

Presumed Benefit for Disabled Citizens

July 19, 1996

Honorable William J. Coyne
U.S. House of Representatives
Washington, DC 20515-3814

Dear Mr. Coyne:

On behalf of Secretary Cisneros, thank you for your letter of March 28, 1996, enclosing correspondence from Mr. Stanley Louis Gorski, Executive Director of the South Hills Area Council of Governments in Pittsburgh, Pennsylvania. Mr. Gorski was concerned about certain requirements under the Community Development Block Grant (CDBG) program, which affect handicapped children, specifically that CDBG funds may no longer be used to fund activities benefiting disabled children.

To respond to Mr. Gorski's concerns, each activity funded under the CDBG program must be eligible and meet one of three statutory national objectives: benefit persons of low and moderate income; aid in the prevention or elimination of slums or blight; or meet other community development needs of a particular urgency. The national objective relevant to Mr. Gorski's concerns is benefit to low- and moderate-income persons. A low- and moderate-income person is defined in the CDBG regulations at 24 CFR 570.3 as "**a member of a family** having an income equal to or less than the Section 8 low-income limit established by HUD." A person's income level is therefore defined by the family income. A child is dependent on his or her family, is considered part of that family, and thus assumes the income of the family for purposes of meeting this CDBG national objective. A child's income has **always** been viewed in the context of the family's income. Exceptions are permitted where a child is separated from his or her family, and lives independent of the family unit, as for example, in a group home for victims of child abuse. There has been no change in the Department's policy on determining income for children under the CDBG program.

The CDBG program regulations provide several ways in which a grantee can document benefit to low- and moderate-income persons. As mentioned by Mr. Gorski, the regulations at 24 CFR 570.208(a)(2)(i)(A) provide for a "limited clientele" category of persons presumed to be principally low and moderate income, e.g., migrant farm workers, persons who are illiterate, the elderly, and battered spouses. The CDBG regulations prior to November 9, 1995, included handicapped persons in this classification of presumed benefit. This presumption for the handicapped was intended to cover only disabilities that were significant enough to affect the family's financial condition. Accordingly, it is not the disability of a child, which would qualify a family for the presumption, but rather the disability of the family's wage earners. The regulatory presumption is based on data, which the Department has obtained from the U.S. Bureau of the Census that correlates the degree of disability with income among adults. This data confirms that, as a group, at least 51% of severely disabled adults, as defined by the Census, are low and moderate income. The wording in the original "presumed benefit" provision was made consistent with the Census language. A CDBG final rule change published in the **Federal Register** on November 9, 1995, clarified the above mentioned handicapped provision, which now reads "adults meeting the Bureau of the Census' Current Population Reports definition of 'severely handicapped.'" The Department does not have Census or any other valid data that indicates that disabled children principally live in families that are low and moderate income.

Mr. Gorski is particularly concerned about the installation of handicapped-access playground equipment. It is permissible for a grantee to use CDBG funds to construct

a new neighborhood playground or retrofit an existing facility in a low- and moderate-income service area. In such cases, the national objective requirement at 24 CFR 570.208(a)(1) is met, and the cost of compliance with the Americans with Disabilities Act (ADA) can be included in the cost of construction or reconstruction of the facility. In fact, every facility constructed with CDBG funds must comply with the requirements of ADA per 24 CFR 570.614(b).

The issue of using CDBG for accessibility for disabled children becomes problematic when a grantee wishes to build a handicapped-accessible playground or to retrofit an existing playground in a non-low- and moderate-income service area. As stated above, every activity must meet a national objective, and children assume the income of their families. A handicapped-accessible playground, which by its nature is available to all the residents of a particular area, is considered an area benefit activity. If the service area is not principally low and moderate income, the activity cannot meet the national objective of benefit to such persons.

While the Department strongly supports compliance with ADA requirements, the primary objective of the CDBG program is to benefit low- and moderate-income persons. It is not that disabled children cannot receive benefits under the CDBG program. The CDBG program may assist disabled children provided national objective requirements are met.

It is hoped that this information will serve to clarify your constituent's concerns. If the Department can be of further assistance, please feel free to contact us. Thank you for your interest in the CDBG program.

Sincerely,
Hal C. DeCell III
Assistant Secretary