

# Chapter 11: Economic Development

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## Introduction

This chapter provides information and requirements governing the use of KCDBG funds for economic development activities. It specifically discusses the eligible activities and national objective documentation, legal agreements, and public benefit standards mandated for economic development projects. It also briefly addresses the other types of implementation requirements that may accompany an economic development project.

## Section 11-A. Eligible Activities and National Objectives

Economic development projects involve activities that are designed to create new jobs, retain existing employment opportunities, stimulate private investment, and revitalize or facilitate the growth and diversification of the local economy. In DLG's economic development program, there are three emphases:

42 U.S.C. 5305(a)  
and 24 CFR 570.482

- ✓ Working with small commercial businesses with less than 5 employees with technical assistance and financial support to grow a locally based economy in a new fashion;
- ✓ Expanding employment opportunities for persons from low- and moderate-income families through assistance to industrial or commercial clients by creating and/or retaining jobs; and
- ✓ Benefiting low- and moderate-income families through other means such as job training and support services.

## Eligible Activities

The CDBG statute and regulations recognize five key ways that economic development may be undertaken:

- ✓ **Special economic development undertaken by/for public and nonprofit entities.** These are economic development projects undertaken by nonprofit entities and grantees (public entities). These activities are typically funded under DLG's Traditional Economic Development Program. DLG's Non-Traditional Economic Development Program may provide funds for related support services such as job training, childcare, peer support, counseling, and transportation.
- ✓ **Economic development undertaken by neighborhood-based and other nonprofit organizations.** These are activities designed to assist in neighborhood revitalization or community economic development and are carried out by certain types of organizations. These activities are funded under DLG's Traditional and Non-Traditional Economic Development Programs. The types of organizations eligible to carry out activities under this part include the following:
  - Neighborhood-based nonprofit organizations;
  - Local development corporations;
  - Nonprofit organizations serving the development needs of non-entitlement areas (e.g., development districts); and
  - Entities organized under section 301(d) of the Small Business Investment Act of 1958.

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In addition to the requirement that the organization be eligible as one of the organizational types listed above, the entity must be carrying out neighborhood revitalization or community economic development projects.

- ✓ **Special economic development undertaken by for-profit entities.** These are economic development projects undertaken by for-profit entities. These activities are typically funded under DLG's Traditional Economic Development Program.

All of the activities above are subject to requirements related to the public benefit test generated due to the expenditure of KCDBG funds. See Section B of this chapter for a further discussion of these requirements.

Additional economic development activities that are also eligible under the KCDBG program include:

- ✓ **Microenterprise development.** These are activities designed to foster the development, support, and expansion of microenterprise businesses. A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise. 24 CFR Part 570.482(c)
  - Eligible microenterprise activities include the provision of:
    - One-on-one and classroom technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
    - General support to owners of microenterprises and persons developing microenterprises;
    - Training and technical assistance or other support services to increase the capacity of grantees or subrecipients to carry out microenterprise activities using performance based measures; and
    - Loans and other assistance to persons owning or developing a microenterprise. A “person developing a microenterprise” refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business, which will be a microenterprise at the time it is formed.
- ✓ **Public facilities.** These are public works activities, typically infrastructure that support economic development endeavors. These activities involve the acquisition, construction, reconstruction, or installation (including design features and improvements that promote energy efficiency) of public works or facilities (except for buildings for the general conduct of government), and site or other improvements.

## Ineligible Activities

In 2006, HUD published a final rule on the prohibition of using CDBG funds for “job pirating” activities—activities in which a community offers CDBG assistance to businesses to move existing operations from another community to its own.

The prohibition applies to projects that involve the following:

- ✓ The funding will assist in the relocation of a plant, a facility or operation; and
- ✓ The relocation is likely to result in a significant loss of jobs (anything more than 500 jobs or .1 percent job loss to a local area between 25-500 jobs) in the area from which relocation occurs.

Any recipient of CDBG funds used to relocate a business must sign a written agreement including: a statement of intent of relocating from one labor market area to another and the number of jobs that

will be relocated to each labor market area; a certification from the business that none of the relocations will result in a significant job loss; and a provision for reimbursement should the provided assistance result in a relocation prohibited by the regulation. Furthermore, all jobs targeted for transfer should be in place at the new location within three years.

This prohibition does not apply to assisting a business that starts a new operation in a new location that is unrelated to current operations and then later reduces operations. This prohibition also does not affect non-profits that do business assistance. Activities that involve the Uniform Relocation Assistance and Real Property Acquisition Act (URA) or assistance to microenterprises are also exempt from this rule. Finally, the prohibition does not apply to businesses that purchase property or equipment in one area and then move to another location.

Grantees should consult with DLG to ensure that “job pirating” activities are not funded with CDBG.

### Meeting a National Objective

As discussed in Chapter 1: Project Administration, projects must not only be eligible under the CDBG rules, but they must also meet a national objective. DLG makes initial determinations regarding eligibility and national objective compliance at the time grant applications are reviewed; however, grantees with approved projects must maintain documentation to show that the national objective requirements were actually met by the completion of each project.

[Chapter 1: Project Administration](#)

There are three national objectives with the primary one being benefit to low- and moderate-income persons (LMI). Within the LMI national objective, there are four categories and the one typically used for economic development projects is job creation and retention. Other LMI options that could be used are discussed at the end of this section.

[42 U.S.C. 5305\(c\)\(1\)](#)

#### **LMI Job Creation/Retention**

A job creation/retention activity is one that creates or retains permanent jobs, of which 51 percent or more are held by persons from low- and moderate-income families.

[24 CFR 570.483\(b\)\(4\)](#)

- ✓ For job creation activities, the grantee and the assisted business(es) must document that permanent jobs have been *created*, and that at least 51 percent of the jobs, computed on a full-time equivalent (FTE) basis, involve the employment of low- and moderate-income persons.
- ✓ In order to consider jobs *retained* as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, “clear and objective” evidence that jobs will be lost would include:
  - Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, and/or
  - Analysis of relevant financial records convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.
- ✓ Further, to meet the LMI jobs national objective, 51 percent or more of the retained jobs must either:
  - Be known to be held by LMI persons at the time CDBG assistance is provided, and/or

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- The job can reasonably be expected to turn over within the following two years and that it will be filled by an LMI person upon turnover.

In addition, job creation and retention activities trigger the Community Planning and Development (CPD) Outcome Performance Measurement System. Specifically, additional data collection and reporting is required regarding the job classifications, the number of jobs with health care benefits and, for job creation only, the number of persons served who were formerly unemployed immediately prior to holding the job.

A prior written commitment to hire or retain LMI persons must be on file for each assisted business. The business must also provide a hiring plan that details the number of jobs to be created/retained, the number of jobs held or to be filled by LMI persons, a description of the job, any special skills or training required and the timetable for hiring. The plan must indicate who will be responsible for hiring, collecting required data, and training to be provided.

As a general rule, each assisted business shall be considered individually for purposes of determining if at least 51 percent of the jobs created or retained will be for LMI persons. However, when CDBG funds are used to acquire, develop or improve real property (e.g., an industrial park), the 51 percent requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property as a direct result of the CDBG assistance.

When counting jobs, the following policies apply:

- ✓ Part-time jobs must be converted to full-time equivalents (calculated on the basis of 2,000 hours per year).
- ✓ Only permanent jobs may be counted.
- ✓ Transferred jobs (those that involve one employee moving from one location to another) may not be counted.
- ✓ Seasonal jobs may be counted only if the season is long enough for the job to be considered the employee's principal occupation.
- ✓ Jobs indirectly created or retained by an assisted activity may not be counted.

**Tip:** The documentation required for demonstrating compliance with the job creation/retention national objective is different for jobs/businesses located in areas meeting certain poverty levels and for employees living in those areas. Contact DLG or review the Guide to National Objectives and Eligible Activities for State CDBG Programs for more information.

Guide to National Objectives and Eligible Activities for State CDBG Programs  
<https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>

The grantee is required to monitor the progress of the assisted business in fulfilling the hiring and LMI job requirements. The business should maintain employee surveys and Equal Employment Opportunity (EEO) information, along with payrolls or employee lists from each phase in a business's hiring plan, to document compliance with KCDBG requirements. It is recommended that these records be maintained separately from a business's individual personnel records and reported to the grantee on a regular basis.

The business must continue to collect income verifications and other required information for all applicants and employees until they reach the number of jobs promised in the hiring plan and the jobs are monitored or verified by DLG. The form to collect and document this information is provided as Attachment 11-1. When all jobs have been created or retained, DLG may monitor the hiring and LMI job documentation at the business. The business must maintain KCDBG records for a period of five years after the recipient's final grant close-out has been completed.

Attachment 11-1:  
Employee Survey Form  
Attachment 11-2: Employee  
Characteristics Summarization

### **Other LMI Options**

Another national objective used for economic development is low- and moderate-income area benefit. This national objective may be used when the activity will benefit a LMI area. For example, if the grantee is funding a grocery store in a neighborhood that is at least 51 percent LMI, that project may qualify under the area benefit national objective. If this national objective is used, the grantee must document the service area of business and then demonstrate through Census or survey data that at least 51 percent of the residents are LMI.

Microenterprise activities may be undertaken under the low-and moderate-income limited clientele national objective only if the owner of the business is LMI (i.e., has income at or below 80 percent of the area median income). In these cases, the grantee must document the income of the business owner. (The business employees may be non-LMI.)

Some Non-Traditional Economic Development projects support LMI workers with job training and placement or other support services such as peer support, counseling, childcare, and transportation. This could also include public/service facilities in support of economic development activities. This type of project may qualify under the low- and moderate-income limited clientele national objective. To meet this national objective, generally, at least 51 percent of the persons benefiting from the activity must be low- and moderate-income. For additional ways to meet the LMI limited clientele national objective, contact DLG.

Finally, economic development projects may occasionally be undertaken under the slum and blight national objective. Use of this national objective is limited and will be reviewed by DLG on a case-by-case basis.

## **Section 11-B. Agreements, Loan/Lease Documents, Security Requirements and Closings**

### **Legally Binding Agreements**

Economic development projects must involve a Legally Binding Agreement to further detail the minimum requirements of each respective party involved in the project. A sample agreement is provided as Attachment 11-3.

Attachment 11-3:  
Sample Legally Binding Agreement

In some instances, the grantee may be passing the grant through a third party entity such as a subrecipient or a Local Development Authority (LDA). In those projects, an agreement must also be entered into with the third party entity. A tri-party agreement can be used in those instances among the grantee, the company or participating party, and the third party. A subrecipient or LDA is a nonprofit or public entity (other than the grantee) that is selected to play one or more roles in the project.

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The grantee has some latitude in negotiating the best arrangement possible with the subrecipient or LDA and the assisted business provided they are within the confines of the grant agreement. The grantee must also develop specific procedures and requirements necessary to guarantee its security.

There are basically three requirements of a Legally Binding Agreement. It must set forth:

- ✓ Basic activities as established in Exhibits A, B and C of the grant agreement;
- ✓ Provisions required in Section 7 of the grant agreement and any other applicable provisions; and
- ✓ A statement that the agreement is contingent upon release of funds thereby avoiding any environmental review concerns.

When entering into an agreement with a business, a resolution establishing the authority of person(s) to enter into the legally binding agreement on behalf of the business must be attached to the agreement. A sample resolution is provided in Attachment 11-4.

Attachment 11-4:  
Sample Resolution of Authority

The opinion of the grantee's legal counsel must accompany all legal documents. The certification to be used for this purpose is provided as Attachment 11-5. The grantee's legal counsel opinions may be combined into one document but must be clearly applicable to all legal documents. At a minimum, legal counsel must certify the authority of each party to sign, state that the document constitutes a valid and legally enforceable contract under the laws of the Commonwealth, and indicate that all documents are in conformance with the grant agreement.

Attachment 11-5:  
Sample Certification of  
Legally Binding Agreements  
and Loan/Lease Documents

## Loan/Lease Documents

The Legally Binding Agreement does not incorporate a loan/lease agreement that provides the financial terms of a project and any other special conditions. Therefore, loans/leases must be executed by separate agreement and must be submitted to DLG as part of the evidentiary materials at the grant agreement stage of the process.

Loan/lease documents must contain:

- ✓ Rate and term of loan/lease;
- ✓ Payment terms, default provisions;
- ✓ Any special conditions attached to the loan/leases;
- ✓ Any other provisions deemed appropriate by legal counsel; and
- ✓ A call provision allowing collection of CDBG funds for failure to meet job projections.

Grantees should be aware that there are several different types of leases. An operating lease is a traditional lease whereby the party leasing the property (lessee) from the owner of the property (lessor) pays the lessor a fee for use of the property. A capital lease allows the lessee to record the property as an asset because of certain conditions of the lease (e.g., ownership of the property will transfer to the lessee at the end of the lease term). A lease-purchase agreement is a lease agreement for the lease, use, and ultimate purchase of industrial equipment by the lessee with CDBG funds. The payment of the CDBG

funds will go to the lessor. A sample lease-purchase agreement is provided as Attachment 11-6 to this chapter.

As stated previously, the opinion of the grantee's legal counsel must accompany all legal documents (use Attachment 11-5). In addition, loan/lease documents must be filed with the county clerk.

Attachment 11-6:  
Sample Lease-Purchase  
Agreement

Attachment 11-5:  
Certification of Legally Binding  
Agreements

## Security

Security for the loan is a very serious matter that can cause numerous problems if not done properly. An important consideration is that the loan be secured as soundly as possible and that the repayment schedule and payment procedures are understood clearly by both the debtor and the grantee. The bank or attorney should be able to produce a repayment (amortization) schedule with principle and interest clearly delineated. Grantees should follow the grant agreement in terms of monthly and annual repayment requirements.

The security documents must describe property to be mortgaged or offered for lien in as much detail as available and clearly identify the position for which security is offered.

- ✓ Mortgages against real property must contain, at a minimum:
  - A legal description of the property,
  - Certification of ownership, and
  - Identification of any claims against the property.
- ✓ Equipment liens must contain the same information as mortgages except that the legal description is to include the make, model number, and serial number of each item of equipment being used as security.

**Security agreements must be filed with the county clerk and other appropriate local or state agencies.**

## Loan Closings

If the economic development project involves a loan to a business, a loan closing must be held to execute the required documents. At loan closing, promissory notes, loan agreements, mortgages, or other appropriate documents must be signed. Signed security documents must be immediately recorded unless specific collateral cannot be identified by serial number or model number (such as equipment not yet delivered). In such instances, alternate security must be approved by DLG prior to the draw of funds.

Documents must be prepared by an attorney and be accompanied by certification containing at a minimum, the following information:

- ✓ Real Property Transfer
  - Title indicating the property is free and clear for transfer as offered;
  - Any deed limitations, covenants, or restrictions applicable to the property;
- ✓ Security Documents
  - Certification that property records have been researched;



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- Certification that the collateral position(s) required is available; and
  - Certification that the KCDBG loan is not subordinated below the level required by the grant agreement.

DLG must be notified in advance of the grantee’s intent to close a loan. All required evidence and documents must be submitted with the request for payment. At that time, the grantee must declare a tentative closing date. Since Automated Clearing House (ACH) transfers occur on the 15th and 30th of the month, loan closings should be held on these dates or within a five day period after these dates of the month. DLG staff may attend loan closings to verify that documents are signed and filed.

A desk closing can be conducted if all legal documents are signed, filed, and submitted to DLG prior to the release of funds. All security documents must be recorded in the county courthouse to assure proper lien filing. This includes lease documents, especially those that are to be capitalized.

## Section 11-C. Public Benefit

The CDBG Statute and regulations require that activities undertaken under the Traditional Economic Development and Non-Traditional Economic Development

Programs have a financial analysis conducted in accordance with HUD and DLG guidelines to determine the feasibility and viability of the project and parties involved. Information would be submitted as a part of the application package and will be reviewed by DLG.

42 U.S.C. 5305(a)(14)–(17)  
and 570.482(e) and (f)

**Tip:** Applicants should not negotiate the final loan terms with the third party for-profit business. Consult with DLG before negotiating. Any pre-negotiated terms are subject to change by DLG.

There are two types of requirements related to public benefit. First, there are requirements related to the ratio and use of public and private funds (underwriting) and second, there are requirements related to the jobs or goods and services benefits of the KCDBG-funded activity. Each of these is described below.

### Ratio and Use of Public and Private Funds

The Federal CDBG regulations contain Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. These guidelines are designed to assist grantees in underwriting economic development projects and in determining which projects are financially viable and will result in the most efficient use of CDBG funds.

The use of the guidelines provided as an appendix to the Federal CDBG regulations at 24 CFR Part 570 is required. In other words, grantees must use either the guidelines provided in the regulations or an equivalent set of guidelines.

24 U.S.C 570 Appendix A—  
Guidelines and Objectives for  
Evaluating Project Costs and  
Financial Requirements.

There are several underwriting criteria that grantees should follow. Each of these criteria is discussed below.

### *Leverage and Use of KCDBG Funds*

Under the KCDBG Program, the impact of CDBG must be maximized and the use of the KCDBG funds must be reasonable. In general, the grantee should clearly establish that there is a need for the investment of public resources.



DLG requires that to demonstrate the need to use KCDBG funds, the grantee must show that all other public and private sources of funds have been reviewed and applied to the project (as feasible). Typically, projects that are eligible for KCDBG funding have a financing gap once all other sources are analyzed.

A financing gap is determined as follows:

- ✓ **Step 1:** Determine the budget.
- ✓ **Step 2:** Calculate the amount of debt the project can support.
- ✓ **Step 3:** Compute the amount of equity the project can generate or the owner has available.

If the budget is greater than/equal to the sum of debt plus equity, then there is a financing gap. If the budget is less than the sum of debt plus equity, there is no financing gap and, therefore, no need for public investment.

### ***Funding Commitments***

Before KCDBG funds are disbursed, ensure that all debt and equity are firmly committed to the project.

All other sources of funds do not have to be in place prior to application. However, the authorization of a KCDBG grant or loan may be made contingent upon conventional financing.

DLG wants to avoid the risk of approving and disbursing funds to finance a portion of the project without sufficient funds from other sources to complete the development.

### ***Reasonable Costs***

All costs under the KCDBG program must be reasonable and must demonstrate the efficient and effective use of funds. DLG will review the project budget to ensure that proposed costs are reasonable. Applicants should review this budget prior to submission of the application.

If the budget is overstated, it would be unwise to devote scarce public resources to the project as this surplus usually ends up as an unintended fee to a developer or entrepreneur.

Conversely, if the budget is understated, the quality of the project may be adversely affected which could also reduce income available for debt service. In extreme cases, the project may go unfinished.

Applicants can control these risks in the following ways:

- ✓ Receive project quotes from independent third parties;
- ✓ Cost certify;
- ✓ Compare subject with cost of comparable projects;
- ✓ Use guaranteed contracts, performance bonds or letters of credit; and
- ✓ Use retainages for contractor's fee, developer's fee or leasing reserve.

### ***Reasonable Return***

The financial benefit the business receives should approximate a market return. Applicants should review the pro-formas and other information submitted by the third-party business and ensure that return is reasonable. DLG will not fund projects where KCDBG funds are subsidizing an excess return to the business.

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Reasonable rates of return will vary by location and project type. Applicants needing guidance on reasonable rates of return are encouraged to contact DLG.

### ***Project Feasibility***

KCDBG will review all economic development applications to ensure that projects appear feasible and are likely to succeed. Applicants should conduct a similar analysis prior to submission of the application.

Once an applicant has established the need for public funds, it must estimate repayment terms. If the terms are too harsh, the survival of the economic development venture is jeopardized. If the terms of repayment are too lenient, the public funds will overly compensate the project. As noted above, financing terms should not be finalized until DLG approves of the project.

### ***KCDBG Funds Disbursed Pro Rata***

As a general rule, KCDBG funds should be disbursed proportional to the percentage of the project they fund. For example, if KCDBG funds are 20 percent of the project, KCDBG funds should not exceed 20 percent of the aggregate proceeds disbursed. One exception might be if funds are allocated to acquisition and the property must be purchased first.

### ***Program Income/Miscellaneous Revenue***

Economic development activities funded by CDBG typically generate repayments. In some cases, repayments of CDBG are considered program income and subject to all CDBG and related requirements. Certain activities by nonprofit development entities that qualify under Section 105(a)(15) of the CDBG statute are exempt from the program income requirements and thus those funds are considered miscellaneous revenue/LDA proceeds. Both types of funds can be placed in a revolving loan fund if the DLG provisions governing such are met. Refer to Chapter 3: Financial Management for more information on the definition and use of program income, including revolving funds.

24 CFR 570.489  
Chapter 3: Financial Management

## **Public Benefit Standards**

When CDBG funds are used for economic development projects under statutory sections 5305(a) (14), (15) and (17), the Federal CDBG rules require the application of specific Public Benefit Standards. The Public Benefit Standards are really a “cost per job” or “cost per goods and services” calculation used to determine if the CDBG financial assistance is appropriate. Use of these standards is mandatory.

The Public Benefit calculation must be done before the economic development activities are undertaken, and is separate from the national objective requirement that 51 percent of the jobs actually created or retained be taken by LMI persons.

The grantee is strongly advised to enter a performance agreement with the business(es) that specifies the hiring commitments and time frames and that holds the business responsible for repayment of any CDBG funds required due to a failure to fulfill CDBG hiring requirements. At its option, DLG may require such a performance agreement as a condition of funding.

There are two types of public benefit standards that the grantee may use. The dollars per job test is available to any economic development project. The goods and services test is available to economic development projects that provide goods and services to a LMI community. When a project both creates jobs and provides goods and services, grantees may document benefit under either option.

### ***Calculating Dollar per Job Public Benefit***

The dollar per job public benefit calculation begins by determining the total number of jobs to be created or retained as a result of the activity for each particular business for which the activity is principally being undertaken. When counting jobs within each applicable business for public benefit purposes, include all jobs to be directly created or retained as a result of each economic development activity.

The total “CDBG cost per job” is then calculated by dividing:

- ✓ The total dollar amount of CDBG funds to be spent for the activity, by
- ✓ The total number of permanent jobs created or retained by the business for which the project is principally being undertaken.

Total number of jobs is based upon full-time equivalents (FTEs). For DLG, full-time is based upon 2,000 hours per year. If a permanent, part-time job is created, the grantee must determine the proportion of an FTE that is created. For example, a half time person is .5 FTEs.

It is DLG’s policy not to allow grantees to expend more KCDBG than \$20,000 per job created or retained.

### ***Public Facilities Projects With Per Job Cost of \$10,000 or Less and Job Tracking***

Sometimes KCDBG funds are used for public facility activities that are designed to create jobs. An example of this might be a water/sewer line constructed for an industrial park.

When the KCDBG cost of the project is \$10,000 or less per job, the public benefit standards are not triggered. If the cost exceeds \$10,000 per job, the standards are triggered. Note that in addition to the public benefit standards, the national objectives are calculated differently depending on whether the project exceeded \$10,000 per job. If this is the case, the grantee is required to complete an assessment plan/restrictive covenant requiring job reporting recorded on properties benefiting from the infrastructure improvement. It must cover any other business for a one-year period.

24 CFR 570.483(b)(4)(vi)(F)

### ***Calculating Goods and Services Public Benefit***

The second option for proving a sufficient public benefit is to show that goods and services are being provided to LMI families in a local service area. Thus, this public benefit option is only provided to those projects where the business will sell goods or services to the public. This generally means that the activity will be retail in nature.

This test is calculated by first determining the number of people living in the service area of the business. The grantee must then determine the portion of those people who are LMI. The grantee then divides the KCDBG expenditure by the total number of LMI people in the service area to obtain an estimate of the KCDBG dollars per LMI person receiving goods or services.

If the KCDBG expenditure per LMI person exceeds \$350 per LMI person, the project is generally deemed to have an insufficient public benefit.

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### ***Documenting Public Benefit***

Public benefit calculations are included as a part of the KCDBG application. However, grantees must maintain files detailing their compliance with these requirements. In general, grantee files should contain:

- ✓ Documentation of the amount of KCDBG funds received;
- ✓ Documentation of the basis for the estimated number of jobs to be created/retained or the number of LMI families in the service area; and
- ✓ Documentation of the calculation showing that the applicable public benefit standard was met.

## **Section 11-D. Applicability of Other Requirements**

Economic development projects funded by DLG are subject to the range of requirements established in the other chapters of this manual. This section briefly highlights how these requirements are applied to economic development activities. For more detail about these requirements, please see the other chapters of this manual.

### ***Project Administration***

In general, all of the requirements explained in Chapter 1: Project Administration apply to economic development. Of particular interest for economic development are the submission requirements prior to release of funds. For these projects, in addition to all standard submission items, grantees must submit:

Chapter 1: Project Administration

- ✓ The legally binding commitments between subrecipients or LDA's, participating parties, and the grantee.
- ✓ Loan or lease agreements (as applicable), including the rate and term of loan or lease, payment terms, default provision, and any special conditions. The documents must contain a call provision should the project fail to meet the job requirements or other grant conditions.
- ✓ Security documents (as applicable), including describing the property to be mortgaged and the lien position.
- ✓ Certification by legal counsel for the above documents, including certifying to the authority of each party to sign, that the contract is legally enforceable, and that the documents are in accord with the grant agreement.
- ✓ Grantee Revolving Fund Guidelines (as applicable).

In addition, HUD's performance measurement data collection requirements apply to economic development projects. Specifically, activities qualifying under the job creation and retention national objective must report jobs by job classifications, such as whether the person filling the job were previously unemployed, and whether the job includes health care benefits. The job classifications are provided as Attachment 11-7 to this chapter.

Attachment 11-7:  
Job Classifications  
for Performance Measurement

### ***Environmental Review***

No KCDBG funds for economic development may be committed or drawn down until the environmental review is completed. Grantees must follow all the rules described in Chapter 2: Environmental Review.

Chapter 2:  
Environmental Review  
24 CFR Part 58

Depending upon the type of economic development project, different levels of environmental review may be required. For example, Non-Traditional projects that provide job training are likely to be exempt from environmental review. On the other hand, Traditional projects where a business will receive funding and where it will construct an industrial facility may require an environmental assessment (EA).

Grantees are encouraged to carefully read Chapter 2 as it applies to their specific project and consult with DLG regarding any questions.

### ***Financial Management***

Chapter 3 provides an overview of the financial management requirements. In addition to all of the standard financial requirements, grantees of economic development projects must follow specific procedures pertaining to agreements, leases, loan documents and security. Refer to Section B of this chapter for more information.

Chapter 3: Financial Management

### ***Procurement and Contracting***

Certain economic development activities may trigger procurement requirements. For example, if a grantee or a subrecipient/LDA is directly undertaking an economic development construction project, the hiring of that construction contractor is subject to the procurement requirements stated in Chapter 4: Procurement. However, procurement requirements do not apply to private, for-profit entities receiving CDBG assistance though costs must be reviewed to ensure reasonableness and eligibility.

Chapter 4: Procurement  
Chapter 5: Contracting

Grantees should also review Chapter 5 to ensure that all contracting provisions are met including ensuring the inclusion of all applicable required provisions in contract documents.

### ***Labor Standards***

As noted in Chapter 6: Labor Standards and Construction Management, the federal and state labor standards provisions may be triggered for KCDBG projects. For economic development projects, this will typically occur when there will be construction in the activity. For example, the grantee might provide funds for construction of infrastructure to a facility or to finance purchase of equipment and its installation.

Chapter 6: Labor Standards  
and Construction Management

Specifically, Davis Bacon and the Copeland Anti-Kickback Acts will be triggered for any economic development activity where the construction contract exceeds \$2,000. When CDBG funds are used in whole or in part to finance equipment, the applicability of wage rates to the installation cost must be determined. An equipment analysis must be completed, in which all items of equipment are included along with an explanation of related installation/modification costs. Please contact DLG if assistance is needed in making this determination.

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In addition to these requirements, other related requirements may also apply to the economic development project, including:

- ✓ Section 3;
- ✓ Equal Opportunity;
- ✓ The Contract Work Hours and Safety Standards Act; and
- ✓ Various Kentucky laws.

Grantees are encouraged to carefully read Chapter 6 and consult with DLG to determine if Davis Bacon and other labor standards requirements are triggered for individual economic development activities.

[Chapter 6: Labor Standards and Construction Management](#)

### ***Acquisition and Relocation***

The Uniform Relocation Assistance and Real Property Acquisition Act (URA) may be triggered for some economic development activities. Chapter 8: Relocation, Displacement, and One-for-One Replacement and Chapter 9: Acquisition discuss these requirements in detail.

The acquisition requirements of the URA may apply to the purchase of sites or properties for economic development activities. If the grantee will use or threaten to use its power of eminent domain, it must comply with the involuntary sales requirements set out in the URA and in Chapter 8 of this manual. These requirements include advisory services, appraisals, review appraisals, and payment of just compensation.

[Chapter 8: Relocation, Displacement, and One-for-One Replacement](#)  
[Chapter 9: Acquisition](#)  
[HUD Handbook 1378](#)

This involuntary acquisition process is less common for economic development activities. However, it may occur in instances such as when a grantee wishes to undertake commercial revitalization of a specific area and thus will acquire all sites in that area. See Chapter 9 for more detailed information about when the involuntary sales procedures are required.

In the instance when a private entity (such as a business) will buy property or when a grantee is buying property but not under threat of eminent domain, the voluntary sales transaction requirements are used. Under these instances, a voluntary sales notice is submitted to the seller informing him or her that the buyer party either does not have the power of eminent domain (businesses) or will not use its power of eminent domain (grantees) in purchasing the property. See Chapter 9 for more information about voluntary sales.

Relocation can be triggered by economic development activities. See Chapter 8 for more details on relocation requirements.

### ***Fair Housing & Equal Opportunity***

The fair housing and equal opportunity requirements described in Chapter 7: Fair Housing and Equal Opportunity apply to economic development projects in the same way that they apply to other types of KCDBG activities. Grantees should ensure compliance with the requirements stated in Chapter 7, as applicable.

[Chapter 7: Fair Housing and Equal Opportunity](#)

### ***Amendments and Close-Out***

Economic development projects follow the standard DLG requirements for grant amendments. Grantees should review Chapter 12: Amendments and Monitoring for more information on the amendment process.

[Chapter 12: Amendments and Monitoring](#)  
[Chapter 13: Project Closeout](#)

In preparing the Project Completion Report at close-out, there are certain special requirements that apply to economic development projects. These requirements may be found in Chapter 13: Project Closeout.

- ✓ As noted above, the grantee must document jobs created and/or retained if that is the national objective used. It is the grantee's responsibility to determine specific statistical information on those persons benefiting from the project.
- ✓ The grantee must also document the investment of other funds into the project. The investment may include private investment, public investment, and program income. For each area, the grantee will give the source of investment, use, amount per grant agreement, and amount invested to date. Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, cancelled checks, etc. A certification from the company's treasurer and president may also suffice for the documentation.