

# CDBG Program Description

## I. Foreword

The State of Colorado, through the Colorado Governor's Office of Economic Development and International Trade (OEDIT), and the Department of Local Affairs, will administer the "Small Cities" Community Development Block Grant (CDBG) program for non-entitlement jurisdictions of the State for Federal Fiscal Year 2009.

Local-State discussions of state administration of the CDBG program began in 1981 and resulted in the State opting to assume the responsibility for administration of the program starting in federal Fiscal Year 1983. These discussions have continued each year and have consisted of a direct consultation process with local governments and the public, including at least one public hearing each year, and deliberations with advisory groups. The State CDBG program presented in this document represents the collective effort of all the individuals, local governments and organizations that participated in its development. While unanimity may not have been achieved on all issues, constructive compromises and agreements were generally realized. The Department of Local Affairs appreciates the time and effort committed by all who participated in the development and refinement of the program.

The Colorado Governor's Office of Economic Development and International Trade is responsible for all projects that use CDBG funds to finance private for-profit businesses, with one exception. The exception is the case in which the financing for a private, for-profit business is for the rehabilitation of non-residential properties when such properties are integral parts of local-government sanctioned and planned community redevelopment efforts, or when such properties are of key historic or commercial importance to a community or neighborhood. The Division of Local Government is responsible for this type of rehabilitation and for all other eligible CDBG project activities, including public facilities and community development. The Department's Division of Housing has "lead" responsibility for housing and homeless assistance projects funded through the program. The Financial Services section of the Department's Division of Local Government (DLG) is responsible for CDBG-assisted public facilities and community development projects, as well as overall coordination of the State's CDBG program. Appropriate State staff can be reached at the following numbers:

|  |                              |                |
|--|------------------------------|----------------|
| Colorado Governor's Office of Economic Development<br>and International Trade (Denver) |                              | (303) 892-3840 |
| Department of Local Affairs – TDD  |                              | (303) 866-5300 |
| Division of Housing (Central Number)   |                              | (303) 866-2033 |
| Field Offices – Denver   | Meghen Duggins               | (303) 866-4020 |
|  | Denise Selders               | (303) 866-6450 |
|  | Ann Watts                    | (303) 866-4652 |
|  | Pueblo Rick Hanger           | (719) 544-2466 |
|  | Grand Junction Bill Whaley   | (970) 248-7302 |
| Division of Local Government   | Teri Davis                   | (303) 866-4462 |
| Field Offices –Golden  | Clay Brown                   | (303) 273-1787 |
|  | Durango Ken Charles          | (970) 247-7311 |
|  | Fort Morgan Greg Etl         | (970) 867-4961 |
|  | Grand Junction Jack Kirtland | (970) 248-7333 |
|  | Loveland Don Sandoval        | (970) 679-4501 |
|  | Pueblo Lee Merkel            | (719) 544-6577 |

Monte Vista  
Silverthorne

Debra Downs  
Greg Winkler

(719) 852-9429  
(970) 668-6160

## II. Introduction

The Housing and Community Development Act of 1974 established the federal Community Development Block Grant (CDBG) program. The program purpose is to help communities meet their greatest community development and redevelopment needs, with particular emphasis on assisting persons of low and moderate income. The overall program consists of three major elements:

- ❖ **The "entitlement" program.** This portion of the overall program is administered by the U.S. Department of Housing and Urban Development (HUD) and assists communities that are "entitled" to CDBG funds by virtue of their size or metropolitan status. Essentially, entitlement communities are those cities that are within a metropolitan area and have a population of 50,000 or more, or are designated as a "central city," and those counties that are within a metropolitan area and have a combined population of 200,000 or more in their unincorporated areas and non-entitlement municipalities.  
HUD has currently designated 18 entitlement jurisdictions in Colorado: Adams County (unincorporated areas and Bennett, Brighton, Federal Heights, Northglenn and Thornton), Arapahoe County (unincorporated areas and Bow Mar, Centennial, Cherry Hills Village, Columbine Valley, Deer Trail, Englewood, Glendale, Greenwood Village, Littleton, and Sheridan), City and County of Broomfield, Douglas County (unincorporated areas and Castle Rock, Larkspur, Lone Tree and Parker), El Paso County (unincorporated areas and Fountain, Ramah, Calhan, Palmer Lake and Green Mountain Falls), and Jefferson County (unincorporated areas and Arvada, Edgewater, Golden, Mountain View, and Wheat Ridge), Aurora, Boulder, Colorado Springs, Denver, Fort Collins, Grand Junction, Greeley, Lakewood, Longmont, Loveland, Pueblo and Westminster.
- ❖ **The "non-entitlement," or "Small Cities," program.** This portion of the overall program assists communities that do not qualify for the entitlement program. The State assumed responsibility for administration of this portion of the CDBG program starting in federal Fiscal Year 1983.
- ❖ **The Neighborhood Stabilization Program (NSP)** is available to fund acquisition, rehabilitation and rent or resale of abandoned and foreclosed homes as part of the Housing and Economic Recovery Act of 2008. The state follows its Action Plan for NSP funds which can be found at the following URL address: [http://www.dola.state.co.us/cdh/NSP/ACTION\\_PLAN\\_Final\\_121108.pdf](http://www.dola.state.co.us/cdh/NSP/ACTION_PLAN_Final_121108.pdf)

## Review and Comment by Local Governments and Citizens

The State's annual Performance and Evaluation Reports provide a basis for review and comment on the performance of the State. Pursuant to the State open records law and the federal CDBG law, records on use of any prior year and future Small Cities CDBG funds by the State or a local government or recipient must be available for access by citizens and units of general local government. The State's records are available through the Department of Local Affairs, 1313 Sherman Street, Room 521, Denver, Colorado. The public may examine these records in the State's offices and obtain copies for a fee during regular working hours.

The State will provide to citizens and to units of general local government reasonable notice of, and an opportunity to comment on, any proposed substantial changes in these Program Guidelines or in the use of CDBG funds.

## **Compliance with Federal and State Requirements**

These Program Guidelines and grantee guidance have been developed to comply with all existing federal requirements. When the federal government publishes revised federal regulations for the State-administered "Small Cities" program for effect, those new regulations and any subsequent changes in the law, regulations or policy will govern in the event of any inconsistencies with these Program Guidelines.

The program design also takes into account that, in administering the program, the State and local applicants and grantees must assume responsibility for assuring compliance with many federal and State laws and regulations that apply to the CDBG program. A brief description of some of the applicable federal requirements is included in Section VIII.

### **III. Goal and Objectives**

**Goal:** Colorado's goal in administering the CDBG program is to establish a program that is responsive to local community development needs, strategies and priorities, and produces a measurable improvement in the communities served by the program.

**Primary Objective:** The primary objective of the State's program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the State will use not less than seventy percent (70%) of federal Fiscal Years 2005, 2006, and 2007 funds and State program income for project activities that benefit persons of low and moderate income.

**Broad Objectives:** The federal Housing and Community Development Act of 1974 establishes three broad national objectives for the CDBG program:

- ❖ Benefit persons of low and moderate income;
- ❖ Prevent or eliminate slums or blight; and
- ❖ Address other urgent needs.

The State will achieve its primary objective through a program that gives maximum feasible priority to funding activities that benefit persons of low and moderate income, or aid in the prevention or elimination of slums or blight. The State may also provide funding for activities that grantees certify meet other community development needs that have arisen during the preceding 18-month period and have a particular urgency.

Additionally, the State and Congress intend that CDBG funds should supplement local financial support for community development activities, rather than reduce it below the level of such support prior to the availability of CDBG assistance.

### **Benefit to Persons of Low and Moderate Income**

Except as otherwise specified in federal law and regulations, the Department of Local Affairs will determine that a local project activity addresses the broad national objective of "benefit to persons of low and moderate income" if at least fifty-one percent (51%) of the beneficiaries of the CDBG-funded project activity are low- and moderate-income persons.

Low- and moderate-income persons are those who are members of households (families for economic development purposes) whose annual incomes do not exceed HUD prescribed income limits, which are based on eighty percent (80%) of median family income. Those income limits are posted on our web site at:

[http://www.dola.state.co.us/dlq/fa/cdbg/docs/max\\_incomes.pdf](http://www.dola.state.co.us/dlq/fa/cdbg/docs/max_incomes.pdf)

Types of activities that benefit low- and moderate-income persons include:

- ❖ Area benefit activities
- ❖ Limited clientele activities
- ❖ Housing
- ❖ Job creation or retention

## **Prevention or Elimination of Slums or Blight**

Section X contains the requirements for a project activity to meet the broad national objective of "prevention or elimination of slums or blight." For determining whether a local project activity addresses this broad national objective, the definition of "slum" is the definition of "slum area" contained in 31-25-103 C.R.S., as amended, and, similarly, the definition of "blight" is the definition of "blighted area" contained in 31-25-103, C.R.S., as amended.

## **Address Other Urgent Needs**

To comply with the national objective of meeting community development needs having a particular urgency, DLG will consider an activity to address this objective if the applicant certifies that conditions exist which:

- ❖ pose a serious and immediate threat to the health or welfare of the community,
- ❖ are of recent origin or recently became urgent,
- ❖ the grantee is unable to finance on its own; and
- ❖ other sources of funds are not available.
- ❖ (A condition will be considered "of recent origin" if it developed or became critical within 18 months preceding the grantee's certification).

Urgent needs include, but are not limited to flood, fire, blizzard, tornado, earthquake, disease or other natural disasters; explosion, or contamination of water supplies

## **IV. Eligible Activities and Recipients**

**Eligible Activities and Recipients:** Eligible activities and services under the State CDBG program are those which:

- ❖ are consistent with the program goal and objectives stated above; and
- ❖ are included as eligible activities under Section 105 of Title I of the Housing and Community Development Act of 1974, as amended, and are otherwise eligible under other sections of Title I and under detailed federal regulations. Excerpts from Section 105 and other sections of the federal CDBG law relevant to activity eligibility are presented in the Eligible Activities Section.

**Activities Eligible Under the Neighborhood Stabilization Program:** CDH will make NSP funds available for the following statutorily eligible activities. NSP funds are eligible to:

- (A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate- income homebuyers;
- (B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;
- (C) establish land banks for homes that have been foreclosed upon;
- (D) demolish blighted structures; and
- (E) redevelop demolished or vacant properties.

In addition, the NSP Notices authorize grantees to expend no more than 10 percent of its grant amount, plus 10 percent of the amount of program income received by the grantee, for planning and administrative expenses (NSP Notice Section II. H. 4.).

Please refer to the NSP Substantial Amendment on our web site at:  
[http://www.dola.state.co.us/cdh/NSP/ACTION\\_PLAN\\_Final\\_121108.pdf](http://www.dola.state.co.us/cdh/NSP/ACTION_PLAN_Final_121108.pdf)

While activities that involve involuntary, permanent displacement of persons are not ineligible, it is a federal requirement that local plans and policies minimize involuntary, permanent displacement; replace low/moderate-income dwelling units demolished or converted to another use as a direct result of CDBG assistance; and assist persons actually displaced as a result of CDBG-assisted activities.

The State has certified to HUD that it will not refuse to distribute the CDBG funds to any unit of general local government because of the particular eligible activity it has selected to meet its community development needs. However, this does not prevent the State from establishing priorities in distributing the CDBG funds based on the activities selected.

**Eligible Recipients:** Eligible recipients are those municipalities and counties not eligible for federal "entitlement" CDBG funds. That is, all municipalities and counties are eligible recipients except: Adams County (unincorporated areas and Bennett, Brighton, Federal Heights, Northglenn and Thornton), Arapahoe County (unincorporated areas and Bow Mar, Centennial, Cherry Hills Village, Columbine Valley, Deer Trail, Englewood, Glendale, Greenwood Village, Littleton, and Sheridan), City and County of Broomfield, Douglas County (unincorporated areas and Castle Rock, Larkspur, Lone Tree, and Parker), El Paso County (unincorporated areas and Fountain, Ramah, Calhan, Palmer Lake and Green Mountain Falls), Jefferson County (unincorporated areas and Arvada, Edgewater, Golden, Lakewood, Mountain View, and Wheat Ridge), Aurora, Boulder, Colorado Springs, Denver, Fort Collins, Grand Junction, Greeley, Lakewood, Longmont, Loveland, Pueblo and Westminster.

- ❖ HUD defines a homeless person as one who lacks a fixed, regular place to live: "A person is considered homeless when he/she resides in one of the places described below:
- ❖ a. in places not meant for human habitation, such as cars, parks, sidewalks, and abandoned buildings;
- ❖ b. in an emergency shelter;
- ❖ c. in transitional or supportive housing for homeless persons who originally came from the streets or emergency shelter;
- ❖ d. in any of the above places, but is spending a short time (up to 30 consecutive days) in a hospital or other institution;
- ❖ e. is being evicted within a week from a private dwelling unit and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing; or
- ❖ f. is being discharged within a week from an institution in which the person has been a resident for more than 30 days and no subsequent residence has been identified and he/she lacks the resources and support networks needed to obtain housing."

The State encourages arrangements between and among eligible entities to ensure adequate provision of common or related community development activities and services. Also, municipalities and counties may contract with other entities or parties (Councils of Governments, Regional Planning Districts, Special Districts, Local Development

Corporations, Downtown Development Authorities, Urban Renewal Authorities, Housing Authorities, non-profit corporations, etc.) to carry out project activities as provided for under statutes (including 31-51-101 (1) (c), 30-11-101 (1) (d), 29-1-203 and 29-1-204.5, C.R.S., as amended), ordinances and resolutions, and State and local financial management procedures.

## **Multi-Jurisdictional Projects**

A "multi-jurisdictional" project is one in which two or more municipalities and/or counties carry out an activity or set of closely connected activities that address an identified common problem or need. Multi-jurisdictional projects must meet the following specific requirements:

- ❖ Participating municipalities or counties must authorize one of the participating entities to act as a representative for all of the participants. The designated entity must assume overall responsibility for ensuring the entire project complies with all program requirements. A legally binding cooperation agreement between the designated entity and all other directly participating municipalities and counties must spell out the overall responsibility and any related individual responsibilities.
- ❖ To meet the citizen participation requirements of Section 104(a)(2) of the Housing and Community Development Act of 1974 ("the Act"), as amended, all the requirements listed in paragraph 2 of "Grantee Responsibilities" must be met, including the requirements that:
  - ❖ Each participating jurisdiction must hold a public hearing; and
  - ❖ Each participating jurisdiction must make the proposed and final project plan/application for the combination of project participants available in each of the participating jurisdictions.
- ❖ To meet the citizen participation requirements of Section 104(a)(3) of the Act, each participating jurisdiction must have and follow a detailed citizen participation plan (or certify that it is complying with the State's plan which addresses the six areas of concern specified in paragraph 3 of "Grantee Responsibilities."
- ❖ To meet the requirements of Section 104(d) of the Act, each participating jurisdiction must have and follow a Residential Anti-displacement and Relocation Assistance Plan. (See paragraph 5 of "Grantee Responsibilities.")
- ❖ To meet the requirements of Section 106(d)(5) of the Act, each participating jurisdiction must make and comply with the displacement, Fair Housing and other certifications described in paragraphs 6, 7, and 8 of "Grantee Responsibilities."
- ❖

## **V. Method of Funds Distribution**

The State expects to receive an allocation of approximately \$10,546,315 in FFY 2009 program, less \$1,148,041 taken as a voluntary reduction, or \$9,398,274. Of this amount, about \$9,016,326 will be available for commitment to local projects, and about \$381,948 (3% of total, or \$281,948 + \$100,000 = \$381,948) will be available to the State for administration of the program. \$200,000 is set aside for Urgent Needs. Any unobligated prior years' funds for local projects will also be available for commitment to local projects, as well as any committed funds that the State may subsequently recover, and any additional funds that HUD may award to the State, less the State administration allowance.

"Program Income" means funds that come back to a state or local entity (regional housing organization), such as:

- ❖ Proceeds from sale of lease or property purchased/improved by CDBG funds
- ❖ Gross income from use/rental of real personal property acquired, constructed, improved (less costs incidental to generation of income) with CDBG funds

❖ Payments of principal & interest on CDBG loans

The State does not directly generate program income through the CDBG program. It provides only grants to recipients and does not provide loans. However, sub-recipients of this funding often provide loans and receive program income that they place into a revolving loan fund. Grant recipients may retain program income if they can demonstrate to the satisfaction of the State that the program income will continue to be used to finance projects of the same type, and that they have adequate capacity to administer the funds. The state has developed revolving loan guidelines to assist sub-recipients to administer program income funds. 3% of CDBG RLF (Program Income) that is retained at the local level counts toward the 3% regular CDBG administrative cap.

The Department of Local Affairs may provide CDBG grant assistance solely to units of general local governments (UGLGs) in non-entitlement areas. The UGLGs may provide CDBG funding to Community-Based Development Organizations (CBDOs) for the new construction of housing or other housing activities, qualified economic development, or infrastructure activities that meet HUD requirements (pending certification). CBDOs for are neighborhood-based nonprofit organizations, local development corporations, community action agencies or other entities that meet HUD's definitions and are certified as CBDOs.

DOLA defines "neighborhood" as a contiguous area with a defined boundary, primarily residential in character, and having similar characteristics and economic factors; or any area defined as a neighborhood by a unit of general local government.

Most existing contracts the State has with local governments for housing rehabilitation and business-financing projects are with qualifying non-profit organizations. Activities carried out by certified 105(a)(15) nonprofit agencies are exempt from program income requirements and income considered "miscellaneous." Miscellaneous income loses or is "washed of" its federal identity, but must still comply with the State's revolving loan fund guidelines. The State requires the organizations to use the miscellaneous income for additional housing and community development needs.

Recipients submit a program/miscellaneous income financial report annually, along with an audit and loan portfolio accomplishment information. The State will track Program income that exceeds HUD's threshold (currently \$25,000 annually) or as required. This information is required from all agencies that currently receive, or have in the past received, CDBG funds to operate rehabilitation and/or down payment assistance programs with a revolving loan fund.

The Department of Local Affairs may provide CDBG assistance to local governments for an urgent community need when:

- ❖ the event poses a serious and immediate threat to the health or welfare of the community,
- ❖ became critical or developed within 18 months preceding the state grant recipient's notification,
- ❖ the event is not due to the lack of maintenance and
- ❖ other financial resources are unavailable to alleviate the condition.

The types of events that DOLA may assist through its economic development, housing or public facilities programs include, but are not limited to, flood, fire, blizzard, tornado, earthquake, disease, or other natural disasters; explosion, contamination of water supplies, sanitary conditions or other critical infrastructure.

Not less than seventy percent (70%) of funds received by the State during the period of FY 09-10 identified in the State's Annual Grant Agreement will be used for project activities that benefit low and moderate income persons.

### **Interim/Short-Term Financing Grant Program**

Significant portions of the CDBG funds allocated to the State will remain unused for relatively long periods, even after the State has committed these funds to eligible recipients for local projects. To maximize the use of these funds, which are available to the State under letters of credit from HUD, the State may choose to use these funds to provide grants to eligible recipients for interim or short-term financing of eligible economic development, housing and public facilities project activities that are consistent with the federal and State program goals and objectives. The State will use program income or other funds paid to the State under the Interim/Short-Term Financing Grant Program to meet its other grant commitments to recipients. A recipient will be allowed to retain program income if it can be demonstrated to the satisfaction of the State that the program income is likely to be needed to finance projects of the same type and that there is adequate capacity to administer the funds.

Because the availability of funds for subsequent use depends on the payment of these funds from the initial user, there is some risk to subsequent users. The State will minimize this risk through the use of irrevocable and unconditional letters of credit (to be required by recipients of borrowers, so that letter of credit proceeds will be available to the State through recipients) and/or other appropriate measures.

For proposals under Interim/Short-Term Financing Grants, the State will consider:

- ❖ Proposed direct benefit of the project activities to low- and moderate-income persons.
- ❖ The nature and extent of the effect of interim/short-term financing on project cost, feasibility and benefit, including the consequences of not providing a grant for the interim/short-term financing.
- ❖ The likelihood that program income or other funds will be available to the State in the amount and at the time proposed by the recipient so that the State will be able to meet its other grant commitments to recipients.
- ❖ If the interim/short-term assistance is to be provided to a private, for-profit entity to carry out an economic development project, the State will determine whether the assistance is "appropriate" (as required by federal statute, regulation and policy).

### **Regular Grant Program Funding**

The Department of Local Affairs contains three divisions that utilize CDBG funds: the Division of Local Government, the Division of Housing, and the Office of Economic Development and International Trade. These divisions collaborate to create a seamless approach to funding community development needs.

### **Guaranteed Loan Funds or Multi-Year, Multi-purpose Applications**

The State will provide information, upon request, for those communities interested in applying for guaranteed loans funds under Subpart M, the Section 108 Loan Guarantee program as well as consider funding multi-year and/or multi-purpose applications.

### **Maximum and Minimum Grant Amounts**

The Department of Local Affairs has set no absolute limits to the amount of funding an applicant may request. The Department suggests that \$600,000 be considered the maximum grant guideline for public facility or community development projects. There is no suggested maximum for housing projects. There is no maximum limit for economic development projects. Suggested guidelines vary based on the use of funds.

### **Review Process for Housing, Public Facilities, and Community Development Proposals**

The Department of Local Affairs may consider public facilities and community development proposals periodically, on a continuous basis, during specified application periods or in conjunction with funding cycles established by the Department. DOLA will advise local government associations and regional organizations providing technical assistance to local governments of application opportunities.

The Department may end or defer consideration of public facilities/community development proposals when funds are exhausted or proposals are incomplete or premature.

The term "community development proposals" includes such projects as public improvements in downtown or other commercial areas, public and private non-profit tourist facilities and attractions, public and private non-profit business incubators, and rehabilitation of publicly and privately owned non-residential properties when such properties are integral parts of local government sanctioned and planned community redevelopment efforts, or when such properties are of key historic or commercial importance to a community or neighborhood.

The Division of Housing will set a competitive application cycle that will allow for the direct comparison of activities across funding types throughout the State. The State Housing Board will set allocation amounts by activity type.

The Governor's Office of Economic Development and International Trade (OEDIT) will receive and consider business development proposals involving the provision of financial assistance for private-for-profit and nonprofit businesses. OEDIT staff will evaluate proposals using the same three major factors as noted above for housing. The Governor's Financial Review Committee reviews business development proposals and makes final funding decisions.

CDH may utilize CDBG funds for homeless services in *non-entitlement* areas only. In order to develop a comprehensive approach to the provision of emergency shelter and delivery of services for the homeless, CDH will give priority to projects that are consistent with the following strategies.

- ❖ First, ensure that applicant agencies are leveraging all resources, including local, state, federal and private funding in the operation of a shelter and/or delivery of related prevention and essential services.
- ❖ Second, ensure that applicants make a significant contribution to the elimination of homelessness as documented statistically.
- ❖ Third, encourage programs to use a coordinated case- management approach to service delivery. Programs utilizing strong case- management approaches that ensure the delivery of essential services along the continuum of care will receive priority consideration for funding.
- ❖ Fourth, funding homeless prevention programs that demonstrate a well- thought-

out approach.

The Department expects applicants for public facilities and community development projects (including all participants in multi-jurisdictional projects) to prioritize all applications to the Department for CDBG funds. When submitted, Department staff will evaluate all housing, public facilities and community development proposals on the following three major factors:

- ❖ Project Impact
- ❖ Public and Private Commitments
- ❖ Management Capability

Regional field and program staff review each application and reach a consensus on a recommended level of funding, although they do not assign any points. Recommendations range from full funding, high or low partial funding, to no funding. The Department considers applications in coordination with all divisions until all funding is committed.

The staff forwards the results of its review to the Executive Director of the Department of Local Affairs, who may consult with the State Housing Board or other advisory groups on the proposal. The consultation may be by telephone or mail, or may involve a meeting or hearing. The State Housing Board will set a competitive application cycle for each HUD activity type that will allow for the direct comparison of programs, developments and agencies to ensure funding of those projects with the best merits. The State Housing Board will allocate dollars by activity type.

The Department Executive Director will consider staff reviews and any advisory committee recommendations and make the final funding decisions based on the project review factors.

In making funding decisions as well as decisions on proposed modifications to funded projects, the Department Executive Director may specify alternatives or changes as he or she deems necessary or appropriate, consistent with the project review factors. Such alternatives and changes may include: changing the level of funding; adjusting project budget line items; funding only selected activities within an overall project; making a single award to two or more separate applicants so that projects can be undertaken on a multi-jurisdictional basis; changing terms, uses and conditions; and permitting projects to be amended to include additional, fewer or different project activities.

### **Review Process for Business Development Proposals for Private Businesses**

The Colorado Governor's Office of Economic Development and International Trade (OEDIT) will accept and consider business development proposals that involve providing financial assistance to private for-profit and non-profit businesses (except for financing for "community development proposals," as previously described) on a continuous basis. Such proposals include those that would provide:

- ❖ funding through local or regional loan funds,
- ❖ infrastructure to benefit specific businesses and
- ❖ feasibility/planning studies to benefit specific businesses.

The OEDIT may end or defer consideration of business financing proposals when funds available for such projects are exhausted and when applications are incomplete or premature. Staff members will evaluate proposals using the same three major factors as noted above for housing, public facilities, and community development proposals. The

Colorado Governor's Financial Review Committee will review the economic development proposals and make final funding decisions.

### **Review Factors for All Public Facilities and Economic Development Proposals**

The following are the factors that staff will use to evaluate proposals. The list below includes many of the general and specific questions that staff in reviewing proposals and determining ratings.

**1. Project Impact:** The purpose of considering this factor is to determine the extent to which the community, particularly its low- and moderate-income residents, will benefit from the proposed project.

a. Benefit to Low and Moderate Income Persons

For all projects, on an activity-by-activity and on a project-wide basis:

- ❖ What amount(s) of CDBG and non-CDBG funds will directly benefit low and moderate-income persons?
- ❖ What percentage(s) of CDBG and non-CDBG funds will directly benefit low- and moderate-income persons?
- ❖ What number(s) of low- and moderate-income persons will directly benefit from CDBG and non-CDBG funds?
- ❖ What percentage(s) of all persons directly benefited by CDBG and non-CDBG funds are low- and moderate-income persons?
- ❖ What local application, hiring, and other procedures will be used to ensure that projected benefits to low- and moderate- income persons will actually be realized by such persons?
- ❖ How will the actual benefit to low- and moderate-income persons be documented?
- ❖ Are the jurisdiction's projections or commitments with respect to low- and moderate-income benefit realistic and attainable?
- ❖ If the proposed project will increase operational costs, what will be the effect on low and moderate-income persons?

b. Extent and urgency of the need, and extent to which the need is addressed in a timely fashion

For all projects:

- ❖ What is the need to be addressed?
- ❖ How serious is the need?
- ❖ Is the public health or welfare threatened?
- ❖ What actions have been taken to remedy the problem?
- ❖ What are the results of these past actions?
- ❖ Have alternative means of addressing the need been adequately considered?
- ❖ What actions are proposed to meet the need?
- ❖ Are the proposed actions effective, efficient, appropriate, reasonable, and feasible?
- ❖ How does the proposed project differ from past efforts?
- ❖ Can the proposed activities be undertaken and completed in a reasonable period of time?
- ❖ What additional actions, in addition to the proposed CDBG project, may be necessary to meet the need?
- ❖ To what extent does the proposed project meet the need?
- ❖ What are the consequences if CDBG funds are denied for the proposed project activities?
- ❖ Does the project minimize resident and/or business displacement? Are there provisions to assist persons involuntarily, permanently displaced?

- ❖ Will the project result in the demolition or conversion of dwelling units for the low-moderate-income persons?
- ❖ What proposed measures will ensure that results achieved by the project will be adequately maintained in the future?
- ❖ If appropriate, has consideration been given and commitment made to recovering and reusing CDBG and other funds to continue efforts to address the need?

For projects including supportive human services activities (including job training and day care aspects of economic development projects):

- ❖ How are such activities critical to the accomplishment of overall objectives?
- ❖ Will CDBG funding supplant local, federal or State assistance available for activities?
- ❖ Is the requested CDBG assistance for such activities sufficient to complete the activities, or must the activities continue in order to achieve overall objectives?
- ❖ What percentage of total project costs will be spent on these activities?

For economic development projects:

- ❖ How many permanent jobs (both full-time and part-time) will the proposed project create and/or retain?
- ❖ Are the required factors used to determine that assistance to a private, for-profit entity "appropriate"?
- ❖ What types of permanent jobs will be created or retained?
- ❖ What effect will the proposed project have on the local tax base?
- ❖ Does the proposal give adequate consideration to the relationships between job training needs, resources available, and the proposed project?
- ❖ When the proposed project involves public improvements in the central business district, are the proposed improvements being undertaken in designated slums or blighted areas?
- ❖ When the proposed project involves industrial sites and/or facilities, is a prospect "in hand"?

For economic development projects that involve grants or business loan funds or loan guarantees:

- ❖ At what point will the full amount of the loan(s) be repaid, if applicable?
- ❖ Is the local selection process for grants, loans, and other forms of assistance open and equitable, and does it address the greatest needs to the extent feasible?

For site acquisition and/or other development projects:

- ❖ Does the site meet lender or other site selection standards?
- ❖ Are preliminary engineering/architectural designs or plans, specifications and cost estimates or studies completed? What is the completion date for final plans, specifications and cost estimates?
- ❖ Has the applicant complete the proper studies to demonstrate that there is a market for the proposed project and that it is financially feasible?

For public facilities projects:

- ❖ Does the applicant plan to recover any capital costs of public improvements assisted with CDBG funds?

If applicable, is the proposed project on the State Water or Sewer Needs Project Tracking List?

c. Is the proposal consistent with local development strategies and coordination with other activities.

For all projects:

- ❖ How long has the proposed project been a priority or identified in an approved plan?
- ❖ What is the priority for the proposed project relative to other CDBG and Impact requests?
- ❖ Is the proposed project compatible with existing local planning regulations, such as zoning ordinances and subdivision regulations?
- ❖ How is the proposed project part of and consistent with an overall local capital improvements and maintenance plan and budget?
- ❖ If the community is included in an adopted development strategy or comprehensive plan for a larger geographic area, is the proposed project compatible with such a strategy or plan?
- ❖ How long has the proposed project represented a documented need?
- ❖ To what extent does the proposed project complement, supplement or support other local, State or federal projects, programs or plans already in effect or to be implemented?
- ❖ Is there duplication of effort or overlap?
- ❖ To what extent does the proposed project further other related local projects or plans?
- ❖ If the proposed project lends itself to a multi-jurisdictional approach, has the applicant adequately considered such a joint approach?
- ❖ When projects involve public improvements in the central business district, are downtown public improvements being undertaken in coordination with, or by a representative local economic development organization?

**2. Public and Private Commitments.** This factor evaluates the extent of public and private commitment to the proposed project. Staff members will consider both the amount or value and the viability of those commitments. Communities are strongly encouraged to take primary responsibility for resolving their housing, economic development and public facilities problems. In specific projects, this may involve making financial commitments; adjusting development regulations, user rates and fees, and capital construction and maintenance programs; creating improvement districts; establishing development and redevelopment authorities; and generally sharing in or leveraging funds and management for development and redevelopment.

a. Local Financial Commitments.

For all projects:

- ❖ To the extent of their abilities, have the local government, project participants and beneficiaries engaged and/or committed to engage generally in taxing efforts to address their own continuing development and maintenance needs?
- ❖ To the extent of their abilities, have the local government and local project participants and beneficiaries appropriated/committed funds specifically for the proposed project and/or committed to alter fees to ensure the success of the specific project?
- ❖ When the proposed project involves business loan funds or loan guarantees, what is the ratio of private and/or local public investment to the amount of CDBG funds requested? How was this determined?
- ❖ When the proposed project involves public improvements in the central business district, has the private sector demonstrated a commitment to reinvest (e.g., through formation of an improvement district or through committing to business loans)?
- ❖ When a proposed development project requires interim and/or permanent financing, is the needed financing firmly committed? If not, is there a conditional

or preliminary commitment, and what is the likelihood that a firm commitment will be made?

b. Local Non-Financial Commitments.

For all projects:

- ❖ If necessary, has the community committed to alter local regulations to ensure the success of the project?
- ❖ Has the community made good faith efforts to involve residents, including low- and moderate-income persons and minorities, in assessing community needs and developing strategies to address its needs?
- ❖ Have the directly affected parties in the community demonstrated active support for the project?

c. Other Commitments

For all projects:

- ❖ Have any grant funds been sought for or committed to the proposed project?
- ❖ What are the sources, amounts and availabilities of these grant funds?

**3. Management Capability.** The purpose of considering this factor is to evaluate the ability of the local government submitting the proposal to administer the project as described.

a. Staff and Contractors

For all projects:

- ❖ Does the local government have adequate and experienced programmatic and fiscal staff and contractors, or has the applicant thoroughly considered the types of staff and contractor experience and qualifications necessary to carry out the project, including extensive statutory and regulatory requirements?
- ❖ How have the local government and its contractors performed in the past in carrying out development and redevelopment activities, and any type of activity with extensive statutory and regulatory requirements?
- ❖ To what extent will local government staff be directly involved in project management?
- ❖ What criteria and procedures will the local government use for selecting contractors?
- ❖ Have the roles and responsibilities of project participants been clearly established?

For economic development projects:

- ❖ Has the local government established an advisory or decision-making committee knowledgeable in economic development matters, including small business support, industrial recruiting, business loan funds, etc.?
- ❖ Does the jurisdiction have business management experience sufficient to review pro forma, cash flow statements and business plans? If not, how will these tasks be accomplished?

b. Budget

DOLA staff will compare administrative and other costs with those of other similar proposals.

For all projects:

- ❖ Are the proposed administration and overall project budgets (including appropriate

development and operating budgets in the case of development projects) adequate, reasonable and realistic given the project work plan?

- c. Statutory and Regulatory Compliance
- ❖ Does the proposed project involve or result in residential displacement? If so, has the applicant taken all reasonable steps to minimize displacement? Is there a plan to replace all low/moderate income housing demolished or converted, and to assist persons being relocated?
  - ❖ Does the proposed project involve real property acquisition or relocation of any persons or businesses? Does it trigger the Uniform Act requirements? Are cost and time requirement estimates reasonable?
  - ❖ Are estimated labor wage costs reasonable? (Especially, has the applicant considered whether the proposed project is subject to Davis-Bacon prevailing wage requirements?)
  - ❖ Is the proposed project in a floodplain or geological hazard area or does it affect cultural or historic resources? Are there other environmental considerations? If so, what mitigation measures are proposed and what alternatives have been considered?

## **VI. Technical Assistance**

The State will continue a coordinated technical assistance program to assist communities with CDBG project management and project formulation and planning, particularly in coordination with State programs such as impact grants, housing grants and loans, emergency water and sewer grants, and economic development funds. The State will target special project management technical assistance to communities that have never administered a CDBG grant, and to those that have experienced or are experiencing difficulty in administering a CDBG grant. Project formulation and planning assistance will be targeted to communities that need more long-term technical assistance to prepare for CDBG or other State funding in the future, and that have committed to undertake overall development and maintenance planning and budgeting efforts.

To provide consistent guidance to CDBG recipients, the Department of Local Affairs will have a CDBG staff specialist. State technical assistance may be in the form of personal contact with local government officials and staff, workshops, brokering assistance from private or local public sources, and documents and materials. Staff members have prepared a CDBG Guidebook that is available online at [www.dola.state.co.us/LGS/FA/cdbg.htm](http://www.dola.state.co.us/LGS/FA/cdbg.htm). The Guidebook contains information on Project Start-up, Financial Management, Reporting, Environmental Review, Civil Rights, Acquisition, Relocation, Labor and Construction, Project Close-Out, and Monitoring. All sections are available in PDF or Word format. DOLA also gives this Guidebook to grantees in hard copy at the time of award.

## **VII. Grantee Responsibilities**

Municipal and county governments are strongly encouraged to take primary responsibility for resolving housing and community development problems. In specific projects, this may involve adjusting development regulations, user rates and fees and capital construction and maintenance programs, creation of improvement districts, and generally sharing in or leveraging funds and management for development and redevelopment.

Local governments and project sponsors are also strongly encouraged to use advisory committees and assessment tools in evaluating needs and in formulating, implementing and modifying local development and redevelopment strategies. Use of such committees or tools can often lend continuity and objectivity to the planning and development process.

Additionally, applicants must comply with the following specific requirements by addressing the preceding "Review Factors" and providing specific certifications and statements:

1. Develop a community development program that gives maximum feasible priority to activities that will benefit persons of low and moderate income, or aid in the prevention or elimination of slums or blight. An applicant may also certify that specific activities are designed to meet other community development needs that have arisen during the preceding 12-month period and have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.
2. Provide opportunities for citizen participation, hearings, and access to information in a timely manner with respect to its community development program, specifically including:
  - ❖ Furnishing citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and its plans for minimizing displacement of persons as a result of activities assisted with CDBG funds and to assist persons actually displaced as a result of such activities;
  - ❖ Publishing a proposed project plan/application in a manner that affords affected citizens an opportunity to examine its content and to submit comments on the proposed project plan/application and the community development performance of the applicant;
  - ❖ Holding one or more public hearings to obtain the views of citizens on community development and housing needs;
  - ❖ Providing citizens with reasonable access to records regarding its past use of CDBG funds;
  - ❖ In preparing its project plan/application, considering any such comments and views and, if deemed appropriate, modifying the proposed project plan/application;
  - ❖ Making the final project plan/application available to the public;
  - ❖ In the event it is awarded CDBG funds by the State, the jurisdiction must provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of CDBG funds from one eligible activity to another by following the same procedures required in this paragraph for the preparation and submission of the final project plan/application.
3. Follow a detailed citizen participation plan which:
  - ❖ Provides for and encourages citizen participation, particularly by persons of low and moderate income who are residents of slum and blight areas and areas in which CDBG funds are proposed to be used;
  - ❖ Provides citizens with reasonable and timely access to local meetings, information, and records relating to its proposed and actual use of CDBG funds;
  - ❖ Provides for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the applicant;
  - ❖ Provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance. These hearings shall be held after adequate notice at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;
  - ❖ Provides for a timely written answer to written complaints and grievances, within

- ❖ 15 working days where practicable; and
  - ❖ Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.
4. Prior to submitting a proposal for funds, identify and document community development and housing needs, including the needs of low- and moderate- income persons, and the activities to be undertaken to meet such needs.
  5. Follow a residential anti-displacement and relocation assistance plan which shall in the event of such displacement, provide that:
    - ❖ Governmental agencies or private developers shall provide comparable replacement dwellings for the same number of occupants as could have been housed in the habitable low- and moderate-income dwelling units that were demolished or converted to a use other than for housing for low- and moderate-income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under Section 8 of the United State's Housing Act of 1937;
    - ❖ Such comparable replacement dwellings shall be designed to remain affordable to persons of low and moderate income for 10 years from the time of initial occupancy;
    - ❖ Relocation shall be provided for all low- or moderate-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and, in the case of displaced persons of low and moderate income, provide either:
      - ❖ Compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or
      - ❖ If elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under sub-clause (I) to permit the household to secure participation in a housing cooperative or mutual housing association:
    - ❖ Persons displaced shall be relocated into comparable replacement housing that is:
      - ❖ decent, safe, and sanitary;
      - ❖ adequate in size to accommodate the occupants;
      - ❖ functionally equivalent; and
      - ❖ in an area not subject to unreasonably adverse environmental conditions.
  6. Will not plan or attempt to recover any capital costs of public improvements assisted in whole or in part with CDBG funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) CDBG funds received are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than CDBG; or (B) for the purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the grantee certifies to the State that it lacks sufficient funds received from the State to comply with the requirements of (A).
  7. Conduct and administer its program in conformity with the Civil Rights Act of 1964 and The Fair Housing Act.

8. Complete a self-evaluation of its current policies and practices to determine whether they meet the requirements of Section 504 of the Rehabilitation Act of 1973 as amended and the HUD implementing regulations at 24 CFR Part 8.
9. Comply with other provisions of Title I of the Act and other applicable federal and State laws and regulations. (A summary of many of the federal laws and regulations is contained in Section VIII.)

Finally, it should be noted that, to the greatest extent permitted by federal law and regulations, it is the State's intent that the local governments' monitoring and evaluation of projects be in accordance with program and financial oversight responsibilities to their citizens under State statutes and fiscal rules. Principal matters for monitoring and evaluation will be project progress, financial management, subcontracts, documentation, project benefit to low- and moderate- income persons, and compliance with federal and State laws and regulations. The State may require quarterly financial and program performance reports, a completion performance report and other reports. An audit is required. Information requested will provide the State with a basis for evaluation of grantee performance. In addition, the reports will provide additional assurance of compliance with applicable federal and State laws and regulations.

## **VIII. Federal Laws and Regulations**

### **Applicable To the State-Administered Community Development Block Grant Program**

**National Environmental Policy Act of 1969** (42 USC 4321 et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500 - 1508) providing for establishment of national policy, goals, and procedures for protecting, restoring and enhancing environmental quality.

**National Historic Preservation Act of 1966** (16 USC 470 et seq.), as amended, requiring consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.

**Executive Order 11593, Protection and Enhancement of the Cultural Environment**, May 13, 1971 (36 FR 8921 et seq.) requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance.

**The Archaeological and Historical Data Preservation Act of 1974**, amending the Reservoir Salvage Act of 1960 (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities.

**Executive Order 11988, Floodplain Management, May 24, 1977** (42 FR 26951 et seq.) prohibits undertaking certain activities in flood plains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.

**Flood Disaster Protection Act of 1973** (42 USC 4001), placing restrictions on eligibility and acquisition and construction in areas identified as having special flood hazards.

**Executive Order 11990, Protection of Wetlands, May 24, 1977** (42 FR 26961 et seq.), requiring review of all actions proposed to be located in or appreciably affecting a wetland. Undertaking or assisting new construction located in wetlands must be avoided

unless it is determined that there is no practical alternative to such construction and that the proposed action includes all practical measures to minimize potential damage.

**Safe Drinking Water Act of 1974** (42 USC 201, 300 et seq., 7401 et seq.), as amended, prohibiting the commitment of federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area.

**The Endangered Species Act of 1973** (16 USC 1531 et seq.), as amended, requiring that actions authorized, funded, or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of the habitat of such species which is determined by the Department of the Interior, after consultation with the State, to be critical.

**The Wild and Scenic Rivers Act of 1968** (16 USC 1271 et seq.), as amended, prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on any river included in or designated for study or inclusion in the National Wild and Scenic Rivers System.

**The Clean Air Act of 1970** (42 USC 1857 et seq.), as amended, requiring that federal assistance will not be given and that license or permit will not be issued to any activity not conforming to the State implementation plan for national primary and secondary ambient air quality standards.

**HUD Environmental Criteria and Standards** (24 CFR Part 51), providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances, and suitable land uses for airport runway clear zones.

**Section 104(d) of the Housing and Community Development Act of 1974**, as amended (42 USC 5301), known as the "Barney Frank Amendment," and the HUD implementing regulations requiring that local grantees follow a residential anti-displacement and relocation assistance plan that provides for the replacement of all low/moderate income dwelling units that are demolished or converted to another use as a direct result of the use of CDBG funds, and which provides for relocation assistance for all low/moderate income households so displaced.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended. -- Title III, Real Property Acquisition (Pub. L. 91-646 and HUD implementing regulations at 49 CFR Part 24), providing for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal or federally-assisted programs and establishing uniform and equitable land acquisition policies for federal assisted programs. Requirements include bona fide land appraisals as a basis for land acquisition, specific procedures for selecting contract appraisers and contract negotiations, furnishing to owners of property to be acquired a written summary statement of the acquisition price offer based on the fair market price, and specified procedures connected with condemnation.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended, -- Title II, Uniform Relocation Assistance (Pub. L. 91-646 and HUD implementing regulations at 49 CFR Part 24), providing for fair and equitable treatment of all persons displaced as a result of any federal or federally-assisted program. Relocation payments and assistance, last-resort housing replacement by displacing agency, and grievance procedures are covered under the Act. Payments and assistance will be made pursuant to State or local law, or the grant recipient must adopt a written policy available to the public describing the relocation payments and assistance that will be provided. Moving expenses and up to \$22,500 for each qualified homeowner or up to \$5,250 for each tenant are required to be paid.

**Davis-Bacon Fair Labor Standards Act** (40 USC 276a - 276a-5) requiring that, on all contracts and subcontracts which exceed \$2,000 for federally-assisted construction, alteration or rehabilitation, laborers and mechanics employed by contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if such property is designed for use of eight or more families.)

Assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any subcontractor or sub-recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

**Contract Work Hours and Safety Standards Act of 1962** (40 USC 327 et seq.) requiring that mechanics and laborers employed on federally-assisted contracts which exceed \$2,000 be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work week.

**Copeland "Anti-Kickback" Act of 1934** (40 USC 276 (c)) prohibiting and prescribing penalties for "kickbacks" of wages in federally-financed or assisted construction activities.

**The Lead-Based Paint Poisoning Prevention Act -- Title IV** (42 USC 4831) prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance, and requiring notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning.

**Section 3 of the Housing and Community Development Act of 1968** (12 USC 1701 (u)), as amended, providing that, to the greatest extent feasible, opportunities for training and employment that arise through HUD-financed projects, will be given to lower-income persons in the unit of the project area, and that contracts be awarded to businesses located in the project area or to businesses owned, in substantial part, by residents of the project area.

**Section 109 of the Housing and Community Development Act of 1974** (42 USC 5309), as amended, providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

**Title VI of the Civil Rights Act of 1964** (Pub. L. 88-352; 42 USC 2000 (d)) prohibiting discrimination on the basis of race, color, religion or religious affiliation, or national origin in any program or activity receiving federal financial assistance.

**The Fair Housing Act** (42 USC 3601-20), as amended, prohibiting housing discrimination on the basis of race, color, religion, sex, national origin, handicap and familial status.

**Executive Order 11246** (1965), as amended by Executive Orders 11375 and 12086, prohibiting discrimination on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally-assisted contracts in excess of \$2,000.

**Executive Order 11063** (1962), as amended by Executive Order 12259, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

**Section 504 of the Rehabilitation Act of 1973** (29 USC 793), as amended, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded

from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

**Age Discrimination Act of 1975**, (42 USC 6101), as amended, providing that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

**Armstrong/Walker "Excessive Force" Amendment**, (P.L. 101-144) & Section 906 of Cranston-Gonzalez Affordable Housing Act of 1990, requiring that a recipient of HUD funds certify that they have adopted or will adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within their jurisdiction against individuals engaged in nonviolent civil rights demonstration; or fails to adopt and enforce a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstration within its jurisdiction.

**Government-wide Restriction on Lobbying**, (P.L. 101-121), prohibits spending CDBG funds to influence or attempt to influence federal officials; requires the filing of a disclosure form when non-CDBG funds are used for such purposes; requires certification of compliance by the State; and requires the State to include the certification language in grant awards it makes to units of general local government at all tiers and that all sub-recipients shall certify accordingly as imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

**Department of Housing and Urban Development Reform Act of 1989** (24 CFR Part 12) requiring applicants for assistance for a specific project or activity from HUD, to make a number of disclosures if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which an application is submitted. An applicant must also make the disclosures if it is requesting assistance from HUD for a specific housing project that involves assistance from other governmental sources.

**Title III of the Housing and Economic Recovery Act of 2008 (HERA)** as it applies to Neighborhood Stabilization Program funding.

## **X. DEFINITIONS - SLUMS AND BLIGHT**

### **State Statutory Definitions**

**Blight Area.** Blighted area, per CRS §31-25-103, means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

- (a) Slum, deteriorated, or deteriorating structures;
- (b) Predominance of defective or inadequate street layout;
- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (d) Unsanitary or unsafe conditions;
- (e) Deterioration of site or other improvements;
- (f) Unusual topography or inadequate public improvements or utilities;
- (g) Defective or unusual conditions of title rendering the title nonmarketable;
- (h) The existence of conditions that endanger life or property by fire or other causes;
- (i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
- (j) Environmental contamination of buildings or property;
- (k) (Deleted by amendment, L. 2004, p. 1745, § 3, effective June 4, 2004.)

(k.5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements; or

(l) If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection 2.2, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. For purposes of this paragraph (l), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.

**Blighted Structure.** A blighted structure has one or more of the following conditions: (1) Physical deterioration of buildings or improvements; (2) Abandonment; (3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings; (4) Significant declines in property values or abnormally low property values relative to other areas in the community; or (5) Known or suspected environmental contamination; (6) The public improvements throughout the area are in a general state of deterioration. The State also accepts local determinations.

**Slum Area.** Slum area, per CRS §31-25-103, means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare.

## **Federal Regulatory Definitions and Clarifications**

Activities meeting the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

1. Activities to address slums or blight on an area basis. An activity will be considered to address prevention or elimination of slums or blight in an area if:

- ❖ The area, delineated by the grantee, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;
- ❖ Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;
- ❖ Documentation is maintained by the grantee on the boundaries of the area and the condition which qualified the area at the time of its designation; and
- ❖ The assisted activity addresses one or more of the conditions that contributed to the deterioration of the area.

Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the

housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

2. Activities to address slums or blight on a spot basis. Acquisition, clearance, relocation, historic preservation and building rehabilitation activities that eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

## **XI. ELIGIBLE ACTIVITIES**

Eligible activities and services under the Community Development Block Grant (CDBG) Program are those which:

- ❖ are consistent with the stated program goal and objectives; and
- ❖ are included as eligible activities under Section 105 of Title I of the Housing and Community Development Act of 1974 (the "Act"), as amended, and are otherwise eligible under other sections of Title I and under detailed federal regulations.
- ❖ are included as eligible activities under the Housing and Economic Recovery Act of 2008 (HERA), Title III

The following list of eligible activities is excerpted from Section 105(a) of Title I of the Act. (Emphasis has been added to facilitate its use.) HUD regulations further define and specify activities and services eligible under the CDBG program.

- (1) Acquisition of real property (including air rights, water rights, and other interests therein) which is
  - (A) blighted, deteriorated, deteriorating, underdeveloped, or inappropriately developed from the standpoint of sound community development and growth;
  - (B) appropriate for rehabilitation or conservation activities;
  - (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;
  - (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or
  - (E) to be used for other public purposes;
- (2) Acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation which promote energy efficiency) of public works, facilities (except buildings for the general conduct of government), and site or other improvements;
- (3) Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;
- (4) Clearance, demolition, removal, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation of privately-owned properties and including the renovation of closed school buildings);
- (5) Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons;

- (6) Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;
- (7) Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;
- (8) Provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, homeless assistance, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 percent of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph unless such unit of general local government (or in the case of non-entitled communities not more than 15 percent statewide) used more than 15 percent of the assistance received under this title including program income for the previous fiscal year for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may not use more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount;
- (9) Payment of the non-federal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this title;
- (10) Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;
- (11) Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;
- (12) Activities necessary
  - (A) to develop a comprehensive community development plan, and
  - (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively
    - (i) determine its needs,
    - (ii) set long-term goals and short-term objectives,
    - (iii) devise programs and activities to meet these goals and objectives,
    - (iv) evaluate programs and activities of such programs in accomplishing these goals and objectives, and
    - (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;
- (13) Payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;
- (14) Provision of assistance including loans (both interim and long term) and grants for activities which are carried out by public or private nonprofit entities, including:

- (A) acquisition of real property;
  - (B) acquisition, construction, reconstruction, rehabilitation, or installation of
    - (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and
    - (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and
  - (C) planning;
- (15) Distance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities of non-entitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c), and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United States' Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;
- (16) Activities necessary to the development of energy use strategies, related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as:
- (A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and
  - (B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities.
- (17) Provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that-
- (A) creates or retains jobs for low- and moderate-income persons;
  - (B) prevents or eliminates slums and blight;
  - (C) meets urgent needs;
  - (D) creates or retains businesses owned by community residents;
  - (E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or
  - (F) provides technical assistance to promote any of the activities under (A) through (E).
- (18) The rehabilitation or development of housing assisted under Section 17 of the United States' Housing Act of 1937.

- (19) Provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low and moderate income persons
  - (A) where the need for the reconstruction was not determinable until after rehabilitation under this section had already commenced, or
  - (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee
    - (i) determines the housing is not suitable for rehabilitation, and
    - (ii) demonstrates to the satisfaction of the Secretary that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction.
- (20) Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13).
- (21)
  - (A) housing services, such as housing counseling, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities authorized under this section, or under Title II of the Cranston-Gonzalez National Affordable Housing Act, except that activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law;
  - (B) lead-based paint evaluation and reduction as defined in Section 1004 of the Residential Lead-Based Paint Hazard reduction Act of 1992.
- (22) Provision of assistance by recipients under this Title to institutions of higher education having a demonstrated capacity to carry-out eligible activities under this subsection for carrying out such activities.
- (23) Provision of assistance to public or private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by-
  - (A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
  - (B) providing technical assistance, advise, and business support services (including assistance, advise, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and
  - (C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises.
- (24) Activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods; and
- (25) Provision of direct assistance to facilitate and expand home ownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph 8) by using such assistance to-
  - (A) subsidize interest rates and mortgage principal amounts for low and moderate income homebuyers;

- (B) finance the acquisition by low and moderate income homebuyers of housing that is occupied by the homebuyers;
  - (C) acquire guarantees for mortgage financing obtained by low and moderate income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);
  - (D) provide up to 50 percent of any down payment required from low and moderate income homebuyer; or
  - (E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- and moderate-income homebuyers.
- (26) Provision of direct assistance to facilitate homeless services including operations, essential services and homeless prevention.

The following is a provision affecting activity eligibility excerpted from Section 105 of Title I of the Act. (Section 105(d) was added to the Act by amendments enacted in 1983. Section 105(d) was added to the Act by amendments enacted in 1992.)

- (1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection 105(a) is identified as principally benefiting persons of low and moderate income, such activity shall:
- (A) be carried out in a neighborhood consisting predominantly of persons of low and moderate income and provide services for such persons; or
  - (B) involve facilities designed for use predominantly by persons of low and moderate income; or
  - (C) involve employment of persons, a majority of whom are persons of low and moderate income.
  - (D) for purposes of subsection (c)(1)(C):
    - (1) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low and moderate income; or
    - (2) if an employee resides in a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median, the employee shall be presumed to be a person of low and moderate income.
- (2) In any case in which an assisted activity described in subsection 105(a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if not less than 51 percent of the residents of such area are persons of low and moderate income.
- (3) Any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

The following is a provision affecting assistance to for-profit entities excerpted from Section 105(f) of Title I of the Act. (Section 105(f) was added to the Act by amendments enacted in 1992.)

In any case in which an activity described in paragraph (17) of subsection (A) is provided assistance such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance.

The following is a provision affecting micro-enterprise and small business program requirements excerpted from Section 105(g) of Title I of the Act. (Section 105(g) was added to the Act by amendments enacted in 1992.)

In developing program requirements and providing assistance pursuant to paragraph (17) of subsection (A) to micro-enterprise or small business, the Secretary shall:

- (1) take into account the special needs and limitations arising from the size of the entity; and
- (2) not consider training, technical assistance, or other support services costs provided to small business or microenterprises or to grantees and subgrantees to develop the capacity to provide such assistance, as a planning cost pursuant to section 105(a)(12) or an administrative cost pursuant to section 105(a)(13).

The following is a provision affecting activity eligibility excerpted from Section 104(b)(5) of Title I of the Act. (Section 104(b)(5) was added to the Act by amendments enacted in 1983.)

The grantee will not attempt to recover any capital costs of public improvements assisted in whole or part (with CDBG) funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

- (A) funds received (from the CDBG program) are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or
- (B) for the purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of (low) income, the grantee certifies to the (State) that it lacks sufficient funds received under (the CDBG program) to comply with the requirements of subparagraph (A).

The following is a provision affecting lump-sum payments excerpted from Section 104(h) of Title I of the Act. (Section 104(h) was amended by the Cranston-Gonzalez National Affordable Housing Act of 1990.)

"Units of general local government receiving assistance under this title may receive funds, in one payment, in an amount not to exceed the total amount designated in the grant (or, in the case of a unit of general local government receiving a distribution from a State pursuant to section 106(d), not to exceed the total amount of such distribution) for use in establishing a revolving loan fund which is to be established in a private financial institution which is to be used to finance rehabilitation activities assisted under this title. Rehabilitation activities authorized under this section shall begin within 45 days after receipt of such payment and substantial disbursements from such fund must begin within 180 days after receipt of such payment."

The following is a provision affecting program income excerpted from Section 104(j) of Title I of the Act. (Section 104(j) was amended per the 1992 Housing and Community Development Act.)

"Notwithstanding any other provision of law, any unit of general local government may retain any program income that is realized from any grant distributed by a state, under section 106 if (1) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and (2) it will utilize the program income for eligible community development activities in accordance with the provisions of this title. A state may require as a condition of any amount distributed by such state under section 106(d) that a unit of general local government

shall pay to such state any such income to be used by such state to fund additional eligible community development activities, except that such state shall waive such condition to the extent such income is applied to continue the activity from which such income was derived, except that the Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with this subsection creates an unreasonable administrative burden on the unit of general local government.”

The following is a provision affecting Section 108 Loan Guarantee Authority excerpted from Section 108(d) of Title I of the Act. (Section 108(d)(2) of the Act was amended by the Cranston-Gonzalez National Affordable Housing Act of 1990.)

“To assist in assuring the repayment of notes, obligations and charges incurred under this section, a State shall pledge any grant for which the State may become eligible under this title as security for notes or other obligations and charges issued under this section in a non-entitlement area by any unit of general local government.

The following is an excerpt from the Housing and Economic Recovery Act of 2008 (Public Law 110-289, enacted July 30, 2008) Title III, Section 2301,(c)(3):

ELIGIBLE USES.—Amounts made available under this section may be used to—

- (A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;
- (B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;
- (C) establish land banks for homes that have been foreclosed upon;
- (D) demolish blighted structures; and
- (E) redevelop demolished or vacant properties.