

Module 3

Eligibility, National Objectives and Public Benefit



**ELIGIBILITY, NATIONAL OBJECTIVES, AND
PUBLIC BENEFIT**

Goal: To expand participants, understanding of the CDBG eligibility, national objectives and public benefits standards requirements and to introduce participants to the State Guide to Eligibility and National Objectives and explain its use as a resource for interpreting statutory and regulatory requirements.

Objectives: Participants will be able to:

1. Become familiar with the purpose, organization and content of the State Guide to Eligibility and National Objectives
2. Learn the key requirements of the Public Benefits Standards requirements and when they apply
3. Become familiar with recent changes related to the State CDBG program

Time: 2 hours 45 minutes

Participant Materials:

- Anti-Pirating Rule
- Final Rule concerning Faith-Based Organizations
- CPD Notice-05-06: HUD suggested survey methodology to determine the percent of LMI persons in the service area a CDBG-funded activity
- Eminent Domain Statutory Provision
- CPD Notice-07-08—Use of CDBG funds for Housing

Module 3 - Outline

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|----------------|--|
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| 3.3.2 | Prevent or Eliminate Slum or Blight |
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| 3.3.3 | Urgent Need |
| 3.4 | Economic Development |
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3.1 Six Key Questions for States to Address Prior to Funding an

Activity

(i) How is the activity eligible?

Determine if the activity falls within a category of explicitly authorized activities in the HCDA. Generally, if an activity does not fall within a category of explicitly authorized activities in the statute, the activity is considered ineligible.

(ii) Is the activity expressly ineligible?

If the activity is not specifically statutorily ineligible, determine if a proposed activity that appears not to be included in the statute's list of eligible activities has actually been interpreted as eligible under the statute by the CDBG Entitlement regulations, or if it falls into the area where the state has Maximum Feasible Deference (MFD) to interpret the statutory list of eligible activities.

(iii) How will the activity meet a national objective?

Determine if the proposed activity meets one of the three national objectives and describe in detail how it does.

(iv) If the activity is not a low/mod activity, what impact will it have on the 70% overall low/mod benefit requirement?

Ensure that assisting the activity with CDBG funds will not result in the state violating its certification that at least 70 percent of CDBG expenditures will be for activities that benefit low- and moderate-income (LMI) persons over one, two, or three consecutive program years specified by the grant recipient.

(v) Are the costs reasonable and necessary?

Ensure that costs of the activity appear to be necessary and reasonable and will otherwise conform with the requirements of OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments), A-122 (Cost Principles for Nonprofit Organizations), A-21 (Cost Principles for Educational Institutions) and 24 CFR parts 84 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and 24 CFR Part 85, (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), as applicable. Parts 84 and 85 are only applicable to the State CDBG program if the state chooses to follow these requirements.

(vi) Have the environmental reviews and clearance procedures been completed?

Ensure that the procedures set forth in 24 CFR Part 58 have been followed.

The HCDA prohibits a state from releasing funds for a CDBG activity until the chief executive officer of the UGLG certifies that it has met its responsibilities with respect to environmental protection.

3.2 Eligible Activities

State CDBG funds may be used to finance eligible activities carried out by state grant recipients, faith-based organizations, any other public agency, a public or private non-profit entity. The state distributes funds as grants to the units of general local government (UGLG). States do not make loans to UGLG. Also, the grants must be to non-entitlement UGLGs (not tribes, Councils of Governments, Public Housing Authorities, etc.). All grants go through the UGLG, which then determines the program activities to be funded. A listing of eligible activities and their corresponding statutory citations is provided at the end of this module.

Eligibility:

HCDA 105(a) says “only the following are eligible”...but...if it’s eligible in regulations states can do it too if entitlement regulations are more specific/prescriptive than statute, states have flexibility.

Some states adopt entitlement regulations officially

Activities described in entitlement regs but not in statute:

- Interim assistance
- private utilities
- ineligible activities
- Administrative expenses to facilitate housing

Activities prescribed/restricted in entitlement regulations beyond what appears in statute:

- Rehabilitation (statute just says “rehab of public and private buildings”) primarily religious activities (nothing in our regulations at all)
- CBDOs vs. 105a15 Nonprofits—can be regional or statewide, any CD-oriented nonprofit

State-specific considerations:

- States can make 100% public services grants to UGLGs
- States can make planning-only grants to UGLGs (must meet a national objective)

3.3 National Objectives

The authorizing statute of the CDBG program, the HCDA of 1974, requires that each funded activity except for program administration and planning-only activities must meet one of the three national objectives described at 24 CFR 570.483

- i. Benefit LMI persons [24 CFR 570.483(b)]
- ii. Prevent or eliminate slums or blight [24 CFR 570.483(c)]
- iii. Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available to meet such needs [24 CFR 570.483(d)].

State CDBG regulations at 24 CFR 570.483(e) and (f) contain additional criteria for applying the national objectives to special situations. In general, Section 104(b)(3) of the HCDA states that each grant recipient must ensure that at least 70 percent of its expenditures over a particular time period must be used for activities qualifying under the first of the three national objectives. LMI is defined by statute, and is based on 80% of the non-metropolitan statewide median income or the county median income (whichever is higher). In addition to meeting the 70 percent Overall benefit test, applicants must ensure that the activities proposed when taken as a whole, will not benefit moderate-income persons at the expense of low-income persons.

3.3.1 Benefit to LMI Persons

The LMI national objective is often referred to as the “primary” national objective. There are four categories of activities that can be used to meet the LMI national objective:

- (a) Area benefit activities;
- (b) Limited clientele activities;
- (c) Housing activities; or
- (d) Job creation or retention activities

3.3.1(a) Low-Mod Area Benefit (LMA)

An area benefit activity is an activity that is available to all the residents of an area that is primarily residential. Typical Area Benefit activities include street improvements, water and sewer lines, neighborhood facilities, and façade improvements in neighborhood commercial districts. In order to qualify as addressing the national objective of benefit to LMI persons on an area basis, an activity must meet the identified needs of LMI persons residing in an area where at least 51 percent of the residents are LMI persons. The benefits of this type of activity are available to all residents in the area regardless of income. For the area benefit criteria:

- State has the discretion to define the income level or use Entitlement definitions of income
- Planning-only grants vs. planning activities combined with other activities. Planning-only means that planning is the only activity, or the planning is unrelated to any other activity assisted by the grant [24 CFR 570.483(c) (3)]
- A few activities that qualify as Public Services also provide an area benefit, most notably police or emergency medical/rescue services. Although public schools may not be used by all the residents of the area they serve, in the CDBG program they nevertheless are considered to benefit all the residents, not only because any household with children can avail themselves of the services of the school, but also because of the contribution schools make to determining the value of the residential property in the area.
- Activities qualifying under the basic eligibility category of Public Facilities and Improvements provide a benefit to all of the residents of an area and thus would be subject to meeting the criteria of the LMI Benefit national objective.

3.3.1(b) Low-Mod Limited Clientele (LMC)

An LMC activity is one that provides benefits to specific groups of persons rather than everyone in the area (for example, construction of a senior center, public services for the homeless, assistance to LMI persons developing a microenterprise, meals on wheels for the elderly, and construction of job training facilities for severely disabled adults). It may benefit particular persons without regard to the area in which they reside, or it may be an activity that provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51 percent of the beneficiaries of the activity must be L/M income persons. To qualify under this subcategory, a Limited Clientele activity must meet one of the following tests:

1. Exclusively benefit a clientele who are generally presumed by HUD to be principally LMI persons. The following groups are currently presumed by HUD to be made up principally of LMI persons: abused children, elderly persons, battered spouses, homeless persons, adults meeting Bureau of Census' definition of severely disabled adults, illiterate adults, persons living with the disease AIDS, and migrant farm workers [See 24 CFR 570.483(b)(2)(ii)(A)]
2. Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the LMI limit [See 24 CFR 570.483(b)(2)(ii)(B) and (C)]
3. Be of such nature and in such location that it may reasonably be concluded that

the activity’s clientele will primarily be LMI persons (for example, a daycare center that is designed to serve residents of a public housing complex) [See 24 CFR 570.483(b)(2)(ii)(D)]

4. Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census’ Current Population Reports definition of “severely disabled,” provided it is restricted, to the extent practicable, to the removal of such barriers by assisting:
 - i. The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the LMI Area Benefit criteria
 - ii. The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the LMI Area Benefit criteria or the LMI Jobs
 - iii. The rehabilitation of the common area of a residential structure that contains more than one dwelling unit and that does not qualify under the LMI Housing criteria [See 24 CFR 570.483(b)(2)(iii)]
5. Be a microenterprise assistance activity carried out in accordance with the provisions of HCDA Section 105(a)(22) or 24 CFR 572.482(c) with respect to those owners of microenterprises or persons developing microenterprises assisted under the activity during each program year who are LMI persons [See 24 CFR 570.483(b)(2)(iv)]
6. Be an activity designed to provide job training and replacement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other services, in which the percentage of LMI persons assisted is less than 51 percent which qualifies under the Limited Clientele national objective in cases where such training or provision of supportive services assists business (es), and the only use of CDBG assistance is to provide the job training and/or the support services; and the proportion of the total cost of the services borne by the CDBG funds is no greater than the proportion of the total number of persons benefiting from the services who are LMI [See 24 CFR 570.483(b)(2)(v)]

3.3.1(c) Low-Mod Housing (LMH)

Housing is activities provide or improve permanent residential structures that upon completion will be occupied by LMI households [24 CFR 570.483(b)(3)]. Eligible housing can be owner, or renter-occupied and can be either one family or multi unit structures. CDBG-assisted activities that qualify under the LMI Housing sub category include:

1. Acquisition of property to be used for permanent housing.
2. Rehabilitation of permanent housing.
3. Conversion of nonresidential structures into permanent housing.
4. Newly constructed housing (when eligible).

If the structure contains 2 units, at least one must be occupied by an I/m household and if the structure contains more than 2 units at least 51% of the units must be occupied by low and moderate-income households.

When less than 51% of the units in a structure will be occupied by low and moderate-income households, CDBG assistance may be provided in the following circumstances:

1. The assistance is for an eligible activity to reduce the development cost of multifamily non-elderly rental housing project; and.
2. Not less than 20% of the units will be occupied by low and moderate-income households; and.
3. The proportion of the total cost of developing the project to be funded by CDBG assistance is no greater than the percentage of units in the project that will be occupied by low and moderate-income households.
4. Example: If the cost of the project is 1 million dollars for a 100 unit building, and 35 units will be occupied by low and moderate income households, the project meets the low/mod housing objective under 570.483 (b)(3), and no more than \$350,000 of the cost of the project can be paid for with CDBG funds.

In counting expenditures towards the 70% overall low and moderate income requirement under 24 CFR 570.484, funds spent for acquisition, new construction or rehabilitation of property for housing that qualifies under 24 CFR 570.483(b)(3), shall be limited to the percentage of low and moderate income households multiplied by the total cost of the project with the proviso that the amount counted cannot exceed the total CDBG funds provided.

Example 1: The cost of the project is \$100,000, and it consists of 100 units. Sixty units are occupied by low and moderate-income households, and CDBG paid \$55,000 towards the project. The entire CDBG expenditure of \$55,000 will count towards meeting the 70% overall low and moderate-income requirement.

Example 2: The cost of the project is \$100,000, and it consists of 100 units. Sixty units are occupied by low and moderate-income households, and CDBG paid \$75,000 towards the project. Only \$60,000 of the CDBG expenditure of \$75,000 will count towards meeting the 70% overall low and moderate-income requirement.

3.3.1(d) Low-Mod Jobs (LMJ)

The statutory basis for the CDBG regulations concerning LMI jobs national objective criterion is found in HCDA Section 105(c)(1). An LMI Job activity is one which creates or retains permanent jobs, at least 51 percent of which, on a full time equivalent (FTE) basis, are either held by LMI persons or considered to be available to LMI persons. Most (but not all) economic development activities are undertaken for the purpose of job creation or retention; conversely, most (but not all) job creation or retention activities are classified as eligible under one of several economic development-oriented eligibility categories. Some examples of activities that qualify when at least 51 percent of jobs created/retained will be for LMI persons include:

1. Clearance activities on a site slated for a new business;
2. Rehabilitation activity that will correct code violations and enable a business to survive and retain jobs;
3. Financial assistance to a manufacturer for the expansion of its facilities that is expected to create permanent jobs; and
4. Assistance to expand a small house cleaning service with four employees that agrees to hire three additional LMI employees.

The following requirements must be met for jobs to be considered created or retained. If grantees fund activities that create jobs, there must be documentation indicating that at least 51 percent of the jobs will be held by, or made available to, LMI persons. For funded activities that retain jobs, there must be sufficient information documenting that the jobs would have been lost without the CDBG assistance and that one or both of the following applies to at least 51 percent of the jobs:

1. The job is held by a LMI person; or
2. The job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, a LMI person.

The following requirements apply for jobs to be considered available to or held by LMI persons. Created or retained jobs are only considered to be available to LMI persons when:

1. Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
2. The grantee and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.

Created or retained jobs are only considered to be held by LMI persons when the job is actually held by a LMI person. For the purpose of determining if the preceding requirements are met, a person may be presumed to be LMI if:

1. He/she resides in a Census tract/block numbering area that has a 20 percent poverty rate (30 percent poverty rate if the area includes the central business district); and the area evidences pervasive poverty and general distress; or
2. He/she lives in an area that is part of a Federally-designated Empowerment Zone (EZ) or Enterprise Community (EC); or
3. He/she resides in a Census tract/block numbering area where at least 70 percent of the residents are LMI.

Jobs created or retained by assisted businesses may also be presumed to be LMI if the job and business are located in an area that: has a 20 percent poverty rate (30 percent poverty rate if the area includes the central business district) and the area evidences pervasive poverty and general distress; or is part of a Federally-designated EZ or EC. To determine if an area evidences pervasive poverty and general distress, the following standards are applicable:

1. All block groups in the census tract have poverty rates of at least 20 percent;
2. The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or
3. Upon the written request of the grantee, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under the job creation and retention category for meeting a national objective. However, in certain cases, such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided such businesses are not otherwise assisted by CDBG funds. Additionally, where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses from non-CDBG funds, this

requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any program year.

As mentioned under the area benefit category, certain job creation or retention activities carried out by a Community Development Finance Institution (CDFI) or under a Community Revitalization Strategy Area can meet the national objective of benefiting LMI persons under either category. In these instances, the grantee will decide which category it will use to qualify the activity and record the decision in program files so that HUD will know which category is being applied.

3.3.2 Prevent or Eliminate Slum or Blight

The criteria for qualifying under this national objective ensure that activities that qualify under the objective are either clearly eliminating objectively determinable signs of slums or blight in a defined *Slum* or *Blighted Area* or are strictly limited to eliminating specific instances of blight outside such an area (Spot Blight). The subcategories under this national objective are: (i) prevent or remove slums or blight on an area basis [24 CFR 570.483(c)(1)]; and (ii) prevent or remove slums or blight on a spot basis [24 CFR 570.483(c)(2)]. Planning-only grants may be used if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity that, if funded, would meet one of the other criteria of elimination of slums or blight.

3.3.2(i) Slum/Blight Area Basis (SBA)

This category covers activities that address the conditions that caused an area to be determined a slum or blighted area. Examples of such activities are:

1. Rehabilitation of substandard housing located in a designated blighted area and where the housing is expected to be brought to standard condition if less critical work is undertaken; however, emergency rehab may be done without necessarily bringing the housing to standard condition
2. Infrastructure improvements in a deteriorated area; and
3. Economic development assistance in the form of a low-interest loan to a business as an inducement to locate a branch store in a redeveloping blighted area.

To qualify under this category, the area in which the activity occurs must be designated as slum or blighted. The following tests apply:

1. The designated area in which the activity occurs must meet the definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

2. Additionally, the area must meet either one of the following two conditions: (i) Public improvements throughout the area are in a general state of deterioration; or (ii) At least 25 percent of the properties throughout the area exhibit one or more of the following;
 - A. Physical deterioration of buildings/improvements;
 - B. Abandonment of properties;
 - C. Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;
 - D. Significant declines in property values or abnormally low property values relative to other areas in the community; or
 - E. Known or suspected environmental contamination.

Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation. The designation of an area as slum or blighted must be re-determined every 10 years for continued qualifications. As stated above, qualified activities must address the identified conditions that contributed to the slum and blight.

3.3.2(ii) Slum/Blight Spot Basis (SBS)

These are activities that eliminate specific conditions of blight or physical decay on a spot basis and are not located in a slum or blighted area. Examples include:

1. Acquisition and demolition of a dilapidated property;
2. Rehabilitation of a decayed community center that eliminates code violations that are detrimental to the health and safety of potential users like faulty wiring, falling plaster, or other similar conditions;
3. Preservation of a deteriorated building of historic significance; and
4. Financial assistance to a business to demolish a decayed structure and construct a new building on the site.

Activities under this category are limited to acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, and building rehabilitation activities. Furthermore, rehabilitation is limited to the extent necessary to eliminate a specific condition detrimental to public health and safety. Acquisition or relocation must be a precursor to another eligible activity

3.3.3 Urgent Need

Existing conditions that pose serious and immediate threat to health and welfare of the community [statutory citations: Section 104(b)(3). Urgent need qualified activities must meet the following criteria:.

- Local government certifies to the state

- State determines whether or not the criteria are met; state must make positive determination
- The existing conditions must pose a serious and immediate threat to the health or welfare of the community;
- The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months);
- The grantee is unable to finance the activity on its own; and
- Other sources of funding are not available

Use of the urgent need national objective category is rare since it is designed only for activities that alleviate emergency conditions. Examples include:

1. Acquisition and demolition of property located in a flood plain that was severely damaged by a recent flood;
2. Public facility improvements like the reconstruction of a publicly-owned hospital that was severely damaged by a tornado;
3. Demolition structures that are severely damaged by a major earthquake;
4. Public services like additional police protection to prevent looting in an area damaged by a recent hurricane;
5. Interim assistance such as emergency treatment of health problems caused by a flood; and

Other special situations for National Objectives:

1. Acquisition of property will be determined to meet a national objective based on the final use of the acquired property.
2. For acquisition and clearance carried out to address the spot blight national objective, the clearance itself will be considered to be the use of the property; however, any subsequent re-use of the property triggers the “change of use” provisions.
3. Relocation assistance will be determined to meet a national objective is considered to meet the national objective that the displacing activity itself does.
4. Certain activities carried out by a CDFI, or carried out as part of a Community Revitalization Strategy Area, are afforded special flexibility in meeting the national objectives requirements.

3.4 Economic Development

1. Economic development (ED) is not an activity per se (in the sense of the statutory list of eligible activities)—it's a purpose for carrying out an activity
2. ED projects can meet one of the 3 national objectives in different ways—can meet slum/blight (redevelopment, brownfields) and possibly even urgent

need

3. Difference between creation and retention; expectations for what constitutes a retained job: must be lost to the employee (out of commuting distance concept), not the job or taxes are lost to the UGLG or state
4. What the job pays has little to do with whether a person is LMI--depends on family income prior to taking this job
5. Most states require a commitment from business to create X number of jobs, of which Y are held by LMI persons. But national objective requirement is that at least 51% of jobs are LMI. Such commitments may not necessarily mean that the 51% threshold is met therefore, you can't stop tracking jobs as soon as Y jobs have been filled by LMI people...if for example the business promises to create 200 jobs the tracking of jobs has to continue until state or locality determines that all of the jobs that are going to result from the assisted activity have been created and 102 of them are held by LMI persons.
6. Nonetheless remember there are multiple options for meeting the LMI national objective by economic development: goods & services to residents of a LMI area; aggregation of jobs for certain activities; presumptions of LMI benefit based on location of business or where employee lives; limited clientele for microenterprise.

3.5 Underwriting Guidelines for Economic Development Projects

1. 1992 HCDA amendments said: HUD shall publish the objectives of underwriting guidelines in regulation – but those guidelines will not be mandatory on grantees
2. Regulations: Grantees can use HUD's guidelines if they wish –but remember these are not quantitative, they only set out overall principles. HUD “expects” grantees to use some underwriting process when appropriate (meaning there are some ED activities where it doesn't make sense to do underwriting, like TA to businesses)
3. A state can come up with its own underwriting guidelines to impose on state grant recipients, or can set out overall principles that locally-established underwriting guidelines must meet. Many states accomplish this within their program design: limit what types of ED projects they'll invest in.
4. But they still have to comply with the HUD public benefit standards, no matter what!
5. In plain English, the objectives of the underwriting guidelines are to ensure, to the extent practicable:

- a. That project costs are reasonable
- b. That all sources of financing are committed
- c. That CDBG funds don't displace non-Federal funding
- d. That the project is financially feasible
- e. That owners don't earn excessive rates of return on their equity;
- f. That CDBG funds are disbursed concurrently with other funds

(See Appendix A of the State Guide [pg. 38-39] for HUD's Underwriting Guidelines for details and explanations of the guidelines' objectives.)

3.6 Public Benefit Standards

1. It is important to remember that Public Benefit standards, being in Section 105 of HCDA, are eligibility requirements, not national objective requirements—can't stress this enough, though they're easily confused & sound somewhat alike
2. Apply only to ED projects funded under 3 categories of the Act:
 - a. Certain public facilities and improvements undertaken for economic development are subject to the public benefits standards
 - b. 105(a)(14): ED directly done by public or private nonprofit entities
 - c. 105(a)(15): ED done by nonprofit entities
 - d. 105(a)(17): assistance to private for-profit businesses subject to the requirements of the Anti-pirating Rule: That is, State CDBG funds may not be used to directly assist a business including business expansion in the relocation of a plant, facility, or operation from one LMA to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.* (see page 21)
 - e. Does NOT apply to activities determined eligible under Section 105(a)(22) of the Act microenterprise assistance, acquisition/clearance of land or (in most cases) public facilities done for ED purposes—essentially, we presume that ED infrastructure jobs provide adequate public benefit if the cost/job is less than \$10,000. Don't confuse this with the \$10,000/job threshold for determining whether jobs must be aggregated for multiple businesses served by infrastructure
3. After lengthy debate, HUD decided to focus particularly on job creation, and to develop standards for both individual projects and a grantee's overall CDBG program.

- a. 2 levels of standards – individual activity and aggregate
 - b. 2 types of public benefit measures – cost per job, and cost of providing goods and services per LMI resident benefiting
 - c. Thus, 4 different public benefit standards
4. Because this is eligibility issue, not national objective issue, public benefit standards apply regardless of what national objective is being met--not about LMI jobs as for LMI job creation national objective criteria, but all jobs --applies even if a slum/blight national objective project. A project could meet the LMI jobs national objective criterion and be tracked against the “goods and services to area residents” public benefit standard
5. Aggregate standards:
- a. \$35,000 CDBG/job
 - i. Permanent FTE jobs
 - ii. All jobs (not just LMI)
 - iii. Created or Retained
 - iv. Jobs assisted via training, placement, child care, transportation, etc. count as new/retained jobs
 - b. \$350 CDBG per LMI resident of an area, for projects which provide goods/services to residents of an area
 - c. "Important National Interest Activities" can be exempted from aggregate standard. (See 24 CFR 570.482(f)(3)(v)):
 - i. The regulations list 14 types of “important national interest” activities
 - ii. A state might choose to include or exempt a given activity from the aggregate standard based on the other activities it has funded that are subject to the standard.
 - iii. If a state is concerned about barely meeting the aggregate standard based on all of its activities, it might choose to include or exclude certain activities to help them meet the \$35,000/job level.
 - iv. For example, let’s say all the FY 08 activities funded to date average out to \$34,900 per job. The state is now considering funding an activity that will create jobs, which will go exclusively to public housing residents. If the cost per job of that new activity was very high (say \$40,000/job), the state might choose to exclude it to keep their aggregate

figure below \$35,000/job. But if the new activity was only going to cost \$9,000/job, the state might choose to include it to bring their aggregate figure down a bit.

6. Individual Activity Public Benefit Standard
 - a. \$50,000 CDBG/job
 - i. Permanent FTE jobs
 - ii. All jobs (not just LMI)
 - iii. Created or Retained
 - iv. Jobs assisted via training, placement, childcare, transportation, etc. count as new/retained jobs
 - b. \$1,000 CDBG/LMI resident of an area for projects, which provide goods/services to residents of an area
 - c. "Insufficient Public Benefit Activities" may not be funded with CDBG—these include:
 - i. General promotion of the community as a whole
 - ii. Assistance to professional sports teams (as opposed to assisting a sports stadium, which is not prohibited...unless the team owns the stadium)
 - iii. Assistance to privately owned recreational facilities where main benefit is to upper income clientele
 - iv. Assistance to a business while that business/owner has unresolved CDBG findings
 - v. Acquisition of land for which the specific proposed use is not yet identified
7. Public benefit standards are primarily prospective--based on projected number of jobs at time state commits to fund the project—whereas national objective compliance is retrospective—based on actual jobs created/retained.
8. However, State must track number of jobs (and cost/job) actually achieved (actual public benefit) and maintain documentation thereof—not so much to see if any individual project did not meet the standards in retrospect as to look for overall patterns in a state. For each year's allocation of funds, the state should have calculations to show: projected aggregate cost/job, actual aggregate cost/job, same for cost/LMI resident if they use those; and figures for actual and projected for each individual activity they funded
9. If a UGLG exhibits a pattern of substantial difference between projected and actual results, state and UGLG are expected to take action to improve the projection process (this is why they maintain documentation on actual public benefit numbers)

10. If state's actual public benefit achieved fails to meet the standards, HUD can hold state to more stringent standards in future years to make up for it
11. Implications of public benefit standards on significant amendments to projects (significant change to scope, financing of project). States given responsibility define 'significant amendment' to give states maneuvering room—for example, not HUD's intent that re-evaluation of a project is necessary just because a business/UGLG asks for a 2-month delay in beginning repayments
12. If a project significantly changed, the state must: re-evaluate the public benefit to be achieved; ensure that project still meets standards; and may need to consider revising the amount of assistance to the project, to ensure it still complies.
13. HUD's experience so far
 - a. States often set their maximum cost-per-job substantially below what's allowed in HUD regulations—few states allow more than \$20,000/job
 - b. Few states even consider cost-per-resident (don't fund area benefit type projects)
 - c. Few if any states take advantage of the exemptions from the aggregate standards (or need to)
 - d. Many also restrict the types of economic development projects they will do so insufficient-benefit activities are usually not an issue
 - e. Some states are not maintaining adequate records to demonstrate overall compliance with aggregate public benefit standards
 - f. Some states are not tracking amendments and evaluating them in terms of continued compliance; do not have definitions of what constitutes a significant change to scope or financing.

| Eligible Activity | State Program: HCDA 105 |
|---|--------------------------------|
| Acquisition of Real Property | 105(a)(1) |
| Public Facilities and Improvements | 105(a)(2) |
| Code Enforcement | 105(a)(3) |
| Clearance | 105(a)(4) |
| Rehab | 105(a)(4) |
| Reconstruction | 105(a)(4) |
| Architectural Barrier Removal | 105(a)(5) |
| Loss of Rental Income | 105(a)(6) |
| Disposition of Real Property | 105(a)(7) |
| Public Services | 105(a)(8) |
| Payment of Non-Federal Share | 105(a)(9) |
| Relocation | 105(a)(11) |
| Planning and Capacity Building | 105(a)(12) |
| Program Administration Costs | 105(a)(13) |
| Activities Carried Out through Private or Public nonprofits | 105(a)(14) |
| Assistance to nonprofits serving development needs of nonentitled portions of the state | 105(a)(15) |
| Energy | 105(a)(16) |
| Economic Development Assistance to For-Profit Business | 105(a)(17) |
| Additional Applicable Requirements Activities Funded Under Section 105(a)(14), 105(a)(15), (17) | 105(e) |
| Technical Assistance | 105(a)(19) |
| Housing Services | 105(a)(20) |
| Assistance to Institutions of Higher Education | 105(a)(21) |
| Microenterprise Assistance | 105(a)(22) |
| In Rem Housing | 105(a)(23) |
| Homeownership Assistance | 105(a)(24) |
| Tornado Shelters | 105(a)(24) |
| New Housing Construction | 105(a)(15) |
| Last Resort Housing | 24 CFR Part 42 |
| Brownfields Redevelopment Activities | (FY99 HUD Appropriations Act) |
| Interim Assistance | None |

HISTORY AND BACKGROUND OF ANTI-PIRATING RULE

In 1998, Section 105 of the HCDA was amended by section 588 of the Quality Housing and Work Responsibility Act, which added Subsection (h) titled *Prohibition on Use of Assistance for Employment Relocation Activities* to the HCDA. This provision was added to address a number of concerns raised over the expenditure of federal funds.

Subsection (h) of the statute indicates that CDBG funds may not be used “to assist directly the relocation of any industrial or commercial plant, facility, or operation, from one area to another area, if the relocation likely to result in a significant loss of employment in the labor market area from which the relocation occurs.”

The statute did not clearly define several items, which HUD has addressed in an interim rule published in the *Federal Register* on **December 23, 2005** (note that this rule follows publication of an October 24, 2000, proposed rule and takes into consideration comments made by the public). The interim rule took effect on **February 21, 2006** (which is also the end of the public comment period) and the rule was finalized on **May 24, 2006**.

Rule clarifications:

Significant loss of employment - statute did not define the term “significant job loss”

- Rule establishes a de minimis – a **loss of 25 or fewer** jobs would not constitute a significant job loss
- Loss of **500 jobs or more** would constitute a significant job loss and would invoke job pirating rule
- Job losses between 25 - 500 must be less than 0.1 percent of the areas labor force, (i.e. the area losing jobs) to avoid being counted as significant

Labor Market Area (LMA) – statute did not define who determined the labor market area. The final rule provides guidance on how to define labor market areas for Entitlement Communities and States

Company Relocation—statute did not address those situations where a company changes operations and relocates, the final rule indicates that:

- Any relocation that results in less than 25 jobs would not invoke the rule and any relocation over 500 jobs would automatically invoke the rule.
- Measures would have to be taken to determine percentage of jobs lost would invoke rule—must be less than 0.1 percent of LMA

Direct Assistance – The HCDA authorizes direct assistance to for-profit businesses, for-profit businesses, CBDOs, and other non-profit entities that target economic development activities. The final rule:

- Prohibits the provision of CDBG assistance to for-profit businesses and CBDOs (does not apply to non-profit entities), if the relocation of a plant or facility resulted in a significant loss of jobs in the area from which the relocation occurs.
- Provides for some exceptions as explained in the rule.

Infrastructure improvements – considered same as direct assistance under certain conditions—specifics expanded on in the rule

Time limits – the final rule establishes time limits on the applicability of the anti-piracy requirements. Generally, a job will be considered to be relocated if positions are eliminated at an existing operation within **3 years** after the provisions of CDBG assistance to the operation.