

MEETING A NATIONAL OBJECTIVE

Purpose

The purpose of this chapter is to describe the criteria which must be met and the records which must be maintained in order for an activity to be considered to have met a **national objective** of the CDBG program. Additional information in the form of examples and tips is also provided.

Basic Requirements

Section 101(c) of the authorizing statute sets forth the primary objective of the program as the development of viable communities by the provision of decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. The statute further states that this is to be achieved in the CDBG program by ensuring that each funded activity meets one of three named national objectives. Those three objectives are identified as: benefiting low- and moderate-income persons; preventing or eliminating slums or blight; and meeting urgent needs. The statute also states that each grantee must ensure that at least 70% of its expenditures over a particular time period must be used for activities qualifying under the first of those national objectives (that of benefiting low- and moderate-income persons.) This chapter concentrates on what is required for CDBG-funded activities to meet each one of these national objectives.

As indicated above, the program rules state that, in order to be eligible for funding, every CDBG-funded activity must qualify as meeting one of the *three national objectives* of the program. This requires that each activity, except those carried out under the basic eligibility categories of Program Administration and Planning and Capacity Building, meet specific tests for either:

- ❖ Benefiting low- and moderate-income persons,
- ❖ Preventing or eliminating slums or blight, or
- ❖ Meeting other community development needs having 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 to meet such needs.

An activity that fails to meet one or more of the applicable tests for meeting a national objective is in noncompliance with CDBG rules.

Note: The requirement that each activity must meet a national objective should not be confused with the requirement that at least 70% of a grantee’s funds over a particular time period must be used for activities that benefit L/M income persons.

This requirement, which is sometimes called the “overall benefit” requirement, together with the rules to be used in calculating the total percentage of funds actually expended for purposes of complying with this requirement, are both covered in Chapter 4.

Each of the three CDBG national objectives, and the subcategories of criteria for how that objective may be met, are described below. Because of statutory, and sometimes regulatory, limitations, certain of the subcategories may not be used for a particular type of activity. These limitations are also reflected in the guidelines shown in this chapter.

**National
Objective
Categories and
Subcategories**

The remainder of this chapter provides guidance on the national objectives and subcategories, guidance on documenting compliance and some thoughts about making the wisest choice among available alternatives, in the following order:

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Activities Benefiting L/M Income Persons

This is usually spoken of as the most important national objective of the CDBG program because of the related requirement that the vast majority of CDBG expenditures must be for activities that meet this objective.

Definitions

A low- and moderate- (L/M) income person is defined as a member of a family having an income equal to or less than the Section 8 Housing Assistance Payments Program low-income limits established by HUD applicable to the size of the person's family. A family is defined as all persons living in the same household who are related by blood, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one person family for this purpose. Adult children who continue to live at home with their parent(s) are considered to be part of the family for this purpose and their income must be counted in determining the total family income. A dependent child who is living outside of the home (e.g., students living in a dormitory or other student housing) is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

A low- and moderate-(L/M) income household is defined as a household in which the total income of all of the household members is equal to or less than the Section 8 Housing Assistance Payments Program low-income limit established by HUD for an equivalent sized family. A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

For purposes of determining whether a person or household is L/M income, the CDBG regulations require grantees to elect one or more of three definitions of what must be considered to be income. The options are the Section 8, IRS, or Census definitions. The detailed definitions can be found at §570.3.

Persons vs Households

It is important to note that, for all but one of the subcategories under this national objective, the test of meeting the objective of Benefit to L/M is to be met based on L/M **persons**. Only with the subcategory of L/M Housing must the test be met based on L/M **households**.

There are reasons for this distinction. First, the statute requires that the focus be on the occupants of a CDBG-assisted housing unit when determining whether the national objective of benefit to L/M Income persons can be met. Secondly, there are two underlying assumptions in the CDBG regulations concerning this issue: 1) that all persons who reside in a housing unit that has been provided or improved with CDBG assistance will benefit from that housing unit; and 2) that the resources of all occupants could be brought to bear with respect to paying for the rental, improvement or purchase of the unit.

For housing units receiving CDBG assistance which are occupied by persons of the same family, totaling the income of all occupants of a unit easily determines whether or not the family is a L/M Income family. However, CDBG-assisted housing units can be occupied by persons who are not related to each other in the traditional family sense. Thus, there needs to be a way to determine whether the beneficiaries of such an assisted housing unit should be considered to be L/M Income for purposes of meeting the CDBG national objective. In addressing this problem, the regulations provide first, that the income of all persons occupying a CDBG-assisted housing unit must be counted without regard to their familial relationships, and secondly, by treating them (for this purpose only) as though they were all of the same family. If the “household/family” income qualifies it as L/M Income, then the assisted housing unit would be considered to be occupied by a L/M Income household.

To illustrate this point, assume that there are two assisted housing units, one of which is occupied by three, unrelated adults and the second of which is occupied by an unmarried couple. Also assume that in each of these two units, one of the occupants is currently jobless and has no income. For non-housing CDBG-assisted activities (such as a public service fair housing program), each of the two persons in these units who are without income would qualify separately as a L/M Income person, eligible to receive the public service. (This is because the regulations treat them as though they are one-person families and, with no income, each is considered to be a L/M Income family.)

For CDBG-assisted housing activities, however, the benefits of the assistance are shared with all of the occupants, and the regulations require that the income of all household members must be considered to determine the L/M Income status of the beneficiaries. For the dwelling unit occupied by the three unrelated adults to qualify for CDBG housing assistance, the combined income of the two working adults could not exceed the limits for a three-person L/M income family. For the unit occupied by the unmarried couple to qualify for CDBG housing assistance, the income of the one working adult would have to be less than the limit for a two-person family.

It is therefore important to note that, even though an individual may qualify as L/M income for certain CDBG-assisted activities, the household of which they are a part may or may not qualify as L/M Income for assisted housing purposes, depending on the total combined income of all the household members.

Criteria **Subcategories**

The criteria for how an activity may be considered to benefit L/M income persons are divided into four subcategories:

- (1) Those based on *area benefit*,
- (2) Those serving a *limited clientele*,
- (3) Those involving *housing*, and
- (4) Those involving employment (*jobs*).

These subcategories are described in detail on the following pages.

Challenge to presumption

The program rules state that an activity that meets the specified criteria for a national objective will be presumed to have met that objective. However, it should be noted that, because almost all CDBG-assisted activities involve *some* benefit to L/M income persons or households, an “override” to a presumption that an activity meets the L/M Income Benefit national objective may come into play. The regulations provide that in any case where there is substantial evidence that an activity might not *principally* benefit L/M income persons, even though the activity conforms with a literal reading of L/M Income Benefit criteria, the presumption that the activity meets the national objective may be rebutted.

In such cases, HUD will consider *the full range of direct effects of the assisted activity*. This means that HUD will examine the extent to which the activity, in addition to benefiting the L/M income persons, either negatively affects such persons or provides direct benefits to a substantial number of other non-L/M income persons as well. When such a rebuttal is raised by HUD, the grantee will have to show why the activity should nevertheless be considered to meet the L/M Income Benefit national objective. *Reference: §570.208(a)*

It should be noted, however, that certain presumptions of a person's L/M income status for job creation/retention activities are specifically authorized by Section 105(c)(4) of the CDBG statute. Insofar as this is a statutory provision, it overrides any presumption that may seem "unwarranted" in a specific case. Thus, the "evidence to the contrary" language in the regulations is not applicable to these L/M income job presumptions.

Restriction on Benefit to Moderate Income Persons

The regulations require that each grantee ensure that moderate-income persons are not benefited to the exclusion of low-income persons [see §570.208(a)]. This does not mean that each CDBG-assisted activity must involve both low- and moderate-income beneficiaries. However, it does mean that the grantee's CDBG program, as a whole, must primarily benefit low-income persons, and that moderate-income persons do not benefit to the exclusion of low-income persons.

L/M Income Area Benefit

Criteria

For these purposes, an area benefit activity is an activity *which is available to benefit all the residents of an area* which is primarily residential. In order to qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51% of the residents (or less if the “upper quartile” applies to the grantee, as described below) are L/M income persons. The benefits of this type of activity are available to all residents in the area regardless of income.

The requirement that an area benefit activity must qualify on the basis of the income levels of the persons who reside in the area served by the activity is statutory. (See section 105(c)(2) of the Housing and Community Development Act of 1974 as amended.) This means that the activity may not qualify as meeting the L/M income area benefit national objective on any other basis. For example, if the assisted activity is a park that *serves* an area having a L/M income concentration that falls below the required percentage, the activity may not qualify even if there is reason to believe that the park will actually be *used* primarily by L/M income persons.

Determining the Service Area

As is probably evident, the determination of the area served by an activity is critical to this subcategory. The inclusion or exclusion of a particular portion of the grantee’s jurisdiction can make the difference between whether the percentage of L/M income residents in the service area is high enough to qualify under the L/M Income Benefit national objective. The principal responsibility for determining the area served by an activity rests with the grantee. HUD will generally accept a grantee’s determination unless the nature of the activity or its location raises serious doubts about the area claimed by the grantee. Appendix D of this Guide provides guidance on how service areas should be determined for this purpose as well as other related information.

The area that the grantee determines will be served by an activity need not be coterminous with census tracts or other officially recognized boundaries, but it is useful if it reasonably coincides with such boundaries because of the need to consider census data in the area, as discussed later in this section. It is critical, however, that *the service area determined by the grantee be the entire area served by the activity*. This means that, even though a predominantly L/M income neighborhood may be one of several neighborhoods served by an activity (e.g., a grocery store) the percentage of L/M income persons in the *total area served by the activity* is considered for this purpose.

The rules also provide that activities of the same type that serve different areas must be considered separately on the basis of their individual service area. This means that, if the grantee has a program that provides for sidewalks to be installed throughout the entire community during a CDBG program year, it would need to break this activity down into separate activities based on the different areas that the sidewalks would serve.

Reference: §570.208(a)(1)(v)

For the most part, activities qualifying under the basic eligibility category of Public Facilities and Improvements provide a benefit to all the residents of an area and thus would be subject to meeting the criteria described here in order to meet the L/M Income Benefit national objective. A few activities that qualify as Public Services also provide an area benefit, most notably police or fire services. CDBG assistance to a for-profit entity that is a commercial/retail establishment generally also provides an area benefit (see Rehabilitation category concerning eligibility of commercial rehabilitation and Special Economic Development Activities category for eligibility of other assistance to a for-profit).

Certain activities that serve an area are designed to meet the needs of only some persons in that area. An example of this would be a facility that is used exclusively as a senior center for a particular neighborhood. Such area benefit activities serving special needs usually must qualify under the Limited Clientele subcategory of the L/M Income Benefit national objective.

Although public schools may not be used by all the residents of the area they serve, in the CDBG program they nevertheless are considered to benefit all the residents not only because any household with children can avail themselves of the services of the school but also because of the contribution schools make to determining the value of the residential property in that area.

Examples

Typical area benefit activities include:

- ◆ Street improvements,
- ◆ Water and sewer lines,
- ◆ Neighborhood facilities, and
- ◆ Facade improvements in neighborhood commercial districts.

Special Situations

The statute provides that certain kinds of area benefit activities may meet the L/M Income Benefit national objective when the general requirements cannot be met. These special situations are discussed below.

911 Systems

An activity to develop, establish, and operate for up to two years after the establishment of a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents otherwise required under this subcategory may qualify as benefiting L/M income persons, provided the grantee obtains prior HUD approval. The details concerning what the grantee must show and what HUD must determine for this purpose can be found at §570.208(a)(1)(iii).

Special Assessments

When the **only** use of CDBG funds to assist in the financing of a public improvement is to pay special assessments (as defined in Appendix C of this Guide) levied against residential properties that are owned and occupied by L/M income persons, such use of the funds will qualify under this national objective subcategory even if the public improvement provides a benefit to all the residents of an area. This is a statutorily authorized means of meeting the L/M income area benefit requirement. *Reference: §570.208(a)(1)(iv)*

Grantee Options for Job Creation/Retention:

There are two special situations which provide the grantee with the option to qualify activities that meet the job creation or retention national objective criteria under the area benefit criteria when program rules would otherwise require the activity to meet the criteria under the job creation or retention subcategory. These situations are:

- ❖ In the case where the grantee has a HUD-approved Neighborhood Revitalization Strategy (NRS) pursuant to the authority of § 91.215(e)(2) of the regulations, activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the *area benefit* subcategory criteria in lieu of the *jobs* subcategory criteria (the area considered for this purpose is the NRS); and *Reference: §208 (d) (5)(i)*
- ❖ Where CDBG-assisted activities are carried out by a Community Development Financial Institution (CDFI) whose charter limits its investment area to a primarily residential area consisting of at least 51% L/M income persons, activities that the CDFI carries out for the purpose of creating or retaining jobs may, at the grantee's option, be considered to meet the *area benefit* subcategory criteria in lieu of the *job creation or retention* subcategory criteria. The area considered

for this purpose is the CDFI's investment area. *Reference:*
§570.208(d)(6)(i)

Remember, however, that even though the reporting requirements will focus on area benefit, it is still necessary to be able to show the basis upon which the above activities are creating or retaining jobs in order to be able to use the area benefit subcategory alternative.

Use of the Upper Quartile "Exception Criteria"

The statute and the regulations recognize that some entitlement communities have few, if any, areas within their jurisdiction that have 51% or more L/M income residents. Since so many activities that fall under the basic eligibility categories of the CDBG program are of a nature that they would have to qualify under the area benefit criteria for meeting the L/M income national objective, provision has been made for these communities to use a percentage other than 51% for this purpose. More specifically, the law provides that such communities may qualify an area benefit activity based on serving an area that contains a percent of L/M income persons that is not lower than that contained in the grantee's upper one-fourth of all areas within its jurisdiction in terms of the degree of concentration of L/M income population. This is sometimes referred to as the "exception criteria" or the "upper quartile." HUD has implemented this exception through the use of an analysis of each grantee's census block groups. This analysis has been developed to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee must use instead of 51% for these purposes. A grantee qualifies for this exception when fewer than one-quarter of the populated block groups in its jurisdiction contain 51% or more L/M income persons. The grantee may then carry out area benefit activities serving any area having a percentage concentration of L/M income persons that is not less than that in the last census block group in its highest (or upper) quartile.

It is important to note that the upper quartile percentage provides an exception to the general rule of 51% *only* with respect to area benefit activities. Therefore, activities qualifying under the limited clientele, housing, and job creation/retention subcategory *cannot* qualify under the upper quartile "Exception Criteria." For example, a limited clientele activity might provide services to persons in a certain area such as a center for handicapped persons in a particular neighborhood. The activity must meet the 51% L/M income benefit requirement for limited clientele and not the upper quartile percentage applicable to area benefit activities within an "exception" community.

Appendix D contains the specific steps HUD follows in computing a grantee's upper quartile.

Use of Census Data

The regulations at §570.208(a)(1)(vi) provide that, for purposes of determining whether a particular area contains a sufficient percentage of L/M income persons to qualify an activity under the area benefit criteria, available information from the latest Decennial Census shall be used to the fullest extent feasible. The field office will provide each entitlement grantee with a special, HUD-produced computer compact disk giving a listing of all census tracts and block groups in the community's jurisdiction. The data on the disk also shows the number of persons that resided in each such tract/block group at the time of the last census and the percentage of such persons who were L/M income (based on the CDBG definition) at that time. The data also show the grantee's "upper quartile" percent, as discussed in the subsection above. Using the information on the disk, the grantee and HUD can compute the percentage of L/M income persons residing in any combination of tracts/block groups within the grantee's jurisdiction, since the disk contains both the total number of persons in each tract/block group that is to be combined, as well as the number of such persons who are L/M income in each such tract/block group. Thus, it aids the grantee in determining whether a particular area benefit activity may be assisted with CDBG funds under the national objective of benefit to L/M income persons.

Similarly, for grantees that seek HUD approval of Neighborhood Revitalization Strategies (see Appendix E), this disk can provide information to determine whether a particular area can meet the threshold L/M income percentage needed to qualify an area for designation.

Use of Surveys

If a grantee has reason to believe that the available census data do not reflect current relative income levels in an area, or where the area does not coincide sufficiently well with census boundaries, HUD will accept information obtained by the grantee from use of a special survey of the residents of the area. The grantee must obtain HUD's approval of the survey instrument and other methodological aspects of the survey for this purpose. HUD will approve the survey where it determines that it meets standards of statistical reliability that are comparable to that of the Decennial Census data for areas of similar size.

It is important to note that, for communities that qualify for the upper quartile exception, there are restrictions for using surveys. Generally, a survey is used to recompute the percentage of L/M income persons residing in a service area that consists of an entire census block group. The survey results may be used to show that the entire area served by the activity *exceeds 51%* and thus qualify the activity under the L/M income area benefit criteria. But once the percent of L/M income persons for an entire block group has been redetermined, the new data may not be used to qualify an activity under the

upper quartile exception percentage. This is because the upper quartile was computed based on data taken from the same source and based on the same point in time. When data from another source and based on another point in time is to be used, it cannot make use of that prior upper quartile calculation. This is because if the surveyed block group shows a different percent of L/M income than that found by the Census Bureau, other block groups in the community would also likely have changed as well, which would produce a new upper quartile percentage. A new upper quartile computation would need to be made using surveys for all block groups reflecting income information based on the same point in time. Note, however, that this does not prevent a community from using surveys to determine the L/M income percentage in a *portion* of a block group and still use that new information under the upper quartile exception.

It should also be noted that a grantee cannot use a survey of the income of the *users* of a particular facility or improvement to qualify it under the L/M Income Benefit national objective if the facility or improvement provides a benefit *that is available to all the residents of an area*. Thus, for example improvements to a park that serves a non-L/M income area may not qualify for CDBG assistance even if a survey of users over a period of time indicates that the majority of users are L/M income persons. (This limitation derives from the statutory provision at section 105(c) concerning activities that serve an area generally.) Notwithstanding this prohibition, a grantee may want to survey the users of an existing facility or improvement to determine *where the users live*, for purposes of helping the grantee determine the area served by the facility/improvement.

Tips

An activity with a service area that is *not* primarily residential in makeup may not qualify under this category. For example, street construction in a central business district that contains financial institutions and investment firms that serve a national and international clientele may not qualify as an area benefit activity, even if there are some persons residing in the district and the majority of such residents are L/M income persons. However, street improvements in a central business district composed of department stores and businesses that serve local customers such that the service area boundaries are drawn around a primarily residential area with the requisite number of L/M income residents *would* qualify under this category.

Records to be Maintained

The records that the grantee must keep to demonstrate compliance under this subcategory include:

- ❖ Boundaries of the service area and the basis for determining those boundaries, and
- ❖ The percentage of L/M income persons in the service area and the data used for determining that percentage.

If the activity is one of the special situations described above, the records must identify the unique aspects of the activity that make it qualify under this respective subcategory. *Reference: §570.506(b)(2)*

L/M Income Limited Clientele

Criteria

A *L/M income limited clientele activity* is an activity which provides benefits to a specific group of persons rather than everyone in an area generally. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons. It should be noted, however, that because of certain statutory limitations, the regulations preclude the following kinds of activities from qualifying under this subcategory:

- ❖ Activities involving the acquisition, construction, or rehabilitation of property for housing, including homeownership assistance (these must qualify under the Housing subcategory, because of section 105(c)(3) of the authorizing statute); or
- ❖ Activities where the benefit to L/M income persons is the creation or retention of jobs (these must qualify under the Jobs subcategory with certain exceptions as noted under the previous area benefit section, because of the different presumptions provided under sections 105(c)(1)(C) and (4) of the authorizing statute).

To qualify under this subcategory, a limited clientele activity must meet one of the following tests:

- ❖ Exclusively benefit a clientele who are generally *presumed by HUD to be principally L/M income persons*. The following groups are currently presumed by HUD to be made up principally of L/M income persons:
 - ◆ abused children,
 - ◆ elderly persons,
 - ◆ battered spouses,
 - ◆ homeless persons,
 - ◆ adults meeting Bureau of Census' definition of severely disabled persons*,
 - ◆ illiterate adults,
 - ◆ persons living with AIDS, and
 - ◆ migrant farm workers.

Reference: §570.208(a)(2)(i)(A)

- *See discussion about the change from the term "handicapped" under the Miscellaneous Activities section in Chapter 2, page 2-84.*

(Note: this presumption may be challenged in a particular situation, however, if there is substantial evidence that the persons in the actual group that the

activity is to serve are *most likely not* principally L/M income persons.)

OR

- ❖ Require *information on family size and income* so that it is evident that *at least 51%* of the clientele are persons whose family income does not exceed the L/M income limit. (This includes the case where the activity is restricted *exclusively to L/M* income persons). *Reference: §570.208(a)(2)(i)(B) and (C)*

OR

- ❖ Be *of such nature and in such location* that it may reasonably be concluded that the activity's clientele will primarily be L/M income persons (e.g., a day care center that is designed to serve residents of a public housing complex). *Reference: §570.208(a)(2)(i)(D)*

OR

- ❖ Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," **provided** it is restricted, to the extent practicable, to the removal of such barriers by assisting:
 - ◆ the reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the L/M income area benefit criteria;
 - ◆ the rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the L/M income area benefit criteria or the L/M income jobs criteria; or
 - ◆ the rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the L/M income housing criteria.

Reference: §570.208(a)(2)(ii)

OR

- ❖ Be a microenterprise assistance activity carried out in accordance with the provisions of §570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. (Note that, for these purposes, once a person is determined to be L/M income, he/she may be presumed to continue to qualify as such for up to a three-year period. This would enable the provision of general support services to such a person during that three-year period, without having to check to determine whether the person's income has risen.) *Reference: §570.208(a)(2)(iii)*

OR

- ❖ Be an activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent which qualifies under the limited clientele national objective in the following **limited circumstance**:
 - ◆ in such cases where such training or provision of supportive services assists business(es), *and the only use of CDBG assistance* received by the business is to provide the job training and/or supportive services; **and** *the proportion of the total cost of the services borne by CDBG funds is no greater than the proportion of the total number of persons benefiting from the services who are L/M income.*

Reference: §570.208(a)(2)(iv)

It should be noted that the so-called “presumed” categories were modified in the regulations in 1995. A new group has been added: “persons living with AIDS.” The former category of “handicapped persons” has been replaced with “severely disabled adults.” This latter change was made for two reasons. First, the word “persons” was replaced with “adults” to make it clear that an activity designed to treat handicapped children would not qualify for the presumption, because HUD has been unable to find evidence that the majority of handicapped (or even severely disabled) children are members of a L/M income family. Moreover, the term “handicapped” has been replaced with “severely disabled” (which now will use the census definition of that term). This change was made because the term “handicapped” has been used in so many different ways for different Federal programs and has taken on a much broader meaning than had been envisioned when it was originally introduced as a “presumed” L/M income group for CDBG purposes. A review of census data supports the

presumption that adults (but not children, as mentioned above) having severe disability are predominantly L/M income persons.

The census definition of “severely disabled” follows:

- ❖ Persons are classified as having a severe disability if they: (a) used a wheel-chair or had used another special aid for six months or longer; (b) are unable to perform one or more “functional activities” or need assistance with an “ADL or IADL”; (c) are prevented from working at a job or doing housework; or (d) have a selected condition including autism, cerebral palsy, Alzheimer’s disease, senility or dementia, or mental retardation. Also, persons who are under 65 years of age and who are covered by Medicare or who receive SSI are considered to have a severe disability.

Note: For purposes of this definition, the term “functional activities” includes seeing, hearing, having one’s speech understood, lifting and carrying, walking up a flight of stairs, and walking. An ADL is an “activity of daily living” which includes getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting. An IADL is an “instrumental activity of daily living” and includes going outside the home, keeping track of money or bills, preparing meals, doing light housework, and using the telephone.

Example

Activities that would be expected to qualify under the L/M income Limited Clientele subcategory include:

- Construction of a senior center,
- Public services for the homeless,
- Assistance to L/M income persons developing a microenterprise,
- Meals on wheels for the elderly, and
- Construction of job training facilities for severely disabled adults.

Records to be Maintained

For each activity, *one* of the following five types of documentation must be kept:

- (1) Documentation showing that the activity is designed to be used exclusively by a segment of the population presumed by HUD to be L/M income persons (e.g., abused children); **or**
- (2) Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by L/M income persons; **or**
- (3) Data showing the size and annual income of the family of each person receiving the benefit; **or**
- (4) Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this subcategory; **or**
- (5) Documentation showing that the activity qualifies under the special conditions regarding job services where less than 51% of the persons benefiting are L/M income persons. *Reference: §570.506(b)(3)*

Tips

Activities which serve an area generally cannot qualify under the limited clientele criterion. For example, while a clinic serving only persons with AIDS living in a particular area would clearly qualify as a limited clientele activity, a clinic providing CDBG-subsidized health services which are available to *all* persons in a neighborhood would not. It must instead meet the criteria for an area benefit activity. However, if the use of a clinic providing general health care were to be administered in a way such that the services are not available to everyone in the neighborhood, but only to L/M income persons, the activity would qualify under limited clientele. (This is, of course, because the benefits would not be available to all the residents of the area.)

L/M Income Housing

Criteria

Section 105(c)(3) of the authorizing statute requires that an activity which assists in the acquisition, construction, or improvement of permanent, residential structures may qualify as benefiting L/M income persons only to the extent that the housing is occupied by L/M income persons. (This includes activities directed towards homeownership assistance.) Thus, this subcategory provides that for such activities to qualify under the L/M Income Benefit national objective, it must result in housing that will be **occupied by** L/M income households upon completion. The housing can be **either** owner- or renter-occupied and can be **either** one family or multi-unit structures. When the housing is to be rented, in order for a dwelling unit to be considered to benefit a L/M income household, it must be occupied by the household at **affordable rents**. The grantee is responsible for establishing the criteria it will use to determine rent affordability for this purpose and must make these criteria public. *Reference: §570.208(a)(3)*

Note that L/M Income Benefit status for this purpose is based on *households* and not *persons*. This distinction is very important because there can be situations where the persons residing in an assisted housing unit are not all members of the same family. For example, consider the case where two working persons are sharing a housing unit but are not related by blood, marriage, or adoption, and their individual incomes qualify them both as L/M income persons. It is possible, however, that their combined income might exceed the applicable Section 8 income limit for a two-person family and thus their household income would not qualify them to be a L/M income household.

Occupancy Rule

Occupancy of the assisted housing by L/M income households under this subcategory is determined using the following general rules:

- ❖ *All assisted single unit structures must be occupied by L/M income households,*
- ❖ *An assisted two-unit structure (duplex) must have at least one unit occupied by a L/M income household, and*
- ❖ *An assisted structure containing more than two units must have at least 51% of the units occupied by L/M income households.*

Exception

The new construction of *non-elderly, multi-family rental* structures need only have at least **20% of the units** occupied by L/M income **households**. However, where L/M income occupancy of such housing falls between 20 and 50%, the CDBG portion of total development costs may not be greater than the portion of units occupied by L/M income households. (For this purpose, total development costs include the cost of all work from design and engineering through completion of the physical improvements and, if integral to the project, the cost of acquisition.) For example, if such a structure were to cost \$1 million and the occupancy by L/M income households were to be only 35% of the units, the grantee could not provide more than \$350,000 of CDBG funds to assist the structure. *Reference: §570.208(a)(3)(i)*

“Presumed” single structures

In a few cases, CDBG assistance to two or more structures may be considered to meet the occupancy-by-structure test as though all of the assisted structures were in a single structure. These cases are:

- ❖ Buildings used for rental housing which are under common ownership and management and are located on the same or contiguous properties
Reference: §570.208(a)(3); or
- ❖ All housing units for which CDBG assistance is obligated during a program year pursuant to a Neighborhood Revitalization Strategy approved by HUD under the authority of §91.215(e)(2) may be considered to be within a single structure *Reference: §570.208 (d)(5)(ii); or*
- ❖ where CDBG-assisted activities are carried out by a Community Development Financial Institution (CDFI) whose charter limits its investments to a primarily residential area that has at least 51% L/M income residents, all housing units for which CDBG assistance is obligated by the CDFI during the program year may be considered to be within a single structure *Reference: §570.208 (d)(6)(ii).*

Condominiums

Where rehabilitation of one or more units in a multi-unit building that are owned on a condominium basis is limited to the particular unit(s) and does not involve rehabilitation of portions of the property that are held in common ownership, the unit(s) are considered to be separate structure(s).

Architectural barriers

When removal of existing barriers to accessibility or mobility is undertaken in one or more units within a multi-unit structure, it is considered to be rehabilitation of the unit(s) and must qualify under the L/M Income Benefit national objective based on the housing criteria and not limited clientele. Removal of such barriers to the common areas of such structures would also qualify under housing criteria, provided that the percent of units occupied by L/M households is sufficiently high. Where the occupancy test cannot be met under the housing subcategory, removal of barriers from common areas could qualify under the limited clientele subcategory.

Project administration for HOME

As noted in the discussion under the subsection entitled Housing Services in the section on Miscellaneous Other Activities, in the preceding chapter, CDBG funds may be used to pay (in whole or in part) for staff costs involved in providing services for the construction or rehabilitation of housing or for tenant-based rental subsidies that are assisted under the HOME program. When CDBG funds are so used, the activity qualifies under the L/M Income Housing subcategory provided that the requirements of 24 CFR 92.252 or 92.254 are met.

Example

CDBG-assisted activities that, in order to be considered as benefiting L/M income households, must qualify under the L/M Income Housing subcategory include:

- Acquisition of property to be used for permanent housing,
- Rehabilitation of permanent housing,
- Conversion of nonresidential structures into permanent housing,
- Newly constructed housing (when eligible), and
- Assistance to a household to enable it to acquire ownership of a home (homeownership assistance).

Records to be Maintained

In order to demonstrate compliance, the grantee must maintain the following records:

- ❖ A copy of the written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multi-unit structure assisted and the number of those units which will be occupied by L/M income households after assistance.
- ❖ Total cost of the activity, including both CDBG and non-CDBG funds.
- ❖ For each unit claimed to be occupied by a L/M income household, the size and combined income of the household.
- ❖ For rental housing only:
 - ◆ the rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and
 - ◆ information as necessary to show the affordability of units occupied (or to be occupied) by L/M income households pursuant to criteria established and made public by the grantee.
- ❖ For each property acquired on which there are no structures, evidence of commitments ensuring that the above criteria will be met when the structures are built.
- ❖ Where applicable, records documenting that the activity qualifies under the special conditions regarding the new construction of non-elderly, multi-family housing that will have L/M income occupancy of less than 51%.
- ❖ Where applicable, information showing that the housing units assisted, although located in different structures, are authorized to be considered to be located in a single structure under one of the special situations described previously.
- ❖ For housing services undertaken under the authority of §570.201(k) (activity delivery costs for HOME-assisted projects), evidence that the project(s) or assistance meet the HOME program income targeting requirements at 24 CFR 92.252 or 92.254. *Reference: §570.506(b)(4)*

Tips

For any type of housing activity, compliance with the L/M Income Benefit national objective is based on the *initial occupancy* of the housing *following completion* of the CDBG-assisted work. Notwithstanding this, grantees are urged to establish their own requirements for replacing such households with other L/M income households whenever the assisted unit becomes vacant within a period of time following completion that is commensurate with the amount of CDBG financial assistance that was provided to the housing unit.

For last resort housing provided pursuant to *24 CFR Part 42, Subpart I*, compliance with a national objective is based on the activity that caused the displacement, rather than the income of the occupants.

Note that the eligibility category of homeownership assistance at §570.201(n) contains within it the requirement that *only* L/M income households may be assisted. The effect of this *eligibility* constraint serves to prohibit the use of any other L/M *national objective* option that is less restrictive than might have otherwise been applied.

L/M Income Jobs

Criteria

Most (but not all) job creation or retention activities emanate from special economic development activities (§570.203). Section 105(c)(1) of the authorizing statute provides that these “special economic development” activities may meet the L/M Income Benefit national objective *only* in the following three ways:

- (1) Be located in a predominantly L/M income neighborhood and serve the L/M income residents (e.g., a grocery store serving a L/M income neighborhood qualifies as area benefit); **or**
- (2) Involve facilities designed for use predominantly by L/M income persons (e.g., a for-profit hospital that is designed to serve patients on Medicaid or welfare qualifies as limited clientele); **or**
- (3) Involve the employment of persons, the majority of whom are L/M income persons (e.g., a retail clothing store creates or retains jobs principally for L/M income persons).

This section of the Guide provides the criteria for the so-called “L/M Income Jobs” standard, which implements the third way authorized in the above-referenced statutory provision. *Reference: §570.208(a)(4)*

A L/M income jobs activity is one which creates or retains permanent jobs, at least 51% of which, on a full time equivalent (FTE) basis, are either *held by* L/M income persons or considered to be *available to* L/M income persons.

General rules

Jobs that are not held (filled) by L/M income persons may be claimed to be “available to” L/M income persons *only* when *both* of the following are met:

- ❖ Neither special skills that can only be acquired with substantial (i.e., one year or more) training or work experience nor education beyond high school is a prerequisite to fill such jobs (or the business nevertheless agrees to hire unqualified persons and train them); and
- ❖ The grantee and/or the assisted business takes actions to ensure that L/M income persons receive “first consideration” for filling such jobs.

Principles involved in providing “*first consideration*”:

- ❖ The business must use a hiring practice that under usual circumstances would result in over 51% of L/M income persons interviewed for applicable jobs being hired,
- ❖ The business must seriously consider a sufficient number of L/M income job applicants to give reasonable opportunity to fill the position with such a person, and
- ❖ The distance from residence and availability of transportation to the job site must be reasonable before a particular L/M income person may be considered a serious applicant for the job.

Special rules for retained jobs

In order to consider jobs *retained* as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, “clear and objective” evidence that jobs will be lost would include:

- ❖ Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- ❖ Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.

To meet the L/M income jobs standard, 51% or more of the retained jobs must be either:

- ❖ Known to be held by L/M income persons at the time CDBG assistance is provided, and/or
- ❖ For jobs not known to be held by L/M income persons, reasonably expected to “turn over” to L/M income persons within two years. (This would involve the grantee or business taking actions to ensure that such a job, upon turnover, will be either taken by or made available to a L/M income person in a manner similar to that pertaining to a newly created job, as discussed above.) *Reference: §570.208(a)(4)*

Presumed L/M income status

Section 105(c)(4) of the CDBG authorizing legislation provides that, for purposes of determining whether a job is held by or made available to a L/M income person, the person may be presumed to be L/M income if either:

- ❖ The person resides within a census tract (or Block Numbering Area

[BNA]) that either:

- ◆ has at least 70% of its residents who are L/M income persons, **or**
- ◆ meets the criteria related to “enterprise zones,” **or**
- ❖ Both the assisted business and the created or retained job are located in a census tract or BNA that meets the criteria related to “enterprise zones.”

In order to qualify for one of the presumptions referred to above concerning “enterprise zone” criteria, the census tract or BNA must either:

- ❖ Be part of a Federally-designated Empowerment Zone or Enterprise Community; **or**
- ❖ Meet *all* of the following criteria:
 - ◆ have a poverty rate of at least 20% as determined by the most recently available decennial census information;
 - ◆ not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract/BNA has a poverty rate of at least 30% as determined by the most recently available decennial census information; and
 - ◆ evidence pervasive poverty and general distress by meeting at least *one* of the following standards:
 - all block groups in the census tract have poverty rates of at least 20%;
 - the specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or
 - upon the written request of the recipient, HUD determines that the census tract/BNA exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

Reference: §208(a)(4)(iv) and (v)

Policies

In counting the jobs to be used in the calculation for determining the percentage that benefit L/M income persons, the following policies apply:

- ❖ Part-time jobs must be converted to full-time equivalents (FTE) (e.g., a job that will require only working half time would count as only one-half a job);
- ❖ Only permanent jobs count; temporary jobs may not be included;
- ❖ Seasonal jobs are considered to be permanent for this purpose only if the season is long enough for the job to be considered as the employee's principal occupation;
- ❖ All permanent jobs created or retained by the activity must be counted even if the activity has multiple sources of funds; and
- ❖ Jobs indirectly created or retained by an assisted activity (i.e., "spin off" jobs) may not be counted.

Provisions for aggregating jobs

As a general rule, jobs from each business receiving CDBG assistance must be considered separately for purposes of demonstrating compliance with the requirement that at least 51% of the resultant created or retained jobs benefit L/M income persons. However, there are certain circumstances under which the grantee may aggregate the jobs created or retained by two or more assisted businesses for this purpose. The following describes those circumstances:

- ❖ Where CDBG funds are used to acquire, develop, or improve real property (e.g., a business incubator, an industrial park, or shopping mall), jobs may be aggregated for all of the businesses which locate on the property, *provided such businesses are not otherwise assisted with CDBG funds. Reference: §570.208(a)(4)(vi)(A)*
- ❖ Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses and where *no CDBG funds are used to make or guarantee the loans*, jobs created by all of the businesses receiving loans during any one program year may be aggregated. *Reference: §570.208(a)(4)(vi)(B)*
- ❖ Where CDBG funds are used *solely to provide technical assistance* to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving such technical assistance during each program year. *Reference: §570.208(a)(4)(vi)(C)*

- ❖ Where CDBG funds are used for activities meeting important national interests as delineated in the criteria under the public benefit standard at §570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except that the activities cannot be aggregated under more than one category. *Reference: §570.208(a)(4)(vi)(D) (Also see Appendix B for further information on the public benefit standards and the activities mentioned here in particular.)*

- ❖ Where CDBG funds are used by a Community Development Financial Institution (CDFI) to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year. *Reference: §570.208(a)(4)(vi)(E)*

- ❖ Where CDBG funds are used for public facilities or improvements (infrastructure) which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement, using the following ground rules:
 - ◆ where such an improvement is undertaken principally for the benefit of one or more particular businesses, **and** the cost (in CDBG funds) for the facility/improvement amounts to *less than \$10,000 per permanent full-time equivalent (FTE) job* to be created or retained by those businesses, the requirement may be met by aggregating the jobs created or retained by **only** those businesses for which the facility/improvement is principally undertaken, regardless of whether other businesses might also benefit from the improvement.

 - ◆ where the CDBG cost per FTE job expected to be created or retained (as determined under the paragraph above) is *\$10,000 or more*, the requirement may still be met by aggregating the resultant jobs created or retained but *jobs from **all** businesses in the service area of the infrastructure must be included.*

More specifically, in such a case, the aggregation must also include all businesses which, as a result of the public improvement, locate or expand in the service area of the improvement *between the date the grantee identifies the activity in its Action Plan under 24 CFR Part 91 and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b)(2).* Reference: §570.208(a)(4)(vi)(F)

Example

Activities that could be expected to create or retain jobs include:

- ❖ Construction by the grantee of a business incubator which is designed to offer both space and assistance to new, small businesses to help them survive and perhaps even expand;
- ❖ Loans to help finance the expansion of a plant or factory;
- ❖ Financial assistance to a business which has publicly announced its intention to close; and to help it update its machinery and equipment instead; and
- ❖ Improvement of public infrastructure as needed by a company to comply with environmental laws to avoid closure.

Records to be Maintained

Maintaining records to demonstrate compliance with this subcategory can be quite challenging. Not only do businesses often dislike having to provide special reports or keep special records, but individuals who hold a job to be retained or who are taking or being considered for a newly created or a “turnover” retained job may resist providing information concerning their family income. The addition of the presumptions described earlier in this section were made in an effort to respond to this problem. Certain other requirements have also been modified over the past few years in an attempt to make this task less onerous.

The following outlines the records that must be kept with respect to the various aspects of this subcategory.

General

When assistance is provided to a business for the purpose of creating or retaining jobs, the grantee must have on file a written agreement with the business in which that business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full- or part-time. The agreement must also specify the actions the business and the

grantee will take to ensure that at least 51% of the jobs created or retained will benefit L/M income persons pursuant to the program rules.

The program records also must document which jobs were actually created and retained, whether each such job was held by, taken by, or made available to a L/M income person, and the full-time equivalency status of each job.

Job Creation

Held by:

With respect to jobs which will be held by L/M income persons, the records must show:

- ❖ A listing by job title of the specific jobs to be created,
- ❖ A listing by job title of the jobs filled,
- ❖ The name and income status of the person who filled each position, and
- ❖ The full-time equivalency status of the jobs.

Available to:

Where the job was not taken by a L/M income person, but the grantee nevertheless wants credit based on the job being made available to L/M income persons, the records must show:

- ❖ The title and description of the jobs made available, and the full- time equivalency status of the job at that time;
- ❖ The prerequisites for the job; special skills or education required for the job, if any; and the business commitment to provide needed training for such jobs (and the training that the business provided to the L/M income person hired, if applicable); and
- ❖ How first consideration was given to L/M income persons for the job, such as:
 - ◆ the name(s) of the person(s) interviewed for the job and the date of the interview(s), and
 - ◆ the income status of the person(s) interviewed.

Reference: §570.506(b)(5)

Job Retention

Where L/M income benefit is based on *job retention*, the files must include the following documentation.

Otherwise lost:

- ❖ The specific evidence that the grantee relied on in concluding that, in the absence of CDBG assistance, the jobs would be lost.

Held by:

- ❖ A listing by job title of permanent jobs retained, those jobs known to be held by L/M income persons at the time CDBG assistance was provided, and the full-time equivalency status of each such job; and
- ❖ Information on the family size and annual income of each such L/M income person.

Turnover jobs:

- ❖ Identification of any of the retained jobs (other than those known to be held by L/M income persons) projected to become available to L/M income persons through turnover within two years of the time CDBG assistance was provided;
- ❖ The basis upon which the job was determined to be likely to turn over within two years following the CDBG assistance;
- ❖ The date the job actually turned over;
- ❖ The name and income status of the person who filled the vacancy;
- ❖ If the person who took the job was not L/M income but the claim is that the job was nevertheless made available to L/M income persons, records equivalent to those described above to substantiate the “available to” claim; and
- ❖ Information on the family size and annual income of each such L/M income person hired.

Reference: §570.506(b)(6)

Documenting income status

Documentation that a particular applicant/employee family income was L/M income may include any of the following:

- ❖ Evidence that the employee/applicant was a referral from a state, county, or local employment agency or other entity that has agreed to refer individuals whom they have determined to be L/M income based on HUD's criteria. These entities must maintain records showing the basis upon which they determined that the person was L/M income, which they agree to make available for grantee or Federal inspection; **or**
- ❖ A written certification signed and dated by the employee/applicant indicating his/her family size and total income as necessary to determine whether the person is a member of a L/M income family at the time the certification is made. The certification may either show the actual size and income of the family or contain a statement that the annualized family income is below the Section 8 low-income limit for the applicable family size. The form must include a statement that the person making the certification is aware that the information being provided is subject to verification by the local or Federal government; **or**
- ❖ Evidence that the employee/applicant has qualified for assistance under another program with income qualification criteria at least as restrictive as those used by this program (e.g., referrals from Public Housing or the Welfare Agency). The Joint Training Partnership Act (JTPA) Program has income standards that are acceptable for this purpose, except for referrals under the JTPA Title III program for dislocated workers; **or**
- ❖ Evidence that the person is homeless; **or**
- ❖ Evidence that the person may be *presumed to be L/M income* as discussed earlier in this section.

It is important to note that, in order to demonstrate that for any given assisted activity a sufficient percent of the jobs created or retained actually benefit L/M income persons, the recipient may use any of the above approaches either singly or in combination. For example, if the recipient knows that some of the persons benefiting from the jobs qualify for the presumption based on their residence, it may use that presumption for those persons while using one or more of the other approaches (e.g., certifications or referrals) for other persons who benefit from jobs created or retained by the same assisted activity.

Tips

The test for determining whether an employee or applicant is L/M income for the purposes of this subcategory must be made based on the person's income status *at the time the CDBG assistance is provided*. One of the most important aspects of this is that the income the person would make from the assisted job under consideration is *not included in the calculation*. Additional guidance can be found in section 570.3 of the regulations under the definition of "income."

Note that, since the determination of L/M income status is to be made based on income at the time the CDBG assistance is provided, a person who occupies a high-paying but low-skilled job may not qualify as a L/M income person in a retained job, but the same job might be filled by a L/M income person if it were to be created (instead of retained) or if it were to become available to be filled through turnover by a L/M income person.

Note that certain job creation or retention activities may also be undertaken by a CDFI or as part of a Neighborhood Revitalization Strategy and thereby could meet the L/M Income Benefit national objective based on area benefit in lieu of jobs. In such a case, the grantee will need to decide which subcategory it wants to qualify the activity under and record that decision in the program files. This is important so that both HUD and the grantee will know which criteria are being applied.

For created jobs, the benefit is intended for persons who are L/M income prior to being hired. For retained jobs, the family must be L/M income at the time the job is retained. Thus, a high-paying unskilled job might count as a created job but might not be counted for retention except for turnover purposes.

Prevention/Elimination of Slums or Blight

The second of the CDBG national objectives has its roots in the Urban Renewal program, one of the major Federal programs that were terminated and replaced with the CDBG program upon its formation in 1974. Although the vast majority of persons who resided in the areas that qualified for assistance under the Urban Renewal program were L/M income, the principal focus of that program lay in eliminating major slums and other areas of blight within the community and preventing the return of blight to the treated areas. Because of some concerns that the CDBG program might not allow the continuance of the type of projects that were funded under the Urban Renewal program, provision was made for this through the inclusion of the national objective concerning slums and blight.

In developing the criteria for qualifying under this national objective, HUD has taken considerable care to ensure that activities that qualify under the objective are either clearly *eliminating* objectively determinable signs of slums or blight in a designated *slum or blighted area* or are *strictly limited to eliminating* specific instances of blight outside such an area (“spot blight”). Criteria are also included under this national objective to allow for the completion of projects that had been approved under the Urban Renewal program prior to the program’s termination.

Accordingly, the subcategories under this national objective are:

- ✓ Addressing slums/blight on an area basis,
- ✓ Addressing slums/blight on a spot basis, and
- ✓ Addressing slums/blight in an urban renewal area.

Addressing Slums or Blight on an Area Basis

Criteria

To qualify under the national objective of slums/blight on an **area** basis, an activity must meet **all** of the following criteria:

- ❖ The area must be officially designated by the grantee and must meet a definition of a slum, blighted, deteriorated or deteriorating area under State or local law. (For these purposes, it is not necessary to follow the formal procedures under State law for designating a slum or blighted area.)
- ❖ The area must exhibit the following physical signs of blight or decay:
 - ◆ there must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a “safe harbor,” HUD will consider this test to have been met if *either*
 - the proportion of buildings in the area that are in such condition is at least equal to that specified in the applicable State law for this purpose; **or**
 - in the case where the applicable State law does not specify the percentage of deteriorated or deteriorating buildings required to qualify the area, then at least one quarter of all the buildings in the area must be deteriorated or deteriorating; **or**
 - the public improvements throughout the area must be in a general state of deterioration. (For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.)
- ❖ Documentation must be maintained by the grantee on the boundaries of the area and the conditions which qualified the area at the time of its designation.
- ❖ Activities to be assisted with CDBG funds must be limited to those that address one or more of the conditions which contributed to the deterioration of the area. (Note that this does not limit the activities to those that address the blight or decay itself, but it allows an activity to qualify if it can be shown to address a condition that is deemed to have contributed to the decline of the area.)

It should be noted here that, once an area has been properly designated as a slum or blighted area under these provisions, the grantee may continue to assist activities that are designed to address a condition that caused the decline of the area even if the area has been brought to a point where it could no longer meet the tests for physical evidence of blight needed for its initial designation. However, if the regulatory requirements have been revised to become more stringent since the area was designated, the area would need to be newly designated (e.g., requalify) under the new criteria before new activities could be assisted with CDBG funds.

Where the assisted activity is *rehabilitation of residential structures*, two additional criteria must be met:

- ❖ Each such building must be considered substandard under local definition. (At a minimum, the local definition must be at least as stringent as the housing quality standards used in the Section 8 Housing Assistance Payment Program - Existing Housing.); and
- ❖ All deficiencies making the building substandard must be corrected before less critical work on the building may be undertaken.

Note: These two criteria do not apply to nonresidential rehabilitation (rehabilitation of commercial or industrial buildings).

Reference: §570.208(b)(1)

Example

Typical activities designed to address blight on an area basis include:

- Acquisition and clearance of blighted properties,
- Installation of a park or playground,
- Commercial revitalization through facade improvements, and
- Treatment of toxic materials on property to enable it to be redeveloped for a specific use

when the assistance is designed to address one or more of the specific conditions which originally qualified the area.

Records to be Maintained

The records must include:

- ❖ The date of designation of the area and its boundaries;
- ❖ A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria for designation;
- ❖ A description of the activity showing how it addressed a condition which led to the decline of the area. Each residential rehabilitation activity must also be supported by documentation that shows:
 - ◆ how the building qualifies under the grantee’s definition of “substandard”;
 - ◆ a pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and
 - ◆ details and scope of the CDBG-assisted rehabilitation, by structure (including the information needed to show that any deficiencies making the building substandard were eliminated prior to less critical work being done).

Reference: §570.506(b)(8) and (9)

Tips

Just because an activity is located in a designated slum/blight area does not mean that it must qualify only under this subcategory. If the activity would meet the criteria under the national objective of benefiting L/M income persons, the location of the activity in the blighted area would not preclude its qualifying under the L/M Income Benefit national objective. For example, rehabilitation of housing that is located in a designated slum/blight area but will be occupied by a L/M Income Benefit household upon completion of the rehabilitation work could possibly meet both the criteria under this subcategory and the criteria under the L/M Income Housing subcategory. The grantee should consider choosing the L/M Income Benefit national objective in this case, since it would help meet the grantee’s certification that at least 70% of CDBG expenditures will be for activities that meet the L/M Income Benefit national objective.

Addressing Slums or Blight on a Spot Basis

Criteria

The elimination of specific conditions of blight or deterioration on a spot basis is designed to comply with the statutory objective for CDBG funds to be used for the prevention of blight, on the premise that such action(s) serves to prevent the spread to adjacent properties or areas.

To comply with the national objective of elimination or prevention of slums or blight on a spot basis, i.e., outside a slum or blighted area, an activity must meet the following criteria:

- ❖ The activity must be designed to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area; and
- ❖ The activity must be limited to one of the following:
 - ◆ Acquisition (but see the discussion about this category under the section entitled Documenting Compliance later in this chapter);
 - ◆ Clearance;
 - ◆ Relocation;
 - ◆ Historic Preservation; or
 - ◆ Rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

Reference: §570.208(b)(2)

Example

- ❖ Elimination of faulty wiring, falling plaster, or other similar conditions from a residential building which are detrimental to all potential occupants;
- ❖ Historic preservation of a blighted public facility; and
- ❖ Demolition of a vacant, deteriorated, abandoned building.

Records to be Maintained

The grantee's records must include:

- ❖ A description of the specific condition of blight or physical decay treated; and
- ❖ A description of the assisted activity showing that it falls under one of the activity types that are eligible to be carried out under this subcategory. For rehabilitation of a building carried out under this category, a description for each assisted structure showing the specific conditions that posed a threat to public health and safety, and details of the scope of CDBG-assisted rehabilitation, indicating that it was limited to addressing a specific condition that posed such a threat.

Reference: §570.506(b)(10)

Tips

To be considered to be detrimental to public health and safety, a condition must pose a threat to the *public in general*. A specific condition of a housing unit may be treated under this subcategory only if it poses a threat to any occupant. Thus if a housing unit is occupied by a disabled person and a specific condition of the housing unit poses a threat to the health and safety only for the disabled occupant, it would not qualify (i.e., it would have to pose a threat to nondisabled occupants as well).

Housing that will be occupied by a L/M income household following rehabilitation should qualify under the L/M Income Housing criteria and should not be treated under this subcategory even though it might otherwise meet the tests to do so. This is because the grantee has an obligation to use a minimum of 70% of its funds for activities qualifying under the L/M Income Benefit national objective. (See Chapter 4 for further information on this requirement.)

Public improvements cannot qualify under this standard except for rehabilitation of public buildings (other than buildings for the general conduct of government) and historic preservation of public property that is blighted.

As a general rule, national objective compliance for the acquisition of real property must be based on the use of the property after the acquisition takes place. The initial determination is based on the *planned* use of the property, but the final determination is to be based on the *actual* use. However, when property is acquired for the purpose of clearance to remove specific conditions of blight or physical decay, the clearance is considered to be the actual use of the property, but any subsequent use made of the property following clearance must be considered to be a “change of use” under §570.505. (See §570.208(d)(1)).

Addressing Slums or Blight in an Urban Renewal Area

Criteria

To qualify under the national objective of addressing slums/blight on the basis of urban renewal completion, an activity must:

- ✓ Be located within an Urban Renewal project area or Neighborhood Development Plan (NDP) action area; i.e., an area in which funded activities were authorized under an Urban Renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and
- ✓ Be necessary to complete the Urban Renewal plan, as then in effect. (This includes the *initial* land redevelopment called for by the plan.)

Reference: §570.208(b)(3)

Background

This category is intended to permit completion of the redevelopment of areas in which activities were begun with funds received under the Federal Urban Renewal and NDP programs which were replaced by the CDBG program and for which areas the Urban Renewal plan remains in effect. CDBG funds may be used for any activity that falls within one or more of the categories of basic eligibility and is undertaken for the purpose of completing the approved plan for the Urban Renewal area.

Note: Note that the plan for redevelopment of such an area may have been amended since it was first approved. For purpose of this application, the Urban Renewal Plan is the latest plan that has been approved through officially authorized procedures. Once a property has been developed or redeveloped in accordance with the plan, any future redevelopment of the same property is not considered as necessary to complete the plan and, therefore, would not meet the criteria described above.

Records to be Maintained

The grantee records must contain the following:

- ❖ A copy of the Urban Renewal Plan, including maps and supporting documentation, as in effect at the time of close-out of Federal financial assistance under the Housing Act of 1949, or financial settlement under Section 112 of the HCD Act; and
- ❖ A description of the assisted activity showing how it was needed to complete the plan for the area.

Reference: §570.506(b)(11)

Urgent Needs

Criteria

To comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions which the grantee certifies:

- ✓ 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 the activity on its own, and
- ✓ Other resources of funding are not available to carry out the activity.

A condition will generally be considered to be of recent origin if it is developed or became critical within 18 months preceding the grantee's certification. *Reference: §570.208(c)*

Example

A major catastrophe such as a flood or earthquake that threatens the community's residents with the spread of serious disease. The community's other resources may well be depleted and other Federal programs may not be sufficient to cover all the costs.

Records to be Maintained

The records should include:

- ❖ A description of the condition that was addressed, showing the nature and degree of seriousness of the threat it posed;
- ❖ Evidence that the grantee certified that the CDBG activity was designed to address the urgent need;
- ❖ Information on the timing of the development of the serious condition; and
- ❖ Evidence confirming that other financial resources to alleviate the need were not available.

Reference: §570.506(b)(12)

Tips

If a participating unit of general local government within an urban county uses CDBG funds for an urgent need, the *county* must be able to document that it was unable to finance the activity out of its own resources, in addition to having evidence that the participating local government was unable to finance the activity.

Documenting Compliance

It is useful to consider the record keeping requirements that go with a particular national objective category or subcategory before deciding which one to use for the activity. Some discussion of what is involved in documenting compliance with those criteria for the various categories and subcategories is included in those respective sections of this chapter. Further guidance on this matter is provided in this section.

Choosing Among the Three National Objectives

A given activity may be able to meet the criteria for more than one national objective. In most such cases, it would be wise to use the L/M Income Benefit national objective because of the requirement that at least 70% of the funds must be used under that objective. Even where it seems clear that the 70% requirement will be met, based on the activities currently planned to be assisted by the grantee, it may still be useful to choose the L/M Income Benefit national objective over the other two national objectives. This is because the grantee cannot always accurately plan its expenditures by activity, nor can it anticipate the fact that an opportunity may arise to assist an activity that cannot qualify under the L/M Income Benefit national objective but that may be of great importance. (This situation is most likely to occur when the grantee wants to consider making use of its “float” or a Section 108 Loan guarantee. See Appendix F.)

There are also cases where it would be useful to keep records for a given activity so that it can be shown to meet more than one national objective if there is a high degree of uncertainty as to whether an activity might not meet one of the national objectives. Consider the case of an activity that is to qualify on the basis of creating jobs. If the nature of the project leaves some doubt that it may be able to create one or more of the planned jobs that may be critical to meeting the test that at least 51% of the jobs benefit L/M income persons, the grantee may be reluctant to proceed. If the activity could also qualify under the Slums/Blight Area criteria, the grantee may want to consider keeping records to show that the activity meets both objectives. In this way, if the project does not proceed as planned and the L/M Income Jobs criteria cannot be met, the grantee could then switch the activity to the Slums/Blight national objective rather than have the activity in noncompliance with CDBG rules.

Some activities (especially providing assistance to commercial properties) can be carried out under either the L/M Income Jobs or L/M Income Area Benefit criteria (e.g., expansion of a grocery store serving a poor neighborhood). Where this is the case, the record-keeping for national objectives purposes usually would be easier for the grantee if it were to qualify the activity under area benefit. If the service area can be easily determined, the percent of L/M income residents can be quickly calculated for the area. If the resultant percent is high enough to qualify, there would be no further records needed to be kept for the activity to qualify under the L/M Income Benefit national objective. (Note, however, that for property under the control of a grantee or a subrecipient, records showing how the property is being used may have to be kept for an extended period of time, pursuant to the requirements of §570.503(b)(8) and 570.505). The activity might also be able to qualify based on jobs being created or retained that would principally benefit L/M income persons. But qualifying on this basis entails careful monitoring of the business to keep track of the jobs and securing income information from the employees or applicants. Before making this choice, however, one needs to consider the related requirement concerning public benefit, where that applies. It is likely that the national objective and public benefit requirements can be met using the same basis (i.e., area benefit vs. jobs), but this is not always the case. If the nature of the planned activity is such that the business could not meet the public benefit test based on the area served, but the activity could meet the public benefits job standards, it might then be the best choice to qualify both tests (public benefit and national objectives) on the basis of jobs. This is because the grantee would have to keep track of the jobs created or retained for public benefit purposes, and would only have to add the information on income status of employees or applicants to qualify under L/M Income Benefit national objective based on Jobs.

When the grantee elects to meet the Slums/Blight national objective, it is necessary to be able to show that blight exists (either for an area or with respect to the property being assisted). In either case, one way that this may be documented easily is through the use of pictures. As the saying goes, “a picture is worth a thousand words.” Since the test for qualifying under this objective involves showing that “objectively determinable signs of blight” exist, it should be evident to the eye and a picture may be able to show this most clearly. The records should still, however, also include narrative information to supplement the pictures and complete the documentation requirements.

Many grantees have expressed a concern about designating an area as a slum or blighted area for CDBG purposes. The concern is that persons residing in that area might object to such a characterization of their neighborhood. It should be noted that, while the grantee does have to make a formal designation of the area for this purpose, it need not use the term “slum or blight” in so doing. In making public statements about the area, it may simply call it a “redevelopment area.” However, in its record-keeping for

activities in the area, a reference can be made to the applicable regulation citation in lieu of repeating the words used in the regulations in order to provide sufficient clarity for program monitors regarding the CDBG-qualifying classification.

As mentioned in the section of this chapter on L/M Income Jobs, there are cases where a person may be considered to be L/M income based on the census tract or BNA in which he/she resides, without having to check further for family size and income. If the grantee typically uses a certification form for determining L/M income status, it might be wise to add the location of the person's residence if it is not already on the form. Since the presumptions are based on the census tract (or BNA), it is necessary that the grantee maintain information showing addresses that fall within the Census divisions in its jurisdiction. It should also be possible to use a computer program to determine whether a particular address falls within a tract/BNA that qualifies the person for the L/M income presumption.

Also, as mentioned earlier under the section on L/M Income Area Benefit, the proper identification of the area served by the activity is critical for purposes of complying under this subcategory. Records showing the factors considered by the grantee in making this determination are important to showing compliance for this purpose. Additional discussion concerning identifying service areas may be found in Appendix D of this Guide.

Acquisition of Real Property

Section §570.208(d)(1) provides that, where the assisted activity falls under the basic eligibility category of Acquisition of Real Property (at 570.201(a)), a preliminary determination of whether the activity meets a national objective may be based on the planned use of the property after acquisition. But a final determination must be based on the actual use. This means that the grantee's files must be able to show the actual use of the property after acquisition .

This same provision also states that, where the acquisition is for the purpose of clearance to eliminate blight, the clearance activity will be considered to be the actual use of the property for this purpose. However, any subsequent use or disposition of the cleared property is to be treated as a "change of use" under the provisions of §570.503 or §570.505, as applicable.

Making the Best Choice

Making the wisest choice among available alternatives for meeting a national objective is highly dependent on the individual grantee. While the relative burden of record-keeping requirements is an important factor to consider, it may also be important for the grantee to be able to show how it is making progress against its own community development goals and objectives. Where, for example, economic empowerment of L/M income persons is one of the grantee's highest goals, it would presumably want to be able to show progress in terms of number of jobs created and how many of those jobs are taken by L/M income persons. Thus, the grantee may want to collect such information even for an activity that could qualify on an area benefit basis (assisting a grocery store that serves a L/M income neighborhood but that also creates jobs that are taken by residents of that area).