

fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(2) The grantee and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(e) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses the primary 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.

(2) Where the assisted activity is relocation assistance that the grantee is required to provide, such relocation assistance shall be considered to address the primary objective as addressed by the displacing activity.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a) of this section as well as those of paragraph (d) of this section in order to qualify as benefiting low and moderate income persons.

(4) Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the grantee's overall program benefits such persons. In determining the percentage of funds expended for such activities:

(i) Costs of administration and planning, eligible under §1003.205 and §1003.206 respectively, will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the ICDBG funds and, accordingly, shall be excluded from the calculation.

(ii) Funds expended for the acquisition, new construction or rehabilitation of property for housing those qualified under §1003.208(c) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction, or rehabilitation by the percent of units in such

housing occupied by low and moderate income persons.

(iii) Funds expended for any other activity which qualifies under §1003.208 shall be counted for this purpose in their entirety.

§ 1003.209 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* ICDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one Identified Service Area to another Identified Service Area, if the relocation is likely to result in a significant loss of jobs in the Identified Service Area from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of ICDBG funds for activities pursuant to:

(i) §1003.203(b); or

(ii) §§1003.201(a)-(d), 1003.201(k), 1003.203(a), or §1003.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to §1003.204, a Community Based Development Organization (CBDO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's Identified Service Area. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of "directly assist," unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Area.* The relevant definition of "area" for a Native American economic development project is the "Identified Service Area" for the eligible applicant, as defined in §1003.4.

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

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if the number of jobs to be lost in the Identified Service Area

§ 1003.300

24 CFR Ch. IX (4–1–10 Edition)

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 area; 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.

(ii) A job is considered to be lost due to the provision of ICDBG assistance if the job is relocated within 3 years of the provision of assistance to the business; or the time period within which jobs are to be created, as specified by the agreement between the business and the recipient, is longer than 3 years.

(c) *Written agreement.* Before directly assisting a business with ICDBG funds, the recipient, subrecipient, or a CBDO (in the case of an activity carried out pursuant to §1003.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *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 Identified Service Area to another, and, if so, the number of jobs that will be relocated from each Identified Service Area; and

(2) *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.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance under §1003.602(b), (c), or (d);

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

(3) *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 reloca-

tion of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one Identified Service Area to another Identified Service Area and does not produce a significant loss of jobs in the Identified Service Area from which the relocation occurs.

[74 FR 1869, Jan. 13, 2009]

Subpart D—Single Purpose Grant Application and Selection Process

§ 1003.300 Application requirements.

(a) *Application information.* A Notice of Funding Availability (NOFA) shall be published in the FEDERAL REGISTER not less than 30 days before the deadline for application submission. The NOFA will provide information relating to the date and time for application submission, the form and content requirements of the application, specific information regarding the rating and ranking criteria to be used, and any other information pertinent to the application process.

(b) *Costs incurred by applicant.* Costs incurred by an applicant prior to the submission of the single purpose grant application to HUD will not be recognized by HUD as eligible ICDBG expenses.

(c) HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Area ONAP may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such written authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.301 Selection process.

(a) *Threshold requirement.* An applicant that has an outstanding ICDBG