similar to that which the grantee currently receives for such activities, with the exception that any employee income information would be omitted.

Issue. Two commenters recommended that the final rule contain language which would make it easy for low- and moderate-income people to challenge an "unwarranted presumption." They recommend that HUD reiterate the regulatory "substantial evidence to the contrary" language in this section of the regulations and add wording that would encourage residents to submit challenges and direct HUD to quickly respond to such challenges. (1 national association and 1 development organization)

Response. HUD cannot accommodate this recommendation. The subject presumptions of a person's low- and moderate-income status for job creation or retention activities is specifically authorized by statute. It does not matter if the presumption appears "unwarranted" in a specific case; if the activity meets the requirements delineated in Section 105(c)(4) of the Act, it is entitled to use the presumption. There is a distinct difference between these presumptions and those that are HUD has otherwise established only on a regulatory basis under the limited clientele standards.

## Job Creation or Retention by Public Infrastructure Improvements

The Department proposed another amendment to § 570.208(a)(4) of the CDBG Entitlement regulations and § 570.483(b)(4) of the State regulations concerning the requirements for demonstrating national objective compliance by CDBG-assisted infrastructure improvements. Eight entities commented on this proposed change: 4 states, 2 national associations, one HUD staff person and one citizen. Nearly all commenters supported HUD's efforts to provide more flexibility in this area. Several comments suggested specific revisions to HUD's proposal.

Issue. Communities often over-design public facilities to accommodate future growth; this frequently makes sense for the community. However, CDBG funds should only be used to pay costs associated with the capacity needed by presently-identified businesses, or else the grantee should track future job creation for three years.

Response. The Department has chosen not to accept this suggestion. As noted in the preamble to the proposed rule, the Department proposed shortening the three-year tracking period to one year because it has received numerous comments from states that the existing State CDBG regulations are unduly

burdensome. The Department believes it would be cumbersome for HUD staff to attempt to identify and prorate construction costs associated with current vs. future capacity needs; this could place HUD staff in the role of second-guessing grantees' engineering reports.

Issue. Two commenters requested that projected, rather than actual, job creation/retention be compared to the \$10,000 CDBG cost-per-job threshold. Because grantees cannot be completely certain how many jobs will actually be created, there may be instances where the projected cost per job is less than \$10,000, but the actual cost per job is over \$10,000.

Response. The Department concurs with these comments. The Department is concerned that grantees might intentionally overstate the projected number of jobs so as to take advantage of the less stringent requirements for projects whose per-job cost is less than \$10,000. However, it is impossible for job creation or retention estimates to be 100% accurate. As the proposed regulations are worded, a grantee could be retroactively held responsible for tracking a wider universe of businesses for job creation/retention if the actual cost per job was over \$10,000, even though the projected cost per job was under \$10,000. In the final regulations, references to actual vs. projected job creation/retention have been eliminated. Instead, the regulations refer to jobs "to be created or retained.'

In the regulations on public benefit documentation, the Department indicates that, where a grantee shows a pattern of substantial variation between projected and actual benefits received, a grantee will be expected to take actions to improve the accuracy of its projections. The Department has not included comparable language in this section. If, for purposes of this section, a grantee's projections show a pattern of substantial variation from actual job creation/retention, the Department will expect grantees to take steps to improve the accuracy of their projections.

Issue. One commenter recommended that, rather than requiring grantees to conduct an assessment of businesses in the service area of the public facility or improvement, the rule should require an "appropriate" review for public improvement projects undertaken to create or retain jobs.

Response. The Department does not accept this comment, for two reasons. This suggestion confuses requirements for meeting a national objective with requirements for demonstrating the eligibility of an activity. Equally significant is that the new statutory

requirements regarding evaluating and selecting economic development projects effectively replace the 'appropriate" determinations previously required. The Guidelines for **Evaluating Project Costs and Financial** Requirements are not applicable to public improvement projects; a grantee may choose to develop guidelines for evaluating public improvement projects if it wishes. The Department has chosen to apply the public Benefit standards only to those public improvement projects (undertaken to create or retain jobs) for which the projected cost per job is \$10,000 or more.

Issue. HUD should restrict the use of CDBG funds in situations where economic development infrastructure activities cross privately-owned property. This would be construed as a potential windfall to the private property owner or company.

Response. The Department has chosen not to accept this recommendation. HUD is unaware of any evidence that this is a significant problem in the CDBG program. As the commenter acknowledges, states and localities have legal mechanisms to govern hookup access to public utilities.

Issue. One commenter noted that the proposed Entitlement and State regulation language differs regarding businesses with which agreements must be signed; the commenter prefers the language in the proposed State CDBG regulation.

Response. The Department has revised the relevant sections [which are now § 570.483(b)(4)(vi)(F) and § 570.208(a)(4)(vi)(F) to provide greater consistency between the two paragraphs. In revamping this section of the regulations, the Department has eliminated references to agreements with businesses.

Issue. Two states urged the Department to delete portions of the proposed regulations: the requirement for conducting an assessment of businesses in the service area of the public facility or improvement; the requirement that job creation should be tracked for each business until the business' job creation/retention obligation is fulfilled; and, where the cost per job is \$10,000 or more, applying the time period for tracking businesses to just the business(es) with signed agreements for which the improvement is undertaken.

Response. Based on relevant statutory language in the Housing and Community Development Act, the Department disagrees with the implication that documentation regarding national objectives should cease once the originally-projected