Homeownership Alliance

**CDBG Recommendations**
**Final Discussion Draft – 8/31/22**



Executive Summary

In response to the nation's severe and worsening housing affordability and supply crisis, the Biden-Harris Administration recently issued a comprehensive call to action to increase the availability of homes affordable to Low- and Moderate-Income (LMI) households, including many Black and Brown households, who are increasingly shut out by harsh market conditions (e.g., historic rise in home prices, rising interest rates, and intense competition from corporate investors and other all-cash buyers.)

As part of this national mobilization, the Administration's May 2022 *Housing Supply Action Plan* directs HUD to leverage existing authority and resources, including the Community Development Block Grant (CDBG) Program, to increase the supply of affordable homes in every community and close the supply gap within five years. Specifically, the Plan calls for the use of CDBG for local acquisition and sales of homes to owner-occupants and mission-driven entities, including by "updating guidance on the *Use of CDBG Program Funds in Support of Housing* to promote acquisition, homeownership assistance, conversion of existing structures into rental housing and "starter" homes, housing counseling, and rehabilitation and reconstruction."[1]

Created in 1974, CDBG is one of the longest-running federal block grant programs. Unlike the HOME Investment Partnership Program, which is restricted to housing uses, grantees rely on CDBG for a wide range of community development and infrastructure needs beyond housing. As a consolidation of eight separate programs at inception, CDBG provides a high degree of flexibility to grantees in choosing activities that best meet the needs of their communities.[2] This often means, however, that there are competing demands and conflicting priorities for limited CDBG resources.

Additionally, while HOME dollars typically flow directly to a grantee's Housing Department or equivalent agency, authority for the allocation and use of highly sought-after CDBG resources is often outside the control of local housing officials. This reality creates an additional constraint on the availability of- and access to CDBG dollars for homeownership uses.

As HUD works to stream more CDBG resources to homeownership, **the Homeownership Alliance offers seven recommendations for updates to the program that could yield a significant increase in the number of affordable homes produced and sold to LMI households across the country.** Recognizing the unique and respective roles of Congress and HUD in authorizing and administering CDBG, our recommendations fall into three intersecting categories: sub-regulatory, regulatory, and statutory. As HUD seeks immediate opportunities at the sub-regulatory and regulatory levels, we also urge HUD to work with Congress to seek waiver authority and statutory changes that are needed to modernize CDBG's outdated framework overall.

Background

The Biden-Harris Administration's May 2022 *Housing Supply Action Plan* calls for boosting the supply of quality housing in every community in order to tackle inflation and bring homeownership within reach for families who cannot find an affordable home. While the nation's housing affordability and supply crisis is not new, it is increasingly dire due to –among other factors- prolonged underproduction of housing units, rapid home price escalation, rising interest rates and asymmetrical competition from corporate investors and all-cash buyers.[3]

According to the National Association of Realtors, for example, strong housing price growth continued in the second quarter of 2022 in all regions of the country, including double-digit increases for existing, single family homes in 80% (148 of 185) of metro markets (up from 70% in the previous quarter).[4] The national median sales price breached the $400,000 level for the first time in June 2022, and was $410,600 in July 2022 (up 13.3% from a year ago). This figure marks the 125th consecutive month of year-over-year price increases.[5]

While the extraordinary rise in home prices is showing some signs of slowing, overall housing affordability has dramatically decreased[6] and competition is now highest for the lowest-price homes[7]. In this context, fewer and fewer LMI families –especially Black and Brown households- are able to attain homeownership. Additional resources are clearly warranted to address this worsening situation, as well as the persistent and harmful racial disparities in homeownership and household wealth building rates.

The Administration's Housing Supply Action Plan encourages the use of CDBG to increase local acquisition and sale of homes to owner occupants and mission-driven entities. It also calls for HUD to update its *Notice CPD 07-08: Use of CDBG Program Funds in Support of Housing*[8] to promote acquisition, homeownership assistance, conversion of existing structures into rental housing and "starter" homes, housing counseling, and rehabilitation and reconstruction. HUD's commitment to these actions is also reflected in its FY 2023 Annual Performance Plan.[9]

Recommendations to Increase Affordable Homeownership Supply and Access through CDBG

The Homeownership Alliance is a coalition of 31 CDFI lenders and nonprofit housing developers from over 19 states working to expand resources for- and access to affordable homeownership in a wide range of local and regional housing market contexts.[10] Alliance members bring diverse transactional experience and deep practitioner knowledge in urban, suburban and rural markets across the nation.

**We offer seven recommendations to HUD for updates to the CDBG program that could yield a significant increase in the number of affordable homes produced and sold to LMI households across the country in the near-term and going forward.** As noted throughout, our recommendations fall into three intersecting categories: sub-regulatory, regulatory, and statutory. As HUD seeks immediate opportunities to expand homeownership through CDBG at the sub-regulatory and regulatory levels, we also urge HUD to work with Congress to seek waiver authority and various statutory changes that are needed to address the ongoing crisis, and to modernize CDBG's outdated statutory framework overall.

## I. Issue updated, single-source, web-based guidance and training on all eligible homeownership uses of CDBG for all grantees, field offices and partners. [SUB-REGULATORY]

Many housing practitioners rely on *Notice CPD-07-08: Use of CDBG Program Funds in Support of Housing*. However, this guidance dates to November 2007. HUD has since issued many CDBG FAQs and explanatory materials, including for the *Basically CDBG* online training series, and it can be difficult to understand which information and guidance is most current and applicable. Staff turnover at grantees, sub-recipients and HUD also means that critical best practices and program knowledge are lost over time.

Additionally, portions of the regulations, such as *Section 570.204 Special activities by Community-Based Development Organizations*[11], are so dense and refer to so many underlying documents that additional guidance and simplification is needed. Input from our members and a number of municipalities indicates that, combined with the complexity of CDBG regulations overall, and given the range of alternative eligible uses, many grantees avoid using CDBG for homeownership activities altogether or limit its use to direct homebuyer assistance.

As such, we recommend updating and reissuing the 07-08 Notice. It should include a specific section on *How to Design an Efficient Homebuyer Assistance / Purchase Assistance program that incorporates and promotes national best practices.* CPD should also remove all older guidance and materials from its website. Given that many grantees use CDBG to address a plethora of non-housing needs, the more streamlined and flexible that HUD's guidance related to homeownership uses can be, the better.

## II. Provide flexibility and relief on household income limits for threshold eligibility; allow the use of alternative income calculation methods and other practices, including those currently permitted for other CDBG activities. [STATUTORY & REGULATORY]

Whether on the development side or homebuyer assistance side, it is increasingly difficult to use CDBG to support LMI homeownership in many markets today. While the CDBG statute requires households to have incomes at or below 80% of AMI to qualify, homes prices in many markets have risen beyond what most families at or below this limit can afford based on standard affordability and mortgage qualification ratios.[12]

Even when CDBG is used to provide various forms of direct purchase assistance (e.g., interest rate and principal reduction, closing costs, PMI premiums), an LMI buyer can still be left with a hefty down payment or financing gap and not be able to close on a home purchase.

Mission driven entities could help more LMI households attain homeownership if HUD and Congress provided relief on the existing income limits, and flexibility on income calculation methods and related standards for homeownership activities.

Specifically, HUD should allow grantees to calculate the applicable household income limit using *four persons* as the minimum household size.[13] [14] This adjustment, which may require waiver authority from Congress, would support homeownership access for smaller (1-3 person) households, including many first generation and first-time buyers, whose family size is likely to grow within a few years.

Additionally, Congress and HUD should allow CDBG grantees to use *geography-based* income eligibility standards and *presumption of LMI status* as two alternatives to the household-specific income test. As described below, these and similar practices are already permitted for other activities under the existing statute. **HUD should work with Congress to provide similar flexibility for homeownership uses.**

- <u>Job creation or retention activities.</u> All CDBG-assisted activities must meet one of three national objectives: 1) benefitting LMI persons; 2) aiding in prevention or elimination of slums or blight; or 3) meeting a community development need having a particular urgency. There are four ways to meet the *benefitting LMI persons* objective: a) area benefit activities; b) limited clientele activities; c) housing activities; and d) job creation or retention activities.[15]

  Under the jobs provision, CDBG assistance can pay for job creation or retention activities, provided that the subject jobs will be permanent and that at least 51% will be held by- or available to LMI persons. To document that a job holder is LMI, *the regulation specifically allows grant recipients to presume that a job holder is LMI either if (s)he resides in a census tract where at least 70% of residents are LMI or if the business is located in a census tract that is part of a Federally-designated Empowerment Zone or Enterprise Community* and also meets criteria including having a poverty rate of at least 20%.[16] [17]

- <u>Limited clientele activities.</u> This provision allows CDBG to pay for certain activities that benefit a limited number of people as long as at least 51 percent of those served are LMI persons.[18]

- Housing activities. The current statute and regulations allow for the use of CDBG to subsidize ***new construction****, non-elderly,* ***multifamily rental*** *housing* developments when various conditions are met.[19]

- Public services. As a public service activity, grantees can provide homebuyer assistance, including to *non-LMI households,* if the home to be purchased is located in a HUD-approved neighborhood revitalization strategy area (NRSA), and at least 51% of all assisted units in the NRSA are LMI occupied.[20] [21] [22] Additionally, when funded as a public services activity, the amount of down payment assistance provided can exceed the 50% statutory cap that otherwise applies.[23] [24]

**III. Develop a unified definition for 2-to-4 unit residential properties that aligns with the FHA program definition for same.** [REGULATORY]

This issue applies to home repair programs using CDBG (including energy and accessibility retrofit, lead abatement, lead service line replacement and flood remediation), but not to new construction or rehab of units for new homeownership.

The CDBG regulations define privately-owned, residential properties with two-to-four units as *Multi-Unit Residential*.[25] FHA defines these same properties as *Single Family Residential with two* [or three or four] *individual dwelling units*. [26] [27] This discrepancy makes data collection and record keeping onerous, especially when a property is assisted using both financing sources.

Additionally, on the CDBG side, IDIS requires that when reporting on buildings with two or more permanent, residential units (multi-units), the reporting entity must report the income of rental units to track that the requirement that 51% of the beneficiaries are LMI is being met. This can be a real problem because it is very difficult to get tenants in a 2-to-4 unit property to provide personal income and financial information when they are not direct applicants or recipients of the program, as the owner-occupant is.

A unified definition of such properties as *Single Family Residential with 1-to-4 units*, and where only the owner-occupant's household income and demographics is reportable, would be far more workable, and is needed. Additionally, the 51% rule should not apply below 5 units. We urge HUD to adopt these changes.

**IV. Streamline CDBG Compliance and Reporting Requirements for Acquisition-Only and Acquisition + Rehab Development** [SUB-REGULATORY]

Based on member feedback, the current requirements for use of CBDG funds on the development side are so burdensome that many developers will only use CDBG for homebuyer purchase assistance. For example, one member wrote: "Overall, it is nearly impossible, especially with construction costs today, to rehab or build affordable homes under the regulatory compliance requirements that make using CDBG so difficult and expensive, including NEPA environmental screenings and Sec. 106 historic review (even for acquisition-only funded with CDBG); lead-based paint remediation and lead safe work place for $25k or more (for rehabs); Davis-Bacon wages, collecting demographic and income data for rental units in 2-4 unit, owner-occupied properties; and excess profit calculation and certification on sales." Given the overall scarcity of housing development subsidy dollars generally, we encourage HUD to review and streamline reporting and compliance requirements in order to facilitate acquisition and rehab uses to the greatest extent possible.

## V. **Review and Update Guidance on Grant Disbursement / Reimbursement Policies to Reduce Payment Delays** [SUB-REGULATORY]

Homeownership Alliance members that have served as CDBG sub-recipients in their respective geographic markets report at times having to tie up substantial amounts of working capital as float for CDBG pass-through funds and to cover eligible grant administration expenses while awaiting reimbursement payments over extended time periods. In one instance, a member had to float approximately $1 million over 24 months, the full duration of an important home repair program. Our understanding is that delays in reimbursement for completed work reflect –in part- grantee concerns about HUD audit requirements and the potential for negative findings. To reduce and minimize the need for nonprofits to use their limited capital resources as float, we ask HUD to review and clarify its guidance to grantees on reimbursement payment policies and related audit standards.

## VI. **Update Lead-based paint full abatement threshold to reflect current construction costs; and index the threshold to inflation.** [REGULATORY]

In September 1999, HUD promulgated a final rule[28] to implement the *Residential Lead-Based Paint Hazard Reduction Act of 1992*[29]. The rule and underlying statute are important for reducing lead-based paint hazards -especially for young children- in federally owned- and federally-assisted housing. The per-unit threshold established by HUD at that time was $25,000. While that amount has remained static, construction costs have risen significantly over the past 23 years. If adjusted for inflation, the $25,000 threshold would be $43,912.83 today.[30] As such, we recommend that HUD update the threshold to reflect current construction costs, and index it to a generally accepted inflation gauge going forward. [REGULATORY]

**VII. Expand flexibility and use of CDBG for homebuyer purchase assistance in all markets; seek Congressional authority to waive or remove 50% Down Payment Assistance cap.** [SUB-REGULATORY, REGULATORY, STATUTORY]

As described above, a major impediment for many creditworthy LMI families seeking to buy a home is the lack of adequate savings or *cash to close*. This challenge is particularly true for LMI households of color, which -for numerous historic and economic reasons- have lower household wealth and savings on average than others. It can also be true for first time- and first generation homebuyers who often do not have family wealth or other resources on which to draw.

To help more LMI households overcome this hurdle, HUD should urge all CDBG grantees to award the maximum amount of Direct Assistance / Purchase Assistance for which households qualify and need. Homeownership is easier to sustain when families do not have to deplete all of their savings to purchase a home, and can instead retain and build additional savings for maintenance, repairs and unanticipated events over time. HUD's guidance to grantees should reflect this perspective.

We also urge HUD to seek Congressional authority to waive or eliminate the 50% Cap on Down Payment Assistance (DPA)**.** Under the existing statute,[31] regulations[32] and sub-regulatory guidance[33], grantees can provide purchase assistance to eligible LMI homebuyers in the form of DPA or pay for reasonable closing costs, interest rate subsidies, mortgage principal reduction, and mortgage insurance premiums. DPA is capped by statute at 50% of the amount required by the lender. This limit does not apply to other forms of purchase assistance, including when CDBG is layered into a transaction as principal reduction. HUD CDBG FAQs explain the rationale for distinguishing between homebuyer assistance such as DPA that involves equity and other forms that adjust or reduce debt.[34] In practice, however, this is a distinction without a meaningful difference. An interest rate buy-down or a development subsidy that reduces the sales price of a home benefits an LMI buyer in ways similar to receiving down payment assistance. To enable more LMI households to attain homeownership through CDBG, the cap on DPA should be waived or lifted.

The Homeownership Alliance appreciates the opportunity to make recommendations to HUD and CPD for advancing affordable homeownership through CDBG at this pivotal time; and we would welcome discussing them further. For follow up, please contact David Hunter dhunter@stabilizationtrust.org or Kris Siglin at ksiglin@stabilizationtrust.org.

[1] President Biden Announces New Actions to Ease the Burden of Housing Costs. The White House Briefing Room, May 16, 2022. Statements and Releases.

[2] Basically CDBG Manual: Chapter 1 - Overview of the Program. Program History. Page 1-1. Predecessor programs consolidated into CDBG at inception include: Open Space Land, Neighborhood Development, Water and Sewer, Neighborhood Facilities, Rehabilitation and Public Facilities Loans, Historic Preservation, Model Cities Grants, and Urban Renewal Grants.

[3] Recent Press Clips

The Guardian.com *American dream of owning a home out of reach for many in tight markets.* August 19, 2022.

National Mortgage Professional. *Competition Now Highest for Lowest-Priced Homes.* August 16, 2022.

CNN Business Perspectives. Opinion: *The housing market is slowing down, but homes aren't getting cheaper anytime soon.* By Orphe Divounguy, Senior Economist at Zillow. August 8, 2022.

[4] National Association of Realtors. Economists' Outlook Blog. August 11, 2022. *Single-Family Home Prices Display Double-Digit Increase in 80% of 185 Metro Areas in 2022 Q2*

[5] National Association of Realtors. Economists' Outlook Blog. August 19, 2022. *Existing-Home Sales Fall for the Sixth Straight Month, Decline 5.9% in July 2022*

[6] National Association of Realtors. Newsroom. August 11, 2022. *Four in Five Metro Areas Notched Double-Digit Price Gains in Second Quarter of 2022.*

[7] National Mortgage Professional. *Competition Now Highest for Lowest-Priced Homes.* August 16, 2022.

[8] Notice CPD-07-08: Use of CDBG Program Funds in Support of Housing.

[9] HUD FY 2023 Annual Performance Plan. Strategies and Major Milestones.

*Strategic Goal 3*: Promote Homeownership. *Strategic Objective 3A*: Advance Sustainable Homeownership. *Major Initiative*: Expand Homeownership Opportunities. Page 93.

*Strategic Objective 2A:* Increase the Supply of Housing. Page 58.

[10] NCST website. Homeownership Alliance webpage.

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[11] 24 CFR 570.204 Special activities by Community-Based Development Organizations (CBDOs).

[12] In June 2022, the median home price in Washington, DC was $736,500, a 4.3% year-over-year increase. Realtor.com. Washington, DC Housing Market Overview.

*Sample affordability calculation for Washington MSA:* the 2021 Median Family Income (MFI) for a family of 4 in the Washington MSA (published by HUD in April 2021), is $129,000, and $103,200 for the same family size at 80% MFI. Assuming $25,000 in available savings and no other household debt, a family at 80% MFI can afford a home priced up to $335,732.

*Calculation assumptions:* Housing ratio of 28% [combined monthly mortgage payment divided by gross monthly income; DTI ratio of 36% [combined monthly debt payments divided by gross monthly income]; 30-yr 5.4% Fixed Rate Mortgage; $3,000 annual property taxes and $1,500 annual property insurance cost. Chase.com Mortgage Affordability Calculator

[13] CFR Title 24 Subtitle B Chapter V Subchapter C Part 570. Section 570.3 Definitions. Income.

[14] 42 U.S.C. 5302(a)(20)(A) General provisions. Definitions.

*As used in this chapter-- (20)(A) The terms "persons of low and moderate income" and "low and moderate-income persons" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term "persons of low income" means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term "persons of moderate income" means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. For purposes of such terms, the area involved shall be determined in the same manner as such area is determined for purposes of assistance under section 1437f of this title.*

[15] Notice CPD-07-08: Use of CDBG Program Funds in Support of Housing.

All CDBG-assisted activities must meet one of three national objectives: 1) benefitting LMI persons; 2) aiding in prevention or elimination of slums or blight; or 3) meeting a community development need having a particular urgency. There are four ways to meet the benefitting LMI persons objective: A) area benefit activities, B) limited clientele activities; C) housing activities; and D) job creation or retention activities.

[16] Basically CDBG Chapter 4 Housing. 4.7.2 LMI Housing National Objective. Page 10.

*If a grantee wishes to qualify a housing rehabilitation, acquisition or construction activity under the LMI national objective, the housing national objective must be used. The grantee may not use LMI area, LMI limited clientele or LMI job creation for these activities.*

[17] 24 CFR 570.208(a)(4) Criteria for national objectives. Activities benefitting low- and moderate-income persons. Job creation or retention activities.

*An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:*

*(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.*

*(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:*

> *(A) The job is known to be held by a low- or moderate-income person; or*
> *(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.*

*(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons for these purposes only if:*

> *(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and*
> *(B) The recipient and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.*

*(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be [LMI] if:*

> *(A) He/she resides within a census tract (or block numbering area) that either:*
>> *(1) Meets the requirements of paragraph (a)(4)(v) of this section; or*
>> *(2) Has at least 70 percent of its residents who are low- and moderate-income persons; or*
>
> *(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (a)(4)(v) of this section and the job under consideration is to be located within that census tract.*

*(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (a)(4)(iv)(A)(1) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:*

> *(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;*

*(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and*
*(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:*

- *(1) All block groups in the census tract have poverty rates of at least 20 percent;*
- *(2) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or*
- *(3) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.*

*(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:*

*(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.*
*(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.*
*(C) Where CDBG funds are used by a recipient or sub recipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.*
*(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.*
*(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.*
*(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.*

- *(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by* *aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.*

*(2) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(vi)(F)(1) of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its action plan under part 91 of this title and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b).*

[18] 24 CFR 570.208(a)(2) Criteria for national objectives. Activities benefitting low- and moderate-income persons. Limited clientele activities.

*"An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) of this section: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:*

*(A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or*

*(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or*

*(C) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or*

*(D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.*

[19] 24 CFR 570.208(a)(3) Criteria for national objectives. Activities benefitting low- and moderate-income persons. Housing activities.

*An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a sub recipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph § 570.208 (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:*

- *(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:*
  - *(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;*
  - *(B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and*
  - *(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.*

- *(ii) When CDBG funds are used to assist rehabilitation eligible under § 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.*

- *(iii) When CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.*

[20] 24 CFR Section 570.201(e). Basic eligible activities. Public services.

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[Excerpt] *Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer downpayment assistance, or recreational needs.*

[21] HUD CDBG Program FAQs. Homebuyer Assistance.

- Can CDBG be used to provide down payment assistance to income-eligible homebuyers? If so, what regulations govern the provision of CDBG down payment assistance?

  *CDBG funds can be used for down payment assistance up to 50% of the lender required down payment amount. This can be done as a stand-alone homeownership assistance activity under 24 CFR 570.201(n) as well as other eligible costs such as principal write-downs, closing costs, etc. Down payment assistance provided under 24 CFR 570.201(n) is restricted to low/moderate income households. If down payment assistance is funded as a public service, this activity would count towards the 15 percent public services cap under 24 CFR 570.201(e). Here, the grantee is not limited to providing 50 percent of the required down payment. The low/moderate income housing national objectives may be used for this activity. The Guide to National Objectives and Eligible Activities for Entitlement Communities may also be helpful to you.*

- Is there a method for other people, who are not low- or moderate-income, to receive CDBG homeownership assistance? If so, is it an activity frequently carried out by grantees?

  *Yes, as a public service under 24 CFR 570.201(e) of the Entitlement CDBG regulations and Section 105(a)(8) of the Housing and Community Development Act (HCDA). However, the only homeownership activity that is allowed as a public service is downpayment assistance. (Note that there is no requirement that only 50 percent of the downpayment required be provided when such assistance is carried out as a public service.) This activity is not frequently carried out by grantees because it is a very costly activity. The primary intent of the CDBG program is for low- and moderate-income persons to benefit from CDBG-assisted activities. In addition, for public services, grantees are limited to spending no more than 15 percent of their CDBG grant plus 15 percent of the prior year's program income.*

[22] Basically CDBG. Chapter 4 Housing Activities. Housing and Other Real Property Activities. July 2012. Pages 4-3 and 4-4.

*CDBG funds may be used to provide direct homeownership assistance to LMI households in two ways…*[including]

– *As a public service activity; however, this eligibility category is limited to down payment assistance only and would count towards the 15 percent public services cap under 570.201(e).*

– *For down payment assistance to be provided as a public service to non-LMI households, it must be located in a HUD approved neighborhood revitalization strategy area (NRSA)(see §91.215(g)). This is because in a NRSA, the units for which assistance is obligated during a grantee's program year may be aggregated and treated as a single structure for purposes of determining compliance with the housing national objective. Therefore, only 51% of the units in a NRSA need to be occupied by LMI households to meet a national objective if the home purchase activity is funded as a public service. Homeowner assistance located in an NRSA and carried out as a public service by a CBDO can also be excluded from the 15 percent public services cap.*

[23] Notice CPD-07-08: Use of CDBG Program Funds in Support of Housing. Page 3.

*Homeownership as a Public Service. Homeownership assistance in the form of downpayment assistance may also be eligible as a public service under 24 CFR 570.201(e). Under this provision, an amount greater than 50 percent of the required downpayment may be provided. However, the only low- and moderate-income national objective that homeownership assistance may meet is the national objective at CFR 570.208(a)(3) and 24 CFR 570.483(b)(3), which generally provides that a single-unit residential structure must be occupied by a low- and moderate-income household.*

[24] HUD CDBG Program FAQs. Neighborhood Revitalization Strategy Area

- How can a community benefit from an NRSA?

  *A community will benefit from a comprehensive place-based approach by using CDBG dollars to leverage additional funding for the neighborhood. An NRSA designation encourages and requires extensive community consultation and participation in revitalization efforts. Grantees also receive enhanced flexibility when undertaking economic development, housing and public service activities when using their CDBG funds. Regulatory relief and greater flexibility are the primary benefits. In a HUD-approved NRSA, CDBG funds may be involved in the following incentives:*

  - <u>*Aggregation of Housing Units:*</u> *Housing units assisted in an approved NRSA, during each program year, may be treated as a single structure for purposes of meeting a national objective. The grantee must maintain documentation that demonstrates 51% of the all the single and multi-family housing units completed in the NRSA were initially occupied by low- and moderate-income households. In contrast, outside an NRSA, 100% of the single family homes must be occupied by low- and moderate-income households.*

- *Job Creation/Retention as Low/Moderate Income Area Benefit: Job creation / retention activities undertaken in an NRSA may be qualified as meeting the area benefit national objective, thus eliminating the need for businesses to track personal income and maintain records for jobs held by or made available to low- and moderate-income persons residing within the NRSA.*
- *Aggregate Public Benefit Standard Exemption: Economic development activities carried out in an NRSA may be exempted from the aggregate public benefit standards. While the public benefit standard for individual projects still applies, exemption from the aggregate standard means that a grantee may offer more assistance to attract companies that will be able to create jobs within an NRSA.*
- *Public Service Cap Exemption: Public services carried out in an NRSA are not subject to the statutory 15% public service cap when such activities are carried out by a designated Community Based Development Organization (CBDO) undertaking a neighborhood revitalization, community economic development, or energy conservation project.*

[25] Appendix A: CDBG Matrix Code Definitions. March 2019. Pages A-11 and A-12

The Matrix Code regulations are the same for what HUD defines as Single-Unit Residential and Multi-Unit Residential. The difference is in the IDIS reporting requirement.

Matrix Code 14 A: Rehabilitation: Single-Unit Residential 24 CFR 570.202(a)(1) or 42 USC 5305(a)(4) Rehabilitation of privately owned, **single-unit homes**.

Matrix Code 14 B: Rehabilitation: Multi-Unit Residential 24 CFR 570.202(a)(1) or 42 USC 5305(a)(4) Rehabilitation of privately owned **buildings with two or more permanent residential units.**

Integrated Disbursement and Information Systems (IDIS): IDIS reporting requires that *when reporting on buildings with two or more permanent residential units (multi-units), you report the income of rental units* to track that you are meeting the requirement that 51% of the beneficiaries are LMI. This can be a real problem because it is very difficult to get tenants in a 2- or 3-unit property to provide personal income and financial information when they are not the direct applicants or recipients of the program, as the owner-occupant is. If we are providing repairs for an owner, tenants are indirect beneficiaries. The program recipients are the owner occupants. A unified definition of single-family as 1-4 units, and where the owner-occupant's household income and demographics is reportable, would be far more workable and is needed. The 51% rule should not even apply below 5 units.

[26] FHA FAQs webpage. How does FHA define the number of units in a property?

*FHA defines the number of units in a Property as follows:*

- ***One Unit Property***

*A one-unit Property is a Single Family residential Property with a single Dwelling Unit, or with a single Dwelling Unit and a single Accessory Dwelling Unit (ADU).*

- ***Two Unit Property***
  *A two-unit Property is a Single Family residential Property with two individual Dwelling Units.*
- ***Three- to Four-Unit Property***
  *A three- to four-unit Property is either:*
  - *Single Family residential Property with three or four individual Dwelling Units; or*
  - *Single Family residential Property with two individual Dwelling Units and one ADU or three individual Dwelling Units and one ADU.*

[27] FHA Single Family Housing Policy Handbook (Online). Handbook update published on June 29, 2022, and effective September 26, 2022.

[28] Final Rule: Requirements for Notification, Evaluation and Reduction of Lead Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

[29] 42 U.S.C Ch. 63A: Residential Lead-Based Paint Hazard Reduction

[30] Minneapolis Federal Reserve Inflation Calculator.

[31] 42 U.S.C. 5305(a)(24(D). Activities eligible for assistance.

*(D) provide up to 50 percent of any down payment required from low- or moderate-income homebuyer; or*

[32] 24 CFR Section 570.201(n). Basic eligible activities. Homeownership assistance.

*CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.*

[33] Notice CPD-07-08: Use of CDBG Program Funds in Support of Housing. Homeownership Assistance. Page 3.

[34] HUD CDBG FAQs.  Homebuyer Assistance.

- How should the CDBG grantee decide what amount of subsidy is appropriate?

  *The Uniform Administrative Requirements require that such subsidies are necessary and reasonable.*

  *CDBG grantees must verify the income of the household in order to determine its eligibility. Using this information, the grantee can establish a standard for how much of the household's gross income can be allocated to housing costs; a commonly-used* *standard is about 30% of adjusted gross income for principal, interest, taxes, and insurance (PITI). In many cases, PITI charges exceed 30% of the household's income.*

*The example below shows how underwriting can calculate the appropriate level of subsidy.*

| | |
|---|---|
| Household Gross Income | $36,000 |
| 30% of income (affordability limit) | $10,800 |
| | |
| Home price | $150,000 |
| Less downpayment (4.0%) | $ 6,000 |
| Mortgage Amount | $144,000 |
| | |
| Annual Principal & Interest on $144,000 | |
| (at 4% interest for 30 years) | $ 8,250 ($688/month) |
| Taxes | $ 3,000 |
| Insurance | $ 1,000 |
| | $ 12,250 |

*The family can afford $10,800 in annual PITI expenses. In this example, they have $1,450 less per year than they need ($12,250-$10,800). The taxes and insurance do not change, but the grantee can make a grant or soft second mortgage to eliminate the gap. Deducting the taxes and insurance from the 30%-of-income figure shows that the family can afford $6,800 for a mortgage payment. Then, one would use a mortgage calculator to determine how large a mortgage can be supported with the $6800 the family can afford to spend on principal and interest. This annual payment amount will support a mortgage of $118,695, at the same 4%, 30-year terms.*

*Revised affordability calculation:*

| | |
|---|---|
| Annual Principal & Interest on $118,690 | |
| (at 4% interest for 30 years) | $ 6,800 ($567/month) |
| Taxes | $ 3,000 |
| Insurance | $ 1,000 |
| | $ 10,800 |

*The grantee would therefore reduce the principal amount of the mortgage by $25,305 and take a soft second mortgage to secure it. Adding the $4,000 in taxes and insurance keeps the total annual housing cost at the $10,800 level that the household can afford on 30% of its gross income.*

*At the grantee's option, it could also pay 50% of the downpayment on behalf of the family. The $25,305 soft second mortgage amount dwarfs the $3,000 that is half of the downpayment, but both forms of subsidy are eligible. However, even though it has substantially more invested in lowering the mortgage amount, the grantee cannot pay more than 50% of the downpayment. The downpayment involves equity and the homeownership assistance adjusts debt.*