

CHAPTER 3: NATIONAL OBJECTIVES



CHAPTER PURPOSE & CONTENTS

This chapter provides a summary of the three national objectives of the program, the categories for meeting the three national objectives as well as selecting and documenting the appropriate national objective for activities funded by state grantees.

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3.1 Introduction to National Objectives

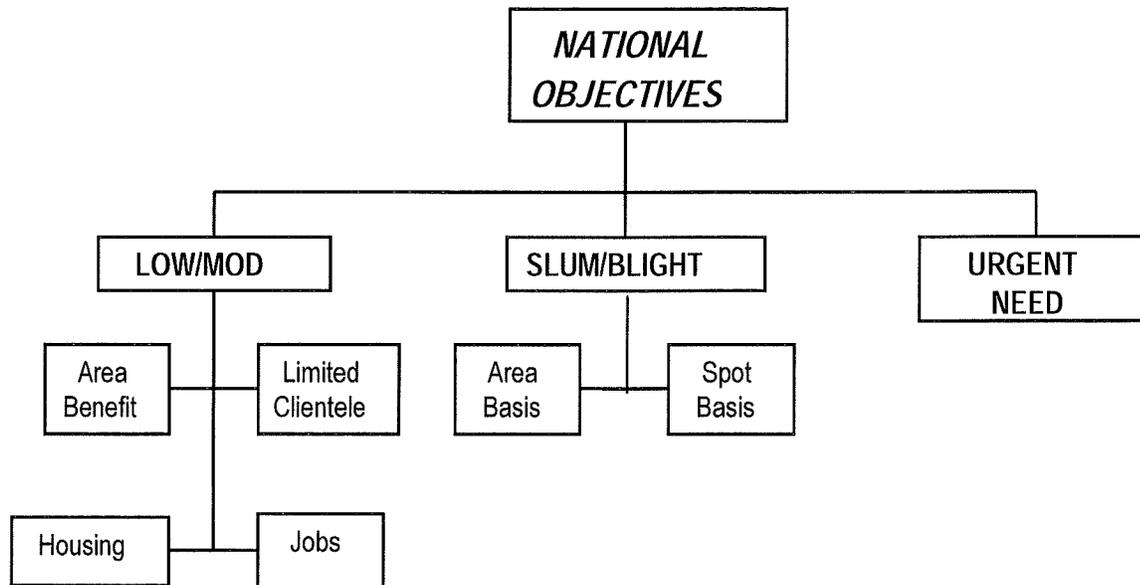
- ✓ This section provides general background on the three national objectives and an overview of the possible approaches.

Key Topics in This Section	✓ Overview of the three national objectives
Statutory Citations	Section 101(c), Section 104(b)(3), 105(c)
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States – Chapter 3: Meeting a National Objective

- ✓ The authorizing statute of the CDBG program requires that each activity funded except for program administration and planning activities must meet one of three national objectives. The three national objectives are:
 - Benefit to low- and moderate- income (LMI) persons;
 - Aid in the prevention or elimination of slums or blight; and
 - Meet a need having a particular urgency (referred to as urgent need).
- ✓ An activity that does not meet a national objective is not compliant with CDBG requirements and may be subject to remedial actions.



- ✓ The following exhibit depicts the different categories associated with each of the national objectives.



- ✓ Each national objective and the categories are discussed in further detail in subsequent sections of this chapter.
- ✓ This chapter will also explore the strategic decisions states can make when qualifying an eligible activity under a national objective. It is possible for an activity to qualify under more than one national objective, although only one national objective is required for an activity. Additionally, activities can qualify under more than one category. This chapter will discuss considerations for making a decision regarding which category works best for an eligible activity.
- ✓ HUD has developed a matrix of the national objectives, eligible activities and IDIS matrix codes. States may wish to refer to this matrix when selecting national objectives. A copy is attached to the IDIS chapter of this manual.

3.2 Benefit to Low and Moderate Income Persons or Households

- ✓ This section describes each of the possible LMI national objectives.

<p>Key Topics in This Section</p>	<ul style="list-style-type: none"> ✓ Overview of the primary objective and associated expenditure cap ✓ Area benefit activities (LMA) ✓ Limited Clientele Activities (LMC) ✓ Housing Activities (LMH)
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	✓ Job Creation and Retention Activities (LMJ)
Statutory Citations	Section 101(c), Section 104(b)
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 3: Meeting a National Objective – Chapter 4: Overall Expenditure Level –Benefit to LMI Persons ✓ CPD Notice 05-06: US HUD Suggested Survey Methodology to Determine the Percentage of LMI Persons in the Service Area of a Community Development Block Grant-Funded Activity

- ✓ The LMI national objective is often referred to as the “primary” national objective because the statute requires that recipients expend 70 percent of their CDBG funds to meet the LMI national objective.
- ✓ Additional information on how to meet the 70 percent test and certification to HUD is located later in this chapter.
- ✓ In addition to meeting the 70 percent test, UGLG applicants must ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons. This does not mean that each activity has to include both low- and moderate income beneficiaries, but it further ensures that the CDBG program will primarily benefit low-income persons.
- ✓ This section covers the four categories that can be used to meet the LMI national objective:
 - Area benefit activities;
 - Limited clientele activities;
 - Housing activities; or
 - Job creation or retention activities.

3.2.1 Low Mod Area Benefit (LMA)

- ✓ The area benefit category is the most commonly used national objective for activities that benefit a residential neighborhood. An area benefit activity is one that benefits all residents in a particular area, where at least 51 percent of the residents are LMI persons.
- ✓ Examples of area benefit activities may include the following when they are located in a predominately LMI neighborhood:
 - Acquisition of land to be used as a neighborhood park;
 - Construction of a health clinic;
 - Improvements to public infrastructure like the installation of gutters and sidewalks; and
 - Development of a community center.



- ✓ The activities listed above benefit all LMI residents in a service area and thus are the type of activities that may qualify under the LMI area benefit category for the purposes of meeting a national objective.
- ✓ States and UGLG are responsible for determining the service area of an activity. HUD will generally accept a state grantee's determination as long as it is reasonable.
 - The factors that may be considered in making a determination regarding the service area include:
 - *The nature of the activity:*

In general the size and the equipment associated with the activity should be taken into consideration. A small park with a limited number of slides and benches would not be expected to serve the entire neighborhood. In the same way, a larger park that can accommodate a considerable number of people would not be expected to service just the immediately adjacent properties. The same applies to improvements or assistance to an alleyway versus a small two-lane street versus an arterial four-lane street within the same neighborhood. The service area for each of these infrastructure projects will be different in size and population.
 - *The location of the activity:*

In general, the immediate area surrounding a facility is expected to be included in the service area. Additionally, when a facility is located near the boundary of a particular neighborhood, its service area could likely include portions of the adjacent neighborhood as well as the one in which it is located.
 - *Accessibility issues:*

Geographic barriers can separate and preclude persons residing in a nearby area from taking advantage of a facility. Other limits to accessibility can include access fees, language barriers, time or duration that an activity is available, access to transportation and parking, etc.
 - *The availability of comparable activities:*

Comparable activities within the service area should be taken into account so that the service area does not overlap with the service area of another comparable activity.
 - *Boundaries for facilities and public services:*

The service area for some public facilities and services are determined based on specified and established boundaries or districts. Examples of such services and facilities are police precincts, fire stations, and schools.
 - If the service area has not already been identified for an activity, the state has to determine the service area before CDBG assistance can be provided under the LMI Area Benefit category.
- ✓ An area is considered to meet the test of being LMI if there is a sufficiently large percentage (51 percent) of LMI persons residing in the service area as determined by:

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- The most recently available decennial Census information, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau; or
- A current survey of the residents of the service area.
- ✓ With respect to using Census information to document that the service area qualifies, states can obtain the following data:
 - A listing of all census tracts and block groups in the community's jurisdiction;
 - The number of persons that resided in each such tract/block group at the time of the last census; and
 - The percentage of such persons who were LMI (based on the CDBG definition) at that time.
 - The above data is available directly from HUD online at:
<http://www.hud.gov/offices/cpd/systems/census/lowmod/>
 - IDIS calculates this information for state grantees.
- ✓ If the proposed activity's service area is generally the same as a census tract or block group, then the Census data may be used to justify the income characteristics of the area served.
- ✓ Additionally, states can compute the percentage of LMI persons in multiple census tracts and block groups because the data includes both the total number of persons as well as the number of LMI persons within a tract and block group.
- ✓ Income surveys are often used to determine LMI area in one of two instances:
 - If HUD data does not indicate the service area contains at least 51 percent LMI persons, and if a state has a compelling reason to believe the data is incorrect, then the state may conduct household surveys based on a change in either population or income of the area since the census. For example:
 - Economic changes such as plant openings or closings (i.e., causing massive income increases or massive job losses in an area);
 - Non-geographic changes such as natural disasters or terrorist attacks; and/or
 - Recent demographic changes not reflected in current data (e.g., population migration changes).
 - Also, when the service area is not generally the same as a census tract or block group, then the state should conduct household surveys to determine the LMI percentage for the service area.
- ✓ The following are typical steps in the household survey process:
 1. Determine sample size (including the random sampling process for selecting participants and if necessary, replacements);
 2. Select a survey instrument;
 3. Develop the questionnaire;
 4. Conduct the survey;

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5. Analyze the results; and
 6. Document and save survey results.
- ✓ Step 1: Determining the sample size:
- Determine the sample size needed in order to achieve an acceptable level of accuracy.
 - A sample is representative of the population from which it is selected if its aggregate characteristics closely approximate those same aggregate characteristics in the population.
 - The larger the sample, the more likely it is that its aggregate characteristics truly reflect those of the population.
 - However, sample size is not dependent on the size of the population, for large populations. This means that a random sample of 500 people is equally useful in examining the characteristics of a state of 6,000,000 as it would a city of 100,000 or 50,000. For this reason, the size of the population is irrelevant when it is large or unknown; however, it becomes relevant when dealing with sparsely populated areas.
 - Sample Size Calculator (SSC) is a website (<http://surveysystem.com/sscalc.htm>) developed by Creative Research Systems to enable survey researchers to calculate sample sizes from various population sizes.
- ✓ Step 2: Selecting the survey instrument that is determined to be the best for the sample size chosen, geography and nature of the activity. The survey must be methodologically sound for the purpose of establishing the percentage of LMI persons in a service area. A survey must meet standards of statistical reliability that are comparable to that of the Decennial Census data for areas of similar size. Types of surveys include:
- **Mail survey (or self-administered questionnaire):** This is a basic method for collecting data through the mail: a questionnaire is a set of questions sent by mail accompanied by a letter of explanation and self-addressed stamped envelope for returning the questionnaire. The respondent is expected to complete the questionnaire, put it in the envelope and return it. HUD does not recommend mail surveys unless at least one follow-up letter or telephone call is made to obtain an adequate response rate. Combining a mail survey with a follow-up letter or telephone call may improve the rate of response.
 - Advantages:
 - Covers large geographic area;
 - Provides an opportunity for honest answers to very personal questions;
 - No travel required;
 - Enables researcher to target a particular segment of the population; and
 - Allows respondents to complete the questionnaire at their convenience.
 - Disadvantages:



- May have possible coverage errors; for example, address lists might be inaccurate or out of date (duplicate address, incomplete or wrong addresses);
 - Not appropriate for requesting detailed written responses;
 - May have a low return rate if too lengthy, poorly worded, or seems too personal;
 - May not have anyone available to assist the respondent with questions, especially if the questions are in English but the respondent's primary language is not English. (Provisions must be made to provide non-English-speaking residents with a questionnaire in their own language, as appropriate);
 - Easiest for people to disregard, postpone, misplace or forget about it;
 - Needs to allow longer time to collect responses;
 - Costly—must pay for return postage to get a decent response rate; also you have paid for postage even for those that aren't returned;
 - It's all or nothing—people will either do it all or not at all; with phone or in-person surveys, one might at least get some answers; and
 - Lack of control over who fills out the questionnaire (for example, a child).
- **Face-to-face (or door-to-door) interviews:** This is a data collection technique in which one person (an interviewer) asks questions of another (the respondent) in a face-to-face encounter. It involves more work since the interviewer must go and knock on doors in order to obtain interviews.
- **Advantages:**
 - Is a very reliable method of data-collection ;
 - Researcher has full range and depth of information;
 - Interview may be scheduled to suit respondent's daily agenda;
 - Respondent has the option to ask for clarifications;
 - Target population may be easily located and defined; and
 - People may be willing to talk longer, face-to-face, particularly with in-home interviews that have been arranged in advance.
 - **Disadvantages:**
 - Responses may be less candid and less thoughtful;
 - Interviewer's presence and characteristics may bias responses;
 - Interviewer is required to go to the respondent's location;
 - Respondents who prefer anonymity may be influenced negatively;
 - May reach a smaller sample;
 - Lengthy responses must be sorted and coded;
 - Can take too much time;



- Costs more per interview than other survey methods; particularly true of in-home interviews in rural areas where travel time is a major factor;
 - May not be able to gain access to the house (e.g., locked gates, guard dogs, “no trespassing signs,” etc.); and
 - Translators may be needed when dealing with non-English speakers.
- **Telephone interviews:** A telephone interview is a data collection technique in which one person (an interviewer) asks questions of another (the respondent) via telephone. Telephone numbers of potential participants must be selected randomly. The interviewer must ensure that the respondent is someone competent and knowledgeable enough to answer questions about the family income status. In a telephone survey, you must devise a method for contacting those families without telephones or those with unlisted numbers. Hence it may be preferable to conduct door-to-door interviews in small service areas, especially in rural areas.
- **Advantages:**
 - Relatively easy to conduct;
 - Saves money and time;
 - Appearance and demeanor of interviewer do not influence the respondent;
 - Respondents may be more honest in giving socially disapproved or sensitive answers due to greater anonymity for respondent;
 - Interviewer may use an alias rather than his/her real name for privacy or to conceal ethnicity if relevant to the study;
 - Allows interviewer to ask follow up questions; and
 - No fear for personal safety.
 - **Disadvantages:**
 - Respondents may be hostile to interviews because of experience with previous telemarketing sales calls disguised as surveys;
 - Respondents may terminate the interview abruptly;
 - The interviewer may have problems reaching potential respondents by telephone because of the prevalence of answering machines that screen telephone calls;
 - May not be able to reach households with unlisted numbers, no telephone at all, or families that use only cell phones;
 - Some people often do not like the intrusion of a telephone call to their homes;
 - Difficulty of reaching people due to reasons such as conflicting schedules;
 - It may be easier to be less candid to someone on the phone than in person; and
 - Difficult to get accurate answers from non-English speakers.



✓ Step 3: Developing the questionnaire:

- Constructing a questionnaire is a skill, which requires decisions concerning the content, wording, format, and placement of questions—all of which have important consequences on the results to be measured.
- There are basically four areas involved in constructing a questionnaire:
 - Determine the question content, scope, and purpose;
 - Choose the response format to be used in collecting information from the respondent;
 - Word the questions so as to get at the issue of interest; and
 - Determine how best (i.e., the order) to place the question(s) of interest among other questions in the questionnaire.

✓ Step 4: Conducting the survey:

- The interviewer should make contact with the head of the family or someone who is qualified to speak for the family and has knowledge about the family income.
- It is important that all respondents be asked the same questions, in the same order, and their responses recorded exactly, without additions or deletions. To ensure this, the questions must be written properly and the exact response of each respondent recorded as it is presented. Finally, interviewers should be trained appropriately on the survey and how to ask the questions to ensure consistent information is collected.

✓ Step 5: Analyzing the results:

- For surveys where the respondents are selected through an acceptable random process, use the number of participants who responded to the survey is used to calculate the percentage of LMI persons for that area.
- Add up the numbers to see what has been learned by tabulating the responses from the questionnaires and calculating an estimated proportion of low- and moderate-income persons; and determine how accurate that estimate is.
- If the survey was undertaken correctly, including random selection of the required number of families, and the estimate shows that less than 51 percent of the residents of the service area have low- and moderate-incomes, LMI area benefit activities cannot be implemented in that area.
- See CPD Notice 05-06 for sample calculation worksheets.

✓ Step 6: Documenting the results:

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- It is important that the results of the survey be documented, since those who audit or evaluate your program may want to review the procedures and data used to determine that the service area qualifies under the CDBG program regulations. The contents of that documentation are as follows:
 - Keep the completed surveys.
 - Saving the cover sheets separately provides a record of who was contacted.
 - Keep a list of the actual families sampled. Replacement families should be noted too.
 - Survey data should be retained in accordance with record-keeping requirements of the State program at 24 CFR 570.490.
- There is no firm answer as to how long an income survey for the purpose of determining the percentage of LMI persons in the service area is good for.
 - Perhaps there might be instances in which an income survey could continue to be used until the next decennial census (e.g., 2010), but the state would have to be sure that there have been no significant demographic, economic and non-economic changes in the area during that time.
- ✓ Additional guidance on developing and implementing surveys is also available in CPD Notice 05-06.
- ✓ Finally, the service area of the activity must be primarily residential and the activity must meet the identified needs of LMI persons.
 - An activity with a service area that is not primarily residential may not qualify under the LMI area benefit category even if the activity provides benefits to all residents in the service area and 51 percent of the residents are LMI persons.
 - This requirement does not apply to the location of the activity itself but rather the service area of the activity. As such it does not mean that activities located in commercial districts cannot be qualified under the LMI area benefit category on the virtue of their geography. The primarily residential test is applied to the service area of the activity.
 - For example, activities that support the infrastructure of a commercial district composed of institutions and firms that serve a national and international clientele will not qualify under LMI area benefit.
 - In contrast, if the commercial district is composed of stores and businesses that serve local customers such that the service area boundaries of the commercial district is around a primarily residential area with the requisite percentage of LMI residents, the activity qualifies under the LMI area benefit category.
- ✓ Activities under public facilities and improvements and some public service activities (e.g. police or fire services) tend to provide benefits to all residents in the service area. Additionally, public schools can be qualified under LMI area benefit because of



the affect a school may have on the value of the residential property in the area. Public Schools are considered to benefit all the residents of the service area and may qualify under this category.

- ✓ There are activities and facilities that are located in a service area but are designed to meet special needs. These activities cannot be qualified under this category. For example, a senior center would qualify under the LMI limited clientele category and not the LMI area benefit category.
- ✓ With respect to exceptions and special situations, the statute allows two kinds of area benefit activities to meet the national objective of benefit to LMI persons even when the general requirements of the area benefit category cannot be met. The two kinds of area benefit activities are described below:
 - 911 Systems
With prior HUD approval, a state may develop, establish and operate for up to two years after the establishment of a uniform emergency telephone number system serving an area having less than the percentage of LMI persons otherwise required.
 - Special Assessments
The use of CDBG funds to pay special assessments levied against residential properties that are owned and occupied by LMI persons will qualify under the LMI area benefit category provided that this is the only use of CDBG funds in the financing of a public improvement. The activity will qualify even if the public improvement provides a benefit to all the residents of an area.
- ✓ Finally, there are two special situations that can meet the national objective of benefiting LMI persons under either the area benefit category or the job creation or retention category, at the option of the state grantee.
 1. Activities undertaken pursuant to a state approved Community Revitalization Strategy Area (CRSA) for the purpose of creating or retaining jobs, and
 2. Activities carried out for the purpose of creating or retaining jobs by a Community Development Financial Institution (CDFI) whose charter limits its investment area to a primarily residential area consisting of at least 51 percent LMI persons.

3.2.2 Low Mod Limited Clientele (LMC)

- ✓ The limited clientele category is a second way to qualify specific activities under the LMI benefit national objective. Under this category, 51 percent of the beneficiaries of an activity have to be LMI persons.
- ✓ In contrast to the area benefit category, it is not the LMI concentration of the service area of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity.
- ✓ Activities in this category provide benefits to a specific group of persons rather than everyone in an area. It may benefit particular persons without regard to their residence, or it may be an activity that provides a benefit to only particular persons within a specific area.
- ✓ Examples of activities that qualify under the limited clientele category include:

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- Acquisition of a building to be converted into a shelter for the homeless;
 - Rehabilitation of a center for training severely disabled persons to enable them to live independently;
 - Clearance of a structure from the future site of a neighborhood center that will exclusively serve the elderly; and
 - Public services activities like the provision of health services.
- ✓ The listed examples qualify under the limited clientele category because the beneficiaries can be identified as LMI residents.
- ✓ With respect to determining the beneficiaries of activities as LMI and qualifying under the limited clientele category, activities must meet one of the following tests:
- Benefit a clientele that is generally presumed to be principally LMI. This presumption covers abused children, battered spouses, elderly persons, severely disabled adults (see the box below), homeless persons, illiterate adults, persons living with AIDS and migrant farm workers; or
 - Require documentation on family size and income in order to show that at least 51 percent of the clientele are LMI; or
 - Have income eligibility requirements limiting the activity to LMI persons only; or
 - Be of such a nature and in such a location that it can be concluded that clients are primarily LMI. An example is a day care center that is designed to serve residents of a public housing complex.
- ✓ In addition, the following activities may qualify under the limited clientele national objective:
- Removal of architectural barriers to mobility for elderly persons or the severely disabled will be presumed to qualify under this category if it is restricted, to the extent practicable, to the removal of such barriers by assisting
 - The reconstruction of a public facility or improvement, or portion thereof that does not qualify under the area benefit category;
 - The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under area benefit or job creation or retention category; or
 - The rehabilitation of common areas in a residential structure that contains more than one dwelling unit and that does not qualify under housing activities category for meeting national objectives.
 - Microenterprise activities carried out in accordance with the HUD regulations when the person owning or developing the microenterprise is LMI; or
 - Activities that provide training and other employment support services when the percentage of persons assisted is less than 51 percent LMI may qualify if: the proportion of total cost borne by CDBG is no greater than the proportion of LMI persons assisted; and when the service assists businesses, CDBG is only used in the project to pay for the job training and/or supportive services.
- ✓ There are two sets of activities that are precluded from qualifying under this category based on statutory limitations:



- Acquisition, construction, or rehabilitation of property for housing, including homeownership assistance must qualify under the housing national objective which will be discussed below in further detail.
- Creation or retention of jobs generally qualify under the jobs or the area benefit category of the LMI benefit national objective.

Exhibit 3-1: Definition of Severely Disabled

Persons are considered severely disabled if they:

- Use a wheelchair or another special aid for 6 months or longer;
- Are unable to perform one or more functional activities (seeing, hearing, having one's speech understood, lifting and carrying, walking up a flight of stairs and walking);
- Need assistance with activities of daily living (getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating and toileting) or instrumental activities or daily living (going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone);
- Are prevented from working at a job or doing housework;
- Have a selected condition including autism, cerebral palsy, Alzheimer's disease, senility or dementia or mental retardation; or
- Are under 65 years of age and are covered by Medicare or receive Supplemental Security Income (SSI).

3.2.3 Low Mod Housing Activities (LMH)

- ✓ The housing category of LMI benefit national objective qualifies activities that are undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by LMI households.
- ✓ Examples of eligible activities include, but are not limited to:
 - Acquisition of an apartment house to provide dwelling units to LMI households at affordable rents, where at least 51 percent of the units will be occupied by LMI households;
 - Site improvements on publicly-owned land to serve a new apartment structure to be rented to LMI households at affordable rents;
 - Housing rehabilitation for single family units;
 - Conversion of an abandoned warehouse to be reconfigured into new apartments, where at least 51 percent of the units will be occupied by LMI households at affordable rents.
- ✓ In order to meet the housing LMI national objective, structures with one unit must be occupied by a LMI household. If the structure contains two units, at least one unit must be LMI occupied. Structures with three or more units must have at least 51 percent occupied by LMI households.
 - Rental buildings under common ownership and management that are located on the same or contiguous properties may be considered as a single structure.



- For rental housing, occupancy by LMI households must be at affordable rents, consistent with standards adopted and publicized by the state grantee.
- ✓ Under the following limited circumstances, structures with less than 51 percent LMI occupants may be assisted:
 - Assistance is for an eligible activity that reduces the development cost of new construction of non-elderly, multi-family rental housing; and
 - At least 20 percent of the units will be occupied by LMI households at an affordable rent; and
 - The proportion of cost borne by CDBG funds is no greater than the proportion to be occupied by LMI households.
- ✓ When housing activities are conducted by a community development financial institution (CDFI) or as part of an approved CRSA, multiple units (e.g. scattered site housing) may be aggregated for the purposes of meeting the LMI housing national objective.
 - NOTE: This flexibility does not apply to activities under the Direct Homeownership Assistance eligibility category.
 - Please refer to the chapter on Revitalization Areas more information.
- ✓ There are a number of activities that generally do not qualify under the LMI Housing national objective. These include code enforcement, interim assistance, microenterprise assistance, public services, and special economic development activities.

3.2.4 Low Mod Job Creation or Retention Activities (LMJ)

- ✓ The job creation and retention LMI benefit national objective addresses activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons.
- ✓ Some examples of activities that qualify when at least 51 percent of jobs created/retained will be for LMI persons include:
 - Clearance activities on a site slated for a new business;
 - Rehabilitation activity that will correct code violations and enable a business to survive and retain jobs;
 - Financial assistance to a manufacturer for the expansion of its facilities that is expected to create permanent jobs; and
 - Assistance to expand a small house cleaning service with four employees that agrees to hire three additional LMI employees.
- ✓ The following requirements must be met for jobs to be considered created or retained.
 - If states fund activities that *create* jobs, there must be documentation indicating that at least 51 percent of the jobs will be held by, or made available to, LMI persons.

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- For funded activities that *retain* jobs, there must be sufficient information documenting that the jobs would have been lost without the CDBG assistance and that one or both of the following applies to at least 51 percent of the jobs:
 - The job is held by a LMI person; or
 - The job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, a LMI person.
- ✓ The following requirements apply for jobs to be considered available to or held by LMI persons.
 - Created or retained jobs are only considered to be *available to* LMI persons when:
 - Special skills that can only be acquired with substantial training or work experience or education beyond high school are **not** a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
 - The state and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.
 - Created or retained jobs are only considered to be *held by* LMI persons when the job is actually held by a LMI person.
- ✓ For the purpose of determining if the preceding requirements are met, a person may be presumed to be LMI if:
 - He/she resides in a Census tract/block numbering area that has a 20 percent poverty rate (30 percent poverty rate if the area includes the central business district); and the area evidences pervasive poverty and general distress; or
 - He/she lives in an area that is part of a Federally-designated Empowerment Zone (EZ) or Enterprise Community (EC); or
 - He/she resides in a Census tract/block numbering area where at least 70 percent of the residents are LMI.
- ✓ Jobs created or retained by assisted businesses may also be presumed to be LMI if the job and business are located in an area that:
 - Has a 20 percent poverty rate (30 percent poverty rate if the area includes the central business district) **and** the area evidences pervasive poverty and general distress; or
 - Is part of a Federally-designated EZ or EC.
- ✓ To determine if an area evidences pervasive poverty and general distress, the following standards are applicable
 - All block groups in the census tract have poverty rates of at least 20 percent;
 - The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or
 - Upon the written request of the state grantee, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high

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incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

- ✓ As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under the job creation and retention category for meeting a national objective.
- ✓ However, in certain cases, such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided such businesses are not otherwise assisted by CDBG funds.
- ✓ Additionally, where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any program year.
- ✓ As mentioned under the area benefit category, certain job creation or retention activities carried out by a CDFI or under a Community Revitalization Strategy can meet the national objective of benefiting LMI persons under either category. In these instances, the state will decide which category it will use to qualify the activity and record the decision in program files so that HUD will know which category is being applied.

3.3 Elimination of Slums and Blight

- ✓ This section highlights the national objectives related to the elimination of slums and blight.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Overview of elimination of slum and blight <ul style="list-style-type: none"> - Area basis (SBA) - Spot basis (SBS)
Statutory Citations	Section 101(c), Section 104(b)(3), Section 105(c)
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> - Chapter 3: Meeting a National Objective

- ✓ Activities under this national objective are carried out to address one or more of the conditions which have contributed to the deterioration of an area designated as a slum or blighted area.
- ✓ The focus of activities under this national objective is a 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.
- ✓ This difference in focus has an impact on the information that is required to assess the qualifications of an activity. Under the LMI benefit national objective, determining the number of LMI persons that actually or could potentially benefit from an activity is central to qualifying the activity. Under the elimination of slum and blight national



objective, determining the extent of and physical conditions that contribute to blight is central to qualifying an activity.

There are two categories that can be used to qualify activities under this national objective:

- Prevent or eliminate slums and blight on an area basis; or
- Prevent or eliminate slum and blight on a spot basis.

3.3.1 Slum Blight Area Basis (SBA)

- ✓ This category covers activities that aid in the prevention or elimination of slums or blight in a designated area. Examples of activities that qualify when they are located within the slum or blighted area include
 - Rehabilitation of substandard housing located in a designated blighted area and where the housing is expected to be brought to standard condition;
 - Infrastructure improvements in a deteriorated area; and
 - Economic development assistance in the form of a low-interest loan to a business as an inducement to locate a branch store in a redeveloping blighted area.
- ✓ To qualify under this category, the area in which the activity occurs must be designated as slum or blighted. The following tests apply:
 - The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
 - Additionally, the area must meet either one of the two conditions specified below:
 - Public improvements throughout the area are in a general state of deterioration; or
 - At least 25 percent of the properties throughout the area exhibit one or more of the following:
 - Physical deterioration of buildings/improvements;
 - Abandonment of properties;
 - Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
 - Significant declines in property values or abnormally low property values relative to other areas in the community; or
 - Known or suspected environmental contamination.
 - Documentation must be maintained by the state 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.
- ✓ As stated above, qualified activities must address the identified conditions that contributed to the slum and blight.



- ✓ NOTE: When undertaking residential rehab in a slum/blight area, the building must be considered substandard under local definition and all deficiencies making the building substandard must be eliminated before less critical work is undertaken.

3.3.2 Slum Blight Spot Basis (SBS)

- ✓ These are activities that eliminate specific conditions of blight or physical decay on a spot basis and are not located in a slum or blighted area. Examples include:
 - Acquisition and demolition of a dilapidated property;
 - Rehabilitation of a decayed community center that eliminates code violations that are detrimental to the health and safety of potential occupants like faulty wiring, falling plaster, or other similar conditions;
 - Preservation of a deteriorated building of historic significance; and
 - Financial assistance to a business to demolish a decayed structure and construct a new building on the site.
- ✓ Activities under this category are limited to acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, and building rehabilitation activities.
- ✓ Rehabilitation is limited to the extent necessary to eliminate a specific condition detrimental to public health and safety.
- ✓ Finally, if acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

3.4 Urgent Need (URG)

- ✓ This section describes the urgent need national objective.

Key Topics in This Section	✓ Overview of urgent need
Statutory Citations	Section 101(c), 104(b)(3), 105(c)
Other Reference Materials on This Topic	✓ Guide to National Objectives and Eligible Activities for States - Chapter 3: Meeting a National Objective

- ✓ Use of the urgent need national objective category is rare. It is designed only for activities that alleviate emergency conditions. Examples include:
 - Acquisition of property located in a flood plain that was severely damaged by a recent flood;
 - Public facility improvements like the reconstruction of a publicly-owned hospital that was severely damaged by a tornado;
 - Demolition structures that are severely damaged by a major earthquake;

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- Public services like additional police protection to prevent looting in an area damaged by a recent hurricane;
 - Interim assistance such as emergency treatment of health problems cause by a flood; and
 - Special economic development assistance to a grocery store that was damaged by an earthquake.
- ✓ Urgent need 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 UGLG certifies and the state agrees that:
 - The UGLG is unable to finance the activity on its own; and
 - Other sources of funding are **not** available.

3.5 LMI Benefit Expenditures

- ✓ States are required to expend a substantial portion of their funds in order to benefit LMI persons. This section describes the calculation of LMI benefit.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Expenditure requirement ✓ Meeting the requirement <ul style="list-style-type: none"> – Excluded expenditures – Activities that meet the requirement ✓ Examples: <ul style="list-style-type: none"> – Excluded housing activity expenditures – LMI calculation
Statutory Citations	Section 101(c), Section 104(b), 105(c)
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 4: Overall Expenditures Level – Benefit to L/M Income Persons

- ✓ The primary national objective of the CDBG Program is the development of viable urban communities principally for LMI persons.
- ✓ To meet the primary national objective, the CDBG regulations require that states expend not less than 70 percent of CDBG funds for activities that benefit LMI persons.
 - Planning and administrative costs are excluded from the LMI benefit calculation.

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- Activities meeting this requirement are those which qualify under one of the four LMI benefit national objective category:
 - Area basis;
 - Limited clientele;
 - Housing activities; or
 - Job creation or retention.
- The percentage calculation is based on aggregate CDBG expenditures over a period specified by the state (up to three years) in a certification to HUD. The certification must be included in state grantee's annual Consolidated Plan action plan submission.

LMI Calculation Example	
Total state grant amount	\$1,000,000
<i>Less</i> actual planning and admin (up to 20 percent)	<u>(200,000)</u>
Equals amount subject to LMI calculation	\$800,000
<i>Multiplied</i> by 70 percent	<u>x 0.70</u>
<i>Equals</i> minimum to benefit LMI	\$560,000
Amount subject to LMI calculation	\$800,000
<i>Less</i> LMI minimum	<u>(560,000)</u>
<i>Equals</i> maximum slum/blight and urgent needs allowable activities	\$240,000
* NOTE: This example is for illustrative purposes only. It does not demonstrate the calculation for states on a multi-year certification cycle, and does not take into account program income.	

- ✓ Due to the 70 percent LMI benefit standard, states **must** limit expenditures under the Slum/Blight and Urgent Need national objectives in order to meet the LMI expenditure requirement.
- ✓ States are required to meet the LMI targeting requirement over their entire program. Thus, the state could allow some UGLG to undertake projects that exclusively meet a Slum/Blight or Urgent Need national objective as long as other UGLGs are focusing on LMI activities. On average, across the state's program over the specified reporting period, a minimum of 70% of all of the state's CDBG expenditures must meet the LMI requirements.
- ✓ Under housing activities, the expended funds that count towards the 70 percent requirement may be limited depending on number of LMI units in the housing structure and the amount of the CDBG funds expended on the structure.
- To determine the amount expended under housing activities that counts towards the 70 percent requirement, states should take the following steps:



- Divide the number of units in an assisted structure that is occupied by LMI households by the total number of units to determine the percentage of units that are occupied by LMI households;
- Multiply the total costs of the assisted activity (including those paid for with CDBG and non-CDBG funds) by the percentage of units that are occupied by LMI households; and
- Exclude the amount of CDBG funds expended for the assisted structure that is in excess of the amount calculated in the above step.

Excluded Housing Activity Expenditures Example	
Number of units occupied by LMI households	4
Total number of units in assisted structure	6
<i>Divide</i> number of units occupied by LMI households by total number of units in assisted structure and multiple by 100	$(4/6) * 100$
<i>Equals percent of LMI units in structure</i>	67%
Total cost of the housing activity (all sources of funds)	\$300,000
Multiplied by percent of LMI units in structure (i.e. proportion of housing costs attributed to LMI units)	\$200,000
CDBG assistance to the structure	\$250,000
<i>Excess CDBG funds that have to be excluded from LM expenditures</i>	\$50,000
* NOTE: This example is for illustrative purposes only.	

3.6 Choosing the Right National Objective

- ✓ States may have options regarding which national objective is used for a particular activity. This section provides tips on selecting the right national objective.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Activities that meet more than one national objective ✓ Selecting the most appropriate national objective
Statutory Citations	
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 3: National Objectives

- ✓ Activities may qualify for more than one national objective category. If an activity meets the LMI benefit national objective, then the best decision for most states will be to use the LMI Benefit national objective because of the 70 percent requirement associated with that national objective.
- ✓ For the activities that meet more than one national objective, states may find it useful to document compliance with all the applicable national objectives, especially if there



is some uncertainty regarding the ability of an activity to meet the chosen national objective upon completion.

- ✓ For example, states may have concern that an activity qualifying on the basis of creating jobs may not meet the test that at least 51 percent of the jobs created will benefit LMI persons. If the activity could also qualify under the slum/blight area category, the state may be best served by documenting compliance with both national objectives. This way, if the activity does not meet the LMI job creation criteria the state can switch the activity to the slum/blight area national objective rather than have the activity in non-compliance with CDBG rules. Note that switching the activity from LMI benefit to slum/blight area may affect the states certification that 70 percent of expenditures are associated with the LMI benefit national objective, so states should proceed with precaution.

3.7 Documenting National Objectives

- ✓ It is critical that states document the results of their activity and the related national objective. This section highlights that required national objective documentation.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Timing of documentation activities ✓ Documenting LMI Benefit national objective ✓ Documenting Prevention/Elimination of Slums or Blight ✓ Documenting Urgent Need
Statutory Citations	
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States - Chapter 3: National Objectives

- ✓ States and UGLG must maintain records that funded activities meet one of the national objectives. The records depend on the national objective category. This section walks states through the documentation requirements under the associated national objective categories.
- ✓ The Performance Measurement, Reporting, Recording Keeping and Monitoring chapter in this manual, Chapter 13, has more details regarding records that must be maintained to document compliance with CDBG regulations, including records on meeting national objectives.
- ✓ The timing of documentation for activities is an important consideration. Compliance with national objectives can be documented upfront for a number of the categories. For example, compliance documentation for the following national objectives can be established upfront:
 - Under the national objective of benefit to LMI persons, the LMI area benefit;
 - Under the national objective of elimination of slums or blight, both categories (area basis, spot basis); and
 - The urgent need national objective.



- ✓ Some national objectives have to be documented over time. For example, it is likely that the future occupants of a rental rehabilitation activity cannot be identified upfront. Compliance with the LMI Housing requirement that 51 percent of the occupants have to be LMI households, will require collecting documentation demonstrating compliance during the lease-up period.
- ✓ In the same way, future hires of created jobs cannot be identified and documentation of compliance cannot be obtained upfront. Rather, hires by the assisted business have to be monitored over a period of time.
- ✓ HUD is charged with negotiating recordkeeping requirements with states. What follows is a list of the types of records that generally may be kept to document national objective compliance.

3.7.1 Benefit to LMI Persons

LMI Area Benefit

- ✓ The following records will demonstrate compliance under this national objective category:
 - Boundaries of service area;
 - Percentage of LMI persons that reside in the service area; and
 - The data used for determining percentage of LMI persons.

LMI Limited Clientele

- ✓ One of the following five types of records should be kept:
 1. Documentation showing that the activity is designed for exclusive use by a segment of the population presumed by HUD to be LMI persons; or
 2. Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by LMI persons; or
 3. Data showing the family size and annual income of each person receiving the benefit; or
 4. Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this category; or
 5. Documentation showing that the activity qualifies under the special conditions regarding job services where less than 51 percent of the persons benefiting are LMI persons.

LMI Housing

- ✓ The following records should be maintained:
 - A written agreement with each landlord or developer receiving CDBG assistance. The agreement must specify
 - The total number of dwelling units in each multi-unit structure, and

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- The number of those units which will be occupied by LMI households after assistance.
- Total cost of the activity, including both CDBG and non CDBG funds
- The household size and income eligibility for each of the LMI households occupying assisted units
- For rental housing
 - The rent charged (or to be charged) after assistance for each dwelling unit in each assisted structure; and
 - Documentation of compliance with the locally established standards for housing that is “affordable to LMI households”.
- When assisting structures with less than 51 percent LMI occupants, documentation of qualification under the special conditions:
 - Number of units to be occupied by LMI households at an affordable rent;
 - Total development cost of new construction; and
 - Amount of CDBG funds expended for activity.
- When aggregating scattered sites, documentation of the basis for aggregating scattered sites and considering them as a single structure.
- When assisting with the delivery costs of HOME assisted projects and assistance, evidence that housing projects and/or tenant based rental assistance achieves HOME income targeting requirements.
- ✓ While compliance with the housing national objective is based on the initial occupancy of the housing following completion of the CDBG-assisted activity, states are urged to establish their own requirements for replacing such households with other LMI households whenever the assisted unit becomes vacant within a period of time following completion that is commensurate with the amount of CDBG financial assistance that was provided to the developer.
- ✓ Another consideration when document compliance is that occupancy of the unit may not be for some time after the completion of the activity. For example, there may be a time lag between the acquisition or land clearing activity subsidized by CDBG funds and the development of the housing units. It is not sufficient to document the intention to comply. The state is responsible for documenting that the housing units are constructed and that the appropriate number of units are initially occupied by LMI households.

LMI Job Creation and Retention

- ✓ Record keeping requirements in this category relate to both the status of the business, the jobs created or retained, and the LMI persons benefiting from the activity. The following is an outline of the documents that have to be maintained by states and/or UGLG:
 - Written agreement with the business in which the following is specified:
 - A commitment from the assisted business to hire or retain LMI persons;

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- The type of job and whether the job will be full- or part- time, and
- The actions that the business will take to ensure that at least 51 percent of the hires or retainees will be LMI persons.
- Compliance with the written agreement must be documented as follows:
 - The jobs that were actually created and/or retained;
 - Whether each such job was held by or made available to a LMI person; and
 - The full-time equivalency status of the jobs.
- For created jobs that will be held by LMI persons, the records must demonstrate:
 - Listing by job title of the jobs created;
 - Listing by job title of the jobs filled;
 - The name and income status of the person who filled each position; and
 - The full-time equivalency status of the jobs.
- For created jobs that will be made available to LMI persons but are not taken by LMI persons:
 - The title and description of the jobs made available;
 - The full-time equivalency status of the job;
 - The prerequisites for the job; special skills or education required for the job, if any; and the business commitment to provide needed training for such jobs; and
 - How first consideration was given to LMI persons for the job can be recorded as follows:
 - The name(s) of person(s) interviewed for the job and the date of the interview(s); and
 - The income status of the person(s) interviewed.
- For retained jobs that would otherwise be lost:
 - Specific evidence that the jobs would be lost without the CDBG assistance.
 - If the retained job is held by a LMI person:
 - A listing by job title of permanent jobs retained;
 - The jobs that are known to be held by LMI persons at the time of assistance;
 - The full time equivalency status of each job; and
 - Family size and annual income of each LMI person.
- For retained jobs that are projected to turnover to LMI persons:
 - A listing of the retained jobs that are projected to become available within two years of assistance;



- The basis of the determination that the job is likely to turnover within two years of assistance;
 - The actual turnover date;
 - The name and income status of the person who filled the vacancy;
 - If the person who took the job was not a LMI person, records to demonstrate that the job was made available to LMI persons:
 - The name(s) of person(s) interviewed for the job and the date of the interview(s) and
 - The income status of the person(s) interviewed; and
 - Information on the family size and annual income of each LMI person hired.
- ✓ There are five options for documenting the LMI status of an applicant or employee:
1. Referrals from an agency that has agreed to refer individuals who are determined to be LMI based on HUD's category. These agencies must maintain records, which must be available to the state or federal inspection, showing the basis upon which they determined that the person was LMI; or
 2. A written self certification by the employee or applicant of his/her family size and total income that is signed and dated. Certification can either include actual size and income of family or can contain a statement that the annual family income is below the Section 8 low-income limit for the applicable family size; or
 3. Qualification of employee or application for assistance under another program with income qualification that are as restrictive as those used by the CDBG program. Examples include referrals from Public Housing, Welfare Agency, or the JTPA Program, with the exception of the JTPA Title III program for dislocated workers; or
 4. Evidence that the individual is homeless; or
 5. Evidence that the individual may be presumed to be LMI by way of residence address and poverty rates of applicable census tract or documentation of area designation as EZ or EC.
- ✓ The state can use any combination of documenting income status for the persons benefiting from a job creation or retention activity.
- ✓ When documenting income, the income status of an individual is made at the time the CDBG assistance is provided. This may have an affect on the retention of high-paying unskilled jobs counting as eligible except for turnover purposes. This is because a person who occupies a high-paying but low-skilled job may not qualify as a LMI person. Whereas a LMI person may fill the job at a lower pay rate if it were created or if it became available through turnover.

3.7.2 Prevention/Elimination of Slums or Blight

- ✓ Evidence of blight on a spot or areas basis must be documented and be part of record keeping. In documenting the presence of blight, the use of pictures is encouraged.



Area Basis

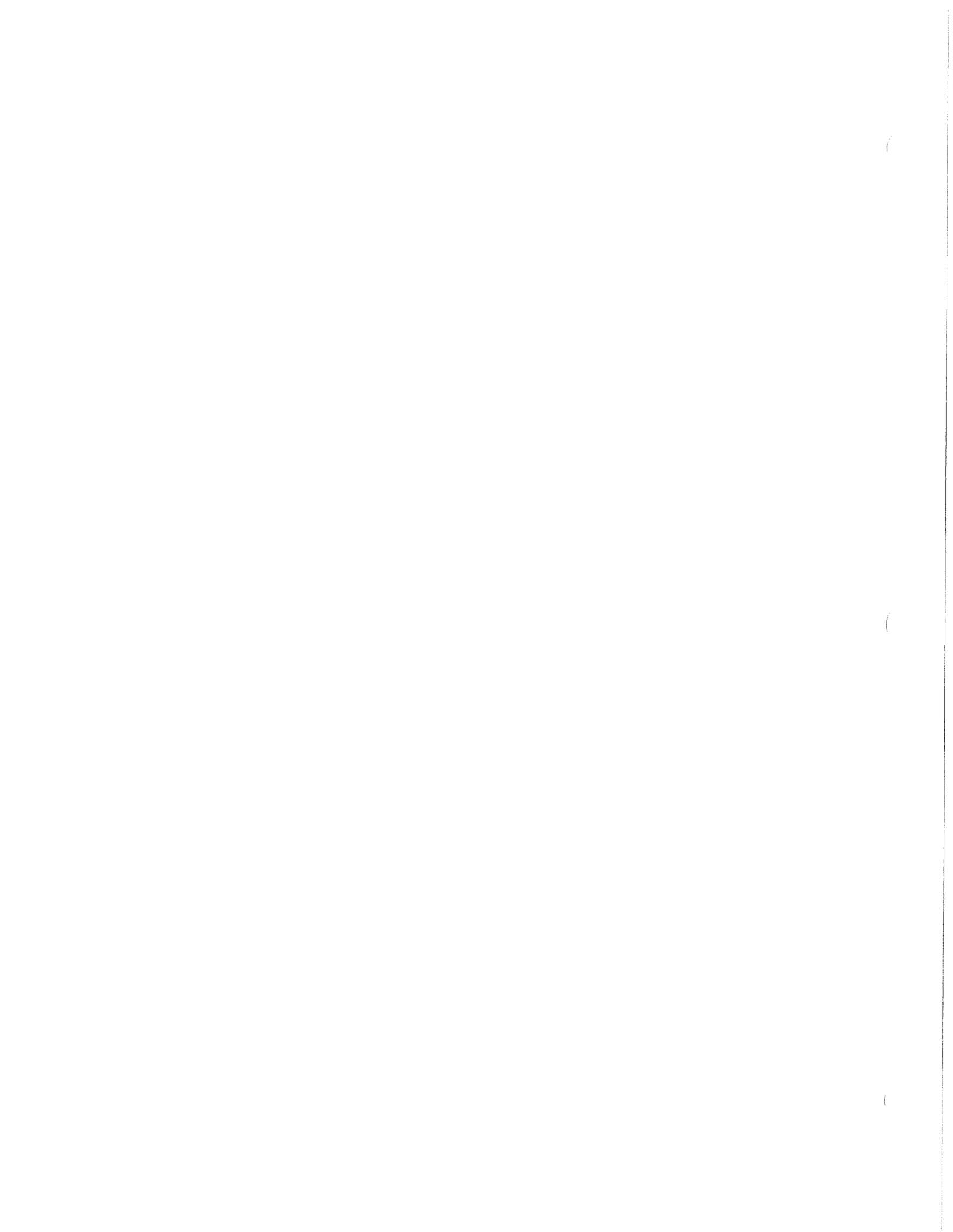
- ✓ Records to be maintained include:
 - Area designation (e.g., boundaries) and date of designation,
 - Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans),
 - For residential rehabilitation:
 - Building qualification as substandard,
 - Pre-rehabilitation inspection report and work plan describing deficiencies,
 - Scope of work performed with documentation that substandard elements were addressed first; and
 - Evidence that the activities undertaken address the conditions that contributed to the deterioration.

Spot Blight

- ✓ State files should include the following:
 - Description of condition addressed by activity,
 - Documentation of eligibility of activity under this category, and
 - Records required for residential rehabilitation as listed above under Area Basis.

3.7.3 Urgent Need

- ✓ Files should include:
 - Documentation of urgency of need and timing,
 - Certification that other financing resources were unavailable and CDBG had to be used, and
 - Condition has been in existence during the past 18 months.



CHAPTER 8: ECONOMIC DEVELOPMENT & SECTION 108



CHAPTER PURPOSE & CONTENTS

This chapter covers economic development activities that are eligible for assistance under the CDBG Program. The chapter provides information on and the economic development underwriting guidelines and the public benefit standards requirements applicable to certain economic development projects. The Section 108 loan guarantee program is also reviewed.

SECTION	TOPIC
8.1	Eligible and Ineligible Activities
8.2	Meeting and Documenting a National Objective
8.3	Underwriting Guidelines and Public Benefit Standards
8.4	Section 108 Loan Guarantee Program

8.1 Eligible and Ineligible Activities

- ✓ Creating economic opportunities and jobs are among the key CDBG activities funded by many states. This section highlights the ways that economic development projects can be funded under CDBG.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Eligible Activities <ul style="list-style-type: none"> – Key ways to undertake economic development activities ✓ Ineligible Activities
Statutory Citations	Section 105(a)(2), Section 105(a)(4), Section 105(a)(14), Section 105(a)(15), Section 105(a)(17), Section 105(a)(19)
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 2

8.1.1 Eligible Activities

- ✓ The CDBG program recognizes several key ways that economic development may be undertaken.
- ✓ **Special economic development.** CDBG funds may be used to undertake certain economic development activities. These activities include:
 - Acquiring, constructing, reconstructing, rehabilitating, or installing commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. These are economic development projects undertaken by nonprofit entities and UGLG (public entities).



- Assisting a private, for-profit business. Assistance may include grants, loans, loan guarantees, and technical assistance; and
- Providing economic development services in connection with otherwise eligible CDBG economic development activities.
- ✓ **Economic development undertaken by nonprofit development organizations under 105(a)(15) of the statute.** These are activities designed to assist in neighborhood revitalization or community economic development and are carried out by an organization that qualifies as a nonprofit development organization under the HCDA statute at 105(a)(15). See chapter 2 for more information about these organizations.
 - In addition to meeting one of the organizational types listed above, the entity must be carrying out neighborhood revitalization, community economic development or energy conservation projects.
- ✓ **Technical assistance to businesses.** This activity involves providing technical assistance and training directly to businesses on topics such as business planning or accounting. This activity may be undertaken under several different eligibility categories, assuming that the activity will meet a national objective:
 - As a part of a special economic development project;
 - To the owner of a microenterprise;
 - As a public service; and
 - By a nonprofit development organization as a part of an eligible 105(a)(15) project.
- ✓ **Microenterprise development.** These are activities designed to foster the development, support, and expansion of microenterprise businesses.
 - A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.
 - Under the entitlement regulations, which states may use as guidance, a “person developing a microenterprise” refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business that will be a microenterprise at the time it is formed.
 - Eligible microenterprise activities include the provision of:
 - Grants, loans, loan guarantees and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;
 - Technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
 - General support to owners of microenterprises and persons developing microenterprises including child care, transportation, counseling and peer support groups; and
 - Training and technical assistance or other support services to increase capacity of states or subgrantees to carry out microenterprise activities.



- ✓ **Commercial rehabilitation.** These are activities that are designed to bring commercial structures up to code or improve their facades.
 - If the commercial structure is owned by a private, for-profit entity, the following limitations apply:
 - Rehabilitation is limited to the exterior of the building and the correction of code violations; and
 - Any other improvements are carried out under the special economic development activities category discussed above.
- ✓ **Public facilities and improvements.** These are public works that support economic development endeavors. Public works facilities and improvements includes infrastructure projects such as off-site water, sewer, roads, drainage, railroad spurs and other types of public facilities or improvements.
- ✓ **Job training.** Job training involves providing skill building classes to employees or potential employees and can be an important part of an economic program. This activity can be undertaken:
 - As a part of a special economic development project;
 - As a public service;
 - By a nonprofit development organization as a part of an eligible 105(a)(15) project; or
 - As a part of microenterprise assistance package to the owner of a micro business for his or her employees.

8.1.2 Ineligible Activities

- ✓ Activities not described above are generally ineligible; however, nonprofit development organizations under 105(a)(15) can undertake many otherwise ineligible activities when they retain direct and controlling involvement in a qualified project.
- ✓ The following restrictions apply when a nonprofit development organization under 105(a)(15) undertakes an activity:
 - They may not carry out otherwise ineligible activities (i.e., general government buildings or expenses, or political activities); and
 - They cannot carry out special economic development activities that do **not** meet the state's underwriting guidelines for such projects **and** HUD's mandatory public benefit standards.
- ✓ Nonprofit development organizations are authorized to carry out public services that exceed the 15 percent public services cap when the services are specifically designed to increase economic opportunities through job training/placement and other employment support services.
- ✓ Nonprofit development organizations may also provide public services of any type outside of the public services cap if the services are undertaken as part of a state-approved Community Revitalization Strategy Area (CRSA).

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- ✓ Nonprofit development organizations may not carry out program administration or planning activities that would result in the state exceeding the 20 percent limit on such expenditures.
- ✓ Job pirating is prohibited under Section 588 of the Quality Housing and Work Responsibility Act of 1998. Job pirating refers to the use of federal funds to lure or attract a business and its jobs from one labor market to another. (See exhibit 8-1 below for further information)



EXHIBIT 8-1:

SUMMARY OF ANTI-PIRATING RULE

In 1998, Section 105 of the HCDA was amended by section 588 of the Quality Housing and Work Responsibility Act, which added Subsection (h) titled Prohibition on Use of Assistance for Employment Relocation Activities to the HCDA. This provision was added to address a number of concerns raised over the expenditure of federal funds.

- Subsection (h) of the statute indicates that CDBG funds may not be used “to assist directly the relocation of any industrial or commercial plant, facility, or operation, from one area to another area, if the relocation likely to result in a significant loss of employment in the labor market area from which the relocation occurs.”
- The statute did not clearly define several items, which HUD has addressed in an interim rule published in the Federal Register on December 23, 2005 (note that this rule follows publication of an October 24, 2000, proposed rule and takes into consideration comments made by the public). The interim rule took effect on February 21, 2006 (which is also the end of the public comment period) and the rule was finalized on May 24, 2006.

Rule clarifications:

- **Direct Assistance** – The HCDA authorizes direct assistance to for-profit businesses, for-profit businesses, CBDOs, and other non-profit entities that target economic development activities. The interim rule:
 - Prohibits the provision of CDBG assistance to for-profit businesses and CBDOs (does not apply to non-profit entities), if the relocation of a plant or facility resulted in a significant loss of jobs in the area from which the relocation occurs.
 - Some exceptions as explained in the rule, including.
 - Public facilities; and
 - Indirect assistance that will provide benefit to multiple businesses unless it includes the provision of infrastructure to aid a specific business.
- **Significant loss of employment** –The statute did not define the term “significant job loss”.
 - The interim rule establishes a de minimis definition of job loss – a loss of 25 or fewer jobs would not constitute a significant job loss.
 - The loss of 500 jobs or more would constitute a significant job loss and would invoke job pirating rule.
 - Job losses between 25 - 500 must be less than 0.1 percent of the areas labor force, (i.e. the area losing jobs) to avoid being counted as significant.



EXHIBIT 8-1: CONTINUED

- **Labor Market Area (LMA)** – The statute did not define who determined the labor market area.
 - States may define their LMA using the following:
 - Area defined as LMA based upon Bureau of Labor Statistics (BLS) data; or
 - Combine non-metropolitan LMAs.
 - States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule.
- **Company Relocation** –The rule indicates that:
 - Any relocation that results in less than 25 jobs would not invoke the rule and any relocation over 500 jobs would automatically invoke the rule.
 - Measures would have to be taken to determine percentage of jobs lost would invoke rule—must be less than 0.1 percent of LMA.
- **Infrastructure** - Infrastructure improvements are considered same as direct assistance under certain conditions. See section above on direct assistance for further information.
- **Time limits** -- The final rule establishes time limits on the applicability of the anti-piracy requirements. Generally, a job will be considered to be relocated if positions are eliminated at an existing operation within 3 years after the provisions of CDBG assistance to the operation.

- ✓ CDBG funds may not be used to assist for-profit businesses, including expansions, as well as infrastructure improvement projects or business incubator projects designed to facilitate business relocation IF:
 - The funding will be used to assist directly in the *relocation* of a plant, facility or operation; and
 - The relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs.
- ✓ The following are definitions to assist in determining if a business location falls under these provisions:
 - Labor Market Area (LMA): An LMA is an economically integrated geographic area where individuals can live and work within a reasonable distance or can readily change employment without changing their place of residence.
 - Operation: A business operation includes, but is not limited to, any equipment, production capacity or product line of the business.
 - Significant Loss of Jobs:
 - A loss of jobs is significant if:



- The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA ;
 - OR in all cases
 - A loss of 500 or more jobs.
 - A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business.
 - Notwithstanding the above definition, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.
- ✓ Before directly assisting a business with CDBG funds the state and UGLG shall include appropriate language in the written agreement with the assisted business to ensure that no pirating has occurred. In addition to other programmatic clauses, the written agreement shall include:
- A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA.
 - If the assistance will not result in a relocation covered by this section, a written certification from the assisted business that neither it, nor any of its subsidiaries, have plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and
 - The agreement shall provide for reimbursement of any assistance provided to, or expanded on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

8.2 Meeting and Documenting a National Objective

- ✓ This section describes the national objectives that may be used for economic development activities.

<p>Key Topics in This Section</p>	<ul style="list-style-type: none"> ✓ LMI Benefit <ul style="list-style-type: none"> – LMI Area Benefit – LMI Limited Clientele – Job Creation/Retention ✓ Slum/Blight
<p>Statutory Citations</p>	<p>Section 101(c), Section 104(b), Section 105(c)</p>
<p>Other Reference Materials on This Topic</p>	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 3

8.2.1 National Objective Summary Chart

- ✓ The following chart summarizes the national objective options related to economic development. The text below provides additional details. 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)								
HUD Matrix Code	Activity	LMA	LMC	LMH	LMJ	SBA	SBS	URG
14E	Rehab; Publicly or Privately-Owned Commercial/Industrial			N				
17A	CI Land Acquisition/Disposition			N				
17B	CI Infrastructure Development			N			N	
17C	CI Building Acquisition, Construction, Rehabilitation			N				
17D	Other Commercial/Industrial Improvements			N				
18A	ED Direct Financial Assistance to For-Profits		N	N			N	
18B	ED Technical Assistance		N	N			N	
18C	Micro-Enterprise Assistance			N			N	

8.2.2 LMI Benefit National Objective

- ✓ Economic activities that benefit an LMI area may qualify under the Area Benefit category of the LMI benefit national objective. For example if the state and UGLG are funding a grocery store in a neighborhood that is at least 51 percent LMI, the activity may qualify as an area benefit.
 - If this criterion is used to qualify the activity, the state must document the service area of the business and then demonstrate through Census or survey data that 51 percent of the residents are LMI.
- ✓ Additionally, the LMI Limited Clientele category may be used to qualify certain economic development activities under the LMI Benefit national objective.
 - For example, microenterprise activities may be undertaken under the LMI Limited Clientele category if the owner of the business is LMI. If this criterion is used, then the UGLG must document the income of the business owner.
 - Also, job training and placement or other employment support services such as peer counseling, child care and transportation may qualify under the LMI Limited Clientele category if at least 51 percent of the persons benefiting from the activity are LMI.
- ✓ Finally, economic activities designed to create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons may qualify under the Job Creation or Retention category of the LMI Benefit national objective.
 - The following requirements must be met for jobs to be considered created or retained.



- If states fund activities that **create** jobs, there must be documentation indicating that at least 51 percent of the jobs will be held by, or made available to, LMI persons.
- For funded activities which **retain** jobs, there must be sufficient information documenting that the jobs would have been lost without the CDBG assistance and that one or both of the following applies to at least 51 percent of the jobs:
 - The job is held by a LMI person; or
 - The job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, a LMI person.
- The following requirements apply for jobs to be considered available to or held by LMI persons.
 - Created or retained jobs are only considered to be **available** to LMI persons when:
 - (a) Special skills that can only be acquired with substantial training or work experience or education beyond high school are **not** a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
 - (b) The state and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.
 - Created or retained jobs are only considered to be **held by** LMI persons when the job is actually held by a LMI person.
- In determining whether a job is made available to or held by a LMI person, states and UGLG may presume that a person is LMI if:
 - He/she resides in a Census tract that meets certain requirements (see below); or
 - He/she resides in a Census tract with at least 70 percent LMI persons; or
 - The assisted business is located in an eligible Census tract (see below) **and** the job will be located within that same Census tract.
- An eligible Census tract is one that is located within a Federally-designated Empowerment Zone or Enterprise Community **or** a Census tract that:
 - (a) Has a poverty rate of at least 20 percent;
 - (b) Does not include part of a central business district (unless the Census tract has a poverty rate of at least 30 percent); and
 - (c) Evidences pervasive poverty and general distress by meeting at least one of the following criteria:
 - (i) All block groups in the Census tract have 20 percent or greater poverty rates;
 - (ii) The activity is undertaken in a block group with a 20 percent or greater poverty rate; or
 - (iii) HUD determines that the tract shows other signs of distress (e.g., crime, homelessness, deteriorated housing, etc.)



- For job training, job placement and other employment support services, the CDBG regulations provide certain circumstances in which these activities can be considered to meet the LMI limited clientele national objective **even** when the percentage of persons assisted is **less** than the 51 percent threshold. The special circumstances under which this is allowed are:
 - Where job training or the provision of supportive services is used to assist businesses, the only use of CDBG funds in the activity is for the job training and/or supportive services; **and**
 - The proportion of the total cost of the job training or supportive services to be paid with CDBG funds is not greater than the proportion of the total number of assisted LMI persons.
- As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies.
- However, in certain cases, such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the businesses, that locate on the property, provided such businesses are not otherwise assisted by CDBG funds.
- Additionally, where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

8.2.3 Slum/Blight National Objective

- ✓ Economic development activities, such as commercial rehabilitation, which aid in the prevention or elimination of slums or blight in a designated area may qualify under the Area Slum/Blight national objective.
 - In order to qualify under this national objective category, the economic development activity must take place in an area that:
 - The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
 - Additionally, the area must meet either one of the two conditions specified below:
 - Public improvements throughout the area are in a general state of deterioration; or
 - At least 25 percent of the properties throughout the area exhibit one or more of 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.



- Documentation must be maintained by the state 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.
- As stated above, qualified activities must address the identified conditions that contributed to the slum and blight.
- ✓ Under the Spot Basis category of the Slum/Blight national objective, activities such as acquisition, clearance and building rehabilitation may be undertaken.
 - When rehabilitation is categorized under the Spot Basis category, it must meet the following requirements:
 - The rehabilitation must eliminate specific conditions of blight or physical decay on a spot basis, i.e., not be located in a designated slum and blight area;
 - Rehabilitation must be limited to only those conditions that are detrimental to public health and safety; and
 - If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

8.3 Underwriting Guidelines and Public Benefit Standards

- ✓ Economic development project must demonstrate a sufficient benefit in return for the CDBG investment. This section highlights these requirements, as well as the voluntary underwriting standards.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Guidelines and Objectives for Evaluating Project Costs and Financial Requirements ✓ Public Benefit Standards <ul style="list-style-type: none"> – Individual standards – Aggregate standards
Statutory Citations	Section 105 (a)(14) – (17)
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 2: Categories of Eligible Activities – Appendix B: Public Benefit Standards

8.3.1 Voluntary Project Guidelines

- ✓ HUD has established guidelines for selecting special economic development projects. The guidelines have two parts:
 - Guidelines and Objectives for Evaluating Project Costs and Financial Requirements, and



- Standards for Evaluating Public Benefit.
- ✓ **Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.** These underwriting guidelines are designed to assist states and UGLG to select economic development projects that are financially viable and will result in the most effective use of CDBG funds.
 - The use of these guidelines is **voluntary**; however, states electing not to use the following guidelines are expected to conduct basic financial underwriting of projects funded under this eligibility category.
 - There are six criteria that have to be evaluated
 - Project costs are reasonable;
 - All sources of project financing are committed;
 - To the extent practicable, CDBG funds are not substituted for non-federal financial support;
 - Project is financially feasible;
 - To the extent practicable, the return of the owner's equity investment will not be unreasonably high; and
 - To the extent practicable, CDBG funds are disbursed on a pro-rata basis with other finances committed to the project.
 - These guidelines do not apply to public facilities or microenterprise activities.

8.3.2 Aggregate and Individual Public Benefit Standards

- ✓ **Standards for Evaluating Public Benefit.** The use of these standards is **mandatory**. States and UGLG are responsible for ensuring that a minimum level of public benefit is obtained when CDBG funds are used for special economic development projects and when used for public facilities and improvements projects undertaken for economic development purposes. The standards have two levels: standards for individual activities and aggregate standards.
 - **Standards for Individual Activities**—An activity is considered by HUD to provide **insufficient** public benefit and can **not** be assisted with CDBG funds if:
 - The amount of CDBG assistance exceeds \$50,000 per full-time equivalent (FTE), permanent job (created or retained) **or** \$1,000 per LMI person to which goods and services are provided by the activity;
 - In addition, an activity would be considered to have an insufficient benefit if it consists of or includes:
 - General promotion of the community (as a whole);
 - Assistance to professional sports teams;
 - Assistance to privately-owned recreational facilities that serve a predominantly higher income clientele where the benefit to users clearly outweighs the benefit of jobs created or retained;
 - Acquisition of land for which a specific use has not been identified (i.e., land banking); or



- Assistance to a for-profit business owner that is the subject of unresolved findings of noncompliance related to previous CDBG assistance.
- **Aggregate Standards**—Activities, in the aggregate, must either:
 - Create or retain at least one FTE, permanent job per \$35,000 of CDBG funds used; or
 - Provide goods and services to an area where the number of LMI persons served by the assisted business amounts to at least one LMI person per \$350 of CDBG funds used.
 - Certain activities can be excluded from the aggregate standards (as discussed below and in 570.482(f)(3)).

8.3.3 Applying the Public Benefit Standards

- ✓ As discussed previously, when CDBG funds are used for special economic development projects and/or public facilities and improvements projects undertaken for economic development purposes, states must ensure that a minimum level of public benefit is obtained.
- ✓ Note: the public benefit standards do not apply to microenterprise assistance provided under the applicable section of the statute.
- ✓ The individual **and** aggregate activity standards must be used as follows in order to make this determination.
- ✓ Applying the standards for **individual** activities:
 - If an activity both creates/retains jobs and provides goods/services to LMI residents of an area, the activity is ineligible only if it fails both standards (i.e. it must meet one);
 - The standards are applied to the number of jobs projected or LMI area residents at the time funds are obligated; and
 - If the activity is limited to job training/placement or employment services, the jobs assisted with CDBG are considered jobs created/retained for the purpose of applying the individual activity standards.
- ✓ Applying the **aggregate** standards:
 - States must apply the aggregate standards to all activities for which funds were first obligated from any given year's CDBG allocation;
 - States may elect to apply the standards to the creation/retention of jobs or to the provision of goods and services to LMI residents, but cannot count an activity under both standards;
 - If the activity is limited to job training/placement or other employment services, the jobs assisted with CDBG are considered as jobs created or retained when applying the aggregate standards;
 - The following activities may be excluded from the aggregate standards:
 - Jobs are provided exclusively for unemployed persons or participants of JTPA, JOBS or AFDC programs;
 - Jobs are provided predominantly for residents of public or Indian housing units;
 - Jobs are provided predominantly for homeless persons;



- Jobs are provided predominantly for low-skilled, LMI persons and the business agrees to provide clear opportunities for promotion and economic advancement (e.g., provision of training);
- Jobs are provided predominantly for persons residing in a Census tract with at least 20 percent of the residents in poverty;
- Assistance is provided to businesses that operate in a Census tract with at least 20 percent of the residents in poverty;
- The activity stabilizes or revitalizes a neighborhood that has at least 70 percent low- and moderate-income residents;
- Assistance is provided to a CDFI that serves a predominantly LMI area;
- Assistance is provided to a CBDO that serves a neighborhood that has at least 70 percent LMI residents;
- Provides services or creates/retains jobs in a HUD-approved Neighborhood Revitalization Strategy Area; or
- With prior HUD approval, represents some other innovative approach with substantial benefits to LMI residents.

8.4 Section 108 Loan Guarantee Program

- ✓ Section 108 is a significant resource that can be used to create community and economic development projects. States can use Section 108 loan guarantees to assist non-entitlement jurisdictions for eligible CDBG activities. This section summarizes the Section 108 Program.

Key Topics in This Section	<ul style="list-style-type: none"> ✓ Program Parameters ✓ The Loan Process ✓ Players and Their Roles ✓ Typical Uses of Section 108 ✓ Advantages of Using Section 108
Statutory Citations	
Other Reference Materials on This Topic	<ul style="list-style-type: none"> ✓ Guide to National Objectives and Eligible Activities for States <ul style="list-style-type: none"> – Chapter 2: Categories of Eligible Activities – Appendix F: Making the Most of your CDBG Resources ✓ CPD Notice 01-10

- ✓ The Section 108 Program is a loan guarantee program, which enables the state to authorize UGLG to borrow funds. The maximum that can be borrowed statewide is five times the state annual allocation.
 - The state pledges future CDBG funds as security for the loan.
 - HUD acts as the guarantor of a 108 loan made from private market funds, promising investors that the loan will be repaid.



- ✓ Being able to borrow large sums of money may help UGLG undertake large scale, capital-intensive projects and provides a mechanism for states to extend the impact of their CDBG Program.
- ✓ If a state allows Section 108 loan guarantees, it must be described in the state's method of distribution (MOD) including amounts to apply for and how applications will be selected.
- ✓ It is important to note that an interim rule was published on August 21, 2009 expanding the eligibility of Section 108 for states. The interim rule was issued in response to Section 222 of the Omnibus Appropriations Act, 2009. This interim rule authorized the following flexibilities:
 - States may now directly borrow Section 108 funds on behalf of local governments in non-entitlement areas. Prior to the enactment of Section 222, HUD could not guarantee notes issued directly by states on behalf of UGLG. Non-entitlement areas may also continue to apply for state-supported Section 108 loan guarantees (rather than the guarantee being issued via the state);
 - If a state elects to undertake this new process, it must distribute all guaranteed funds to UGLG in non-entitlement areas. In its application to HUD, the state must identify the local governments that will be eligible to be assisted by the state with the Section 108 guaranteed funds. States can:
 - List the specific UGLG that are eligible for the funds; or
 - Describe that all or a specific subset or type of UGLG that are eligible for the funds. For example, the state could dictate that only UGLG with a poverty rate of great than 20% are eligible for assistance;
 - The activities undertaken by the state must be eligible under the existing Section 108 regulations at 570.703. The state can directly use Section 108 proceeds to: pay for interest on the guaranteed obligation; pay for issuance, underwriting, servicing, trust administration and other costs allowed under 570.703(g); and for debt service reserves as allowed under 570.703(k). These costs are allowed be directly paid by the state because they are related to financing the UGLG Section 108 activities.
 - If the state wishes to participate in the Section 108 program under this new flexibility, it must describe its planned approach and the eligible UGLG in its Consolidated Plan MOD.
 - State applications for Section 108 assistance may either directly identify eligible projects in selected UGLG or may describe the types of projects and indicate how it will determine the eligibility and national objective of these projects. If the second, more general type of application is submitted, the state has to get HUD approval of any specific project that is later chosen.
 - State Section 108 projects are subject to all of the other applicable CDBG and other federal rules, as outlined below.
- ✓ This chapter provides an overview of Section 108 basics and its advantages.

8.4.1 Advantages to Using Section 108

- ✓ States take on the risks of borrowing Section 108 funds because the program provides the following significant advantages:



- **Potential leverage**—A state has access to funds totaling up to five times its annual grant while retaining the use of its funds. The maximum Section 108 loan guarantee is the five times its annual CDBG allocation minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans for which the State has pledged its CDBG funds as security. Each individual UGLG can borrow up to \$7,000,000. HUD will be publishing a revised CDBG rule which will state these limitations.
 - **Avoid referendum**—Since Section 108 borrowing is not ordinarily a general obligation, the UGLG can avoid a referendum and the Section 108 indebtedness does not affect the debt limit of the UGLG.
 - **Accelerate CDBG activities**—Instead of “paying as you go,” UGLGs can complete needed projects now by utilizing Section 108.
 - **Spread Costs Over Time**—The costs for projects can be spread out over long periods of time—the maximum loan term is 20 years. Long-term repayment schedules lessen the yearly debt burden.
 - **Avoid private benefit restrictions**—Most state constitutions prohibit the use of tax-generated funds to benefit private interests. Since Section 108 generally encumbers federal entitlements and not tax revenue, UGLGs can avoid this restriction.
 - **Access funds at an AAA rate**—Despite the premium over Treasuries associated with Section 108 debt; the rate is approximately equal to what AAA-rated publicly held companies pay for its debt. Consequently, a third party borrower, who is typically non-rated and privately held, can access financing at significantly lower rates than would be otherwise be available to small businesses.
 - **Access long-term funds at a fixed rate**—The fixed rate eliminates the risk of future rate changes to the UGLG. Thus, the community is able to make long-term plans with certainty about its future obligations.
- ✓ These advantages are substantial enough that many UGLGs have accepted the risks of Section 108 borrowing and successfully expanded their economic opportunities.

8.4.2 Program Parameters

- ✓ The following basic parameters apply to the Section 108 program:
- **Maximum loan amount**—Up to five times a state’s annual CDBG grant.
 - **Loan Terms**—Interest rates and repayment schedules can vary on a case-by-case basis, but the maximum loan term is 20 years.
 - **Eligible Applicants**—States, non-entitlement communities that are assisted by states, and non-entitlement communities eligible under the Small Cities Program.
 - **Eligible Activities**—Eligible Section 108 activities are different than those under the regular CDBG program. Section 108 can fund the following activities (NOTE: consult the regulations for a more complete description of these requirements):
 - Acquisition;
 - Rehabilitation of publicly-owned property;



- Clearance, demolition, removal and site preparation related to acquisition or rehabilitation;
- Economic development activities;
- Housing rehabilitation;
- Payment of issuance and finance costs associated with 108 loans;
- Relocation assistance necessitated by a 108 project;
- Acquisition, construction, reconstruction, rehabilitation or installation of public facilities;
- Site preparation, including construction, reconstruction, and installation of public and other site improvements, facilities and utilities (see the regulations for additional requirements).
- **Program Requirements**—With its origin derived from CDBG legislation, Section 108 is subject to CDBG requirements. The following criteria are the same for both CDBG and Section 108:
 - Compliance with national objectives;
 - Davis-Bacon labor standards;
 - Environmental review requirements;
 - Underwriting guidelines;
 - Compliance with the primary objective (i.e., 70 percent of expenditures benefit LMI persons);
 - Public benefit standards; and
 - CDBG certifications.
- **Ineligible Activities**—Several activities that are eligible under CDBG are not eligible under Section 108, including public services, payment of the non-Federal share of other Federal grant programs, and long-term planning.

8.4.3 Typical Uses of Section 108

- ✓ Although CDBG is more inclusive, the activities that are eligible under Section 108 are quite broad. UGLGs can finance: operating costs for businesses and developers; micro loan funds and Fortune 500 companies; machinery, equipment and working capital; and leasehold improvements, furniture and fixtures. While some of these categories may carry burdens relating to additional security, all are eligible.
- ✓ Examples of completed Section 108 projects include:
 - Industrial expansion;
 - Capitalization of a revolving loan fund;
 - Construction of a neighborhood shopping center;
 - Expansion of an accounting practice;
 - Construction of a warehouse facility and industrial park;
 - Funding a business incubator;



- Creation of a retail business;
- Constructing an office building; and
- Housing rehabilitation carried out by a nonprofit organization.

8.4.4 Players and Their Roles

- ✓ The typical Section 108 transaction has the following players:
 - **Eligible Community**—The state incurs the ultimate risk of the Section 108 debt. If the state manages risk prudently and transfers the risk and cost to the third parties, the state can accelerate CDBG activities and achieve tremendous leverage. To secure Section 108 debt, the state pledges future CDBG allocations, program income, and provide additional security as HUD deems necessary.
 - **HUD**—HUD reviews the application to see if the proposed activities comply with Section 108 regulations and are underwritten in a prudent manner. If the application is approved, HUD provides a 100 percent full faith and credit guarantee, which is the cornerstone of the program.
 - **Underwriter**—The underwriter is a consortium of national brokerages, which sell the Section 108 notes to private investors. The underwriters receive a fee for their services. HUD competitively procures the underwriting services on a periodic basis.
 - **Fiscal Agent**—The Fiscal Agent manages Level #1 transactions. It acts as a trustee for the investors and manages disbursements to UGLGs and repayments from the project that are conveyed back to the investors.
 - **Private Investors**—Private investors fall into two major groups: (1) individuals; or (2) institutions. The investors are buying paper, which has fixed rates and has nominal credit risk (due to the full faith and credit guarantee). The Section 108 notes are roughly equivalent to Treasury issues but carry a slight premium to Treasuries, ranging from one eighth of a percent in the shorter maturities to six tenths of a percent in the longer terms. To date, no investor has ever incurred a loss from buying a Section 108 note.
 - **Third Party Borrowers**—If the state allows, and the non-entitlement community chooses, it can re-loan Section 108 proceeds to third party borrowers. The third party borrowers accept some portion of the risk and cost from the community. Section 108 can provide such borrowers with fixed-rate, long-term and reasonably priced financing that may be difficult to obtain conventionally.

8.4.5 The Loan Process

- ✓ The basic steps of a typical Section 108 transaction work as follows:
 - The state and/or UGLG apply to HUD for a Section 108 Loan Guarantee.
 - The state pledges a portion of its future CDBG grants plus any needed additional security to ensure that the notes will be repaid in the event of a project default.
 - Notes are sold to investors in a public offering to raise funds for the state's approved project.



- The UGLG uses the funds raised by the sale of the notes to undertake the approved project.
- The loan repayments are used to repay investors. Funds to repay the note can come from future CDBG funds, program income generated by the project, or other revenue sources that the state has available.
- Depending on the type of project that is financed, states may have from one to twenty years to repay the Section 108 notes.
 - The notes may be repaid with future CDBG grants; or
 - The UGLGs may transfer the risk and cost (interest) by lending Section 108 proceeds to third party borrowers. If the third party repays this loan the state/UGLG may never have to dip into its CDBG funds to repay the notes. However, if the third party defaults, the UGLG is typically required to repay the loan to the state (or if unfeasible, the state must repay the loan to HUD).
- ✓ In summary, Section 108 consists of two levels:
 - **Level # 1**—UGLGs borrow money from private investors (which the financial underwriters find).
 - **Level # 2**—UGLGs either carry out activities, which are eligible under Section 108 *or*, alternatively, re-loan the funds to third parties (entrepreneurs, developers, nonprofits, etc.) who undertake eligible activities.
- ✓ To ensure the marketability of Section 108 notes, HUD provides a 100 percent full faith and credit guarantee to the private investors who purchase the notes at the public offering.
- ✓ To comply with the Credit Reform Act of 1992, HUD cannot rely solely on the pledge of future CDBG funds to repay the Section 108 loan. Accordingly, the community must prove to HUD that either:
 - The project being financed with Section 108 funds has sufficient collateral and satisfies sound underwriting; or
- ✓ The community pledges other assets that provide additional security beyond CDBG funds to bridge any repayment shortfalls.

