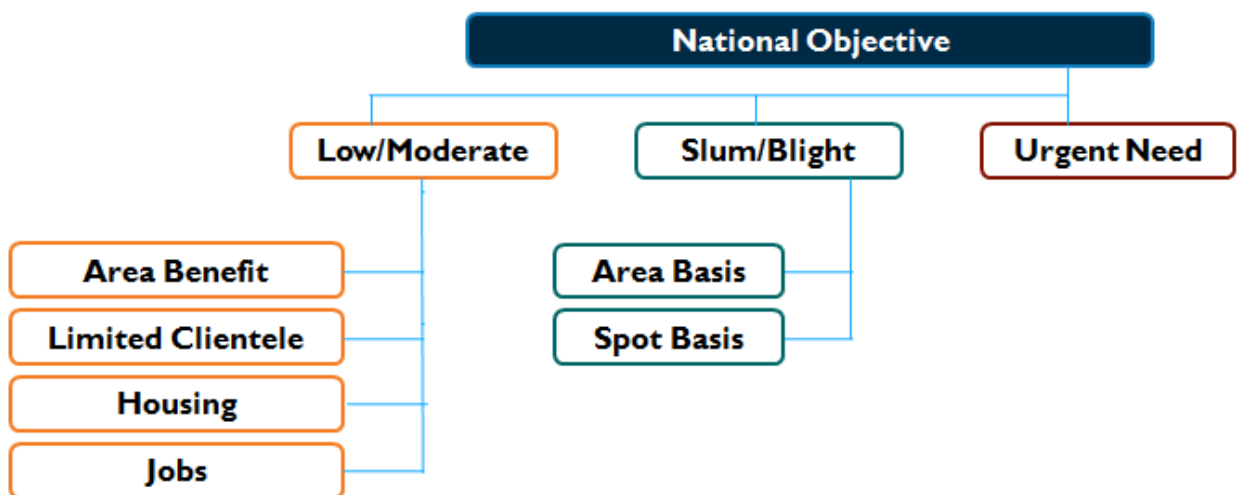


CHAPTER 3 – CDBG NATIONAL OBJECTIVES & FUNDABILITY

Before DED can fund any activity with CDBG funds, completely or in part, a determination must be made as to whether the activity is eligible under Title I of the Housing and Community Development Act of 1974, as amended. Activities must also address at least one of the following three National Objectives of the CDBG Program:

- Benefit low and moderate income (LMI) persons
- Aid in the prevention or elimination of slums or blight
- Meet other community development needs having a particular urgency, because existing conditions pose a serious and immediate threat to the health or welfare of the community and are of recent origin or recently became urgent, and where other financial resources are not reasonably available to meet such needs.

There are different criteria by which an activity can meet a national objective, as shown in the following chart.



Below is additional information on each of the three CDBG National Objectives, and their subcategories.

LOW AND MODERATE INCOME (LMI) PERSONS

Often referred to as the “primary” national objective, federal regulations require DED to expend at least 70% of its CDBG funds to meet the LMI National Objective. In addition, subrecipients must ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons. Activities that benefit low- and moderate-income (LMI) persons are divided into four subcategories:

- Area benefit activities (LMA)
- Limited clientele activities (LMC)
- Housing activities (LMH)
- Job creation/retention activities (LMJ)

Area Benefit Activities (LMA)

An LMA activity is one whose benefits are available to all the residents in a particular service area, where at least 51% of the residents are LMI **persons**. The service area of the activity must be primarily residential and meet identified needs of LMI persons. For example, building a community center in an LMI town could qualify as an Area Benefit activity where the facility was identified in a comprehensive plan or other planning process. The benefits of this type of activity are available to all persons in the area regardless of income. For example, the construction of a water tower servicing Anytown is eligible where Anytown meets the area benefit test. The area benefit test requires that at least 51% of residents within the service area are LMI.

The **determination of an activity's service area is critical to this subcategory**. Once a service area is determined, the data on the percentage of LMI residents is derived from one of two sources.

1. Primary source of data: HUD-provided Low/Moderate Income Summary Data (LMISD)
2. Methodologically sound local income surveys to determine the percentage of LMI residents in activity service area(s) (*Reference: 24 CFR 570.483(b)(1)(i)*).

LMISD is based on the ACS data and summarizes data on percentage of LMI residents by census tract/block group. Based on a multitude of factors, this summary data may not always be appropriate in making the determination for an activity's service area(s). Such instances include where the area that will be served by an activity is not coterminous with census tracts, block groups, or other officially recognized boundaries, but also where events have occurred giving reason to presume the data is no longer accurate (e.g. closing of a major employer, annexation, etc.). For additional guidance on income surveys and survey methodology, see appendices.

The activity's service area does not need to be consistent with census tracts or other officially recognized boundaries, but it must be the entire area served by the activity. Activities of the same type that serve different areas must be considered separately on the basis of their individual service areas.

In determining whether an activity will actually benefit LMI persons, the net effect of the completed activity is considered. The mere location of an activity in an LMI area does not conclusively demonstrate that the activity benefits LMI persons. Furthermore, the primarily residential test is applied to the service area of the activity. As such, if the activity is located within a *commercial district 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*. However, activities and facilities designed to meet special needs located within a service area cannot meet the area benefit test (e.g. a senior center and daycare centers qualify under LMC and not LMA).

Activities under public facilities and improvements tend to provide benefits to all residents in the service area. In such cases, the activities are eligible when the service area is comprised of at least 51% LMI persons. The simplest manner of meeting the area benefit test is where (1) the service area is the congruent with the municipal boundaries and (2) the municipality meets the 51% or more threshold. However, where municipalities have distinguishable neighborhoods and/or where the activity can be shown to benefit a service area within the jurisdictional boundaries of the subrecipients, such activities may meet the test for area benefit. Such activities where the municipality does not meet the area benefit test, but where a service area does meet the area benefit test may include improvements serving a LMI neighborhood by paving a gravel road and installing drainage improvements; acquiring land for use as a neighborhood park; building or rehabilitating a library.

NOTE: Where a library service area includes the entire municipality, the municipality must meet the area benefit test not just the neighborhood where it is located.

Following statutory requirements of HCDA Section 105(c)(2), for an activity to meet the area benefit test, it must qualify on the basis of the income levels of the *persons who reside in the area served by the activity*. To illustrate, if the assisted activity is a park that *serves* an area having a LMI concentration below 51%, the activity may not qualify even if there is reason to believe that LMI persons will primarily use the park.

Limited Clientele Criteria (LMC)

A LMC activity benefits a specific group of people (rather than all the residents in a particular area), at least 51% of whom are LMI persons. For example, the construction of a Senior Center for elderly persons (age 62 and over) is a Limited Clientele activity. However, the following kinds of activities do not generally qualify under this category:

- Activities where the benefits are available to all the residents of an area
- Activities involving the acquisition, construction, or rehabilitation of property for housing
- Activities where the benefit to LMI persons is the creation or retention of jobs (except for certain microenterprise and job training activities as described below)

To qualify under Limited Clientele criteria, the activity must meet one or more of the following criteria that would benefit a clientele generally presumed to consist principally of LMI persons, provided there is no evidence to the contrary. 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:

1. Benefit a clientele that is generally presumed to be principally LMI, this presumption includes:
 - Abused children
 - Battered spouses
 - Elderly persons (62 and older)
 - Severely disabled adults (as defined by the Census)
 - Homeless persons
 - Illiterate adults
 - Persons living with AIDS
 - Migrant farm workers; or
2. Require documentation on family size and income demonstrating that at least 51% of the clientele are LMI; or
3. Have income eligibility requirements limiting the CDBG-funded activity to LMI persons only; or
4. Be of such nature and location to conclude that clients are primarily LMI. *EXAMPLE:* a daycare center designated to serve residents of a public housing complex.

Activities that serve a service or target area generally cannot qualify under the Limited Clientele criterion. For example, while a clinic serving only persons with AIDS living in a particular area would clearly qualify as a Limited Clientele activity, a clinic providing CDBG-subsidized health services that are available to *all* persons in the area would not. It must instead meet the criteria for an Area Benefit activity. Similarly, improvements to a library or community center are eligible under LMC only where those activities explicitly address removal of architectural barriers.

Removal of Architectural Barriers Activity under LMC

Generally, removal of architectural barriers meets LMI national objective on the subcategory basis of benefiting limited clientele (LMC). Activities involving removal of architectural barriers are those explicitly addressing mobility for elderly persons or the severely disabled 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 privately owned nonresidential building or improvement that does not qualify under area benefit or job creation/retention category
- The rehabilitation of common areas in a residential structure that contains more than one dwelling unit that does not qualify under housing activities category for meeting national objectives

NOTE: Proceed with caution when undertaking improvements that can be classified as removal of architectural barriers. If there is a presumption an activity benefits limited clientele, the benefit may be challenged in a particular situation if there is substantial evidence that the persons in the group the activity is designed to serve are most likely not principally LMI persons. If the new construction of a public facility or improvement cannot meet a national objective based on either area benefit or the clientele to be served, then the features required in such construction in order to provide for accessibility to handicapped persons also cannot meet a national objective.

Activities that do not qualify under LMC based on federal statutory limitations include (1) acquisition, construction, or rehabilitation of property for housing and (2) creation or retention of jobs.

Housing Activities (LMH)

An LMI Housing activity is one carried out for the purpose of providing or improving permanent, residential structures for occupation by LMI households upon completion. This would include, but not necessarily limited to, owner occupied rehabilitation of residential property.

Housing units can be either owner or renter-occupied in either one family or multi-family structures. Rental units occupied by LMI persons must be at affordable rents as defined by DED.

Activities that do not qualify under LMH include code enforcement, interim assistance, microenterprise assistance, and special economic development activities.

Job Creation/Retention (LMJ)

Nearly all Economic Development (ED) projects incorporate LMJ by benefiting a business through job creation, job retention, or both job creation and job retention. Such job creation or job retention must involve the employment of persons, the majority (i.e. at least 51%) of whom are made available to or held by LMI persons. Jobs are computed on a full-time equivalent basis. Examples of activities that qualify when at least 51% of jobs created/retained will be for LMI persons include:

- Rehabilitation activity that 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
- Assistance to expand a small business with four employees that agrees to hire three additional LMI employees.

Slum and Blight

The prevention or elimination of slum and blight is a CDBG National Objective that focuses on activities that create a ***change to 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. HUD strives to ensure that activities qualifying under this National Objective are clearly eliminating objectively determinable signs of slums and/or blight in a defined slum or blighted area (i.e. area basis), or are strictly limited to eliminating specific instances of blight outside such an area (i.e. spot basis).

*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.***

“Slums” has the meaning as substandard areas as defined in Section 18-2103(31) Neb. R.R.S. “Blight” has the same meaning as blighted areas as defined in Section 18-2103(3) Neb. R.R.S.

There are two ways to meet the Slum and Blight National Objective:

- Area Basis (SBA)
- Spot Basis (SBS)

For more information, please review the specific HUD guidance on the slum and blight national objective. Statutory citations include HCDA Sections 101(c), 104(b)(3), and 105(c).

Area Basis (SBA)

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

- 1) The area is designated by the official action of the local government and must meet a definition of a slum, blighted, substandard, or deteriorating area under applicable state statute or local law.
- 2) The area must exhibit signs of economic disinvestment as indicated by at least one of the following physical signs of blight or decay:
 - a. There must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a “safe harbor,” HUD will consider this test to have been met if either:
 - i. The proportion of buildings in the area that are in such condition is at least equal to that specified in the applicable State law for this purpose; or
 - ii. In the case where the applicable State law does not specify the percentage of deteriorated or deteriorating buildings required to qualify the area, then at least 25% of all the buildings in the area must meet the local government’s definition of:
 - Deteriorated or deteriorating
 - Abandonment of properties
 - Chronic high occupancy turnover rates or chronic vacancy rates in commercial or industrial buildings
 - Significant declines in property values or abnormally low property values relative to other areas in the community
 - Known or suspected environmental contamination
 -
 - b. The public improvements throughout the area must be in a general state of deterioration.

NOTE: For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.

- 3) Documentation must be maintained by the subrecipients on the geographical and/or physical boundaries of the area and the conditions that qualified the area at the time of its designation, or re-designation (redetermination) as appropriate. The subrecipients must establish definitions of the conditions (listed under item 2 above) and maintain records to substantiate how the area met the slums or blighted criteria.

NOTE: The area must be re-designated every 10 years for continued qualification and documentation must be retained.

- 4) Activities to be assisted with CDBG funds are limited to those that address one or more of the conditions that contributed to the deterioration of the area and subsequent designation (or re-designation) thereof.

NOTE: This requirement does not limit the activities to those that address the blight or decay itself, but it allows an activity to qualify if it can be shown to address a condition that is deemed to have contributed to the decline of the area.

Examples of qualifying activities under SBA include rehabilitation of an abandoned elementary school building located in a designated blighted area and where the building will be converted to a library or community center; infrastructure improvements in a deteriorated area; and establishment of a commercial rehabilitation façade improvement program to assist businesses in a redeveloping blighted area.

NOTE: Planning-only grants can meet this national objective where the plans are for the entire slum or blighted area, or if all elements of the planning are both necessary for and related to an activity that, if implemented, could be shown to meet the slum/blight national objective criteria. Because an activity must meet a national objective throughout the life of the grant, an area that is not yet designated cannot meet this category¹.

Spot Basis (SBS)

An activity must be designed to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area; and be limited to one of the following: acquisition, clearance, relocation, historic preservation, or rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety. (Public improvements cannot qualify under this standard except for rehabilitation of public buildings and historic preservation of public property that is blighted.)

To comply with the SBS National Objective an activity must meet the following criteria:

- 1) Officially designated and meet the requirements of State statutes;
 - a. A substantial number of deteriorated or deteriorating buildings throughout the area or
 - b. As a whole, public improvements throughout the area must be in a general state of deterioration.
- 2) Documentation is maintained substantiating those conditions considered as a part of designation and re-designated every 10 years; and
- 3) The activity must be designed to eliminate specific conditions of blight, physical decay, or environmental contamination not located in a designated slum or blighted area.

¹ Refer to the applicable CDBG Application Guidelines to determine if the Planning Grants can meet the national objective of Prevention of or Elimination of Slum and Blight.

Where the assisted activity is acquisition or relocation, 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. This requirement is not intended to discourage acquisition and relocation as pre-development activities and does not mandate that a proposed plan be in place before CDBG funds can be spent. For example, a subrecipients could clean up a contaminated site without acquiring the site; however, if the subrecipients acquired the site first, the project would be considered to meet the slum/blight national objective criteria only after clean-up occurred.

Urgent Need

Use of this national objective category is extremely rare. It is designed only for activities that alleviate emergency conditions. Urgent Need activities must meet the following qualifying 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 (generally, within the past 18 months)
- The recipient is unable to finance the activity on its own, and
- Other sources of funding are not available

CDBG Program Fundability

Fundability refers to key thresholds that determine the ability of projects and programs to receive CDBG funding. DED's review process for all subrecipient CDBG funding applications must include a fundability determination that is completed prior to Notice of Approval.

All CDBG activities, and activities completed for CDBG Match, must meet two criteria:

- 1) Meet a CDBG National Objective (National Objective Compliance)
- 2) Must be eligible for funding (Activity Eligibility)

National Objective Compliance refers to the determination made as to whether or not an activity meets a CDBG National Objective based on a subrecipient's application narrative and the activity description noted within the budget section of a subrecipient's application.

Activity Eligibility refers to the determination made as to whether or not an activity is eligible based on a subrecipient's application narrative and the activity description noted within the budget section of a subrecipient's application. Once a project is awarded, and an executed subrecipient agreement has been obtained, the subrecipients must complete the activities that were identified within the agreement. Failure to complete an activity as awarded and identified within the agreement, will result in disallowance of CDBG funds and the subrecipient to repay to DED for funds previously drawn down.

Eligible and Ineligible Activities

There are several activities that are eligible for funding with the CDBG Program. The Housing and Community Development Act of 1974 (HCDA), as amended, is the primary authority for determining the eligibility of potential CDBG activities. The eligible activities section of the State CDBG regulations and guidance is minimal, thus the States and subrecipients must use Section 105(a) of the HCDA.

Not all eligible activities universally meet a national objective. Some activities are only fundable under specific criteria. The complete list of eligible and ineligible activities is also identified and summarized within HUD's "Guide to National Objectives and Eligible Activities for State CDBG Programs" that is available on HUD's website.

All activities identified within HUD's Guide to National Objectives are eligible for funding; however, these may not be considered a priority within the State of Nebraska's CDBG Program. The State has the authority to be more restrictive in identifying activity priorities that are completed through the State CDBG Program.

Eligible Activities

All project activities must be eligible for funding according to the HCDA Section 105(a). The general rule is that any activity that is not authorized by the HCDA is ineligible to be assisted with CDBG funds.

Common eligible activities include, but are not limited to, the following:

- Acquisition
- Clearance
- Code enforcement
- Fire equipment (including the purchase of fire trucks)
- Public facilities
- Public services
- Payment of non-federal share
- Planning and Capacity Building
- Façade Improvements of Commercial Buildings
- Relocation
- Owner Occupied Rehabilitation (OOR) of residential units
- Street improvements including curb, gutter, and sidewalk, which may include energy efficiency improvements for lighting; storm sewer improvements; flood control drainage improvements
- Removal of architectural barriers; and single or multi-use facility improvements that are designed to provide public recreational and social activities
- Removal of architectural barriers that restrict accessibility for elderly and handicapped persons in support of public facilities/infrastructure, which includes buildings used predominantly for the general conduct of government
- Employment Training
- Economic Development (ED)
- Technical Assistance
- General CDBG Administration expenses

Ineligible Activities

Any activity that is not authorized by the HCDA Section 105(a) is ineligible to be assisted with CDBG funds.

Common ineligible activities include, but are not limited to, the following:

- Payment of salaries for public employees (not related to the CDBG program)
- Operating/Maintenance expenses
- Public improvement repairs
- Construction equipment
- Motor vehicles
- Filling of potholes in streets
- Reconstruction of City Hall or County Courthouses

- General government operating expenses
- Political expenses
- Capitalizing CDBG funds for City Hall construction
- General government expenses
- Mowing recreation areas
- Repairing cracks in sidewalks
- Purchase of furniture
- New housing construction
- Construction or rehabilitation of buildings for the general conduct of government (except for special cases)

Subrecipients should work with a DED Program Representative in order to determine which activities are appropriate for CDBG funding for any given project.

Special Policies for Activities

1. Facilities containing both Eligible and Ineligible Uses:

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

- a) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
- b) The subrecipients can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

2. Fees for Use of Facilities:

Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding LMI persons from using the facilities, are not permitted.

3. Special Assessments:

The term special assessment means the recovery of the capital costs of a public improvement, such as streets, water, or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes on property or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be used to recover capital costs as follows:

- a) Special assessments to recover the CDBG funds may be made only against properties not owned and occupied by LMI persons (such assessments are program income), or
- b) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by LMI persons; except that CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate income persons if the subrecipients certifies that it does not have sufficient CDBG funds to pay the assessments on behalf of all of the LMI owner-occupant persons (funds collected through such special assessments are not program income).

4. Target Area Definition:

A target area is contiguous and substantial. Generally, substantial means a concentration of 100 or more families and primarily residential in character. A contiguous target area is generally delineated along block lines and by natural/man-made boundaries, such as streets, highways, railroads, and streams. Alleys and lot lines do not delineate target area boundaries exclusively. The entire community is considered the target area if there are less than 100 families. All target areas will be reviewed for direct effects of the assisted activity to LMI persons and other persons inside or outside the target area as well.

The target area for a county is contiguous and substantial area of concentrated families or the entire unincorporated area. County applications exclude the incorporated areas, unless the county is a lead applicant in a joint application submitted in conformance with *Section 1.03(3)*.

Target area must be appropriately designed to coincide with the project service area. Separate activities may suggest different target areas or a combined target area to be most effective.

OTHER RESOURCES

Below is a list of other resources to assist you regarding CDBG National Objectives

- **Guide to National Objectives and Eligible Activities for State CDBG Program**, December 2014: <https://files.hudexchange.info/resources/documents/Matrix-Code-National-Objective-Accomplishment-Type-Combinations-Table.pdf>
- **CDBG Eligible Activities Matrix Code/National Objective/Accomplishment Codes:**
 - HUD Definitions: <https://files.hudexchange.info/resources/documents/Matrix-Code-Definitions.pdf>
 - HUD: <https://files.hudexchange.info/resources/documents/Matrix-Code-National-Objective-Accomplishment-Type-Combinations-Table.pdf>
- **Basically CDBG for States, July 2014:** <https://www.hudexchange.info/resource/269/basically-cdbg-for-states/>
- **Nebraska CDBG Administration Manual, Appendix – Section 1**
- **HUD CDBG Income Survey Toolkit:** <https://www.hudexchange.info/programs/cdbg/cdbg-income-survey-toolkit/>