

# Disadvantaged Community Guidance

## Michigan Department of Environmental Quality

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<http://www.michigan.gov/deq>

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## INTRODUCTION

The intent of this guidance is to provide applicants with information regarding the “**disadvantaged community**” provisions of the Drinking Water Revolving Fund (DWRF), State Revolving Fund (SRF), and Stormwater, Asset Management and Wastewater (SAW) programs by expanding upon the statutory provisions contained in Part 54 (Safe Drinking Water Assistance), Part 53 (Clean Water Assistance), and Part 52 (Strategic Water Quality Initiatives) of Michigan’s Natural Resources and Environmental Protection Act (1994 PA 451) MCL 324.5401-324.5418, MCL 324.5301-5317, and MCL 324.5201-5206.

For the DWRF and SRF, the benefits available to water suppliers and wastewater systems who qualify as a “disadvantaged community” are:

- Award of 50 additional project priority points [Sec. 5406(1)(d) and Sec. 5303(5)(c)(v)];
- Possible extension of the loan term to 30 years or the useful life of the facilities/ components funded, whichever is earlier; Drinking Water State Revolving Fund, Title 40, U.S.C. Section 35.3525(b)(3) and Federal Water Pollution Control Act, Section 603(d)(1).
- The DWRF also offers an additional benefit. Possible technical assistance to cover project planning costs for communities with a population of 10,000 or less, dependent upon availability of funds and submission of an approvable project plan. [Sec. 5404(c)]

For the SAW, the benefits available to wastewater systems who qualify as a “disadvantaged community” are:

- If any of the following conditions are met for a municipality, a grant may be issued to cover 100 percent of the incurred costs [Sec. 5204(e)(2)(a)(iii)]
  - Is a disadvantaged community as defined in Part 53
  - Is in receivership
  - Is operating under an emergency manager or an emergency financial manager appointed under state law
  - Is operating under a consent agreement per the Local Government Fiscal Responsibility Act.
- May not expend not more than \$500,000 in grant funds to construct projects identified in its asset management program [Sec. 5204(e)(2)(b)(i)]

This guidance may be used to assist applicants in assessing whether or not they may qualify as a disadvantaged community. The Department of Environmental Quality (DEQ), however, is responsible for reviewing the documentation to make a final determination based on the criteria included in the laws.

### **I. DETERMINING MEDIAN ANNUAL HOUSEHOLD INCOME**

#### **A. Rationale**

The principal reason for extending benefits to a municipality, which meets the disadvantaged community criteria is to reduce the economic stress on users within the area to be served by a proposed project.

The criteria for determining whether or not an applicant qualifies as a “disadvantaged community” are clearly related to permanent residents through the application of median annual household incomes (MAHI). Therefore, the

intent of Parts 52, 53, and 54 are primarily to provide relief for the permanent residents of the area to be served by the project.

B. Making the Determination

The MAHI, as defined by the U.S. Bureau of the Census, includes income from wages and salaries, non-farm self-employment, interest or dividend, net rental, social security, public assistance, retirement or disability, unemployment, government payments, alimony, child support, contributions and gifts, military family allotments, net gambling winnings, and other types of period payments other than earnings. It includes income of the householder and all other persons 15 years old or over in the household, whether related to the householder or not.

To determine the MAHI for the area served by the proposed project, the applicant must use the most recently published statistics from the U.S. Bureau of the Census, updated to reflect current dollars, for the municipality which most closely approximates the geographic area being served. The geographic area could be an entire city, township, village, or an unincorporated area. It could also be a combination of any of these entities in a regional system, as allowed in the definition of “municipality” found in Parts 53 and 54.

In some instances, the service area may represent only a portion of a municipality. If this is true, then more refined census data from individual census tracts or blocks may be required.

C. Updating the MAHI

It is important to utilize a “current year” MAHI in calculations used to determine disadvantaged community status. This will allow the most effective comparison against the annual user costs resulting from construction of the proposed project. If, for example, the MAHI for the service area is taken from the last census, a project may end up comparing annual user costs against MAHI data as much as nine years old. Such a disparity may result in inaccurate conclusions. This is why applicants are asked to update the MAHI using inflation indexing. All references to MAHI in this document imply an updated MAHI value.

This is accomplished by multiplying the MAHI in the most recently published census data by the change in the Detroit Consumer Price Index for Urban Consumers from that year to present. This information is available from the Bureau of Labor Statistics web page ([www.bls.gov](http://www.bls.gov)) under the Chicago region.

D. Community Survey

If appropriate census data is not available for the geographic area, which most closely approximates the area to be served by the proposed project, the applicant may have a survey of the municipality conducted by an independent consultant to document the current MAHI for the area served by the project.

**II. ANNUAL USER COSTS**

A. Definition

“Annual user cost” is defined in Section 5401(b), Part 54 of 1994 PA 451 as follows:

*Annual user costs means an annual charge levied by the applicant on users of the waterworks system to pay for each user’s share of the cost for operation, maintenance and replacement of the waterworks system. The costs may also include a charge to pay for the debt obligation.*

Since the intent of the “disadvantaged community” status is to provide relief for permanent residents of the service area, costs borne by such users must be directly identified and compared against the MAHI if affordability criteria are used to support the determination. This is best expressed as an annual charge levied for a residential equivalent unit (REU).

**B. Data Consistent with Cost Effective Analysis**

Accurate calculation of the initial annual user cost should be based on best available data at the time the project plan is drafted. To ensure that the applicant includes all pertinent information for the selected alternative in the project plan, the DEQ project planning guidance suggests that data presented should be consistent with the plan’s cost-effective analysis and include:

1. Estimated capital construction costs to be included in the calculation of annual user costs. (Note: Grants or other funding sources may reduce total costs assessed to users.);
2. Estimated operation and maintenance costs, including replacement of equipment, which may be necessary to ensure the system functions properly throughout its useful life;
3. Other costs to be incurred by system users, including tap-in fees, service connections, or abandonment of any existing facilities;
4. An analysis of the impacts of the annual user costs on the system users; and
5. A demonstration of the applicant’s ability to repay the incurred debt, including a discussion on how the project costs will be financed.

**C. Disadvantaged Community Information Included in the Project Plan**

To substantiate that the municipality is a disadvantaged community, the project plan should include the following information, consistent with criteria established in Parts 52, 53, and 54, 1994 PA 451:

1. The MAHI of the area which most closely approximates the geographic area to be served by the project;
2. Information supporting poverty criteria if applicable; and
3. The annual user cost for the applicant after the project is completed, including costs resulting from the project, as well as the applicant’s

existing costs for operation, maintenance and replacement (OM&R), and debt.

D. Flexibility in Establishing Rates

Parts 52, 53, and 54, however, also allow the applicant flexibility to determine its method of assessing rates. In many instances, the applicant may choose to assess rates based on delivered billable flow. In other cases, absent of individual meters, residential equivalent units may be employed to assess costs. Ad valorem taxes, special assessments, or other non-flow related charges are also used to defray the cost of capital financing. The actual method of distributing OM&R costs, as well as debt retirement costs, to users remains the responsibility of the supplier.

The law is permissive, not prescriptive, as to whether or not the applicant includes debt service in its actual levy of annual user costs. It should be noted, therefore, that for accurate comparison to the MAHI, debt servicing based on something other than billable flow must be added back to OM&R costs to determine total annual user costs.

Example 1: A \$5,000 special assessment would be amortized, without interest, over the expected term of the loan. Therefore, for a typical 20-year loan, \$250 would be added to the cost of OM&R to arrive at an annual user cost which reflects true total costs.

Example 2: OM&R costs are \$.15/1000 gallons. Debt service for costs of construction adds a charge of \$.25/1000 gallons, therefore the total is \$.40/1000 gallons. Spread to a typical residential customer and multiplied by the expected water use throughout the year, this rate will yield an annual user cost, which encompasses both OM&R and debt.

### III. Disadvantaged Community Criteria

A. To qualify as a disadvantaged community, an applicant must:

1. Meet the definition of "municipality" established in Sec. 5402(g)

*"Municipality" means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law.*

OR in and Sec. 5301(i)

*"Municipality" means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law; or an Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of title III of the federal water pollution control act, 33 USC 1329.*

Applicants such as manufactured housing communities, subdivisions, churches or other non-municipal systems may not achieve this designation if they are the applicant for assistance.

2. Directly assess users within the area served by the proposed project for the costs of construction. Municipalities that choose to assess construction costs over a wider area than the service area of the project may not qualify as a disadvantaged community unless the entire area to be assessed for the project meets the criteria set forth in Part 53 and Part 54. This may ease the economic impact of utility rates by spreading them over a larger user base, however such action may not circumvent the intent to assist only those users truly unable to pay for the waterworks system improvements.

Example 1: The service area of the project covers a 10-block area of municipality A. The debt coverage for construction costs will be added only to the utility bills of the users within this area. The municipality may qualify as a disadvantaged community if all other conditions are met.

Example 2: The service area of the project covers a 10-block area of municipality B. The debt coverage for construction costs will be assessed to all users of the municipal system. To qualify as a disadvantaged community, the poverty or affordability criteria must be met using income and user fee data for all customers to be assessed, including those in the service area of the project.

Example 3: The proposed project will benefit all users within municipality C's system. The debt coverage for construction costs will be spread to all users throughout the service area. The municipality may qualify as a disadvantaged community if all other conditions are satisfied.

Example 4: Regional system D seeks financing for system improvements that will enhance its ability to deliver services to a number of other municipalities. These outlying municipalities contract for this service. If the costs of construction are directly assessed to those municipalities, the regional project may qualify as a disadvantaged community, if all other conditions are met. If, however, these costs are spread to all users of the system without there being a benefit to them, the regional system will not qualify as a disadvantaged community.

Example 5: A proposed project will be built to serve a limited service area in which no permanent residential users will be assessed for costs of the project. Since the intent of disadvantaged community status is to reduce economic stress on such users, the municipality may not qualify, unless costs are borne by other users within the municipality and all other conditions are met.

3. Demonstrate that the median annual household income (MAHI) for the area served by the proposed project does not exceed 120 percent of the updated statewide MAHI for Michigan.

A municipality will not qualify as a disadvantaged community if the MAHI of the service area exceeds 120 percent of the updated statewide MAHI.

4. In addition to satisfying 1-3 above, the applicant must demonstrate at least one of the following:
  - a. Poverty Criteria
    - 1) More than 50 percent of the geographic area to be served by a proposed project is identified as a poverty area by the U.S. Bureau of the Census. Current poverty areas within Michigan are identified in Appendix B on the Census website.
    - 2) The MAHI for the area to be served by a proposed project is less than the most recently published Federal Poverty Guidelines for a family of four in the 48 contiguous United States. These guidelines are published annually by the Department of Health and Human Services.
  - b. Affordability Criteria
    - 1) The MAHI for the area to be served by a proposed project is less than the most recently published statewide MAHI for Michigan, and annual user costs [as defined in 1994 PA 451, Section 5401(B)] for service will exceed 1.0 percent of the MAHI of the area to be served by the proposed project.
    - 2) The MAHI for the area to be served by a proposed project is greater than the statewide MAHI for Michigan, (up to 120 percent) and annual user costs will exceed 3 percent of the MAHI of the area to be served by the proposed project.

#### **IV. CHANGE IN DISADVANTAGED COMMUNITY DESIGNATION**

##### **A. Changes in User Costs**

The DEQ recognizes that the user costs may increase or decrease as the project moves from the planning process through the bidding phase when actual costs of construction become known. Thus, annual user costs identified within the project plan may not be identical to those actually adopted in the required revenue system. This may result in an applicant achieving designation as a disadvantaged community based on estimates provided in the project plan and later losing the designation if project costs decrease. If this occurs, the applicant may benefit from additional priority points, but will not qualify for the loan term extension or the use of technical assistance funds to defray planning costs.

Conversely, if the estimates used in the project plan are understated from actual bid costs, the DEQ may determine that the municipality qualifies for disadvantaged community status once the final costs are known.



B. DEQ Reviews to Determine Disadvantaged Community Status

To account for the potential of any change in the user costs, the DEQ will examine information presented in the project plan to first determine whether or not the applicant will receive the additional 50 priority points extended to disadvantaged communities.

After actual bid costs are submitted, the DEQ will again review the annual user cost calculation, this time using the updated information to determine if the applicant qualifies as a disadvantaged community. This will be done in conjunction with review of the revenue system. If the new data supports the determination that the municipality qualifies as a disadvantaged community, the DEQ will establish its Order of Approval (OOA) with 30-year terms, rather than 20 years. To the extent funds are available, the DEQ will also provide assistance from technical assistance set-aside funds to defray a qualifying supplier's project planning costs (DWRP only).

C. Future Fiscal Year Priority Points

If the disadvantaged community designation is changed due to the newer cost data and the DEQ does not issue an OOA to the applicant within the fiscal year, the project's disadvantaged community priority points will be revised on the next fiscal year's project priority list.

If a project is segmented, a change in the disadvantaged status on the first segment will also cause the disadvantaged community priority points to be revised on all future segments.

V. **CONTACTS**

A. U.S. Bureau of the Census

The Detroit Office of the U.S. Bureau of the Census and the Michigan Information Center publish information on the MAHI and the percentage of population below poverty level. This information is available for counties, cities, townships, Census Designated Places, villages, school districts, blocks, group blocks, and census tracts.

The following information will assist you in contacting that office:

U.S. Bureau of the Census-Detroit Office  
1395 Brewery Park Boulevard  
Detroit, Michigan 48207  
Telephone: 313-259-0056  
Internet: [www.census.gov](http://www.census.gov)

B. The Michigan Information Center

This center, located within the Michigan Department of Technology, Management and Budget, also has information relating to population and income for communities within the state. You may contact the center at:

Michigan Information Center  
Department of Technology, Management and Budget  
P.O. Box 30026  
320 South Walnut Street  
Lansing, Michigan 48933  
Telephone: 517-373-7910

C. The Office of Drinking Water and Municipal Assistance/Revolving Loan Section

Department of Environmental Quality  
Office of Drinking Water and Municipal Assistance  
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