



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Community Planning and Development

Special Attention of:

All CPD Division Directors
State CDBG Program Managers

Notice CPD- 07-02

Issued: March 21, 2007
Expires: March 21, 2008

Supersedes:

Cross References: 24 CFR 570.483(b)(1)

**SUBJECT: Transition Policy for Low/Mod Income Summary Data
Updates for Fiscal Year 2007 for the State Community Development Block Grant
program**

This Notice describes policy guidance for using the updated Low/Mod Income Summary Data (LMISD) resulting from the new income limit areas HUD is now using when preparing median family income estimates and income limits. The posting will include updated data for each non-entitlement locality in each state and will reflect new entitlement cities and urban county configurations. The updated LMISD data will have a minimal impact on states. Of the approximately 40,000 units of general local government, only 16 areas that previously met the 51% low and moderate income (LMI) eligibility threshold, now fail to meet the threshold. In addition, there are nearly 400 new areas that previously were not eligible, and now meet the 51% eligibility threshold. Information on the impact on all areas is contained in websites listed later in this Notice.

The LMISD are a critical support for the statutory and regulatory Community Development Block Grant (CDBG) national objective of providing benefit to low- and moderate-income persons on an area basis. Under the regulation, 24 CFR 570.483(b)(1)(i), states have the option of either using HUD provided data, or survey data that is methodologically sound, for official determination of compliance with the low- and moderate-income area benefit national objective. HUD issued CPD Notice 05-06, titled, "HUD Suggested Survey Methodology to Determine the Percentage of Low- and Moderate-Income in the Service Area of a CDBG Funded Activity," which provides guidance to states on conducting surveys. If your office believes that relief from the transition policy is necessary, please consult with the State and Small Cities Division before taking action.

The current changes in the LMISD are based on the income limits as calculated using revised area definitions. In a [Federal Register](#) notice published December 16, 2005, HUD proposed changes in the metropolitan area definitions used to calculate HUD median family income limits and

estimates. The new definitions, which match FY 2006 fair market rent (FMR) areas, were used in the new HUD estimates that became effective March 8, 2006. The new definitions are based on the current Office of Management and Budget (OMB) metropolitan statistical area (MSA) definitions, but divide OMB areas along the old FMR area lines in cases where significant differences in rents or median comes exist. OMB revises metropolitan area definitions after each Decennial Census. It issued its 2000 Census-based definitions in 2003, which contained substantial changes to several metropolitan area definitions. These changes were made to better reflect metropolitan area commuting tendencies and patterns of economic integration. The OMB metropolitan area definitions are used on a widespread basis throughout the federal government for both data collection and program administrative purposes. The 2000 Census based income limits using the new income limit area geography combined with the 2000 decennial Census data were used to recalculate the LMISD and are available at <http://www.hud.gov/offices/cpd/systems/census/lowmod/calculation.cfm>.

For further explanation, please review the December 16, 2005, Federal Register notice in which HUD proposed changes in the metropolitan area definitions used to calculate HUD median family income estimates and income limits. It is easily accessed at: http://www.huduser.org/datasets/il/il06/FY06_ProposedMeth.pdf. Another useful source of information on the FY 2006 income limit changes is found at: <http://www.huduser.org/datasets/il/il06/faq.html>.

Distribution. Each Field Office is responsible for notifying their state via e-mail that the state can access the new data from HUD's website. The LMISD has been posted on HUD's website. The website is www.hud.gov/offices/cpd/systems/census/lowmod/index.cfm. States should be encouraged to acknowledge receipt of this notification by return e-mail to the Field Office. If the Field Office does not receive acknowledgement from the state, then a written notification should be sent to the state. This process should be completed within two weeks after the Field Office receives this Notice.

Effective Date for Updated LMISD. The Department will not consider the LMISD referenced in this Notice to be in effect until 60 days after the date of this Notice, or 60 days after a state's program year start date for program year 2007, whichever is later, but no date shall be later than July 1, 2007. States have the option of utilizing the information as soon as it becomes available.

Transition Policy. If the new LMISD data shows that an area no longer qualifies under 24 CFR 570.483(b)(1)(i), starting and/or finishing activities in a program year should be governed by the following guidance.

- Defined Services Areas. Area benefit activities for which a specific service area had been identified based on data derived using the prior LMISD and for which CDBG funds had already been awarded as of the effective date of the new LMISD may continue to qualify under the previous data, but only to the amount awarded for the activity as of the effective date. Amounts that need to be expended for such activities beyond the awarded amount and all area benefit activities initiated after the effective date of the new data must be based on the new LMISD.
 - Awarded: For these purposes, "awarded" has the same meaning as "distributed" under 24 CFR 570.494: 'obligated and announced to units of general local government.' Funds are "awarded" on the date on which the state officially announces the selection and awards of grants to its units of general local government.

- Pre-award Costs. For those area benefit activities that involve pre-award costs authorized by the state, CDBG funds may be used to reimburse the costs previously incurred as long as the activity's service area still meets the low/mod qualifying standard from the LMISD in effect at the time the costs were incurred.
- Acquisition of Real Property. For area benefit activities using prior LMISD that include the acquisition of property with CDBG funds, the development of the property may be completed using the prior LMISD if CDBG funds were awarded for the acquisition prior to the new data being made effective for the grantee and the use planned for the property at the time of acquisition does not change. If the planned use changes after the 2007 LMISD effective date, compliance for the area served by the new activity (use) with the low/mod benefit national objective must be based on the 2007 LMISD (see example 2 below).
- Activities Involving Loan or Grant Programs. Certain activities may be designed to meet the low- and moderate-income area benefit national objective criterion, but involve the provision of direct financial assistance to individuals or businesses in that area. By far the most common such situation would be an activity making loans or grants to businesses that provide goods or services to residents of a neighborhood, where at least 51 percent of the residents are low- and moderate-income. Application of the new LMISD to such activities will follow the same principle as is required under the low- and moderate-income housing and jobs national objective criteria: each separate provision of assistance must meet the national objective criterion as of the date the assistance is obligated to the business or individual. Even if a state awarded a grant to a community for such an activity before the new LMISD were effective, assistance can be obligated to individual activities after that effective date only if those activities still meet the area benefit national objective criterion (see example 3 below).
- Cost Overruns. If there is an unexpected increase in the cost of an activity using prior LMISD data, and that cost increase does not change the scope or purpose of the activity, grantees may continue funding the project to cover the cost overrun. However, enhancements, amendments, or continuations (e.g., improvements that change the scope or purpose of the activity) may only be funded if the activity will meet the low- and moderate-income area benefit national objective using the new LMISD (see example 6 below).

Examples:

1. \$100,000 has been awarded to a city for construction of a recreation center as a public facility that will serve a low/mod area based on prior LMISD. \$20,000 was obligated by the city prior to the effective data of the 2007 LMISD for the grantee. Because funds had been awarded by the state to the city, the activity may continue to qualify under the prior LMISD and the remaining \$80,000 may be used to complete construction.

2. A state awarded \$150,000 to a city for acquisition of property and construction of a neighborhood recreation center (on the property) that, based on prior LMISD, will serve a low/mod area. The acquisition was completed prior to the effective date of the updated LMISD, but the contract for construction had not been signed. Because the state awarded the grant and the state grant recipient grantee completed the acquisition prior to the effective date of the 2007 LMISD update, the activity may be completed using the prior LMISD, as long as the property is used for the construction of a neighborhood recreation center as planned.
3. A state awarded a grant to a city for “economic development loans to businesses located in and serving the Hilltop neighborhood,” which is a qualified low/mod area based on the prior LMISD, and one loan had been made (obligated) prior to the 2007 LMISD update. Because each loan would be considered a separate activity, subsequent loans made under this economic development program could only qualify if the service area is still eligible based on the 2007 LMISD update data.
4. A state publicly announces that it was awarding a grant to county “X” before the new LMISD become effective, but the grant contract was not signed by the county until after the effective date. The service area of the activity qualified as being at least 51 percent low- and moderate-income under the old LMISD, but would not qualify under the new LMISD. Under the definition of “awarded” for the state program the county can continue using the old LMISD data.
5. A village submitted an application to a state for an activity; the service area qualifies as being at least 51 percent low- and moderate-income under the old LMISD at the time the application was submitted. The new LMISD goes into effect while the state is reviewing the application, and the service area no longer qualifies. Under this scenario the state cannot fund this activity based on the old LMISD. The state and the village would either have to obtain local survey data showing the service area qualifies, or else determine whether the activity could be designed to meet another national objective criterion.
6. State “X” provides a funding set-aside for construction contingencies in its Method of Distribution. Town “Q” received a 2006 grant for water/sewer and shortly after the new LMISD goes into effect, the project engineer discovers an unexpected layer of bedrock that will raise the construction cost for the project by \$100,000. The state can award another \$100,000 to Town “Q” for construction contingencies providing the scope of the project (previously awarded) doesn’t change.

In closing, please keep in mind the Department’s policy on the required use of income limits that are updated and issued annually by HUD. State CDBG program regulations do not contain a specific definition of what constitutes income. States are free to develop their own definition of income and can follow the CDBG Entitlement regulations for interpretive guidance (see 24 CFR 570.3).

If you have any questions about the guidance provided in this memorandum, HUD field staff should contact the State and Small Cities Division on (202) 708-1322; states should contact their HUD Field Offices.