develop their own underwriting guidelines for the evaluation of microenterprise assistance programs. However, if a grantee designs a program to provide assistance to both microenterprises and other small businesses, the public benefit standards and underwriting guidelines apply to the entire program, and grantees will be expected to evaluate each instance of assistance individually. Regarding the third comment, both the proposed and the final regulations state that different levels of review and financial documentation are appropriate for different sizes of projects and businesses; grantees are encouraged to develop guidelines which take into consideration the size of the business being assisted.

From the first of these comments, as well as from several comments addressed elsewhere in this preamble, it is clear that the relationship between the financial guidelines, the public benefit standards and the "appropriate determination" requirements (which the Department has heretofore relied on) is not understood. In the 1987 "Stokvis Memo" and in the 1992 "Kondratas Memo", the Department outlined its policy for implementing the statutory requirement that assistance to private for-profit entities must be "appropriate to carry out an economic development project". The Department believes that the new underwriting guidelines and public benefit standards, taken together, effectively comprise a methodology for determining that such assistance is appropriate, and supplant the previously-required "appropriate determinations".

It is important to note that the financial and public benefit standards cover a wider range of activities than did the "appropriate determinations", including all economic development activities funded under sections 105(a) (14) and (15) of the Act. Grantees are encouraged to develop guidelines to cover the evaluation and selection of other types of economic development activities, beyond those statutorily required. However, HUD will not evaluate or enforce locally-developed guidelines covering economic development activities other than those described in the regulations.

Issue. Three commenters expressed apprehension about a statement contained in the preamble to the proposed regulations. The Department noted that, in cases where an activity receiving CDBG financial assistance fails to meet other applicable program requirements, such as the public benefit standards or the national objective requirements, HUD will consider the

extent to which the recipient conducted prudent underwriting in determining appropriate sanctions to be imposed on the recipient for such noncompliance. Commenters questioned the consistency of this statement with statutory language, felt this represented a "gotcha" mentality by HUD, and opened the door to HUD "second-guessing" grantees' underwriting decisions.

Response. Commenters are correct in noting that the Department is prohibited from basing a determination of project ineligibility on the failure of a project to meet the objectives of the underwriting guidelines. The Department will not monitor grantees' projects for compliance with HUD's underwriting guidelines. The proposed underwriting guidelines also state, however, that the Department expects that grantees will engage in some form of underwriting of projects, regardless of whether or not a grantee adopts HUD's guidelines. The intent of the preamble statement was not to suggest that HUD would "secondguess" local underwriting guidelines or decisions about specific projects pursuant to them. When the Department discovers cases of noncompliance with other program requirements (such as national objectives or eligibility), it has flexibility to determine the appropriate action to resolve the noncompliance. In cases of noncompliance with other program requirements, the Department reserves the right to examine whether the grantee conducted any underwriting on the activity in question. If a grantee performed no underwriting whatsoever (or purely perfunctory underwriting) on a project that fails, the Department may look to see whether even rudimentary underwriting would have disclosed to the grantee that the project was likely to fall into noncompliance. Similarly, the Department will also consider whether a grantee's underwriting disclosed that a project was likely to fail, but the grantee chose to fund the project anyway for reasons unrelated to underwriting decisions.

Issue. One HUD staff person inquired about the relationship between the public benefit standards and the underwriting guidelines. The commenter asked what HUD would do in a case where a grantee followed established underwriting guidelines, yet knowingly chose to fund a project which exceeded the public benefit standards (particularly the individual activity standards).

Response. Having complied with a grantee's underwriting standards would not recuse this project from failure to meet the regulatory requirements for public benefit. In such a situation, the Department may still consider the

extent to which underwriting was performed in assessing what corrective action is appropriate to resolve the noncompliance.

Issue. One correspondent requested clarification or examples of what is meant by the statement that guidelines also apply to "activities carried out under the authority of § 570.204 that would otherwise be eligible under § 570.203."

Response. The Department's position is, and has been, that all activities involving assistance to a for-profit business are subject to the same requirements (including the underwriting guidelines, the public benefit standards, and the previouslyrequired "appropriate determinations"). Provision of CDBG assistance to a forprofit business through a non-profit subrecipient does not exempt such an activity from the underwriting guidelines or public benefit standards. In the final regulations, this principle is clarified and illustrated with an example.

Issue. Three commenters raised questions about the treatment of nonfinancial or indirect assistance to businesses in the underwriting guidelines. Two commenters felt that by not specifically addressing the level of underwriting documentation needed for technical assistance activities, the proposed regulations imply that the same degree of analysis is required for technical assistance to a business as for direct financial assistance. Two commenters also urged the department to accept yearly aggregation of technical assistance activities for demonstrating compliance with national objectives.

Response. The Department concurs with the comments regarding technical assistance activities. The underwriting guidelines published today specifically mention that different levels of underwriting documentation may be appropriate for technical assistance activities, given the nature and dollar value of assistance being provided to businesses. The Department has also added a provision to the national objectives requirements for low- and moderate-income benefit, to allow job creation/retention to be aggregated for technical assistance activities.

Certain indirect forms of assistance to business, such as land acquisition or certain public improvement projects, are not statutorily subject to the underwriting guidelines. The Department believes that, while not mandatory, grantees should evaluate all forms of assistance to businesses, to ensure that the project represents an appropriate use of the grantee's funds. Grantees are encouraged to develop