and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and

- (ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and
- (iii) May be either non-profit or forprofit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and
- (iv) Maintains at least 51 percent of its governing body's membership for low-and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and
- (v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and
- (vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and
- (vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution; and
- (viii) Is free to contract for goods and services from vendors of its own choosing.
- (2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:
- (i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or
- (ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

- (iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).
- (3) A CBDO that does not qualify under paragraphs (c) (1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraphs (c) (1) or (2) of this section.
- 8. Section 570.207 is amended by revising paragraphs (b) introductory text and (b)(3)(iii) to read as follows:

§ 570.207 Ineligible activities.

* * * * *

- (b) The following activites may not be assisted with CDBG funds unless authorized under provisions of \S 570.203 or as otherwise specifically noted herein or when carried out by a entity under the provisions of \S 570.204.
 - (3) * * *
- (iii) When carried out by an entity pursuant to § 570.204(a);
- 9. Section 570.208 is amended by:
- a. Revising the paragraph heading of paragraph (a), revising paragraph (a)(1)(i), the first sentence in paragraph (a)(1)(iv), and adding a new paragraph (a)(1)(v);
- b. Revising paragraph (a)(2)(i) introductory text and by adding new paragraphs (a)(2)(iii) and (a)(2)(iv);
- c. Revising the introductory text of paragraph (a)(3);
 - d. Revising paragraph (a)(4); and
- e. Adding new paragraphs (d)(5), (d)(6), and (d)(7), to read as follows:

§ 570.208 Criteria for national objectives.

(a) Activities benefiting low- and moderate-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. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

* * * * *

- (iv) In determining whether there is a sufficiently large percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraphs (a)(1)(i), (ii), or (v) of this section, the most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. * * *
- (v) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.
- (2) Limited clientele activities. (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) of this section: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or 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 (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:
- (iii) A microenterprise assistance activity carried out in accordance with the provisions of § 570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year 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.