DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-94-1729; FR-3474-F-02] RIN 2506-AB53

Community Development Block Grant Program Economic Development Guidelines

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule and guidelines.

SUMMARY: This rule establishes guidelines to assist Community Development Block Grant (CDBG) recipients in evaluating and selecting economic development activities for assistance with CDBG funds. The guidelines deal with project costs and financial requirements and with the public benefit provided by such activities. This rule also makes certain other changes to facilitate the use of CDBG funds for economic development objectives.

EFFECTIVE DATE: February 6, 1995. FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Office of Block Grant Assistance, Room 7286, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3587; TDD: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: One of the Department of Housing and Urban Development's (HUD's) expressed goals is to provide an economic lift for distressed cities. Toward this end, HUD has embarked on a course designed to make the Community Development Block Grant (CDBG) program a potentially major contributor to the provision of jobs, especially for lowincome persons residing in our poorest areas. To accomplish this goal, the Department recognizes that it will need to change both the perception and the reality concerning the usefulness of CDBG for economic development objectives.

Section 806 of the Housing and Community Development Act of 1992 (the 1992 Act) requires the Secretary to establish, by regulation, guidelines to assist CDBG recipients to evaluate and select economic development activities for assistance with CDBG funds. The 1992 Act also made further changes in the CDBG program affecting the use of funds for economic development

activities, particularly those carried out under the national objective of benefiting low- and moderate-income persons through the creation or retention of jobs. These changes necessitate revisions to the CDBG regulations. HUD has also determined that it is appropriate to take this opportunity to make certain other changes to the regulations to facilitate the use of CDBG funds for economic development objectives. These changes are designed to reduce the administrative burden on grantees while, at the same time, focusing efforts on assisting the residents of low- and moderate-income neighborhoods.

A proposed rule regarding these issues was published on May 31, 1994, at 59 FR 28175. The rule gave the public 30 days in which to submit comments. Fifty-one comments were received, and many of the comments were extensive. The following types and numbers of commenters were represented: 14 local government agencies, 7 state agencies, 12 national associations, 7 development organizations, 1 regional planning agency, 3 private citizens, and 7 HUD Field staff.

Applicability of This Rule to the State CDBG Program

Separate regulatory language for the Entitlement and State CDBG programs is contained in this rule. This preamble generally discusses the changes for the two programs together, with differences between the requirements for the two programs noted. Overall, such differences have been kept to a minimum.

The State CDBG program regulations do not contain an explanatory list of eligible activities, and relatively few terms are defined in regulation. The changes to §§ 570.201, 570.203, 570.204, 570.500 and 570.506 (and the accompanying preamble discussions thereof) are thus not applicable to the State CDBG program, as there are no comparable sections in the State regulations. In interpreting the list of eligible activities found in Section 105 of the Housing and Community Development Act of 1974, as amended, states may use the Entitlement regulations as interpretive guidance.

Applicability of This Rule to the HUD-Administered Small Cities and Insular Areas CDBG Programs

Portions of the Entitlement CDBG Program regulations are incorporated by reference into the regulations for the HUD-Administered Small Cities program and the Insular Areas CDBG program. Thus, the changes to the Entitlement regulations also apply to the HUD-Administered Small Cities and Insular Areas programs. Further clarification will be provided (such as through annual Notices of Funding Availability or other instructions) for those programs, particularly regarding applications proposing a limited number of activities subject to the public benefit guidelines.

Applicability of This Rule to the Indian CDBG Program

It has been determined by the Office of Native American Programs that this regulation will not be applicable to the **Indian Community Development Block** Grant (ICDBG) program. The nature of the ICDBG program is so separate and distinct from the Entitlement or the State and Small Cities program that it is in the best interest of the ICDBG to address these issues separately. A specific rule will be proposed at a later date to address the needs of the Indian Tribes and Alaskan Native Villages served by the ICDBG program to comply with the requirements of the Housing and Community Development Act of 1992.

Summary of Public Comments and HUD Responses

Assistance for Microenterprises

Issue. Three commenters requested that the maximum number of employees permitted in order for a business to be considered a microenterprise be increased. (2 local government agencies and 1 state agency)

Response. The term "microenterprise" is defined by Section 807(c)(2) of the 1992 Act as a "commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise." With this statutory limitation, the maximum number of employees cannot be increased.

Issue. Four commenters requested further clarification of the definition of a microenterprise. Issues raised included: whether the limitation on the number of employees applies to actual persons or full-time-equivalent positions; the scope of the term "commercial"; and the length of time a CDBG-assisted microenterprise must remain within the five-employee maximum. (2 national associations, 1 state agency, and 1 private citizen)

Response. The Department interprets the statutory language regarding the size limitations for a microenterprise as referring to number of actual persons employed by the business, including the owner(s).

As noted above, the statutory definition of a microenterprise describes