Appendix D

HUD National Objectives

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the requirements for State CDBG recipients.

(iii) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(iv) *Significant loss of jobs.* (A) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(B) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years from the date the assistance is provided to the business or the time period within which jobs are to be created as specified by the agreement among the business, the recipient, and the state (as applicable) if it is longer than three years.

(3) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or (in the case of any activity carried out pursuant to 105(a)(15)) nonprofit entity shall sign a written agreement with the assisted business. The written agreement shall include:

(i) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another and, if so, the number of jobs that will be relocated from each LMA;

(ii) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(iii) *Reimbursement of assistance.* The agreement shall provide for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(4) *Assistance not covered by this paragraph.* This paragraph does not apply to:

(i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970 (URA), (42 U.S.C. 4601–4655); optional relocation assistance under section 105(a)(11), as implemented at 570.606(d);

(ii) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(iii) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1949, Jan. 5, 1995; 61 FR 54921, Oct. 22, 1996; 70 FR 76370, Dec. 23, 2005; 71 FR 30035, May 24, 2006]

§ 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 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. Units of general local government may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii)(A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(*1*) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the state a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(*2*) At least 51 percent of the use of the system will be by low and moderate income persons. The state's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, the state will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the state's certification may be based upon other data, agreed to by HUD and the state, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.

(*3*) Other federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(*4*) The percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. The unit of general local government must include a description of the boundaries of the service area of the system; the census tracts or enumeration districts within the boundaries; the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district, and the percentage of low and moderate income persons in the service area; and the total cost of the system.

(B) The certifications of the state must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.

(v) HUD will consider activities meeting the requirements of paragraph

(e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:

(A) The area is in a Federally-designated Empowerment Zone or Enterprise Community;

(B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;

(C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any part thereof) which are included in the strategy area.)

(D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low and moderate income persons. The following kinds of activities may not qualify under paragraph (b)(2) of this section:

(A) Activities, the benefits of which are available to all the residents of an area;

(B) Activities involving the acquisition, construction or rehabilitation of property for housing; or

(C) 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)(2)(v) of this section.

(ii) To qualify under paragraph (b)(2) of this section, the activity must meet one or the following tests:

(A) It must 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 or a combination 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 farm workers; or

(B) It must 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

(C) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of 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:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under § 570.483(b)(1);

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under § 570.483(b) (1) or (4); or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under § 570.483(b)(3).

(iv) A microenterprise assistance activity (carried out in accordance with the provisions of section 105(a)(23) of the Act or § 570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity 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 as such for up to a three-year period.

(v) 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 circumstances:

(A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

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

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures that, 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 by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If 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. If housing activities being assisted meet the requirements of paragraph (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also 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 unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

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

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

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

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

(ii) Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons if the housing units for which the services are provided are HOME-assisted and the requirements of § 92.252 or § 92.254 of this title are met.

(4) *Job creation or retention activities.* (i) An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be

made available to low and moderate income persons.

(ii) For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG 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 CDBG 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 it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.

(iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(A) 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

(B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(iv) 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:

(A) He/she resides within a census tract (or block numbering area) that either:

(*1*) Meets the requirements of paragraph (b)(4)(v) of this section; or

(*2*) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (b)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (b)(4)(iv) (A)(*1*) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(*1*) All block groups in the census tract have poverty rates of at least 20 percent;

(*2*) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(*3*) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG 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 that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity specified in section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by

all of the businesses receiving technical assistance during any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at §570.482(f)(3)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(*1*) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(*2*) In any case where the cost per job to be created or retained (as determined under paragraph (b)(4)(vi)(F)(*1*) of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the state awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at §570.482(f).

(5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if the state can determine that:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

(ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or(c)(1)(ii)(B) of this section.

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at § 570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(3) *Planning only activities.* An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

(d) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the state determines, that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

(e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of paragraph (b)(4) of this section are met in order to qualify as benefiting low and moderate income persons.

(2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national 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. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered

the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under §570.489(j).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.

(4) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the unit of general local government may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (b)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of §91.315(e)(2) of this title, and the State has approved the strategy, the unit of general local government may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of paragraph (b) of this section under the criteria at §570.483(b)(1)(v) instead of the criteria at §570.483(b)(4); and

(ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(6) If an activity meeting the criteria in §570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

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§570.484 Overall benefit to low and moderate income persons.

(a) *General.* The State must certify that, in the aggregate, not less than 70 percent of the CDBG funds received by the state during a period specified by the state, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the state shall be designated by fiscal year of annual grants, and shall be for one, two or three consecutive annual grants. The period shall be in effect until all included funds are expended. No CDBG funds may be included in more than one period selected, and all CDBG funds received must be included in a selected period.

(b) *Computation of 70 percent benefit.* Determination that a state has carried out its certification under paragraph