

PUBLIC BENEFIT STANDARDS

Introduction

The CDBG authorizing statute requires that activities qualifying under particular categories of eligibility must meet standards of Public Benefit established by HUD in regulations. Specifically, it requires that an activity carried out under the category of economic development or one which could be carried out under that category but is instead carried out under the category of community economic development must meet the standards of Public Benefit set forth in 24 CFR 570.482(f). By regulation, HUD has also included under this requirement, under certain circumstances, a public improvement activity that qualifies under the L/M Income Jobs subcategory of the L/M Income Benefit national objective. (The situation in which such a Jobs activity must meet Public Benefit standards is described in Chapter 3, Meeting a National Objective, under the discussion of the L/M Income Jobs criteria.)

Background

It should be noted from the outset that the Public Benefit requirement has, in effect, taken the place of the previously required “appropriate” determination for CDBG financial assistance to a for-profit business. While public benefit had long been required to be considered, the “appropriate” determination previously focused on financial underwriting of the assistance. Statutory changes were made that had the effect of removing this focus and replacing it with one of ensuring that the amount of public benefit to be derived from this type of activity (and some others as well) will be appropriate given the amount of CDBG assistance being provided to the activity. This statutory change required HUD to publish guidelines for performing a financial analysis of these economic development activities, but it also specifies that HUD may not find an activity ineligible for failure to meet them. HUD has published these underwriting guidelines as an appendix to the regulations in an attempt to make it clear that they are not required to be used.

Despite the fact that the HUD-published underwriting guidelines are not mandatory, a grant recipient is still expected to perform a due diligence assessment of any assistance it provides to a for-profit business as a means of ensuring that public funds are not wasted and that the expected economic benefit will flow from the project and help to meet a CDBG national objective.

As required by the statute, HUD has also established standards for Public Benefit and they are contained in the regulations at 24 CFR 570.482(f). Unlike the underwriting guidelines, the Public Benefit guidelines (or standards) are *required* to be used for the activities mentioned in the introductory paragraph to this appendix.

It should be noted that the requirement for meeting the Public Benefit standards is a basic eligibility issue and should not be confused with the requirements concerning meeting a national objective. This caveat is provided in recognition of the fact that the same factors (jobs and area served) are involved in the criteria for both requirements. While the same factors come into play, they are used differently. For example, for Public Benefit purposes, compliance involves the *total number* of jobs created or retained without regard to how many (if any) benefit L/M income persons. In contrast, the use of jobs for meeting a national objective is determined by the *percentage* of the created or retained jobs that benefit L/M income persons, and only incidentally involves the total number of such jobs. The determination of compliance with the L/M Income Jobs national objective is based on the jobs that are *actually* created or retained and who actually benefits from those jobs. The focus for determining compliance for Public Benefit purposes lies in the number of jobs *expected to be* created or retained.

Similarly, for the area benefit factor, compliance with national objectives is based on the *percentage* of L/M income residents served, while public benefit is determined based on the *number* of L/M income persons served.

It should also be noted an that activity that is subject to the Public Benefit standards does not have to use the same factor for meeting that standard as it does for meeting national objective requirements. For example, assistance to a grocery store serving a L/M income neighborhood that also retains some jobs may qualify as meeting the national objective based on the area served while the grant recipient may choose to qualify it under the Public Benefit standards based on the retained jobs.

The fact that an activity qualifies for national objective purposes under one of the Slum/Blight subcategories or even under the Urgent Need category does not affect its need to separately meet the Public Benefit standards.

The Standards

In developing the Public Benefit standards, HUD attempted to make them unambiguous, reasonable, and fitting within the context of the rest of the program. Accordingly, while there are many aspects that could be considered to constitute a Public Benefit resulting from these activities, only two have been adopted for the standards: jobs and the provision of goods or services.

As formulated, the Public Benefit standards are to be applied to the activities funded under the relevant categories both on an *individual activity* basis and on all such *activities in the aggregate*. Thus, the standards fall into those two basic categories, each of which is described below:

Individual Activity Standards:

The following individual activity standards apply to any activity subject to these standards:

- ❖ For an activity that creates or retains jobs, the use of CDBG funds cannot exceed *\$50,000 per full-time equivalent job* or
- ❖ For an activity that provides goods or services to residents of an area, the amount of CDBG funds provided for the activity cannot exceed *\$1,000 per L/M person served*.

The effect of these dollar limits is that, if an activity could both create or retain jobs AND provide goods or services to persons, it must fail *both* dollar standards to be precluded on the basis of these individual activity standards (and thus ineligible to be carried out using CDBG funds).

HUD also determined that there are certain kinds of economic development activities that by their nature *fail* to provide sufficient public benefit. They are:

- ❖ An activity in which the grant recipient promotes the community as a whole (as opposed to promotion of specific areas and programs);
- ❖ Assistance to a professional sports team;
- ❖ Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to be derived by users or members clearly outweighs the employment or other benefits to L/M income persons;

- ❖ Acquisition of land for which the specific proposed use has not yet been identified; and
- ❖ Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided to the business.

Therefore, any activity subject to the Public Benefit standards that falls into any of the above descriptions *may not be assisted with CDBG funds* regardless of any other aspect of the activity.

Aggregate Standards:

Activities that are subject to the Public Benefit standards and pass the individual activity tests outlined above also must generally, in the aggregate, either:

- ❖ Create or retain at least *one full-time equivalent, permanent job per \$35,000* of CDBG funds used for all such activities or
- ❖ Provide goods or services to residents of an area, such that the number of L/M income persons residing in the area served by the assisted businesses amounts to at least *one L/M income person per \$350* of CDBG funds used for all such activities.

As with the individual standards, if the activity can both create or retain jobs AND provide goods or services to residents of an area, the grant recipient may elect to apply either of the above aggregate standards to the activity. However, only *one* standard shall be used for each such activity. That is, if the grant recipient elects to use the area standard, any jobs created or retained by the activity are not to be counted for purposes of applying that aggregate standard.

Applying the Aggregate Standard:

In applying the aggregate standard, grant recipients are to aggregate the dollars and resultant jobs or L/M income persons served (as applicable) based on the following:

A state shall apply the aggregate standards to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year. (24 CFR 570.482(f)(3))

Excludable Activities:

Certain activities that would otherwise be subject to the aggregate Public Benefit standards may be excluded from the aggregate calculations under the authority of 24 CFR 570.482(f)(3)(v). Such activities are those that have been determined by HUD to serve important national interests. The activities must still pass the individual activity tests. Activities that qualify for this optional exclusion from the aggregate calculations are those that:

- ❖ Provide jobs exclusively for unemployed persons or participants in one or more of the following programs:
 - ✓ JTPA,
 - ✓ JOBS, or
 - ✓ AFDC.
- ❖ Provide jobs predominantly for residents of Public and Indian Housing units;
- ❖ Provide jobs predominantly for homeless persons;
- ❖ Provide jobs predominantly for low-skilled, L/M income persons, where the business agrees to provide clear opportunities for promotion and economic advancement to such persons who are hired, such as through provision of training;
- ❖ Provide jobs predominantly for persons residing within a census tract (or BNA) that has at least 20 percent of its residents who are in poverty;
- ❖ Provide assistance to business(es) that operate(s) within a census tract (or BNA) that has at least 20 percent of its residents who are in poverty;
- ❖ Stabilize or revitalize a neighborhood that has at least 70 percent of its residents who are L/M income persons;
- ❖ Provide assistance to a CDFI that serves an area that is

predominantly L/M income persons;

- ❖ Provide assistance to a community development organization serving a neighborhood that has at least 70 percent of its residents who are L/M income persons;
- ❖ Provide employment opportunities that are an integral component of a project designed to promote spatial deconcentration of L/M income and minority persons;
- ❖ With prior HUD approval, provide substantial benefit to L/M income persons through other innovative approaches;
- ❖ Provide services to the residents of an area pursuant to a Community Revitalization Strategy approved by HUD (see Appendix E, Community Revitalization Strategy Areas); or
- ❖ Create or retain jobs through businesses assisted in an area pursuant to a Community Revitalization Strategy approved by HUD (see Appendix E, Community Revitalization Strategy Areas).

Note that the above-listed activity types may be excluded *at the grant recipient's option*. This means, of course, that they do not have to be excluded. While a grant recipient might choose to exclude such activities in order to minimize the record-keeping requirements of complying with the aggregate Public Benefit standards, there is at least one good reason why the grant recipient would want to have one or more of them included. That reason is that the public benefit (jobs or goods/services per dollar) might be such that the grant recipient would want to include the activity in order to make the overall aggregate calculation more favorable. For example, if the grant recipient runs its economic development program in a way that stays very close to the aggregate standard (for example, \$35,000 per job), it may want to include an activity that provides jobs at a much lower CDBG cost per job, even if that activity falls into one of the above-described categories and the grant recipient had the option of excluding it.

General Ground Rules:

Both the individual and aggregate standards are to be applied based on the number of jobs to be created or retained or to the number of persons residing in the area served (as applicable), as determined at the time the funds are obligated to the activities. This is because there is always the possibility that an economic development activity might not proceed as planned, and for the purpose of this particular requirement, a grant recipient should generally only be held to the conditions that prevailed at the time it provided the assistance. Nevertheless, grant recipients are

required to keep records that show how it performed against the Public Benefit standards based on actual jobs and L/M income persons served. Where the actual results attained by a grant recipient consistently fall substantially below what it expected, the grant recipient is expected to make adjustments in how it conducts its front end assessments for complying with the Public Benefit standards for future activities, and HUD may require that the grant recipient meet more stringent standards in the future, as appropriate.

Where the CDBG assistance for an activity is limited to job training and placement and/or other employment support services under HCDA Section 105(a)(17), the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying both the individual and aggregate standards.

Tips

Although the aggregate standards may sound very difficult to keep track of, one way to minimize additional record-keeping burdens is for a state to operate its CDBG economic development program in a way which ensures that no assistance will be provided for an *individual* activity that exceeds the *aggregate* standard. For example, while the individual standard based on jobs created/retained is \$50,000 per job, if the state makes sure that no individual activity is funded that would exceed \$35,000 per job (which is the aggregate standard), the result becomes an amount of assistance that does not exceed \$35,000 per job in the aggregate. Since studies on the use of CDBG for economic development in the past have indicated that the average assistance per job created or retained is, on average, less than \$10,000 per job, it seems likely that few states would have difficulty operating their activities based on an individual activity limitation of \$35,000, which would ensure their compliance with the aggregate standard without any additional record-keeping.