

Community Development: The Workings of a Federal-Local Block Grant

THE INTERGOVERNMENTAL GRANT SYSTEM:
AN ASSESSMENT AND PROPOSED POLICIES



**ADVISORY
COMMISSION ON
INTERGOVERNMENTAL
RELATIONS**

Washington, D.C. 20575
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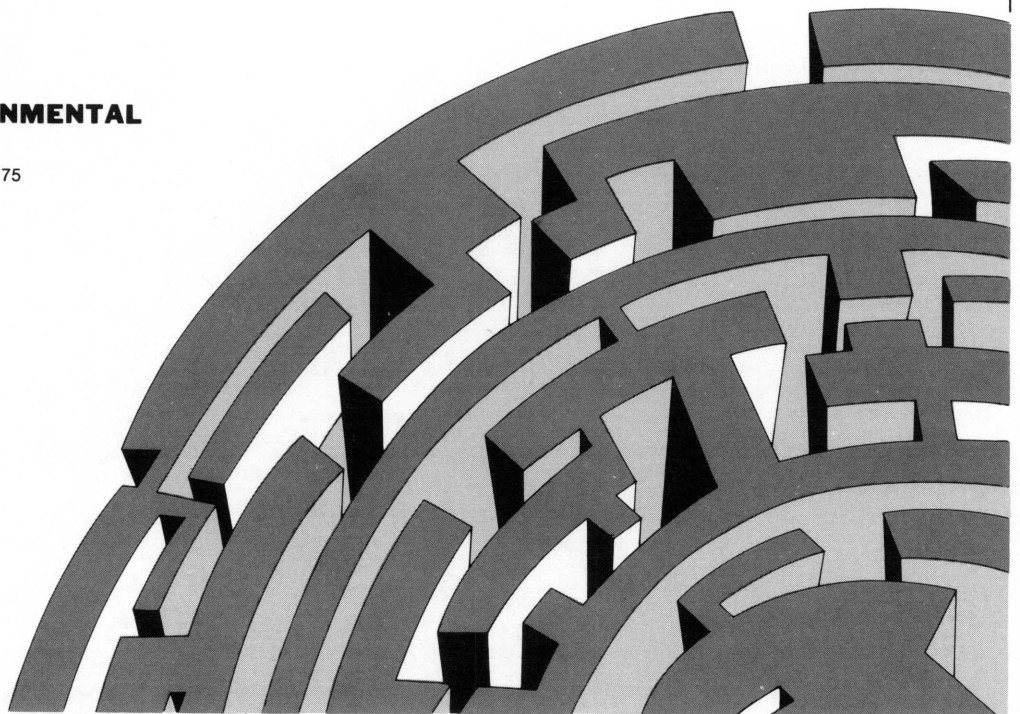
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Preface

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Pursuant to its statutory responsibilities authorized in Section 2 of P.L. 86-380, passed during the first session of the 86th Congress and approved by President Eisenhower on September 24, 1959, the Commission singles out particular problems impeding the effectiveness of the federal system for study and recommendation.

The current intergovernmental grant system was identified as such a problem by the Commission in the spring of 1974. The staff was directed to probe four features of this system: categorical, the range of reform efforts that stop short of consolidation, block grants, and the changing state servicing and aid roles. This report is the fifth in the series that resulted from this basic Commission decision. It deals with Title I of the *Housing and Community Development Act of 1974*, the second Federal-local block grant to be enacted in modern times; and it is one of four studies done under the block grant phase of the overall report. It was approved at a meeting of the Commission on May 21, 1976.

Robert E. Merriam
Chairman

Acknowledgments

This volume was prepared by the government structures and functions section of the Commission. Joanne L. Doddy had major responsibility for the staff work. Staff members David R. Beam, Bruce D. McDowell, Carl W. Stenberg, and Albert Richter assisted in the preparation of the recommendations and provided advice and constructive criticism during the preparation of the report. Patricia A. Alston had the lead responsibility for typing and coordinating the volume. She was assisted by Evelyn M. Nolin, Linda S. Silberg, and Gloria K. Thomas. Carol Monical Wright provided indispensable library assistance.

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The completion of this volume would not have been possible without the cooperation and assistance of the persons and agencies identified above. Full responsibility for its content and accuracy rests, of course, with the Commission and its staff.

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Executive Director

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Introduction

With the advent of the Community Development Block Grant (CDBG) program came a new type of block grant. From its inception, two major aspects of the program indicated that it would generate curiosity and controversy.

First, the program operates in a broad area which has always been loosely defined – community development. Since the term's emergence in Federal legislation in the *Housing Act of 1949*, it has been used to describe a plethora of programs and policies bent upon rebuilding and preserving the nation's urban areas, and improving the lives of the residents therein. Community development has, from time to time, included programs related to physical development, human services, environmental protection, and political organization. More than many other programs, its meaning has varied depending upon the particular program, its objectives, and the participants involved.

Second, the program is Federal-local in nature. The legislation entitles cities over 50,000 and certain counties over 200,000 to CDBG funds, and all other units of general local government are eligible for funds on a discretionary basis. The locality decides how it wants to use the funds, provided that its selected uses fall within the specified program parameters. This Federal promotion of local priority setting – frequently referred to as returning power to the local people – for the widely

diverse localities of the nation is the program's most distinctive feature.

The controversy begins when these two primary features are combined. The act never defines “community development.” Instead, it offers a series of objectives and a list of activities which qualify for funding under the auspices of the program. These activities and objectives, when taken as a whole, encompass a very wide range of activities in the area which has come to be known as community development. But when a participant – faced with scarce funds and other constraints – selects only a few activities in pursuit of a few of the objectives, the individual local programs often become a mere fragment of the comprehensive program envisioned. This is precisely what has occurred in the CDBG program.

Beginning with the Federal government's earliest involvement in community development programs, continuing through the legislative battle which resulted in the enactment of the CDBG program, and ending with a first year assessment of the program's operation, this ACIR study looks at this new approach to community development. The prime focus is on the use of the block grant mechanism in a Federal-local partnership to deliver community development assistance in a manner consistent with the Congressionally expressed objectives of the act.



Legislative History

The Drive for Enactment

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Early Background. Although Congress held its first housing hearings on slums and blight in 1892, more than a half century was to pass before legislative action was taken in the area of community development. In the interim, the fluctuating political, social, and economical events of the nation generated a host of housing and community development problems. The production demands of two world war economies resulted in concentrations of workers near major shipyards and munitions plants. The Federal government was forced to respond with the construction and/or conversion of temporary dwelling units. The aftermath of the wars brought increased numbers of veterans seeking housing. The Federal government reacted with efforts to stimulate housing production and to facilitate financing.

The Great Depression also left its victims: dispossessed homeowners and collapsing financial institutions. Once again, the Federal government responded, this time with mortgage insurance programs, rent subsidies and public housing.¹ One result of this rapid growth under volatile conditions was an increase in urban blight. During this time, 10,262,000 dwelling units were reported to be either dilapidated or deficient in plumbing.² It was against this backdrop that the *Housing Act of 1949* was enacted. The *Housing Act of 1949*³ was a landmark piece of legislation. For the first time, Congress stated a national goal for housing:

The Congress hereby declares that the general welfare and security of the nation and the

health and living standards of its people require housing production *and related community development* sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the *development and redevelopment of communities* and to the advancement of the growth, wealth, and security of the nation. (Emphasis added.)⁴

4 It was noteworthy that this initial policy statement did not use a restrictive concept of housing. As the 1961 U.S. Commission on Civil Rights Report of Housing noted: "Housing was no longer incidental to some other national purpose, nor was the goal merely to build more houses. The government started also to attack the larger problem of community redevelopment. Here was a new concept of housing that demanded imagination and daring."⁵

While the 1949 legislation interpreted housing broadly, the concept of community development, or more accurately urban development, was given a more narrow construction. Within the scope of the legislation, urban development referred to land acquisition, slum clearance, preparation of the blighted land and resale of the prepared site to private developers. It was a good start; but it was clearly insufficient to meet the needs of the nation's rapidly changing cities.

In 1953, President Eisenhower established the President's Advisory Committee on Government Housing Policy and Programs and charged the committee with the task of developing "a new and revitalized housing program . . . to meet the problems of housing and sound community development through a series of related actions."⁶ The committee's report both expanded the parameters of the 1949 act and recommended a shift in emphasis for urban renewal. The shift was away from project planning on a limited, piecemeal, few blocks at a time basis to comprehensive planning. It was suggested that the nation's programs move beyond slum clearance and redevelopment to encompass the general revitalization of the total community. Most importantly, this shift was to be the result of a Federal-local cooperative venture. Each community would be responsible for devising a workable program for community improvement to attack the problems of urban decay. The reason for the program

requirement was simply explained by the committee: ". . . there is no justification for Federal assistance except to cities which will face up to the whole process of urban decay and undertake long-range problems."⁷ This same reasoning and desire to actively involve the local communities in the planning process of community development reemerged 20 years later with the passage of the *Housing and Community Development Act of 1974*.

The advisory committee's subsequent report provided the basis for a second major piece of community development legislation, *the Housing Act of 1954*.⁸ The 1954 act contained two major changes pertaining to community development programs. First, it substituted the phrase "urban renewal" for "urban redevelopment" and broadened the concept to include conservation, restoration, and rehabilitation of houses in accordance with an urban renewal plan rather than simply slum clearance as the older term implied. Second, it introduced the concept of "urban planning" (which was changed to "comprehensive planning" in the *Housing Act of 1968*), whereby all grants must be made to official planning bodies which had official power for various planning functions. Although less than comprehensive, the 1954 act provided a basis from which community development assistance over the years was to grow.

From then through 1966, Congress passed three more housing bills which allowed for specific grant funds for community development activities. These were:

- (1) Title VIII, *Housing Act of 1961*: provided for the preservation of open space, urban beautification, and historic sites;
- (2) Title VII, *Housing Act of 1965*: provided grants for water and sewer, neighborhood facilities and advance acquisition of land; and
- (3) Title I, *Demonstration Cities and Metropolitan Act of 1966*: established the Model Cities support grants.

This series of categorical programs and the Model Cities target grants, developed in incremental stages, formed a complex system of Federal governmental assistance for community development. As the number of programs increased, the recipients began to voice concern over the difficulties in operating in such a fragmented system. By 1968, a move for greater coordination and consolidation had begun.

The Move for Reform. The special revenue sharing programs of New Federalism, as announced in President Nixon's January 22, 1971, State of the Union message, did not spring full blown from the heads of the Nixon Administration. These revisions of Federal aid to state and local government were the climax of a series of administrative experiments, government and public interest group task force studies, and elected officials' complaints. Each of these actions focused upon the need for grant consolidation in light of the demonstrated weaknesses of the categorical grant-in-aid programs. No place was this more evident than in the area of community development.

The initiation of the Neighborhood Development Programs (NDPs) pursuant to the *Housing Act of 1968*⁹ represented one of the earliest administrative attempts to simplify the increasingly more complex field of intergovernmental assistance in the area of community development. As stated in its purpose, the NDP was intended:

Sec. 131(a): To facilitate more rapid renewal and development of urban areas on an effective scale, and to encourage more efficient and flexible utilization of public and private development opportunities by local communities in such areas.¹⁰

More specifically, the program allowed a community to receive financial assistance for planning and carrying out urban renewal projects in one or more urban renewal areas on the basis of annual increments. It provided a faster method of implementing a renewal project by allowing immediate starts on rehabilitation, public improvements, and redevelopment activities. By 1972, three years after the program's commencement, all new renewal projects were carried out through the NDP approach.¹¹

A second experimental administrative program was the Planned Variations (PV) demonstration, an experiment within the Model Cities program initiated by the July 29, 1971, announcement of President Nixon. Its main objectives were: to enable cities to improve their coordination of Federal funds in solving critical urban problems, to increase their ability to set local priorities, and to reduce bureaucratic paperwork and overcome delay. This purpose was achieved by the use of three basic Planned Variations: (1) The Citywide Model Cities; (2) Chief Executive Review and Comment (CERC); and (3) Minimization of Review.¹²

PVs moved the grant-in-aid program for community development from the limited range of the categorical

and target grant to more of a block grant approach. It allowed for greater local discretion in the use of program funds. HUD, in its evaluation report entitled *Planned Variation: First Year Survey*, emphasized the role of the PV as a forerunner of the community development block grant:

As President Nixon stated in his announcement of July 29, 1971, the Planned Variation program was developed "as a way to convert a portion of present Model Cities grants into a test of what can be accomplished under the revenue sharing approach to intergovernmental relations."¹³

President Nixon viewed the program as a method by which greater responsibility could be assigned to the local level.

Instead of focusing these decisions in Washington, one fundamental thrust of my Administration has been to develop power-to-the-local-people programs under which the local officials who know the local scene best are given funds as local conditions suggest with a minimum of Federal red tape and regulations.¹⁴

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A third experiment, which also was related to the PVs, was the Annual Arrangement (AA).¹⁵ Like the PVs, its primary objective was better coordination of separate categorical grant programs. The *modus operandi* was the early earmarking of HUD funds for a full year program based upon comprehensive assessment of local needs and priorities. But the Administration had another purpose. The AA process was intended to give both HUD and the cities some idea as to how special revenue sharing money for community development might work. It was an attempt then "to end-run the categorical structure of HUD's grant-in-aid program."¹⁶ Recognizing the fact that legal restrictions prevented it from shifting moneys between various community development program categories, HUD believed the AA process would enable mayors to select desired projects for funding much the same way as with a no-strings attached community development block grant.

This hope did not materialize. The categorical limitations which were placed on HUD funds proved to be an obstacle to program coordination and flexibility. First, the existence of a finite funding source within each program category placed an automatic limitation upon the cities. Unless a request for increased funding in

one category by one city was counterbalanced by a desire to decrease funding in the same category by another city, additional money for particular programs did not become available. Since there were no mechanisms to coordinate intercity funding requests, AA cities generally experienced no appreciable change in funding. Where cities were successful in shifting around amounts of money received, it was possible that they would receive more than they requested in one area and less than they requested in another.

Additionally, cities found it difficult to change priorities in community development projects where the funds had already been allocated. Previous commitment to ongoing programs curtailed the flexibility of the funds involved. It was felt, however, that this obstacle could be overcome as these projects were completed.

Despite these faults, the AA process did fulfill some of its goals. It forced city administrators and HUD officials to deal with program coordination in housing and community development. It pointed out the weaknesses in the structure of those cities where the chief executive's control over physical development projects had been diminished by various public agencies or authorities. Finally, it gave HUD an idea as to what would constitute adequate funding and program guidelines for special revenue sharing or block grant programs in the area of community development.

In early 1970, a serious attempt to revamp the housing and community development categorical grant programs was made in HUD under the direction of then HUD Secretary George Romney. It produced a move toward block grants. Computer runs were used to test various formulas which might be used if block grants were dispersed in a revenue sharing format.

A HUD proposal was never formalized; however, before Secretary Romney could announce his new program, the White House had captured the idea. John Ehrlichman, the White House assistant for domestic affairs, quietly instructed White House and Office of Management and Budget (OMB) staff (some of whom had worked with HUD officials designing the new block grant proposal) to draft legislation for a series of special revenue sharing programs which formally would be announced along with the Administration's proposed general revenue sharing in the January 1971, State of the Union Message of President Nixon. The affected cabinet officers were informed of the President's planned proposals the day before the State of the Union address. Richard P. Nathan, then the assistant director of OMB, reported on the incident in his book, *The Plot That Failed*:

... George Romney, was furious. He took

the occasion to lambast White House arrogance in dealings with members of the Cabinet. Citing similar events, his anger was not to be allayed until he had enumerated his grievances and eventually calmed down. When he did, he took marching orders like the others and was cooperative. In fact, Romney became one of the strongest advocates of special revenue sharing (in his case for urban affairs) [community development] because this proposal in so many ways fitted in with his ideas about urban programs.¹⁷

Meanwhile, both the House and the Senate Committees on Housing and Urban Development during 1970 had begun to investigate new types of housing and community development programs. The Senate probed the use of a discretionary grant program for community development funds which contained a type of limited hold harmless grant. Their approach reflected many of the ideas of the National Association of Housing and Redevelopment Officials (NAHRO) which had just proposed a new community development program¹⁸ and whose legislative director, John Maguire, sat on the Senate task force. The House studied the possibilities of blocking. Both bodies acted in response to the criticisms of the categorical programs and with the knowledge that the Administration was actively considering revamping its programs.

On January 22, 1971, President Nixon's announcement of special revenue sharing, in his State of the Union message, proposed the consolidation of the 130 existing categorical grants into six broad-purpose packages to be provided to state and local governments with few requirements and no mandatory matching of funds. The six areas proposed were education, law enforcement, manpower training, rural community development, urban community development, and transportation.

In a special message to the Congress on March 5, 1971, President Nixon proposed a specific plan for special revenue sharing for urban community development. This proposal initiated a three-and-a-half-year legislative struggle which culminated with the passage of the *Housing and Community Development Act of 1974*.¹⁹ The history of this piece of legislation and its subsequent impact are the focal points of the remainder of this chapter.

Early Bills. The legislative battle over the passage of the *Housing and Community Development Act* challenged

the Congress to resolve two conflicting philosophies concerning the proper role of the Federal government in its granting position. Both the Administration and the Congress agreed on certain basic propositions: the status quo was unacceptable; consolidation of the plethora of community development programs was needed; bureaucratic red tape should be eliminated; and recipient discretion in the utilization of grant moneys should be increased. Yet, there was substantial disagreement as to the method by which these goals could best be achieved. The Administration advocated a grant system which would eliminate virtually all Federal restrictions on the local government's use of Federal funds. This highly flexible grant was referred to by the Nixon Administration as special revenue sharing. The Democratic Congress, on the other hand, favored a program which had sufficient Federal controls to guarantee that the national objectives which had been established over the years in housing and community development would be continued. This less flexible approach was referred to as a block grant. These divergent approaches to Federal grantmaking recur throughout the various proposed bills and provide a backdrop against which the emerging piece of legislation must be viewed.

On April 22, 1971, the Nixon Administration proposed the *Urban Community Development Revenue Sharing Act of 1971* (H.R. 8853).²⁰ Basically this bill sought to consolidate four categorical grant programs (urban renewal, Model Cities, neighborhood facilities and rehabilitation loans) into a single system of special revenue sharing. It eliminated the requirement of a formal application and detailed community planning prior to receipt of funds. In lieu of these procedures, local officials would only need to prepare and publish for public examination a statement of the community development objectives and projected uses of funds. The funds could be utilized for a wide variety of community development activities. Since the act contained no definition of community development, it was possible to read the term broadly. The sole Federal review would be a periodic audit to determine that funds were indeed being used to fulfill community development objectives.

H.R. 8853 envisioned a \$2 billion fund for the first full year of operation. Eighty percent of the special revenue sharing funds would be allocated to use in Standard Metropolitan Statistical Areas (SMSAs). Annual entitlements were to be calculated according to a formula that would consider population, the degree of housing overcrowding, housing deficiencies, and the proportion of families with incomes below the poverty level. Central cities and other cities in each SMSA with a

population of more than 50,000 would automatically receive an annual share of the designated funds according to the formula. The remaining 20 percent of the funds would be used by HUD to compensate any major city in an SMSA which received less under the formula allocation than it received annually from the prior categorical program. The balance remaining after those payments, would then be used to assist other units of governments (e.g., counties, townships, etc.) and to encourage areawide development and cooperation. The program would commence on January 1, 1972.

The Administration's bill did not meet with instant success. Separate and in many respects conflicting consolidationist bills were subsequently introduced chiefly by members of the Housing Subcommittees of the House and the Senate. The Housing Subcommittee of the House Committee on Banking and Currency embodied its ideas for the reform and consolidation of community development programs in Title VI of the proposed *Housing and Urban Development Act of 1971* (H.R. 9688)²¹ which was introduced on July 8, 1971. This measure proposed a CDBG which would consolidate different programs than those included in the Administration bill. The bill merged basic water and sewer; advanced land acquisition grants under Title VII of the *Housing and Urban Development Act of 1965*; and the open space, urban beautification, and historic preservation grants authorized under Title VII of the *Housing and Urban Development Act of 1961*. It excluded from the consolidation the major Model Cities activities of Title I of the *Demonstration Cities and Metropolitan Development Act of 1966*, but Model Cities supplemental grants were authorized.

H.R. 9688 also differed from H.R. 8853 in terms of the substantive procedures localities would have to enter into before they could receive the Federal funds.²² H.R. 9688 retained the formal application procedure. Although a distributional formula determined specific allocations, the amount had to be justified in the application procedure on the basis of estimated program costs. Thus the maximum established allocation was not guaranteed. A 10 percent local match was stipulated as well as a requirement that the localities maintain their programs in conformance with standards established for various other Federal programs (e.g., environmental protection, equal employment opportunity, fair housing, etc.). Funding renewals were subject to Federal review with the Secretary of HUD having the express authority to withhold funding for lack of performance or failure to comply with national priorities.

Eligibility extended to all units of general local government (unrestricted by population) and the funds

were to be dispersed according to a formula which considered population, the amount of overcrowding and the amount of poverty in the area. Metropolitan areas would receive their funding first and the remainder would be allocated among the states and smaller units of general local government. The program carried a price tag not to exceed \$7.5 billion over three years.

Despite the similar purpose between H.R. 9688 and H.R. 8853, the Administration objected to H.R. 9688. Then HUD Secretary George Romney, testifying before the House Subcommittee on Housing, indicated that the Administration's objections to the bill stemmed from its belief that the preconditions for Federal assistance in H.R. 9688 would preserve more administrative processing than would be desirable and might result in denying a locality the distribution of its allocated funds.²³

8 On July 22, 1971, Senator John Sparkman (D.-Ala.), Chairman of the Senate Subcommittee on Housing, introduced the Senate counterpart to H.R. 9688, *The Community Development Act of 1971* (S. 2333).²⁴ The Senate bill resembled the House version in that it proposed the retention of a degree of Federal control over local programs. This the Administration found unacceptable. Additionally, S. 2333 proposed a higher expenditure of \$8.8 billion over a three-year period.

In Fall 1971, the Senate Banking, Housing, and Urban Affairs Committee's Subcommittee on Housing and Urban Affairs held ten days of hearings on HUD legislation which included both its own S. 2333 and the Administration bill, S. 1618. In the omnibus housing bill which emerged, the *Housing and Urban Development Act of 1972* (S. 3248),²⁵ the Senate adopted the Sparkman block grant approach to community development and rejected the Administration's revenue sharing approach, basically because of the limited oversight role allotted to the Congressional and Executive Branches. On March 2, 1972, the Senate passed S. 3248 by a roll call vote of 80-1.

The House version of the housing and community development bill received less favorable treatment. Nine days of hearings were held by the Subcommittee on Housing of the House Committee on Banking and Currency. At their conclusion, the House committee elected to adopt the block grant approach to community development programs, and criticized the lack of application or other front end review requirements under the special revenue sharing format. The new House version of the housing bill, H.R. 16704,²⁶ was reported by the Banking and Currency Committee by a 9 to 3 vote on September 19, 1972. But it fell victim to the House Rules Committee which refused to grant a

rule for floor consideration by a 9 to 5 roll call vote. A variety of factors contributed to the failure of the bill in the Rules Committee. *The Congressional Quarterly* reported that Rules Chairman William M. Colmer (D.-Miss.) considered the complex and lengthy omnibus housing bill to be "a Herculean task" to consider before adjournment.²⁷ Participants in the process attributed the bill's failure to other reasons. First, Housing Subcommittee Chairman Wright Patman gave the bill a less than enthusiastic report when seeking the rule. He indicated his disapproval of the bill even though he agreed to recommend passage. Second, the omnibus bill contained controversial material which was opposed by two major groups. The Administration opposed the operating subsidies for mass transportation which were included in the bill, while the NAACP and other civil rights groups opposed the provisions for public housing which they found regressive. Although the community development sections were not considered to be controversial at this time, urban counties also opposed the bill, because they were not included as entitlement jurisdictions under the block grant provisions. The end result was that no housing legislation emerged from Congress in 1972.

Failure to obtain final community development revenue sharing legislation in 1971 and 1972 did not deter the Nixon Administration. The concept remained a fundamental component of its domestic program. In his 1974 budget message, President Nixon reaffirmed the need for special revenue sharing programs and provided for them in his budget.²⁸ To emphasize this point, the Administration took two basic actions. First, on April 19, 1973, special revenue sharing for community development was reintroduced as the *Better Communities Act (BCA)*,²⁹ a revised version of the original *Urban Community Development Revenue Sharing Bill of 1971*. The BCA expanded the number of programs to be folded into seven, including the open space, water and sewer facilities, and public facilities loan programs. Furthermore, it included urban counties as entitlement jurisdictions and added a hold harmless provision to ease the losses of some past participants.

Second, the Administration began to apply pressure to push its legislation through the Congress. Specifically, the Administration announced a temporary holding action on new commitments for water and sewer grants, open space grants, and public facility loans until these activities were folded into the special revenue sharing program.³⁰ A similar "holding action" was planned for urban renewal and Model Cities programs at the end of the fiscal year, June 30, 1973. The action was intended as a strategic move to force the unwilling Congress to

expedite the passage of community development legislation by making a return to the old categorical programs impossible in the event that no housing legislation emerged from Congress in 1973. It was argued that only quick passage of community development legislation would prevent a harmful disruption of the flow of HUD money which, for most cities, extended only through the end of the fiscal year. If Congress were to attempt to mandate a return to the old categorical grants, the bureaucratic delay involved in HUD's processing procedures would be so time consuming as to result in substantial delays (possibly up to six months) in the receipt of checks for programs.

The strategy backfired — despite its purported consequences. Rather than expedite legislative action, the suspensions resulted in a legal battle³¹ and a diminution of the President's support and credibility with Congress. It fortified congressional resolve to use its agreement on community development legislation as leverage to obtain acceptable housing proposals. Its ultimate goal was clear: an omnibus housing bill which would ensure the continued use of Federal dollars by local governments to maintain and further the national goals and objectives set by Congress during the past 30 years of housing and community development legislative involvement.

On October 1, 1973, the Congress passed *House Joint Resolution 719*³² specifically authorizing funds for basic housing and urban development programs. This measure counterbalanced the actions of the Supreme Court and the President, continued the categorical programs, and reestablished the status quo. Yet, in this setting and with this background, the major and final battle for community development legislation was played out.

Final Legislative Action. The legislative battle was resumed in 1973 when three major legislative proposals on community development appeared before the 93rd Congress: the Administration's *Better Communities Act* (H.R. 7277); the *Senate Community Development Assistance Act of 1973* (also known as the Sparkman bill, S. 1744); and the *Housing and Community Development Act of 1973* (also known as the Barrett-Ashley bill, H.R. 10063). Each bill was a revival of previously unenacted legislation. The BCA, sent by the President to Congress on April 19, 1973, revised the community development special revenue sharing bill. The Sparkman bill, reintroduced on May 9, 1973, was merely the CDBG bill which the Senate passed the previous year (i.e. Title III of the proposed *Housing and Urban Development Act of 1972*). The Barrett-Ashley

bill, introduced by Housing Subcommittee Chairman William A. Barrett (D-Penn.) and Rep. Thomas L. Ashley (D-Ohio), not only set forth the House's former position in Title VI of the *Housing and Urban Development Act of 1971*, but also was viewed by its authors as a vehicle for accommodating the Administration's BCA.

Although all three bills stated similar objectives, there were still significant differences among them. The resolution of these major differences will be treated in depth in the next section, since they present the major issues of community development.

A total of 26 days of Senate legislative hearings were held covering the various pending housing and community development proposals. Another 26 days were spent in markup sessions on the legislation. Several Senators, who viewed the Administration's decentralization approach as detrimental to the interests of low income people, argued strenuously against the Senate adopting the special revenue sharing philosophy. Finally, on February 27, 1974, the Senate Banking, Housing, and Urban Affairs Committee reported the *Housing and Community Development Act of 1974* (S. 3066) as an omnibus housing bill to revise and consolidate Federal housing programs and to establish a block grant program for community development. It passed the Senate on March 11, 1974, by a 76-11 vote. Although the community development section of S.3066 contained a combination of the features of the Sparkman bill and BCA, the Senate philosophy, as the Committee Report states, was distinctive:

... the Committee adopted the block grant approach primarily to insure that Federal funds would be used with a priority to eliminate slums and blight, to upgrade and make the nation's cities more livable, attractive and viable places in which to live.³³

The House counterpart to S. 3066 was the *Housing and Community Development Act of 1974* (H.R. 15361). Like the Senate bill, it combined features of two earlier community development bills (H.R. 10036 introduced by Representatives Barrett and Ashley and H.R. 7277, the Administration's BCA introduced by Rep. Widnall) and included proposals of an earlier Administration housing recommendation, H.R. 10688. The Housing Subcommittee held hearings on the bill during three weeks in October 1973. Executive session commenced on the bill on February 5, 1974, and almost three months later, on April 30, 1973, the bill was

unanimously reported to the full committee. The latter took up the measure on May 20, 1973, and reported a clean bill, H.R. 15361, to the House by a vote of 26-3 on June 13, 1974. A week later, H.R. 15361 passed the House by a vote of 351-26.

The two bills, S. 3066 and H.R. 15361, from which the *Housing and Community Development Act of 1974* finally emerged, had differences which were resolved in the final Conference Committee. The community development sections of the final act more closely resembled the House version, thanks in part to the fact that the House community development provisions were more tightly drafted, reflected substantial collaboration with the Administration, and were supported by a more informed and unified delegation. The Senators, on the other hand, had a stronger interest in the housing provisions of the act and finally receded on some of the community development issues in the interest of passing some housing legislation.

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The final bill, S. 3066, was passed by the Senate on August 13, 1974, by a vote of 84-0 and by the House on August 15, 1974, by a vote of 377-21. The act was signed into law by the new President, Gerald R. Ford, on August 22, 1974 – within two weeks of his inauguration. At the signing, President Ford heralded the new program saying:

In a very real sense this bill will help return power from the banks of the Potomac to the people in their own communities. Decisions will be made at the local level. Action will come at the local level. And responsibility for results will be placed squarely where it belongs – at the local level.

I pledge that this Administration will administer the program in exactly this way. We will resist temptations to restore the red tape and excessive Federal regulations which this act removes. At the same time, of course, we will not abdicate the Federal government's responsibility to oversee the way the taxpayers' money is used.³⁴

In most accounts of the act's passage, the role impeachment politics played in the final stages of congressional deliberations has been stressed. The pressure for clearing the dockets of all pending legislation to prepare for a possible (and at the time probable) impeachment trial in the House, they claim, had the effect of rushing the House Committee and its deliberations. A similar claim has been made about the

conference on the final bill. However, this notion is specifically refuted by staff members and spokesmen who followed the bill closely. While granting the fact that everyone was aware of the possibility of the House having to deal with impeachment, this inside group strongly argues that that possibility had no effect on the careful deliberations on the bills. The facts support this argument. The amount of time spent in committee, markup, and in conference over this piece of legislation was considerable. Indeed, the House had never spent more time on any other piece of housing and community development legislation.

A second theory regarding the effect of impeachment politics is perhaps more plausible. The intense and continued interest of HUD Secretary James Lynn and HUD General Counsel James Mitchell in bringing to fruition housing legislation in the 93rd Congress was commonly acknowledged as a contributing factor to the bill's enactment, but HUD's initial ability to bargain had been largely preempted by White House efforts. Because the pressing nature of Watergate business on these staffers (particularly Domestic Council Director John Ehrlichman), Secretary Lynn in effect acquired greater discretion in negotiating compromises over conflicting Administration and Congressional positions. This flexibility had the effect of expediting the legislative process.

Many of the issues raised by the *Housing and Community Development Act* were novel ones. Congress did not treat them lightly in resolving them. Many had ramifications which only now are being fully realized. That is not to say that they went undiscussed. As the next section illustrates, lengthy deliberation went into the formulation of the policies of the act. And even today, there are still questions left unanswered.

Major Issues Raised

Once the decision to consolidate the numerous categorical programs was made, the determination of an equitable system to distribute Federal funds proved to be a formidable task. Billions of dollars for thousands of political jurisdictions were at stake. The system to be devised had to satisfy the diverse interests of prospective participants as well as merge the conflicting philosophies regarding the role of Federal government when providing fiscal assistance to the states. It had to be administrable by units of local government which varied widely in governing powers. Because the proposed program increased the number of recipients without significantly increasing the amount of available funds, it had to

provide a mechanism for phasing in some participants and phasing down and out others. The result was a complex scheme which reflected the interests of everyone affected by the new program.

An Overview. To fully understand the drafting problems posed by the new CDBGs, a basic overview of the final enactment is helpful. CDBGs are potentially available to states and units of local governments (or their designees) of all sizes regardless of their designation under state law as cities, counties, towns, or villages. The act, however, establishes categories of eligible applicants and treats them differently depending upon their size, their location and their type of government. These differences affect the amount of funding, the continuity of the funding as well as the degree of local decisionmaking power over the types of programs which qualify for funding. These specific eligibility categories were devised to help deemphasize grantsmanship as a major criterion for obtaining funds and to allocate them on a more objective basis. Although the act describes two transitional funding arrangements, which extend over six years and eight years respectively, the actual authorization for the CDBG program is \$11.3 billion for only three-and-a-half years (January 1, 1975, through FY 1977). Sec 103(d) requires the Secretary to submit a timely request to Congress for additional authorizations for FY 1978 through 1980.

Under the distributional formula, the bulk of the funds (80%) is allocated to metropolitan areas (Standard Metropolitan Statistical Areas), while the remaining 20 percent is reserved for non-metropolitan (non-SMSA or rural) areas. Within the metropolitan area category, three methods of allocation are provided: by formula; by a hold harmless determination; and by discretionary grant. Within the non-metropolitan area category, there are only two methods: by discretionary grant and by hold harmless determination.

Formula funds under the act represent a basic annual grant entitlement available to each metropolitan city with a population over 50,000 and to certain qualifying urban counties. The formula share is computed annually by HUD using three criteria: population, housing overcrowding, and poverty (which is double weighted and can use regionalized income figures).^{3 5} As an automatic grant entitlement, it is the preferred type of grant.

Hold harmless funds are minimum fund allocations, the sum of which is computed from the sum of the five-year average of all grants, loans, or advances received by the applicant under each of the consolidated programs over the preceding five fiscal years. The only

exceptions are NDPs and Model Cities for which the average annual grant from FY 1968 to 1972 is computed separately, then added. The proposed funding scheme for these programs is a temporary one, lasting at most eight years (through FY 1982)^{3 6} — and, in effect, providing transitional financing between the old categorical and the new consolidated program. Provision is made for recipients of hold harmless funds to have their funding amounts phased up or down to the funding level determined by formula under the new system of basic entitlement grants. In eight years, the hold harmless category of funds will entirely disappear from the act.

Discretionary grants are the final category of funding. They are available to states and to all units of local governments which do not qualify for automatic entitlement and come from three sources of discretionary funding: the urgent needs fund; the Secretary's fund; and the non-metropolitan and Standard Metropolitan Statistical Areas (SMSA) general purpose fund. These funds are to be allocated on a competitive basis according to procedures and criteria established by HUD. Any funds not utilized by communities under the basic entitlement (formula) provisions will be reallocated to this funding pot. Additionally, as funds are freed from the hold harmless mechanism, they, too, will go into this discretionary pool. Consequently, funds in this category are supposed to increase over time.

This multiple allocation scheme became a focal point for the legislative battle. The fight did not revolve around the validity of the various categories, but rather around determining who would fall into which category. The debates were exacerbated by a worsening national economy and the concomitant rising cost of governmental services. In short, almost everyone needed more money. Since alternative Federal funding sources would not be available for programs covered by the block grant, the division of the available Federal funds raised the question of equity as well as of necessity.

In viewing past participation and past performance with community development programs, it was clear that the metropolitan cities had been the main beneficiaries of these earlier efforts. For some, indeed arguably for many, their recipient status was directly related to their greater need and demonstrated performance. Yet, some Administration officials and others believed that for certain recipients their past participation demonstrated a greater expertise in grantsmanship rather than actual need or successful performance. This grantsmanship was a target of some of the molders of the new legislation. But the fact that the amount of money in the community development pot was not being increased while the number of potential

recipients was being greatly augmented concerned former recipients whose participation represented more than accomplished grantsmanship. They feared indiscriminate cuts in the funding of their vital community development projects. The mathematics of the legislation was clear: some would be receiving less.

The act, by its very nature, had to address other major questions. What format would the grants take? How would the funds be distributed? What effect would the redistribution of funds have upon the potential recipients and their programs? The remainder of this section will focus upon these and other major issues which arose during the drafting and passage of this new program.

Block Grant vs. Special Revenue Sharing. Congress called its proposal a block grant. The Administration termed its program special revenue sharing. The distinction was arguably more than semantical. It went to the very nature of the program to be drafted. Although the Administration was later to use the terms interchangeably to describe the resulting grant,³⁷ an examination of the early proposals supports the argument that the differences between the programs correspond to the differences which have been suggested between the theoretical model of a block grant and special revenue sharing.³⁸

The struggle in Congress to define the granting mechanisms under consideration was understandable. The newness of the format had resulted in a paucity of explanatory or documented material. The few existing models were themselves new and varied. There seemed to be general agreement that both programs contained three basic traits:

- (1) broad program discretion for recipients;
- (2) a formula-based distribution provision to curtail grantor intrusiveness; and
- (3) a fairly specific and restrictive eligibility program favoring general local governments.

There were two basic points of departure between the programs which focused upon:

- (1) a requirement for matching funds; and
- (2) the degree of flexibility in the administrative, reporting, and program requirements.

Special revenue sharing generally requires no matching of funds or maintenance of effort by recipient

jurisdictions. Additionally, it advocates the elimination (or at least a drastic reduction) of the administrative procedures entailed in grant application review, and reporting in order to minimize the intrusiveness of the Federal government. This approach is designed to encourage the strengthening of the role of locally elected generalists by allowing them to establish their own program priorities while diminishing the role of the vertical functional administrators at all government levels.

Proponents of the block grant approach, on the other hand, while interested in curtailing grantor interference are still concerned with front end review. Matching funds or maintenance-of-effort requirements are called for. An application procedure is necessary and review of program content and progress is more than perfunctory. While the objectives of the two programs are the same, the amount of flexibility allowed the recipient differs significantly.

The real test of the type of program which emerged from the various proposed bills is to be found in the program conditions (or in the strings) attached to each grant. Did it emerge as a basic no-strings program or was it, as Richard Nathan commented, "a different strings program?"

Program Discretion. At first blush, the CDBG program appears to allow a recipient a substantial degree of latitude in the area of program discretion. The act consolidates most of HUD's existing community development-type categorical programs into a single block grant. These are: grants for urban renewal,³⁹ neighborhood development,⁴⁰ Model Cities,⁴¹ water and sewer facilities,⁴² neighborhood facilities,⁴³ public facilities,⁴⁴ open space⁴⁵ — urban beautification — historic preservation, and rehabilitation loans.⁴⁶ The two main additions expand the category of eligible activities to include funding for payment of the non-Federal share required to match other Federal grants of a community development program and for the development of a comprehensive community development policy, planning and management capacity.⁴⁷

On closer examination, some program restraints become obvious. First, a maintenance of effort clause is found in the act's statement of purpose, clarifying the Congressional intention that the previous level of activity in this area is to be maintained. Second, all activities must be directed toward the primary objectives of the title (*i.e.*, the development of viable urban communities) as well as toward the seven specific objectives for community development activities included in the act.⁴⁸ To reinforce this provision, the act requires that local

governments certify that they have given "maximum feasible priority"⁴⁹ to the national goals of preventing or eliminating slums, blight or deterioration and that activities are planned to actively benefit low and moderate income persons. This provision is a watered-down version of a Senate provision which would have required that at least 80 percent of the community development funds received by a locality be spent in such a way as to "directly and significantly benefit low and moderate income families or blighted areas."

Third, the act adopts an inclusive "laundry list" approach to denote the eligible community development activities. Both the act itself and its accompanying regulations stress that an activity must be included among the list of 13 eligible activities in order to qualify for funding. To further illustrate this point, the regulations give examples of six areas of activities which are related to community development but which do not qualify for funding under the new grant. This list includes: public works facilities and site improvements which are not specifically related to a particular neighborhood (e.g., a central library is not eligible but a neighborhood library is); operating and maintenance expenses in connection with community services and facilities; general government expenses not related to community development programs; new housing construction; supplemental income payments; and political activities (even when part of a communitywide, government-sponsored voter registration drive).⁵⁰

Finally, the act reverses the thrust of some former HUD programs which treated physical and social problems together and elects to concentrate the majority of its resources upon hardware (i.e., physical development) programs.

This final point raised one of the more difficult programmatic issues for the drafters in light of their inclusion of Model Cities as one of the consolidated programs under the act. Since the proposed program took a less people-oriented approach to development, a question arose as to the fate of the large social (i.e., software) component of its predecessor program, Model Cities.

A senate provision specifically limiting software expenditures to not more than 20 percent of the funds regardless of prior program levels was rejected. However, the compromise provision which was accepted by the Conference Committee is almost as restrictive. Software activities must meet a four-part test before qualifying for funding.⁵¹

1. The public service must be designed to serve areas where CDBG activities are

being carried out in a concentrated manner.

2. Such services must be necessary or appropriate to support the other community development activities.
3. Assistance for the services has been applied for and denied under other applicable Federal laws or programs.
4. The activities must be directed toward improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas and coordinating public and private development programs.

The inclusion under the act of some other programs also raised questions. It was not clear from the onset that all physical development-related programs should qualify for block grant funding. In particular, there was disagreement over the inclusion of all water and sewer programs, Section 312 rehabilitation loans, public facilities loans, public works planning advances, and assisted housing programs.

In the final act, all basic water and sewer programs were consolidated despite an earlier Administration objection to their inclusion. Secretary Romney, speaking before both the House and the Senate Housing Subcommittees, had argued that continuation of separate funding for these programs "was warranted by the need to help counteract generations of neglect that have contributed to widespread pollution, and to aid particularly our smaller communities in combating this condition." Under the Administration's *Special Revenue Sharing Act of 1971*, community development would have been defined broadly enough to allow a community to utilize special revenue sharing moneys for water and sewer purposes without actually consolidating the categorical program.

Secretary Romney also objected to the consolidation of assisted housing programs. His objections were two-fold: first, that certain broader community needs could not be achieved on the fragmented jurisdictional basis that now characterizes local government in metropolitan areas; and second, that the housing problems of the central core cities could not be solved solely within the central core cities. No assisted housing programs were consolidated in the final act.

Section 312 rehabilitation loans were not to be

immediately consolidated under the act. Separate funding for this program was made available for the first year after the passage of the act. On August 1, 1975, separate funding was scheduled to be terminated and the program consolidated into the block grant. This did not occur. Despite the Administration's attempts to end the program, Congress extended the program funding for an additional year, until August 22, 1976. Legislation to further extend Section 312 loans until September 30, 1977, has been introduced.

The public facilities loan program, as it had previously operated, was effectively terminated. With consolidation, there was a shift in the type of public facility which would be eligible for funding under the new program. While it is permissible to utilize community development funds to acquire the property on which public facilities are to be built, only a limited amount of public facilities (basically, neighborhood facilities and not city halls, central libraries, hospitals, airports, sports arenas, etc.) can properly be funded with community development money.

What emerges, then, from a close reading of the act, the regulations, and the legislative history is a community development program which includes those activities which address certain Federally defined problems which can be solved on the local level by local government. While the main emphasis is clearly upon physical redevelopment programs, such software programs as will meet the test provided in the act will be acceptable. Within these established parameters, the grantee is allowed considerable program discretion.

Administrative and Program Requirements. Nothing demonstrated the divergent philosophies of the Congress and the Administration more sharply than the position of each on the issue of applications and review under the proposed program. In both the 1971 and the 1973 sets of bills, the Senate, the House and the Administration each maintained different positions on the question of application and front end review procedures.

The Administration in H.R. 8853 and the BCA advocated no formal application. The only requirement would be that local governments file statements of their community development objectives and their projected use of anticipated funds. These statements would be published for public examination 60 days before submission to HUD. No HUD review was contemplated; approval would be automatic.

The House bills (H.R. 9688 and H.R. 10036) took the middle position. A required application would cover a three-year period. It, too, would contain a statement

of the community development needs and objectives of the community, moreover it would detail a program to address the identified needs. A general HUD review was proposed.

The Senate bills (S. 2333 and S. 1744) called for the most detailed application. They required a submission of a three-year general plan of community development needs and objectives as well as a two-year specific plan of activities to be undertaken. They also required certifications of consistency with local and areawide comprehensive development and national growth policies; citizen participation in the entire community development process; public hearings on all private land acquisitions; specific limitations upon the use of allocated funds; and a performance report of previous community development activities. Finally, a vigorous front end review was expected.

Many members had serious misgivings about transferring the responsibility for community development activities, particularly those activities designated to benefit low and moderate income people, to local officials. Basic to congressional thinking was the fact that Congress needed a tool to control the spending of Federal funds. The application and review procedures served this purpose. Congressional desire to use numerous Federal controls as reins by which to control the actions of state and local governments disturbed the balance which a block grant attempts to achieve between national program goals, on the one hand, and minimal grantor intrusion on and control over the recipient government actions, on the other. More importantly, it threatened to reduce the program to no more than one of a series of consolidated categoricals.

The Congressional approach contrasted sharply with the Administration proposal. Basic to the Administration's thinking was the fact that the presence of an objective needs formula would eliminate the demand for an application as a competitive tool and relegate the local role to merely one of informing the public and HUD as to the uses of particular community development funds. Four additional reasons underscored the objection of Administration spokesmen to the use of detailed applications. These were:⁵²

- (1) their recognition that the local communities were in a better position to set their own community development priorities;
- (2) their desire to eliminate delays which would be inherent if applications were required for the the first year of the program;

- (3) their desire to allow local officials to spend more time on problem solving and less time on drafting applications; and
- (4) their belief that HUD bureaucrats should not (or could not) make the best local decisions.

Closely tied to the application procedure was the question of the appropriate scope of Federal review. Two types of review appeared in the draft bills: prior Federal review of the application and subsequent Federal review of the recipient's yearly progress. All parties agreed to a subsequent review procedure; but on the question of prior Federal review of the application, there was a split.

The Administration called for no Federal review of the contents of a recipient's program. Neither was an A-95 review contemplated. Their position was consistent with the general "hands-off" policy of the special revenue sharing approach.

The House took a middle position. Its bills required mandatory approval of an application if the following conditions were met:

- (1) it identifies the community development needs and specifies both long and short-term community development objectives which are consistent with local and areawide development planning and national urban growth policies;
- (2) it has formulated a program which included any activities necessary to provide adequate housing in a suitable living environment for low and moderate income persons who live, are employed or may reasonably be expected to reside in the community;
- (3) it describes the activities to be undertaken to meet the objectives and needs stated in (1) and has provided assurances that the programs will be administered in conformance with the *Federal Civil Rights Acts of 1964 and 1968*;
- (4) there has been information disseminated to citizens in the community and they have had an opportunity through public hearings and other means to participate in the development of the application; and

- (5) it has been submitted to an areawide agency for review and comment.

Additionally, a metropolitan city had to meet three extra requirements: establish a realistic three-year schedule of program activities which can meet the established needs; satisfactorily provide for the periodic reexamination of program methods and objectives as new information on their impact becomes available, and formulate a comprehensive program with activities designed to eliminate or prevent slums, blight and deterioration as well as develop properly planned community facilities and public improvements. In any case, an application was automatically approved 60 days after submission to HUD unless the applicant was informed for the reasons of disapproval.

The Senate bills contained the strictest front end review procedures. Rejecting the "no strings" attached revenue sharing principle, the Senate Banking, Housing, and Urban Affairs Committee operated from the principle that funds authorized and appropriated by the Congress should achieve national, as well as local, objectives. It did not intend that the reduction in application red tape should eliminate either the necessity for detailed local planning or for executive oversight to insure that Federal funds are being used efficiently to achieve national objectives. While calling for a review which was limited in scope, the Senate nevertheless contemplated a review along substantive and legal lines. The legal would include satisfying the purposes of the chapter as well as other Federal laws related to development such as those contained in the Equal Opportunity, Environmental Protection, and the A-95 Review programs. Substantively, the Senate bills advocated a move from project to program review and an elimination of unnecessary "second guessing by Washington." Unlike the House bill, there was no specific provision requiring approval of an application meeting certain prescribed standards. The Secretary, therefore, under the Senate bills had greater discretion in determining whether a given community development plan was adequate to meet the needs of the community and the statutory requirements.

Like the House bill, there was a designated minimal requirement for acceptance of the application. Disapproval was required if there was insufficient information, if an ineligible activity was included, or if there had been inadequate performance of past obligations during the preceding two-year contract period.

Given the divergent views on the application procedure as well as on other parts of the proposed

legislation, it became increasingly obvious that some negotiations would be necessary if a bill on housing and community development was to emerge from the 93rd Congress. Earlier bills had died, due in part, to the lack of flexibility on behalf of the Administration to accommodate the differing Congressional approaches to community development assistance. But with the Watergate affair demanding the attention of the White House staffers, HUD Secretary Lynn was allowed greater leeway to devise a compromise position. One such position which was crucial to the bill's passage involved the application procedure.⁵³

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A provision was drafted to require an application which set forth the community's needs and proposals for meeting them, including a housing assistance plan for low and moderate income families. That application, in turn, would receive automatic approval from HUD unless the needs were "plainly inconsistent"⁵⁴ with the generally available data or the planned programs were "plainly inappropriate" to meet the needs. In the Joint Conference, the House and Senate approaches had to be reconciled. The House-Administration compromise for a substantially reduced Federal role in community development activities was adopted over the Senate preference for a strong Federal role. But the act retained the Senate's statement of national objectives and a modified version of the Senate's provision that a majority of the funds be spent to benefit low and moderate income persons or blighted areas. It also contained the Senate provision that gave the Secretary the right to waive the application requirements at his discretion for communities under 25,000 which applied for a single development activity.

The compromise was seen as one which afforded considerable discretion to local communities, while still allowing some HUD oversight. The measure of a community's success would be based upon the community's own projections and goals rather than what HUD had determined should be accomplished. The compromise found acceptance with city spokesmen as well. The mere requirement of an application would serve to limit or control the number of grant recipients; but its simplified format would still eliminate the unnecessary and undesirable red tape. Of even greater importance, the compromise virtually assured the passage of the legislation with its badly needed funds for the cities.

But the compromise must also be evaluated in terms of the original goal: the passage of a block grant. Did it promote the block grant concept, or did it require so many conditions as to defeat the minimal intrusion test?

The application which emerged requires a host of

information — some of which is novel — from recipient local governments. It has five major sections:

- (1) A Summary Plan: which requires an applicant to assess long-range (three-year) goals, develop a comprehensive strategy to meet them, participate in areawide development planning and A-95 clearance procedures;
- (2) An Annual Plan: which requires an applicant to submit a program of proposed activities with specifics for their implementation;
- (3) A Program to Relate Local Needs to National Objectives: which requires the applicant to give "maximum feasible priority" to activities geared to prevent or eliminate slums, blight, or deterioration and which actively benefit low and moderate income persons;
- (4) A Housing Assistance Plan (HAP): which requires the applicant to accurately survey present housing stock, assess the present and future housing needs of the community, and set realistic goals for meeting those needs;
- (5) Certifications: which require the applicant to provide satisfactory assurances that it has taken certain actions and complied with Federal statutes in the area of: civil rights, environmental protection, citizen participation, relocation and reacquisition assistance, and low income employment and training opportunities. Additionally, an applicant must certify that it has given maximum feasible priority to the national goals stated in (3).

This laundry list of application requirements clearly distinguishes this program from the earlier special revenue sharing proposal. If the requirements are strictly enforced, it could be argued that this action would defeat the minimal grantor intrusion requirement of a block grant. Thus, the compromise agreement to proceed with a basically automatic prior review of

applications becomes crucial in that it minimizes HUD's role in assessing compliance with all of these preconditions and in "second guessing" program priorities. Hence, the stage is set for striking the balance for which the block grant strives.

Yet, the contradictions inherent in the compromise cannot be overlooked. A heavy emphasis on the preconditions can pull the program away from the block grant format, while a heavy stress on the minimal review provision, if exercised both prior and subsequent to the grant, can push the program nearer to the special revenue sharing approach. What emerges, then, as the real test is how these "conditions" are applied in actual administrative practice.

The Funding Decision. Since all units of local government were eligible for some form of Federal community development assistance under the proposed bills, the crucial question was how the distribution of funds would be made. Two allocation methods were considered; both were finally adopted. The first utilized discretionary grants pursuant to a competitive application procedure. The second employed a direct entitlement approach, allowing for automatic distribution of funds according to a given formula.

The discretionary grant approach has several advantages. First, it provides better assurance that the limited funds will be distributed to those with a specific interest in a program for community development. Second, by requiring an application, it provides a means by which an applicant's capability to perform a proposed plan can be judged. Third, it can be argued that the individual approach inherent in the application process results in a more equitable distribution of funds given the fact that needs for community development are unequally distributed around the country.

On the negative side, the front end review inherent in the discretionary grant approach is more complex, involving considerable amounts of man-hours, money and delay. Additionally, this type of grant is more arbitrary and purportedly encourages the development of grantsmanship which can result in a distribution of funds to those most skilled in making applications and not necessarily to those with greatest needs.

Formula funding, on the other hand, has the advantage of simplicity. Once the formula has been determined, the amount of the allocation is set, thereby reducing grantor discretion, related administrative problems, and potential favoritism. Uniformity within the grant system also is promoted. But there are disadvantages as well. Formula funding usually increases the number of potential recipients and frequently, where

it replaces categoricals, results in fewer funds being awarded to previously participating grantees. More importantly, it raises the possibility that the funds may not be directed to the most needy recipients in an amount which can efficiently or effectively accomplish the intended purpose.

All of the community development block grant and special revenue sharing bills utilized some formula to determine the basic entitlement. In the initial House hearings on the early bills, the National League of Cities and the U.S. Conference of Mayors,⁵⁵ and NAHRO⁵⁶ opposed the use of national formula distributions as the main vehicle for transferring Federal housing and community development moneys. Their argument focused basically upon the limited amounts of community development funds, the difficulty of devising a formula which accurately reflects needs, and the inequities which would have resulted in previous years if the national formula had been utilized. Despite this testimony, the House Committee agreed with HUD and favored the use of formulas.

The Senate Committee was split on the issue of a formula entitlement. In the early Sparkman bill, S. 233, the basic grant entitlement was determined by the five-year average assistance levels for localities conducting ongoing programs and the actual community development grant received during the first year by newcomers to the program. This format was rejected by the Senate in its 1972 deliberations. S. 3248 adopted a basic "needs" formula.

In its earlier bill, S. 3248, the Senate had adopted a basic "needs" formula. However, the later bill, S. 3066, abandoned the concept of an objective "needs" formula in favor of a system of hold harmless grants to prior participants and discretionary grants for all other jurisdictions which wished to apply for funding. The first year grants of the new recipients would then form a base for a future entitlement, subject to a possible 20 percent upward or downward biennial adjustment.

The supplemental comments of Senators Tower, Packwood, and Brock indicate the disappointment of those who favored the formula approach. But it was the additional view of Senator Robert Taft, Jr., who was one of the most active participants in the Senate deliberations, which shed the most light on the Senate's change of approach:

... the case for a formula bears weight in direct proportion to the extent of funding distortions and inequities which have occurred under the present system, and its ability to rectify them. Unfortunately, no

formula which was presented to the committee seemed to match my sense of relative community needs any better than the funding distribution under the past programs. Apparently the other committee members agreed.

I believe that a suitable formula might have been found if the committee had been willing to take considerably more time, and I hope that the formula approach will remain under consideration in the future.⁵⁷

The House and the Senate went to the Joint Conference with opposite views on the funding issue. A compromise was reached which retained the formula approach used by the House for automatic entitlement, the hold harmless provisions of the Senate, albeit as only a temporary provision, and discretionary funding.

18 A small special discretionary fund (2 percent of moneys remaining after urgent needs, transition funds, and the initial metropolitan hold harmless funds for 1975-76) was established to be administered by the Secretary of HUD.⁵⁸ The remaining community development appropriation was then divided and earmarked, with 80 percent of the funds set aside for metropolitan (SMSA) areas and 20 percent designated for non-metropolitan (non-SMSA) areas. Within the metropolitan funds category, all funds which remain after the basic entitlement and hold harmless grants are made would be placed into a discretionary fund to be utilized by all other units of local government, states, and their designated agencies within the metropolitan areas. Within the non-metropolitan areas, funds are first allocated to hold harmless prior participants in community development programs; the remainder is then allocated under the entitlement formula among the 50 states for use in non-SMSA areas and to non-SMSA units of local government.⁵⁹ Unused funds from one state may be reallocated to non-SMSA areas of other states. Allocations of all non-entitlement grants are made on a discretionary basis by HUD.

Once this format was established, the more difficult task of finding an equitable and affordable method of distributing the grant funds captured the attention of proponents and opponents alike.

Formula Entitlement Funding. The formula amount which the act utilizes is based upon three criteria: population, housing overcrowding, and the extent of poverty.⁶⁰ Each factor is defined for the purposes of the act. Population refers to the total resident population

based upon U.S. Bureau of the Census data.⁶¹ The extent of housing overcrowding means the number of housing units with 1.01 or more persons per room based upon Census Bureau data.⁶² The extent of poverty means the number of persons whose income is below the poverty level as determined by the Secretary of HUD pursuant to OMB criteria but allowing for adjustments reflecting regional or area variations in income and cost of living.⁶³ In each case, HUD is required to use data which is referable to the same point or period of time for all recipients.

The process of arriving at an acceptable formula was a tedious one and it faced an inherent limitation. Data had to be available for each component part of the formula for each potential recipient jurisdiction. As a practical matter, the data of the U.S. Census Bureau was the most complete and the most readily available. But even this source was not without its problems.

The act's formula was attacked by its opponents on two basic grounds: utilization of inaccurate data, and the utilization of the wrong components to achieve the desired results. Probably the most severe attack came as a result of using Census Bureau data to compile each of the three factors. The charge was simple: the census data was inaccurate, particularly to the extent that it attempts to reflect the demographic make-up of urban areas. The accuracy of the decennial census had been at issue since the 1960s. Two basic groups were believed to be omitted: those persons in neighborhoods considered by the census takers to be dangerous, and drifters without permanent addresses. By the 1970s with the advent of general revenue sharing, census data had taken on increased importance.⁶⁴ Fiscal assistance after all was directly tied to the Federal head count. Thus the move for census data reform was augmented.

The Census Bureau estimated its omission rate to be 5.3 million people (2.5%) for 1970.⁶⁵ It further divided its omission estimates by race. At this point, the under-enumeration became more significant. The net omission rate for blacks was 7.7 percent as opposed to only 1.9 percent for whites.⁶⁶ Consequently, areas which are largely or totally black would receive considerably less money than their actual entitlement.⁶⁷

These sociological and demographic inaccuracies were of particular concern to urban mayors. The concern was intensified by the fact that each factor in the formula was to be derived from census figures. As they viewed it, the overall effect would be to channel more money into the suburbs and some non-metropolitan areas which are less likely (and often less willing) to carry out the national goal of achieving a more suitable living environment for all Americans while leaving the urban

areas with less funding but a larger share of the problems.

HUD also had some reservations about the use of census data; but its concern focused on a different issue. HUD was concerned about inaccuracies arising as a result of the temporal lag in the data. Significant shifts in population could and had occurred over a ten-year period. With one exception,^{6,8} the Census Bureau would not be revising the figures which were applicable to the community development program before its 1980 census. James T. Lynn, then Secretary of HUD and formerly undersecretary of commerce overseeing the Census Bureau, and David O. Meeker, HUD assistant secretary for community planning and development, had favored a mid-term census to get information necessary for revenue sharing and other programs. This has now been adopted to begin in 1985.^{6,9}

The second attack on the formula centered around the appropriateness of the factors used. From the beginning, opponents of a statutory distributional formula maintained that no scheme could be devised which accurately reflected the community development needs of the various recipient governments. One particularly vocal opponent, NAHRO, devised a list of about 30 different criteria which could be utilized in determining a community's needs. Although most of these factors were not considered as serious substitutes for the factors which were finally accepted, they were intended to demonstrate the complexity of the task being undertaken.

In addition to population, poverty and housing overcrowding, only a few other factors were seriously considered and rejected. These included: "the extent of housing deficiencies" as proposed in the Administration's first bill; the vacancy rate; past performance; and the age of the housing stock. Past performance was rejected when hold harmless provisions were included within the funding mechanism. The vacancy rate, the age of the housing stock, and the extent of housing deficiencies were all rejected in favor of "the extent of housing overcrowding," due in part to the lack of current and available data.

The use of "extent of housing overcrowding" as a factor in the formula has been seriously criticized. The clear intent was that housing overcrowding would serve as a measure of the need for community development. This assumes, however, that there is a direct correlation between overcrowding and housing deterioration. Arguably, these are two different phenomena, and it is the latter which the act intended to identify.^{7,0} Nevertheless, the formula utilizes the measure of overcrowding. Evidence has been adduced to prove that

there is not always a direct correlation between the two factors. The U.S. National Commission on Urban Problems in its 1968 report supported the proposition that the most deteriorated urban areas do not necessarily have the highest incidences of overcrowding. Indeed, a high vacancy rate could and can be found in the areas with the worst housing stock.^{7,1} Abandonment of entire buildings has become a serious problem in many urban areas. These considerations then supported the criticism that this criterion failed to measure what the act intended.

The poverty index which is used in the community development formula has also been the object of critical scrutiny. It was designed by Mollie Orshansky of the Department of Health, Education, and Welfare's Office of Research Statistics as a research tool to relate the cost of a minimum diet to income level. Ms. Orshansky has not only agreed with critics who questioned the appropriateness of the poverty index as a tool for measuring housing and community development needs, but has also gone so far as to state that "a measure devised for research is not good for actual programs."^{7,2} Furthermore she has acknowledged an "equity inadequacy" in the index resulting from a lack of information about variations on cost of living. This latter criticism, however, is obviated by the fact that under the act, the inequity can be corrected where found to exist at the discretion of the Secretary of HUD.^{7,3}

Although there were questions about the particular poverty index which would be used in the formula, there was general agreement with the decision to use extent of poverty as a factor, and to weigh need-related factors more heavily than others. In the early bills, this took two forms. In the Congressional proposals, the poverty factor was double weighed. The Administration used a different approach. Poverty was one of three need-related factors used in its formula which also included the number of housing deficiencies and the amount of overcrowded housing. HUD felt that the inclusion of three need-related factors resulted in an ample weighing of the poverty conditions within a given area. Yet, the Congressional approach was ultimately adopted.

The relationships between and among the three factors raises additional questions about the formula's effectiveness. The total population of an area has no relationship to the poverty population. Nor is there any direct connection between total population and the amount of housing or community deterioration or the amount of service moneys needed to alleviate the identified problems. This fact is of particular concern when funds are distributed to SMSAs with major cities where poverty and housing overcrowding are often

concentrated. A study done by Carroll Harvey of the Joint Center for Political Studies looked at the distribution of entitlement funds within 23 SMSAs using HUD's original funding figures. His calculations indicate that on the average, the major cities comprise only 42 percent of the SMSA total population but have 62 percent of the total poverty population and 62 percent of the overcrowded units. Under the formula, they are scheduled to receive only 57.5 percent of the CDBG funds. The remaining areas of the SMSAs, on the other hand, comprise 58 percent of the population but have only 34 percent of the poverty population and 38 percent of the overcrowded housing units. They are scheduled to receive 42.5 percent of the CDBG funds. Thus the program's funding distribution results in higher unit investments in the generally newer, less blighted and richer, suburban areas. In turn, Harvey concludes, this higher unit investment might encourage a higher degree of private investment in these suburban areas at the expense of the more needy central cities.

An earlier ACIR study examined the relationships between city size and density, on the one hand, and the cost of city services, on the other.⁷⁴ The results showed a wide variance in the economics of scale from state to state as the size of cities increase. It also noted that most available data related to the amount of money spent, not the more subjective measures of need and quality of services. The evidence did suggest, nevertheless, that for certain expenditures in certain states, larger cities experienced diseconomies of scale. Yet the act's formula ignores such differences and interrelates the factors by establishing the amount of the basic grant as equal to an amount which bears the same ratio to the allocation for all of the particular governmental units (e.g., metropolitan city, and metropolitan city and/or counties) as the average of the ratios between the three factors within the governmental unit. The range in ratios can be very wide. Such a wide range can have the effect of minimizing the double weighting of the poverty indicator and thus skewing the results to make them less related to need. The result can leave the poorer areas worse off.

The drafters of the act realized that the formula may not be perfect. As a legislative safeguard to insure that the formula is both correct and being properly enforced, HUD is committed to report to Congress by March 31, 1977, on the success of the current formula.⁷⁵ If, in that report, the formula is adjudged inadequate, steps could then be taken to alter it.

Hold Harmless Funding. The task of establishing an acceptable hold harmless category of funding was no less

tedious and controversial than the determination of an entitlement formula. The hold harmless issue was further complicated by the fact that it was inextricably linked to another central funding concern — the preservation of the discretionary fund. Since both grants would derive their funding from the moneys remaining in the metropolitan area coffers after the entitlement funding had been subtracted, the growing concern among small metropolitan non-entitlement cities was whether a sufficient amount of discretionary funds would remain to accommodate their needs. From their point of view, two factors in particular threatened to deplete the discretionary funds: one was the inclusion of a large number of urban counties within the automatic entitlement status; the other was the formation of a sizeable and/or long-term, hold harmless fund.

The hold harmless provisions changed substantially from the early 1971 bills to the final 1974 act. In the earliest bills, hold harmless was not specifically mentioned. The early Senate bill, S. 2333, included within its basic grant entitlement localities already involved in HUD programs. It computed their entitlement by aggregating the annual assistance received over the previous five years (1967-71) under each program to be consolidated and by using the highest three of the past five years to arrive at the average. This average was their basic grant entitlement, but it could not exceed 115 percent of the entitlement in the first year; 130 percent in the second year; or 145 percent in the third year. In the early House (H.R. 9688) and Administration (S. 1618, H.R. 8853) bills, hold harmless was contemplated even though it did not appear in either bill. The legislative history of the House bill stated that no community would receive less under the formula allocation than the yearly average of assistance received under the programs to be consolidated during the past five years.⁷⁶ Similarly, the Administration bill held harmless communities with ongoing community development programs from a loss of funds where the formula entitlement amounted to less than the yearly average (using the past five years) of assistance provided through the programs slated for consolidation⁷⁷ plus the actual last contract for Model Cities. After five years, Model Cities funds would be dropped from the hold harmless provision. If a community's hold harmless funding was more than its entitlement grant, any additional Federal money it subsequently received pursuant to a prior grant reservation would be subtracted from the hold harmless add-on.

These early bills had three major differences from their later versions. First, the bills consolidated fewer programs, thus resulting in smaller hold harmless figures

Second, they utilized different cut-off dates (1967-71 as opposed to 1969-73) to determine the average grant. From 1967 to 1969, Model Cities and NDPs were fledgling programs with funding levels significantly less than during 1971 to 1973.⁷⁸ Use of the earlier dates made the initial version less costly. Finally, they were more simplistic, in that they did not include multiple schemes for phasing in and phasing out grants under differing timetables for different programs.

The later bills, H.R. 10036, S. 1744 and the Administration's BCA explicitly included hold harmless provisions. The basic provision in all three stated that if the prior funding level of a recipient was in excess of its entitlement formula amount, the recipient would be held harmless on the basis of its prior program level. The BCA proposed to phase out the excess amounts for formula recipients by thirds during the last phase of the authorization period. The House and Senate bills, on the other hand, excluded the phase-out provisions. Non-formula communities were allowed their hold harmless level for two years under the BCA before their funds would be phased out. The Senate bill again lacked a phase-out provision. The House bill, however, used a third approach wherein past participation in urban renewal or Model Cities was held harmless for non-formula participants but with a gradual (although not graduated) phase-out over a five-year period.⁷⁹

By the time the bills reached the final conference stage, they had been changed again. S. 3066 provided that all communities and counties that had been receiving funds under Model Cities or urban renewal would be entitled to funding in the first two years of the community development grants but would thereafter have the amount of funding decreased or increased by up to 20 percent in each subsequent two-year period depending upon the Secretary's view of their local performance. H.R. 15631 allowed all metropolitan cities and urban counties to receive the higher entitlement under formula or hold harmless during the first three years. If they received a higher hold harmless amount, the excess over the formula would be phased out by thirds over the last three years of the program with the resulting funds going to formula and non-formula jurisdictions. Non-metropolitan prior participants in Model Cities and urban renewal (including NDP) would also be held harmless for the first three years with a subsequent three-year phase-out of funds.

The act recognized the fact that during the first two years, the funds allocated to the metropolitan areas would be insufficient to cover hold harmless and metropolitan discretionary needs. Hence, an additional appropriation of up to \$50,000,000 was authorized for

each of the Fiscal Years 1975 and 1976,⁸⁰ but not for the third program year, FY 1977.

After the program's enactment, HUD realized that the qualification of an unexpectedly high number of urban counties, combined with the operation of hold harmless, would result in a \$100 million shortfall in the FY 1977 metropolitan area fund. Under the act, jurisdictions which have a formula amount larger than their hold harmless amount (and this would include most counties) are phased into the program during the first three years of its operation, thereby increasing the total amount of necessary entitlement funds; while jurisdictions which have a higher hold harmless amount than entitlement formulas grant do not begin to phase down until 1978. The result is that during the third year, FY 1977, the revised projected expenditures will exceed the authorized funds by about \$100 million, thus depleting the metropolitan discretionary fund and cutting short the hold harmless funds.

In an attempt to rectify this unexpected situation and to protect the funds of both small metropolitan and hold harmless cities, two amendments were proposed to H.R. 9852 (94th Congress, 2nd Session), a mobile homes mortgage bill. A House amendment would set aside \$200 million in community development funds for smaller cities in urban areas; and a Senate (Brooke) amendment would establish that, in the event of a shortfall of community development funds, urban counties would be the first to have their allocations reduced. Urban county opposition to the proposed Brooke amendment was so strong that a compromise amendment (the Cranston-Brooke Amendment) was devised. Under it, a shortfall in metropolitan funds would be treated as follows:

1. In FY 1977, \$200 million would be set aside from off the top of the total appropriation, with up to \$100 million available for hold harmless purposes and at least \$100 million for the metropolitan discretionary fund.
2. If a hold harmless deficit should still exist, funds would be taken from the Secretary's discretionary fund.
3. If a deficit still exists, the Secretary would be authorized to reduce *pro rata* formula entitlement of metropolitan cities and counties.

This agreement, in effect, distributed the burden of a shortfall in funds across all the metropolitan recipients rather than allowing it to rest solely upon the urban counties. H.R. 9852 failed due to disagreements over

non-community development-related provisions, but new legislation incorporating the above was reintroduced in March 1976.

The final act, which contains a multiplicity of schemes for phase-ins and phase-outs for hold harmless cities and counties (see *Figure 1*), reflects the compromises which were made by all three groups. The Senate's original proposal for a permanent hold harmless scheme was defeated. A hold harmless compromise for Model Cities was reached on the last day of the five-week House-Senate Conference upon the suggestion of Rep. Robert G. Stephens, Jr., (D-Ga.). Model Cities funding was extended for five years to all former recipients, regardless of whether their funding under this program ordinarily would have expired during that period. Over the next three years, the funding would be phased out by fifths and by the ninth year, all Model Cities funding would cease. In other words, funding level would drop from 40 to 0 percent.

22 A different funding schedule was applied to the other programs. If the formula entitlement is higher than that received under the former grants, the difference will be phased-in in thirds during the first three fiscal years, placing the community on a permanent formula basis by FY 1977. If the formula entitlement is less than the former grants, the city or county will be held harmless for three years before the excess is phased out by thirds during the subsequent three years. The same scheme applies to the phase-out of non-entitlement cities and counties, except that they are left potentially with no funds at the end of three years.

Eligibility for Grants. The act created two types of eligibility status: entitlement and discretionary. Exactly which jurisdictions would fall into which category was a more difficult decision. In certain areas, there was basic agreement. This included the decision to concentrate the bulk of available community development funding in metropolitan (SMSA) areas. The decision was justified by HUD's urban oriented focus; by the greater needs and the general conditions of these areas as compared to their non-metropolitan counterparts; and by the basically successful history of participation in past programs which these areas had demonstrated. The original House bill, H.R. 9688, proposed that all available money go to the metropolitan areas. The Senate and Administration bills consistently divided the funds between metropolitan and non-metropolitan areas. The basic Senate allocation of 75 percent to metropolitan areas and 25 percent for non-metropolitan areas along with a sharing of a disaster and urgent needs fund finally lost to the Administration (H.R. 8853) and

later to the House (H.R. 10036) allocation of 80 percent to SMSAs and 20 percent to non-SMSAs.

There was also agreement among the drafters in the House, Senate, and Administration that a basic entitlement grant should be given to metropolitan cities. As defined in the act, this meant a central city or any other city with a population over 50,000 within an SMSA. Although it is clear that the intent of this provision is to direct funds to larger cities, the definition of a "central city" creates some anomalies. According to the Census Bureau, a central city consists of the population of the cities named in the title of an urbanized area. The title is limited to three names and normally lists the largest city first and the other cities in order of size. The names of the other cities are generally based on the 1960 population since they were fixed before the 1970 population count, and to be listed, must either have a population of 250,000 or have at least one-third the population of the largest city and a population of 25,000 or more except in the case of small twin cities. Under the act, this has resulted in some cities with populations under 50,000 receiving entitlement funds because they are named in the title of the urbanized areas. Other cities of the same size whose names do not appear in the title of the area are placed in the category of discretionary applicants. This discriminatory treatment has been duly noted and criticized by the latter group.

When it became necessary to draw the line between entitlement and discretionary recipients, differences began to emerge. A major question arose around the status of urban counties, particularly as county representatives actively pushed for entitlement status. Similar questions, albeit on a lesser scale, were posed about the status of states, towns and townships, and special purpose agencies. Their resolution was crucial to the operation of the program.

Urban Counties. The major difference in eligibility provisions between the early community development bills and the final act was the inclusion of the urban counties within the basic entitlement category. The issues which were raised by the decision to include urban counties as entitlement recipients touched upon some of the hardest funding questions posed by the act.

In the early cluster of community development bills (H.R. 8853 and H.R. 9688), there was no mention of separate or automatic entitlement for urban counties. Community development assistance was envisaged as going only to metropolitan cities. In part, this absence of the urban counties from the early legislation at this time reflects the inactivity before 1971 of many of the urban

Figure 1

HOLD HARMLESS FUNDING SCHEDULES

(FY 1975 – FY 1983)

Community development funds will be distributed by the new housing act under four schedules: one for Model Cities' participants; another for cities with populations under 50,000 that previously have participated in community development programs; and two for urban counties and cities with populations exceeding 50,000. One of these gradually

phases onto the three-part formula (poverty, overcrowded housing, and population) those areas that will be receiving more under the formula than they have received in the past. The other more rapidly implements the formula for those areas that will garner more from the formula than they had before the act's passage.

Fiscal Year	Cities of more than 50,000 population or urban counties which have populations of at least 200,000		Cities under 50,000 population with previous community development funding levels	Model Cities (assumes a newly funded Model Cities program)*
	Those that will receive less money on formula than on hold harmless	Those that will receive more money on formula than on hold harmless		
1975	Hold harmless	hold harmless + 1/3 the difference between hold harmless and formula	hold harmless	100% Model Cities funding
1976	Hold harmless	hold harmless + 2/3 the difference between hold harmless and formula	hold harmless	100% Model Cities funding
1977	Hold harmless	permanently on formula	hold harmless	100% Model Cities funding
1978	Formula + 2/3 hold harmless	—	2/3 of hold harmless	100% Model Cities funding
1979	Formula + 1/3 hold harmless	—	1/3 of hold harmless	100% Model Cities funding
1980	Permanently on formula	—	0% of hold harmless—money drawn from discretionary fund	80% Model Cities funding
1981	—	—	—	60% Model Cities funding
1982	—	—	—	40% Model Cities funding
1983	—	—	—	0% Model Cities funding

*Some Model Cities will phase out before 1983 since by law, the phase-out for Model Cities begins after the fifth action year. So, for example, a Model City which was funded or extended in 1972 for FY 1973 would begin its phase-out of Model Cities funding in FY 1978. Sec. 106(g).

Source: p. 1371, 9/14/74, *National Journal Reports*.

county officials, both individually and through their organization, the National Association of Counties (NACo), in the area of housing and urban development.⁸¹

Urban counties began their drive for inclusion as an entitlement jurisdiction during the mark-up of the original Senate omnibus housing bill, *The Housing and Urban Development Act of 1972* (S. 3248). The Senate refused to qualify all counties. Instead, under its version of the bill, only those counties which had previously participated in community development programs would have received funding, and that funding would have been in the form of hold harmless funds.

Urban counties were more successful in dealing with the House Subcommittee on Housing. This success was partially attributable to the make-up of the committee which contained several Representatives who represented urban counties. These included among others the ranking Republican on the House Banking and Currency Committee and Representative William B. Widnall from Bergen County, N.J.

Originally, NACo pushed for the inclusion of all counties with a population of 50,000 or more, (the same as the metropolitan cities); however, it was generally understood that the chances of success under that formulation were virtually negligible. Later on, they settled for the population figure of 200,000 or more. As John Murphy, the legislative counsel for NACo explained, 200,000 was "the point at which we could set the votes on the committee."⁸²

The first vote for inclusion was taken before the full House Banking and Currency Committee in Spring 1972, and entitlement status for the urban counties failed. Opposition to their inclusion was spearheaded by Rep. Margaret Heckler (R.-Mass.) who opposed the idea of urban counties receiving such a windfall.⁸³ Pursuant to House rules, urban county supporters moved for reconsideration of the issue at the next committee meeting. The definition for urban counties was redrafted to contain the requirement that entitlement would only extend to those counties which were authorized by the state to be involved in essential community development activities. Utilizing the population restriction alone, 95 counties would have been eligible for entitlement grants. When the second criteria was added, the number of counties decreased by 10 to 85.⁸⁴ This definition was accepted. *The Housing and Urban Development Act of 1972* emerged from the House Banking and Currency Committee with urban counties included in entitlement funding. The victory was short lived, however, and the act died in the Rules Committee.

In 1973, when community development legislation

was again introduced, the urban counties received more favorable treatment. The Administration's bill, the Better Communities Act, provided for entitlement grants to be extended to urban counties with a population of 200,000 or more (exclusive of SMSA central cities or cities of 50,000 or over located in SMSAs which would receive allocated funds directly by formula). It did not contain the earlier provision that urban counties must be authorized under state law to undertake community development activities. The Administration bill would have provided funding for many counties which heretofore had not been active in community development. As one commentator on the bill reported: "Urban counties would fare so well under the BCA that for the National Association of Counties the situation is almost too good to be true."⁸⁵

The urban counties received equally favorable treatment from members of the Housing Subcommittee in the House. During the initial committee proceedings, Rep. Widnall indicated that the Republicans would walk out of the hearings if the urban counties were not included in the bill. His proposal for urban county inclusion was opposed by one of the House bill co-sponsors, Rep. Thomas Ashley (D.-Ohio). It took six days of debate in the mark-up session before a committee decision was reached to grant the urban counties basic entitlement grant status.

An explanation for the change in two years from virtual inactivity in the community development and housing field to legislative activism by the urban counties and the concomitant change from exclusion to general inclusion in the community development bills can be found both in the politics of the times and in the substance of the legislation.

From the political angle, NACo's influence with the Federal government increased with the start of the Nixon Administration. Vice President Agnew, himself a former NACo member and committee chairman, retained as his top aid for domestic affairs, C. D. Ward, NACo's chief counsel and lobbyist from 1960 to 1968. Additionally, NACo had an entree to John D. Ehrlichman, the executive director of the Domestic Council, through John D. Spellman, a past chairman of NACo's legislative steering committee on crime and public safety and a close hometown associate of Ehrlichman. The overall result was a Federal Administration with a particular sensitivity to the cause of the counties.⁸⁶

Similarly, NACo had cultivated powerful allies in the Congress. Many were high ranking members on committees which dealt with housing issues. As the move from the cities to the suburbs continued, many members of Congress found themselves representing an

increasingly county conscious constituency. Hence, their own interests in the growing powers and problems of the counties were heightened. As the legislative battleground began to shape itself, the issue was seen with increasing frequency as the needs of the cities versus the needs of the counties. With strong political allies, the urban counties were able to meet the metropolitan cities from a position of strength.

From a substantive angle, the programs which were consolidated into the community development block grant were a basic contributing factor to the increased interest of the counties in the legislation. Although past urban county participation in conventional community development programs (e.g., urban renewal, Model Cities, code enforcement, etc.) had been minimal, it had been more substantial in other community development programs. Of the 78 urban county respondents to a NACo-administered *Community Development Capabilities Study* questionnaire, 72 percent had received prior 701 Comprehensive Planning assistance; 67 percent had received open space grants; and 58 percent had obtained water and sewer facilities money.⁸⁷ The growth of the counties' populations indicated that many of these jurisdictions would soon be experiencing some of the same problems and needs which the cities had experienced earlier. Under these conditions, it seemed natural to seek the entitlement status role under the proposed act.

NACo began its representational efforts to retain a favorable county position within the new draft bills. Specifically, its job was to persuade Congress to accept the Administration's version of the community development legislation rather than either the pending Barrett-Ashley or Sparkman bills.

Two major objections were raised to the extension of direct entitlement to urban counties. The first concerned the effect of the urban counties' inclusion in the preferred grantee status on the amount of available funds. Two major opponents to the granting of entitlement status emerged: the small SMSA communities and the big cities. The former were concerned with the preservation of the discretionary funds and opposed urban county inclusion within the entitlement category if, as a result, insufficient funds remained in the discretionary pot to accommodate their needs as SMSA non-entitlement governments. The large cities, on the other hand, were interested in preserving the entitlement fund. They feared that urban counties as entitlement grantees would so threaten discretionary funds as to require an earmarked reserve for the smaller communities and this, in turn, might decrease the entitlement funds.

The second objection centered around the counties' general lack of prior participation in HUD's categoricals. But county supporters argued against penalizing their jurisdictions for not having joined in the earlier urban programs, citing a variety of reasons including: the burdensome red tape; the administrative costs in time and money; the uncertainty of funding from year to year; and the changing growth patterns which had generated new county needs.

The crux of the matter was the effect of expanding the jurisdictional coverage of the community development programs without a corresponding increase in the overall level of funding. A Milwaukee development coordinator put it more succinctly: "You either have to increase the amount in the pot or cut down on how it's distributed." The latter was much more likely than the former.

Three computer runs incorporated HUD's best estimates of the number of counties that might qualify for direct entitlement.⁸⁸ The figures showed that such inclusion would not greatly increase the total amount of formula grants and would have little effect upon the amount remaining for discretionary grants to smaller communities.⁸⁹ These runs supported the urban counties' case by providing concrete information about the cost of county inclusion.

Representative Ashley finally reversed his position and voted for the incorporation of urban counties into the direct entitlement category. He maintained that it was not the computer figures which were decisive but rather that he had come to the conclusion independently. It has been suggested nevertheless that the Congressman's change of mind was necessary to keep the support of the members from the suburban county districts. Since shifts in residential patterns had increased the number of Congressmen serving suburban constituents, such a concern was well founded. The sheer mathematics of winning on the floor necessitated a bill which would have broad based appeal to urbanites and suburbanites alike. The final bill reported to the full House Banking and Currency Committee from its Housing Subcommittee had the unanimous support of all the Housing Subcommittee members on the question of the inclusion of urban counties.

It is important to note, here, that there was some confusion as to the number of qualifying urban counties — a confusion that persisted over a year after the measure was enacted. Although no one knew at the time of the act's drafting how many counties would qualify or apply for grants, HUD General Counsel, James Mitchell developed a "best estimate," based on the number of urban counties which had participated in

major HUD-funded programs in the past, as reported by the HUD area offices. According to their estimate, only ten or 12 counties would initially qualify for the grants – with the cumulative total reaching 51 by FY 1980. NACo maintained that the estimate was low, and claimed that a figure of about 80 qualifying counties would be more accurate.⁹⁰ Of these, it was expected that about 40 initially would be eligible.

Three basic reasons explain the confusion regarding the number of potential urban counties: (1) the vagueness of the definition of an urban county which was used in the act; (2) a basic unawareness of the varying powers and governmental forms within given counties; and (3) the use of past participation as an indication of interest in the new program.

The Administration's bill contained no definition of the powers which an urban county should possess in order to receive funding. The House bill and the final act were more specific, in that they required the county to be "authorized under state law to undertake essential community development and housing assistance activities in its un-incorporated areas, if any, which are not units of local government."⁹¹ Yet, even these versions failed to identify what were the "essential community development activities." That decision was left to the Secretary of HUD, who subsequently determined by regulation that to qualify, counties needed to possess the authority to undertake urban renewal and publicly assisted housing.

It soon became clear that HUD was unaware of the powers held by the urban counties. Even if "essential community development activities or powers" had been given early definition, no one was well versed about which counties possessed which powers. Consequently, HUD commissioned NACo to perform a community development capabilities study to focus on the urban counties potentially eligible for entitlement under the act. Specifically, the study sought to research past program experience, existing legal authority to carry out community development activities, financial capacity, intergovernmental relationships, planning and management capabilities, and citizen participation procedures for the 84 potentially urban counties.

Past participation in the consolidated programs varied. The number of potential urban counties participating in the conventional community development programs of Model Cities, NDPs, and urban renewal came to nine, 11, and 16 respectively. Based upon these figures, HUD estimated that only about ten to 15 urban counties would participate initially in the new CDBG program. HUD erred in ignoring past county participation in the community development-related programs

which tended to be greater and, in retrospect, were a better indication of urban county interest. The number of counties participating in comprehensive planning,⁹² open space and water, and sewer facilities numbered 56, 52 and 45 respectively. These numbers corresponded to NACo's estimate for the first year of the new program. But even this proved to be an inaccurate forecast.

The uncertainty about the number of qualifying urban counties continued even after the passage of the act. In September 1974, the following explanatory note was included in the first *Directory of Recipients* published by the Housing Subcommittee of the House:

Since the determination of which counties will qualify as urban counties (as well as which portions of such counties might be excluded) involves a rather elaborate assessment of each county's powers and the intentions of its component units of government, no attempt has been made at this time to anticipate which counties will receive a formula entitlement in the funding projections shown in this directory. A few counties do appear, but they are counties which would qualify for hold harmless grants, and only such estimated payments are shown for them. Inclusion of urban counties would not affect materially the amounts allocated to metro cities and hold harmless communities. However, inasmuch as the amount of funds to be allocated geographically for discretionary usage represents the balance of funds after meeting basic grant and hold harmless obligations, the omission of urban counties from this projection results in some overstatement of discretionary funds in SMSAs. (This does not affect the non-metropolitan discretionary fund levels.) There will, at the same time, be a direct correlation between the amount of population, poverty, etc., which would shift from the SMSA balances to such urban counties for purposes of formula allocation.⁹³

HUD utilized a three-part process to qualify potentially eligible urban counties. First, it sent letters to the 84 requesting information on their intentions to apply for the grants. Second, a following communication was sent to those counties intending to apply for grants, requesting a formal statement as to their legal authority to undertake urban renewal and publicly assisted housing pursuant to the "essential powers" language of the

act. Third, those counties with the requisite legal authority were notified that they must either provide an opportunity for certain units of general local government included within the county to disassociate themselves from the urban county or submit cooperation agreements with them.⁹⁴ After complying with these requirements, the county was qualified for that year under the act. Given this intricate procedure, it is easier to understand why some uncertainty continued as to the number of potential urban counties.

Towns and Townships. The act also provides for towns or townships which (1) possess powers and perform functions comparable to those associated with municipalities; (2) are closely settled; and (3) contain no incorporated places within their boundaries that qualify as a "city."⁹⁵ If, in addition to these criteria the town or township is located in a metropolitan area and has a population of 50,000 or more, it can also qualify as a metropolitan entitlement city under the act.

Discussion regarding the inclusion of towns and townships was less extensive than the discussion about urban counties. In part, this reflected the lesser service role of townships and the smaller size of most towns.⁹⁶ Only four states with a total of 31 towns and townships ultimately received direct entitlement grants under the act.⁹⁷

The basic and sole objection to the act's definition of towns and townships was raised by Jerome A. Ambro, then a supervisor of the town of Huntington, N.Y., and later a member of Congress. It focused upon the effect of including within the definition of a town or township the requirement that no incorporated places be found within the boundaries. Although he spoke about towns in general, it was clear that the situation which he posited solely affected New York towns. The exclusion of towns with incorporated places, as it turned out, resulted in the disqualification of 17 New York towns which otherwise would have qualified for entitlement funding. He proposed that the definition of a metropolitan city be amended to include specific entitlement funding for "metropolitan towns" which meet the requisite population. Alternatively, he advocated the striking of the section which required the exclusion of towns and townships with incorporated places. Neither of these proposals was adopted.

In response to the Ambro objection, HUD noted its historical policy of opposing legislation which would affect only special areas or communities. In the case presented, the New York towns did indeed have more functional community development powers than the counties. Nevertheless, under the terms of the act the

counties (which independently have no community development powers) become the recipient of the community development funds through the use of cooperative agreements and HUD considered this situation an anomaly.

As an interesting sidelight, it should be noted that the aforementioned *Community Development Capabilities Study* of the urban counties revealed additional information to HUD about townships. It was discovered that what had been assumed to be "unincorporated areas" of potential urban counties were in many instances viable governments, most of which were townships. This discovery was significant to the extent that the reduction of the number of "unincorporated" areas resulted in more urban counties qualifying for entitlement status. Moreover, it highlighted the Federal government's ignorance nationally of the complexity of the American system of local government units.

Special Purpose Districts and Authorities. Section 102(a)(1) includes within the term unit of general local government:

... a state or a local public body or agency (as defined in Section 711 of the *Housing and Urban Development Act of 1970*), community association, or other entity which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of Section 712 of the *Housing and Urban Development Act of 1970* or Title IV of the *Housing and Urban Development Act of 1968*.

This definition renders special purpose agencies eligible for a portion of the 20 percent allocation which is made by the Secretary for meeting non-SMSA hold harmless needs, for general grants, and for applying for discretionary grant funds.

The inclusion of the special purpose agency as a grant recipient raised two basic policy questions. First, was the special purpose agency capable of operating under the new and more comprehensive concept of community development? Second, would its involvement contradict the spirit of the act which encourages return of power to generalists and local general government?

Special purpose agencies (also called special function units and special districts) were generally created to serve particular areas and to provide facilities at particular locations. Prior to the 1930s, these units were

considered to be outside the normal structure of governments. But their proliferation over the past four decades has resulted in a more general acceptance of their role as a legitimate governmental unit.⁹⁸

In the community development area, they have been instrumental in carrying out the public housing programs which arose after 1937 and the urban renewal programs after 1949. Among the 23 categories of special purpose agencies as classified by the Census Bureau, districts for housing and urban renewal, fire protection, drainage, and water and sewer account for more than half. In the area of housing and urban renewal alone, special districts are the dominant service provider in 22 of the nation's states.⁹⁹ Clearly, then, when one talks about implementing community development programs, the special purpose agency is an integral part of the discussion based upon its past participation and performance.

28 Nevertheless, the act indicates an intent to strengthen the role of the generalists, and its consolidationist approach would appear to argue against the involvement of functionalist units of government. Indeed critics of the special purpose agencies have asserted that they tended to usurp functions that belong to general governments without being sufficiently responsive to public opinion. At the same time, their unique role in assisting specialized functional problems, their fiscal self-sufficiency, their greater flexibility and efficiency, and their freedom from political pressure was also recognized.¹⁰⁰

This ambivalence towards special purpose agencies was reflected in the early drafts of the bills. The Senate version included them as eligible recipients. Their favorable status in these bills was largely attributable to the influence of NAHRO which worked closely with Senate staffers in the legislative drafting sessions. Both the initial and later versions of the House and Administration bills omitted the special purpose agencies as grantees. Their inclusion in the final piece of legislation attests to the persistence of the special agencies' representatives.

The act struck a flexible compromise. It allows those agencies which provide essential community development services and effective programs to continue doing so with the assistance of Federal funding. The funding can be received either directly through the competitive discretionary process or by assignment from a unit of general local government.¹⁰¹ Yet, the act's entitlement grants to local general government encourage those units to take over the tasks of these special purpose agencies or to render them more dependent. Moreover in some instances, the act has prompted these local governments to secure from their states the necessary enabling

legislation to carry out the responsibilities of these agencies and authorities, the lack of which had formerly been a prime factor in establishing a reliance upon these functional units of government.

The State. The role of state government is reduced to a minimum under the act. In limited situations, a state may be the recipient of funds, but its role here is clearly subordinate to the units of general local government. States are eligible to compete for the discretionary funds which remain after entitlement grants are made and after hold harmless needs are satisfied. These funds are generally designated for use in certain metropolitan or non-metropolitan areas unless granted pursuant to one of the special discretionary funds. But for the most part, the state is merely a conduit for funds, retaining for itself only an allowance for the cost of general administration.

The issue of a stronger role for state government was raised during the hearings on the early community development bills. Under the original Administration bill, the states had been assigned recipient status on par with units of general local government. However, the Administration shifted its position in the BCA giving the states a larger administrative role. In explaining the shift, Secretary of HUD James Lynn noted:

... in the BCA, we have provided for a significant but limited state role. Under this arrangement, states will not have funds for their own community development programs, but must, more appropriately we believe, distribute funds for the use in local communities. But what the states will have through control over distribution of these funds is the ability to coordinate and influence community development activities on a scale larger than the individual communities themselves.¹⁰²

The small state role within the structure of the act is partially reflective of the minimal involvement of the governors through the National Governors' Conference during the legislative process. Community development was low on their list of priorities. In 1973, only about 15 of the states had community development agencies. Since other statewide issues (e.g. pension funds, general revenue sharing, law enforcement, etc.) which were equally — if not more — in need of attention and funding, the governors did not choose to press the issue of a stronger state participation.

Unlike the governors, the state directors of com-

munity affairs, through their new representational organization, the Council of State Community Affairs Agencies (COSCAA), have taken a more active role in challenging the weakened role of the state within the legislation. Their main criticisms have been twofold: the absence of a coordinating role for the states to integrate the various Federal programs and promote substate regional planning for effective delivery of coordinated services, and the lack of a general advisory role which would recognize the unique perspective and experience of the states and their ability to provide necessary and vital information to its local governments.¹⁰³ In short, they prefer a role similar to the proposed state role in the BCA. COSCAA further feels that the act placed the states in an untenable position of being in competition with their own localities for funds. Their lack of preferential status resulted in some unsuccessful efforts to obtain discretionary grants during the first funding year.¹⁰⁴ Finally, their lack of direct entitlement funding has

resulted in the inability of some states to initiate multicommunity activities and to provide needed technical assistance to their localities who have received funding. In short, COSCAA believed that the states' overall low priority has weakened the effectiveness of both the act and the states.

Conclusion

The struggle for CDBG's enactment did much to highlight basic issues in controversy, both as to the design of the grant and to the goals to be achieved. As might be expected, the statute along with its formal and informal legislative record represents a "bundle of compromises" — compromises which partially modify, but by no means ignore the essential features of a block grant program. How these and other features of the measure worked in practice is the subject of the next chapter.

FOOTNOTES

¹These measures include: the creation of the Home Loan Bank System in 1932; the Home Owners Loan Corporation in 1933; the passage of the *National Housing Act of 1934* which created the Federal Housing Administration (FHA); the incorporation of the Federal National Mortgage Association (FNMA, or Fannie Mae) in 1938 and the passage of the *United States Housing Act of 1937* which created the Public Housing program.

²U.S. Bureau of the Census, *1950 Census of Population and Housing*. Utilizing these figures, the President's Advisory Committee on Government Housing Policies and Programs later made the conservative estimate that at least 5,000,000 of these units would require demolition. The study eliminated those non-dilapidated units which lacked only hot water or an inside toilet and those units which could be rehabilitated. It included in its count dilapidated units which would need to be demolished to relieve congestion in the neighborhood.

³P.L. 171; 81st Congress; 63 Stat. 413; 42 U.S.C. 1441.

⁴Sec. 2, "Declaration of National Housing Policy Housing Act of 1949."

⁵U.S. Commission on Civil Rights Report. *Housing* (1961), p. 20.

⁶The President's Advisory Committee on Government Housing Policies and Programs; *Government Housing Policies and Programs: A Report* (Washington, D.C.: U.S. Government Printing Office, 1953) p. 1.

⁷*Ibid.* p. XX.

⁸P.L. 560, 83d Congress; 69 Stat. 590, 40 U.S.C. 461.

⁹*Housing and Urban Development Act of 1968*, Section 501(6); P.L. 90-448; 82 Stat. 476, 518, approved August 1, 1968; added as Part B to Title I, *Housing Act of 1949*; ACIR, *Administration's Grant Consolidation Proposals*, M-70

(Washington, D.C.: U.S. Government Printing Office, 1971), p. 1.

¹⁰*Ibid.*

¹¹For more information about NDP, see Robert W. Maffin, *NDP* (Washington, D.C.: National Association of Housing and Redevelopment Officials, 1970); and Congressional Research Service, Library of Congress (for U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing and Urban Affairs), *The Central City Problem and Urban Renewal Policy* (Washington, D.C.: U.S. Government Printing Office, 1973), pp. 51-67, 245-246.

¹²A more detailed discussion of the Planned Variation experiments can be found in ACIR, *Improving Federal Grants Management* (A-53), (Washington, D.C.: U.S. Government Printing Office, 1977), Chap. II, pp. 74-77.

¹³*Planned Variations: First Year Survey*, Community Development Evaluation Series No. 7 (Washington, D.C.: U.S. Department of Housing and Urban Development, October 1972), p. 4.

¹⁴"Planned Variation" Program. *Presidential Documents*, Vol. 7, No. 31, July 29, 1971, p. 1095.

¹⁵See ACIR, *Improving Federal Grants Management* (A-53), Chap. V, pp. 234-240, for an indepth discussion of Annual Arrangements. See also, Raymond A. Anderson, "Annual Arrangements as a Forerunner of Special Revenue Sharing for Community Development," *Journal of Housing* (May 1973), p. 24.

¹⁶William Lilley, III, Timothy B. Clark and John K. Iglehart, "New Federalism V/Annual Arrangements," *National Journal Report* (March 3, 1973), p. 301.

¹⁷Richard P. Nathan; *The Plot That Failed: Nixon and the Administrative Presidency* (John Wiley & Sons, Inc., New York, 1975), pp. 6,7.

¹⁸NAHRO, *NAHRO Proposes Community Development and Comprehensive Housing Assistance Program* (Approved by the NAHRO Board of Governors, December 3, 1970) pp. 5-8.

- ¹⁹ P.L. 93-383, 93rd Congress, 42 U.S.C. 5301.
- ²⁰ 92d Cong., 1st Sess. (1971); S. 1618 92d Cong., 1st Sess. (1971).
- ²¹ 92d Cong., 1st Sess. (1971).
- ²² A more detailed analysis of the various issues raised by the conditions and requirements can be found in the next section.
- ²³ Testimony of George Romney, Secretary of HUD, U.S. House Subcommittee on Housing of the Committee on Banking and Currency Hearings on Housing and Urban Development Legislation - 1971, pp. 74, 75.
- ²⁴ 92d Cong., 1st Sess., 1971.
- ²⁵ 92d Cong., 2d Sess., 1972.
- ²⁶ 92d Cong., 2d Sess., 1972.
- ²⁷ *Congressional Quarterly Almanac*, Vol. XXVIII (92d Cong. 2d Sess.), (Washington, D.C.: 1972), p. 628.
- ²⁸ "The Budget, 1974 - Message from the President," *119 Congressional Record* 1406 (1973).
- ²⁹ H.R. 7277, 93d Cong., 1st Sess. 1973; S. 1742, 93d Cong., 1st Sess., 1973.
- ³⁰ George Romney, press release (January 8, 1973), p. 5. Remarks prepared for delivery at the 29th Annual Convention Exposition of the National Association of Home Builders. Also suspended at that time were four housing programs not included in the CD legislation. These included: public housing; rent supplements; Sect. 235 (home ownership subsidies) and Sect. 236 (interest subsidies for low-income rental housing).
- ³¹ The Nixon moratorium was challenged in the case of *Pennsylvania v. Lynn*. On July 23, 1973, U. S. District Court Judge Charles R. Richey ruled the Administration's moratorium unlawful. The District Court order was stayed on August 29, 1973, by Supreme Court Chief Justice Warren E. Burger, with the remainder of the court voting to sustain the stay (7 to 1, J. Douglas, dissenting), On October 9, 1973. By so doing, the Supreme Court declined to support the lower court finding that the moratorium had been an improper exercise of Executive authority in its refusal to execute Congressional policy with which the President happens to disagree.
- ³² P.L. 93-117.
- ³³ *Senate Report No. 93-693* (report of the Committee on Banking, Housing and Urban Affairs, U. S. Senate to accompany S. 3066. 93d Cong. 2d Sess., February 27, 1974).
- ³⁴ *Presidential Documents*, (Vol. 10, No. 34), p. 1060.
- ³⁵ HUD did not use regionalized income figures during the first year of the program.
- ³⁶ Hold harmless funds for non-Model Cities would terminate in FY 1979. Hold harmless funds for Model Cities may last through FY 1982, depending upon when funding for the Model City began.
- ³⁷ During the first set of hearings on the earliest community development bills, the Administration systematically referred to its program as special revenue sharing. Two years later, during the House hearings on the second set of bills, then Secretary of HUD James T. Lynn, testifying about the differences between the BCA and H.R. 10036, stated: "First, and most fundamental, we seem agreed on the concept of special revenue sharing or block grants - whichever term you prefer . . ." From that time on, the terms are used interchangeably by the Administration to describe the program.

When interviewed by the author, Richard P. Nathan who worked closely with the program, stated that there was no actual or substantive difference between block grants and special revenue sharing. The difference was merely political terminology.

However, Assistant Secretary of HUD for Community Development Warren Butler said recently, at the National Association of Regional Councils' Conference, that officials should be critical of Congress for the regulations which have resulted under the new act "since Congress moved that program from special revenue sharing as the Administration proposed to block grants." His comment would indicate that the difference is really more than semantics. There is fundamental difference in the nature and amount of program requirements under the two programs.

- ³⁸ Advisory Commission on Intergovernmental Relations, *Special Revenue Sharing: An Analysis of the Administration's Grant Consolidation Proposals*, M-70 (Washington, D.C.: U.S. Government Printing Office, Dec. 1971). David B. Walker, "The New System of Intergovernmental Assistance: Some Initial Notes." *Publius*. Vol. 5, No. 3, Summer 1975.
- ³⁹ *Housing Act of 1949*, 42 U.S.C. 1450, *et seq.* (1949).
- ⁴⁰ *Housing and Urban Development Act of 1968*, 42 U.S.C. § 1469.
- ⁴¹ *Demonstration Cities and Metropolitan Development Act of 1966*, 42 U.S.C. 3301.
- ⁴² *Housing and Urban Development Act of 1965*, 42 U.S.C. 3102 (1973), formerly P.L. 89-117, 702, 79 Stat. 400.
- ⁴³ *Housing and Urban Development Act of 1965*, 42 U.S.C. 3101 (1967), formerly P.L. 89-117, 703, 79 Stat. 491.
- ⁴⁴ *Housing Amendments of 1955*, 42 U.S.C. 1491 (1962), formerly Ch. 783, 201, 69 Stat. 642.
- ⁴⁵ *Housing Act of 1961*, 42 U.S.C. 1500 (1966), formerly, P.L. 87-70, 701, 75 Stat. 183.
- ⁴⁶ *Housing Act of 1964*, 42 U.S.C. 1452 (b) (1973); formerly, P.L. 88-560, 312, 78 Stat. 790. This program has not yet been consolidated. See discussion on p. 34.
- ⁴⁷ As envisioned this would begin to replace Section 701 Comprehensive Planning Grants.
- ⁴⁸ Section 101(c): The primary objective of this 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. Consistent with this primary objective, the Federal assistance provided in this title is for the support of community development activities which are directed toward the following specific objectives-
- (1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;
 - (2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;
 - (3) the conservation and expansion of the nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;
 - (4) the expansion and improvement of the quantity and quality of community services, principally for persons of low

and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons.

It is the intent of Congress that the Federal assistance made available under this title not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

⁴⁹The term "maximum feasible priority" emerged from the Conference Committee Report. Although there is no specific definition of the term, one could assume that all activities proposed need not comply with the national objective. Where the line will be drawn is unclear. A similar term, "maximum feasible participation," was used in the 1964 *Economic Opportunity Act* provision which created the Community Action Agencies. However no definition was included in the legislative history, the hearings or the act itself. Nevertheless, the phrase has been continued in housing legislation, in the 1970 *Amendments to the Housing Act*, 42 U.S.C. 1402(6) and in Section 3(4) of the *Housing and Community Development Act of 1974*.

⁵⁰See generally, Daniel P. Moynihan, *Maximum Feasible Misunderstanding* (New York: The Free Press, 1969).

⁵¹Section 105(a)(8).

⁵²Testimony of HUD Secretary James Lynn, U.S. House, Subcommittee on Housing of the Committee on Banking and Currency. *Housing and Community Development Legislation - 1973*, p. 311.

⁵³Two other key compromises dealt with the level of program funding and the provision of housing assistance for low and moderate income persons. The Administration agreed to the higher House level of program funding - \$8.25 billion over three years. The House, in turn, dropped its proposed "housing block grant program" for lower income housing and accepted the Administration's new Housing Assistance Program as the single replacement for existing housing assistance programs, with the added proviso that the housing program be linked to the community development grants by including a Housing Assistance Plan as an application requirement.

⁵⁴As an example of the "plainly inconsistent" test, the House Committee on Banking and Currency suggested in its report accompanying H.R. 15361: "[If] a community's application asserted that it had little or no need for housing for lower income families despite census figures showing large numbers of substandard dwellings and housing overcrowding, the community's assertion would be "plainly inconsistent" with facts and data available to the community and HUD. On the other hand, if a community proposes to improve housing in census tract "X" in a particular year but census figures show

that the problem is somewhat worse in census tract "Y," the Committee does not expect HUD to second guess that decision."

⁵⁵U.S. House Subcommittee on Housing of the Committee on Banking and Currency. *Hearings on Housing and Urban Development Legislation - 1971*, Part II, pp. 501-502.

⁵⁶*Ibid.*, pp. 970, 988, *et. seq.*

⁵⁷Additional views of Mr. Taft, Senate Report 93-693 to accompany S. 3066 93d Congress, 2d Session.

⁵⁸Section 107.

⁵⁹Although the funds are allocated among the states, the state itself is not involved in awarding discretionary funds. State representatives have proposed that the act be amended to assign the states this decisionmaking role.

⁶⁰Section 106(b)(1).

⁶¹Section 102(7).

⁶²Section 102(9).

⁶³Section 102(8).

⁶⁴U.S. Department of Commerce, Bureau of the Census "Coverage of Population in the 1970 Census and some Implications for Public Programs," Series P-23, No. 56 (Washington, D.C.: U.S. Government Printing Office, August 1975). See also: National Academy of Sciences. *America's Uncounted People*, edited by Carole W. Parsons (Washington, D.C.: National Research Council, 1972).

⁶⁵*Ibid* at 4.

⁶⁶*Ibid* at 4.

⁶⁷For example, under general revenue sharing, Baltimore, Md., claimed it received about \$1 million less and Newark, N.J., about \$500,000 less than its actual entitlement due to the inaccurate figures. These two cities subsequently sued the Secretary of the Treasury to force him to use the section under the *State and Local Fiscal Assistance Act of 1972* (General Revenue Sharing) which permits him to adjust the level of funding to accommodate known errors.

⁶⁸The U.S. Bureau of Census updates its figures to keep track of changes resulting from city or county expansion through annexation.

⁶⁹The 94th Congress, 2d Session, passed P.L. 94-521 on October 17, 1976, establishing a mid-decade census beginning in 1985. ACIR has supported a mid-decade census and testified in its behalf on appropriate occasions in Congress since 1962.

⁷⁰In the Administration's special revenue sharing bill, H.R. 8853/S. 1618, the "extent of housing deficiencies" was used as an additional factor, addressing this concern.

⁷¹The result may be that Honolulu, Hawaii, which has a high incidence of overcrowding (one unit in four) will receive a rank of overcrowding slightly more than ten times higher proportionally than New York City which has less overcrowding but a higher incidence of substandard housing. See: Richard T. Legates and Mary C. Morgan, "The Perils of Special Revenue Sharing for Community Development," *AIP Journal* (July 1973), pp. 257-258.

⁷²Arthur J. Magida, "Major programs revised to stress community control," *National Journal Reports* (Sept. 14, 1974), p. 1373.

⁷³Section 102(a)(8). HUD has not used this power.

⁷⁴ACIR, *Urban and Rural America: Policies for Future Growth*, A-32 (Washington, D.C.: U.S. Government Printing Office, April 1968).

⁷⁵Section 106(1).

⁷⁶The programs were: urban renewal; water and sewer;

neighborhood facilities; open space; historical preservation; Section 312 rehabilitation loans and urban beautification.

⁷Only three programs were consolidated: urban renewal; neighborhood facilities; and 312 rehabilitation loans.

⁸Model Cities and NDP received Congressional appropriations of \$1,685.5 million in 1969-71 versus \$2,335.5 million in 1969-73. Source: U.S. Department of HUD.

⁹Hold harmless funds formed the base allocation so long as one or more NDP, urban renewal or Model Cities funded projects were in existence – a possible five-year period. After that time, the hold harmless funds disappear – without a graduated percentage reduction as in the current bill.

⁰Section 103(a)(2).

¹Former Secretary of HUD Wood once commented that if counties were to be major forces in metropolitan government, “they have to do a lot more with housing and land use development; those are the keys to modern government.” Former Secretary Wood’s advice apparently struck a favorable note. By the time the next major battle over community development funds was launched, NACo was in the midst of the fray—with diligence which paid off. As quoted in William Lilley, III, “Growth of the Nation’s Suburbs Boosts County Lobby’s Stock,” *National Journal Reports* (May 29, 1971).

²Interview with John Murphy, December 15, 1975.

³It should be noted that the county structure in Massachusetts is particularly weak. Throughout the “urban counties” debate, the strength or weakness of the counties in their Congressional districts heavily influenced the positions of the members.

⁴This number was subsequently lowered to 84 when the Census Bureau redefined the SMSA in Honolulu, Hawaii, and omitted Honolulu County from the SMSA.

⁵As quoted in John L. Moore’s “Congress Gathers Wide Support for Reshaping the Administration’s Community Development Bill,” *National Journal Reports* (June 2, 1973), p. 808.

⁶Lilley cites as an example of this heightened concern former Vice President Agnew’s order to the Office of Intergovernmental Relations to look across the board at all domestic programs to see where counties are being discriminated against.

⁷Not all of the 78 respondents ultimately became CDBG recipients; nor did all urban counties which ultimately became CDBG recipients respond.

⁸“Will It Work? Ask the Computer,” *National Journal Reports* (April 13, 1975), p. 559. This brief article elaborates upon the role of the computer in the community development hearings, or as the article states “legislation by Univac 1106.”

⁹Although the total entitlement amount for the 73 urban counties exceeded \$120 million, the actual additional cost (i.e., without hold harmless) was \$61 million.

⁰NACo’s higher estimate can be attributed to its greater familiarity with the activities and capabilities of its member counties. For instance, HUD did not include the 11 urban counties in Pennsylvania. NACo, on the other hand, included these counties since Pennsylvania boroughs had urban renewal authority which transferred to the counties.

¹Section 102(a)(6): The term “urban county” means any county within a metropolitan area which (A) is authorized under state law to undertake essential community development and housing assistance activities in its unincorporated

areas, if any, which are not units of general local government, and (B) has a combined population of 200,000 or more (excluding the population of metropolitan cities herein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

²Although the Section 701 Planning Grant was not one of the consolidated programs, HUD has expressed the clear intent to make CDBG funds the major support for comprehensive planning. Funding for the 701 Program reflects this decision. The appropriations for FY 1975, 1976, and 1977 have been \$100 million, \$75 million and \$25 million, respectively.

³U.S. Congress. House Committee on Banking and Currency. Subcommittee on Housing. *Directory of Recipients: Housing and Community Development Act of 1974*, (Washington, D.C.: U.S. Government Printing Office, 1974), p. 8. The legal and structural problems which arose as a result of this definition are treated on pp. 99, et. seq.

⁴For more information about these requirements, see the discussion about “Cooperation Agreements” on p. 103.

⁵Section 102(a)(5).

⁶Although the 1967 *Census of Governments* of the U.S. Bureau of the Census counted 17,105 township or town governments in 21 north and north central states, only the townships in Michigan, New Jersey, New York, Pennsylvania and Wisconsin, and the towns in the six New England states perform significant service functions. The fiscal expenditures of the five strong township states for highway and urban functions were significantly higher than the expenditures in the ten weak township states. The expenditures of the New England towns for these same services were comparable with those of municipalities. But despite their strong service function, these units of government tend to be small. Only 74 had populations over 50,000.

⁷The breakdown by states is: Pennsylvania – 13; New Jersey – 12; and Michigan – 6 townships; New York – 8 towns. Wisconsin is the only member of the five which shows no direct entitlement to its townships according to the September 1974 proposed *Directory of Allocations* by HUD.

⁸ACIR reported that special districts increased 93.6 percent in the last 20 years to a total of 23,886 in 1972. ACIR, *Regional Decision Making: New Strategies for Substate Districts*. Vol. 1., A-43 (Washington, D.C.: U.S. Government Printing Office, Oct. 1973), p. 23.

⁹A dominant service provider is one that accounts for more than 55 percent of the direct general expenditure in a particular function. See ACIR, *Substate Regionalism and the Federal System*, Vol. IV, A-45 (Washington, D.C.: U.S. Government Printing Office, Feb. 1974), Table I-1, p. 3.

⁰For a general panel discussion; see: “Is There a Role for Special Purpose Agencies in the Community Development Program – Including direct receipt of block grants?” *Journal of Housing* (March 1975), p. 161, et. seq. See, also Jeffrey L. Pressman, “Political Implications of the New Federalism” in Wallace E. Oates, Editor, *Financing the New Federalism* (John Hopkins University Press, Baltimore, 1975), pp. 26-27.

¹⁰¹ Section 102(c).

¹⁰² Testimony of Secretary James Lynn, Hearings on H.R. 7277 before the Subcommittee on Housing of the House Committee on Banking and Currency, 93d Cong., 1st Sess., Part I at 309 (1973). See generally H.R. 7277, Sec. 7(c).

¹⁰³ Advisory Commission on Intergovernmental Relations, Comments of David Walker for A-85 Review of HUD Regulations; Albert L. Hydeman, Jr., and Eugene R. Fisman, "The Missing Link: Community Development and the States?" a

discussion paper prepared for the National Conference of the Council of State Community Affairs Agencies (Salt Lake City, Utah, September 1975).

¹⁰⁴ Three of the six states which applied for innovative grant discretionary funds received grants. It is also reported that some states were discouraged from applying for general purpose discretionary funds by some HUD field offices which questioned their recipient status. No states applied for these funds during the first year.

Implementation

Premature assessments of new and innovative programs run the risk of being deemed inherently suspect. This section, which examines the Community Development Block Grant (CDBG) program after little more than a year in operation, assumes that risk. From the outset, the fledgling nature of the program is recognized. Long-term program goals can only be stated, not assessed. Even the evaluation of short-term objectives must allow some latitude to accommodate the unexpected and the novel which are bound to arise as the program gets underway. The Administration provides the guiding caveat with its own admission that, in some areas, it too is feeling its way.

Notwithstanding these restraints and necessary precautions, some areas can, and should be examined now, inasmuch as they provide some insights into the early operation of this major new block grant. These include (1) the HUD experience of getting the program underway; (2) the initial structural or organizational changes which have occurred at the state level as a result of the program's implementation; (3) the first year reports of HUD and other groups with their accompanying statistics; (4) the issues raised by the final statutory provisions of the act in light of its legislative history, the first year experience, the oversight hearings and monitoring efforts by the Administration, the Congress and the public interest groups; and (5) suggested amendments and recommendations. This chapter will focus upon these areas, with special attention given to the intergovernmental effects of these various actions.

HUD's Role

The task of implementing the CDBG program was a major one. It required a substantial amount of administrative preparation on the Federal and local level to get the program moving and the funds flowing. To further complicate the process, the act mandated the program's commencement on January 1, 1974 – a little more than four months after its enactment.

The HUD office charged with basic responsibility for administering the program – the Office of Community Planning and Development under the direction of Assistant Secretary David O. Meeker – had not waited until the law's enactment before preparing draft guidelines. Work on these had started in April 1974. But many of the more difficult issues changed substantially during the final months before the act's passage, thereby delaying the final preparations until mid-August.

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The first draft of the guidelines appeared for comment in the September 17, 1974, edition of the *Federal Register*. More than 200 responses were received by HUD. The nature of the comments varied. Many just asked for further clarification of vague terms or procedures. However, more substantive concerns were raised about the restriction of urban county entitlement status to past participants, the non-mandatory nature of the A-95 review procedure, and the weak citizen participation guidelines. The final regulations, issued on November 13, 1976, reflected HUD's reaction to some of these criticisms. Additional definitions and clarifying language were added. Although changes were made to encourage A-95 clearinghouse comments, HUD declined to make the procedure mandatory. In addition, HUD rejected the comments urging more explicit guidelines for citizen participation, noting that structuring the manner in which local general purpose government related to its citizens was not an appropriate role for HUD.

This initial set of guidelines formed only the core of the program's regulations and mainly dealt with entitlement grants. Because of the complex nature of the program, HUD decided to issue its regulations piecemeal. Over the first year and a half of the program, HUD periodically promulgated separate or revised regulations dealing with varying aspects of the CDBG program including:

- Application and submission deadlines;
- Discretionary grants (applications criteria and rating procedures);

- Environmental review procedures;
- Fund allocation and reallocation;
- Fair market rents and contract rent automatic annual adjustment factors;
- Lease and grievance procedures;
- Housing assistance payments;
- Construction loans for elderly and handicapped;
- Eligible activities;
- Housing assistance plans and the expected-to-reside figures; and
- Urban renewal close-out and financial settlements.

A second major task was to calculate the exact amount of the entitlement and hold harmless grants which would be awarded to qualifying jurisdictions. In September 1974, a *Directory of Recipients* was published reflecting the estimated grants for some of the recipients. These estimates were subject to change because of four factors which had not yet been settled: (1) the determination of urban county entitlements; (2) the determination of towns and townships qualifying for formula entitlement as metropolitan cities; (3) the validation of hold harmless amounts; and (4) the exact amount of the Congressional appropriation.

After these four factors were settled, HUD was able to calculate the final amount of each entitlement and hold harmless grants and notify the recipient jurisdictions. Additionally, a better estimate of the amount of discretionary funding could be made and jurisdictions were notified to apply for funds.

The established program deadlines resulted in a tight timetable for both HUD and potential recipients. Entitlement applications for metropolitan cities were due by April 15. A final decision by HUD was required by law within 75 days of an application's receipt. Entitlement applications for urban counties and applications for discretionary grants had a May 15 deadline. There was, however, no mandated deadline for discretionary application review.

The bulk of the review and decisionmaking for most applications occurred in HUD's 39 area offices. Because of the key role which the area offices perform under the act, their staff organization and training was crucial. In August 1974, the HUD Office of Administration put forth the "HUD Area Office Realignment Plan" designed to align the area office structure with that of the regional and central offices. The plan separated the housing and community development functions in area offices, abolished the operation division and replaced it with two divisions – Community Planning and

Development (CPD) and Housing Production and Mortgage Credit (HPMC). This new structure was designed to further administrative decentralization by increasing the accountability of area offices while at the same time simplifying their operations in light of the fact that some of their former responsibilities would be transferred to local communities under the new housing and community development programs.

A training program for HUD staff charged with the program's operation and administration was conducted in conjunction with the office reorganization. Since area office staff had primary responsibility for reviewing incoming applications and making funding commitments, and also served as key resource persons for local officials in need of additional information during the application's preparation, their understanding of the program was imperative.

But in some instances, as could be expected, the interpretations of different offices varied. Certain issues appeared to be more troublesome than others — e.g., the determination of eligible activities, the eligibility of social service projects, and the interpretation of the "expected to reside" element of the HAP requirement. When additional guidance was needed or if an area office recommended that an application be rejected, the area office turned to Washington for the final decision. On the latter point in particular, a November 26, 1974, Meeker memorandum clarified the degree of control to be exercised by the central office "... community development plan disapproval can only be made at the central office ... The power to disapprove applications for entitlement funds is not delegated below my office."

HUD's central office handled the difficult task of preparing policy guidelines and interpreting confusing provisions by creating a special issues committee headed by Deputy Assistant Secretary for Community Development and Planning Warren Butler. The committee's decisions supplemented the program's guidelines.

By the end of the application process, HUD had issued a number of individual rulings concerning the eligibility of various community development activities at the request of different area offices. In some cases, these rulings were in opposition to earlier decisions made by the area offices, and raised particular problems when funded activities were later deemed ineligible for funding. Revised rules governing eligible activities were published in the January 19, 1976, *Federal Register*. These rules incorporated the earlier in-house decisions and contained more detailed examples of permissible and impermissible activities.

HAP. HUD faced more serious problems with its

attempts to clarify the procedures for the HAPs. Hampered by a tight timetable, relatively little legislative guidance regarding implementation, and inadequate data on housing needs both in-house and in-the-field, HUD decided to deemphasize the HAP during the first year rather than delay the operation of the full program. A memorandum from Assistant Secretary Meeker on May 21, 1975, instructed the area office directors to allow applicants with incomplete assessments of the "expected to reside" housing needs for their communities to choose to: (a) adopt estimates provided by HUD; (b) adopt its own estimates; or (c) indicate what steps the applicant intends to take in identifying a more appropriate needs figure by the time of its second year submission.

For a number of reasons, this de-emphasis on the HAP found favor with many of the recipient jurisdictions for which the HAP was proving to be a formidable problem.

First, few jurisdictions had the required data at hand. Often the most recent data was from the 1970 census. To alleviate this problem in 318 eligible cities, HUD purchased and made available new data on population and housing stock from the firm of R. L. Polk and Company. For the remaining localities, data collection was a time consuming and expensive process. Some jurisdictions were forced to hire outside experts to prepare the required plans. Others used in-house staff with varying levels of expertise. The result was predictably a host of HAPs of mixed quality. Second, the HAP required jurisdictions to directly face the issue of planning housing for low and moderate income persons and, should they decide to apply for the CDBG funding, to commit themselves to that objective. The requirement was applicable regardless of their intended use for CDBG funds. In essence, the HAP requirement forced potential recipients to acquiesce to nationally established goals for economically integrated communities. Third, some of the terminology used in the HAP requirement called for an assessment of housing needs which was novel to many recipients. Specifically, the requirement that communities submit the number of low income persons "expected to reside" in the community based upon planned as well as existing employment baffled many.¹ This problem was compounded by the fact that the proposed rules regarding HAPs did not appear until June 9, 1975.

But this approach was found to be unacceptable by civil rights groups which monitored the program closely.² They argued that the HAP was an integral part of the CDBG program and of prime importance in guaranteeing equal opportunity and fair housing to low

and moderate income people. They saw the failure of HUD to vigorously examine the CDBG applications in light of the HAPs as an indication of a Federal lack of commitment to the stated objectives of the act. It was also noted that the momentum for regional "fair share" allocation plans that had begun in 1968 appeared to be dissipating under the *pro forma* "A-95" review process established by the act.

Concern increased as HUD's approval of the housing plans in the first year applications appeared to be near automatic — even when some local jurisdictions were submitting "expected to reside" figures of zero. As this practice occurred on an areawide scale, it threatened to eliminate any plans for regional "fair share" housing. City officials and representatives of the poor and minority population of Hartford, Conn., decided to sue HUD and Hartford's seven neighboring suburban towns and challenged HUD's practice of waiving requirements in the landmark case of *The City of Hartford v. Hills*.³ They claimed that HUD abused its discretion by approving the community development entitlement grants to the seven neighboring communities which had not met the requisite housing assistance plan requirement. On January 28, 1976, the district court found that HUD had acted illegally when it approved the applications of the seven towns without requiring them to assess the needs of low and moderate income persons expected to reside within their borders. The court permanently enjoined the defendant towns from drawing or spending entitlement funds until such time as their grant applications received new approval from HUD.⁴ The case indicated an intent on behalf of the court to require strict compliance to the act and its procedure.

Before the district court handed down its final decision, HUD had begun to flesh out its HAP requirements. But these rules became even more detailed after the court's decision. HUD drew up new regulations for the "expected to reside" requirement, and made data on "expected to reside" figures available to communities. It extended the second year application period to allow communities more time to meet the new HAP rules. In general, HUD began to make it known that the second year of the program would be the year of the "hard hat" on HAPs.

Discretionary Grants. The discretionary grant applications were treated differently from the entitlement applications. The application deadline was set one month later — May 15 — and HUD was free to set its own schedule for review and decisionmaking. A preapplication procedure was often used to narrow

down the field of applicants. Preapplications and applications were ranked according to HUD-established criteria reflecting an area's community development needs.

The non-metropolitan general purpose fund and the Secretary's discretionary fund grants proceeded with few problems. Demand was high and area offices which reviewed the applications were sometimes stuck with the tedious job of rerating all applications when some arrived later, not preceded by preapplications. This non-mandatory preapplication procedure proved unacceptable; the procedure was made mandatory for the second year.

Metropolitan general purpose discretionary funds proved to be a more serious problem. The original estimates for entitlement and hold harmless funding proved to be low, creating a deficit in the FY 1975 SMSA discretionary balance. On March 19, 1975, HUD announced the suspension of the SMSA discretionary balance grant program until additional funding could be established. In June, Congress appropriated an additional \$54.6 million for SMSA balance funding.⁵ HUD began to accept new applications and process the preapplications received prior to the program's suspension. By the fall, funds for the small metropolitan cities were being approved.

But for many jurisdictions — discretionary as well as entitlement — approval of an application did not mean immediate receipt of CDBG funds. The funds were often conditioned on the jurisdiction's completion of a variety of program requirements. By the end of November, only 37 percent (492) of the approved grants amounting to \$422.9 million (or one-fifth of the total dollar amount of CDBG funds) had been freed from conditions. Congressional critics noted this slow draw-down of funds with some concern. As late as March 1976, Secretary Hills was still being queried about the slow pace of local jurisdictions in actually receiving their funds.⁶

Local Responses

To better understand the sometimes slow startup time for CDBG participants, it is necessary to look at the structural, organizational, and political changes which occurred at the state and substate levels. In the process of returning power to the local people, the act has altered many of the traditional roles and relationships. Expanded fiscal and program responsibilities are mandated on participating local government grantees, placing some of them in novel positions. There is little in the legislative history to indicate that such a

restructuring was intended or even contemplated. Rather, these changes seem to be the byproducts of the mechanism which attempted to transfer most of the administration of national programs to the local level.

As if to indicate just how new the subject matter was, one of the initial actions taken by HUD in light of the designated position of local general government under the act was the commissioning of a study to determine if these units, in fact, had the requisite legal, financial, and intergovernmental authority to participate in the new community development funding scheme.⁷ The power question was of particular concern to the urban county, since the act's language conditioned automatic entitlement upon its authorization under state law to undertake essential community development and housing assistance activities in its unincorporated areas. Although equally as explicit language was not used in the definitions of the other governmental units, it was obvious from the nature of the grant that the existence of certain powers would have to be present if a grantee intended to use the funds as intended by the act.

The HUD-sponsored surveys divided these powers into three basic categories: categorical, financial, and intergovernmental. In each area, varying percentages of the cities and counties were found to lack the powers necessary to use the CDBG program completely. Some of the more serious examples include:

Categorical Powers

- 1) lack of legal authority to pay the requisite costs of relocation assistance and replacement housing;
- 2) lack of direct legal authority to provide conventional or leased housing, rehabilitation loans and grants, construction of publicly assisted housing, and cash rental subsidies;⁸
- 3) lack of direct legal authority to write down land costs, clear privately owned land, lease land to developers, sell or donate property to individuals;⁹
- 4) lack of timing and sequential control powers; and
- 5) lack of full powers over construction, operation and maintenance of water, sewer and solid waste facilities.¹⁰

Fiscal Powers

- 1) lack of authority to raise state-established debt limits (which are often already reached) in order to

undertake additional development activities;¹¹

- 2) lack of authority to assign or transfer funds to other special or general governmental units (e.g., as would occur in a cooperative agreement) or to private development agencies should the recipient not be able to carry out a certain function on its own accord;¹²
- 3) lack of authority to pledge the full faith and credit of the locality;

Intergovernmental Powers

- 1) inability to transfer authority to perform community development activities to any city;
- 2) lack of legal authority over special districts and public authorities.

These surveys highlighted the legal dilemma which faced many state and local governments after the passage of the act. The CDBG program was structured to increase the powers of local government, but in many cases the legislation offered local governments funds to perform tasks that they were not legally empowered to perform. To reverse a widespread practice of using special authorities, the act essentially subjugated those state and local housing, urban renewal, and other special authorities which were dependant upon Federal funding to the rule of local government. State governments were faced with a difficult policy choice: either augment the powers of local government or deny these localities power and, with that decision, Federal funding. Many states acquiesced to the subtle but real Federal-local pressure, often despite the fact that some of the same powers had previously been sought by localities and denied. But this state action can hardly be called voluntary. The fact that the Federal funding carrot was dangled in front of eager and financially strained local governments can not be overlooked.

In some cases, state governments moved swiftly to allow their localities full participation. Seven counties in four states were notified during their initial application proceeding that they lacked all or some of the necessary legal authorities in their unincorporated areas to meet the essential powers test and to qualify as entitlement jurisdictions. Six of these counties in three states were subsequently successful in obtaining the necessary state enabling legislation in time to complete the FY 1975 application. More than a dozen other states passed laws in 1974 and 1975 granting cities basic urban renewal and

community development powers specifically in response to the act.¹³

The most frequent concerns regarding legal impediments to parts of the CDBG program dealt with the inability of jurisdictions to make rehabilitation loans. The NAHRO survey indicates that 24 states have constitutional prohibitions against the lending or granting of credit. But the study also shows that about half of these states have passed enabling legislation to allow municipalities to undertake rehabilitation loans and/or grants (or have home rule legislation which has the same enabling effect) despite constitutional prohibitions.

HUD's Assistant Secretary Meeker presents a different picture when talking of the program in operation.¹⁴ Although a preliminary HUD survey indicated that 26 states might have legal impediments to making rehabilitation loans, the attorneys general in all but five of the states had ruled that the municipalities could legally engage in making rehabilitation loans. In the remaining five states, Meeker reports, rehabilitation loans were being made, regardless.

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Cooperation Agreements. The proliferation of cooperation agreements was one of the most significant developments, especially as they affect inter-governmental relations on the substate level during the first year of the program; 1,875 incorporated units entered into cooperation agreements with 72 counties in 19 states. These agreements arose pursuant to the Section 102(a)(6) definition of an urban county which required that a county have both a population of 200,000 or more and powers to perform "essential community development and housing activities." A permissible means for counties to achieve the necessary population or authority is to enter into cooperative agreements with the incorporated areas within the county. The agreements are multipurpose and usually contain tradeoffs. First, they allow counties to raise their population over the 200,000 minimum which is required to achieve automatic entitlement status under the act. Second, they facilitate the transfer of the requisite authority to perform essential housing and community development activities to previously unempowered counties.

In exchange for the "use" of its population and in some cases its legal authority, the municipality benefits by: (1) becoming part of a unit which is guaranteed funding under the act rather than being forced to compete for discretionary funds; this fact takes on greater significance when the first year program statistics indicate that less than half of the discretionary

applicants received grants (1,174 out of 3,268 applicants); and (2) minimizing the need for administrative staff to prepare, administer, and be responsible for the grant, since these functions, by and large, are assumed by the coordinating county. On the other hand, the municipality relinquishes some of its autonomy as a result of this arrangement. It is prevented from applying to HUD for additional funding and can not provide for a veto or any other restrictions which would limit its support for the community development plan that is ultimately submitted to HUD.

Twenty-five of the 73 counties that qualified for urban county status met the population threshold on the basis of their unincorporated area population alone. Nevertheless, 23 of these counties opted to solicit local incorporated government participation in order to increase their entitlement allocation.

The process of devising acceptable cooperation agreements created some tension in its early stages. The format for the agreement was left to the counties which, with some assistance from NACo, submitted initial agreements to HUD after assuring the included towns and cities that no further conditions would be required. HUD found these initial agreements to be with one exception unsatisfactory and responded by devising a list of eight specific requirements which were to be included in cooperation agreements.¹⁵ Basically, these requirements operated to confirm the authority of the parties entering into the agreement and to firmly commit these parties to the specific community development plan which underlaid the pact. Furthermore, the counties were allowed less than two months to complete the task in order to be eligible for FY 1975 funding.

Despite the HUD guidelines, ultimate responsibility for achieving eligible status for funding purposes laid with the counties themselves. To this extent, intergovernmental cooperation was mandated by the act for those counties desiring to participate, but no formal method was established for this coordinative process. In some cases, the county commissioners took the lead; in others, the county administrator/executive was the initiator; while the department of community development assumed the role in still other cases. The point of contact at the city level also varied. For the most part, it was either the mayor or the city manager. And in a few situations, the city council was directly involved.

Application coordination was performed in a variety of ways, including ad hoc committees, consultants, and task forces of city and county officials. It was necessary to collect and assess the community development and

housing needs for each individual governmental unit and formulate a single application reflecting all of these needs.

Reaction to the cooperation procedure varied. HUD surveyed 35 counties and found that 17 believed that the requirement had an effect upon their community development program; 18 felt it did not. Of those who perceived a difference, some found the effects to be positive — the promotion of good county-municipal relationships, an equalization in the distribution of program funds and activities, and a facilitator of providing low income (Section 8) housing in incorporated areas. Other counties noted less favorable effects: the diminution of the county role and an implied commitment to proportionately allocate funds regardless of need.

The municipal groups likewise had mixed reactions. Some favored the procedure for reasons already noted. Others disapproved and refused to participate. Their reasons included: (1) a dislike of the required provisions in the cooperation agreement; (2) a fear of losing autonomy; (3) a belief that there were no guaranteed benefits for them; (4) a desire for benefits not offered or included in the county plan; and (5) a general preference to seek discretionary funding as an individual unit.

HUD also asked the surveyed urban counties about their methods of allocating the entitlement funds among the component localities. The responses varied, reflecting the flexibility of the cooperative procedure. Funds were allocated by population, formula, project costs, and a needs assessment. There was a considerable amount of variation in the number of cooperating units funded. Not all participants received funding (thereby justifying a concern on the part of some non-participating municipalities). To a certain extent, the numbers of units funded was a function of the allocation process used.

The funding breakdown for the 35 was as follows:

Allocation Method	Total Number of Counties Using Method
Formula	7
Population	3
Project Cost	0
Need	14
Need plus one or more of the above	11

Four of the ten counties using the formula and population methods funded all included jurisdictions.

Two counties using need and two counties using need plus another factor funded all included jurisdictions. The unexpectedly heavy use of the cooperation agreement helped to augment the number of qualifying urban counties. An examination of the population figures for these counties reveals that the qualifying population for all of them is often substantially less than the total county population. This would suggest the possibility of increased cooperation agreements, and therefore increased amounts of county entitlement funding in the future. If shortfalls continue in the general discretionary fund and if a successful record of cooperation is established by the already participating units, this possibility would appear to be a very real one. The end effect may be the heralding of a new era of intracounty cooperation.

Application Requirements. The “different strings” which have been attached to the CDBG program contain some which require of recipient governments a level of expertise or a functional mechanism not previously existing. Receipt of grant funds is conditioned upon fulfillment of each of these requirements. Constituents in some of the local jurisdictions have viewed these requirements as mechanisms by which effective local popular as well as governmental participation consistent with the broad objectives of the act can be assured. Since it is mandatory that a grant recipient certify their adherence to certain Federal laws and procedures¹⁶ and because the act specifically provides administrative and judicial remedies for non-compliance,¹⁷ citizen monitoring groups have already shown a willingness to take their governments to court to air their grievances about allegedly improper local decisionmaking. While some officials note that few cases have been filed and even fewer have been decided against the local decisionmaker, the option of obtaining satisfaction in the courts is an important check in a system based on checks and balances.

At least a dozen cases have been filed in Federal and state courts. These cases have challenged the following provisions: the Housing Assistance Plans; the environmental review procedures; the citizen participation requirements; the relocation assistance requirements. In California, “citizens’ suits” attacking the sufficiency of local plans have met with some success.¹⁸ To date, three Federal District Courts have ruled on CDBG cases. The *Hartford* decision, as mentioned earlier, was decided against HUD and essentially overruled the housing plans of the seven suburban defendant cities. However, two other decisions have upheld HUD’s approval of the community develop-

ment plans of Dallas, Texas, and Santa Rosa, Calif.¹⁹ In the Dallas case, the court found that the city complied with the applicable HUD regulations and the law for environmental review and citizen participation. Similarly, the court in the Santa Rosa case found the city's citizen participation procedure and its HAP to be adequate, and its use of CDBG funds to be in compliance with the law.

While all the requirements are important, four requirements in particular have generated the bulk of local action thus far. One, the HAP, has already been discussed. The other three are the environmental review procedures under the *National Environmental Policy Act*, the citizens participation requirements, and the A-95 review.

Environmental Review. Section 104(h) of the act authorizes HUD to delegate to recipients the authority for insuring that projects funded with the community development block grants meet all Federal environmental requirements. In the regulations for this section,²⁰ HUD requires all applicants to assume this responsibility and all executive officials in recipient jurisdictions to agree to assume all legal enforcement responsibilities heretofore exercised by Federal officials.

This section drastically changed the Federal review mechanisms. As one commentator put it: "... Congress inaugurated a new era in environmental review of major Federally funded projects."²¹ Every local government recipient is required to fulfill the *National Environmental Policy Act* (NEPA) responsibilities as though it were a Federal agency. This new system has raised questions and concerns, not the least of which goes to the efficacy of basic delegation of regulatory responsibility. Some commentators, including Environmental Protection Agency (EPA) officials, expected a challenge to HUD's action based on the argument that the total delegation of environmental review responsibility exceeded the authority Congress granted to HUD in the act. To date, that challenge has not arisen. But, the more serious concerns go to the operational effect of this section upon local governments and upon program operations.

Many local jurisdictions were not prepared to take on this novel responsibility. General knowledge of Federal environmental regulations and the technical expertise for implementing them was frequently lacking or minimal. Where there existed state environmental protection agencies, localities had more familiarity and experience with environmental issues; but state and Federal regulations are generally not identical. Local executive officials were still left with the task of learning about

generally more stringent Federal measures. HUD field offices varied in the amount of assistance provided to applicants in this area. Thus, the performance of local governments here has ranged from outstanding to inadequate.

In addition to the requirement that localities make environmental analyses, the responsibility of defending lawsuits filed on the basis of environmental objections to projects funded under the CDBG program is also assumed by local governments. Thus far, the number of suits has been minimal, thereby granting local government attorneys temporary reprieve from this duty.

The minimal legal challenges can partly be explained by one of the impacts of the delegation of environmental review responsibility. Recipient jurisdictions have tended to shy away from projects which would require extensive environmental analyses. Where environmental review statements have been required, the processing time becomes extended. In New York City, an environmental review took between four and six months to complete.²² A jurisdiction with an immediate need which cannot afford to wait may be forced to scrap the project or seek funding elsewhere.

It is possible that some of the problems in this area will cure themselves with time as local officials gain a greater knowledge of NEPA requirements and their own responsibilities. Yet, the larger issue of the propriety and the desirability of the delegation to units of local government of review duties in major Federally funded programs requires more serious consideration, particularly where it preempts state review programs – totally or, in the case of community development environmental review, on a jurisdiction-by-jurisdiction basis. The intergovernmental impact of such delegations cannot be overlooked; nor should the decision to delegate major Federal review responsibility be taken lightly.

Citizen Participation. The citizen participation requirement attempts to involve actively community residents in the local government decisionmaking process. HUD regulations require each applicant to certify that it (1) has provided citizens adequate information concerning the amounts of funds available for proposed community development and housing activities, the range of permissible activities, and applicable program requirements; (2) held at least two public hearings to obtain citizen views on community development and housing needs; and (3) provided citizens an adequate opportunity to participate in the development of the application. Each of these measures

has the potential for promoting local government accountability to its citizens.

But while the act mandates some form of citizen input into local government's community development planning, it stops short of requiring that the recipient establish a particular format or accommodate the views which the citizens express. On the former point, the act reflects HUD's feeling that structuring the manner in which local government related to its citizens was not an appropriate role for HUD. On the latter point, the act specifically notes that community involvement:

Shall not be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Program.²³

Reactions to the implementation of citizen participation requirements have been varied. A majority of the 880 entitlement recipients surveyed by HUD attested to the fact that the degree of citizen participation in developing community development applications increased an average of 80 percent over similar involvement with prior categorical programs, and that such community involvement was the first or second most influential non-governmental factor on the direction and development of the application for a majority of the recipients. The large increase in the amount of citizen participation was to be expected, given the fact that the requirement itself was a prerequisite to the receipt of funds, and that only the Model Cities and the urban renewal programs had similar provisions for community involvement in neighborhood planning.

The more revealing question concerning this program requirement goes to the amount and nature of its influence on the local decisionmaking process. There is certainly information to support the claim that some jurisdictions have responded by establishing new structures to facilitate citizen input. In Birmingham, Ala., for instance, the city council has adopted a three-tiered system of elected advisory boards (neighborhood citizen committees, community citizen committees, and a citizen advisory board) to insure community involvement. Other communities have adopted less elaborate systems such as the use of existing (former Model Cities or urban renewal) advisory committees or other general community organizations; newly formed advisory committees; citywide door-to-door surveying; mobile city hall units; mailed questionnaires; and the convening of informal

neighborhood meetings. There is nevertheless, contradictory information about the actual influence exercised by the participating groups.

The Southern Regional Council, the NAACP, and the National Urban League (NUL) have all maintained that, based upon their investigations in a variety of recipient jurisdictions, meaningful citizen participation in the program is largely non-existent.²⁴ Similar views have been raised by concerned citizen groups in the form of written critiques of individual plans and, in a few cases, lawsuits. These complaints focus on the fact that the act failed to establish adequate guidelines for insuring the incorporation of citizen viewpoints. Examples of total disregard of stated community objectives by local elected officials have prompted an interest in the formulation of a Federally mandated review or grievance procedure to assure compliance with the letter and spirit of the act. Finally, lack of access to relevant official information has been noted in some cases and has hampered community effectiveness.

Another commentator on the citizen participation procedure has raised a different series of concerns which go to the effectiveness of the requirement.²⁵ Anthony Downs suggests that even the existing types of citizen participation groups will be ineffective in achieving certain crucial goals of the act unless their basic role in the process changes. First, the groups should have an ongoing advisory role which would encourage broad citizen participation, exercise greater influence over the actual use of community development money, and participate in the ongoing educational process of explaining governmental operations to the citizenry.

Second, they should encourage the participation of the financial community in an effort to attract financial resources into community development. Recognizing the fact that the Federal funding is totally inadequate to accomplish any serious program of urban improvement, Downs suggests the establishment of one overall citizens' advisory group to work with the local business community to generate additional program funding.

The importance of leveraging funds has been recognized by everyone involved in the CDBG program, although not necessarily in connection with the citizen participation requirement. Some cities and counties have already been successful. In 15 cities surveyed by HUD, CDBG funds have generated \$81 million from a variety of sources, while nine surveyed counties expect to leverage an average of 86 cents for each CDBG dollar. Thus far, private investment has not been the major source of leverage funds. The largest source of funds used by communities to increase their projects have come from other Federal agencies, with the Department

of Health, Education, and Welfare dominating. The largest source of non-Federal funds came from cities, counties, and states. Where private investments have been made, the urban counties have been the primary beneficiaries. This funding pattern would support the observation that additional action, in some form or another, is needed to attract private funds.

HUD has scheduled a study of the roles, models, and effectiveness of citizen participation in recipient communities as part of its community planning and development research series. Its results, when evaluated in conjunction with the evaluation reports of other monitoring groups, should suggest additional ways for strengthening this important process.

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A-95 Review. Section 106(e) requires the submission of an application to state and areawide clearinghouses for A-95 review prior to a grant of CDBG funds. Yet, in the interpretation of this section, the HUD regulations state:

the applicant must give careful consideration to applicable areawide plans but need not conform rigidly to such plans or secure approval of areawide planning agencies.²⁶

These two provisions provided the basic guidelines for the involvement of local government recipients with areawide and state planning agencies. Although the review and comment procedure was clearly mandated, the regulations could be read to mean not much more than this. The language of the regulations was less stringent than prior legislative review requirements under two of the consolidated categorical programs (open space and water/sewer facilities). This apparent retreat raises a question regarding the importance of areawide agencies in this new federal scheme.

In the first year of program operation, the state and areawide clearinghouses did not assume critical positions in the review of applications. OMB was in the process of revising its Circular A-95,²⁷ while HUD was fleshing out its own A-95 guidelines for CDBG participation.²⁸ When these two factors were combined with the overall newness of the CDBG program, the results added up to a less-than-effective A-95 comment procedure for the first program year.

The second year promises to be better. The Secretary of HUD has indicated that she is looking to state and areawide clearinghouses to play a more active role in the coordination of the CDBG program. To this end, HUD has issued new guidelines for A-95 comments to the clearinghouses so that their comments may reflect

information which is useful to HUD in making its funding decision.²⁹

The new guidelines underscore the intergovernmental importance of the clearinghouse's role. Individual CDBG applications address localized problems, while the clearinghouse reviews place those problems into an areawide and a state context, and help to identify the broader effects of individualized policies. HUD also envisions these units as providing a substantial data source. By suggesting these new responsibilities for the clearinghouses, HUD appears to be taking a stronger pro-regionalism stand.³⁰

HUD's Assessment

Pursuant to Section 113 of the act, HUD issued its first annual report on the CDBG program on December 31, 1975.³¹ In this 300-page report, HUD detailed the process of setting up the program, the progress made towards accomplishing the objectives of the act, and its use of the \$2.55 billion appropriation for FY 1975. The statistics which the report contained provide an initial look at the program in operation.

Grant Administration. The most striking changes under the CDBG program have occurred in the area of grant administration. Specifically, HUD noted four new characteristics of the CDBG which are indicative of the new simplified program.

First, the program requirements have been streamlined. Federal regulations governing the first year of the program (as evidenced by *The Federal Register*) were reduced from 2,600 pages under the seven previous categorical programs to 25 pages.³²

Second, a single grant application has replaced the multiple applications required of each locality under the former categoricals. In large cities, the number of applications for funds was reduced from the average of five applications per year during the period 1968-1972 to a single application in 1975. The application was both shorter and less costly. The entitlement application averaged 50 pages and the discretionary grant application averaged 40 pages. Both types were substantially shorter than the average 1,400 page application filed each year for earlier categorical programs. The cost to the applicant was reduced in both dollar amount and staff hours. The average dollar cost was \$12,305 per application, which amounted to less than 1 percent of the typical grant. The average number of staff hours utilized in the preparation and submission of the application was 1,035.

Third, the average HUD review time for entitlement applications was shortened substantially when compared to the time lapse involved in the review of the former conventional urban renewal programs. By law, an entitlement application is approved if HUD does not act within 75 days of its receipt. During the first year, the average review time was 49 days, less than the statutory requirement.³³ HUD also noted that the overall time involved in preparing an application from start to finish was reduced from 31 months for conventional urban renewal projects to eight months for CDBG entitlement awards.

Finally, the act restricts HUD from performing a detailed review of the application.³⁴ Instead, HUD performs a limited review function to assure basic compliance with the objectives of the act and related Federal laws. This new procedure has two effects: expediting the review process and reducing the amount of Federal administrative discretion.

To supplement the statistical data, HUD conducted an additional survey of recipients. In effect, HUD

wanted to determine whether the new simplified grant administration process was perceived as such by actual participants in the program. The results indicated that the recipients' perceptions differed depending upon the extent of their previous involvement with the former HUD categoricals. Where a city had participated in one or more of these programs, its administrators tended to perceive a decrease in the amount of Federal requirements and Federal intervention under the new CDBG program; this was especially true among participants in six or more of the older programs (74 percent of the 152 cities surveyed in this category). Generally, the greater the past program participation, the greater the recipient awareness of a decrease in HUD intervention.

Fund Allocation. As of December 3, 1975,³⁵ HUD had approved community development grants totaling \$2,505,863,000 of a possible \$2.55 billion.³⁶ *Table 1* illustrates the breakdown by grant category.

HUD further interpreted this data by comparing the

Table 1
CDBG FUND ALLOCATIONS AND APPROVAL BY GRANT CATEGORY*

Category	ALLOCATIONS		APPROVED GRANTS		
	Number	Amount (\$,000)	Number	Amount (\$,000)	Percent
Formula (Metro Cities-Urban Counties)	594	\$1,776,365	581	\$1,771,769	70.7
Small Hold Harmless					
SMSA	301	172,565	293	170,963	6.8
Non-Metropolitan	450	269,799	447	269,770	10.8
Discretionary Balances					
SMSA	***	54,642	357**	29,667	1.2
Non-metropolitan	***	199,694	1,179	199,000	7.9
Other Discretionary	***	76,935	93	64,694	2.6
TOTAL		\$2,550,000		\$2,505,863	

*Based on data available December 5, 1975.

**Some applications are still under review.

***The potential number of discretionary applicants was not estimated.

Source: Department of Housing and Urban Development, Office of Community Planning and Development.

CDBG funding patterns with the pattern under the categorical programs for the base years of 1968-72 with the following results:

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- the number of small cities under 25,000 receiving funds increased from 794 to 1,313, but cities with 10,000 to 24,999 population received an average grant decrease of 7 percent and cities under 10,000 experienced a 33 percent decrease from the average former categorical grant;
- medium size cities between 25,000 and 100,000 population slightly increased their participation (from 457 to 492) and their average grant amount slightly decreased (percentages not given by HUD);
- the number of large cities over 100,000 population receiving grants remain constant and their average grant slightly increased the average grant figure by 1 percent;
- non-metropolitan discretionary grants were awarded to 739 localities with no prior history of participation in categorical grant programs; and
- entitlement grants were awarded to 58 cities with no prior categorical grant assistance (in the amount of \$10,474,000) and to 22 urban counties with no prior participation (in the amount of \$17,378,000).

Overall, the results of the first year fund allocation were largely as expected. The amount of available CDBG funds rose from \$1.96 billion in FY 1972 (the last year of full categorical program funding) to \$2.55 billion in FY 1975. When adjusted to current dollars, this reflects a 15 percent increase³⁷ in funding. This minimal increase in funds appears even smaller when compared to the increase in the number of program participants. There were 80 new recipients under the entitlement funding provisions: 58 metropolitan cities receiving \$10,474,000 and 22 urban counties receiving \$17,378,000. The number of new SMSA discretionary recipients increased dramatically from about 450 which were funded under some categorical program from 1968-1972 to 938. Similarly, the number of

non-metropolitan discretionary recipients expanded, adding 739 new participants. As was to be expected, the average grant generally decreased, with the smaller cities shouldering the bulk of the larger cuts.

At first glance, the fears of the larger cities that their assistance levels would drop substantially under the new CDBG program have not been borne out. However, the first year results can be deceiving if one ignores the fact that the funding allocation for the CDBG program is artificially controlled for the first three years of the program by the use of hold harmless provisions. These provisions fulfilled their designated purpose during the initial program year and buffered many of the larger entitlement cities from substantial impending funding decreases.³⁸ Limited reference is made in the HUD report to these changes. In discussing the new entitlement cities and counties, HUD noted that their current total of \$27,872,000 in new funds will increase threefold in FY 1977 when the needs formula is phased in.³⁹ However, no parallel statement is made concerning the prospective decrease in funding to the hold harmless cities. The more revealing picture of the comparable allocations between categorical and block grant programs then will not appear until FY 1977 or at such other time as the phaseout of hold harmless funds begins.

Entitlement Recipients. Often, the story of the non-participating but eligible is as informative as the story of the recipients when assessing the program's success. This is particularly true in this program where the issues of recipient eligibility and fund availability were in dispute.

Of the 1,269 metropolitan cities entitled to receive CDBG funds, only 18 (1.4 percent) failed to receive their funds. According to HUD documentation, the reasons were varied. One city failed to complete its application by the established deadline date. Two cities declined to apply for funds because the amount of funding was too small to justify the application effort. Three applications were actually disapproved.⁴⁰ Two cities utilized their full entitlement as amendments to existing urban renewal projects as allowed under the act.⁴¹ The remaining potential recipients refused the assistance because they were unwilling to provide housing assistance for low and moderate income persons as required by the act.⁴²

Seventy-three of the 84 potential urban counties ultimately qualified as entitlement urban counties under the act. Only three of the 11 counties which were identified as potential recipients demonstrated no initial interest in the CDBG program. These three counties

failed to submit letters of intent to apply for funds.⁴³ The other eight counties were weeded out during the application process. Although initially seven counties in four states⁴⁴ had legal impediments to their participation, only Baltimore County, Md., failed to remedy its legal deficiency. Baltimore County was subsequently denied entitlement status for failure to meet the "essential housing and community development powers" test. Five counties were disqualified for their inability to meet the 200,000 population minimum as set by the act, either independently or through the use of cooperative agreements with incorporated units of governments within the county.⁴⁵ Finally, one county failed to submit the final application,⁴⁶ while a second submitted an incomplete, and therefore unacceptable, application.⁴⁷

For those eligible for entitlement funding, the failure on the part of a recipient to receive funds can generally be explained in either one of two ways: the jurisdiction made a conscious decision to refuse the funds or it failed to meet certain limited programmatic requirements which constitute the basis of the Secretary's limited review of the entitlement applications. In the latter case, this may result from a failure to meet national requirements, a refusal to accept national objectives, or a failure to meet certain specific programmatic requirements. In any of these cases, the result is consistent with the intent of the act - to fund those localities which need assistance and accept certain basic national goals. The potential recipient has the option either to conform to these requirements or forego the Federal funding.

Discretionary Funds. The candidates for discretionary funding, on the other hand, have no such option. Although receipt of funds is conditioned upon acceptance and conformity with prescribed Federal regulations, mere adherence to the mandated conditions is insufficient. Competition is introduced in a win or lose fashion. If the application is rejected, there is no alternative source of Federal funding for community development related projects. An assessment of the allocation of the four types of discretionary grant funds must be viewed in light of this fact.

Total funding requests for SMSA discretionary balances amounted to \$132.8 million or more than twice the \$54.6 million available for this portion of the program. The number of applicants reached 959, of which 357 received grants.⁴⁸

The picture for non-metropolitan discretionary grant funds was even more bleak. The FY 1975 funds in this

category totaled \$199,694,000. By December 1975, 2,270 cities, counties, and townships had filed applications requesting a total of \$478 million. Of this number, only 1,174 applications for the \$199 million were approved. Another 998 unsolicited applications requesting more than \$234 million also were rejected.

HUD's report was less specific about the numbers of applicants for the remaining two discretionary grant funds. The three-year urgent needs fund which was "designed to facilitate an orderly transition to the CDBG program where HUD had invested in viable but uncompleted projects under specific categorical grant programs" dispensed \$50 million to meet commitments in three program areas:

- 1) Urban Renewal,
- 2) Planned Variation (PV) Cities, and
- 3) Water and Sewer Projects, Neighborhood Facilities, and Open Space.

Although it is certain that HUD did not fund all who applied, no indication of the percentage of total applicants receiving funding is provided. Some facts are known among the 20 Planned Variation cities, however; 16 were considered for urgent needs funding and 13 actually received the funds. The bulk of funds (80% or \$10,200,000) was awarded to urban renewal projects.

In September 1975, NAHRO surveyed 725 communities, asking them to estimate the total amount which would be needed to complete ongoing HUD approved urban renewal projects. Of the 334 responses, 209 communities identified a need for \$1.77 billion in additional capital grants. However, of this group, only 90 attested to applying for urgent needs funds, requesting a total of \$336 million. But these jurisdictions admitted that the requested amount was below their real needs, which they estimated came to \$670 million. Total funds received by this group, however, were only \$20 million. Based upon its survey, NAHRO judged that the urgent needs funds, rather than being a one-time transitional fund, needs to be continued with an additional appropriation of \$200 million for 1976 and 1977 and \$300 million in FY 1978, 1979, and 1980.

Urgent need funds for water and sewer were awarded to eight recipients, while 13 received grants for neighborhood facilities use. What percentage of need this factor reflects is unclear from the HUD report.

The Secretary's 2 percent discretionary fund authorized \$26,951,000 to be spent for five purposes: new communities; inequities; territories; innovative projects; and Federally recognized disasters. A sixth

designated category for use of the Secretary's fund, areawide programs, was not funded for FY 1975. Funding for the Secretary's fund underwent major changes. The original FY 1975 allocation was \$47,907,500 (or 2 percent of the CDBG appropriation less \$50 million for urgent needs and \$50 million for SMSA hold harmless entitlements and discretionary grants pursuant to Section 103(a)(2)). Of this amount, \$20,965,500 was transferred to hold harmless entitlements in order to cover the shortfall resulting from the unexpectedly high number of qualifying urban counties.

The New Communities Administration was allocated \$13.1 million of the Secretary's discretionary fund, and requests from 13 new communities for approximately \$115 million were received. When the HUD annual report went to press, six applicants had received approvals for \$6,252,690 with the remaining funds reserved for the other seven. These funds were allocated on a basis of different criteria than those of other grants and focused on three issues: (1) were grants necessary to achieve new community objectives; (2) were funds for the activity needed immediately to sustain a project's current development program (with an emphasis placed upon hard infrastructure investments such as essential public works and facilities); and (3) what were the long-range prospects for the project's success?

The inequities portion of the discretionary fund was designed to permit necessary adjustments to more equitably reflect local needs for CDBG and \$26,283,250 was allocated for FY 1975. Of this amount \$20,956,500 was used for hold harmless entitlements and \$17,000 was shifted to the SMSA general purpose fund to cover an excess in the computed SMSA balances resulting from the computerized rounding of formula figures. Five Indian tribes received \$392,000 under this non-metropolitan discretionary balance program while the remaining \$4,917,720 was allocated to 11 entitlement cities and counties and one non-entitlement city. Selection criteria established three specific areas for dispensing of these funds:

- correction of technical error in computation of amount,
- supplement of urgent need funds, and
- supplement entitlement grants where the base period used to calculate the entitlement grant does not adequately reflect recent local participation in HUD categoricals *and* the application is a phase-in metropolitan city or county.

Two awards were made based on the first criteria; two

on the second; and six on the third. A final grant was made to address a unique situation where a specific requirement of the act contradicted express congressional intent (Smithville-DeKalb County, Tenn.).

Separate funding for four U.S. territories was required due to the lack of available census data regarding poverty and housing conditions which made the non-metropolitan discretionary balance fund formula inapplicable. The \$3,250,000 in allocated funds were awarded to American Samoa and the Pacific Territories. Guam and the Virgin Islands received hold harmless grants.

From the final Secretary's fund category, \$3.9 million was dispersed to states and units of local government for the purpose of conducting innovative community development demonstration projects in three priority areas. Twelve grants totaling \$1.9 million were awarded to two states and ten cities: three grants for projects in public service productivity, five in energy conservation, and four in neighborhood conservation. An additional \$2 million was awarded to fulfill a prior departmental commitment for a joint state-city innovative neighborhood preservation demonstration project.

The Federally recognized disasters fund was allocated \$1,360,673. Section 107(b) of the act specifically limits expenditures in this category to not more than one-fourth of the total reserved amount in the Secretary's fund. No applications in this area were approved nor were funds expended.

The combination of limited funds and the sheer volume of discretionary grant applicants in the various categories necessitated certain procedural requirements. During the first year, preapplications for discretionary funds were encouraged but not required of applicants for metropolitan and non-metropolitan general funds. They were required, however, of applicants for urgent needs and innovative grants. In their reviews, HUD field office staffers ranked these preliminary applications, made initial funding decisions and notified preapplicants of their relative chances of receiving a grant based upon the preapplication of other eligible competitors. Where preapplications were mandatory, the system worked; where preapplications were voluntary, it did not. New applications required continual reranking of all applications in hand, and chances for funding changed accordingly. In September 1975, HUD decided to require preapplications for all discretionary grant applicants, and final applications would only be accepted at the invitation of HUD. Citizen participation requirements had to be met prior to the preapplication and applicants were discouraged from adding or substituting different activities between

submission of the preapplications and the full application.

Within each discretionary grant category, specific criteria and priority areas were devised to rank the preapplicants. Although there was some variation, the main focus was on the type of activity; the length of performance time; the community need, eligibility, and capability of applicants; and the adequacy of the funds in light of the proposed activity. Staff was encouraged to develop standard response language which indicated an applicant's chances; to inform applicants of the necessary certifications; and to remind them that regardless of the field's evaluation of the preapplications, they still were able to apply for funds.

HUD's Office of Evaluation and Planning is quick to explain that its rather cursory treatment of the discretionary fund portion of the new program in the first year report is a result of two major factors: the original shortfall of funds; and the delay in allocating the available funds. Preliminary plans for the second year report reveal a heavier emphasis on this phase of the program and this is significant. After all, as hold harmless phaseouts begin, a larger percentage of the funds will be dispensed by the discretionary grant mechanism.⁴⁹

During the first year, the discretionary grant has fulfilled a multiplicity of roles. It has provided funding for a large number of smaller jurisdictions, in both metropolitan and non-metropolitan areas. It has given the Administration the flexibility it needed to ease the transition from the old to the new program. Finally, it has allowed for a certain amount of experimentation with new approaches. In short, the discretionary fund has been used to lubricate some potentially squeaky wheels as the new block grant begins to gear up for action.

Uses of Funds – National Objectives. HUD analyzed the applications to determine intended uses of funds and to compare these intended uses with the act's national objectives. The statute states its primary goal to be:

... 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.⁵⁰

Pursuant to this broad purpose, seven specific objectives are mentioned: the elimination and prevention of slums and blight; the elimination of detrimental conditions;

the conservation and expansion of the housing stock; the improvement and expansion of the quantity and quality of community services; more rational utilization of land resources and better arrangement of activity centers; the reduction of the isolation of income groups; and the historic or esthetic restoration or preservation of property. Because many of these objectives overlap and many proposed projects addressed more than one of these goals, HUD had difficulty in quantifying the attention paid to each. Nevertheless, the report makes two points: the seven specific objectives received varying amounts of attention; and the bulk of the funds are going to the intended recipient groups – the low and moderate income persons.

The two national objectives which were given greatest emphasis by CDBG recipients were the prevention of slums and blight and the conservation and expansion of housing stock. Although these objectives are by no means new ones to many communities, the methods which are being used to achieve them have changed. Many communities are moving away from new, large-scale, long-term redevelopment programs and conventional urban renewal and concentrating more on rehabilitation of existing stock and preventive measures to curb blight in its earlier stages.⁵¹ This change appears to reflect recipient uncertainty over future funding as much as a change in basic community development philosophy and strategy.

At the other end of the scale, the two national objectives receiving the lowest priority were the reduction of the isolation of certain income groups and historic preservation. Although 14 percent of the CDBG recipients indicated that the former was an area of emphasis in their first year programs, no funds have been identified in specific support of that anti-isolation objective. Historic preservation was ranked as a priority by the lowest percentage of recipients (7%); and only 1 percent of CDBG funds were targeted to such activities.

Among the remaining three national objectives, some programs reflect definite funding increases. These include a 525 percent increase in funds for code enforcement, a 1,300 percent hike for selective demolition to eliminate detrimental conditions, and a 30 percent increase for neighborhood facilities to achieve better resource utilization. These increases suggest that the prior funding limits under the categorical programs may have operated to curtail preferential spending by local governments in these community development areas and this tends to validate one of the underlying assumptions of the AA and PV programs.

The improvement and expansion of community services was an objective formerly shared only by the

Model Cities program. In addition, there is legislative history in the act to indicate Congressional intent that this is not a dominant goal of the CDBG program and the 4 percent funding figure for public services reflects this. This is noticeably less than the 20 percent limit proposed in the defeated Senate bill, S. 3066, but, in a few communities, public service expenditures have exceeded 20 percent. This was particularly the case with some sample non-Model Cities communities with populations of less than 100,000 and entitlements less than \$350,000, where emphasized services are child care, activities for the elderly and neighborhood legal services.

Budgeted service expenditures of over 20 percent also were found in some additional cities if certain other line items besides the explicit "Provision of Public Services" are included, such as special projects for the elderly and handicapped; Model Cities continuation; and payment of the non-Federal share in other programs. The majority of these cities were former Model Cities which inherited larger service components from their prior program experience. This difference in general service spending levels between Model Cities and non-Model Cities is attested to by the fact that the average amount budgeted for service programs was \$645,000 for Model Cities as compared to \$91,000 for other cities.

A difference in the use of funds can be noted between former Model Neighborhoods and other neighborhoods in former Model Cities as well as in non-Model Cities. Although medical care, child care, and elderly services receive about equal emphasis, former Model Neighborhoods emphasized legal services and education, while the formerly excluded areas within the Model Cities concentrated more on economic development and housing counseling. Non-Model Cities, in contrast, emphasized neighborhood security, crime prevention, and interim projects related to rehabilitation activities.

Consistent with the primary objective of the act, HUD found CDBG recipients programming approximately 71 percent of their funds to benefit low or moderate income families. This figure was arrived at by analyzing the amount of CDBG funds targeted for the relevant census tracts ranking them first from richest to poorest in 151 sample cities, and then according to the relationship of their median income to the SMSA median income. Under the latter method, the results indicate 69 percent of the funds going to census tracts with median incomes of 80 percent or less of the SMSA median income.^{5 2}

Uses of Funds – Local Strategies. In addition to addressing national objectives, CDBG recipients were

required to develop a comprehensive strategy for meeting their community development needs in the form of a three-year plan with short (one year) and long-term (three years) goals. A separate but related requirement was the submission of a HAP to encourage and facilitate coordination between community development and housing needs. HUD's Community Development Funding Survey sought information regarding the priorities and uses of funds in both areas.

Entitlement cities and urban counties were found to have similar needs, but these varied in priority ranking. Entitlement cities listed their four top priorities as:

- improvement or expansion of the housing stock (26% of the priorities listed);
- community services and facilities (19%);
- water and sewer needs (15%); and
- elimination of slums and blight and economic development and employment (10%).

The urban counties' list was as follows:

- construction and improvement of water and sewer and other public facilities (29%);
- improvement or expansion of the housing stock (28%);
- provision of parks, recreation, and open space (9%); and
- elimination of slums and blight.

While recipients recognized that CDBG funds would assist in addressing these priority needs, they conceded that this assistance was insufficient to meet these needs completely. The cities reported that only 9 percent of their priority needs would be satisfied completely but partial satisfaction would occur in another 68 percent. The act's substantive program restraints and lack of funding will prevent all needs from being fulfilled. Overall, however, 78 percent of the entitlement cities and 50 percent of the counties reported an increase in their capacity to handle community development programs as a result of the CDBG funds.

When community development strategies are viewed by income areas, by types of neighborhood (Urban Renewal-NDP, blighted, central business district, etc.), and by minority population, variations arise among the priorities and types of planned activities. But the general pattern is the same as before consolidation. In the low and moderate income areas, in minority neighborhoods, and in Model Cities, Urban Renewal-NDP, and other

Table 2
DISTRIBUTION OF TOTAL PLANNED HOUSING ASSISTANCE

	Percentage of Total Housing Needed	Percentage of Assistance Planned	Percentage of New Construction Assistance	Percentage of Rehabilitation Assistance	Percentage of Existing Housing Assistance
Large Families	13%	16%	12%	22%	16%
Elderly- Handicapped Households	33	38	52	22	34
Small, Non- Elderly	54	46	36	56	50

blighted neighborhoods, conventional urban renewal-type activities combined with housing and supportive public works are the primary strategic activities. In the more affluent, non-minority and less blighted areas, the funded programs, while reflecting some of those in the poorer neighborhoods, tend more toward water and sewer needs; service related and neighborhood facilities; open space; and public works.

Although Housing Assistance Plans received reduced emphasis during the first year of the program, HUD sample data⁵³ revealed an initial picture of the housing situation in entitlement communities. Overall, the percentage of substandard housing was set at 11 percent (the Census Bureau estimate was 10 percent). However, this figure reflects a range from 92 percent in one city to less than 1 percent in seven cities. Seventy-five percent of the substandard housing was deemed suitable for rehabilitation with the remaining units (2.6% of all housing) being considered in need of demolition. The average vacancy rate was 4 percent, although the range varies between less than 1 to 38 percent.

The basic program approach to housing assistance for almost one-half of the recipients is to mix the strategies of new construction with rehabilitation and utilization of existing standard units. About one-third of the recipients intend to combine two of the three types of assistance. A smaller proportion plans to utilize only one method: new construction only (7%); rehabilitation only (4%); and existing units (9%). Of the three approaches, greatest preference was expressed for new construction (43% average; 44% median), while less interest was expressed in rehabilitation (30% average, 17% median), and in use of existing stock (27% average, 19% median).

A mixed approach also is used by 79 percent of the

recipients in providing for the needs of lower income, small, large, and elderly households. Only 3 percent of the communities plan housing assistance for the elderly alone, while only 2 percent plan solely for smaller, non-elderly families. Another 16 percent are planning for two family groups. The following tables illustrate the distribution (*Table 2*) and types (*Table 3*) of housing assistance proposed for each household group in the HUD survey.

Smaller families receive a smaller percentage of their housing needs, while the other two categories receive slightly higher percentages than their needs. The elderly and handicapped are designated for a higher percentage of the planned new houses, while small families dominate the categories of planned assistance for rehabilitated and existing units.

The predominant mode of housing assistance for the elderly is clearly new construction (60%), while large and particularly the small families have a more even distribution of housing assistance — with rehabilitated housing assistance favored.

Since the objectives of the act include the coordination of housing and community development activities, the dispersion of income groups, and the arrest of slums and blight, the location of the housing assistance becomes crucial. New construction or rehabilitated houses in only low or moderate income areas would defeat the dispersal objective. Similarly, if housing assistance is planned for an area which does not receive CDBG funds, the coordination aspect of the program is undermined.

Almost half (46.7%) of the new construction and one-third of the rehabilitation are planned for upper income areas. HUD suggests that such housing is being

Table 3

TYPE OF HOUSING ASSISTANCE BY GROUP

	Handicapped Elderly	Large Family	Small Family
Rehabilitated Housing	17%	40%	36%
New Housing	59	32	34
Existing Housing	24	28	30

Source: Department of HUD, Community Planning and Development, Office of Evaluation, *Housing Assistance Plan Analysis*.

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planned for the non-elderly as well as the elderly because the elderly account for only 22 percent of the planned rehabilitation units. HUD fails to note that the elderly account for 52 percent of the planned new construction units. Thus, it could be argued that the new housing might be used chiefly for the elderly and the handicapped, largely to the exclusion of the large and small poor families. Such an action would be an obvious contradiction to the intent of the act.

In locational terms, the housing assistance is being concentrated in the low to moderate income neighborhoods (63%) with 36.6 percent of the assistance scheduled for the poorest neighborhoods. The highest percentage of coordination of housing and community development activity likewise occurs in the low and

moderate income areas (76.3% versus 23.7% in the upper income areas), and reflects the new emphasis on rehabilitation. Nearly 60 percent of the census tracts with uncoordinated housing and community development activities occur in the upper income areas.

Other Assessments

A measure of the interest in the CDBG program can be found in the number of scholarly articles and non-HUD-sponsored research and monitoring efforts. This latter group has included a range of participants: from public interest groups to private consultants for local governments, to college and graduate students.

Table 4

DISTRIBUTION OF CENSUS TRACTS DESIGNATED FOR HOUSING ASSISTANCE, BY TYPE OF HOUSING AND INCOME QUARTILES

Income Quartile	New	Type of Housing Rehabilitation	Combined	Total
I (High)	25.9%	11.7%	14.5%	16.3%
II	20.8	21.1	20.2	20.7
III	22.0	28.8	27.0	26.5
IV (Low)	31.3	38.5	38.3	36.6
	100.0%	100.1%	100.0%	100.1%
Total	25.7%	40.2%	34.1%	100.0%

Source: Department of Housing and Urban Development, Community Planning and Development, Office of Evaluation, CDBG Evaluation System.

Some of the major works which have been published include:

NAHRO: a monitoring study of 86 jurisdictions on their early experiences with the CDBG;

National Urban League: *The New Housing Program – Who Benefits?*, a monitoring study of 27 cities conducted by local urban leagues, focusing on questions of housing assistance;

Southern Regional Council: *A Time for Accounting: A Monitoring Study of the Housing and Community Development Act of 1974 in the South*, a monitoring of 26 southern cities focusing on citizen participation, local use of funds and planning and administrative procedures;

The Potomac Institute: *The Housing Assistance Plan: A Non-Working Program for Community Improvement*, a monitoring study of the application and approval process in eight metropolitan areas.

Report of the Comptroller General of the U.S.: *Meeting Application and Review Requirements for Block Grants Under Title I of the Housing and Community Development Act of 1974*, a study of the problems experienced by 23 communities in preparing their applications, focusing on whether “maximum feasible priority was given to low and moderate income families.”

These monitoring studies often present a more critical look at the CDBG program. The Potomac Institute Study found that HUD’s approval of local HAPs was virtually automatic despite negative comments from regional or statewide agencies, and sometimes internal HUD reviews. Moreover, it found little to indicate that the objective of promoting the dispersal of lower income housing within metropolitan areas was being accomplished – a conclusion which was also reached in the studies by NUL and NAHRO. The General Accounting Office (GAO) found information deficiencies in one-third of the applications it reviewed, including omissions of “expected to reside” figures and information on specific types of housing needs.

The NUL, GAO, and NAHRO studies differed

significantly from HUD when describing the beneficiaries of the program. NAHRO found that only 51 percent of the CDBG funds went to low and moderate income tracts.⁵⁴ The NUL study showed 55.6 percent of all expenditures to be classified for the direct benefit of lower income people. The GAO study arrived at a similar figure – 55.5 percent. These figures are substantially less than the 71 percent which HUD found was benefiting low and moderate income families.

The NUL study goes on to note that even those funds targeted to low and moderate income tracts do not necessarily reach low and moderate income people. Under the program objective of eliminating slums or blight, local officials are submitting (and HUD is approving) plans to use CDBG funds to redevelop land formerly occupied by lower income persons for reuse by higher income residents. Articles in the *New York Times* have noted that rehabilitation funds have been given to young middle income families to attract them back to the cities. Although such plans have the eventual effect of increasing the tax base and revitalizing the neighborhood, the benefit to low and moderate income persons is, at best, indirect. This fact highlights a possible contradiction in the goals of the act.

The GAO report is critical of HUD’s treatment of the “maximum feasible priority” requirement. Although the act requires an applicant to certify that its community development plan gives maximum feasible priority to activities benefiting low or moderate income families or in aiding in preventing or eliminating slums or blight, neither the act nor HUD regulations provide a definition of the term. HUD failed to issue instructions to applicants and personnel establishing specific, quantitative criteria for determining whether proposed programs had met this requirement. The possible conflict between the two goals which are to receive “maximum feasible priority” was never addressed by HUD. Neither had it issued instructions on evaluating compliance with the requirement in its postapplication monitoring procedure. Where the requirement was considered, GAO found it was done in a cursory and inconsistent manner. The effect of HUD’s laxness is to loosen the administrative controls which Congress clearly envisioned to guarantee that the program would be operated in a manner consistent with the expressed national objective of aiding low and moderate income persons and blighted communities.

A final area of concern which has been examined in non-HUD-sponsored surveys has been the operation of the citizen participation requirement. NUL and the Southern Regional Council (SRC) have both criticized HUD for not establishing a more detailed structure for

local governments to follow in order to assure effective citizen participation. SRC finds a need for an appeal or grievance procedure with a body outside the local government applicant.⁵⁵

HUD's response to the studies which have monitored the CDBG program has been varied. Some of the reports presented preliminary findings which are now dated, for HUD has acted quickly to improve many aspects of the program. Most notably, it has amended or added new regulations and guidelines in many areas (including the controversial HAP), and is giving greater scrutiny to the first year performance reports and the second year applications of program applicants.

HUD has established a number of performance standards which, if met, are geared to assure that the grants are being used properly to achieve the objectives of the act. These standards refer to basic statutory and administrative requirements for carrying out various policies pertaining to relocation and acquisition assistance, equal opportunity, and citizen participation.

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The annual performance report will require seven basic items: (1) a progress report on planned activities; (2) an assessment by the recipient on the effectiveness of its program of community development activities; (3) an indication of any housing assistance which has been provided; (4) a listing of the nature and status of all environmental reviews; and statements of compliance with (5) equal opportunity, (6) citizen participation performance standards, and (7) maintenance of local financial support for existing community development programs.⁵⁶ A notice of the availability of the annual performance report must be made to the public and copies are to be available free of charge.

Unlike the simplified application review requirements, the annual performance of recipients is subject to substantial administrative review. The Secretary retains the discretion to review, monitor, and evaluate a recipient's performance of its community development program at any time. Pursuant to this authority, HUD has already begun to study, plan, and contract out a variety of evaluation and monitoring reports.

In addition, HUD has arranged for a substantial amount of program evaluation and research. Two offices within HUD share the primary task: Office of Evaluation, Community Planning, and Development (CPD) and Office of Policy Development and Research (PDR). CPD staff will focus on 15 topics before FY 1978: urban counties, compliance, CDBG-housing coordination, environmental review, housing assistance plans, statutory objectives, discretionary funds, employment potential of CDBG, non-metropolitan communities, entitlement

cities, citizen participation, 701 housing element, A-95 procedures, longitudinal studies, and expenditures. PDR staff research will focus on the net fiscal effects, CDBG allocation formulas, effects of CDBG on urban housing, and political and structural effects.

In addition to this in-house work, HUD has contracted with the Brookings Institution for a major field study evaluation of three basic aspects of the CDBG program: the fiscal effects, the political and structural effects, and the allocation formula. This two-year study is being carried out by 28 research associates who submit detailed field reports about the program's operation in 62 jurisdictions. The final report promises to be the seminal work on the CDBG program.

Smaller contracts have been negotiated between HUD and other monitoring groups to evaluate more specific aspects of the program. These include a study of grant management problems and solutions being conducted by the Municipal Finance Officers Association and a study by the National Council for Urban Economic Development examining linkages within cities among CDBG, Comprehensive Employment Training Act (CETA), and Economic Development Administration (EDA) "urban project grant activities."

While HUD's response to outside monitoring has been basically receptive, it has been quick to point out what it believes to be two important differences in operating approaches. First, HUD notes the tendency of monitoring groups to generalize about a program which services over 1,300 jurisdictions after surveying only a fraction of their number. To date, the largest non-HUD survey was conducted by NAHRO and included 86 jurisdictions. By contrast, HUD based its assessment on the responses of 880 jurisdictions to its Community Development Funding Survey, and the detailed analysis of 407 HAPs, 151 entitlement applications, and the expenditures of 73 counties. Second, HUD notes a tendency of monitors to focus on the same jurisdictions which are often those with the most dramatic circumstances. Thus the results can be atypical for the program at large. HUD's studies, on the other hand, include a wider spectrum of program participants.

The Future Outlook

Just how typical the first year CDBG experience is will be revealed in time. Already, some modifications of the program have been made and others can be anticipated. Freed from the pressures for a quick initial start-up and with a basic set of program regulations operative, HUD has begun the tedious process of ironing

out the wrinkles in the program fabric and it has already identified some of the most troublesome spots.

First, the administrative task is growing. Public interest concern for what sometimes seemed to be a too cursory review procedure for applications combined with the judicial warning for strict adherence to HAP requirements in the *Hartford* case have resulted in a closer scrutiny of CDBG applications. The mandated time restrictions for review of entitlement grant applications have left HUD no time for niceties and has sometimes placed it in an adversary relationship with its applicants. Although the applications for the second year were processed well within the 75-day limit, the average number of days have increased over the first year.

Discretionary grants have become a major occupier of staff time. After the flood of applications in the initial program year, HUD required mandatory preapplications for all discretionary grantees. It is estimated that over 10,100 preapplications and applications will be reviewed for these grants in FY 1976, and over 12,000 in FY 1977. HUD is already expressing concern about the effect that this sheer volume of applications will have on the decisionmaking process. If the program is left unchanged, administrative feasibility may necessitate a move away from the desired objective standards and toward more subjective HUD standards.

Second, continuous interpretation and refinement of the program requirements have been underway. Confusion over what qualified as an eligible activity has resulted in rewrites and additions to the governing regulations and numerous administrative rulings. Program critics have called for both a broadening and a narrowing of the eligible activities' lists. HUD is considering both options. Legal restraints have been identified by HUD attorneys against use of some of the CDBG funds for local matching. Finally, the HAP and the "expected to reside" regulations seem destined to be subjected to further review.

Third, extensive research into the effects of the current formula are in progress by HUD and the Brookings Institution in preparation for the report to the Congress at the end of FY 1977. HUD is performing extensive computer analyses to determine if the present formula helps or hinders the objectives of the act and to see which factors (either currently in use or available for use) are most responsive to the real community development needs of communities also encompassed in this analysis is information about the regional distribution of the first year funds.

Finally, HUD is reexamining the eligibility requirements. The prime concern is whether the current

provisions result in the money going to the intended urban areas. The first year statistics showed 90 percent of the non-metropolitan funds going to towns of less than 10,000 population — many of which were not urban. On the other hand, many small urban units have been left out due to the vagaries of the metropolitan discretionary fund and the definition of a SMSA. Some revision is likely to occur to sharpen the urban focus of the program.

The first year experience revealed a considerable amount of information about the functioning of units of general local government. The demands of the program required of the recipients a degree of management and technical expertise which many of the smaller cities lacked. This gap necessitated development of technical assistance programs to increase local capacity and it suggests a possible avenue for additional state government involvement. Furthermore, the program has enhanced intergovernmental cooperation. The use of intracounty cooperation agreements has the potential for strengthening urban counties and the device also may serve as a model for consortia of small cities interested in cooperating for community development activities.

Finally, there is discussion in both HUD and Congress about the creation of a separate program for the nation's older and deteriorating cities. As the realization set in that the oldest and often most blighted cities were destined to receive funding cuts with the phaseout of hold harmless, pressure began to mount to correct what commonly was recognized as a funding inequity. Critics of the CDBG program focused upon the fact that the program's formula operated to give funds to the suburbs at the expense of the cities. This, they argued, was surely an anomaly.

Calls for changes in the program and amendments to the legislation have come from all affected interest groups. HUD, through its system of monitoring and evaluation, is attempting to identify and address many of the concerns which have been raised.

A variety of amendments to the legislation already have been introduced. These include:

H.R. 11556: a bill to amend the act to provide that a combination of cities having an aggregate population of 50,000 or more shall be eligible to be an applicant;

H.R. 3385: a bill to amend the act with regard to the definition of the term "city" as it is used in the act (to allow certain towns to qualify for entitlement);

S. 2986: a bill to amend the act to provide

supplementary community development block grant assistance to communities with high unemployment due to adverse economic conditions, and for other purposes;

H.R. 13159: a bill to give priority for assistance to political subdivisions submitting plans for the inclusion of low and moderate income housing in Federal programs.

Despite the actual and planned program changes, a few jurisdictions have become disillusioned. Some merely complain that the program has made funds more difficult to obtain. The expansion of Federal requirements attached to the funds, they claim, have made it an expensive and time-consuming program to operate. A few jurisdictions have taken more direct action. Bakersfield, Calif., became the first entitlement jurisdiction to pull out of the program, returning to HUD about \$200,000 in unused funds. The specific

complaint was too many Federal strings. A related reason is deemed to be the city's opposition to affirmative action and the placement of assisted housing within its boundaries. If more entitlement cities follow this lead, the very important link between community development and housing, particularly housing in the less blighted suburban areas, may become an additional problem for the program's administrators.

The expansive nature of the CDBG program opens it to many, often diverse, suggestions for change. Its large number of participants now form a loose coalition of interested parties which are not likely to let the program die.

Conclusion

The CDBG statute, its legislative history and its relatively short Federal implementation record raise certain questions about the design and workings of this Federal-local block grant. In the chapter that follows, five of the more basic issues are probed in some depth.

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FOOTNOTES

¹The new regulations promulgated on February 19, 1976 changed the requirements for this portion of the HAP as well as containing other regulations and extensive explanations for compliance.

²*The New Housing Program - Who Benefits* (National Urban League: New York, 1975), and *The Housing Assistance Plan: A Non-Working Program for Community Improvement?* (Washington, D. C.: The Potomac Institute, November 1975).

³*City of Hartford, et al., v. Carla A. Hills, et al.*, U. S. District Court - Connecticut, Civil No. H-75-258.

⁴At least one of the defendant towns - Windsor Locks, Conn. - elected not to seek reapproval.

⁵*Second Supplemental Appropriation Act of 1975*, P.L. 94-32.

⁶Testimony of Secretary Hills Before the Senate Committee on Banking, Housing, and Urban Affairs at Hearings on S. 2986, March 3, 1976.

⁷Department of HUD, National Association of Counties, and National League of Cities/U.S. Conference of Mayors, *Community Development Capabilities Study* (August 1975).

⁸These powers are generally vested in the housing authority and were so vested because of the locality's lack of legal authority.

⁹These powers are generally vested in urban renewal authorities. Again they were so vested due to the locality's lack of legal authority.

¹⁰These powers are generally vested in special districts, public authorities, or other special units of functional local government.

¹¹In this regard, the counties are in a favored position with all of them currently below their debt limits.

¹²This problem increases when the transferee is a private agency and the contracted services are broad or general. It decreases when the contracted services are specific and the transferee is a general purpose government.

¹³NAHRO, *Community Development Monitoring Study; Appendix B: Legal Changes Relative to the Implementation of Community Development Activities* (April 1976), and the NLC/NACo *Community Development Capability Studies*.

¹⁴Comments of HUD Assistant Secretary David O. Meeker at ACIR Meeting, May 21, 1975.

¹⁵See HUD, *First Annual Report*, p. 78, for a full listing of the requirements for cooperation agreements.

¹⁶Grant recipients are required to adhere to seven specific laws: (1) Title VI of *Civil Rights Act of 1964*; (2) Title VIII of *Civil Rights Act of 1968*; (3) Civil rights provision of the act itself; Section 3 (employment training and opportunity) of *HUD Act of 1968*; (4) *Executive Orders 11063 and 11246* relating to equal employment in Federally assisted projects; (5) relocation and acquisition requirements of Titles II and III of the *Uniform Relocation and Real Property Acquisition Policies Act of 1970*; (6) labor standard requirements of the *Davis-Bacon Act*; and (7) the *National Environmental Policy Act of 1969*.

¹⁷Section III: Remedies for Noncompliance.

¹⁸James A. Kushner, "Local Performance and Participation Under Title I of the *Housing and Community Development Act of 1974*" (Earl Warren Legal Institute, Berkeley, Calif.).

¹⁹*The New Housing Program - Who Benefits* (New York: National Urban League, 1975), and *The Housing Assistance Plan: A Non-Working Program for Community Improvement?* (Washington, D. C.: The Potomac Institute, November 1975).

²⁰24 CFR 58, et. seq.

²¹George Lesser, "Delegation of Environmental Review Responsibility Under Block Grants Worries Officials at EPA,"

Bureau of National Affairs, *Housing and Development Reporter*, Vol. 3, 1975, p. 561.

²² *Ibid*, p. 563.

²³ Section 104(a)(6).

²⁴ *A Time For Accounting: The Housing and Community Development Act in the South*. (Atlanta, Ga.: Southern Regional Council, March 1976), and *The New Housing Program – Who Benefits* (National Urban League, 1975).

²⁵ Anthony Downs, "What Most Communities are Now Doing About Citizen Participation in Community Development – and Why Some Changes are Needed," *Environmental Comment* (The Urban Land Institute, December 1975).

²⁶ 24 CFR, 570.303(a).

²⁷ Part 1 of OMB Regulations (January 13, 1976).

²⁸ 24 CFR. See 570.300(c).

²⁹ HUD memorandum, For State and Areawide Clearinghouses, Subject: Guidelines for A-95 Comments on CDBG Applications (Office of Assistant Secretary David O. Meeker. April 2, 1976).

³⁰ However, in another area HUD has yet to act in promotion of pro-regionalism, despite authorization in the law: the establishment of cooperative areawide programs under the Secretary's discretionary fund.

³¹ U.S. Department of Housing and Urban Development, *Community Development Block Grant Program: First Annual Report* (December 1975).

³² But see the discussion on pp. 54 regarding second year regulations.

³³ Non-entitlement communities in non-metropolitan areas did not receive such expeditious treatments due to inadequate funds.

³⁴ Section 104(c). For more details about the HUD review procedures, see the discussion on p. 54.

³⁵ This is the cutoff date used by HUD for this first annual report. When referring to this HUD report, all factual data will be presented as of December 5, 1975.

³⁶ At the time the report was written, some discretionary grant applications were still under review.

³⁷ The amount equals a 30.1 percent increase if the GNP deflator index is not used.

³⁸ Of the 20 largest cities which receive CDBG funds, only three – New York, Los Angeles, and Houston – would increase or maintain their current level of funding after FY 1977. For specific figures, see: U.S. Congress House Subcommittee on Housing: *Directory of Recipients: Housing and Community Development Act of 1974*, 93d Cong., 2d sess., 1974.

³⁹ HUD CDBG: *First Annual Report*.

⁴⁰ Parma, Ohio; Maple Shade and Bloomfield, N.J.

⁴¹ Section 106(e), and 106(f)(2).

⁴² The communities which refused the Federal assistance include: Arlington Heights, Berwyn, Cicero, Des Plaines and Oak Lawn, Ill.; Warren, Hamtramck, Roseville, Rogers City, and Wyandotte, Mich.; Hawthorne, Calif., and Suffield, Conn. Only four of these communities had previously received aid under any of the categorical programs which were consolidated. One

of these cities, Arlington Heights, is currently named as a defendant in a suit pending before the Supreme Court which alleged that Arlington Heights acted unconstitutionally by refusing to rezone some land to permit the construction of low and moderate income development.

It is interesting to note that not all the cities which have received funds have used them to promote low and moderate income housing.

⁴³ Monroe, N.Y.; Macomb, Mich.; and Lake, Ind.

⁴⁴ Texas, Louisiana, Washington, and Maryland.

⁴⁵ Westchester, N.Y., York, Penn.; Dallas, Texas; and Milwaukee and Waukesha, Wisc.

⁴⁶ Camden, N.J.

⁴⁷ Essex, N.J.

⁴⁸ As of December 5, 1975, other applications were still pending.

⁴⁹ \$1.2 billion was allocated to hold harmless cities. Some portion of this will transfer to the discretionary grant fund.

⁵⁰ Section 101(c).

⁵¹ Under the CDBG program, \$1 was spent on rehabilitation for every 90 cents spent on acquired property for demolition. The program has accelerated the change towards rehabilitation that developed with the growth of the NDPs during the early 1970's. In the urban renewal programs during 1966-1970 \$13 was spent on acquired property for demolition for every \$1 spent on rehabilitation.

⁵² This 71 percent figure is disputed by NAHRO in its first year evaluation report of 86 entitlement cities. Using the same method of ranking by median incomes in census tracts, NAHRO found that only about one-half of the funds that could be assigned to census tracts (80 percent of the total) were targeted for use in low and moderate income areas. NAHRO also found that 20 percent of the funds went to citywide activities and could not be ascribed to use in any one income tract.

⁵³ HUD analyzed 407 HAPs from 359 cities and 48 counties and found them to be representative of all the jurisdictions. Because of previous difficulties on the part of localities, HUD and the Census Bureau in defining "substandard" housing, CDBG applicants were instructed to adopt definitions conforming to the broad local understanding of the terms. These differences in definitions may result in some variations in the data.

⁵⁴ For the purpose of its study, NAHRO defined low income tracts as those where the median family income was less than 50 percent of the median city income and moderate income tracts as those where the median income was between 51 and 80 percent of the city median. NAHRO noted, however, that if the median SMSA income was used, the funds going to low and median income areas would increase to 59 percent.

⁵⁵ Currently dissatisfied community groups can and have used the courts as an avenue for appeal. SRC points out that this is a costly procedure which is not often open to low and moderate income persons.

⁵⁶ Although certification of compliance with the maintenance of effort provision is required, HUD is reconsidering its use within the actual performance report.

Issues

The generic block grant traits provide a convenient organizational tool for analyzing the CDBG program. Although a variety of issues have been raised about the program's operations, most are related to broader considerations posed by the use of the block grant format. The program which emerged from Congress was clearly a hybrid. In the process of developing legislation which was politically acceptable, it was necessary to deviate from the basic block grant model. The effects of these changes can be highlighted best by focusing on five questions.

- First, does the CDBG program authorize Federal assistance for a broad range of community development activities and allow its recipients greater program discretion?
- Second, are the eligibility requirements specific and do they favor units of general local government?
- Third, does the funding provision adhere to the statutory formula requirement and, if so, with what effect? If it does not, what impact does this have on the program?
- Fourth, how intrusive are the Federal requirements? Does the Federal-local nature of the program affect the degree of intrusiveness?

- Fifth, what are the unanticipated and perhaps unintended results of the program?

1. Does the CDBG program authorize Federal assistance for a broad range of community development activities and allow its recipients greater program discretion?

The CDBG program authorizes Federal assistance for seven of HUD's former community development-related categorical programs and allows a recipient to pursue any of 13 eligible activities subsumed thereunder. To this extent, the program covers a broad functional area and allows its recipients greater discretion in their use of these particular funds. But the real test of the breadth of the functional area lies in an examination of what is omitted from the program's provisions governing eligible activities.

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Two questions can be raised regarding HUD programs which were not consolidated under the act. The first is: Why were certain community development-related programs excluded? Two programs are of particular interest since they involve activities which are fundable under the act: the Section 312 Rehabilitation Loan program and the 701 Comprehensive Planning and Management Assistance program. The Section 312 Rehabilitation Loan program was originally slated for consolidation under the CDBG program in August 1975; however, supporters of this categorical program succeeded in getting Congress to maintain this loan program separate from the larger block grant at least temporarily. The reasons most frequently given are that the program is simple and effective, that it assures funds for rehabilitation efforts, and that it gives those efforts a priority in funding which is not guaranteed by the broader block grant process. By contrast, the 701 program was never slated for consolidation despite the fact that comprehensive planning and management assistance are eligible activities for CDBG funding. Nevertheless, the Administration has proposed a budget cut in FY 1977 for this program premised on the view that many local planning activities can and should be funded through use of the new block grant funds.

An argument can be made that inclusion of both these programs would strengthen the current block grant. They both serve the same type of activities and the same constituency as the block grant program. Their separate existence is duplicative and increases the administrative burdens of both the grantors and the grantees. However, equally strong arguments are made for re-

taining them as they are. First, it is noted that they both provide funds for special needs (rehabilitation and planning assistance leading toward capacity building) which may be overlooked in a program with broad recipient discretion. Some argue that a block grant should not include such programs which are geared to such specific needs, but should serve as a mechanism for facilitating local determination of general local needs in a broad program area. Second, the programs are geared towards constituents who are not directly served by the block grant. Section 312 loans can be given to individual property owners and tenants while CDBG funds for rehabilitation must be allocated to a local government. Similarly, 701 funds are available to states and regional planning bodies whereas similar CDBG funds could only go to states on a discretionary basis and could not be allocated directly to regional planning bodies under either discretionary or entitlement grants. Finally, the 701 program is broader than the CDBG program, allowing planning assistance for activities which are not eligible for CDBG funds. This difference was a contributing factor in retaining the 701 program separate from the block grant.

Given the slightly different focus and emphasis of the two non-consolidated programs, one could conclude that they could remain separate without undermining the basic block grant format as established for community development. However, should a trend develop to create additional programs which for similar reasons ought to remain separate, Congress would run the risk of repeating the Partnership in Health Act experience of diminishing the initial block grant by creating more exclusions than inclusions.

The second basic question regarding the exclusion of other HUD programs arises upon an examination of the objectives of the act as they relate to the provision of decent housing in pursuit of the goal of viable urban communities. If the concept of community development includes housing as an integral component, should housing assistance have been designated an eligible activity and should housing assistance programs have been consolidated under the act?

In earlier House versions of the act, a separate housing block grant was proposed which would have transferred funds to general purpose governments to implement the housing plan contained in a locality's community development application. This approach to housing assistance was later abandoned when a compromise was reached between Congress and the Administration on the use of alternative means for providing housing assistance for low and moderate income families. Although a linkage between housing and

community development was retained in the form of a Housing Assistance Plan (HAP) as an application requirement for Federal community development funds, direct expenditures through block grants for housing subsidies were abandoned and housing assistance was covered in other titles of the act.

Critics of this arrangement have feared that the housing and community development linkage would prove to be a weak one and that community development funds would be allocated while funds for the concomitant HAP would lie dormant or become defunct. The early lack of emphasis on the HAPs and the extremely slow start-ups for Federally assisted housing added fuel to the critics' fears. Additionally, the emphasis upon the use of existing rather than new housing has been viewed as a retreat from the act's specific objectives of reducing the isolation of income groups within communities and increasing the housing opportunities for low and moderate income persons.

One response to these program critics would be to revive the idea of housing block grants, either in conjunction with the CDBG or as a separate but parallel program as originally proposed in the earlier House bill. But this response would only be appropriate under certain specific circumstances. First, there should be some showing that the delay or failure to allocate housing assistance to local jurisdictions has been the result of HUD administrative red tape. If this is determined to be the basic cause of the delay, then the idea of a housing block grant which allows funds to be dispersed quickly and efficiently might need to be revived. However, a good case can be made that given the newness of the programs established under the act, such an assessment at this time may be premature. Furthermore, there is evidence to suggest that some delays in the start up of HAPs have resulted not from problems within HUD but from the unwillingness of certain local jurisdictions to participate in programs for low and moderate income housing. If such is the case, locally administered housing block grants may actually be counterproductive.

Second, there needs to be a showing that the general purpose governments which are the designated recipients under the CDBG program have the legal authority to undertake the types of activities which would be required if housing assistance programs were consolidated. Although there is some evidence to support the proposition that the CDBG program itself has had the effect of augmenting the powers of certain local jurisdictions in this particular area, careful consideration should be given to the extent of this empowerment and the effect which an uneven ability to perform housing-

related activities would have upon the national policy of housing assistance.

Third, and to many supporters of housing assistance programs the most crucial factor, any housing block grant should be supported by sufficient funding to make the program viable. This last point raises one of the more serious obstacles to the combination of housing and CDBGs. Housing assistance requires significant sums of money. If all housing funds were to be consolidated into the existing block grant program, three things might occur. First, housing needs might take priority over other community development needs. Second, in certain jurisdictions, community development needs might be given priority over housing needs. Third, each activity might be given equal weight but the available funds would be so minimal as to make both activities useless. Part of this problem could be solved by earmarking certain funds for housing and certain funds for community development. However, such a procedure would limit the recipient's discretion and arguably defeat the block grant's purpose. But the more serious problem is the shortage of funds which is bound to occur when the number of eligible and entitled recipients are greatly augmented and this does not lend itself to easy solutions. These problems could validly lead one to conclude that the purposes of this particular block grant are best served by omitting such housing assistance activities.

Yet, even if housing-related community development programs are eliminated, the block grant could be extended to include other community development programs not found within HUD. Other agencies, such as the Department of Agriculture's Farmers' Home Administration (FHA), the Department of Commerce's Economic Development Administration (EDA), the Appalachian Regional Commission (ARC), and the Environmental Protection Agency (EPA) administer programs in this broad area. The clientele and the focus of these non-HUD programs are distinguishable in some ways from those included under the CDBG program. Many of the FHA programs are directed toward small rural communities and their developmental problems, while the ARC programs concentrate upon regional development in the Appalachian area. EDA focuses on areas with severe unemployment and low income problems. While some overlapping of purpose and recipients does exist, for the most part, none of these programs could basically be considered urban oriented.

In recognition of these differences, President Nixon proposed a Rural Community Development Special Revenue Sharing program in 1971 along with his proposal for Urban Community Development Special

Program Discretion

Revenue Sharing. The *Rural Development Act of 1972*, in partial response to the Nixon proposal, emerged to serve basically rural needs. The CDBG program, of course, developed into the *Housing and Community Development Act of 1974* which was designed to serve basically urban needs.

But the CDBG program has not been an assistance program solely for urban areas. Funds are available for use in rural and urban areas alike. Qualified urban counties, as entitlement jurisdictions, may use their funding for eligible community development activities in their included rural areas. Additionally, states may apply for metropolitan and non-metropolitan discretionary funds to be used for eligible activities in these areas. To underscore the funding possibilities under this program, the Department of Agriculture's Rural Development Service has even printed an information bulletin assisting its clientele in seeking CDBG funds.

62 The fact that there already has been some overlapping between these areas of rural and urban community development raises the possible alternative of amassing all community development-related programs into a single block grant, forming in a sense a classic block grant of community development-related programs. Such a block grant would require a parallel change in the designated eligible recipients for entitlement funding, recognizing a more favorable status for smaller and non-urban jurisdictions. It might also necessitate a revision of the elements of the entitlement formula to reflect the needs of rural jurisdictions.

In opposition to such a broad block grant, it could be argued that it mixes apples and oranges to no one's benefit and to everyone's detriment. If the entire program was made an entitlement one, the result would be even less funding for the blighted older cities. If the present mix of entitlement and discretionary grants was to be retained, the needs of the rural communities would then become subject to an already overtaxed discretionary fund and might ultimately receive less funding. In addition, such a move would give HUD the task of administering new programs in areas where HUD expertise may be lacking. This arrangement would present a particular problem in light of the strict performance evaluations mandated upon the department by the act. Furthermore, such a broad consolidation would place the program within the jurisdiction of additional Congressional committees as well as expand the number of public and private interest groups overseeing the program's operation. Both of these actions would increase the demands upon the time of HUD administrators and the amount of politics operating during the decision-making process.

Regardless of whether a decision is made to consolidate additional programs and thereby expand the breadth of the block grant or maintain the program as it presently stands, another issue which affects the recipient's ability to obtain Federal assistance for community development activities is presented by the current language of the act. The CDBG program takes the approach of designating an inclusive list of 13 activities eligible for funding. HUD regulations amplify this restriction and further discriminate between acceptable and non-acceptable projects for funding purposes. The effect of the HUD and statutory restrictions resulting from the use of a list of eligible activities presents a possible contradiction between the existing program and a model block grant.

One of the strengths of the block grant mechanism is the high degree of flexibility which it affords its recipients in their local decisionmaking. Underlying this flexibility is the belief that local government officials are better able to determine their local needs and should be given the opportunity to do so. Thus, the block grant is characterized by broad recipient program discretion. There are, to be sure, some limitations upon the types of activities which can be funded. To this extent, the existing program differs from the proposed but rejected special revenue sharing approach to community development which would have supported the use of Federal funds for virtually any activity that was community development related.

The fact that the current grant scheme does draw lines between permissible and impermissible activities has caused some confusion and dissension. This is most noticeable in funding decisions relating to three specific activities: public service projects in support of another community development activity, the construction and installation of public facilities, and the use of funds for sewage treatment.

In the case of public services, the act itself has established a five-part test for qualifying activities. The test resulted from a rejection of a more liberal percentage ceiling (20%) on related public service expenditures and it was intended to be more restrictive. The restrictiveness of this test is reflected in its application by HUD area offices in their rulings upon permissible activities during the program's first year. Only 5 percent of a jurisdiction's entitlement grant on the average was slated for this purpose in the first year applications. There are indications that this was as much a reflection of discouragement of such use by HUD as it was a

ranking of different program priorities by the recipient.

Similarly, HUD has restricted the fundable category of public facilities projects. Acting in apparent reaction to the Congressional decision to terminate rather than consolidate the public facilities loan program under the CDBG program, HUD drew up regulations which only permit the funding of public facilities which serve neighborhoods, with the exception of communitywide projects in the case of jurisdictions having a population under 10,000. This restriction excludes from the funding scheme all central facilities as well as multicommunity projects.

These two restrictions on the use of CDBG funds were intended to preserve the funds for uses more in keeping with the national and agency objectives. Thus, a preference for physical development over social service programs and for neighborhood facilities providing assistance to target populations over larger areawide structures was established. Yet, HUD later appeared to contradict itself in its rulings regarding the use of CDBG funds for sewage treatment facilities. Rejecting its own more restrictive interpretation, HUD has proposed a change in its regulations to support the use of funds for sewage treatment facilities in areas where other community development-related activities are occurring in contrast to the former restriction allowing such use only in support of other community development activities. Critics charge that the effect of this new HUD ruling will be to dilute CDBG funds, and turn the program into a more general special revenue sharing approach to community development.

Although recipient discretion over program funds is the main issue, it can not be separated from the reality of the program's funding problems. The lines being drawn by HUD and being proposed by recipients and critics are nothing more than attempts to set priorities on the use of limited community development funds. Because the block grant format allows the grantor to tie certain strings to the funds in pursuit of stated national objectives, HUD has reserved the right to retain administrative control over the program's spending. However, the confusion caused by project eligibility (necessitating individual rulings on various "questionable" projects) runs the risk of recategorizing the list of eligible projects for funding purposes. Like most block grants, CDBG is facing the challenge of artfully balancing national goals and recipient program purposes.

2. Were the eligibility requirements specific and did they favor units of general local government?

The actual block grant provisions contain fairly

specific and restrictive eligibility requirements which favor general local government. However, the fact that the program itself favors some governments more than others has raised a substantial amount of debate. The controversy is focused more upon the particular mix of entitlement grants and discretionary grants which the program has generated rather than the block grant *per se*.

The program effectively shifted the positions of recipients *vis-a-vis* each other. Under the prior categories, all recipients were essentially equal competitors for the desired funds.¹ Under the new system, two categories of recipients were created for the formerly competitive funds: entitlement jurisdictions and discretionary applicants.

Entitlement status was awarded by location and by size, regardless of need. Only central cities, cities of over 50,000, and counties with over 200,000 persons and certain designated powers located within a SMSA were eligible for entitlement status. Units of local government within qualified urban counties with less than 50,000 population were given the option of signing cooperative agreements with those counties, thereby benefiting from entitlement status, albeit indirectly.

This definition placed seemingly similar jurisdictions in different positions. Central cities under 50,000 in SMSAs received entitlement grants; all other cities of the same size located within or outside of SMSAs only qualified for discretionary grants. Cities under 50,000 included within a qualifying urban county have the option of cooperating with the county and being included within an entitlement jurisdiction and sharing its funding, while cities of the same size without an overlying qualifying urban county can only qualify for discretionary funds. Urban counties with incorporated places within their boundaries can obtain entitlement grants and other counties with such incorporated places are eligible for discretionary grants; however, towns and townships with incorporated places within their boundaries can not qualify independently for purposes of obtaining either entitlement or discretionary funding.

The act's definitions also clearly eliminate certain units of government from entitlement funding. These include the states; all units of local general government located outside an SMSA; units of local general government included within SMSAs which are not central cities and which have populations of less than 50,000; all SMSA counties with less than 200,000 population; plus those counties, towns, and townships which fail to meet the various qualifying tests of powers and general composition. Only temporary hold harmless or competitive discretionary funding is available to these jurisdictions.

These distinctions raise two major questions: (1) do the eligibility requirements result in funds being channeled to the areas of greatest need? and (2) are the designations of entitlement and non-entitlement jurisdictions the correct ones?

It is a commonly acknowledged fact that many of the recipients of CDBG funds are new participants in HUD-sponsored community development programs. This fact applies to entitlement and discretionary grantees alike. As a result of this increased participation, the funds from what was formerly considered to be urban assistance legislation have shifted to suburban areas. An initial study made by the Brookings Institution as part of its monitoring effort of the CDBG program indicates that under the previous categorical programs, 71 percent of the funds went to central cities in metropolitan areas while after the phaseout of hold harmless funds, only 42 percent of the CDBG funds will be allocated to those same jurisdictions. This shift of funds from urban to suburban areas occurs in two ways: by setting aside 20 percent of the funds for exclusive use in non-metropolitan areas, and by the entitlement of large numbers of suburban metropolitan jurisdictions.

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The applications of the program participants clearly indicates there is a need for the funds generated from this legislation. Newer communities have a number of growth and developmental needs, while older cities have a myriad of urban renewal as well as urban growth needs. Thus, to look at the eligibility requirements solely in terms of general community development needs is insufficient. Instead, it is more accurate to focus upon the types of needs which are asserted by each recipient in light of the intent of the legislation.

Because the block grant shies away from setting priorities for the activities which are to be funded, ancillary indicators of the act's priorities must be found. These are arguably provided by the general and specific legislative objectives. A perusal of these objectives, however, indicates that they are mixed. There is substantial language on which to base an argument that those areas with deteriorating or deteriorated neighborhoods, large concentrations of low and moderate income persons, and blighted conditions were intended to be the prime beneficiaries of the act. Such an argument would favor those communities which are currently slated to lose money as the CDBG program progresses. Nevertheless, there is also supportive language for the roles which suburban and non-metropolitan areas now play under the act. The legislative objectives are not only the elimination of blighted conditions and slums but also their prevention. They speak to the rational utilization of land, better arrangement for planned development,

and spatial deconcentration of housing opportunities for low and moderate income persons. This language, when read in conjunction with the eligibility requirements for funds and the earmarking of funds for non-metropolitan areas, supports the arguments of suburban and non-metropolitan jurisdictions that the act contemplated their participation as much as their larger urban city counterparts.

If a balancing act was performed between the arguments of the urban and suburban interests, the scale would seem to tip somewhat to the side of those blighted urban areas in their claims to the majority of the CDBG funds. But it must also be noted that the drafters fully recognized that various recipients would have varying degrees of need for the funds and attempted to accommodate this by devising a formula for entitlement jurisdictions which would reflect their community development needs. Their success in achieving this goal is covered more fully under the third general issue discussed later in this chapter. The long-term projections of the funding allocations indicate that they will fall short of their goal.

The second issue posed by the eligibility requirements is: Was the correct line drawn between entitlement and non-entitlement jurisdictions? This question becomes increasingly important in light of the perceived funding shifts and the projected shortfalls of funding in various funding categories. In particular, questions have been raised concerning the effect of designating urban counties as entitlement jurisdictions and the equity of assigning discretionary status to small cities and the states.

The question most often discussed regarding the position of the urban county within the act is whether or not the Congress intended to authorize the substantial degree of urban county participation which occurred during the first year of the act. The answer is that it clearly did not. No one, not even the representatives of the urban counties themselves, expected 73 counties to qualify during the initial year of the program. This number was higher than was expected for any of the first three program years. But this begs the real issue. If the number of urban counties initially qualifying for the program had been reduced, would that have affected the shift of funds from urban to suburban areas?

The answer would appear to be negative. The initially high qualification of urban counties did, in fact, contribute to the depletion of the metropolitan general purpose discretionary fund and the hold harmless funds. This necessitated the shifting of some funds from the Secretary's discretionary fund to the metropolitan pot, the appropriation of additional authorized funds, and

generated some new legislation. However, it did not take funds which would have otherwise gone to the larger blighted cities under the funding scheme of the CDBG program. The shift of funds occurred when the initial definition of entitlement jurisdiction was established, when the subsequent entitlement formula was written, and when the total appropriation was divided into separate metropolitan and non-metropolitan funds.

The acceptance of the urban counties as entitlement jurisdictions did have an effect, the impact of which is generally lost amidst the funding issue. It has contributed to the strengthening of the urban county as a political unit. Although the initial designation may have been merely in recognition of the few urban counties with well developed governmental powers, the effect of their inclusion in the favored funding category (particularly with only minimal powers required of them in the housing and community development area) has worked to augment county power. This has been evidenced by new state enabling legislation for counties in some areas and the proliferation of intracounty cooperation agreements. Irrespective of their financial needs, the entitlement status has benefited the counties substantially. Whether or not this was actually an intent of the act is difficult to discern, either from the act's language or its history. There is no doubt that the often quoted statement, "the counties got a windfall," has some element of truth. Even Congress expressed surprise at the number of counties which qualified for funding. If Congress decides to clarify the vague definition of essential housing and community development powers necessary to qualify for entitlement status in its oversight hearings, a better indication of intent may emerge.

The shortfall of funds in the metropolitan general purpose discretionary fund and the heavy competition for non-metropolitan discretionary funds raised the issue of the role of the small cities under the act. Representatives of these jurisdictions argue that Congress intended that some funds be used to fulfill their needs, and that additional steps ought to be taken to safeguard their right to these funds. The first point is correct as it pertains to a sum of money reserved for the general use of non-metropolitan jurisdictions. However, it may be incorrect as it applies to small metropolitan cities. The allocation language of the act apportions only the amount which remains after the entitlement grants are made plus any funds not applied for by entitlement jurisdictions to the metropolitan discretionary fund. It can be argued that the language "which remains" as opposed to "if any remains" indicates that some remainder was expected. But as the first year experience shows, this may not always be the case.

If the issue of the small cities is merely framed as preserving the discretionary funds from which they are to receive funding, then the issue may only be a temporary one. After the phaseout of hold harmless funding, additional funds may become freed for use in the metropolitan discretionary fund. At most, then, only a short-term stop-gap measure would be necessary to protect the small cities' interest.

But the issue of the small cities can also be framed in terms of basic entitlement rights to Federal community development funds. This point is more a question of equity. If other jurisdictions with needs are entitled, including others of similar size through the central city and urban county provisions, why not all small cities?

There are arguments on both sides of the issue. The basic argument against small city entitlement is the fact that a line must be drawn somewhere in the distribution of limited resources. In the CDBG program, it was drawn to exclude small cities from entitlement funding. Their inclusion would have the effect of spreading already insufficient funds even thinner, exacerbating the current situation which many already find intolerable. For example, if the population requirement was lowered to 20,000, approximately 760 additional cities would become entitled to funding. Furthermore, it would shift the focus of the program even further away from the plight of decaying urban areas. Proponents of an entitlement status for small cities point out that one effect of blocking has been to limit the amount of funds accessible to smaller cities which inevitably fall below the population requirement for entitlement jurisdictions. They fear a continuation of a trend which may ultimately result in the serious diminution of these cities' available funding sources. Objections are also raised to the eligibility provisions of the act which treat jurisdictions of the same size differently.

An amendment to correct the small cities situation under the act has been proposed. It would allow small communities to join together to form entitlement jurisdictions similar to those designated under the act. Although such an amendment is a middle ground proposal between full entitlement and discretionary status, it still contains the same faults as full entitlement, although the effects are somewhat diminished.

The final entitlement issue is raised by the proposed inclusion of the states on a par with their included units of local general government in qualifying for discretionary grants. Unlike the two older block grants, the CDBG program followed the model of the Comprehensive Employment and Training Act of 1973 and established a basically Federal-local partnership. In rejecting the states as entitlement jurisdictions in the block grant

scheme, Congress merely reinforced what past experience had demonstrated; local governments were the primary actors in the field of community development. This local government dominance was a logical outgrowth of the previous categorical grant system which provided them financial assistance. Little was done during the enactment of the legislation to challenge this perception of the state role in community development-related activities. However, since the passage of the act, questions regarding the role of the states have been raised with increasing vigor and the issue has emerged as a possible area for revision in the upcoming oversight process.

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State directors of community affairs through their organization, the Council of State Community Affairs Agencies (COSCAA), have persistently raised the issue of the state's role within the new CDBG program. Basically, they propose three roles for the states: as an entitlement jurisdiction; as an additional or substitute administrator; and as a provider of technical expertise. Conceding the point that there is merit in each suggestion when considered from the position of the states involved, the roles must also be considered in terms of their enhancement or detriment to the block grant concept. Already, the states are provided funds for basic administrative duties and are qualified to apply for discretionary grants under the metropolitan, non-metropolitan, and Secretary's discretionary funds. An additional role must be understood to be in addition to those.

The states' automatic qualification as entitlement jurisdictions has the same effect upon the overall funding levels of the program as the small communities' automatic qualification. Such an action could, in fact, severely draw down the individual allotments to participating jurisdictions. At the same time, it offers no real assurance of better meeting the needs of the areas which the act attempts to serve than any existing entitlement scheme. While a state community development program may be designed to assist multicomunity needs, such a program could receive an innovative grant under the Secretary's discretionary fund or compete for the limited funds in the general purpose discretionary funds. One argument stems from the states' distinctive legal position and this leads to their claim that they should never be placed in direct competition with their local jurisdictions. Such a position merits consideration as a federalism issue. On the other hand, it can be argued that respect for state sovereignty may be better addressed by earmarking special funds, either within the Secretary's discretionary fund or within the general purpose discretionary funds, to serve the states' needs.

Still another question arises concerning the granting

of entitlement status to the states. Should it be automatic or granted with strings attached? The predominant non-involvement of states in significant community development activities would argue against automatic state entitlement, even recognizing the legal status of the states. If entitlement is not automatic, some criteria of entitlement must be provided, assuring some state commitment to community development programs. Such indications of commitment may vary from the existence of an active state community affairs agency to the expenditure of substantial state funds for community development-related activities. The requirements, however, clearly would need to be balanced so as not to discourage or frustrate those states which desire to engage in such activities but have not participated in the past.

3. Does the funding provision adhere to the statutory formula requirement and, if so, with what effect? If it does not, what impact does this have on the program?

The funding provision of the CDBG program establishes two basic funding mechanisms: an entitlement grant based upon a statutory formula requirement and a discretionary grant based upon competitive applications for funds allocated to specific areas. The distributional formula for the entitlement grants is based on population, housing overcrowding, and poverty (which is double weighted). In addition, a temporary hold harmless provision is included to ensure that each locality would receive at least as much money in the initial three years of the block grant as it had received under the categorical programs. No local match is required by the act, but a maintenance-of-effort clause does exist.

Unlike some earlier block grant programs, no specific percentage of funds is appropriated for either the metropolitan entitlement or discretionary grants. Instead, the funding mix here is permitted to vary. A few percentage set-asides, however, are mandated by law, including 2 percent of the total appropriation for the Secretary's discretionary fund, and 20 percent of the remainder which is set aside for non-metropolitan hold harmless general purpose discretionary funds. The remaining 80 percent of the funds is allocated for a mix of metropolitan area entitlement, hold harmless, and discretionary funding. Within this category, an order of funding is established: first priority is given to the statutorily based entitlement formula distributions; next, funds are distributed for the purpose of holding harmless prior program participants; and finally, any remaining funds are disbursed as discretionary grants to

non-entitlement metropolitan jurisdictions for general purpose use. During the first year of the program, 100 percent of these metropolitan funds were used for entitlement grants. Hold harmless grants and discretionary grants were funded through additional appropriations. A projection for the sixth entitlement year after the phaseout of hold harmless indicates that about 72 percent of the funds will be used for entitlement funding and 28 percent will be used for metropolitan discretionary grants.

As far as the entitlement formula is concerned, it appears to adhere to the basic block grant trait of a statutory formula which narrows the grantor's discretion in the amount of funding allocation and provides the entitlement jurisdiction with some sense of fiscal certainty. The program's funding provisions do reflect a change in approach as former HUD Secretary Lynn noted before a House Subcommittee: "... formula funding over the next five years will give communities, for the first time, forward funding they can count on instead of having to rely on a hand-to-mouth, year-by-year, catch-as-catch-can categorical system where their important priorities got lost in a maze of red tape and on-again, off-again funding." However, the block grant recipients do not currently enjoy a high degree of certainty with respect to the specific amount of their grant. In part, this can be attributed to the newness of the program and the fact that it is only funded for three years. In addition, controversy has arisen over the eligibility requirements for entitlement participants and this could result in the future inclusion of additional recipients thus lowering individual entitlement grants, or the disqualification of other jurisdictions, which might raise the amount of the grants.

In part, the reduced degree of certainty can be attributed to the particular formula currently in use and the allocation of funds pursuant to that formula. Congress recognized that the task of devising a formula which objectifies the indicators of community development needs and directs funds to those needy areas was an extremely difficult one. It also recognized the possibility of error in its initial attempt to designate such a formula.

During the initial legislative drafting sessions, numerous discussions were held to identify the factors which should be included in the formula to accurately assess community development needs. No consensus emerged. For these reasons, a provision specifically requiring a review of the formula and its effects was written into the act. Even before the new program was under way, critics of the adopted formula were calling for its amendment. HUD-sponsored studies currently are examining its

impact. All these factors have added to the fiscal uncertainty of grant recipients.

There is good cause to believe that some changes may occur in the distributional formula as initial monitoring reports begin to document the shift in funding that the formula has generated and the effects of this shift. The critical question here is: Has the formula operated to achieve the intent of the act? The program's and the formula's harshest critics answer "No." Their basic criticism is stated in the following excerpt from a *New York Times* editorial entitled "The Failing Urban Strategy:"

The problem is that the nation's old core cities are in a crisis and the community development program, by spraying funds shotgun fashion all over the landscape, is doing little to improve the picture. The urban problems of the sixties have matured and hardened during the seventies as the middle class exodus to suburbia has accelerated, leaving the core cities in mounting difficulties and with diminishing governmental tools. Yet, under the community development act, these core cities are forced to compete for funds with affluent suburbs, for which such help was never intended under the original urban assistance legislation.

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The facts bear out these generalizations. Using the current formula and current statistics, 18 major urban cities in some of the largest SMSAs will have their entitlements decreased anywhere from 5 to 77.5 percent as hold harmless is phased down.² Only six major cities – New York, Los Angeles, Miami, Dallas, Houston, and Chicago – stand to gain funds under the current formula as hold harmless funds are phased out.³ These projections could change as more up-to-date Census Bureau figures are received. However, given the fact that population and housing overcrowding are components of the formula, some of these figures may change for the worse if the trend of abandoning the older cities of the northeastern and north central states continues at its current pace. Such a change would reduce the amount of Federal funding going to these areas. This, combined with the cities' own reduced tax base, would create additional financial hardships and further frustrate a city's ability to carry out the intent of the act.

Controversy still exists over particular factors in the formula and the availability and reliability of the data called for. For instance, the use of housing overcrowding

as a measure of need is being questioned in areas where there are serious problems of housing abandonment. Even the Secretary, on occasion, has noted with concern the rising abandonment rate. Under the present formula, cities with such conditions are receiving less funds although these conditions are generally recognized as a type of blight which the act was intended to reach.

In addition, the straight use of population has come under attack. This one factor taken independently has no relationship to need. The fact that the amount of poverty is also considered in the formula does not negate the ability of the "population" factor to shift the money towards populous but not needy jurisdictions. It has been suggested that need could more accurately be measured if the population factor were amended to reflect only the needy or poor population in a given jurisdiction. A similar adjustment might result if population was retained but some factor of taxing effort was added, thereby relating population more closely with the ability to generate funds.

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The population factor also has been questioned because of the current geographic shifts in population. Regional planners and economists have documented the move from the north and north central urban centers to cities of the south and southwest. Population projections for the decrease in the former groups of cities and for the increase in the latter groups have been shown to have been grossly underestimated. The population shift is occurring at a more rapid rate than expected; hence the use of 1970 Census Bureau statistics is grossly out of date. Documentation of these shifts not only highlights the need for a reevaluation of population as a factor, but also the vital importance of a mid-decade census.

Public interest groups and other observers who have expressed concern about the operation of the existing formula have met with the same problems as the legislation's drafters in suggesting revisions which would mitigate some of the formula's harsh effects. Certain factors which would seem to be better indicators, such as age of housing and number of substandard units, are currently not viable alternatives due to lack of available data. The operation of the formula has served to remind many of the necessity to acquire additional information from the Census Bureau to keep up with these new block grant programs.

If adequate revisions of the formula occur, then the issues arising around the phaseout of the hold harmless provisions will most likely disappear. Most proponents of the current hold harmless provisions realize that they contain elements of the grantsmanship which the CDBG program was designed to eliminate. However, at the moment this appears as the lesser of two evils if, upon

their phaseout, major urban cities lose large sums of Federal assistance as a result of the operation of the current formula.

The allocation of both entitlement and discretionary funds is based upon the assessed needs in a particular area. For the metropolitan areas, the distribution is made according to a ratio of the amount of housing overcrowding, population, and poverty (double weighted) existing in a particular SMSA as compared to the ratio of the same three factors extant in the nation as a whole. For non-metropolitan areas, the distribution is done in the same manner except that the individual states are substituted for the SMSAs. These distributional arrangements for the total program funding, in some instances, have affected the interplay between use of the entitlement and discretionary funds.

Although there were shortfalls in the amounts of funds for discretionary recipients, the shortfalls did not occur evenly around the country. Shortfalls depended upon the size of the SMSA or state allocation, and the number and types of jurisdictions which applied within that particular SMSA or state. The more complicated the mix, the more severe the problems of fund allocation. On the other hand, where a single jurisdiction (either entitlement or discretionary) existed in an SMSA, or where one entitlement and one discretionary jurisdiction existed, the simpler the allocation. As a concomitant to this phenomenon, the fewer the applicants, the greater degree of fiscal certainty, particularly for discretionary applicants.

This particular aspect of the funding provision has implications for other phases of the program. It relates directly to the issue of eliminating or minimizing the HAP requirement for discretionary applicants. Specifically, if a decision were made to eliminate the HAP requirement for all discretionary applicants, a single jurisdiction within an SMSA might decide to reject its entitlement status and opt for discretionary status. With no other competitors in its SMSA, it would then be free to apply for all of the discretionary funding in its SMSA and legally avoid what it deemed an objectionable requirement. Such a situation may be atypical of the majority of the jurisdictions, but it can occur given the present funding system and its patchwork type of application.

The role of the discretionary funds within this particular block grant scheme also merits analysis because it raises another major issue regarding the funding provision of the act. If the statutory formula is not working to satisfy the full intent of the act, can the discretionary funds be used to correct any shortcomings?

The discretionary funds are the block grant's categorical programs. They exist to provide for the needs of non-entitled jurisdictions and to allow Federal administrators some discretion in the allocation and use of the funds. Any decision to further expand the entitlement categories has the automatic effect of diminishing the amounts of funds available to carry out the stated roles of the discretionary funds. However, the alternative possibility of strengthening the use of discretionary funds is often overlooked.

The program provides for two separate types of discretionary funds. Each has separate advantages and limitations. The Secretary's fund is a percentage of the total appropriation. Any increase in its amount (*i.e.*, by increasing the percentage of funds that it takes off the top or by a special add-on to this fund) would distribute the reduction of remaining funds evenly across all participating jurisdictions. The possible uses of the Secretary's fund are statutorily specified. This means that additional uses, either in the form of directing money to specific jurisdictions, such as the states or designated decaying cities, or in the form of earmarking certain funds for particular uses, such as providing technical assistance, would most likely necessitate an amendment to the act. Amendments might be sought in light of the possible need to target more fiscal assistance to designated high priority areas or needs. Major objections against extensive use of this fund in this way are that it would diminish the funds for the remaining block grant program and tend to recategorize the program.

The general purpose discretionary funds, on the other hand, can better target needs to their respective metropolitan and non-metropolitan areas. The set percentage which is used in the non-metropolitan fund establishes some degree of fiscal certainty within that program. The amount of available funding is statutorily established and is known by potential applicants who, through the use of the mandatory preapplication procedures, can gauge their chances for funding ahead of their fiscal year deadlines. The metropolitan discretionary fund, on the other hand, lacks the feature of an established funding level. Supporters of an earmark provision have noted that its inclusion within the metropolitan discretionary fund would inject a degree of fiscal certainty into that program, thereby reassuring the smaller non-entitled jurisdictions that some amount of discretionary funding would be available for their community development needs. However, unlike the non-metropolitan fund, this could only occur at the expense of restricting the amount of available funds for entitlement grants. The earmarking tactic has been used in other block grant

programs, but there is no indication in the formal legislative history as to why the approach was not adopted in the CDBG.

4. How intrusive are the Federal requirements? Does the Federal-local nature of the program affect the degree of intrusiveness?

Before examining the intrusiveness of the Federal requirements under the current program's operation, a necessary distinction must be made between the entitlement grant and the discretionary grant within the CDBG program. While the minimal Federal intrusiveness mandate is an important program constraint upon the block grant format and, thus, in the instant case, upon the entitlement grants, it is inapplicable to categorical programs and as such serves as no constraint upon the discretionary portions of the overall program. Nevertheless, it might be expected (or hoped) that some of this block grant trait would carry over into the discretionary program as well.

A number of Federal requirements are attached to the CDBG program. Assuming (as some do not) that the existence of certain requirements *per se* does not defeat the test of a block grant, the inquiry should focus on the degree of intrusiveness which is generated by the program's various requirements. In addition, since the CDBG program is one of two new style Federal-local block grants, examination of these requirements must bear in mind whether they are being used in response to special administrative needs arising out of this Federal-local relationship.

The CDBG program requires a detailed application prior to the receipt of any funds. Basically the application includes (1) a summary plan of long-range (three years) goals; (2) an annual plan for specific proposed activities; (3) a program to relate local needs to national objectives; (4) certifications of compliance with a variety of Federal statutes in the areas of civil rights, environmental protection, relocation and reacquisition assistance, low income employment and training opportunities, and citizen participation; and (5) a HAP. In limited cases, any of the first four requirements may be waived at the Secretary's discretion.

Pursuant to a compromise agreement during the legislative drafting sessions, the detailed application only receives minimal review. The first year experience suggests that this format has successfully expedited the disbursement of funds and has occurred with minimal grantor intrusiveness.

Some critics have asserted, in fact, that the review at this level has been too little and threatens to defeat the

other side of the block grant mandate, *i.e.*, sufficient review to ensure that national goals are accomplished. Although the statutory provisions provide for substantial year-end review, some critics argue that this later review is insufficient, since it occurs after the damage has been done and funds have been expended.

HUD has attempted to answer these criticisms by promulgating regulations and guidelines which delineate the minimum Federal requirements in such areas as environmental review, A-95 review procedures, and HAPs. It is still too early to make any credible assessments of the effects of these guidelines on the block grant nature of the program. If they were to become progressively more detailed, they conceivably could leave HUD open to a charge of "guideline intrusiveness."

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The use of such explanatory materials only underscores the need for technical assistance which has been expressed by many new recipients in the program. Such assistance is crucial during the capacity-building phase in which many jurisdictions find themselves. It is especially critical to assure that the national objectives are not frustrated or lost sight of during the initial phases of this decentralization process.

While the need for technical assistance in the preparation of application and performance reports and in the initial administration of the community development program is acknowledged, the appropriate source for that expertise is an issue. A variety of potential actors emerge: HUD, the state, regional council or councils of governments (COGs), and counties.

HUD has shied away from substantial involvement in the delivery of technical assistance. Its position is based on the premise that the purpose of the program was to return power to the local people and HUD's involvement might frustrate that purpose, regardless of the fact that its technical expertise may make it the preferred actor.

The state community affairs officers have expressed some willingness to assume this technical assistance role if some reimbursement is provided. Under the existing provisions of the law, any assistance they currently provide is performed *gratis*. State involvement at the administrative level would have advantages. Local governments could utilize the expertise of their state community affairs agencies. What is more, such state participation could facilitate coordination of state re-

sources as well as augment their own community development involvement. However, in many states, the community affairs departments are not sufficiently developed to provide this type of help. In these cases, programs which develop both state and local capacity to perform community development activities may be in order.

Regional councils and COGs present other possibilities for the provision of technical assistance. Their knowledge of specific areawide needs is often as good as — if not better than — some states'. However, two problems may be raised by their participation: first, their own degree of technical expertise in the area; and second, their lack of legal status as general purpose governments which might operate to disqualify them from remuneration under the existing law.

A final source of technical expertise and assistance for localities could be the urban counties. It would be logical for those counties which have the necessary skills to provide this service for those jurisdictions within their boundaries. In some cases, this has already occurred since, under the law, the qualifying urban counties assume the legal responsibility for the preparation of their community development application. But this approach has two limitations. First, it assumes that all urban counties have the requisite technical skills which is not, in fact, true. Furthermore, it would be inapplicable to the large number of the participating jurisdictions which have no affiliation with an overlying urban county.

It is premature to reach a judgment on HUD administration of the year-end performance reports. However, pressure is already mounting to hold local governments to a strict accounting of their use of funds in the pursuit of the national statutory objectives. Examples of intentional abuses of local government discretion already have surfaced. Civil rights groups are particularly anxious that the general revenue sharing experience of local expenditures of Federal funds in total disregard of Federally mandated civil rights obligations not be repeated under the CDBG. Anything less than vigorous enforcement of the letter and spirit of the law is liable to become a heated issue.

Although, as previously noted, the operation of the discretionary grant is not theoretically governed by the same constraints as the block grant, the intrusiveness of the Federal requirements applied to its recipients still is of concern. HUD appears to be extending its administrative simplification methods to these grants as well. Evidence of HUD's simplification techniques in the discretionary grant area can be found in its use of preapplication procedures in order to assess and inform

applicants of their chances of being awarded one of the highly competitive discretionary grants. However, the very fact that competition is strenuous may necessitate the requirements of increased amounts of information in order to facilitate the meritorious awarding of these grants. Although this is not a current problem, it is one to which HUD is likely to remain sensitive. Applications of certain small jurisdictions for one-shot developmental assistance can be simplified by the Secretary who has the option of waiving all but the HAP requirement in their application process.

While there are strong arguments for the retention of the HAP requirement for the sake of program uniformity as well as the coordinated development of housing assistance for the applicants for metropolitan discretionary grant funds, a question has arisen as to the necessity of the current requirement for very small and non-metropolitan cities. Some claim that it is possible to simplify this requirement for these jurisdictions without sacrificing the program's objectives. In fact, an argument has been made that in certain situations this simplification is also equitable. Experience has shown that the preparation of the HAP is an expensive process — in use of funds and manhours. This expense may discourage small jurisdictions from applying for one-shot, non-housing-related expenses. Since this was not the intent of the act, the argument for an exception in these types of cases has merit.

5. What are the unforeseen and perhaps unintended results of the program?

Interest in the CDBG program was high at its inception and has increased during the first year-and-a-half of its operation. As the program's potential impact becomes more apparent, the public interest monitoring groups become more numerous. Their studies, combined with HUD's sizeable number of planned and ongoing in-house and contracted out research projects, would indicate that this may be one of the most carefully scrutinized new programs to emerge in the past few years.

Three major explanations are suggested for this high level of interest. First, the CDBG program is the first Federal program to give direct entitlement grants to units of general local governments for a wide range of community development expenditures. By so doing, Federal funds were redistributed across the county — providing funds for communities which previously never participated in Federal community development programs, and portending the diminution of funds to past participants. This distribution generated two basic (and

sometimes antagonistic) interest groups among the recipients: the new haves and the soon-to-have less or the have-nots.

Second, the CDBG program attempts to accomplish this redistribution of funds at a time when the overall funding level for the given purposes of the program is seriously low in comparison with the needs.

Third, the CDBG program in furtherance of the New Federalism's decentralization objective, puts to the test the old idea of popular democracy on the local level. The act promotes a sharing of responsibility between Federal and local government for the development of viable urban communities and the fulfillment of housing needs of the low and moderate income person. Critics of the program point out that it assumes that persons with power will respond to persons without power — something which has rarely occurred.

In a very real sense, a majority of the criticisms of the program stem from the inadequacies of the funding, particularly in light of the substantial increase in participation. The underlying theory of the program is sound: dispense Federal funds for a designated purpose based on need, not grantsmanship. But it assumes both an accurate definition of need and the ability to direct funds only where needed. If the funding level were sufficiently high to cover all the needs of all the jurisdictions which sought fiscal assistance, then whatever inequities that arise from channeling some funds to less needy recipients or recipients with lower priority needs would be of far less concern. The current CDBG program, however, does not fit this pattern.

First, funding for the CDBG program is significantly below the level of need. This also had been the case under the old categorical programs, but it was accentuated by the new program which increased participation by 40 percent while funds increased by only 15 percent. This funding shortfall is furthered by the worsening of the nation's economic position. Double-digit inflation, periods of recession and near depression, plus high unemployment rates have left many of the nation's communities in severe financial distress. These conditions have curtailed the ability of local jurisdictions to raise money to perform basic governmental services and have sometimes resulted in the scrapping of all but the most essential programs.

Under such circumstances, the influx of additional fiscal assistance was particularly welcome. In some cities, the funds meant the difference between having a community development program and continuing to do without; in others, it made the difference between maintaining the current program level and expansion. However, the existence of the maintenance-of-effort

provisions within the CDBG program requirements placed some entitlement participants, already in fiscal straits, in a greater dilemma. Money was available but with a crucial string attached. It could not be used to substitute for pre-existing efforts, even when the supporting funds were no longer available. In such cases, the maintenance-of-effort provision may have necessitated the recommitment of funds from other project areas in order to obtain the needed Federal funding.

One unforeseen effect of the nation's economy and the local jurisdictions' lack of funding for public works projects was the consideration of the CDBG program as a mechanism for the disbursement of countercyclical assistance to areas of high unemployment, to be used to generate additional employment and private investment in economically depressed areas. Proponents of the legislation viewed the CDBG program structure as a means for quickly dispensing funds to local jurisdictions which met the unemployment criteria designated in the proposed bills. Although action has yet to be taken on this proposal, it brings to the forefront the issue of unintended uses of the new program. Careful consideration will have to be given to the applicability of the present program to these ancillary uses and the burdens which such additional uses may place upon its operation.

National economic conditions were not the only unforeseen events which affected the level of program funding. A variety of in-house miscalculations on the part of HUD succeeded in further reducing the amounts of funding which the drafters thought would be available. The servicing of more than 3,100 varying jurisdictions (and this number might rise to almost 4,300 next year) under a single funding scheme was bound to cause some unanticipated problems.

The amount of funds needed for entitlement grants was underestimated. This underestimation occurred even prior to the unexpected qualification of the 73 urban counties — an action which used an additional \$61 million of the metropolitan funds. An additional sum of \$17,000 was shifted from the inequities portion of the Secretary's discretionary fund to the SMSA general purpose fund just to cover the excess in computed SMSAs balances resulting from the computerized rounding of formula figures, while another \$20,956,500 was shifted from the same fund to be used for hold harmless entitlements. HUD's failure to initially request the total authorized appropriation for the first year program also added to the funding confusion.

Many of these problems can be written off as start-up errors but they do highlight the initial fiscal complexities of a Federal-local-type block grant which deals directly with thousands of recipients in contrast to a Federal-state

program dealing with 50 some recipients. One commentator noted that this piece of legislation was "legislation by computer." The same comment applies, to a certain degree, to the program's administration. Its complexities are sufficient to temporarily tax the combined skills of man and computer.

Other unexpected issues arose at the implementation level. A major one involves the way in which some CDBG funds have been used. Initial reports are coming in from some major cities which indicate that local decisionmakers have opted to use their funds to "save" transitional areas at the expense of providing funds for the more severely blighted neighborhoods. One method which has been used is to provide funds for middle income families (who often happen to be white) to rehabilitate houses in these transitional areas. Such actions are said to fall within the act's objectives of revitalizing urban communities by bringing in new taxpayers who can assume some of the fiscal responsibility of rehabilitation while also fulfilling the objective of reducing the isolation of income groups.

While it is difficult to argue that such an action is impermissible under the act or that it is an abuse of local government discretion, it might necessitate a closer scrutiny of each jurisdiction's planned activities in pursuit of the act's overall objectives. Widescale adoption of such a *modus operandi* could result in the death of the already dying areas. Although minimal intrusiveness into each jurisdiction's use of its CDBG funds is the desired goal, it cannot be accomplished at the expense of the larger national purpose. The first year performance reports should provide the necessary data to evaluate the extent to which national goals are not being actively achieved.

There is also evidence to suggest that there has been a shift in the types of activities which are being undertaken with the CDBG funds. Little large-scale community rebuilding is being started. Small-scale, short-term activities were preferred during the initial funding year and these tended to be spread over a large area rather than concentrated in target communities.

One suggested explanation for this shift to short-term activities is the three-year funding term of the CDBG program. Jurisdictions are hesitant in these financially hard pressed times to take on major commitments if additional Federal funds can not be guaranteed. This same explanation has been offered for the failure of the program to leverage significant amounts of private sector investment. When the issue of future funding (scheduled to come before Congress in Spring 1977) is settled, one could assume that the nature of the community development activities would once again shift to more long-

range projects and business interests will be more anxious to invest their monies. However, if no change in activities occurs, a serious reevaluation of the program operation and its incentives for long-range development would be in order.

A final unforeseen event has been the emergence of the urban counties as stronger political actors. The fact that urban counties were designated as entitlement jurisdictions and that 73 participating urban counties successfully organized themselves and 1,875 of their included incorporated units to obtain funding and

carry out countywide community development programs, attests to their development. These actions now appear to serve as a model for small communities and state community affairs agencies which both seek stronger roles within the act.

A variety of "sleeper" issues undoubtedly exist and will reveal themselves as the program grows and develops. For this reason, the close scrutiny which the CDBG program has been receiving should be an added blessing, for it promises to provide additional information on the workings of this Federal-local block grant.

FOOTNOTES

¹It has been suggested that although this was the case at the inception of the categoricals, the development of sophisticated grantsmanship on the part of some past participants eliminated equal competition in the later funding years.

²These cities and their projected percentage loss of funding include: Newark, N.J. (51.3 percent); Boston, Mass. (60.1 percent); Buffalo, N.Y. (34.6 percent); Detroit, Mich. (20.9 percent); St. Paul, Minn. (77.5 percent); Minneapolis, Minn. (62.1 percent); Seattle, Wash. (40.4 percent); San Francisco,

Calif. (55.3 percent); Oakland, Calif. (44 percent); Philadelphia, Penn. (39.7 percent); Pittsburgh, Penn. (44.3 percent); St. Louis, Mo. (5 percent); Atlanta, Ga. (39 percent); Baltimore, Md. (43.3 percent); Cleveland, Ohio (9.9 percent); Cincinnati, Ohio (49.9 percent); Milwaukee, Wis. (16.3 percent); and Washington, D.C. (61.4 percent). Source: *An Evaluation of the Impact of the Housing and Community Development Act of 1974*, by Carroll Harvey (Washington, D.C.: Joint Center for Political Studies, Jan. 1975).

³The projected gains for these cities, according to the Harvey study are: New York, N.Y. (54.9 percent); Miami, Fla. (267.7 percent); Dallas, Texas (267.7 percent); Houston, Texas (76.5 percent); and Chicago, Ill. (46.3 percent).

Findings and Recommendations

This volume of the Commission's study of the *Intergovernmental Grant System: Policies, Processes, and Alternatives* has focused on the workings of the newest Federal-local block grant. Although the CDBG program is less than two-years old and has yet to establish a lengthy performance history, the Commission feels there is sufficient data regarding some of the fundamental issues which are raised by this new style block grant to warrant this case study and its concomitant recommendations.

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The Federal-local block grant is more complex than its more established predecessor, the Federal-state block grant. Its complexities, in part, derive from the increase in the number of recipients — from 50 to a couple of thousands — as well as from the wider variety of different, often conflicting and competing needs which this greater number of participants possess. These factors, in turn, render the development of an equitable, workable, and politically viable allocation formula an inordinately difficult task.

The strict block grant approach tends to gloss over these differences under the assumption that the program will allow participating jurisdictions the requisite flexibility to accommodate their individual needs. If sufficient program funds are available, then this might be true. However, thus far, insufficient funding has plagued the CDBG program.

SUMMARY OF MAJOR FINDINGS

The Act

- The Community Development program emerged as a hybrid block grant. It

contained a mix of funding mechanisms, program objectives, and administrative regulations. Although all the basic elements of a block grant were present, many were preempted by additional requirements to insure administrative control and accountability.

- The CDBG program combines a variety of past approaches to community development. It provides funds for metropolitan as well as non-metropolitan communities, for the purpose of physical development as well as related social services, and for urban renewal as well as urban growth. It relates comprehensive areawide planning with local community planning, and attempts to establish a firmer link between housing and community development.
- The broadly stated objectives of the programs were geared to eliminating and preventing slums and blight, and these suggest broad program discretion. However, the statutory language pertaining to eligible activities and the subsequent administrative regulations, in effect, restricted the extent of program discretion by using a “laundry list” approach (13 eligible activities) for fundable projects.
- The mix of formula entitlement, hold harmless, and discretionary funding has produced a more complicated allocation scheme than is ordinarily found in a block grant. It has operated, in some cases, to decrease rather than increase certainty of funding, and has raised questions of equity and effectiveness.
- The eligibility requirements for formula entitlements were drawn broadly enough to encompass the intended units of large and medium size general local government as well as an unexpected number of urban counties. Small cities and states were given minor roles by their designation of eligibility only for discretionary grants.
- The grant administration requirements

reflected a Congressional compromise between the highly flexible recipient-dominated approach of special revenue sharing and the strong Federal oversight approach of a formula-based categorical program.

Implementation

- In the area of grant administration, HUD has been able to distribute funds to more cities, more quickly, with less administrative red tape under the CDBG program than under the former categoricals. This difference is perceived most sharply by past participants in two or more of the former categorical programs.
- The distributed funds have gone to many jurisdictions which had little or no previous HUD program experience. These new recipients include urban counties with their incorporated and unincorporated units, suburban communities, and smaller cities. Participation in the program has fostered intergovernmental cooperation on the city-county and intra-county level.
- The recipients of funds have used them to fulfill the broad objectives of the act. The past participants (frequently older cities) continue to use their funding generally for projects designed to eliminate existing slums and blighted conditions as well as to rebuild these decaying areas. Many of the new recipients are using their funds more for growth-related community development problems pursuant to the objective of preventing future slum or blight conditions. The overall effect of the expanded eligibility provisions has been to shift some of the former urban assistance funds away from the urban areas and into the suburban areas.
- The entitlement formula has been the subject of much criticism. While the formula may measure broad community development needs in light of the act’s dual objectives to eliminate and prevent

slums and blight, it does not target sufficient funds to those cities with the most critical urban slum and blighted conditions, especially in light of the percentage of poverty and over-crowding existing there. These cities are currently being held harmless by funds which are scheduled to be phased out by FY 1980.

- The multiple discretionary grant categories have operated to allow a large amount of flexibility in fulfilling the community development needs of non-entitlement recipients. However, during the first year, they have been plagued by unexpected shortfalls of funds – due to the unanticipated high expenditure of entitlement funds for qualifying urban counties.
- The small cities, as a result of the shortfall of discretionary grant funds, have pressed for guarantees of more certain funding, either through earmarked funds for their jurisdictions or through arrangements to obtain entitlement status.
- The objective of strengthening the role of local general government is being achieved in two ways: (1) state statutory actions have enhanced the legal authority of localities, allowing them to exercise a broader range of community development powers; (2) the act has resulted in increased local government decision-making. In areas where previously only special districts could act, generalists now have options to assume or delegate the power.
- The administrative “strings” which are required to safeguard certain national goals have not operated as effectively as public interest monitors had hoped. HUD, in its initial phase, had only loose requirements which gave rise to questions of the degree of allowable program permissiveness. The result was a wide diversity in local government responses to various requirements. However, HUD has now increased its involvement in program

oversight. Recently, it has issued guidelines for cooperation agreements, A-95 procedures, housing assistance plans, eligible program activities, and environmental review.

- HUD’s role in planned review and program evaluation is an open question. Its current position of establishing substantive guidelines for fulfilling national goals strengthens the block grant. Nevertheless, HUD runs the risk of recategorization if, by so doing, it develops a series of intrusive procedural requirements which infringe too greatly upon local discretion.

RECOMMENDATIONS

Functional Scope of the Program

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Functional Scope of the Program. After reviewing the initial workings of the Community Development Block Grant, the Commission concludes that a combined block and discretionary grant program provides the most effective and efficient strategy for meeting the community development needs of units of general purpose local government, given the program’s funding constraints. In adopting its recommendations relating to the program’s breadth, the Commission seeks modest changes with a view toward balancing the broader block grant goal against the realities of providing community development and other assistance to large numbers of local jurisdictions whose needs vary (sometimes dramatically) one from another.

Recommendation 1: Further Coordination and Consolidation

(a) *The Commission concludes that the block and discretionary grant programs established by Title I of the Housing and Community Development Act of 1974 provide the most effective and efficient strategy for meeting the community development needs of general purpose units of local government in metropolitan and non-metropolitan areas. Therefore, the Commission recommends that efforts be made to coordinate and, where feasible, merge administratively the Title I program with those related community development grant programs now administered by other Federal departments and agencies.*¹

(b) *The Commission further recommends that the*

Section 312 rehabilitation loans program be consolidated with Title I of the Housing and Community Development Act of 1974.

(c) The Commission concludes that the Community Development Block Grant, general revenue sharing, and other block grant programs have not diminished the necessity of Federal support for local, regional, and state planning, management, and technical assistance or "capacity building" activities. Therefore, the Commission recommends that Congress provide adequate funding for the Department of Housing and Urban Development's 701 comprehensive planning and management assistance program, until such time as a broader, consolidated, planning and management assistance program may be enacted.

In this recommendation the Commission addresses the functional scope of the program. It examines the program terrain with the objective of promoting greater recipient discretion and economies of scale by eliminating duplication and overlap among functionally related programs. At the same time, it seeks to identify those related programs which ought to remain separate from the broad block grant. The Commission here recognizes two categories of community development programs — those within HUD and those outside — and treats them differently.

The Commission specifically rejected a proposal to consolidate with the CDBG program those related community development grant programs now administered by other Federal departments and agencies, which would have turned the program into a classic urban and rural CDBG. Several factors led to this rejection including: the political difficulties of consolidating programs from different agencies; the complications which would result from the multiplicity of Congressional oversight committees that would acquire jurisdiction over the program; the related factor of the amount of administrative time this increased oversight would consume; the added management burden imposed upon the urban-oriented HUD if it were to take on non-urban-oriented programs; and the differences in recipients and target areas from one program to another.

At the same time, the Commission both encourages and endorses efforts to coordinate and, where feasible, to merge administratively those related community development programs. In the Commission's judgement, this approach best maximizes recipient flexibility and administrative feasibility in the broader program area.

Attempts to merge the administration of related community development programs of other agencies have already been initiated. HUD has authorized its field

offices to accept applications for projects to be funded by the Appalachian Regional Commission and by the Regional Action Planning Commissions² along with applications for CDBG funds. Under this arrangement, projects which propose to use supplemental funds from these multistate commissions are treated as discretionary block grant activities and are subject to the same regulations as other community development discretionary grants. This Commission applauds these efforts and urges their expansion.

The Commission adopts a different approach when dealing with community development programs administered by HUD. Here, it recognizes the CDBG program as the most effective and efficient strategy for meeting the broad community development needs of local governments. Hence, the Commission recommends that the Section 312 rehabilitation loan program be terminated and merged with Title I of the act.

The Section 312 program was originally scheduled for termination and consolidation in August 1975. The amount of the average grants previously received was figured into the hold harmless calculations of past program participants in expectation of the program's demise. But, enthusiastic supporters of this simple but highly effective program mounted a campaign in Congress to maintain it and, thus far, have been successful.

The one major difference between the 312 and CDBG programs is the identity of the recipient. Under the Section 312 program, loans can and are made directly to individuals and families, property owners and tenants. The CDBG program would transfer the funds directly to local governments which then would be free to design their own programs for distributing rehabilitation funds.

Some opponents to the Section 312 consolidation have pointed to legal impediments raised by provisions in state laws which prohibit communities from making loans or lending credit to borrowers and cited this as another for a separate program. These impediments, however, have been circumvented under the Section 312 program by use of direct loans from HUD to the borrower. At the same time, a HUD survey has shown that of the 26 states which have possible legal impediments to rehabilitation loans made by state or local agents, the attorneys general in all but five of these states have approved the loans. In the remaining five, funds for rehabilitation appear to be flowing from localities regardless of the adverse legal opinions.

The Commission takes the position that, on balance, the recognized effectiveness of the Section 312 program does not outweigh the charge that the program is duplicative. CDBG recipients are, in fact, placing consid-

erable stress upon the rehabilitation of housing, according to HUD's first annual report, and they have perfected the means of doing so. Consolidation would allow local governments the opportunity to coordinate rehabilitation efforts occurring within their jurisdiction while relieving HUD of this overlapping and administratively burdensome program.

In the final section of this recommendation, the Commission distinguishes the situation of the 701 program from that of the Section 312 program. It does not find sufficient overlap between the 701 and the CDBG programs to warrant consolidation. To the contrary, the Commission concludes that the CDBG program has not diminished the necessity of Federal support for local, regional, and state planning, management and technical assistance or "capacity building" activities.

Although formal consolidation has not been proposed, the necessity of continuing past funding levels for HUD's 701 comprehensive planning program has been questioned. In its proposed FY 1977 budget, the Administration requested a 66 percent cutback of program funds, premised on the view that many local planning activities can and should be funded through the block grant.

The Commission rejects this view and recommends that the Congress provide adequate funding for the 701 comprehensive planning and management assistance program until such time as a broader, consolidated planning and management assistance program may be enacted.

The Commission's position here covers two separate but related topics: the need to adequately fund 701 as a categorical program separate from the CDBG; and the need for a consolidated planning and management assistance grant program. Underlying the Commission's stand against any further reduction of 701 funds is the fact that the Administration's proposal would actually make less money available for planning at a time when more is needed.

It must be recognized that the 701 program with its inclusion of citywide planning for transportation and health is broader than the CDBG program. A cutback in funding for those jurisdictions receiving CDBG funds could actually result in the receipt of less planning funds. This problem is exacerbated by the fact that prior 701 grants are not even averaged into the hold harmless amounts for former recipients. Furthermore, the proposed cutback of 66 percent is larger than the percentage of funds which went to entitlement jurisdictions, and localities under 50,000 under the 1975 701 allocation.³ It would appear to cut back the funds available for areawide agencies which are not eligible for CDBG

funds and states which must compete with their own localities for funding.

Of even greater concern is the fact that the cutback is coming at a time when the need for comprehensive planning, analysis, and central management at the state and local level has been heightened by the increased need for greater state and local initiative and responsibility mandated under the block grant approach. By suggesting consolidation of the funds for 701 (if not the 701 program, itself), HUD may be forcing a financially hard-pressed community to choose between physical development and planning-management. The Commission feels that this situation mixes apples with oranges.

The Commission has supported the enactment of a consolidated grant program of general planning, programming, and coordinative management assistance for umbrella multijurisdictional organizations and the repeal of existing programs since 1973.⁴ In the Commission's judgment, the consolidation of 701 with the more than 35 programs which provide comprehensive or functional planning assistance would be more in keeping with the block grant approach of combining programs within the same functional area.

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Recipient Program Discretion

Recipient Program Discretion. In the area of recipient program discretion within the CDBG program, the Commission has attempted to harmonize the high degree of flexibility which the block grant affords its recipients in their local decisionmaking with safeguards necessary to guarantee the stated objectives of the act. With this approach, the Commission seeks to obtain a pragmatic solution which is still consistent with the theory of the block grant.

Recommendation 2: Greater Recipient Discretion

The Commission concludes that the CDBG program contains some program constraints which unnecessarily restrict the program discretion of its recipients. Therefore, the Commission recommends that Congress amend the act to allow greater discretion in identifying and designing the programs to be funded. Specifically, the Commission recommends that the act be amended to:

(a) *allow for the funding of public services which are necessary or appropriate to support community development activities, pursuant to the objectives of the act provided that no more than 20 percent of the recipient's grant be used for this purpose where other Federal program funds cannot be provided for social services;*

(b) allow for the funding of all facilities, whether neighborhood or communitywide, which are consistent with, and in support of, the community development objectives of the act; and

(c) simplify the requirements for the Housing Assistance Plan to the maximum degree possible consistent with the objectives of the act.

This recommendation in part addresses the statutory language which restricts the projects eligible for funding to an inclusive list of 13 activities and focuses directly upon two situations where Congress has limited the types of fundable projects: public services and neighborhood facilities. The statutory language and the supporting legislative history have the effect of limiting the program discretion of the CDBG recipients in these particular areas.

The Commission recommends amending the act to include more liberal provisions for the funding of public services and facilities. In making these recommendations, the Commission has considered the counterarguments posed by the supporters of the current, often more restrictive, provisions and has attempted to incorporate the substance of their objections into the language.

Thus, by recommending adoption of a 20 percent ceiling on service-related activities which can be supported with CDBG funds (as was proposed originally in an early Senate bill), the Commission reinforces the Congressional preference that the CDBG program remain predominantly a physical development program, while at the same time providing greater fiscal certainty to applicants with a social service component in their application. By retaining the requirement that CDBG funds finance only social service projects which have not received funding from other sources, the Commission discourages the overuse of the easier-to-obtain CDBG funds for such activities.

Finally, by permitting the funding of public services which are necessary or appropriate to support other community development activities and public facilities, whether neighborhood or communitywide which are consistent with, and in support of, the objectives of the act, the Commission supports greater flexibility for the recipient jurisdiction in the choice of services and facilities, but with the caveat that they are geared to building viable urban communities and to serving the needs of poor and moderate income persons.

The Commission understands the concern of the program's administrators and some observers with the proposal to liberalize the neighborhood locational requirement. The Commission shares their concern that some CDBG funds may be diverted into the general coffers or may not be used to promote the act's

objectives. Thus its recommendation should not be construed to support those communitywide facilities (such as tourist centers or convention centers) which do not have as their principal use the service of the act's intended beneficiaries. At the same time, this recommendation does recognize the economies of scale which can be achieved by building one large facility for those cities where there is a heavy communitywide concentration of low and moderate income persons or where the residences of these intended beneficiaries are dispersed throughout a city. For these reasons, the Commission sanctions greater recipient discretion in this area.

The final portion of this recommendation urges simplification of the mandatory HAP process. It is intended to underscore the Commission's belief that grantor intrusiveness and accompanying program requirements should be held to a minimum.

In particular, the Commission is concerned with the fact that the HAP has proven to be a time-consuming and often expensive process, especially for applicants with no prior experience in comprehensive planning. Under the existing law, no distinction is made between the types of applicant and the types of assistance requested. The HAP is required across the board.

While the Commission supports HUD's use of the HAP and recognizes its important role as a linkage between housing and community development, it also believes that additional steps should be taken to simplify the requirement in some instances. For example, a simplified version of the HAP might be appropriate where the applicant is a small non-metropolitan or a small non-urbanized metropolitan discretionary community. Similarly, a simplified HAP might be required of very small communities with one-shot, non-housing-related developmental needs.

It is important that the Commission's recommendations for more liberal program constraints not be construed as a means of backing away from the act's objectives. On the contrary, these recommendations are intended to give recipient jurisdictions greater flexibility only when used in pursuit of the CDBG program's stated goals. The Commission understands that more liberal provisions can be subject to abuse. Therefore, it is imperative that these recommendations be considered in conjunction with the Commission's support of an active Federal role in performance evaluation and strict enforcement of the act's objectives.

Balanced Federal Administration

Balanced Federal Administration. Block grants provide a mechanism for balancing greater administrative simplifi-

cation and applicant discretion in the use of grant funds, on one hand, against the need to achieve national objectives, on the other. The CDBG program raises several major administrative issues as it attempts to strike this balance. The Commission believes that these issues must be considered in relation to one another, and presents the following set of three interrelated recommendations on the subjects of simplification, performance evaluation, and capacity building, in an effort to achieve better balance.

Recommendation 3: Continuing the Simplification of Administrative Requirements

The Commission concludes that HUD has made substantial strides in establishing simple administrative requirements for the Community Development Block Grant program in accordance with Title I of the *Housing and Community Development Act of 1974*. However, Commission studies show that there are still several areas of confusion regarding this program, and that other block grants with longer experience frequently have tended to become more complex in their administration over time. Detailed administrative and program problems arise and are resolved and Congressionally dictated requirements often intrude, thus building up an overburden of precedents and rigidity. Hence. . .

The Commission recommends that HUD remain sensitive to further opportunities for simplifying the administrative requirements of the CDBG program, and refrain from establishing additional procedural requirements which unnecessarily burden the application, administration, and performance reporting processes in the program.

HUD's handling of the various administrative and other requirements pertaining to CDBG thus far has reflected a conscious effort to strike a sensible balance between maximum recipient administrative flexibility and national goals and statutory caveats. Yet, recent events have made forecasts regarding these requirements risky.

The requirement for housing assistance plans encompasses one of the clearest national goals for which HUD is responsible, but remains confusing and difficult for applicants. Thus, it possesses the potential for introducing new complexities and rigidities into the program. The program's shakedown period with respect to this issue is still of concern to the courts, and the need for coordination between local and areawide housing assistance plans and Section 701 planning assistance programs has been recognized but not thoroughly explored.

Obviously, these issues need to be addressed, but the "easy" administrative solutions which could be applied rapidly through new, more detailed and more rigid requirements should be resisted. If solutions can wait until there is a more thorough understanding about how to deal with these difficulties based upon actual and varying experience as well as research, it may be possible to substitute alternative approaches and technical assistance in place of rigid and uniform new requirements, and this would produce superior results. The Commission believes this option should be explored, at the very least, before existing regulations are made more detailed and intrusive.

With respect to the numerous "requirements" in the act — concerning citizen participation, civil rights, and environmental protection — HUD is allowed to accept certifications from applicants that such requirements are being met, rather than detailed proofs entailing detailed HUD reviews. HUD-sponsored research on the acceptability of results under these certification acceptance procedures is proceeding. Since procedures of this type offer prime potential for keeping grant management simple, this research should be carefully pursued and precipitous judgments should be avoided while applicants are still unfamiliar with their new responsibilities and are still experiencing start-up difficulties. The capacity building assistance recommended in *Recommendation 5* should be applied to these certification situations before conclusions are drawn about the necessity for additional and more arduous application and review procedures.

The discretionary grants authorized under this program also could generate more complex procedures. The need to compare applications against each other in order to judge which are the most meritorious obviously can lead to an administrative desire for more information. This natural tendency needs to be held in check as much as possible.

Both the governmentwide circulars for simplification of grant-in-aid programs on an interagency basis and the integrated grant administration program under the *Joint Funding Simplification Act of 1974* represent challenges to the CDBG program. A program as broad as this one already is may be more difficult than a narrower one when it comes to integrating it into governmentwide procedures and interagency operations. Yet, the tendency to want to keep it apart from broader simplification and coordinative program efforts could undermine these other highly desirable undertakings and make it more difficult for applicants to deal with HUD on the basis of standard Federal aid procedures.

The Commission recognizes the primacy of the

national goals established in the act for this specific block grant program and the Federal responsibility to assure the achievement of these goals. Yet, simplification and less intrusion by the Federal government into the planning and decisionmaking of applicants also are meritorious and, at this point, they too are prime national goals. This recommendation, then, urges HUD to make the extra effort required to reconcile these sometimes conflicting objectives.

Recommendation 4: The Federal Role in Performance Evaluation

The Commission concludes that HUD has developed commendable guidelines for performance reporting by recipients and for evaluating recipient progress toward their planned objectives, consistent with the national goals of reducing blight, improving housing conditions, providing orderly development, enhancing civil rights, assisting low and moderate income residents, and protecting the environment. Under the law, HUD is authorized to perform needed reviews and audits to assure compliance with these national objectives, and may withhold grants or reduce the amount of funds under such grants when compliance is not achieved. This places HUD in the position of having to audit the program of each block grant recipient every year in a fairly detailed manner. While this auditing does not delay the initial grant award, it does constitute a vital means of meeting Congressional and other informational needs regarding the program. Hence. . .

The Commission supports the legislatively established Federal role in using performance reporting in the CDBG program to monitor progress toward the program's national objectives and to assure that Federal funds are spent in accordance with them.

Performance evaluation is more than a mere procedural issue. It is an integral component of the balanced management ethic of a block grant and it also relates to the long-term stability or instability of this grant form. The balancing question prompts some to insist that HUD must have the responsibility for determining whether recipients have been in compliance with the act and are progressing toward their planned community development goals. Others contend that this assessment should be shifted to the citizens of the jurisdiction in which the block grant funds are being expended. This citizens' approach would, they maintain, leave HUD in a position of not having to be involved directly in reviewing and evaluating the program of each recipient in detail every year, but of concentrating instead on the

programs of only those recipients which have been challenged – a management-by-exception approach. This could be achieved by accepting certifications from the applicant that Federal requirements are being met.

The Commission believes, however, that shifting the burden for performance evaluation from the Federal government to the citizens of a jurisdiction is unwise and burdensome. The "certification acceptance" procedure after all is still relatively new and untried. HUD now is studying how this approach is working in three areas where it already has been applied – namely civil rights, citizen participation, and environmental protection. Expanding the use of this technique to performance evaluation at this time, in our opinion, would be premature, at the very least.

This is not to say that citizens should ignore the CDBG performance of their respective local governments. They should not, and individually and collectively they ought to make their judgments known through all the many channels of access that lead to city hall and the county courthouse.

The Commission's position here is based on the deep-seated conviction that evaluating program performance is a vital element in a block grant's management and that the delicate administrative balance required dictates a prime HUD rule in this activity. The history of other block grants suggests that where the federal administering agency lacks or ignores this responsibility, the program loses credibility in the eyes of Congress. For all these reasons, then, the Commission supports the assignment of performance monitoring and reporting roles to HUD as presently stipulated under the act.

Recommendation 5: Building Greater Capacity of Block Grant Recipients

The Commission concludes that, despite attempts to simplify the administration of the CDBG program, it does place substantial new responsibilities on recipients and demands of them greater capacities than many currently possess for policymaking, planning, management, and application preparation. Hence. . .

The Commission recommends that:

(a) *HUD step up its sponsorship of research and demonstration projects designed to enhance the capacity of local governments to use the CDBG within the broadest context of community governance;*

(b) *HUD make more effective use of its publications, public information program, field offices, and other mechanisms to provide technical assistance to CDBG*

recipients and potential recipients; and that Congress authorize the necessary resources for this purpose;

(c) Congress fund and HUD use Section 811 of the Housing and Community Development Act to support capacity building objectives in CDBG recipient and potential recipient governments, using appropriate state and areawide agencies as vehicles for training and technical assistance, where advantageous; and

(d) HUD make a special effort, in cooperation with the EPA, the Council on Environmental Quality, and other appropriate Federal agencies, to provide much more substantial technical assistance to CDBG recipients than is presently available for compliance with required environmental reviews.

Under the CDBG program, recipients are expected to plan the development of their community in a comprehensive fashion, relate the use of their block grant funds to the total development of their community, use these funds for the highest priority activities related to specific national goals as needed in their own community, relate their community development activities to areawide community development policies and programs, certify that they are meeting a variety of complex Federal requirements through their own procedures, and comply with a sophisticated set of Federally imposed administrative requirements.

These are not easy tasks, whether looked at administratively or in the broader context of the community's political and policymaking processes. Moreover, the building of greater capacity in recipient governments to respond to these significant administrative and policy tasks is not a simple matter. A few isolated training programs and the availability of some technical information manuals will neither suddenly nor miraculously transform an unprepared recipient government into a model of administrative and political perfection. Capacity building is both a long-term task and a task which needs to be approached consistently from a number of different angles at the same time. Moreover, to be successful, it must relate directly to the basic program and political needs of the jurisdiction involved.

Outside assistance and prompting can be helpful but not necessarily decisive. Many CDBG recipients, for example, have received predecessor HUD programs and some have been strengthening their management capacities over a period of years under HUD's long standing "workable program" requirements. But the block grant recipients include many governments which have not had that experience. Many of these new grant recipients, as well as some previously involved, need a greater management capacity if they are to gear-up to use effectively the CDBG program.

The capacity building program recommended here encompasses a rather full range of research, information, technical assistance, and training activities, all working toward the same end. Special subject areas may need to be picked out from time to time for high priority capacity building emphasis. One such area, specifically set forth in this recommendation because of the obvious need, is the evaluation of environmental impacts for which recipients have been made completely responsible. Often, the recipients have had little direct experience with this environmental responsibility, and some are beginning from scratch. It may be necessary in some cases, for example, to actually transfer Federal personnel to a recipient government for a period of time to work with recipient personnel charged with these new responsibilities. Such transfers would be possible under the *Intergovernmental Personnel Act of 1970* and other Federal legislation.

Of course, it is one thing to authorize a Federal agency to provide technical assistance, and quite another to enable it do a good job of carrying out this responsibility. HUD and other Federal agencies frequently have been handicapped in performing such roles under existing legislative authorizations because of insufficient Federal resources. For example, HUD's former Title VIII training program (which is now Section 811) has not been funded for several years. At one time, it was a primary means of upgrading state and local staffs working in the community development field. The need for this type of training certainly has not diminished as the block grant program has come into operation, yet this training program has been allowed to lapse. This is inconsistent with the Federal policy of delegating more responsibilities to state and local governments where previously they had been exercised at the Federal level. The Commission believes that the Federal government has a responsibility for helping to build greater capacity at state and local levels when it requires more from these levels under programs for meeting national objectives.

As in the past, HUD would not have to rely upon its own capabilities alone for capacity building at other levels of government. Its present practice of using national public interest groups, consultants, private research organizations, state agencies, and areawide planning organizations to perform appropriate capacity building tasks could be stepped up along with the acceleration of HUD's overall capacity building program.

In the final analysis, however, the change here is a delicate one, for few recipient jurisdictions are likely to respond to such a HUD effort if it is merely perceived as a means of fulfilling what they deem to be unnecessary

Federal requirements. Where recipient cities and counties view the management of CDBG as part of the broader challenge of updating their central administrative systems, then a full fledged technical assistance effort is likely to be productive. The HUD effort, then, must be cognizant of this stubborn rule of intergovernmental administration and strive to emphasize the broader community-oriented benefits that can be gained from the capacity building endeavor.

Recommendation 6: The Role of Regional Bodies

The Commission recommends that HUD revise its guidelines to encourage councils of governments and other general purpose regional planning bodies to provide more technical assistance to applicant communities in preparing their HAPs.

84 *The Commission further recommends that Congress amend the act to authorize councils of governments and other general purpose regional planning bodies to prepare a regional housing assistance plan in lieu of local HAPs. Upon acceptance by the affected local units in accordance with the approval procedures of the areawide body within the region, the regional HAP would be submitted to HUD in fulfillment of the statutory application requirements.⁵*

The role of regional councils of government and other multifunctional regional planning bodies in the CDBG program has been minimal to date. Many of these organizations, of course, review and comment on applications submitted by eligible local jurisdictions as part of their A-95 clearinghouse responsibilities. Yet, the potential of regional councils to furnish services to applicants prior to the areawide review phase has been largely untapped. This is a marked departure from the regional thrust of many Federal programs that have been enacted since the mid 1960s. HUD, for example, administers financial assistance for comprehensive planning by regional councils authorized by Section 701 of the *Housing Act of 1954*, as amended. At the present time, 19 other Federal programs have mandatory regional components or offer fiscal incentives for areawide planning activities. In addition, two of the seven HUD programs merged into the CDBG (Open Space and Water-Sewer Facilities) required nationally certified areawide plans and funded only those projects which would make a positive contribution toward the implementation of those plans.

The emphasis which the act places on general purpose local governments as eligible recipients of Federal community development funds has been a disincentive to regional involvement. While considerably different from

a special district or a public authority, a regional council is an organization of local governments, but not a local government, *per se*. As such under the present statute and implementing guidelines, they cannot be remunerated directly for services performed on behalf of applicant communities.

The Commission is fully in accord with the general purpose government orientation of the act. At the same time, steps should be taken to help encourage regional councils to provide more technical assistance to applicants. Regional councils offer two distinct advantages in this area compared with the states or HUD: they are geographically closer to localities and presumably more familiar with their needs and how these relate to areawide problems and priorities; and they possess professional planning staffs who over the years have developed a reasonably good rapport with local officials.

The HAP is a policy document to which regional councils could make a significant contribution. The costs associated with preparing this document often have been burdensome for local governments, particularly smaller units. The quality of the HAPs submitted to HUD has been uneven. Technical assistance in identifying the condition of the existing housing stock and in assessing the future needs of low income residents for housing could be invaluable to many of these jurisdictions. Local administrative costs could be lowered. The time involved in application preparation could be reduced. And more than likely, the quality of the HAP could be improved. Greater participation of the regional council in HAP preparation could also help expedite the A-95 review process and facilitate interlocal coordination of housing programs.

A related task that some regional councils would be equipped to perform is the preparation of a regional HAP that would be submitted to HUD in lieu of individual local HAPs. Recent court decisions suggest that increased emphasis will be placed upon the interrelationships between the housing needs of a local jurisdiction and those of its region. A regional HAP would be a convenient tool for satisfying this judicial concern. But the desirability and feasibility of a regional HAP must be considered in light of the strength and credibility of regional councils.

Since low income housing is a sensitive issue in many jurisdictions, the regional council would need to possess certain of the characteristics of the umbrella multi-jurisdictional organizations (UMJOs) called for by the Commission in its 1973 substate regionalism report. These include state-designated local membership; provision for population-weighted voting under specified conditions; and authority and capacity to prepare a

comprehensive regional development plan, to review proposed local activities supported with Federal or state aid for consistency with the plan, and to resolve any conflicts prior to implementation. Currently, most regional councils would be unable to meet these conditions. However, those organizations that do possess these powers, or are beginning to acquire them, should not be denied the opportunity to perform a function that is closely related to their powers and duties under other Federal and state programs as well as to their overall mission — especially when this role could be of considerable help to their constituent localities.

To achieve greater regional council involvement in the CDBG program, changes in both the act and HUD's guidelines would be necessary. Provision needs to be made authorizing the reimbursement of these bodies for technical assistance rendered to localities. This could take the form of an authorization for regional councils to apply to HUD for reimbursement of eligible technical assistance costs under either the Secretary's discretionary fund or the general purpose discretionary fund. As an alternative, regional councils could be allowed to draw down on the administrative costs constituent entitlement localities would otherwise incur. A third approach would be to authorize a fixed percentage of entitlement funds to be used by the regional councils, if desired by the affected local governments, to cover the costs involved in preparation of a regional HAP or the provision of other technical assistance.

These changes would provide significant benefits to both HUD and local applicants. The quality of the HAPs would be improved, and the number of documents submitted for HUD action could be reduced. Better coordination of local programs would take place and the prospects of implementing HAPs and programs would be enhanced. Court cases might even be avoided. Moreover, these results could be accomplished without categorizing the block grant or incurring additional expenditures.

Recommendation 7: Strengthening the State Role

The Commission recommends that Congress amend the act to establish a new Federal category to be used to stimulate and support the direct performance of community development programs by any state which has a demonstrated interest and capacity in this area, as evidenced by the state's: (a) having a community affairs agency, (b) engaging in planning for community development, (c) providing technical assistance to local applicants in community development programs, and (d) providing substantial amounts of its own funds for community development-related purposes.⁶

The *Housing and Community Development Act of 1974* and the *Comprehensive Employment and Training Act of 1973* were sharp departures from earlier block grant programs. Both acts essentially established Federal-local rather than Federal-state partnerships. Particularly in the case of community development, states were accorded only a nominal role — primarily as eligible recipients of discretionary grants, as A-95 reviewers, and as conduits for funds. Unlike the Partnership for Health and Safe Streets programs, Congress did not believe that the states were willing or able to assume a pivotal position in CDBG planning, coordination, fund allocation, or overall administration. State spokesmen did little to change this view during the Congressional debate in the 1970s over the proposed legislation.

This direct Federal-local approach was basically consistent with that used in practically all of the categorical programs that were consolidated into this block grant. Yet, whether the states should be more involved in CDBG and in what ways have become controversial issues. Some contend that the substantial number of Federal "hardware" and "software" programs related to community development that are channeled through state agencies and the sizeable direct outlays made by some states for such purposes provide ample basis for ending the bypassing of these jurisdictions in CDBG. Bypassing, they argue, can impede interprogram coordination and penalizes states that have made a significant effort in this area. Others emphasize that given the decentralization and discretionary objectives of the block grant as well as the weak state role generally in urban programs, greater state involvement would merely add more red tape, delay, and administrative costs to the program and in many cases reward the undeserving.

This recommendation confronts these basic concerns, and provides a viable means for certain states to play a more significant role in CDBG that is consistent with the spirit of this block grant. It would do so by establishing a separate new funding category to be used to assist state-administered community development programs. In calling for this amendment, the Commission rejects the view that states should be included in the entitlement formula, thereby converting this block grant into a Federal-state-local partnership and placing states in a competitive position *vis-a-vis* their local governments for funding. The states' uneven past commitment to community development, the pressing needs of most large central cities and some urban counties, and limited Congressional appropriations make such action unfeasible. At the same time, states that possess the capacity and the desire to participate in the program should not be deterred or precluded from doing so.

The Commission believes that funds for the states should not be awarded at the expense of the already financially hard pressed cities and rejects the use of funds in the existing funding categories of the act. Instead, the Commission supports the establishment of a new and separate funding category, to be funded by an additional appropriation for the purpose of supporting state involvement in CDBG.

The Commission is fully aware of the concerns expressed throughout the legislative history of the program that the states' commitment to community development has been minimal. The fact that the states overall spend only about 3 percent of their own revenues for aid programs of an urban-municipal character lends support to this position. In addition, even though each state has established a community affairs agency (CAA), their functions, finances, staffing, and power vary widely. On the whole, however, CAAs are fledgling organizations and are weak in comparison with other state line agencies. Yet, to generalize here is to ignore fundamental interstate differences in commitment and capacity.

In the Commission's judgment, adoption of a differentiated approach to state eligibility for designated funds would help avoid penalizing those states that have a demonstrated interest in community development and now reward those whose desire was kindled only by the availability of Federal aid. Hence, this recommendation specifies four criteria that would be applied in determining state eligibility for the earmarked funds. The first indicator is the presence of a CAA which, at a minimum, should have well established lines of communication with local governments and provide significant services to these units. CAAs in states such as Pennsylvania, Connecticut, New Jersey, Utah, and Wisconsin provide good examples of the types of activities in which these agencies could and should engage.

In addition to an administrative structure, a state should have a planning process for community development as a means for identifying needs and problems; establishing goals, priorities, and standards; integrating and coordinating remedial actions; and assessing future conditions. This process should have a broad jurisdictional and programmatic scope. At the present time, several states receive 701 financial assistance to conduct comprehensive planning of this type.

Thirdly, a state should provide technical assistance to local CDBG applicants. This is a typical CAA function which can be especially helpful to smaller and non-metropolitan localities that do not possess sufficient professional staff or requisite sophistication in grantsmanship.

Finally, a state should provide a substantial amount of financial support for community development from its own sources. In 1972, for example, 12 states had a total of 18 public housing and urban renewal programs amounting to \$100.9 million in state aid; only five years earlier, seven states provided approximately \$67 million for these purposes. Some growth also is evident in the water and sewer area, where state support increased from ten programs and \$26.3 million in 1967, to 33 programs and \$37.4 million in 1972. A "buy-in" approach was first recommended by the Commission in 1964 as a key indicator of a state's commitment to urban development which would justify channeling in Federal-local programs.

This differentiated strategy, then, employs indicators of capacity and interest that are realistic and which reflect recent state experience. Their use in determining eligibility for CDBG funds is an important *quid pro quo* for participation in the program. The coordinative and facilitative role of certain states can be enhanced. At the same time, the red tape and delay associated with state assumption of merely a middleman position in the paperwork process can be avoided. And, in no way would the block grant principle be compromised; in fact, opportunities for overall program effectiveness would be enhanced.

The Commission considered and specifically rejected a recommendation that states which qualify for the proposed CDBG funds also be allowed to distribute the discretionary funds allocated for jurisdictions within their borders. If the states were to perform this task alone, legal problems regarding HUD's ultimate responsibility for program funds could be raised. On the other hand, if the states worked with HUD on the decision-making process for discretionary grants, an extra – and arguably unnecessary – layer of bureaucracy would be established without significantly improving the overall program operation.

General Call for Allocation Revision and Long-Term Funding

General Call for Allocation Revision and Long-Term Funding. The final two recommendations in this report address the issues of the equity of the allocation provisions and the program's funding. The existence of a dual funding mechanism providing entitlement as well as discretionary funds coupled with the relatively low funding level of the program when measured in terms of the needs of the nation's local jurisdictions call into question one of the basic tenets of a block grant – that

it provides some sense of fiscal certainty for grantees. Moreover, the operation of this dual funding mechanism along with the allocation factors used in the entitlement portion have raised basic equity questions.

Recommendation 8: A General Call for Allocation Revision

The Commission recommends that Congress amend the act so that the funding allocation treats the older, deteriorating cities and small communities in metropolitan areas more equitably. The Commission further recommends that in reviewing the operation of the funding allocation in preparation for recommending improvements to the Congress on or before December 31, 1976, as provided in the act, the Secretary of HUD give special attention to the fiscal treatment accorded these two groups of recipients.

The provisions for allocating CDBG funds among the various recipient groups reflect a complex of considerations that developed over the long history of the previous community development categorical programs and the pulling and tugging in the legislative process leading up to passage of the 1974 act.

The Existing System. In oversimplified terms, the existing system works as follows: 2 percent of the total appropriation (less a special needs authorization in the first three years) is set aside for the Secretary's special discretionary fund, to be used for disaster needs, areawide projects, innovations, new communities, and to correct certain inequities. Of the remainder, 80 percent is allocated to metropolitan areas and 20 percent to non-metropolitan areas.

First claim on the metropolitan portion goes to metropolitan cities (central cities and all other cities over 50,000 population in SMSAs) and urban counties (SMSA counties over 200,000 having certain community development powers). This allocation is on the basis of a three-factor "entitlement" formula: population, poverty, and overcrowded housing, with poverty receiving double weight. The next claim — for hold harmless — is also an automatic distribution. Through a formula averaging past program experience for the FY 1968-72 period, formula entitlement cities receive extra funds that amount to the difference between their formula entitlement share and the sum of their earlier average total grant. These hold harmless provisions are slated to phaseout completely by FY 1983. After these first two cuts from the metropolitan allocation, the remaining "discretionary balance" is available for distribution on a project application basis to cities under

50,000, counties other than urban counties, and states.

For the 20 percent non-metropolitan portion, the first allocation is distributed to hold harmless localities, and the remainder, the non-metropolitan discretionary balance, is distributed by the same process as the metropolitan discretionary balance.

In addition to these various allocations, there is an authorization for special needs — \$50 million for FY 1975 and 1976, and \$100 million for FY 1977 — to facilitate the orderly transition of units of general local government having urgent community development needs which cannot be met through the basic allocation provisions.

It is no simple task to judge whether the operation of this complex allocation system adequately accomplishes the objectives Congress set forth in the act, but the system does highlight the great difficulty of devising a substate allocation scheme that is both equitable and politically feasible. The several separate groups of claimants of the overall "pot" and the different provisions for assuring each its fair share tend to guarantee conflict and disagreement over whether the system is or is not working equitably. Congress itself recognized the complexity of the allocation task and the uncertainty of its effort to achieve equity by requiring the Secretary to recommend to it by March 31, 1977, desirable modifications in the method of funding and allocation of funds. At issue are two basic questions: are the allocation provisions in the CDBG program equitable and, if the response here is negative, can a better allocation system be developed without menacing the problem politically and without additional funding?

Allocation Impact and Equity. The preliminary findings of the Commission's study clearly suggest that two groups of recipients are already being treated unfairly or are in imminent danger thereof. By any reasonable construction of the legislation's objectives and by even a cursory reading of the implementation record to date, the larger, older central cities, and the small cities and counties of metropolitan areas have or will have a legitimate basis for claiming unfair treatment. The former have the most critical urban slum and blighted conditions, especially as measured by poverty and housing conditions, and must be a central focus of concern in carrying out the act's primary objective of "providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." Their fears of substantial reduction in assistance levels under the new CDBG program were not borne out in the first year, but this, in considerable part, was due to the effect of hold

harmless provisions which are scheduled to be phased out completely by FY 1978.⁷ The second group — cities under 50,000 and non-urban counties in SMSAs — looked to the CDBG program for equity after many years of underfunding when they were ill-equipped or indisposed to play the “grantsman” game with the larger jurisdictions in the competition for limited categorical program funds. In the first year under the CDBG, they still found themselves vulnerable in the contest for funds. As the lowest units on the totem pole in the distribution of the metropolitan pot, they bore the brunt of the fund reductions when increases were required for recipients with prior claims.

88 The Commission is convinced that the CDBG program will not be viable if the problems which have emerged with the funding system are not recognized and reconciled. Hence, the Commission makes a general call for an allocation revision to meet the funding inadequacies which its study has identified. At the same time, the Commission recognizes several key factors which argue against the immediate promulgation of detailed recommendations for funding changes.

First, while it is recognized by many that the present entitlement formula operates to the detriment of the older central cities, it is less clear what factors ought to be changed to bring about a more equitable result. In depth and highly quantitative research, designed to gauge the totality of the formula’s impact, is currently underway at HUD and the Brookings Institution. The Brookings Institution, in particular, is looking at the impact of each of the formula elements and will attempt to devise more equitable formulas to be used as possible alternatives. The results of these analyses should provide concrete data on which a responsible recommendation for formula amendment can be made.

Second, several factors which impacted on the funding allocation during the first year experience appear to be atypical of the program as a whole and may change as the program progresses into its second and third year. These factors include the larger than expected number of counties qualifying for entitlement funds; the backlogged requests of many jurisdictions for formerly impounded HUD funds; and the one-shot, generally water and sewer, projects of many small jurisdictions.

In light of these factors, the Commission supports the timetable which the act sets forth for review of the method and allocation of funds at the end of FY 1977. A better assessment and judgment of the funding allocation can be made at that time.

Reform Options. The Commission’s research, however, suggests that the inequities in the act’s funding mech-

anism can be corrected in a variety of ways: by extending the hold harmless provision; by a change in the definition of an entitlement jurisdiction; and/or by a change in the allocation formula. These various approaches assume a continuation of the present level of program funding — a level which the Commission recognizes as being below the actual level of need but which arguably is necessitated by current national economic conditions. However, since the CDBG program is the dominant program for community development for all jurisdictions and particularly for the cities, the Commission firmly believes that larger authorizations are needed if and when the fiscal conditions become more favorable. The present CDBG budget is really only 5 percent of all Federal aid in FY 1975, and about 31 percent of direct Federal aid to municipalities, counties, and townships.

In order to select the “best” approach and because of the interrelated nature of the funding provisions, it is imperative that the overall objectives of the CDBG program be clearly defined. In addition, as *Recommendation 9* points out, the program’s physical development activities can only be effectively implemented with assured substantial and long-term fiscal commitments. Thus, the Commission believes that any proposed changes must be considered in light of a better articulation of the act’s primary goal, their effect upon the amounts of money being distributed to each jurisdiction, and the length of time for which those funds are guaranteed.

A variety of options would obtain if the Congress decided to make the program more equitable for the older, deteriorating cities which, for the most part, are scheduled to lose money with the phaseout of hold harmless. Most commonly mentioned is making permanent or further extending the hold harmless provisions of the act. This type of relief, some argue, would be simple and less upsetting to the whole allocation procedure than tampering with the entitlement formula.

While this option may be preferable to the current phaseout provisions when measured by its effect upon the older cities, two counterpoints ought to be considered. First, unless appropriations are increased, this approach could have adverse consequences on those smaller jurisdictions and state governments which depend upon discretionary balance funds. Since the funds available for the discretionary balances are what remain after the entitlement (taking into account hold harmless) allocations are made, any increase in the latter would mean a decrease in the discretionary balances. This would reduce the funds available for these other recipients. Such a decrease occurred when the number of cities and urban counties qualifying for entitlement

grants exceeded the initially anticipated figure. Second, some feel this "hang-on to hold harmless" approach uses a shotgun where a surgical knife is needed. It would benefit all prior participants, regardless of differing fiscal and community development needs. Moreover, it would compensate those needs at a 1968-1972 level of expenditure.

Another approach would be to change the entitlement formula to make it more reflective of the needs of older, deteriorating cities. While this type of amendment is most consistent with the block grant theory, it is also the most difficult and disruptive to implement.

The current three-factor formula, in effect, weights population one-fourth, housing overcrowding one-fourth, and poverty one-half, since poverty is counted twice as much as the other two factors. Critics of the formula hold that, even with this double weighting of poverty and the inclusion of a housing overcrowding factor, the formula fails to gauge accurately community development needs.

Total population, they contend, is not correlated with poverty population, with the amount of housing and community deterioration, or with the amount of service moneys needed to alleviate the underlying problems. Some analysts indicate that for certain expenditures in certain states, larger cities experience diseconomies of scale, supporting the case for giving larger cities more money than is indicated by a one-to-one relationship to population. In support of their contention, they claim that the greater number of cities and counties covered by CDBG than its predecessor community development programs is a reflection of the fact that the population factor diffuses funds much more broadly than earlier, more narrowly targeted, categorical efforts.

These observers acknowledge the significance of giving double weight to the poverty factor, but note that the poverty index used is basically a measure of nutritional rather than housing and community development needs. Finally, these critics believe that the extent of housing overcrowding is an unreliable measure of housing needs. They point out that the U.S. National Commission on Urban Problems in its 1968 report concluded that the most deteriorated urban areas do not necessarily have the highest incidences of overcrowding, and that a high housing abandonment rate often is found in areas with the worst housing stock.

Taking account of all these flaws, these critics urge that poverty be given heavier weight. They suggest further that, to reflect the possibility that housing abandonments are a better indicator than overcrowding of underlying development and redevelopment needs,

entitlement jurisdictions be allowed to substitute their housing abandonment rate for the overcrowding factor when it is to their advantage to do so. In addition, they propose that the age of housing be introduced as a fourth factor, since it is a highly relevant indicator of the need for community development. Acknowledging that there is a serious question that any single formula can be devised which is sensitive to the community development needs of all the various kinds and sizes of recipient governments, these critics contend that the existing formula clearly has not responded to the act's major objectives. Defects have already been revealed, they stress, and Congress should not postpone correcting them. The needed formula changes, they contend, have been identified: more emphasis on poverty, the optional substitution of the housing abandonment rate for the overcrowding rate, and the addition of the age of housing factor.

A third option would be to earmark special funds for these older cities. Those who support this approach agree that the entitlement formula is defective in not responding adequately to the demonstrated needs of these cities. Yet, they believe that it would be futile, if not a mistake, to try to adjust the formula. First, they cite the great difficulty in designing a formula which, by objective measures, would accurately gauge the needs that the act is supposed to meet. Even granting that a formula might be capable of eventual refinement, they feel that the interests that have become attached to the present formula would prove too much to overcome in the legislative battle over formula amendment, especially one that would decrease the sums available for the non-metropolitan as well as metropolitan discretionary jurisdictions.

The earmarked funds, they point out, could be targeted to the older cities in two ways. First, a separate categorical program could be established with its eligibility limited to a designated list of target cities. Alternatively, funds could be earmarked within the Secretary's discretionary fund of the CDBG program for special assistance to these cities. Since the current Secretary's fund only contains 2 percent of the total appropriation and already has six designated uses, they urge expansion of the fund, either by an add-on or by designating a larger percentage of the overall appropriation for this purpose. In either case, they emphasize that the targeted and regular CDBG program for these cities should be merged administratively.

Turning to the small cities, the legislation and its history makes it clear that these units (*i.e.*, cities under 50,000) were not intended to be prime beneficiaries of the act. Nevertheless, these cities are now raising

questions of equity concerning their distinctly unfavorable position in obtaining CDBG funding. Their arguments focus directly upon their community development needs as growing urban governments and the necessity of having Federal funds available to help meet these new demands.

Historically, the needs of small communities have often been separated from those of larger cities. Small non-metropolitan cities were primarily serviced by the Department of Agriculture's Farm Home Administration or Rural Development Service. Small metropolitan cities were left to compete with the large urban units (often to their detriment) for HUD categorical funds.

HUD takes the position that small cities have fared better than ever under the act. HUD increased its funding of cities under 50,000 by more than 50 percent. While admitting that competition for funding was vigorous, HUD notes that many of the applications were for "one-shot" type projects or for projects which had been postponed during the Federal funding moratorium. Thus, it feels that the demand will subside two or three or four years into the program. In addition, HUD and others note that the original funding estimates needed to be adjusted during the first year as a result of a variety of "first-time" or start-up problems which are unlikely to be repeated. The resulting shortfall of funds for small metropolitan communities, some feel, touched off unnecessary concern over future program years.

In light of the HUD assertion that the problem of small metropolitan city funding is a predominantly temporal one, the Commission approaches recommendations in this area with a degree of caution. The recently passed *Housing Authorization Act of 1976* allocated an additional \$200,000,000 in CDBG contract authority to be used specifically in metropolitan areas in FY 1976. This amendment also makes available the \$119.1 million projected in the HUD budget for metropolitan discretionary funds, thereby eliminating the type of funding shortfall experienced during the first program year. It is, therefore, possible that the combined effect of this additional funding and the fulfillment of the backlogged one-shot development projects may alleviate the need for changing the act.

However, many small city advocates pose a more difficult question: should the CDBG program itself be changed to provide additional funds to meet the growing needs of the nation's numerous small cities? Put differently, should the focus of the CDBG program shift from the renewal and development of large urban areas to the renewal and especially the development of all the nation's cities?

The Commission's position is that HUD in its funding

allocation report and Congress in its assessment of this report give special attention to the needs of the small cities. In making this recommendation, the Commission suggests that various options be weighed in light of their potential effect on the program, particularly in light of its limited funding resources.

One method of guaranteeing funds for more small cities would be to expand the entitlement category — either by lowering the required population of an entitlement jurisdiction or by permitting combined applications for consortia of small cities. In either case, the effect would be to further expand the entitlement category, while decreasing the funds available for discretionary balances.

Lowering the entitlement population requirement could significantly increase small city participation. If, for instance, the population requirement was set at 25,000 rather than 50,000, 337 SMSA cities would qualify for entitlement. If entitlement status was further amended to include all cities over 25,000 rather than just SMSA communities, an additional 183 non-SMSA cities would be added. A drop to 20,000 would increase the number by another 242 cities. Thus the number of cities between 20,000 and 50,000 (762) would result in a 128 percent increase in the number of jurisdictions (594) currently entitled by formula.

Critics of this change note that while some small cities would probably fare well under it, other smaller ones would not. Moreover, a decrease in entitlement population size might result in further confusion, they warn, while possibly diluting even more the urban nature of the program. The lack of agreement on just what is rural or urban is evidenced by the various population size eligibility criteria used for many legislatively established rural programs. Under the *Rural Development Act of 1972*, towns of under 10,000 population in metro and non-metro areas are eligible for community facilities loans and water and sewer grants and towns under 50,000 qualify for business and industrial loans and business enterprise grants. *The Housing and Community Development Act of 1974* makes non-metro towns of under 20,000 and metro towns under 10,000 eligible for rural housing loans. If lowering the population would necessitate a determination of whether a town is "urban," the change may further complicate the administrative role of HUD.

Entitling two or more small jurisdictions with a combined population of 50,000 or more through the use of joint cooperative agreements but only in cases where the overlying county is unable or unwilling to qualify as an urban county presents another alternative. In one sense, this proposal could be viewed as expanding the

current practice of allowing entitlement funds to be distributed to small metropolitan jurisdictions which sign cooperation agreements with their overlying urban county. It would afford those small cities with no qualifying county a chance to qualify for entitlement funds like their counterparts in urban counties. It also would encourage increased interlocal relations in a vital service area.

Although the equities are appealing, the practical aspects of this proposal are less persuasive. First, it could swell the ranks of entitlement jurisdictions while further diminishing discretionary balances for those small cities which cannot aggregate for lack of neighboring cities, legal powers, or satisfactory agreement with adjacent cities on community development goals. Second, it would only accentuate the shift of assistance away from large urban areas. Finally, the proposal might prove to be an administrative nightmare. Unless small cities indicated their decision to aggregate well in advance and agree to maintain the cooperative mechanism for the extent of the program authorization, HUD would be placed in the position of continually altering its funding figures for participating jurisdictions — thereby decreasing fiscal certainty in contravention to one of the block grant's purposes. For administrative ease and to encourage greater county-municipal cooperation, small cities in qualifying urban counties usually are excluded from this option.

If a decision is made to pursue this approach to revision, the Commission would suggest that Congress and HUD give due consideration to the type of cooperation agreement which would be used to establish the consortia. The Commission favors the use of cooperation agreements and recognizes their potential for improving intergovernmental relations, but it also realizes abuses can arise. Specifically, assurances should be required that the entitlement funds received are distributed among the cooperating jurisdictions in accordance with need as indicated by the act's formula, and that all cooperating jurisdictions are active participants in carrying out the planned community development activities. Moreover, the duration of the agreement and its capacity to bind its members should not be overlooked.

The cooperation agreement experience of the urban counties should provide some guidance about what to avoid. Hence, the lack of the specific cooperation agreement guidelines have resulted in some situations where the urban county merely acts as a coordinator or as an included small jurisdiction that merely lends its authority or population to the cooperative arrangements. For some, this type of ad hoc arrangement

merely has been a means of obtaining more money without full commitment to the spirit and intent of the act.

A second basic method of guaranteeing funds for small metropolitan city use is to earmark a set percentage of the SMSA fund for the discretionary balance. Such action would have the concomitant effect of placing a ceiling on the entitlement funds. This approach would only be appropriate if it was decided that the thrust of the CDBG program is toward community development assistance in all jurisdictions and not merely to the large, more urban areas whose funds would be limited by such a ceiling. But such a move, some argue, would be tantamount to abandoning those areas which most need large sums of Federal funds and would serve to accelerate the deterioration of the nation's older central cities. These critics feel that it would be a difficult amendment to support given the act's stated objectives.

General Summary. The Commission's list of options to assist small cities and large deteriorating metropolises is admittedly not exhaustive. The complex funding scheme of the act suggests a multitude of possible changes which could affect these two groups. By highlighting some of the possible changes, this analysis has tried to emphasize the effect on the whole program which even a relatively small revision might generate and to encourage careful consideration before amendments are adopted.

The Commission would suggest that before a recommendation for a funding allocation revision is made, some additional thought ought to be given to the future direction of the program. The political infighting and compromise that marked the act's initial passage were basic conditioners of the present hybrid program. Post enactment developments relating to entitlement eligibility also have contributed. Taken together, these factors prompt the question: is the CDBG a rehabilitative or a developmental program?

At the present, the program is at a crossroads. All affected interest groups are presenting cases for the program to swing more in their respective directions. And each of these cases has merit. Older cities are falling into increased disrepair and critical financial straits. They need help. Non-metropolitan areas, claiming 40 percent of the nation's population, are experiencing the problems of urbanized growth. They need help. Suburban areas are accepting the population of their neighboring central cities and some of the problems of urban blight as well. They need help, too. At the same time, the Federal government has become increasingly aware of the necessity of counting its pennies and conserving its

dollars. More than ever, there is a need to set priorities and to use money efficiently.

Recommendation 9: Advance Funding

The Commission concludes that the physical development activities which the CDBG program supports can most effectively be implemented by the assurance of substantial and long-term fiscal commitments. Therefore, the Commission recommends that Congress appropriate funds for the CDBG program for a six-year period of advance funding beyond the current funding entitlement with provisions for periodic Congressional review of the program's goals, operation, and effectiveness.

92 A continual complaint about the CDBG program has been that its limited funds are authorized for too short a period of time to encourage major urban renewal and development projects. The delivery period for major capital improvements, urban renewal, and development projects, after all, commonly runs from four to eight years, and sometimes longer. This complaint prompted the Commission to adopt this final recommendation which it feels should be considered along with any funding allocation revision.

The first year experience indicated that most CDBG funds were being directed to basically low-cost, short-term projects. The reason most frequently given was that financially pressed local governments and private investors were hesitant to commit substantial sums of their own funds to long-term major development projects when the Federal financial contribution was only guaranteed for a short three years. Added to this concern is the general confusion surrounding the Federal government's commitment to revitalizing the nation's dying cities, and the program direction which a different administration might adopt.

As the legislation presently stands, Congress has given the Secretary of HUD definite authorization for \$8.4 billion to be used over the first three-year period of this six-year program, but with the appropriations made on an annual basis. In addition, the legislation requires the Secretary to submit timely requests to Congress for additional authorizations for the fiscal years 1978-80 at a level to be determined.

The recommendation advanced here recognizes that the real thrust of the Federal CDBG program is towards major community developmental efforts which generally carry a price tag so high as to be discouraging or prohibitive to most local governments acting independently. It realizes the importance of using limited Federal funds to attract and to leverage substantial private

investment, and it acknowledges that this cannot be done unless these potential investors are assured of the Federal government's long-term commitment to this purpose.

In light of the special long-term developmental character of this program, the Commission recommends that when the funding allocation revisions are considered after the submission of the December 31, 1976, HUD report, Congress also consider that the legislation be amended to give the CDBG program a firm six-year authorization with annual authorized funding levels. In addition, the Commission urges Congress to enact either a single lump sum appropriation that covers the full authorization period or annual appropriations enacted in advance for the entire authorization period. Despite the current fiscal constraints and Congress' budget procedures, the Commission is convinced that the thrust of the program, the special long-term nature, various urban development projects, and the distributive role this program plays in the critical life of our cities all warrant a full six-year appropriation and authorization.

An advance funding procedure has already been used in a number of Federal aid programs in the field of education. As early as the 90th Congress, appropriations for several such programs were authorized to be included in the appropriation act for the fiscal year preceding that for which they became available for obligation, notwithstanding the fact that initially this would result in the enactment of two separate acts in the same year. This approach, of course, was devised and adopted to end the uncertainty and semichaos that resulted from the mismatch of the school year's funding cycle and the timing of Congressional funding actions.

Moreover, general revenue sharing has benefited from a long-term authorization. In the case of the CDBG, the specific program problems are somewhat different, and the general question of certainty is even more sharply drawn. Hence, Congress should enact an appropriate multiyear authorization for this program. The existence of a sum certain in the form of a definite long-term (preferably six years) appropriation that would facilitate recipient community development planning. It would after all maximize program options, in that large-scale projects would be more feasible.

Furthermore, it would help provide private investors sufficient assurance of the Federal government's long-term commitment to community development, thus helping to assure their involvement. These funds, of course, could still be revoked if a recipient was found to be operating its program in contravention to the established national objectives. In fact, the adoption of longer term funding would operate to increase the

importance of a strict and effective performance monitoring and evaluation role by HUD.

While this recommendation is important to all participating entitlement jurisdictions, it is particularly crucial to the older and more deteriorated cities. The first year record shows that what little private investment that did

occur was generated more often in the suburban areas where the problems are less severe. A continuation of this trend would only increase the disparity in the urban-suburban situation and prove counterproductive to the program's goals. For all these reasons, the Commission strongly sanctions advance funding.

FOOTNOTES

¹ Among the specific programs which might be considered for consolidation are: *Department of Agriculture*, Farm Labor Housing Loans and Grants (10.405); Water and Waste Water Disposal Systems for Rural Communities (10.418); Rural Self-Help Housing Technical Assistance (10.420); Community Facilities Loans (10.423); Industrial Development Grants (10.424); *Department of Commerce*, Economic Development—Grants and Loans for Public Works and Development Facilities (11.300); Economic Development—Public Works Impact Projects (11.304); Economic Development—Special Economic Development and Adjustment Assistance Program (11.307). Numbers refer to *Catalog of Federal Domestic Assistance* listing.

Established under Title V of the *Public Works and Economic Development Act*.

³ The \$100 million appropriation for 701 in 1975 were distributed as follows: (in millions)

States	\$22.394
Areawides	
metro (including urban counties)	28.580
non-metro	9.837
Cities over 50,000	20.970
Localities (all cities under 50,000 and non-urban counties)	14.941
Other (Indians, etc.)	2.292
TOTAL	\$99.014

(total appropriation was \$100 million)

⁴ ACIR, *Regional Decision Making: New Strategies for Substate Districts* (Washington, D.C.: U.S. Government Printing Office, October 1973), p. 348.

⁵ Commissioner Dunn and Mr. White dissenting.

⁶ Commissioner Dunn dissented.

⁷ In the case of some Model Cities, this phaseout will be extended to 1983.

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The Commission is composed of 26 members—nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

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