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**PUBLIC WORKS EMPLOYMENT ACT OF 1976**  
**(Review of Regulations to Title I—Local Public Works**  
**Capital Development and Investment Program)**

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**JOINT HEARING**  
BEFORE THE  
**COMMITTEE ON ECONOMIC DEVELOPMENT**  
AND THE  
**SUBCOMMITTEE ON**  
**INVESTIGATIONS AND REVIEW**

**OF THE**  
**COMMITTEE ON**  
**PUBLIC WORKS AND TRANSPORTATION**  
**HOUSE OF REPRESENTATIVES**  
NINETY-FOURTH CONGRESS

SECOND SESSION

AUGUST 31, 1976

Printed for the use of the  
Committee on Public Works and Transportation



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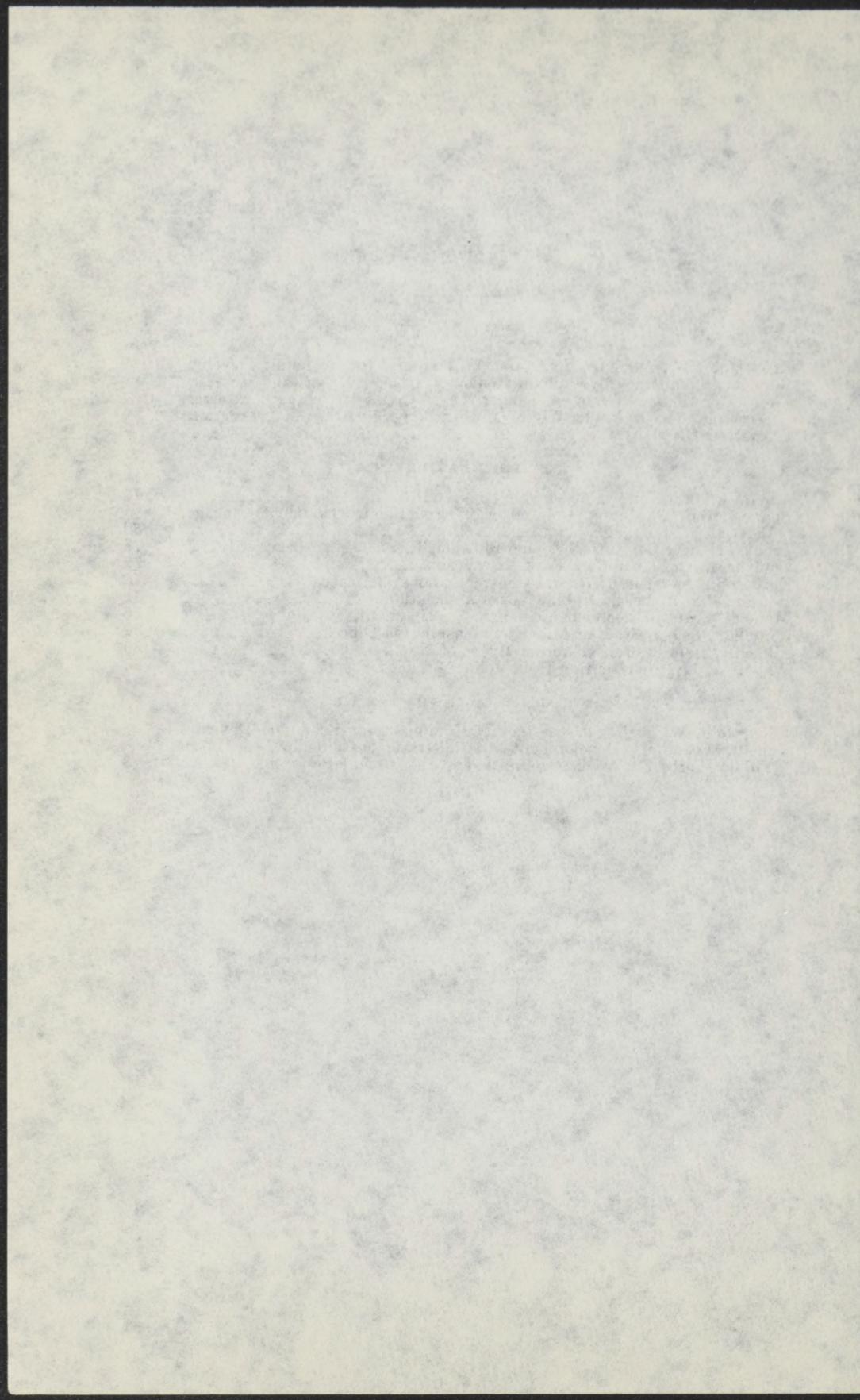
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**PUBLIC WORKS EMPLOYMENT ACT OF 1976**  
**(Review of Regulations to Title I—Local Public Works**  
**Capital Development and Investment Program)**

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**TUESDAY, AUGUST 31, 1976**

**HOUSE OF REPRESENTATIVES,**  
**SUBCOMMITTEE ON ECONOMIC DEVELOPMENT**  
**AND SUBCOMMITTEE ON INVESTIGATIONS AND REVIEW**  
**OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,**  
*Washington, D.C.*

The subcommittees met, pursuant to notice in room 2318, Rayburn House Office Building, at 10:16 a.m., Hon. Robert A. Roe (chairman of the Subcommittee on Economic Development) presiding.

Mr. ROE. We want to welcome you, ladies and gentlemen, this morning to this oversight review hearing being held jointly by the Economic Development Subcommittee of the Public Works Committee together with the Investigations and Review Subcommittee, also of the Public Works Committee, which is chaired by Jim Wright who will be back with us shortly. There are about five other hearings going on this morning, so bear with us if members come in and out—it is not their lack of interest.

And we certainly do want to welcome John Eden and his staff. Secretary Eden will be explaining the regulations and the Economic Development Administration's interpretations of our Public Works Employment Act.

I do want to thank you all for taking the time to come down here, because this is a vitally important piece of legislation to all of us, as you know, and many of the members have questions they want to ask the Secretary and his staff. The circumstances surrounding the passage and implementation of this act are rather unique, in a way. This legislation was voted on and passed several times in the House and in the Senate, and it is now law. Since July 22, the date of its enactment, we had several meetings with many of the people from throughout the country, representing many organizations, mayors, freeholders, and other government officials who sought to meet with us informally to review the provisions of the act, express their views and their needs in their respective communities. In turn, many of us in Congress held seminars throughout our respective States. These discussions helped us to get a feeling as to the interpretation of the provisions of this legislation; and if you like, the hopes and plans and thoughts of the communities and cities throughout America, and how the act is to be implemented.

I would like to point out to you that this is not an adversary hearing. Let's call it a semi-formal hearing if you like. Usually we are much more formal in the House. We will, however, record the proceedings so that precise interpretations can be made both from the administrative agency's point of view and the Congress' point of view.

Before I call on my good friend, John Paul Hammerschmidt for a few remarks let me say that the format for today will be based upon the point of view that the Secretary will be requested with his staff to review with us the rules and regulations, and particularly the guidelines that they have established. We would also like to have the interpretation, and thoughts as they relate to the implementation of those guidelines. In this manner, I feel that they answer a great many questions that have arisen among members of the committee. Then we will ask for questions from the floor.

Now, understand what we are trying to do here today. This is a massive piece of legislation that affects the entire Nation. We would like the questioning to be as cryptic and precise as possible and don't be afraid to ask a question, because this is a chance for you to express your thoughts.

We will, therefore, have an explanation first from the Secretary and his staff to see what the administration is talking about. Then we will ask for different views from the floor where we will expect you to identify yourself, as to whom you are representing, what town, what city or community, what group or what agency.

Before I call on the Secretary for him to introduce his staff, I want to call your attention to the gentleman on my left, Mr. John Paul Hammerschmidt, a splendid representative from Arkansas, who does not have a candidate running against him this year in the election. He is going to be back next year, which we are all applauding.

John is our ranking member and one of our finest Members in the House of Representatives. John?

Mr. HAMMERSCHMIDT. Well, thank you, Mr. Chairman, for those kind words. I join you in welcoming Assistant Secretary Eden to this joint subcommittee session this morning to discuss the guidelines for implementation of the Public Works Employment Act.

These guidelines will be crucial to this program in that Congress' intent to boost the economy through this program can be implemented through effective administration.

Mr. ROE. Thank you, Mr. Hammerschmidt. I am pleased, ladies and gentlemen, members of the committee, to introduce John Eden, whom I call the Secretary of EDA. He is the Assistant Secretary of Commerce for Economic Development.

**TESTIMONY OF JOHN W. EDEN, ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT; ACCOMPANIED BY WILLIAM HENKEL, JR., DEPUTY ASSISTANT SECRETARY FOR OPERATIONS; WILLIAM F. CLINGER, CHIEF COUNSEL; GEORGE T. KARRAS, DIRECTOR, OFFICE OF PUBLIC WORKS; AND ANTHONY SILVETTA, CHIEF, PROGRAMS ANALYSIS DIVISION**

Mr. EDEN. Thank you very much, Mr. Chairman. On my right is Bill Clinger, who is the General Counsel of the Economic Development Administration; on my left is Bill Henkel, who is the Deputy

Assistant Secretary for Operations; I would also like to introduce George Karras, who is immediately to my left in back, who is the Director of the Office of Public Works; and also Mr. Tony Sulvetta, who is the Chief of our Programs Analysis Division—Tony is immediately behind me.

I have a prepared statement to read, Mr Chairman, which at this time I will proceed with.

I appreciate very much the opportunity your invitation affords me to explain how the Economic Development Administration has implemented title I of the Public Works Employment Act of 1976.

The President, as you know, vetoed the statute primarily because he felt that the bill would not only stimulate inflation by increasing the Federal debt but also prove to be an extremely costly means of creating jobs. Now that the Congress has overridden the veto, this administration has sought to proceed with an expeditious implementation of the act by creating a "bare-bone" set of regulations.

Title I of the act, which EDA administers, is concerned with immediate job opportunities for the maximum number of unemployed in those areas having high unemployment. These opportunities are to be provided through useful public works facilities.

The urgency felt about the program was pointed up in section 107 of the act which required these regulations be published within 30 days of the enactment of the legislation. Therefore, regulations were published in the Federal Register of August 23. On the same date we also printed our guidelines for the local public works program authorized by title I.

In developing these regulations we recognized the numerous problems that implementation and administration of the program brought about. The many subtle and practical considerations became obvious only when the various type of areas, projects, statistical data sources, as well as the special considerations of the act, were studied in relation to one another.

I would like to explain to you what these considerations were and how we sought to resolve them as equitably as possible.

The starting point was a set of agency objectives that were drawn from EDA's experience with public works facilities and the considerations set forth in the act. First, as we noted in the preamble to the published regulations, even the most labor-intensive public works projects generate a limited amount of direct employment per dollar of project cost. This does not deny, however, that public works projects do result in useful facilities and do provide a degree of economic stimulation, particularly in the construction and construction-related industries. We therefore perceived our objectives to be:

To insure adequate consideration to the relative needs of the various sections of the country.

To maximize not only immediate job opportunities but to encourage, whenever possible, those opportunities for unemployed residents of the project area.

To fund whenever possible projects that advance local plans and those that provide long-term benefits.

Not to replace or reduce local, State, or other Federal funds that have been specifically provided or set aside for the projects submitted to us for funding.

In order to assure that the relative needs of the various sections of the country are met, the following allocation formula was developed. Subject to program administrative costs and statutory minimum and maximum amounts allocated to individual States by the legislation, 65 percent of the funds will be distributed to the States based on the share of unemployed workers residing in the States of the total national unemployed; 35 percent of the funds to be distributed to the States based on the relative severity of unemployment for each State above the national unemployment. The allocation formula accounts either directly or indirectly for the nuances proposed in section 107 which are intended to provide the Secretary with guidance to insure that adequate consideration is given to the relative needs of the various sections of the country.

I will not repeat the provisions of the act that you are so very well acquainted with. But instead I will provide you with a highlight of those implementing regulations that proved troublesome in resolving.

The major troublesome areas cover: (1) Unemployment data; (2) construction industry data; and (3) project ranking.

To determine the acceptable sources of unemployment data meant first defining the project area. It was decided that such areas should include, but not be limited to, neighborhoods, counties, cities, standard metropolitan statistical areas, and multicounty areas or parts thereof. Since the Bureau of Labor Statistics has the most comprehensive and reliable body of unemployment statistics their data will be used for State and local governments.

Limited BLS data for some counties will become available in the near future. Our Economic Development Representatives, EDR's, and our regional offices will be able to aid applicants in determining if this data is available. As the data are furnished to use we will make them available through the EDR's and the regional offices.

Where BLS figures are not available, we will automatically accept the data supplied by the appropriate State Employment Security Agency (ESA).

Where local governments have good reason to believe that the unemployment rates of areas within their boundaries warrant the establishment of separate rates, the State employment security agencies will, on request, provide the required data. Where the State agency is not able to provide such data, the applicant should contact our regional office for advice.

Once the unemployment rates are determined and applications submitted, concern focuses on selecting projects that will have a maximum impact on the unemployed and provide useful public facilities in needy areas. Our goal is to achieve a high degree of equity and economic efficiency in implementing this program. As a result, in comparing projects within each State we have developed a ranking procedure composed of two components: a basic rank which is modified by additional considerations. The basic rank is composed of four elements:

One: The number of unemployed workers in the project area averaged over the 3 most recent consecutive months for which data

are available. Since consideration is being given to the absolute number of unemployed workers, implicit consideration is also to be given to the availability of unemployed construction workers. Past studies have found that construction unemployment tends to increase with increasing general unemployment and to decrease when unemployment declines.

Unfortunately, construction related unemployment data are not available on a consistent basis for either State or substate areas, thus the inclusion of unemployed workers as one of the four elements of the basic rank takes into account the availability of unemployed labor resources generally and implicitly the availability of unemployed construction workers. We fully realize the importance the present legislation has placed on alleviating the distress of unemployment in the construction and construction related industries, and we have gone to great lengths to determine the availability of such data. The Bureau of Labor Statistics has informed us that no State provides total unemployment figures in the construction industry for union and non-unionized workers at either the State or county level. Specifically, only one State, New York, has unemployment insurance data based on a 100-percent sample. Even these data are available several months after the period studied. Less than 10 States provide such insured data by county and State on a limited sample basis. For example, Georgia uses only a 1-percent sample. Other States provide insured data on a statewide basis only, again based on a limited sample which may be a year old.

Further, I understand that all of the foregoing data is premised on various statistical methods that may limit the usefulness of the data. Thus, the use of the total number of unemployed workers in the project ranking procedure provides us with a direct measure of an area's overall unemployment problem and an approximation of the possible size of the unemployed construction labor available to undertake construction activities.

Two: The severity and duration of unemployment is the second element of consideration in the ranking procedure. Distressed areas, characterized as having high unemployment rates even with small to moderate forces would benefit from project construction activities due to some direct hiring and indirect benefits from wage and material purchases. In addition, an area having both a high unemployment rate and an absolutely large unemployed labor force would tend to further concentrate the project's impact on the construction unemployed.

Three: The ratio of the total cost of the project to the total number of person-months of employment to be generated is the third element of consideration and accounts for the cost of providing employment opportunities for the unemployed.

Four: Finally, the level of income for the project area is considered to assure that low-income areas having relatively high unemployment rates are equitably treated under the law.

In addition to the aforementioned elements of the basic rank, additional considerations are also introduced to assure that useful public facilities will be constructed which are consistent with identified local needs. Appropriate modifications to the basic rank will be made

after assessing the long-term benefits a project will provide a community, a determination that the project is consistent with local plans and priorities, and that the sponsor of the project is a general-purpose unit of local government.

A key element to the project selection procedure is that within each State, projects will be compared only with other projects in their priority category. For example, a project in the 70-percent priority category called for in section 108(d) is to be compared only with other projects in that category in that State. The same treatment is provided for in the 30-percent priority category.

We clearly expect an enormous number of applications to be submitted causing an excessive administrative burden on the agency's limited resources. However, the merits of the project selection procedure is that it will allow EDA to rationally make a comparative analysis of the merits of diverse applications in order to select those meeting the intent and purposes of the legislation.

Resolving these matters still left other very important problems such as seasonality, environment, and preliminary project costs, to name only a few.

EDA recognizes that in some northern States projects may not be able to start construction in the 90 days after project approval, as called for in the act. We believe the State allocations approach, as well as a liberal interpretation of onsite labor, will minimize if not eliminate this concern.

Then there is consideration of environmental matters. NEPA, of course, mandates that Federal agencies evaluate the effect of a project on the environment. The evaluation starts with a preliminary assessment, followed by a detailed statement if it is determined that the environment will be significantly affected.

This systematic analysis is not feasible under the act's 60-day deadline to approve or disapprove a project. While it may be possible to prepare the preliminary assessment within the 60-day period, the environmental impact statement, which takes at least 6 months under existing statutory procedures, would never be completed within 60 days. Therefore, we have concluded that we will proceed with as much of the environmental procedures that are possible within that period. The agency determination to approve or disapprove a project will include such environmental information and analysis as is available at that time.

It should be pointed out that the guidelines do incorporate concrete environmental prohibitions where the adverse impact would be readily apparent and requires no analytic demonstration, that is, demolition of property on the National Register of Historic Places, or converting to another use scarce environmental resources.

The agency has provided in its guidelines, but not in the regulations, that, to the extent possible, at least 10 percent of the personnel hired for a project be project area residents unemployed for at least 30 days prior to being hired. This provision does not and is not intended to be a basis for approval or disapproval of a project. Instead, by including it in the assurances in the grant offer document, it is meant to encourage those which are already funded to, if at all possible, use this desirable consideration.

The guidelines provide that ineligible costs include those for plans, specifications and estimates incurred prior to EDA's receipt of the application. Such costs incurred after that date will be eligible for reimbursement only if EDA approves the project for ultimate funding.

I would like to emphasize that in keeping with the act's purpose of speedy action in all aspects of this program, the appropriated funds will be obligated as quickly as possible. If funds are appropriated, we will announce the date applications will be accepted.

Mr. Chairman, that concludes the statement. We would be pleased to try to answer any questions that you or the other Members might have, both on behalf of myself and the other members of my staff.

Mr. ROE. Thank you, Mr. Secretary. I believe it would be helpful, before our members begin to ask their questions to turn to the guidelines.

You have summed up a broad-based intent as far as the administrative agency is concerned as to their interpretation of what we were trying to write into the law. In large measure the eligibility of a project, or the ranking of a project, is based on the priority rating score that has been elucidated. I am looking, for example, at paragraph 1, which enumerates the circumstances that carries a rating of 30 percent. As we go on, there is a criteria established for a 25-percent rating; then there is a 30-percent rating, a 15-percent rating, a 10-percent rating, and two 5-percent ratings.

Would you want to have somebody from your operation just run through those so we can bring your guidelines for the criteria of eligibility into focus. With this explanation I think the members can better ascertain the impact of what these ratings of a project really mean, and will elicit the questioning by the Members on the matters they are concerned about.

So, at your leave, if you could proceed beginning with the first item, which is entitled, the "Basic Rank."

[The following was received for the record:]

August 23, 1976

ECONOMIC DEVELOPMENT ADMINISTRATION  
GUIDELINES FOR LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT  
AND INVESTMENT PROGRAM

A. Authority

Title I of the Public Works Employment Act of 1976, which is entitled the Local Public Works Capital Development and Investment Act of 1976, authorizes grants to any State or local government for local public works projects that will stimulate employment.

B. Objectives

1. Legislative Objectives

On the basis of an in-depth study of the Local Public Works Capital Development and Investment Act of 1976 and its legislative history, it has been determined that the purpose of this legislation is to provide:

- Employment opportunities in areas of high unemployment through the expeditious construction or renovation of useful public facilities.
- A countercyclical stimulus to the national economy.

2. EDA Program Objectives

Analyses of past public works programs and the Economic Development Administration's (EDA) experience in operating such programs have revealed certain characteristics about the extent and nature of employment generated by public works construction. Of these, the most relevant to the objectives of the Local Public Works Capital Development and Investment Act are the preponderance of skilled construction jobs and the relatively high cost of creating a job through such an approach. Between 68 and 81 percent of the costs of a public works project are for materials, equipment, overhead, and contractor profits, leaving between 19 and 32 percent for on-site wages. Consequently,

even the most labor intensive public works projects generate a limited amount of direct employment per dollar of project cost. Public works projects do, however, result in useful end products and are commonly believed to provide general economic stimulation, particularly to the construction and construction-related industries.

In recognition of these characteristics of public works construction projects, as well as other considerations deriving from the legislation and EDA's experience, the following objectives for implementing the program authorized by this Act have been established:

- . To insure that adequate consideration is given to the relative needs of the various sections of the country.
- . Within those sections, to fund projects that maximize immediate employment opportunities and, wherever possible, that maximize employment opportunities for unemployed residents of the project area.
- . To fund locally oriented projects that provide useful public facilities in areas of high unemployment and low income.
- . To fund projects that advance local plans and provide long-term benefits.
- . To fund facilities that could not have been constructed in the absence of the Local Public Works grant (i.e., facilities for which Federal funds are not merely replacing or reducing local, State, or other Federal monies that have been specifically provided or set aside).
- . To carry out a comprehensive evaluation of both the direct employment impact and the indirect or stimulative impact of the projects funded.

C. Funding

The authorization for carrying out this program is \$2.0 billion for the period beginning with EDA's receipt of appropriation and ending September 30, 1977.

D. Eligible Applicants

Eligible applicants for this program are:

1. States

The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

2. Local Governments

Any city, county, town, parish, or other political subdivision of a State (including general-purpose and special-purpose units of government and local school districts), and any Indian tribe.

E. Eligible Areas

The Act requires that 70 percent of all funds appropriated for this program be granted for projects submitted by States or local governments having unemployment rates in excess of the national rate. It further requires that 30 percent of all funds appropriated be for projects submitted by States or local governments having unemployment rates equal to or below the national average. In line with these requirements, the following guidelines will govern area eligibility.

1. Unemployment Level

It shall be EDA's policy that the majority of projects approved will be in areas with an unemployment rate of 6.5 percent or more for the average of the three most recent consecutive months for which data is available. Projects in areas with an unemployment rate of less than 6.5 percent will be considered only when funding of

projects.

such projects is necessary to fulfill the minimum funding level required for each State or if funds are available in the 30 percent category.

2. Eligibility for Priority Consideration

An area will be eligible for priority consideration based on unemployment rates developed using the procedures described in Section E.3.b. Priority will be given to areas based on these unemployment rates for the 70-30 categories discussed above.

3. Determination of Areas Eligible for Priority Consideration

a. Project Area Definition

- 1) To establish an unemployment rate for an area, a "project area" must be defined. The boundaries for this project area may be defined according to the area from which the labor force for the project is expected to be drawn. The project area should be one for which unemployment rates are available or easily calculable. Such areas include, but are not limited to, census tracts, neighborhoods, counties, cities, Standard Metropolitan Statistical Areas, and multi-county areas or parts thereof.
- 2) In determining where the labor force can be expected to be drawn from, the journey-to-work characteristics of the labor force and the applicant's intent to hire the unemployed of a specific area must be considered.
- 3) Applicants who anticipate that project labor requirements will draw upon the unemployed and underemployed labor resources of other jurisdictions outside the immediate project area (such as a multi-county area) may define their project area to include those jurisdictions.

b. Procedures for Obtaining Unemployment Data

Note: The unemployment data discussed in these guidelines must be for periods within the 12 months preceding the date of application.

1) Bureau of Labor Statistics

The principal source of the unemployment statistics to be used in considering applications submitted by States and local governments will be the latest available data published by the U. S. Bureau of Labor Statistics (BLS). This data will be used to determine whether an application comes from a 70 percent area or a 30 percent area and to rank individual projects from these areas within a State.

Initially, EDA Regional Offices and Economic Development Representatives (EDRs) will be furnished a list for public use that will contain unemployment data for those States and "identifiable" local governments for which BLS, for its Comprehensive Employment and Training Act of 1975 (CETA), has published such data. The initial data will include the unemployment rate and total number of unemployed persons for the three most recent consecutive months for States and areas for which information is available. BLS data indicating unemployment rates by county will become available in the near future and will also be furnished to EDA Regional Offices and EDRs. Potential applicants should contact EDRs or EDA Regional Office staff to determine if they are covered by such BLS data.

2) State Employment Security Agencies

An applicant whose proposed project is in an area for which BLS unemployment data is not available may seek to obtain the required data, for the three most recent consecutive months, from the appropriate State Employment Security Agency. EDA will automatically accept the unemployment data as confirmed by the State Agency. This confirmation must accompany the project application.

3) Specially Defined Areas

A local government situated within a larger area may seek to obtain State confirmation

for its own unemployment rate. A local government may also seek to obtain State confirmation for any community or neighborhood within its jurisdiction. The U. S. Department of Labor has issued instructions to State Employment Security Agencies to respond affirmatively to the requests of local governments for unemployment rates for the three most recent consecutive months for both these types of areas. However, no such request should be made by a local government unless it has good reason to believe that the unemployment rates of such areas warrant the establishment of separate rates.

A project application submitted to EDA by a local government for a specially defined area must be accompanied by evidence that the unemployment data for that area has been confirmed by the State Employment Security Agency.

If, for any reason, a State Agency should advise an applicant that it is unable to provide unemployment rates for areas covered under this section and Section 2) above, a statement of the circumstances should be furnished the appropriate EDA Regional Office, which will contact EDA's Qualification Division in Washington (telephone 202-377-2710) for advice and assistance.

#### 4) Indian Reservations

If an Indian tribe is unable to establish its three-month-average unemployment rate according to the procedures described above, it may submit to the appropriate EDA Regional Office such evidence as it can produce regarding unemployment conditions within its jurisdiction. Preferably, this would be in the form of a statement signed by an authorized official of the Bureau of Indian Affairs. However, if this cannot be obtained, the evidence should include the results of a study or survey showing labor force, employment and unemployment numbers, and unemployment rates for the three most recent

consecutive months. The individuals or organizations carrying out the survey or study should be identified, and the methodologies and procedures followed should be described. This documentation should be submitted to EDA's Qualification Division in Washington, which will determine the acceptability of the unemployment data submitted and advise the applicant and the Regional Office of its findings.

F. Types of Grants

The types of grants that are available to State and local governments under this program are:

1. Direct Grants

100 percent grants for local public works projects on which construction has not been started.

2. Supplemental Grants

- a. Grants to supplement other Federally funded public works projects, in the amount necessary to make the Federal share 100 percent of the project cost, provided that the other Federal funds are immediately available and that construction on the project has not been started owing to a lack of funding for the non-Federal share.
- b. Grants to provide all or any part of the required State or a local share (but not both shares) of the cost of a public works project for which financial assistance is authorized under the State or local law requiring such a contribution, provided that the financial assistance other than that being provided is immediately available and that construction on the project has not been started.

The guidelines and requirements set forth here apply to both direct and supplemental grants, unless otherwise specified.

G. Types of Projects

1. Eligible Projects

The types of projects eligible for funding under this program are:

- a. Construction (including demolition and other site preparation activities), renovation, repair, and other improvements related to public works projects that have a local orientation. Such local public works projects include, but are not limited to, municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, and health, education and social service facilities.
- b. Public works projects authorized by other Federal acts.

## 2. Ineligible Projects

The types of projects that are not eligible for funding under this program are:

- a. Projects that have as their principal purpose -- or permanent effect -- the channelization, damming, diversion, or dredging of any natural watercourse, or the construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site). The primary purpose of this restriction is the environmental protection of the Nation's natural watercourses.

This prohibition refers, generally, to the alteration of the natural state of a watercourse, i.e., to those watercourses (or portions of watercourses) that have not been disturbed by man. Therefore, the construction of a new dam or the expansion of the capacity of an existing dam is prohibited, as is the construction of a new canal or the expansion of an existing canal, except one designated as an historic site.

Construction on natural watercourses that have already been diverted, dammed, and channelized would constitute an acceptable project if the final project result were the improvement of the natural flow of the entire watercourse. Thus, acceptable projects would include: dredging a previously diverted river; desilting an existing dam; temporarily diverting a river for the principal purpose of constructing a bridge; and constructing, reconstructing, or repairing a jetty in an area where beach erosion or storm damage has occurred.

- b. Projects on which construction is ongoing (i.e., on which a contract for construction has been awarded, notice to proceed or its equivalent has been issued or on-site labor has begun, whichever has occurred earlier).
- c. Projects requiring financial assistance in excess of \$5 million. However, in unusual circumstances, the Assistant Secretary may waive this requirement.
- d. Projects that will take more than two years to complete. This requirement may also be waived by the Assistant Secretary in unusual circumstances.
- e. Projects for which this program's funds would reduce, diminish, or replace funds specifically budgeted and/or committed for the project by the State, local government, Indian tribe, or other Federal agency.

#### H. Program Administration

##### 1. Considerations

The following factors will be considered in the administration of this program:

- a. Unemployment, in both absolute numbers and concentration, is unevenly distributed in the country.

- b. Areas in some States do not have unemployment rates in the 70-30 proportions prescribed by the Act.
- c. There are large concentrations of unemployed persons in the major urban areas of the country.

## 2. Policy Implications

To account for these factors, the following policies will govern the administration of this program.

### a. State Minimum Funding Level, Planning Allocations, or Ceiling(s)

- 1) Each Regional Office will observe, with respect to each State served by it, a State minimum funding level, planning allocation, or ceiling(s). The formula by which these levels will be established is as follows:

Subject to EDA administrative costs and statutory minimum amounts allocated to individual States by the Act, 65 percent of the appropriated funds will be set aside as planning allocations for individual States based on each State's share of the total national unemployed (i.e., the ratio between the number of unemployed workers residing in a State and the total number of unemployed workers in the Nation) averaged for the three most recent consecutive months; 35 percent of the funds will be set aside as planning allocations to individual States based on the relative severity of unemployment for each State (i.e., the relationship between a State's unemployment rate and the national unemployment rate) averaged for the three most recent consecutive months.

Further, in accordance with statutory requirements, each State allocation, including that for the District of Columbia and for Puerto Rico, will not be less than 0.5 percent or more than 12.5 percent. For Guam, the Virgin Islands, and American Samoa, not less than 0.5 percent will be granted for all three.

- 2) It should be understood that the level assigned to each State is not intended to establish an entitlement to any minimum or maximum level of project assistance within the State (unless such is the statutory minimum or maximum). Rather, it is adopted to further the objective of insuring that consideration is given to the relative needs of various sections of the country.
- 3) One hundred and twenty days after the date on which funds are first apportioned for program assistance, and at any time thereafter, the Assistant Secretary may reconsider the State funding levels previously established and make such adjustments as are determined to be reasonable in achieving the purposes of the Act.

b. 70-30 Priority

The 70-30 requirement of the Act (discussed in Section E of these guidelines) will be met by totaling the funding of projects on a State level -- or regionally or nationally, if necessary.

- 1) First priority and expedited processing will be given to applications submitted from areas having an unemployment rate for the average of the three most recent

consecutive months (for which data is available at the time of application) that is in excess of the national unemployment rate. Seventy percent of the funds appropriated for this program will be available for projects from these areas.

- 2) Second priority will be given to applications submitted from areas having an unemployment rate for the average of the three most recent consecutive months (for which data is available at the time of application) in excess of 6.5 percent but less than or equal to the national average. Thirty percent of the funds appropriated for this program will be available for projects from these areas.
- 3) Third priority will be given to applications submitted from areas having an unemployment rate equal to or less than 6.5 percent. Applications from such areas will be approved if funds are available in the 30 percent priority level, or if funding of the proposed project is necessary to fulfill the minimum funding level required for each State.
- 4) Public works projects of general-purpose units of local governments within each of the above priorities will be given priority and preference.

### 3. Project Selection Procedure

#### a. Considerations

In line with the purposes and objectives of the Act, EDA's goal of choosing projects having the greatest potential for furthering these purposes and objectives, the relative importance of various factors in determining this potential, and the availability and consistency of data specified in the Act, the following project selection procedures have been adopted.

b. Project Selection Formula

The ranking procedure developed for selecting projects within each State's planning allocation uses those project and area factors that will contribute most to achieving substate equity (priority allocation of funds based on need) in the distribution of planning funds, and insures that the relatively more economically efficient projects (those having maximum impact on unemployment) are selected. Certain factors will be standardized in order to perform comparative analyses of projects within each State. Each factor has been assigned a weight to reflect its importance in the ranking procedures.

1) Basic Rank

The basic rank of a project will be determined by the following factors:

- a) The number of unemployed workers in the project area averaged over the three most recent consecutive months for which data is available at the time of application. An area characterized as having a high unemployment rate overall is generally characterized as having a high unemployment rate in the construction industry. Similarly, an area characterized as having a large number of unemployed overall is generally characterized as having a relatively large number of unemployed construction workers as a share of the overall unemployed. Therefore, this factor gives consideration to construction unemployment. This factor will constitute 30 percent of a project's basic rank.

- b) Severity and duration of unemployment, as measured by the unemployment rate prevailing in the project area averaged over the three most recent consecutive months for which data is available at the time of application. This factor will constitute 25 percent of a project's basic rank.
- c) The cost per person-month of employment, defined as the ratio of the total cost of the project to the total number of person-months of employment to be generated. It should be emphasized that supplemental assistance provided for under the Act will be considered as part of total project costs; the latter is defined as funds from all sources, whether Federal, State, or local. This factor will constitute 30 percent of a project's basic rank.
- d) The level of income prevailing in the project area. This factor will constitute 15 percent of a project's basic rank.

## 2) Additional Considerations

A project's basic rank will be increased if the project meets one or more of the following criteria:

- a) Exhibits potential for providing long-term benefits (e.g., provides a needed community facility). The basic rank of a project will be increased up to a maximum of 10 percent if it meets this criterion. The amount of increase will be determined by the nature and extent of the long-term benefit(s) to be provided by the project.

- b) Is sponsored by a general-purpose unit of local government. Projects meeting this criterion will have their basic rank increased by five percent.
- c) Relates to existing approved plans and programs of a local community development or regional development nature or promotes or advances longer range plans and programs. The basic rank of a project meeting this criterion will be increased by five percent.

3) Final Rank

The final rank of a project is to be determined by summing the basic rank and increases attributable to the additional considerations defined above.

c. Application of Project Selection Formula

1) Geographic Considerations

Projects will be ranked and assessed relative to other projects submitted from the same State until such time as the Assistant Secretary determines, pursuant to Section H.2.a.3. of these guidelines, that comparison of projects submitted from different States is required either to further the purposes and objectives of the Act or to comply with statutory requirements.

2) Priority Considerations

Within each State, projects submitted from areas with an unemployment rate exceeding the national average for the three most recent consecutive months for which data is available at the time of application will be ranked and compared only with projects submitted from other areas in this priority category.

Similarly, projects submitted by areas with an unemployment rate below the national average for the three most recent consecutive months will be ranked and compared only with projects submitted from other areas in the same priority category.

### 3) Project Selection

Within each State and priority category, projects will be selected on the basis of their final ranks until the State planning allocation for each priority category has been exhausted or until such time as the Assistant Secretary, pursuant to Section H.2.a.3 of these guidelines, determines that the remaining funds made available under the Act must be reallocated among the States.

The Agency may disapprove an application for a project when it is believed that the project construction activity will generate labor requirements in excess of those available among the unemployed in the project area. Further, for areas having large pools of unemployed labor, projects will be ranked; however, the Agency may decline applications of lower rank when the sum of project labor requirements exceeds the available supply of unemployed labor.

## I. Application Procedures

### 1. Forms

An application form, developed for this program and available from EDA's Regional Offices and EDRs, is to be used for all proposed projects. Owing to the short time available for developing project applications, pre-application conferences for projects will not be held.

2. General Considerations and Requirements for Financial Assistance

- a. An applicant must provide EDA with satisfactory assurance that on-site labor can begin within 90 days of project approval. It is recognized that many Northern States could have difficulty in meeting this requirement, particularly during the winter months. This problem will be minimized by the following.
- 1) The planning allocation established for each State will insure that the relative needs of the country are met, and that projects are competing with other projects within the same State, rather than with all projects in the Nation. This will eliminate unfair competition among States. It is expected that those States having the most severe seasonality problems will have projects that are funded later in the program.
  - 2) Because in those States experiencing varying weather conditions the 90-day requirement could be seen as giving unfair advantage to "fair weather" areas, the definition of on-site labor will be interpreted liberally. That is, some on-site labor must begin within 90 days, with full-fledged construction capable of being started as soon as weather permits.
- b. An applicant must provide EDA with the following environmental information (except items (5) and (6) if such materials are not available and the applicant so certifies): (1) those elements of the project that will impact the environment; (2) the nature of the environment to be impacted; (3) data on the expected environmental impact; (4) alternatives to the proposed project; (5) any environmental analyses previously conducted by local, State, or Federal agencies; and (6) public reaction as evidenced, for example, in transcripts of local public hearings held on the proposed project.

- c. An applicant must insure that plans, specifications, and estimates for projects are either complete or sufficiently complete so as to insure that on-site labor can begin within 90 days of project approval. Final plans and specifications will not be required for EDA review and approval except in unusual circumstances.
- d. An applicant must provide EDA with satisfactory assurance that no person has been discriminated against or will be denied the benefit of the project on the grounds of sex, national origin, color, or race.
- e. A project should relate to existing approved local plans and programs of a community or regional development nature -- e.g., OEDPs, Comprehensive Plans, HUD 701 Plans, EPA Areawide 208 Plans -- as applicable, and should advance long-range plans.
- f. To the extent possible, at least 10 percent of the personnel hired for a project should be project area residents who had been unemployed for at least 30 days prior to being hired.
- g. For a project involving a neighborhood or community within a larger jurisdiction that is eligible for priority assistance on the basis of the unemployment rate for this specially defined area, the project must directly benefit or provide employment for unemployed persons within that neighborhood or community. However, it is not necessary that the project be located in that neighborhood or community -- only that it benefit or provide employment for unemployed area residents.
- h. For supplemental grants providing the non-Federal share of another Federally funded public works project, the applicant must obtain certification from the other agency involved in the project that: (1) the project is approved and funds are immediately available; (2) construction has not been

started owing to the lack of the non-Federal share; and (3) on-site labor can begin within 90 days.

- i. For supplemental grants providing the State or local share of any State or local authorized public works project, the applicant must obtain certification from the State or local agency involved in the project that:
  - (1) the project is approved and funds for one of the shares are immediately available;
  - (2) construction has not been started; and
  - (3) on-site labor can begin within 90 days.
- j. If a 100 percent direct grant application has been authorized and is pending under another Federal program(s), that application -- to be eligible for funding under this program -- must be withdrawn from the other program, and evidence of the withdrawal must accompany the application for EDA funding. In certain situations, as required by EDA, grant applications authorized and/or pending under another Federal program(s) must be reviewed -- and certifications obtained from the agency (agencies) involved -- concerning design, program, and technical standards.

### 3. Procedures

- a. An applicant will develop an application in conjunction with EDA's field organization and will submit the completed application to the appropriate EDA Regional Office.
- b. An application may be accepted only by the appropriate Regional Director, processed by the Regional Office, and approved by the Assistant Secretary. No application will be accepted unless funds have been appropriated and made available to the Agency.

- c. A modified A-95 clearinghouse procedure has been requested by EDA from the Office of Management and Budget. The procedure will be as follows. An applicant will be encouraged to submit its full application or notification of intent to apply to the appropriate clearinghouses as early as possible. Upon submission of an application to EDA, the applicant must certify that the full application has been submitted to the appropriate clearinghouses. EDA may begin processing the application upon its acceptance; however, the Agency will make no final decision to approve an application until 30 days after its acceptance, unless, of course, clearinghouse response is received before the 30 days have elapsed. Clearinghouse comments will be submitted directly to EDA, and EDA will consider such comments until processing of the application is completed. This procedure will be in effect for 90 days.

An applicant submitting an application after the first 90 days during which EDA is accepting applications will be expected to attach all State and areawide clearinghouse comments to the application, as required by Circular No. A-95. It should be noted that clearinghouses will often be able to provide technical assistance in the preparation of applications for assistance under this program.

#### 4. Acceptance of Applications

The Regional Office will begin the processing of an application after it has been determined that the application is eligible for consideration, has been properly prepared, and contains all necessary material. The Regional Office will notify the applicant of one of the following:

- . The application has been received for processing.
- . The application contains deficiencies that must be corrected. After the deficiencies have been corrected, the application may be resubmitted to the Regional Office. Upon resubmission, the application will be treated as a first submission.
- . The application is ineligible for funding, stating the specific reason (e.g., ineligible project type or applicant).

- . There is a need for comment by other Federal agencies.
- . Although the project is eligible, all funds have been expended, the State's maximum funding level has been met, or no funds remain for the priority group.

#### 5. Final Determination

After the Regional Director has received and begun processing the application, EDA has 60 days within which to make a final determination on approving or denying the project proposal. If, after 60 calendar days, the applicant has not been advised regarding final determination, the project will be considered approved.

EDA, to comply with the Local Public Works Capital Development and Investment Act, the regulations governing this Act, and these guidelines -- particularly in the case of areas in other than the 70 percent priority group -- may disapprove applications without prejudice. When this is done, EDA will so notify the applicant promptly. Applications that have been disapproved without prejudice automatically will be considered as resubmitted for further processing, unless the applicant withdraws the application in writing.

#### J. Exclusions

To meet the time frames mandated by the Act, delays in the initiation of construction of projects must be avoided. Therefore, projects normally will not be approved if it appears that any of the following conditions might result in delays that would prevent construction from being initiated within 90 days of project approval:

- . Clear title to the project site has not been obtained.
- . Condemnation or relocation actions are involved.
- . Information contained in assurances for plans and specifications is not sufficient.

## K. Environmental Considerations

### 1. National Environmental Policy Act

Because the Local Public Works Capital Development and Investment Act requires that EDA process applications within 60 days of their acceptance, EDA will not be able to prepare environmental impact statements for those projects that may significantly affect the quality of the human environment. However, EDA will, to the fullest extent possible within the allotted 60 days, analyze a proposed project's potential environmental impacts and give appropriate consideration to these impacts in making its final decision.

The environmental impact analysis will include: (1) the identification of any potential major adverse environmental impacts; and (2) when feasible, the development of mechanisms and measures to avoid or mitigate such impacts. EDA will deny an application if, after consideration of the benefits of a project against any environmental costs, the Agency concludes that the environmental costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. Unacceptable adverse impacts may include, but are not limited to, the following:

- . The addition to the environment of a pollutant that will violate or increase an existing violation of a Federal, State, or local standard covering such a pollutant.
- . The deterioration of an environmental resource declared to be of national significance, such as a property listed on or eligible for the National Register of Historic Places.
- . The major disruption, or conversion to another land use, of important environmental resources within the surrounding area, particularly those resources in scarce supply.

- . The existence of substantial controversy among government agencies or residents/users of the project area concerning the acceptability of the project's environmental impact.

The time frame for application review mandates that the Regional Offices identify early in the application stage those projects having substantial environmental costs and/or unacceptable adverse impacts. Applications that are inconsistent with the environmental policies described above are discouraged.

2. National Historic Preservation Act

In compliance with the National Historic Preservation Act, all project applications must be accompanied either by a statement of the State Historic Preservation Officer's (SHPO) views on the project or by evidence that the SHPO was provided with a detailed project description and a request for comment prior to submittal of the application.

EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation, as required. Even though completion of the coordination process may not be possible, the results of the process will be used by EDA in making the final decision on the project.

3. The Wild and Scenic Rivers Act

As required, EDA will coordinate with either the Department of the Interior or the Department of Agriculture regarding the requirements of the Wild and Scenic Rivers Act.

L. Compliance

In addition to the requirements of the Local Public Works Capital Development and Investment Act, projects must be in compliance with the following:

- . 15 CFR Subtitle A, Part 8 Civil Rights and Title VI of the Civil Rights Act of 1964.

- . The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 13 CFR Part 310.
- . The National Flood Insurance Program and 13 CFR 309.15.
- . The National Environmental Policy Act of 1969, as amended.
- . The Archeological and Historic Preservation Act.
- . The Federal Water Pollution Control Act, as amended.
- . The National Historic Preservation Act.
- . The Clean Air Act.
- . The Fish and Wildlife Coordination Act of 1975.
- . The Wild and Scenic Rivers Act, as amended.
- . The Endangered Species Act of 1973.
- . OMB Circular A-95 (modified procedure for this program).
- . 13 CFR 309.14 Design, construction and alteration of buildings to accommodate the physically handicapped.
- . 13 CFR 309.11 Special purpose units of local governments.
- . 13 CFR 309.26 Project modification.
- . The Davis-Bacon Act.
- . Part E of the Omnibus Safe Streets and Crime Control Act of 1968, as amended (for detention facility projects).
- . 13 CFR 314 Property Management.
- . The Contract Work Hours and Safety Standards Act.

- . The Intergovernmental Cooperation Act of 1968.
- . The Copeland Anti-Kickback Act.
- . 13 CFR 309.9 Records and Audits.
- . 13 CFR 309.27 Land Use near Federal Airfields.
- . Executive Order 11246, of 1965, Equal Employment Opportunity.
- . All other existing or further acts affecting this program, including State and local acts.

M. Project Costs

1. Eligible Costs

The types of project costs that are eligible for funding under this program are:

- a. Construction and facility improvement costs.
- b. Uniform Relocation Assistance expenses and payments.
- c. Costs for capital equipment not included in the construction contract.
- d. Interest on interim construction financing.
- e. Costs for completing and updating plans, specifications, and estimates -- where either architectural design/preliminary engineering or related planning has already been undertaken, and where additional architectural and engineering work or related planning is required to permit construction of the project.
- f. Other A/E costs such as inspection fees and test borings.
- g. Legal and audit costs.

## 2. Ineligible Costs

The types of costs that are not eligible for funding under this program are:

- a. Costs for acquiring real property -- acquisition of land, structures, and rights-of-way, including costs incidental to acquisition of land.
- b. Maintenance costs -- costs incurred for any necessary repairs or upkeep of property that neither add to the permanent value of the property nor appreciably prolong its intended life, but rather keep it in an efficient operating condition.
- c. Costs for plans, specifications, and estimates for projects incurred prior to receipt of an application by EDA. Such costs will not be reimbursed by EDA, nor will costs incurred subsequent to receipt of applications unless the project is approved.
- d. Cost overruns. This means that, regardless of the type of grant (100 percent direct or supplemental), no additional funding will be extended once a project is approved. Any cost overrun incurred on a project must be funded by the grantee.

## N. Construction Management Procedures

### 1. Processes

The following processes are to be followed in the implementation of projects funded under this program:

- a. Each grantee will be provided with a copy of "Design and Construction Guidelines for the Local Public Works Capital Development and Investment Act," which details construction procedures and requirements.

- b. EDA will monitor construction of 100 percent direct grant projects and projects for which the grant is supplemental to State or local funding.
- c. EDA will transfer to other Federal agencies the supplemental grant funds for the projects of those agencies. The other agencies will then administer the grant, monitor construction, and provide EDA with assurance that program requirements of the Local Public Works Capital Development and Investment Act have been met.
- d. Construction on projects normally will be contracted for through competitive bidding.
- e. EDA will allow simultaneous design and construction of projects when this is necessary for the applicant to meet the requirement that on-site labor begin within 90 days of project approval. A description of the procedures to be followed in such cases will be supplied to the grantee by the appropriate EDA Regional Office.
- f. Any cost underrun incurred on a local public works project may be used for additional construction, if approved by EDA. If an underrun cannot be used for this purpose, the amount of the underrun will be returned to EDA.

## 2. Requirements

The following major construction management requirements are to be followed in the implementation of each project approved under this program. Detailed instructions for these and other requirements will be supplied to the grantee upon project approval.

- a. A Project Management Conference normally will be held. This conference is to be attended by, but not limited to, EDA representatives, the grantee, his designer, and his attorney to discuss design and construction requirements.

- b. The grantee must obtain EDA approval of A/E and related planning services that are found to be required after the project has been approved.
- c. The grantee must insure that adequate construction surveillance and inspection are carried out by a fully qualified inspector.
- d. The grantee must provide to EDA regular reports on design and construction progress and on the status of all advanced grant funds.
- e. The grantee must provide to EDA evidence that all necessary permits, certifications, land titles, rights-of-way, easements, etc., needed to carry out the project have been obtained.
- f. The grantee must establish a financial management system that meets FMC 74-7 standards.
- g. The grantee must insure that bidding and contract award procedures are accomplished in accordance with FMC 74-7 standards.
- h. The grantee must obtain EDA concurrence on any major changes affecting the project as approved by EDA.
- i. During project construction, the grantee must provide to EDA monthly reports and a final report indicating number of employees, person-months of work, and certain characteristics of the individuals employed on the project.
- j. EDA normally will make disbursements through the line of credit procedures outlined in the Department of the Treasury Fiscal Requirements Manual.

Mr. EDEN. Yes, sir, Mr. Chairman, I will go ahead with that. As we analyzed the legislation, we attempted to make judgments on a project based on four principal criteria. Criterion No. 1 was the total number of people that are unemployed in the project area; No. 2, the severity of the unemployment in that project area; No. 3, the cost per man-month that the project provides; and No. 4, the level of income in the location from which the project is requested.

We then took those four criteria and established a weighting system or numerical evaluation to them. We did this primarily so that we would have a system of judging the projects as they were presented to us. It is our judgment that there will be a very large number of applications that we will have to process in a very short period of time. From the meetings that we have held with people throughout the country, testimony that your committee and others have taken, we feel there will be a great deal more than \$2 billion worth of projects that will be presented to us for judgment.

And, of course, we have to make a judgment on the projects within a 60-day period of time.

EDA is not a large agency; we have about 750 people, of whom about half are in the region. So the resources available to us to make judgments on these projects are somewhat limited. And we felt we simply had to have a system that would enable us to score a project as fast as we possibly could. Second, we felt it was necessary and absolutely essential that we have a system that would enable us to be as fair and as objective and as efficient in granting the money as we possibly could be.

So this was the system that we devised.

Then to these four scores, we would apply a percentage bonus for the ability of the project to effect local plans and to provide long-term benefits to the community. In addition, a bonus would be provided if the applicant were a general purpose unit of local government, since the act requires that priority be given to public works projects of local government.

Mr. ROE. Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. Mr. Secretary, the basic rank of a project is determined by these four elements, which add up to 100 percent under the percentages which you have assigned to each one of them under the guidelines.

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. And then you have these bonus ranks, where you add on 10 and 5 and 5.

Now, could you explain how each of these elements would be translated into a common denominator so that a numerical value could be assigned to each project? Will it be done on a basis of 100 percent, or 120 percent? How would you arrive at a final rating determination?

Mr. EDEN. As we score the projects, we will add the total points that are achieved by the project, and then it will be compared with other projects within that category, that is, the 70-percent or the 30-percent category, within that State. And we will come out with a ranking of projects in relation to one another within that category and within that State.

Mr. HAMMERSCHMIDT. So the top you could score would be 120 percent?

Mr. EDEN. It could conceivably be.

Mr. HAMMERSCHMIDT. Would that be correct?

Mr. EDEN. That is very unlikely that it will have that high a score, but they will be close to it.

Mr. HAMMERSCHMIDT. So 120 percent, though, would be your basis for scoring on?

Mr. EDEN. Correct.

Mr. HAMMERSCHMIDT. Rather than 100 percent.

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. Well, how will local unemployment statistics be used in this program? How do we arrive at them? Are you following the intent of the legislation, and how are you going to do that?

Mr. EDEN. We are doing all we can to follow the intent of the legislation. If the project comes from an area for which local statistics are not available from the Bureau of Labor Statistics, the local community will be asked to have its unemployment rate certified by the appropriate State Employment Security Agency, so that the unemployment percentage figure will be given to us on the application.

Mr. HAMMERSCHMIDT. As I understand it, you have been in touch with the Department of Labor.

Mr. EDEN. Yes, sir.

Mr. HAMMERSCHMIDT. In helping promulgate this legislation. And, therefore, if a community or any entity that you outlined here as an applicant, a qualified applicant, which is just about anybody, as we understand—and that is the way we really want it.

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. If they qualify and they go to the employment security division of a State and ask for a labor determination, and it is certified by them, then you accept it with no further ado?

Mr. EDEN. This is correct. Again, we felt—we were trying to be as simple and as efficient as we can with it. For us to have to verify or to establish a labor rate for each possible location throughout the country would be almost an impossibility, of course, to do.

Mr. HAMMERSCHMIDT. We appreciate that, certainly—and I think you are on a good course. This is a grand experiment; it is a \$2 billion experiment, but I feel that we are using mechanisms here that we have never used before, and we may find that we can indeed put public works projects in place quicker, if we go this shortcut route, with certain safeguards, than we have ever done before in this country. And I compliment you on your candid and conscientious approach to these guidelines.

Mr. Chairman, I won't take any further time on this line of questioning, and I appreciate your yielding to me.

Mr. ROE. If I may, Mr. Hammerschmidt, I want to build on that point, because I think that the Members and the public who are here ought to understand the interrelationship, because what it amounts to is that they are going to be competing with each other. In fact, that is the way the bill, in part, was generated—on the basis of need.

Now, if we go to page 13 and we talk about the basic rank and the four areas that you have related your attention toward—which are: (1) The total number of unemployed, (2) the severity of unemployment, (3) the cost per man-month on the project, and (4) the level of

income of the project area—we have a little bit of difficulty there with some dichotomies. I think you could better explain the scoring by using specifics, such as project area. For example, Item No. 1 is a very high rating; we are ranking that criteria at 30 percent. If the applicant meets the requirements under item 1, does that mean that he is going to score a rating of 30 percent for that project area?

Mr. EDEN. Well, again, it will be a relative matter, as the project relates to the total number of unemployed in other—of other projects.

Mr. ROE. I think this is a very salient point, John. We are saying that the project area is the key word here.

Mr. EDEN. Yes.

Mr. ROE. The project area is the key word. If a community of 50,000 or 70,000 people have a number of projects or their first project, whichever the case may be. Let's say that they are going to add an addition onto a school and they are going to renovate a school. If they meet the fundamental basic rank they qualify in the first category, they are eligible, No. 1.

In determining the project area—if the community has 60,000 people and they are going to build a school, query: what area does it service? Is it the service area? Or are we going to say that the area of the community wherein the school is built determines the project area? That determination is going to have a very weighted relationship to the unemployed workers in the project area. Do we count the unemployed workers in the service area or the community? That is a very important question, in my judgment.

Mr. EDEN. Well, I would like to try to define that, because I quite agree with you, Mr. Chairman; that is a very significant point.

We have established that the area need not be just the local area in which that school would be located.

Mr. ROE. Service area.

Mr. EDEN. But it is that area that the applicant wishes to describe as the affected area, principally with regard to the unemployment in the area.

Mr. ROE. Let me review that further because we are in a fuzzy, spongy area there. On August 25, in the debate that was fiercely fought on the floor of the House on the Cederberg amendment to the Public Works Employment Act appropriations bill, the quarrel that the committee had with that amendment was not the quarrel that seemed to be emotionally apparent by many of those in attendance as Jim Wright well knows. We had no quarrel with the principle of hiring the unemployed who resided in the impacted area of the project. We would not want to deny any job opportunity to an unemployed person with the skills to do the job in his project area. The problem with the Cederberg amendment was that it categorically knocked out any project application by requiring that there would be no funds available for a project unless 10 percent of the people employed on the project could be hired from the unemployed in the project area.

The problem there was that if there were not enough electricians or enough carpenters or enough masons residing in the area where the project would be built, then, in that instance, the project would be ineligible, according to our interpretation.

So that is why we struggled so hard and so valiantly, if you like, to reject that amendment to the appropriations bill. That provision

in the law was never the intent of the committee in promulgating the act in the first place. That was our concern, not the idea that we should not be hiring someone from that particular project area, because certainly we would try to do that.

We are now saying in the EDA guidelines that the value of a project is going to be determined, in part at least, with a 30 percentile rating or point system, on the number of unemployed workers in the project area, which has no bearing per se on what the trade talents or capabilities of those people may be. So, in effect, we are coming back and we are saying, at least as I interpret this particular part of the regulations, that the eligibility of a project is going to be weighted from 1 to 30 percent on the number of unemployed workers in the project area. This criteria really doesn't have any direct bearing on the unemployment that we are trying to cure, because we will be drawing construction workers from outside the project area.

Mr. EDEN. And they can define the project area to include that area from which those unemployed workers come.

Mr. ROE. That I understand, except let me point out to you another codicil that is in these guidelines. Be that so, we are basing the criteria of eligibility on the number of unemployed workers in the project area. Our delineating that project area, therefore, becomes crucial. This thread of reasoning goes through these whole regulations. Let's assume that a city is broken up into five wards, and let's assume that the levels of unemployment in those five wards differ considerably, let's assume that a school will be built in ward 3, let's assume that in that particular ward there is a level of unemployment of 26 percent. Because of its higher level of unemployment, that ward is in a better weighted position than the other wards if the project area includes only that ward, although the service area may be greater than the project area.

Mr. EDEN. But the service area, if it is greater than the local project area, will therefore allow the applicant to include a larger number of unemployed in his project.

Mr. ROE. Yes, but that countermands another point which we will get into the next time around. What we are saying here basically is that the applicant can select the project area.

Mr. EDEN. Yes.

Mr. ROE. Therefore, it doesn't have to be that the whole city has to be included, because the unemployment rate in the city may be considerable higher than the project area. So, we are saying that we are going to weight the unemployed worker, which has no bearing upon the construction worker other than the hypothetical point of view that a certain number of construction workers should be in that particular region. Therefore, when filing an application for funds under the act, it is vitally important how the project area is delineated in order to receive optimum consideration as far as these unemployed workers are concerned, because that is going to have a bearing on how they are weighted from 1 to 30.

Mr. EDEN. This is correct, Mr. Chairman, I might also point out—

Mr. ROE. You are not going to limit that, for example, if Paterson or Passaic, one of the cities in my district, comes in with a project and

say, well, you either put that in as Passaic being your total project area or you are out of the ball game?

Mr. EDEN. No, sir, that is correct. I might also point out that in our deliberations, one of the reasons we felt it was important to include this broader area was for the benefit of the rural counties where you could have a rural county with a low level of income, with a high rate of unemployment, but not many fitting in under category No. 1, not many absolute unemployed, because there wouldn't be that many people in the rural county or the rural area.

So in broadening it we allow the rural county to include unemployed from other counties surrounding that area, so they, too, can benefit from this type of provision.

Mr. ROE. What we are saying fundamentally is that the project area is critical to delineate in the application in order to take advantage of the particular weighting procedures.

Mr. EDEN. This is correct, sir.

Mr. ROE. We are rating that criteria 30 points. Who is going to determine that 30 points? In other words, suppose I have a situation where I want to build a school. I have selected the best possible project area as it is weighted by the number of unemployed in category 1, and I have submitted the application to the EDA regional office. Needless to say, other communities and cities are doing the same.

Who decides, and on what methodology does he decide, that category No. 1 of the application will be rated 15, 18, 26, 4 or whatever the case may be? How is the rating between 1 and 30 determined?

Mr. EDEN. Well, to the first part of your question, the judgments will be made in our regional offices on the scoring; our regional people will make the judgment.

Mr. ROE. Have you given them a list to determine that?

Mr. EDEN. We are working now on our more detailed guidelines to our field as far as the precise method they use to allocate the number, whether it be 22, 24, 28, or whatever. We have not completely finished that system of instructions at this time. But the project will relatively speak for itself, and it will be standardized on a grading system, again compared to other projects within that location, within that State.

Mr. ROE. Mr. Cleveland?

Mr. CLEVELAND. Thank you for yielding, Mr. Chairman. I would like to suggest that when these guidelines are ready to go, we have another hearing similar to this; my experience with these ratings of grant applications has not always been a happy one, and sometimes extremely difficult to explain to constituents.

If you are going to have guidelines backing up these regulations we have before us, I think it would be enormously important for either our staff or the full committee to have a look at them—and the sooner, the better.

That is my suggestion, Mr. Chairman.

Mr. WRIGHT. Would the gentleman yield at that point?

Mr. CLEVELAND. Yes, certainly.

Mr. WRIGHT. I thought this was it; I didn't know there were going to be some more.

Mr. EDEN. I probably should not have used the word "guidelines," Mr. Cleveland. This will simply be internal administrative procedures as to how our people can deal with the numbers.

Mr. CLEVELAND. Let me explain what I am getting at, and you tell me if I am wrong. I won't bore you with the horrible details, but I have been here long enough to have had a great deal of difficulty explaining to constituents why a grant was turned down. And so we read the regulations and then somebody comes up to my office and we have a discussion as to why, under the regulations, this particular grant was turned down. Then they come up with little checklists and ratings, which is going on all the time, because grantsmanship is the name of the game in many of the departments down here.

If you are going to have guidelines—I don't care if they are internal or external—I think if this committee is going to be in a position to advise our constituents whether they have a good application that we think is going to go, or a lousy one they might just as well forget about, we are going to have to know how you are going to implement these regulations. I think it would be enormously important for us to have a look at those guidelines and rating charts; and so forth, or have the people that are going to draw them up right here explaining to us how they are going to work.

Mr. HAMMERSCHMIDT. Would the chairman yield?

Mr. ROE. Yes, sure.

Mr. HAMMERSCHMIDT. Well, I think this discussion goes back to an original question that I asked, which was never really fully answered, although I think I can see the answer now. The question was, could you explain how each of these elements will be translated into a common denominator so that a numerical value could be assigned to each project?

I take it from what you are saying that, for example, category A, which is 30 percent—would be evaluated separately on a point system, something like that?

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. And you would take category B of all the projects that are competing with each other within a State, and then you would say category C and so on, to where you would finally come out with a total point system—and then you would go into the bonus arrangement.

Mr. EDEN. That is correct.

Mr. HAMMERSCHMIDT. Is that in general the direction you are going?

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. Now, I think what gives us pause, and what gives Congressman Cleveland and others pause, is the title X experience, and I know you are going to try to do a better job than you did with that—but this point system reminds us of that.

VOICE. Would the gentleman yield?

Mr. HAMMERSCHMIDT. Well, the chairman has the floor, and he yielded to me.

Mr. LEVITAS. Mr. Chairman, would you yield at that point?

Mr. ROE. I will yield to Mr. Levitas.

Mr. LEVITAS. Thank you. What I think is troubling Mr. Cleveland—and I know it is troubling me—is that when you say there is a maximum of 30 available points under the first criterion, somebody is going to have to look at an application and say, of the 30 available points, you get 10, you get 20, you get 25. The regional office is going to make that decision.

What criteria are they going to use in deciding whether an application gets 10, 20, or 25 points out of the available 30? I think that is very fundamental. It will indeed determine, under the regulations as they are now written, whether a project is approved or not approved. That criteria doesn't appear here; it is just an available 30 points. When it gets down to the nitty-gritty, we don't have that information available.

Mr. HAMMERSCHMIDT. Would the gentleman yield? As I read this, those are all hard statistics that must be used—there is no judgment factor in the first 100 percent, isn't that true?

Mr. EDEN. You are correct, Mr. Hammerschmidt. Perhaps I could go a little bit further and explain some of the details of this procedure—and if I am not correct in this, my staff can help me.

Within a given State, the number of people unemployed by project will be defined as each of the projects are defined. Then we will compare those projects within the State, and making the comparison within the State will determine a score of 29, 18, 22, whatever the score might be.

Now, this can vary from State to State. Taking into consideration the State of Georgia, that area that has the most number of people unemployed might be 200,000. The second area might be 160,000.

Mr. WRIGHT. Wait just a second. Would the gentleman yield?

In attributing an arbitrary figure within this 30 percent, are you saying the number of unemployed or the percentage of unemployed as defined within the project area?

Mr. EDEN. On this particular point we are talking about the first criterion, that it be total number of unemployed people in the project. The applicant specifies that on his application.

Mr. WRIGHT. Then apparently what you are doing is weighting it in favor of a big community. You could have a community of 500,000 people—well, let's say you could have a community of a million people that had 7 percent unemployed, and you would yield a greater factor there than in a community of 25,000 people that had 19 or 20 percent unemployed.

I wonder if that is what we wanted to do. I am not sure. I thought maybe the percent of unemployment in the project area was the thing to be considered, not just alone the raw numbers.

Mr. EDEN. They are both considered. The percentage of unemployment, the severity of unemployment, is point No. 2. We were just speaking here and trying to clarify point No. 1.

Mr. WRIGHT. Point No. 1 is the total number of unemployed. Therefore, the bigger the project area, obviously the greater credit you are going to get under that.

Mr. EDEN. Under that criterion; that is only 1 of 4. But it is a fair assumption to make that—

Mr. WRIGHT. So it would be true, then, that under your regulations, a city of 1 million people, if it had only 6½ or 7 percent unemployed, could score higher than a community of 25,000 people with 18 percent unemployed.

Mr. EDEN. Not necessarily.

Mr. WRIGHT. Under that criterion, if you are talking about total numbers.

Mr. EDEN. Because the second criterion is the percent of unemployment.

Mr. WRIGHT. I am talking about that criterion.

Mr. EDEN. Well, that one criterion, yes, sir. But that is why there are four.

Mr. SHUSTER. Would the gentleman yield on that point?

Mr. ROE. In view of the fact that you have been waiting so long, of course, Mr. Shuster.

Mr. SHUSTER. Thank you. This is the point that I wanted to get to. I think Congressman Wright has really hit the nail on the head. This is an enormously serious matter, it seems to me.

For example, it means that Pittsburgh, Pa., for example, with, let's say, a labor force of 100,000, if it has 5 percent unemployment—and these are theoretical figures—it has got 5,000 unemployed. Little Bedford County, Pa., with a 10,000 employment force, with 1,000 unemployed, has 10 percent unemployment.

So in that one category, Pittsburgh is going to score—and I realize you have got to be over 6½ percent, let us say 6 to 12 percent to get it in the same grouping—Pittsburgh is going to score overwhelmingly better in that one category.

Now, little Bedford County can score slightly better than Pittsburgh in the second category of severity. It can score slightly better than Pittsburgh in the cost per person-month of employment. It can score slightly better than Pittsburgh in the level of income. It can score slightly better in all three other categories. But because it scored so poorly in the first category, the total number of points could turn out to favor the first area.

And I do not mean to pick Pittsburgh versus Bedford. But by way of example it strikes me that this was not the intent of Congress. We do not care, in one sense, about the raw number of unemployed. We care about the unemployment rate. We care about the impact on the community.

It seems to me that this first criteria is enormously serious in that it is not in keeping with the intent of Congress. Other members here may disagree with me.

Mr. EDEN. Well, Mr. Shuster, I would like to say how very hard we worked on that very point. You put your finger right on it. And it is one that we worked very assiduously in reading the legislation as carefully as we could read it to determine your intent, and to try to be as—as I said—as fair and as objective as we possibly could be.

We felt that your intent was to place these dollars where they could get the maximum return.

Mr. SHUSTER. Yes, but that is point No. 3. Maximum return is the bang for the buck, the cost per person-month of employment.

Mr. EDEN. No, but it is also the point where there are the most number of people unemployed. We felt that it was your intention to put the dollars where the biggest problem was.

Mr. SHUSTER. Well, when you have a wrong number—Houston, Tex., probably has several thousand unemployed, but Houston, Tex., I understand, has one of the lowest rates of unemployment in the country. I really think it—

Mr. EDEN. It will get a very low score. Within Texas.

Mr. SHUSTER. Well, I really think this first criteria distorts the picture.

Mr. EDEN. There is one other treatment we will make to the point that you raise, Mr. Shuster. That is, having given a score under item No. 1 related to the most number of people unemployed, we will then apply a logarithmic transformation to 10 to reduce the curve, so that the heavy weight of the Pittsburgh side, for instance, would not be that far out of line with Bedford. It will not permit a score of 28 versus 6, for instance. It will tend to reduce the extent of the curve. And as we have made some trial runs with this, we have found that it does in fact accomplish that.

Mr. SHUSTER. You know, John, I have great admiration for the job you are doing, as you know. And as a fellow Pennsylvanian, I could not think more highly of you. But you really make me nervous when you start talking about logarithmic—

Mr. EDEN. I am sure you duly noted the pause before I used the phrase, and I hope it was correct.

Mr. ROE. Let the Chairman interject here. I think we are right at the meat of the problem. What are we saying here?

We are saying, No. 1, the clever adaptation of the grantsman in putting the factors together, and the flexibility he has, is going to determine—which is exactly the point Mr. Shuster is making—the eligibility of that project.

Because we have said that No. 1 is categorically the area of the project which is to be determined by the applicant, the applicant can then apply and do his arithmetical maneuvering for a rating in that category.

Now what are we saying? We are saying under No. 1—I think we have to now take it into context. We are saying under No. 1 you can be weighted 30 points depending on the unemployed bodies in that area.

Now I do call something out to you: those figures are not that readily available. If I am the grantsman, and I am going to figure out the best deal I can under these guidelines, I am going to draw an artificial line around that project area to give me the best possible opportunity I can get.

Therefore, the numerical number of bodies that are unemployed do not become important. Certainly not important to the point of view of 30 percent weighting, which is part of the problem.

Now I can do something else under the law. I can quarrel with the Federal BLS statistical situation. I can quarrel with the State. And I can come back to the Secretary and say, I do not think they have been fair here, because they do not have the figures of the areas per se that I delineated as my project area. Therefore I want to submit to you additional figures for bodies. And I have to go out into that project area, and I am going to count those people. And I am not being facetious at all.

So therefore what I am saying is that there is another mechanism in the bill which gives the applicant the right to quarrel with the figures. So he can come back and say, well, the number of bodies—now, just think, we are weighting that 30 points—will be rated on the basis of the bodies of unemployed in the project area. I think that is No. 1.

Mr. CLEVELAND. Would the Chairman yield at that point?

Mr. ROE. No, let me just get the continuity, if I may, Mr. Cleveland. Just for a second.

On page 14(b), the criteria is based on the severity and duration of unemployment, which is fairly measurable but that is weighted 25 points. In other words, if a community—as you are pointing out, Bud—comes back and says, well, OK, fine, in this particular area the severity is—you can pretty well measure that. You are weighting that category 25 points.

Now let us go to the next category. The cost per month of employment. What does that mean? Renovation construction projects, for example, come in with a labor force of about 50 percent versus the national statistics on new construction. The 30 points, therefore, in item 3 is weighted toward projects of renovation where you have numbers of people working on that job. That category is worth 30 points.

Now let me point something out to you. We have a case in New Jersey which was pointed out to us during one of our seminars with local government officials on the Public Works Employment Act whereby the city could use the funding to build a road, a water supply line and a water sewer line into 750 acres of industrial property in the meadowlands. The project, however, is not labor intensive. It is more material intensive. But if they could get that road built in there, and the sewer line and water line, they can open up those 750 acres, which are worth about \$100,000 an acre and can produce 20,000 jobs in that particular area if they can be opened up.

By applying 30 points to paragraph (c) on the cost per person-month of employment, we are coming back and saying that those projects, regardless of what the city's or other unit of government's priority may be, have to be weighted 30 points based on the number of people you employ.

Now let me build on that point. I go ahead and you approve my project. You say, "Well, OK, we think you are doing the right thing." I have to demonstrate to you the number of people that I am going to employ on that project, now, by God or by guess.

Let us take that same combination, building and renovation job. If you once bid that job and have the materials which are listed on take-off sheets from a construction point of view, then you take the take off sheets and relate these statistics to the number of people that are going to be employed. At that point I can give you an accurate figure.

But if I am only estimating that job, and I have not done that job yet, I cannot legitimately and honestly give you that answer because I really do not know.

But be that as it may, what we are saying, with 30 points applied under section (c), you are going to weight renovation types of projects—not based on the judgmental point of view of what the priority may be of the community to create a better infrastructure and a much broader employment base later on at the end of the rainbow, so to speak.

To get back to the guidelines, item (d) which you are going to weight 15 percent. This category relates to the level of income prevailing in the project area.

It seems to me from a point of logic we are not as much concerned with the man who has the job and is bringing home the food to the family table. We are concentrating here on the man who does not have the job. Why should my project be denigrated because it might embrace a ward of the city where everybody is employed. Am I also going to be measured with 15 points because of the level of their income. That does not seem fair for what I am trying to do. In applying 15 points to that area of the city where I am trying to get something done, I lose the advantage.

What I am trying to get across, John, is that when you really analyze the real world of these particular situations that are weighted so heavily, what is going to happen to us? How do we determine what projects we should include in the application? We have already said the project area can be delineated by the applicant. Now we have to somehow play a game.

The second thing we are talking about is the cost per month of employment. That means that we are tilting toward renovation projects, primarily, which is the basis used mostly for title X projects under the general EDA legislation, if you will recall. We are not really giving a judgmental value to weighting the priority situation that the community may need. In other words, we do not want them out there grabbing off the first Federal buck along the line. That is not the issue; we want to get the jobs in there. We are trying to use public works to help unemployment where construction workers are involved. And we are trying to provide a source of capital development funds for building the infrastructure of our communities.

This is, I believe, the basic thrust and intent of the Public Works Employment Act.

Some people have said that public works construction will not work. It costs too much per job, and it is the wrong way to go. They refer to the leaf raking jobs, and other make-do jobs. Well, it will only take on that atmosphere if we constrain our people so greatly that they have no room to move.

Let me conclude on this phase of it before we talk to some of our other members. We all have a big problem here. In my judgment, under this legislation we have created with our people a massive feeling of hope and intent that we are moving in this country. This will work. We are now moving ahead.

We know there is not going to be enough money available, by far, in this first impact of funding. I hope that it is not the intent of the EDA Agency to say, well, of the 186 projects that would be eligible in New Jersey, we can only fund 74. Therefore, the others are rejected.

What we are really building for the first time is a legitimate capital needs and investment situation throughout this Nation. This committee can then try to decide beyond that. We are frightfully concerned with the weighting of these points in the criteria of eligibility. We are frightfully concerned with the proposed prioritizing of the value of a project that a community wants.

For example, if a community puts in four applications, why should we not be coming back and saying, well, okay—and I will use names in my State that I am familiar with and only for reference. The city of Paterson puts in four applications. Okay, maybe they will get all

four of them, maybe they will not. But the city of Paterson wants to prioritize their four projects. They are not going to prioritize them on the number of dollars involved, because that is not going to build their infrastructure. But if they had to compare building the road and the sewer line and the waterline into the industrial area, which would open up 10,000 jobs or 5,000 jobs down the road, if that is their number one priority, why should not the cities and towns and regional projects be weighted somehow on the order of the community's priorities so that they are not forced to go the route of a massive renovation job which may not be their top priority—it might be priority three to them.

These are the kinds of concerns that I would just like to project for elucidation as we go along.

Mr. EDEN. Well, I think you have raised some very cogent and very profound points, Mr. Chairman.

To speak to two of them, you raised the question of the downstream benefit of a project. That project would receive a 10-percent bonus, on page 14 of the guidelines. A 10-percent bonus is granted to a project which presents potential for providing long term benefits; that is, it provides a needed community facility, et cetera.

So we have recognized that characteristic, or we tried to, with the bonus factor.

Now, your comment about income levels, section 107 of the act clearly says, in subparagraph 2, that we should take into consideration, too, the income levels and extent of underemployment in the proposed project area. And that was what we were trying to do in attaching that weight. So our four criteria come right out of section 107 of the act.

Mr. ROE. No, I am not quarreling with that. But I am concerned about 15 percent being extended to that particular provision of the law. It truly was not our intent that those who were employed would be measured against those who were unemployed. And maybe we erred in not being more precise in the language of the legislation.

I would only trust that you would take another look at your measurement of weighting these projects because that criteria is going to determine what the project area is going to be.

Mr. EDEN. It will certainly contribute to it, you are correct. Again, we have felt that your intention was that we put the dollars where we can get the most return for the American taxpayer from this program.

Mr. ROE. Well, let me say this with the greatest respect.

Our program here was based fundamentally on a point of view of devising a new delivery system for public works that could be implemented with the greatest dispatch. We do not want to waste any public dollars anymore than you or anybody else does along the line.

I am simply saying that we do not want to force this program into a point where those projects that are going to come up No. 50 on the first part of the list are going to be renovation projects. That was not our intent at all. We were saying that each one of our communities could intercompete with each other for these funds to get this economic recovery measure moving along the line.

We do not want to discourage our people and say, "Well, unless you come in with an application for a renovation project, then you are counted out." That was not the intent of this committee, and I can say that quite authoritatively. It just was not. We want to get the best return. But we do not want to limit our people, and weigh the project so heavily that only renovation projects qualify. That is not what the intent of this legislation was.

How about some more questions?

Mr. CLEVELAND. I just had one very specific question on the first regulation. You say in the first regulation (a), over the 3 most recent consecutive months. Now, what would that do to an area that might have seasonal employment—say a resort area? By the time they get their application in to the hopper, for example in September, and they have just come off the summer resort season when everybody had a job, but they were moving into a time where there would be severe unemployment.

Now, that is the type of specific question I would like to have answered.

Mr. EDEN. Mr. Cleveland, we have discussed that at some length and worked on it. We have to deal with the statistics that are available to us from the Bureau of Labor Statistics. And we do not have seasonally adjusted figures to utilize.

Mr. CLEVELAND. Well, can you not come up with something that would not just completely eliminate an area that had just come off a seasonally good rate, but was obviously very underemployed? It almost seems to me that you would have to if you are going to try to solve the problem that Congress is trying to solve.

Mr. EDEN. We wish that we could. As I said, it is an area that we have considerable thought and discussion with the Bureau on, and unfortunately, we just do not have the tools with which we can do anything.

Mr. CLEVELAND. Well, what do you mean, you do not have the tools? You just write in there, that if the previous 3 months happened to be at a time of high seasonal employment, they could be ignored. What do you mean, you have not got the tools? You can just write it right into the regulation.

Mr. EDEN. We accented the 3 most recent available months—an average of the three most recent—

Mr. CLEVELAND. Yes; but in a farming community or in a resort community, if your last 3 months are ones of high employment, taking in the crops, a lot of visitors, and all the hotels are busy, it seems to me you can just take care of that problem, by the use of the English language.

Mr. CLINGER. I think one of the ways to control this is, since the State is competing only with itself, that to some extent the unemployment rates are going to be the same for all the areas, in an area where you have high recreational tourism type of thing. And I think they can control this somewhat by the time of application.

Mr. CLEVELAND. Yes; but all right, let us say if everything goes according to plan, these applications are going to go in in September and October. You are just coming off the seasonally good rate of employment in a resort area or in a farming area. So right on the face of it, you have taken out those areas.

Mr. CLINGER. I do not know how we can avoid using the 3 most recent available months, since the statute is very clear——

Mr. CLEVELAND. Well, you can simply avoid it by the use of language that will make an exception for those areas where they do have that particular type of seasonal problem. I do not see any great problem there.

Mr. CLINGER. I am just not sure we have that latitude.

Mr. ROE. We had nothing in the bill——

Mr. OBERSTAR. If the gentleman from New Hampshire would yield, the chairman of the subcommittee and I made it very clear during floor consideration of the conference report that this language was intended to cover seasonal adjustments in the unemployment rate, to reflect those seasonal adjustments.

And I am quite sure that we have that clarified as a matter of legislative history in the floor debate on the conference report. So there is the latitude available to EDA to make those adjustments.

Mr. EDEN. The latitude is available to us, but unfortunately the statistics are not. Are you suggesting that without the statistics we go back to 3 different months?

Mr. OBERSTAR. I thought your problem, as your assistant was explaining it, was that the law does not give you the latitude. And the law and its legislative history certainly do give EDA the latitude. Whether you can develop the statistics or not is another problem, and that is a problem that the local government or State government has to resolve.

Thank the gentleman for yielding.

Mr. CLEVELAND. Well, I appreciate it, and I hope you can take care of that.

May I have one more question?

Mr. ROE. Sure.

Mr. CLEVELAND. Did you have some additional comment in response to——

Mr. CLINGER. Just the comment, Mr. Oberstar, that in the debate you stated that this was the seasonally adjusted average of all 3 months, not to be disqualified by a low rate in any 1 of those 3 months. And I—my interpretation of that was, you were still talking about the 3 most recent months, and that this would be an average of those 3 months. In other words, it didn't talk in terms of some other 3 months, or adjusting for—taking those 3 months and adjusting them seasonally, which we cannot do. We do not have the data.

Mr. OBERSTAR. Well, I think our intention——

Mr. CLEVELAND. I have one other point I want to make, but I would just as soon stay with this point until it is resolved. Is there anything else on this point?

Mr. ROE. Let me point out that we also did not say that at least 10 percent of the personnel hired for the construction of the project must come from the project area. We never said that. That is nowhere in that bill whatsoever. And in all due candor, neither did we have any specific provisions relating to the construction of projects during the winter months. We did not intend by any stretch of the imagination that Alaska and Minnesota and Michigan and upper State New York who have 30 feet of snow for 3 or 4 months out of the year would be denied the right to participate in this piece of legislation. We never

meant that, and you are not so interpreting it that way. You are coming back, and you are interpreting the act broadly. Nor did we say that 10 percent of the people hired on a project must come from the project area which is the point Mr. Cleveland is trying to make. In fact, quite the converse.

The House spoke out and rejected the amendment to the appropriations bill that would have established that requirement. We were not going to go along on the point of view that 10 percent of the unemployed had to be hired from the area or the project proposal would not be approved. But you have got this criteria in there. What I think Mr. Cleveland is trying to say, and I think he is quite right, is, "Let us use a little Yankee imagination." If we can solve one problem in one direction, we can solve another problem in another direction.

MR. CLEVELAND. Well, I yielded most of my time on a discussion of my first point. And I had a second point—just very briefly.

MR. ROE. Sure.

MR. CLEVELAND. Is there anything in your regulations about, or has any thought been given to, the following problem—and this is a problem that has concerned me: You have a project that is all set to go. The money is raised. The bonds have been sold. The money is in the bank. And the contract has just about been let. It is a type of project which would score well on your rating system.

However, this is a project that is going to go ahead anyway. It is a project that is going to employ people, and it is in the works. And then, of course, the good news is gotten out. So they stop their plans, they keep the money in the bank, and they come running over to you with an application.

Now, logically, that application was all set to go, and the money was in the bank and the plans were all drawn up, and it was all set—if you found that you are not accomplishing the purposes of this act. And I want to know what you have done about that, either in your regulations or discussions.

MR. EDEN. We provided for it in the regulations, Mr. Cleveland. We say that an application will be rejected unless it contains certification by the properly authorized official of the Federal agency, or State or local government; that no funds budgeted and available or otherwise specifically committed for the project applied for in its application shall be reduced, diminished or replaced by funds requested under this part.

Now, essentially the phrase that you used—the money was already in the bank. In that case it would be rejected, and we would ask the local authority to certify to the fact that the funds were available for it.

MR. CLEVELAND. So my advice to my constituents, then, is to get the money out of the bank, and just suddenly say, this was a mistake. We did not mean to build this particular building or jail. Then they could come in.

MR. ROE. Well, the gentleman is building a very important point that is vitally important to clarify.

In the State of New Jersey, we are required by State law, that if a community wishes to raise capital funding to invest in any construction project, the community has to introduce and adopt an enabling ordinance.

We know there is no retroactivity for reimbursement of funds for the plans and specifications of a project under this act. That is absolutely not allowed. In response to the dilemma being encountered by the community, we had suggested that they proceed with the necessary ordinance to attempt to raise their capital money for architectural and engineering work.

Now, they have not sold the bond anticipation notes. And I want this very clear for the record. Are we now saying then that they are ineligible because they operated under the State law and introduced a bonding ordinance? They have not processed the bond anticipation notes or sold the bonds, nor do they have the constructive receipt of the funds.

Mr. EDEN. Our interpretation in that case would be that they would not be ineligible. That is, the funds are not available yet.

The example Mr. Cleveland used was, the funds are there in the bank. They have already obtained the funds. In that case we would be substituting Federal funds for local funds that had already been obtained.

With the example you are describing, the funds are not there yet.

Mr. ROE. Right. They had not—and therefore the funds are not readily available. Is that the interpretation?

Mr. EDEN. And the project would not go without the funds that we would be providing.

Mr. ROE. Precisely. So we are saying that if the State has a constraint in its law, such as is the case in my State; and the communities, because they were getting themselves geared up and getting themselves ready by introducing these ordinances so they had the legal authority to move—is what it amounts to—if they had not sold the bonds, if they have not sold the bond anticipation notes they are not out of phase with the program?

Mr. EDEN. That is correct.

Mr. ROE. They are eligible to proceed?

Mr. EDEN. That is the way we would interpret it, Mr. Chairman.

Mr. ROE. Unless there is a constructive receipt of funds. That is very important. Mr. Wright?

Mr. WRIGHT. Thank you, Mr. Chairman.

Since there are a great number of members who have very serious questions, I am going to try to be brief. Because Mr. Levitas, I know, and Mr. Nowak and Mr. Myers, all have questions.

One brief comment: Under the circumstances, given the gargantuan job we handed you, and in comparison with other sets of regulations that I have seen on other programs, I think you have done a creditable and conscientious job in trying to carry out the intent of the legislation.

Mr. EDEN. Thank you very much, Mr. Wright. I appreciate it. Our staff has done, I concur, a very excellent job. It is very subtle to try to work this out to be as absolutely fair as possible to get the maximum return that we can get and something that can be accomplished in a short period of time.

Mr. WRIGHT. Sure. Absolutely. And that is the purpose. Get the money out, get the program going, find those projects that will make the greatest impact, move with them as quickly as possible with a minimum delay. I think you have tried to do that. And I just wanted you to understand that while we are naturally very solicitous of the

carrying out of the congressional intent, and we will find things here and there that will be questioned, so far as I am concerned, I think you have made a conscientious effort, and I want to compliment you for that.

Mr. EDEN. Thank you.

Mr. WRIGHT. Now, just two or three very quick questions, because I am conscious that some of the others have questions that they want to ask.

You have fulfilled, so far as you are concerned, our request or mandate in the act that within 30 days the Secretary shall have prescribed those rules, regulations and procedures, including application forms necessary to carry it out. You have sent those over to the OMB under your administrative procedures for their approval.

Since the application form is the trigger which puts this whole thing into operation, it, of course, is essential that the application forms be available to the communities and local units of government immediately upon the availability of the funds.

Now, I presume that the OMB recognizes that also, and is going to act on these points.

Mr. EDEN. The application form, Mr. Wright, was approved on Friday. And we sent it to the printer today.

Mr. WRIGHT. All right, very good.

Mr. EDEN. We should have applications ready by Monday.

Mr. WRIGHT. And I think you have assured me earlier that this is, to the very best of your ability, a simple form, not a complicated form?

Mr. EDEN. Yes, sir.

Mr. WRIGHT. Very good.

Second question. The 90-day time limit that we wrote into the act, referred to by our chairman, Mr. Roe, was not intended—and you understand that it was not intended—to preclude consideration of projects in areas where the climate does not actually physically permit them to begin construction within 90 days if the money is made available at the beginning of the wintertime. And you have made arrangements to accommodate those?

Mr. EDEN. Yes, sir.

Mr. WRIGHT. All right.

Third question. And this comes from the State of West Virginia. A specific question. Congressman Mollohan sends this from their interstate planning commission.

We have eliminated canals and watercourses, channelization, damming, diversion, and dredging from consideration—a specific question: Can a flood wall be eligible in your interpretation of our act?

Mr. EDEN. I am advised that it can be.

Mr. WRIGHT. Thank you.

Now just one other question, and then I want to give what time is available to other members.

You have given 25 percent in your evaluation process. And I recognize that, given the total number of applications you anticipate, you had to have sort of a computerized system to grade them, to see which ones meet the eligibility criteria best and therefore are entitled to priority consideration.

The 25 percent consideration, however, that you have given to labor-intensity causes me some little concern. Obviously, you get

more labor intensity out of more or less make work than you do out of long term projects of constructive value.

They put it very bluntly, the best way to get labor intensity and the best way to satisfy the criticism which the President made when he vetoed the bill twice and said that its cost per job was too much; the best way to satisfy that would be to just give each man a shovel and tell him to dig holes and fill them up all day long. The cost of the shovel would be little, and therefore labor intensity would be almost 100 percent.

That is not what we are trying to do exactly. Although we want to put people to work, we want to put them to work doing constructive things, and things that need to be done, of course. And I am just wondering if the imposition of this labor intensity factor might encourage a community, rather than reconstructing a bridge, paint the bridge.

Mr. EDEN. Well, it is possible to do the kind of things that we have discussed, the restoration and rehabilitation type projects. This category represents 30 percent, or less than 30 percent of the total. And it would still get, for instance, the 10-percent bonus if the painting of the bridge provided for its long-term extension, that type of thing.

But we again felt that a cost factor had to be put into it in order to try to get the most effective use of the dollar that we could.

Mr. WRIGHT. Well, I can see the genesis of your thinking in section 107. We did not set a cost factor, but under our three factors we listed as No. 3 the extent to which proposed projects will contribute to the reduction of unemployment. Of course, you have had to consider that.

Mr. EDEN. Yes. We also took into consideration, section 101, paragraph 3, wherein it says, for construction including demolition and other site preparation activities; renovation; repair.

Mr. WRIGHT. That is fine. All I am thinking about is, you have lamented in your general observations that you only get about 19 to 32 percent of the money into onsite wages. And that is a typical public works project, according to your program objective suggestion here.

Mr. EDEN. Yes, sir.

Mr. WRIGHT. I should think, you know, you would not rule out those typical public works projects, because that is what we had in mind.

Mr. EDEN. Certainly not.

Mr. WRIGHT. I think a fairly well established rule of thumb, though imprecise, that every onsite job that is generated by this kind of program generates an additional job in the related construction and materials supply industries. And those, too, ought to be given some consideration as to their benefits.

Mr. EDEN. Yes, sir. And I think that we have acknowledged that in our regulations, as well as in the guidelines. We have acknowledged downstream effects on the economy, and the counter-cyclical capability of legislation.

Mr. WRIGHT. OK, well, that is fine. I do not have any other specific questions, because I know some of my colleagues do.

Mr. ROE. Mr. Levitas?

Mr. LEVITAS. Thank you, Mr. Chairman.

Just to show you that reasonable men can differ, and with great respect and deference to my distinguished chairman and colleague

from Texas, I perceive in these regulations in several specific instances a clear rejection of the specific legislative intent of the Congress. And—

Mr. EDEN. Well, such, I would assure you, is not the case. I read with interest your comments on the floor, the other day, and I think it is somewhat unfair to make that kind of judgment—

Mr. LEVITAS. Well, I will spell it out, then, and give you an opportunity to respond because I think that is the purpose of these hearings.

I am very concerned that in three areas which are of vital importance in these regulations there has been, in my judgment, an important failure to follow the mandate of the Congress.

I have a number of other questions or observations which I will submit in writing to you, which perhaps you could respond to at an appropriate time.

But let me mention three right now, and deal with them very briefly. One deals with the emphasis or lack thereof on construction industry related unemployment. The second with the \$5 million project cap subject only to waiver by you. And third, the regionalization of the apportionment of funds under the bill.

Now let me take the first one, because I think that is the most obvious and the most important. Clearly public works means people who drive nails into wood, who fit pipe together, who connect electrical connections, who operate bulldozers—construction employed people who are unemployed.

When this bill was originally reported out of the Public Works Committee, it contained a provision in section 107, which is now in section 107, of the law, that says: For purposes of this section, in considering the extent of unemployment or underemployment, the Secretary shall consider the amount of unemployment or underemployment in construction, and construction-related industries.

If you have got a high level of unemployment in certain nonconstruction industries, that is not going to be drained off into jobs under this legislation, because you do not have the skills available.

Also, and this exists, I have got the statistics here—there are many areas of the country which have relatively low levels of general unemployment, but extremely high levels of construction industry unemployment. There are some statistics I have got where unemployment in the construction industry is running as high as 50 to 80 percent. And overall, unemployment in the State may be in the area of 6 to 7 percent.

Now, in adopting your regulation—I am referring specifically to 316.10(a)(i)A, you make the incorrect assumption, which is contrary to the mandate in the law, that an area characterized as having a high unemployment rate overall is generally characterized as having a high unemployment rate in the construction industry.

I suggest to you that this is ignoring completely this mandate. I think that you will not be getting to the people who will be employed under this law unless you follow the specific language of the Congress. And if you say that the statistics are not available, I suggest to you that the statistics are available, and can be made available by the local applicant in many ways. For example, by going to the unemployment office and checking the number of people whose last employer shown in their application for unemployment compensation was in

the construction industry. That is one way to do it. By contacting the hiring halls and finding out the level of unemployment as it exists now, as compared with the way it existed 1 year ago, or 2 months ago. And the local applicant, in each instance, can provide information and statistics which will tell you how many construction unemployed there are. That is who this legislation—according to the language of the Congress—shall take into account.

Now, what is your response to that, Mr. Eden?

Mr. EDEN. My first response is to your comment with regard to our intent to steer away from this point. We worked long and hard over it. And we discussed it with great deliberation. How could we—properly, fairly, and objectively—comply with the sentences which you read, which is in the bottom of section 107?

So please understand that we have tried to deal with that point as well as we could.

We are assured from the sources that we have spoken to that there are no meaningful nationwide reliable statistics on the level of unemployment in the construction industry. In isolated cases, that might be available to us. But to be able to present to our people in the field this information, we feel it is just totally unavailable to us as far as specific, objective, and fair information is concerned.

Now, in coping with this problem, the statistics that we have dealt with in the past do indicate that there is a relatively direct correlation between both underemployment and severity of unemployment, and that of the construction industry. To be sure, there may be specific instances that do not concur with that.

Mr. LEVITAS. Let me interrupt you right there and go back to the point you just concluded—that you do not have the statistics available.

You have provided in your regulations a variety of ways for unemployment data to be put together by local applicants. You talked about going to the employment security office of the State and getting certain information certified as being a source of information.

Yet when it came to using a device such as that—and there are a variety of devices that could be used—in order to ascertain the actual level of construction unemployment, you did not use the imagination which you showed so clearly in other aspects of the regulations.

And I am suggesting to you that the information can be made available through a variety of devices. But your regulations do not take it into account at all.

On the point you were just making, I can give you State after State, community after community. And I have talked to members of this committee. And I have talked to local officials, where there is—just looking at a community I am personally familiar with—is a 5.6 percent unemployment rate overall in one of the large counties that I represent. The construction level of unemployment in that county is in the neighborhood of 14½ percent. In an adjoining county, which has about a 7 percent unemployment rate, they have a 25 percent construction industry unemployment. These are the people who would be put to work if you permitted in your regulations for the applicant to provide data which would bear out precisely what the mandate of Congress requires. And I do not know why you failed to do that.

Mr. EDEN. Well, again, as I say, we just do not feel confident of the figures that we would have to work with, and their ready availability in the 60-day period of time.

I might ask Mr. Tony Silvetta if he would comment on this because he has worked closely in this area. He is director of—

Mr. LEVITAS. Before he does, perhaps he could address himself to this point, because I think it is absolutely vital, when we are talking about people in the construction industry. Why can't you place the burden on the applicant, for obtaining construction unemployment data certified by the State department of labor, or by any other appropriate agency available from regional planning commissions to whatever source they can supply it from, in the regulations. Since they are only competing under your proposal with other applicants in the same State, the applicant can say, look, this is the level of construction unemployment that we have to deal with.

Why don't you provide the same flexibility and imagination in this congressionally mandated consideration that you did in the other areas that you have dealt with?

Mr. EDEN. Why do we not let Mr. Silvetta comment first, and then perhaps I will have another point.

Mr. SILVETTA. I think we have attempted to take into account unemployment in construction. We have looked at past studies of the Department of Labor and studies by experts in the field of labor statistics on the relationship between construction unemployment and rational unemployment. We found again—I will reiterate the Secretary's position—a rather high or significant correlation between the unemployment rates.

We made an effort to break it down to State and sub-State units. We have called out to States and talked to the State employment security offices. They cannot provide the data. We have called the AFL-CIO. We have talked to trade unions. They cannot provide the data.

Mr. WRIGHT. Will the gentleman yield at that point?

Mr. SILVETTA. Pardon me, sir?

Mr. WRIGHT. Will the gentleman yield at that point?

Mr. SILVETTA. Yes.

Mr. WRIGHT. This is contrary to what I have been told by building trades people at the AFL-CIO. In fact, they have submitted to me figures with respect to percentage of unemployment among various construction trades in specific localities.

Now if the gentleman would indulge me for a moment, we had the conversation about this, you will remember, Mr. Eden, in my office the other day with Mr. Roe. And I think you agreed that the statute mandates some consideration to be given here. It is not a question of whether you think it should be. It is simply assumed when the statute says it must be considered.

And I believe you said at that time that you would arrange some method whereby a community which can establish that it has a very high and disproportionately high unemployment in the building trades can get consideration under (b), that 25 percent which is set aside for severity and duration of unemployment; over and above the raw statistic for the total area, which applies to all employment exclusively but does not apply with specificity to building trades.

Was that the assurance we got?

Mr. EDEN. I did indicate that we would do what we could to accomplish something that was proper in that area. And frankly, we have not had a chance to address it yet in all thoroughness.

Mr. WRIGHT. It seems to me, if the gentleman will yield further, that the only way that could be done under your set of ranking criteria would be under (b) where we speak of severity and duration of unemployment. Or conceivably under (a) where we speak of number of unemployed workers. To permit a community that can submit to you data showing that its unemployed in the building trades are inordinately high, to get some credit there.

Mr. HENKEL. Yes, Mr. Wright, we did discuss that the other day.

I think it is very clear, though, the whole thrust of our administration of this thing also goes to the issue that the Congressman is addressing, that a community can, in fact, try to identify a project area. This was very carefully explored in the beginning of this meeting. This can take into effect some of these unique characteristics to the unemployment problem there.

Yes, if there are these severe rates of unemployment existing in the construction industry, it is very definitely going to impact on the overall, you know, rate of severity within that area.

To go to Mr. Wright's point, we think that the regulations and the guidelines are very, very clear in allowing a community or a census tract, a neighborhood, or whatever, who feels it has a unique situation, to come forward and try and develop the situation. And I do submit that we do have those provisions.

Mr. LEVITAS. But—Mr. Henkel, is it?

Mr. HENKEL. Yes, sir.

Mr. LEVITAS. Mr. Henkel, what I am suggesting is, that it is not spelled out in the regulations. Indeed, the contrary is spelled out, because it addresses in the regulation I referred to before, 316.10(a) (1)A, that the assumption is where you have got a high overall unemployment rate, you have got a high construction unemployment rate.

And yet, just the other day, by contacting two sources—one was a trades union organization, the North Georgia Building Trades Council, and the Georgia Department of Labor—using certain statistics that they were able to furnish from their own data available, we were able to establish that the rate of construction unemployment in these areas covered by them almost doubled the general unemployment rate.

For example, I referred earlier to this, the Georgia Department of Labor, by determining the total number of persons receiving unemployment compensation benefits, and comparing that to the number of persons who applied for unemployment compensation with their last liable employer being in the construction business, we were able to determine that the unemployment rate for Georgia, in the construction industry, was 12 percent; for the Atlanta SMSA, 13.4 percent; and on and on and on.

Now, why should not that data be usable and available for any applicant in making his case for consideration? Those are the people who will get the jobs, even if the overall unemployment rate is 5.6 percent.

Mr. EDEN. Well, Mr. Levitas, I would like to explore that in other areas of the country to see if that same pattern that is available might

be available to us in all 50 States, in every location, in every neighborhood area that we might be confronted with. And we will get back to you with what we can develop in this area.

Mr. LEVITAS. Well, I have discussed it with other Congressmen from the same region that I am in—and in Texas and other places like that—where you have relatively low overall unemployment, yet high construction local unemployment.

Mr. Chairman, I know I have gone longer. I would just like to ask two more questions, and they will be very brief.

Mr. EDEN. Excuse me, Mr. Levitas. Mr. Silvetta did have another point to make.

Mr. SILVETTA. In such cases, situations do occur. Some of the better studies that have been done, particularly by the Department of Labor, clearly indicate that the unemployment problem in construction, particularly when unemployment rates are as high as you are citing, is generally a problem of unemployment among the unskilled. We know that as a benchmark figure, 60 percent of the project construction requirements are for skilled labor; 40 percent for unskilled labor. Construction by its very nature is an industry of preferred employment, characterized as having a higher degree of labor mobility into and out of the construction trades. In effect, skilled personnel will seek employment elsewhere during the periods of high employment.

What is generally left behind is a residual, unfortunately, of unskilled labor that may not be able to meet a project's skilled labor requirements.

On the other hand, when we start looking at the absolute numbers of unemployed—say the area has a 5 percent unemployment rate, but construction unemployment is 20 percent—of course this is a devastating situation but, what does that 20 percent of overall unemployment represent? Will it be comparable to a project's labor requirements?

Mr. LEVITAS. Well, again, with all due respect to that information, I come back to the language in section 107, which is a mandate, and with the suggestion that there are ways of getting that information, which I have already indicated. I appreciate, Mr. Eden, your response that this will be looked into. I strongly urge that consideration and flexibility be given in revised regulations to this factor which has been written into the law.

Let me just mention the two other points. I think you can respond to them briefly. One is the provision in section 316.10(g) that says the maximum amount of financial assistance made available under this part shall not exceed \$5 million for each project, subject only to waiver for good cause. I have had experience with waivers for good cause, and with all that it entails.

I find nothing in the law that imposes a \$5 million limitation. I think that what you would be doing is forcing applicants to perhaps look for less needed, less efficient, less effective \$1 million projects, rather than saying, look, we have got an \$8 million or a \$12 million project, ready to go, meeting every other criterion, but—that \$5 million limit is not in the law.

And the other point is, in section 316.8, where the allocation is made regionally, rather than considering this as a national program,

where projects should be competing, subject to the statutory limitations, on their merits.

If you could comment on those two points. Because, again, I think there is nothing in the law about a \$5 million limitation, nor am I familiar, if it is in the law, with the regionalization.

Mr. EDEN. Well, in both of those cases, we took as our guide in making those judgments, the phrase in section 107 in which it urges that we give consideration to all regions of the country. And it seemed to us that the proper way to do that was to allocate to States, and to take the \$5 million level—it was arbitrary figure at best—in order to provide the most amount to the most number of areas. I can see how you would take exception to it, but I wonder what your alternative would be.

Mr. LEVITAS. Well, I think the alternative would be, again, since the applications are going to be made—as I understand it—on a State by State basis, with the competition being within the State—

Mr. EDEN. Then you do not object to that?

Mr. LEVITAS. I have got some reservations about that, but I have got them spelled out in another document which I will submit to you. Because I am again not sure that that is what the law intended. I do not think there is anything in the law that says that this money shall be allocated according to the formula you put in the regulation I have cited to you on a regional basis. It says you should take into account disbursement throughout the country. Every region should be taken into account. We have a maximum limit for each State. We have a minimum limit for each State. That is what the law provides. But the \$5 million? Why \$5 million?

It seems to me that in Paterson, N.J., what they may need—and have ready to go—or in Detroit, Mich.—is a new criminal justice communications facility. It is going to cost \$8 million. And that is the most efficient, effective thing they could do.

Mr. EDEN. If it is clearly the most efficient, effective thing they can do and would be of value, it can be done.

Mr. LEVITAS. But why do you put a \$5 million limitation?

Mr. EDEN. What would you suggest?

Mr. LEVITAS. I would suggest that you have no limitation, and let each particular applicant make their own judgments as to what projects they want to apply for.

What that \$5 million is going to do, using the grantsmanship adagio that the chairman has referred to, is, making them say, well, we are going to get better consideration if we come under \$5 million. So whether it is the best project, employs the most people, is ready to go, or is the most efficient—let us get under \$5 million so we do not have to hassle with EDA or with John Eden who is the person who can give a waiver for good cause.

I am suggesting that there is nothing in the legislative history that ever talked about a project limitation. And I think that legislating it in these regulations is just wrong. I think it is wrong, I think it is counterproductive.

Mr. HENKEL. Congressman, just one other response to that. I think the \$5 million also arises out of the legislative history, which indicated that the Congress wanted projects which could be completed in 1½ to 2 years. And it was our consideration—as the Secretary has

indicated, somewhat arbitrary—that if you get into a very expensive project, the completion time is perhaps going to go beyond the 2-year period. So this was—

Mr. LEVITAS. I know of two projects right now that GSA is constructing in my area. One is a \$12 million project, the other is a \$70 million project, and both of them will be completed in less than 2 years. To say that a \$5 million project cannot be built in less than 2 years again presupposes something.

But apart from that—and that is why I made the observations I did in the debate the other day—there is nothing in the law that says there should be a \$5 million limitation. And I am just urging you not to legislate requirements that were not intended by the Congress in adopting this on six or seven occasions—I forget how many times we voted on it.

I will submit the rest of my comments and questions to you later. Thank you.

Mr. ROE. Thank you. Mr. Nowak?

Mr. NOWAK. Thank you very much, Mr. Chairman.

The conversation here today is really bringing out some of the facts that you had to struggle with. First of all, I want to congratulate you. You have done, overall, a very good job in trying to follow the intent of the legislation. The questioning has certainly illustrated the very complicated task you had.

I, for one, when we were writing this legislation, tried to visualize what kind of regulations would come out. Overall, I am very satisfied.

I would like, however, to talk about a couple of things that have already been discussed. Mr. Levitas made the point about construction trade unemployment. I think, that factor, if it were weighted heavily, would lead to some dislocation.

I know of an awful lot of speculative building that was going on in the past 2 or 3 years. During the recession of 1974-75, that private building stopped, but the other service products of that area kept producing. Thus, you may have a very, very high construction trade unemployment; yet the overall unemployment would not be that severe.

So, in trying to judge this, perhaps you should take that into consideration, especially from the point of view of accomplishing everything that the applicant is looking to do. But I would agree, too, that the overall objective would be best suited in the way you have drafted your regulations at the present time.

You have gone into the State minimum funding levels and planning allocations and ceilings. You assigned a 65-percent factor for the ratio between the number of unemployed workers residing in the State and the total numbers of unemployed workers in the Nation, then 35 percent for the severity of the unemployment.

I am wondering why that could not basically have been the designation within a State as well, instead of the factors you have assigned to ranking a particular project; and the breakdown of the State's allocation, then, to the localities, would be based upon the same factors.

I am leading up to the same point that has been made—that the labor-intensity factor, I believe, is overweighted in your formula. If the weight for that factor were lower, I could see the rationale for it

to be in the ranking procedure. I do think that 30 percent is inordinately high for that factor. I wonder why and how that percentage came about? What was your thinking on that? I feel it is really the majority opinion here that that factor should either be eliminated or reduced. I, for one, would like to see it reduced.

Mr. EDEN. Well, your direct question, Mr. Nowak, is where the figure came from. It was a judgmental call, as we balanced the various weightings of the different allocations. And we felt that it was your intent that we try to favor those projects which would put the most number of people—for the dollar expended—to work.

Mr. LEVITAS. Well, I think that we had not developed any guidelines. I am listening to you on this particular point. But as these are going to be put into a computer type system, I am wondering if you have enough flexibility for the EDA's and other criteria that you have appointed. I would think the potential for long-term economic benefits would be given a greater factor in the whole formula. And I would lessen, certainly, the labor intensity. Because if you do not leave any discretion, I think you are going to find a lot of projects tailored just to fit a numerical system here. You are going to come out with projects which may be secondary in the community's priority list, so to speak, but they feel they cannot fund the real important ones because they will not score high enough on the board.

You had mentioned previously a curve that would perhaps bring this whole factoring thing into balance. But is there any discretion that you can see you are going to be able to apply after that?

Mr. EDEN. Well, I can see in this category an opportunity for our economic development representatives to work with the local community, to help the community in determining those projects which will provide that long term lasting benefit and get the 10-percent bonus that we spoke about earlier.

Mr. NOWAK. Well, what I am saying, is that even with that 10-percent bonus, you may not be able to overcome the 30-percent factor. At least if they were equal, you would have some way to reach a valid and very efficient project. But with just a numerical balance, you are never going to be able to do it. And the EDR's are going to be very frustrated, I think, in projects that they would like to see go, perhaps for lack of funding over a long period of time. They see the opportunity here—the community certainly does—to finally get these projects funded. But because of the strictness and the numerical formula that is devised here, they are not going to be able to get at those projects, because they will not be able to use that 10 percent to overcome the very hard factor, as I see it, of labor intensity.

Mr. EDEN. I see your point. Your point is that it is going to compel the local communities into seeking out projects of higher labor-intensity and not necessarily long-term construction projects that could have a lasting benefit to the community.

I would like to ask George Karras, the Director of Public Works, if he would have any comment on that, because he is very familiar with the various range of public works type projects, and their respective labor intensity.

Mr. KARRAS. I think it does that to some degree, because obviously 30 points is a significant number of points. That is one of the things we thrashed around ourselves as we looked at ways at which we

could not only establish the fairness, but also try to discriminate in terms of that section of the act that permitted both kinds of projects, permitted new construction where traditionally the cost of labor in the number of jobs you are creating is, what, 20, 25, 30 percent.

However, the act also provides that you can—authorizes projects where you are repairing and renovating facilities. And those, by their very nature—somebody here said 50 percent; in terms of our title X experience, we found that those can go almost up to 90 percent.

Now, one of the things that really has not been brought out, and I would like to bring it out, Mr. Eden. And that is how we define repair and renovation, you know, is still basically a problem. Because if you are merely painting, and 90 percent of your cost is indeed in labor, and 10 percent is in buying brushes and paint, then the question comes: is that maintenance? Is that traditional maintenance in a public facility? Or a public works project—is it indeed construction?

Now, there are those of us—and I know the Chief Counsel is also concerned about this, as is Mr. Eden—who like to look at the IRS code in terms of what really is a capital improvement.

Now, I am not so sure that gives us a satisfactory answer. Because if we look at the IRS code, we are talking about the degree to which the assistance is adding to the life of the facility. And it is another judgment: one can make a case that painting a school or painting a bridge does that.

So what we are really doing, Mr. Nowak, is trying to get the best of both worlds, trying to accommodate ourselves—

Mr. NOWAK. George, I understand that. And, you know, my caveat is that perhaps you are not going to be able to get the best of both worlds because of the strictness of the code. And if you are going to have a community trying to apply, and within that community a subdivision—perhaps a school district or other—that can better fit its project into this numerical system, that will not leave you with any discretion. I think we are relying too much on this system, and not providing enough leeway for the EDR's who have done a very, very good job in selecting these projects. At least they have in New York State and in my area, where they really have looked at the economic circumstance, and tried to avoid some of the other projects that are not going to be productive.

Mr. ROE. Will the gentleman yield? I think that Congressman Nowak is getting to a very, very salient point. What concerns us, legitimately, is the weighting factor of 30 percent in that area.

Now, it would seem to me that we ought to give some responsibility back to the community. We are not talking about quantitative dollars there; we are talking about the need for a project by a community. If the community establishes its priorities for, let's say four of its projects—and they said of those four projects, we will rate this one as a first priority, another as a second priority, a third priority, and another as a fourth priority, the four projects ought to be weighted accordingly. And part of that 30 percent ought to be taken out of there, and reduced maybe to 20 percent. In this way the community is given the right to make a judgment as to what they think they really need.

Our intent is to put some judgmental value back in the hands of the community, and the EDA regional offices, where they can make a

judgment on it. Otherwise, we are competing with a machine, and all the dribble that we put into the machine and how good we are at machinating into that machine is going to determine the value of a project. That doesn't determine the value of our needs as human beings.

In these proposed guidelines and criteria of eligibility we are taking the human factor of decisionmaking and we are limiting it to a stereotyped point system. We are saying, these are the points allotted for certain criteria of eligibility and if you score high on those points, you have got it made. This then boils down to the cleverness, the capability of the maneuvers, and the machinations that can be devised from what we all see here that will determine whether a project is eligible. That isn't what we intend at all.

You are coming back and saying, you will weight that first item 30 points. We are coming back and saying, let's consider what we are trying to achieve, where some judgment is going to be made.

Mr. Henkel?

Mr. HENKEL. Mr. Roe, one of the things we are doing, in answer to Mr. Nowak's point, too, is we are exploring—and I think George Karras just mentioned one of the approaches we are taking—this is definitional, in terms of, you know, defining repair, renovation, et cetera.

Another methodology that we are exploring right now, that goes to the issue of the 30-percent criterion, is perhaps putting a ceiling on that. If, in fact, the labor-intensity factor—and I am just using an arbitrary figure, and I am going to emphasize that for the hearing so that it doesn't become fact—perhaps if, in fact, the cost per person-month reached a certain point of, you know, 50 percent of the project. Anything above that isn't going to score anything more, that we could just hold a ceiling on it.

So this could have an effect. But, again, going to the thrust and the spirit of that, if two projects are generally equal, from a given area where the problem exists, we would certainly like to be able to pick the one that perhaps is going to put that extra one or two persons to work. We think these indicia do help us with that.

But we are looking at the fact of perhaps putting a ceiling on top of that to, in fact, eliminate perhaps the most labor-intensive type of a project.

Mr. SHUSTER. Would the gentleman yield?

Mr. NOWAK. Yes.

Mr. SHUSTER. Let me ask it this way, using a specific example. Suppose we have a project that is going to provide 20 construction jobs for 1 year, to build a facility; but that facility is going to create new economic activity and it is going to require 10 people to man that facility for the life of the facility.

Now, are you going to weigh—are you going to say it is 20 man-years into that project, because that is what constructing the project is going to be, or are you going to say 20 man-years plus 10 people for 30 years, the life of the project, which is another 300 man-years.

Mr. HENKEL. No, Mr. Shuster, we cannot give credit in that calculation for the jobs to be created after the project is constructed. However, it is a very definite determinant and factor in the additional consideration, and long-term benefit.

Mr. SHUSTER. That just doesn't make sense; it defies reason.

Mr. EDEN. It gets the score, it gets the value. Due to the bonus, it gets 10 percent.

Mr. SHUSTER. Yes; but that is some other arbitrary addition.

Mr. HENKEL. We are conscious of PWEDA CETA in administering that. And our key orientation is the long-term job, believe me. And I think we are quite good at that.

However, there is nothing in this legislation, as we read it, that gives priority and preference perhaps to construction projects that do in fact lead to—

Mr. SHUSTER. I am not talking about priority or preference; I am talking about the basic reasonableness. If it is going to create 300 man-years of work, that is what it is going to create. I am not saying that one should get more value than another, but it at least should get equal value.

Do other members of the committee disagree with me on that? [There was no disagreement.]

Mr. NOWAK. We can—and I am sure you are taking this into consideration; perhaps we haven't made that intent strong enough in the legislation to begin with, but I think you can realize the present feeling of the committee, which is our first review of this. I would just like to see that factor changed to give you more discretion and give the EDR's more discretion, because I am concerned you are going to get projects more in the category of leaf raking, so to speak, than in basic long-term economic development.

I think you are going to be foreclosed because of the high percentage that you have assigned to that factor. I would urge a complete review of the formula, because if you come out with a computer print I am sure you are going to have to assign very high marks from this subdivision C to those smaller renovation projects than you will to other long-term economic development projects.

I don't think even assigning the 10 percent, you are going to be able to make a good and valid adjustment for yourselves, or to the communities that are applying.

Thank you, Mr. Chairman.

Mr. EDEN. I would like to say this, Mr. Nowak—I think we have learned a great deal from this hearing of your feelings on this and of the intent of the legislation. These regulations have been printed for a 30-day period for comment. In addition to this, we have gone out to the field to all of our regional offices with training teams over the last week, discussing the regulations and the guidelines with them and getting their comments and opinions with the EDR's.

And I think this is a point that we have learned from here today, of your interest and desire along these lines. And it is one that we now should go back to our people and discuss in greater depth and possibly come up with a revision to our thoughts in this area.

Some of these judgments had to be judgmental calls in the very beginning, and if there is a feeling that we are overly heavily weighted in this area, why, we are certainly respectful of your points on it.

Mr. NOWAK. Thank you very much, Mr. Chairman.

Mr. ROE. Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. Mr. Chairman, I think this discussion has been very constructive as it pertains to the philosophy and the guidelines. But I am assuming that we are going to go largely with what is printed here in the Federal Register, although there may be some changes, as has been suggested by the assistant secretary.

What I am interested in is how we are going to administer these rules and guidelines. And I would like to know if there is any plan for any involvement of the economic development districts or the planning districts and, if so, how would they be involved?

Mr. EDEN. Both of those entities can be project areas, and they can also play a role in helping local governments within their jurisdiction develop projects and make decisions on which projects to submit.

It is our hope and intention that our economic development representatives will continue to work closely with the people in districts in the development of the projects.

Mr. HAMMERSCHMIDT. Districts are a valuable entity that you have in or attached to your organization, and I think it would be wise to use them. I assume that if you go through A-95 review, which I understand in the regulations you must do this—

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. In many cases, they would be involved in that, because districts are the designated entity within States. So districts would have that oversight.

Mr. EDEN. They would have that clearinghouse function, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Would you explain exactly how the A-95 process works under these regulations?

Mr. EDEN. We are going to submit an application for A-95 review concurrently with our review of the project, so that it does not delay the processing, and they will have a 30-day period in which to solicit the clearinghouse input.

Mr. HAMMERSCHMIDT. And so when the 30 days has gone by, you are going to take it for granted that that is A-95 clearance?

Mr. EDEN. Yes, to expedite the proceeding.

Mr. ROE. Would the gentleman yield on that point?

Mr. HAMMERSCHMIDT. I yield to the Chairman.

Mr. ROE. Paralleling John [Hammerschmidt]'s point, which I think is extremely important. Now we get down to how it is going to work—the A-95's, we take a look at that, we get started legitimately to figure it out but if they are going to drag their feet for 6 months, that is not meeting the intent of the bill.

Mr. EDEN. That is why we put it on a 30-day basis.

Mr. ROE. That is the forerunner to my next question. You do make quite clear in the regs and in the guidelines that if they are eligible projects we have to have reviews by a host of other agencies.

Now, we have all been around here long enough to know that if you have to go to seven other Federal agencies, you and I aren't going to live long enough to get that work out. Now, with that thought in mind, specifically to the point John is making, where we have spoken to the A-95, how do we feel on environmental impact statements. It would seem to me that a blanket environmental assessment

for certain types of projects in probably 95 percent of the cases, as was true in title X, would be ample to meet your needs.

Is that reasonable?

Mr. EDEN. Yes.

Mr. ROE. Let me ask you the next question. Now, suppose we are going to file for a supplemental grant for the balance of funding to proceed with an eligible project under another Federal assistance program. You have said in your regs, as I recall, that the applicant had to demonstrate in his certification that the balance of the non-Federal funding was not available to match the Federal share and so forth and so on.

Mr. EDEN. Prior work had not started.

Mr. ROE. Prior, right. Now I go to that HUD agency or the HEW agency and I say, OK, fine, I want now to go for a supplemental grant, and I have to get a certification from you that I have met all of your criteria for eligibility.

If they drag their feet, I am going to take forever to get that certification. Are we going to apply the same requirement that applies to EDA under this act that if they don't respond within 30 days, we can assume the project has been approved? How are we going to apply that requirement with the other Federal agencies?

Mr. CLINGER. Congressman Roe, the exception we made in the A-95 review, for example, we got consent to do that.

Mr. ROE. Splendid.

Mr. CLINGER. And the second area you mentioned, which was NEPA, we are basing our procedure in that area on a Supreme Court decision which we think indicates that that procedure is proper.

Now, with regard to the other requirement—

Mr. ROE. Let's elucidate on the Supreme Court decision.

Mr. CLINGER. It is indicated that where the Congress intended that something go forward within a set period of time, that therefore we would only be required to comply with NEPA to the extent possible within that period of time.

Mr. ROE. That's extremely important. Then you are coming back and saying that if NEPA does not perform in its certification within the timeframe established by this Congress in this bill, then the project will go ahead.

Mr. CLINGER. Just because an environmental impact statement may be indicated does not in and of itself constitute grounds to deny the project, that's correct.

Mr. HAMMERSCHMIDT. When you say you got permission, you mean from the Office of Management and Budget?

Mr. CLINGER. Yes, sir.

Mr. HAMMERSCHMIDT. Along that line, on page 10, 2.a.1, it says:

Each Regional Office will observe, with respect to each State served by it, a State minimum funding level, planning allocation, or ceiling(s).

This allocation, will it all be made at one time?

Mr. EDEN. Yes, sir.

Mr. HAMMERSCHMIDT. The funding allocation, will it be in one lump sum, will it all come forward at one time?

Mr. EDEN. Well, it's a planning allocation, and in that sense we will announce after funds are—in the event that, and after, funds are

apportioned to us, we will know what the starting day for submission of applications is. And, therefore, our labor figures will be taken from the time period prior to that.

Mr. HAMMERSCHMIDT. Do we have assurances from OMB that \$2 billion will be released at once, or could they do this over a quarterly basis or some other basis?

Mr. EDEN. I don't have any information on that, Mr. Hammerschmidt, at this time—I don't know.

Mr. HAMMERSCHMIDT. I know that OMB has been very cooperative.

Mr. EDEN. Yes, they have.

Mr. HAMMERSCHMIDT. It is certainly the intent of Congress, I believe, to speak to what we are trying to do. \$2 billion should be released whenever the applications come in—I mean at one time and not dribbled out over a quarterly period, and I hope that OMB would not do that.

Mr. EDEN. With the requirement of the act that we act within 60 days on applications—

Mr. ROE. Will the gentleman yield?

Mr. HAMMERSCHMIDT. Well, let me get an answer. I believe, though, you are not going to consider your application—at what point do you consider that that starting time will commence?

Mr. EDEN. That will be the date the funds are apportioned to EDA by OMB.

Mr. HAMMERSCHMIDT. So you are still beholden to OMB's directive on that.

Mr. EDEN. Yes. Now, back to your earlier question, Mr. Hammerschmidt, with regard to the allocation of the planning figures, we will announce what those figures will be as soon as we possibly can, which will be the time in which we have the information necessary to make those judgments.

Mr. HAMMERSCHMIDT. I yield to the chairman.

Mr. ROE. I think John is making an extraordinarily important point. For example, you have a starting date, which will be made known, if you like, when OMB provides the funding. Then you can release the applications. That is the intent and that is the direction you have taken.

But if OMB does not release the full amount, now you have a real dilemma—that is the point he is making—because that would mean. Let's assume that you follow through with your programming now, and you have allocated the funds to the respective States based on the formula established under the act for the total authorization of \$2 billion. Then you have triggered the mechanism and the people file their applications, now you are getting flooded with applications, and you go through point systems and adjustment and evaluations.

But suppose OMB only releases half the money at that point? Then at that point, because you have a time constraint, you have a seal-off point involved. That means that the community who does not have its applications in within that time frame fights a mandated decisionmaking period and loses out in the first go-around. Whereas if the full amount were made available to you, and that related to the full allocation available to the State, then the communities are competing with each other on the merit of their case. So that if the

community in the first instance doesn't get its application in immediately, relatively speaking, when the funds are available—and you can't process them immediately, then you are not going to have any cutoff date to consider brothers within brothers in the applications.

So the idea of OMB releasing that funding all at one point is crucially important in fair play in a State.

Mr. HAMMERSCHMIDT. Right, Mr. Chairman, I agree—it has serious implications if they did not.

Do you intend to allow regional offices to make allocation and give preliminary approval to applications?

Mr. EDEN. They will score the application, Mr. Hammerschmidt, and the application will finally come to Washington for final signoff and approval.

Mr. HAMMERSCHMIDT. My apprehension on this matter, and the full committee may share my apprehension, concerns regional offices setting up predetermined application time frames, such as the work program guidelines that they used under the EDA program. We think every application should stand on its own as it is reviewed. That is the way the regional office should do it. And we hope that it will be administered in that direction, that they don't just automatically look at their computer and say, these are the projects that appear eligible for funding, because there may be some people that have never even formed the entity that will be used as a project area.

And I just want to express that for the record; that is a deep apprehension of ours.

Mr. EDEN. You have described the situation that we intend to have happen, that they will give due consideration to all the projects that come in and they will be scored and finally ranked at a particular period of time, when we will choose those very best ones.

To speak to your earlier point, Mr. Chairman, we do have the capability to deny or reject a project without prejudice. If we did have that span in there of the second \$1 billion worth of projects, let's say—the second \$1 billion, for which we did not have funds yet, but there were still projects that fitted in that category, we could deny them without prejudice and then fund them at a later date when funds were available, it would seem to us.

Mr. HAMMERSCHMIDT. If I may comment, let's say we are 6 months down the road. You really would need a new set of applications to speak to the latest 3 months of unemployment, but I won't belabor that point.

I have one more question that I am going to submit on behalf of our colleague, Joe McDade of Pennsylvania, who serves on the Appropriations Committee—and his question is: "How does a private institution, such as a private college or a nonprofit enterprise, participate under the act?"

Mr. EDEN. The act is designed for local governments, which it defines as "any city, county, town, parish, or other political subdivision of a State, and any Indian tribe." If the project that the private institution might be interested in was a project that the local community could undertake, the private organization could benefit from it in that way.

It would be their best initiative to work with the local community in getting it to undertake that project.

Mr. HAMMERSCHMIDT. Congressman McDade expands further. He said, "Could the private institution qualify by asking a local government entity to sponsor their application and, in turn, have the college make it available to the public as a community facility?"

Mr. EDEN. The local community would of necessity have to own the facility.

Mr. HAMMERSCHMIDT. Could you please expand on your response in writing for the record, and that way Congressman McDade will have specific direction on this.

Mr. EDEN. Yes.

Mr. HAMMERSCHMIDT. Thank you very much, Mr. Chairman.

Mr. ROE. Mr. Oberstar?

Mr. OBERSTAR. Thank you, Mr. Chairman. Mr. Eden, I certainly am impressed with your grasp of the program in such a very short period of time. You have come into a complex situation and you have mastered the intricacies of this program very well, as your 2½-hour ordeal well demonstrates.

Mr. EDEN. Thank you, Mr. Oberstar. I wouldn't want to take any of that credit on myself. This is a tremendous staff that is working long, long hours.

Mr. OBERSTAR. George Karras, he lived through the original forerunner of this program. He made it this far. At the risk of beating a dead horse further to death, coming back to the unemployment gathering and reporting and rating—just a suggestion that I think makes some sense.

Allow the applicant to take from the most recent 12 months those 3 consecutive months that reflect the highest unemployment in his area. That information is available through CETA, through the State unemployment offices; that can resolve some of these problems that we are talking about.

Think it over; I think it makes sense.

Mr. EDEN. You are suggesting that in the previous 12-month period, the 3 most severe months of unemployment?

Mr. OBERSTAR. Right.

Mr. EDEN. Consecutive months together.

Mr. OBERSTAR. Right. Some of the questions that I had wanted to ask, if one sits here long enough, will be asked by others, and were asked. The role of the A-95 procedure—in meetings that I have held in my district with local government officials, they are anxious about that procedure, how time-consuming it might be, and how strictly EDA will adhere to A-95. I think you have in part responded to that by saying if it goes longer than 30 days you are going to disregard it, is that right?

Mr. EDEN. That's right.

Mr. OBERSTAR. What is going to be the role of State planning agencies in determining priorities among competing projects?

Mr. EDEN. I think it is going to depend on the relationship between those State planning agencies and the local communities in the extent that they will work actively together.

Mr. OBERSTAR. You are not going to rely on them in any formal sense?

Mr. EDEN. We don't have a structure to rely on them, no.

Mr. OBERSTAR. Good, the fewer layers of bureaucracy we can have, the better.

The development district was alluded to by Mr. Hammerschmidt. They have performed a very constructive and effective and responsible role, but, again, I am concerned about layering of bureaucracies. And we wouldn't want to say that a project couldn't be considered by EDA unless it had been approved by a development district—and I would hope that that is not the direction you are going.

Mr. EDEN. No, that is not our intent.

Mr. OBERSTAR. But development districts have proven very effective and have played a very constructive role in working with local government units in the development of their projects. And I hope that they will be involved and encouraged to be involved in a very real way in project development.

Mr. EDEN. Well, we would like to see just that very thing happen. We hope that the development districts will help the local communities to identify those projects which will contribute to the long-term benefits of the area.

Mr. OBERSTAR. Now, the legislation is very clear in saying that the Federal share is 100 percent. It also says that in cases where there is other Federal Government agency involvement, Local Public Works Act money can be used to increase the participation to 100-percent Federal funding. For instance, in sewage treatment plant construction, where EPA is providing 75 percent—do you envision EDA, through LPWA, coming in with the 25-percent balance?

Mr. EDEN. Yes, that is part of that supplemental section of the act, where we could substitute for the local participation in a project.

Mr. OBERSTAR. At what stage—and I have in mind the question of Mr. Cleveland earlier, where the community has already planned, they have banked this money or set it aside, and they are going to go ahead with this sewage treatment plant anyway, they have got to build it—are you going to say, sorry, we can't for that reason do it?

Now, before you answer that, let me harken back to what I referenced a moment ago, the accelerated public works. Actually, its title was the Public Works Acceleration Act. And in that program you have to show that there was actual acceleration of public works, that this was above and beyond the planned capital expenditure program.

We deliberately avoided that requirement in this legislation.

Mr. EDEN. Our judgment on that is basically, would the project have been held up were it not for our funding; is our funding going to be the trigger that enables it to go? I think the intent here—our intention is that we are providing new jobs, not jobs that were already provided. We thought that was your intention.

Mr. OBERSTAR. Yes.

Mr. ROE. We are on a rollcall.

We have some citizens that have traveled a long way to participate today. I would suggest, with your good efforts, Mr. Secretary, we try to do two things—one is to have this colloquy between the committee and yourself and your staff, and there are still some other questions the members would like to ask.

If we could reconvene at 1:30, would that be convenient for you?

Mr. EDEN. We would be happy to accommodate your schedule, Mr. Chairman.

Mr. ROE. There are some members of the committee who have additional questions to ask, and then we will have some questions asked by some of the people who have traveled here for today's hearing.

We will reconvene at 1:30 p.m.

[The subcommittees recessed.]

#### AFTERNOON SESSION

[The subcommittees reconvened at 1:45 p.m., Hon. Robert A. Roe, chairman of the Subcommittee on Economic Development, presiding.]

Mr. ROE. While we are waiting for other members to return—they are voting now—maybe it would be good, in view of the shortness of time on the Secretary's schedule this afternoon—I want to take advantage of your being here if some of the citizens present would like to frame some of their thoughts together now and propound their questions, we will take them now, rather than lose the time.

Is there anybody in the room at the moment?

[A gentleman stands up.]

Sir, would you identify yourself for the record?

Mr. ELLIS. Yes, Mr. Chairman—John Ellis, Associated General Contractors.

I believe it is clearly implied in the legislation and the regulations that none of the funding, at least in title I or title III, would be used to force account construction. However, I don't see it spelled out anywhere.

Am I correct it would not be so used?

Mr. ROE. Mr. Secretary?

Mr. EDEN. Yes.

Mr. ROE. I think we did have a discussion on this matter when we were talking about fast track construction, and I would like to clarify the situation. You are talking about force account versus the point of straight outright construction, or the point of view of fast track construction.

Mr. ELLIS. I am not concerned with the fast track, just local construction by government.

Mr. ROE. OK, just on local force account. Yes, sir.

Mr. KARRAS. That's right, there is no mention in the guidelines. Obviously as a project that would be a rare case or an unusual case. The only way that it could be constructed is through force account. Then the guideline in effect permits that to happen. The reason why the guideline doesn't spell this out the way it did in title X, you recall, is that the nature of this program is one that really does not lend itself to force account construction. But we do not want to preclude the possibility of that remote case where the community can only construct a project with its own forces.

Mr. ROE. All right. How about any other questions while we are waiting?

[A gentleman stands up.]

Sir, would you identify yourself for the record?

Mr. HENSON. Bill Henson, American Public Works Association.

Can title I funds be used by a local government for construction S. & I. costs, supervision and inspection costs? Do they—

Mr. ROE. I understand what you are saying.

Mr. HENSON. Well, where the local government provides the construction inspection service rather than going to an AE for it.

Mr. ROE. Right. In other words, if I may interject here—I think you are saying that some contractual agreements for architects and engineers would require onsite inspection during construction, which could be performed by the engineer during construction, which could be performed by the engineer or the architect, and/or, what you are asking specifically, would the local inspectors be covered under that same premise.

Mr. HENSON. Absolutely.

Mr. EDEN. To answer your question, sir, yes, they would be.

Mr. ROE. That's an important point. Any other questions here now? [A gentleman stands up.]

Yes, sir.

Mr. CAULKER. Michael Caulker, Pandora Park Association.

Getting back to the question that several Congressmen raised concerning the first category or criterion, determining basic rank, 30 percent for the total unemployment—I was wondering whether or not EDA has had a chance to test out in any large model the application of these criteria in order to determine their equitability and desirability for the system?

Mr. EDEN. Yes, we have made a number of runs on some of our regular PWIP projects, and in this manner we have been able to verify or confirm the criteria we have established as well as the allocation formula.

Mr. ROE. Are there any other questions? While you are thinking up another question, Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman. Coming back to my reference to meetings that I held in my district to explain the program to local government people, one of the questions raised was, how far along in the project development can a community be and still be eligible for grant funds? I think what they were concerned about is where they might have a project designed, engineered—they may even have already let bids on it.

Can they delay acceptance of bids until they can get their grants?

Mr. EDEN. It is our judgment that we are funding a 100-percent project, and these funds will not be used to continue a project which is already underway and/or to substitute for local funds that may have already been apportioned and allocated to the project. Is that the question you are asking, Mr. Oberstar?

Mr. OBERSTAR. Well, you are going beyond the question. What I am concerned about is this. Say there is a community that has a project designed, engineered, which it has advertised for bids, it has received bids that are well within the ballpark—and now along comes local public works, and Uncle Sam can pick up the cost of that project.

Mr. EDEN. Have they already allocated funds and committed funds to the project?

Mr. OBERSTAR. Presumably, yes, they have gone to that point.

Mr. EDEN. Then it would not be eligible as the guidelines are written.

Mr. OBERSTAR. That goes back to the point I was raising earlier. Under the old accelerated public works program, I could see a rationale for that.

But here, where we are not asking the community to do something over and above their regular budget—we are not saying in this legislation that you have to in fact accelerate, that you have to do something in excess of what you ordinarily would be doing in your community. We are saying to the community, we want you to get this underway as fast as possible. They may have another project that is not quite at that stage. It may take them 3 or 4 months to design it and engineer it and get it ready to go to bid. By that time you are gone with the funds.

So my question is, why, then, would they not be eligible?

Mr. EDEN. Well, we feel that the bill is intended to provide new money and new jobs, not to be a revenue-sharing program simply to substitute funds from this legislation for funds that have already been allocated, provided for, committed, budgeted by the local community.

Mr. ROE. Will the gentleman yield?

Mr. OBERSTAR. Yes, I will yield.

Mr. ROE. I think there is a fine line here, and what are you saying basically is that if a community has done its architectural and engineering work and because of the time frame the project has gone out for bids, but the community has not awarded the contracts, if they had the money available, whether they awarded the contracts or not, they are ineligible, because they had the cash in hand to do the job, that is what you are saying.

Mr. EDEN. That is what we are saying.

Mr. ROE. However, if a community had gone out to bid, but they had not awarded any contract and the funds were not available, they are eligible.

Mr. EDEN. I think it is a remote chance that they would be going out to bid without having obtained funds. But if that is the case, why, then, it would be satisfactory.

Mr. OBERSTAR. I don't know how often that problem is going to present itself, you know, whether in fact it is going to be a very substantial problem, or how many cases we will have of that.

But I know there were at least half a dozen out of, say, 150 local government officials at one of the meetings that I held who were in that position. They had projects through the design stage, they had it out for bid or they were ready to go out for bid—and, you know, I told them that we would have to await further clarification, but that it would be my judgment that since this is not the public works acceleration program, where Congress did not specifically direct that they should be spending money over and above their regular capital improvement budget—that there is a chance for a project of that nature being eligible.

I left the door open to get out of that one.

Mr. EDEN. Well, quite frankly, in our deliberations on this, we felt that it was the intention of the legislation to provide new dollars for new jobs, and that it would not serve the purpose of the legislation if we were to simply be substituting these dollars for other dollars

that had already been apportioned, thereby allowing the local community to go do something else which would not necessarily be a construction project.

Mr. OBERSTAR. Now, coming back to your dollar ceiling on a given project, a ball park figure of \$5 million—and I understand the caveats that are written into your regulations—but let's say we have got a \$6 million project, and you are keeping a \$5 million lid—the community will have to supplement that \$1 million from other sources, either its own funds or subscriptions or whatever source, is that right?

Mr. EDEN. Yes.

Mr. HENKEL. Mr. Oberstar, I would like to clarify that. This is for 100-percent funding of a project, these funds are, so that it would not be possible that a local share could be added on.

Mr. OBERSTAR. Well, are you going to reject a \$6 million project simply because you have put a \$5 million ceiling on an individual project?

Mr. EDEN. Not necessarily. We would make an evaluation of the project and, in the event that we thought it particularly worthwhile, would make the waiver, as was described.

Mr. OBERSTAR. And then you would come in with the \$6 million or you would just give the \$5 million and say, you match the balance.

Mr. EDEN. No, we cannot do the latter.

Mr. HENKEL. Or, Mr. Oberstar, one other thing. Of course, perhaps the project would lend itself to, you know, separating out. You know, in some projects you can clearly come up out of a \$6 million project with a project that could be funded at \$5 million—then perhaps the parking facility, or some other thing, could be separated from that project and done by the local community. You know, we would look with favor toward something like that.

Mr. CLINGER. Or the payment of ineligible costs; for example, land acquisition is precluded under this act; if the local share was part of that, it could be used to purchase land or provide maintenance or whatever might be ineligible costs.

Mr. OBERSTAR. I see. So it is possible to separate a project out into some constituent parts that, severed from the project, would bring its cost down to what you can fund on a 100-percent basis?

Mr. CLINGER. Right.

Mr. EDEN. Our judgment there would be based on the completeness of the entity that is being requested.

Mr. ROE. But you are forgetting a very important point. If a local community has a project that they wish to build, and in their application they submit to you they propose to put up \$2 million locally and they are asking for a matching grant to the \$2 million they are going to put up locally, there is no reason why you cannot do that.

Mr. CLINGER. Mr. Chairman, we have interpreted—the law seems to be fairly clear in saying that we shall provide 100 percent of the grant funds.

Mr. ROE. Except in the area where you are providing a matching grant, either match Federal or State or local.

Mr. CLINGER. That's true. Local, that's true.

Mr. ROE. All right, now the community comes back and they don't file for a 100-percent grant and their project is \$6 million, the same

point that Mr. Levitas was making this morning and Mr. Oberstar is making now—and from their local project they are going to put up \$1 million locally and they are going to file to you for supplemental grant to match the \$1 million.

I see nothing wrong with that. It is in the law.

Mr. CLINGER. Mr. Chairman, the way we view this is that under section 105 you talk about local or State projects, that we can fund either one or the other but not both.

Mr. ROE. Oh, I understand that, I am not suggesting that.

Mr. CLINGER. And in section 104 we can supplement another Federal grant.

Mr. ROE. I understand that.

Mr. CLINGER. With the local share.

Mr. ROE. Now, the local community is not going to ask for any other grants from anybody else.

Mr. CLINGER. So it doesn't really fit under sections 104 or 105.

Mr. ROE. That is not my understanding of that.

Mr. OBERSTAR. Well, section 105 says, in part, "The Secretary is authorized to make a grant for the cost of any public works project for which financial assistance is authorized under any provision of State or local law requiring such contribution."

So if a city ordinance permits the construction of a fire hall which would cost \$6 million, and the city is required to provide those funds—you put in \$5 million, they are putting in \$1 million—they are complying with section 105.

Mr. CLINGER. We are not supplementing the local share, we are not supplementing the State share.

Mr. ROE. You would be supplementing the local share.

Mr. CLINGER. Well, they are putting up the \$1 million.

Mr. ROE. Well, it says the local share. It is our interpretation—it is good the question came up—and we respect the \$5 million cap, by the way, understand that. We are coming back and saying, suppose the community has a project that the community wants to do without going through a lot of gyrations—needless red tape—and they are saying we are not going to apply for more than \$5 million, we want to build this project—as Jim (Oberstar) is talking about—the project is going to cost \$6.5 million; we are going to ask you for a grant to match the local share.

I don't see anything that precludes that.

Mr. OBERSTAR. Well, that seems to be a fuzzy area right now.

Mr. ROE. I don't think it is fuzzy at all. I would like to get it on the record.

Mr. OBERSTAR. From their explanation.

Mr. ROE. Well, it seems rather clear to me.

Mr. EDEN. Our interpretation of section 105 was a situation in which the local government was going to provide three and the State was going to provide two, let's say, on a project, and substitute for either, but not both, for either the State's portion or the local government's portion.

Ours would be a substitute for the supplement that either of those were going to supply.

Mr. CLINGER. Where we are talking about strictly a 100 percent project, if we didn't come in and they would put up the entire amount, then we are bound by that 100 percent which says we must provide 100 percent of the project cost. There we don't have both shares; we are just talking about a local share.

Mr. EDEN. But the question Mr. Oberstar is raising is, supposing you have a project where the local puts in the three—they don't even bother to ask the State for the two; they just ask us for the two. Therefore we are substituting for something that was not previously provided.

Mr. CLINGER. We have read it that way, you know, as saying where there was any State contribution involved, then we could supplement for that, or vice-versa; but we couldn't come in in an area where it was going to be all local or all State and supplement that. And I think that is the way the language is.

Mr. OBERSTAR. But you don't want to get into a situation where the only project in a community that may have 10-percent unemployment is one that is, say, \$7 or \$8 million and you have got a \$5 million project ceiling, and the locals say, "Well, look, we will kick in \$3 million just to get it going—give us \$5, we will kick in \$3," and that is an \$8 million project. And you are going to say, "No, I am sorry, the law doesn't allow us to do that, but it also doesn't allow us to pay the cost of the project," unless you give it a waiver.

Mr. CLINGER. Or the project definition. In other words, using the local share to pay for costs, you know, outside of our project—outside of the parameters of how you define the project.

Mr. OBERSTAR. It seems to me that is an area we want to think through more.

Mr. EDEN. I think we can concentrate more on this area, Mr. Oberstar. That is an interesting interpretation of section 105. And I don't know that it doesn't follow properly.

So I think we would like to get back to you with it with a further reflection on it.

Mr. OBERSTAR. Again, how often that is going to present itself, I don't know, but just from my experience of meeting with local government officials, that point has been raised—and with great sincerity. So it is something I am sure will be appearing elsewhere in the country.

Mr. Chairman, I have no further questions.

Mr. ROE. Well, we have to go vote again—I am sorry—and we will be back in 10 minutes.

[The subcommittees briefly recessed.]

Mr. ROE. Are there any other questions that want to be asked from the floor, because the Secretary does have to go and we have almost concluded?

Are there any other questions you have on your mind? I think we have covered many of them. Let's get them out. Yes, sir.

[A gentleman stands up.]

Would you identify yourself, please?

Mr. MANCINI. My name is Frank Mancini, I am with the city of Passaic, and I am the director of economic development there. I have a question based on the issue which was just brought up—and the question is, suppose the community had this \$6.8- or over a \$5-million

project; the project has various components which can be singled out and developed independently; however, we would like to apply for a full funding of the full project.

Are we advised to submit an application of over \$5 million, or would we be more advised to submit an application of \$5 million, should that limitation still be in effect?

Mr. EDEN. Without any more of the details, Mr. Mancini, than those that you have described, I would think that it would be most advisable to apply for the project under \$5 million—break it down into the section that you feel is an entity in itself under the \$5-million level.

Mr. MANCINI. My concern is that if, say, we go for \$6.8 million and we get approval for \$5 million, in order to—

Mr. EDEN. We would not likely make that kind of a judgment, no.

Mr. MANCINI. Okay.

[A gentleman stands up.]

Mr. ALMAN. Elliott Alman, National Association of Counties. I had a couple of points I just wanted to perhaps clarify.

One was, what plans or provisions was EDA making to distribute the application once it does become available next week? Are local governments going to have all of them contact one of the six regional offices and get it from the regional, or will there be other provisions?

Mr. EDEN. They will be available in all of our regional offices. Our economic development representatives will have them. We have no further plans for wider distribution, because it would be so extensive, the distribution program.

Mr. ALMAN. I was just going to suggest that it might be more equitable if perhaps it could be located in different Federal office buildings located in different areas of the country, both to save the local governments time and expense and to save you the manpower of answering all those requests for applications.

Mr. EDEN. Our economic development representatives are located widely throughout the country, and they will have copies of them for distribution.

Mr. ROE. I can assure you every congressional office will be right at their doorstep to get a copy of those applications to mail to their constituents before election day. [Laughter.]

Mr. ALMAN. I have two other points, if I might ask. There was some discussion on the review of other Federal agencies of applications, as specified in the guidelines and regulations. And it seemed to us that it would be a good idea if there were a 30-day cap, a 30-day deadline, through which other Federal agencies, such as LEAA, must give their review process and what they think of the application, or else there would be a presumption of acceptance of the application.

And also I wanted a clarification on the 30 percentage points given to labor intensity—that was included in the regulations—what the yardstick was, if perhaps you people had something in mind as 0 to 50 percent labor-intensive, and 50 percent you would get the full 30 percent—you know, what would be the yardstick that you would be making your decisions based on?

Mr. ROE. Let's answer the first question first. That had to do with certification.

Mr. CLINGER. I think on the first question, which you raised earlier, and that is in those areas where we have clear authority, I think, to either truncate or change the normal procedure required, we have done so. In those areas where there are Federal laws which apply to all Federal grant-in-aid programs—and we don't have specific exemption or some provision given to us to avoid those provisions—I just don't see how we can avoid them. In other words, we have had to make applicable those laws which apply to all Federal grant-in-aid programs, except in those areas where they have been mitigated to some extent.

Mr. ALMAN. Can interagency agreements be contemplated, be drawn up, to avoid some of those?

Mr. CLINGER. We are doing that.

Mr. ROE. They mentioned that before that they were doing that. Now the second question on the 30-percent weighting.

Mr. HENKEL. The projects themselves compete among themselves; we don't have any, at this juncture, standards to say you get so many percentage points for something that is 50 percent labor-intensive or not. All of the projects within that State, within that priority category, are ranked; and then the maximum weight that could be ascribed to that, to the best project of all of those ranking—these projects are ranked against each other, stacked up against each other—would be 30 percent, that one on the very, very top. It is not being established by some arbitrary, you know, standard.

[A gentleman stands up.]

Mr. ELLIS. John Ellis, Associated General Contractors. If the ranking is worked that way, then it would seem to assume that you are waiting until you have all project applications expected on a given date before you start actively considering any of them.

Mr. EDEN. I think that is a very good observation. We will be ranking on a concurrent basis. However, we will start our ranking after a period of time, after we have received a number of applications.

This goes to the question that Congressman Levitas asked earlier as to how we score on the total points on the absolute scale also. And it is ranked on the basis, in that case, of—the largest total number of unemployed will get the highest score, that is, 30 or 29, working down from that within a State area.

So the ranking, in answer to your question, will be done concurrently starting soon after projects have begun to arrive in our offices, and will continue.

[A gentleman stands up.]

Mr. ROE. Sir?

Mr. BROOKS. I am Henry Brooks with the Consulting Engineers Council. We have noticed that engineer's fees would not be allowed for those portions of the work that might have to be done before approval.

We also noticed that there are certain architect-engineer certifications necessary in the applications.

It would seem that if that work is not eligible for fee consideration, then we are denying the applicant in the areas where he has trouble having that kind of money available for services of the architect-engineer to help him get ready, anticipating some delay and having the funds available for this program.

And we just wonder if they had thought this out, and how the AE would account for his time and fee—

Mr. EDEN. Well, you are right in your judgment, Mr. Brooks; we did take it into consideration. When we made our judgment as to what A. & E. funds, preliminary funds, could be allowed, namely, those that were expended after submission of the application, we did that with the idea in mind that if we started to go back and pick up retroactive costs, where would the cutoff date be? And how would the architectural and engineering firm know over what span of time to allocate those costs?

I think we could open ourselves to a great deal of question and temptation.

Mr. BROOKS. Well, certainly it is true that projects on the whole have been developed, say, halfway. Picking up those fees would be a temptation to the applicant. But in the case of preparing this application, and, for that matter, a complete fee for the usual Federal program grant—you are knocking out part of that fee consideration.

Mr. ROE. Well, let me answer that, if I may. We had a very, very strong, fierce debate in this committee on that issue to begin with, way before it ever reached you folks. It was an amendment, and we finally won that amendment. We importuned our communities to get on with it, because there is, you know, an element of local consideration and responsibility that is involved here.

And the committee finally acquiesced and agreed that where a project has been started and its engineering or preliminary planning had been done, that we would make the next step eligible provided they could meet these time constraints in the construction pattern.

So from an objective point of view—and we had the same problem in the 1972, Air Pollution Control Act—as it related to auto emission to make it retroactive just wouldn't do the job at all; we would absolutely be in a terrible muddle; we might as well be straightforward about that.

If we are talking about rebuilding the infrastructure of this country one way or the other we have to be most objective in our analysis and evaluation of each project proposal.

So for the purposes here, if we are unable to fund every project—I think it was mentioned in your colloquy a little earlier, having to do with the fact that we are not going to reject people highhandedly and with absolute finality—we are going to say, "Well, OK, you are eligible but you don't fall in the top priority of the final selection at the moment, so we will hold your application in reserve."

But if a project is going along on a fast-track construction or something of that nature, there is no reason why part of the funds for engineering and architectural work could not be picked up out of the bill, provided they can meet the construction date requirements.

There is a certain amount of give-and-take that has got to be made here.

Mr. BROOKS. Thank you, sir.

Mr. HAMMERSCHMIDT. Mr. Chairman, may I expand just a little bit further on that, just to remind whoever posed that question that, while this might not fit the immediate need that he poses, the EDA mechanism itself is an ideal place to look to for planning and development, and certain titles of the Economic Development Administration bill. Now, I don't think you could move quickly enough in this particular instance, but if you are looking that way to get worthy

projects on the shelf, I think that is the way to do it, as far as engineering and planning.

Mr. BROOKS. Indeed, sir, the timing was the thing that bothered me.

Mr. ROE. I would still advise him to go ahead, because we are going to try to get this bill extended. Who is next now?

Mr. BROOKS. We will find a way, Mr. Chairman.

[A gentleman stands up.]

Mr. BENNETT. I am Andrew Bennett. I represent for these purposes the city of Chicago, the Mayor's Committee on Economic Development.

Under the cost per person-month of employment, does EDA contemplate some examination of the claimed costs so as to make sure that these claims of the applicant are realistic? Will the well-experienced people of EDA be able to look at these costs and make some decision, or will this degenerate into a kind of fiction-writing contest?

Mr. EDEN. The answer is yes to your question, Mr. Bennett. I would like if George Karras, who is the Director of the Office of Public Works, could elucidate on that.

Mr. KARRAS. Well, to a large degree, since this application form is essentially an application form where we are really going to go on the honor and the trust of the applicant—and the applicant's A. & E., we are going to be accepting what they say. However, we have, over the years, developed our rules of thumb and our own benchmarks with regard to certain types of construction, to suggest to us those cases where there are obviously distortions and fabrications and abuses, as the A. & E. is indicating figures which are really estimates—that was brought out earlier, he is really estimating—it is not a contractor who is doing this, the A. & E. is doing it; he is estimating the person-months of employment.

So in answer to the question, we will be looking at them, and we will be discounting them in cases where there is clearly abuse.

The followup part of that is that, if we tamper with that application form, we have got to notify the applicant we are doing it, so that he will know we changed the figure. And if he doesn't agree with that, then we are going to have to reject the application without prejudice until that issue is settled, because that could lead to abuses.

[A gentleman stands up.]

Mr. ROE. Sir?

Mr. MULCAHY. Congressman Roe, it is with some pleasure that I at least stand here, as a native of New Jersey—and I am Bob Mulcahy of Governor Byrne's staff. Before we even say anything, I want to acknowledge with pride the role that you have played with the Democratic leadership in getting this bill passed, and where we are now, so we at least have the opportunity to begin.

I think it is terribly important, if there is any concern about the depth of the need, that in New Jersey we relate to you that in the short time that Congressman Roe has been traveling the State and presenting the legislation to the people, we have had in our office letters of intent, letters of indication, of the magnitude of 1,500 applications, that if they all came in would exceed \$6 billion.

So I think it is important that Commerce recognize the magnitude of the effort that is here and what could possibly come forth.

We are attempting to keep track of these and glean information. The Governor has asked me to specifically coordinate the role of New Jersey so that we could provide all the technical assistance possible to the municipalities in making their applications.

But I thought it was important that, Secretary Eden, you understand what is out there, at least in our State, what could possibly come forth. And we will present an indepth statement concerning our concerns about some of the regulations.

But I would like to point out four or five things right now, Congressman, that I think are important.

First, in listening to the testimony this morning, one thing became very apparent to us—and that was our concern about the delineation of the project area. It seems apparent that there is a great deal of flexibility in the project area, and our concern is that the drawing of this project area, the lines, could take an unfair advantage of the ranking or point system that is in the bill, where we have a rich community next to an urban community, and their ability to use the neighboring area for gaining additional points is a concern until we see the criteria that are going to be used in making up, say, what minimum and maximum amounts from the 1 to 30. We think that those numbers could be quantified. We have good data in New Jersey, in that there could be a formula devised so that it wouldn't be a subject of decision by someone in a regional office. We are concerned about that.

We also feel that we have figures in New Jersey, by trade, relating to the construction industry, and that these could be taken into account, if there was the ability to use them. It appears to us that the intent of the bill was to take them into account. We feel that we are one of the States that have that data. We were not contacted; we would have said we have the data, if we were.

I indicated that we are concerned over the method of coming up with the points within the criteria and the ranking system, as well as the priority. We feel this can have some impact back on the first matter I mentioned, and that is the delineation of the project area.

We also would like to be able to use the New Jersey State planning and research method for unemployment data. Particularly in our area, the data which we feel is good, strong and defensible is running ahead of the national data, basically because we take into account those people who have gone off the employment rolls.

The last point that I want to make is that we understand the action of the House in rejecting an inflexible requirement for local labor. I think I would be remiss if I did not indicate the strong feelings of the labor unions and building trades of New Jersey have expressed to me about their priorities for local labor.

Other points we will make in writing. I appreciate the opportunity to be here. And, again, I want to acknowledge our appreciation of the role that you played, Mr. Chairman.

Mr. ROE. Thank you.

Mr. EDEN. I might say, Mr. Mulcahy, we would appreciate hearing from you specifically as to the nature of the information your State could provide on unemployed construction worker labor.

Mr. MULCAHY. Mr. Secretary, we will provide that within days to your office.

Mr. EDEN. Thank you.

[A woman stands up.]

Mr. ROE. The lady?

Ms. MONAHAN. I am Peggy Monahan with the State of Michigan, Washington office. In Michigan we expect to get about \$157 million. And about 95 percent of our local communities are over the national average in unemployment, so we have difficulty with the fact that 70 percent of the money has to go to areas over the national average and 30 percent to areas under the national average.

Is my understanding correct? We feel that if that is correct, we may not be able to spend all our money, although we certainly need to.

Mr. HENKEL. The act clearly states that 70 percent must be spent in areas with unemployment above the national average, and 30 percent in areas with 6½ percent maximum.

From an administrative standpoint we want to try and administer this by State, internal in States. We do recognize that in a situation like Michigan, and perhaps one or two other areas—it might be very difficult. So our next step with regard to meeting that mandated 70–30 would be to look to the regions to see if we can't balance if off, and failing that, nationally. But it is clearly our intent to try to follow that within States, but there is some flexibility with regard to your unique situation.

Mr. EDEN. Nothing in the legislation says that it needs to be done within the State. We will approach it on a State basis, but if you are clearly not able to provide the 30 percent within the State of Michigan, all the law says is that it should be 70–30 within the country. And we will be able to make an adjustment later on downstream after certain applications have been granted, once we start the application system. We will be able to make adjustments to it at a later time, I feel quite certain.

Ms. MONAHAN. Certainly a State like Michigan, one that desperately needs these funds, and hopefully because we are suffering more we would not be able to use the money.

Mr. EDEN. Yes.

Ms. MONAHAN. I have another question. Is it possible to use alternate sources of funding on projects that cost more than \$5 million? Does it have to be 100-percent Federal funding?

Mr. EDEN. Our interpretation of the act is that these are 100-percent grants for the entire project. You may not have been here earlier when Mr. Oberstar raised these similar type questions in relation to interpretation of section 105, and we said that we would like to, in light of the questions that were raised, make a deeper study of that and the legislation data that was presented before the legislation was written in order to determine that very question.

Ms. MONAHAN. Would alternate sources of funding be part of your consideration?

Mr. EDEN. That is what we will be discussing, yes.

Ms. MONAHAN. OK. The other thing is—

Mr. EDEN. However, I would like to say, Ms. Monahan, on that—we really don't see how any other interpretation can properly be made of the law than the interpretation we have made, namely, that we can substitute for a local or a State portion that had been previously

established—that, in contrast to providing an add-on to a local amount.

We are going to be studying it, but I think we should point out at this time that it seems to us that that is still the only interpretation we can put on that.

Mr. LEVITAS. Mr. Eden, would you yield at that point?

Mr. EDEN. Yes, sir.

Mr. LEVITAS. Wouldn't that problem, this Michigan problem, be avoided if that \$5 million were just eliminated, since it is not provided for in the law? It seems to be a problem which has been created by the regulations.

Mr. EDEN. Well, as I say, we want to study it, Mr. Levitas, and give it some more thought, because we did interpret it in a different way.

Mr. LEVITAS. Oh, I am sure your interpretation is correct on the point of 100 percent. I disagree with some other views. However, I think your interpretation on the 100 percent is correct. What I am saying is that you wouldn't have to go to alternate financing if there were no \$5 million limitation involved. You see, you are creating a double problem in this arbitrary \$5 million.

First of all, if your interpretation is correct on the 100 percent, then you are ruling out those projects where the State of Michigan would put up \$3 million and EDA \$5 million, and you would have an \$8 million project. I think you are correct on the 100 percent, so you have ruled out that from either point of view.

It seems to me, just eliminating the \$5-million limit would be a solution.

Mr. EDEN. Well, if I may, we would like to study that one in more depth with some care to determine the proper thing we can do from the legal point of view as to the interpretation of section 105.

Ms. MONAHAN. And to make it a little bit more specific for 5 or 6 seconds, I am sure everybody is aware of the problems of Detroit for the last 2 or 3 weeks—past 5 or 6 years.

We hope to do something about these things. Certainly it is going to take more than \$5 million to build the kind of facility that is envisioned in a city that has so many problems.

Mr. ROE. Let me interject a thought here. What the Secretary is saying is that at least in their judgment, they have placed a \$5 million cap on a project; it doesn't have anything to do with the city putting in 4 or 5 or 6 or 10 projects.

Ms. MONAHAN. Yes; I realize that, thank you. One more quick question is, with regard to local jails or detention centers, we understand they must meet the requirements of the Omnibus Crime Control Act and go through the National Clearinghouse in Urbana, Ill. Our understanding is that it takes 6 to 12 months to have that cleared, and our question is, will EDA have some way of speeding up that process?

Mr. CLINGER. I think it is part E of the Omnibus Safe Streets Act which my understanding is does not take that long, a much more rapid process. Not applying the whole act, it is just part E of that act.

Mr. HAMMERSCHMIDT. If I may interject a thought, Mr. Secretary, on her comment and question. It may be that through interagency cooperation, you could be in touch with LEAA and ask you to make a special project case out of this, because they do have to meet those requirements.

But maybe you could get the same cooperation that you receive from Labor and OMB.

Mr. EDEN. I might say, Mr. Hammerschmidt, that we are meeting with them now, negotiating on this very point, and as soon as we have some judgments available on it, we will announce them.

Ms. MONAHAN. Thank you.

Mr. ROE. We have 5 minutes for any additional questions, except I see that my colleague from California, Mr. Mineta, is here.

Do you have anything you want to add?

Mr. MINETA. Mr. Chairman, thank you very much. I apologize for not being here prior to this.

Mr. Secretary, I wanted to ask one thing. You dwell on the environmental impact reports. California has the California Environmental Quality Act which is, I think, much more strict than NEPA. Many of these local California projects have already gotten CEQA clearing; they have already prepared their environmental impact reports in conformance with the California Environmental Quality Act.

Is there a way of avoiding having to go through that whole process of another EIS, since the EIR is already prepared?

Mr. CLINGER. In terms of the NEPA requirements or in terms of—

Mr. MINETA. That's right. Where local projects would require an environmental impact statement, there is already prepared an environmental impact report in compliance with the California Environmental Quality Act. And I am just wondering, is there some way of avoiding going through that duplication—particularly since CEQA is so much more tightly construed, in many respects more so than NEPA, is there a way of getting the EIR to be considered sufficient for the EIS?

Mr. CLINGER. Well, as I indicated earlier, our procedure under NEPA is that we are going to comply to the maximum extent possible within the 60-day period. We can't supersede State law, so that we couldn't say that there was no requirement—if the State required such a study, we would have to require that.

But certainly in our assessment we would take into account the fact that there was the environmental report done under State law, and that would be a part of our assessment.

Mr. MINETA. You were saying that the NEPA would take 6 months.

Mr. CLINGER. Well, it could. I mean, an environmental impact statement will take 6 months; that is correct.

Mr. HENKEL. If required.

Mr. CLINGER. If required.

Mr. MINETA. But, see, under California law, for instance—oh, I see.

Mr. HENKEL. Having that on the record would be an integral part of the assessment which we are making, which is in compliance with NEPA—having that report on file, having its results, certainly would enhance our environmental review of that project and our determination. And it might be the conclusion of the assessment that a, quote,

EIS, environmental impact statement, is not required. Therefore, we are not into a 6-month hiatus or anything like that.

Mr. MINETA. But if an EIS is required, can you take the EIR that is required under CEQA and use that as the document—

Mr. CLINGER. What I said earlier, that even if an EIS might be indicated as a result of our assessment, we will make our determination on the project without the EIS.

Mr. MINETA. I see. Thank you very, very much, Mr. Chairman.

[A gentleman stands up.]

Mr. ROE. Mr. Wilber, representing John McFall.

Mr. WILBER. Mr. Chairman, my name is Lee Wilber and I work for Congressman John McFall, and I want to say it is a pleasure to be here today to say a brief few words on this subject.

Earlier this morning Congressman Wright had some kind remarks to make regarding some of the good work that the agencies have done in the past and was sympathetic to the massive job that has been thrown at you at this time—we understand and appreciate that.

Mr. Chairman, as you know, the agency over the years—I know during the last couple of years when I have worked closely with them and with your staff—I couldn't help but observe that they have been under very close surveillance and generally subservient to OMB in many ways. As we know, when the title X program came along, instead of asking 100 percent, 100 points, they insisted on 125.

This 30-percent weight—I think it is out of balance. I feel perhaps that these weights may be considered shifted to a couple of other items that you have in your guidelines where you increase one of them 5 percent and one of them 10 percent—one might as well be increased by 15 and the other one 10.

But we feel there is a real need to take another look at the way those weights have been established. We think it can be improved on.

Mr. Chairman, thank you very much for the opportunity to get up and say a few words on the subject—I know time is short. I have some other things. I took these guidelines home and I sucked them up like a sponge and wrote down many, many questions I had in mind that I would like to pose, but a lot of them were answered at the hearing this morning.

That is about all I have to say, sir.

Mr. ROE. Thank you. The Chair wants to thank the citizens for participating today; certainly the members showed a great deal of interest in the bipartisan approach, because we are terribly dedicated to this piece of legislation. And we thank you, Mr. Secretary, and your staff. We feel a warmth and friendship to the agency, of which we are the reviewer, if you like, of the first order—and I think we have manifested our deep concern with the most effective and expeditious implementation of this legislation which is the major thrust of today's hearing. I think you have responded in equity and good faith. It didn't turn into an adversary proceeding at all; it turned into a chance to review and ascertain and understand.

We would suggest that in view of the two or three areas that everybody has pinpointed in this hearing that you do take another look at your proposed regulations and guidelines because we, too, are looking for equity and fair play and I know you want the same. This doesn't

mean that we are saying adieu and farewell, because we will be looking at the next round, and then we will be back and exchange views again.

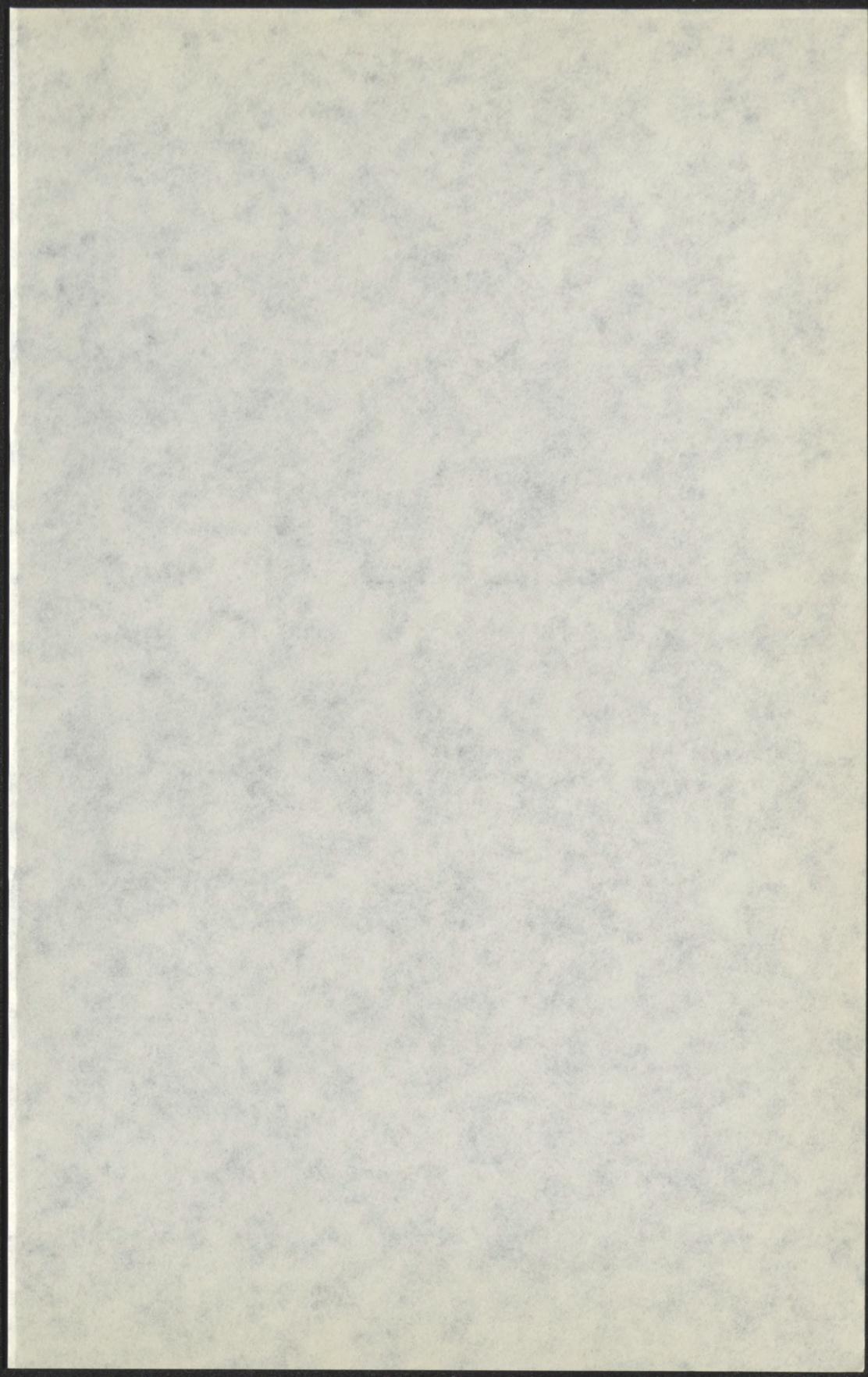
But I do want to thank you for taking the time. This assembly is unique; this hasn't been done, to my knowledge, in a long time around here where the citizen participates in a committee oversight hearing before the legislative mandate gets underway, and maybe we can really proceed with dispatch with the implementation of this legislation and achieve our goal.

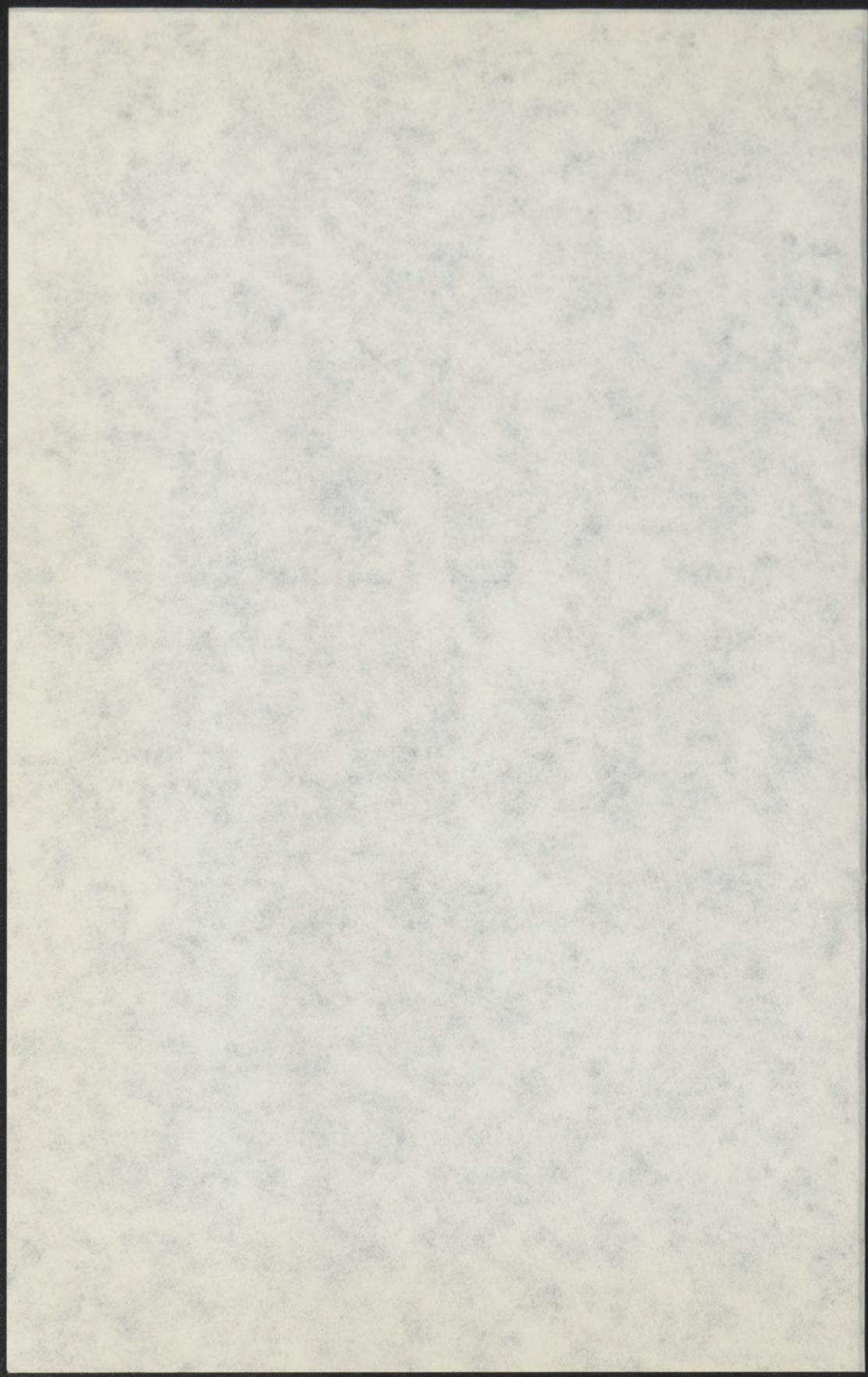
Our goal is to deliver to America the funding and the infrastructure we need to start to rebuild our country. That is what our goal is.

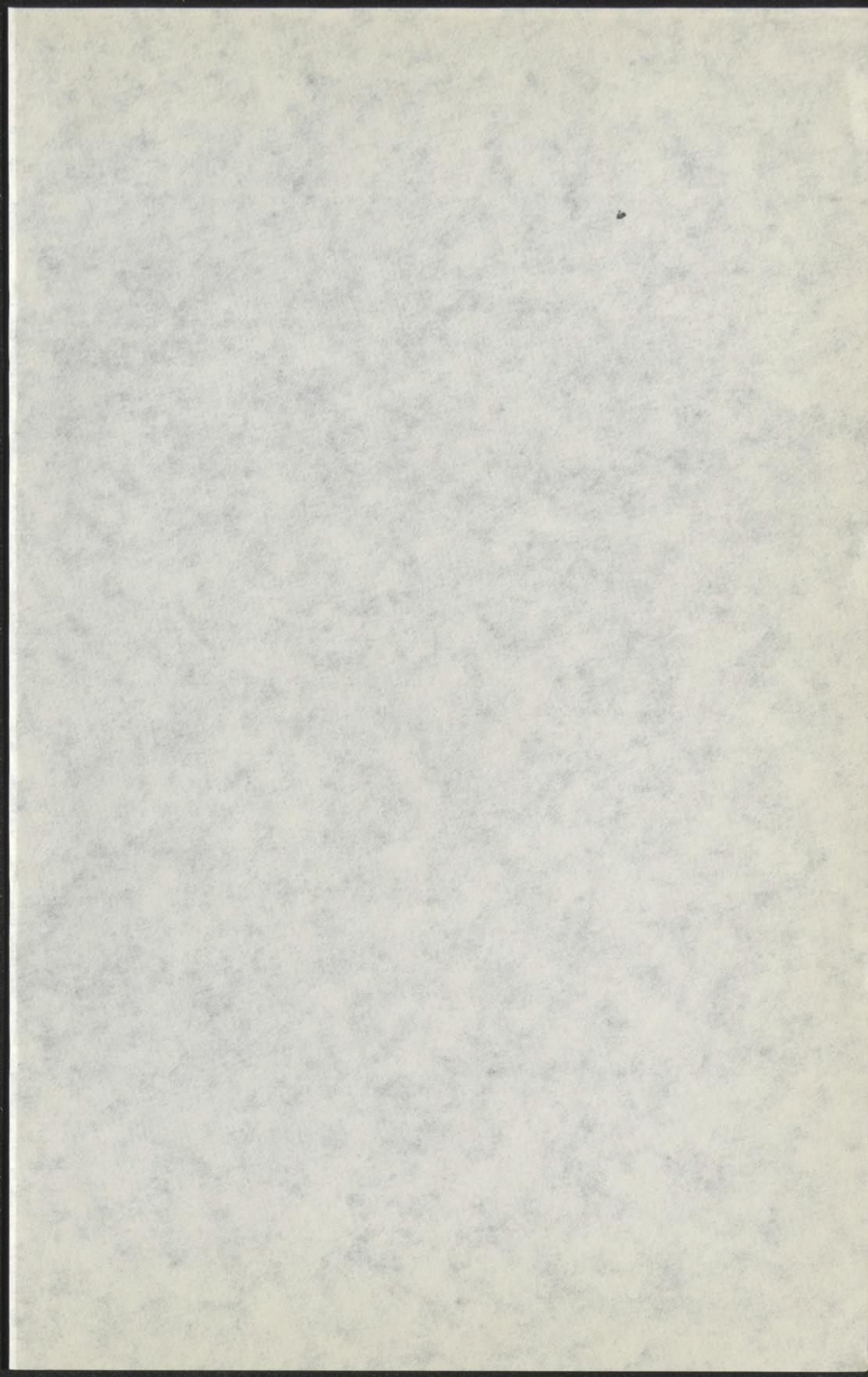
We thank you very much, ladies and gentlemen, Mr. Secretary and your colleagues, for being with us today.

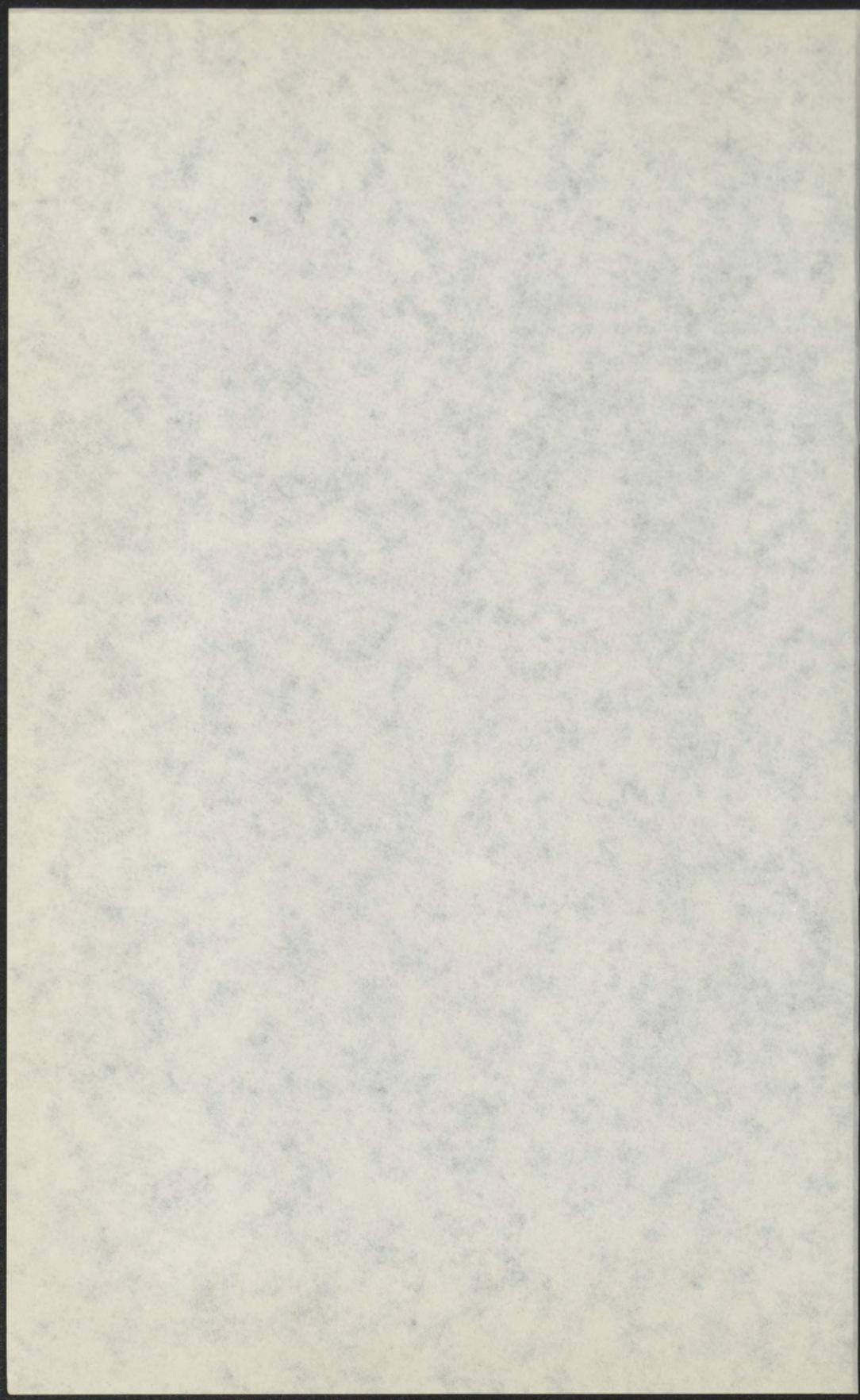
[The subcommittees adjourned at 2:47 p.m.]

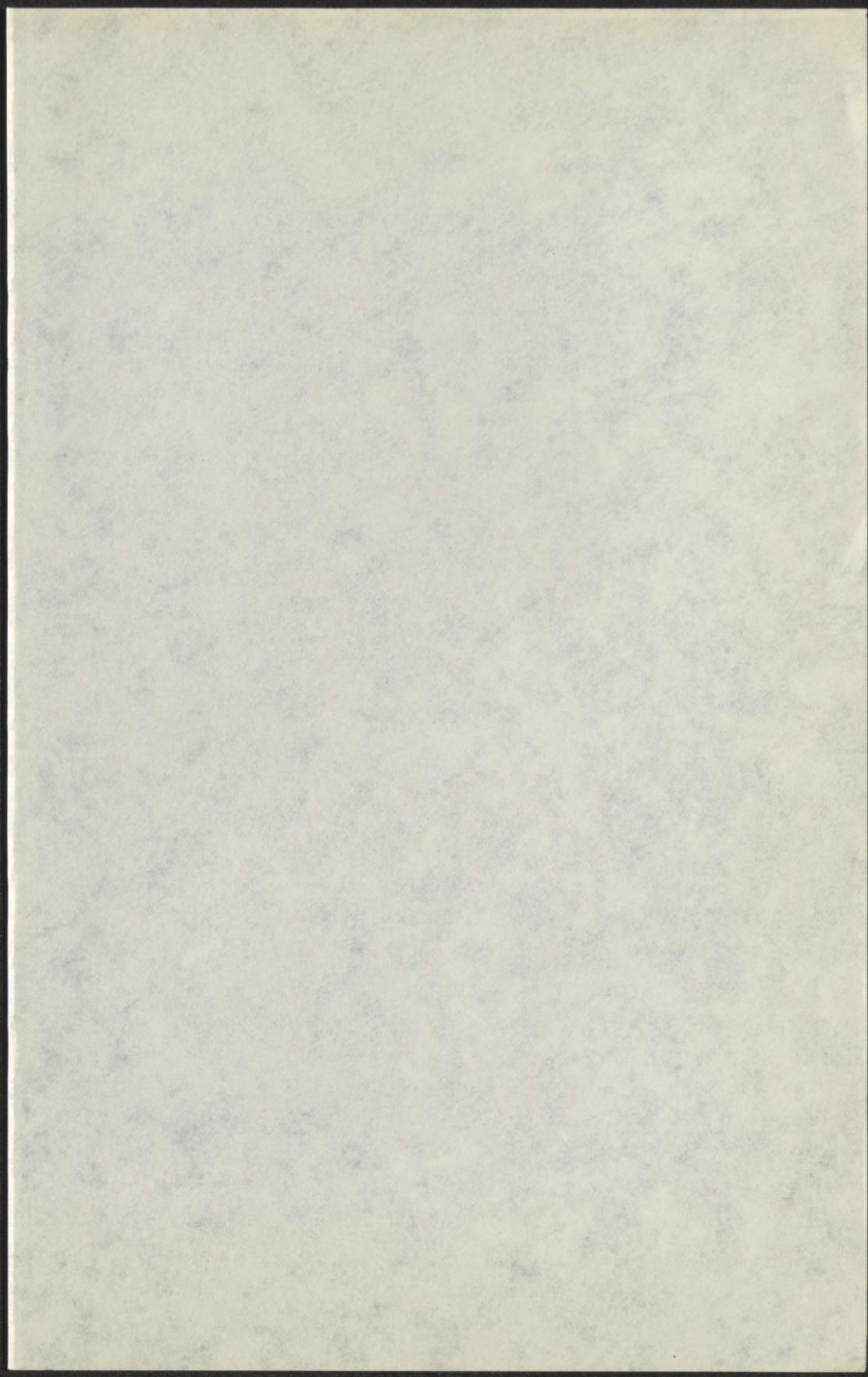












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