

Using CDBG Funds for the Construction of a Railroad Crossing

September 21, 1995

Honorable Connie Mack
United States Senate
Washington, DC 20510-0904

Dear Senator Mack:

On behalf of Secretary Cisneros, thank you for your letter of July 25, 1995 regarding the construction of a railroad crossing in Holly Hill, Florida. The City had actively pursued implementation of the project, but by the time local officials had obtained a permit from the Florida Department of Transportation, the area where the crossing was to be located no longer qualified for funding under the guidelines of the Community Development Block Grant (CDBG) program. You requested an update on the status of the Holly Hill proposal.

The issue in Holly Hill is whether this railroad crossing meets a national objective of the CDBG program. The enabling legislation, the Housing and Community Development Act of 1974, requires that each activity meet certain requirements, including that it be eligible and meet one of the broad 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. As a result of the 1990 census data made available to grantees in 1993, the service area for this railroad crossing no longer meets the national objective of benefit to low- and moderate-income persons as originally intended.

When the new census data became available in 1993, the Department of Housing and Urban Development (HUD) issued a memorandum which provided guidance about the transition to the new data. That guidance states that area benefit activities (e.g., such as a railroad crossing) for which a specific service area has been identified based on data derived using the 1980 Low/Mod Income Summary Data (LMISD) and for which CDBG funds had already been obligated at the time the 1990 LMISD is effective for use would continue to qualify under the 1980 LMISD, but only to the amount budgeted for the activity as of that date. An activity for which funds were budgeted, but no funds had been obligated by the date the 1990 LMISD became effective for the grantee, would have to qualify under the most recent data. That guidance is based on a provision in 24 CFR 570.208(a)(1)(iv) of the CDBG regulations which states that the most recently available decennial census information shall be used when determining whether an activity benefits low- and moderate-income persons on an area basis. In this instance, no CDBG funds had been obligated by the effective date of the guidance.

The City of Holly Hill participates in the CDBG program with Volusia County. The County was advised that it had the right to request a waiver of any regulatory provisions that prevented it from carrying out an activity it thought to be important. The HUD Field Office in Jacksonville received a request from the County to waive a portion of 24 CFR 570.208(a) (1)(iv). Under the provisions of 24 CFR 570.5, the Secretary may waive any requirement not required by law whenever it is determined that undue hardship

will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act. In order for HUD to grant a waiver, therefore, it must determine that the requirement is not statutory and that the waiver request adequately addresses the two other considerations cited above.

In responding to your letter and in discussing the particulars of the County's waiver request, the Department believes that the requirement of 24 CFR 570.208(a)(1)(iv) is not something that can be waived. While the transition provision is not in and of itself statutory, the effect of waiving this national objective requirement goes to the heart of the statutory requirements for compliance. The Department cannot grant a waiver which would allow a grantee to use CDBG funds for an activity HUD knew did not meet the claimed national objective of benefit to low- and moderate-income persons at the time CDBG funds were obligated for the activity. It is understood that this activity also can not meet either of the two remaining national objectives: aid in the prevention or elimination of slums or blight or meet other community development needs of a particular urgency. Subsequently, the HUD Jacksonville Office has advised Volusia County to take a second look at whether the service area for this project has been correctly defined to determine whether, in fact, this activity could comply with the program's national objective requirements. This project can not be implemented with CDBG funds if the service area delineated does not meet the criteria of section 570.208 (a)(1)(ii) of the CDBG regulations or otherwise comply with one of the program's national objectives.

Thank you for your interest in the Department's programs.

Sincerely
John C. Biechman
Acting Assistant Secretary