HUD CDBG
BROWNFIELDS FUNDING
A BUILDING BLOCK FOR COMMUNITY DEVELOPMENT

A REPORT PREPARED FOR THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
OFFICE OF POLICY DEVELOPMENT AND RESEARCH

PREPARED BY
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OCTOBER 1998
Founded in 1993 by a group of local officials, the National Association of Local Government Environmental Professionals represents local government personnel responsible for ensuring environmental compliance and developing and implementing environmental policies and programs. NALGEP is the only national organization devoted exclusively to addressing local government environmental program development and implementation. NALGEP’s membership includes more than 85 local government entities located throughout the United States, ranging in size from the largest cities to much smaller communities. NALGEP’s diverse membership includes environmental managers, solid waste coordinators, public works directors, development officials and attorneys, all working on behalf of towns, cities, counties and municipal associations. Given the broad base and expertise of its membership, NALGEP is a unique vehicle for providing a national voice for local government environmental officials.

NALGEP members include many of the nation’s leading local brownfields officials and the organization has extensive experience working on brownfields and smart growth issues. Specifically, NALGEP has convened work groups of local brownfields officials to provide input to federal officials on liability issues, the implementation of the U.S. Environmental Protection Agency’s initiative to capitalize Brownfields Cleanup Revolving Loan Funds, EPA delegation of cleanup authority to the states and other key brownfields matters. NALGEP is also conducting projects on Smart Growth, Air Quality, and the Brownfields Showcase Community program.

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ACKNOWLEDGEMENTS -- NALGEP wishes to thank the following officials at the U.S. Department of Housing and Urban Development for their leadership on community revitalization issues, and for reviewing and commenting on this report, including Robert Hickmott, Nelson Bregón, Steve Johnson, Edwin Stromberg, Richard Broun, and Kristen Sarri. NALGEP also wishes to thank Sven-Erik Kaiser of the U.S. Environmental Protection Agency for his assistance and support.
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Appendix 1: NALGEP’s Proposed Changes to CDBG Part 570 Regulations to Promote Brownfields Revitalization
I. EXECUTIVE SUMMARY

A. Project Objectives

In May 1998, the U.S. Department of Housing and Urban Development ("HUD") funded the National Association of Local Government Environmental Professionals ("NALGEP") to evaluate the impact of current Community Development Block Grant ("CDBG") regulations on brownfields redevelopment and to provide the views of local government brownfields officials to HUD as the Department considers revising these regulations. Specifically, HUD asked NALGEP to: (1) determine whether modifying the CDBG regulations would help to facilitate the use of CDBG funds for brownfields revitalization; and (2) make specific recommendations for modifying the CDBG regulations to make them more responsive to the needs of local CDBG grant recipients conducting brownfields activities.

During the course of this project, the United States Congress passed legislation, which the President is expected to sign in late October 1998. The legislation declares that:

For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under the community development block grants program under title I of the Housing and Community Development Act of 1974 for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act.

This legislation sets the stage for HUD to move quickly to clarify its CDBG regulations to ensure that local governments and States can effectively use block grant funding to support the myriad brownfields activities that are necessary to revitalize cities and towns and help create new jobs in local communities across the Nation. NALGEP hopes that this report can provide HUD with a design for prompt action to make the CDBG program work better for local communities across America.

B. Summary of Key Findings and Recommendations

NALGEP and its CDBG Brownfields Task Force provide the following findings and recommendations regarding regulatory clarifications to the Part 570 CDBG program:

The Need for Regulatory Clarification

- HUD's Community Development Block Grant program provides a critical source of resources to local governments that seek to revitalize communities through the
assessment, remediation and redevelopment of brownfields, and many communities have successfully used CDBG funds for brownfields projects.

- There is, however, substantial confusion among local government officials, community leaders, and HUD staff concerning whether the assessment and cleanup of brownfields is a legitimate use of CDBG funds and what types of brownfields activities are eligible for funds.

- Although the recent legislation passed by Congress should help to eliminate this confusion, there is a strong need to modify and clarify CDBG regulations to ensure that local governments understand how block grant funds can be used to support brownfields activities, and to make the CDBG program more responsive to the brownfields needs of local communities.

**Overall Findings Regarding Changes to the CDBG Regulations**

- Changes to CDBG regulations to support brownfields revitalization should be clear, simple and straightforward.

- CDBG regulations should allow the use of block grants on a broad range of environmental contamination of real properties, and should not seek to restrict grants to certain types or levels of contamination.

- CDBG eligibility for brownfields revitalization should not be limited to properties enrolled in Federal or State environmental cleanup or regulatory programs.

- CDBG funding should be permitted for remediation and redevelopment of properties directly affected by environmental contamination, but should not be used on spots or areas just because they are indirectly or generally affected by pollution.

- CDBG regulatory language should use the term “actual or perceived environmental contamination of real property”, and not try to define the term “brownfields.”

- Changes to promote CDBG funding for brownfields activities should be made for entitlement communities, state programs and loan guarantees.

- HUD should consider promulgating CDBG brownfields changes by interim rule, both to establish regulatory certainty, and to ensure that such regulations can be available to local communities as quickly as possible.

**Recommendations for Specific Regulatory Changes**

- The regulations should make it clear that assessment and remediation of brownfields sites meet the CDBG national objective of preventing or eliminating slums or blight.

- Brownfields activities should be included in the national objective, related to slums/blight on an area basis, with other activities in a mix and match manner.
HUD regulations should clearly state that the “assessment or remediation of environmental contamination” are eligible activities under the CDBG program.

Brownfields planning activities should also be included as “eligible planning, urban environmental design and policy-planning-management-capacity building activities” under HUD Part 570 regulations.

CDBG funding should be permitted to address properties with perceived environmental contamination.

CDBG funding should support the myriad activities involved in the assessment, remediation and redevelopment of brownfields.

Aggregate standards for public benefits should allow the exclusion of brownfields activities.

Individual activity standards for evaluating public benefit should allow the exclusion of brownfields activities in special circumstances.

In Appendix 1 to the report, NALGEP provides specific proposed language to clarify CDBG regulations to support brownfields revitalization.

**Recommendations for Educating Stakeholders About the Use of CDBG Funds for Brownfields Initiatives**

- In clarifying policies and regulations related to brownfields, HUD should conduct an aggressive effort to publicize the changes and educate key stakeholders about the many opportunities to use CDBG funds for brownfields revitalization activities.

- HUD’s educational and informational activities on CDBG brownfields clarifications should include Federal Register notices, policy bulletins, communications with HUD regional, local and Community Builder staff, collaboration with U.S. EPA to reach local brownfields officials, and a variety of outreach efforts.

- HUD should begin immediately to educate stakeholders about the new legislation clarifying that brownfields activities are eligible activities under the CDBG program.

**C. Project Methodology**

NALGEP convened a CDBG Brownfields Task Force consisting of seven local government officials knowledgeable in community development and brownfields issues to help guide and oversee this project. The Task Force worked closely with NALGEP staff and carried out the following tasks:

regulations in order to identify specific regulatory changes that could be made to facilitate brownfields revitalization in local communities;

♦ Contacted a number of additional brownfields leaders including several officials from Brownfields Showcase Communities and EPA Brownfields Pilots to get their views on the need to revise the current CDBG regulations;

♦ Consulted with HUD Community Development and regional staff to discuss the preliminary results of the review and analysis of the CDBG regulations;

♦ Developed findings and recommendations for modifying the CDBG regulations in order to stimulate additional brownfields activities;

♦ Convened a meeting among the NALGEP Task Force and HUD officials to discuss the Task Force’s findings and recommendations; and

♦ Revised and finalized this report about recommended changes to HUD CDBG regulations to support local brownfields revitalization.

In developing our proposed revisions to the CDBG regulations NALGEP sought to ensure that the regulatory changes would:

♦ actually create more local flexibility for use of CDBG funds for brownfields projects while supporting the objectives of the CDBG program;

♦ not create new bureaucratic hurdles that would raise disincentives to the use of CDBG funds for brownfields projects; and

♦ help meet the needs of local community development programs as they address their brownfields revitalization priorities.
II. **BACKGROUND**

As part of the Administration’s Brownfields National Partnership, HUD has made the cleanup and redevelopment of brownfields a major departmental priority. HUD has declared that, “[s]litting unused or under-utilized, brownfields are impediments to urban economic development. But redeveloped, brownfields can be catalysts for community revitalization and sustainable urban development.” HUD Brownfields Redevelopment Fact Sheet (1998). In recent years, HUD has endeavored to notify local governments that CDBG funds may be used to support the cleanup and redevelopment of brownfields properties. Toward that end, Secretary Andrew Cuomo has vowed that “working in partnership with communities, we will transform abandoned commercial and industrial sites into new locations for businesses that will create jobs and help revitalize communities.”

The revitalization of brownfields is not some new or different activity from the types of community redevelopment HUD’s CDBG program has supported for many years. Indeed, brownfields are one of the foremost types of slums, blight and deterioration that have plagued America’s urban centers. Moreover, brownfields have a devastating effect on low- and moderate-income communities. As noted by the U.S. EPA National Environmental Justice Advisory Council’s (“NEJAC”) 1996 report, *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authetic Signs of Hope*:

The concept of “Brownfields” emerged as a natural outgrowth of groups and individuals seeking to reverse the tide of urban decay. . . . The Brownfields Issue is yet another aspect of an intensifying set of systemic problems related to residential segregation, disinvestment of inner-city areas, urban sprawl, degradation of the urban environment, and the polarization between urban and non-urban communities along lines of age, life style, race, socioeconomic status, and other spatially-related social divisions.

NEJAC’s report puts forth the “hope that the Brownfields Initiative could provide an opportunity to . . . provide focus to a problem which by its very nature is inextricably lined to environmental justice, for example, the physical deterioration of the nation’s urban areas.” Brownfields revitalization is thus a key component in the achievement of the CDBG national objectives of eliminating slums and blight, and assisting low and moderate income persons.

Addressing the problems of deterioration of our nation’s urban areas requires additional resources to overcome what HUD has described as the “serious financial and environmental barriers” to the redevelopment of brownfields. HUD’s CDBG program provides an important funding vehicle for a broad range of local community development initiatives including brownfields revitalization projects. Current CDBG regulations, however, were developed prior to the emergence of brownfields redevelopment as a
national issue and a major priority for many local communities. Consequently, HUD is presently considering the clarification of CDBG regulations to make them more responsive to the needs of CDBG recipients who want to carry out brownfields projects.

While various brownfields activities are eligible for funding under current CDBG regulations and numerous successful local brownfields projects have been facilitated with the aid of CDBG funds, there exists considerable confusion among some local communities about whether brownfields activities are a legitimate use of CDBG funds, and what types of activities are eligible for funding. Consequently, HUD is exploring the revision of CDBG rules to create more clarity about the use of CDBG funds for brownfields activities and more flexibility for CDBG grantees to conduct brownfields projects. Specifically, HUD is considering the possibility of expanding the CDBG criteria for the prevention and elimination of slums / blight to include environmental contamination, as a way to create additional flexibility for brownfields funding. In addition, HUD has now been authorized by Congress to consider brownfields activities as “eligible activities” under the statute authorizing the CDBG program, which makes now an excellent time for regulatory clarifications by HUD to promote CDBG brownfields revitalization.

HUD asked NALGEP to consider a number of issues related to the potential clarification of the slum / blight criteria including:

- determining what types and levels of contamination would qualify a site as a slum or blighted;
- determining to what extent an area must be contaminated to qualify as a slum or blighted;
- dealing with brownfields sites where development is inhibited by perceived contamination;
- identifying whether there are existing federal and / or state environmental programs that could help HUD define the types and levels of contamination that would support the designation of a spot or area as a slum or blighted; and
- determining what types of brownfields activities, including site assessment, removal or remediation, would qualify as actions that address slums/blight.

This report, prepared by the National Association of Local Government Environmental Professionals, presents the views of a network of local government brownfields leaders about the value of clarifying the CDBG regulations to promote increased flexibility for communities to use CDBG funds for brownfields projects. The report addresses the issues outlined above and provides specific recommendations for regulatory changes that will help meet the needs of local communities who want to use CDBG funds for brownfields revitalization.
III. **REGULATORY CHANGES ARE NEEDED TO FACILITATE THE USE OF CDBG FUNDS FOR BROWNFIELDS PROJECTS**

As mentioned previously, current regulations allow CDBG funds to be used for brownfields cleanup and redevelopment activities, and there are growing numbers of communities that are successfully using CDBG funds for brownfields projects. Here are some examples:

- The City of Indianapolis recently used $231,000 in CDBG funds for asbestos testing and abatement, underground storage tank removal and demolition to facilitate the redevelopment of an old concrete block factory into a new self-storage facility and a 20,000 square foot office and light industrial space.

- The City of Bridgeport used $2 million in block grant funds to help finance the assessment and cleanup of the area near Westinghouse Company’s Bryant Electric Facility.

- The City of Lawrence allocated $600,000 in CDBG funds to help facilitate the cleanup and development of the Lawrence Gateway Project.

- The City of Chicago has secured HUD approval for a total of $50 million in Section 108 loans guaranteed by CDBG funds. The funds are being used to facilitate the assessment, cleanup and redevelopment of various brownfields sites in the City.

- The City of Philadelphia spends a significant portion of its $100 million annual CDBG allotment on the assessment and remediation of environmental contamination to facilitate housing and commercial redevelopment projects.

Despite these and many other success stories, many communities remain unaware or confused about whether CDBG funds can be used for brownfields projects and which brownfields activities are eligible for CDBG funding. The confusion over CDBG funding for brownfields is illustrated by the actions of Congress in each of the past three fiscal years to include language in federal appropriations legislation clarifying that CDBG funds can be used for brownfields activities (a clarification that is now permanent under the 1998 legislation). NALGEP believes that modifying the CDBG regulations can eliminate this confusion, educate additional communities about the benefits of using CDBG funds for brownfields, and further stimulate additional brownfields revitalization projects in communities across the country. Below, we outline a number of reasons why modifying the CDBG rules, consistent with the overall mandate and objectives of the block grant program, would be beneficial for brownfields redevelopment and for local communities.
Many local leaders appear to be unaware that CDBG funds can be used for brownfields -- this includes local government leaders, leaders of community organizations and local and regional HUD officials. For example, a major southern city with substantial experience conducting brownfields projects faced significant opposition within its own municipal government regarding using CDBG funds to clean up environmental contamination on brownfields sites. In addition, the City had to work with a regional HUD official to "creatively interpret" Part 570 regulations, which do not clearly specify remediation of environmental contaminants. Although the brownfields leaders were eventually successful in turning the city around with the help of HUD officials, it took significant time and resources. Moreover, despite this experience, the city remains reluctant to use CDBG funds for brownfields.

There exists confusion among some local CDBG recipients as to whether brownfields projects meet the CDBG national objectives. Some believe that brownfields projects meet the Low/Moderate-Income objective while others believe they meet the Slum/Blight objective. Still others are not sure where brownfields fit in. Modifying the regulations to clarify that addressing environmental contamination of real property can meet any of the three national CDBG objectives in appropriate circumstances -- Slum/Blight, Low/Moderate-Income, or urgent community need -- will help eliminate this confusion.

There exists confusion among some local CDBG recipients as to whether brownfields activities qualify as eligible activities under the CDBG program. For example, Salt Lake City initially rejected the City Redevelopment Agency’s proposal to create an “Environmental Cleanup Loan Program” with CDBG funds, contending that it could not “determine what eligible activity it would meet.” While the Redevelopment Agency was ultimately successful in overturning this initial decision and raising awareness among City staff, it took substantial time and significantly delayed the start of the program. In the view of Salt Lake City, brownfields activities remain a “gray area” of the CDBG regulations. Consequently, lingering questions remain in Salt Lake City about whether particular brownfields cleanup activities that are supported with loans under the Redevelopment Agency’s CDBG-funded program are in fact eligible. Clarifying that the “assessment or remediation of environmental contamination” are eligible CDBG activities should clear up this confusion.

There exists confusion as to what types of brownfields activities are eligible activities under the CDBG program. Can CDBG funds be used for site assessments? For remediation? What types of remediation -- soil contamination, removal of toxic materials, groundwater contamination, underground storage tanks, environmental monitoring, or asbestos and lead abatement? Can funds be used for the demolition of buildings with environmental contamination? The lack of clarity in the current regulations provides a disincentive to some who may want to use CDBG funds for brownfields sites. For example, when the City of Miami was establishing its brownfields revolving loan fund with CDBG funds, they were told by local CDBG experts that the funds could be used only for site assessments and not for remediation.
As a result of this inaccurate information, the City created a loan fund that did not fully meet the local brownfields needs. Modifying the regulations can help overcome these barriers.

- Since some localities are unaware that CDBG funds can be used for brownfields activities, and others are confused about how the regulations should be implemented, institutional inertia can settle in, making many communities reluctant to fund brownfields projects when local CDBG priorities are established. Providing clear direction in the regulations that CDBG funds can be used for environmental cleanup should help overcome this tendency to stick with the status quo, and thus encourage more communities to fund brownfields revitalization.

- While many local CDBG recipients are aware that CDBG funds can be used for brownfields and are knowledgeable about the implementation of the regulations, other brownfields stakeholders such as neighborhood and environmental justice organizations may not have this information. Revising the regulations to explicitly state that CDBG funds can be used to address environmental contamination can help empower these grassroots stakeholders to play a more prominent role in shaping local CDBG priorities.

- While many of the nation's brownfields leaders are successfully using brownfields funds, many are not. NALGEP believes that clarifying the regulations can help educate local communities about the benefits of using CDBG funds for brownfields activities and, in turn, help stimulate additional brownfields projects.

In sum, NALGEP strongly believes that there is a critical need to modify the Part 570 CDBG regulations if HUD wants CDBG brownfields activity to reach its potential and to meet the needs of local communities. The following section outlines overall findings and specific regulatory recommendations that NALGEP and the CDBG Brownfields Task Force are proposing to address this need.
IV. **FINDINGS AND RECOMMENDATIONS FOR REVISING THE HUD CDBG PART 570 REGULATIONS**

NALGEP’s CDBG Brownfields Task Force presents below seven (7) overall findings on how Department of Housing and Urban Development Part 570 CDBG regulations can best be clarified to promote urban brownfields revitalization, and eight (8) recommendations suggesting specific regulatory changes to the program.

**OVERALL FINDING 1 --** *Changes to CDBG Regulations to Support Brownfields Revitalization Should Be Clear, Simple and Straightforward.*

The objective of any changes to HUD’s Part 570 CDBG regulations should be to clarify its block grant program in order to promote more brownfields revitalization activity by grant recipients. NALGEP and the members of the CDBG Brownfields Task Force therefore encourage HUD to adopt an approach to clarifying the Part 570 regulations that is clear, simple and straightforward. HUD will not encourage further use of block grant funds on brownfields if the CDBG funding program is complicated by burdensome, additional process requirements or with unnecessary environmental regulatory restrictions.

For example, clarity will not be achieved by cross-referencing federal environmental regulatory programs, which are independently applicable to contaminated sites. Attempting to specifically define environmental contamination may artificially exclude types of environmental contamination that are hindering urban economic redevelopment. Likewise, attempting to define existing eligible activities -- such as “construction” or “clearance” -- in a broader, but constrained manner, to encompass activities involved in brownfields revitalization will likely confuse, rather than promote, HUD’s objectives. Regulatory changes that are not necessary to achieve HUD’s objective of clarifying the permissibility of block grant expenditures on brownfields activities should be avoided in order to prevent CDBG regulations from becoming more complicated for local communities.

The NALGEP Task Force consensus is that any regulatory clarifications should be simple and straightforward. The overall findings and specific regulatory recommendations put forth below are based on this principle.
OVERALL FINDING 2 -- CDBG Regulations Should Allow the Use of Block Grants on a Broad Range of Environmental Contamination of Real Properties, and Should Not Seek to Restrict Grants to Certain Types or Levels of Contamination.

HUD should not seek to restrict eligibility of CDBG brownfields funding to specified types or levels of environmental contamination.

The economic deterioration and lack of redevelopment potential associated with brownfields can be triggered by hazardous substances and environmental contamination of many types and characteristics. The legacy of industrial pollution at brownfields sites involves thousands of substances that threaten public health and environment. The fear of liability under federal and state environmental laws that helps to create brownfields conditions can result from actual or perceived contamination by a wide range of hazardous substances regulated by those laws.¹

Likewise, determining whether the level of environmental contamination by different hazardous substances is a public health, environmental or redevelopment concern is a complicated, site-specific endeavor. Determining whether a level of environmental contamination is “significant” requires scientific, technical, community-specific and legal judgments.

Tying block grant eligibility determinations to some requisite type or level of environmental contamination will raise a very substantial barrier to communities that seek to use CDBG funds on properties that are genuinely and negatively affected by perceived or actual hazardous substances. Whatever the characteristics of toxic substances at a site, the presence of actual or perceived environmental contamination can create the brownfields perception that hinders redevelopment. Assessing and dealing with any perceived or actual environmental contamination problem can put a site back on the redevelopment track. Block grant funding, by providing needed funding for environmental assessment and remediation activities, can help overcome the redevelopment barriers at brownfields.

Moreover, restricting CDBG eligibility based on specified types or levels of contamination would require environmental assessment and site characterization prior to the

¹ For example, the Comprehensive Environmental Remediation, Compensation and Liability Act (“CERCLA” or “Superfund”), 42 U.S.C. §§ 9601 et seq., can impose liability for releases of a broad range of un-specified hazardous substances. The Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”) regulates several hundred environmental contaminants; and petroleum product releases are governed by the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq. or RCRA. Other federal regulatory programs govern underground storage tanks, lead abatement and asbestos abatement, all of which can impact properties and cause brownfields conditions. Environmental laws and regulations of the 50 states may regulate these same substances, along with others.
application of CDBG funding. Such a restriction would mean that CDBG funding would not be available for assessment itself, which is a critical funding need for localities.

For these reasons, NALGEP recommends that CDBG funding eligibility should be based on the actual or perceived presence of environmental contamination of real properties, whatever the types or level. The presence of environmental contamination in a particular spot or area will be determined by standard environmental assessment and remediation planning activities, which may need to be supported by CDBG funding. That is, if a site has been assessed and characterized prior to the application of block grant funds, the funding recipient will have determined the extent of environmental contamination, assessed the risk that the contamination is a threat to health or the environment, and thus be better able to establish a plan for remediation and a strategy for using CDBG funding on remediation activities. On the other hand, if a site has not yet been assessed at the time that the community considers the use of CDBG funding at that site, such funds can be used to support the necessary assessment process.

**OVERALL FINDING 3**

*CDBG Eligibility for Brownfields Revitalization Should Not Be Limited to Properties Enrolled in Federal or State Environmental Cleanup or Regulatory Programs.*

For the same reasons of simplicity, avoidance of complicated regulatory requirements, and the lack of any need to characterize types or extent of environmental contamination in order to make CDBG funding eligibility determinations, NALGEP strongly believes that CDBG funding for brownfields activities should not be limited by, or determined for eligibility based upon, whether a property is enrolled in a federal or state cleanup program or subject to any particular environmental regulatory requirement. For example, HUD could conceive of a Part 570 requirement that based block grant eligibility on whether a brownfield site is subject to listing as a Superfund site on that statute’s National Priorities List, or subject to classification under a state’s voluntary cleanup program requirements. However, such a requirement could mire CDBG funding in burdensome eligibility determinations that are not necessary to decide whether a property is genuinely hindered by environmental contamination. In addition, a Part 570 requirement that would tie funding to eligibility determinations under federal or state environmental programs would likely induce local governments to shun CDBG funding for brownfields activities, not only to avoid the bureaucratic burden but also to avoid unnecessary entanglement in those environmental requirements themselves and the associated site stigmatization that could result.

It should be emphasized, however, that federal and state environmental laws and regulations are, of course, independently applicable to sites affected by environmental contamination regardless of whether CDBG funding is being expended on those sites or not. Nothing in CDBG regulations should create any perception that block grant recipients are excused from their legal obligations to comply with independently applicable federal and state environmental (or other) legal requirements. However, it is not appropriate nor necessary for
HUD to tie CDBG eligibility to whether a spot or area is subject to any particular federal or state environmental program or requirements.

Connecting the CDBG program to CERCLA Superfund requirements is a particularly bad idea. Localities seek to avoid designation of properties as Superfund sites, and would be unlikely to voluntarily risk such designation in order to use CDBG funding. Moreover, most brownfields sites do not pose a sufficient threat to public health or environment from their contamination to trigger Superfund eligibility (that is, they are not “National Priorities List-caliber”). Thus, tying block grants to Superfund requirements would likely exclude most brownfields from Part 570 eligibility. In addition, Superfund sites are laden with comprehensive process requirements, such as National Contingency Plan requirements, that may take years, and millions of dollars to complete. CDBG eligibility should not be based on whether a site is in the Superfund process.²

It is also not feasible or practicable, NALGEP believes, to base CDBG funding eligibility on the requirements of a particular state brownfields (or state superfund) program. Although many states have developed “voluntary cleanup programs” or “VCPs” to address the cleanup and redevelopment of non-superfund brownfields properties, it is not appropriate to tie CDBG funding to these programs, for several reasons.

First, because every state’s program is different (and sometime the differences are great), CDBG cannot establish a uniform eligibility requirement, but instead would have to tie each State’s and each entitlement community’s CDBG funding to its own State’s VCP program (if there is one). However, these state programs function in very different ways, on different timelines, and at varying levels of effectiveness. The differences in these programs would likely create a patchwork quilt scheme of CDBG funding that could create inequities among funding recipients and would certainly not result in clarifying and promoting the use of HUD funding for brownfields activities.

Second, there is often a regulatory gap between state brownfields programs and federal Superfund requirements, which could leave some sites ineligible for CDBG funding for no other reason than the environmental regulatory gap. This gap exists either because a state has no VCP, or because EPA has not negotiated a “Superfund Memorandum of Agreement” delineating which sites EPA is willing to defer to the state VCP. Currently, only 11 states have Superfund Memoranda of Agreement with EPA. For states with no MOA, HUD would have to be the arbiter of whether a particular site must meet state or federal environmental regulatory requirements, in order to be eligible for CDBG funding.

² NALGEP believes that CDBG funds should be permitted to be used for assessment, remediation or redevelopment activities on Superfund National Priority List sites, where appropriate. A local community may decide to devote community redevelopment resources, including CDBG funds, to the revitalization of a Superfund site, and this should be permitted. However, this does not mean that a spot or area must be determined to be a Superfund site or to meet Superfund requirements before CDBG funds may be expended. As explained above, the vast majority of brownfield sites are not, and should not be, Superfund sites.
NALGEP points out that a recent EPA effort to require States and localities to classify non-Superfund-caliber brownfields sites based on their level, types and characteristics of contamination was controversial and unsuccessful, and that EPA policy was withdrawn. In an August 1, 1997 “Final Draft Guidance for Developing Superfund Memoranda of Agreement Language Concerning State Voluntary Cleanup Programs” (“EPA Guidance”), EPA put forth a policy designed to classify contaminated properties to determine whether they were subject to Superfund requirements and continuing federal oversight, or subject to state-level supervision only, under qualified voluntary cleanup programs. This EPA guidance was opposed by many organizations representing state and local governments. Commenters objected to the method by which a state voluntary cleanup program would be deemed to be “qualified” to handle brownfields remediation activities without federal oversight. HUD would have to address the issue of which state environmental programs were “qualified” in order to determine whether CDBG funding will be tied to such state programs.

Another area of the EPA Guidance that received very strong criticism was a proposed method for categorizing brownfields sites based on their potential health or environmental threat, their levels and types of contaminants, and other factors. Commenters opposed this effort because it would impose burdensome, unnecessary bureaucratic requirements on States and localities, slow the process of brownfields redevelopment at the local level, and leave many sites in even greater limbo than their present state.

Another regulatory gap is the restriction under the Superfund statute -- and thus under EPA brownfields programs -- against the expenditure of Superfund funds on petroleum, underground storage tank, lead and asbestos contamination of property and buildings. These pollution problems are among the foremost causes of urban environmental contamination and the resulting deterioration of brownfields properties. If HUD CDBG funds were tied to federal or state environmental regulatory requirements, there may be confusion about whether block grants may be used on environmental contamination problems such as lead, asbestos, petroleum or underground storage tanks.

NALGEP strongly recommends that HUD seek to avoid these criticisms by basing CDBG funding eligibility for brownfields activities simply on the presence of “actual or perceived environmental contamination,” but not on any specified type or level of contamination, or on the designation of a spot or area under federal or state environmental laws or regulatory requirements. Such a straightforward approach will help ensure that the CDBG program remains an economic redevelopment program, rather than turning into a quasi-environmental program.
OVERALL
FINDING 4 -- CDBG Funding Should be Permitted for Remediation and Redevelopment of Properties Directly Affected by Environmental Contamination, But Should Not Be Used on Spots or Areas Just Because They Are Indirectly or Generally Affected by Pollution.

CDBG regulations should be clarified to enable communities to promote expanded brownfields revitalization activities. However, the regulations should not be loosely interpreted to permit communities to expend funds on spots or areas that are arguably affected by general pollution concerns, but lack actual or perceived environmental contamination in the soil, facilities or groundwater that directly affect the properties’ redevelopment value and viability.

For instance, many urban areas are designated nonattainment for ozone pollution under the Clean Air Act, or include properties that are located near surface water that has been designated as not fishable or swimmable under the Clean Water Act. However, air nonattainment or proximity to contaminated surface waters may not have any direct effect on the redevelopment viability of a particular property or area. Although such broad-ranging pollution concerns affect quality of life and economic viability of urban areas, they do not necessarily impact particular properties in the same manner that direct contamination by hazardous substances in the soil at a particular property, creating a brownfield situation, does. A clarification of HUD’s Part 570 CDBG regulations to expand expenditures of block grants for spots or areas of environmental contamination should not be improperly interpreted to allow such general pollution concerns to determine funding eligibility.

For this reason, the NALGEP Task Force recommends language for the amendment of the Part 570.201 “basic eligible activities” that specifies activities related to “environmental contamination” at “real properties.” Likewise, proposed changes to Part 570.208(b)(1) “criteria for national objectives” specify that there must be environmental contamination of “real properties” to support activities to address brownfields on an area basis. With respect to Part 570(b)(2)’s enumeration of permitted activities to address slums or blight on a spot basis, NALGEP suggests brownfields activities in the context of “specific conditions of blight or physical decay on a spot basis.” All of these proposed regulatory language changes are intended to ensure that expenditure of CDBG funds is related to the revitalization of specific brownfields conditions, and not for generalized pollution concerns that do not directly affect specific areas or real properties.
OVERALL

FINDING 5 -- CDBG Regulatory Language Should Use the Term “Actual or Perceived Environmental Contamination of Real Properties” and Not Try to Define the Term “Brownfields”.

The term “brownfields” is well known and well understood by HUD funding recipients and local communities. It is also a term that is used extensively by HUD, EPA and others, including NALGEP (including in this report). However, while it might at first appear contradictory, the NALGEP CDBG Brownfields Task Force does not believe that the term “brownfields” should be used in the actual regulatory language of Part 570.

There is no standard definition of a brownfield. The term brownfield can be interpreted in different ways to suit different purposes. Indeed, some communities may use the term brownfield to describe an abandoned lot or building, or an area with deteriorated or deteriorating buildings, not necessarily associated with environmental contamination. These spots or areas may be classified as slums or blighted under the existing Part 570.208(b) regulations. However, NALGEP suggests that the purpose of any new regulatory clarifications is to ensure that CDBG funds can be used in areas that are slums or blighted due to the presence of actual or perceived environmental contamination. To avoid ambiguity, the use of jargon in regulatory language, or confusion on the meaning of the term “brownfield,” NALGEP suggests that HUD instead use the term “actual or perceived environmental contamination of real properties” to describe the conditions which CDBG funding can be used to help alleviate.

Another reason to avoid the explicit term “brownfields” is that the term may have a stigmatizing, counter-productive effect on spots or areas of slum or blight. Labeling a particular spot or area a “brownfield,” whether or not the level or impact of environmental contamination is fully understood, may have the counter-productive effect of discouraging developers, lenders, municipalities and other important stakeholders from becoming involved in the revitalization and redevelopment of such sites.

However, NALGEP feels that it is entirely appropriate for HUD to use the term “brownfields” in any materials that explain or promote the Part 570 regulatory clarifications that NALGEP proposes in this report. For example, NALGEP believes that it is appropriate and helpful for HUD to use the term brownfields in its explanations of the Part 570 clarifications, regulatory preambles, or educational materials. However, the regulatory language itself should avoid this possibly ambiguous, potentially stigmatizing term.
OVERALL
FINDING 6 -- Changes to Promote CDBG Funding for Brownfields Activities Should Be Made for Entitlement Communities, State Programs and Loan Guarantees.

NALGEP finds that any regulatory clarifications to the HUD Part 570 regulations to promote the use of CDBG funding on brownfields activities should be included in all aspects of the HUD CDBG program. That is, any regulatory changes should be consistent across the CDBG Entitlement Communities Program (Subpart C, as made applicable by Subpart D), the State Program (Subpart I), and the Loan Guarantee Program (Subpart M). NALGEP’s proposed regulatory clarifications apply consistently to each of these three programs.

OVERALL
FINDING 7 -- HUD Should Consider Promulgating CDBG Brownfields Changes by Interim Rule, Both to Establish Regulatory Certainty, and to Ensure that Such Regulations Can Be Available to Local Communities As Quickly as Possible.

NALGEP finds that the clarifications to the HUD block grant program to promote brownfields revitalization should be made by rule, which will have binding legal effect and provide better notification to the nation than some other means of clarification, such as agency guidance. However, because local communities across the nation are currently engaged in brownfields activities, and actively seeking funding sources from these activities -- including from HUD -- NALGEP encourages HUD to put these regulatory clarifications into place as quickly as possible.

NALGEP therefore recommends that HUD put the regulatory clarifications for CDBG brownfields activities into place by means of Interim Final Rule, which will become immediately applicable upon proposal, and modified only to the extent HUD deems necessary to respond to public comments in response to the interim rule. An Interim Final Rule will help to quickly spread the word to entitlement communities and states about the CDBG source of brownfields funding. After the Interim Final Rule is in place and HUD gains additional information and experience on the use of block grants in community brownfields revitalization, the Interim Rule could be adopted as a Final Rule.

In addition, HUD should consider promoting awareness among local communities now (and during the period that regulations are being developed and promulgated) regarding the recent congressional legislation specifying brownfields cleanup and redevelopment activities as “eligible activities” under the CDBG program. Such information to communities, using the educational mechanisms recommended by NALGEP in Section V of this report, would be valuable and timely for local communities.
REGULATORY

RECOMMENDATION 1 -- The Regulations Should Make Clear That Assessment and Remediation of Brownfields Sites Meet the CDBG National Objective of Preventing or Eliminating Slums or Blight.

There is clearly confusion among many local government recipients of HUD CDBG allocations about how brownfields revitalization activities may meet the national objectives of the block grant program. Communities are not sure whether brownfields cleanup and redevelopment activities are properly included under the national objective of preventing or eliminating slums and blight, under the urgent community need national objective, or under the national objective of providing assistance to low and moderate income persons -- or any and all of these objectives.

Local communities that conduct brownfields activities using block grant funding often conduct them in support of the national objective of preventing or eliminating slums or blight on either an area or spot basis. However, lingering confusion among local governments about the permissibility of this approach makes clarifications to the slum/blight objective appropriate. NALGEP therefore recommends that HUD explicitly clarify the national objective concerning the prevention or elimination of slums and blight through regulatory language specifying that brownfields activity does meet that national objective.

In addition, as explained in Regulatory Recommendation 3, eligible brownfields activities can further not only the slum/blight objective, but also the national objectives for assisting low- and moderate-income persons or addressing urgent community needs, as appropriate. Thus, communities that seek to revitalize brownfields in order to prevent or eliminate blight can clearly do so under the Part 570 regulations, or in order to further other national objectives appropriate to the circumstances. In addition to providing the regulatory clarification recommendation below, NALGEP strongly encourages HUD to engage in a pro-active educational effort to both HUD personnel and block grant recipients to explain that brownfields activities can, in appropriate circumstances, fulfill any of the CDBG national objectives, including prevention or elimination of slums or blight.

In order to clarify the national objective relating to slums and blight, NALGEP specifically proposes:

- Inserting a new phrase related to brownfields activities into the list of national objective activities to address slums or blight on an area basis in Entitlement Communities, in Section 570.208(b)(1)(ii); and inserting a new phrase related to brownfields activities into the list of national objective activities to address slums or blight on a spot basis in Entitlement Communities, in Section 570.208(b)(2);
- Inserting a new phrase related to brownfields activities into the list of national objective activities to address slums or blight on an area basis in State Programs, in Section 570.483(c)(1)(ii); and
Inserting a new phrase related to brownfields activities into the list of national objective activities to address slums or blight on a spot basis in State Programs, in Section 570.483(c)(2).

**REGULATORY RECOMMENDATION 2 -- Brownfields Activities Should be Included in the National Objectives, Related to Slums/Blight on an Area Basis, with Other Activities in a Mix and Match Manner.**

As explained above in Recommendation 1, the national objectives for both the Entitlement Community and State CDBG programs should be clarified to permit brownfields activities for the prevention or elimination of slums or blight on an area basis. NALGEP recommends that brownfields activities be included in the national objective criteria for areas of slum and blight in a “mix-and-match” manner with other conditions of slum or blight which, taken altogether, affect at least 25 percent of the properties in the designated area. This mix-and-match approach is consistent with NALGEP’s understanding of HUD’s plan to revise the Section 570.208(b)(1)(ii) requirements for activities to address slum and blight on an area basis.

Under this mix-and-match approach, an area can be designated a slum or blighted if at least one, or a combination of, certain conditions exists on at least 25 percent of the area. These conditions include deterioration of buildings, long term vacancies, high rates of turnover in occupancy, or other evidence of pervasive economic disinvestment. To these conditions of slum or blight, NALGEP recommends the addition of “real properties with actual or perceived environmental contamination.”

Thus, if any of these conditions, including environmental contamination, combined together, exist at the substantial level of at least 25 percent of the properties throughout an area, the area could be designated a slum or blight area. Such a mix-and-match approach will allow individual circumstances of slum or blight in particular communities to be eligible for CDBG funding. These individual circumstances may include several conditions of pervasive economic disinvestment, no one of which affects more than 25 percent of an area but, taken together, impose serious and substantial blight conditions on that area.

NALGEP’s proposed regulatory clarifications fulfill Recommendation 2 by:

- Reformulating Section 570.208(b)(1)(ii) to adopt the mix-and-match approach, and including a provision in the mix that addresses “real properties with actual or perceived environmental contamination.”

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3 Under this approach, the designation of an area of slum or blight can also be made if “all or most public improvements throughout the area are deteriorated.”
REGULATORY
RECOMMENDATION 3 -- HUD Regulations Should Clearly State That the “Assessment or Remediation of Environmental Contamination” are Eligible Activities Under the CDBG Program.

Many local communities are confused about whether, and which, brownfields activities are considered to be “eligible activities” under CDBG regulations. A recent study on brownfields prepared for HUD by the Research Triangle Institute noted that some local communities have adopted the mistaken position that CDBG funds may not be used for environmental remediation, which is in fact an eligible activity under both current regulations and NALGEP’s proposed regulatory clarifications. Salt Lake City’s Redevelopment Agency recently experienced problems in accessing CDBG funds because the City was uncertain whether brownfields revitalization is an eligible activity. Likewise, some officials in Miami-Dade mistakenly interpreted the Part 570 regulations to mean that CDBG funds may not support environmental remediation. These communities have viewed brownfields as a “gray area” under current regulations.

Moreover, the Congress recently passed legislation clarifying that “environmental cleanup and economic development activities related to Brownfields projects” are “eligible activities” under the block grant program. This legislative enactment removes all doubt that brownfields revitalization activities are permissible under the block grant program. However, further action by HUD is critical to ensure that local block grant recipients are aware of the clarification and can move forward on their brownfields revitalization objectives with block grant support.

Therefore, in order to eliminate confusion among local communities, and to avoid the need for “creative interpretation” of the current list of eligible activities in §§570.201 and 570.703(f) to support local brownfields revitalization, NALGEP recommends that the CDBG program clearly state that the “assessment or remediation of environmental contamination” are eligible activities. Such a clarification will cover activities that communities need to undertake in order to overcome brownfields barriers, and prevent local officials from feeling that they need to “fit a square peg in a round hole” in order to support brownfields revitalization with block grant funds.

An earlier draft of this report included the term “removal” along with “assessment or remediation” in NALGEP’s proposed regulatory language, to ensure that the entire range of possible activities associated with brownfields planning, assessment and cleanup would be covered by the Part 570 program. In particular, NALGEP wished to make sure that the removal of materials such as barrels of hazardous wastes could be undertaken with block grant funds. After further analysis and consideration of comments provided by reviewers, NALGEP has decided to remove the term “removal” for two reasons. First, NALGEP and the CDBG Task Force believe that the term “remediation” includes removal activities, and that leaving out the removal term will result in a more simple and straightforward regulation. Second, the term removal has special meaning under the Superfund regulatory program, referring to actions to
remove or clean up released hazardous materials that may damage the public health or welfare. Thus, use of the term “removal” in Part 570 might prompt readers of the regulation to mistakenly believe that the CDBG program has been associated with Superfund regulatory requirements.

In addition, the NALGEP CDBG Brownfields Task Force supports the inclusion of brownfields activities under eligible activities criteria because it will support necessary assessment and remediation of environmental contamination not only in spots or areas determined by the recipient as a slum or blighted because of environmental contamination, but also in areas that meet the low/moderate income national objective put forth in §§ 570.208(a) and 570.483(b). Brownfields revitalization activities that address environmental contamination and thereby benefit low and moderate income persons can thus be done in support of either the low/moderate benefit objective, or the objective of preventing or eliminating slums and blight.

NALGEP’s proposed regulatory clarifications fulfill Recommendation 3 by:

- Adding a new section (r) related to brownfields activities to the list of basic eligible activities for Entitlement Communities in Section 570.201 to clarify that “assessment or remediation of environmental contamination of real properties” are eligible activities; and
- Inserting the new phrase “assessment or remediation of environmental contamination” into the list of eligible activities for Loan Guarantees in Section 570.703(f).

**REGULATORY RECOMMENDATION 4** — Brownfields Planning Activities Should Also Be Included as “Eligible Planning, Urban Environmental Design and Policy-Planning-Management-Capacity Building Activities” Under HUD Part 570 Regulations.

In addition to specifying that assessment or remediation of environmental contamination is a basic eligible CDBG activity, HUD should clarify its Section 570.205 regulation permitting certain planning activities to include “environmental assessment and remediation planning” of brownfields properties. Successful brownfields revitalization often requires substantial data gathering, studies, analysis and preparation of plans. Such planning may include site assessment of potential environmental contamination at brownfields sites, or the preparation of remediation plans for the cleanup and redevelopment of such sites.

Although the current Section 205 regulations deem as eligible certain planning activities related to “land use and urban environmental design” (Section 205(a)(3)(ii)) and “general environmental [and] urban environmental design” (Section 205(a)(iv)(4)), the regulations do not clearly specify that “environmental assessment and remediation planning” activities that are critical to brownfields revitalization are eligible planning activities.
In addition, clarification of eligible planning activities to include brownfields planning activities will provide local governments with flexibility to apply block grant funds in a manner which best suits local needs and circumstances. Thus, under NALGEP’s Recommendations 3 and 4, block grant recipients could consider brownfields planning activities either as basic eligible project activities under §§ 570.201 and 570.703(f), or as planning activities under § 205. Such flexibility is important, because limitations on CDBG allocations -- such as the requirement that 70 percent of block grant funds be expended on the low/moderate income national objective, or the requirement that no more than 20 percent of block grants may be used on planning costs -- may require a community to structure its block grant priorities and programs to meet these regulatory requirements while ensuring fulfillment of their brownfields redevelopment objectives.

NALGEP’s proposed regulatory clarifications fulfill Recommendation 4 by:

♦ Adding a provision to Section 205(a)(3) to include “environmental assessment and remediation planning related to real properties with actual or perceived environmental contamination” as eligible planning activities.

REGULATORY
RECOMMENDATION 5 -- CDBG Funding Should Be Permitted to Address Properties with Perceived Environmental Contamination.

The abandonment, under-utilization or economic disinvestment associated with brownfields sites occurs not only because of the presence of actual environmental contamination at these sites. Quite often, brownfield conditions are created simply because of a perception that environmental contamination at a site may impose uncertain costs and liabilities on the municipalities, lenders, developers and other stakeholders whose involvement is necessary to redevelop a brownfield. Indeed, most working definitions of “brownfields,” including the definition used by the Administration’s Brownfields National Partnership Action Agenda, include properties at which expansion or redevelopment is hindered by “real or perceived contamination.”

Overcoming the perception barrier to brownfields revitalization requires, at a minimum, site assessment and characterization to determine the extent of any environmental threat at a site. In addition, there may be the need for remediation planning, actual cleanup of a site, or certification by regulatory authorities that cleanup is complete, in order to overcome the

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4 See, e.g., “The Effects of Environmental Hazards and Regulation on Urban Redevelopment,” Report prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research by The Urban Institute et al. (February 1998) (discussing the impacts of perceived environmental liabilities on real estate); see also Davis and Margolis, Brownfields, A Comprehensive Guide to Redeveloping Contaminated Property, at 13 (American Bar Association, ed.) (1997) (comparing the unknown or perceived risks of environmental cost and liability issues at brownfields to sharks, whose attacks are rare. Nonetheless, the fear of being eaten alive may keep some out of the water.)
perceptions of environmental costs and liability that may hinder economic redevelopment of that site.

An earlier draft of this report used the term “suspected” contamination rather than “perceived” contamination, because NALGEP and the Task Force felt that “suspected” more accurately describes the way in which people may consider a brownfields site negatively because of fears of pollution. However, the term most widely used by local communities, industry and regulatory officials is “perceived.” We believe that the practical significance of using “suspected” versus “perceived” is inconsequential. However, NALGEP has opted for the term “perceived” because this term is used widely by most in the brownfields field.

For these reasons, NALGEP recommends that HUD Part 570 regulations make clear that funds may be expended on brownfield activities at which there is “actual or perceived environmental contamination.”

NALGEP’s proposed regulatory clarifications fulfill Recommendation 5 by:

- Using the phrase “actual or perceived environmental contamination” in Sections 570.208(b)(1)(ii), 570.208(b)(2), 570.483(c)(1)(ii) and 570.483(c)(2).

REGULATORY
RECOMMENDATION 6 -- CDBG Funding Should Support the Myriad Activities Involved in the Remediation and Redevelopment of Brownfields.

Successful revitalization of brownfields properties typically requires a range of activities including planning, site assessment and characterization, removal of hazardous substances and conditions, and remediation of environmental contamination. Block grant funding should be available to support all of these necessary activities for brownfields redevelopment. As explained in NALGEP Recommendation 4, planning and administrative costs for brownfields activities can be supported through existing Part 570 provisions including Section 570.205(a)(3) and Section 570.206. However, the existing regulations should be clarified to allow environmental assessment or remediation to be included as eligible CDBG activities. NALGEP notes again the finding that some communities have adopted the mistaken position that CDBG funding may not be used on environmental remediation. One southern city is unsure whether CDBG funds can be used to help abate the city’s extensive asbestos problems.

NALGEP therefore recommends that the specific words “assessment or remediation” of environmental contamination be included as eligible activities under the CDBG regulations. These terms should cover the entire range of brownfields activities that are appropriately supported by CDBG resources.

NALGEP’s proposed regulatory clarifications fulfill Recommendation 6 by:
♦ Adding a new eligible activity provision to Section 570.201 for "[a]ssessment or remediation of environmental contamination of real properties";

♦ Adding the phrase "assessment or remediation of environmental contamination" to the list of activities to address slums or blight on a spot basis in Entitlement Communities, in Section 570.208(b)(2);

♦ Adding the phrase "assessment or remediation of environmental contamination" to the list of activities to address slums or blight on a spot basis in State Programs, in Section 570.483(c)(2); and

♦ Adding the phrase "assessment or remediation of environmental contamination" to the list of eligible activities that may be undertaken with guaranteed loan funds, in Section 570.703(f).

REGULATORY
RECOMMENDATION 7 -- Aggregate Standards for Public Benefits Should Allow the Exclusion of Brownfields Activities.

HUD Part 570 regulations include standards for evaluating the public benefit obtained from the expenditure of CDBG funds for eligible activities, including standards for aggregate activities for which a recipient’s CDBG funds are obligated. See Section 570.209(b). Although the Community Development Act requires HUD to promulgate public benefit standards, the content of these standards is left to HUD’s discretion. Presently, HUD regulations state that funded activities must, in the aggregate, create or retain at least one full-time or permanent job per $35,000 of CDBG funds used, or provide a certain level of goods or services to low- and moderate-income residents of an area. At the same time, aggregate public benefit standards recognize 13 activities that may, at the grantee’s option, be excluded from the aggregate standard for jobs created or retained, or for goods and services provided. See Section 570.209(b)(2)(v). These excludable activities include activities that promote important national interests or programs. Some of these excludable activities may not create or retain jobs, or provide goods and services, in a short period of time, but nonetheless lay the groundwork for job creation and other important public benefits over the longer term.

Similarly, activities that promote the assessment, remediation and redevelopment of brownfields promote an important national interest, which has been strongly recognized and supported by the Department of Housing and Urban Development, and more than 20 other federal agencies under the Administration’s Brownfields National Partnership Program. Indeed, HUD has clearly conveyed that the remediation of brownfields is a building block for the urban and economic development of our local communities. So too, brownfields activities may not create or retain jobs immediately, but will lay a solid foundation for long-term, sustainable job creation, or provision of goods and services, at the local level. Moreover, assessment or remediation of environmental contamination can in some cases pose very substantial costs that would make achievement of the aggregate public benefit standards difficult for CDBG
recipients,\(^5\) thus providing a disincentive to local communities to support brownfields revitalization with HUD assistance.

Although NALGEP understands that the public benefit standards are not applicable to several CDBG eligible activities, including many municipal brownfields activities, NALGEP nevertheless recommends changes to the aggregate standards and individual standards (see Recommendation 8) because many brownfields activities are likely to be covered by these standards. Under the Community Development Act and HUD’s implementing regulations, the public benefit standards are applicable only to certain activities carried out by public or private nonprofit entities, neighborhood-based and local development organizations, and private, for-profit entities. Thus, activities carried out by a municipality itself, which could include brownfield assessment, remediation or redevelopment, are not subject to public benefit standards. However, many brownfields assessment and remediation activities are conducted by local development organizations, for-profit entities and others that will be covered by the public benefit standards.

Therefore, NALGEP is recommending that brownfields activities be permitted to be excluded, at the grantee’s option, from the public benefit standards. In addition, NALGEP recommends that, when HUD conducts efforts to educate local governments and other stakeholders on the CDBG brownfields changes that HUD may make to the Part 570 program, HUD also conduct educational efforts to remind local governments that brownfields activities undertaken directly by municipalities are not subject to or limited by the program’s public benefit standards. Such education, along with NALGEP’s recommendation here to allow the exclusion of covered brownfields activities from the public benefit standards, should provide local communities with the flexibility necessary to ensure that block grant funds can be used to address local brownfields problems.

For these reasons, NALGEP suggests that brownfields activities be permitted to be excluded, at the grantee’s option, from the aggregate public benefit standards of §570.209(b)(1). NALGEP’s proposed regulatory clarifications fulfill Recommendation 7 by:

- Adding a new provision to the list of eligible activities that may be excluded, at the grantee’s option, from the aggregate standard in Section 570.209(b)(1)(i), for an activity that “[c]reates or retains jobs as a result of the assessment or remediation of environmental contamination from real property that promotes the use or redevelopment of such property.”

- Adding a new provision to the list of eligible activities that may be excluded, at the grantee’s option, from the aggregate standard in Section 570.209(b)(1)(ii), for an activity that “[p]rovides goods or services to low- or moderate-income persons through the assessment or remediation of environmental contamination from real property.”

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\(^5\) As HUD has stated, “Successful redevelopment requires rehabilitating these [brownfields] sites for industrial, commercial, retail, and residential uses, but cleaning up the contamination at these sites can send development costs skyrocketing.” HUD Brownfields Redevelopment Initiative Fact Sheet, available at www.hud.gov/progdesc/brownf.html.
REGULATORY
RECOMMENDATION 8 -- Individual Activity Standards for Evaluating Public Benefit Should Allow the Exclusion of Brownfields Activities.

For the same reasons involving promotion of an activity in the national interest and the potentially high cost of brownfields activities, HUD should consider allowing block grant recipients the option of excluding brownfields activities from the individual activity standards for public benefit at Section 570.209(b)(4). Indeed, one local government which NALGEP has interviewed has experienced difficulty in a particular brownfields redevelopment project supported by HUD funding, in determining whether individual benefit standards would be met in that circumstance. Ultimately the individual standard did not hinder the completion of the successful project, which has retained a significant number of manufacturing jobs in the community, and allowed the expansion of an existing business that had contemplated leaving the community, but which stayed in part because of the city’s pro-active role in addressing brownfields issues hindering the expansion project. However, the local community and its local HUD office disagreed about the applicability of the individual benefit standard, and the issue of whether the standard may hinder worthy redevelopment projects remains open for communities across the nation.

Therefore, under this proposal NALGEP recommends:

♦ Adding a new provision (iv) to Section 570.209(b)(4) stating that “CDBG assistance for the assessment or remediation of environmental contamination from real property may, at the grantee’s option, be excluded from the standard for individual activities contained in paragraph (b)(3)(i)(A) of this section.”
V. RECOMMENDATIONS FOR EDUCATING AND ASSISTING KEY STAKEHOLDERS REGARDING CDBG BROWNFIELDS REGULATORY CLARIFICATIONS

A key objective of HUD’s clarifications of the Part 570 regulations to facilitate brownfields activities should be to educate local government officials and local community stakeholders about the opportunities associated with CDBG brownfields funding. NALGEP emphasizes that making brownfields clarifications to the CDBG program is only half the job -- HUD must conduct educational efforts to ensure that local communities are aware and able to take advantage of the opportunities to revitalize brownfields with block grant funds.

NALGEP has considered how HUD can best spread the word about any regulatory changes that HUD may make, and recommends the following actions by HUD:

1.) HUD’s Secretary Andrew Cuomo should immediately send a letter to regional HUD officials announcing the recent legislative changes declaring brownfields activities as eligible activities under the CDBG program. In addition, Secretary Cuomo should send the same type of announcement to HUD officials across the nation at that time when HUD issues CDBG regulatory clarifications, encouraging these officials to undertake efforts to educate local governments and communities about the revisions.

2.) HUD should utilize available informational tools to promote the Part 570 brownfields clarifications to HUD regional and local staff, and States and local communities, including Community Planning and Development Notices, technical and training bulletins, and other promotional mechanisms.

3.) HUD should work with the U.S. Environmental Protection Agency to notify EPA Brownfields Assessment Pilot communities about the revisions to the Part 570 regulations.

4.) HUD should hold a satellite video conference on the subject of CDBG brownfields funding.

5.) HUD should ensure that its Community Builders are educated regarding the use of CDBG brownfields funds, and the specific regulatory clarifications that are made to the Part 570 regulations.

6.) HUD should consider contracting with an organization to provide educational outreach and promotion to local government CDBG, economic development and environmental officials through printed materials, on-line communication, seminars and teleconferences.

7.) HUD should make information available on CDBG regulatory clarifications at the Brownfields ‘98 Conference in Los Angeles.
8.) HUD should utilize on-line resources to promote the CDBG regulations, including the HUD home page, the EPA home page, the NALGEP home page, and the web resources of non-profit and educational organizations.

9.) HUD should seek to publicize the CDBG regulatory clarifications in appropriate publications, such as *Brownfield News*, as well as in the publications of key stakeholder organizations (e.g., Council for Urban Economic Development, NALGEP, National Association of Housing and Redevelopment Officials, U.S. Conference of Mayors).

10.) HUD should provide information on the CDBG brownfields regulatory changes to local communities through HUD's "Interfaith and Community-Based Development" initiative.
APPENDIX 1

PROPOSED REGULATORY LANGUAGE FOR
PART 570 CLARIFICATIONS
NALGEP'S PROPOSED CHANGES TO CDBG PART 570 REGULATIONS TO PROMOTE BROWNFIELDS REVITALIZATION

Subpart C -- Eligible Activities

§ 570.201 Basic Eligible Activities

PROPOSED ADDITION -- Insert new section (r):

(r) Assessment or remediation of environmental contamination of real properties.

§ 570.205 Eligible planning, urban environmental design and policy-planning-management capacity building activities

PROPOSED ADDITION: Insert new section (x) to § 205(a)(3):

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

(4) Functional plans, in areas such as:

(x) Environmental assessment and remediation planning related to real properties with actual or perceived environmental contamination.

§ 570.208 Criteria for national objectives

(b) Activities which aid in the prevention or elimination of slums or blight.

(1) Activities to address slums or blight on an area basis.

(ii) At least one of the following conditions exists:

(A) at least 25 percent of properties throughout the area experience one or more of the following conditions:
(1) deterioration of buildings;
(2) long term vacancies;
(3) for commercial or industrial buildings, unusually high rates of turnover in occupancy;
(4) actual or perceived environmental contamination; or
(5) other objectively determinable evidence of pervasive economic disinvestment; or

(B) all or most of public improvements throughout the area are deteriorated or deteriorating.

(2) Activities to address slums or blight on a spot basis. Acquisition, clearance, assessment or remediation of environmental contamination, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

§ 570.209 Guidelines for evaluating and selecting economic development projects

PROPOSED ADDITION #1 -- Insert a new section (N) to Section 209(b)(2)(v):

(b) Standards for evaluating public benefit.

(2) Applying the aggregate standards

(v) Any activity subject to these guidelines which meets one or more of the following criteria may, at the grantee’s option, be excluded from the aggregate standards described in paragraph (b)(1) of this section:

ADDITIONS:

(N) Creates or retains jobs as a result of the assessment or remediation of environmental contamination of real property that promotes the use or redevelopment of such property.

(O) Provides goods or services to low- or moderate-income persons through the assessment or remediation of environmental contamination of real property.
PROPOSED ADDITION #2 -- Insert a new section (iv) to 209(b)(4):

(b) Standards for evaluating public benefit.

(4) Applying the individual activity standards.

ADDITION:

(iv) CDBG assistance for the assessment or remediation of environmental contamination of real property may, at the grantee's option, be excluded from the standard for individual activities contained in paragraph (b)(3)(i)(A) of this section.

Subpart I -- State Community Development Block Grant Program

§ 570.483 Criteria for national objectives.

(c) Activities which aid in the prevention or elimination of slums or blight.

(1) Activities to address slums or blight on an area basis.

(ii) At least one of the following conditions exists:

(A) at least 25 percent of properties throughout the area experience one or more of the following conditions:

(1) deterioration of buildings;

(2) long term vacancies;

(3) for commercial or industrial buildings, unusually high rates of turnover in occupancy;

(4) actual or perceived environmental contamination; or

(5) other objectively determinable evidence of pervasive economic disinvestment; or

(B) all or most of public improvements throughout the area are deteriorated or deteriorating.

(2) Activities to address slums or blight on a spot basis. Acquisition, clearance, assessment or remediation of environmental contamination, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.
Subpart M -- Loan Guarantees

§ 570.703 Eligible activities.

Guaranteed loan funds may be used for the following activities, provided such activities meet the requirements of § 570.200.

* * *

(f) Site preparation, including construction, reconstruction, assessment or remediation of environmental contamination, or installation of public and other site improvements, utilities, or facilities (other than buildings), which is:

(1) Related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section, or

(2) For an economic development purpose.