

# CDBG and Economic Reinvestment

September 25, 1986

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-1000

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL AND INTERGOVERNMENTAL  
RELATIONS

Honorable Sherwood Boehlert  
House of Representatives  
Washington, DC 20510

Dear Mr. Boehlert:

Thank you for your letter of July, 17, 1986, transmitting a June 27, 1986, letter from your constituent, Mr. Edward Ratazzi, Jr., Executive Director of the Rome Industrial Development Corporation in Rome, New York. Mr. Ratazzi's letter expresses concern that several provisions in the existing and proposed regulations for the Community Development Block Grant (CDBG) Entitlement Program will adversely affect the City of Rome's Economic Reinvestment Program.

Before addressing Mr. Ratazzi's concerns, I would like to clarify the status of the CDBG program regulations. The current rule at 24 CFR Part 570 has governed the program since November 1983. In October 1984, the Department published a proposed rule incorporating in regulatory form the 1983 and 1984 legislative amendments to Title I of the Housing and Community Development Act of 1974 (the Act). In response to this rule, HUD received over 270 comments from many entitlement communities and private organizations participating in CDBG-funded activities. Although a final rule was approved over a year ago by both HUD and the Office of Management and Budget, its publication has been delayed by a Department of Justice review of its civil rights provisions. When the Justice review is concluded, we expect the final rule to be published without significant change to any other provisions. Until then, all CDBG grantees must follow the rule at 24 CFR Part 570, the 1983 and 1984 amendments to the Act, and current policy directives communicated in writing to grantees through HUD Field Offices.

Each of the four concerns raised by Mr. Ratazzi will be examined within the regulatory framework described above.

## 1. Assistance to For-Profit Businesses to Create or Retain Jobs

The first concern involves the City of Rome's CDBG-funded program to assist for-profit businesses. Mr. Ratazzi believes that existing regulations allow the low and moderate income benefit objective to be fulfilled if at least 51 percent of all jobs created or retained by all assisted businesses are made available to low and moderate income persons. Under the proposed regulations, he continues, the City could no longer aggregate jobs in order to meet the 51 percent requirement; rather, at least 51 percent of the jobs

created or retained by each assisted business would have to be made available to such persons.

Mr. Ratazzi's understanding is incorrect. Under existing law and regulations, each activity must meet one of the CDBG program's broad national objectives. The Department would view Rome's Economic Reinvestment Program in the same way as a revolving loan fund or any other funding mechanism designed to assist more than one business; that is, as a collection of separate and discrete activities. Each grant, loan or other type of assistance provided to a for-profit business through such a funding mechanism must meet one of the broad national objectives described at §570.208.

It is important to note that an activity to assist for-profit businesses may meet the low and moderate income benefit objective either because it creates or retains jobs, a majority of which are available to low and moderate persons, or because it is located in and serves an area with a majority concentration of low and moderate income persons.

The proposed rule will not change the Department's policy in this area, but rather will strengthen the linkage between economic development activities and jobs created or retained by these activities for low and moderate income persons. This will be accomplished primarily by establishing more specific and separate criteria and recordkeeping requirements for both created and retained jobs.

## 2. Definition of "Substantial" Training, Work Experience, or Education Beyond High School

The proposed rule would require that an activity which meets the low and moderate income benefit objective by creating or retaining jobs must show that 51 percent of these jobs are or will be held by or made available to low and moderate income persons.

The Department's intention is to enable a community to qualify assistance to a business without actually requiring the business to hold specific jobs open exclusively for low and moderate income persons. The alternative it offers is to make the jobs available to such persons. This approach relies on the assumption that under a given set of circumstances there is a substantial likelihood that the jobs will be taken by low and moderate income persons. In order for such an assumption to be reasonable, however, low and moderate income persons must be given first consideration in the job-filling process and the job must be of such nature that most such persons could qualify for it. Where a job requires education beyond high school, or skills that can only be acquired through substantial training or work experience, the probability that a low and moderate income persons could qualify is significantly reduced.

Mr. Ratazzi notes that the proposed rule lacks a definition of the term "substantial" in terms of a person's training, work experience, or education beyond high school. Although a time period is not specified in the rule, HUD will consider one year or more of training, work experience, or education beyond high school as "substantial" for purposes of this provision.

Mr. Ratazzi also states that this requirement would prevent grantees from hiring certain highly-skilled persons, such as dislocated factory workers, for jobs "available to" low and moderate income persons. Whether it would or not depends on whether the job requires the skills they possess. In any event, it would only bar the "available to" alternative, since such workers that are demonstrably of low and moderate income could be shown to meet the "held by" alternative.

### 3. Documenting Low and Moderate Income Status

In order to document that at least 51 percent of the created or retained jobs are held by, or made available to low and moderate income persons, either the grantee or the business must determine that certain persons are of low and moderate income. This clearly necessitates obtaining information from or about such persons and their families, if applicable. Ideally, the documentation would include data on the family size and annual family income (prior to hiring) of each low and moderate income person hired. We expect that in most cases the grantee or an employment service will obtain this information and refer qualified candidates to the business for first consideration for available jobs. However, this could also be handled by a business willing to do so.

Mr. Ratazzi states that requiring an employer to collect such information from actual or potential employees might be illegal. Although there may be a law which would prevent an employer from requiring employees to provide such information, there is no law which prevents employees from voluntarily providing such information as a condition for receiving a benefit (e.g., to establish eligibility for housing assistance payments, medical care, or as in this case, a permanent job). HUD recognizes, however, that assisted businesses may not be able to obtain this type of information. For this reason, HUD will accept, as a substitute, evidence that the employee or applicant qualifies under another program (for example, Section 8 housing assistance, Aid to Families With Dependent Children (AFDC), or the Job Training Partnership Act) which has income qualification criteria at least as stringent as those for the CDBG program. HUD will also accept a copy of a signed certification from the employee stating that his or her family income does not exceed the applicable Section 8 income limits. The form used for this purpose must indicate that the certification is subject to verification by the grantee and HUD.

### 4. Definition of "Clear and Objective" Evidence

Mr. Ratazzi notes that the proposed rule lacks a definition of the term "clear and objective" evidence. Such evidence would be required in order to determine whether jobs to be retained would be lost without CDBG assistance. Although we agree that it would have been desirable to define this term in the rule, it was not feasible to do so since the individual circumstances of job retention activities may vary from one situation to another. As an alternative, HUD has provided its Field offices with examples of the types of evidence which will be considered "clear and objective." These could include a notice to affected employees, a public announcement by a business, or financial records provided by the business.

It is important to note that the primary purpose of the CDBG rule is to ensure that the program's statutory requirements are met. Because of the requirements that each activity meet one of the three broad national objectives, and that the program, as a whole be carried out for the principal benefit of low and moderate income persons, it is necessary to impose some restrictions on the use of CDBG funds. In developing those portions of the rule which implement non-statutory program requirements, however, the Department has and will continue to provide grantees with maximum flexibility in carrying out the program at the local level.

I appreciate your bringing these issues to your attention and hope that this letter fully responds to Mr. Ratazzi's concerns. Should he wish to discuss any of these issues in more he may contact Mr. Michael Merrill, Director of the Community Planning and Development Division in our Buffalo Office, at (716) 646-5766.

Very sincerely yours,  
(signed)

Stephen May  
Assistant Secretary