Housing and Community Development Guidebooks

CDBG

An Action Guide to the Community Development Block Grant Program

U.S. Department of Housing and Urban Development
Andrew Cuomo, Secretary

Office of Community Planning & Development
Cardell Cooper, Assistant Secretary

CDBG

An Action Guide to the Community Development Block Grant Program

By Ed Gramlich
Research and Community Development Specialist
Center for Community Change

This is a reprint of a publication prepared under a Cooperative Agreement with the U.S. Department of Housing and Urban Development (HUD).

ISBN # 1-890874-04-3

CONTENTS

1 Introduction 1
What Is the Purpose of CDBG? 1
How Much Money Are We Talking About? 2
Who Gets This Money? 2
Why Should We Care About CDBG? 2

2 Principal Benefit To Low And Moderate Income People 5
Primary Objective of the Law 5
The CDBG Formulas and "Lower Income Benefit" 5
Definition of "Low and Moderate Income" 6
Inflating the Meaning of "Lower Income Benefit" 7

3 The Three "National Objectives" and "Lower Income Benefit" 9
Activities "Benefiting Lower Income Households" 9
1. The Housing Benefit Test 9
2. The Area Benefit Test 11
3. The Limited Clientele Test 12
4. The Jobs Benefit Test 13
Activities Dealing With "Slums and Blight" 18
Activities Meeting an "Urgent Need" 20

4 What Can CDBG Be Used For? 21
Brief Description of Eligible Activities 21
A. "Redevelopment" Activities 21
B. "Housing" Activities 23
C. "Nonprofit" Activities 24
D. "Public Facilities and Services" 25
E. "Economic Development" Activities 26
F. "Administration and Planning" Activities 27
Ineligible Activities 29
Extra Information About Some CDBG Activities 31
More Details About Housing Rehab 31
More Details About New Housing Construction 32
More Details About Public Services 32
More Details About Public Facilities 35
More Details About "Community-Based Development Organizations" (CBDO) 36
More Details About Public Works 39
More Details About Administration And Planning 39

"A key factor in how well CDBG money is used is whether low income community organizations have become involved. When they have, the money is often used in ways that respond to the most pressing needs of low income communities."

5 CDBG as Part of the Consolidated Plan 43

What Is the Consolidated Plan? 43

The Five Stages of the CDBG/Consolidated Plan Process 43

1. Identifying Needs 44
2. Proposed Use of CDBG (Action Plan) 44
3. Final Action Plan 45
4. Substantial Changes In the Action Plan 45
5. Annual Performance Report 45

6 Public Participation and CDBG 49

The Formal "Citizen Participation" Plan 49

Encouraging Participation By Low Income People 49

Access To Information 50

Review and Comment 51

Complaints 51

Public Hearings 51

Certifications 52

Additional Information 55

CCC's "Regs Workshops" 56

Preface

For more than 25 years, the Center for Community Change has been working to involve low income people and their organizations in decisions and programs that affect their communities.

For much of this period, one of the largest federal programs that is supposed to primarily benefit low income people is the Community Development Block Grant program, or CDBG. Every year the federal government distributes more than $4 billion through this program to state and local governments, which can use the money in a wide variety of ways.

In many communities, CDBG money has been a critical resource, helping rehabilitate needed affordable housing, supporting small businesses in low income neighborhoods and providing important services. However, in other communities, this money has been used in ways that only minimally — if at all — benefit low income people, such as resurfacing downtown streets.

Often, a key factor in how well CDBG money is used is whether a low income community organization has become involved in the decision-making process. When such groups do become involved, CDBG money is often used in ways that respond to the most pressing needs of low income communities, as defined by those communities.

This *Action Guide* is intended to help low income groups better understand the CDBG program and how to influence decisions about the use of this important resource. It is written by Ed Gramlich, CCC's Community Development Specialist, who has assisted groups on CDBG and other community development issues for more than 23 years. Preparation of this guide was supported by a cooperative agreement from the Housing and Urban Development Department's Office of Community Planning and Development.

The guidebook's development was overseen by Lois Athey, CCC's Director of HUD Projects. Production was managed by Tim Saasta. *Cover illustration by Jorge Lois Somarriba.*

1 Introduction

This *Action Guide* presents a general description of the Community Development Block Grant program (CDBG). It is written as a basic introduction for leaders, members, and staff of lower income community-based organizations. It presents information that will be useful to those who want to work to ensure that CDBG money is used in ways that benefit lower income people.

The *Action Guide* doesn't use a lot of jargon, but it does let you know what the key CDBG terms are. If you become familiar with them, you can feel more comfortable dealing with public officials, and you can better explain CDBG to others in your community. Plus, you can better challenge existing uses of this money with much greater confidence and authority, making it much more difficult for public officials to give you the runaround.

Please don't be discouraged by all of the information in this *Action Guide*. You won't become an instant expert by reading it just once; you don't need to be. The *Action Guide* is designed to allow a quick reading to get an overall sense of the CDBG program. There is, however, enough information here to help you contend with some more detailed problems as they come up over time. You can always look up a particular issue or situation weeks, months, or years from now. It might be helpful to review the Table of Contents once in a while because it is a general outline of the CDBG program. It will also give you a clue about where to look for information that might be important to you at the moment.

Finally, you should know that many members, leaders, and staff of community organizations have learned about the CDBG program. With this knowledge, and a lot of hard work, many have improved the way CDBG money is used in their communities. They have increased the amount of this money going to things which benefit lower income people. In some places, the efforts to better influence CDBG resulted in long-term improvements that now only require a little monitoring. In other places, the struggle goes on year after year, with some years being more successful than others.

Just knowing the law and regulations is not enough. If you want more CDBG used to benefit lower income people, it takes knowing the program, helping others to learn it a little, and working with others to get public officials (staff and elected officials) to change local CDBG priorities. In many places, public employees and elected officials see CDBG as "their" money, not money that should "principally benefit" lower income people. So, the effort is likely to be difficult, but the rewards can be great.

Editorial notes: Throughout this *Action Guide,* there are references to both the CDBG law and regulations. The regs are Part 570 of Chapter 24 of the Code of Federal Regulations (CFR). *When opinions or suggestions are being made, the text will be in italics.* Also, the term "lower income" is frequently used in this guidebook as a short-hand way of saying "low and moderate income."

What Is the Purpose of CDBG?

The Community Development Block Grant program is a federal program that began operation in 1975. It is formally known as "Title I" of the Housing and Community Development Act of 1974, as amended. CDBG is run by the U.S. Department of Housing and Urban Development (HUD).

Congress's primary objective for CDBG has always been, and still is — to improve communities by providing:

- "decent housing";
- "a suitable living environment"; and,
- "expanding economic opportunities..."

all, "principally for persons of low and moderate income."

"CDBG remains the largest source of money available that is designed to primarily benefit lower income people."

How Much Money Are We Talking About?

Since CDBG's beginning in 1975, Congress has allocated about $82 billion for the program. For Fiscal Year 1998, which began on October 1, 1997, another $4.2 billion was available. Since 1992, the amount available to communities has increased significantly. However, as more suburban communities become eligible to get CDBG, the slice of the pie for any one place gets a bit smaller. Add to that the effects of inflation, and the money available to anyone place generally continues to shrink.

Even though CDBG is very popular with elected officials, its future is less certain than at any time in the past. Efforts by Congress to balance the federal budget have left CDBG unhurt, but that could change at any time. Also, in recent years, some in Congress have considered merging CDBG into a mega-block grant with other programs such as HOME and the McKinney Homelessness Assistance programs.

Because there is relatively less CDBG money for most jurisdictions than in the past, lower income community groups will find it more difficult to get CDBG assistance for the types of activities lower income people need. Still, CDBG remains the largest source of money available that is designed to primarily benefit lower income people.

Who Gets This Money?

Every year, each city with more than 50,000 people, and each county over 200,000 in population, gets CDBG money automatically. These cities and counties are called "entitlement jurisdictions" — they are "entitled" to CDBG by virtue of their size. Entitlement jurisdictions get 70% of the money.

States get the other 30% of CDBG. Each state gets CDBG to pass along to its smaller towns and rural counties, which compete with one another for the funds. Every state has its own procedures for operating the "Small Cities" CDBG program.

The amount of CDBG money each of these jurisdictions gets is set by one of two formulas. There will be more discussion about these formulas later.

Why Should We Care About CDBG?

You might care about CDBG for a variety of reasons. Here are some for you to consider.

CDBG Money "Belongs" to Lower Income People

The "primary objective" of the CDBG program, as stated in the law, is to benefit "principally persons of low and moderate income." In addition, several of the law's "specific objectives" repeat that line. [Law, Sec. 101(c)]

In addition, the two formulas for distributing CDBG money to jurisdictions are mostly based upon housing problems and the number of people with incomes below the poverty level (75% to 83% of the weight in the formulas).

[Law, Sec. 106(b)(1), (2), &(3) for entitlements]
[Law, Sec. 106(d)(1) for states]

So the amount of CDBG a jurisdiction gets (compared with other jurisdictions) depends upon how many extremely low income people live there and on how bad its housing is. The worse off people are, the more money a place gets. *It only seems right then that low income people should receive almost all of the benefits of these funds.*

"CDBG can educate, motivate, and mobilize people to work on more basic, yet grander issues. It can make people aware of their right to be involved."

CDBG Money Is a Flexible Resource for Meeting the Needs of Lower Income People

Large amounts of CDBG money still flow to jurisdictions each year, while other forms of federal money have decreased greatly — or no longer exist. This money can be used in many ways, and most of it is supposed to be for activities that will help to meet the housing and community development needs of lower income people. *Often, though, the money is used for other purposes because it's been controlled by public officials who haven't been held accountable to the program's "primary objective." It will be up to you to work to change that.*

CDBG Can Be Used in Ways That Harm Lower Income People

If people in lower income communities aren't involved and don't have significant influence on how the money is spent, low income people and neighborhoods can be hurt by CDBG funds. For example, some jurisdictions use CDBG for projects that force lower income people out of their homes and neighborhoods. They claim to be fighting "slums and blight," but the fight sometimes involves removing lower income people to make room for others to live and conduct business there. Another example involves using CDBG for downtown development, which might not create decent jobs for lower income people and which often threatens neighborhoods near the downtown with "gentrification" by those with greater incomes.

CDBG Can Be Used as a Tool To Empower Lower Income People

Several features of CDBG are useful in helping lower income people gain significant influence over the political and economic forces that affect daily life. First, CDBG can provide the money needed to address many neighborhood needs. Second, it is distributed through a political process, with opportunities to: get people out for public hearings; find allies in other neighborhoods or among those with different needs in the same neighborhood; build bridges with elected officials; engage the media; and, challenge a jurisdiction's priorities.

Third, CDBG links the neighborhood issues which get people involved in an organization (such as abandoned homes) with much broader issues of how the jurisdiction makes decisions and how well elected officials respond to their constituents. By its nature, CDBG can give neighborhood residents an introduction to the government's processes that determine the overall budget, approve public works projects, change zoning, and plan for economic development, transportation, housing, or social services. CDBG can educate, motivate, and mobilize people to work on more basic, yet grander issues. It can make people aware of their right to be involved in major government decisions and of their right to a "fair share" of the money.

Community groups all across the country have had success in influencing the use of CDBG money. By monitoring their governments, comparing legal requirements with local practice, building coalitions, and using various organizing tactics, lower income people have achieved numerous CDBG successes. People who organized to improve the ways CDBG money is spent often go on to build upon their organized strength. In many cases, they have gone on to succeed in altering housing policies, determining planning and zoning policies, and shaping economic development policies.

2 Principal Benefit to Low and Moderate Income People

According to the CDBG law, lower income people are to be the principal beneficiaries of the CDBG program. However, since the first days of the program, there has been an ongoing struggle over how the money is actually spent. There are many CDBG-funded projects that do not directly (or even indirectly) really benefit lower income people. As jurisdictions attempt to keep or attract middle income residents, there are pressures to spend CDBG for activities such as roads which are less likely to meet the critical needs of low income people.

Therefore, low income community groups must learn the basics of the CDBG program, become confident of their right to seek a fair share of this money for activities that directly meet the needs of low income people, and then engage public officials so that the funds will be spent that way. This section of the Action Guide will help to reinforce the idea that lower income people are supposed to be the principal beneficiaries of CDBG.

Primary Objective of the Law

The law clearly declares that the "primary objective" of the CDBG program is the development of healthy communities "by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

[Law, Sec. 101(c)]

"Principally" is defined in the law in two places to mean that, at a minimum, 70% of a jurisdiction's CDBG funds, overall, should be used to benefit lower income people. This 70% can be measured over the course of a one-, two-, or three-year period. The jurisdiction can select the time period. (For the States and Small Cities Program, this means that at least 70% of the sum of all CDBG activities funded throughout the state must benefit lower income people. Therefore, it is possible that in one small town, an entire activity might not benefit lower income people.)

[Law, Sec. 101(c) and Sec. 104(b)(3)]
[Regs, Sec. 200(a)(3) for entitlements]
[Regs, Sec. 484(a) for states]

Remember, that 70% figure is a minimum. You can try to be sure that your jurisdiction spends 100% of its CDBG for activities which benefit lower income people. And, you might also try to get a local city ordinance which ensures that a meaningful portion is used in ways that directly benefits "low" income people, those with incomes below 50% of the areawide median.

The CDBG Formulas and "Lower Income Benefit"

The formulas for distributing CDBG money make up another feature of the law which reinforces the idea that most of the money should be used in ways that benefit lower income people. The formulas are a mathematical way of allocating the funds once Congress has voted on how much should go into the CDBG program nationally.

There are two formulas; a jurisdiction gets money from the formula which gives it the most CDBG. Each of the formulas stress two conditions which lower income people contend with daily — poverty-level incomes and bad housing.

Formula A has three "factors" related to the jurisdiction: population, number of people with incomes below the poverty level, and housing overcrowding (meaning that there is more than one person per room in a housing unit). For the states, the formulas only look at the population, etc., for the parts of the state which are not in entitlement cities or counties.

The law applies mathematical "weights" to these three factors, reflecting Congress's belief that some

"The amount of CDBG money a jurisdiction gets depends on how many extremely low income people live there, and on how bad the housing is. It only seems right then that lower income people should receive almost all of the benefits."

factors are more important than others. In Formula A, the poverty factor is multiplied by a weight of 2; population and housing overcrowding only have weights of 1.

Formula B also has three factors: the number of people with incomes below the poverty level; the age of housing; and population. (For entitlement jurisdictions, the formula looks at the degree to which the jurisdiction's population has not grown as fast as the population of other communities.) Age of housing reflects a common condition for lower income people. Most lower income people can only afford to live in housing which is old and often in very bad shape, resulting in very high heating bills, leaking roofs, bad plumbing, and fire-prone electrical wiring.

The law put different weights on Formula B's factors too. "Age of housing" is multiplied by 2.5, "poverty" is multiplied by 1.5, and population "growth lag" is only multiplied by 1.0.

[Law, Sec. 106(b)(1),(2),(3) for entitlements]
[Law, Sec. 106(d)(1) for states]

What all of this boils down to is that the amount of CDBG a jurisdiction gets depends on how many extremely low income people live there, and on how bad the housing is. The worse off people are, the more money a jurisdiction gets. It only seems right then that lower income people should receive almost all of the benefits of this money.

Lower income people will, however, not necessarily benefit from a "fair share" of CDBG funds. It is up to you to influence how CDBG money is spent in your jurisdiction. To do this, first, you need to learn a little bit about how the CDBG program works, and how your local government works; then you can seek to have CDBG spent for activities you think should have the greatest priority.

Definition of "Low and Moderate Income"

The law defines "low and moderate income" individuals and families as those with incomes below 80% of the median income for the entire metropolitan area (the Metropolitan Statistical Area, MSA). The law allows the meaning of the term to be adjusted for the size of the household; "lower income" is less for a two-person household and greater for a seven-person household. The term "low income" means individuals and households with incomes below 50% of the median income for the entire metropolitan area. "Moderate income" means those with incomes above 50% but below 80%. [Law, Sec. 102(a)(20)]

(Some of you might bump into conflicting and confusing uses of the term "low" income. For example, the law creating CHAS {The Comprehensive Housing Affordability Strategy, now going by the name of "The Consolidated Plan"} defined the terms differently. That law defined "low" income to be 80% of the median, while calling 50% "very low." However, in merging CDBG into the Consolidated Plan process, HUD agreed to keep the CDBG definitions. Nevertheless, some jurisdictions still use the wrong terms. Be alert, and ask if you are not sure. One clue is that if your jurisdiction refers to "very low" income, you can guess it is not using the correct terms.)

Adding a little more confusion, the CDBG regs define "low" income as the Section 8 "very low income limit," and the regs define "moderate" income as the Section 8 "low income limit." The use of the Section 8 formula results in various adjustments. As a result, the low income limit in your area might not be a simple 80% of the areawide median. For example, in 1997 the median income for the St. Louis MSA was $49,300 for a four-person household. Yet the number HUD assigned to the St. Louis metro area for "moderate income" was **not** $39,440 (80% of $49,300) for a four-person

"The 'inflation' of the income ceiling resulting from the use of metropolitan-wide income figures makes it easier for cities and counties to use much less CDBG money than they should for low income people, considering the severity of their needs."

household. Because the Section 8 formula is used, the assigned "moderate" income level for a four-person household in the St. Louis area was $36,700.

In some places, the areawide median income is so high that HUD "caps" it. For example, in the area surrounding Hartford, CT, the 1997 median income was $58,900. There, HUD capped "moderate" income at the current "national median income" of $43,500.

On the other hand, sometimes the arithmetic is straight-forward. For example, in Albany, NY, the 1997 areawide median income was $47,000, and HUD assigned a simple 80% figure to it: $37,600 for a four-person household.

Inflating the Meaning of "Lower Income Benefit"

For a variety of reasons, it is easy for jurisdictions to "benefit" lower income people. This section discusses this "benefit inflation."

1. *Because HUD uses the median income for the whole metropolitan area, which includes affluent suburbs, the 80% level is often very high. While $32,250 for a family of four in Evansville, IN, might not be a princely sum, it is far higher than what someone makes at the minimum wage ($8,880 gross) and is double the $16,050 poverty level for a four-person household. Don't forget the extra weight that the law gives to the number of people with poverty-level incomes when distributing money.*

2. *Generally, if you calculate the median income for the center city of a metropolitan area, it is much lower than the median for the surrounding suburbs. But all the incomes of the entire region are lumped together for CDBG purposes. As a result, cities can get credit as benefiting "lower income people" when they assist "moderate income" households having incomes far higher than those typically found in center cities. For example, in 1990 $39,017 was 80% of the median for the metropolitan area surrounding Hartford. In comparison, 80% of the median for just the city was $19,819.*

The "inflation" of the income ceiling resulting from the use of metropolitan-wide income figures makes it easier for cities and counties to use much less CDBG for low income people than the severity of their needs requires. Although the regulations say that "moderate" income people should not benefit at the expense of "low" income people, this feature does not seem to be enforced.

3. For most CDBG uses, only 51% of the beneficiaries of an activity have to be lower income for HUD to consider the activity as one that "benefits lower income people" (see page 11). Yet, HUD considers 100% of an activity's money to benefit lower income people, even if only 51% of that activity's users are lower income. Therefore a jurisdiction can quickly reach its obligation to spend 70% of its money for lower income people.

For example, if $1 million of CDBG is spent on a road improvement project in a neighborhood where only 52% of the residents are lower income, the city gets 100% credit ($1 million) — not 52% credit ($520,000) — toward its obligation to spend 70% of its CDBG for lower income people. (The law, however, requires that CDBG used for housing be counted as benefiting lower income people only to the extent that lower income people actually occupy the housing. The regulations inflate this too by counting not just the amount of CDBG in a housing project, but the total amount of all resources going into it. See page 10.)

[Regs, Sec. 200(a)(3)(iv)&(v) for entitlements]
[Regs, Sec. 484(b)(3)&(4) for states]
[Law, Sec. 105(c)(3)]

4. *It is legally possible for as little as 29% of a jurisdiction's CDBG to be used to benefit lower income people. When calculating the "primary objective" of 70% of CDBG being used to benefit lower income people, HUD subtracts out money*

> *"Most jurisdictions claim that 80% to 100% of their CDBG money benefits lower income people. Yet observations by low income residents frequently show that such claims are exaggerated or false."*

allowed to be spent for "overall program administration and planning." The law allows up to 20% of CDBG to be used for overall administration. Therefore, subtract 20% from 100%, and then multiply that 80% of your CDBG left by the obligation that 70% of it must benefit lower income people (80% x 70% = 56%). Now multiply the remaining 56% by 51% to get 28.56% (the 51% coming from the point made in #3 above). So, it is possible that as little as 29% of your CDBG really benefits lower income people.

5. *Most jurisdictions claim that 80% to 100% of their CDBG money benefits lower income people. Yet observations by low income residents frequently show that such claims are exaggerated or false. So it's important to take a closer look at what is really bought with your CDBG dollars. (See page 11 for more details which can help you judge whether your jurisdiction is truly meeting the requirement of benefiting lower income people.)*

3 The Three "National Objectives" and "Lower Income Benefit"

Each year when getting CDBG money, jurisdictions must pledge that the proposed use of CDBG money will give "maximum feasible priority" to activities which will:

1. Benefit lower income families, or
2. Aid in preventing or eliminating "slums and blight", or
3. Meet an "urgent need."

Jurisdictions must be able to show that every CDBG-funded activity fits into one of these categories. HUD calls these the three "national objectives." When a jurisdiction prepares a proposed Annual Action Plan (see page 44) or an Annual Performance Report (see page 45), it must indicate which test an activity meets. [Law, Sec. 104(b)(3)] [Regs, Sec. 200(a)(2) for entitlements] [Regs, Sec. 483(a) for states]

An activity can't just simply meet one of the three national objectives; it must also be an activity that is defined as "eligible." So, a proposed CDBG activity must jump through two hoops. First, it must be "eligible." Second, it must meet one of the three national objectives (see page 21 for a discussion of eligible activities).

Records must be kept by entitlement jurisdictions so that it is possible to show that each activity meets a national objective. These records must provide a "full description" of each activity, its location, and the amount of CDBG money budgeted, obligated, and spent for it. Also, the records must show how each activity satisfies one of the tests HUD has for determining whether a national objective is met. [Regs, Sec. 506(a)&(b) for entitlements]

This Chapter of the Action Guide explains the three "national objectives" and how an activity can be judged as meeting one of them.

Activities "Benefiting Lower Income Households"

There are four sets of special tests that help to determine whether an activity can be counted as "benefiting lower income people." [Law, Sec. 105(c)] [Regs, Sec. 208(a) for entitlements] [Regs, Sec. 483(b) for states]

1. The Housing Benefit Test

Housing activities subject to this test include: purchase, rehab, or construction; downpayment assistance; conversion of non-residential structures to housing; and, provision of housing services to HOME projects.

Generally, single-family housing units assisted with CDBG must be lived in by lower income people (when the CDBG activity is completed) in order to meet the Housing Benefit Test — if the activity is to be claimed as "benefiting lower income people."

In multi-family projects (structures with two or more units), at least 51% of the units must be occupied by lower income people.

Rents must be "affordable" to lower income people. But the jurisdiction defines the meaning of "affordable." Also, there is no guidance from HUD regarding how long a CDBG-assisted unit must remain affordable. [Law, Sec. 105(c)(3)] [Regs, Sec. 208(a)(3) for entitlements] [Regs, Sec. 483(b)(3) for states]

There are different measures that apply to: new construction of multi-family housing; multiple rental buildings located next to each other; and, housing assisted by a Community Development Financial Institution, (see my Regs Workshop, "CDBG and Housing," for details).

The records required to show that an activity meets the "Housing Benefit" test are found in the regs at Sec. 506(b)(4).

"While most uses of CDBG for housing are likely to officially meet the Housing Test, people have encountered a variety of problems over the years."

Reaching the Primary Objective of Benefiting Lower Income People

The law says that use of CDBG involving purchase or rehabilitation of property for housing is considered to benefit lower income people only to the extent that it is occupied by lower income people. To measure this, the regs look at "total development cost," not just how much CDBG is used. [Regs, Sec. 200(a)(3)(iv) for entitlements] [Regs, Sec. 484(b)(4) for states]

Here is an example of how this works:

- A 100-unit project has a total development cost of $1 million.
  - $700,000 is from CDBG.
  - $300,000 is from other sources.
- When completed, only 60 units are occupied by lower income people.
- Therefore, $600,000 (60% x $1 million) of the CDBG money is counted as benefiting lower income people.

This interpretation of the law is a generous reading. In the above example, the jurisdiction gets to count 26% more CDBG money as benefiting lower income people than in a more strict reading of the law, which would not take into consideration the total development cost. (A straight proportional calculation would be 60% x $700,000 of CDBG = $420,000 "benefit to lower income people.") The regs' interpretation of the law speeds up a jurisdiction's achievement of its obligation to spend 70% of all of its CDBG money in ways that benefit lower income people.

Some Questions To Consider

While most uses of CDBG for housing are likely to officially meet the Housing Test, people have encountered a variety of problems over the years.

- *Is there a fair amount of CDBG used for multi-family projects, given the need stated in the Consolidated Plan?*
- *Do the various housing rehab programs work well for you and your neighbors?*
  - *Is the loan amount big enough to get the job done while not burdening the household with an expensive bank loan?*
  - *Is the interest rate low enough so that the housing remains "affordable"?*
    - *—The loan could be "forgivable," turning into a grant after a certain number of years.*
    - *—Outright grants might be necessary to ensure that the rehabbed house is "affordable."*
  - *Are the various "liens" reasonable, or do they unnecessarily discourage people from using the program? (For example, in one city, in order to get a leaking roof repaired, an elderly widow had to agree to sign a lien that would not allow her children to inherit the house in which they grew up. She did not use the loan.)*
- *Are the "underwriting" standards too rigorous? Is the rehab program acting more like a bank than a housing improvement program?*
- *Are the most appropriate neighborhoods getting access to the housing assistance?*

>> For More Information About Housing and CDBG:

- See Pages 23 and 31 of this Action Guide.
- Ask for a copy of my Regs Workshop, "CDBG and Housing."
- Ask for a copy of a new CCC Action Guide called *Using CDBG for Affordable Housing*.

"Road repairs, park repairs, and water and sewer projects serving the entire metro area are often funded with CDBG. Yes, they are 'eligible.' But no, low income people do not primarily benefit."

2. The Area Benefit Test

A number of eligible CDBG activities can be available to all people in a geographic area, no matter what their income is. (For example: street improvements, parks, and "neighborhood facilities".) These kinds of activities must pass the "Area Benefit Test" if they are claimed to meet the "national objective" of benefiting lower income people.

In general, to meet the Area Benefit Test, at least 51% of the residents of the particular area must be low or moderate income people.

[Law, Sec. 105(c)(2)(A)]
[Regs, Sec. 208(a)(1)(i) for entitlements]
[Regs, Sec. 483(b)(1)(i) for states]

The law adds that the CDBG-assisted activity must be "clearly designed to meet identifiable needs of low and moderate income people in the area." In other words, mere location in a lower income neighborhood does not mean that a CDBG activity counts as benefiting lower income people.

Regulations refine this a little by saying that activities will be considered benefiting lower income people unless there is "substantial evidence" which shows such a claim is not true. In judging the evidence, the regs say that the "full range of direct effects of the assisted activity will be considered." So a project repairing a road running through a neighborhood with 51% lower income people would fail the Area Benefit Test if that road really served mainly as a major thoroughfare for the entire metro area, easing the trip to and from downtown for people outside the neighborhood.

The regs also say that jurisdictions must ensure that moderate income people do not benefit "to the exclusion" of low income people.

[Regs, Sec. 208(a) for entitlements]
[Regs, Sec. 483(b) for states]

Remember the language of the regs, the "full range of direct effects" clause. It is very important, and many of you will have to raise it. Road repairs, park repairs, and water and sewer projects serving the entire metro area are often funded with CDBG. Yes, they are "eligible." Yes, they might be physically located in a "lower income area." But no, low income people do not primarily benefit from such projects. It will be up to you to challenge these expensive activities by pointing to Sec. 208(a), a clause conveniently forgotten by many jurisdictions.

The records required to show that an activity meets the "Area Benefit" test are found in the regs at Sec. 506(b)(2).

A Few Specifics That Might Be Important

1. An area that is not primarily residential does not qualify under the Area Benefit Test. *So that big road project downtown does not make the grade.*
2. The particular "area" does not have to be strictly limited to census tracts or other official boundaries.
3. The "area" must be the entire area served by the activity. For example, if a city uses CDBG to repair the street serving a strip mall, the retail service area of that mall is the "area." Do most of the mall's customers come from beyond the immediate neighborhood; are 51% of all of the households in the mall's retail service area below 80% of the metropolitan median income?

[Regs, Sec. 208(a)(1)(i) for entitlements]
[Regs, Sec. 483(b)(1)(i) for states]
[Introduction to the regs, Federal Register, Vol. 53, No. 172, September 6, 1988, page 34424]

The "Exception Criteria"

Some cities and urban counties are fairly wealthy, yet they still get CDBG money. Many of these jurisdictions do have small areas or pockets where lower income people live; however, most of

> *"When a jurisdiction is spending a lot of CDBG money for streets, curbs, gutters, sewers, and parks, it is substituting CDBG dollars for general revenues of the jurisdiction."*

the areas will have fewer than 51% of their residents who are lower income people. Affluent jurisdictions can still claim an activity benefits lower income people on an Area Benefit basis by using the "Exception Criteria." Ask for a copy of my Regs Workshop, "The Area Benefit Test," if you want to learn a little more about this.

[Regs, Sec. 208(a)(1)(ii) for entitlements]

Substitution

"Substitution" is an issue related to the problems many low income community groups find with the use of CDBG for activities which only appear to benefit lower income people on an Area Benefit basis. Generally, when a jurisdiction is spending a lot of CDBG money for streets, curbs, gutters, sewers, and parks, it is substituting CDBG dollars (which are supposed to principally benefit lower income people) for general revenues of the jurisdiction. Taxes make up most of a jurisdiction's general revenues, and lower income people pay taxes. Substitution is using low income people's tax dollars in more affluent areas of town, replacing these tax dollars in low income neighborhoods with scarce CDBG money — instead of using both low income people's tax dollars plus CDBG dollars in the neighborhoods where the needs are the greatest.

Although the CDBG law addresses this issue, the regulations have been silent about this for many years, making it difficult for low income people to challenge the practice of substitution. The law says:

> It is the intent of Congress that the federal assistance made available under this title not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.
>
> [Law, Sec. 101(c), after the string of 9 "specific objectives"]

A few low income community groups have had some success in reducing substitution. However, their success was not with the law. Instead, they built a strong "moral" case which they presented to the larger community. They argued that lower income people's CDBG money should not be used to replace their tax dollars. They argued that to do so is, in effect, low income people subsidizing more affluent people — keeping down the taxes of the more affluent, while affording the more affluent the same (or even a greater) level of public services, because CDBG substitutes for general tax revenues to pay for public services in low income areas. Advocates have argued that CDBG is special money, brought to the jurisdiction by low income people (remember the formulas?) to help meet their special needs. The jurisdiction's general tax revenues should be spent fairly in all areas. Low income people pay taxes for public services; CDBG money should be used in addition to their tax dollars.

3. The "Limited Clientele" Test

Some CDBG-assisted activities, by their special nature, serve a particular segment of the population which might frequently be "primarily lower income." Examples include senior centers, shelters for victims of domestic violence, or migrant farmworker service centers. HUD calls these "limited clientele" activities.

To determine whether one of these activities "principally benefits" lower income people, one of the following seven criteria must be met:

1. Only lower income people can use the service or facility; or,
2. The activity requires users to provide information about their income and family size, and at least 51% of them are lower income; or,
3. The activity is one which HUD assumes benefits lower income people. HUD specifically "presumes" the following groups of users to be lower income: elderly adults, severely disabled adults, abused children, victims of domestic violence, illiterate adults, homeless people, migrant farm workers, and people with HIV; or,

> *"Advocates learned of a senior center which was to get CDBG funds for medical equipment and services. They were able to show that none of the users of the center in this very affluent county were lower income people."*

4. The kind of activity and its location leads to the conclusion that lower income people are the primary users; or,
5. The activity will remove physical barriers that limit severely disabled people's and elderly people's access to and mobility in non-residential buildings and in common areas of multi-family residential buildings; or,
6. The activity provides assistance to a lower income owner of a microenterprise or to a lower income person working to create a microenterprise; or,
7. Less than 51% of the people served through a job training, placement, or other employment support activity* can be "low or moderate income," but only if:
   a. The business getting CDBG money will only use it for training or employment support services; that is, if it is not using CDBG for machinery, physical expansion, working capital, or other "Sec. 203, Special Economic Development" activities (see page 26); and,
   b. The share of the total cost of the activity paid for by CDBG is less than (or the same as) the share of the total number of people served who are lower income.

   * ("Other employment support services" can include: peer support, counseling of various types, child care, transportation, and similar services.)

[Law, Sec. 105(c)(1)(A)&(B)]
[Regs, Sec. 208(a)(2) for entitlements]
[Regs, Sec. 483(b)(2) for states]

Community Monitoring Is Important

Low income community groups will want to be on the lookout for activities that might not really benefit lower income people. Criteria #3 and #4 are particularly open to potential problems. For example, advocates learned of a senior center which was to get CDBG funds for medical equipment and services. Since it was a senior center, the county claimed the activity was one "presumed" to primarily benefit lower income people. However, advocates were able to show that none of the users of the center in this very affluent county were lower income people.

Remember, Section 208(a) of the regulations says activities are considered to benefit lower income people unless there is "substantial evidence" that shows this claim is not true.

The regs also state that for each activity claiming to meet the Limited Clientele Test, jurisdictions must have "documentation" that one of the criteria are met. In addition, the introduction to the 1988 regulations said that there must be documentation that the limited clientele activity "continues to serve such a population."

[Regs, Sec. 506(b)(3) for entitlements]
[Introduction to the regs, page 34425, Federal Register, Vol. 53, No. 172, September 6, 1988]

The records required to show that an activity meets the "Limited Clientele" test are found in the regs at Sec. 506(b)(3).

4. The "Jobs" Benefit Test

Use of CDBG by for-profit businesses became an "eligible" CDBG activity in 1981. It is called "special economic development" by the regulations (see page 26). If a business getting CDBG money justifies this aid by claiming that it is benefiting lower income people, the law requires it to "involve employment of persons, a majority of whom are" lower income. [Law, Sec. 105(c)(1)(C)]

There are several ways a business can meet this "Jobs Benefit" Test claim.

The Job Creation or Retention Option

Until a few years ago, the "Job Creation or Retention" test was the only option. In general, it requires that lower income people fill at least 51% of

> *"If a business getting CDBG money justifies this aid by claiming that it is benefiting lower income people, the law requires it to 'involve employment of persons, a majority of whom are' lower income."*

any jobs either newly created or "retained" (saved). Instead of "filling" a job, the regs also allow a job to simply be "available to" lower income people.

[Regs, Sec. 208(a)(4) for entitlements]
[Regs, Sec. 483(b)(4) for states]

"Available to" means either the job does not require special skills or a lot of schooling; or, that the business agrees to hire people and train them for the job. In addition, the business and the jurisdiction giving it the CDBG money must try to ensure that lower income people get "first consideration" for filling the job.

[Regs, Sec. 208(a)(4)(iii) for entitlements]
[Regs, Sec. 483(b)(4)(iii) for states]

"Job retention" relates to using CDBG to prevent jobs from being lost. In these cases, the jurisdiction must document that the jobs would actually be lost without CDBG aid. Also, jurisdictions must document that some combination of 51% of the jobs to be retained are either:

a. "Held" by lower income people already employed at the business; or,

b. Can be expected to be held by or be "available to" lower income people when there is turnover within two years.

[Regs, Sec. 208(a)(4)(ii) for entitlements]
[Regs, Sec. 483(b)(4)(ii) for states]

For both job creation and retention, jobs must be "permanent" (not temporary), although some "seasonal" jobs are considered permanent according to a HUD Policy Memo. In addition, jobs are to be measured on a "full-time-equivalent" basis. A "full-time-equivalent" is the combination of several part-time jobs so that their time value equals one full-time job. For example, two people working 20 hours per week count as one "full-time-equivalent."

In general, each assisted business is considered a separate "activity" for determining whether the Job Creation or Retention Test is met. However, there are six exceptions. For these, instead of counting the jobs of each individual business, the jobs of all businesses can be counted together ("aggregated") to reach the 51% level. An example of an exception is the use of CDBG money for a business incubator or industrial park. For more about the six exceptions, ask for my Regs Workshop, "The Job Creation or Retention Test."

[Regs, Sec. 208(a)(4)(vi) for entitlements]
[Regs, Sec. 483(b)(4)(vi) for states]

The "Presumed Benefit" Option

In 1992, the CDBG law was changed to "presume" that a special economic development activity benefits lower income people if one of three situations exists:

1. If an employee of an assisted business lives in a census tract or "block numbering area"* where at least 70% of the people have incomes below 80% of the areawide median income; or,

2. If an employee of an assisted business lives in a census tract or block numbering area which meets the definition of a "federal enterprise zone" (see next paragraph); or,

3. If the business itself is located in a census tract or block numbering area which meets the definition of a "federal enterprise zone."

*A "block numbering area" is a US Census term meaning a grouping of census "blocks" in counties for which there are no census tracts. Census blocks are the smallest geographical units for which the Census Bureau presents data. In rural areas census blocks can include many square miles and can have boundaries which are not streets.

[Law, Sec. 105(c)(4)]
[Regs, Sec. 208(a)(4)(iv) for entitlements]
[Regs, Sec. 483(b)(4)(iv) for states]

"Meeting the definition of a federal enterprise zone" is spelled out in the CDBG regs. The census tract or block numbering area can either:

1. Be part of a HUD-designated "Empowerment Zone" or "Enterprise Community." As of this

"There are problems with the 'presumptions' allowed by the law. A business can be located in a low income area but not hire many, or any, lower income people — or pay livable wages. Residents of such areas could also be affluent."

date, there are only 9 Zones and 95 Communities.

(Note, state-designated enterprise zones are not necessarily the same as federally-designated zones); or,

2. Meet each of the following criteria:

   a. Have a poverty rate of 20%; and,

   b. Not include any portion of a "central business district" (downtown). (But a downtown census tract can be included if it has a poverty rate over 30%.); and,

   c. Have "pervasive" poverty, meaning it meets one of the following:

      1. All "block groups"* in the census tract have a poverty rate of 20%; or,

      2. The business is in a block group with a poverty rate of 20%; or,

      3. HUD agrees that the area is distressed.

*A "block group" is a US Census term meaning clusters of census "blocks." Census blocks are small areas that make up census tracks. They are bounded on each side by something visible such as a street, or by something invisible like a property line. While a census track might have 4000 people in it, a census block group might have only 1500 people. [Regs, Sec. 208(a)(4)(v) for entitlements] [Regs, Sec. 483(b)(4)(v) for states]

There are some problems with the "presumptions" allowed by the law. A business can be located in an area but not hire many, or any, lower income people — or pay livable wages. It is also possible for residents of such areas to be affluent. A census tract might have a 20% poverty rate, but with poor people concentrated in a "pocket of poverty." On the other hand, it is possible for a truly poor census tract to have pockets of affluence, such as those containing universities and hospitals. In either case, a CDBG-subsidized business could easily hire people who are not lower income.

For more about the "Presumed Benefit" option, see my Regs Workshop called "Presumed Benefit."

The Revitalization Strategy Area Option

In 1995, HUD changed the regulations by creating "Revitalization Strategy Areas" (RSA). HUD assumes that the national objective of primarily benefiting lower income people is met by any special economic development activity carried out in a "Revitalization Strategy Area."

[Regs, Sec. 208(d)(5)(i) for entitlements]
[Regs, Sec. 483(e)(5)(i) for states]

Unlike the general Area Benefit Test or even the Exception Criteria to it (see page 11), a Revitalization Strategy Area is not one that can be created automatically. Entitlement jurisdictions must apply to HUD and get approval. Small towns and rural counties must apply to their state for approval, but the state does not have to clear these applications with HUD.

[Consolidated Plan Regs, 24CFR91.215(e)(2) for entitlements]
[Consolidated Plan Regs, 24CFR91.315(e)(2) for states]

A "Revitalization Strategy Area" is defined in the part of the regs relating to the Area Benefit Test. The definitions are a little bit different for entitlement jurisdictions than they are for states.

For Entitlement jurisdictions, an RSA can be an area which is:

1. A HUD-designated "Empowerment Zone" or "Enterprise Community"; or,

2. A primarily residential area that has a concentration of lower income people that is:

   - Greater than 70%, or
   - Greater than the jurisdiction's "upper quartile" concentration, (However, this concentration must be at least 51%).

   The "upper quartile" is difficult to explain briefly. See my Regs Workshop, "Revitalization Strategy Areas," for details. Just to give

> *"Low income community groups should be careful about applications for Revitalization Strategy Area designation. If granted, HUD will assume low income people will benefit from aid to businesses there."*

you a flavor, the upper quartile for Wheeling, West Virginia, was 53.6%, while that for Philadelphia was 74%.

[Regs, Sec. 208(a)(1)(vii) for entitlements]

For states, an RSA can be an area which is:

1. A HUD-designated "Empowerment Zone" or "Enterprise Community"; or,
2. A primarily residential area that has a concentration of lower income people that is at least 70%; or,
3. A primarily residential area in which all of the census tracts or block numbering areas have a poverty rate of at least 20%, and in which at least 90% of them have a poverty rate of at least 25%. [Regs, Sec. 483(b)(1)(v) for states]

HUD issued Policy Notices indicating that jurisdictions should consult with the area's "stakeholders, including residents...." It also said that there must be a realistic development strategy "focusing on activities to create meaningful jobs for unemployed and lower income residents of the area...."

[Notice CPD-96-01 for entitlements]
[Notice CPD-97-01 for states]

Low income community groups might want to be careful about applications for RSA designation. If granted, HUD will assume low income people will benefit from aid to businesses there. For example, there is a city which has an upper quartile that is just above 51%. It could apply to HUD for an RSA designation for a residential area where many lower income people live — next to the downtown. That area is also a corridor for getting into the part of downtown where there is a professional hockey rink, new restaurants, offices, and a planned riverboat gambling casino. With the RSA option, CDBG could be used for a special economic development activity which would not provide jobs for lower income people in the neighborhood.

For more about the "Revitalization Strategy Area" option, see my Regs Workshop, "Revitalization Strategy Areas."

Records To Be Kept

Entitlement jurisdictions must provide specific records for each CDBG-assisted activity claimed to benefit lower income people by creating or retaining jobs. These requirements are presented here in detail because they are important for community monitoring. (For the small cities program, each state must create its own record keeping system.)

[Regs, Sec. 506(b)(5)&(6) for entitlements]

Records for Job Creation

When an activity claims to have created jobs (rather than to retain them), there are two sets of possible ways to comply. One set is for jobs "held by" lower income people. The other set is for jobs "available to" lower income people.

A. Jobs "held by" lower income people

If a jurisdiction chooses to document that at least 51% of the jobs at an activity are **held by** lower income people, then the documentation for each assisted business must include:

1. A copy of a written agreement that contains:
   a. A promise by the business that at least 51% of the jobs (on a full-time-equivalent basis) will be "held by" lower income people.
   b. A list, by job title, of permanent jobs to be created; identifying any which are only part-time.
2. A list, by job title, of permanent jobs **filled**; and, which of these were "initially" held by lower income people.
3. A list of both family size and family income (before getting the job) for each lower income person hired.

[Regs, Sec. 506(b)(5)(ii) for entitlements]

"When an activity claims to have prevented jobs from being lost and that it benefits lower income people, the jurisdiction is supposed to maintain extensive records."

B. Jobs "available to" lower income people

If a jurisdiction chooses to document that at least 51% of the jobs at an activity will be **available to** lower income people, then the documentation for each assisted business must include:

1. A copy of a written agreement that contains:
   a. A promise by the business that at least 51% of the jobs will be "available to" lower income people, **and** that it will provide training for any of those jobs if special skills or education are required.
   b. A list, by job title, of permanent jobs to be created. The list should show which jobs will:
      1. Be available to lower income people;
      2. Require special skills or education; and,
      3. Be part-time.
   c. A description of the actions the jurisdiction and business will take to ensure that lower income people get **first consideration** for those jobs.
2. A list, by job title, of permanent jobs **filled**, including which were "available to" lower income people.
3. A description of how lower income people were given "first consideration" for the "available" jobs. This description should include: the hiring process; which lower income people were interviewed for a particular job; and, which lower income people were hired.

[Regs, Sec. 506(b)(5)(i) for entitlements]

Records for Job Retention

When an activity claims to have prevented jobs from being lost, and that it meets the "national objective" of benefiting lower income people, the following records must be kept for the activity:

A. Evidence that the jobs would have been lost without CDBG help.

B. A list, by job title, of permanent jobs "retained," showing which retained jobs, at the time the CDBG money was used, were:
   1. Part-time;
   2. "Held by" lower income people, along with:
      a. Their family income; and,
      b. Their family size.

C. If there are retained jobs not held by lower income people, but the firm expects turnover of these jobs within two years after getting CDBG, and if the firm projects these job slots will become "available to" lower income people, then:
   1. These jobs should be listed; and,
   2. The information used to make the job projections should be included in the record.

[Regs, Sec. 506(b)(6)(i)-(iii) for entitlements]

D. When these "turnover" jobs are claimed to be "available to" lower income people, the following records must be kept:
   1. In anticipation of turnover there must be:
      a. A written agreement that contains a promise by the business that at least 51% of the original-retained and turnover-retained jobs will be available to lower income people, **and** that the business will provide training for any of the turnover jobs if special skills or education are required.

"Only about 80% of CDBG money is used to prevent 'slums and blight.' In many cases, low income community groups have questioned whether the use of this money met the spirit of the law."

b. A list, by job title, of retained jobs expected to turnover, showing which will:

1. Be available to lower income people;
2. Be part-time; and,
3. Require special skills or education.

c. A description of actions to be taken by the jurisdiction and business to ensure that lower income people get "first consideration" for available turnover jobs.
[Regs, Sec. 506(b)(6)(iv) for entitlements]

2. When turnover has taken place, there must be:

a. A list of each job which has turned over to date showing which were either taken by, or available to, lower income people.

b. For jobs "made available to" lower income people, there must be a description of how "first consideration" was given.
[Regs, Sec. 506(b)(6)(v) for entitlements]

Inflation in Counting Jobs Benefit

Remember, a jurisdiction must spend (overall) 70% of its CDBG money in ways that benefit lower income people. The law allows "counting" benefit in a way which inflates the actual benefit to lower income people. It allows 100% of an activity's CDBG money to be considered benefiting lower income people, even though only 51% of that activity's jobs might "involve" lower income people. For example, if a special economic development activity gets $1 million in CDBG to create 100 jobs, but only 53 jobs will involve lower income people, the entire $1 million (not just $530,000, 53% of $1 million) is counted toward the jurisdiction's obligation to spend 70% of its CDBG money in ways that benefit lower income people.

Activities Dealing with "Slums and Blight"

The second "national objective" is the use of CDBG money to prevent or eliminate "slums and blight." In most jurisdictions, this national objective is little used. Across the country, only around 8% of the money is used this way. Still, low income groups need to be aware of this national objective and work to ensure that it is used appropriately. *(In most instances when an activity was claimed to address "slums and blight," low income community groups have thought the assisted activity was one that did not truly meet the spirit of the law, and sometimes the letter of the regulations — Ed.)*

According to the regulations, there are three ways an activity can meet the "slums and blight test."

1. "Area Basis" for Meeting The Slums and Blight Test

There are four parts to this test.

1. The "area" must meet the state, county, or municipal definition of a slum, blighted, deteriorated, or deteriorating area. *(Generally, this definition is very easy to meet — Ed.)*
2. All "throughout the area" there must be a "substantial" number of:

   a. Deteriorated or deteriorating buildings; or,

   b. Public improvements in a general state of deterioration.

   HUD policy has refined this a bit, saying that it will consider this criterion met if:

   a. At least 25% of all the buildings in the area are in a state of deterioration (if state law does not have a specific percentage); or,

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

"Jurisdictions using 'slums and blight' claims to justify how they use their CDBG money has been a lingering problem for groups in some communities."

this case, public improvements as a whole must clearly show signs of deterioration. In other words, it is not enough for only one type of public improvement (sewers, for example) to be deteriorated.

[HUD "Guide to CDBG Eligible Activities," page 2-17]

3. The jurisdiction must keep documentation of the conditions which allowed the area to be designated "blighted."

4. The CDBG-assisted activity must actually deal with one of the conditions which helped to cause deterioration of the area.

For housing rehab to meet this part of the test, each building rehabbed must be considered "substandard" according to local law. In addition, the rehab must take care of all of the problems which caused the house to be judged "substandard" before any less critical work can be done.

[Regs, Sec. 208(b)(1) for entitlements]
[Regs, Sec. 483(c)(1) for states]

2. "Spot Basis" for Meeting The Slums and Blight Test

CDBG can be used to eliminate specific conditions of blight on a "spot basis" if the problem is not in a blighted "area." Only a few "activities" are allowed under this "spot" test: buying property, demolishing property, relocating people and businesses, preserving historic buildings, and rehabbing buildings. The regs limit rehab to eliminating specific conditions which threaten public health and safety. HUD policy does not allow use of the "spot basis" test for infrastructure.

[Regs, Sec. 208(b)(2) for entitlements]
[Regs, Sec. 483(c)(2) for states]
[HUD "Guide to CDBG Eligible Activities", page 2-21]

3. Completing an "Urban Renewal" Plan

Before the CDBG program existed, there were various HUD "urban renewal" programs. Cities applied to HUD for "urban renewal" money. Specific areas were designated as urban renewal "project areas," or "action areas" under the old Neighborhood Development Program. CDBG money can be spent in one of these areas as long as the activity fits the urban renewal plan — and as long as the urban renewal plan remains in effect. Surprisingly, some of this activity currently continues.

[Regs, Sec. 208(b)(3) for entitlements]

Challenging "Slums and Blight" Claims

At the beginning of Sec. 208 and Sec. 483, the regulations offer you an opportunity to question whether an activity meets the "slums and blight" test. The regs invite you to present "substantial evidence" if you think that an activity does not meet the test. This same language is repeated in the part of the regs discussing the "slums and blight" test. In the back of the Entitlement regs is a list of the records jurisdictions must keep which show how the "slums and blight" test is met; these regs echo the requirements of the test "criteria."

[Regs, Sec. 208(b) for entitlements]
[Regs, Sec.506(b)(8)-(11) for entitlements]
[Regs, Sec. 483(c) for states]

Even though few activities are justified by jurisdictions on the basis of dealing with "slums and blight," it has been a lingering problem for groups in some communities. Although it is often difficult to be successful, you might question whether an area is still blighted. Many areas might have met the test years ago, but because of improvements the area no longer has a substantial number of deteriorating buildings or public improvements. In other words, is the area still "blighted"? Another potentially helpful line of questioning is challenging whether the CDBG money will be used to deal with the conditions which are truly a cause of deterioration.

"Usually, HUD views 'urgent needs' as a problem resulting from earthquakes, hurricanes, tornadoes, and floods."

Activities Meeting an "Urgent Need"

Jurisdictions seldom allocate funds to activities on the basis that they meet an urgent need. Tightening of the regs many years ago reduced abuse of this category of spending. In short, the law stresses that activities claiming to meet this "national objective" should have "a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs."

The regs refine this a bit, by saying the use of CDBG must "address" this threat, and that the threat must be something that recently became urgent...generally within the last 18 months. Usually, HUD views "urgent needs" as a problem resulting from earthquakes, hurricanes, tornadoes, and floods. The regs invite challenges to a claim that an activity meets an urgent need when there is "substantial evidence" that the test posed by the law and regs can't be met.

[Regs, Sec. 208(c) for entitlements]
[Regs, Sec. 483(d) for states]

4 What Can CDBG Be Used For?

One reason low income communities might want to pay attention to CDBG is that it is a very flexible resource that can be used in many different ways to meet the needs of low income people. Remember, for any activity to use CDBG it must be both an "eligible" activity and meet a "national objective." In this chapter, the Action Guide will focus on "eligible" and "ineligible" activities. [Law, Sec. 105]
[Regs, Sec. 200(a)(1) for entitlements]
[Regs, Sec. 482(a) for states]

The law lists many categories of eligible activities at Section 105(a). The regulations about eligible activities are at Section 482 for the states, and among Sections 200 through 207 for entitlement jurisdictions.

Because this is a "basic" guide to CDBG, all of the details are not discussed for each of the categories of eligible activities. Those activities that are most frequently of interest to low income groups or which low income groups find to be problems will be discussed in a little more detail. If you want more information on a particular activity, I might have a separate "Regs Workshop" on that topic which I can send to you.

In this chapter, each of the eligible activities will be briefly presented. The presentation is clustered around the general themes of: "redevelopment," "housing," "non-profits," "public services and facilities," "economic development," and "administration and planning." After that, there is a section about "ineligible" activities. Finally, there is a section that goes into a little more detail about several of the "eligible" activities.

Brief Description of Eligible Activities

A. "Redevelopment" Activities

1. Buying Property. "Real" property can be bought with CDBG. (Basically, land and buildings are "real" property. Items that are movable, such as cars and computers, are not "real" property; they are "equipment". See page 29 about equipment.) The real property can be bought by private non-profit organizations, governments, or other public agencies such as housing authorities. Private individuals or for-profits can also buy property as part of a housing activity (see page 23) or as part of an economic development activity (see page 26). A long-term lease (lasting at least 15 years) can be considered "acquisition." To judge whether purchase of real property meets a national objective, HUD looks at how the property is eventually used.
[Law, Sec. 105(a)(1)]
[Regs, Sec. 201(a) for entitlements]

2. Public Works. Public works are items such as roads, sidewalks, curbs and gutters, and sewers. CDBG can be used to buy, build, rehab, install, or reconstruct public works. See page 39 for more on public works. [Law, Sec. 105(a)(2)]
[Regs, Sec. 201(c) for entitlements]

3. Code Enforcement. Code enforcement can be funded if: it is carried out along with public or private improvements and services; is done in "deteriorating" areas; and, if it can be expected to slow the deterioration. [Law, Sec. 105(a)(3)]
[Regs, Sec. 202(c) for entitlements]

Over the years, many low income groups have found that code enforcement is not used in ways that really help low income people. Low income people want something done about neglected and abandoned houses; however, they often complain that the city doesn't do anything about these prop-

> *"In some places code enforcement is often selectively used after years of neglect. As a result, low income people are removed from properties desired by others, and a piece of potentially affordable housing is removed from the housing stock."*

erties. In other situations, the city code inspectors come around and write up low income owners, putting even more economic strain on low income people; the city doesn't tie its code enforcement practices with its CDBG rehab programs. In some places code enforcement is used too late to help low income people. In these places code enforcement is often selectively used after years of neglect by landlords and failure by local government to enforce housing codes. As a result, low income people are removed from properties desired by others, and a piece of potentially affordable housing is removed from the housing stock.

4. Clearance and Demolition. CDBG can be used to tear down buildings. To meet the national objective of benefiting lower income people, HUD looks at how the property will be used after demolition. [Law, Sec. 105(a)(4)]
[Regs, Sec. 201(d) for entitlements]

5. Accessibility for Disabled People. "Architectural barriers" which are obstacles for disabled or elderly people, such as steps or doorways too narrow for wheelchairs, can be removed with CDBG money. The regs specifically allow the use of CDBG money to remove architectural barriers even at "buildings for the general conduct of government," such as City Hall, where CDBG cannot normally be spent. [Law, Sec. 105(a)(5)]
[Regs, Sec. 201(c) & 207(a)(1) for entitlements]

6. Historic Preservation. Public or private buildings can be rehabbed if they are eligible to be on the national list of Historic Places or are officially recognized by state or local law.
[Law, Sec. 105(a)(1)(C)]
[Regs, Sec. 202(d) for entitlements]

7. Colleges and Universities. CDBG can be used by "institutions of higher education" to carry out any CDBG-eligible activity. [Law, Sec. 105(a)(21)]
[Regs, Sec. 201(q) for entitlements]

8. Relocation Payments. When redevelopment causes people or businesses to move (either temporarily or permanently), CDBG can be used to pay them compensation as well as moving costs, even if CDBG or other HUD money did not cause the "displacement." CDBG can be used to provide more than the minimum required by law when people are displaced. (For more about displacement and CDBG, see page 54.) [Law, Sec. 105(a)(11)]
[Regs, Sec. 201(i) for entitlements]

9. Interim Assistance. The regulations allow certain activities to be done on a temporary basis in areas where there is clearly physical deterioration and where "immediate" action is needed to stop the deterioration until something permanent can be done. The activities allowed include repairing: streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings. Also allowed are special garbage and trash removal. When there is a threat to public health and safety requiring immediate action, CDBG can be used to improve private property, clear streets (including snow removal), and repair streets, sidewalks, and publicly owned buildings and utilities.
[Regs, Sec. 201(f) for entitlements]

10. Disposition. CDBG can be spent for the costs of selling, leasing, or giving away property originally bought with CDBG money. It can also be used to temporarily manage this property until it is finally sold. [Law, Sec. 105(a)(7)]
[Regs, Sec. 201(b) for entitlements]

11. Cost of Completing An Urban Renewal Project. A formally recognized federal urban renewal project can be completed with CDBG.
[Law, Sec. 105(a)(10)]
[Regs, Sec. 201(h) for entitlements]

"Housing rehab is a very popular use of CDBG money. For many years, anywhere between 33% and 36% of the CDBG spent by entitlement jurisdictions has been for housing-related activities."

12. Loss of Rental Income. When landlords house people displaced by CDBG, CDBG can reimburse the landlord for any loss of rental income.
[Law, Sec. 105(a)(6)]
[Regs, Sec. 201(j) for entitlements]

13. Privately Owned Utilities. CDBG can be used to buy, build, reconstruct, rehab, or install the distribution lines and facilities of privately-owned utilities. [Regs, Sec. 201(l) for entitlements]

B. "Housing" Activities

14. Rehabilitation or Reconstruction. Private or public buildings can be rehabbed or substantially reconstructed. The regs say that CDBG assistance can be in the form of grants, loans, loan guarantees, interest rate supplements, and other means. Private individuals (homeowners and landlords), nonprofit organizations, and for-profits can all receive CDBG to rehab property that they will use or sell. The regs go on to list many ways CDBG can be used for rehab. Included are: paying for labor and materials; refinancing; "weatherizing"; rehab counseling; and, paying for work specs and loan processing. [Law, Sec. 105(a)(4)]
[Regs, Sec. 202 for entitlements]

Housing rehab is a very popular use of CDBG money. For many years, anywhere between 33% and 36% of the CDBG spent by entitlement jurisdictions has been for housing-related activities. In the States and Small Cities program, about 25% is spent on housing-related activities. See page 31 for more on housing rehab.

Non-residential buildings can also be rehabbed. The regulations allow rehab of commercial or industrial buildings; but, if they are owned by for-profit businesses, rehab is limited to the outside of the building (known as "facade" improvements) and to correcting code violations (unless the business is getting CDBG as a "special economic development" activity; see page 26).
[Regs, Sec. 202(a)(3) for entitlements]

15. Home Ownership. CDBG can be used to provide direct assistance to lower income people so that they can buy existing housing (even if there is no use of CDBG to rehab it). Some examples of "direct homeownership" assistance, as it is called, include: paying closing costs; providing up to 50% of downpayment costs; financing the purchase of a house people already live in; and, subsidizing interest rates and mortgage principal amounts. The law clearly states that this financial assistance is not subject to the 15% cap on public services (see page 25). [Law, Sec. 105(a)(24)]
[Regs, Sec. 201(n) for entitlements]

16. Housing Services. CDBG can be used for "housing services" if they are related to HUD's HOME program. (HOME is another HUD block grant, but it can only be used for housing.) These housing services include: housing counseling, energy audits, preparation of work specs, loan processing, inspections, tenant selection, management of tenant-base rental assistance, and others. (The "housing services" here are distinct from the "rehab services" listed in the regulations at Sec.202(b)(9), discussed on page 32.) [Law, Sec. 105(a)(20)]
[Regs, Sec. 201(k) for entitlements]

17. Lead-Based Paint Evaluation and Reduction. CDBG can be used to inspect properties for lead paint hazards, and it can be used to reduce or eliminate lead paint hazards. [Law, Sec. 105(a)(25)]
[Regs, Sec. 202(f) for entitlements]

18. New Construction. In general, CDBG cannot be used to build new housing. However, there are exceptions to this rule. The primary exception is that Community-Based Development Organizations (CBDOs) can build new housing. Not every community group necessarily meets the HUD definition of a CBDO (see pages 24 and 36 for more on CBDOs). HUD also requires that new housing built by a CBDO help to carry out either a "neighborhood revitalization" or "community

"CDBG can be used to pay for technical assistance to build the capacity of nonprofits to carry out a 'neighborhood revitalization' or 'economic development' project."

economic development" project (see page 37 for details).

The regs also mention several CDBG-eligible activities that can be done without a CBDO. They are activities which support the development of new housing without directly building it. For more on new construction, see page 32.

[Regs, Sec. 207(b)(3)(iii) for entitlements]

19. Maintain Housing Obtained Through Tax Foreclosure. To prevent abandonment of housing, CDBG can be used to repair and pay operating costs to maintain housing bought through tax foreclosure. [Law, Sec. 105(a)(23)]

20. Administrative Costs. CDBG can be used to pay the staff and overhead costs directly related to carrying out all of the housing activities listed here. These direct "activity delivery costs" are not subject to the 20% cap on "overall" program administration (discussed on pages 27 and 39).

[Regs, Sec. 206 for entitlements]

C. "Nonprofit" Activities

Generally, nonprofits can get CDBG as loans or grants to carry out just about any activity which is "eligible." [Law, Sec. 105(a)(14)]

21. Special Activities By Community-Based Development Organizations (CBDOs). "Special" nonprofits can use CDBG in ways that are not even available to cities. For example, "Community-Based Development Organizations" (CBDOs) can use CDBG to construct new houses. CBDOs can also provide job-related services and not have that count toward the 15% public service cap (see page 25 about the 15% cap). In order to carry out these special activities, the nonprofit must meet one of the definitions of a "CBDO," and the activity must be one which is necessary for either a "neighborhood revitalization" project, a "community economic development" project, or an "energy conservation" project. Before you run to City Hall and attempt to ask for money to build new affordable housing, read page 37 to be sure your activity meets the definition of one of these three types of "projects"— and that your organization meets the CBDO definition.

[Law, Sec. 105(a)(15)]
[Regs, Sec. 204 for entitlements]

22. Technical Assistance. CDBG can be used to pay for technical assistance to build the capacity of nonprofits to carry out a "neighborhood revitalization" or "economic development" project (see page 37 for definitions). The introduction to the regs gives an example of the type of capacity building meant by this section of the law: training to a nonprofit to help it improve its abilities to conduct work write-ups, loan underwriting, and rehab inspections in anticipation of the nonprofit carrying out a housing rehab loan program. The capacity building provided under this section of the law does not count toward the 20% cap on overall planning and administration cost (see page 27 for more on the 20% cap). For more information, ask for my Regs Workshop called "Technical Assistance for Capacity-Building."

Capacity building which is less specific — for example, public education, goal setting, planning, and program design — is possible under another regulation, Sec. 205. See page 28.

[Law, Sec. 105(a)(19)]
[Regs, Sec. 201(p) for entitlements]
[Introduction to 1995 reg revision, page 56905 of the Federal Register, November 9, 1995.]

"Public service is a term that covers a lot of ground. It includes services that many people would call social services or human services, as well as more traditional 'municipal' services."

D. "Public Facilities and Services"

23. Public Services. "Public service" is a term that covers a lot of ground. It includes services that many people would call social services or human services, as well as more traditional "municipal" services. Examples of "public services" listed in the law include services relating to employment, crime prevention, child care, health, drug abuse, education, welfare, and recreation. The regulations add fair housing counseling and homebuyer downpayment assistance. Both the law and the regs make it clear that these are not the only activities that can be considered "public services". (See page 32 for more.) [Law, Sec. 105(a)(8)]
[Regs, Sec. 201(e) for entitlements]

CDBG can be used to pay for the labor costs, supplies, and materials needed to provide a service. Also, the cost of operating and maintaining a facility which houses a public service is "eligible." Equipment, furnishings, motor vehicles, etc., needed to provide a service can be bought or leased with CDBG. [Regs, Sec. 201(e) for entitlements]
[Regs, Sec. 207(b)(2) for entitlements]
[Regs, Sec. 207(b)(1)(iii) for entitlements]

The law places two limits on public services:

a. **No Substitution**

The law limits the use of CDBG to public services which are <u>either</u> brand new <u>or</u> a significant, measurable increase in the level of service. When measuring the increase, the regs look at the level of service provided with the jurisdiction's own money (or the money given to it by the state) during the previous 12-month period. The purpose of this limit is to minimize the substitution of CDBG money for regular local or state revenues. (See page 33 for more.) [Law, Sec. 105(a)(8)]
[Regs, Sec. 201(e) for entitlements]

b. **The 15% cap**

No more than 15% of a jurisdiction's CDBG money can go for "public services." This is a reflection of Congress wanting CDBG to be primarily used for "bricks and mortar." When calculating 15%, "program income" from the previous year must be added to the amount of new CDBG money a jurisdiction gets. Then the sum of those two numbers is multiplied by .15 to give you the cap. Program income is money returned to the jurisdiction as a result of a CDBG activity; for example, repayment of a rehab loan, or money made when property bought with CDBG is sold. (The calculation is actually a little more tricky; see page 34)

In the States and Small Cities program, the 15% cap applies to the state overall, not to the small city. For example, a state could award a single grant to a town, and that grant could be for homeless services — 100% social services. As long as all of the public service obligations of all of the small towns in the state aren't greater than 15%, the state is OK.

There are exceptions to the 15% cap, especially for community-based organizations. See page 33. [Law, Sec. 105(a)(8)]
[Regs, Sec. 201(e)(1) for entitlements]

For more about public services, see page 32.

24. Public Facilities. Public facilities are things such as libraries, police stations, neighborhood centers, recreation centers, parks, and playgrounds. (Buildings for the "general conduct of government," such as a city hall, can't be assisted.) A variety of shelters for people with special needs can be assisted, such as shelters for homeless people, runaway children, and people with mental disabilities. CDBG can be used to buy, build, rehab, install, or reconstruct facilities. Site improvements and other improvements can also be made to public facilities. Making public facilities accessible to disabled people is also eligible, even for city hall. See page 35 for a few more details and some comments.
[Law, Sec. 105(a)(2)]
[Law, Sec. 105(a)(14)]
[Regs, Sec. 201(c) for entitlements]

"A variety of shelters for people with special needs can be assisted, such as shelters for homeless people, runaway children, and people with mental disabilities. CDBG can be used to buy, build, rehab, install, or reconstruct facilities."

E. "Economic Development" Activities

25. Special Economic Development. CDBG can be used for economic development purposes by jurisdictions or by nonprofits.

[Law, Sec. 105(a)(14)]
[Regs, Sec. 203(a) for entitlements]

Since 1981, CDBG can also be used to assist private, for-profit businesses when the help is "appropriate", and when it does one of the following:

- Creates or retains jobs for lower income people; or,
- Prevents or eliminates slums and blight; or,
- Meets an urgent need; or,
- Creates or retains businesses owned by community residents; or,
- Assists businesses that provide goods and services needed by and affordable to lower income residents; or,
- Provides technical assistance to promote any of the activities on this list. [Law, Sec. 105(a)(17)]
[Regs, Sec. 203(b) for entitlements]

Notice that the law requires the aid to businesses to be "appropriate." Expanding on "appropriate," another paragraph was added to the law in 1992, providing "guidelines" to help jurisdictions choose economic development activities. There are two categories of guidelines: financial guidelines, and guidelines to assess the degree to which the public benefits from the aid to a business. This *Action Guide* will not go into detail about the guidelines in the law or regulations because jurisdictions do not have to follow the "financial" guidelines; *and, while businesses must meet the "public benefit" guidelines, they are so easy to meet that there is no point listing them — Ed.* [Law, Sec. 105(e)]
[Regs, Sec. 203 & 209 for entitlements]
[Regs, Sec. 482(e) & (f) for states]

A Special Note About Job Training: In short, if job training is directly linked to helping people fill jobs at a specific business, it is "special economic development." The jurisdiction must have a commitment from a specific business agreeing to actually employ the people trained if the use of CDBG is to be considered "special economic development", and not a "public service." Until 1995, all job training activities were considered "public services", so subject to the 15% cap (see page 25). For more on this topic, ask for my Regs Workshop, "Job Training." [Regs, Sec. 203(c) for entitlements]
[Introduction to the regs, Federal Register, Vol. 60, No. 3, January 5, 1995, page 1925]

26. Microenterprises. A "microenterprise" is defined in the law as a business that has five or fewer employees; and, at least one of those employees is the "owner." The assistance can be in the form of:

a. Credit (grants, loans, loan guarantees, etc.) to either start a new microenterprise, or to stabilize or expand an existing one.

b. Technical Assistance (business advice and support relating to developing business plans, conducting marketing, etc.) to owners of microenterprises, or to people wanting to start one.

c. General Support (counseling, child care, transportation, peer support, etc.) to owners of microenterprises, or to people wanting to start one.

[Law, Sec. 105(a)(22)]
[Law, Sec. 102(a)(22)]
[Regs, Sec. 201(o) for entitlements]
[Regs, Sec. 482(c) for states]

The law specifically lists assistance to microenterprises as an eligible activity, therefore they are not subject to the public benefit aspects of "special economic development." In addition, services provided (such as the counseling services mentioned above) do not count toward the 15% "public services cap" (see page 25).

[Regs, Sec. 201(o)(2) for entitlements]
[Regs, Sec. 482(d)(1) for states]

"A section 108 Loan Guarantee involves pledging up to five years of your community's entire CDBG entitlement as backup for a loan. If something goes wrong with the project, then CDBG money must be used to pay off the loan."

A Note on Housing and Microenterprises. HUD recognizes that many home-based day care providers might qualify as microenterprises, and that improvements to the house might be necessary or helpful in providing home-based day care. HUD also notes that other forms of business can be operated out of the home. Therefore HUD changed the rehab part of the regs in 1995 to allow physical improvements to a home that are done to benefit a business, considering the improvements to be "housing rehab" (see page 31).

[Regs, Sec. 202(a)(1) for entitlements]
[Introduction to the regs, Federal Register, Vol. 60, No. 3, page 1924, January 5, 1995]

For more about microenterprises, ask for my Regs Workshop, "Microenterprises."

27. Section 108 Loan Guarantees. This is a very technical aspect of CDBG, but one that groups should be aware of. In short, a Section 108 Loan Guarantee involves pledging up to five years of your community's entire CDBG entitlement as backup (collateral) for a loan. If something goes wrong with the project financed with a loan guaranteed by Section 108, then CDBG money must be used to pay off the loan. *If this happens, housing rehab, job creation projects, and other activities neighborhood people want might be reduced, or even eliminated — Ed.* [Law, Sec. 108(a) & (b)]
[Regs, Sec. 703 & 705(a)(2)]

Normally, when jurisdictions plan big projects such as arenas and downtown malls, they can borrow money by issuing bonds. The money borrowed is paid back from future taxes or from revenue earned by the project built with bond financing.

To reduce investors' risk, a Section 108 Loan Guarantee pledges payment by the federal government if the project runs into trouble financially. *However, the risk really gets shifted to low income people; it is their CDBG money for the next five years that gets put on the line — Ed.* That is because HUD pays the investors from the jurisdiction's CDBG entitlement.

[Law, Sec. 108(d), (e), & (f)]
[Regs, Sec. 705(b) & (c), and Sec. 706]

In some situations, the jurisdiction does not intend to use future taxes or project revenues to pay off the bond; instead, it plans to use CDBG funds. This is an eligible activity. *So, groups should determine whether the downtown shopping mall's Section 108 Loan Guarantee holds five years' worth of CDBG money hostage, or whether it will actually cause a direct and immediate drain on CDBG funds. It could do both.* [Law, Sec. 108(c)]
[Regs, Sec. 705(c)(1)(i)]

For more about Section 108 Loan Guarantees, including "low income benefit" and public participation, see my Regs Workshop, "Section 108 Loan Guarantees."

F. "Administration and Planning" Activities

28. Overall Program Administration. CDBG can be used to pay for a jurisdiction's general costs to administer the CDBG program. Called "program" administration costs, they are costs that are not directly related to providing a specific activity. "Program" administration includes things such as overall management, coordination, monitoring, and evaluation of the jurisdiction's CDBG program. Tasks associated with "program" administration might include preparing budgets and performance reports, or monitoring activities for progress and compliance with regulations. Usually, the staff costs of the "Community Development Department" or the Planning Department will be counted as "program" costs. [Law, Sec. 105(a)(13)]
[Regs, Sec. 206(a) for entitlements]

No more than 20% of a jurisdiction's CDBG money (new money plus any program income for that year) can be for program administration and planning. For the States and Small Cities program, that 20% includes the "program" administration

> *"Jurisdictions can award CDBG to low income community groups to help low income residents know more about CDBG and participate more fully in the 'public participation process'."*

costs of the state itself, plus all of the local governments getting CDBG from the state that year. (There is another limitation for states, see page 40.)

[Regs, Sec. 200(g) for entitlements]
[Regs, Sec. 489(a)(3) for states]

HUD recognizes two kinds of administration, "program" administration and "project" administration. Only "program" administration comes under the 20% cap. "Project" administration costs are the staff and overhead costs directly related to carrying out eligible CDBG activities. "Project" costs are also called "activity delivery costs".

For more information, see page 39 and ask for my Regs Workshop, "Administration and Planning Costs."

29. Providing Information to The Public. Another form of "program" administration is the use of CDBG to pay for providing information "and other resources" to community residents and community organizations so that they can be involved in planning, carrying out, and assessing activities funded by CDBG. These costs count toward the 20% cap. *This provision is the one which allows jurisdictions to award CDBG to low income community groups to help low income residents know more about CDBG and participate more fully in the law's required "public participation process".* (See page 49 for more on "public participation".)

[Regs, Sec. 206(b) for entitlements]

30. Fair Housing. Use of CDBG to provide "fair housing services" can be counted either as a "program administration" cost (subject to the 20% cap), or as a "public service" (subject to a 15% cap, see page 25). Fair housing services, according to the regs, are services designed to further the objectives of the Fair Housing Act. Fair housing services include:

- Providing people with information about the range of housing opportunities available to them;
- Providing fair housing education and outreach;
- Providing fair housing enforcement;
- Providing other activities designed to further fair housing; and,
- Providing other activities designed to avoid undue concentrations of assisted people in areas containing a high level of low income people.

Fair housing services are aimed at doing the above "without regard" to race, color, religion, sex, national origin, family status, or handicap.

[Regs, Sec. 206(c) for entitlements]

31. Planning. A variety of planning activities can be paid for with CDBG: comprehensive plans; community development plans; functional plans dealing with housing, land use, economic development, recreation, energy use, transportation, historic preservation, and wetlands management; and, studies dealing with neighborhoods, fair housing, capital improvements, the environment, and individual project plans. Planning costs come under the 20% cap for administration and planning.

[Law, Sec. 105(a)(12) & (16)]
[Regs, Sec. 205(a) for entitlements]

32. Capacity Building. The law and regulations recognize capacity building as an eligible CDBG "planning" activity. CDBG can be used to help improve policy making, management, and planning capacities. The intent is to improve the organization's ability to: identify needs; set short-term objectives and long-term goals; design programs and activities; evaluate the progress of programs; and, to manage, coordinate, and monitor programs. These capacity building-type planning costs come under the 20% cap for administration and planning. *Through this provision, a number of community groups have received CDBG money to help build the capacity of other community groups.* (This type of capacity building is different from that allowed in the law for specific "neighborhood revi-

"CDBG can't be used to carry out the regular responsibilities of government. Also, political activities are not eligible, including voter registration."

talization" or "economic development" activities. See page 24.)

[Law, Sec. 105(a)(12)(B)]
[Regs, Sec. 205(b) for entitlements]

Ineligible Activities

The law and regulations put few limitations on how CDBG money can be spent. Still, it is important to know what these limitations are. It is also very important to know that community-based organizations (called "Community-Based Development Organizations" or "CBDOs" by HUD) are allowed to use CDBG in ways that governments and other nonprofits can't. (See pages 24 and 36 about CBDOs). This section discusses ineligible activities, and repeats the activities that CBDOs can carry out.

CDBG can't be used to carry out the regular responsibilities of government. Also, political activities are not eligible, including voter registration. (However, a facility such as a neighborhood center can be used to hold political meetings, candidate rallies, voter registration, etc., if those functions are not too frequent.)

[Regs, Sec. 207(a)(2) & (3) for entitlements]

1. General Government Buildings. CDBG can't be used for buildings where general functions of government take place. For example, CDBG can't be used to fix up City Hall.

However, CDBG can be used to make general government buildings more accessible to people with disabilities.

In addition, CDBG can be used for government buildings that have a special purpose and are located in lower income neighborhoods. HUD policy memos make it clear that police stations, libraries, etc., that directly serve lower income neighborhoods are eligible. [Law, Sec. 102(a)(21) and 105(a)(2)]
[Regs, Sec. 3 for entitlements]
[Regs Sec. 207(a)(1) for entitlements]

2. Equipment. Generally, CDBG can't be used to buy equipment such as construction equipment, cars and trucks, and furniture. However, there are exceptions:

- CBDO's can buy equipment (see page 36 for more on CBDOs).
- "Special economic development" activities can buy equipment (see page 26).
- Furniture, vehicles, etc., can be bought if they are necessary to either:
  - Carry out an "eligible" public service (see page 25); or,
  - Administer CDBG-assisted activities.
- Buying fire trucks is eligible.
- Construction equipment can be leased if used with an otherwise eligible activity.

[Regs, Sec. 207(b)(1) for entitlements]

3. Operating and Maintenance Expenses. In general, CDBG can't be used to repair, operate, or maintain public facilities or public works. For example, maintaining streets, fixing up parks, and repairing sewers, are specifically mentioned as ineligible in the regs. Maintenance activities such as filling pot holes, replacing bulbs in street lights, and mowing grass at the playground are also given as examples of ineligible activities.

There are a few exceptions. The regs say it is ok to use CDBG to pay for the operation or maintenance cost of:

- Eligible "public service" activities (see page 25 for more details);
- CBDO-related activities (see page 36);
- The office space used to administer the CDBG Program;
- Interim assistance (see page 22).

[Regs, Sec. 207(b)(2) for entitlements]

"CDBG can't be used to repair, operate, or maintain public facilities or public works, nor can it be used to build new housing. However, there are exceptions to both of these prohibitions."

4. New Housing Construction. CDBG can't be used to build new housing. However, there are a few exceptions:

a. CBDOs can use CDBG to build new housing (see page 36).

b. When another federally assisted project will displace people, and there is no "comparable" replacement housing, CDBG can be used to build new housing. This is part of the "last resort" housing feature of the Uniform Relocation Act.

c. CDBG can be used to pay for a number of housing development support activities, such as buying property, clearance, site improvements, and providing public improvements.

[Regs, Sec. 207(b)(3) for entitlements]

5. Income Payments. Generally, CDBG can't be used to make income payments to people. HUD defines "income payments" as a series of "subsistence" grant payments to someone for things such as food, clothing, utilities, and rent or mortgage.

As always, CBDOs can use CDBG to make "income payments."

[Regs, Sec. 207(b)(4) for entitlements]

In addition, HUD allows "emergency grant payments" for no more than three months in a row. These emergency grant payments must be paid to the provider of the service (utility company, for example), not to the individual. In the introduction to the regs, HUD makes it clear that additional emergency grants can be given to people if the payments are for different emergency problems at different times of the year. Also, loans can be made without restriction.

[Introduction to the reg, Federal Register, Vol. 60, No. 217, November 9, 1995, pages 56896 & 97]

Helping people become homeowners by giving them money for closing costs, downpayment assistance, etc., is now no longer considered an "income payment" or a "public service"; instead, it is a separate "eligible" activity and free of those limitations. (See page 23 for more.) [Law, Sec. 105(a)(24)]

6. Religious Facilities. Complying with the First Amendment of the Constitution, CDBG can't be used for religious activities or given to "primarily" religious bodies for any activities, including non-religious activities.

[Regs, Sec. 200(j)(1) for entitlements]

However, CDBG can be used to rehab buildings owned by "primarily" religious organizations if the building will be used for entirely non-religious purposes. In addition, a number of conditions must be met. Some of the main conditions are:

- The building (or a part of it) is leased to an entirely non-religious body. The religious organization can create the non-religious body which leases the building.
- People can use the CDBG-assisted part of the building, regardless of their religion.

[Regs, Sec. 200(j)(2) for entitlements]

Public Services Provided by Religious Organizations. CDBG can be used for public services even if provided by a "primarily" religious organization. The "primarily" religious organization must agree:

- It will not limit employment to, or give employment preference to, people on the basis of religion. Likewise, it will not otherwise consider the religion of employees or anyone seeking to be an employee.
- It will not limit services to, or give preferences for, services to people on the basis of religion.
- It will not provide religious instruction nor conduct religious services when providing the CDBG-assisted public service.

[Regs, Sec. 200(j)(3) for entitlements]

"HUD now allows improvements to a single-family residence that is also used as a place of business, such as for child care."

Extra Information About Some CDBG Activities

More Details About Housing Rehab

Section 202 of the regulations spells out a lot more detail about rehabilitation.

Types of buildings eligible for rehab include:

1. Privately-owned residential buildings;
2. Publicly-owned residential buildings, including public housing;
3. Manufactured housing (for example, mobile homes) if part of the permanent housing stock;
4. Non-residential buildings owned by nonprofit organizations that are not "public facilities" (see page 25) {This can help fix up the offices of community organizations.};
5. Commercial or industrial buildings (see limits, page 23).

   [Regs, Sec. 202(a) for entitlements]
6. Buildings which are closed, such as old school buildings, can be rehabbed for use as housing or as a public facility.

   [Law, Sec. 105(a)(4)]
   [Regs, Sec. 202(e) for entitlements]

A new feature was added to the regs in 1995. It recognizes the extent to which people operate businesses out of their homes, especially child care. HUD now allows improvements to a single-family residence which is also used as a place of business, such as for child care. The improvements must be required to run the business, but also be of general benefit to the residents.

[Regs, Sec. 202(a)(1) for entitlements]

Types of Rehab Assistance

The regs go into detail, explaining the many ways that CDBG can be used for rehab. First, the regs make it clear that the CDBG assistance can be in the form of grants, loans, loan guarantees, interest supplements, or "other means."

Then a number of types of eligible rehab activities are listed at Section 202(b):

1. Rehabbing property, or buying property to rehab it for residential use.

   Private individuals, nonprofits, or for-profits can buy or rehab. The building can be used by the rehabber or sold to someone else.
2. Labor, materials, and other costs of rehab are eligible.

   Rehab can mean: repairs, replacement of major fixtures, installation of security devices, smoke detectors, etc.; or, additions to buildings.
3. Loans to refinance existing debt on a building being rehabbed.

   However, the jurisdiction must determine that such help is "necessary and appropriate" to its "community development objectives." There are no definitions of the words in quotes.
4. Improvements to increase energy efficiency (e.g., storm windows, insulation, etc.).
5. Improvements to increase the efficient use of water.
6. Water and sewer hook-ups. (An August 26, 1986, Policy Memo extends this to include other "essential utilities" such as gas, electric, and phone.)
7. Inspecting and testing for, or abating, lead-based paint when rehabbing.

   A new regulation in 1995 made "evaluation" of buildings for lead paint a "rehab activity"

"The amount of CDBG spent for public services by entitlement jurisdictions has increased from 7% in 1982 to 13% in 1993. HUD rules note a wide variety of services that can be supported with CDBG."

all by itself. This means that CDBG can be used simply for testing houses for lead paint hazards even if the houses are not scheduled for rehab. [Regs, Sec. 202(f) for entitlements]

Also mentioned in paragraph (7) are paying for premiums for homeowner warranties, hazard insurance, and flood insurance — all eligible only if the house is being rehabbed with CDBG.

8. Buying tools to lend to owners, tenants, or others for rehab.
9. Rehab services such as rehab counseling, energy audits, preparing work specs, loan processing, inspections, or other services. (The 15% cap on "public services" does not apply to rehab services. See page 25 for more on the 15% cap.)
10. Rehab of housing under the now-defunct HoDAG program.
11. Removing barriers for elderly or disabled people.

More Details About New Housing Construction

In addition to allowing CBDOs to build new housing, the regs offer two other exceptions to the basic rule that CDBG can't be used to construct new housing.

If CDBG money will displace people, triggering the Uniform Relocation Act (URA), then CDBG can be used to build replacement houses as "housing of last resort" — if comparable replacement housing is not available.

[Regs, Sec. 207(b)(3)(i) for entitlements]

The regs also mention several activities that "support" the construction of new housing which are eligible for CDBG. They include:

1. Buying property to sell at a lower price to developers for new housing.
2. Making improvements to public property. Improvements include items such as streets or alleys, and water, sewer, or utility lines. (Improvements like this can be done for private property if carried out by a CBDO and if the activity is needed for a "neighborhood revitalization" or "community economic development" project. See page 37.)
3. Clearing existing buildings to make way for new housing.
4. Paying the costs of selling property previously bought with CDBG.

[Regs, Sec. 207(b)(3) for entitlements]

More Details About Public Services

HUD's Annual Reports to Congress show that the amount of CDBG spent for public services by entitlement jurisdictions has increased from 7% in 1982 to 13% in 1993. Typically, only about 1% of CDBG is spent for public services in the States and Small Cities program.

A. More About Eligible Public Services

1. Welfare, or Emergency Grant Payments

Although the regs say CDBG can be used for "welfare" services, a different part of the regs prohibits the use of CDBG for "income payments." What is meant by "welfare" in the regs are emergency grant payments (for things like food, clothing, housing, and utilities) for no more than three months in a row. These payments can't be made to the person who has an emergency; instead, they must be paid to the provider of a service, such as a utility company.

When this new feature was introduced in the regs in November of 1995, HUD added two clarifying points:

"Public services can be good issues to focus on if your community is just getting started with CDBG. Public services often don't require that much money, and they can often be carried out quickly and easily."

a. Payments to meet one emergency do not prevent people from getting more CDBG assistance to meet a different emergency at a different time in the year.

b. Providing loans (as opposed to grants) for essentials such as food, clothing, utilities, and rent or mortgage, is an eligible public service activity.

[Regs, Sec. 207(b)(4) for entitlements]
[Federal Register, Vol. 60, No. 217, November 9, 1995, pages 56896 & 97]

2. References to Other Public Services

Although the law and regs clearly state that services other than those specifically listed can be funded with CDBG, it might be helpful to know that HUD mentions others in official materials. Other examples of public services include:

a. Services for seniors, services for homeless people, job training, and police and firefighters.

["Guide to CDBG Eligible Activities," page 1-30]

b. Assistance to battered and abused spouses, landlord/tenant counseling, abused and neglected children, handicapped services, youth services, transportation, emergency shelter, and services to AIDS patients.

[Handbook 6510.2 Rev-2, Instructions for Completing the Grantee Performance Report]

c. Summer jobs for kids, after-school programs, and homeless prevention activities such as: first month/last month rent needed to get an apartment, security deposits, and, utility deposits. [Various HUD Policy Memos]

B. Exceptions to the 15% Public Service Cap

1. Employment-related services, if provided by a "Community-Based Development Organization" (CBDO), do not count against the 15% cap. Employment-related services are those designed to increase "economic development opportunities" by providing job training and placement, or other employment-related support services such as: counseling, child care, transportation, and peer support. See page 36 about CBDOs.

[Regs, Sec. 204(b)(2)(i) for entitlements]
[Regs, Sec. 482(d)(2) for states]

2. Any service provided by a "Community-Based Development Organization" (CBDO) in a HUD-approved "Revitalization Strategy Area" (RSA) does not count against the 15% cap. See page 15 about RSAs. [Regs, Sec. 204(b)(2)(ii) for entitlements]
[Regs, Sec. 482(d)(3) for states]

3. Some activities that are specifically listed as "eligible" activities in the law are not subject to the 15% cap. They include: rehab services, relocation services, support services for microenterprises, code enforcement, and planning. Fair housing services can be counted either as public services or as "administration and planning."

4. Job training, if it is directly tied to specific jobs at specific businesses, is not considered a "public service". See page 26.

[Regs, Sec. 203(c) for entitlements]

5. Some jurisdictions might be spending more than 15%. In 1983, the law was changed to allow some places which were already using more to continue to do so.

C. More on the No Substitution Rule

1. This does not mean that a CDBG-funded public service can't be refunded at the same level in future years.

2. CDBG can substitute for private or other federal dollars.

3. HUD can provide an exception to this requirement if the service was stopped (or reduced) due to events the jurisdiction couldn't control, such as the state ending funding to a county for the service. In formal Policy Memos, HUD claims that it requires information indicating that the jurisdiction

"Many services currently funded with CDBG are holdovers from long ago. They might have been valuable services then, but are they still? What are the highest priority needs now?"

is unable to fund the activity, as opposed to choosing not to fund it. [Law, Sec. 105(a)(8)]
[Regs, Sec. 201(e) for entitlements]
["Guide to CDBG Eligible Activities," page 1-31]

D. Calculating the 15% Cap

Knowing the 15% level ("new" CDBG + program income) is not enough. You also need to compare the 15% cap with:

>>The amount of CDBG spent for public services for the year,

Plus

>>The amount of CDBG "obligated" for public services, but not spent during the year (the so-called "unliquidated obligation"),

Minus

>>The unliquidated obligation from the previous year.

("Obligated" means that the jurisdiction awarded a contract for the service or placed an order with a vendor to deliver a service.) Sound confusing? It is. Ask for my Regs Workshop, "Public Services" for more detail — if you dare.

By the way, if a jurisdiction does not obligate/spend a full 15% in one year, it can't "carry-forward" the "unused" portion to the next year. For example, if only 9% is spent/obligated in year x, a jurisdiction can't obligate 21% in year y.

E. Service Provided By Religious Organizations

Many services are provided by religious organizations. There are some conditions that apply. See page 30 for more.

F. Some Thoughts About Public Services

"Public services" can be good issues to focus on if your community is just getting started with CDBG. Public services often don't require that much money, and they can often be carried out quickly and easily. Plus, they are often the type of items people first think of when asked, "What do you want to do with CDBG money?"

One problem, however, might be that your jurisdiction is already at the 15% cap. Then, what do you bump? Taking money from a day care center won't win you many friends.

On the other hand, many services currently funded with CDBG are holdovers from long ago. They might have been valuable services then, but are they still? In addition, some currently funded services might be "safe" kinds of services which could more easily get money from United Way or other sources. Should those other sources of funds be asked to pick up more of the tab for the traditional services, making room for services meeting newer, perhaps more crucial needs? What are the highest priority service needs now? How have changes in welfare law changed the needs of extremely low income people? Is there a greater need for services which are not traditionally funded by CDBG, newer activities such as transportation to jobs, literacy, and job preparation?

If you need to challenge some existing public service uses of CDBG in order to make room under the public service cap for a service which you think is more important, look into those activities currently claimed as "public services." Who is getting the money? What do they do and whom do they serve? It is possible that they might not be meeting one of the low income benefit tests: for example, a "senior center" might not really be serving low income people. Or an activity might not truly be a "public service;" it might be "eligible" as something else — opening the way for services that people in your neighborhood think are more essential.

To what extent do you want to use CDBG for public services, compared to, for instance, housing? There are other sources for meeting many types of public service needs, and fewer resources for affordable housing.

> *"Another common problem is the jurisdiction substituting CDBG for general revenues to pay for traditional municipal functions such as police protection in low income neighborhoods."*

Sometimes low income groups end up fighting each other over bits and pieces of the 15% public service money, becoming distracted from the bigger picture: being actively involved in influencing how 100% of CDBG money is allocated.

A related problem is that some jurisdictions limit public participation in the CDBG process to commenting on proposed uses of CDBG for public services — rather than the full amount of CDBG available.

Finally, another problem which low income groups have had to deal with is the jurisdiction substituting CDBG for general revenues to pay for traditional municipal functions in low income neighborhoods: for example, more and more CDBG is going for police in low income neighborhoods.

More Details About Public Facilities

Shelters

The regulations give many examples of public facilities which can be bought, built, or rehabbed in order to provide "shelter" for people with "special needs." Included are: homeless shelters; convalescent homes; hospitals; nursing homes; shelters for those escaping domestic violence; halfway houses for runaway children, drug offenders, or parolees; group homes for people with mental disabilities; and, temporary housing for disaster victims.

Even though the buildings might be "public" facilities, the regs allow nonprofits to own them, as long as they are open for use by the general public. When a religious organization owns a facility, there are some other rules to follow to keep the constitutional separation of church and state (see page 30). [Regs, Sec. 201(c) for entitlements]

Equipment and Furnishings

Generally, CDBG can't be used to buy equipment and furnishings unless it is "built in" as part of a facility. (Fire trucks are specifically considered "public facilities," not equipment, by the regs.) Equipment and furnishings can be bought with CDBG if they are part of a "public service." For example, a day care center getting CDBG to provide day care service can buy tables and chairs and play equipment. The law limits the amount of CDBG which can be spent on "public services" to 15%. See page 25 for more on "public services".
[Regs, Sec. 207(b)(1) for entitlements]

Operating and Maintenance Costs

The cost of operating or maintaining a public facility or improvement is generally not allowed. However, CDBG can be used to pay the costs of operating and maintaining a facility used to provide a "public service;" however, these costs would be considered a "public service" and subject to the 15% cap (see page 25).

The regulations spell out some publicly owned facilities which can't be repaired with CDBG: parks, playgrounds, neighborhood facilities, senior centers, centers for people with disabilities, and parking facilities. The regs also mention ineligible maintenance activities such as cutting grass in parks. Likewise, CDBG can't be used to pay the salaries for staff, utility costs, etc., that are necessary to operate public facilities.
[Regs, Sec. 207(b)(2) for entitlements]

Facilities Owned By Religious Organizations

Many public facilities are associated with religious organizations. Some restrictions apply. See page 30 for more information.

"The regs clearly state that CBDOs can carry out activities that are not otherwise eligible, including purchase of equipment, operating and maintenance expenses, building new housing, and making income payments."

More Details about "Community-Based Development Organizations" (CBDOs)

As mentioned on page 24, "special" community groups can use CDBG in ways that not even jurisdictions can use it. The classic example is using CDBG to build new housing, which is otherwise not an eligible use of CDBG. This section goes into more detail, explaining: the "special" activities CBDOs can carry out; how those activities must fit into "projects" as defined in the regs; and, what a nonprofit must look like in order to meet the HUD test of being a CBDO.

(For you old-timers, "special subrecipients" are now called CBDOs.)

Special Opportunities for CBDOs

The regs clearly state that CBDOs can carry out activities that are not otherwise eligible. However, it takes a little tricky reading of the regs to figure out what CBDOs can really do. You have to read Section 204(b) of the regs {The part of the regs dealing with CBDOs} along with Section 207(b) {The part of the regs spelling out what is not eligible} in order to piece together what can be done.

For example, Section 207(b) lists four categories of activities which are generally ineligible uses of CDBG money. The four are: purchase of equipment; operating and maintenance expenses; building new housing; and, making income payments. However, if you read Section 207(b) carefully, it clearly states that the above four categories of activities can be carried out by CBDOs under Section 204.

Be on guard. Staff of some jurisdiction, and even some HUD Field Staff, have pointed to Section 207(b)(3), telling groups that they could not get CDBG to build new housing. Be sure you help them to read both the opening paragraph of 207(b) and paragraph (b)(3)(iii), which say that CBDOs can construct new housing.

Two More Special Opportunities for CBDOs

In early 1995, HUD added two provisions to the regulations which expanded the special features available to CBDOs. Both relate to "public services". (In general, the law limits the amount a jurisdiction can spend on "public services" to 15% of its total CDBG amount. Public services are non-brick and mortar kinds of things such as day care, health care, etc. See pages 25 and 32 for more on public services.)

However, there are two situations in which public services are exempt from the 15% cap (and other limits) if they are provided by CBDOs:

1. If the services are limited to increasing economic opportunities by providing job training, placement, or other employment support services. Some examples of "other employment support services" mentioned in the regs are child care, transportation, counseling, and peer support.

   [Regs, Sec. 204(b)(2)(i) for entitlements]
   [Regs, Sec. 482(d)(2) for states]

2. If the services (of any kind) are provided in a "revitalization strategy area." These are "areas" having relatively high concentrations of lower income people, selected by jurisdictions and approved by HUD for special treatment. (See page 15 for more on RSAs.)

   [Regs, Sec. 204(b)(2)(ii) for entitlements]
   [Regs, Sec. 482(d)(3) for states]

These two exemptions might be very helpful to low income people in jurisdictions that are close to the 15% cap. With the CBDO exemptions, you might not have to compete as much to get an important public service funded.

"To qualify for an exception, a Community Based Development Organization — CBDO — can't just build a few houses here and there, or provide job training which is not part of a bigger effort."

Activities Must Be Part of a "Project"

In order for a CBDO to carry out an "otherwise ineligible" activity, or for an activity to be exempt from the "public service limits," the activity must be part of a "project": a "neighborhood revitalization" project, a "community economic development" project, or an "energy conservation" project. (These are defined below.) To qualify as a "project" under one of these three categories, the CDBG "activity" can be considered either alone, or as part of other activities that make up a "project" which is actually being carried out, or for which funding is committed. HUD says that the "other activities" do not have to be funded by CDBG or be carried out by the CBDO. [Regs, Sec. 204(a) for entitlements]

In explaining this part of the regs, HUD has stated that any single CDBG activity will not itself necessarily qualify simply because it is carried out by a CBDO. What HUD is saying is that in order for an activity to be considered eligible under Section 204, the activity must be part of an overall "project." For example, a CBDO can't build a few houses here and there; it must build them in a geographic location where there are also other efforts going on to revitalize that area. Building a few new homes in an area where neither the city nor the private sector are rehabbing, improving parks, fostering neighborhood commercial activity, etc., is not enough for HUD to allow what is an otherwise "ineligible" activity.

[Introduction to Proposed Regs, Federal Register, Vol. 59, No. 103, May 31, 1994, pages 28186 & 87.]

A "neighborhood revitalization" project includes a number of activities. Taken together, the activities should add up to a project which will have an impact on the decline of an area. The CBDO's "activity" can be just one of the activities making up the "project." The "area" must be within the jurisdiction, but it can't be the entire jurisdiction. Plus, the "area" must be one that is formally recognized in plans, ordinances, etc., as a "neighborhood," "village," or some other geographic location. (However, for jurisdictions with less than 25,000 people, the area can be the entire jurisdiction.)

[Regs, Sec. 204(a)(1) for entitlements]

A "community economic development" project includes activities which either:

1. Increase economic opportunity, principally for lower income people; or,
2. Promote or preserve businesses or permanent jobs; or,
3. Provide affordable housing where there is not enough located close to existing or planned jobs.

[Regs, Sec. 204(a)(2) for entitlements]

An "energy conservation" project is one which includes activities that attempt to conserve energy principally for lower income people.

[Regs, Sec. 204(a)(3) for entitlements]

What Is an "Eligible" CBDO?

The regs define four general categories of CBDOs. The two main categories will be summarized here: one is a basic CBDO, while the other is an organization which can't meet the basic CBDO definition but is a "CHDO" which meets a few extra tests. (For all the specifics, ask for a copy of my Regs Workshop, "Community-Based Development Organizations".)

A. *Basic CBDO Criteria*

A CBDO carries out activities which deal with one or more critical problems (physical, economic, or social), giving "particular attention" to the needs experienced by lower income people. The CBDO provides these activities "primarily" within a specific "area of operation" in the jurisdiction. It can be either a nonprofit or a for-profit organization; however if it is a for-profit, the profits can't be the primary motive of the organization.

[Regs, Sec. 204(c)(1)(i)-(iii) for entitlements]

"Be on the lookout for a CBDO board controlled by officials of universities or medical centers and related business interests. Even a chamber of commerce could be considered a CBDO!"

The key feature distinguishing a CBDO from other organizations is that its board must have 51% of its members who are either:

1. Low and moderate income residents of the area of operation; or,
2. Representatives of lower income neighborhood organizations located in the area of operation; or,
3. Owners or senior officers of private establishments and other institutions located in and serving the area of operation.

[Regs, Sec. 204(c)(1)(iv)for entitlements]

A CBDO can't be an agency of the jurisdiction (such as the Redevelopment Authority). And, no more than one-third of the CBDO's board can be public officials or people appointed by public officials. [Regs, Sec. 204(c)(1)(v) for entitlements]

What does "primarily within a specific area of operation" mean? HUD says it means that most of the organization's projects are located in, and the funds are used in, and staff time is mostly spent on, projects in the "area of operation."

[Introduction to the regs, Federal Register, Vol. 60, No. 3, page 1927, January 5, 1995]

In some situations, low income people might be wary of the third option for a CBDO's board, "owners or senior officers of establishments and other institutions." A CBDO could be made up entirely of university officials or medical center officials, and related business interests, intent on changing the area around their university, hospital, or business district — without regard to the impact on low income people. In addition, because there is virtually no limit to the "area of operation," something like a Chamber of Commerce could be considered a CBDO. In some situations involvement by owners and senior officers might be good; however, they could easily fill the 49% of the board's seats not occupied by people who are truly responsible to low income neighborhood residents.

B. *CHDOs*

A second type of group can be an "eligible" CBDO — a HOME Program "CHDO", Community Housing Development Organization. HOME is similar to CDBG in that money automatically arrives from HUD in many jurisdictions; however, HOME money can only be used for housing-related activities.

HUD stresses that a CHDO does not have to meet the criteria in this section. Only CHDOs which fail to meet the basic CBDO criteria discussed above need to pass the extra two tests described below:

1. To be a CBDO, a CHDO must be "designated" by the jurisdiction, and either already have HOME money or expect to get some within two years. In other words, it is not enough that an organization meets the standards of the HOME regulations; it must also have the blessing of its jurisdiction, which sometimes is difficult to gain...for local political reasons.
2. In addition, to be a CBDO, the "area of operation" of the CHDO can be no larger than one neighborhood. (Under HOME, the CHDO can operate jurisdiction-wide. HUD places this "one neighborhood limit" for CHDOs under CDBG in recognition of the fact that only one third of a CHDO's board members have to somehow be representative of the "area of operation".)

For more about CHDOs, ask for my Regs Workshop, "Community-Based Development Organizations." [Regs, Sec. 204(c)(2)(iii) for entitlements]

[Introduction to the regs, Federal Register, Vol. 60, No. 3, page 1927, January 5, 1995]

"If CDBG is use to substitute for your local tax revenues to meet basic public functions such as streets and sidewalks, then local government is actually taking money away from low income neighborhoods."

More Details About Public Works

Operating and Maintenance Costs

The cost of operating or maintaining a public improvement is generally not allowed. The regulations say that streets and water and sewer works can't be repaired with CDBG. The regs go on to give examples of ineligible maintenance, such as filling pot holes, repairing cracked sidewalks, and replacing burned-out street lights. Likewise, CDBG can't be used to pay the salaries for staff, utility costs, etc., that are necessary to operate public works. [Regs, Sec. 207(b)(2) for entitlements]

Public works is a category of activity which has caused low income groups much concern over the years. Examples of problem public works are: decorative pavements in downtown shopping plazas; antique-looking street furniture (benches, lamps, signs, etc.) in neighborhoods being up-scaled; covering for a merry-go-round in a major park; new sidewalks, and repairs to gutters and sewers; and, in particular, repairs to roads used by suburbanites getting to and from the downtown or pleasure-boat marinas. While the above activities are "eligible," low income groups often observe that they either fail to benefit low income people, or do not really address "slums and blight." You will have to use your knowledge of the community to determine whether the tests described in Chapter 3 are met; and, if not met, raise a challenge to your jurisdiction and HUD Field Office.

In addition, many low income groups have begun to challenge the growing use of CDBG for public works because they believe, as taxpayers, CDBG money should not be substituting for their local tax revenues. Remember, the amount of CDBG available to your jurisdiction is based mostly on the presence of very poor people and the housing needs of lower income people. CDBG is special money intended to meet the special needs of lower income people — over and above the normal service local government provides. If CDBG is substituting for your local tax revenues to meet basic public functions such as streets and sidewalks, then local government is actually taking money away from low income neighborhoods.

More Details About Administration and Planning

Is It a "Program" Cost or a "Project" Cost?

We tend to think of "administration" as any staff and overhead (for example, rent, office supplies, etc.) associated with the jurisdiction. However, HUD makes a distinction between two kinds of administration: "program" administration and "project" administration. Consequently, much more than 20% of a jurisdiction's CDBG money can be spent on public staff and equipment.

"Project" administration costs are the staff and overhead expenses directly related to carrying out a specific eligible CDBG activity. For example, if a city operates several types of housing rehab programs, it might have a number of staff who review applications for rehab assistance. There might even be a supervisor who oversees these staff. Even though the supervisor is a "manager," the cost of that supervisor's salary is not counted toward the 20% cap because the supervisor's work is considered necessary to directly carry out the rehab programs — which are specific, eligible activities. Their "project" administrative costs are called "activity delivery costs" by HUD, and are not subject to the 20% cap on "program" administration costs.

Counting "Program" Costs

In the introduction to the regs (from 1988), HUD recognized that the difference between "program" administration and "project" administration can be confusing. To help, the first paragraph of the regs describes various types of staff assignments generally involved in "program" administration. They include:

> *"Money for administering CDBG can pay for salaries, travel, accounting and legal services, rental or purchase of equipment, purchase of office supplies and utilities, and rental and maintenance of office space."*

1. Providing information about CDBG to elected officials or the public.
2. Preparing budgets.
3. Developing systems to monitor the CDBG program.
4. Making agreements with other public agencies or with community groups to carry out CDBG activities.
5. Preparing reports to HUD.
6. Evaluating CDBG activities.
7. Managing people who do the things listed in items #1 through #6.

[Regs, Sec. 206(a)(1)(i)-(ix) for entitlements]

There are different kinds of costs CDBG can be used to pay for when carrying out the types of assignments listed above. They include paying for: salaries, travel, accounting and legal services, rental or purchase of equipment, purchase of office supplies and utilities, and rental and maintenance of office space. (Office space can't be built or bought.) [Regs, Sec. 206(a)(1)-(4) for entitlements]

The regs give local governments two ways to measure these "program" administration costs. One way is to charge all of the wages and related costs to each person whose primary duties are of the type listed above. The other way is to charge a proportion of the salaries and related costs of each person whose job includes any "program" administration assignments. The charge should relate to the percentage of time that individual spends on program administration assignments.

[Regs, Sec. 206(a)(1) for entitlements]

More on "Program" Costs

More Eligible Uses

CDBG can be used for "program" administration of a jurisdiction's HOME program or of its federally designated Empowerment Zone/Enterprise Community program. There does not have to be any actual use of CDBG for HOME or EZ/EC activities in order to use CDBG for administering those programs. [Regs, Sec. 206(i) for entitlements]

Lower Income Benefit

HUD assumes that "program" administration benefits lower income people to the same degree that the overall use of a jurisdiction's CDBG benefits lower income people. Therefore, there is no test to see if "program" administration meets a "national objective." Also, when calculating whether a jurisdiction meets the "primary objective" (70% of its CDBG benefiting lower income people), HUD subtracts out the amount spent on "program" administration before doing the arithmetic. For example, if a jurisdiction has $10 million in CDBG (entitlement amount plus program income), and if it spends up to the 20% cap for "program" administration ($2 million in this case), then only $5.6 million ($8 million x 70%) of the jurisdiction's $10 million must benefit lower income people.

[Regs, Sec. 200(a)(3)(i) for entitlements]
[Regs, Sec. 483(f) & 484(b)(1) for states]

2% Limit For States

Overall, states are expected to use their own, non-CDBG money to meet "program" administration costs. However, up to 2% (yes, "two") of its CDBG allocation, plus program income received by local governments, can be used for "program" administration. Even this 2% has a limit: states can spend up to $100,000 of CDBG for program administration; but, then after that first $100,000, the state must "match" every CDBG dollar with a dollar of its own money. [Regs, Sec. 489(a) for states]

Calculating The 20% Cap

The 20% cap is affected by three figures:

1. The amount of CDBG "obligated" for program administration and planning during the program year;

   (The term "obligated" means money the jurisdiction or any of its "subrecipients" {such as

"Local governments can spend up to 20% of their CDBG money on administration. States however are expected to use their own, non-CDBG money to meet 'program' administration costs."

the Redevelopment Authority or even community groups) have committed and that requires payment in the future. Ways to "commit" money include placing orders, awarding contracts or grants, or receiving goods or services.)

2. The amount of CDBG the jurisdiction received from HUD that program year; and,
3. Any "program income" gained by the jurisdiction (and local governments in the State Program) during the program year. (Program income is money returned to a jurisdiction as a result of its use of CDBG, such as interest payments made by homeowners on a CDBG rehab loan.)

The cap is calculated by dividing item #1 by the sum of items #2 plus #3.

[Regs, Sec. 200(g) for entitlements]

5 CDBG as Part of the Consolidated Plan

CDBG is a central feature of the Consolidated Plan process. In fact, much of CDBG law drives the Consolidated Plan process, especially around public participation. In order to get CDBG funds, your jurisdiction must have a HUD approved Consolidated Plan. If you want to have an effect on how CDBG is used in your community, you must also be familiar with the Consolidated Plan process. [Law, Sec. 104(c)]
[Regs, Sec. 302 for entitlements]
[Regs, Sec. 485 for states]

This Chapter of the Action Guide presents a brief summary of the Consolidated Plan process as it affects CDBG. It also summarizes the key parts of the Consolidated Plan which most affect CDBG. Greater detail about the Consolidated Plan process and document is available in the companion to this Action Guide, the *Consolidated Plan Action Guide.*

What Is the Consolidated Plan?

The Consolidated Plan is the effort to roll into one process and one document, the planning, application, and performance reporting requirements of five HUD programs. CDBG is by far the biggest of these programs. In short, the Consolidated Plan requires a jurisdiction to identify all of its housing and community development needs, and then come up with a long-term strategy for meeting those needs. A key part of the strategy is setting priorities. (People's needs are unlimited, but the money available to address those needs is very limited, so priorities must be set. This means deciding which needs have higher priority...which should get greater attention and money.)

It is not enough to simply set priorities. Priorities are meaningless unless they are backed up by both programs designed to address high priority needs, and resources (especially money) in amounts that reflect the number of people who have the need and how severe that need is — compared with other needs. To that end, the Consolidated Plan has to indicate what programs and resources will be used over the course of the long-term strategy. Then, each year, the jurisdiction must spell out in detail which activities it will carry out, and how much money (including CDBG) will be spent on them, in order to work toward reaching its program goals.

If you are going to be working to affect how CDBG is allocated in your community, it would be a good idea to get a copy of your jurisdiction's Consolidated Plan, the long-term version (usually a 5-year document, but sometimes a 3-year document).

Caution: Confusing use of words. Because the Consolidated Plan is relatively new and because it includes both a long-term and short-term "plan," you might get different things if you just ask for the "Consolidated Plan." Sometimes the annual Action Plan part of the Consolidated Plan is what you will get. Other times you will get the entire long-term "Strategic Plan." You need to have both.

The Five Stages of the CDBG/ Consolidated Plan Process

CDBG, and now the Consolidated Plan process, have five stages that are important to know about if you want to have an impact. To get started, figure out where your jurisdiction is in the Consolidated Plan cycle. If possible, try to have influence at each of the five stages. The regulations affecting the CDBG process have been transferred to the Consolidated Plan regs, which are in the Federal Register at Part 91. Because this chapter only summarizes the Consolidated Plan process, a citation from those regulations will not follow each paragraph. (However, a few regs are mentioned, specifically those in the States and Small Cities CDBG regs affecting small cities.) It is almost essential for you to also refer to the *Consolidated Plan Action Guide* because it goes into much greater detail about these five stages.

> *"Applying for CDBG from some governments is very rigorous, which can be discouraging to groups with little or no staff. But governments must provide technical assistance about applying if groups request it."*

1. Identifying Needs

The law requires jurisdictions to engage the public in identifying housing and community development needs. One way of doing this, as required by law, is to hold a public hearing each year so that residents can present their ideas about needs.

[Law, Sec. 104(a)(2)(C)]
[Regs, Sec. 486(a)(5) for small cities]

2. Proposed Use of CDBG (Proposed Annual Action Plan)

In order to get CDBG, the law requires jurisdictions to prepare a formal document declaring how CDBG will be used. A "proposed" version of this document must be presented to the public so that "affected" residents have a chance to study the document and to give the jurisdiction their comments. This document is now called the proposed Annual Action Plan (of the Consolidated Plan). Since CDBG flows each year, there must be an Action Plan drafted every year.

[Law, Sec. 104(a)(2)(B)]

The draft Annual Action Plan must describe all of the activities that the jurisdiction intends to fund with CDBG dollars in the upcoming year. "CDBG dollars" means both the new entitlement amount and program income. The description of each activity must be in enough detail, including location, that people can understand how they might be affected.

[Consolidated Plan Regs, Sec. 220(g)(1) for entitlements]

The Consolidated Plan regulations require that complete copies of the draft Annual Action Plan be available in public places such as libraries. In addition, a "reasonable" number of free copies must be given to residents upon request. (Small towns and rural counties only have to give their residents "reasonable" advance notice of, and a chance to comment on, activities proposed in an application by the locality to the state for CDBG funds. [Sec. 570.486(a)(6)])

The Consolidated Plan regs give you only 30 days to: get a copy of the proposed Annual Action Plan, study it, discuss it with others, and write comments about it to public officials or prepare testimony for a public hearing.

CDBG law requires a public hearing at each stage of the process, including "the review of proposed activities." In addition, the Consolidated Plan regulations for entitlement jurisdictions call for a public hearing "during the development" of the Consolidated Plan. However, the state Consolidated Plan regs do not require states to have a public hearing about their proposed Annual Action Plan; and, the small cities CDBG regs only imply that there should be a public hearing when rural towns or counties intend to apply to their states for CDBG.

[Law, Sec. 104(a)(3)(D)]
[Regs, Sec. 486(a)(5) for small cities]

The law obliges jurisdictions to provide technical assistance to groups asking for help in putting together an application for CDBG money from the jurisdiction. The jurisdiction can decide the kind and amount of help it will provide. *Each jurisdiction has its own CDBG application process. Applying for CDBG from some governments is very rigorous, which can be discouraging to groups with little or no staff. If you live in one of these jurisdictions, you might want to remind it of its obligation to provide technical assistance...which ought to include instructions on how to fill out the locality's own application form.*

[Law, Sec. 104(a)(3)(C)]
[Regs, Sec. 570.486(a)(4) for small cities]

Since most people's experience with CDBG and the Consolidated Plan will be around the Annual Action Plan, ***you are encouraged to look at the companion to this Action Guide, the Consolidated Plan Action Guide. In particular, there is a section which explains how to read and interpret the table format which is at the heart of the Annual Action Plan****. That section of the other Action Guide explains each part of the table line-by-line and column-by-column. These tables really are easy to read once you know*

"Since a Substantial Amendment won't be taking place at an expected time, it could go mostly unnoticed. Therefore, you might want to be on the lookout for major changes and be sure they are treated as 'Substantial Amendments.'"

what's supposed to be there; and they should give you a lot of useful information.

3. Final Action Plan

Once the jurisdiction has "considered" the public's comments, as required by law, elected officials vote on and sign-off on the "Final" Annual Action Plan. It is then sent into HUD for approval before the beginning of the jurisdiction's "program year." [Law, Sec. 104(a)(2)(E)]

(Remember, the date of the beginning of a "program year" varies from place to place. Most start on July 1, while many begin on January 1. *It is good to know when your program year begins because CDBG planning and public participation requirements are tied to that date.*)

There are several reasons why HUD might not "approve" an Annual Action Plan. You might need to write a formal letter of complaint to your HUD Field Office, explaining in detail the concerns you have: for example, how an activity will not meet a "national objective" such as benefiting lower income people. (See the *Consolidated Plan Action Guide* for more information).

4. Substantial Changes in the Action Plan

The law triggers the "Citizen Participation" process whenever there is a major change, a "Substantial Amendment." However, with two exceptions, the law does not define "Substantial Amendment." The law does consider any change in use of CDBG from one activity to another to be a "Substantial Amendment." And it calls for a "Substantial Amendment" whenever a state changes its method for distributing CDBG among small towns and rural counties. The entitlement regs were changed in 1995, leaving it up to each jurisdiction to define "substantial change." The States and Small Cities regs are better; they keep the pre-1995 definition, which includes "any changes made in terms of the purpose, scope, location, or beneficiaries." [Law, Sec. 104(a)(2)(E)] [Regs, Sec. 486(a)(6) for small cities]

If a Substantial Amendment is proposed, then the public must be given "reasonable" notice that one is being proposed, and be given a chance to comment on it. [Law, Sec. 104(a)(2)(E)]

Since a Substantial Amendment won't be taking place at an expected time during the CDBG/Consolidated Plan calendar, it could go mostly unnoticed. Therefore, you might want to be on the lookout for major changes and be sure that your jurisdiction treats them as "Substantial Amendments."

For more about Substantial Amendments, see the *Consolidated Plan Action Guide*.

5. Annual Performance Report

Since the beginning of the CDBG Program, jurisdictions have been submitting detailed annual performance reports to HUD. These reports have always been available to the public in order to help foster greater government accountability to the jurisdiction's residents. The Annual Performance Report is due at HUD within 90 days of the close of a jurisdiction's "program year." (Prior to 1995, these performance reports were called "Grantee Performance Reports" or GPRs for entitlement jurisdictions, and "Performance and Evaluation Reports" for states.)

Traditionally, the Annual Performance Report must give a detailed description of the activities funded with CDBG money during that program year, showing for each activity: how much money was budgeted for it; how much was actually spent; the specific locations of activities; how much was accomplished (such as the number of houses rehabbed or the number of jobs created); and, how many people or households benefited — by race and by income category.

"Public hearings are potentially very 'empowering' for low income people. Without them, low income people are denied an opportunity for the direct give-and-take between elected officials and constituents."

Public Participation and the Annual Performance Report

Before an Annual Performance Report is sent to HUD, residents must be given "reasonable" notice that it exists, and be given a chance to comment on it. Then the jurisdiction must consider these comments. A summary of public comments must be attached to the Annual Performance Report before it goes to HUD. Of course, the Annual Performance Report must be available to the public.

[Law, Sec. 104(a)(2)(B) & Sec. 104(e)]

The Consolidated Plan regulations, however, allow jurisdictions to determine how they will meet the legal obligation to: provide "reasonable notice" that there is an Annual Performance Report; make it "available"; and, offer people a chance to comment. The regs also only require jurisdictions to give you 15 days for "comment."

You will want to attempt to convince your jurisdiction to do more than the minimum required under the Consolidated Plan regulations. In order to live up to the spirit of the law which seeks "to enhance public accountability" as well as "encourage" participation by low income people, more is necessary. A number of features you might consider getting written into your formal Citizen Participation Plan are mentioned in the companion guidebook, Consolidated Plan Action Guide.

Public Hearings and the Annual Performance Report

The law clearly declares that there must be public hearings at all stages of the process, "including at least...review of program performance." [Law, Sec. 104(a)(3)(D)] However, the regs only require two hearings. As a result, many jurisdictions lump together a public hearing about performance with one about how the jurisdiction intends to spend CDBG money next year.

This greatly reduces a jurisdiction's accountability to its residents. Written comments sent in by the public might not even be seen by elected officials. Elected officials need to hear directly from their constituents what people are not happy with and what seems to be going well. Without the direct, face-to-face meeting of elected official and constituent, the probability of achieving understanding and improvement is severely reduced. In addition, the agendas of most public hearings are full, so mixing two topics at one hearing diminishes the attention both topics deserve. Public hearings are potentially very "empowering" for low income people. Without public hearings, low income people are denied an opportunity for the direct give-and-take between elected officials and constituents which is essential to genuine democratic decision-making.

It is worth your effort to get a provision in your jurisdiction's Citizen Participation Plan that there must be at least one public hearing devoted solely to the Annual Performance Report.

Past Experience and a Word about the Annual Performance Report

Experience suggests that some of you will bump into obstacles set up by your jurisdiction. For example, you might be told that a Performance Report doesn't exist, or that it is not available to the public, or that you will have to file a "Freedom of Information Act" request. Some of you might be asked to spend 25 cents a page for it (usually at least 100 pages long), while others will be promised a copy which never seems to be "ready". {Don't feel bad about asking for free copies. Jurisdictions can spend up to 20% of their CDBG money and 10% of their HOME money for "program administration" expenses, such as informing residents on how their CDBG funds have been used.} Once in a while you will find that the copy that you get has some big gaps in information, or that there are big inconsistencies in the way information is reported.

Annual Performance Reports have been very valuable tools for many community organizations. The Reports should contain a wealth of detailed information which can help groups of low income people see exactly where their CDBG money has

"Annual Performance Reports have been very valuable tools for many community organizations. They can help groups see exactly where their CDBG money has been going and who has been benefitting."

been going and who has been benefitting. While the documents can seem a bit overwhelming at first glance, with a little digging in people can get a handle on them without too much pain.

Changes in the Wind

As of the writing of this *Action Guide*, there are changes unfolding regarding the details relating to the Annual Performance Report. HUD is working on a sophisticated computer system (called IDIS) which will make it possible to know details of a jurisdiction's performance on a daily basis as the jurisdiction "draws down" CDBG dollars (actually spends CDBG money held for it at the U.S. Treasury) CCC hopes to provide a supplement to this *Action Guide* once the new system is fully in operation, and all of the "bugs" are worked out.

In the meantime, HUD is asking jurisdictions to prepare a CAPER (Consolidated Annual Performance and Evaluation Report). This CAPER is a three-page listing of broad categories of housing and community development activities. On it, jurisdictions merely have to give grand totals of amounts spent for any of these broad categories. Individual activities are not identified or reported.

While such a summary might have some "big picture" value, in order for jurisdictions to be truly accountable to the public, detailed information about each activity is essential. For community people to make informed assessments of their jurisdiction's performance, they must have all of the activity-specific information previously reported under CDBG's Grantee Performance Report (GPR).

HUD's improved IDIS computer system has all of this detailed information, but the public might only get the broad summary in the CAPER unless community groups ask for more. According to a HUD memo, the IDIS information is public information. For example, HUD says:

> In the event that jurisdictions choose to include more traditional representations of data in their report, IDIS will generate a number of performance related reports. These reports may be attached to this [CAPER] report or the jurisdiction may choose to only include a list of available reports that will be made available to interested parties upon request.
>
> [December 5, 1996 Memo For CPD Field Office Directors]

In the same memo HUD directly states that jurisdictions can "report accomplishments by neighborhoods or some other breakdown," and that the old GPR forms and instructions can be used.

Further guidance is provided by HUD's *Grants Management System Policy Notebook*. It says:

> These [Annual Performance] reports should contain accurate and up-to-date data (hopefully, generated by the IDIS [computer software]) and should be written in a form that ordinary citizens can understand. This is in keeping with our philosophy of ensuring that citizens are real participants in the community development process.
>
> [GMS; Chapter 4, page 1]

HUD adds that one of the purposes of the Annual Performance Report is to:

> allow...the public to arrive at certain conclusions about the jurisdiction's overall performance. These conclusions could include...whether the intended beneficiaries actually received the benefits proposed....
>
> [GMS; Chapter 4, page 3]

Reinforcing the fact that changes continue regarding performance reporting, another HUD Memo was issued in February of 1998. Among other things, this memo says that there are "currently 27 pre-programmed report features", and that "Grantees should use these reporting features to...report to their citizens." Later, this memo identifies some of these reports and declares that four of them must be provided to the public. Those four are:

"Since the IDIS computer system has a lot of specific information essential for effective public monitoring, be sure that you get it too."

- CDBG Summary of Activities (C04PR03), which should be very similar to the old GPR.
- *Financial Summary Report (no code at this date), which should be very similar to the Financial Summary pages of the old GPR.*
- Summary of Accomplishments Report (C04PR23), which is to present data on CDBG/HOME activity counts and the disbursement of money by priority need categories. It is also to have data on CDBG accomplishments by various units of measurement, including the number of housing units assisted by race or ethnic categories.
- Consolidated Annual Performance and Evaluation Report (C0PR06)

New memos and ongoing adjustments are likely to emerge periodically. Check with your HUD field office or CCC for the latest. At a minimum, since the IDIS computer system gives jurisdictions and HUD a lot of good, specific information that is essential for effective public monitoring, be sure that you get it too. Try to get language in your Citizen Participation Plan which makes it clear to the public that the jurisdiction will include all important, specific information in the Annual Performance Report that was previously required by HUD in the old Grantee Performance Reports.

See the *Consolidated Plan Action Guide* for more about the Annual Performance Report.

6 Public Participation and CDBG

From the beginning of the CDBG program in 1974, Congress has intended that the public be involved in the planning and decision-making around the use of federal dollars given to localities and states for housing and community development activities. Although the law has been amended many times over the years, the concept of public participation has always been an important one with CDBG. For example, a 1983 amendment to the law calls for improved "public accountability" of governments, in part through "timely" public "examination and appraisal" of a jurisdiction's CDBG program. In order to achieve that accountability, the law set out some basic public participation obligations. Then, in 1987, additional public participation requirements were put in the law after community groups convinced Congress that many jurisdictions were finding ways around the law. [Law, Sec. 104(a)(2) & (3)]

In 1990, a different law created the HOME program and the CHAS process (CHAS means, Comprehensive Housing Affordability Strategy). The CHAS law has its own set of public participation features. In 1994/95 all of this was blended into the Consolidated Plan process. Neither the CDBG nor CHAS laws were changed when the Consolidated Plan was created through regulation (not law). However, the public participation aspects of CDBG are now found in the regulations about the Consolidated Plan.

In this section of the *Action Guide*, most of the references to regulations are those of the Consolidated Plan regs. They are in "Part 91" of the Code of Federal Regulations, so will be distinguished from the CDBG regs here by referring to "Sec. 91.xx." The CHAS law is also mentioned in this section. So, when there is a reference to a law, either "CHAS" or "CDBG" is indicated.

This section of the Action Guide is just a summary of the public participation requirements of the CDBG program. A much more detailed discussion about public participation, along with ways you can try to improve it in your jurisdiction, is in the *Consolidated Plan Action Guide*.

The Formal "Citizen Participation" Plan

The CDBG law requires that a jurisdiction have and "follow" a formal and "detailed" Citizen Participation Plan before it can get CDBG money. Small cities getting CDBG money from their state governments do not necessarily have to have a Citizen Participation Plan, but they must follow some basic public participation "requirements."

[CDBG, Sec. 104(a)(3)]
[Sec. 91.105(a) for localities]
[Sec. 91.115(a) for states]
[Sec. 570.486(a) for small cities]

Encouraging Participation by Low Income People

As set out in the law, Congress did not want the Citizen Participation Plan to be just a piece of paper. Instead, the law obliges jurisdictions to actually "follow" their Plan — to really use it. It gets better. The law also requires that the Citizen Participation Plan both "provide for" and "encourage" public participation, "with particular emphasis" on lower income people, including residents of lower income neighborhoods and areas where CDBG might be spent. [CDBG, Sec. 104(a)(3)(A)]
[Sec. 91.105(a)(2)(ii) for localities]
[Sec. 91.115(a)(2) for states]
[Sec. 570.486(a)(1) for small cities]

The regs make it clear that this obligation to "provide for and encourage" public involvement covers the entire Consolidated Plan calendar, which includes the creation of the Consolidated Plan (including the Annual Action Plan), as well as any substantial changes to it during the year, and the performance report at the end of the year.

[Sec. 91.105(a)(2)(i) for localities]
[Sec. 91.115(a)(2) for states]

"The law requires that the Citizen Participation Plan both 'provide for' and 'encourage' public participation, 'with particular emphasis' on lower income people, including residents of lower income neighborhoods and areas where CDBG might be spent."

Going a step further, the regs help to refine the meaning of "encourage" participation by saying jurisdictions are "expected to take whatever actions are appropriate to encourage participation by all." The regs specifically refer to "minorities," people who do not speak English, people with disabilities, and residents of public housing and other federally assisted housing such as Section 8.

[Sec. 91.105(a)(2)(ii) & (iii) for localities]
[Sec. 91.115(a)(2) for states]

Access to Information

According to the law, people must be given "reasonable" and "timely" access to key information and records, plus local meetings. The information and records might be about the proposed use of money, or the money currently being used, or about the money actually used in past years. In terms of records regarding the past use of money, the CHAS law says this "reasonable" access must be given for records going back at least five years.

[CDBG, Sec. 104(a)(2)(D) & (3)(B)]
[CHAS, Sec. 107(a)(4)]
[Sec. 91.105(h) for localities]
[Sec. 91.115(g) for states]
[Sec. 570.508 for entitlements]
[Sec. 570.486(a)(2) for small cities]
[Sec. 570.490(c)(2) for states and small cities]

In the CDBG/Consolidated Plan process there are six standard documents. All must be available to the public. The six standard documents and the citation in the law or regs showing that they are "available" are:

1. The Citizen Participation Plan
   [Sec. 91.105(a)(3) for localities]
   [Sec. 91.115(a)(3) for states]

2. The Anti-Displacement Plan
   [Sec. 91.105(b)(1) for localities]
   [Sec. 91.115(b)(1) for states]
   [CDBG, Sec. 104(a)(2)(A)]

3. The Proposed Consolidated Plan
   (Annual Action Plan and Long-Term Strategic Plan)
   [Sec. 91.105(b)(2) for localities]
   [Sec. 91.115(b)(2) for states]
   [CDBG, Sec. 104(a)(2)(B)]
   [CHAS, Sec. 107(a)(2)]

4. The Final Consolidated Plan
   (Annual Action Plan and Long-Term Strategic Plan)
   [Sec. 91.105(g) for localities]
   [Sec. 91.115(f) for states]
   [CDBG, Sec. 104(a)(2)(E)]
   [CHAS, Sec. 107(c)]

5. Substantial Amendments
   (Proposed and Final)
   [Sec. 91.105(g) for localities]
   [Sec. 91.115(f) for states]
   [CDBG, Sec. 104(a)(2)(E)]
   [CHAS, Sec. 107(c)]

6. The Annual Performance Report
   [Sec. 91.105(g) for localities]
   [Sec. 91.115(f) for states]
   [CDBG, Sec. 104(e) & (a)(2)(B)]
   [CHAS, Sec. 107(c)]

"Availability" also means that these materials must be available "in a form accessible to persons with disabilities, upon request."

[Sec. 91.105(g) for localities]
[Sec. 91.115(f) for states]

As indicated above, the law also gives residents the right to "reasonable and timely access to local meetings...." Local meetings might be Advisory Committee meetings or meetings of City Council subcommittees that affect how money is used, such as a "Housing Subcommittee." Curiously, the State regulations do not specifically say that the public must be given reasonable access to state-level meetings. However, the State Consolidated Plan regs refer to the State CDBG regs which require small cities and rural counties to provide "reasonable and timely" access to their local meetings.

[CDBG, Sec. 104(a)(3)(B)]
[Sec. 91.105(f) for localities]
[Sec. 570.486(a)(2) for small cities]

"For every written complaint from the public, the complaint process must provide a 'timely', written response which is meaningful. 'Timely' is defined as within 15 working days."

"Review and Comment"

The CDBG law and the CHAS law both seek to foster more public involvement by requiring jurisdictions to actively "notify" residents that information is available and to enable residents to "examine" it so that they can make informed comments.

[CDBG, Sec. 104(a)(2)(B) &(E)]
[CHAS, Sec. 107(a)(2) & (b)]
[Sec. 91.105(b)(2), (c)(2), & (d)(1) for localities]
[Sec. 91.115(b)(2), (c)(2), & (d)(1) for states]
[Sec. 91.105(a)(3) for localities]
[Sec. 91.115(a)(3) for states]
[Sec. 570.486(a)(6) for small cities]

The laws require that jurisdictions "consider" all comments. Also, the summaries of comments must be attached to the Action Plan, Strategic Plan, Substantial Amendments, and Performance Reports.

[CHAS, Sec. 107(c)]
[CDBG, Sec. 104(e)]

Complaints

The Citizen Participation Plan must describe the procedures it will use in response to complaints from the public regarding the CDBG/Consolidated Plan and any changes to it, as well as the Annual Performance Report. At a minimum, for every written complaint from the public, the complaint process must provide a "timely", written response which is meaningful. "Timely" is defined as within 15 working days if the jurisdiction is getting CDBG. The spirit of the CHAS law calls for a "fair hearing and timely resolution" of complaints from the public.

[CDBG, Sec. 104(a)(3)(E)]
[CHAS, Sec. 107(d)]
[Sec. 91.105(j) for localities]
[Sec. 91.115(h) for states]
[Sec. 570.496(a)(7) for small cities]

Turning in written complaints might seem like extra work, and frustrating work at that. But written complaints by the community are important in many efforts to improve how money is spent or how the Consolidated Plan process operates.

Public Hearings

The law requires public hearings so that the public can express its views and so that the local or state government can respond to questions and proposals for the use of CDBG funds. According to the law, public hearings are to be held "at all stages" of the process, "including at least the development of needs, the review of proposed activities, and review of program performance." *It is fairly straight-forward:*

- *There should be a public hearing to allow people to describe housing and community development **needs**;*
- *There should be a public hearing to enable the community to comment on the **proposed uses** of CDBG money; and,*
- *There should be a public hearing devoted to that "accountability" which Congress stresses in the law — a public hearing to review how the local or state government **performed** in using the CDBG funds.*

[CDBG, Sec. 104(a)(3)(D)]

The regulations about public hearings are very confusing — Ed. In short, they really only require localities to have two public hearings at two different stages of the process. The state regulations only require one public hearing: a public hearing to obtain people's ideas about housing and community development needs.

[Sec. 91.105(e)(1) for localities]
[Sec. 91.115(b)(3) for states]
[Sec. 570.486(a)(5) for small cities]

Just because the regulations don't call for a public hearing at each stage of the CDBG/Consolidated Plan process, that doesn't mean you can't try to convince your local or state government to hold public hearings at each important point in the process, as called for in the law.

"In order to reach out to low income people, some public hearings ought to be in places where people will feel more at ease, in buildings in low income neighborhoods, such as school halls, community recreation centers, church basements, and library meeting rooms."

Additional Features Relating to Public Hearings

A. "Times" and "Places"

The law's emphasis on encouraging participation by low income people is reinforced in the paragraph relating to public hearings. It stresses that public hearings are to take place at "times and locations convenient to potential or actual beneficiaries...."

[CDBG, Sec. 104(a)(3)(D)]
[Sec. 91.105(e)(3) for localities]
[Sec. 91.115(b)(3)(ii) for states]
[Sec. 570.486(a)(5) for small cities]

The traditional place for public hearings has been City Hall or the County Courthouse. However, the formality of City Hall can be very intimidating to many people. Therefore, in order to reach out to low income people, some public hearings ought to be in places where people will feel more at ease. So that places are easy to get to (even after the buses stop running), most public hearings should be in low income neighborhoods. They should be held in buildings people are more familiar with, such as school halls, community recreation centers, church basements, and library meeting rooms.

B. Public "Notice"

The law also requires that public hearings be held only after the public has been given "adequate notice." Responding to problems from the past, the regs warn that "small-print notices" in the legal section of newspapers only "a few days before the hearing" are **not** adequate. The regs consider two weeks advance notice as "adequate."

Beyond this direction, the regs leave it up to the jurisdictions to determine how and when adequate notice will be given to the public. The regs for small cities are not as specific: they simply call for "reasonable" notice, without refining the meaning of "reasonable," even though the state regs use the same modest guidance as do the formula jurisdiction regs.

[CDBG, Sec.104(a)(3)(D)]
[Sec. 91.105(e)(2) for localities]
[Sec. 91.115(b)(3)(i) for states]
[Sec. 570.486(a)(5) for small cities]

In order to truly encourage low income people to participate, there are a number of things that jurisdictions should do. See the Consolidated Plan Action Guide for more.

C. Public Hearings and Populations With Unique Needs

The law and regs require that there be "accommodation" for people with disabilities. The law also requires jurisdictions to meet the needs of people who do not speak English if a "significant number" of non-English speaking people can be "reasonably expected to participate." The regulations allow jurisdictions to figure out how these obligations will be met. The Citizen Participation Plan must spell out the jurisdiction's policies so that people with unique needs will know what to expect.

[CDBG, Sec. 104(a)(3)(D) & (F)]
[Sec. 91.105(e)(3) & (4) for localities]
[Sec. 91.115(b)(3)(ii) & (iii) for states]
[Sec. 570.486(a)(5) for small cities]

Certifications

Most of the time you won't need to be bothered with the "certifications." But because they are often attached to the copy of the Action Plan that you get, you might as well know what the "certs" are all about. The "certifications" are legal-looking pages in a different typeface than the rest of the Action Plan (because they are standard forms that come straight from HUD). You don't need to read all of this.

The "certifications" are formal pledges by your local or state government that it is following the fundamental elements of the CDBG and CHAS

"A number of low income leaders and advocates find fair housing an effective tool for addressing some types of CDBG problems."

laws, as well as several other laws that apply to all federal programs.

The key "certifications" include:

- **Consistency with the ConPlan.** Housing activities assisted with CDBG funds must be "consistent" with the Strategic Plan. All that is meant by "consistent" is:

  1. The Consolidated Plan shows "need";
  2. A proposed activity is "consistent" with the long-range Strategy; and,
  3. The location of a proposed activity is "consistent" with the geographic areas specified in the Strategy. [Sec. 91.225(a)(6) for localities] [Sec. 91.325(a)(6) for states] [Sec. 91.510(c)]

There are some serious limitations to this definition. See Page 67 the Consolidated Plan Action Guide for more.

- **Following the ConPlan.** The CDBG law requires entitlements to use CDBG money in ways that "follow" the Consolidated Plan. This applies to nonhousing activities as well as housing activities. The meaning of the word "follow" is defined in the CDBG regulations as "taking all of the planned action described in the Action Plan." The regs go on to say that this means:

  1. Seeking all resources that the jurisdiction said it would seek;
  2. Being impartial when giving "certifications of consistency" to those who apply for HUD funds when the jurisdiction said it would support applications for those specific HUD programs; and,
  3. "Not hindering implementation of the Consolidated Plan by action or willful inaction." [Sec. 570.903(b)]

There are problems with this definition which make it difficult for lower income people to use the "following" feature to better ensure that low income people adequately benefit from CDBG. See page 68 of the Consolidated Plan Action Guide for more.

- **Section 3 Job Preferences.** The jurisdiction must comply with Section 3, which calls on them to "ensure to the greatest extend feasible" that low income people will have opportunities for training and employment at construction projects assisted with CDBG and Public Housing dollars. [Sec. 91.225(a)(8) for localities] [Sec. 91.325(a)(8) for states] [Sec. 570.607(b) for entitlements] [Sec. 570.487(d) for states]

Section 3 has not been effectively used by low income community leaders and advocates to attempt to gain jobs for low income people at CDBG construction sites. In part it has not been fully used due to some limitations in the Section 3 regulations [24CFR part 135]. However, you might want to look into Section 3.

- **Fair Housing.** The jurisdiction must "affirmatively further fair housing." This includes conducting an "analysis of impediments" to housing choice, and having a plan of action that the jurisdiction will take to overcome the effects of these impediments. [CHAS, Sec. 105(b)(14)] [Sec. 91.225(a)(1) for localities] [Sec. 91.325(a)(1) for states] [Sec. 570.601 for entitlements] [Sec. 487(b) for states and small cities]

A number of low income leaders and advocates find fair housing an effective tool for addressing some types of CDBG problems. Be sure to study your jurisdiction's "Analysis of Impediments" (AI) and its "action plan" of specific steps intended to overcome the impediments to fair housing which it identified. HUD has a "Fair Housing Planning Guide" which is a detailed description of what HUD expects an AI to look like, as well as the process to follow to develop an AI. Copies of the "Fair Housing Planning Guide" are free from your HUD field office.

"For low income community groups challenging a jurisdiction's use of CDBG funds or its Consolidated Plan, it might be helpful to refer to specific 'certifications' that reinforce your case. Your challenge should give specific examples showing that the 'certification' is not accurate."

- **Displacement.** The jurisdiction must have and follow an Anti-Displacement Plan.
  [CDBG, Sec. 104(d)]
  [CHAS, Sec. 105(b)(15)]
  [Sec. 570.606(c) for entitlements]
  [Sec. 570.488 for states and small cities]
  [Sec. 91.225 (a)(2) for localities]
  [Sec. 91.325(a)(2) for states]
  [Sec. 42.325 for entitlements and states]

- **Citizen Participation.** The jurisidiction is "in full compliance [with] and following a detailed citizen participation plan that meets the requirements of [the regulations]," for CDBG.
  [Sec. 91.225(b)(1) for localities]
  [Sec. 91.91.325(b)(1) for states]

- **Discrimination.** The jurisdiction certifies that it does not discriminate. [CDBG, Sec. 109]
  [Sec. 507.602 for entitlements]
  [Sec. 91.225(b)(6) for localities]
  [Sec. 91.325(b)(5) for states]

- **Lead Paint.** The jurisdiction must comply with lead paint inspection, testing, and abatement procedures, for CDBG.
  [Sec. 570.608 for entitlements]
  [Sec. 570.487(c) for states]
  [Sec. 91.225(b)(7)]

- **Disabilities.** The jurisdiction must comply with the Americans with Disabilities Act, as well as the Architectural Barriers Act.
  [Sec. 570.614 for entitlements]
  [Sec. 570.487(e) for states]

- **State Distribution.** States (only) must pledge that they will not refuse to distribute CDBG funds to local governments based on the type of activity. (For example, a few years back, one state did not plan to use any CDBG money for housing.) However, the state can have priorities for distributing CDBG for the various types of eligible activities. A state that does not want to use CDBG for housing can give it a low priority and effectively deny use of CDBG for housing.
  [CDBG, Sec. 106(d)(2)(C)(iii)]
  [Sec. 91.325(b)(2)(iv)]

For each program there are other certifications; only some of the more important ones are listed above. See the actual certifications or the regs if you want to dig into this deeper.
[Sec. 91.225 for localities]
[Sec. 91.325 for states]

For low income community groups challenging a jurisdiction's use of CDBG funds or its Consolidated Plan, it might be helpful to add in your challenge references to specific "certifications" that reinforce your case, such as: the "certifications" that deal with "citizen participation," "consistency" with the Consolidated Plan, and "following" the Consolidated Plan. Your challenge should give specific examples supporting your claim that the "certification" is not accurate. Remember, the mayor, county executive, or governor have signed these "certifications" and that official is responsible for them being carried out.