Counting Jobs for Economic Development Activities

September 12, 1997

Mr. Mark Tigan
Community Capital Group
42 Spring Street, Suite #12
Newport, RI 02840

Dear Mr. Tigan:

Thank you for your facsimile of May 27, 1997, to Deirdre Maguire-Zinni, Director of the Entitlement Communities Division, raising various questions about counting jobs for economic development activities assisted under the Community Development Block Grant (CDBG) program. Your memorandum seeks clarification of how jobs are to be counted for national objective and public benefit compliance.

"Job Count Start Date"

The first issue you raise is when to start counting jobs created by CDBG-assisted activities, including those receiving assistance under the Section 108 Loan Guarantee program. As you note in your memorandum, communities use varying start date triggers, but a common thread among these various triggers is that the selected start date in each instance represents when some event occurred such that the for-profit business being assisted can rely on the CDBG assistance. The CDBG regulations do not specify a start date. The regulations do require that the grantee and HUD only count those permanent jobs, computed on a full-time equivalent basis, that are directly generated or retained by the CDBG assistance, i.e., the scope of the assisted economic development project as defined by the grantee and the business. Given that requirement, the jobs to be counted would generally occur after the grantee has obligated the CDBG assistance to the for-profit business in some manner. However, that "obligation" can take various forms depending upon the structure of the financing for a particular economic development project and the local community's procedures for approving assistance. Nonetheless, the job count start date should not be determined by the date of actual disbursement of the CDBG funds. Such date of disbursement has no bearing on determining what jobs should be counted for either national objective or public benefit compliance. In fact, in many instances, the CDBG or Section 108 assistance may be provided strictly as a guarantee for financing provided by some other entity, and in such cases, no CDBG or Section 108 funds may ever actually need to be disbursed. The assistance is considered obligated when the guarantee is initially provided, not when it may need to be exercised.

Your memorandum also asks whether jobs created before environmental clearance or through authorized pre-award costs after environmental clearance can be counted for national objective and public benefit compliance. In regard to the environmental clearance threshold, the regulations at 24 CFR 58.22 impose limitations on the types of activities that can be undertaken prior to such clearance being obtained. Thus, CDBG-assisted activities are generally not able to proceed, and in turn create jobs, until after the proper environmental clearance is obtained. If, however, there is some component of the CDBG-assisted activity that can proceed prior to the environmental clearance under the above-noted regulations, then it is possible that some permanent job creation could occur during that time. In regard to

the question about jobs created by authorized pre-award costs incurred after environmental clearance, such jobs directly generated by the CDBG-assisted project can clearly be counted for national objective and public benefit compliance. As noted above, actual disbursement of CDBG or Section 108 funds is not determinative of the time period for counting jobs generated by the assisted activity.
Your memorandum states that you have found the CDBG regulations to be inconsistent on establishing the "job count start date" because you believe the public benefit standards for economic development activities call for job counting to begin at the first disbursement of funds. Such an interpretation of the public benefit regulations at 24 CFR 570.209 is not correct. Actual fund disbursement is not a factor in applying the public benefit standards either for an individual activity or for a community's economic development activities in the aggregate. Pursuant to 24 CFR 570.209(b)(4), the individual activity public benefit standards are to be applied to the number of jobs to be created or retained by the activity, as determined at the time funds are obligated to activities. Pursuant to 24 CFR 570.209(b)(2)(i), an entitlement grantee is to apply the aggregate public benefit standards to all applicable activities for which CDBG funds [including, by definition, Section 108 funds] are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. Paragraph (ii) of the referenced regulation further states that the grantee shall apply the aggregate standards to the number of jobs to be created or retained, as determined at the time funds are obligated to activities. This number should represent the total number of permanent jobs to be directly generated by the CDBG assistance for the economic development activity.

"Job Count Stop Date"

The next issue raised in your memorandum is when a grantee should stop counting jobs created by CDBG-assisted economic development activities. As you note, this issue has been addressed by HUD at various times, including a National Community Development Association (NCDA) meeting after the new CDBG economic development regulations were published in 1995. As noted earlier in this letter, the CDBG regulations for determining compliance with the national objective requirements of 24 CFR 570.208(a)(4) require that all permanent jobs directly created or retained by the CDBG assistance be counted. The public benefit standards at 24 CFR 570.209(b) are applied based on the number of such jobs to be created or retained as determined at the time the CDBG funds are obligated so as to keep the calculations [particularly for the aggregate standards] from being unduly burdensome. Thus, while national objective compliance is based on actual jobs created or retained, compliance with the public benefit standards is determined prospectively. Nonetheless, 24 CFR 570.209(d) does require the grantee to maintain documentation to demonstrate the number of jobs actually created or retained by CDBG-assisted economic development activities and how that compares to the projections made at the time the CDBG funds were obligated.

Determining the precise time at which all the jobs directly generated by the CDBG assistance have been created can be a difficult task. It is clearly inappropriate to stop counting job creation simply when a business reaches the number of jobs it had initially projected if it is readily apparent that the CDBG-assisted project is still generating additional employment. Likewise, it is just as inappropriate to require a business that does not meet its initial projection to continue reporting if it is clear that no further employment will be directly generated by the CDBG-assisted project. In most cases, however, the specific point at which CDBG-generated employment ends may not be that clear. From the start, the grantee and the assisted business should jointly agree on a sufficiently detailed scope of the economic development project being assisted with CDBG funds and its employment potential. As the activity

progresses, the grantee and the assisted business should reassess the projected employment as appropriate given the prevailing economic conditions impacting the CDBG-assisted project. In this process, the grantee and the assisted business should also assess how economic conditions may be impacting the business beyond the scope of the assisted project. If changes in employment levels, either increases or decreases, are driven by factors outside the scope of the CDBG-assisted project, they should be excluded from consideration for CDBG compliance purposes. Upon review of all appropriate information, the grantee and the business should jointly agree on when the creation of additional jobs as a direct result of the CDBG assistance has concluded. Even if the CDBG assistance was provided for the business' start-up expenses, it is likely that the business will at some point move beyond the start-up mode and make expansion or down-sizing decisions on the basis of economic factors beyond the CDBG assistance. If the business does not move beyond that start-up mode, then there would still be a point at which employment reporting would cease because CDBG compliance is based on the initial employees filling all the jobs created, not everyone who ever holds those positions.

HUD recognizes that determining specifically what jobs to count in a given assisted economic development activity can be a complex matter. Establishing uniform standards by which each activity must be measured can also be quite difficult given the wide variety of economic development projects undertaken by communities across the country. The Department is considering issuing further guidance in this area and has asked for input and suggestions from Field Office staff and grantees alike. The suggestions provided in your memorandum will be taken into consideration in the development of the proposed additional guidance.

Public Benefit Calculations

Your memorandum also requests verification of how the "CDBG cost per job" figure is to be calculated in determining compliance with the public benefit standards for economic development activities. While your memorandum only references the calculation of the $35,000 aggregate standard, the same type of calculation is done for the $50,000 individual activity standard. You pose an example of an economic development activity that will create a total of 45 permanent jobs over 3 years. The business forecasts that 10 jobs will be created in Year 1, another 15 jobs will be created in Year 2, and the remaining 20 jobs will be created in Year 3. Your assumption that the total of 45 jobs is the figure to be used in the "CDBG cost per job" calculation is correct. The public benefit standards at 24 CFR 570.209(b) provide for the "CDBG cost per job" to be calculated by dividing the amount of CDBG assistance obligated to the activity by the total number of full-time equivalent, permanent jobs to be created or retained by that activity on a prospective basis as determined at the time of obligation of the CDBG funds.

Definitions of Low- and Moderate-Income Persons

In the final section of your memorandum, you raise questions regarding how various types of individuals should be considered in determining their income status under the CDBG program. The first question relates to a working student who files his or her own income tax return with the Internal Revenue Service (IRS), but who is also claimed as a dependent by the parent. You ask what family size and income is used for purposes of income certification. CDBG policy has long held that a student, working or not, who qualifies as a dependent family member for IRS purposes is considered a member of that family for CDBG income qualification purposes. Thus, the overall family size and income must be used in determining such a student's income status.

You next ask what constitutes "residency" for a student who may have various addresses for various purposes. This issue is raised in the context of the presumptions of low- and moderate-income status that are now permitted for job creation or retention activities. As noted above, any student who qualifies as a dependent family member for IRS purposes is considered to be a member of that family for CDBG purposes as well. The student is considered to actually reside in the family's primary household, with any school address (or other address) being only temporary. Therefore, any presumption of low- and moderate-income status for a dependent student based on residence should only be accorded using the family's primary residence.

Finally, you ask whether certain resident aliens may be counted for job creation or retention purposes, and if so, whether family members overseas should be considered for CDBG income qualification purposes. Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, often referred to as the Welfare Reform Act, includes new restrictions on the ability of aliens, both legal and illegal, to receive certain Federal benefits. HUD has been working with the Department of Justice to determine the extent to which these restrictions apply to CPD programs and whether some programs or activities may be exempt. HUD expects to receive final guidance from the Department of Justice in the near future. Upon analysis of that guidance, HUD will issue further program-specific guidance.

Thank you for your interest in the CDBG program. I hope you find this information responsive to your concerns. Identical letters have also been sent to Mr. Warren Butler, your partner in the Community Capital Group, and Mr. Patrick Moynahan of TONYA, Inc., who also raised the same questions to this Office through electronic mail. If you have any questions concerning this matter, please contact the Entitlement Communities Division at (202) 708-1577.

Very sincerely yours,

Richard J. Kennedy
Director, Office of
Block Grant Assistance

Identical letters sent to:

Mr. Warren Butler Mr. Patrick Moynahan
Community Capital Group TONYA, Inc.
7005 Arandale Road
Bethesda, MD 20817