number of jobs has been created. Furthermore, these recommendations would eliminate the distinction in requirements between activities in which the cost per job is \$10,000 or more and those in which the cost per job is under \$10,000. Based on the data from the State CDBG program, the \$10,000 per job created/retained threshold appears to be significantly above the median costs for public facility/improvement projects of this sort; few projects should thus be subject to the stricter requirements. The Department believes that stricter requirements are appropriate for projects costing \$10,000 per job or more, because less public benefit is being obtained per CDBG dollar expended.

However, the Department has taken seriously the underlying desire for simplicity, and as a result has worked to streamline this section of the regulations. Eliminated in the final regulations is the requirement that the recipient undertake an assessment of all businesses in the service area of the public facility/improvement to determine which businesses may create/ retain jobs as a result of the public facility/improvement. Grantees are cautioned, however, that should the CDBG per-job cost of the project be \$10,000 or more, the recipient must still aggregate jobs created/retained by all businesses which locate or expand in the service area of the public improvement/facility. Grantees will thus need some mechanism for identifying such businesses.

Issue. One state requested that the proposed public improvement-job creation requirements for the State program be made retroactively applicable to projects funded by states after December 9, 1992. That was the effective date of the current State CDBG regulations, in which the existing requirements concerning public improvement-job creation activities were first effected.

Response. A recent U.S. Supreme Court decision casts uncertainty on the constitutionality of retroactive rulemaking. The Department feels an attempt to provide some retroactive flexibility through the rule-making process could be legally problematic. States may, as always, request a waiver of the existing regulations for individual cases.

## **Other Job Creation/Retention Issues**

Issue. One commenter raised a concern regarding the provision at the new § 570.208(a)(4)(vi)(B) of the Entitlement regulations which permits the aggregation of jobs for loan funds administered by a subrecipient where CDBG pays only for the staff and overhead and loans are made exclusively from non-CDBG funds. The commenter recommended that HUD change the phrase "... jobs created by all the businesses receiving loans during each program year" to "... jobs projected by all the businesses receiving ..." This recommendation is based on the claim that during the early years of a program's operation, "few jobs may actually have been created, even though many loans have been 'committed.'" (1 private citizen)

Response. The commenter appears to misunderstand the subject provision. The regulation does not measure the number of jobs actually created in each program year. Instead, it measures all the jobs created as a result of the CDBG assistance by all the businesses that *receive loans* in each program year, regardless of when the jobs are actually created.

In developing this final rule, HUD has pursued additional job aggregation options in consideration of the many comments received in support of less burdensome job tracking. Also, in considering the comments on the public benefit standards, HUD has determined that it is appropriate to offer certain flexibility for activities that serve important national interests. Thus, in this final rule, HUD is delineating three additional instances under which jobs created or retained may be aggregated for purposes of determining compliance with national objective requirements. Aggregation of jobs is now also permitted for (1) activities providing technical assistance to for-profit businesses; (2) activities meeting the criteria in the public benefit standards at § 570.209(b)(2)(v) of the Entitlement regulations and  $\S570.482(f)(3)(v)$  of the State regulations; and (3) for activities carried out by a CDFI. To reflect this, § 570.208(a)(4)(vi) of the Entitlement regulations and § 570.483(b)(4)(vi) of the State regulations have been amended. In this regard, it should also be noted new paragraphs § 570.208(d)(7) and § 570.483(e)(5), added to the Entitlement and State regulations respectively, require that for an activity that may meet the standards for more than one of these options, the grantee may elect only one option under which to qualify the activity. No "double counting" is permitted.

Issue. One commenter raised a concern regarding the requirement regarding the criteria now at § 570.208(a)(4)(iii) and § 570.483(b)(4) making jobs "available to" low- and moderate-income persons, particularly the "no special skills" requirement unless the business agrees to hire unqualified people and then provide training. The commenters argues that HUD should not "presume" that lowand moderate-income persons have no education because many such persons may have a community college or vocational technical education and still be underemployed or poorly paid because of various factors. The commenter also notes that in certain cases, the jobs to be created by an assisted activity will not actually be created for a year or more, which would provide time for necessary training before the business completes its hiring process. (1 national association)

Response. The reference requirement is important to ensure that no special skill or education requirements form a barrier to low- and moderate-income persons being considered for the jobs under the "available to" option under § 570.208(a)(4). If a community knows that there is a pool of more skilled lowand moderate-income persons available, it can always choose to demonstrate compliance with the national objective requirement under the "held by" option where skill level is not considered. The new low- and moderate-income presumptions should also make it easier for grantees to use the "held by" option. In regard to the issue of the timing of the training versus hiring, the Department wants to ensure that any training claimed under the new "economic development services" provision at § 570.203(c) of the Entitlement regulations and §570.482(d) of the State regulations is limited to persons whom the respective business has actually agreed to employ and not to include training just to provide a general "pool" of persons from which a business may possibly hire. This is important in distinguishing "economic development services" that qualify as part of the "delivery costs" of a related economic development project from more generic public service activities that qualify under § 570.201(e) of the Entitlement regulations. It is noted that under this final rule, activities qualifying under either of these eligibility categories can also take advantage of the new low- and moderate-income limited clientele option at § 570.208(a)(2)(iv) of the Entitlement regulations and § 570.483(b)(2)(v) of the State regulations in certain circumstances. **Request for Comment on Certain Other** Job Creation/Retention Issues Not **Contained in the Proposed Rule** 

In addition to a discussion of specific regulatory revisions, the preamble to the May 31, 1994, proposed rule also contained a specific request for public comment on certain other issues which HUD is examining in an attempt to