

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 598**

[Docket No. FR-4853-F-02]

RIN 2506-AC16

Empowerment Zones: Performance Standards for Utilization of Grant Funds

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

ACTION: Final rule.

SUMMARY: This final rule establishes certain planning and performance standards for utilization of grant funds allocated to Empowerment Zones, including planning and performance standards for benefit levels and economic development activities. The standards are designed to ensure that activities undertaken with HUD Empowerment Zone grant funds are consistent with the strategic plans of the Empowerment Zones. This final rule follows publication of a proposed rule, takes into consideration the public comments received on the proposed rule, and makes certain changes in response to public comment.

DATES: *Effective Date:* January 14, 2008.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. Background—June 8, 2005 Proposed Rule**

On June 8, 2005 (70 FR 33641), HUD published a proposed rule that would amend its regulations at 24 CFR part 598 to add a new subpart G entitled "Empowerment Zone Grants." New subpart G was proposed to be added to establish (1) the requirements for preparation and submission of an implementation plan for the use of funds appropriated by Congress and made available by HUD specifically for the Round II urban Empowerment Zones (EZs), and (2) performance standards that the EZs must meet in the use of those funds. The June 8, 2005, rule proposed to require an EZ to submit to HUD a plan for use of HUD EZ grant funds. These plans would be subject to

performance and economic development standards in order to ensure that grant funds are expended in ways that are consistent with the EZ's strategic plan as well as ensure that a certain level of the benefits resulting from the expenditures of these funds accrue to persons who reside within the EZ.

The June 8, 2005, proposed rule was prompted, in part, by numerous comments received by HUD on the subject of utilization of funds for the benefit of EZ residents following HUD's issuance of a policy statement on resident benefit in July 2002. Round I EZs received Social Service Block Grants (SSBG) from the Department of Health and Human Services (HHS). The HHS statute governing the use of SSBG funding, (42 U.S.C. 1397 *et seq.*), states in relevant part that, "an area shall use the grant for activities that benefit residents of the area for which the grant is made." Round II EZs received grant funds from HUD (HUD EZ grant funds) rather than SSBG funds.

This funding distinction created a situation where there is an explicit statutory basis for a resident benefit standard for Round I EZs, but not for Round II EZs. Nevertheless, HUD determined that it was appropriate to establish a performance standard that strives to ensure a certain level of resident benefit is achieved from the use of HUD EZ grant funds. The establishment of such a standard is supported by and consistent with the fact that several of the tax incentives that are the primary benefits for businesses operating in EZs also provide a direct benefit to EZ residents.

Therefore, to enhance achievement of the objectives of an EZ strategic plan and the specific objective of benefiting EZ residents, this rule requires each EZ to submit an implementation plan for HUD approval for each project or activity to be undertaken with HUD EZ grant funds that is proposed by the EZ after the effective date of this rule. The implementation plan is to describe the EZ's planned use of HUD EZ grant funds, and what percentage of the funds specifically will meet the principal benefit standard. The three performance standards are stated as (1) a principal benefit standard, (2) a proportional benefit standard, and (3) an exception criterion for determining the amount of HUD EZ grant funds that may be used to fund a particular project or activity described in an implementation plan. Each of these standards was discussed in detail in the preamble to the June 8, 2005, proposed rule, and a brief summary of each standard is provided in this preamble.

A. Performance Standards**1. Principal Benefit Standard**

The principal benefit standard is based on the percentage of the total number of persons projected to benefit from the assisted activity who reside within the boundaries of the EZ. This standard recognizes that for most projects it is not feasible to entirely limit the persons who benefit directly from EZ activities to those who reside within the EZ. The rule therefore establishes a minimum percentage of persons who must benefit in order to determine that EZ residents principally benefit from EZ activities.

The rule provides that an EZ may use HUD EZ grant funds to assist any project that provides at least 51 percent of its direct benefits to persons who reside within the designated EZ boundaries. Moreover, in any case where the direct benefits to be provided by the project in question will be in the form of jobs, the project may be assisted if at least 35 percent of the jobs, on a full-time equivalent basis, are taken by, or made available to, EZ residents.

The emphasis on the benefits to be received by EZ residents derives from HUD's determination that such an emphasis is needed to make the main goal of the EZ program more likely to be achieved. That goal is the long-term, sustainable revitalization of a highly impoverished area. In the case of an EZ, which by definition includes a very high percentage of persons in poverty, this means that many such persons must find a way to raise their income. HUD also recognizes that there may be projects that would be helpful to the overall effort to revitalize an EZ but which cannot meet either of the two proposed resident benefit tests (that is, the 51 percent or 35 percent tests), and therefore the rule provides two other standards to determine resident benefit.

2. Proportional Benefit Standard

In the interest of providing maximum flexibility to an EZ in its effort to achieve the goals of its strategic plan, the June 8, 2005, rule also proposed to establish a proportional benefit standard to assist such an activity to a lesser degree. This standard provides that while a project that will meet either the 51 percent or 35 percent test, as applicable, may be fully assisted with HUD EZ grant funds, a project that cannot meet those tests may nevertheless be eligible for assistance with HUD EZ grant funds.

The level of assistance that may be provided to such projects will be limited so that the percentage of assistance does not exceed the

percentage of EZ residents that are expected to directly benefit from the assisted activity. This standard embodies a practical approach that allows the use of the HUD EZ grant funds at a level commensurate with the extent to which EZ residents will benefit directly from such a project.

The principal benefit standard provides an incentive to EZs to fund projects that will provide at least 51 percent (or 35 percent, where applicable) of the direct benefits to EZ residents because where these percentages are met, there is no limit as to the allowable percentage of HUD EZ grant funding in a project. However, if a project is highly desirable for other reasons, under the proportional benefit standard, the project may still be assisted, in part, using HUD EZ grant funds.

3. Exception Criterion

In any case where a proposed project does not meet the principal benefit standard or the proportional benefit standard, the June 8, 2005, proposed rule advised that HUD would consider a request for exception if an EZ concludes that the project would contribute to its strategic plan in a critical way. The proposed rule provided that where an EZ demonstrates, to HUD's satisfaction, other substantial benefits to the EZ that would result from the project, or other compelling reasons justifying the appropriateness of the implementation plan to its strategic plan, HUD may approve the project notwithstanding inability to meet either the principal or proportional benefit standards.

The proposed rule provides that all requests for exceptions to the two standards must be in writing, accompanied by a statement or narrative that provides the factual information that justifies an exception.

B. Additional Issues

In addition to the three performance standards, the preamble to the June 8, 2005, proposed rule also addressed the following issues, for which this preamble also provides a brief summary for the convenience of the reader.

1. *Amount of benefit.* The question of how much benefit, at minimum, should be derived from the expenditure of HUD EZ grant funds was not proposed in the June 8, 2005, rule to be addressed in the regulatory text. The concern about quantifying in regulation the amount of benefit derives from the fact that the dominant use of HUD EZ grant funds is expected to be for assisting private businesses to establish, expand or remain in place in the EZ and create,

increase or retain jobs that would otherwise not be available. In referring to grant funds assisting private businesses in establishing, expanding or remaining in place in the EZ, HUD uses the terms "establish," "expand" or "remain in place" as they are commonly understood in everyday conversation, and more importantly as they are understood by EZs and EZ residents from the outset of the EZ program. "Establish a business" means the employer establishes additional working opportunities or makes investment in a new business within the EZ. The employer may be a new employer within the EZ or an existing employer that starts a business or invests in a business that is different from any that the employer currently operates within the EZ. "Expand a business" means that an employer, within the EZ, provides additional work opportunities or makes investments in an existing business. The expansion of an existing business results in hiring more staff, or generating more business activity. "Remain in place in the EZ" means that the business will not create or expand new hiring opportunities, but there will be no reduction of existing employment opportunities or business activities.

Since private businesses must principally focus on their own profitability, the public sector needs to ensure that the number of jobs that are made available is commensurate with the amount of HUD EZ grant funds provided to such businesses. To date, HUD is not aware of abuses in this regard with respect to the use of HUD EZ grant funds, but in the June 8, 2005 proposed rule, HUD solicited public comment on whether establishing specific requirements in regulation would be desirable to prevent them from occurring.

2. *Types of benefits/service area/location of the project.* Economic development professionals recognize other types of direct benefits besides creation and retention of jobs. For example, a supermarket, drug store, or for-profit medical clinic may provide essential services to support the quality of life and the business climate in the community. Given the type of project that may be proposed to be funded, the proposed rule noted that an EZ may choose which of the two standards, principal benefit or proportional benefit standard, best apply to a proposed commercial project. In addition, the location of a project within the EZ and the nature of the goods and services that the project will provide may justify a presumption that most of its goods and services would benefit the residents of the EZ. If a project is located outside the

EZ, the proposed rule noted that HUD would expect the EZ to provide more substantial analysis of its service area and customer base if it claims that a majority of these kinds of benefits would accrue to EZ residents.

3. *Full-time equivalency.* The June 8, 2005, proposed rule recognized that the standards to date for ensuring that sufficient benefit will go to EZ residents from activities assisted with HUD EZ grant funds measure jobs on a full-time equivalent basis. Such measurement standard was considered important because many of the jobs created or increased in an EZ could involve less than full-time employment. Because standards require a calculation of the "percentage" of total jobs resulting from utilization of HUD EZ grant funds that will benefit EZ residents, HUD determined in the June 8, 2005, proposed rule that it was important that provision be made for those cases where one or more of the resulting jobs will be part-time jobs.

4. *Making jobs "available to" EZ residents.* The June 8, 2005, proposed rule provided that the standards for ensuring sufficient benefit to EZ residents allow for inclusion of those jobs made available to residents even if the residents do not accept the available jobs. This standard recognizes that it may not be feasible for a business to hold one or more jobs open indefinitely while the business attempts to fill its available job vacancies with EZ residents. If the EZ can demonstrate that the job referral resources and the business have a good faith plan to provide first consideration to employment of EZ residents who reasonably can be expected to fill 35 percent of the jobs, it will be seen as meeting the principal benefit standard under this regulation. Although the proposed rule did not define "good faith," the proposed rule and this final rule both provide examples that demonstrate how good faith by an EZ will be determined, and these examples include public notification of employment opportunities, job fairs that are targeted to EZ residents, and first source agreements. These examples are consistent with established practices in implementing and monitoring job creation and retention activities funded with HUD's Community Planning and Development (CPD) grants.

The proposed rule noted that qualifying for tax exempt financing, increased deductions for capital equipment in accordance with section 179 of the Internal Revenue Code (26 U.S.C. 1791), and preferential tax treatment for capital gains otherwise available to an EZ business require that

the business meet the tests that define an "Enterprise Zone Business" under the Internal Revenue Code, including having at least 35 percent of its employees residing in the EZ.

C. In Conjunction With Economic Development

As the proposed rule noted, to date, all funds appropriated by Congress for Round II EZs (the HUD EZ grant funds) have generally been accompanied by the explicit requirement that the funds be used "in conjunction with economic development activities consistent with the strategic plan for each EZ."¹ Public Law 106-554 (the Consolidated Appropriations Act, 2001, approved December 21, 2000, which provided FY2001 appropriations for HUD), does not contain this requirement, but HUD has determined to apply a consistent approach to focus the use of all HUD funds made available to EZs.) Over the course of time that such funds have been made available to these EZs, questions have arisen about whether particular planned activities would fall within this statutory restriction. While each question was answered on an individual basis, until this rulemaking, HUD had not attempted to establish specific requirements for adhering to the economic development restriction. Through the June 8, 2005, rule, HUD proposed to establish specific criteria to address the economic development requirement. Specifically HUD proposed to amend the EZ regulations in 24 CFR part 598 to remove references to HHS at 24 CFR 598.215(b)(4)(i)(D) and replace these references with statements that HUD EZ grant funds are to be used in conjunction with economic development activities consistent with an EZ's strategic plan. This rule also provides for economic development activity standards.

In order to ensure that the economic development standard is met, the rule provides that each proposed use of EZ grant funds must be described in an implementation plan and receive prior approval by HUD. In reviewing a proposed use of HUD EZ grant funds,

¹ See Public Law 105-277 (providing omnibus and consolidated emergency supplemental appropriations for fiscal year (FY) 1999); Public Law 106-74 (providing FY2000 appropriations for HUD); Public Law 106-377 (providing FY2001 appropriations for HUD); Public Law 107-73 (providing FY2002 appropriations for HUD); Public Law 108-7 (Consolidated Appropriations Resolution, 2003, providing FY2003 appropriations for HUD, among other agencies), Public Law 108-199 (Consolidated Appropriations Act, 2004, providing FY2004 appropriations for HUD, among other agencies); and Public Law 108-447 (Consolidated Appropriations Act, 2005, providing FY2005 appropriations for HUD, among other agencies).

HUD will consider the nature of the activity and, in addition to making a determination that the resident benefit standard is met, will make a decision as to whether the activity is in conjunction with economic development.

While the two requirements governing use of EZ grants funds (resident benefit and economic development) addressed in this rulemaking are independent of each other, they nevertheless have to be considered almost simultaneously by those making decisions about how to spend HUD EZ grant funds. Sections 598.605 and 598.615(a)(1) of HUD's regulations contain reminders that the resident benefit and economic development requirements must be separately met for each activity supported with HUD EZ grant funds. HUD's decision as to whether the activity is in conjunction with economic development will be made in accordance with the following:

1. An activity that involves assisting a business to establish or expand is clearly "economic development" (subject to the restrictions in § 598.215(c).)
2. An activity that assists a person to take, or remain in, a job also meets the economic development standard.
3. The provision of other kinds of educational assistance meets the economic development standard only if the EZ's implementation plan demonstrates that such education will be provided to persons who cannot qualify for available jobs because of the lack of some specific knowledge that would be given them through the course(s) to be provided and at least 51 percent of whom are EZ residents.
4. An activity that is clearly aimed at increasing the capacity of governance board members, or staff of the EZ's lead agency, to carry out their roles with respect to economic development projects expected to be assisted in support of the EZ's strategic plan meets the test as well.

5. The provision of public improvements, such as construction of a parking structure, extension of water or sewer capacity, street widening, etc., meets the economic development standard only if it is shown that the lack of the improvements clearly is an impediment to the establishment, expansion or retention of one or more businesses, and that the provision of the proposed public improvement would be limited as much as feasible to assisting the business or businesses. The benefits provided by such businesses would need to satisfy the resident benefit standard.

6. HUD may also expressly approve a project that does not fall within any of

the previous review standards if the EZ provides evidence in the implementation plan that, in some other way, the project can reasonably be seen as meeting the economic development standard. All requests for such an exception must be in writing, accompanied by the facts that the EZ wants HUD to review and consider as justification.

D. Evaluation, Monitoring and Enforcement

The June 8, 2005, proposed rule advised that HUD would review the performance of the EZ's use of HUD EZ grant funds as part of its regular evaluation process under 24 CFR 598.420, through on-site monitoring in accordance with 24 CFR 85.40(e), and by other appropriate means.

Evaluation, monitoring and compliance with the provisions of the proposed rule, as made final by this rule, will be carried out in accordance with established procedures for monitoring CPD programs, as provided in CPD's Monitoring Guidebook. (See HUD CPD Monitoring Guidebook, <http://www.hud.gov/offices/cpd/library/monitoring/handbook.cfm>.) HUD's Performance Measurement System, which contains the designee's implementation plans, is designed to collect information on the project and actual outputs benefiting EZ residents. These monitoring procedures will be enhanced by the performance standards established by this rule.

E. Technical and Conforming Changes

In addition to the establishment of performance standards, the June 8, 2005, proposed rule also described several technical and conforming amendments that were proposed to be made to the regulations in 24 CFR part 598.

II. Changes Made to the Proposed Rule at the Final Rule Stage

Changes Made at Final Rule Stage. The following highlights some of the key changes made at the final rule stage.

- In § 598.600, HUD has revised the "applicability" language to make clear that the standards promulgated by this final rule apply only to projects or activities to be undertaken with HUD EZ grant funds that are proposed by the EZ after the effective date of this rule.

- In § 598.610(a)(2), which addresses the job benefits criterion under the principal benefit standard, HUD has replaced the full-time equivalency standard with a new standard for documenting the number of jobs created and filled by EZ residents. The new standard requires an EZ resident to be

employed by the employer for at least 90 days during the year in order to count the job towards the 35 percent criterion of requiring jobs to be taken by, or made available to, EZ residents.

- In § 598.610(a), HUD adds a new paragraph (3) (paragraph (a)(3)) to provide for a presumed benefit test. The presumed benefit test allows for an EZ administrator to assume that certain commercial revitalization activities located and undertaken in the EZ and that provide services to both EZ residents and non-residents (e.g. supermarkets, drug stores) meet the 51 percent principal benefit standard. The application of the presumed benefit test requires the EZ to maintain documentation that briefly describes the activity, its service area, and the rationale for presuming that the activity meets the 51 percent principal benefit test.

- In § 598.610(c), the circumstances under which an EZ may utilize the exception criterion have been expanded to include activities outside the designated area.

- In § 598.610(c) and § 598.615(b), HUD provides that it will respond to request by an EZ for an exception no later than 60 days from the date of the EZ's request provided that the EZ's request with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

Benefits and Costs/Burdens of this Rule. The benefits to be provided by this rule, as stated in this final rule and the proposed rule, are the establishment of standards that are designed to ensure that activities undertaken with remaining HUD EZ grant funds are consistent with the strategic plans of the EZs. The strategic plans are designed to benefit EZ residents through a broad range of strategies. The purpose of designating EZs is to generate economic development in distressed communities. In an effort to ensure that EZs are fulfilling their obligations, EZs must submit an annual report to HUD to (1) report the EZ's progress in generating economic growth through the utilization of grants and tax incentives (the federal assistance), and (2) describe ongoing and upcoming activities; that is the EZ's plan for implementing new activities through utilization of remaining funds. The implementation plans that are prescribed by this final rule are a component of the annual reporting process. The significant change to be made to the preparation of the current annual reports is that the annual reports and HUD's review of such reports will include greater emphasis on ensuring that the utilization of remaining funds are designed to benefit EZ residents.

As this final rule and the preceding proposed rule describe, EZ residents benefit from EZs primarily through increased employment and business activities that occur within the EZ, which in turn, are prompted or stimulated by the grants and tax incentives provided to the EZs. EZs stimulate growth in communities primarily through the creation of work opportunities and increased business activities. The rule establishes performance goals of 35% percent job placement for EZ residents. The wage tax credits that are offered to EZs are especially attractive to businesses, especially those looking to grow. Businesses within EZs are able to hire and retain EZ residents and apply the credits against their federal tax liability. Employers can claim a federal tax credit up to \$3,000, for a full or part-time employee who is an EZ resident. The credit is based on 20% of the first \$15,000 in wages earned by the qualifying employee.

The costs or burden associated with this rule are determined to be minimal. The existing regulations, as already noted, require an annual report, and the implementation plans, prescribed by this final rule, are a component of the on-line reporting system (known as PERMS) and incorporated into the annual reports. They are not an independent reporting requirement to be submitted in some other form or at some other date. Under its current Paperwork Reduction Act approval for the EZ annual report, HUD estimates that preparation of the report is 13 hours per EZ at a cost of \$70 an hour resulting in a cost of \$910.00 for each of the 15 Round II EZs. Although the rule will put in place a new component of the annual report, HUD estimates no significant change in burden hours to preparation of the annual report because the remaining funds that each EZ has to expend are slowly decreasing and there are fewer new activities to report in each succeeding year's report.

III. Issues Raised by Public Commenters and Responses to the Public Comments

The public comment period on the proposed rule closed on August 8, 2005. HUD received four public comments on the proposed rule. Comments were received from an empowerment zone corporation, a community organization, a regional development corporation, and a non-profit organization. The issues raised by the commenters and HUD's responses to these issues are provided in this section of the preamble.

Amount of Benefit

Comment: With respect to the preamble discussion of the amount of benefit, a commenter stated that no minimum benefit return per funding spent should be established because flexibility is imperative for programs addressing the problems of distressed communities. The commenter stated that, "Some programs require large subsidies but are catalytic to redevelopment of an area." The commenter suggested that the final rule should reflect a heavy reliance on the judgment of EZ board of directors to assess projects and the amount of support that the project merits.

Commenters also expressed concern that the proposed rule failed to account for programs identified in strategic plans as central to the revitalization of the distressed area and physical development. Further, commenters expressed concern that the proposed rule would make fulfilling parts of their mission challenging because some of the program activities now fall under the exception criteria.

HUD response: The statutory and regulatory provisions governing all three EZ rounds closely mirror each other in many respects, including areas of program flexibility and local decision-making, which, HUD agrees, are essential to the administration of local EZ programs. The differences among the three rounds largely relate to their funding source and the list of eligible activities. Round I EZs received Social Services Block Grants (SSBG) of \$100 million from the Department of Health and Human Services (HHS) to support an array of eligible activities, such as public services, housing, public facilities and economic development activities.

From 1999 to 2005, Round II EZs received annual HUD EZ grants ranging from \$3 million to \$12 million for activities carried out "in conjunction with economic development." Round III EZs received no funding. The benefits for Round III EZs consist of tax incentives for spurring the EZ economies through business development and job creation and retention.

In having to change essential elements of their strategic plans in response to the changes in the expected source of funds from SSBG funds to HUD EZ grants, Round II EZs were subject to time consuming inconveniences. When Round II EZs learned that their funds would be substantially reduced from the expected \$100 million in SSBG funds to the annual increments of \$3 million to \$12 million, these EZs had to modify

their budgets and rethink the projects/activities already identified in their HUD approved strategic plans. With SSBG funds, Round I EZs were able to carry out an array of activities from public services and facilities to housing. With the change in funding sources from SSBG to HUD Round II EZ grants, however, Round II EZ had to accommodate the change in funding sources by selecting projects and activities that would meet the statutory mandate that HUD Round II EZ grants be used "in conjunction with economic development activities."

As noted in the preamble of the June 8, 2005, proposed rule, "* * * a number of questions have arisen about whether particular planned activities would fall within this statutory restriction. While each question was answered on an individual basis, HUD has not attempted to set forth specific requirements for adhering to the economic development restriction." (70 FR 33644) The proposed rule preamble also stated that "this rule proposes for each EZ to submit an implementation plan for HUD approval, after this rule is issued as final and becomes final. The implementation plan will describe the EZ's planned use of HUD EZ Grant Funds, and how utilization of funds will meet one of three performance standards designed to promote benefit to residents." (70 FR 33642) Consistent with these statements made in the preamble of the proposed rule, the standards promulgated by this final rule apply only to projects or activities to be undertaken with HUD EZ grant funds that are proposed by the EZ after the effective date of this rule.

Section 2007(c) entitled "Use of Grants" of Title XIII, Subchapter C, Section 13761 of Public Law 103-66 (Omnibus Budget Reconciliation Act of 1993) requires that SSBG funds be used for activities benefiting EZ residents. Conversely, there is no explicit statutory language requiring that HUD EZ grants benefit Round II EZ residents. The absence of specific statutory language is not in of itself a barrier in formulating resident benefit requirements. Rather, in developing § 598.610, the statutory eligibility requirements that must be considered for designation and the strong participatory influence allowed EZ residents in the development of the EZ's strategic plan were a strong influence in determining the requirements of resident benefit. The eligibility requirements that must be met are poverty, high unemployment, and general distress in the nominated area.

HUD's conclusion that EZ grant funds should benefit Round II EZ residents is,

in part, based on statutory eligibility requirements and on 24 CFR 598.2, which addresses the objective and purpose of the EZ program. Specifically, the objective and purpose of the EZ program is to stimulate the creation of new jobs to empower low-income persons and families to become economically self-sufficient and to promote revitalization of economically distressed areas.

In establishing the EZ performance standards, HUD intentionally avoided the establishment of a hard and fast rule requiring all of a designee's activities supported by a HUD EZ grant to meet a percentage standard without exception. Rather, HUD developed standards that contained viable options based on program flexibility and local decision-making authority, without compromising resident benefit requirements. HUD maintains that the final rule contains the necessary and appropriate restrictions on the use of the HUD EZ grant funds and that the rule is reasonable without unduly compromising local decision-making authority and flexibility by providing the following three options.

- Option #1 allows the Zone to apply the principal benefit standard requiring that the majority of beneficiaries of the project or activity described in the implementation plan reside within the EZ. Where the creation of jobs is the benefit, the resident benefit test is met when at least 35 percent of the jobs are taken by or made available to EZ residents. (See § 598.610(a) "Principal benefit standard" of this final rule.)

- Option #2 provides the EZ further flexibility through the proportional benefit standard by allowing it to carry out activities that are unable to meet the principal benefit standard. Under the proportional benefit standard, the EZ can use HUD EZ grant funds for an activity in proportion to the percent of all persons benefiting from the project or activity who are residents. (See § 598.610(b) "Proportional benefit standard" of this final rule.)

- Option #3 is the exception criteria that enable the EZ flexibility by providing the EZ with the opportunity to make its case for funding activities that cannot meet resident benefit either through principal or proportional benefit standards, but can meet resident benefit by applying the exception criteria. Application of these criteria requires the EZ to demonstrate that the proposed activity can provide substantial benefits to the EZ or provide other compelling reasons for assisting the activity with HUD EZ grant funds. An example of a compelling reason would be an activity that contributes in

a critical way to the EZ's strategic plan to increase commerce within the EZ through the establishment of new business and expanded economic activity. (See § 598.610(c) "Exception criterion" of this final rule.)

HUD submits that the availability of the proportional benefit standard and, in particular, the exception criteria, provide additional flexibility and local discretion, which enable EZ governance boards and other local governing entities to assess projects and to determine the amount of support a project/activity merits, while still ensuring that EZ residents are the principal beneficiaries of local EZ programs. Consistent with the EZ program goal of flexibility and local decisionmaking, the exception criteria allows the locality to use EZ grant funds for an activity outside of the designated area if the EZ can demonstrate an activity contributes to its strategic plan.

The above three options support the EZ goals of designee flexibility and local decisionmaking, particularly with respect to the EZ governing boards. In response to a comment from an EZ resident seeking to apply for a business grant, the final rule better ensures that residents are the principal beneficiaries of HUD EZ grants without compromising local authority and decisionmaking.

Consequently, HUD believes that the resident benefit standards as proposed in the June 8, 2005, proposed rule, are needed and reasonable in protecting the interests of EZ residents as beneficiaries of the EZ program. For these reasons, HUD declined to make changes to these standards at this final rule stage.

Full-Time Equivalency

Comment: With respect to the discussion of full-time equivalency in the preamble to the proposed rule, one commenter stated that while appreciative of the intent underlying the conversion of EZ jobs to a full-time schedule equivalent, limited EZ funding and limited staff make such a requirement overly burdensome to monitor. The commenter stated that requiring businesses to report detailed work information on employees and then verifying the data is a time consuming process that will hinder staff from pursuing other development work.

HUD response: Among the benefits of an EZ designation are the tax advantages that an eligible EZ business receives from tax-exempt financing, increased Section 179 deductions, and capital gains exclusions. A business in an EZ is also eligible for a maximum \$3,000 wage credit for every EZ resident it employs. In meeting the 35 percent EZ

resident/employee test, the Internal Revenue Service (IRS) generally does not make a distinction between full- or part-time jobs. In this regard, the IRS does not have a full-time equivalency requirement. To meet the 35 percent test of requiring employees to live in the designated EZ area, the IRS provides two methods: the per-employee fraction and the employee actual work hour fraction. An eligible EZ business may use either one. The per-employee fraction is a fraction, the numerator of which is, during the taxable year, the number of employees who work at least 15 hours a week for the employer, who reside in the EZ, and who are employed for at least 90 days, and the denominator of which is, during the same taxable year, the aggregate number of all employees who work at least 15 hours a week for the employer and who are employed for at least 90 days. The employee actual work hour fraction is a fraction, the numerator of which is the aggregate total actual hours of work for the employer of employees who reside in the EZ during a taxable year, and the denominator of which is the aggregate total actual hours of work for the employer of all employees during the same taxable year. See 26 CFR 1.1394-1(e)(3)(ii).

The IRS also requires that a business that takes advantage of the tax incentives maintain a record and/or documentation, which evidence that the business has met the 35 percent job requirement. The only documentation that a business maintains as evidence in meeting the 35 percent resident/employee requirement is a statement from the employee, who under the penalty of perjury, provides his or her address as principal residence and an assurance that the employee will notify the employer of a change in the employee's principal residence. In addition, the IRS requires that the employer must not have actual knowledge that the principal residence set forth in the employee's certification is not the employee's principal residence. See 26 CFR 1.1394-1(e)(1).

HUD finds merit in the comments regarding full-time equivalency test requiring a business to establish records that document and verify the hours of part-time employees separately from the hours of full-time employees, and agrees that maintaining and monitoring such records is overly burdensome. HUD also agrees that the full-time equivalency test imposes an unreasonable drain on staff and funding resources of a business, particularly for small and start-up businesses.

In view of the fact that the IRS does not require a full-time equivalency test

for EZ resident jobs, HUD removed the full-time equivalency requirement and replaced this requirement with a new standard for documenting the number of jobs created and filled by EZ residents. The new standard only requires that an EZ resident be employed by the employer for at least 90 days during the year in order for the applicable business to count the job toward meeting the 35 percent test.

In removing the full-time equivalency test and substituting this test with the 90-day standard, HUD believes that it provides a more reasonable and practical approach in meeting the job benefit requirement of § 598.610(a)(2). This section recognizes the good faith efforts of businesses in opening job opportunities to EZ residents. In order to take advantage of certain tax incentives, however, the business still must meet the IRS 35 percent resident/employee test.

Recordkeeping and evidence of the jobs taken by EZ residents would be limited to a statement from the EZ resident/employee showing the address as the employee's principal residence and the employee's assurance that the employer would be notified of a change in the employee's principal residence.

Section 598.610: Resident Benefit Standards

Comment: One commenter recommends a presumption that the resident benefit test has been met for EZ-based activities consistent with already established strategic plans approved by the local governance board of the EZ. The commenter stated that such a presumption would be consistent with the presumption allowed under Community Development Block Grant (CDBG) funds with respect to qualifying jobs at businesses assisted within an EZ.

HUD response: When an EZ receives CDBG funds in support of an economic development activity involving job creation and retention, § 570.208(a)(4)(iv) of the CDBG regulations (24 CFR part 570) allows the employee to qualify as a low-or-moderate income person under the presumption of benefit standard if that employee resides in an EZ.

Consequently, for the purpose of receiving CDBG funds in support of a job creation activity in an EZ, the presumed benefit standard set forth in 24 CFR 570.208 (a)(4)(iv) satisfies the CDBG criteria for national objectives and is one that only applies to CDBG funded job creation or retention activities.

Conversely, when a job creation and retention activity is in whole or part supported with HUD EZ grants, the rule

applicable to HUD EZ grants governs. Importantly, funding job creation or retention activities with HUD EZ grants is closely aligned with the benefits of the \$11 billion tax incentive package available to businesses in EZs as well as to businesses in Renewal Communities (RCs). Tax incentives and HUD EZ grant funds are dual benefits exclusively for Round II EZ designees.

The objective of Round II benefits is to couple the use of EZ funds for activities "in conjunction with economic development" with the aggressive utilization of tax incentives. HUD believes that this rule will help ensure the empowerment of low-income EZ residents to become economically self-sufficient through job creation and retention.

HUD concludes that the presumption of benefit standard and the resident benefit standards of § 598.610 must be applied separately to each of the portions of assistance provided with CDBG funds and HUD EZ grant funds. Therefore, HUD is not including, in this final rule, the CDBG presumption of benefit, referenced in 24 CFR 570.208 (a)(4)(iv)-(v), as an option for job creation activities funded in whole or in part with HUD EZ grants.

Comment: All four commenters advocated for a provision enabling community revitalization and other activities to meet principal benefit standards as a presumed benefit to EZ residents. According to the commenters, a presumed benefit provision would eliminate the administrative burden of having to document resident benefit, protect the ability of EZ organizations to fulfill critical parts of their mission without having to justify to HUD why an exception to the principal benefit standard is justified, and allow EZs to carry out activities directed at slum and blight reduction.

The commenters objected to the application of undefined exception criteria, viewing it as creating uncertainty resulting in another HUD review of activities already identified in the HUD approved strategic plan. One of the commenters requested clarification of the resident benefit requirement as this requirement relates to place-based redevelopment activities and their accompanying indirect effects on economic development.

HUD response: The proposed rule presented the "presumed benefit" analysis in Section D ("Additional Issues") of the preamble, specifically in subsection 2 of Section D ("Types of benefits/service area/location of the project"), but did not address "presumed benefit" in the text of the rule. HUD believes that many of the

comments regarding presumed benefit have merit and, as noted earlier in this preamble, HUD is revising § 598.610 by adding a new paragraph (a)(3) entitled “presumed benefit” to this section. The addition of a presumed benefit test recognizes other types of direct benefit activities that are located in an EZ and serve both EZ residents and non-residents. The test allows EZ administrators to assume that certain commercial revitalization activities located and undertaken in the EZ and that provide services to both EZ residents and non-residents (e.g. supermarkets, drug stores) meet the 51 percent principal benefit standard. The application of the presumed benefit test requires the EZ to maintain written documentation that briefly describes the activity, its service area, and the rationale for presuming that the activity meets the 51 percent principal benefit standard. Important to this issue is the fact that the new paragraph does not extend to activities outside the designated area.

However, HUD recognizes that there may be circumstances where HUD EZ grants assist activities outside the designated area that would benefit EZ residents. For such cases, HUD provides, through this final rule, for an exception criterion in § 598.610(c) to cover activities outside of the designated area. This expansion of coverage of the exception criterion gives an EZ the opportunity to justify why an activity that, on its face, does not appear to benefit EZ residents, would in fact result in substantial benefits to EZ residents upon closer examination. An EZ that wishes to use this exception criterion must provide HUD with a substantial analysis of its service area and customer base to support its claim that the activities outside the designated area would result in substantial benefit to the EZ and meet the goals of its strategic plan. Providing EZs with the opportunity to apply an exception criterion in these situations does not compromise the purpose of the EZ program, which is to stimulate the creation of new jobs, empower the residents to become more economically self-sufficient, and promote the revitalization of distressed areas.

HUD has determined that the exception criterion is a reasonable option to provide EZs that wish to demonstrate that utilizing HUD EZ grant funds for activities outside a designated area (and because the activities are outside the designated area, the activities are unable to meet resident benefit under the principal benefit standard or proportional standard), do, in fact, benefit EZ residents.

In response to the comment for clarification of the relationship of the resident benefit requirement to place-based redevelopment activities and their impact on economic development, HUD believes that the final rule satisfactorily explains this relationship in both the exception criterion described in § 598.610(c) (“resident benefit standard”) and the new presumed benefit standard in § 598.610(a)(3).

Comment: One commenter requested that following submission by an EZ of a request for an exception with accompanying documentation, HUD commit to a period of 30 calendar days in which HUD has to respond to the request.

HUD response: There may be times when HUD will need additional information as part of its review of the EZ’s exception request. HUD’s concern is that to impose a 30-calendar day review period may not allow sufficient time for HUD to request and the EZ to provide additional information or respond to any questions that HUD may have about the proposed activity for which the EZ seeks an exception under § 598.610(c). However, HUD is also aware of the need to respond as promptly as possible to the EZ’s request once all information has been provided.

Accordingly, the final rule provides in § 598.610(c) that HUD will notify the EZ of its response to the exception requested under § 598.610(c) within 60 days of the receipt of the EZ request provided that the EZ has promptly provided any additional information requested by HUD and the request is considered complete no later than 45 days from the date of the request. The final rule incorporates the same provision with respect to exceptions requested under § 598.615(b).

Section 598.610(a)(2): Job Benefit

Comment: One commenter stated that the expansion of the resident benefit requirement to include not only jobs filled by EZ residents, but made available to EZ residents is a “great” one. The commenter suggested that this language be incorporated into contracts through a first source type agreement requiring businesses to advertise and recruit from organizations that train and place EZ residents.

HUD response: HUD agrees that a first source type arrangement can be an effective means for an EZ to assure that an assisted business will make jobs available to EZ residents. Such an arrangement is one way for an EZ to satisfy § 598.610(a)(2).

Section 598.615(a)(1)(i)(ii): In Conjunction With Economic Development

Comment: One commenter requested that HUD clarify the relationship of the resident benefit requirement to place-based redevelopment activities and the accompanying indirect effects on economic development.

HUD response: HUD believes that the manner in which place-based redevelopment activities may meet resident benefit standards is clarified by the new paragraph added at this final rule stage to § 598.610(a) on presumed benefit.

Comment: One commenter stated that the economic development standards are unduly restrictive. The commenter stated that activities that qualify as “in conjunction with economic development” should not be limited to traditional economic development activities, but rather should allow for EZ activities to be tied to an economic development strategy that promotes a coordinated initiative. The commenter stated that support for this comprehensive interpretation arises from Congress’ use of the words “in conjunction with” rather than requiring that “funds must be used for economic development.”

HUD response: HUD disagrees with the premise that the discussion of “in conjunction with economic development” in the preamble to the proposed rule, and § 598.615, which establishes economic development standards present unduly restrictive standards and are contrary to Congressional intent. An interpretation which allows for non-economic development activities to be automatically deemed as meeting the standard of “in conjunction with economic development” because of ties to an EZ’s economic development strategy, is contrary to the statutory language, which mandates that HUD EZ grants be used in conjunction with economic development.

The statutory language that describes the purpose and use of HUD EZ grants supports a view that it is the intent of Congress to limit the use of HUD EZ grants to clearly defined activities that primarily and directly promote economic development. It is HUD’s view that § 598.615 captures the types of activities/projects that are most likely to promote economic development and business revitalization. Even though some of the comments suggest that these “traditional” type activities are limiting efforts for a coordinated initiative, HUD believes that final rule’s economic development standards are in the best

interest of the EZ program in providing economic opportunity to EZs through the retention and creation of jobs and business revitalization.

However, HUD recognizes the need for a provision giving EZs the opportunity to demonstrate that carrying out a non-economic development activity/project is in fact in conjunction with economic development; for example, the construction or rehabilitation of housing, in an area of great potential for economic development, but one where the economic development potential may not be fully realized because of a great need for housing and public improvements, such as water and sewer capacity. In such a case, § 598.615(b) provides the EZ with the opportunity to apply for an exception request, which must be accompanied by documentation that the proposed non-economic development activity also meets the resident benefit requirement of § 598.610.

Section 598.615(b) provides for the opportunity to request an exception for those limited circumstances where a project/activity appearing to have no direct relationship to economic development may still be critical to the EZ's economic strategy as defined in its strategic plan. The exception provision allows the EZ to justify why certain activities that have no readily visible direct connection to economic development may still meet the economic standards of § 598.615. The exception provision also allows scrutiny of the proposed project/activity and for HUD to determine if it can reasonably meet the economic development requirement.

Comment: With respect to § 598.615(a)(1)(i) and (ii), one commenter stated that for this provision to work, the 35 percent EZ resident employment requirement must include a "best effort" clause so that a business can operate if no EZ residents are available.

HUD response: HUD believes that the addition of a "best effort" clause is unnecessary. As noted earlier in this preamble, the final rule recognizes that a business may not be able to hold open indefinitely employment opportunities for EZ residents to fill. However, the EZ should demonstrate that EZ businesses with employment opportunities made a good faith effort to recruit and give first consideration to EZ residents. Examples of good faith efforts may include public notification of employment opportunities targeted to EZ residents and job fairs.

Comment: With respect to §§ 598.615(a)(3); 598.615(a)(4), and

598.615(a)(5), one commenter requested that the final rule modify these sections to: (1) Include, in § 598.615(a)(3), "soft-skill training" and "youth access" as additional activities to be categorized as education resources; (2) allow, in § 598.615 (a)(4), for employees of EZ organizations to undertake capacity building; and (3) include, in § 598.615(a)(5), housing development in conjunction with the appropriate infrastructure.

HUD response: An expectation arose during the Round II EZ designation process that the same funding source and stream that was provided to Round I EZs would eventually also be available to the 15 Round II EZs; that is, that each of the Round II EZs would receive \$100 million in SSBG funds.

This expectation resulted in Round II EZs developing strategic plans and activities and projects based on substantially larger funding amounts than the funding that actually became available to the Round II EZs. Since their time of designation, Round II EZs received HUD EZ grants of \$25.6 million rather than the anticipated \$100 million in SSBG funds.

The receipt of a lower level of funding to carryout an EZ's strategic plan resulted in HUD limiting and restricting the type and range of eligible activities/projects meeting the statutory test of "in conjunction with economic development." For example, use of HUD EZ grant funds for public improvements is permissible "only" if the EZ can show in its implementation plan that the lack of the public improvements clearly presents an impediment to the establishment and or expansion of a business.

Even though this same "only if" restriction is found in the educational assistance provision, it does not preclude "training to youth." The requested modification to expand § 598.615(a)(4) to include employees of organizations serving the EZ is considered beyond the scope of ensuring the most comprehensive and effective use of limited resources. Although HUD did not make the requested modification to § 598.615(a)(5) to include housing development, as noted earlier in this preamble, an EZ may demonstrate that housing development is in conjunction with economic development.

Comment: A commenter requested assurance that the final rule would provide that the standards established by the final rule would only be applied prospectively to implementation plans and activities in order to avoid the hardship that EZs may face in having to redesign programs and resubmit plans

of grant-funded programs in accordance with the new standards.

HUD response: Unless there is statutory authority that allows or directs for new regulations to be applied retroactively, all rulemaking is prospective. Nevertheless, HUD has revised the "applicability" language of § 598.600 to make clear that the standards promulgated by this final rule apply only to a project or activity to be undertaken with HUD EZ grant funds that is proposed by the EZ after the effective date of this rule.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in subpart G of 24 CFR part 598 were submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This submission was reviewed and approved, and provided the following OMB approval number: 2506–0148. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable at this final rule stage and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule only establishes program-specific requirements governing a recipient's use of Federal grant funds and does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule establishes performance standards for the use of grant funds made available to EZs by HUD, largely pertaining to benefit levels and economic-development activities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 ("Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this is a "significant regulatory action," as defined in section 3(f) of the order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 598 is 14.244.

List of Subjects in 24 CFR Part 598

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

■ Accordingly, HUD amends 24 CFR part 598 as follows:

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

■ 1. The authority citation for 24 CFR part 598 continues to read as follows:

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

§ 598.3 [Amended]

■ 2. In § 598.3, remove the definition of "EZ/EC SSBG funds."

■ 3. In § 598.210, remove paragraphs (e) and (g), redesignate paragraph (f) as paragraph (e), redesignate paragraph (h) as paragraph (f), and revise newly redesignated paragraphs (e) and (f) to read as follows:

§ 598.210 What certifications must governments make?

* * * * *

(e) 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

(f) Provide assurances that the nominating governments will administer the Empowerment Zone program in a manner that affirmatively furthers fair housing on the basis of race, color, national origin, religion, sex, disability, and familial status (presence of children).

§ 598.215 [Amended]

■ 4. In § 598.215, remove the last sentence of paragraph (b)(4)(i)(D).

■ 5. Revise § 598.405 to read as follows:

§ 598.405 Environmental review.

Where any EZ's strategic plan or any revision thereof proposes the use of HUD EZ Grant Funds for activities that are not excluded from environmental review under 24 CFR 50.19(b), the EZ shall supply HUD with all available, relevant information necessary for HUD to perform any environmental review required by 24 CFR part 50.

■ 6. Add a new subpart G to read as follows:

Subpart G—Empowerment Zone Grants

Sec.

598.600 Applicability.
598.605 Implementation plan.
598.610 Resident benefit standards.
598.615 Economic development standards.
598.620 Evaluation, monitoring, and enforcement.

§ 598.600 Applicability.

This subpart applies to a project or activity proposed by an Empowerment Zone after January 14, 2008 to be undertaken with funds appropriated by Congress and made available by HUD specifically for use by the EZ. These funds are referred to as "HUD EZ Grant Funds."

§ 598.605 Implementation plan.

(a) *Implementation plan content.* An EZ must submit an implementation plan for HUD approval that addresses each project or activity proposed to be undertaken by the EZ with HUD EZ Grant Funds. The implementation plan must:

- (1) Describe the project or activity;
- (2) Identify the completion date or duration of the project or activity;
- (3) Provide the total cost of the project or activity;
- (4) Identify the amount of HUD EZ Grant Funds to be used for the project or activity; and

(5) Include a narrative description of how the project or activity meets the resident benefit and economic development standards of this subpart.

(b) *Proposed funded project or activity.* The project or activity proposed in the implementation plan is subject to the following requirements:

- (1) The Federal requirements listed in 24 CFR 5.105;
- (2) The governmentwide, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments at 24 CFR part 85;
- (3) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 *et seq.*);

(4) The environmental review and approval requirements of 24 CFR part 50;

(5) The provisions of the Memorandum of Agreement (MOA) setting forth the obligations and requirements that the state and local governments, as Empowerment Zone designees, have agreed to meet as signatories of the agreement.

(6) Recipients of the HUD EZ Grant Funds also must adhere to the requirements set forth in the provisions of the grant agreement for HUD EZ Grant Funds.

§ 598.610 Resident benefit standards.

The project or activity described in an implementation plan submitted for HUD approval by an EZ to describe the planned use of HUD EZ Grant Funds must meet one of the following three standards of resident benefit for determining the amount of HUD EZ Grant Funds that may be used to fund a particular project or activity:

(a) *Principal benefit standard*—(1) *Benefits other than jobs.* If a majority (51 percent) of the direct beneficiaries of the project or activity described in the implementation plan reside within the EZ, the project or activity may be fully assisted with HUD EZ Grant Funds.

(2) *Jobs benefit.* In any case where the direct benefits to be provided by a project or activity described in an implementation plan will be in the form of jobs, the project may be fully assisted with HUD EZ Grant Funds if at least 35 percent of the jobs are taken by, or made available to, EZ residents. A job satisfies this 35 percent requirement if the EZ resident is employed by the employer for at least 90 days during the year. For purposes of this 35 percent requirement, an employer may rely on a certification by the employee that provides to the employer the address of the employee's principal residence, and requires the employee to notify the employer of a change of the employee's principal residence.

(3) *Presumed benefit.* Certain commercial revitalization activities that are located and undertaken in an EZ and that provide services to both EZ residents and non-residents (e.g., supermarkets, drug stores) will presume to meet the 51 percent principal benefit standard in paragraph (a)(1) of this section, provided that the EZ maintains written documentation that briefly describes the activity, its service area, and the rationale for presuming that the activity meets the 51 percent principal benefit standard.

(b) *Proportional benefit standard.* If a project or activity described in an implementation plan cannot meet the principal benefit standard of paragraph (a) of this section, the percent of the cost of the project or activity that may be assisted with HUD EZ Grant Funds may not be greater than the percent of all persons benefiting directly from the project or activity who reside within the EZ.

(c) *Exception criterion.* In any case where a proposed project or activity, including activities outside of the designated area, would not meet the standards of paragraph (a) or paragraph (b) of this section, HUD EZ Grant Funds may be used where HUD determines that an implementation plan,

accompanied by the facts that the EZ requests HUD to review and consider as justifying the exception, demonstrates substantial benefits to the EZ that would result from the project or other compelling reasons justifying the appropriateness of the implementation plan to the EZ's strategic plan. A request by an EZ for an exception under paragraph (c) of this section will receive a response by HUD no later than 60 days from the date of the EZ's request provided that the EZ's request with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

§ 598.615 Economic development standards.

(a) *Economic development standards.* The project or activity in an implementation plan submitted for HUD approval by an EZ to describe the planned use of HUD EZ Grant Funds must meet one of the following economic development standards:

(1) *Business development assistance.* An activity that involves assisting a business in the EZ meets the standard, whether or not the business will create any new jobs. Any such activity must also meet the standards for benefiting a sufficient portion of EZ residents as required under § 598.610. Qualifying activities include the use of HUD EZ Grant Funds to:

- (i) Assist in establishing a business;
- (ii) Expand a business, including efforts to stimulate the development or expansion of microenterprises; and
- (iii) Assisting businesses that provide goods or services within the EZ to remain within the EZ.

(2) *Employment training and assistance.* An activity that assists a person to take, or remain in, a job, subject to meeting the standards for benefiting a sufficient proportion of EZ residents as required under § 598.610, including:

- (i) Job training;
- (ii) Provision of child care;
- (iii) Transportation to or from the place of employment or the place where job training is taking place; or
- (iv) Counseling persons on job-related skills, such as how to interview successfully for a job, and dress and act appropriately in the conduct of a job.

(3) *Educational assistance.* The provision of educational assistance meets the economic development standard only if the EZ's implementation plan demonstrates that such education will be provided to persons who cannot qualify for available jobs because of the lack of some specific knowledge that would be given them through the course(s) to be provided.

Any educational assistance provided must also meet the standard for benefiting a sufficient portion of EZ residents as required under § 598.610.

(4) *EZ administrative capacity.* An activity that increases the capacity of governance board members or staff of the EZ's lead agency to carry out their roles with respect to economic development projects expected to be assisted in support of the EZ's strategic plan is eligible. This includes the cost of attending a conference on economic development. The use of HUD EZ Grant Funds for capacity building under this paragraph is deemed to provide adequate benefit to EZ residents.

(5) *Public improvements.* The provision of public improvements, such as extension of water or sewer capacity, or street widening, meets the economic development standard only if it is shown in the implementation plan that the lack of the improvements clearly is an impediment to the establishment, expansion or retention of one or more businesses in the EZ, and that the provision of the proposed public improvement would be limited as much as feasible to assisting the business or businesses. Any public improvements must also meet the standard for benefiting a sufficient portion of EZ residents as required under § 598.610.

(b) *Exception request.* HUD may approve a project or activity that does not fall within any of the previous review standards of this section if the EZ provides evidence that, in some way, the project or activity can reasonably be seen as meeting the economic development standard. Such a project or activity must also meet the standards for benefiting a sufficient portion of EZ residents as required under § 598.610. All requests for such an exception must be in writing, accompanied by the facts that the EZ wants HUD to review and consider as justification. A request by an EZ for an exception under this paragraph (b) will receive a response by HUD no later than 60 days from the date of the EZ's request provided that the EZ's request with all relevant information is considered complete no later than 45 days from the date of the EZ's request.

§ 598.620 Evaluation, monitoring, and enforcement.

(a) *Progress, evaluation, and monitoring.* HUD will review the performance of an EZ's use of HUD EZ Grant Funds for compliance with this subpart as part of its regular evaluation process under 24 CFR 598.420, through on-site monitoring under 24 CFR 85.40(e), and by other appropriate means.

(b) *Warning letter.* If HUD has reason to believe that an EZ is not carrying out its funded activities in accordance with any applicable requirements, including the resident benefit and economic development standards of this subpart, HUD may forward a warning letter to the EZ informing it of a potential violation and recommending action to avoid a violation. A warning letter is not a prerequisite for any other action HUD may take.

(c) *Notice of violation.* If HUD determines that there appears to be a violation in the use of HUD EZ Grant Funds, it will notify the EZ of the

alleged violation and the action HUD proposes to take under 24 CFR 85.43 or its successor regulation or if appropriate, 24 CFR 598.430.

(d) *Response to notice.* A notice sent to an EZ under paragraph (c) of this section will provide the EZ with at least 30 calendar days from the time HUD sends the notice to respond with any information to rebut or mitigate the alleged violation.

(e) *Final action.* If the EZ does not respond within the period specified pursuant to paragraph (d) of this section, HUD will make a final determination of the violation and may proceed to take the action proposed in

the notice. If the EZ responds, HUD will consider the information received from the EZ and may request additional information. After considering the information received from the EZ, HUD will notify the EZ of HUD's final determination and action, affirming, modifying, or repealing HUD's initial determination of an alleged violation and proposed action.

Dated: November 13, 2007.

Roy A. Bernardi,

Deputy Secretary.

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