

Microenterprise Assistance Activities

July 21, 1995

MEMORANDUM FOR: Robert F. Poffenberger, Director, Community Planning and Development Division, 5HD

FROM: Andrew M. Cuomo, Assistant Secretary for Community Planning and Development, D

**SUBJECT: Community Development Block Grant (CDBG) Program Request for Waiver of National Objective Requirement for Microenterprise Assistance Activities
City of South Bend, Indiana**

This is in response to your memorandum of March 21, 1995, recommending approval of a request by the City of South Bend, Indiana, for a waiver of the CDBG regulations at 24 CFR 570.208(a)(2)(iii). The cited regulation permits microenterprise assistance activities to qualify under the low- and moderate-income limited clientele national objective standard only with respect to those owners of microenterprises and persons developing microenterprises who are low- and moderate-income persons. The City of South Bend is requesting a waiver of this section to allow the national objective of benefit to low- and moderate-income persons for its microenterprise assistance program to be met through a limited clientele basis where at least 51 percent of the owners and developers of microenterprises assisted are low and moderate income.

In its 1995 Consolidated Plan, the City of South Bend proposed an activity which would fund training sessions to assist owners of microenterprises and persons developing them in the preparation of business plans, management, marketing, cash flow, customer service, competition, and recordkeeping. This program was designed by the City based upon the proposed economic development regulations which were published in the Federal Register on May 31, 1994. In that publication, HUD proposed amending the CDBG national objective regulations to allow a microenterprise assistance activity to qualify as a low- and moderate-income limited clientele activity if at least 51 percent of the owners of microenterprises and persons developing microenterprises assisted under the activity during each program year were low- and moderate-income persons.

However, in the final rule which was published in the Federal Register on January 5, 1995, and became effective on February 6, 1995, the Department revised the proposed limited clientele provision so that only those assisted owners of microenterprises and persons developing them who are low- and moderate-income persons could qualify under this standard. The City feels that this revision in the final regulation would cause extreme hardship for the City in its efforts to meet the priority community need of creating a future job base through the development and support of microenterprises. The City states that applying the new requirement may cause the cancellation of the planned CDBG activity.

The City designed its proposed microenterprise assistance activity to be open to all microentrepreneurs. According to the City, the experience to date of the Corporation for Entrepreneurial Development (CED), the subrecipient that is expected to implement this new CDBG activity, indicates that over 51 percent of these entrepreneurs would meet low- and moderate-income requirements. The City states that applying

the requirement in the final rule would necessitate that it either limit the training program to only those persons who are currently low and moderate income or use the job creation national objective option for the activity. The City argues that the first option is inefficient because it could mean that the City would have to hold two concurrent classes, one CDBG-assisted class for low- and moderate-income persons and another for those over the income limits. The City further argues that the second option imposes undue burdens on both the City and the business owners in having to demonstrate benefit "after the fact." As you are aware, the proposed amendments to the economic development regulations which were published on May 31, 1994, were published only for public comment and not for effect at that time. Thus, they were subject to change. The Department received several comments regarding § 570.208(a)(2)(iii) of the proposed rule. Those in opposition to the proposed provision were particularly concerned about the fact that only 51 percent of the owners of microenterprises and person developing them would be required to be low- and moderate-income persons. That provision had the potential to permit sizable numbers of non-low- and moderate-income persons to receive financial assistance to develop a for-profit business. As a result of these comments, HUD revised the limited clientele provision in the final rule to restrict its use to qualify only those assisted owners of microenterprises and persons developing microenterprises who are low- and moderate-income.

In making its request for a waiver of the subject limited clientele provision as it was published for effect, the City of South Bend appears to be assuming that it must qualify all of the proposed microenterprise training program under a single national objective standard. This is not necessarily the case. While the new limited clientele provision has been restricted to qualifying only low- and moderate-income persons, CDBG microenterprise assistance activities may still assist non-low- and moderate-income entrepreneurs as long as each instance of such assistance can be shown to meet another national objective. The most likely alternative standard under which such assistance may qualify is the criteria for creation and/or retention of jobs principally for low- and moderate-income persons. It may also often be possible for certain microenterprises to qualify under the criteria for low- and moderate-income area benefit activities. Such an overall microenterprise assistance effort need not require separate training classes. The City could use CDBG funds to run one training program and split the national objective claims. All those owners of microenterprises and persons developing them who are low- and moderate-income persons could be considered to qualify under the new limited clientele provision; additional national objective documentation would then need to be provided only for each additional microentrepreneur that is assisted.

It should also be noted that the final rule revising the CDBG economic development regulations also made significant changes to the national objective criteria for job creation and/or retention activities which should greatly reduce the administrative burden of carrying out activities under this national objective standard. Of particular note are the new presumptions that may be used to determine a person's low- or moderate-income status for job creation and/or retention activities, as delineated at 24 CFR 570.208(a)(4)(iv). Given the limited extent of the statutory authorization for these presumptions [Section 105 (c) (4) of the Act], they can only be used for activities qualifying under the national objective of job creation or retention for low- and moderate-income persons.

It appears to me that granting a waiver of the CDBG regulation is not necessary. As stated herein, there are other program design options which can assist the City in meeting the goal of developing economic opportunities to create neighborhood wealth for low- and moderate-income areas, increase entrepreneurship opportunities, and create jobs. Please meet with the City to discuss the full range of

options outlined in the regulations as published on January 5, 1995. Based on the information provided, the City of South Bend has not satisfied the waiver provisions at 24 CFR 570.5. Therefore, the City's request for a waiver of the subject requirement is denied.

If you have any questions regarding this matter, please contact the Entitlement Communities Division at (202) 708-1577.

cc: John E. Wilson