

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 598

[Docket No. FR-4853-P-01; HUD-2005-0009]

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:** Proposed rule.

**SUMMARY:** This rule proposes to establish certain planning and performance standards for utilization of grant funds allocated to Empowerment Zones, including for benefit levels and economic-development activities. The standards are designed to ensure that the activities undertaken by Empowerment Zones with Federal grants are consistent with the Empowerment Zone's strategic plan.

**DATES:** Comment Due Date: August 8, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

**FOR FURTHER INFORMATION CONTACT:** John Haines, Office of Community Planning

and Development, Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 708-6339 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Background

This rule proposes to amend HUD's regulations at 24 CFR part 598 by adding a new subpart G, "Empowerment Zone Grants," that will establish an implementation plan and performance standards for the use of funds appropriated by Congress and made available by HUD specifically for the Round II urban Empowerment Zones (EZs). These funds are referred to as HUD EZ Grant Funds. The funds Congress has appropriated to date are found under the following appropriation acts commencing with fiscal year 1999: Public Laws 105-277, 106-74, 106-377, 106-554, 107-73, and 108-7. Should additional funds be made available in the future for Round II or Round III EZs, the provisions of this new subpart G, once promulgated as a final rule, would apply to them as well. Subpart G would provide for an EZ to submit to HUD its plan for expenditure of HUD EZ Grant Funds. Such planning would assist both HUD and the EZ to ensure that HUD EZ Grant Funds are expended consistent with the EZ's strategic plan and any directions or restrictions that may be imposed on the grant funds by the appropriations acts that make the funds available to EZs. Subpart G also would establish certain performance standards for the expenditure of EZ grant funds to greater ensure that a certain level of the benefits resulting from the expenditure of these funds will accrue to persons who reside within the EZ.

#### II. Benefits to EZ Residents

With respect to performance standards for utilization of funds for the benefit of EZ residents, numerous comments were received by HUD on this subject 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). Part of an HHS statute governing the use of SSBG funding, (42 U.S.C. 1397f(c)(1)(C)), states 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 HUD EZ Grant Funds rather

than SSBG funds. This funding distinction has created a situation where there is an explicit statutory basis for a resident benefit standard for Round I, but not for Round II EZs. Nevertheless, HUD has determined that it is appropriate to establish a performance standard that helps to ensure a certain level of resident benefit from the use of HUD EZ Grant Funds. The establishment of such a standard is supported by and would be consistent with the fact that several of the tax incentives that are the primary benefits for businesses operating in the EZs also provide a direct benefit to EZ residents. For example, the Empowerment Zone Employment Wage Credit is specifically linked to existing employees and new hires who live and work in the EZ, and the Work Opportunity Tax Credit gives employers a tax credit for hiring EZ residents who are within specified age brackets. EZ residents are certainly intended to be among the principal beneficiaries of the EZ program.

Accordingly, to enhance achievement of the objectives of an EZ strategic plan and the specific objective of benefiting EZ residents, this rule proposes for each EZ to submit an implementation plan for HUD approval, after this rule is issued as final and becomes effective. 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. The three performance standards are a principal benefit standard, a proportional benefit standard, and 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. The following discusses each of these standards in more detail.

#### A. Principal Benefit Standard

The principal benefit standard looks at 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 begins with the presumption, with which HUD agrees, that for most projects it is not feasible to entirely limit the persons who benefit directly to those who reside within the EZ. This rule proposes to establish a minimum percentage for this purpose. The strong emphasis on the benefits to be received by EZ residents stems from HUD's belief 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. Accordingly, the objective expressed at 24 CFR 598.2 in the Round II regulations appropriately calls for "empowering low-income persons and families receiving public assistance to become economically self-sufficient." Conversely, HUD also recognizes that the local governments involved in the EZ program must partner with private businesses to achieve the desired redevelopment of the area, and cannot control the results entirely. Thus, some sharing of the direct benefits with those outside the EZ is likely to occur. HUD accepts the proposition that, if a majority of the direct beneficiaries reside within the EZ, the project that provides the benefits may be assisted with HUD EZ Grant Funds to meet this concern. However, HUD also notes that the Congress, in setting the requirements for some of the tax incentives available in conjunction with EZs, allows for a smaller proportion of resident benefit. In these cases, the tax incentives only require 35 percent of jobholders to be EZ residents. For example, among the criteria a business has to meet to qualify as an "Enterprise Zone Business" eligible to use the Increased Section 179 Deduction, EZ Facility Bonds, and certain other incentives is the requirement that 35 percent of employees must be EZ residents. HUD believes that this requirement provides a reasonable basis for allowing as few as 35 percent of the direct beneficiaries to be EZ residents to suffice with respect to a project that provides for the creation of jobs or, in the case where the loss of jobs would result without the assistance of the federal EZ funds, the retention of jobs.

Therefore, this proposed 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. But 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 these tests (51 percent or 35 percent), and so two other standards are also provided, as discussed below.

#### *B. Proportional Benefit Standard*

In the interest of providing maximum flexibility to an EZ in its quests to pursue its strategic plan, HUD has made provision to also assist such an activity to a lesser degree. That is, 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, one that cannot meet those tests may also be assisted in part. The level of assistance that may be provided must be limited so that it does not exceed the percentage of direct beneficiaries that are EZ residents. An example might help to show how this would work. If a business needs \$100,000 to expand its operations and will create four new full time jobs, but it can only assure that one of those four jobs will be made available to an EZ resident, the EZ could provide \$25,000 (one-fourth of the total amount needed by the business) in the form of HUD EZ Grant Funds. This is because only one-fourth of the jobs will benefit EZ residents. Using this practical approach, HUD 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.

Comparing the principal benefit standard to the proportional standard proposed by this regulation means that the EZs will have an incentive to fund projects that will provide at least 51 percent (or 35 percent, where applicable) of the direct benefits to EZ residents. This is because where the applicable percentage can be reached, there is no limit as to the percentage of the funding needed by the project in question that may be met using the HUD EZ Grant Funds. However, if a project is highly desirable for other reasons, it may still be assisted, in part, using such funds.

#### *C. Exception Criterion*

In any case where a proposed project does not meet the principal benefit standard or the proportional benefit standard set forth in this regulation, the regulation provides that HUD will consider a request for exception if an EZ concludes that the project would contribute to its strategic plan in a critical way. Where an EZ shows, 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 expressly approve the project despite its failure to meet either the principal or proportionate criterion. All requests for exceptions to these criteria must be in writing, accompanied

by the facts that the EZ wants HUD to review and consider as justifying the exception. The performance standards proposed in this rule for determining whether an activity is in conjunction with economic development contain a similar exception provision, as discussed elsewhere in this preamble.

#### *D. Additional Issues*

1. *Amount of benefit.* The question of how much benefit, at minimum, should be derived from the expenditure of HUD EZ Grant Funds is not addressed in this proposed rule. The concern about the amount of benefit stems 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 and thus to create or retain jobs that would otherwise not be available. Since private businesses must principally focus on their own profitability, the public sector needs to make sure that the number of jobs that are made available is commensurate with the amount of HUD EZ Grant Funds provided to such businesses. HUD is not aware of abuses in this regard with respect to the use of HUD EZ Grant Funds, but is interested in receiving public comment on whether establishing specific requirements would be desirable to prevent them from occurring. For example, in the Community Development Block Grant (CDBG) program, there is a general requirement that economic development activities that will create or retain jobs must create or retain at least one permanent, full-time equivalent job for each \$35,000 of CDBG funds obligated for applicable activities during the program year. HUD invites public comment on whether this or any similar requirement would be appropriate to apply to all jobs created or retained by the use of the HUD EZ Grant Funds.

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. Specifically, if EZ residents comprise at least 51 percent of the persons who live within the area served by the business, the project would qualify under that standard, even if it cannot meet the 35 percent jobs standard. (Appendix D of the *CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities*, published in 1998, contains guidance on how to determine a service area that may be used for this

purpose.) Thus, an EZ may choose which of the two standards, principal benefit or proportional benefit, to apply to a proposed commercial project. In addition, the location of a facility within the EZ and the nature of the goods and services that it 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, HUD would naturally 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 standards for ensuring that sufficient benefit will go to EZ residents from activities assisted with HUD EZ Grant Funds require measuring the jobs on a full-time equivalent basis. This is because many of the jobs can be expected to involve less than full-time employment. Because the standards in this regulation require that a calculation of the percentage of the total jobs resulting that will benefit EZ residents, it is important that provision be made for those cases where one or more of the resulting jobs will be part-time jobs. An example might help to clarify the concerns HUD has and how the calculation should be made. Assume that a proposed project is expected to create 10 new jobs, four of which will require only 20 hours of work per week. Knowing that four of the new jobs will go to EZ residents would, on the surface, appear to meet the standard that at least 35 percent of the new jobs benefit EZ residents. However, if the four jobs to be taken by EZ residents are all only part-time, the simple calculation based on the number of jobs alone is misleading. While 40 percent of the new jobs will benefit EZ residents, less than 40 percent of the *total employment* to be produced will accrue to them. Using a full-time equivalent approach, only 25 percent of the employment opportunity will benefit EZ residents. This is because when the part-time jobs are converted to their equivalent in full-time jobs (*i.e.*, a 20 hour per week job is the equivalent of one-half of a full-time job), they would compute to only two full-time equivalent jobs. Thus, using a full-time equivalent calculation, the 10 new jobs are seen as equaling only eight full-time equivalent jobs. The four part-time jobs that would go to EZ residents convert to the equivalent of two of those eight full-time jobs, yielding only 25 percent of the total employment opportunities to be produced by the HUD EZ Grant Funds. (**Note:** In those cases where an

employer operates on the basis of a full-time schedule of less than 40 hours [*e.g.*, 36 hours], the calculation of part-time to full-time equivalency would be made using that lesser figure in lieu of 40.)

4. *Making jobs "available to" EZ residents.* The standards proposed in this regulation for ensuring sufficient benefit to EZ residents allow for qualifying based on the fact that a job was made available to such residents even if they do not actually take the job. This provision recognizes that it may not be feasible for a business to hold one or more jobs open indefinitely while they attempt to fill it with a resident of the EZ. If the EZ can demonstrate that the job referral resources and the business have a good faith plan to provide first consideration to 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. Note, however, that qualifying for tax exempt financing, increased deductions for capital equipment in accordance with section 179 of the Internal Revenue Code, and preferential tax treatment for capital gains otherwise available to an "EZ business" requires 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.

### III. In Conjunction With Economic Development

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." (See Public Laws 105-277, 106-74, 106-377, 107-73, and 108-7. Public Law 106-554 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, 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 had not attempted to set forth specific requirements for adhering to the economic development restriction. The regulations governing urban EZs from Round II are contained in 24 CFR part 598. At the time they were published, it was expected that any funds the Congress would appropriate for Round II EZs would continue to fall under the

jurisdiction of HHS as the Round I funds did. The regulations are now being amended to reflect the change in jurisdiction over the funds to HUD. This rulemaking removes references to HHS at 24 CFR 598.215(b)(4)(i)(D) and in its place provides 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, each proposed use of the funds must be described in an implementation plan and approved by HUD in advance. This rule would provide that in reviewing a proposed use of HUD EZ Grant Funds, 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. It should be noted that while the two standards (resident benefit and economic development) covered in this proposed rule are independent of each other, they will have to be considered almost simultaneously by those making decisions about how to spend HUD EZ Grant Funds. This preamble and §§ 598.605 and 598.615(a)(1) of the proposed rule contain reminders that both resident benefit and economic development standards 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." Such activities include efforts to stimulate the development or expansion of microenterprises. Assisting commercial businesses that provide goods or services within the EZ to either remain within the EZ or expand would also satisfy the standard, whether or not the business will create any new jobs, so long as either the principal benefit or the proportional benefit standard is met, or an exception is granted for resident benefit.

2. An activity that assists a person to take, or remain in, a job also meets the economic development standard. The standard is met by job training, provision of child care or transportation to or from the place of employment (or the place where job training is taking place), or even by counseling persons on how to interview successfully for a job, dress and/or act appropriately in the conduct of a job.

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. This includes the cost of attending a conference on economic development. Because of the difficulty of tracking the relationship of such capacity building to resultant grant-assisted activities, this rule would deem the use of funds to build capacity for carrying out economic development activities as providing adequate benefit to EZ residents.

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.

#### IV. Technical and Conforming Changes

This proposed rule would add, at § 598.605(b), provisions to emphasize the need for compliance with other requirements applicable to the use of HUD EZ Grant Funds, such as the uniform administrative requirements of 24 CFR part 85, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 *et seq.*) and with the

environmental review procedures required to expend HUD funds. These amendments are in the nature of technical corrections to codify general requirements affecting the use of HUD grant funds.

This rule would also remove references to SSBG. Congress appropriated HUD EZ Grant Funds rather than SSBG funds as was anticipated when 24 CFR part 598 was first issued. As a result, the SSBG references in part 598 are not relevant and would be removed, as follows:

The definition of "EZ/EC SSBG" would be removed from § 598.3. "HUD EZ Grant Funds" would be defined in § 598.600.

The certification requirement in § 598.210(e) would be removed. It reads as follows: "Provide assurances that any Round II EZ/EC SSBG funds that may be provided to the state for the area will not be used to supplant federal or non-federal funds for services and activities that promote the purposes of section 2007 of the Social Security Act."

The phrase, "and reporting on the use of EZ/EC SSBG funds" would be removed from the certification requirement in § 598.210(f), which would be redesignated as § 598.210(e).

The certification requirement in § 598.210(g) would be removed. It reads as follows: "Provide assurances that the nominating State(s) agrees to distribute any EZ/EC SSBG funds that may be awarded to it for use by a designated Empowerment Zone for programs, services, and activities included in the Empowerment Zone's strategic plan to the extent they are consistent with section 2007(a) of the Social Security Act as well as other applicable Federal, State, and local laws and regulations."

Section 598.210(h) would be redesignated as § 598.210(f).

The last sentence of § 598.215(b)(4)(i)(D) would be removed. It reads as follows: "Budgets will also include details about proposed uses of any Round II EZ/EC SSBG funds that may become available from HHS, in accordance with Guidelines on Eligible Uses of EZ/EC SSBG Funds."

The reference to EZ/EC SSBG funds in § 598.405 would be changed to HUD EZ Grant Funds. Section 598.405 would also identify HUD's environmental review responsibility under 24 CFR part 50 and specify, consistent with 24 CFR 50.3(h)(1), that the EZ must provide HUD with the information necessary to conduct an environmental review.

#### V. Evaluation, Monitoring and Enforcement

HUD will 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 under 24 CFR 85.40(e), and by other appropriate means. Should it appear that an EZ is not carrying out its funded activities in accordance with its approved implementation plan, including performance standards, HUD may forward a warning letter to the EZ informing it of a potential violation. If HUD makes an initial determination that there has been a violation in the use of HUD EZ Grant Funds, it will notify the EZ of the alleged violation and the proposed action HUD will take under 24 CFR 85.43, the enforcement provision of HUD's promulgation at 24 CFR part 85 of the government-wide

"Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" or if appropriate, 24 CFR 598.430. The notice will also provide the EZ with at least 30 days to respond with any information to rebut or mitigate the alleged violation. If the EZ does not respond within the specified period, HUD 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 and proposed action.

#### VI. Findings and Certifications

##### *Paperwork Reduction Act*

The proposed new information collection requirements contained in subpart G of part 598 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this 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.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 598.610 .....	15	1	15	4	60
§ 598.615 .....	15	1	15	3	45
§ 598.620 .....	15	1	15	6	90
Total hours .....					195

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the proposal by name and docket number (FR-4853-P-01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503-0001; Fax number (202) 395-6974; and

Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, Office of Community and Planning Development, Room 7232, 451 Seventh Street, SW., Washington, DC 20410-7000.

#### *Environmental Review*

A Finding of No Significant Impact with respect to the environment for this

rule has been made in accordance with HUD 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 is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 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 proposed rule would only establish 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 the 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 would establish 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.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities,

HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *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 proposed rule would not have federalism implications and would 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, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 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 record keeping requirements, Urban renewal.

Accordingly, HUD proposes to amend 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 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 bases 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 (see § 598.600) 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. Following § 598.515, 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 the use of funds appropriated by Congress and made available by HUD specifically for use by EZs. 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.

(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 Empowerment Zone 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 Empowerment Zone, 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, on a full-time equivalent basis, are taken by, or made available to, Empowerment Zone residents.

(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 Empowerment Zone.

(c) *Exception criterion.* In any case where a proposed project or activity 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 Empowerment Zone requests HUD to review and consider as justifying the exception, demonstrates substantial benefits to the Empowerment Zone that would result from the project or other compelling reasons justifying the appropriateness of the implementation plan to the Empowerment Zone’s strategic plan.

### **§ 598.615 Economic development standards.**

(a) *Economic development standards.* The project or activity in an implementation plan submitted for HUD approval by an Empowerment Zone 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 Empowerment Zone 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 Empowerment Zone 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 Empowerment Zone to remain within the Empowerment Zone.

(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 Empowerment Zone 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 Empowerment Zone'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 Empowerment Zone residents as required under § 598.610.

(4) *Empowerment Zone administrative capacity.* An activity that increases the capacity of governance board members or staff of the Empowerment Zone's lead agency to carry out their roles with respect to economic development projects expected to be assisted in support of the Empowerment Zone'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 Empowerment Zone 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 Empowerment Zone, 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 Empowerment Zone 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 Empowerment Zone 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 Empowerment Zone residents as required under § 598.610. All requests for such an exception must be in writing, accompanied by the facts that the Empowerment Zone wants HUD to review and consider as justification.

#### **§ 598.620 Evaluation, monitoring, and enforcement.**

(a) *Progress, evaluation, and monitoring.* HUD will review the performance of an Empowerment Zone'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 Empowerment Zone 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 Empowerment Zone 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 Empowerment Zone 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 Empowerment Zone under paragraph (c) of this section will provide the Empowerment Zone 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 Empowerment Zone 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 Empowerment Zone responds, HUD will consider the information received from the Empowerment Zone and may request additional information. After considering the information received from the Empowerment Zone, HUD will notify the Empowerment Zone of HUD's final determination and action, affirming, modifying, or repealing HUD's initial determination of an alleged violation and proposed action.

Dated: May 10, 2005.

**Pamela H. Patenaude,**

*Assistant Secretary for Community Planning and Development.*

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