than 75 percent zoned for commercial or industrial use (1 local government agency and 1 development organization).

must be used in determining these presumptions. In regard to the presumption that is determined by tract meeting what Section 105(c)(4)

Response. HUD has determined that it is not appropriate to revise the regulations implementing the CDBG presumptions to include such tracts in general. While the Empowerment Zone/ **Enterprise Community legislation does** permit these tracts to be considered as passing the minimum poverty tests, this is done mainly in the context of qualifying the tract as part of an overall area to be designated. Because the CDBG presumptions apply only on an individual census tract basis, the Department has determined that including such tracts without limitation would unduly broaden the scope of the subject presumptions. However, it is recognized that many federally designated Empowerment Zones and Enterprise Communities could include such census tracts. Thus, the new paragraph § 570.208(a)(4)(v) of the Entitlement regulations and a new paragraph § 570.483(b)(4)(v) of the State regulations added in this final rule to implement the CDBG presumptions permit any census tract that is part of a federally designated Empowerment Zone or Enterprise Community to qualify for the CDBG presumption regardless of whether it meets the other general criteria delineated in the regulation.

Issue. Several commenters raised other concerns that relate to the statutory bases for the subject presumptions of a person's low- and moderate-income status for CDBG activities carried out under the national objective of job creation or retention. Issues raised included: concerns regarding the use of census tract data instead of block group or "neighborhood" data; a recommendation to permit communities to use data obtained through a survey; questions as to why one of the presumptions only applied to the residence of the employee while the other applied to either the employee's residence or the location of the assisted business; and concerns about the interpretation of the terms "assisted business" and "job under consideration" as used in the proposed rule, as opposed to the term "assisted activity" as used in the Act (4 national associations and 1 private citizen).

Response. Section 105(c)(4) of the Act, as added by Section 806(e) of the 1992 Act, which expressly authorizes the subject low- and moderate-income presumptions for job creation and retention activities, specifically refers to "census tracts." Thus, overall tract data

presumptions. In regard to the presumption that is determined by the tract meeting what Section 105(c)(4) calls "Federal enterprise zone eligibility criteria," it is noted that the Empowerment Zone/Enterprise Community legislation requires poverty rates to be determined using the most recent decennial census data available. Thus, this requirement is carried over into a new paragraph § 570.208(a)(4)(v) of the Entitlement regulations and a new paragraph § 570.483(b)(4)(v) of the State regulations added in this final rule to implement the related CDBG presumption. The other CDBG presumption, which is based on the low- and moderate-income character of the census tract in which an employee resides, does not carry with it the specific requirement that the most recent decennial census data available must be used. Thus, while HUD expects grantees to follow the general CDBG rule of using such census data to the fullest extent feasible, it would be possible for a grantee to conduct a survey to support a census tract's qualification for that presumption. However, given the statutory "census tract" language noted above, the area for which such a survey would be undertaken must coincide with the census tract boundary. It is further noted that this latter presumption only applies to a census tract in which an employee resides and not to the location of the assisted economic development project because of the statutory language in Section 105(c)(4).

In expressing concern over the possible interpretation of the terms assisted business" and "job under consideration," as used in the regulations implementing the broader presumption, one commenter gave two examples. First, the commenter states that assistance to a "branch office" located in a qualified tract should be able to use the presumption resulting from "Federal enterprise zone eligibility criteria" even if the business' principal office is located elsewhere. This is entirely consistent with the language included in the new paragraph § 570.208(a)(4)(iv) of the Entitlement regulations and the new paragraph § 570.483(b)(4)(iv) of the State regulations. In using the term "assisted business" in those portions of the rule, HUD does not intend to imply that the business' main office or corporate headquarters must be located in a qualified tract in order to use the presumption. The regulatory language is designed to provide sufficient restrictions to prohibit businesses from

establishing only a "shell" office to make use of the location presumption while the actual activity being assisted is in fact being carried out elsewhere. Assistance to legitimate "branch offices" is not restricted under the regulatory language. As a second example, the commenter states that a "job training center or small business assistance office" should be able to use the presumption even though such a facility "helps people who do not yet have businesses nor specific 'jobs under consideration'." It is not clear how this second example would be able to use the presumption given the statutory language at Section 105(c)(4). Based on that provision, the new presumptions can only be used for activities qualifying under the national objective of job creation or retention for low- and moderate-income persons. Job training centers or business assistance offices such as those which appear to be described in the commenter's second example generally would not qualify under that national objective and would thus not be able to use the presumption.

Issue. Two commenters raised questions about how the subject presumptions would be implemented. The first question relates to whether the presumptions based on an employee's residence could be used together with the traditional way of documenting an employee as a low- or moderate-income person in order to meet the overall 51 percent low- and moderate-income requirement for jobs created or retained by a particular assisted business. One of the commenters also asked what documentation HUD will require to verify that jobs are created when the presumption on the basis of the location of the business is used. (1 state agency and 1 private citizen)

Response. In regard to the first question, it is entirely permissible for a grantee, in a single activity, to combine counting employees presumed to be low- and moderate-income persons on the basis of their residence with those employees documented as being such persons under more traditional means. Any concerns that this could possibly lead to the company and/or the grantee being accused of "singling out certain individuals" for requests for income information (as one of the commenters states), is as unfounded as the "privacy" concerns certain persons have raised for several years in discussions of this section of the CDBG regulations. In regard to the second question, a grantee qualifying a business based on its location must still obtain sufficient documentation to demonstrate that jobs are actually created or retained by the activity. This documentation would be