

**FY 2017**  
**Massachusetts**  
**Community**  
**Development Block**  
**Grant Program**

**Infrastructure and Public Facilities**

**GUIDE**

**January 2017**



Charles D. Baker, Governor  
Karen E. Polito, Lieutenant Governor  
Chrystal Kornegay, Undersecretary

## INFRASTRUCTURE AND PUBLIC FACILITIES WITH CDBG

Many communities seek Massachusetts Community Development Block Grant (CDBG) funds for public facility and infrastructure projects because they have limited capital budgets and cannot afford all of the public improvements their residents need. The Massachusetts CDBG Program can finance special projects and neighborhood improvements that might otherwise not be funded for many years.

For the purposes of this document, *public facility* and *infrastructure* are considered separately because there are different approaches to documenting national objective and implementation plans for each. For the purposes of this Guide, the term *public facility* means a building or structure (vertical construction) that is publicly or privately owned *and* that is used by persons seeking access to services provided by or available in the facility. *Infrastructure* means public improvements at street level or below grade (horizontal construction), which benefits the residents of a defined service area. The Construction activity packet should be used when applying for CDBG funds to assist either a public facility or infrastructure project. A separate packet should be used for each proposed project. Some examples of public facility projects that can be assisted with CDBG funds include:

- Senior centers
- Social service centers
- Homeless shelters
- Neighborhood playground improvements
- Solid waste transfer and recycling centers
- Renovating closed school buildings for a CDBG-eligible use
- Removing architectural barriers from existing public buildings<sup>1</sup>

In contrast, examples of infrastructure projects include:

- Street and sidewalk repairs and related “streetscape” improvements
- Installation or upgrades of water mains, sanitary and storm sewer systems
- Construction of or improvements to parking lots.

### Eligibility

Infrastructure and Public Facilities are eligible for CDBG assistance under the Title I of the Housing and Community Development Act of 1974, the statutory umbrella of HUD’s Community Development Block Grant Program. At Section 105(a) of Title I, there is a list of all CDBG-eligible activities. They are also enumerated in [Appendix A](#) of the 2017 Massachusetts CDBG Program Application Guidance. Public facility and infrastructure projects may be

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<sup>1</sup> Refer to Massachusetts [CDBG Architectural Barrier Removal Guide](#) if undertaking Barrier Removal projects.

eligible, or may be supported by eligible activities, under several subsections of Section 105(a). Examples for each are provided below:

**Section 105(a)(2):** Acquisition, construction, reconstruction or installation of public works and facilities, except for buildings for the general conduct of government, and site or other improvements.

*Examples:*

- Installation of storm sewers to reduce the burden on an existing public wastewater disposal system
- Reconstruction of deteriorated streets and sidewalks and installation of street lights
- Rehabilitation of a public building for use as a senior center
- Acquisition and rehabilitation by a non-profit organization of a building to be used as a multi-service center for low and moderate-income persons
- CDBG assistance to install new utilities (electrical, water, sewer, on-site septic system) for a building that will be used as a neighborhood service center

**Section 105(a)(5):** Special projects directed to the removal of material and architectural barriers, which restrict the mobility and accessibility of elderly and handicapped persons.

*Examples:*

- Accessibility enhancements integral to the construction of a new community center that has documented that more than 51% of its users will be low and moderate-income (The project enhancements also eligible under Section 105(a)(2) ).
- Removal of architectural barriers integral to the reconstruction of a senior center (barrier removals also eligible under Section 105(a)(2)).
- Installation of accessible bathrooms and ramp at municipal offices to enable accessibility compliance. (Improvements to buildings of general conduct of government are otherwise ineligible for CDBG funds.)
- Elimination of architectural barriers in a public facility that otherwise cannot be documented as serving 51% or more low and moderate-income users.

**Section 105(a)(7):** Disposition (through sale, lease, donation or otherwise) of any real property acquired pursuant to this title, or its retention for public purposes.

*Examples:*

- Sale of a CDBG-acquired and rehabilitated building to a non-profit organization that provides public services to low and moderate-income persons (where proceeds from the sale are CDBG program income)

- Sale of a CDBG-acquired vacant site to a non-profit development corporation or a housing authority that is building new affordable housing (where proceeds from the sale and transfer are CDBG program income)
- Execution of a long-term lease with an organization that will use a CDBG-financed public building to provide job training and other support services for low and moderate-income persons (where lease payments are also CDBG program income)

**Section 105(a)(14):** Provision of assistance including loans and grants for activities, which are carried out by public and private non-profit entities, including (in part) acquisition, construction, reconstruction, rehabilitation or installation of public facilities, site improvements, and utilities.

*Examples:*

- Construction by a subrecipient of a training center to assist microenterprises with business planning and development.

**Section 105(a)(15):** Assistance to (qualified) non-profit development group to carry out (public facility or infrastructure) activities, which are part of a (qualified) neighborhood revitalization project, community economic development project or energy conservation project. ***Note: This provision is used on a very limited basis. Prior review with Massachusetts CDBG program staff is highly recommended.***

## **National Objectives**

The National Objective for infrastructure and public facility projects is most often “benefit to low and moderate-income persons.” It is instructive to consider how national objectives apply to different projects. When providing a benefit to low and moderate-income persons, characteristics of the individual users and potential users are evaluated.

### ***Public facility projects***

The most common method of demonstrating low and moderate-income benefit for a public facility project usually involves one of the limited clientele benefit methods available in the CDBG regulations, as in the following illustrations:

1. The facility assists persons generally presumed by HUD to be principally low and moderate-income. HUD has designated six categories of people presumed to be low and moderate-income: severely disabled adults, elderly, battered spouses, abused children, illiterate persons, and migrant workers. The rehabilitation or construction of a social service center or senior center often provides services to this limited clientele.
2. The assisted facility *activity* serves a population that has income eligibility requirements, which limit the activity exclusively to low and moderate-income persons (e.g., improvements to a playground located in a subsidized housing

- development for the exclusive use of its residents). No verification of income is required.
3. The assisted facility *activity* is of such a nature and in such a location that it can be concluded that the activity's clientele will be primarily low and moderate-income persons (e.g., a soup kitchen or homeless shelter). No verification of income is required.
  4. The beneficiaries of the assisted facility are at least 51% low and moderate-income. Low and moderate-income status is determined by income documentation or as dictated by local program design.

### ***Infrastructure Projects***

**When *infrastructure* provides a low and moderate-income benefit, it is most often on an area-wide basis.** The area benefit strategy requires grant applicants to prove, with census or survey data, that a majority of the beneficiaries of the project will be low and moderate-income persons. The project's benefit extends to all residents of the area, provided at least 51% of its residents are documented as low or moderate-income.

### ***Other Methods of Demonstrating National Objective***

The following illustrations are available options for national objective compliance, though they are less commonly used for public facility and/or infrastructure projects, as indicated:

1. **Low and Moderate-Income – Area Benefit (LMI/Area)** – Although frequently used for infrastructure projects, it is also possible to show that a public facility project benefits an area with 51% or more low and moderate-income residents. However, the applicant must demonstrate that the low-income area is in fact the project's *geographic service area*. The mere fact that a building is located in a predominantly low-income neighborhood does not mean that the benefits of improving it are principally confined to that area. Communities planning to use an area-wide benefit approach need to establish who uses the public facility in order to make a case that the surrounding area will benefit (e.g., the users must be residents of the target area and the target area must have 51% or more low and moderate-income residents).
2. **Low and Moderate-Income – Job creation or retention (LMI/Jobs)** – A public facility or infrastructure project may also meet the low and moderate-income benefit test as a **job creation or retention** activity if the assistance primarily serves businesses. Communities considering this option should consult CDBG program staff for assistance.
3. **Prevention or Elimination of Slum and Blighting Conditions** – This national objective may be used for public facility or infrastructure improvements under certain circumstances. The national objective of preventing or eliminating slums and blight may be chosen for public facility and infrastructure projects on an *area* basis, and public facility projects involving buildings could also meet this national objective on a *spot* basis, as described below:

Prevention or elimination of slums and blight on an area-wide basis

To eliminate slum and blighting conditions to a public facility or infrastructure on an area wide basis it is suggested that the property meet one or more of the conditions that HUD has identified (see application guidance) that can contribute to Slum and Blight. Deterioration is the condition most commonly identified. The facility would be listed on the approved Slums & Blight inventory as being in fair or poor condition. The project will be more competitive in the application if it can be shown that it will directly eliminate blight.

All of the following points must be documented and submitted to DHCD at least 30 calendar days prior to the grant application deadline:

- The Community must determine that the area meets the state’s definition of deteriorated, substandard, blighted or decadent areas as stated in MGL ch.121A and ch.121B.
- The community must document that at least 25% of properties throughout the area experience one or more of the following conditions: Physical deterioration of buildings or improvements, abandonment of properties, chronic high occupancy turnover rates in commercial or industrial buildings, significant declines in property values or abnormally low property values relative to other areas in the community, known or suspected environmental contamination, or public improvements throughout the area are in a general state of deterioration.

Refer to [Application Guidance Information](#), pages 11-15 for instructions on completing the Slums and Blight area inventory and documentation requirements.

***Note: A community will receive a ten year designation of the slum/blight area if DHCD accepts the supporting documentation.***

Prevention or elimination of slums or blight on a spot basis

Eliminating blight on a spot basis can be used only if the project area is not blighted and if the scope of work is limited to “the extent necessary to eliminate specific conditions detrimental to public health and safety.” Eligible projects for eliminating blight on a spot basis are limited to acquisition, clearance, demolition, relocation, historic preservation and building rehabilitation.

**4. Urgent Needs** – This is the third, and seldom used national objective. It is extremely difficult to document compliance with the urgent needs national objective because of stringent regulatory requirements. Communities planning to show that a public facility or infrastructure project will address an urgent or critical local need must receive prior Massachusetts CDBG approval to cite this as the national objective for any project.

## **Other Important Considerations**

### ***Space allocation plans***

Projects involving publicly owned, multi-use buildings should include a space allocation plan that details CDBG-eligible and ineligible (e.g., general government) functions and spaces. The CDBG eligible space must be used primarily for the eligible activity that meets a national objective. Only incidental use of the space (e.g., an occasional meeting) is allowed. It must be clear that the portion of the building developed for ineligible uses will be financed with non-CDBG funds. For example, a proposal to expand a municipal center by 1,500 square feet, with 1,000 square feet allocated for social service activities and 500 square feet allocated for municipal office use may use CDBG funds only on the eligible 1,000 square foot area. Furthermore, there must be evidence that upon completion, the expansion will be occupied and exclusively used by organizations that serve low and moderate-income persons.

Common systems such as HVAC or kitchen facilities must also be pro-rated allowing payment with CDBG funds for only eligible project space. To determine the share that can be financed by CDBG, the allocation plan must be based on the proportionate number of users who are CDBG beneficiaries to those who are not. For example, if a community is adding a wing to Town Hall for the sole purpose of providing a senior center, and the project includes a kitchen to serve the entire building, the applicant must determine how many senior citizens will benefit from the kitchen and how many non-senior residents and/or staff will benefit from it as well. If over the course of a year, 500 seniors will use the new center and have access to the kitchen for meal preparation, and 500 community-wide residents will also use the kitchen for community purposes, then CDBG can pay up to one-half the cost of installing and equipping the kitchen.

### ***Special Public Facilities Rule for State CDBG Program Recipients***

HUD requires recipients of State CDBG Program grants to retain the use for which CDBG funds were expended on behalf of a public facility project for a minimum of five years after the closeout of the grant. The purpose of this rule [24 CFR Part 570.489(j)] is to ensure a long-term low and moderate-income benefit from the use of federal funds. This means a community cannot receive CDBG funds to rehabilitate a former school building for use as a senior center, and then convert the facility to a town hall three years later.

If retaining the approved use for five years becomes impractical, a community can request permission to change the use. However, the new use must also benefit low and moderate-income persons and a plan for complying with the national objective is an integral part of any use conversion. A change of use that no longer achieves a national objective can result in the need to repay grant funds to the Massachusetts CDBG Program. Communities planning to apply for public facility projects need to consider the feasibility of meeting this requirement.

### ***Accessibility Requirements for Public Facilities and Infrastructure***

Construction and renovation of buildings and facilities assisted with CDBG funds are subject to the some or all (and potentially other) federal and state accessibility requirements. Although not discussed here, some accessibility requirements also apply to the activities and program operations assisted with CDBG funds.

### Section 504 of the Rehabilitation Act of 1973

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act. HUD regulations in 24 CFR Part 8.21(a) require recipients of federal financial assistance to design and construct public facilities that are readily accessible to and usable by persons with disabilities. For purposes of Part 8, "recipients" includes States and localities that are grantees and subgrantees under the CDBG program, their subrecipients, community-based development organizations, businesses and any other entity that receives CDBG assistance. New facilities and alterations to existing facilities must be designed and constructed to be readily accessible to and usable by individuals with handicaps.

### Americans with Disabilities Act (ADA) of 1990

Title II of the ADA requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings). State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided. The Department of Justice's revised regulations for Titles II and III of the ADA were published in the Federal Register on September 15, 2010. These regulations adopted revised, enforceable accessibility standards called the 2010 ADA Standards for Accessible Design, "2010 Standards." On March 15, 2012, compliance with the 2010 Standards was required for new construction and alterations under Titles II and III. Link: <https://www.ada.gov/regs2010/2010ADAStandards/Guidance2010ADAstandards.htm>

### The Architectural Barriers Act (ABA) of 1968

The ABA requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. ABA covers any building or facility financed in whole or in part with Federal funds, except privately owned residential structures. The United States Access Board develops and maintains accessibility guidelines under this law. These guidelines serve as the basis for the standards used to enforce the law, the Uniform Federal Accessibility Standards (UFAS). Four Federal agencies are responsible for the standards, including HUD. Usually, if a facility or building is built to meet the requirements Section 504 and ADA it will conform to the requirements of the ABA.

## Massachusetts Architectural Access Board (AAB)

All new construction of public buildings and facilities, and all additions to, reconstruction, remodeling, and alterations or repairs of existing public buildings or facilities, which require a building permit or which are so defined by a state or local inspector are subject to Massachusetts AAB. AAB regulations are in 521 CMR.

***Note: It is DHCD's policy that all newly designed and constructed multi-story public facility buildings financed in whole or in part with CDBG funds must provide interior access by an elevator.***

For further guidance on alterations to existing public facilities please refer to the Architectural Barrier Removal Technical Assistance Guide.

### ***Final considerations for planning, design and implementation of a public facility or infrastructure program***

#### Initial Program Planning

1. Evaluate the construction or rehabilitation needs in your target area. Determine what problems and severity of the problems need to be addressed or evaluated and why they are important. The application needs to explain why the proposed infrastructure or public facility project was chosen, given the range of needs in the community.
2. Set funding priorities and identify all possible funding resources. Bonding, tax overrides or tax debt exclusion should be considered for infrastructure projects. In cities and towns with a high tax levy per capita, Proposition 2-1/2 overrides may be impractical if not inappropriate. Consider and weigh the full range of funding sources available and discuss them in the grant application. Show that CDBG funds are necessary to complete the proposed projects and that all project funds are committed at the time of application submittal.
3. Establish a process to solicit input and involve the community, target area, and potential beneficiaries in the selection and development of the project. This will help an application in the areas regarding citizen participation and how your community selected a project for CDBG's consideration. Many towns have a Town Buildings Committee instead of individual building committees for public facility projects. Massachusetts CDBG encourages you to avoid duplicating existing volunteer efforts, but you might ask your Town Buildings Committee to add a small group of additional members who would work as a subcommittee on a CDBG-assisted project. This would help ensure that citizen beneficiaries have a voice in the project planning process.
4. As a rule, the more pre-application design work that has been completed, the more competitive your application will be. A building project that has design development drawings or is "bid-ready" will have a more realistic, line item budget than one that is based on schematic plans or master plan-level studies. A project with completed, detailed construction plans and specifications will go out for construction bids more quickly, and is more likely to be finished within the grant term.

***Note: Bid-ready plans and specifications are required for all public facilities and architectural barrier removal projects with construction costs of \$100,000 or more. Design development drawings are required for public facilities and architectural barrier removal projects or equivalent site and landscaping plans for Playground/Park projects with a total construction cost of more than \$25,000 but less than \$100,000. Although there is no specific design readiness threshold for infrastructure projects, more advanced design will be considered more competitive. Refer to [Application Guidance Information](#) for details.***

### Program Design

The design of an infrastructure or public facility project should provide all information requested in the Application, and at a minimum, address the following set of issues:

1. Communities must explicitly state how their projects will be funded and cite and document availability of all other required funds and identification of potential significant delays. Proposed projects may be eliminated from consideration if they lack documentation of other funds, are not determined to be feasible, or do not receive competitive scores.
2. The Massachusetts CDBG Program does not require cash or in-kind matches for any public facility or infrastructure projects. Thus, a match is not an eligibility threshold. However, applications will be more competitive where communities can document that they have matching funds. Provide specific information about the improvements for which you are seeking CDBG funds, including linear, square, or cubic feet of construction: (e.g., 2,000 linear feet of waterline to be installed; construct a public facility center with 2,500 square feet for elderly services; 7,000 cubic yards of loam and 25 aspen trees installed in a neighborhood park; construct a recycling plant to handle 8,000 tons of the participating communities' paper, glass and cans; pave 10,000 linear feet of deteriorated roads with 50,000 cubic yards of black top; install 1,000 linear feet of new 21-inch PVC sewer line).

***Note: The FY 2017 CDBG Program will award application activities an additional 1 point for leverage up to 10% of project costs; 2 points for leverage over 10%.***

### Program Implementation

1. Who will oversee the project, including procurement, design, bidding and construction?
2. Who will be responsible for labor standards compliance (in particular, wage rate monitoring)?
3. Who will prepare design plans: the municipality or a consultant? Who is responsible for procuring consultant services?
4. Who provides labor: the municipality, through its public works department (force account labor), or a general contractor selected through a competitive bid process?
5. If project labor is contracted from private sources, federal Davis-Bacon wage rates and labor standards compliance, and possibly state prevailing wages must be built into project and reflected in the budget. If the project is being carried out by a non-profit entity and the town is not executing construction contracts as a public awarding authority, then

federal Davis-Bacon wage rates will apply to the project. However, in most cases construction work on these projects is procured and contracted by the municipality. In these instances, you must obtain both the federal Davis-Bacon and state prevailing wage schedules for the labor classifications that will be deployed on the project, and the contractor must pay the higher of the two for each job classification.

6. Federal Davis-Bacon wages are triggered for construction contracts that exceed \$2,000, regardless of the total amount of CDBG assistance. Certain categories are exempt, such as legal, clerk of works, self-employed contractors, foremen, and apprentices. Davis-Bacon wages can increase labor costs by as much as 25%, so you must account for potential project cost impacts when calculating your construction budget.
7. Work on public buildings is also subject to state regulations, governing procurement, and state prevailing wages. Consult with your Town Counsel or City Solicitor, your Town Buildings Committee, Town Manager, designated Procurement Officer or other available officials to determine which of the state procurement rules apply to the type of project you plan to propose in your application. All procurement, regardless of dollar amount, must be conducted in a manner that provides for maximum free and open competition.
8. Site control may be important in certain projects (a threshold requirement for any senior center project). In the grant application, communities should state who owns or has an interest in the property to be improved with CDBG funds. There must also be a long-term maintenance plan for the project so that funds are not used for public facility improvements that cannot be properly maintained in the long run. Provide a budget and describe the plan in the context of your community's existing public facility or infrastructure maintenance programs.
9. Implementation schedules must be realistic; consider start-up date, seasonal weather, design time, and permits to obtain. The schedule must account for all design, permitting, and construction activities required to complete a project. Weather and seasons should be considered. Communities must complete projects within the grant cycle (18 months for FY 2017).
10. The construction process generally includes these primary steps:
  - Procurement and award to the designer/other service
  - Design or engineering phase(s)
  - Preparation of plans, specifications and bid documents
  - Construction bidding
  - Contract award
  - Pre-construction conference
  - Construction phase - labor standards/wage and payroll monitoring
  - Inspections to pay invoices
  - Final inspections and contract monitoring
  - Retainage held - final retainage released
  - Close-out.