

## X. National Objective

All NDR funded activities must meet one of the three national objectives required under the authorizing statute of the CDBG program:

- Benefit Low and Moderate Income (LMI) persons.
- Aid in the prevention or elimination of slum or blight (Slum and Blight).
- Meet a need having a particular urgency (Urgent Need).

CDBG regulations state that a project is not considered to have met a national objective until it is complete. This requires HCD to track each project through completion and the closeout phase.

HCD's NDR projects meet the following National Objectives:

Project	National Objective
BUF	Benefit to Low and Moderate Income (LMI) persons based on providing Job opportunities
CRC	Benefit to Low and Moderate Income (LMI) persons on an Area Basis
FWHP	Urgent Need

HCD has been granted a waiver under the CDBG NDR program for LMI requirements where, as necessary, HUD has permitted the state to use a percentage of no less than 38 percent to qualify activities under the low and moderate income area benefit national objective. See also the [Federal Registrar Notice 36812 for August 7, 2017](#).

### A. National Objective Compliance for Eligible Activities

#### 1. Urgent Need

The certification requirements to document urgent need under 24 CFR 570.483(d) have been waived by HUD for the purpose of CDBG NDR until 24 months after the date HUD obligates funds to a grantee. In place of 570.483(d), HCD must document how programs and/or activities funded under the urgent need national objective respond to a disaster related impact (type, scale, and location of the disaster related impacts to be addressed).

Activities identified in the approved Action Plan that meet the urgent need national objective can be utilized through the extended expenditure deadline of September 30, 2022.

#### 2. Acquisition

Qualifying an acquisition activity under one of the CDBG national objectives depends entirely on the use of the acquired real property following its acquisition.

A preliminary determination of compliance may be based on the planned use and documentation shows that the property was acquired at fair market value.

Eligibility for the use of the property should be documented based on the national objective that it is intended to meet. For example, if the national objective is LMI Area Benefit, then it must be shown that the property will be used in a purpose that will benefit all residents in a designated area that is comprised of at least 51 percent LMI households. If property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, HCD and its subgrantees must document the general use it intends for the property, the national objective category it expects will be met, and make a written commitment to use the property only for a specific project under that general use that will meet the specified national objective.

The final determination must be based on the actual use of the property, excluding any short term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a “change of use” under 24 CFR §570.503(b)(8) or §570.505, as applicable.

Since the ultimate use of the property determines how a national objective will be met, whenever the use differs from that considered at the time of acquisition a review must be made of the new use to ensure it will meet a national objective. When such review results in the determination that the national objective being met differs from that ascribed to the activity initially, an adjustment must be made to the program records.

If property acquired with CDBG funds, or any interest therein, is subsequently transferred to another entity, the property or interest must be sold to the entity at the current fair market value unless the property will be used for an activity which meets a CDBG national objective. Sale proceeds would be program income. The purchase of real property by HCD and its subgrantees or other entities under this eligibility category is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Among other things, this could mean that persons displaced as a result of the acquisition must be provided with financial assistance. Temporary easements, acquisition from another public agency, and voluntary offers in response to a public solicitation are exempt from Uniform Act requirements. Reference: 24 CFR §570.606.

### 3. Planning

The State of California was granted a waiver by HUD allowing state planning activities to be conducted without having to document meeting a national objective. Like entitlements regulations, NDR state grantees can presume that the planning activity meets a national objective. HUD also waived the \$35,000 public benefit rule and only requires that some reasonable level of public benefit be obtained when using NDR funding for economic activities that trigger public benefit compliance.

### 4. Relocation

The compliance of relocation activities with the national objectives of the CDBG program must be determined in one of two ways, depending on whether the

relocation assistance is mandatory. Where such assistance is required under the Uniform Act or the CDBG statute, the activity may qualify as meeting the national objective of benefiting LMI persons only where the acquisition or rehabilitation causing the relocation can also qualify under that objective.

If HCD or its subgrantees acquire property for construction of a public facility that will serve an area that qualified under the slums/blight objective, but cannot qualify as benefiting LMI income persons, the payment of assistance to those displaced by such activity would qualify under the slums/blight objective even if most or all of those displaced are LMI persons. This is because HCD and its subgrantees are required by law to make such payments and therefore it must be viewed as an integral part of the displacing activity.

In any case where the payment of such assistance is voluntary on the part of HCD or its subgrantees, however, the relocation payments could qualify either on the basis of the reuse of the property or the income of the recipients of the relocation assistance, at HCD and its subgrantees' option. Thus, HUD would accept a claim of addressing the LMI benefit objective where the voluntary payment of relocation benefits is made to LMI persons who were displaced by an activity that could not be considered to meet that objective. This is because the payment of such benefits clearly would not be needed to make possible the activity causing the displacement.

Because of the relationship of the optional versus mandatory aspects of relocation payments to the national objectives determinations, it is critical that HCD and its subgrantees make this distinction in its program files and identify the displacing project.

## 5. Public Facilities and Improvements

As provided in Section 105(a)(2) of the Housing and Community Development Act of 1974, the acquisition, construction, reconstruction, and improvements of public works, facilities, and site or other improvements (except for buildings for the general conduct of government) are eligible for CDBG funding.

Public facilities or public improvements are generally defined as those which are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. Site improvements of any kind made to property that is in the public ownership or use are considered to be a "public improvement".

To meet the national objective for urgent need, the project must demonstrate and certify that the public facility meets a critical need for the health or welfare of the community.

- The need may have existed previously, but has become a serious and immediate threat, or
- The need is of recent origin or recently became urgent, or
- The grant recipient is unable to finance the activity on its own, and other sources of funds are not available.

Except for highly specialized facilities, most public facilities and improvements are intended to benefit all residents of an area. Therefore, to qualify under the national objective of benefit to LMI persons, the CDBG funded public facilities and improvements must serve a primarily residential area having at least 51 percent LMI residents, notwithstanding the exceptions provided in the HUD area benefit waiver noted above.

In order to meet the national objective for benefit to low to moderate income persons in a public facility service area, the public facility must be operational and documentation of benefits and services received by local residents will be provided by the subgrantee and verified by HCD.

The appropriate service area of the intended benefit is defined by the NDR funding requirements for this project. Under the NDR award, HUD has limited the service area boundaries to within the MID URN. However, HUD has established that census data, including census tracts or block groups, may be used to determine the LMI ratio in an anticipated service area. If there is a reasonable expectation that the census information does not support that the intended service area would benefit a predominately LMI population, a survey using appropriate methodology for obtaining LMI income data may be used in lieu of conflicting census information.

Public facilities that are vacant after the project is complete or become vacant within the required period of use defined in the Agreement will not be able to meet a national objective.

## 6. Clearance

Section 105(a)(4) of the HCDA defines Clearance as:

- The demolition of buildings and improvements.
- The removal of demolition products (rubble) and other debris.
- Physical removal of environmental contaminants or treatment of such contaminants to render them harmless.
- Movement of structures to other sites.

Clearance may be considered a separate CDBG activity, but in scenarios where Clearance is an integral part to the construction or improvement on a CDBG funded site, the Clearance activity may be treated as a part of the construction costs and scope and need not be qualified separately under the CDBG program. Meeting the national objective is dependent on the purpose of the proposed Clearance project:

National Objective	Qualifying Condition
LMI – Area Benefit	The cleared property will be used for a purpose the benefits of which are available to all the residents in a particular area, and at least 51 percent of those residents are LMI persons.

LMI – Limited Clientele	The cleared property will be used for an activity the benefits of which are limited to a specific group of people, at least 51 percent of who are LMI persons.
LMI Housing	The cleared property will be used for providing housing to be occupied by LMI persons. Rental units for LMI income persons must be occupied at affordable rents.
LMI Jobs	The clearance is part of an activity that will create or retain permanent jobs, at least 51 percent of which are for LMI persons.
Slum or Blighted Areas	The clearance activities are within a designated blighted area and are designed to address one or more conditions that contributed to the deterioration of the area.
Spot Blight	The clearance activity is undertaken to eliminate specific conditions of blight or physical decay on a spot basis not located in a designated slum or blighted area.
Urgent Needs	The clearance is part of an activity designed to alleviate existing conditions and the grant recipient certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available.

## 7. Economic Development

Economic development activities can meet any of the three national objectives. The most common national objective met is LMI tied to jobs (LMJ). To meet this national objective, the assisted business must provide over half of all jobs created/retained from investment of CDBG-NDR funding to low and moderate income persons. Under NDR, economic development compliance will be required through BUF projects. Compliance is documented through multiple records maintained by the business receiving assistance and HCD:

- **Written agreement.** The agreement between HCD, and/or the subgrantee, and the business receiving CDBG assistance states the specific number of jobs to be created or retained and the actions the business, and the subgrantee, or HCD, will take to ensure the jobs benefit LMI persons.
- **Jobs created or retained.** Records must be maintained on which jobs were created or retained, what the FTE of each position was, and whether each job was held by or made available to an LMI person.
- **Jobs filled by LMI.** For those positions filled by LMI persons, the records must also include the exact job titles and the name, address, and income status of the person who took the job. Refer also to the presumption criteria under Section IX – “Eligible Activities” to determine LMI status.
- **Jobs made available.** If positions were not filled, but the business wants to count them toward the required number set in the agreement, the records

must document the title, description and FTE of each position, as well as any prerequisites, skills or education required to qualify for the position and if the business committed to provide necessary training. In addition, records must show how consideration was given to any LMI application, the name of persons who interviewed, along with the date of the interview and the income status of the applicant.

- **Jobs retained.** To document jobs retained by CDBG funds, records must include:
  - Evidence that jobs would have been lost without CDBG assistance.
  - A listing of the jobs held by LMI persons and the FTE status of each job.
  - Information on the family size and income status of each LMI person in a retained job.

Evidence that jobs would be lost without funding can be documented by notices to employees or public announcement of job cuts, or an analysis of financial records to support that the employer would be required to cut jobs without assistance.

- **Job turnover.** As turnover is part of any workplace, it must be included in the documentation for economic development compliance. Specifically, files must include:
  - Listing of current positions that were retained and are projected to turn over and become available for LMI persons within two years of CDBG assistance and the basis for projecting the turnover.
  - Documentation of the date of any turnover and the name and income status of the individual filling the vacancy.
  - If the person filling the vacancy is not LMI, the file must show how the job was made available to an LMI person.