

project are provided to low- and moderate-income residents from the pocket. The application should clearly describe how the applicant intends to meet initial and continuous job requirements. Private participating parties must meet these employment requirements in the aggregate. To enable the private participants to do so, lease agreements executed by a private participating party shall include:

(a) Provisions requiring lessees to follow hiring practices that the private participating party has determined will enable it to meet these requirements in the aggregate; and

(b) Provisions that will enable the private participating party to declare a default under the lease agreement if the lessees do not follow such practices.

[61 FR 11476, Mar. 20, 1996]

#### Subpart H [Reserved]

### Subpart I—State Community Development Block Grant Program

SOURCE: 57 FR 53397, Nov. 9, 1992, unless otherwise noted.

#### § 570.480 General.

(a) This subpart describes policies and procedures applicable to states that elect to receive Community Development Block Grant funds for distribution to units of general local government in the state's nonentitlement areas under the Housing and Community Development Act of 1974. Other subparts of part 570 are not applicable to the State CDBG Program, except as expressly provided otherwise.

(b) HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially-declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

(c) In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly

inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act. The Secretary will not determine that a state has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.

(d) Administrative action taken by the Secretary that is not explicitly and fully part of this regulation shall only apply to a specific case or issue at a specific time, and shall not be generally applicable to the state-administered CDBG program.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 11477, Mar. 20, 1996; 61 FR 54921, Oct. 22, 1996]

#### § 570.481 Definitions.

(a) Except for terms defined in applicable statutes or this subpart, the Secretary will defer to a state's definitions, provided that these definitions are explicit, reasonable and not plainly inconsistent with the Act. As used in this subpart, the following terms shall have the meaning indicated:

(1) *Act* means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed by the state under section 108 of the Act.

(b) [Reserved]

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 5209, Feb. 9, 1996]

#### § 570.482 Eligible activities.

(a) *General.* The choice of activities on which block grant funds are expended represents the determination by state and local participants, developed in accordance with the state's program design and procedures, as to which approach or approaches will best

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serve these interests. The eligible activities are listed at section 105(a) of the Act.

(b) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

(1) *Public improvements initially assisted with CDBG funds.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the *CDBG funds* may be made only against properties owned and occupied by persons *not* of low and moderate income. These assessments constitute program income.

(ii) Special assessments to recover the *non-CDBG* portion may be made, provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if, when permitted by the state, the unit of general local government certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(2) *Public improvements not initially assisted with CDBG funds.* CDBG funds may be used to pay special assessments levied against property when this form of assessment is used to recover the capital cost of eligible public improvements initially financed solely from sources other than CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments, provided that:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this subpart, including labor, environmental and citizen participation requirements;

(ii) The installation of the public improvement meets a criterion for na-

tional objectives. (See § 570.483(b)(1), (c), and (d).)

(iii) The requirements of § 570.482(b)(1)(ii) are met.

(c) *Provision of assistance for micro-enterprise development.* Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974 (the Act), as amended, (42 U.S.C. 5301 *et seq.*) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including non-profit and for-profit subrecipients).

(d) *Provision of public services.* The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Housing and Community Development Act of 1974, as amended:

(1) Support services provided under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended, and paragraph (c) of this section;

(2) Services carried out under the provisions of section 105(a)(15) of the Housing and Community Development Act of 1974, as amended, that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(3) Services of any type carried out under the provisions of section 105(a)(15) of the Act, pursuant to a strategy approved by a State under the provisions of § 91.315(e)(2) of this title.

(e) *Guidelines and objectives for evaluating project costs and financial requirements—(1) Applicability.* The following guidelines, also referred to as the underwriting guidelines, are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. The use of the underwriting

guidelines published by HUD is not mandatory. However, states electing not to use these guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

(2) *Objectives.* The underwriting guidelines are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. These underwriting guidelines are published as appendix A to this part. The objectives of the underwriting guidelines are to ensure:

- (i) That project costs are reasonable;
- (ii) That all sources of project financing are committed;
- (iii) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;
- (iv) That the project is financially feasible;
- (v) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
- (vi) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(f) *Standards for evaluating public benefit—(1) Purpose and applicability.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these standards. The standards set forth below identify the types of public benefit that will be recognized for this pur-

pose and the minimum level of each that must be obtained for the amount of CDBG funds used. These standards are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. Certain public facilities and improvements eligible under section 105(a)(2) of the Act, which are undertaken for economic development purposes, are also subject to these standards, as specified in § 570.483(b)(4)(vi)(F)(2). Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory.

(2) *Standards for activities in the aggregate.* Activities covered by these standards must, in the aggregate, either:

- (i) Create or retain at least one full-time equivalent, permanent job per \$35,000 of CDBG funds used; or
- (ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per \$350 of CDBG funds used.

(3) *Applying the aggregate standards.*

(i) A state shall apply the aggregate standards under paragraph (e)(2) of this section to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents

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of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these standards which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (f)(2) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(1) Jobs Training Partnership Act (JTPA);

(2) Jobs Opportunities for Basic Skills (JOBS); or

(3) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood income that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution (as defined in the Community Development Banking and Financial Institutions Act of 1994, (12 U.S.C. 4701 note)) serving an area that has at least

70 percent of its residents who are low- and moderate-income;

(I) Provides assistance to an organization eligible to carry out activities under section 105(a)(15) of the Act serving an area that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by the State under the provisions of §91.315(e)(2) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by the State under the provisions of §91.315(e)(2) of this title.

(4) *Standards for individual activities.* Any activity subject to these standards which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) \$50,000 per full-time equivalent, permanent job created or retained; or

(B) \$1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(5) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (f)(4)(i) of this section.

(ii) The individual activity tests in paragraph (f)(4)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (f)(4)(i) of this section.

(6) *Documentation.* The state and its grant recipients must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If a state grant recipient's actual results show a pattern of substantial variation from anticipated results, the state and its recipient are expected to take those actions reasonably within their respective control to improve the accuracy of the projections. If the actual results demonstrate that the state has failed the public benefit standards, HUD may require the state to meet more stringent standards in future years as appropriate.

(g) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a sig-

nificant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (f) of this section.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1949, Jan. 5, 1995; 61 FR 54921, Oct. 22, 1996]

#### § 570.483 Criteria for national objectives.

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with § 570.480(b)).

(b) *Activities benefiting low and moderate income persons.* An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in paragraph (b) of this section, 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 activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular