

Handicapped and the Presumption of Low and Moderate Income in the Case of the Drug and/or Alcohol Abuser in a Treatment Program

November 13, 1990

MEMORANDUM FOR: Harry W. Staller, Deputy Regional Administrator- Regional Housing Commissioner, 3S

FROM: Anna Kondratas, Assistant Secretary for Community Planning and Development

SUBJECT: Clarification of the Definition of Handicapped and the Presumption of Low- and Moderate-Income in the Case of the Drug and Alcohol Abuser in Recovery Programs Community Development Block Grant Program

This memorandum is in response to your correspondence dated June 11, 1990, requesting clarification of the definition of handicapped. We apologize for any inconvenience the delay in responding to your inquiry may have caused. Your memorandum specifically asks whether drug and alcohol abusers are considered handicapped and thus presumed to be low- and moderate-income persons for the purpose of carrying out limited clientele activities described at 24 CFR 570.208(a)(2). Your memorandum references three different definitions of handicapped: the Fair Housing Act (24 CFR 100.201(a)(2)), the Section 8 Housing Assistance Payments Program (24 CFR 812.2), and Section 504 of the Rehabilitation Act of 1973 (24 CFR 8.3). These regulations vary regarding the inclusion of drug and alcohol abusers within their respective definitions of handicapped.

While the CDBG regulations do not explicitly define the term "handicapped persons," there are two general areas where that term is used. One is a reference to handicap which prohibits grantees from denying equal opportunity and failing to affirmatively further fair housing on the basis of handicap (among other protected classes). References in this regard can be found at 570.206(c), 570.601(b), and 570.904(a) and (c). The other use of the term applies to the presumption under 570.208(a)(2)(i)(A) that handicapped persons are principally low- and moderate-income. This presumption permits certain CDBG activities to be carried out without documentation being required on family income. The clarification being provided in this memorandum relates strictly to the limited clientele presumption and in no way should be construed to apply to the fair housing and equal opportunity sections of the regulations described above.

Because the CDBG regulations do not define the term as it is used at 570.206(a), grantees have the flexibility to establish their own definitions for this purpose. However, in so doing, two issues must be taken into consideration:

1. None of the definitions of handicapped that we are aware of, including the three referenced in your memorandum, consider drug and alcohol abusers to be handicapped persons solely on the basis that they are drug or alcohol abusers; and
2. The purpose of the presumption under 570.208(a)(2)(1)(A) that certain categories of individuals are low- and moderate-income persons is to reduce the grantee documentation burden in cases where the probability that the majority of persons served are low- and moderate-income is quite high. It is clear from this use of the term that persons so included should be impaired in a way that makes it likely that they would have difficulty becoming economically self-sufficient.

We believe that HUD should challenge a grantee's use of the presumption of benefit to low- and moderate-income persons under 570.208(a)(2) for any activity that is aimed at serving persons based solely on the fact that they are drug or alcohol abusers. This is because the information that we have indicates that such abuse is not significantly correlated with income. Males and females with higher personal incomes are almost a likely to be drug and alcohol abusers as those with lower personal incomes, although there may be some statistically significant correlations between types of substance abuse and income.

It should be noted that, although not presumptively low- and under moderate income, drug and alcohol abusers may be included under one of the other limited clientele criteria at 570.205(a)(2)(i)(A), (B), (C), or (D). For example, drug and alcohol abuse programs offered to residents of public housing or to homeless persons would not need to document family income. We recognize the confusion that some grantees may face with regard to this use of the term "handicapped" and are considering modifying our regulations to clarify the issue.

Cc: Edwin Gardner, DUSFC