




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

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OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MEMORANDUM FOR: All CDBG Grantees
All CPD Field Office Directors

FROM: 
Manuel T. Ochoa, Deputy Assistant Secretary for Grant Programs,
DG

SUBJECT: Reminder of the Prohibition on Use of Community Development
Block Grant Assistance for Job-Pirating Activities

The Government Accountability Office (GAO) issued a report in September of 2007 entitled "Formal Monitoring Approaches Needed to Help Ensure Compliance with Restriction on Funding Employer Relocations." This report can be reviewed by visiting the following website: <http://www.gao.gov/new.items/d071005.pdf>. The report recommended that HUD develop and implement formal and structured approaches for federal reviewers to follow when monitoring for compliance activities related to jobs being relocated from one labor market to another. This memorandum provides guidance that will assist CDBG grantees in properly documenting their economic development activities so they are consistent with the regulatory requirements. In addition, the guidance will assist the CPD field staff responsible for reviewing the documentation and confirming grantees' compliance with the anti-pirating regulation.

Section 588 of Public Law 105-276 added a new provision to section 105 of the Housing and Community Development Act of 1974, as amended (the Act). This new provision, section 105(h), prohibits the use of Community Development Block Grant (CDBG) funds "to assist directly 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 (LMA) from which the relocation occurs." CPD published a final rule dated May 24, 2006 which codified the anti-pirating provisions at 24 CFR 570.210 for entitlement communities and 570.482(f) for states.

The first issue is to determine whether the anti-pirating provisions apply to economic development activities and particularly those involving the relocation of jobs. A number of factors should be taken into consideration. These factors include the labor market area where the company is currently located, and the projected number of jobs that will be lost once the company vacates its current labor market and relocates to another.

A labor market is an area defined by the Bureau of Labor Statistics (BLS) as an economically integrated area within which individuals can live and find employment within a reasonable distance or can readily change jobs without changing their place of residence. The BLS maintains a website that specifically defines labor market areas nationwide: <http://www.bls.gov/lau/lmadir.pdf>

CDBG Entitlement grantees must use the BLS labor market determination when defining the labor market area of the company's location. However, state grantees have the option of using BLS definitions or can determine the labor market areas in the state based upon employee commuting indicators or other employee data. For instance, if the state has knowledge of a particular area where a company is located that is drawing workers from a 100 mile radius, it could redraw the boundaries for this area which could differ from the commuting distance indicators BLS may use when determining the labor market for the same area. States are expected to retain supporting documentation for defining an LMA when it differs from BLS and these designations should be updated annually. It should be noted that the only change states may make to the BLS definition of LMAs is combining two or more LMAs in non-entitlement areas.

A second issue is to determine whether any loss of employment is significant so that a determination can be made if the regulation applies. The regulation sets parameters for a company's relocation from one LMA to another, and whether the number of jobs being lost will trigger the anti-pirating provisions. The loss of 25 jobs or less from the LMA where the company is currently located, for example, does not trigger the anti-pirating regulation and is not viewed as significant loss of employment. However, a loss of 500 jobs or more is considered significant and would automatically invoke the anti-pirating provisions. Furthermore, job losses ranging from over 25 – 500 jobs must be less than 0.1 percent of the total jobs in the LMA that is losing jobs. If the job loss is less than 0.1 percent, the anti-pirating regulation would not be triggered. Involuntary relocations, which means those businesses forced to relocate as a result of some government action covered under the Uniform Relocation Act (URA), are excluded from the anti-pirating regulation. It is noted that job relocation within the same LMA is not subject to the anti-pirating regulation.

CDBG funds cannot be used to directly assist a for profit businesses under section 105(a)(17) of the Act (or pursuant to 105(a)(15) or other forms of direct assistance as mentioned in 24 CFR 570.210(b)(1)(i) and (ii) or 570.482 (h)(2)(i)), if those funds are used to assist a business and the business' relocation results in a significant loss of employment. It is important to keep in mind that the regulation would not apply if the business started a new operation and that operation is totally unrelated to the current business, and the new business will operate in a new LMA. An example of this would be a company in the food service business that decided to diversify and open a new plant in a different LMA to manufacture computer circuit boards. Currently the anti-pirating regulation does not apply to non-profits, but CPD has the authority to revisit this issue if it appears that non-profits are engaging in the pirating of jobs.

Before assisting any business with CDBG funds, the regulations require any recipient to sign an agreement with the assisted business. The written agreement consists of: 1) a statement from the business indicating whether the assistance 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) a certification (if the assistance will not result in a relocation covered by this section) from the 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; and, 3) a provision for reimbursement should the assistance provided result in a relocation prohibited by the regulation.

It should be noted that time limits have also been established for those businesses that are relocating; it is expected that all the jobs targeted for transfer should be in place at the new location within three years. If delays are anticipated, the rule allows for the recipient and the business to work out an agreement to extend the time beyond three years and the provisions of the rule would still apply for the duration of the agreement.

In summary, if CDBG funds are being used to assist a business to relocate from one labor market to another, three key factors must be considered when trying to decide whether the regulation applies. The factors to be considered are: 1) the labor market area of the business that is contemplating relocating; 2) the number of jobs involved in the transfer; and, 3) the determination of whether the loss is deemed significant to the LMA that is losing the business. It should be noted that the anti-pirating rule only applies to businesses in the United States.

Questions arising from CDBG grantees should be directed to your local CPD Field Office. Field Offices should direct their questions to either the Entitlement Communities or the State and Small Cities Division at 202-708-1577 or 202-708-1322 respectively.