Federal Register

Friday,
December 23, 2005

Part III

Department of Housing and Urban Development

24 CFR Part 570

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4556–I–02; HUD–2005–0076]

RIN 2506–AC04

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: The interim rule implements certain statutory changes by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Specifically, this interim rule prohibits state and local governments from using CDBG funds for ''job pirating'' activities that are likely to result in significant job loss. The rule also applies to section 108 loan guarantees, and the use of Brownfields Economic Development Initiative and Economic Development Initiative funds with section 108 loan guarantees and CDBG funding. This rule follows publication of an October 24, 2000, proposed rule and takes into consideration the public comments received on the proposed rule. The interim rule also provides the public with an additional opportunity to comment on the regulatory job pirating provisions.

DATES: *Effective Date:* February 21, 2006.

Comment Due Date: February 21, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410–7000, telephone (202) 708–3587 (this is not a toll-free number).

In addition, program participants may contact their respective program offices by calling the applicable telephone number listed below (these telephone numbers are not toll-free).

For State CDBG, HUD-administered Small Cities, and Insular recipients: Michael Sowell, Community Planning and Development Specialist, State and Small Cities Division, (202) 708–1322.

For Entitlement Communities: Stan Gimont, Director, Entitlement Communities Division, (202) 708–1577.

For Section 108 program participants: Paul Webster, Director, Financial Management Division, (202) 708–1871.

For Economic Development Initiative (EDI) and Brownfields Economic Development Initiative (BEDI) program participants: William Seedyke, EDI and BEDI Program Coordinator, Grants Management Division, (202) 708–3484.

Hearing- or speech-impaired individuals may access any of the telephone numbers listed in this section by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (1974 HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) Program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled ''Community Development Block Grants''). As used in this rule, the term ''CDBG funding'' or reference to CDBG programs means, in addition to the Entitlement and State CDBG programs, those programs covered by the part 570 regulations (*e.g.*, section 108 loan guarantees, Economic Development Initiative, Brownfields Economic Development Initiative, HUD-administered Small Cities, and Insular CDBG program). This rule does not apply to the Indian CDBG program.

Section 105 of the 1974 HCD Act (42 U.S.C. 5305) was amended by section 588 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Title V of the Fiscal Year 1999 HUD Appropriations Act, Public Law 105–276, approved October 21, 1998). Specifically, section 105 was amended to add a subsection (h) entitled ''Prohibition on Use of Assistance for Employment Relocation Activities.'' This subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another if the relocation is likely to result in a significant job loss.

Subsection 105(h) provides as follows:

> (h) Prohibition on Use of Assistance for Employment Relocation Activities.—Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from [one] area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

II. The October 24, 2000, Proposed Rule

On October 24, 2000 (65 FR 63756), HUD published a proposed rule to implement section 588 of QHWRA. The October 24, 2000, proposed rule proposed to prohibit state and local governments from using CDBG funds for job pirating activities. Job pirating was defined as the act of one community luring a business, and the jobs that would accompany it, from another community that could have significant impact on the economic viability of the latter community.

The statute sought to ensure that CDBG funds would not be used to the detriment of one community for the prosperity of another. However, the statute did not define clearly what was meant by significant job loss, or what was considered a labor market area for entitlement and non-entitlement areas.

HUD received 32 public comments on the October 24, 2000, proposed rule. Several commenters expressed a concern with respect to the issue of how the statute would be implemented particularly in non-entitlement areas. The objections raised regarding the non-entitlement portion of the proposed rule have been addressed in this interim rule without fundamentally changing the conceptual approach of the October 24, 2000, proposed rule. There were no substantial objections raised by commenters regarding HUD's implementation of the non-entitlement provision in the Entitlement CDBG

program. The changes made in this rule for the Entitlement program are principally to ensure consistency of application between the Entitlement and State CDBG programs. HUD believes this rule implements the statutory prohibition while maintaining the local flexibility of the CDBG program.

III. Significant Differences Between this Interim Rule and HUD's October 24, 2000, Proposed Rule

This interim rule follows publication of the October 24, 2000, proposed rule and takes into consideration the public comments received on the proposed rule. In response to the public comments, HUD has made the following changes to the proposed rule. The rationale for these revisions is more fully explained in section IV of this preamble.

1. *''De minimis'' job loss*. This interim rule provides that a loss of 25 or fewer jobs as a result of a single activity does not constitute a significant job loss for purpose of the anti-pirating provisions.

2. *State designation of applicable Labor Market Area (LMA)*. The interim rule permits each state to combine LMAs in non-metropolitan areas to determine its LMAs for purposes of the anti-pirating requirements. States will be required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. States can obtain LMA designations at the following Bureau of Labor Standards Web site: *http://www.bls.gov/lau/lmadir.pdf*.

3. *Time limit on anti-piracy requirements*. This interim rule establishes a time limit on the applicability of the anti-piracy requirements. In general, a job will be considered to be relocated if positions are eliminated at an existing operation within three years after the provision of CDBG assistance for the new operation.

4. *Streamlined reporting requirements*. In place of the detailed information required under the proposed rule, this interim rule requires that the assisted business submit a certification that neither it nor any of its subsidiaries has plans to relocate jobs that will result in a significant job loss for a specific area. This certification will be part of the agreement committing CDBG assistance to the business.

5. *Definition of ''directly assist.''* This interim rule further defines ''directly assist.'' The provision of CDBG funds for activities pursuant to public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business.

IV. Discussion of Public Comments on the October 24, 2000, Proposed Rule

Twenty-one of the 32 comments came from states, with many of the remaining comments coming from organizations that represent non-entitlement areas. The states and organizations that represent non-entitlement areas wrote that the proposed rule was flawed as labor market areas did not relate to the true commuting patterns in rural areas, and that there needed to be a *de minimis* number of jobs that would not trigger the operation of this rule. As a result of the comments from states and organizations representing non-entitlement areas, this rule makes the following changes to the proposed rule.

A. *Significant Loss of Jobs*. Many commenters raised questions or concerns regarding the definition of ''significant job loss'' contained in the October 24, 2000, proposed rule. Under the proposed rule, a loss of jobs would be considered significant if the number of jobs lost is equal to or greater than one-tenth of one percent (0.1%) of the total number of jobs in the labor force. However, in all cases a loss of 500 or more jobs is considered significant.

Several commenters wrote that the percentage used to calculate significant job loss would adversely affect smaller, rural areas. For example, under the proposed rule, a loss of 10 jobs in a labor market area containing 10,000 jobs would have triggered the application of the rule. The commenters recommended several alternatives to address this concern. Several commenters, for example, suggested that HUD not use a percentage to calculate significant job loss and instead simply rely on the second component of the definition (i.e., a loss of 500 or more jobs). Other commenters suggested raising the percentage used to determine whether job loss is significant. Several commenters suggested that HUD establish a de minimis number of lost jobs that would not trigger the operation of the anti-pirating provisions.

HUD continues to believe that a percentage-based calculation is useful for determining significant job loss, since such a calculation may be uniformly applied to varying sized labor forces. However, HUD also recognizes that a percentage-based test may be difficult to apply to small communities where the loss of a handful of jobs may be sufficient to trigger the anti-pirating provisions. After considering the public comments on this issue, HUD has modified the proposed rule to provide that a loss of 25 or fewer jobs as a result of a single activity will not constitute a significant job loss.

According to the Office of Advocacy of the U.S. Small Business Administration, there are approximately 4.4 million firms in the U.S. that employ 25 employees or fewer out of a total of nearly 5.5 million firms nationwide. There are only 470,356 firms that employ between 25 and 500 employees. Approximately 80 percent of firms in the U.S. employ fewer than 25 workers. HUD believes the potential impact of any single business relocating from one labor market to another would be minimal on the employment rate in that given labor market area. Furthermore, while HUD has taken every measure to minimize the burden of compliance with this rule on businesses in general, HUD believes that it would be overly burdensome to impose such requirements on businesses that employ 25 or fewer employees.

B. *Problems with the Definition of LMAs in Rural Areas*. Several commenters objected to the use of LMAs defined by the U.S. Department of Labor for purposes of determining significant job loss. The commenters wrote that the size and composition of LMAs vary throughout the country, thus limiting their usefulness in consistently and uniformly measuring job loss. The majority of the commenters on this issue wrote that the LMAs do not accurately reflect commuter patterns in rural areas. These commenters wrote that the U.S. Department of Labor LMA definition did not work for rural areas, as the LMA definition was for a single county, when the real commuting area is a multicounty area.

The commenters suggested various ways to remedy the perceived difficulties with use of LMAs. Some commenters suggested that HUD replace the use of LMAs with use of the relevant jurisdiction, such as the city or county. Other commenters recommended that HUD permit jurisdictions to voluntarily combine and designate themselves as an LMA for purposes of the anti-pirating provisions.

Since publication of the October 24, 2000, proposed rule, the Office of Management and Budget has issued a revised definition of LMA that HUD believes lessens the prevalence of the concerns raised by the commenters. Specifically, under the revised definition of LMA, all non-metropolitan areas in each state are grouped into small LMAs usually consisting of one or more counties. To further address the concerns raised by the commenters, the interim rule permits each state to

combine LMAs in non-metropolitan areas to determine its LMAs for purposes of the anti-pirating requirements.

States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Under this interim rule, metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. The area defined by the state must also be coterminous. HUD will revisit this issue in the future if there is evidence of abuse by states in configuring LMAs.

In those situations where a particular state decides not to define its LMAs in non-metropolitan areas, then the area(s) defined by the U.S. Department of Labor for that particular non-metropolitan area shall be used. It should be noted that the state losing one or more net jobs is the state with the responsibility for defining the LMAs.

C. *Time Limit on Anti-Piracy Requirements.* Many commenters from non-entitlement areas suggested that a limit should be set on the length of time during which changes in employment may be considered to be as a result of CDBG assistance. HUD agrees and has established a time limit on the applicability of the anti-piracy requirements. A job will be considered to be relocated if positions are eliminated at an existing operation within three years after the provision of CDBG assistance for the new operation. HUD has determined that three years is an appropriate time period to define relocating existing operations. Most states allow no more than three years for a project to be completed and expect the majority, if not all, of the jobs to be created in this time frame. However, if the contractual agreement between the recipient (entitlement grantee, state, or state grant recipient) and the assisted business allows a time period longer than three years for the business to create jobs, then the provisions of this rule will apply for the duration of that agreement.

D. *Provision of Infrastructure Assistance Should Not be Subject to the Rule.* The majority of commenters wrote that infrastructure assistance should not be covered by the rule as it is not a deciding factor on whether a business will relocate to an area. Several of these commenters wrote that assistance for infrastructure development is indirect assistance and, therefore, outside the scope of the statutory anti-pirating prohibition, which applies solely to direct assistance. A minority of commenters, however, thought infrastructure assistance should be covered by the rule. HUD continues to believe that the rule should cover infrastructure assistance when a grantee, participating unit of general local government, subrecipient, Community-Based Development Organization (CBDO), or a nonprofit organization serving the development needs of communities in non-entitlement areas, directly assists in the relocation of a business. The Department does not consider infrastructure assistance to be indirect assistance in such cases, since there is no difference between providing infrastructure assistance and making a loan to a business when there is a written agreement in which a business commits to create jobs. However, if CDBG funds are provided to assist infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business, those funds would fall under the definition of ''directly assist.'' The interim rule clarifies the definition of ''directly assist'' to include this distinction.

E. *Recordkeeping Requirements.* Many commenters stated that the recordkeeping requirements of the proposed rule were onerous and would discourage economic development projects. HUD agrees that the proposed information collection requirements would have imposed an undue burden on certain businesses. For example, requiring information on all of a business' facilities with the number of jobs at each facility would prevent the provision of assistance to national retail operations, as provision of this information would be onerous for corporations such as Target or McDonald's, for example, to complete. As a result, HUD has streamlined the proposed reporting requirements. In place of the detailed information required under the proposed rule, this interim rule requires that the assisted business submit a certification that neither it nor any of its subsidiaries has plans to relocate jobs that will result in a significant job loss. This certification will be part of the agreement committing CDBG assistance to the business.

F. *Applicability to nonprofits.* Several commenters wrote in support of the exemption of non-profit organizations from the anti-pirating requirements. Other commenters, however, questioned the non-profit exemption. Most of these commenters agreed that there is little likelihood of nonprofit group use of CDBG assistance for job relocation purposes. However, the commenters wrote that the relocation of some large nonprofit organizations could potentially result in a significant job loss. These commenters also wrote that the statutory anti-pirating requirements do not specifically single out for-profit businesses.

HUD has not revised the rule in response to these comments. As the commenters acknowledge, the potential that CDBG assistance will result in a nonprofit group relocating is limited. However, as some commenters questioned the non-profit exemption, HUD is inviting specific comments on examples of situations where relocations of nonprofit organizations have resulted in significant job losses.

V. This Interim Rule

This interim rule follows publication of and takes into consideration the public comments received on HUD's October 24, 2000, proposed rule. As noted above, this interim rule makes several changes to the proposed rule in response to the public comments. HUD has decided to issue this rule as an interim rule to afford the public with another opportunity to comment, and specifically to the changes made to the rule based on earlier comments. All comments received in response to this interim rule will be considered during development of the final rule.

This interim rule would implement section 105(h) of the 1974 HCD Act by revising HUD's CDBG program regulations at 24 CFR part 570. For the Entitlement CDBG program, the interim rule would establish a new § 570.210 (entitled ''Prohibition of use of assistance for employment relocation activities''), which would describe the CDBG job pirating prohibitions. Other related sections of the Entitlement regulations would be revised. For the State CDBG program, the interim rule would revise § 570.482 (entitled ''Eligible activities'') to describe the job pirating provisions for the state-administered CDBG program.

In situations where a natural disaster has occurred and the President has declared the area a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, grantees can request suspension of certain statutory provisions.

A. Significant Features of the Interim Rule

1. *Direct assistance to for-profit businesses.* Section 105 of the 1974 HCD Act authorizes the provision of direct CDBG assistance to for-profit businesses. Specifically, section 105(a)(17) authorizes CDBG recipients to provide direct assistance to for-profit businesses for economic development activities. Additionally, section

105(a)(15) authorizes recipients to provide CDBG funds to Community-Based Development Organizations (CBDOs) and other nonprofit entities for economic development activities that increase economic opportunities, or that stimulate or retain businesses or permanent jobs. CBDOs and other nonprofit entities may implement economic development activities directly or they may assist for-profit businesses similar to the way CDBG recipients assist for-profit businesses.

Section 105(h) targets CDBG assistance to for-profit businesses. Pursuant to section 105(h), this interim rule would prohibit the provision of CDBG assistance to for-profit businesses (including business expansions) under sections 105(a)(15) and 105(a)(17) of the 1974 HCD Act, if:

(i) The funding will assist in the relocation of a plant, facility, or operation; and

(ii) The relocation is likely to result in a significant loss of jobs in the area from which the relocation occurs.

As noted, HUD will apply the job pirating prohibition rule to those business expansions that result in the relocation of all or a portion of an operation to the expansion site, if the relocation would result in a significant loss in the number of jobs at the current facility. This rule is not intended to apply to situations in which a business starts a new operation in a new location, which is unrelated to existing operations, and later decides to reduce or eliminate the existing operation. For example, a business presently manufactures lawnmowers in city A, and decides to diversify its operations by opening a plant (with CDBG assistance) to assemble computer circuit boards in city B, which is in a different LMA. Two years later, because of changes in the industry, the business decides to get out of the lawnmower business and to focus exclusively on computer circuit boards; it closes the lawnmower factory or sells the factory to a competitor. This scenario would not constitute job pirating, because the circuit board plant constitutes a completely different operation with very different job positions from the lawnmower factory. The firm's decision to exit the lawnmower business was unrelated to the decision to enter the computer circuit board business. However, a company that plans to open a new plant outside its current LMA, with the express intent to consolidate its production of ''goods'' at that location, and then shuts down an older facility elsewhere up to three years later, would trigger the anti-pirating provision if there was a significant loss of jobs.

HUD also decided that the rule should not cover the business activities of nonprofit entities. HUD will revisit this issue in the future if there is evidence of abuse from job pirating involving nonprofit entities.

2. *Infrastructure improvements.* The October 24, 2000, proposed rule considered how section 105(h) applies to CDBG recipients that provide assistance *indirectly* to for-profit businesses. The proposed rule stated that indirect assistance may take the form of buildable sites, rail spurs, and other amenities in industrial parks. CDBG recipients may carry out these activities under section 105(a)(14) of the 1974 HCD Act, as well as sections 105(a)(1), (2), (4), or (7), which govern the use of CDBG funds for acquisition of real property, public facilities improvements, clearance, demolition, and disposition of real property. After reviewing the comments on the October 24, 2000, proposed rule, the Department believes that using CDBG funding for these activities assists directly in the relocation of a business when a CDBG recipient, participating unit of general local government, subrecipient, or CBDO enters into a written agreement to provide the assistance as a condition of the business relocating to the recipient's jurisdiction. Under such circumstances, the Department discerns no difference between providing infrastructure assistance and making a loan to a business. The Department does not consider infrastructure assistance to be indirect assistance in such cases, since there is no difference between providing infrastructure assistance and making a loan to a business when there is a written agreement in which a business commits to create jobs.

3. *Definition of ''Operation.''* Section 105(h) prohibits the use of CDBG assistance with respect to the relocation of any industrial or commercial plant, facility, or ''operation'' from one area to another. This interim rule defines the term ''operation'' to include, but not be limited to, any equipment, position, employment opportunity, production capacity, or product line.

4. *Definition of ''Area.''* Section 105(h) prohibits the relocation of any industrial or commercial plant, facility, or operation, from ''one area to another,'' if the relocation is likely to result in significant job loss. For metropolitan areas, HUD defines the term ''area'' as synonymous with the term ''Labor Market Area (LMA),'' as defined by the U.S. Bureau of Labor Statistics (BLS) (*http://www.bls.gov/lau/laugeo.htm*). The BLS defines an LMA as:

> [a]n economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive.

LMAs include metropolitan statistical areas (MSAs) and Metropolitan Divisions, defined by the Office of Management and Budget (OMB), and small LMAs. Metropolitan Division is a new OMB term that has replaced Primary Metropolitan Statistical Areas (PMSAs). A Metropolitan Division consists of a county or a group of counties within a Core Based Statistical Area that has a core population of at least 2.5 million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties. A Micropolitan Statistical Area is viewed as an area with urban clusters of at least 10,000 population, but less than a population of 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

HUD received multiple comments in response to the October 24, 2000, proposed rule that indicated the BLS definition of LMA does not work in rural areas for the purposes of this rule. Some commenters stated that in many states rural LMAs tended to be single-county entities while the true commuting area is a multicounty area. Using the BLS definitions could give a distorted view of the distances an employee could commute in order to maintain employment in a job that has moved to a new location. In response to these comments, HUD has determined that in non-metropolitan areas, a state may choose to use the BLS definition of LMA, or it may combine LMAs if that gives a more accurate definition of the true commuting area for a portion of a state. States would be required to define their LMAs and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. It should be noted that metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. Combined LMAs will still be referred to as LMAs. Also, a state can be more restrictive in its definitions (*e.g.*, a state can forbid units of general local government from using State CDBG

funds to fund *any* business relocation if the state so chooses).

HUD believes that the BLS definition of a LMA is the most logical one to use for metropolitan jurisdictions, for two reasons:

(i) It ensures consistency of definitions and data across the country; and

(ii) It enhances consistency of approach among federal programs.

The interim rule would be applicable to business relocations from one LMA to another, regardless of the type of area (*e.g.*, from a MSA to a Metropolitan Division, or from a MSA to a small LMA, etc.) or the type of CDBG grantee providing assistance (*e.g.*, entitlement city or state grant recipient). As a result, the rule defines LMAs for both entitlement and non-entitlement areas in both the entitlement and State CDBG regulations. The only exception is that the rule will not be applicable to moves to Indian reservations; however, the statute is applicable to moves to reservations.

For instance, moving a business from the City of Denver (located in the Denver-Aurora, CO, MSA) to Adams County, CO (also located in the Denver-Aurora, CO, MSA) would not be subject to the anti-pirating provisions of this interim rule since both Denver and Adams County are located in the same LMA.

5. *Determining ''significant job loss.''* As noted above, section 105(h) prohibits CDBG assistance for business relocation activities that ''will result in a significant loss of employment'' in the LMA from which the relocation occurs. This interim rule requires that a CDBG entitlement, small city, insular grantee, or a unit of general local government receiving funding from a state, in determining whether a significant job loss would occur, collect labor force statistics for the LMA where the business is located *before* the relocation occurs. As stated in this rule, the CDBG grantee also would be required to document the number of jobs that the business plans to relocate to the new LMA.

The example in the chart below illustrates the factors that a CDBG grantee would be required to consider in determining whether the relocation of a business would result in a significant job loss. In the example, a city has proposed funding a business that plans to relocate from any of the following areas. The business plans on relocating on July 1, and the move would result in the relocation of 50 jobs.

EXAMPLE OF CALCULATING SIGNIFICANT JOB LOSS

CDBG grantee/name of LMA Area where business is currently located (A)	Number of persons in labor force in area where business is currently located (April 2003 for Chattanooga and Jefferson County, 2002 average for Logan) (B)	One-tenth percent of labor force Multiply column (B) by .001 (C)	Number of jobs leaving the area Must be fewer than number in column (C) to be eligible for assistance (D)
Chattanooga, TN	234,900	234,900 × .001 = 234	50
Chattanooga, TN-GA MSA			NOT PROHIBITED
Logan, NE	18,250	18,250 × .001 = 18.250	50
Lincoln-Logan-McPherson SLMA			PROHIBITED
Jefferson County, CO	1,238,600	1,238,600 × .001 = 1,238.6	50
Denver, CO, Metropolitan Division			NOT PROHIBITED

(MSA)
(SLMA: Small LMA)

Labor force statistics are provided monthly and annually for each LMA. Labor force data may be obtained from the BLS Web site at *http://www.bls.gov/lau/home.htm*. CDBG grantees also may write to their state employment statistics contact person to receive local employment data. A list of state employment statistics contact names is provided on the Internet at *http://www.bls.gov/bls/ofolist.htm*. To obtain a list of LMAs or for questions regarding local area unemployment statistics, contact the BLS Local Area Unemployment Statistics Division by calling (202) 691–6392 (this is not a toll-free number) or e-mail the Division at *lausinfo@bls.gov*.

In large LMAs, one-tenth of a percent job loss of the total labor market may constitute a large number of employees. Therefore, this interim rule provides that in all cases a loss of 500 or more jobs will be considered to constitute a significant job loss. To prevent the rule from having an effect in situations where the relocation of a business causes an insignificant loss of jobs, the interim rule provides that a loss of 25 or fewer jobs from an area, as a result of a CDBG-funded economic development project, does not constitute a significant loss of jobs. In summary:

(1) A loss of 25 or fewer jobs as a result of a single activity will not constitute a significant job loss,

(2) Any loss greater than 500 will continue to be counted as significant,

(3) Job losses between 25–500 must be less than 0.1 percent of the areas labor force to avoid being counted as significant.

B. Activities and Businesses Exempt From the Job Piracy Prohibition

1. *General*. This interim rule will not apply to any of the following:

(a) Relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (implemented at 24 CFR part 42) (URA) and with respect to the CDBG regulations, at 24 CFR 570.488 and 570.606;

(b) Microenterprises; and

(c) Assistance to businesses that buy equipment and/or inventory in arms-length transactions and move the equipment and/or inventory to another area.

2. *Relocation assistance*. HUD will exclude relocation assistance required to be provided to a business under the URA. Businesses that receive such assistance and are required to relocate generally are not voluntarily relocating. In addition, optional relocation assistance under section 105(a)(11), as implemented at 570.201(i) and 570.606(d), should be excluded for the same reasons. HUD does not believe that the anti-pirating provisions were intended to prevent businesses that are forced to relocate as a result of a government action covered by the URA from relocating to another area.

3. *Microenterprises*. HUD considered whether microenterprises should be subject to the job pirating restrictions, but has determined that this type of business was not the intended target of the statutory prohibition. Microenterprises generally have five or fewer employees and typically do not seek resources to relocate jobs to other areas.

4. *CDBG-assisted arms-length transactions*. The exemption for businesses that buy equipment, inventory, or other physical assets in arms-length transactions is meant to protect assisted businesses that simply purchase equipment and inventory that are located in one area and move them to a new location. The job piracy prohibition targets businesses that move *existing* operations from one labor market area to another.

This interim rule applies to CDBG assistance to a business that: (1) Shuts down or downsizes a facility and sells the equipment in a non-arms-length transaction (an example of a non-arms-length transaction is a firm selling equipment to a subsidiary); or (2) sells, in an arms-length transaction, an interest in an existing business, product line, customer base, or the entire stock-in-trade and goodwill of an existing business.

This interim rule does not apply to assistance to a business that only purchases used equipment in an arms-length transaction. HUD believes that the sale and purchase of equipment, inventories, or other business assets on the open market were not intended to be included under the business relocation provisions of section 105(h).

The examples below illustrate the applicability of this interim rule to the sale of business equipment and inventory.

Example 1: A city provides CDBG assistance to a business for the purchase of equipment. The business will purchase the equipment through a used equipment broker. The equipment is currently owned by a firm that is downsizing. Upon purchase of the equipment, the new owner will move the equipment to another state from where the equipment is currently located.

Example 2: A city provides CDBG assistance to a firm that intends to buy the product line of a business and to relocate the operations of the entire product line to another area.

In both cases, HUD would examine:

(1) Will the CDBG assistance directly assist in the relocation of the business?; and

(2) Will the relocation result in significant job loss?

In Example 1, the CDBG assistance did not trigger the relocation of the equipment, nor was the relocation of the equipment related to any loss of jobs. The current equipment owner's decision to downsize, regardless of another business' subsequent purchase of equipment and inventory, was the reason for the job loss in this example. The use of CDBG funds to purchase equipment in an arms-length transaction such as this is not prohibited under this interim rule.

In Example 2, the CDBG assistance would directly assist the move of an operation from one LMA to another. The interim rule prohibits this assistance if the relocation of the product line is likely to result in significant job loss in the LMA from which the proposed relocation would occur.

C. Documentation Requirements for CDBG Recipients and Businesses

This interim rule would require that, for each CDBG assisted business covered by this interim rule, the recipient's (entitlement, small city, insular grantee, state, or the state grant recipient) CDBG project file must document: Whether the business has a plant, facility, or operation in an area outside of the recipient's area; and, if the business has one or more plants, facilities, or operations located in other LMAs, whether the business plans to relocate jobs from other locations to the site being assisted with CDBG funds. Prior to a decision to provide CDBG assistance to a business that has a plant, location, or facility in other LMAs, the recipient shall document whether the number of jobs relocated by the business at each of the locations that are losing jobs to the new facility would constitute a significant job loss as defined in this rule. If the recipient decides to commit CDBG assistance to a business, then it must require and obtain, as a condition for assistance, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule. The business must provide this certification to the recipient as a part of the agreement committing CDBG assistance to the business. Further, the agreement must provide that, in the event the CDBG assistance results in a business relocation subject to this interim rule, the business will reimburse the CDBG recipient for any assistance provided to, or expended on behalf of, the business.

The purpose of this certification is to prohibit businesses, especially those with similar facilities/operations in other LMAs, from using CDBG assistance to establish a new facility with the intent of subsequently relocating existing operations to the new facility within a three-year period (or the length of time for creating jobs in the agreement between the business and the recipient if it is longer than three years) from the date of the certification. If the business plans to relocate jobs, then it would be required to certify as to the number of jobs at the current facility that would be lost, and the number of those positions that would be relocated once the CDBG-assisted facility was fully operational. If the number of jobs to be relocated exceeds the threshold for significant job loss, CDBG assistance cannot be provided.

States are required to define and certify their LMAs and retain records to substantiate such areas prior to any business relocation that is impacted by this rule. It should be noted that metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. In those situations where a particular state decides not to define its LMAs in non-metropolitan areas, then the area(s) defined by the U.S. Department of Labor for that particular non-metropolitan area shall be used.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The current OMB control number for the CDBG Entitlement program is 2506–0077. The current OMB control number for the State CDBG program is 2506–0085. These information collection numbers will be revised to include the information collection requirements contained in this interim rule.

The burden of the information collections in this interim rule is estimated below:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 570.200(e) and § 570.506(c) (Maintenance of Required Documentation):				
Local	337	1	.333	112
§ 570.210(c) (Statement):				
Local	337	1	2	674
§ 570.482(h)(3) (Statement):				
Local	50	1	2	100

Total Local Reporting and Recordkeeping Burden (Hours): 886.

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

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

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

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

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

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must be received within 60 days from the date of this interim rule. Comments must refer to the interim rule by name and docket number (FR–4556) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Fax number: (202) 395–6974 (this is not a toll-free number.)

and

Shelia Jones, Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410–7000.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage and is applicable to this interim rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. HUD did not receive any comments on this issue in its October 24, 2000, proposed rule. HUD is again soliciting alternatives for compliance from small entities as to how these small entities might comply in a way that is less burdensome to them. The *de minimis* threshold (25 jobs) for applicability of this rule will, by itself, minimize any burden on small businesses. Therefore, the undersigned certifies that this interim rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described by this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This interim rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket by calling the Regulations Division at (202)

708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers for the programs covered by this interim rule are as follows:

—Community Development Block Grant entitlement program—14.218;

—State CDBG program—14.228;

—HUD Small Cities CDBG program—14.219;

—Economic Development Initiative and Brownfields Economic Development Initiative programs—14.246;

—Section 108 Loan Guarantee program—14.248; and

—Insular Areas—14.225.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 2. Revise § 570.200(e) to read as follows:

§ 570.200 General policies.

* * * * *

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

* * * * *

■ 3. Add § 570.210 to read as follows:

§ 570.210 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* CDBG funds may not be used to directly assist a business, including a 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.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of CDBG funds for activities pursuant to:

(i) § 570.203(b); or

(ii) §§ 570.201(a)—(d), 570.201(l), 570.203(a), or § 570.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to § 570.204, a Community Based Development Organization (CDBO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the BLS. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, an LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business; or the time period within which jobs are to be created as specified by the agreement between the business and the recipient if it is longer than three years.

(c) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or a CDBO (in the case of an activity carried out pursuant to § 570.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA;

(2) *Required information.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(3) *Reimbursement of assistance.* The agreement shall provide for reimbursement of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601–4655);

(2) *Microenterprises.* Assistance to microenterprises as defined by Section 102(a)(22) of the Housing and

Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

■ 4. Add § 570.482(h) to read as follows:

§ 570.482 Eligible activities.

* * * * *

(h) *Prohibition on use of assistance for employment relocation activities.* (1) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (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.

(2) *Definitions.* The following definitions apply to the section:

(i) *Directly assist.* Directly assist means the provision of CDBG funds to a business pursuant to section 105(a)(15) or (17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq*). Direct assistance also includes assistance under section 105(a)(1), (2), (4), (7), and (14) of the Housing and Community Development Act of 1974, when the state's grantee, subrecipient, or nonprofit entity eligible under section 105(a)(15) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(ii) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the U.S. Bureau of Labor Statistics (BLS). An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the assisted business is currently located and from which current jobs may be lost. For non-metropolitan areas, a LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the Insular Areas, each jurisdiction will be considered to be an LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(iii) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(iv) *Significant loss of jobs.* (A) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(B) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years from the date the assistance is provided to the business or the time period within which jobs are to be created as specified by the agreement among the business, the recipient, and the state (as applicable) if it is longer than three years.

(3) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or (in the case of any activity carried out pursuant to 105(a)(15)) nonprofit entity shall sign a written agreement with the assisted business. The written agreement shall include:

(i) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another and, if so, the number of jobs that will be relocated from each LMA;

(ii) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(iii) *Reimbursement of assistance.* The agreement shall provide for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(4) *Assistance not covered by this paragraph.* This paragraph does not apply to:

(i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970 (URA), (42 U.S.C. 4601–4655); optional relocation assistance under section 105(a)(11), as implemented at 570.606(d);

(ii) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(iii) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

■ 5. Revise § 570.506(c) to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

* * * * *

Dated: November 30, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 05–24428 Filed 12–22–05; 8:45 am]

BILLING CODE 4210–29–P