



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

Special Attention of:

Honolulu and Caribbean Directors of CPD
Insular Area CDBG Program Managers

Notice CPD-04-09

Issued: August 20, 2004
Expires: August 20, 2005

**SUBJECT: Transition Policy for Low/Mod Income Summary Data
Updates for Fiscal Year 2004 for the Insular Area Community Development Block
Grant program**

This Notice describes policy guidance for using the Low/Mod Income Summary Data (LMISD) resulting from the 2000 Census that will be posted on HUD's website. The posting will include census tract and block group data for the first time for the insular areas. Up to now, Guam and the Virgin Islands were the only insular areas where any income data was available on a subjurisdiction basis, and that data was not strictly comparable to the LMISD. For American Samoa, and the Commonwealth of the Northern Marianas (CNMI), it was assumed that all areas of the jurisdiction were at least 51% low-and moderate-income unless that presumption could be rebutted by generally available information.

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. 24 CFR 570.208(a)(1)(vi) states that the most recently available decennial census information must be used to the fullest extent feasible together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Despite this regulatory requirement, there was no equivalent census data for the insular areas until the 2000 census. Where the service area does not coincide with the census boundaries, or if the census data does not reflect current income levels in an area, a survey of the residents may be conducted in accordance with the requirements of Section 570.208(a)(1)(vi). HUD will issue guidance on conducting surveys in an upcoming CPD Notice. If your office believes that relief from the transition policy is necessary in the form of a waiver, please consult with the State and Small Cities Division before taking action.

Distribution. The Honolulu and Caribbean Field Offices are responsible for notifying their insular grantees via e-mail that the insular areas can access the new data from HUD's website. The LMISD were posted on HUD's website on August 13, 2004. The website is: www.hud.gov/offices/cpd/systems/census/lowmod/index.cfm. Insular areas 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 insular area, then a written notification should be sent to the insular area. 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 October 1, 2004. Insular areas 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 570.208(a)(1), starting and/or finishing activities in a program year should be governed by the following guidance:

- Defined Service Areas. Area benefit activities for which a specific service area had been identified based on data derived using the prior data, or low-and moderate-income presumption for American Samoa and CNMI and for which CDBG funds had already been obligated, as of the effective date of the new LMISD may continue to qualify under the previous data, but only to the budgeted amount for the activity as of the effective date. Amounts that need to be expended for such activities beyond the budgeted amount and all area benefit activities initiated after the effective date of the new data must be based on the new LMISD.

Budgeted: For these purposes, “budgeted” means the total amount identified for the activity in the Integrated Disbursement and Information System (IDIS), or in the applicable Insular Area program application (or amendments, if applicable) as of the effective date of the new LMISD. However, this allowance extends only to those area benefit activities with a clearly defined service area. An amount that was included in an approved application or IDIS for an activity described as “an economic development loan to a commercial business” would not be considered “budgeted” and, therefore, would not meet this test. But an economic development loan with a specified service area, e.g., “economic development loan to ABC Groceries, Inc., serving the Hilltop neighborhood,” would be considered budgeted.

Obligated: As defined in 24 CFR 85.3, obligation means the amount of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

- Pre-award Costs. For those area benefit activities that involve authorized pre-award costs, CDBG funds may be used to reimburse the costs previously incurred as long as the activity’s service area still meets the low- and moderate-income qualifying standard based on the data or the low-and moderate-income presumption for American Samoa and CNMI that was in effect at the time the costs were incurred.
- Acquisition of Real Property. For area benefit activities using prior data that include the acquisition of property with CDBG funds, the development of the property may be completed using the prior data, if CDBG funds were obligated 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 new LMISD effective date, compliance for the area served by the new activity (use) with the low/mod area benefit national objective must be based on the new LMISD.

- Cost Overruns. If funds have been obligated for an activity and there is an unexpected increase in the cost of an activity which was qualified using prior data or the low-and moderate-income presumption for American Samoa and CNMI, and that cost increase does not change the scope or purpose of the activity, the grantee may cover the cost overrun, even though it was not included in the amount budgeted. However, enhancements (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.
- 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 good 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 principal as is required under the low- and moderate-income housing and jobs national objective criteria: each separate provision of assistance must meet the area benefit national objective as of the date the assistance is obligated to each business or individual.
- Amendments. Following the effective date for use of the new LMISD, amendments to budgeted activities that increase the amount of funds budgeted for the activity or that change the service area of the activity, must qualify under the new data. Also, an activity for which funds were budgeted but no funds had been obligated by the effective date of the new LMISD must qualify under the new LMISD data.

Examples of activities applying the new LMISD and the old data:

1. An insular area has budgeted \$100,000 for construction of a recreation center as a public facility that will serve a low/mod area based on prior data. Prior to the effective date of the new LMISD for the grantee, \$20,000 was obligated. Because funds had been obligated, the activity may continue to qualify under the prior LMISD and the remaining \$80,000 may be used to complete construction.
2. A grantee budgeted \$150,000 for acquisition of property and construction of a neighborhood recreation center (on the property) in CNMI that, based on the prior low/mod assumption, 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 let. Because the grantee completed the acquisition (obligated funds) prior to the effective date of the new LMISD, the activity may be completed using the prior low/mod assumption, as long as the property is used for the construction of a neighborhood recreation center as planned.
3. An activity is listed in the approved application as “economic development loans to businesses located in and serving the Hilltop neighborhood,” which is a qualified low/mod

area based on the prior data, and one loan had been made (obligated) prior to the grantee's effective date of the new LMISD. 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 new LMISD.

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; insular area grantees should contact their HUD Field Offices.