CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

TO: Robert W. Healy, City Manager

FROM: Kathy A. Spiegelman, Assistant City Manager for Community Development

SUBJECT: HUD's Proposed Revisions in Block Grant Regulations

DATE: December 2, 1982

As made known to you by Mayor Vellucci's letter of November 16, 1982 (copy attached), the U. S. Department of Housing and Urban Development (HUD) has drawn up new Block Grant Program regulations that would, if approved by Congress, substantially undermine the targeting of Block Grant funds to low- and moderate-income persons and neighborhoods throughout the nation. A congressional hearing on the proposal will take place on December 7.

The chairman of the House Sub-Committee on Housing and Community Development has prepared an excellent memorandum to his committee members about the issues involved. I am transmitting herewith a copy of the memorandum for your information. An attachment to the memorandum--the letter of October 7, 1982 from the National Housing Law Project to Secretary Pierce of HUD--is particularly recommended for your review.

cc: Jill Herold
Assistant City Manager for Human Services

Attachments

CITY OF CAMBRIDGE
MASSACHUSETTS 02139 • 617-498-9090

Alfred E. Vellucci
Mayor

November 16, 1982

Mr. John J. Gunther
Executive Director
U. S. Conference of Mayors
1620 Eye Street, N.W.
Washington, D. C. 20006

Attention: Mr. Barry Zigas

Dear Mr. Gunther:

RE: Hud's Proposed Changes in Regulations for Community Development Block Grant Program

It has been suggested that I let you know my opinion of HUD's proposed revisions to the Block Grant Entitlement Regulations. These are the Block Grant changes established by HUD as an "Interim Rule" in September and submitted to Congress for its review.

While I believe that a number of the proposed revisions constitute a step forward--for example the broadening on the Secretary's authority to waive regulations in special cases, under Section 570.4--I must take strong issue with the proposal that HUD no longer review a Grantee's overall program as regards benefit to low- and moderate-income persons.

It is apparent that this change constitutes a flagrant undercutting of Congressional intent. The original language of the Housing and Community Development Act of 1974 states that "The primary objective of the title is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income" (underlining mine). Although many amendments to the Block Grant title have since been made, this basic statement of purpose has remained unchanged.

The HUD administrators argue that their proposal will not turn the focus of the Block Grant Program away from the needs of low- and moderate-income persons. They stress the point that their new regulation will not prevent a city from continuing to spend as much of its Block Grant funds for the benefit of low- and moderate-income persons as it is presently doing.

This is, of course, specious reasoning. While it is true that the new regulation will not prevent a city from continuing with its established Block Grant spending priorities, it is also true that cities

will now be permitted to shift their spending, at will, to the other two categories of eligible activity--i.e. "the prevention or elimination of slums or blight," and the meeting of "other community development needs having a particular urgency." Clearly, these two alternative categories can serve as umbrellas for a wide variety of Block Grant projects that more directly serve the interests of the middle and upper economic constituencies within a city. The substantial loosening up of these two categories by the proposed revisions to the Block Grant regulations further increases this danger.

Since low- and moderate-income persons are at a disadvantage in competing with more affluent groups for allocation of public funds, this proposed "deregulation" of the Block Grant Program will move quickly to sabotage the intent of Congress. Block Grant products will no longer be "principally for persons of low and moderate income."

The Community Development Block Grant Program as you and I know it--and as Congress envisioned it--will be replaced by something more like the current General Revenue Sharing Program. While well aware that low- and moderate-income persons are a minority voice in most cities, I nonetheless am confident that the Mayors of our nation do not want the interests of their low- and moderate-income constituency to be trampled on in this way.

Should you want additional details on my thinking about HUD's proposed revisions in the Block Grant regulations, please let me know.

Very truly yours,

Alfred E. Vellucci

Alfred E. Vellucci
Mayor

AEV:jp

cc: Robert W. Healy
City Manager

Kathy A. Spiegelman
Assistant City Manager for Community Development

Edward A. Handy
Director, Block Grant Program

NATIONAL COMMUNITY DEVELOPMENT ASSOCIATION

1620 Eye Street NW Suite 505 Washington DC 20006 Telephone (202) 293-7587

TO: ALL NCDA MEMBERS

FROM: JOHN A. SASSO

DATE: NOVEMBER 23, 1982

CONGRESSIONAL HEARINGS ON HUD REGULATIONS

One of the issues facing the "lame duck" session of Congress, which reconvenes next week, is review of HUD's CDBG Entitlement regulations. Enclosed is the packet of information sent by Representative Henry B. Gonzalez to his subcommittee which will hold hearings on the regulations in December.

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-SEVENTH CONGRESS
2129 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

November 9, 1982

MEMORANDUM

To: All Members of the Subcommittee on Housing and Community Development

From: Chairman Henry B. Gonzalez

Re: Hearings on CDBG Entitlement Regulations

Tuesday
Dec. 7, 1982
10 A.M.
2128 RHOB

On October 4, 1982, the Department of Housing and Urban Development published interim regulations designed to implement changes in the Community Development Block Grant Program for entitlement communities. A great deal of concern has been expressed by Members of this Subcommittee, the press and the public at large that those regulations would weaken the primary objective of the CDBG Act which is to "develop viable urban communities..... principally for persons of low and moderate income." Attached are copies of an editorial and correspondence that appeared in the NEW YORK TIMES and a letter from Ms. Frances Werner of the National Housing Law Project to Secretary Pierce which analyzes some of the major issues raised by the regulations.

The Subcommittee has been contacted by a number of individuals, governmental entities and interest groups that have requested the opportunity to testify before the Subcommittee on the impact of these regulations.

Based on the issues raised by these regulations, I plan to hold a full-day hearing on Tuesday, December 7, 1982, beginning at 10:00 a.m. in 2128 Rayburn Building. At present the witness list includes the Assistant Secretary for Community Planning and Development, Steve Bollinger, and the HUD General Counsel, John Knapp. Other witnesses tentatively scheduled to appear include representatives from the League of Women Voters, the League of Cities, the Conference of Mayors, the American Planning Association, NAHRO, local community-based CD organizations, LULAC, ACORN, the National People's Action and the Council for Urban Economic Development.

The New York Times, Saturday, October 9, 1982

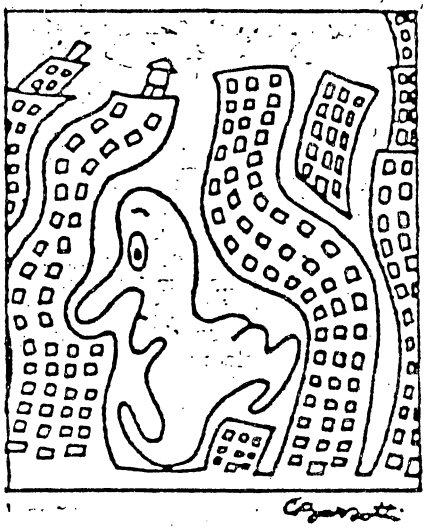
H.U.D.'s Grants Will Still Be Income-Oriented

To the Editor:

Your Sept. 26 news article on proposed new rules for the Community Development Block Grant (C.D.B.G.) program implies that H.U.D., the Department of Housing and Urban Development, is making a change in the administration of the program that would result in diminishing assistance to low- and moderate-income persons.

The facts are otherwise.

The primary objective of the Housing and Community Development Act of 1974 is "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principallly for persons of low and moderate income." In March 1978, H.U.D. promulgated a regulation to further this primary objective by requiring that each grantee's overall program principally benefit low- and moderate-income



persons. A few months later, Congress amended the law so as to prohibit H.U.D. from enforcing that rule.

Contrary to the impression created by your article, not one grantee had an application for C.D.B.G. funds disapproved, or even had funds reduced, under the old rules for failure to spend enough of those funds on programs for low- and moderate-income persons. Most participating cities undertake activities that do principally benefit those of low and moderate income, and no part of the new regulations has the effect of reducing that impact; nor do we intend such reduction.

What the new rules will do is implement the 1981 legislative amendments to the act, which provided greater flexibility to grant recipients.

This was accomplished by eliminating a burdensome application procedure, eliminating restrictions on promoting economic development activities and clarifying the integrity of the three national objectives of the program: (1) principally benefiting low- and moderate-income persons; (2) eliminating or preventing slums and blight, and (3) meeting urgent community development needs where there is a serious and immediate threat to community health or welfare.

The department will continue to review — both in field monitoring and audits — exactly how C.D.B.G. funds are spent. We have an obligation to see that the taxpayers' dollars are spent in accordance with the law for eligible activities and in accordance with the three broad national objectives mentioned above. It is an obligation we take as seriously as our obligation to help cities become or remain healthy.

The C.D.B.G. program has undergone a legislative evolution. We believe that the proposed new rules accurately and faithfully mirror that evolution. At the same time, the primary objective of the legislation is being achieved nationally as the funds are used principally to benefit low- and moderate-income persons.

We have every expectation that that objective will continue to be met, but under the more flexible approaches Congress fashioned for communities in the 1981 amendments.

STEPHEN J. BOLLINGER
Assistant Secretary for Community Planning and Development, H.U.D.
Washington, Sept. 29, 1982

THE NEW YORK TIMES, TUESDAY, OCTOBER 19, 1982

Another Retreat From Fairness

Properly chided for not keeping careful track of how cities spend their Federal community development grants, the Reagan Administration no longer intends even to try. Its Housing and Urban Development Department proposes to abandon the monitoring of a $3.5 billion program that is supposed to benefit low- and moderate-income people.

This cynical retreat would deprive the poor of a vital ally in local tugs-of-war for the money. It also invites cities to squander the money on undeserving projects in ways that are likely to discredit the entire program.

In 1974 seven different programs, including urban renewal and Model Cities, were folded into a unified community development grant to be allocated by formula. The grants were to help eliminate slums and blight and meet other urgent community needs. H.U.D. was to monitor the allocations.

Some cities nonetheless managed to evade the law with expenditures that did not remotely help the needy. The Carter Administration looked disapprovingly at any plans that alloted less than 75 percent to poor people and neighborhoods. But this angered Congress, which insisted the law set no priorities.

The Reagan Administration last year stopped advance reviews altogether. Misspending, it maintained, would be detected in due course. Now H.U.D. would eliminate even this secondary control.

The alleged advantages are by now familiar: less paperwork for cities and fewer Federal bureaucrats second-guessing city halls. But these hardly outweigh allowing cities to ignore the poor.

The risks are plain. Montgomery, Ala., once justified spending block-grant funds for golf courses and drainage in affluent neighborhoods, even as it ignored the urgent needs of low-income housing. It may be true, as a H.U.D. official argued in a recent letter to this page, that the department never reduced, much less rejected, a grant that did not sufficiently serve low- and moderate-income persons. But until recently, the department routinely threatened disapproval to induce fairer allocations.

The proposed deregulation would in effect turn the community development grants into a general revenue sharing that cities can spend as they see fit. That is not what the law intended, and it is now up to Congress to make certain cities do not neglect the poor.

The New York Times, Friday, October 22, 1982

A Watering Down of Community Development

To the Editor:

I noted the Oct. 9 letter from Stephen J. Bollinger, U.S. Assistant Secretary for Community Planning and Development, with concern.

I strongly disagree with his assessment that the Department of Housing and Urban Development's proposed regulations implementing the changes in the Community Development Block Grant Program would not weaken the primary objective of the underlying legislation, which requires those funds to be used to benefit principally the low- and moderate-income residents of our urban communities.

While Mr. Bollinger declared that the Administration did not intend a reduction in the use of C.D.B.G. funds for the benefit of such families, the rule changes would make it easier for a community to ignore their needs.

The changes include:

- Deleting the requirement that each community's program as a whole principally benefit low- and moderate-income families.
- Declaring that H.U.D. will no longer monitor the extent to which each program as a whole provides such benefits.
- Permitting a C.D.B.G.-funded economic development activity to be considered to provide such benefits if it takes place in an economically distressed city even though none of the jobs are made available to persons of low or moderate income.
- Permitting the use of C.D.B.G. fund for new multi-family rental buildings when 20 percent of their units are deemed affordable for low- and moderate-income families (but are not necessarily occupied by such families).
- Permitting communities to establish a definition of low and moderate income that is higher than the 80 percent of area median now used.

I submit that these changes will make it much easier for Community Development Block Grant funds to be used for programs that do not principally benefit low- and moderate-income families.

Since this issue is of such grave significance to the Congress, the Subcommittee on Housing and Community Development will be holding a hearing during the first week of December to explore the impact of the proposed regulations.

It is not enough that the Administration "expects" that the primary objective of the program will continue to be met by communities: it has a legal obligation to issue regulations that will assure they will be met.

(Rep.) HENRY B. GONZALEZ
Chmn., House Subcommittee on Housing
and Community Development
Washington, Oct. 14, 1982

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October 7, 1982

Samuel R. Pierce, Jr.
Secretary
U.S. Department of Housing
and Urban Development
Room 10000
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Docket No. R-82-1005,
47 Fed. Reg. 43900
(October 4, 1982)

Dear Secretary Pierce:

First in its state-run Small Cities Program regulations, then in its HUD-administered Small Cities Program regulations, and now in its Entitlement Program regulations, HUD has totally abdicated federal oversight of the primary objective of the Community Development Block Grant program to principally benefit persons of low- and moderate-income. It has authorized the annual transfer of over $3 billion from the federal government to state and local governments in purposeful disregard of whether those dollars reach the statutorily mandated intended beneficiaries. In the course of so doing, HUD has misread the law and misinterpreted the history surrounding legislative amendments of 1978 and 1981 in an effort to construct a rationalization for its wholly unwarranted conclusions. The purpose of this letter is to address the major failings of the Interim Rule amending the Entitlement Program regulations.

Failure to Implement the Statutory Requirement That Low- and Moderate-Income Persons Principally Benefit from the CDBG Program

The Interim Rule flatly states that "HUD will no longer conduct any review of the grantee's overall program with respect to benefit to low- and moderate-income persons." Draft Interim Rule, p. 52. In support of its decision to ignore what even the Interim Rule acknowledges to be the primary objective of the Housing and Community Development Act, HUD relies on its perception of legislative events occurring in the years 1978 and 1981. But even a cursory look at the amendatory process of those two years discloses no support for HUD's position.

In 1978, at the instance of Representative Gary Brown of Michigan, Congress added the following sentence to Section 104(c) of the Act which reads as follows:

> The Secretary may not disapprove an application on the basis that such application addresses any one of the primary purposes described in paragraph (3) to a greater or lesser degree than any other, except that such application may be disapproved if the Secretary determines that the extent to which a primary purpose is addressed is plainly inappropriate to meeting the needs and objectives which are consistent with the community's efforts to achieve the primary objective of this title.

It is submitted that this impenetrable prose is nearly unintelligible and that any regulation that purports to rely upon this sentence alone rests upon a foundation of lightly packed goose feathers. This sentence only has meaning by reference to simultaneous explanations of it. For example, the joint explanatory statement of the Committee of Conference makes it clear that this amendment does not abrogate the primary objective of the Act and in fact the conferees stated that they wished to "reaffirm that the primary objectives of the CDBG program is the development

of viable urban communities by providing decent housing and a suitable living environment and extending economic opportunities, principally for persons of low and moderate income." Conf. Rep. No. 95-1792, 95th Cong. 2d Sess. 60 (1978). The Conference Report also indicated its approval of HUD's regulatory requirement that established a presumption of program compliance if a majority of program funds was earmarked for activities that benefited low- and moderate-income persons.

If the Conference Report is not clear enough, the remarks of Senator Proxmire and Representative Ashley, as they introduced the Conference Report to their respective Houses, should remove any lingering ambiguities. Senator Proxmire observed of the Conference Committee Report, "The original House amendment would, I believe, have been a disaster. The compromise, I feel, reaffirms the primary objective of the act, and the authority of Secretary Harris to administer the program in accordance with the policies she has established." Cong. Rec. § 18773 (Oct. 14, 1978). Likewise, Representative Ashley stated in his introductory remarks, "There were also substantial issues with regard to the direction that the Community Development Block Grant program should take. In the end, the conferees reaffirmed that this program is one oriented towards local control and local conditions while making it clear to all that its purpose is to develop viable urban communities principally for the benefit of low and moderate income persons." In view of this clear direction from Congress in 1978, how, then, can HUD conclude that "Since enactment of the 1978 amendments, it has been the opinion of the Department's Office of General Counsel that the 'program as a whole' regulation is inconsistent with the Act."? (Quoted from 47 Fed. Reg. 15292 (Thursday, April 8, 1982) upon which HUD relies in its preamble to the Entitlement Program Interim Rule.)

In addition, HUD appears to be relying upon 1981 amendments which provide local units of government a much greater role in determining their community development needs and in selecting activities appropriate to meeting those needs. Once again, HUD's view of what it thought Congress was doing flies in the face of legislative history. The Senate, which adopted the administration's proposals for the CDBG program

in the spirit of deregulation and in order to reduce the federal role in shaping local governments' community development programs, was quite clear that it was making procedural changes only. To underscore that point, the Senate Report on S.1197 states:

> It should be emphasized the Committee's intent is to cause procedural simplication rather than substantive change .... The Committee believes that, in conjunction with the simplification and reconstructing of the Block Grant Program, it is desirable to reaffirm the program's overall objective contained in Section 101(c) -- the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

S. Rep. No. 97-87, 97th Cong., 1st Sess. 2 (1981).

In view of the fact that Congress in 1978, and again in 1981, saw fit expressly to reaffirm the primary objective of the Act, it is worth taking a second look at exactly what the Act provides. After setting forth the primary objective, Section 101(c) of the Act states that only "consistent with this primary objective" may funds be used to carry out the more specific objectives then listed, which, among other things, include the elimination or prevention of blighted conditions. It is clear, therefore, that all of the more specific objectives listed in Section 101(c) are subservient to the overall purpose to principally benefit the lower-income. Likewise, the certification required in Section 104(b)(3) that "the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low and moderate income families or aid in the prevention or elimination of slums or blight ....", can only be read to be subservient to the overall purpose of principally benefiting the lower-income. Thus, a local government

could choose to allocate some of its CDBG funds to activities that do not benefit the lower-income, but principally the beneficiaries of the funded activities must be lower-income households.

In contrast, the Interim Rule for Entitlement Jurisdictions would allow a local government to expend its entire CDBG allocation on activities that eliminated slums or blight, or met urgent needs, or a combination of both, in total disregard for the needs of the lower-income. This interpretation vitiates the primary purpose provision entirely. Moreover, HUD's approach inevitably will lead to the results that were achieved in the early days of the program when there was no effort to ensure that CDBG program benefits were targeted to the lower-income. Numerous studies and administrative and court complaints have documented the abuses that took place in the first few years of the program. (For the most extensive listing of such studies and complaints, see Keating and LeGates, "Who Should Benefit from the Community Development Block Grant Program?" 10 URBAN LAWER 701 (Fall 1978). A NAHRO study, for example, found that more middle-income households than low-income households benefited from CDBG program years 1975 and 1976. 10 URBAN LAWYER at 712, fn. 50. And Senate Oversight Hearings in 1976 turned up instances of golf courses, tennis courts, and swimming pools funded with CDBG program dollars. Oversight Hearings on the Administration of the Housing and Community Development Act of 1974 before the Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. passim (1976).

Even if prior history did not compel the conclusion that HUD regulations are necessary to ensure that low- and moderate-income people receive the principal benefits of the program, present-day policies of targeting scarce federal resources to the truly needy should require it. Instead of ignoring the statutory mandate, HUD should be carefully regulating to ensure that the most needy do in fact receive the benefits of the CDBG program. Instead, HUD is consciously and purposely choosing to conduct a performance review in which the question of whether the primary objective of the Act is met is not even raised.

Inadequate Compliance Review Standards

Should a local government voluntarily decide to allocate CDBG funds to activities that purport to benefit the lower-income, the compliance review standards set forth in the Interim Rule establish presumptions of benefit that may bear no relationship to reality. For example, if an economic development activity is designed to attract or retain commercial facilities, it will be deemed to benefit the lower-income if the service area is comprised of a majority of low- and moderate-income persons without regard to the nature of the commercial facility itself. Formerly, only those commercial services essential to the needs of the lower-income community could be considered of benefit to the lower-income; now, boutiques and flower shops in a gentrifying neighborhood can be counted as benefiting the lower-income. In addition, while Section 578.901(b)(1)(i)(B) provides that economic development activities designed to create or maintain permanent jobs must in fact be available for low- and moderate-income people, a major loophole is created in Section 570.901(b)(1)(v) which establishes a presumption of benefit to the lower-income of any economic development activity funded for the primary purpose of creating or retaining jobs in a county or city which meets or exceeds at least three of the Urban Development Action Grant program minimum distress criteria. Under the latter provision, apparently through application of the so-called trickle down theory, the jobs created could be highly skilled and require heavy credentials and still be counted as benefiting lower-income people.

In addition to weakening the lower-income benefits presumed to flow from economic development activities, HUD has weakened its definition of lower-income benefits that are presumed to flow from housing activities. The rehabilitation of multifamily residential structures in which more than 50% of the rehabilitated units are occupied by low- and moderate-income households is deemed to be of benefit to low- and moderate-income people. However, HUD is leaving the question of whether a unit is considered "affordable" to the determination of the local government. There is nothing in the Interim Rule which would disallow the determination by a local government that requiring a household to spend in excess of 50% of its income on housing

household to spend in excess of 50% of its income on housing costs is affordable. In addition, the Interim Rule, instead of forbidding displacement through rehabilitation, expressly authorizes it by its acknowledgement that "rental units might not be occupied by the same household after rehabilitation as before rehabilitation". Section 570.901(b)(1)(iv)(B). Thus, increased housing costs as a result of rehab could force a low-income family to move, but so long as the unit is still "affordable" (as determined by the local government), to a moderate-income household, the local government is deemed to have benefited low- and moderate-income households.

Finally, all of the funds allocated to the construction of a multifamily, non-elderly housing project where only 20% of the units will be occupied by low- and moderate-income persons may be counted towards benefiting the lower-income. The fact that most new construction of family housing these days requires a subsidy to make it feasible is no justification for permitting the use of CDBG funds -- which are supposed to principally benefit the lower-income -- on a project that will not be occupied by a majority of low- and moderate-income households.

Related to the question of program benefit is HUD's treatment of special assessments. Pursuant to Section 570.200(f) of the superseded regulations, no special assessments could be imposed to recover the capital costs of public improvements funded in whole or in part with block grant funds from properties owned and occupied by low- and moderate-income persons. Under the Interim Rule, however, special assessments can be leived on the homes of lower-income households to recover the portion of a capital expenditure funded from other sources. While CDBG funds may be used to pay for special assessments levied against properties owned by low- and moderate-income persons, this is clearly a discretionary, not mandatory, provision.

Before HUD tightened up the prohibition against the levying of assessments against homes owned by low- and moderate-income persons, it was commonplace to find local governments imposing burdensome special assessments on these homeowners for improvements partially assisted with CDBG funds. The superseded regulation was in response to a real, rather than a perceived, need and HUD's Interim Rule will

turn back the clock to those days when families were actually displaced from their homes because they could not afford onerous special assessments.

Failure to Require Local Governments to Minimize Displacement

Section 901 of the Act requires HUD to administer its programs in such a fashion as to minimize displacement. This statutory provision was untouched by the 1981 amendments, yet HUD has failed even to reference it, much less spell out how it is to be enforced. It is not among the "other program requirements" set forth in Section 570.600 of the regulations and it is not one of the standards by which will determine compliance with the program. HUD's disregard of a clear program requirement is in direct contravention of its statement to Congress in which it reaffirmed its commitment to implement the anti-displacement provision of the Act in the administration of its programs. See U.S. Department of Housing and Urban Development, Report to Congress, Residential Displacement -- An Update vi (October, 1981).

HUD's Position on the Applicability of the Uniform Relocation Act to the CDBG Program Is Wrong

It is commendable that HUD has decided, at least for the Entitlement and HUD-administered CDBG programs, that grant recipients must adhere to the Uniform Relocation Act (URA). However, its statement that it "has elected not to disrupt existing practice unless and until nonapplicability of the statutory requirements is confirmed", is a clear message to local governments that they are free to indulge in the belief held by HUD that compliance with the URA is not mandated by the terms of that statute itself.

There is no legal basis for HUD's position. Just because Congress in 1981 amended the Housing and Community Development to provide states and local governments with greater decision-making authority and flexibility, that does not mean that HUD is free to conclude that the URA no longer applies to CDBG-assisted, displacement-causing activities. It is a long-standing canon of statutory construction that a legislative enactment remains the law until it is explicitly

repealed. See, for example, cases cited in 2A J. Sutherland, Statutory Construction, 56.02 (4th ed., C. Sands, 1973). This canon "applies with particular force when the asserted repealer will remove a remedy otherwise available". Schlesinger v. Councilman, 420 U.S. 738, 752 (1975). The virtue of attaching a presumption of on-going vitality to any prior law is that Congress, not an administrative agency or the courts, has the opportunity to decide if it perceives a conflict between two of its laws. In the absence of Congressional action, the courts are very wary about construing one law as impliedly repealing another. In Morton v. Mancari, 417 U.S. 535 (1974), the Supreme Court stressed that there must be an irreconcilable conflict between two laws for the later to repeal sub silentio the earlier.

There has been only one instance in which the URA has been found to be inapplicable to a later enacted law, and that was in the case of Goolsby v. Blumenthal, 590 F.2d 1369 (5th Cir. 1979) (en banc), the case relied upon by HUD as the sole support for its conclusion that the URA should not apply to the CDBG program. But in Goolsby the other law in question, the 1972 General Revenue Sharing Act, was so radically different from the CDBG program as amended that the case is wholly inapposite. The irreconcilable conflict between General Revenue Sharing and the URA was founded on the following facts. First, the court noted that the Revenue Sharing Act made reference to only two other federal laws: Davis-Bacon and civil rights laws. Second, if the URA were applied, the court found that there was no effective method for the Office of Revenue Sharing to enforce the requirement. There is no provision for review of expenditures, either through a "front-end" review or by means of a performance review because of the difficulty of tracing General Revenue Sharing funds and determining how they were actually spent. The court also found evidence in the legislative history of the Revenue Sharing Act that Congress intended that the use of the funds would not trigger the application of any laws or standards not specifically spelled out in that Act itself. This was consistent with the Revenue Sharing Act's "no strings attached" approach to dispensing federal funds. Finally, the court found persuasive the fact that Congress had remained silent after the

Fourth Circuit held that NEPA, another federal law not specifically mentioned in the General Revenue Sharing Act, did not apply to general revenue sharing funds. See Carolina Action v. Simon, 552 F.2d 295 (4th Cir. 1975).

In sharp contrast, the 1981 amendments to the Housing and Community Development Act expressly hold a grantee to compliance with civil rights laws and "other applicable laws". 42 U.S.C. § 5304(b)(4). Further, the "force fit" that the Fifth Circuit complained of in Goolsby is not present when meshing the URA with the CDBG program. There is an effective means of enforcement. While the "front-end" review has been eliminated, Congress clearly intended to emphasize the performance review. (Nor would HUD want to be in the position of arguing that it cannot effectively trace or account for CDBG expenditures.)

Thus, there is not one shred of support in the legislative history of the 1981 amendments for the view that a sub silentio repeal of the URA was contemplated by Congress. To the contrary, the purpose of the shift in decision-making and the emphasis on flexibility was, as the Senate Report, supra, makes clear, procedural and not substantive in nature. If Congress had any expectation that by streamlining the delivery of CDBG funds it was also rendering the URA inapplicable, it surely would not have made reference in Section 5304(b)(4) to "other applicable laws". In sum, there is no irreconcilable conflict between the URA and the CDBG program and there is every indication that Congress intended the on-going application of the URA to that program.

Failure to Provide for Meaningful Citizen Participation

The citizen participation requirements set forth in Section 570.301(b) are the bare minima required by the statute. While the 1981 amendments represent a relaxation of citizen participation requirements as compared to the prior law, HUD has gone further than Congress intended. The conferees adopted the Senate version of the citizen participation requirements. The Senate Report, however, makes clear that its relaxation of requirements was not

based "on a lack of concern about the importance of citizen participation", and that it had "full confidence that the vast number of state and local laws governing the local policy making process and the experience gained by citizen groups interacting with local policymakers on community development will sustain this activity". S. Rep. No. 97-87, 97th Cong., 1st Sess. 3 (1981). The brevity of the Interim Rule does not transmit the exact nature of the Senate's vote of confidence to local government officials.

HUD also knows full well that any success citizen groups have had in the past in effectively participating in the CDBG program has been predicated on their access to basic information concerning the program. It is difficult to mandate effective citizen participation; but it is possible, and in fact it is necessary, to require that the public have access to the documents and information that can lead to an informed and effective citizenry. The superseded regulations (24 C.F.R. § 570.303(i)) provide that basic information and similar provision must be made in the final rule.

In addition, the Interim Rule eliminates the administrative complaint process by which citizens can voice their objections to the community development statement and the local government's performance and be guaranteed that they will receive a response. Mandating such a procedure provides a useful avenue for establishing a dialogue between local government officials and citizens who have complaints about the program's operation. As HUD well knows, complaints can often be resolved at the administrative level, thereby obviating the necessity of time-consuming litigation.

Violations of the Administrative Procedure Act in HUD's Regulations

This is the third time that HUD has published a rule implementing 1981 legislative amendments to the CDBG program which is intended to become effective before the receipt of public comment. This procedure violates the Administrative Procedure Act and HUD's own regulations which require publication of regulations for notice and public comment prior to their becoming effective, and which require that HUD provide an analysis or evaluation of the

issues set forth in the comments submitted. 5 U.S.C. §§ 553(d)(3) and 553(c) and 24 C.F.R. §§ 10.1 and 10.16. The history of HUD's first Interim Rule, initially published for comment on November 20, 1981, demonstrates that HUD has no concern for meaningful public comment. When that rule was ultimately published in final form on April 8, 1982, the preamble was a highly elaborate justification of positions HUD had taken in its initial publication of the rule in November. While there was some analysis of the comments received, in reality HUD made only those few and fairly insignificant changes demanded by Congress. Moreover, HUD's own delay in promulgating regulations implementing the 1981 amendments cannot now be used as justification for the use of the Interim Rule process when HUD had more than ample time to publish a proposed rule and receive public comment before the rule became effective.

Conclusion

This Interim Rule, with its callous disregard for whether the statutory intended beneficiaries are either hurt or harmed by the Community Development Block Grant program, does not reflect either the law as amended or Congressional intent. It does represent a wholesale abdication of federal responsibility in a manner not contemplated either by Congress or even by the program's severest critics. The Interim Rule must be revised to ensure that low- and moderate-income people are the principal beneficiaries of the program.

Very truly yours,

Frances E. Werner
Staff Attorney

FEW:lm

cc: Rules Docket Clerk

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

December 6, 1982

To the Honorable, the City Council:

Enclosed for your information is a copy of a communication from Kathy A. Spiegelman, Assistant City Manager for Community Development, relative to HUD's proposed revisions in Block Grant regulations.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item Number Three

F 333

Re: enclosing for informational purposes a memo from Kathy Spiegelman, Asst. City Manager for Community Development Re: HUD's proposed revisions in Block Grant regulations

In City Council,

December 6, 1982

12/6/1982

Placed on File-