

Good Jobs First
1616 P Street NW #210
Washington DC 20036 ~ 202-232-1616

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TO: Interested Parties

FR: Greg LeRoy, Good Jobs First

RE: Federal Rules Against Job Piracy

At least eight federal economic development programs have had anti-piracy provisions: Economic Development Administration (EDA) financial assistance, Urban Development Action Grants (UDAG), Empowerment Zones/Enterprise Communities EZ/EC, Community Development Block Grants (CDBG), Small Business Administration (SBA) loan guarantees in high unemployment areas, Small Business Administration CDC 504 loans, Workforce Investment Act (WIA) funds, and the Dept of Agriculture's Business and Industrial Loan program.

Here is the relevant text from the US Code and/or Code of Federal Regulations.

Economic Development Administration (EDA) financial assistance
(Department of Commerce)

Section 202 of the Public Works and Economic Development Act of 1965 (as amended) prohibits the use of financial assistance from the EDA to relocate businesses from one area to another. The section places the requirement specifically on the EDA's business development assistance program, but the EDA has applied it to all its financial assistance programs, including the Public Works and Development Facilities grants (source: GAO Report to Congressional Requesters, "Economic Development Activities: Overview of Eight Federal Programs," August 1997, GAO/RCED-97-19 3).

[Code of Federal Regulations]

TITLE 13--BUSINESS CREDIT AND ASSISTANCE

CHAPTER III--ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF
COMMERCE

PART 316--GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE--Table of Contents

Sec. 316.3 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("`area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be Located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

Urban Development Action Grant (UDAG)

(Dept of Housing and Urban Development)

42USC5318

(h) Limitations on grants for industrial or commercial relocations or expansions; appeal of denial or cancellation of assistance; grants to adversely affected individuals

(1) Speculative projects

No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated. The provisions of this paragraph shall apply only to projects that do not have identified intended occupants.

(2) Projects with identified intended occupants

No assistance may be provided or utilized under this section for any project with identified intended occupants that is likely to facilitate--

(A) a relocation of any operation of an industrial or commercial plant or facility or other business establishment--

(i) from any city, urban county, or identifiable community described in subsection (p) of this section, that is eligible for assistance under this section; and

(ii) to the city, urban county, or identifiable community described in subsection (p) of this section, in which the project is located; or

(B) an expansion of any such operation that results in a reduction of any such operation in any city, county, or community described in subparagraph (A)(i).

(3) Significant and adverse effect

The restrictions established in paragraph (2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the city, county, or community from which the relocation or expansion occurs.

[Code of Federal Regulations]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 570_ COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G - Urban Development Action Grants

Sec. 570.456 Ineligible activities and limitations on eligible activities.

(c)(1) No assistance may be provided under this subpart for speculative projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another. The provisions of this paragraph (c)(1) shall not apply to a relocation of any such plant or facility within a metropolitan area.

(2) Projects with identified intended occupants. No assistance may be provided or utilized under this subpart for any project with identified intended occupants that is likely to facilitate:

(i) A relocation of any operation of an industrial or commercial plant or facility or other business establishment from any UDAG eligible jurisdiction; or

(ii) An expansion of any operation of an industrial or commercial plant or facility or other business establishment that results in a substantial reduction of any such operation in any UDAG eligible jurisdiction. The provisions of this paragraph (c)(2) shall not apply to a relocation of an operation or to an expansion of an operation within a metropolitan area. The provisions of this paragraph (c)(2) shall apply only to projects that do not have speculative space, or to projects that include both identified intended occupant space and speculative space.

(iii) Significant and adverse effect. The restrictions established in this paragraph (c)(2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the UDAG eligible jurisdiction from which the relocation or expansion occurs. However, the Secretary will not be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, among the factors which the Secretary will consider are:

(A) Whether it is reasonable to anticipate that there will be a significant net loss of jobs in the plant or facility being abandoned; and

(B) Whether an equivalent productive use will be made of the plant or facility being abandoned by the relocating or expanding operation, thus creating no deterioration of economic base.

Empowerment Zones/Enterprise Communities

(Department of Health and Human Services has fiscal responsibility; HUD and Agriculture share programmatic responsibilities)

The Omnibus Budget Reconciliation Act of 1993 stipulates that the strategic plans for revitalizing distressed communities may not encourage businesses to move into Empowerment Zones and Enterprise Communities if it causes employment loss at the original location. HUD and the Dept of Agriculture include similar restrictions in their program regulations (source: GAO Report to Congressional Requesters, "Economic

Development Activities: Overview of Eight Federal Programs,” August 1997, GAO/RCED-97-19 3).

The regulation below applies to round one designations for urban EZs and ECs; the laws for rural areas and for rounds two and three have similar provisions.

Code of Federal Regulations

Title 24, Volume 3

Revised as of April 1, 2005

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TITLE 24--HOUSING AND URBAN DEVELOPMENT
CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 597_ URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES: ROUND ONE DESIGNATIONS

Subpart C_ Nomination Procedure

Sec. 597.200 Nominations by State and local governments.

(e) Prohibition against business **relocation**. The strategic plan may not include any action to assist any establishment in relocating from one area outside the nominated urban area to the nominated urban area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(1) The establishment of a new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

Community Development Block Grants

(Dept of Housing and Urban Development)

From the U.S. Code 42USC5305

Sec. 5305. Activities eligible for assistance

(h) Prohibition on use of assistance for employment relocation activities

Notwithstanding any other provision of law, no amount from a grant under section **5306** made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

Small business loans (areas of high unemployment)

(Small Business Administration)

The Small Business Act of 1999 puts anti-piracy requirements on loans made in rural or urban areas with high proportions of unemployment or low-income residents.

15 USCS § 636 (2005)

TITLE 15. COMMERCE AND TRADE

CHAPTER 14A. AID TO SMALL BUSINESS

§ 636. Additional powers

(i) Loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals.

(7) **No financial assistance shall be extended pursuant to this subsection** where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

Small Business Administration Certified Development Company 504 Loan Program

TITLE 13--BUSINESS CREDIT AND ASSISTANCE

CHAPTER I--SMALL BUSINESS ADMINISTRATION

PART 120--BUSINESS LOANS--Table of Contents

Sec. 120.881 Ineligible Projects for 504 loans.

In addition to the ineligible businesses and uses of proceeds specified in subpart A of this part, the following Projects are ineligible for 504 financing:

(a) **Relocation** of any of the operations of a small business which will cause a net reduction of one-third or more in the workforce of a relocating small business or a substantial increase in unemployment in any area of the country, unless the CDC can justify the loan because:

(1) The **relocation** is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the applicant; and

(2) The economic development benefits to the applicant and the receiving community outweigh the negative impact on the community from which the applicant is moving; and

(b) Projects in foreign countries (loans financing real or personal property located outside the United States or its possessions).

Workforce Investment Act (WIA)

(Department of Labor)

Prohibits WIA funds from being used to encourage companies to relocate, and prohibits companies that do relocate from receiving funds for customized or skill training for 120 days.

29 USCS § 2931 (2005)

TITLE 29. LABOR

CHAPTER 30. WORKFORCE INVESTMENT SYSTEMS ADMINISTRATION

§ 2931. Requirements and restrictions

(d) Relocation.--

(1) Prohibition on use of funds to encourage or induce relocation.--No funds provided under this title shall be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is within the United States.

(2) Prohibition on use of funds for customized or skill training and related activities after relocation.--No funds provided under this title for an employment and training activity shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any business or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such

business or part of a business results in a loss of employment for any employee of such business at the original location and such original location is within the United States.
(3) Repayment.--If the Secretary determines that a violation of paragraph (1) or (2) has occurred, the Secretary shall require the State that has violated such paragraph to repay to the United States an amount equal to the amount expended in violation of such paragraph.

Business and Industrial Loan Program
(Dept of Agriculture)

Denies loans for relocating business activity from one area to another if it receives more than \$1 million in funds and creates more than 50 jobs.

[Code of Federal Regulations]

TITLE 7--AGRICULTURE
CHAPTER XVIII--RURAL HOUSING SERVICE, RURAL BUSINESS--COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE (CONTINUED)
PART 1980--GENERAL--Table of Contents
Subpart E--Business and Industrial Loan Program

Sec. 1980.412 Ineligible loan purposes.

Loans may not be made or guaranteed if the funds are used:

(c) For projects in which such assistance exceeds \$1 million and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such explanation is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.