

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circular A-21, A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of ICDBG funds.

(ii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. Exceptions to this general prohibition are set forth in §1003.201(o).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the ICDBG program. For example, the use of ICDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under §1003.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disability, parking and similar public facilities; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* ICDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR part 42; or

(ii) When carried out by a CBDO pursuant to §1003.204(a);

(4) *Income payments.* The general rule is that ICDBG funds may not be used

for income payments. For purposes of the ICDBG program, income payments means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

**§ 1003.208 Criteria for compliance with the primary objective.**

The Act establishes as its primary objective the development of viable communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, not less than 70 percent of the expenditures of each single purpose grant shall be for activities which meet the criteria set forth in paragraphs (a), (b), (c) and (d) of this section. Activities meeting these criteria as applicable will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The grantee shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(a) *Area benefit activities.* (1) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(2) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(3) In determining whether there is a sufficiently large percentage of low and

moderate income persons residing in the area served by an activity to qualify under paragraph (a) (1) or (2) of this section, the most recently available decennial census information shall 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. Grantees that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the grantee rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(b) *Limited clientele activities.* (1) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under paragraph (b) of this section: Activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs except as provided in paragraph (b)(4) of this section.) To qualify under paragraph (b) of this section, the activity must meet one of the following tests:

(i) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of

persons in any one of the following categories may be presumed to benefit persons, 51 percent of whom are low and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' current Population Reports definition of "severely disabled", homeless persons, illiterate adults, persons living with AIDS, and migrant workers; or

(ii) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(iii) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(iv) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(2) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(i) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under §1003.208(a); or

(ii) The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under §1003.208 (a) or (d); or

(iii) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit.

(3) A microenterprise assistance activity carried out in accordance with the provisions of §1003.201(1) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during the grant period who are low and moderate income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify for up to a three year period.

(4) 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 may qualify under this paragraph in the following limited circumstance:

(i) In such cases where such training or provision of supportive services assists business(es), the only use of ICDBG assistance for the project is to provide the job training and/or supportive services; and

(ii) The proportion of the total cost of the project borne by ICDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(c) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. Funds expended for activities which qualify under the provisions of this paragraph shall be counted as benefiting low and moderate income persons but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons. If the structure assisted contains two dwelling units, at least one must be occupied by low and moderate income households, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents

to qualify under this criterion. The grantee shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

(1) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances:

(i) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(ii) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(iii) The proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(2) When ICDBG funds are used for housing services eligible under §1003.201(j), such funds shall be considered to benefit low-and moderate-income persons if the housing for which the services are provided is to be occupied by low-and moderate-income households.

(d) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate persons. For purposes of determining whether a job is held by or made available to a low or moderate income person, the person may be presumed to be a low or moderate income person if: he/she resides within a census tract (or block numbering area) where not less than 70 percent of the residents have incomes at or below 80 percent of the area median; or, if he/she resides in a census tract (or block numbering area) which meets the Federal Empowerment Zone or Enterprise Community eligibility criteria; or, if the assisted business is located in and the job under consideration is to be located in such a tract or area. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies

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under this paragraph. However, in certain cases such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by ICDBG funds. Where ICDBG funds are used to pay for the staff and overhead costs of a CBDO under the provisions of §1003.204 making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the grantee must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(1) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(2) The grantee and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(e) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses the primary objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property,

excluding any short-term, temporary use.

(2) Where the assisted activity is relocation assistance that the grantee is required to provide, such relocation assistance shall be considered to address the primary objective as addressed by the displacing activity.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a) of this section as well as those of paragraph (d) of this section in order to qualify as benefiting low and moderate income persons.

(4) Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the grantee's overall program benefits such persons. In determining the percentage of funds expended for such activities:

(i) Costs of administration and planning, eligible under §1003.205 and §1003.206 respectively, will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the ICDBG funds and, accordingly, shall be excluded from the calculation.

(ii) Funds expended for the acquisition, new construction or rehabilitation of property for housing those qualified under §1003.208(c) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction, or rehabilitation by the percent of units in such housing occupied by low and moderate income persons.

(iii) Funds expended for any other activity which qualifies under §1003.208 shall be counted for this purpose in their entirety.

**§ 1003.209 Prohibition on use of assistance for employment relocation activities.**

(a) *Prohibition.* ICDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one Identified Service Area to another Identified Service Area, if