

## § 597.500

(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.

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#### § 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.

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

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

SOURCE: 63 FR 19155, Apr. 16, 1998, unless otherwise noted.

**Subpart A—General Provisions**

**§ 598.1 Applicability and scope.**

(a) This part establishes policies and procedures applicable to the second and third rounds of designations of urban Empowerment Zones, authorized under Subchapter U of the Internal Revenue Code of 1986 (26 U.S.C. 1391, et seq.), as amended. Any reference to, or requirement of, Round II in this part is also a reference to, or requirement of, Round III.

(b) This part contains provisions relating to area requirements, the nomination process for urban Empowerment Zones, and the designation and evaluation of these Zones by HUD. Provisions dealing with the nomination and designation of rural Empowerment Zones are issued by the Department of Agriculture.

[63 FR 19155, Apr. 16, 1998, as amended at 66 FR 35855, July 9, 2001]

**§ 598.2 Objective and purpose.**

The purpose of this part is to provide for the establishment of Empowerment Zones in urban areas, to stimulate the creation of new jobs—empowering low-income persons and families receiving public assistance to become economically self-sufficient—and to promote revitalization of economically distressed areas.

**§ 598.3 Definitions.**

In addition to the definitions of “HUD” and “Secretary” found in 24

CFR 5.100, the following definitions apply to this part.

*Census tract* means a census tract, as the term is used by the Bureau of the Census, or, if census tracts are not defined for the area, a block numbering area.

*Designation* means the process by which the Secretary designates urban areas as Empowerment Zones 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.

*Developable site* means a parcel of land in a nominated area that may be developed for commercial or industrial purposes.

*Empowerment Zone* means an urban area so designated by the Secretary in accordance with this part.

*HHS* means the U.S. Department of Health and Human Services.

*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 that 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 in accordance with this part.

*Revocation of designation* means the process by which the Secretary may revoke the designation of an urban area as an Empowerment Zone. (See subpart E of this part.)

*State* means any State of the United States.

*Urban area* means:

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

(2) An area outside an MSA if the jurisdiction of the nominating local government documents:

(i) The urban character of the area, or

(ii) The link between the area and the proposed area in the MSA.

[63 FR 19155, Apr. 16, 1998, as amended at 72 FR 71016, Dec. 13, 2007]

## § 598.4

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### § 598.4 Period of designation.

The designation of an urban area as an Empowerment Zone will remain in full effect during the period beginning on the date of designation and ending on the earliest of:

- (a) The close of the tenth calendar year beginning on the date of designation;
- (b) The termination date designated by the State and local Governments in their application for nomination; or
- (c) The date the Secretary modifies or revokes the designation.

### Subpart B—Eligibility Requirements

#### § 598.100 Eligibility requirements.

A nominated urban area is eligible for designation in accordance with this part only if the area:

- (a) Has a maximum population that 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 § 598.110;
- (c) Does not exceed twenty square miles in total land area, excluding up to three noncontiguous developable sites that are exempt from the poverty criteria;
- (d) Has a continuous boundary, or consists of not more than three noncontiguous parcels meeting the poverty criteria, and not more than three noncontiguous developable sites exempt under § 598.115(c)(1) from the poverty rate criteria;
- (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 census tract in the district is not less than 35 percent.

#### § 598.105 Data used for eligibility determinations.

- (a) *Source of data.* The data to be used in determining the eligibility of an

area is from the 1990 Decennial Census, and from information published by the Bureau of the Census and the Bureau of Labor Statistics. 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 must coincide with the boundaries of census tracts, as defined in § 598.3.

#### § 598.110 Tests of pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Pervasive poverty is demonstrated by evidence that:

- (1) Poverty, as indicated by the number of persons listed as being in poverty in the 1990 Decennial Census, is widespread throughout the nominated area; or
- (2) Poverty, as described above, has become entrenched or intractable over time (through comparison of 1980 and 1990 census data or other relevant evidence).

(b) *Unemployment.* Unemployment is demonstrated by:

- (1) The most recent data available indicating that the annual rate of unemployment for the nominated area is not less than the national annual average rate of unemployment; or
- (2) Evidence of especially severe economic conditions, such as military base or plant closings or other conditions that have brought about significant job dislocation within the nominated area.

(c) *General distress.* General distress is evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, number of persons on welfare, per capita property tax base, average years of school completed, substantial population decline, and a high or rising incidence of crime, narcotics use, homelessness, high incidence of AIDS, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidence of domestic violence, incidence of certain health conditions and illiteracy are examples of

appropriate indicators of general distress.

**§ 598.115 Poverty rate.**

(a) *General.* In order to be eligible for designation, an area's poverty rate must satisfy the following criteria:

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

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

(b) *Special rules relating to the determination of poverty rate*—(1) *Census tracts with populations of less than 2,000.* A census tract that has a population of less than 2,000 is treated as having a poverty rate that 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, and the tract is contiguous to one or more other census tracts that have an actual poverty rate of not less than 25 percent.

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

(c) *Noncontiguous parcels.* (1) Noncontiguous parcels that are developable sites are exempt from the poverty rate criteria of paragraph (a) of this section, for up to three developable sites.

(2) The total area of the noncontiguous parcels that are developable sites exempt from the poverty rate criteria of paragraph (a) of this section must not exceed 2,000 acres.

(3) A nominated urban area must not contain a noncontiguous parcel unless such parcel separately meets the criteria set forth at paragraphs (a)(1) and (2) of this section, except for up to three developable sites.

(4) There must not be more than three noncontiguous parcels, except that up to three developable sites are not included in this limit.

**Subpart C—Nomination Procedure**

**§ 598.200 Who nominates an area for designation?**

Applicants for empowerment zone designation must be nominated by the State or States and one or more local government(s) in which the area is located, except as provided in §§ 598.500, 598.510, and 598.515. The nomination must be submitted in a form to be prescribed by HUD in the application and in the document announcing the initiation of the designation process, and must contain complete and accurate information.

(Approved by the Office of Management and Budget under Control Number 2506-0148)

[63 FR 19155, Apr. 16, 1998, as amended at 63 FR 53262, Oct. 2, 1998]

**§ 598.205 What are the requirements for nomination?**

(a) *General.* No urban area may be considered for designation in accordance with subpart D of this part unless:

(1) 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 § 598.215 will be implemented, and these governments submit its nomination;

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

(3) The application for designation is complete, as described in paragraph (b) of this section.

(b) *Contents of application for designation.* The application for designation of an urban area as an Empowerment Zone must do the following:

(1) Demonstrate that the nominated urban area satisfies the eligibility criteria set forth in subpart B of this part;

(2) Include a strategic plan, as described in § 598.215;

(3) Include the certifications described in § 598.210;

(4) Include the 1990 census maps showing the following:

(i) The boundaries of the local government(s); and

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(ii) The boundaries of the nominated area, including any developable sites; and

(5) Include such other information as may be required by HUD in the application or in the document announcing the initiation of the designation process.

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[63 FR 19155, Apr. 16, 1998, as amended at 63 FR 53262, Oct. 2, 1998]

### § 598.210 What certifications must governments make?

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

(a) The nominated urban area satisfies the boundary tests of § 598.100(d);

(b) The nominated urban area is one of pervasive poverty, unemployment and general distress, as prescribed by § 598.110;

(c) The nominated urban area contains no portion of an area that is included in an Empowerment Zone or any other area currently nominated for designation as an Empowerment Zone (but it may include an Enterprise Community);

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

(1) Nominate the urban area for designation as an Empowerment Zone;

(2) Make the commitments required of nominating entities by § 598.215(b); and

(3) Provide written assurances satisfactory to the Secretary that the strategic plan will be implemented.

(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,

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and familial status (presence of children).

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[63 FR 19155, Apr. 16, 1998, as amended at 63 FR 53262, Oct. 2, 1998; 72 FR 71016, Dec. 13, 2007]

### § 598.215 What are the purpose and content of the strategic plan?

(a) *Principles of strategic plan.* The strategic plan, which accompanies the application for designation, must be developed in accordance with four key principles:

(1) 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 also should set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan;

(2) Community-Based Partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, local public health and social service departments and nonprofit groups providing similar services, environmental groups, local transportation planning entities, public and private schools, religious organizations, the private and nonprofit sectors, centers of learning, and other community institutions and individual citizens;

(3) Economic Opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, job training and other important job readiness and job support services, such as affordable child care and transportation services, that may enable residents to be employed in jobs that offer upward mobility;

(4) Sustainable Community Development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development. These approaches should preserve the environment and historic landmarks, address “brownfields”

clean-up and redevelopment, explore the economic development advantages of energy efficiency and use of renewable energy resources, and improve transportation, education, public safety, and enhanced access to information and technology among all segments of the community.

(b) *Elements of strategic plan.* The strategic plan must include the following elements:

(1) *Vision and values:* The community's strategic vision for change—a statement of what the community believes its future should be, and a statement of the community's values that guided the creation of the vision. Explain how the vision creates economic opportunity, encourages self-sufficiency and promotes sustainable community development.

(2) *Community assessment:* A comprehensive assessment of existing conditions and trends within the community, which includes, as a minimum:

(i) *Assessment of problems and opportunities.* A description and assessment of the trends and conditions within the community and of the surrounding region that form the basis of the strategic plan. The assessment will include an analysis of the strengths and assets of the community and region, as well as needs and problems, and should include a description of poverty and general distress, barriers to economic development and barriers to human development; and

(ii) *Resource analysis.* An assessment of the resources available to the community, including potential resources outside the nominated area, to address identified problems and needs, and maximize opportunities that exist within the community. Such resources may include financial, technical, human, cultural, educational, leadership, volunteerism, communications, transportation and commerce centers, rail and mass transit linkages, redevelopable land (including land, such as ports, that can be designated as “developable sites” under the additional 2,000 acres available), public space, infrastructure, and other community and regional assets that form the basis for the formulation and implementation of the strategic plan.

(3) *Goals:* A statement of a comprehensive and holistic set of goals to be achieved through implementation of the strategic plan throughout the 10-year implementation period, and a statement of the strategies the community proposes to use to achieve the strategic plan goals, and the identification of priority objectives.

(4) *Implementation plan:* A detailed plan that outlines how the community will implement its strategic plan. The plan will include:

(i) *Projects and programs.* Provide, for the first two-year implementation period, the following:

(A) A narrative outlining the specific projects and programs that will be implemented that will result in the achievement of the community's goals;

(B) Proposed timelines for implementing identified projects and programs;

(C) Identification of lead implementers of identified projects and programs, along with innovative partnerships that will be utilized to insure maximum community participation and project sustainability;

(D) Proposed budgets for each identified project or program, including projected costs, and sources of funding. Information on sources of funding will include whether the funding is anticipated or committed, and whether funding is conditioned upon the designation of the community as an Empowerment Zone. Evidence of committed funding is required, and may include letters of commitment, resolutions of support, or similar documentation as outlined in paragraph (b)(6) of this section. Funding may include cash and in-kind support from Federal, State and local governments, non-profit organizations, foundations, private businesses and other entities that will assist in the implementation of the strategic plan.

(E) Baselines and proposed measurable outputs;

(ii) *Tax incentive utilization plan.* A plan for integrating the new business tax incentives that are available to designated Empowerment Zones into

the nominated area's business development efforts. The Round II tax incentives include Tax-Exempt Bond Financing, Increased Section 179 Deduction, Welfare-to-Work Credit, Environmental Cleanup Cost Deduction (i.e., "Brownfields Tax Incentive"), and the Work Opportunity Tax Credit. For a description of the tax incentives, see IRS Publication 954, "Tax Incentives for Empowerment Zones and Other Dis-tressed Communities";

(iii) *Developable sites plan.* If the nominated area is to include developable sites, a plan to describe how the use of these parcels would benefit residents and businesses of the nominated area;

(iv) *Governance plan.* A Governance Plan for the administration of the strategic plan implementation process, which will include the following:

(A) The name of the proposed lead implementing entity, and other major administrative entities and their proposed or actual legal status and authority to receive and administer Federal funds. The strategic plan may be implemented by the local governments(s) and/or by the State(s) nominating an urban area for designation and/or by nongovernmental entities identified in the strategic plan;

(B) Evidence that the lead implementing entity and other key entities participating in the strategic plan implementation have the capacity to implement the plan;

(C) Proposed composition and date of establishment of any governance boards, advisory boards, commissions or similar bodies that will be established to manage the implementation of the strategic plan. Specific information will be included regarding representation of residents and businesses of the proposed Empowerment Zone area, and how members of the boards or commissions will be selected;

(D) The relationship between any governance structure created and local governments and other major community or regional organizations, such as a metropolitan planning organization, operating in the same geographic area;

(E) The methods by which stakeholders within the Zone will be kept informed about Zone activities and progress in implementing the strategic plan, including a description of plans

for meetings open to the public. The community should utilize modern communication techniques and incorporate the Internet in order to enhance the communication and access to information among all stakeholders and participants; and

(F) The methods and procedures that will ensure continuing community and grassroots participation in the implementation of the strategic plan and in the governance of the Zone's activities.

(v) *Community performance assessment.* Methods the community will use to assess its own performance in implementing the strategic plan, and the process it will use to continually review the plan and amend as appropriate.

(5) *Strategic planning process documentation.* A description of the process the community used to select the boundaries of the proposed Empowerment Zone, including the developable sites, and to prepare the Strategic Plan. The documentation will:

(i) Explain how the community participated in choosing the area that is being nominated and why the area was nominated;

(ii) 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;

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

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

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

(6) *Documentation of commitments.* Letters of commitment, resolutions committing public or private resources, and other documentation that will demonstrate the level of public and private resources, both inside and outside the nominated area, that will be available to implement the Strategic Plan and increase economic opportunity in the nominated Empowerment Zone.

(c) *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 the 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.

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[63 FR 19155, Apr. 16, 1998, as amended at 63 FR 53262, Oct. 2, 1998; 72 FR 71016, Dec. 13, 2007]

### Subpart D—Designation Process

#### § 598.300 Procedure for submitting a nomination.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of nominations for designation as Empowerment Zones, including submission deadlines and addresses, in a document announcing the initiation of the designation process.

(b) *Acceptance for processing.* HUD will accept for processing those nominations for designation as Empowerment Zones that HUD determines have met the criteria required by this part.

(c) *Publication of designations.* Announcements of those nominated urban areas designated as Empowerment Zones will be made by publication in the FEDERAL REGISTER.

#### § 598.305 Designation factors.

In choosing among nominated urban areas eligible for designation, the Secretary will consider:

(a) *Quality of strategic plan.* The quality of the strategic plan (see § 598.215(b));

(b) *Quality of commitments.* The quality and breadth of the commitments made in connection with the strategic plan (see § 598.215(b)); and

(c) *Other factors.* Other factors established by HUD, as specified in a FEDERAL REGISTER notice.

### Subpart E—Post-Designation Requirements

#### § 598.400 HUD grants for planning activities.

(a) HUD will award planning grants up to \$100,000 to each of the Empowerment Zones designated in accordance with this part.

(b) Eligible recipients for these grants are the lead unit of general local government that received designation under this part, or its designee. These recipients may subgrant all or part of the planning grant to qualified subgrantees, such as community organizations, agencies of local government, regional planning authorities, or planning consultants.

(c) Eligible planning activities include: hiring and development of staff, consulting services, publication of materials, community outreach and participation, governing board training, and similar activities that are intended to:

(1) Expand the planning capacity of the designee local government, the governing board, and/or participating entities, such as community organizations;

(2) Help the designee plan the implementation of the strategic plan; and

(3) Help the designee to develop its performance measurement process.

(d) The document announcing the initiation of the designation process describes the procedures for award of these planning grants, post-award reporting requirements with respect to the grants, and the uniform requirements applicable to all Federal grants.

#### § 598.405 Environmental review.

Where any EZ's strategic plan or any revision thereof proposes the use of HUD EZ Grant Funds for activities

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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.

[72 FR 71016, Dec. 13, 2007]

### § 598.408 Lead-based paint requirements.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title apply to the activities funded by HUD under this program.

[69 FR 34275, June 21, 2004]

### § 598.410 Public access to materials and proceedings.

After designation, an area designated an EZ must make available to the public copies of the strategic plan and supporting documentation and must conduct its meetings in accordance with applicable open meetings statutes. HUD may make the strategic plan and supporting documentation available to members of the public.

### § 598.415 Reporting.

(a) Empowerment Zones designated in accordance with this part must submit periodic reports to HUD. These reports must identify the community, local government and State actions that have been taken in accordance with the strategic plan and provide notice of updates and modifications to the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones as HUD requests from time to time, including information documenting non-discrimination in hiring and employment by businesses within the designated Empowerment Zone, must be submitted promptly.

(b) The States must submit periodic reports to HUD, demonstrating compliance with the certifications it is re-

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quired to submit in accordance with this part.

(Approved by the Office of Management and Budget under Control Number 2506-0148)

[63 FR 19155, Apr. 16, 1998, as amended at 63 FR 53262, Oct. 2, 1998]

### § 598.420 Periodic progress determinations.

HUD will regularly evaluate the progress of implementation of the strategic plan in each designated Empowerment Zone on the basis of available information. HUD also may commission evaluations of the Empowerment Zone program as a whole by an impartial third party, at such intervals as HUD may establish.

### § 598.425 Validation of designation.

(a) On the basis of the periodic progress determinations described in § 598.420, and subject to the provisions relating to the revocation of designation in § 598.430, HUD will make findings on the continuing eligibility for and the validity of the designation of any Empowerment Zone.

(b) HUD may approve an Empowerment Zone's request for boundary modification, subject to the requirements specified in subpart B of this part.

### § 598.430 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of an urban area as an Empowerment Zone if the Secretary determines, on the basis of the periodic progress determination described at § 598.420, that the State(s) or local government(s) in which the urban area is located:

(1) Has modified the boundaries of the area without written approval from HUD;

(2) Has failed to make progress in implementing 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 and an Empowerment Zone, the Secretary will issue a letter of warning to the nominating State(s) and local government(s), with a copy to all affected Federal agencies of which the Secretary is aware;

(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 without written approval from HUD; or

(ii) Is not complying substantially with, or has failed to make progress in implementing the strategic plan; and

(2) Requesting a reply from the nominating entities within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* To revoke the designation, the Secretary must issue a final notice of revocation of the designation of the urban area as an Empowerment Zone, after allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination in accordance with paragraph (a) of this section.

(d) *Notice to affected Federal agencies.* HUD will notify all affected Federal agencies of which it is aware, of its determination to revoke any designation in accordance with this section.

(e) *Effect of revocation.* Upon revocation of an EZ's designation, the designation and remaining benefits may be awarded to the next highest ranked Round II applicant.

(f) *Publication.* The final notice of revocation of designation will be published in the FEDERAL REGISTER, and the revocation will be effective on the date of publication.

(Approved by the Office of Management and Budget under Control Number 2506-0148)

[63 FR 19155, Apr. 16, 1998, as amended at 63 FR 53262, Oct. 2, 1998]

### Subpart F—Special Rules

#### § 598.500 Indian reservations.

(a) An area within an Indian reservation (as defined in section 168(j)(6) if the Internal Revenue Code, 26 U.S.C. 168(j)(6)) may be included in an area nominated as an Empowerment Zone by State and local governments. An area completely within an Indian reservation may be nominated by the reservation governing body and, in that case, the area is treated as if it also were nominated by a State and a local government. Where two (or more) governing bodies have joint jurisdiction over an Indian reservation, the nomi-

nation of a reservation area must be a joint nomination.

(b) For purposes of paragraph (a) of this section, a reservation governing body must be the governing body of an Indian entity recognized and eligible to receive services from the Bureau of Indian Affairs, United States Department of Interior.

#### § 598.505 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 applies to all such governments.

#### § 598.510 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.

#### § 598.515 Alaska and Hawaii.

A nominated area in Alaska or Hawaii is deemed to satisfy the criteria of distress, size, and poverty rate detailed in § 598.100(b), (c), (d), and (f), and § 598.110 if, for each census tract or block numbering area within the area, 20 percent or more of the families have income that is 50 percent or less of the statewide median family income (as determined under section 143 of the Internal Revenue Code).

### Subpart G—Empowerment Zone Grants

SOURCE: 72 FR 71016, Dec. 13, 2007, unless otherwise noted.

#### § 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 suc-

cessfully 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

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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

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the EZ of HUD's final determination and action, affirming, modifying, or repealing HUD's initial determination of an alleged violation and proposed action.

### PART 599—RENEWAL COMMUNITIES

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