

Eligibility and National Objectives



U.S. Department of Housing and Urban Development



Six Questions for States to Address Prior to Funding an Activity

- How is the activity eligible? Is it expressly ineligible?
- Has the activity been interpreted as eligible under Entitlement regulations?
- How will it meet a national objective?
- If it is not a low/mod activity, what impact will it have on the 70% overall low/mod benefit requirement?
- Are costs reasonable and necessary?
- Have environmental requirements been met in accordance with 24 CFR Part 58?



Eligible Activities

- Statute vs. Regulations-Eligible activities not listed in state regulations (however, listed in Section 105(a) of HCDA of 1974)
- Maximum Feasible Deference (MFD)



State CDBG Program Eligibility

- Entitlement regulations at 24 CFR 570.201-206 may be used as guidance to determine eligibility
- Some states adopt entitlement regulations



Statutes v. Regulations: Some Examples

- Entitlement Regulations may have more descriptions than the Statute
- Rehabilitation (provide more details about types of rehabilitation)
- Activities carried out by Faith-Based Organization—Applicable to the State CDBG program under 24 CFR 570.480(e)



Statutes v. Regulations Cont'd

CBDOs vs. 105(a)(15) Non-profits: assistance to nonprofit entities undertaking development activities. The Statute allows more flexibility for State funded UGLGs due to the fact that there are fewer non-profits in non-entitled areas.



CDBG Eligible Activities

- **All project activities must be eligible for funding under rules for CDBG funds.**
- **General Rule---any activity that is not specifically authorized is ineligible to be assisted with CDBG funds.**



CDBG Eligible Activities continued

- **Eligible activities are listed in the Housing and Community Development Act (HCDA) Section 105(a)**
- **States are prohibited from declaring statutorily eligible activities ineligible for funds, however states may prioritize which activities to fund. 24 CFR 570.482**



CDBG Eligible Activities- continued

- **Basic categories of eligibility in order of appearance in Section 105(a) of the HCDA**
 - Acquisition of real property
 - Public facilities and improvement and privately-owned utilities
 - Code enforcement
 - Clearance, rehab, reconstruction and construction of buildings
 - Architectural barrier removal



CDBG Eligible Activities – continued

- Loss of rental income
- Disposition of real property
- Public services
- Payment of the non-federal share
- Relocation
- Planning and capacity building
- Program administration costs
- Activities carried out through nonprofits
- Assistance to neighborhood based development organizations



CDBG Eligible Activities - continued

- Energy efficiency/conservation
- Economic development assistance to for-profit businesses
- Technical assistance
- Housing services
- Assistance to Institutions of Higher Education
- Microenterprise assistance
- In-Rem Housing
- Homeownership Assistance
- Tornado safe shelters
- Lead-based paint hazard evaluation and abatement



Acquisition of Real Property 105(a)(1)

- Real property acquired in whole or part by: purchase, long-term lease, donation, or otherwise....must have a permanent interest in the property
- Acquisition for ownership of the land, air rights, easements, water rights, rights-of-ways, buildings or other real property improvements, other interests in the real property



Acquisition of Real Property 105(a)(1)

- CDBG funds may pay for: land surveys, appraisals, legal document preparation, recordation fees, other acquisition fees
- CDBG funds may **NOT** pay for:
 - moveable equipment, furnishings, or machinery if principal purpose
 - purchase of property to donate or sell at less than purchase price to same entity which purchased.

Note: these “**not's**” may qualify as assisting for-profit business under economic development. Section 105(a)(17)



Acquisition of Real Property 105(a)(1)

- Purchase of land for a park
- Purchase of building for a homeless shelter
- Purchase of house to provide rental housing
- Acquiring property to be used for commercial purposes
- Acquiring deteriorated buildings for demolition
- Acquiring permanent easements for water/sewer lines, streets and utilities

NOTE: regarding national objective qualification -
Preliminary determination is based on planned use,
Final determination based on the actual use of the property.



Public Facilities and Improvements and Privately- Owned Utilities Section 105(a)(2)

Public facilities include:

- libraries
- firehouses
- community centers
- senior centers
- daycare centers
- health clinics
- homeless/domestic violence shelters
- group homes



Public Facilities and Improvements and Privately-Owned Utilities Section 105(a)(2)

Public improvements include:

- **streets**
- **sidewalks**
- **water/sewer lines**
- **wells**
- **parks**
- **flood/drainage**
- **utility lines**
- **playgrounds**



Public Facilities and Improvements and Privately-Owned Utilities Section 105(a)(2)

- Acquisition (long term leases of 15 or more years),
 - construction
 - reconstruction
 - rehabilitation (removal of architectural barriers to accessibility)
 - installation



Public Facilities and Improvements and Privately-Owned Utilities Section 105(a)(2)

Ineligible under this category:

- “Buildings for the general conduct of government” such as city halls, county administrative buildings, state offices---
(exception: removal of building materials and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons)



Public Facilities and Improvements and Privately-Owned Utilities Section 105(a)(2)

- Ineligible under this category:
 - Operation/Maintenance of public facilities/improvements
 - Purchase of construction equipment
 - New construction of public housing



Public Facilities and Improvements and Privately- Owned Utilities Section 105(a)(2) Additional Considerations:

- **Water/sewer hookups** cost to connect properties is NOT eligible as public facility, instead rehab of a building/house
- **911 Systems** special requirements
- **Title (general public)** non-profit centers must be open to general public normal hours
- **Facilities with both eligible/ineligible uses** only fund portion facility that is eligible
- **Fees** reasonable fees for use of facilities by LMI persons
- **Special Assessments** limitations on the recovery of capital costs levied against property owners. 24 CFR570.482



Clearance, Rehabilitation, Reconstruction and Construction of Buildings Section 105(a)(4)

- **Clearance, demolition, removal,**
- **Demolition of buildings/improvements**
- **Removal of demolition debris**
- **Removal/treatment of environmental
contaminants to render harmless**
- **Movement of structures to other sites**



Clearance, Rehabilitation, Reconstruction and Construction of Buildings Section 105(a)(4)

- **Rehabilitation of buildings and improvements**
- **Non public facility property (land/buildings)**
- **Residential property---private or public...housing rehabilitation**
- **Commercial---limited to exterior improvements of the building and code violation corrections**



Clearance, Rehabilitation, Reconstruction and Construction of Buildings Section 105(a)(4)

Reconstruction

- rebuilding on the same site in substantially the same manner - may be residential or commercial, private or public
- change in number of housing units may constitute “New Construction”



Clearance, Rehabilitation, Reconstruction and Construction of Buildings Section 105(a)(4)

Construction

- Last Resort Housing – suitable replacement housing
- Local development Corporations/Nonprofit organization as part of NRS/community economic development project – new housing under neighborhood revitalization policy
- Activities “In support of” new housing



Public Services

Section 105(a)(8)

Child Care

Health Care

Job Training

Recreation

Education Program

Public safety services

Fair Housing Activities

Senior Services

Homeless Services

Drug Abuse Programs

Homebuyers

assistance

Emergency

Assistance

Operating facilities

which provide

services

- **Ineligible:**
 - Political Activities
 - Ongoing grants (non-emergency)



Public Services

Section 105(a)(8)

The public service must be either:

- New service or
- Quantifiable increase in service **or**
- Service discontinued beyond control of the local government

CDBG funds may pay for:

- labor, supplies, materials and other costs associated with public service

State cap on public services

- No more than 15% of the state's yearly allocation, plus program income distributed may be spent on public services. Note that cap applies to the state and not to individual local government recipients.



Planning and Capacity Building Section 105(a)(12)

Activities necessary to develop a comprehensive community development plan; and to develop policy, planning or management capacity so that the recipient can: of assistance under this title may more rationally and effectively:

- determine its needs
- set long-term goals and short-term objectives
- devise programs/activities to meet the above
- evaluate the progress; and
- carry out management, coordination and monitoring activities.



Planning and Capacity Building Section 105(a)(12)

- When undertaken in conjunction with another CDBG assisted activity, planning takes on that national objective**
- When planning is the only activity, or unrelated, planning must meet a national objective independently**



Planning and Capacity Building Section 105(a)(12)

This category does not include:

- Engineering, architectural, and design costs related to a specific project; or
- other costs of implementing plans



Program Administration Costs

Section 105(a)(13)

- **Pay reasonable program administration costs and charges related to the planning and execution of the CDBG or HOME Program.**
- **Costs include: overall program management, coordination, monitoring, reporting, and evaluation.**
- **State CDBG program includes state, unit of general local government (and their subrecipients) costs of administering grants.**



Program Administration Costs Section 105(a)(13)

Eligible Costs include:

- Staff and related costs (State/UGLG/Sub)
- Citizen participation costs
- Fair housing activities
- Indirect costs charged using an accepted cost allocation plan
- Development of applications for federal programs
- Staff and overhead costs for project delivery; and



Activities Carried Out through Nonprofit Development Organizations

Section 105(a)(15)

Assistance to neighborhood based nonprofit organizations, local development corporations, public or private nonprofit organizations serving development needs of communities in non-entitlement areas

- To carry out a neighborhood revitalization project, community economic development or energy conservation project.
- Business incubator
- Acquire land and install infrastructure in a park
- Loan for developing a sheltered work environment for employment training of developmentally disabled adults



Economic Development Assistance to For-Profit Businesses Section 105(a)(17)

Allows assistance to private, for-profit entities, to carry out economic development projects using such methods as:

- Direct financial assistance to businesses: grants, loans, loan guarantees, interest supplements; and any other, which the business could use to:
 - purchase or construct a building or make improvements, renovate an existing structure, construct tenant improvements, lease a building, purchase inventory, use as working capital, provide job training



Economic Development Assistance to For-Profit Businesses Section 105(a)(17)

- **Other eligible activities include:**
 - Land acquisition
 - clearance and disposition
 - provision of infrastructure
 - micro-enterprise assistance
- **Services in connection with the above and technical assistance to businesses are also eligible**



Economic Development Assistance to For-Profit Businesses Section 105(a)(17)

This category does NOT include:

- Assistance to for-profit businesses for lobbying/political activities
- Public facilities/improvements carried out to support or benefit for-profit businesses
- New housing construction
- Planning for economic development projects
- Non-related job training



Economic Development Assistance to For-Profit Businesses Section 105(a)(17)

Anti-Pirating Rule:

- No CDBG funds can be used to lure businesses away from another jurisdiction if job creation/loss is more than one-tenth of one percent of the Labor Market Area
- Projects with 25 jobs or less are exempt
- States may create labor market areas to suit rural areas which primarily benefits private entities



Economic Development Assistance to For-Profit Businesses Section 105(a)(17)

Prohibition on Use with Eminent Domain

The HUD Appropriations Acts for FY 2006, 2007 and 2008 each include an administrative provision restricting the use of CDBG (and other Federal) funds appropriated for those years to support any federal, state, or local project that seeks to use the power of eminent domain for any activity other than a public use that does not involve economic development



Economic Development Assistance to For-Profit Businesses Section 105(a)(17)

Provision of assistance to private for-profit entities, appropriate to carry out an economic development project, that:

- Creates/retains jobs for LMI persons
- Prevents or eliminates slums and blight
- Meets urgent needs
- Creates or retains businesses owned by community residents
- Assists businesses that provide goods/services needed by, and affordable to, LMI residents
- Provides TA to promote any of the above.



Technical Assistance Section 105(a)(19)

- **Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization and economic development activities.**
- **States may undertake technical assistance for its staff and others**



Technical Assistance Section 105(a)(19)

- **Prepare technical assistance handbooks, provide application workshops**
- **Provide technical on-site and peer-to-peer assistance**
- **Train state staff on specific components for administering program**
- **Develop and deliver a community development practitioner certification for units of general local government, and others**



Microenterprise Assistance Section 105(a)(22)

- **Financial or technical assistance to an existing microenterprise or to persons developing a microenterprise**
- **What is a “microenterprise” ?**
 - A commercial enterprise with 5 or fewer employees, 1 of whom owns the enterprise
 - Owner qualifies as low- or moderate-income
 - At least 51% of jobs created are for low- and moderate-income individuals



Homeownership Assistance

Section 105(a)(24)

Provision of direct assistance to facilitate and expand homeownership among LMI persons

- Subsidize interest rates and mortgage principal amounts for LMI homebuyers
- Finance acquisition by LMI homebuyers of housing that is to be occupied by the homebuyers
- Acquire (non direct) guarantees for mortgage financing obtained by LMI homebuyers from private lenders
- Provide up to 50% of downpayment
- Pay for reasonable closing costs



Additional Eligible Activities

- **CDBG funds may be used to provide tornado-safe shelters Section 105(a)(24)**
- **CDBG funds may be used to perform lead-based paint hazard evaluation and abatement Section 105(a)(25)**



Ineligible Activities

- **The following activities are categorically ineligible under the Housing and Community Development Act:**
- **Construction or rehabilitation of buildings for the general conduct of government except:**
 - Removal of materials and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled adults
 - May fund work on buildings used to deliver services to the public such as fire stations
 - Can pro-rate costs for buildings associated with both service delivery and administrative functions



Ineligible Activities

- **General Government Expenses-** carry out regular responsibilities
- **Political Activities-** use of equipment or facilities for political purposes
- **Purchase Equipment-** generally ineligible, except for: construction equipment used as part of solid waste disposal facility, fire protection equipment furnishings, fixtures, or other personal property, which is an integral part of the structure



Ineligible Activities

- **Operating and Maintenance**
 - mowing grass
 - filling pot holes
 - repairing sidewalks, etc.
 - payment of staff salaries
- **New housing construction (with exceptions)**
- **Activities with insufficient “Public Benefit” (economic development activities)**
- **Employment Relocation Activities**
- **Other activities listed as ineligible under OMB Circular A-87 (Cost principles)**



Ineligible Activities

Income Payments

- series of subsistence-type payments made to family for food, clothing, housing or utilities
- Except: IDA, Homeownership, short-term/emergency type grants eligible



Ineligible Activities

Faith-Based Assistance 24 CFR 570.480(e)

CDBG may not be used for religious activities.

- May not be used to support properties to be used for primarily religious purposes
- CDBG may support religious organization-owned buildings used for entirely secular purposes, in certain circumstances
- CDBG may support services provided by religious organizations, with restrictions



Ineligible Activities

New Construction of permanent residential structures is ineligible, except:

- Reconstruction
- “Last Resort” provision 49 CFR Part 24 (Related to URA)
- Undertaken by nonprofit development organization serving development needs of non-entitled areas
- **Conversion/Substantial rehabilitation**
- “In support of” activities

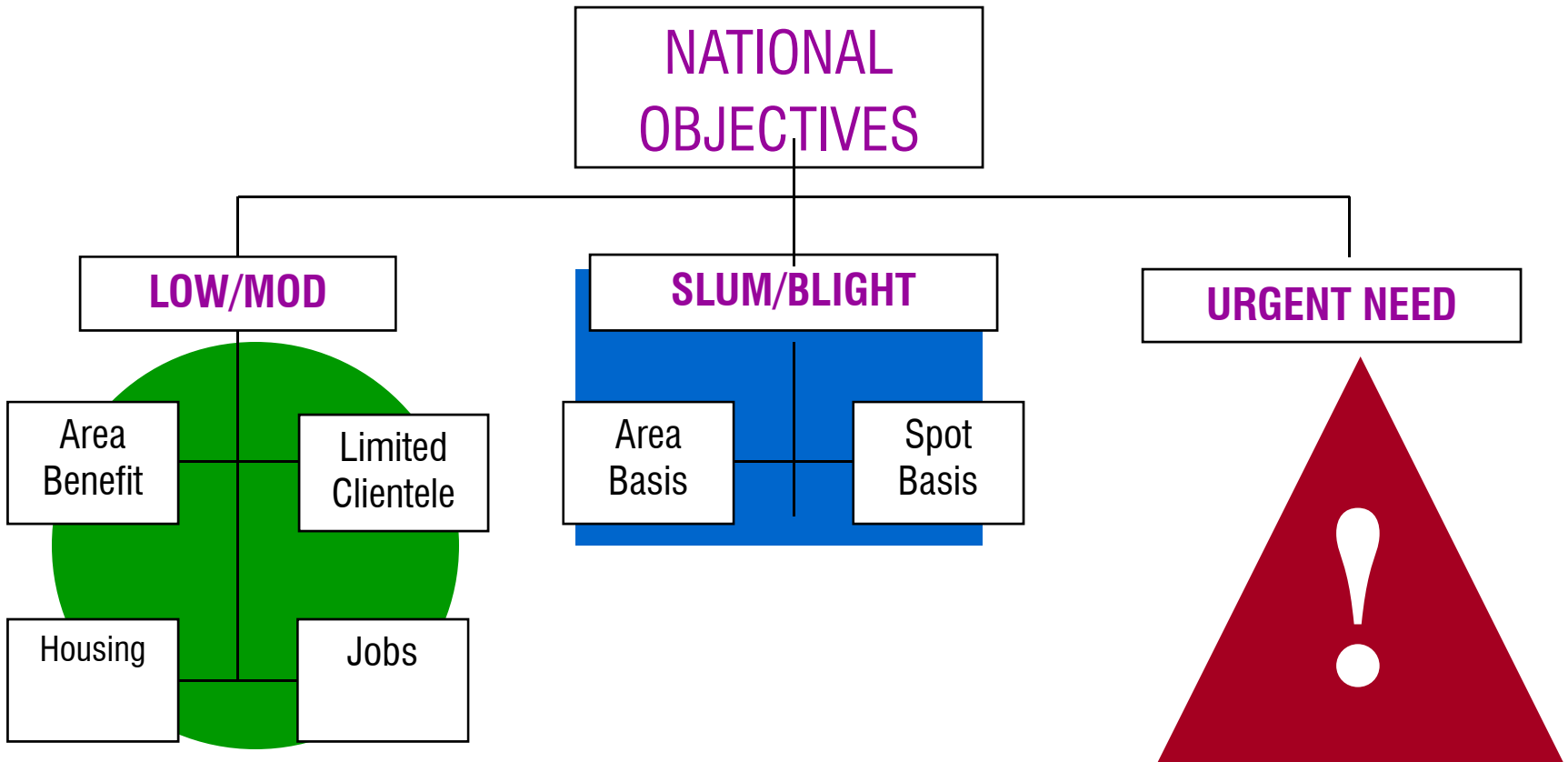


What are the Three National Objectives?

- Activities benefiting low- and moderate-income persons
- Prevention/Elimination of slum or blight
- Address Urgent needs



National Objectives





National Objectives: LMI Benefit

- Criteria for Activities to Qualify as LMI Benefit:
 - i) Area Benefit
 - ii) Limited Clientele
 - iii) Housing
 - iv) Jobs



Definitions of Low-Mod Income

What is Low-Mod Income?

- Extremely Low Income: up to 30% of median family income
- Low Income: greater than 30% but does not exceed 50% of median family income
- Moderate Income: greater than 50% but does not exceed 80% of median family income



National Objectives: LMI Benefit

Area Benefit (24 CFR 570.483(b)(1))

- **Activity benefits available to all residents in a particular area**
- **Must be the entire area served by activity**
- **At least 51% area residents are LMI persons**
- **LMI documentation for 51% or greater by**
 - HUD provided data---Census data/LMI levels or
 - Income survey data (HUD Notice CPD-05-06)
- **Area Served by the activity must be primarily residential in character**
- **Local applicant defines service area and state approves**



National Objectives: LMI Benefit

Limited Clientele

(24 CFR 570.483(b)(2))

- **Presumed Benefit**
- **51% of clientele LMI (Documentation required)**
- **Exclusive Benefit (Income Eligibility)**
- **Nature and Location**
- **Architectural Barrier Removal**
- **Microenterprise Assistance**
- **Job Training (in certain circumstances)**



National Objectives: LMI Benefit

Housing

(24 CFR 570.483(b)(3))

- **Providing or improving permanent residential structures, completed and occupied by LMI households (only LMI test that must be met by households)**
 - single family structures
 - two or more units at least 51% units occupied by LMI households
 - rental housing, occupied by LMI households at affordable rents



National Objectives: LMI Benefit

Jobs

(24 CFR 570.483(b)(4))

- **Create jobs - at least 51% of jobs must employ LMI persons, computed on full-time equivalent basis**
- **Retain jobs- document jobs lost without CDBG assistance, at least 51% of which must be LMI based on who they are held by or reasonable turnover of jobs over 2 years**
- **Available to LMI persons- business provides training for unskilled and first consideration for LMI persons**



National Objectives: Slum/Blight

- Eliminate slum/blight on area basis [24 CFR 570.483(c)(1)]
- Eliminate slum/blight on a spot basis [24 CFR 570.483(c)(2)]
- Planning only grants – planning is the only activity [24 CFR 570.483(c)(3)]



National Objectives: Slum/Blight

Area Basis

[24 CFR 570.483(c)(1)]

Criteria:

- Area officially delineated and meets state/local definition of slum or deteriorating area
- Substantial number of deteriorated buildings or
- Public improvements in state of deterioration
- Documentation kept on the area boundaries and the conditions that qualified the area
- Activity addresses one or more of the contributing conditions
- Must meet all CDBG requirements



National Objectives: Slum/Blight

Area Basis

[24 CFR 570.483(c)(1)]

Documentation:

- Must define the boundaries of the delineated area
- Identify all building and public improvement conditions demonstrating blight
- Description of activity addressing the condition led to blight in area
- Review every 10 years to continue an area as qualified



National Objectives: Slum/Blight

Area Basis

[24 CFR 570.483(c)(1)]

- **Activities designed to address slum blight on an area basis - examples**
 - acquisition and clearance of blighted property
 - renovation and reuse of abandoned historic buildings
 - commercial revitalization through façade improvements
 - removal of environmental contamination on property for a specific redevelopment use
 - residential rehabilitation of a building to meet the substandard conditions stated by local codes



National Objectives: Slum/Blight

Spot Basis

[24 CFR 570.483(c)(2)]

Criteria:

- Activity takes place outside slum or blighted area
- Activity limited to:
 - acquisition*
 - clearance
 - relocation*
 - historic preservation or
 - rehabilitation of buildings-only to eliminate detrimental conditions to public health/safety

*Must have a follow-on activity



National Objectives: Slum/Blight

Spot Basis

[24 CFR 570.483(c)(2)]

Documentation:

- Description and location of the property and contributing deteriorating conditions
- Identify activity according to eligibility types

(acquisition, clearance, relocation, historic preservation or building rehabilitation)

Examples include: elimination of unsafe conditions for occupants of a structure, historic preservation of a public facility and demolition of vacant, deteriorated building.



National Objectives: Urgent Need (24 CFR 570.483(d))

Criteria:

- The need must pose a serious and immediate threat to health and welfare of the community
- The need must be of recent origin or recently urgent (**within past 18 months**)
- Unable to finance activity on its own
- Other funding sources not available to carry out



National Objectives: Urgent Need (24 CFR 570.483(d))

Documentation:

- Description of the nature and seriousness of the condition
- Evidence that the activity meets the designated urgent need
- Date activity certified as serious or urgent
- Other financial resources not available (local, state, federal)



Economic Development (ED): Using Job Creation or Retention to Meet a National Objective

- ED is not an activity per se—it is a purpose
- Directly, jobs created or retained from ED activities can be used to meet a national objective
- Indirectly, jobs generated from other CDBG eligible activities can be used to meet a national objective provided other statutory and regulatory requirements are met



Other Options for Meeting a National Objective Under Economic Development

- ED projects can meet a national objective through slum/blight (redevelopment, and Brownfields and urgent need
- Other options for meeting LMI national objective under economic development include area benefit however, public benefit standards must apply



Job Creation and Retention

- Difference between job creation and retention
- The job salary can be misleading as it has little to do with whether the person is LMI as it is measured on family income
- Ascertain that national objective is met (51% of jobs are held by or made available to LMI persons)



Underwriting Guidelines for ED Projects

1. Pursuant to HCDA of 1992, HUD shall publish the objectives of underwriting guidelines in regulation; however, such guidelines will not be mandatory on grantees
2. HUD expects grantees to use some underwriting process when appropriate
3. A state can come up with its own underwriting guidelines provided they are practicable and comply with the public benefit standards



Public Benefit Standards

- Applicable only to ED projects funded under 3 categories of the Act:
 - (i) 105(a)(14)-ED by locality/public agency
 - (ii) 105(a)(15)-ED by nonprofit agency
 - (iii) 105(a)(17)-Assistance to private for-profit businesses (subject to the dictates of the Anti-pirating Rule)
- NOT applicable to activities eligible under 105(a)(22), microenterprises.



Public Benefit Standards Cont'd

- Public benefit standards are an eligibility consideration
- Two types of public benefit standards: aggregate standards and individual activity
- Applicable regardless of what national objective is being met



Public Benefit Standards: Aggregate Standards

- \$35,000/job
 - (i) Permanent FTE jobs
 - (ii) All jobs (not just LMI)
 - (iii) Created or Retained
 - (iv) Jobs assisted via training, placement, etc.
- \$350 per LMI resident of area for projects that provide goods and services to residents of the area

Note: Cannot determine compliance until grant is expended



Public Benefit Standards: Individual Activity

- \$50,000/job
 - (i) Permanent FTE jobs
 - (ii) All jobs (not just LMI): created or retained
 - (iii) Jobs assisted via training, placement, etc., count as new /retained jobs
- \$1,000/LMI resident of an area – for projects which provide goods/services to residents of the area



Insufficient Public Benefit Activities

- General promotion of the community as a whole
- Assistance to professional sports teams
- Assistance to privately owned recreational facilities that serve a higher income clientele
- Assistance to business while owner has unresolved CDBG findings
- Acquisition of land for which the proposed use is not identified yet



Public Benefit Standards: Other Important Information

- Public benefit standards are prospective while national compliance is retrospective
- State must track the jobs and maintain documentation thereof
- Look for patterns of substantial difference between projected and actual results



Important Information Cont'd

- If the State's public benefit fails to meet standards, HUD can hold state to more stringent standards
- When a project is amended, the public benefit standard must be re-evaluated



Overview of HUD's Experience

- States often set their maximum cost per job substantially lower
- Few states even consider cost-per-resident
- Few if any states take advantage of the exemptions from the aggregate standards



HUD's Experience Cont'd

- Many states restrict the types of economic development projects they do
- Some states are not maintaining adequate records to demonstrate overall compliance with aggregate public benefit standards
- Some states are not tracking amendments and do not define a “significant change to scope or financing”