

# Public Facilities and Improvements

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## Eligible Activities

CDBG funds may be used by the grantee or other public or private nonprofit entities for the:

- ✓ Acquisition (including long term leases for periods of 15 years or more),
- ✓ Construction,
- ✓ Reconstruction,
- ✓ Rehabilitation (including removal of architectural barriers to accessibility), or
- ✓ Installation.

of public improvements or facilities (except for buildings for the general conduct of government). *Reference: §570.201(c)*

Neither the statute nor the regulations define the terms “public facilities” or “public improvements.” However, in the CDBG program, these terms are broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. This would include neighborhood facilities, firehouses, public schools, and libraries. Public improvements include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property such as trees, sculptures, pools of water and fountains, and other works of art. The regulations specify that facilities that are designed for use in providing shelter for persons having special needs are considered to be public facilities (and not permanent housing), and thus are covered under this category of basic eligibility. Such shelters would include nursing homes, convalescent homes, hospitals, shelters for victims of domestic violence, shelters and transitional facilities/housing for the homeless, halfway houses for run-away children, drug offenders or parolees, group homes for the developmentally disabled, and shelters for disaster victims.

In the CDBG program, site improvements of any kind that are made to property that is in public ownership are considered to be a “public improvement” eligible for assistance under this category. This distinction would be of particular importance if new housing is to be constructed on the property and direct CDBG assistance to that construction would not be eligible under program rules.

With one notable exception, this category does not authorize expenditures for “buildings for the general conduct of government.” The exception is that CDBG funds may be used to remove from such buildings material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons. *Reference: §570.207(a)(1)*

- ❖ As defined in the statute, the term “buildings for the general conduct of government” means “city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of government are conducted.” The term includes court houses but does not include jails or prisons. It does not include buildings which are used to deliver services to the public, such as police stations or fire stations. “Mini-city halls,” which are used by some large communities to make certain services available closer to the public, are also not included under this term. Generally speaking, buildings which house administrative functions of the government are considered to be “buildings for the general conduct of government.” Thus, CDBG assistance to a building in which the chief of police and the fire captain of a city have their offices would generally be ineligible. For small communities where one building provides both the administrative functions and services directly to the public, a determination should be sought from HUD as to whether the building may be assisted under this category.

Public facilities and improvements authorized under this category also do **not** include:

*Reference*

❖ Costs of <i>operating or maintaining</i> public facilities/improvements;	<i>§570.207(b)(2)</i>
❖ Costs of purchasing construction equipment;	<i>§570.207(b)(1)(i)</i>
❖ Costs of furnishings and other personal items such as uniforms; or	<i>§570.207(b)(1)(iii)</i>
❖ New construction of public housing.	<i>§570.207(b)(3)</i>

## **Complying with National Objectives—Public Facilities and Improvements**

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Except for highly specialized facilities, public facilities and improvements by their nature are intended to benefit all the residents of an area. Thus, to qualify under the national objective of benefit to L/M income persons, in most cases they must serve an area having a sufficiently high percentage of L/M income persons. The general rule is that the primarily residential area must have at least 51% L/M income residents. Certain grantees are authorized to use what is called the “upper quartile” percent in lieu of 51% or more in the area served. See §570.208(a)(1)(ii). The charts following Additional Considerations, below, show several ways that facilities and improvements eligible under this category may meet a national objective of the CDBG program. Note that public facilities that serve the entire jurisdiction of the grantee, a main library for example, may qualify under the L/M Income Benefit national objective only if the percentage of L/M income persons in the entire jurisdiction is sufficiently high to meet the “area benefit” test. Jails are considered to benefit the entire community served by the facility and thus would have this same restriction. Some facilities by their nature serve an area that is larger (sometimes much larger) than the grantee’s jurisdiction. Regional parks and prisons fall into this category. In such cases, it is important to note that the entire area served by the facility must be considered in determining if it can meet the L/M Income Area Benefit subcategory of the L/M Income Benefit national objective.

## **Additional Considerations**

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### *Title to public facilities:*

- ❖ Nonprofit entities frequently hold title to and operate facilities such as senior centers, centers for the handicapped and neighborhood facilities. When such facilities are owned by nonprofit entities, they may qualify for assistance under this category only if they are made available to the general public. Where applicable, facilities owned by a nonprofit must be open for use by the general public during all normal hours of operation. *Reference: §570.201(c)*

### *Facilities containing both eligible and ineligible uses:*

- ❖ If a public facility contains both eligible and ineligible uses, §570.200(b)(1) of the regulations should be consulted for special qualifying criteria for the eligible portion of the facility.

### *Fees:*

- ❖ Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding L/M income persons from using the facilities are not permitted. *Reference: §570.200(b)(2)*

*Special assessments:*

- ❖ Because many communities levy special assessments against property owners to help pay for the costs of certain public facilities, it is important to be aware of limitations, implications, and requirements that are unique to the CDBG program in this regard.
- ❖ For purposes of the CDBG program, “special assessment” is defined as the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through:
  - a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of a benefit derived from the installation of a public improvement; or
  - a one-time charge made as a condition of access to the public improvement.
- ❖ Where CDBG funds are used to pay all or part of the cost of a public improvement, the rules (described in Appendix C to this Guide) apply if special assessments are used to recover capital costs.  
*Reference: Section 104(b)(5) of the HCD Act*
- ❖ There is no special category of basic eligibility authorizing the use of CDBG funds to pay for special assessments. However, because of the broad use of this technique for funding public improvements, the use of CDBG funds to pay special assessments on behalf of property owners for a public improvement has been considered to constitute a form of using CDBG funds to assist the public improvement and is thus authorized under this category. Therefore, all the rules applicable to a CDBG-assisted public improvement apply even if CDBG funds are only used to pay special assessments for that improvement, but do not assist in the construction. This means that Davis-Bacon applies, and the rules described in Appendix C about the requirements to pay assessments on behalf of L/M income property owners also apply.

## NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

Objective	Qualifies If	Example	Additional Information
<b>L/M Income Area Benefit</b>	The public facility or improvement will be used for a purpose the benefits of which are available <i>to all the residents in a particular area</i> that is primarily residential, and at least 51% of those residents (or less if grantee qualifies to use the exception rule) are L/M income persons.	Paving of gravel streets and the installation of curbs, gutters, and sidewalks in a predominantly L/M income neighborhood.	For more information, see page 3-7.
<b>L/M Income Limited Clientele</b>	The public facility or improvement will be used for an activity designed to benefit a particular group of persons at least 51% of whom are L/M income persons.	Rehabilitation of a building to be used as a center for training severely disabled persons to enable them to live independently.	For more information, see page 3-14.
<b>L/M Income Housing</b>	The public facility or improvement exclusively assists in the provision of housing to be occupied by L/M income persons.	Site improvements on publicly-owned land to serve a new apartment structure to be rented to L/M income households at affordable rents.	For more information, see page 3-19.

## NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

Objective	Qualifies If	Example	Additional Information
<b>L/M Income Jobs</b>	The provision of a particular public improvement needed by one or more businesses to allow creation or retention of jobs, primarily for L/M income persons.*	Rebuilding a public road adjacent to a factory to allow larger and heavier trucks access to the facility, determined to be necessary for plant expansion and the creation of new jobs, where the business agrees to fill 51% of the jobs with L/M income persons.*	For more information, see page 3-24.
<b>Slum or Blighted Area</b>	The public facilities and improvements are located in a designated slum or blighted area and are designed to address one or more conditions which contributed to the deterioration of the area.	Reconstruction of a deteriorated public park located in an area designated by the grantee as slum or blighted pursuant to CDBG rules.	For more information, see page 3-35.
<p>* <i>In certain cases, the area served by a public improvement that enables a business to create or retain jobs may also include other properties (e.g., bringing new water or sewer service to a fringe area of a community that will not only help a business to locate there but that also will bring that new water/sewer service to houses that are located in that area). When, overall, the properties served by the public improvement are primarily residential, the benefits to the residents must also be considered. Therefore, the assisted public improvement in such a case must not only meet the L/M Income Benefit based on the Jobs criteria but must also meet the Area Benefit criteria</i> Reference: §570.208(d)(3)</p> <p><i>(See also the discussion on page 3-27 of this Guide concerning the case where more than one business may create or retain jobs as a result of a public improvement.)</i></p>			

## NATIONAL OBJECTIVES— PUBLIC FACILITIES AND IMPROVEMENTS

Objective	Qualifies If	Example	Additional Information
<b>Spot Blight</b>	The public facilities or improvements are for the historic preservation or rehabilitation of blighted or decayed public facilities/improvements located outside of a designated slum or blighted area. Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.	Rehabilitation/restoration of a severely deteriorated building of historic significance that is being used as a museum that is located outside a designated slum or blighted area (and does not serve a L/M income area).	For more information, see page 3-38.
<b>Urban Renewal Completion</b>	The public facilities and improvements are located within an urban renewal project area (or an NDP action area), designated under Title I of the Housing Act of 1949, and the public facilities/improvements are necessary to complete the urban renewal plan.	Construction of a publicly-owned parking garage in an urban renewal project area where the garage is specified in the urban renewal plan and is necessary to complete the plan.	For more information, see page 3-40.
<b>Urgent Needs</b>	The acquisition, construction, or reconstruction of a public facility or improvement designed to alleviate existing conditions and the grantee certifies that those conditions are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin, and there is no other known source of funds it can use to implement the activity.	Reconstruction of a publicly-owned hospital that was severely damaged by a tornado.	For more information, see page 3-41.