

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Community Planning and
Development**

24 CFR Part 597

[Docket No. R-95-1702; FR-3580-F-03]

RIN 2506-AB65

**Designation of Empowerment Zones
and Enterprise Communities**

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

ACTION: Final rule.

SUMMARY: This rule makes final an interim rule published on January 18, 1994 that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 dealing with the designation of urban Empowerment Zones and Enterprise Communities. The interim rule, consistent with the statute, authorized the Secretary of HUD to designate not more than six urban Empowerment Zones and not more than 65 urban Enterprise Communities based upon the effectiveness of the strategic plan submitted by a State or States and local government(s) nominating an area for designation.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development, Room 7136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708-2290; TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB Control Number 2506-0148.

**I. Background—the January 18, 1994
Interim Rule**

On January 18, 1994 (59 FR 2700), HUD published an interim rule that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget

Reconciliation Act of 1993 which addresses the designation of urban Empowerment Zones and Enterprise Communities. Title XIII also provides for the designation of rural Empowerment Zones and Enterprise Communities. As noted in the January 18, 1994 interim rule, the urban part of the program is administered by HUD as a Federal-State-local partnership. The rural part of the program is administered by the Department of Agriculture. The Department of Agriculture also published an interim rule on January 18, 1994 (59 FR 2686). (The program is hereafter referred to as the EZ/EC program.)

The EZ/EC program is a key step in rebuilding communities in America's poverty-stricken inner cities and rural heartland. It is designed to empower people and communities across the nation in developing and implementing strategic plans to create job opportunities and sustainable community development. The program combines tax benefits with substantial investment of Federal resources and enhanced coordination among Federal agencies.

Designated Enterprise Communities are eligible for new Tax-Exempt Facilities Bonds for certain private business activities. States with designated Enterprise Communities will receive approximately \$3 million in Empowerment Zone/Enterprise Community Social Service Block Grant (EZ/EC SSBG) funds to pass through to each designated area for approved activities identified in their strategic plans. Enterprise Communities will receive special consideration in competition for funding under numerous Federal programs, including the new National Service and proposed Community Policing initiatives. The Federal Government will focus special attention on working cooperatively with designated Enterprise Communities to overcome regulatory impediments, to permit flexible use of existing Federal funds, and to assist these Communities in meeting essential mandates.

Designated Empowerment Zones will receive all the benefits provided to Enterprise Communities and other communities with innovative visions for change. Empowerment Zones are awarded substantial Empowerment Zone/Enterprise Community Social Service Block Grant funds, in the amount of \$100 million for each urban Zone. An Employer Wage Credit for Zone residents is extended to qualified employers engaged in trade or business, in designated Empowerment Zones. Businesses are afforded an increased deduction under section 179 of the

Internal Revenue Code for qualified properties.

The preamble to the January 18, 1994 interim rule described in detail the eligibility requirements for Empowerment Zones and Enterprise Communities and the nomination process. This information is not repeated in this final rule.

The Department also published on January 18, 1994, a notice inviting applications on nominations for areas as Empowerment Zones and Enterprise Communities (59 FR 2711). Title XIII of the Omnibus Budget Reconciliation Act of 1993 authorized the Secretary of HUD to designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities. The purpose of this document is to make final the interim regulations published on January 18, 1994. The designated Empowerment Zones and Enterprise Communities will be announced by separate notice published in the **Federal Register**.

**II. Differences Between Final Rule and
Interim Rule**

This final rule makes only editorial and technical correction changes to the January 18, 1994 interim rule. As will be discussed in the following section of this preamble, HUD received several good suggestions and recommendations of matters that the rule should address or expand upon, or terms that should be defined. These changes are largely directed to the nomination process, to the eligibility process, to the contents of the strategic plan or to the evaluation of the plan. Because of the need to have applications submitted by June 30, 1994 so that HUD and the Department of Agriculture could make designations within the time period set by statute, any significant or substantial revisions to the interim rule would have delayed the application process, and therefore delayed the designation process. Any significant or substantial revisions made at this time to the nomination process, evaluation process, etc., would have no effect since the designation process is complete.

HUD anticipates that if another round of designations is authorized by the Congress, there will be accompanying legislation that may make changes to the existing EZ/EC program, and thus require amendments to the regulations in 24 CFR part 597. At the time of this rulemaking, HUD will again consider the comments received on the January 18, 1994, and if they remain applicable to the new round of designations (the issue of applicability depends upon the type of legislative changes, if any, made to the EZ/EC program by the Congress),

these comments will be adopted in new regulations.

The technical changes made by this final rule are largely directed to that section of the rule (§ 597.200(d)) which addresses the use of EZ/EC SSBG funds and therefore are relevant even after the designation process is complete. The following provides a list of the editorial/technical changes made to the interim rule by this final rule.

1. In § 597.3 (Definitions), the second paragraph of the definition of "urban area" inadvertently omitted the phrase "jurisdiction of the" before the words "nominating local government." (See 59 FR 2704, second column.)

2. In § 597.200 (Nominations by State and local governments), HUD sets forth the procedures for nominations by State and local governments of areas for designation as an Empowerment Zone and/or Enterprise Community. Paragraph (d) of that section addresses the elements of the strategic plan which must be developed as part of the application for designation, and paragraph (d)(12) specifically addresses how the Social Services Block Grant (SSBG) funds for designated Empowerment Zones and Enterprise Communities will be utilized. Several technical errors were made in paragraph (d)(12), and these are as follows:

a. Paragraph (d)(12)(i)(A) discusses the commitment concerning the use of EZ/EC SSBG funds. The rule provides for the commitment to be made by the "applicant as well as by the State government(s)." In this paragraph, HUD inadvertently omitted reference to the full range of nominating entities that would have to make this commitment, and only listed "State governments." (Note that § 597.501 provides for nomination by States and local governments [the preamble also discusses this at page 2701, second column] and § 597.502 provides for nominations by State-chartered economic development corporations.) Accordingly, the final rule corrects this paragraph to include not only State governments, but local governments and State-chartered economic development corporations. The final rule also explains that the "services or activities" referenced in this paragraph are the "services or activities which can be used to achieve or maintain the goals set forth in paragraph (d)(12)."

b. Paragraph (d)(12)(ii) provides, in error, that Empowerment Zone or Enterprise Community SSBG funds (EZ/EC SSBG funds) may be used to achieve certain goals set forth in this paragraph by "undertaking one of the below specified options." (See 59 FR 2706, first and second columns.) The correct

wording should provide that States and local governments may undertake "one or more" of the options set forth in the paragraph. One option available to States and local governments for the use of EZ/EC SSBG funds was inadvertently omitted from the interim rule. This option provides for the use of EZ/EC SSBG funds to promote the economic independence of low-income residents, such as capitalizing revolving or micro-enterprise loan funds for their benefit.

c. In paragraph (d)(12)(ii), the interim rule provides that EZ/EC SSBG funds "may" be used to maintain the goals set forth in paragraph (d)(12). (See page 2706, first column.) The rule should have stated that the EZ/EC SSBG funds "must" be used to maintain the goals set forth in paragraph (d)(12), and that the goals "may be achieved" by undertaking the program options listed in (d)(12)(ii).

d. The interim rule inadvertently omitted the paragraph that provides guidance concerning how designated empowerment zones and enterprise communities may meet the goals specified in paragraph (d)(12). (See 59 FR 2706, middle column.) This paragraph does not dictate how the goals may be met, but offers guidance as to how they may be met. This rule makes this correction by adding a new paragraph (iii), and the succeeding paragraphs are redesignated accordingly.

e. In paragraph (d)(12)(v) of the interim rule, the Department provided that the State must obligate EZ/EC SSBG funds in accordance with the strategic plan within two years from the "date of designation of the Empowerment Zone or Enterprise Community." (See page 2706, middle column.) This time frame is incorrect. This paragraph should have provided that the State must obligate funds two years from the date "the funds are paid to the State." This paragraph is also corrected by this document to add that "funds not obligated must be remitted to the Secretary of Health and Human Services." This sentence was inadvertently dropped in the rule text.

f. Two requirements pertaining to the strategic plan were inadvertently omitted from paragraph (d)(12). One requirement provides that the strategic plan must indicate how the EZ/EC SSBG funds will be invested and used for the period of designation, and the second provides that the strategic plan must provide for periodic reporting of information by the relevant State. These requirements are now set forth in (d)(12)(vii) and (viii).

g. In addition to the above corrections, this document corrects missing or erroneous punctuation in paragraph

(d)(12). For example, some paragraphs ended in periods, and should have ended in semicolons.

4. In § 597.200, paragraph (d)(17) is corrected by removing the "and" which follows the semicolon at the end of this paragraph. (See 59 FR 2706, third column.)

5. In § 597.200, paragraph (d)(18) is corrected by removing the period at the end of the paragraph, and replacing it with a semicolon. (See 59 FR 2706, third column.)

6. In § 597.201 (Evaluating the strategic plan), paragraph (b)(9) should end with a semicolon and not a period. (See 59 FR 2707, third column.)

7. In § 597.201 (Evaluating the strategic plan), paragraph (c)(1) should end with a semicolon and not a period. (See 59 FR 2708, first column.)

8. In § 597.301 (Selection factors for designation of nominated urban areas), paragraphs (a) (1), (2) and (3) should each end with a semicolon instead of a period, and the word "and" should follow the semicolon in paragraph (a)(3). (See 59 FR 2709, first column.)

The above changes are the only ones that have been made to the interim rule by this final rule.

III. The Public Comments

General Comments

The January 18, 1994 interim rule provided for a 30-day public comment period. The public comment period expired on February 17, 1994. Comments, however, were accepted through March 1, 1994. By this date, a total of 45 comments had been received. The commenters consisted of State and local jurisdictions (or agencies of such jurisdictions), State legislators and non-profit organizations. Twenty-two (22) of the commenters were from the State of California.

The majority of the commenters gave the interim regulations favorable marks, stating that, overall, the interim rule clearly delineates the role of the State and participating entities. As noted earlier in this preamble, HUD received several good suggestions and recommendations from the commenters that will be considered in any future rulemaking needed for a new round of designation. Other suggestions raised by commenters, although equally with merit, could not be adopted (even if HUD were making substantive changes at this time) given the current statutory framework of the EZ/EC Program, and other requests for changes or clarification were determined to be adequately addressed by the January 18, 1994 interim rule. The following provides a summary of the significant

issues raised by the public commenters, and HUD's response to these issues.

General Comments on the Rule

Comment. One commenter stated that the interim rule as a whole did not adequately address the needs of extremely low-income persons.

Response. HUD disagrees with the commenter. The eligibility for designation as an Empowerment Zone or Enterprise Community requires a significant level of poverty, and the strategic plan required various descriptions of how the nominated area would address the need of low-income persons, for example, through the creation of economic opportunities, home ownership, education or other route to economic independence for low-income families, youth and other individuals. (See § 597.200.)

Comment. Two commenters stated that the rule should explicitly address the need of areas in which military base closures have occurred or will occur.

Response. Military base closure was explicitly referenced in the rule. Note that § 597.102(b)(1) of the rule provides in relevant part that "Unemployment shall be demonstrated by * * * (2) Evidence of especially severe economic conditions, such as military base or plant closings, or other conditions which have brought about significant job dislocation within the nominated area."

Comment. One commenter stated that the rule should have taken into consideration areas which have both rural and urban characteristics.

Response. HUD strived to the extent possible, given the statutory framework and requirements, to be as flexible as possible in describing eligibility for nominated areas, and to recognize that some urban areas will have rural characteristics. To a significant degree, however, this flexibility was limited by the statutory requirements for eligible urban areas.

Comment. One commenter stated that the rule and program structure perpetuate the inner city as a place for only low-income persons to live. The commenter stated that while EZ/EC SSBG eligible expenditures give latitude for communities to address social problems, they leave little room for needed neighborhood economic development programs that could make urban neighborhoods better places to live, to raise families, to shop, to work and to grow businesses.

Response. The entire EZ/EC program is directed to uplifting the economic and social environment of the designated urban area. HUD believes that the four key principles of the

program, set forth in § 597.200, and the specific elements embodied in each principle, clearly make this point.

Comments on Terms Used

Comment. One commenter stated that the rule should have defined the terms "community" and "low-income." Another commenter stated that the interim rule should have defined the term "long-term unemployed."

Response. HUD acknowledges the merit of these suggestions, and definitions for these terms will be considered for any future rulemaking that may be necessary for a new round of designations.

Comment. Two commenters stated that the term "disadvantaged" should be defined in the regulation. The commenter stated that this term should be defined to mean household or individual income below 30 percent or 50 percent of the area-wide income.

Response. This term appears in § 507.200(d)(12) which addresses the use of EZ/EC SSBG funds. EZ/EC SSBG funds are administered by the Department of Health and Human Services. Accordingly, HHS has responsibility for defining this term. Although this term is not defined in the HHS regulations governing Social Service Block Grant Funds (see 45 CFR part 96, subpart G), HHS should be able to provide guidance to grantees on the meaning of this term.

Comment. One commenter stated that the definition of "State-chartered economic development corporation" was not very clear.

Response. The statute defined this term, and the rule simply incorporated the statutory definition.

Comments on Census Tracts and Census Tract Data

Comment. Twenty-four (24) commenters objected to the failure to use census block data instead of census tract data. The commenters pointed out that many city boundaries do not coincide with census boundaries, and these cities would be disqualified. In addition to requesting use of census block data in lieu of census tract data, other suggestions submitted by commenters included: Excluding significantly-sized public facilities from calculation of a city's total mileage; and allowing an entity to request EC designation to be extended on a case-by-case basis to coterminous properties adjacent to an eligible poverty census tract.

Response. HUD is unable to adopt the suggestions of the commenters. The statute requires the use of census tract data, and does not permit the exclusions

or case-by-case exceptions as suggested by the commenters.

Comment. One commenter requested that the rule exclude portions of census tracts incapable of development, such as those that may be covered by water.

Response. In determining what constitutes census tracts, and what areas are not included or excluded in census tracts, HUD follows existing regulations applicable to census tracts issued by the U.S. Census Bureau.

Comment. Another commenter stated that census retail trade data does not accurately characterize central business districts. The commenter stated that the rule excludes central business districts (CBDs) as defined by the 1987 Census Retail Trade unless poverty rate for each tract in the CBD is not less than 35 percent for an EZ and 30 percent for an EC.

Response. Central business districts are addressed in § 597.100(f). HUD's rule provides some flexibility since the last Census of Retail Trade was in 1982. The issue of characterization of CBDs is not a question of whether an area was listed in the Census of Retail Trade, but whether the area fits characteristics of CBDs. HUD's rule allows applicants to demonstrate that the character of an area has changed, and does not meet the definition of CBD as used in the most recent Census of Retail Trade.

Comments on Population Levels

Comment. Twelve commenters stated that the 50,000 population limitation excludes many cities in need of EZ/EC assistance, and requested that the population limit be increased to 200,000 for all urban nominated areas.

Response. The population limitation of 50,000 found in § 597.100(a)(2) is directly from the statute.

Comment. Another commenter said that the rule should have excluded prison and hospital populations from the populations caps.

Response. This concern was accommodated by HUD at the time of issuance of the January 18, 1994 interim rule. The application process allowed cities to deduct institutional populations or populations in group quarters.

Comments on Pervasive Poverty and Unemployment

Comment. One commenter stated that the test for pervasive poverty should meet all three criteria, not simply one, and that a higher test should be utilized to determine unemployment.

Response. HUD believes that each of the three factors presented in § 597.102(a), in and of itself, adequately exemplifies an area that has pervasive

poverty. Similarly, HUD believes that each of the two factors presented in § 597.103(b) adequately exemplifies an area of unemployment. However, these comments will certainly be considered if another round of designations is authorized by the Congress.

Comments on Poverty Rate

Comment. Sixteen commenters stated that the definition of low or zero population industrial or commercial census tracts should be extended to include zero population census blocks which meet the same criteria. Two other commenters stated that the requirement for a non-contiguous area to separately meet the poverty rate criteria makes no sense where the non-contiguous area consists of a single census tract.

Response. Poverty rate is addressed in § 597.103 of the rule. The existing EZ/EC legislation provides no flexibility to adopt the comments suggested by the commenters.

Comment. Other commenters asked that HUD take into consideration the unique poverty rates of their own States or communities due to the high cost of living.

Response. HUD believes that the poverty rate factors in the rule are sufficiently broad to encompass the unique poverty and high cost of living characteristics of any individual State or community.

Comments on the Strategic Plan

Comment. Three commenters stated that the strategic plan principle concerning employment should emphasize job creation for low-income persons. Another commenter stated that the strategic plan principle concerning employment should emphasize job creation for minority businesses.

Response. HUD agrees with the commenters and such emphasis will be considered in future rulemaking that may be necessary for any additional rounds of designations that may be authorized.

Comment. Two commenters stated that the rule should require an explanation of how participants in the planning process are representative of the "affected" community.

Response. This requirement was included in the application, and HUD will consider including this requirement in the text of the regulation in any future rulemaking that may be needed.

Comment. Two commenters stated that the rule should emphasize that public funds cannot be used to encourage plant relocations or pirating of jobs from one place to another.

Response. This issue was addressed in § 597.200(3) of the rule, and the EZ/

EC application included a certification to this effect.

Comment. Two commenters stated that the rule should allow designated communities to use funds and other resources identified in the strategic plan for properties directly adjacent to the boundaries of the designated census tracts.

Response. HUD provides flexibility on this issue. Businesses and enterprise communities do not receive tax incentives and the only funding that flows from EZ/EC designation is title 20 funding. The latter can be used outside of the EC if the use of the funds benefits the EC residents directly.

Comment. Two commenters stated that the rule did not discuss the applicability of existing plans (e.g., CHAS) to the strategic planning process.

Response. Although the rule does not specifically reference the CHAS, the rule contains reference to other local planning efforts and to consolidated planning efforts (See §§ 597.200(d)(15) and 597.201(b).) Once the Consolidated Plan final rule is published, it will bring all plans into conformance.

Comment. One commenter stated that the rule should require jurisdictions to disclose areas considered for nomination, but not selected, and to explain why they were not selected.

Response. This issue is addressed to some extent in § 597.201(c) of the rule, but HUD will consider expanding on this issue in any future rulemaking that may be needed.

Comment. One commenter, in response to the requirements of § 597.200(d)(14), (15), and (16), stated that the rule should require applicants to explain which existing resources (including the amounts) will be shifted from other geographic locations to the EZ/EC area to fulfill the applicant's commitment to resources to the EZ/EC area.

Response. HUD believes that such a requirement would be an unwarranted intrusion in local government processes.

Comment. Two commenters stated that the rule should identify specific regulatory and other impediments to implementing the strategic plan, and indicate whether waivers can be accomplished administratively or through statutory changes.

Response. HUD cannot identify specific regulatory barriers for each applicant. The applicant is in a better position to advise HUD where there are barriers and other impediments to implementation of the plan, and HUD asks applicants to identify such barriers in § 597.200(d)(17) and (18).

Comment. Other commenters made several other suggestions for the

strategic plan, including: requiring the same standards for citizen participation for strategic plan revisions as required for initial development of the plan, requiring benchmarks that identify benefits to low-income persons and long-term unemployed persons, and encouraging activities that specifically meet the needs of low-income persons.

Response. All these suggestions have merit and HUD will consider these in any future rulemaking that may be needed.

Comments on Evaluation of the Strategic Plan

Comment. Several commenters made suggestions for changes to § 597.201 which describes how the strategic plan will be evaluated. The suggestions included evaluating the plan based on the number of *quality* jobs provided to low-income persons; allowing community-based partnerships to include labor unions; allowing community-based partnerships to include low-income persons, long-term unemployed persons, and residents of the area to be designated; providing minimum standards for participation in the development of the plan; and providing for low-income persons to monitor the implementation of the plan.

Response. All of these suggestions will be taken into consideration in any future EZ/EC rulemaking.

Comment. One commenter stated that the rule must promote affordable housing and without affordable housing in proposed zones, the EZ/EC program will fail.

Response. Affordable housing was promoted through the rule. See §§ 597.200(d)(12)(ii)(B)(3) and (g)(3), and 597.201(b)(8).

Comment. One commenter stated that a city's compliance with the affordable housing requirement may make the city ineligible for EZ/EC designation. The commenter stated that as a result of compliance with this requirement, some cities do not have concentration of poverty described in the threshold requirements for EZ/EC designation. Another commenter stated that the evaluation of a plan should have included a review of whether a jurisdiction is affirmatively furthering fair housing, and also required applicants to submit a certification that they are in compliance with fair housing laws. The commenter also stated that the rule should provide for revocation of designation as a zone or community if the jurisdiction fails to comply with these laws.

Response. With respect to the first commenter's concern, the poverty rates set forth in the interim rule are based on

the 1990 Census, which HUD believes provides a fair and impartial measure of poverty level. With respect to the second commenter's concern, these suggestions will be considered in future rulemaking.

Comments on Submission of Nomination of Designation

Comment. Two commenters stated that the affected community should have access to the same information and reports, at no cost, that are available to HUD.

Response. Following completion of the designation process, the information contained in applications will be available to the public through requests made under the Freedom of Information Act.

Comment. One commenter suggested that the rule require the affected State to receive a copy of notice of intent to participate by the community, at the same time the local community sends the notice to HUD.

Response. HUD will consider adopting this suggestion in future rulemaking.

Comments on the Selection Factors for Designation

Comment. One commenter stated that the rule should include procedures for appealing selections based on geographic diversity. The commenter notes the rule allows HUD to designate a lower rated application over a higher rated application in the interests of geographic diversity of the designations (see § 597.301). Another commenter states that the geographic diversity provision should be strengthened by providing that each State will receive at least one urban designation as either an EZ or EC. A third commenter stated that HUD should reserve two of the six urban zone designations for small cities with populations under 100,000.

Response. HUD is not inclined to adopt any of these commenters' suggestions as regulatory requirements. These suggestions limit the flexibility that is needed in the selection process. However, HUD will re-evaluate these issues at the time of any future rulemaking.

Comments on Other Provisions

Comment. One commenter stated that the rule should be explicit about the eligibility of areas for designation within the Commonwealth of Puerto Rico.

Response. Pursuant to Title XIII, no areas of Puerto Rico were eligible for designation.

IV. Other Matters

National Environmental Policy Act. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the interim rule. That Finding remains applicable to this final rule and is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

Executive Order 12866, Regulatory Planning and Review. This rule was reviewed and approved by the Office of Management and Budget as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities within the intent and purpose of that Act. The Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. To the extent that this rule affects those entities, its purpose is to reduce any disproportionate burden by providing for the waiver of regulations and by affording other incentives directed toward a positive economic impact. Therefore, no regulatory flexibility analysis under the Act is necessary.

Executive Order 12611, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that, although the policies contained in this rule may have a substantial direct effect on States or their political subdivisions that are designated as Empowerment Zones or Enterprise Communities, this effect is intended by the legislation authorizing the program. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States and local governments, and to reduce any regulatory burden imposed by the Federal government that impedes

the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being, except to the extent that the program authorized by the rule will empower communities and their residents to take effective action to solve difficult and pressing economic, human, community and physical development challenges that have a negative impact on families. Any such impact is beneficial and merits no further review under the Order.

Semiannual Agenda. This rule was listed as sequence number 1851 in the Department's semiannual agenda of regulations published on November 14, 1994 (59 FR 57632, 57665) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 597

Community development, Empowerment zones, Enterprise communities, Economic development, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

In accordance with the reasons set out in the preamble, 24 CFR part 597 is revised to read as follows:

PART 597—URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Subpart A—General Provisions

Sec.

- 597.1 Applicability and scope.
- 597.2 Objective and purpose.
- 597.3 Definitions.
- 597.4 Secretarial review and designation.
- 597.5 Waivers.

Subpart B—Area Requirements

- 597.100 Eligibility requirements and data usage.
- 597.101 Data utilized for eligibility determinations.
- 597.102 Tests of pervasive poverty, unemployment and general distress.
- 597.103 Poverty rate.

Subpart C—Nomination Procedure

- 597.200 Nominations by State and local governments.
- 597.201 Evaluating the strategic plan.
- 597.202 Submission of nominations for designation.

Subpart D—Designation Process

- 597.300 HUD action and review of nominations for designation.
- 597.301 Selection factors for designation of nominated urban areas.

597.302 Number of Empowerment Zones and Enterprise Communities designated.

Subpart E—Post-Designation Requirements

597.400 Reporting.
597.401 Periodic performance reviews.
597.402 Validation of designation.
597.403 Revocation of designation.

Subpart F—Special Rules

597.500 Indian Reservations.
597.501 Governments.
597.502 Nominations by economic development corporations or the District of Columbia.
597.503 Use of census data.

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 597.1 Applicability and scope.

(a) This part establishes policies and procedures applicable to urban Empowerment Zones and Enterprise Communities, authorized under Subchapter U of the Internal Revenue Code of 1986, as amended, relating to the designation and treatment of Empowerment Zones, Enterprise Communities and Rural Development Investment Areas.

(b) This part contains provisions relating to area requirements, the nomination process for urban Empowerment Zones and urban Enterprise Communities, and the designation and administration of these Zones and Communities by HUD. Provisions dealing with the nomination and designation of rural Empowerment Zones and Enterprise Communities will be promulgated by the Department of Agriculture. HUD and the Department of Agriculture will consult in all cases in which nominated areas possess both urban and rural characteristics, and will utilize a flexible approach in determining the appropriate designation.

§ 597.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in urban areas, to stimulate the creation of new jobs, particularly for the disadvantaged and long-term unemployed, and to promote revitalization of economically distressed areas.

§ 597.3 Definitions.

Designation means the process by which the Secretary designates urban areas as Empowerment Zones or Enterprise Communities eligible for tax incentives and credits established by Subchapter U of the Internal Revenue Code of 1986, as amended (26 U.S.C. 1391 *et seq.*) and for special

consideration for programs of Federal assistance.

Empowerment Zone means an urban area so designated by the Secretary pursuant to this part. Up to six such Zones may be designated, *provided, that* if the Secretary designates the maximum number of zones, not less than one shall be in a nominated urban area the most populous city of which has a population of 500,000 or less; and no less than one shall be a nominated urban area which includes areas in two States and which has an area population of 50,000 or less.

Enterprise Community means an urban area so designated by the Secretary pursuant to this part. Not more than 65 such communities may be so designated.

HUD means the Department of Housing and Urban Development.

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions which is recognized by the Secretary.

Nominated area means an area nominated by one or more local governments and the State or States in which it is located for designation pursuant to this part.

Population census tract means a census tract, or, if census tracts are not defined for the area, a block numbering area.

Poverty means the number of persons listed as being in poverty in the 1990 Decennial Census.

Revocation of designation means the process by which the Secretary may revoke the designation of an urban area as an Empowerment Zone or Enterprise Community pursuant to § 597.403.

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States

Strategic plan means a strategy developed and agreed to by the nominating local government(s) and State(s), which have provided certifications of their authority to adopt such a strategy in their application for nomination, in consultation and cooperation with the residents of the nominated area, pursuant to the provisions of § 597.200(c). The plan must include written commitments from the local government(s) and State(s) that they will adhere to that strategy.

Urban area means:

(1) Any area that lies inside a Metropolitan Area (MA), as designated by the Office of Management and Budget; or

(2) Any area outside an MA if the jurisdiction of the nominating local

government has a population of 20,000 or more, or documents the urban character of the area.

§ 597.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated urban areas to determine the effectiveness of the strategic plans submitted by nominating State and local government(s) in accordance with § 597.200(c). The Secretary will designate up to six urban Empowerment Zones and up to 65 urban Enterprise Communities.

(b) *Period of Designation.* The designation of an urban area as an Empowerment Zone or Enterprise Community shall remain in full effect during the period beginning on the date of designation and ending on the earliest of:

(1) The close of the tenth calendar year beginning on or after the date of designation;

(2) The termination date designated by the State and local governments in their application for nomination; or

(3) The date the Secretary modifies or revokes the designation, in accordance with §§ 597.402 or 597.403.

§ 597.5 Waivers.

The Secretary of HUD may waive for good cause any provision of this part not required by statute, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

Subpart B—Area Requirements

§ 597.100 Eligibility requirements and data usage.

A nominated urban area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population which is the lesser of:

(1) 200,000; or

(2) The greater of 50,000 or ten percent of the population of the most populous city located within the nominated area;

(b) Is one of pervasive poverty, unemployment and general distress, as described in § 597.102;

(c) Does not exceed twenty square miles in total land area;

(d) Has a continuous boundary, or consists of not more than three noncontiguous parcels;

(e) Is located entirely within the jurisdiction of the unit or units of general local government making the nomination, and is located in no more than two contiguous States; and

(f) Does not include any portion of a central business district, as this term is

used in the most recent Census of Retail Trade, unless the poverty rate for each population census tract in the district is not less than 35 percent for an Empowerment Zone and 30 percent for an Enterprise Community.

§ 597.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to the criteria set forth at § 597.102 shall be based upon the 1990 Decennial Census, and from information published by the Bureau of the Census and the Bureau of Labor Statistics. The data shall be comparable as to point or period of time and methodology employed. Specific information on appropriate data to be submitted will be provided in the application.

(b) *Use of statistics on boundaries.* The boundary of an urban area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of census tracts, or, where tracts are not defined, with block numbering areas.

§ 597.102 Tests of pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Pervasive poverty shall be demonstrated by the nominating entities by providing evidence that:

(1) Poverty is widespread throughout the nominated area; or

(2) Poverty has become entrenched or intractable over time (through comparison of 1980 and 1990 census data or other relevant evidence); or

(3) That no portion of the nominated area contains any component areas of an affluent character.

(b) *Unemployment.* Unemployment shall be demonstrated by:

(1) Data indicating that the weighted average rate of unemployment for the nominated area is not less than the national average rate of unemployment; or

(2) Evidence of especially severe economic conditions, such as military base or plant closings or other conditions which have brought about significant job dislocation within the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. A high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline, are examples of appropriate indicators of general distress.

§ 597.103 Poverty rate.

(a) *General.* The poverty rate shall be established in accordance with the following criteria:

(1) In each census tract within a nominated urban area, the poverty rate shall be not less than 20 percent;

(2) For at least 90 percent of the population census tracts within the nominated urban area, the poverty rate shall not be less than 25 percent; and

(3) For at least 50 percent of the population census tracts within the nominated urban area, the poverty rate shall be not less than 35 percent.

(b) *Special rules relating to the determination of poverty rate.* (1) *Census Tracts with no population.* Census tracts with no population shall be treated as having a poverty rate which meets the standards of paragraphs (a)(1) and (2) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(3) of this section.

(2) *Census tracts with populations of less than 2,000.* A population census tract which has a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of paragraphs (a)(1) and (a)(2) of this section if more than 75 percent of the tract is zoned for commercial or industrial use.

(3) *Adjustment of poverty rates for Enterprise Communities.* Where necessary to carry out the purposes of this part, the Secretary may reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the census tracts, or, if fewer, five population tracts in the nominated urban area:

(i) The 20 percent threshold in paragraph (a)(1) of this section;

(ii) The 25 percent threshold in paragraph (a)(2) of this section; and

(iii) The 35 percent threshold in paragraph (a)(3) of this section; *Provided that*, the Secretary may in the alternative reduce the 35 percent threshold by 10 percentage points for three population census tracts.

(4) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percent or more up to the next highest whole percentage figure.

(c) *Noncontiguous areas.* A nominated urban area may not contain a noncontiguous parcel unless such parcel separately meets the criteria set forth at paragraphs (a)(1), (2), and (3) of this section.

(d) *Areas not within census tracts.* In the case of an area which does not have population census tracts, the block numbering area shall be used.

Subpart C—Nomination Procedure

§ 597.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the State or States in which an urban area is located may nominate such area for designation as an Empowerment Zone and/or as an Enterprise Community, if:

(1) The urban area meets the requirements for eligibility set forth in §§ 597.100 and 597.103;

(2) The urban area is within the jurisdiction of a State or States and local government(s) that have the authority to nominate the urban area for designation and that provide written assurances satisfactory to the Secretary that the strategic plan described in paragraph (c) of this section will be implemented;

(3) All information furnished by the nominating State(s) and local government(s) is determined by the Secretary to be reasonably accurate; and

(4) The State(s) and local government(s) certify that no portion of the area nominated is already included in an Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section.

(b) *Nomination for designation.* No urban area may be considered for designation pursuant to subpart D of this part unless the nomination for designation:

(1) Demonstrates that the nominated urban area satisfies the eligibility criteria set forth at § 597.100;

(2) Includes a strategic plan, as described in paragraph (c) of this section; and

(3) Includes such other information as may be required by HUD in the application or in a Notice Inviting Applications, to be published in the **Federal Register**.

(c) *Strategic plan.* Each application for designation must be accompanied by a strategic plan, which must be developed in accordance with four key principles, which will also be utilized to evaluate the plan. These principles are:

(1) Economic opportunity, including job creation within the community and throughout the region, as well as entrepreneurial initiatives, small business expansion and training for jobs that offer upward mobility;

(2) Sustainable Community Development, to advance the creation of liveable and vibrant communities through comprehensive approaches that coordinate economic, physical, community and human development;

(3) Community-Based Partnerships, involving the participation of all segments of the community, including

the political and governmental leadership, community groups, health and social service groups, environmental groups, religious organizations, the private and non-profit sectors, centers of learning and other community institutions; and

(4) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(d) *Elements of strategic plan.* The strategic plan should:

(1) Indicate and briefly describe the specific groups, organizations, and individuals participating in the production of the plan and describe the history of these groups in the community;

(2) Explain how participants were selected and provide evidence that the participants, taken as a whole, broadly represent the racial, cultural and economic diversity of the community;

(3) Describe the role of the participants in the creation, development and future implementation of the plan;

(4) Identify two or three topics addressed in the plan that caused the most serious disagreements among participants and describe how those disagreements were resolved;

(5) Explain how the community participated in choosing the area to be nominated and why the area was nominated;

(6) Provide evidence that key participants have the capacity to implement the plan;

(7) Provide a brief explanation of the community's vision for revitalizing the area;

(8) Explain how the vision creates economic opportunity, encourages self-sufficiency and promotes sustainable community development;

(9) Identify key needs of the area and the current barriers to achieving the vision for it, including a description of poverty and general distress, barriers to economic opportunity and development and barriers to human development;

(10) Discuss how the vision is related to the assets and needs of the area and its surroundings;

(11) Describe the ways in which the community's approaches to economic development, social/human services, transportation, housing, sustainable community development, public safety, drug abuse prevention, and educational

and environmental concerns will be addressed in a coordinated fashion; and explain how these linkages support the community's vision;

(12) Indicate how all Social Services Block Grant funds for designated Empowerment Zones and Enterprise Communities (EZ/EC SSBG funds) will be utilized.

(i) In doing so, the strategic plan shall provide the following information:

(A) A commitment by the applicant, as well as by the nominating State-chartered economic development corporation or State government(s) and local governments, that the EZ/EC SSBG funds will be used to supplement, not replace, other Federal or non-Federal funds available for financing for services or activities which can be used to achieve or maintain the goals outlined in paragraph (d)(12) of this section;

(B) A description of the entities that will administer the EZ/EC SSBG funds;

(C) A certification by such entities that they will provide periodic reports on the use of the EZ/EC SSBG funds; and

(D) A detailed description of all the activities to be financed with the EZ/EC SSBG funds and how all such funds will be allocated.

(ii) The EZ/EC SSBG funds must be used to achieve or maintain the following goals. The goals may be achieved by undertaking one or more of the following program options:

(A) The goal of economic self-support to prevent, reduce or eliminate dependencies, through one or more of the following program options:

(1) Funding community and economic development services focused on disadvantaged adults and youths, including skills training, transportation services and job, housing, business, and financial management counseling;

(2) Supporting programs that promote home ownership, education or other routes to economic independence for low-income families, youths, and other individuals;

(3) Assisting in the provision of emergency and transitional shelter for disadvantaged families, youths, and other individuals;

(B) The goal of self-sufficiency, including reduction or prevention of dependencies, through one or more of the following program options:

(1) Providing assistance to non-profit organizations and/or community and junior colleges that provide disadvantaged adults and youths with opportunities for short-term training courses in entrepreneurial and self-employment skills and other training that promotes individual self-

sufficiency, and the interest of the community;

(2) Funding programs to provide training and employment for disadvantaged adults and youths in construction, rehabilitation or improvement of affordable housing, public infrastructure and community facilities; and

(C) The goal of prevention or remedying the neglect, abuse or exploitation of children and/or adults unable to protect their own interest; and the goal of preservation, rehabilitation, or reuniting of families, through one or more of the following program options:

(1) Providing support for residential or non-residential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women, and mothers and their children;

(2) Establishing programs that provide activities after school hours, including keeping school buildings open during evenings and weekends for mentor and study programs.

(iii) Designated Empowerment Zone and Enterprise Communities may work to achieve or maintain the goals outlined in paragraphs (d)(12)(ii) (A) and (B) of this section by using EZ/EC SSBG funds to capitalize revolving or micro-enterprise loan funds which benefit low-income residents of the designated Empowerment Zones and Enterprise Communities. Similarly, the Zones and Communities may work to achieve or maintain the goals outlined in paragraphs (d)(12)(ii) (A) and (B) of this section by using the EZ/EC SSBG funds to create jobs and promote economic opportunity for low-income families and individuals through matching grants, loans, or investments in community development financial institutions.

(iv) If the EZ/EC SSBG funds are to be used for program options not included in paragraph (d)(12)(ii) of this section, the strategic plan must indicate how the proposed activities meet the goals set forth in paragraph (d)(12)(ii) of this section and the reasons the approved program options were not pursued.

(v) To the extent that the EZ/EC SSBG funds are to be used for the program options included in paragraph (d)(12)(ii) of this section, they may be used for the following activities, in addition to those activities permitted by Section 2005 of the Social Security Act (42 U.S.C. 1379d):

(A) To purchase or improve land or facilities;

(B) To make cash payments to individuals for subsistence or room and board;

(C) To make wage payments to individuals as a social service;

(D) To make cash payments for medical care; and

(E) To provide social services to institutionalized persons.

(vi) The State must obligate the EZ/EC SSBG funds in accordance with the strategic plan within 2 years from the date of payment to the State, or remit the unobligated funds to the Secretary of Health and Human Services (HHS).

(vii) The strategic plan must indicate how all the EZ/EC SSBG funds will be invested and used for the period of designation of the Empowerment Zone or Enterprise Community.

(viii) The strategic plan must provide for periodic reporting of information by the State in which the Empowerment Zone or Enterprise Community is located.

(13) Indicate how tax benefits for designated Zones and Communities, State and local resources, existing Federal resources available to the locality and additional Federal resources believed necessary to implement the strategic plan will be utilized within the Empowerment Zone or Enterprise Community;

(14) Indicate a level of commitment necessary to ensure that these resources will be available to the area upon designation;

(15) Identify the Federal resources applied for or for which applications are planned; if a strategic plan indicates how Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant, and Housing Opportunities for People with AIDS (HOPWA) funds will be expended (for the entire locality including the nominated area), the strategic plan will be considered by the Office of Community Planning and Development at HUD toward satisfying the consolidated planning requirements that will soon be issued for these programs;

(16) Identify private resources and support, including assistance from business, non-profit organizations and foundations, which are available to be leveraged with public resources; and provide assurances that these resources will be made available to the area upon designation;

(17) Identify changes necessary to Federal rules and regulations necessary to implement the plan, including specific paperwork or other Federal program requirements that must be altered to permit effective implementation of the strategic plan; and

(18) Identify specific regulatory and other impediments to implementing the strategic plan for which waivers are

requested, with appropriate citations and an indication whether waivers can be accomplished administratively or require statutory changes;

(19) Demonstrate how State and local governments will reinvent themselves to help implement the plan, by identifying changes that will be made in State and local organizations, processes and procedures, including laws and ordinances;

(20) Explain how different agencies in State and local governments will work together in new responsive ways to implement the strategic plan;

(21) Identify the specific tasks and timetable necessary to implement the plan;

(22) Describe the partnerships that will be established to carry out the plan;

(23) Explain how the plan will be regularly revised to reflect new information and opportunities; and

(24) Identify benchmarks and goals that should be used in evaluating performance in implementing the plan.

(e) *Prohibition against business relocation.* The strategic plan may not include any action to assist any establishment in relocating from one area outside the nominated urban area to the nominated urban area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(1) The establishment of a new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(f) *Implementation of strategic plan.* The strategic plan may be implemented by the local government(s) and/or by the State(s) nominating an urban area for designation and/or by nongovernmental entities identified in the strategic plan. Activities included in the plan may be funded from any source, Federal, State, local, or private, which provides assistance in the nominated area.

(g) *Activities included in strategic plan.* A strategic plan may include, but is not limited to, activities which address:

(1) Economic problems, through measures designed to create job training and employment opportunities; support

for business start-up or expansion; or development of community institutions;

(2) Human concerns, through the provision of social services, such as rehabilitation and treatment programs or the provision of training, education, or other services within the affected area;

(3) Community needs, such as the expansion of housing stock and homeownership opportunities, efforts to reduce homelessness, efforts to promote fair housing and equal opportunity, efforts to reduce and prevent crime and improve security in the area; and

(4) Physical improvements, such as the provision or improvement of recreational areas, transportation or other public services within the affected area, and improvements to the infrastructure and environmental protection.

§ 597.201 Evaluating the strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated urban areas described in § 597.301. On the basis of this evaluation, HUD may negotiate reasonable modifications of the strategic plan or of the boundaries of a nominated urban area or the period for which such designation shall remain in full effect. The effectiveness of the strategic plan will be determined in accordance with the four key principles set forth in § 597.200(c). HUD will review each plan submitted in terms of the four equally weighted key principles, and of such other elements of these key principles as are appropriate to address the opportunities and problems of each nominated area which may include:

(a) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship increase within the Zone or Community;

(2) The extent to which residents will achieve a real economic stake in the Zone or Community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic and community development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire region or metropolitan area, and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the Zone or Community interrelates with the broader regional or metropolitan economies; and

(6) The extent to which lending and investment opportunities will increase within the Zone or Community through

the establishment of mechanisms to encourage community investment and to create new economic growth.

(b) *Sustainable Community Development.* (1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating locality and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the Zone or Community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection, and the quality of life in the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted, and the extent to which young people will be provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(7) *Education goals.* The extent to which schools, religious institutions, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable Housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug Abuse.* The extent to which the plan addresses levels of drug abuse and drug related activity through the expansion of drug treatment services, drug law enforcement initiatives and community based drug abuse education programs;

(10) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated Zone or Community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, national origin, gender or disability in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, or use of facilities.

(c) *Community-Based Partnerships.* (1) *Community partners.* The extent to which residents of the nominated area have participated in the development of the strategic plan and their commitment to implementing it, and the extent to which community-based organizations in the nominated area have participated in the development of the plan and their record of success measured by their achievements and support for undertakings within the nominated area; and the extent to which the plan integrates the local educational, social, civic, environmental and health organizations and reflects the prominent place that these institutions play in the life of a revitalized community;

(2) *Private and non-profit organizations as partners.* The extent to which partnership arrangements include commitments from private and non-profit organizations, including corporations, utilities, banks and other financial institutions, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which State and local governments are committed to providing support to implement the strategic plan, including their commitment to "reinventing" their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the Zone or Community's designation and the extent to which the partners agree to be bound by their commitments.

(d) *Strategic vision for change.* (1) *Goals and Coordinated strategy.* The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community

development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets;

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

§ 597.202 Submission of nominations for designation.

(a) *General.* A nomination for designation as an Empowerment Zone and/or Enterprise Community must be submitted for each urban area for which such designation is requested. The nomination shall be submitted in a form to be prescribed by HUD in the application and in the Notice Inviting Applications published in the **Federal Register**, and must contain complete and accurate information.

(b) *Certifications.* Certifications must be submitted by the State(s) and local government(s) requesting designation stating that:

(1) The nominated urban area satisfies the boundary tests of § 597.100(d);

(2) The nominated urban area is one of pervasive poverty, unemployment and general distress, as prescribed by § 597.102;

(3) The nominated urban area satisfies the poverty rate tests set forth in § 597.103;

(4) The nominated urban area contains no portion of an area that is either already designated as an Empowerment Zone and/or Enterprise Community, or is otherwise included in any other area nominated for designation as an Empowerment Zone and/or Enterprise Community;

(5) Each nominating governmental entity has the authority to:

(i) Nominate the urban area for designation as an Empowerment Zone and/or Enterprise Community;

(ii) Make the State and local commitments required by § 597.200(d); and

(iii) Provide written assurances satisfactory to the Secretary that these commitments will be met.

(6) Provide assurances that the amounts provided to the State for the

area under Section 2007 of Title XX of the Social Security Act will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of Section 2007;

(7) Provide that the nominating governments or corporations agree to make available all information requested by HUD to aid in the evaluation of progress in implementing the strategic plan and reporting on the use of Empowerment Zone/Enterprise Community Social Service Block Grant funds; and

(8) Provide assurances that the nominating State(s) agrees to distribute the Empowerment Zone/Enterprise Community Social Service Block Grant funds in accordance with the strategic plan submitted for the designated Zone or Community.

(c) *Maps and area description.* Maps and a general description of the nominated urban area shall accompany the nomination request.

Subpart D—Designation Process

§ 597.300 HUD action and review of nominations for designation.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of nominations for designation as Empowerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the **Federal Register**.

(b) *Acceptance for processing.* (1) HUD will accept for processing those nominations for designation as Empowerment Zones or Enterprise Communities which HUD determines have met the criteria required by this Part. HUD will notify the State(s) and local government(s) whether or not the nomination has been accepted for processing. The criteria for acceptance for processing are as follows:

(2) The nomination for designation as an Empowerment Zone or Enterprise Community must be received by HUD on or before the time on the date established by the Notice Inviting Applications published in the **Federal Register**. The nomination for designation as an Empowerment Zone or Enterprise Community must be complete and must be accompanied by a strategic plan, as required by § 597.200(c), and the certifications required by § 597.202(b).

(c) *Evaluation of nominations.* In the process of reviewing each nomination accepted for processing, HUD may undertake a site visit(s) to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated urban areas, and/or period during which designation is in effect.* Subject to the limitations imposed by § 597.100, HUD may negotiate reasonable modifications of the strategic plan, the proposed boundaries of a nominated urban area, or the term for which a designation is to remain in full effect, to ensure maximum efficiency and fairness in the provision of assistance to such areas.

(e) *Publication of designations.* Announcements of those nominated urban areas designated as Empowerment Zones or Enterprise Communities will be made by publication of a Notice in the **Federal Register**.

§ 597.301 Selection factors for designation of nominated urban areas.

(a) *Selection factors.* In choosing among nominated urban areas eligible for designation, the Secretary shall consider:

(1) The effectiveness of the strategic plan in accordance with the key principles and evaluative criteria set out in § 597.201;

(2) The effectiveness of the assurances made pursuant to § 597.200(a)(2) that the strategic plan will be implemented;

(3) The extent to which an application proposes activities that are creative and innovative in comparison to other applications; and

(4) Such other factors established by HUD. Such factors include, but are not limited to, the degree of need demonstrated by the nominated area for assistance under this part. If other factors are established by HUD, a **Federal Register** notice will be published identifying such factors, along with an extension of the application due date if necessary.

(b) *Geographic diversity.* HUD, in its discretion, may choose to select for designation a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of designations approved under this part.

§ 597.302 Number of Empowerment Zones and Enterprise Communities designated.

(a) *Empowerment Zones.* HUD will designate up to six of the nominated urban areas as Empowerment Zones, provided: that if six such zones are so designated, no less than one shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than one shall be a nominated urban area which includes areas in two States and which has a population of 50,000 or less.

(b) *Enterprise Communities.* HUD will designate up to 65 of the nominated

urban areas not designated Empowerment Zones under paragraph (a) of this section as Enterprise Communities.

Subpart E—Post-Designation Requirements

§ 597.400 Reporting.

HUD will require periodic reports for the Empowerment Zones and Enterprise Communities designated pursuant to this part. These reports will identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones and Enterprise Communities as HUD shall request from time to time, including information documenting nondiscrimination in hiring and employment by businesses within the designated Empowerment Zone or Enterprise Community, shall be submitted promptly.

§ 597.401 Periodic performance reviews.

HUD will regularly evaluate the progress of the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and other information submitted. HUD will also commission evaluations of the Empowerment Zone program as a whole by an impartial third party, at such intervals as HUD may establish.

§ 597.402 Validation of designation.

(a) *Reevaluation of designations.* On the basis of the performance reviews described in § 597.401, and subject to the provisions relating to the revocation of designation appearing at § 597.403, HUD will make findings on the continuing eligibility for and the validity of the designation of any Empowerment Zone or Enterprise Community. Determinations of whether any designated Empowerment Zone or Enterprise Community remains in good standing shall be promptly communicated to all Federal agencies providing assistance or administering programs under which assistance can be made available in such Zone or Community.

(b) *Modification of designation.* Based on an urban area's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation appearing at § 597.403 and the requirements as to the number, maximum population and other characteristics of urban Empowerment Zones set forth in § 597.3, the Secretary may modify designations by reclassifying urban Empowerment

Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

§ 597.403 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of an urban area as an Empowerment Zone or Enterprise Community if the Secretary determines, on the basis of the periodic performance review described at § 597.401, that the State(s) or local government(s) in which the urban area is located:

(1) Has modified the boundaries of the area;

(2) Has failed to make progress in achieving the benchmarks set forth in the strategic plan; or

(3) Has not complied substantially with the strategic plan.

(b) *Letter of warning.* Before revoking the designation of an urban area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the nominating State(s) and local government(s):

(1) Advising that the Secretary has determined that the nominating local government(s) and/or State(s) has:

(i) Modified the boundaries of the area; or

(ii) Is not complying substantially with, or has failed to make progress in achieving the benchmarks set forth in the strategic plan prepared pursuant to § 597.200(c); and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* After allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination pursuant to paragraph (a) of this section, the Secretary may issue a final notice of revocation of the designation of the urban area as an Empowerment Zone or Enterprise Community.

(d) *Notice to affected Federal agencies.* HUD will notify all affected Federal agencies providing assistance in an urban Empowerment Zone or Enterprise Community of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to § 597.402(b).

Subpart F—Special Rules

§ 597.500 Indian Reservations.

No urban Empowerment Zone or Enterprise Community may include any area within an Indian reservation.

§ 597.501 Governments.

If more than one State or local government seeks to nominate an urban area under this part, any reference to or requirement of this part shall apply to all such governments.

§ 597.502 Nominations by economic development corporations or the District of Columbia.

Any urban area nominated by an Economic Development Corporation chartered by the State in which it is located or by the District of Columbia shall be treated as nominated by a State and local government.

§ 597.503 Use of census data.

Population and poverty rate data shall be determined by the most recent decennial census data available.

Dated: December 2, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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