Bureaucratic Policymaking Through Administrative Regulation: Congressional, Clientele, Agency Interactions and the Implementation of Community Development Block Grants

by

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Submitted to the Department of Urban Studies and Planning
in partial fulfillment of the Degree of Doctor of Philosophy
at the Massachusetts Institute of Technology

October 1987

Signature of Author _____
Urban Studies and Planning, October 2, 1987

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ABSTRACT

The process of setting administrative regulations or guidelines to govern the implementation of public policies has received little attention from scholars of the policymaking process. Yet rules and guidelines have the power to authoritatively mold the content of policy as it will be reflected in the routines of administrative practice, often in very significant ways.

On the case of the nation's major urban policy initiative, the Community Development Block Grant program, bureaucratic regulatory actions played an especially critical role in shaping two features central to the policy's character - both the degree to which local authorities were ceded power to set program priorities and the degree to which funds would be used to benefit economically disadvantaged groups. Administrative regulations used from 1974-1977 stressed revenue sharing aspects of the program, ceding maximum discretion to localities and affording no special priority to the needs of low income groups. Regulations employed from 1977-81 reversed direction, mandating earmarking of 50-75% of funds for low-income projects and nationally circumscribing localities' decisionmaking powers. In 1981, new regulatory edicts again reversed the basic thrust of the program, erasing low income targeting requirements and reinstating the revenue sharing approach utilized in the block grant's earliest years.

This study examines administrative rulemaking for the CDBG program during the 1974-83 period in order to discern the forces which shaped bureaucratic regulatory choices and to discover why stable regulatory policy proved so difficult to secure. Neither reforms in statutory language, nor conventional bureaucratic concerns with attainment of effective and efficient bureaucratic operations were found to have played a significant role in accounting for shifts in regulatory direction. Instead, the

bureaucratic erraticism which marked CDBG regulatory efforts was attributable to a vigorous and contentious "post-policymaking" politics which surrounded administrative rulemaking activity.

The succession of bureaucratic leaders who attempted to fashion "appropriate" guidelines to govern the implementation enterprise were forced not only to contend with cross-pressures spawned by a clientele sharply divided on the issues in question, but with persistent, competing and problematic demands for regulatory accountability emanating from higher authorities in both the legislature and the executive branch. At various times in the program's history, rulemaking activities became bound up in tenacious intra-Congressional battles over the "true meaning" of statutory mandates and in struggles for ascendency between the Congress and the upper tiers of the Executive Branch.

Though other case analyses are needed, the study findings suggest that both Congressional and Executive attention to the rulemaking function may be on the upswing. If so, a new era of more complex and contentious administrative politics may be beginning to emerge.

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PREFACE

The process of research and scholarly inquiry seldom proceeds in as linear and straightforward a manner as one hopes it will at the onset of the effort. Especially in the field of public policy, unforseen events and occurrences often serve to upset the most well-intended research plans. Questions one sets out to discern answers to are often modified or refined as the process of inquiry reveals other more significant or noteworthy intellectual puzzles to be resolved. At times, new questions that surface prove to be so compelling as to prompt a major reorientation of the research venture. Such was the case with the research reflected in this dissertation.

This study of bureaucracy and policymaking as it occurs through the process of administrative regulation or guideline development had its origins in an earlier research initiative which I had presumed would form the base for my dissertation research. My dual interests in implementation and the administrative process, and in intergovernmental affairs had aroused my curiosity about the functioning of a major domestic policy initiative-- the Community Development Block Grant Program-- the "grandaddy" of the nation's New Federalism approaches to intergovernmental policy and its primary strategic route for the provision of urban aid.

At the heart of my interest in the CDBG program was a particular concern with the implications of the new intergovernmental order for the racially and economically disadvantaged segments of the nation's urban populace. Like other observers of urban policy, I was well-aware that despite two decades of experimentation with various federal initiatives, promises to the urban poor of better housing, employment opportunities and upgraded neighborhood environments had yet to be fulfilled. With many

others, I shared a special interest in the degree to which the restructured federal-local arrangements called for in the block grant experiment were proving responsive to these critical urban poverty needs.

Given the thrust of my programmatic interests, my attention was drawn to a particular administrative initiative undertaken in 1977. Three years after creation of the block grant program, officials in the Department of Housing and Urban Development introduced reforms aimed at assuring federal block grant allocations would be targeted in a manner that better served the nation's urban poor. New administrative regulations promulgated in 1977 and 78 expanded federal bureaucratic responsibilities for oversight of local grant activity and called for reorientation of local efforts by, among other things, requiring that localities devote at least 50-75% of their grant allotment to projects directly serving low income needs. For any locality which failed to do so, federal sanctions were to be applied. My original dissertation plan involved examination of how this intergovernmental grant reform was implemented. Consistent with implementation studies of a similar nature, I planned to explore how these regulations were put in place administratively; to what extent federal and local bureaucratic agents had responded to the new guidelines by altering past practices and behaviors; and what ultimate effect on programmatic outcomes had been achieved in the years following introduction of the regulations.

But during the 1981-82 period in which I had begun conducting my preliminary fieldwork, events were taking place within the agency which significantly altered the thrust of my research. A new administrative team had assumed positions of authority, and within the year, HUD's official demeanor toward the program had undergone radical change. In direct

contradiction to the agency's earlier assertions that legislative mandates necessitated establishment of the low income targeting guidelines, agency authorities now maintained that legislative mandates for programmatic decentralization required rules providing full local discretion in deciding how grant funds were to be spent. By mid 1981 the targeting regulations had been revoked, supplanted by new regulatory proposals designed to enforce a non-redistributive, revenue sharing approach to grant administration similar to that employed in the program's initial years.

For the program, this new effort represented the second complete 180° turnabout in the thrust of its administrative regulations in eight years, despite the fact that the legislation itself had remained fundamentally unchanged since 1974. Moreover, of great significance with respect to these regulatory choices was the fact that their content had such weighty implications for CDBG policy as it would be reflected in administrative practice. Few programmatic issues have greater consequences for policy outcomes than those related to the distribution of power and authority among levels of government or those which circumscribe who is to benefit from use of programmatic funds. Yet these major determinations were being rendered wholly through the process of regulatory choice.

Furthermore, the political pressures brought to bear on the agency's regulatory development activities proved extraordinarily weighty and complex. It was evident that not only in 1981-82 but in prior regulatory drafting periods, the political machinations surrounding deliberations over "appropriate" guidelines to govern the implementation enterprise had assumed the kind of prominence, intensity and conflictual character typically associated not with "technical" administrative rulemaking activity but with

major legislative policy debate.

As the 1981-82 controversies heightened my attentiveness to these aspects of the program's history, my interest in the administrative aftermath of rulemaking activity gave way to a desire to understand the prior process of regulatory development and choice. Yet a search of the implementation literature provided little useful guidance.

Though many implementation scholars make mention of guideline or regulatory development tasks as part of the post-legislative implementation process, few explore the forces shaping bureaucratic behavior during the guideline development stage. In part as a consequence of this gap in the literature, and in part due to the extreme import of the issues being contended in guideline forums, I became convinced much could be learned from an analysis of administrative guideline development focused on the CDBG case.

My dissertation was thus recast from its earlier manifestation as a study of how guidelines were put into effect into a study of how they were formulated; from an analysis of one brief period of the program's history to one with a broader longitudinal sweep, whose ultimate aim was to discern what forces served to shape the behavior of administrative authorities in electing the regulatory content they did; and in a more general sense to uncover the reasons regulatory development efforts during this protracted period were rendered so unstable, erratic, subject to radical change.

As soon became quite clear, however, a foray into the regulatory history of the CDBG program is a bit like taking a walk through a labyrinth. Interviews with key actors active in guideline development forums yielded quite disparate recollections of the agreements reached at

various stages of the program's operations, and contradictory understandings of what the words contained in formal legislative documents truly meant. Although this rendered the research effort more difficult and frustrating a venture that I had anticipated, and necessitated a copious review of documents and files for confirmation of events, these disparities became a key part of the guideline development story, and essential to an understanding of why the crafting of stable regulations for the CDBG program proved so problematic to achieve.

This study is an examination of the process of guideline development and formulation as it occurred during the first ten years of CDBG operations. Unlike other studies of program implementation efforts, it is not a study concerned with how guidelines are carried out in administrative practice, with what programmatic effects. Rather it is a study of bureaucratic policymaking activity as it occurs through the process of guideline development, wherein law, administrative considerations, and external political pressures can be seen to interact.

Research material contained in this case study was derived from a variety of sources. In addition to materials in the public domain such as legislative documents, agency records, and various governmental and non-governmental studies and reports, sources include items made available to me from internal agency, Congressional and interest group files. Moreover, the study draws from personal interviews held with more than two dozen key agency, Congressional and interest group actors, many of whom had been continuously involved in guideline development efforts throughout the ten year period. Several gave generously of themselves to this effort, making themselves available for multiple interviews and devoting what sometimes

came to be several hours of their time helping me to disentangle the confusing and complex events surrounding the case. To these individuals, many of whom at their own request must go unnamed, a special note of thanks is due.

My appreciation also extends to the Joint Center for Urban Studies of MIT and Harvard for providing financial support during the initial phase of this project. But adequately expressing gratitude for other debts incurred during the course of this research proves a far more difficult task.

I was most fortunate to have benefit from the sound ideas and advice provided by my dissertation advisers, Bernard Frieden and Michael Lipsky of MIT, and Robert Hollister of Tufts University. Despite the barriers of distance, each proved an invaluable source of ongoing intellectual sustenance and personal encouragement during the various stages of this effort. For their patient counsel and their continued support throughout the lengthy period of completion of this work, I am enormously grateful.

I would also like to convey my sincere thanks to Evelyn Brodkin, Carol Jones, Adrian Walter, and Marie Howland - friends and colleagues whose expressions of personal interest, insights and suggestions contributed both substantively and personally to this work.

Finally, I would like to express my deepest gratitude to my husband Dennis Muniak, whose criticisms (though not always welcomed at the time) invariably served to improve the quality of the final product, and whose abiding faith in the significance of this research sustained me during the more discouraging periods of the work. For his tireless support, unwavering confidence and good humor throughout this enterprise, I owe a debt too great to be repaid.

CHAPTER 1: POLICY IMPLEMENTATION AND GUIDELINE DEVELOPMENT: A REVIEW OF THE LITERATURE

Policy Implementation as a Field of Study

Until as recently as 12 years ago, the implementation stage of the policy process had been severely neglected as an area of scholarly research. Prior to Pressman and Wildavsky's seminal study of the implementation process, published in 1973, the attention of scholars of American public policy had been directed almost exclusively toward discerning both the process and the politics of policy formulation and adoption. Researchers had oriented their scholarly efforts toward tracing the routines by which public problems came to secure a place on the political agenda of policy-makers, and toward understanding the interplay of political forces which culminated in the acceptance or legitimation of a policy as a remedy for a perceived societal problem. But with respect to those processes which ensued after the formal adoption of a policy through legislation, the literature was virtually silent. Policy implementation was simply not perceived to be of great consequence to our understanding of policy processes. As Van Meter and Van Horn explained in 1975:

> The implementation process is assumed to be a series of mundane decisions and interactions unworthy of the attention of scholars seeking the heady stuff of politics. Implementation is deceptively simple: it does not appear to involve any great issues. Most of the crucial policy issues are often seen to have been resolved in the prior decisions of executives, legislatures and judges.[1]

Moreover, the era was marked by a profound naivete about the character of events in the post-policymaking phase of the policy process. Neglect of implementation as an object of study can be traced, in part, to the prevailing assumption adhered to by both policymakers and scholars alike "once a

policy has been 'made' by a government, the policy will be implemented and the desired results of the policy will be near those expected by policy-makers".[2]

But our naivete about the character of implementation processes began to fall away during the mid-1970's. As evidence began to accumulate that the social programs of the Great Society were failing to accomplish all that had been expected of them, researchers began to attempt to discern exactly what had gone wrong. Were these policies failing because of flaws in their theoretical underpinnings? Or were these failures attributable to unanticipated problems in putting the proper administrative machinery in place? These questions led to an outpouring of studies exploring the process of policy implementation.

While these studies did much to highlight the complexities and pitfalls involved in attempts to implement policies set forth in legislation, conceptually they lacked a clear focus. In part, this theoretical failing can be traced to the broad-brush approach these studies adopted toward the delineation of the policy implementation process.

Policy implementation was viewed in a very comprehensive, all-encompassing fashion as involving "those events and activities that occur after the issuing of authoritative policy directives".[3] Defined in this fashion, policy implementation encompassed a very diverse and complex set of behaviors and interactions including such elements as the behavior of upper-level bureaucrats in operationalizing the policy mandates, the series of interactions among program administrators at all levels of the implementing agency, interactions between implementing actors at all levels of government (in the case of intergovernmental policy), and interactions between lower level service deliverers and members of the policy's target

group, all of which had discernible impacts on the ultimate policy outcomes.

But, as the literature evolved, implementation scholars began to recognize the theoretical weakness inherent in adopting such a comprehensive approach to implementation. As a result, they began to attempt to disentangle and clarify distinct components of the policy implementation process.

Substages of Implementation

While the field of implementation studies remains clouded by conceptual ambiguity, a significant advance was made by the theoretical work of Rein, Rabinovitz and Pressman.[4] In their conceptualization of implementation, they see merit in disaggregating implementation phenomena by viewing the process as a series of distinct substages. Sequentially, the first substage involves the process of guideline development. This is the process through which formal rules and regulations (as well as less formal administrative guidelines) which are to govern program operations are distilled from the policy legislation.

Subsequently, a second stage of policy implementation is said to occur in which these guidelines are applied in administrative practice. Major components of this substage include the routine administration and enforcement of the established rules and regulations, and the deployment of administrative resources in support of the program effort.

The merit of the Rein, Rabinovitz and Pressman work lies in its utility as an organizing framework for separating out the diverse set of implementation problems uncovered in the voluminous empirical work compiled to date.

Implementation: Administrative Paradigm

Taking the second of their substages first, that stage involving the

routine application and enforcement of programmatic guidelines, much of the implementation literature can be seen as adhering to an Administrative paradigm, in which the conventional problems encountered in administrative practice are of central concern. Within this Administrative paradigm, the researcher's attention is drawn to a series of problems endemic to the process of bureaucratic administration of policy. These problems would include such elements as:

> a) the sufficiency of resources; that is, whether adequate funds, personnel and facilities are available to allow effective administration of the program effort.
>
> b) difficulties in the process of inter and intra organizational communication through which directives regarding expected behavior of implementing (or administering) actors are conveyed.
>
> c) difficulties in securing compliance and cooperation of those organizational actors whose cooperation is essential to successful execution of the program effort.

Examining the theoretical and empirical literature on implementation, one can see that much of our work to date is linked to elements subsumed under the Administrative paradigm.

Sufficiency of Resources

Several theoreticians have pointed to the importance to the implementation process of having available resources commensurate with administrative needs.[5] And they caution that inadequate resources can seriously impair an organization's ability to achieve the policy goals set forth in legislation. In the empirical work on implementation, several studies have highlighted the adverse impact various forms of resource inadequacy have had on the effectiveness of the implementation process. Research has pointed to such specific resource problems as the inadequacy of staff size;[6] inadequacies in the training and competence of

administrative personnel;[7] the insufficiency of funding;[8] and the shortage of time in which to carry out necessary administrative tasks.[9] The empirical work, then, is replete with references to resource problems as implementation dilemmas of the Administrative paradigm.

Problems of Communication

Another major component in the implementation literature that can be tied to the Administrative paradigm relates to the problematic nature of communications as they flow through the administrative or implementing organizational system. One widely recognized precondition of securing effective policy implementation is that the lower level implementors in the administrative system must be able to discern, with sufficient clarity and accuracy, the new behaviors that are expected of them in the course of carrying out their implementation responsibilities. In other words, policy directives and guidelines for program operation must be conveyed in a sufficiently straightforward and unambiguous manner that lower level administrators glean an appropriate understanding of their new responsibilities for program execution.

Implementation theorists have long recognized, however, the potential for distortion in the communication program directives, as administrative messages (implementation orders) are transmitted downward through the bureaucracy.[10] Directives regarding expected changes in the behavior of lower level administrators are subject to persistent and cumulative misinterpretations which may impair the effectiveness of the implementation process. Lack of clarity or consistency in the communication of implementation orders provide lower level administrators with discretion that enables them to act in ways that may prove inconsistent with the original meaning or intention of the policy.

Several of the empirical studies on implementation have highlighted the barriers faulty communications can pose to attaining successful policy implementation.[11] Moreover, these studies have demonstrated that the problems of communication are attenuated in implementation systems which rely upon complex, loosely-linked organizational systems for execution of the policy. Communication problems loom large, for example, in policies which rely upon intergovernmental arrangements for their administration.

Problems of Compliance and Enforcement

Even if lower level implementors perceive with accuracy and clarity implementation directives that are conveyed by their ostensible bureaucratic superiors, implementation may falter if the lower reaches of the implementing organizational system choose to disregard or disobey their marching orders. Thus the problems of securing compliance with mandated behavior looms emerges as a key implementation problem in the Administrative paradigm.

Scholars working in the implementation field have devoted a major share of their attention to explicating the dilemmas involved in motivating lower level implementors to alter their behavior to conform to the directives regarding program execution they receive. Several factors have been highlighted in the implementation literature as reasons why the ostensible "subordinates" in the implementing organization fail to carry out the implementation tasks with which they are charged. These include such things as inconsistency of new directives with the standard operating procedures implementors are accustomed to following;[12] resistance rooted in subordinates disagreement with the goals and objectives the new policy seeks to advance[13], either because they conflict with subordinate's personal values, or because they are perceived as inconsistent with the

agency's organizational mission;[14] and resistance stemming from the inability of subordinates to reconcile new implementation tasks with the dictates of competing or conflicting pressures inherent in the structure of their work.[15]

Moreover, while several empirical studies have documented the dilemmas of securing compliance with implementation directives as they are transmitted within a single bureaucratic organization, others have revealed the additional dilemmas involved in securing compliance of implementors when policies are implemented through intergovernmental systems.[16] In these settings, the difficulties in securing compliance of lower level implementors are attenuated by the inability or unwillingness of bureaucrats at "higher" governmental levels to produce and use either sanctions or incentives powerful enough to induce necessary changes in the behavior of implementing officials in "lower" levels of government.

The vast majority of work on implementation to date has had as its most predominant theme a focus on problems endemic to the routine execution of implementation - problems which can be subsumed under the Administrative paradigm. But as the work of Rein, Rabinovitz and Pressman points out, there exists a prior and crucial stage of the implementation process about which little is known. This is the stage which bridges formal legislative policymaking and the routines of administrative practice. What marks this stage is the prevalence of activities through which policy mandates contained in the legislation are transformed into a concrete set of rules and guidelines which serve as the prescription for administrative action. It is the stage that they refer to as the stage of guideline development.

The Nature and Function of Guidelines in Implementing Systems

Through the process of guideline development, the implementing

bureaucracy fashions from the legislation a series of programmatic rules, regulations and operating procedures which are to govern the day-to-day actions of implementing officials as they execute the statutorily-mandated policy. The process of guideline-setting then, in a very concrete way, involves the establishment of a kind of a strategic administrative framework within which the ensuing routines of administration (which have received so much attention in implementation research) are to take place.

Guidelines, in essence, constitute a set of interrelated, centrally-forged instructions to actors engaged in the implementation enterprise, specifying how they are expected to behave in the latter administrative stage of implementation. As such, they may prescribe such things as the operating procedures bureaucrats are to follow in carrying out their implementation responsibilities, the principles which are to be employed by agents of policy implementation in exercising discretionary judgment during program administration, the standards of performance to which implementation intermediaries (such as other levels of government or private sector organizations involved in policy execution) are to be held, and the sanctions which are to be applied where non-compliance with implementation directives is uncovered.

Guidelines specifying these elements of administrative practice may assume a variety of forms. In their most formal manifestation, they may be incorporated as part of the program's formal administrative regulations, published in the Federal Register and issued in accordance with the procedures contained in the Administrative Procedures Act of 1946. Frequently, however, guidelines assume other forms. They may be set forth in the agency's administrative handbooks governing the program's operations, or contained in the written administrative directives conveyed

from bureaucratic headquarters to the agency's field staff. In some instances, guidelines may even assume a less-formalized non-written form, systematically transmitted from central actors to implementation agents only verbally, as, for example, during program training sessions.

Regardless of the particular form they assume, in complex organizational structures such as those through which national policy is implemented, guidelines are an essential ingredient of administration. For the implementing bureaucracy, they serve several important functions.

First, they serve to direct the behavior of the diverse network of implementation actors toward the accomplishment of organizational tasks. In delineating the sequence of events and activities which are to ensue in order to place the policy in operation, and specifying the roles to be assumed by various administrative agents and the procedures they are to follow in executing their roles, guidelines serve a coordinative function. By designating who is to do what to whom, when, and how, guidelines attempt to ensure that the energies of implementation actors are merged and channeled in ways that are presumed to lead to the attainment of stated policy goals.

Second, guidelines represent an attempt to constrain the discretionary behavior of implementing actors, and to assure the consistency of their actions with the content of policies arrived at through democratic means. Especially given the presumed link between legislation and guidelines, guidelines can be seen as providing a kind of check on the exercise of power of actors in the administrative state. In the absence of guidelines ostensibly rooted in law, the discretionary behavior of individual bureaucratic actors would be untethered from its democratic foundation, thereby posing a threat to the tenets of democracy.[17]

Third, guidelines reflect attempts to assure that actions of the implementing agency conform with the bureaucratic ideal. By specifying common procedures and standards to be applied during implementation, they represent efforts to inject impartiality into the administrative process, and to assure bureaucratic fairness by providing for the uniform treatment of those affected by the implementation enterprise.

Neglect of Research on Guideline Development

To date, the guideline development stage of implementation has been largely ignored as a subject of scholarly inquiry. Works aimed at specifying the character of components of the guideline development process, or identifying the forces influencing the outcomes of guideline development activities are largely absent from the implementation literature. In part the lack of theoretical or empirical work on these topics may be attributable to the same set of biases among policy scholars which inhibited research on implementation for such a long time. As Van Meter and Van Horn point out, implementation has long been presumed to involve only "a series of mundane decisions ... unworthy of the attention of scholars ...".[18] In this conventional view of the policy process, all the important substantive policy issues are seen as having been resolved "in the prior decisions of executives, legislatures and judges" -- decisions which have served as the focal point for the bulk of policy research.

But this does not explain why our knowledge about the process of guideline development has remained scanty, even as the volume of research on the implementation of policy has grown. While several implementation researchers have drawn attention to the existence of guideline development as a component of the implementation process[19] they have failed to fully

disaggregate this set of activities from the broader set of implementation tasks, or to initiate any independent investigations into the process through which guidelines are created, or the forces which influence the content of guidelines as they emerge during the implementation of policy.

What, then, accounts for the absence of attention to guidelines among scholars seeking knowledge of the processes involved in implementation? In part the answer lies in the widespread acceptance of legalistic and technocratic conceptions of the guideline development process.

In seeking to explain the dearth of guideline development studies in the implementation literature, Rein, Rabinovitz and Pressman draw attention to the presumed "technocratic" character of the guideline development process. They argue that research on this substage of the implementation process has been neglected because "at first glance it seems so simple and so technical. Congress drafts a law and administrators write rules that provide detailed instructions for carrying out the law."[20] Conceived in this way, the outcomes of the guideline development process are seen as insignificant, the process itself of little interest since it is simplistically presumed to be no more than a kind of neutral, apolitical technical administrative exercise of the sort that Woodrow Wilson envisioned when he maintained that administration could, and should be divorced from politics.[21]

Moreover, other researchers of the guideline process maintain that empirical investigation into the full dynamics of guideline formulation has been impeded by the widespread acceptance among scholars of a "legalistic" image of the guideline development process.[22] Frieden and Brown assert that "the legalistic model views guidelines as products of a close examination of statutory language ...". Extracted in a straightforward manner from the

wording contained in the statue forged in formal legislative policymaking forums, guidelines, in this legalistic model, become "in essence glosses on statutory language and intent, divining [from legislation] the behavior that lawmakers were (or would be) most concerned to monitor, require or prohibit".[23] As a result of the pervasiveness of this legalistic image, the authors argue, and the widespread acceptance of the validity of the assumptions inherent in it (that the guideline setting process is dominated by legal considerations, and that guideline content is largely circumscribed by clear authoritative language set forth in statutory law), the bulk of research or guideline development has been undertaken by scholars preoccupied with issues of administrative law.

[Note: To the extent that administrative law scholars have addressed issues linked to guideline development processes, they have focused their work on such issues as bureaucratic use of adjudicatory processes (case by case reconciliation of individual circumstances to law) vs. rulemaking (the establishment of a priori standards which circumscribe uniform treatment of cases under law); the influence of legal requirements such as the Administrative Procedures Act of 1946 on the bureaucracy's choice of which approach to employ; the reconciliation of notions of liberty, formal justice, and due process with an agency's use of its state sanctioned powers of coercion; and the role of the judiciary as it impacts the administrative process.[24] In the broader sense in which the term "guidelines" is employed here, these works prove of limited utility. First of all, they confine their attention to only the most formal types of rulemaking, ignoring the less formally structured manifestations of guidelines noted here. Secondly, many of these works tend to focus as does the broader literature on regulation, on the behavior of Independent

Regulatory Commissions, charged with regulating private sector economic activity. Given the distinctive nature of these Commissions as governmental bodies, and the manner in which their activities differ in nature from those of other administrative agencies, these studies are of limited utility in developing the framework espoused here. Finally, as is argued in the remainder of this section, these studies share with other aspect of the literature the fatal flaw of downplaying or ignoring the impact of political forces held to be of great import in understanding rulemaking or guideline setting activity.]

If language put forth in policy-setting legislation was uniformly clear, concise, comprehensive and unambiguous, then perhaps the lack of attention afforded guideline development in the implementation literature might well be warranted. Under these conditions, guideline development activities would presumably have little independent impact on the content of policy (since all pertinent policy-shaping details would have been set forth in the products of formal policymaking activities) rendering guideline-setting a relatively insignificant process. Moreover, under these conditions, the composite image of the guideline development process as a simplistic and purely legalistic or technocratic, apolitical administrative exercise might sufficiently capture all the relevant qualities inherent in guideline development tasks.

But as the authors are quick to note, such a vision is a far cry from the realities of American policymaking.

Both sets of guideline development researchers point to the fact that the policymaking process is prone to yield policy products that are in some way vague or incomplete. These assertions receive widespread support from the findings of other scholars investigating both policymaking and

implementation processes. With some regularity, Congressional policymaking activities have been found to yield policy products that are in some way vague or incomplete. These assertions receive widespread support from the findings of other scholars investigating both policymaking and implementation processes. With some regularity, Congressional policymaking activities have been found to yield statutes which are deficient in several ways. They may contain unclear or ambiguous directives to the administering agency on how program implementation is to proceed; vague or lofty goals unaccompanied by details suggesting the strategic framework through which they are to be accomplished; or multiple policy objectives any one of whose attainment may be incompatible with another.[25]

Long recognized in the broader political science and policy literature, the phenomenon of Congressional failure to routinely fashion clear, detailed, fully explicated policy statutes has been attributed to a variety of sources. Congress is said to face severe limitations with respect to time and staff support -- factors which can constrain its ability to provide comprehensive policy legislation.[26] Moreover, the Congress, despite its moves over the past decades to develop greater specialization within its institutional structure, remains at root a body composed of policy generalists. As a consequence, statutory framers may lack (or at least believe they lack) sufficient knowledge about precisely what types of actions are required to remedy a particular societal problem, and thus may, by conscious design, do no more than set forth general goals in policy legislation -- deferring to the presumed "superior expertise" of the administering agency, decisions regarding the means through which to accomplish stated ends.[27]

But most frequently, the vagueness and irrationalities of statutory

products are said to be rooted in Congress's need t fashion, out of conflicting demands, some "policy" on which contending interests can agree. Given the weaknesses in contemporary institutions of governance, the dictates of political consensus-building often require that Congressional policies be kept vague, or even internally contradictory, in order to amass sufficient consent to act.[28] As Nakamura and Smallwood note "it is easier to get agreement on an abstract statement of principles ... than it is to reach agreement on more concrete statements that involve difficult trade-offs among values."[29]

The Consequences of Vague Policy for Guideline Development

Regardless of its sources, the inescapable reality that many if not most policy products passed on to the bureaucracy for implementation are either vague, incomplete, or internally inconsistent has two significant and related consequences. First, it renders guideline development as an especially crucial stage of the implementation process, wherein important discretionary choices affecting the substance of policy will be made. As Frieden and Brown point out, when Congressional legislation obscures key elements of policy, "federal administrators must shoulder twin responsibilities of goal refinement (stating general program goals in clear operational terms) and goal reconciliation" (resolving conflict among competing program priorities)[30] (emphasis added) as part of their guideline setting tasks. The outcome of these activities can be seen as having significant impact on the content of the policy being implemented. It is at the stage of guideline development, then, that the vagarities of policy legislation must be clarified, that the policy issues left open in the legislation must, out of administrative necessity be addressed and resolved.

Second, precisely because vague or unclear products of formal policymaking have the effect of ceding to administrators substantial discretion in framing rules and guidelines, the exercise of which has important impacts on policy substance, our prevailing conceptions of the guideline development process are rendered deficient. They can be seen to inaccurately depict its character, and to deflect attention away from important qualities inherent in guideline development tasks.

Though conventionally viewed as part of the administration of preordained policies, the process of guideline setting may in fact be more akin to policymaking than administration. Under conditions generated by a vague or incomplete product of legislative forums, the decisive act of framing rules and guidelines for implementation may more closely resemble the act of substantive policymaking itself. Moreover, though carried out under the guise of the technical translation of law into administrative practice, guideline choices may at root be more political than technical in nature. As Brodkin points out, "The actions that administrative agencies take to operationalize policy are imbued with political significance because they embody policy choices."[31] Where these policy choices encompass resolution of important substantive issues, the political significance of the guideline development process looms large.

What is more, as a result of these factors, the nature of the process through which guidelines are arrived at by the bureaucracy may be inaccurately depicted in prevailing models. If the process of guideline development, in fundamental ways, resembles the process of policymaking itself, then through means we have yet to fully understand, alternative rules and program specifications are formulated, debated, and a course of action selected. During this process, opportunities arise as alternative

guidelines are being considered by the implementing bureaucracy for contending organized interests to bring political pressures to bear in an effort to see that their perspectives and policy preferences are reflected in the guideline products that result. To the extent that guidelines have great policy significance, such political activities become likely. Thus, while prevailing images of the guideline process foreclose the possibility that political influences mark the process, concentrating solely on either administrative or legal ones, the tendency of Congress to produce vague or incomplete policy may render political qualities of the process important ones. It is in recognition of this fact that Rein, Rabinovitz and Pressman were prompted to characterize the guideline development process as the "continuation into another arena of the political process."[32]

Implementation: The Political Process Paradigm

The conceptualization of policy implementation as a set of activities shaped in important ways by political forces is not without its referents in the broader implementation literature which has both preceded and followed Rein, Rabinovitz, and Pressman's collective work. Several implementation scholars have made note of the fact that politics pervade the implementation process. Sabatier and Mazmanian assert in their writings that "the policy outputs of implementing agencies are essentially a function of interaction between legal structure and the political process."[33] Nakamura and Smallwood note that during the entire course of the implementation activities "outside groups attempt to pressure implementors to administer policies in ways that advance their perceived self interest."[34] And Ripley and Franklin state that "the activities of interest groups do not cease after legislation is enacted", though they concede that "little is known about their role in implementation."[35]

While these writings enhance our understanding of implementation by disclosing the fact that implementation has a political dimension as well as an administrative one, their weakness lies in the authors' failure to distinguish among stages of the implementation process and to identify the subtasks of implementation around which political activity is prone to be most fully manifest. To a degree, their broad-brush approach is justifiable. It is undoubtedly the case that the political forces highlighted in these writings make themselves felt throughout both stages of implementation cited in Rein, Rabinovitz, and Pressman's work. Indeed scholars of public administration have long been aware that even the routines of administrative practice (discussed here under the Administrative Paradigm of Implementation) are "infected" by the forces of politics[36] But is perhaps at the earlier guideline development stage of implementation that political forces find their fullest expression.

Since rules and regulations are designed to serve as uniform and authoritative constraints on subsequent administrative action, affecting all parties touched by implementation efforts, decisions made at the guideline development stage will presumably have the most systematic and wide-ranging impact of any post-legislative implementation actions. It is around the tasks of guideline development, then, that political efforts to attain influence may be most rigorous. It is during the guideline development stage of implementation that the policy stakes are highest, the greatest political gains and losses to be made.

Bardach supports this concept, highlighting the stress contending political interests place on securing influence during guideline setting when he states that

> The bargaining and maneuvering, the pulling and hauling of the policy adoption process carries over into the policy implementation process.

> Die hard opponents of the policy who lost out at the adoption stage seek and find means to continue their opposition when ... administrative regulations and guidelines are being written.[37]

Summary

Given these realities, neither the existing literature on policy implementation nor the dominant conceptualizations of guideline development in the broader of public administration and administrative law literatures serve as adequate guides to our understanding of guideline development activities. In general, implementation scholars have tended to focus on discovery of problems tied to the routine administration of policy, ignoring the distinctive nature of antecedent guideline setting efforts, and implicitly dismissing the potential policy salience of these pre-administrative implementation tasks. Moreover, in the other literatures, where guideline development has implicitly been acknowledged as a discrete set of implementation activities, characterizations of the guideline-setting process have been too narrowly cast. The weight afforded predominant models of the guideline development process as a strictly legalistic and/or technical bureaucratic exercise of neutrally translating legislative products into administrative practice has deflected attention away from the political significance of these activities, and ignored the likelihood that political forces and considerations will play a crucial role in shaping guideline choices that are made.

As has been pointed out in this chapter, these weaknesses in the literature have their root in faulty conceptions regarding the nature of formal policymaking. If Congress were, with some consistency, to fully explicate formal policy in legislation, the act of setting guidelines in implementation would presumably possess no independent "policymaking" force at all. Guideline development activities and outcomes would be rendered

insignificant elements of the implementation process; political forces would be discouraged from seeking influence over their content, and legalistic, technical apolitical models of the process would likely hold true. But when Congress leaves policy vague or incomplete in legislative edicts, as it frequently does, guideline development is transformed into a process laden with policy significance. Guideline development thus becomes an important stage of implementation in which unspecified but potentially significant substantive elements of policy may be added, in which policy issues left indeterminant in formal policy must ultimately be resolved. Under these conditions, the tasks of guideline setting come to constitute a form of de facto policymaking albeit policymaking whose dimensions we have yet to fully understand. Moreover, given the potential import of guideline outcomes for policy substance, the prospect is heightened that political forces described in the implementation literature will come into play as guidelines are being forged.

Under these conditions, the relative neglect of empirical and theoretical treatment of guideline development in implementation leaves important gaps in our knowledge. The "policymaking" qualities inherent in guideline development, which distinguish this set of implementation activities from the more purely administrative implementation tasks, render guideline development an especially important subject for research. If policy choices are embodied in guidelines forged during implementation, then we need to know more about the process through which guidelines are created and the forces which play a determinative role in shaping the guideline choices that are made. An understanding of guideline development thus becomes crucial to a more complete understanding not only of implementation, but of the policy process as it progresses from beginning to end.

Chapter 1 Footnotes

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CHAPTER 2: ADMINISTRATIVE GUIDELINES AND REGULATIONS: A FRAMEWORK FOR ANALYSIS

Guideline development has been seen to merit recognition as a discrete stage of the implementation process. It is a stage marked by a distinct set of activities directed toward the establishment of a strategic framework of rules and guidelines which set the parameters within which the routines of administration (those activities involved in the latter stage of implementation) are to ensue. Guidelines are necessitated by the need to provide for coordination of, and uniformity within, the implementation undertaking, and by the need to reconcile the routines of administration with mandates arrived at through democratic means.

Though we have historically dismissed this stage as inconsequential to the study of public policy, the weaknesses inherent in contemporary Congressional policymaking activity force a reassessment of this view. If we acknowledge Congressional tendencies to fashion policy in a manner which may leave important aspects of its character ill-defined or ambiguous in the legislative products they pass on for implementation, then guideline development can no longer be presumed to encompass just insignificant administrative plan making activity. To the extent that Congressional irresolution may cede incomplete policy to administrative forums, the tasks of setting the strategic framework of rules and regulations governing implementation may instead be more accurately cast as an extension of the policymaking process, whose outcomes are revealed to have important consequences for policy as it will be manifest in administrative routines. Under these conditions, guideline development becomes an especially important topic for empirical inquiry. An understanding of how guideline

development activities are undertaken, with what results, becomes crucial to our understanding of policy and the full set of processes through which it is forged and sanctioned.

Yet empirical efforts directed toward the study of guideline development activity must be guided by reformed conceptions of the process and its products. While past models depict guideline development as a simple straightforward technical exercise (of translating law into administrative practice), guideline products as containing no more than policy-neutral administrative detail, under conditions where Congressional irresolution may be manifest in formal policymaking, the accuracy of these conceptions (which would be suspect even where policy was more fully specified) can be seen to fall far from the mark. Guideline products are revealed to have potentially weighty policy-shaping content, the process of their creation to involve more complex processes of policy deliberation and policy choice. Under these conditions, the tasks of guideline development might more properly be approached for study as a discrete and discretionary policymaking enterprise, albeit one that takes place at the hands of non-elected officials, under the auspice of filling in mere administrative detail to which Congress failed to attend.

Guideline Developers as Policymakers

If we acknowledge guideline development to have these qualities, then empirical research aimed at understanding how policy is ultimately "made" or refashioned as guideline development progresses must ultimately center on understanding the behavior and choices rendered by the authoritative actors who control the guideline development process. While legislators serve as the ultimate authoritative decisionmakers in the legislative

arena, bureaucratic actors serve as the ultimate authoritative decision-makers in the implementation arena of which guideline development constitutes a subpart. Ripley and Franklin note "it is in the realm of implementation that agencies dominate ... they are not impervious to outside influence ... but implementation is their major activity and the arena in which they clearly claim pre-eminence.[1]

When ill-specified policy is passed from legislative to administrative forums, the top tier of program officials charged with responsibilities for the coordination and management of the implementation enterprise are, in effect, ceded an informal but important discretionary role in shaping policy -- a role akin to a policymaking role. Under these conditions, bureaucratic guideline authorities are transformed from mere technical agents of policy execution into discretionary policymaking actors, on whose authoritative choices regarding guideline content the true character of policy (as it will be manifest in administrative actions) can be seen to depend.

If we approach guideline development in this manner -- as a discrete stage of the policymaking-implementation continuum, in which bureaucratic actors assume the mantle of the pre-eminent policymaking operatives who render important and authoritative policy-setting decisions as part and parcel of their guideline development tasks -- then empirical efforts to understand the behavior and choices rendered by these actors must be guided by some conceptions of the forces of influence which we would expect to play a role in shaping the conduct and the products of their guideline development work. Just as empirical work on formal policymaking is guided by conceptions of the forces which fashion the contours of policy as it

emerges from legislative arenas, so too must empirical work on this secondary policymaking process be guided by conceptions of the forces we would expect to shape "policy" as it emerges from guideline development forums. Yet here again past models prove deficient as guides to empirical inquiry.

Though past conceptions of the guideline development process depict guideline outcomes as captive to a singular deterministic set of influences -- either legalistically predicated or technocratically derived--where important policy stakes are subsumed in guideline decisionmaking processes (as they are when Congressional vagueness or ambiguity prevail) the prospect is heightened that political considerations and influence, ignored in earlier conceptions, will play some role in shaping both process and outcomes as guideline choices are being made. Thus we must allow for the prospect that guideline development outcomes are shaped by a broader and more complex set of influences than prevailing models would lead us to portend.

To date, the scholarly work which offers the most useful and comprehensive framework for understanding decisions rendered at the guideline development stage, has been crafted at the hands of Rein, Rabinovitz and Pressman. The authors (in two separate pieces, one prepared by all three scholars, the other by Rein and Rabinovitz alone), posit that the behavior and choices of bureaucratic guideline developers are shaped by their need to respond to three distinct sets of influences of "imperatives."[2] These they characterize as -- the Legal Imperative, the Bureaucratic Imperative, and the Consensual (Political) Imperative.

The Legal Imperative

In creating guidelines governing the implementation undertaking, the

behavior and choices of guideline developers are presumed to be influenced, first and foremost, by the legal imperative. The legal imperative directs attention to the priority afforded by guideline developers to considerations of statutory content and meaning, and to any constraints on guideline choices which they perceive the legislative language of the statute to impose.

Under the legal imperative, guideline developers are impelled to be faithful to the policy intentions expressed by the Congress; to craft guidelines such that they are consonant with legislative language; to craft guidelines which are consistent in their aim and impact, with Congressional intent as that intent is embodied in statutory law. Under the legal imperative, Rein and Rabinovitz note "the law itself becomes the referent for all actors in the process."[3]

The legal imperative has special importance to the guideline development process because, ultimately, the authority under which bureaucratic actors are empowered to draft rules and regulations for implementation has its root in the legislature itself. Only the legislature is constitutionally endowed with the authority to set legally-binding policies. But it has become common practice, as societal governance has grown more complex, for Congress to formally delegate to the bureaucracy, the authority to frame rules and regulations which carry with them the full force of law. The exercise of the bureaucracy's formal rulemaking authority, however, is constrained by the requirement that these rules and regulations <u>conform to the mandates contained in the original policy statute</u>. While less formal guidelines governing program operations may fall outside the bounds of this formal authority (and thus not bear the full unquestionable weight of the law in their enforcement) they too, are subject to the test of consistency

with statutory language. As Rein and Rabinovitz note "Because laws are best understood as expressions of citizen will, bureaucratic compliance with legislative intent is morally justified and deemed necessary."[4] (emphasis added) Thus administrators are bound, both by law and the dictates of democratic morality to exercise their guideline development authority consonant with the wishes and intentions of Congress, as they are manifest in the language of the law.

The Bureaucratic-Rational Imperative

In casting their guideline verdicts regarding rules and procedures, administrative authorities are subject to an independent set of influences emanating from a different source. According to Rein, Rabinovitz and Pressman, bureaucratic guideline developers are subject as well to a set of bureaucratically-rooted pressures which the authors encompass under the label of the Rational/Bureaucratic Imperative.

During the process of guideline development, the authors note, the legal mandates contained in the law are transformed into a blueprint for administrative activity. The Bureaucratic Imperative directs attention to the fact that as the law is transformed into a blueprint for administrative action, bureaucratic pressures develop to ensure the plan will be fashioned in a manner consistent with the principles of effective administrative practice.

Implicitly, this part of their construct is grounded in the assumption that for any programmatic operation, there exists an internal bureaucratic constituency in which guideline developers both partake, and on which they must depend. This constituency consists of the myriad of bureaucratic actors granted a role in policy implementation activities, including both those responsible for the execution of administrative procedures and the

application of prescribed rules, as well as those responsible for successful coordination and management of the implementation enterprise as a whole (the guideline developers themselves). Foremost among the values advanced by this constituency, as the authors characterize them, are concerns with administrative rationality and the technical efficacy of administrative operations under which policy implementation is to be carried out.

These assertions regarding the values brought to bear by this internal constituency are grounded in "non-partisan" conceptions of the impulses which motivate bureaucratic agents in the conduct of their administrative work. Cast in the role of neutral administrative experts, this bureaucratic constituency is held to be guided not by political or philosophical judgements regarding the proper substance of policy, but instead by a kind of technocratic logic which is believed to predominate in the bureaucratic culture of which they form a part.

Under the Rein, Rabinovitz and Pressman framework, then, we would expect the behavior and choices rendered by bureaucratic agents during guideline development to be shaped not only by legal, but also by administrative dictates. As those responsible for coordination and management of the implementation undertaking, guideline developers are held to be impelled by both inherent role-related values as well as overt pressures from their bureaucratic peers to be attentive to issues of pragmatism and bureaucratic efficacy as they frame guidelines which will direct the execution of administrative tasks. Thus we can expect guideline decisions to be cast with an eye toward not only what is legally required, but also with an eye toward what is technically sound and administratively feasible given the capacities of the implementation system; with an eye toward not only the language of the law but also with an eye toward what is required

to ensure smooth, continuous and efficient bureaucratic functioning as the routines of administration are carried out.

The Consensual Imperative

In alleging that bureaucratic decisionmaking undertaken during the guideline development stage is shaped by the legal content of the statute and by the dictates of effective bureaucratic functioning, Rein, Rabinovitz and Pressman draw from the predominant visions in the literature of guideline development as a process of legal translation of law into practice, and as a process of strategic administrative planning. But in recognition of the deficiencies of these models, they include a third set of influences which they anticipate will also shape the outcomes of guideline development efforts. These are political influences and considerations which they encompass under the label of "the Consensual imperative."

The Consensual imperative directs attention toward the bureaucracy's need to be responsive to the forces active in the agency's political environment; in particular the forces linked to the organized interests who form the base for the agency's political support. Writing about the process of implementation, Ripley and Franklin point out "Every bureaucratic agency is involved in a web of relationships with important others ... Primary relationships in the implementation realm are those among bureaucratic units and their clients."[5] Consonant with this view, Rein and Rabinovitz state that the consensual imperative impels agency administrators to fashion guidelines in a manner which "take(s) into account the interest groups affected by the legislation."[6]

The importance which Rein and Rabinovitz vest in these political factors and influences as impulses which shape the outcomes of bureaucratic

decisionmaking during guideline development is lent credence by the findings of several implementation scholars that active interest group involvement in attempts to fashion the contours of public policy does not cease once the stage of formal legislative policymaking has passed.[7] Rather than diminishing in the post-policymaking period, interest group activities and pressures tend to persist throughout the implementation stage, and may even intensify at the point where guideline decisions are cast.

In highlighting the consensual imperative as one of three sets of influences upon the guideline development process, Rein and Rabinovitz affirm that guideline developers are not immune to the interplay of these important political forces. If agencies are to operate without disruption, they must seek in their actions to ensure the political quiescence of important clienteles to whom they are beholden. If they are to maintain themselves as resource-laden institutions, they will be impelled to render guideline decisions in a manner which responds to the actions and pressures brought to bear upon the agency by important interest groups. "When an agency owes its existence to outside interests that also control the legislative process through which its programs develop," Rein and Rabinovitz note, "it has to pay substantial obeisance to these groups."[8]

The consensual imperative, then, directs attention to the fact that the tasks of devising rules and regulations are conducted with an eye toward the bureaucracy's need to secure the appeasement of pertinent interest groups with a stake in the outcomes. Under the consensual imperative, then, influences and considerations tied to the political interests of organized program constituencies take their place alongside legal and bureaucratic ones as factors which are expected to play an

important role in shaping the products of guideline development efforts.

Implications of the Rein, Rabinovitz and Pressman Framework

The Rein, Rabinovitz and Pressman framework represents a great advance over earlier conceptions of guideline development activities. Given what we know about the incompleteness of the formal policymaking process and the opportunities for the exercise of bureaucratic discretion at this stage, their model can be seen to more accurately reflect the greater complexity of guideline development decisionmaking which we would expect to be manifest in the post-policymaking stage of governmental activity. It can be seen to more realistically and comprehensively depict the set of forces which would be expected to shape the outcomes of the guideline development process - forces to which empirical attention should be drawn. They eschew, in their model the view that the contents of guidelines are singularistically or determinatively shaped by either law or administrative dictates. Instead, under their conception, the contents of rules and procedures (and the policy-shaping features they contain) are only in part legally influenced, in part administratively fashioned, and in part politically impelled. To understand the behavior and choices elected by bureaucratic guideline authorities, then, one must look to the contents of the law, the pressures emanating from bureaucratic self interest, and the activities of the interest group network active in the bureaucracy's political field.

Moreover, their framework has important implications for our understanding of the character of the guideline process and the nature of the guideline developers role. Their model suggests that guideline development is neither strictly an exercise in the translation of law, nor simply an exercise in strategic administrative planning. Rather, as they cast it,

the guideline development process is fundamentally a more complex and political process in which law, bureaucracy, and interest group politics interact. Under the Rein, Rabinovitz and Pressman framework the tasks of guideline development become, in essence, tasks of political reconciliation involving the melding of the influences of the law, technical bureaucratic considerations, and felt interest group concerns into a coherent framework of rules and procedures governing the implementation enterprise. As the authors note, during the guideline process

> "An executive at the federal level responds to a piece of legislation not only in terms of what it directs but also in terms of constituent opinions, and the demands of administration in a world of scarce resources. It is his job to turn legislation into workable practice by balancing the claims of legislative intent, [constituency] opinion and administrative effectiveness [in the guideline products produced]"[9]

The Weakness of Their Model: The Legal Imperative Revisited

Though of great utility in directing empirical researchers to consider the effect of not one but three sets of influences (the law, bureaucratic concerns with administrative efficacy and technical feasibility, and interest group political pressures) which conjointly account for the content of guidelines elected during the guideline stage of implementation, their model does prove weak or faulty on one important count. Their conception of the legal imperative leads the model to neglect an important related set of influences on guideline development which must be examined in empirical research on guideline development activity.

In their discussion of the legal imperative, the authors argue that "the law ... becomes the referent for all the actors in the [guideline

development] process."[10] Implicit in this conception is the view that the sole Congressionally-based influence on guideline development resides in the statute itself. One minor flaw with this conception is that it ignores the significance of the content of other Congressional policy documents which are intended to supplement the law.

Congressional policymaking actors seek to convey their conception of legislative intent and expectations about policy implementation through not only the law itself but also through a variety of non-statutory documents which precede and accompany the bill forged into law. Since the policy content circumscribed in law is generally a product of Congressional Committee effort (to which the Congressional body as a whole tends to defer in passing legislation), messages contained in Committee-issued documents such as Committee Reports which accompany House and Senate versions of the bills later forged into law, can be expected to have significant influence in shaping bureaucratic choices during the guideline development phase, as will statements of key Committee members entered into the legislative record during floor debate on the legislation. These supplementary documents become especially important addendums to the law where statutory language itself proves vague or unclear.

But the more important weakness in this portion of their model lies in the presumption-inherent in the legal imperative as they present it - that Congressional influences on the guideline process are frozen at the point of legislative enactment (i.e. derive solely from legislative actions preceding the crafting of guidelines); that direct Congressional involvement in the policy process ends at the point at which legislative decisions are cast. This presumption regarding the absence of Congressional forces during the post-policymaking period may have its root

in the assertions of Congressional scholars that Congress manifests little interest in conducting legislative oversight of bureaucratic operations. Indeed at one time the preponderance of evidence led Congressional scholars to almost universally conclude that Congressional members were unconcerned with the "details of administration" - grossly negligent of their legitimate responsibilities for reviewing bureaucratic implementation efforts to ensure their fealty to legislative intent.

As one set of prominent Congressional observers has attested "oversight [of implementation] by Congress happens only occasionally ... motivations to engage in detailed continuous oversight is often missing or weak at best."[11] Scholars researching this phenomenon have found that the personal and professional rewards to Congressional members for engaging in oversight of implementation tend to be too paltry to induce post-legislative oversight interventions; the costs in terms of loss of time, and of energy invested in the mastery of the details of administrative functioning tend to be so great as to suppress Congressional implementation review.[12]

These findings have served to intensify criticism emanating from both legislative and scholarly quarters that Congressional neglect of its oversight function has been producing insufficient democratic checks on the expanding power of the administrative state.[13] Perhaps in response to these critiques of Congressional operations, or perhaps as an outgrowth of other changes in the function of the legislature[14] some of the more recent research has given rise to speculation that we may be witnessing some deviation from earlier trends.

It is the authorization Committees of the Congress which are the predominant force in the legislative body in shaping the content of policy

legislation offered up to the House and Senate for passage, and it is these Committees which bear the major responsibility for oversight of the manner in which the bureaucracy implements the policies they have crafted. In recent years, efforts have been initiated within some of these Committees to strengthen their capacity to oversee activities of the executive branch. In some instances hearings on agency activity have been found to be scheduled with greater regularity; in others, tools to facilitate Congressional control of administration such as legislative review and veto of program regulations have been found to have been established with greater frequency than in the past. Thus, though scholars continue to adhere to the view that "Overall, Congressional attention to bureaucratic agencies is haphazard"[15], the presumption of Congressional disinterest in the "details of administration" can no longer be made at the outset; Congressional inactivity during program implementation stages can no longer be automatically assumed.

All of this should lead us to expand the set of forces we examine in an effort to understand guidelines and the process through which they come to exist in the form that they do. In understanding the legal imperative as a force in guideline development, we must look to the weighty influence exerted by the language of the law, but we must view it as at least potentially only one portion of a broader set of Congressionally-based influences on guideline outcomes. As a supplement to this statutory component, we must examine as well the influence exerted by the messages contained in other non-statutory Committee documents. But more importantly, we must examine the behavior of and pressures brought to bear by Congressional actors during the post-policymaking period, especially those of important Congressional Committee authorities engaged in the

conduct of their legislative oversight role.

The Conciatory Politics of Guideline Development

Despite the greater complexity embodied in the Rein, Rabinovitz and Pressman framework, there is nothing inherent in their model (even with the modifications proposed here) that should lead us to expect guideline development to be a particularly contentious, problematic, or unstable exercise. In fact the logic of their argument leads to the counteropposite view. Guideline authorities are presumed to approach their tasks as fundamentally non-partisan actors -- serving as a kind of blank slate on which the interests of Congressional, administrative, and interest group forces will be etched. In exercising discretion in setting rules and regulations, they are held to be guided first and foremost by a desire to eradicate tensions among competing interests in the triad, in order to allow the bureaucratic enterprise of implementation to proceed unimpeded by political conflict or dissent. Guideline authorities are cast in their model as agents of conciliation and compromise who manifest in the guideline products they produce, a stabilizing fulcrum or balance point among the diverse constitutional preferences held by the three sets of interests being influence in guideline forums. Guideline decisionmaking, in the authors words, involves the "integration of competing views"[16] arising from Congressional bureaucratic, and interest group corners of post policymaking arenas.

Moreover, the political maneuvering which marks the manner in which these triadic forces are held to interact during the post-policymaking stage is suggested at one point in their writings to be a "politics of accommodation"[17] - a politics of negotiation, concession, and coming into accord which begins during the crafting of legislation and extends into the

crafting of guidelines where policies are refined and effectuated. The tasks of reconciliation of Congressional, administrative and interest group wishes are presumed to be eased by the fact that "in large part the same persons or interests involved in the legislative process (whether inside government or outside) are equally involved in the implementation process."[18] "Here we find competing interests at play," the authors note "within an atmosphere of give and take and conciliation."[19]

Policy Subsystems and Guideline Development

This image of a relatively tranquil and ordered set of relationships which structure the exercise of administrative discretion during guideline development is striking in the degree to which it parallels the literature on policy subsystems activity in American government. Analogous to the triad of forces which Rein, Rabinovitz and Pressman detail, policy subsystems (or iron triangles or subgovernments) are said to refer to

> the existence of a triangular relationship between (sic) three elements in American national politics: bureaucratic agencies, interest groups and Congressional Committees.[20]

Most of the work on policy subsystems has highlighted their predominance in shaping the content of legislatively enacted policy (later passed to guideline forums) over which they are said to exert near complete, comprehensive control. "It is in a subsystem...." one recent study proclaims, "that much legislation in a particular policy area will be proposed, debated, drafted and ratified."[21] By implication, Rein, Rabinovitz and Pressman lead us to believe that it is within these same policy subsystems that guideline content will ultimately be negotiated and settled upon as well.

Again reinforcing the vision manifest by Rein, Rabinovitz and Pressman, the relationships among subsystem actors are in this parallel literature,

near universally held to be tranquil rather than tumultuous, stable rather than vacillating, concordant rather than discordant. The logic of harmonious interaction in subsystem relationships is held to reside in the inducements each corner of the triad has for seeking conciliation with their counterparts views

> "Congressman look [to bureaucrats and interest groups] for political support and campaign contributions. Agency administrators want to protect their budgets and otherwise enhance their programs. Finally, client groups want to make sure their interests are furthered by government policies. Over time, close working relationships develop ... policies are formulated with the needs of all partners in mind."[22]

Thus despite the inherently competitive nature of these triadic forces, during the legislative process on which the subsystems literature has focused "policymaking in a subsystem is held to be consensual. Each side of the triangle can be helped by working with the other two."[23]

Though research on subsystem activity has not been directed toward the guideline development stage per se, findings that "the typical policy subsystem (is) stable ... policymaking (is) carried out in a cooperative consensual manner,"[24] lend credence to the assertions of Rein, Rabinovitz and Pressman. Especially since the issues dealt with in guideline forums are presumed to be less weighty, less open-ended and more technical than those addressed in legislative forums, we should expect to find accord on rules and regulations reached at a relatively early point in a program's history; guidelines should remain relatively stable and enduring over time.

But such was not the case with the program selected for examination in this empirical study. Established via legislation enacted in 1974, the Community Development Block Grant program was designed to provide grants-in-aid to local governments to be used for the remediation of a variety of urban ills. For more than a decade, this program has served as the

cornerstone of the nation's urban policy. Having been in existence now through three Presidential Administrations, the program continues to enjoy widespread political support. At a time when other major domestic programs have faced elimination, or found their budgets trimmed to the bone, the CDBG program remains in existence; and though the dollar amounts provided to sustain the operation have fallen in recent years (from a high of $3.8 billion per year in 1980 to a level of approximately $3.0 billion for fy '87) these levels have not fallen to a degree commensurate with those of other domestic initiatives for comparable purposes.

Yet despite the continued flow of funds under this programmatic aegis, the rules and regulations governing the implementation effort have proven notoriously unstable. Between 1974 and 1984, guidelines related to key aspects of the program's operation were reformulated on five occasions. Moreover, these guideline changes did not represent only marginal incremental adjustments in the administrative enterprise. Rather, they had the effect of substantively altering the central character of CDBG policy in a manner which represented a virtual 180° turnabout in the basic thrust of the program three separate times.

Where such instability is found in guidelines, a number of questions regarding the administrative behavior of guideline authorities should be raised. What were the motivating factors which induced the shifts in guidelines that were observed? To what extent did concerns with bureaucratic efficacy (the bureaucratic imperative) and interest group pressures (the consensual imperative) play a role in shaping the guideline products that were produced at each stage? What was the nature of the legal imperative (the directives contained in the law) and of the influences exerted by Congressional overseers? Did bureaucratic agents

seek to play the mediating role they are presumed to play, and if so, why was accord on guideline issues so difficult to reach?

The chapters which follow seek to provide answers to these questions. Chapter 3 describes the events leading up to the passage of the 1974 enabling legislation, and the origins of the confusing legislative directives contained in the original CDBG law. Chapter 4 examines how these directives were transformed into the initial programmatic guidelines during the Ford Administration's tenure at the helm of the programmatic effort (1974-76). Chapters 5 and 6 provide an account of attempts on the part of Carter Administration officials to recast administrative guidelines; forces and considerations which shaped their administrative actions and the outcomes of their attempts (in the 1977-80 period) at programmatic reform. Chapters 7 and 8 provide a parallel accounting of the guideline-crafting activities which occurred during the Reagan era (1980-83), leading up to the final legislative actions taken in 1983 and aimed at seeking final resolution of the protracted guideline controversies through recasting of the CDBG law.

The final chapter is devoted to a discussion of the findings and implications which emanate from an examination of guideline-setting activity in the CDBG case. Employing the Rein, Rabinovitz and Pressman framework as modified here, it seeks to analyze the role of law, congressional pressures, administrative considerations, and interest group politics as they affected bureaucratic action, as well as to assess what the findings of the case contribute to our understanding of bureaucratic policymaking as it occurs during the execution of guideline development tasks.

Chapter 2 Footnotes

1. Randall Ripley and Grace Franklin, Bureaucracy and Policy Implementation (Homewood, IL: Dorsey Press, 1982), p. 32.

2. Martin Rein and Francine Rabinovitz, "Implementation: A Theoretical Perspective," Working Paper No. 43, Joint Center for Urban Studies of MIT and Harvard University, March 1977; Francine Rabinovitz, Jeffrey Pressman and Martin Rein, "Guidelines: A Plethora of Forms, Authors, and Functions," Policy Sciences, Volume 7, September 1976, pp. 399-416.

3. Rein and Rabinovitz, op.cit., p. 8.

4. Ibid., p. 3.

5. Ripley and Franklin, op.cit., p. 43.

6. Rein and Rabinovitz, op.cit., p. 14.

7. See Eugene Bardach, The Implementation Game (Cambridge, MA: MIT Press, 1977), pp. 38-40; Daniel Mazmanian and Paul Sabatier, Implementation and Public Policy (Glenview, IL: Scott Foresman and Co., 1983), pp. 32-33; Robert Nakamura and Frank Smallwood, The Politics of Policy Implementation (New York, NY: St. Martin's Press, 1980), pp. 49-51.

8. Rein and Rabinovitz, op cit., p. 15.

9. Rabinovitz, Pressman and Rein, op.cit., p. 400.

10. Rein and Rabinovitz, op.cit., p. 8.

11. Randall Ripley and Grace Franklin, Congress, the Bureaucracy and Public Policy (Homewood, IL: Dorsey Press, 1984) p. 249.

12. See Seymour Scher, "Conditions of Legislative Control" Journal of Politics, Vol. 25, August 1963, pp. 526-551; Morris Ogul, Congress Oversees the Bureaucracy (Pittsburgh, PA: University of Pittsburgh Press, 1976); Morris Fiorina, Congress: Keystone of the Washington Establishment (New Haven, CT: Yale University Press, 1977).

13. See Charles Hyneman, Bureaucracy in a Democracy (New York, NY: Harper and Brothers, 1950); Herman Finer, "Administrative Responsibility in Democratic Government," Public Administration Review, Vol. 1, Summer 1941, pp. 335-350.

14. See Samuel Huntington, "Congressional Responses to the Twentieth Century," in Congress and America's Future (Englewood Cliffs, NJ: Prentice Hall, 1973), pp. 1-5; see also Lawrence Brown, New Policies, New Politics: Government's Response to Government's Growth (Washington, D.C.: Brookings Institution, 1983).

15. Lawrence Dodd and Richard Schott, Congress and the Administrative State (New York, NY: John Wiley and Sons, 1979), p. 170.

16. Rein and Rabinovitz, op.cit., p. 38.

17. Ibid. p. 26.

18. Ibid. p. 10.

19. Ibid. p. 3.

20. Dodd and Schott, op.cit., p. 95.

21. Ibid., p. 10.

22. Jeffrey Berry, Feeding Hungry People: Rulemaking in the Food Stamp Program (New Brunswick, NJ: Rutgers University Press, 1984) p. 11.

23. Ibid., p. 10.

24. Ibid., p. 123.

CHAPTER 3: FROM IDEA TO LAW TO BUREAUCRATIC FORUMS: COMMUNITY DEVELOPMENT BLOCK GRANTS AS AN EMPIRICAL CASE

Ultimately, the difficulties bureaucratic guideline developers confronted in attempting to set stable rules and guidelines governing CDBG administrative operations had their origin in the conditions surrounding the passage of the law which brought the program into being. Both the nature of the political deliberations which marked the 3 1/2 year legislative struggle to enact an urban block grant program, and the ideological atmosphere of grant reform within which the law was initially cast were later to shape the guideline setting process in important ways.

In introducing the empirical case around which this study of guideline development is focused, then, this chapter will describe the legislative machinations which propelled the program into existence, as well as the basic contours of the CDBG program as it was set forth in the law passed by Congress in 1974. The final portions of this chapter will highlight the particular set of programmatic issues which guideline authorities were left to contend with as they moved to operationalize the CDBG program - issues which form the basis for an exploration of the guideline setting process in action.

Dissatisfaction with Categorical Grant Functioning

The impulse which lead to the creation of the CDBG program had its roots in dissatisfaction with the categorical grant-in-aid system. Prior to 1974, virtually all federal grants dispensed to urban areas took the form of categorical grants-in-aid. Categorical grants were provided for narrowly specified purposes which Congress had dictated, and came attached with a panoply of attendant administrative strings.

Local officials were required, under categorical grant stipulations, to apply for federal funds via complex and elaborate application processes. Once a grant was approved by the national bureaucracy administering the categorical program, local officials were told, with extraordinary specificity, exactly how and in what manner funds could be expended. Moreover release of federal funds was often premised on localities adhering to a series of additional administrative requirements such as requirements that local officials undertake an extensive planning process; that they substantiate that their activities would have no adverse impact on the functioning of other federal grants received within their jurisdiction; or that they secure the participation of disadvantaged citizens in the process of electing projects upon which the funds would be expended.

Administratively, local officials were subject to intense scrutiny by national bureaucratic overseers regarding their intentions for use of categorical grant monies. During the execution of federally-funded categorical projects they were dictated to by national agency administrators checked and double-checked along the way. In all, for local officials, the federal grant-in-aid system came to resemble both a maze and a prison.

For the nation's urban officials, confronted with the tasks of solving the problems of severe physical deterioration within their borders and the manifestations of urban poverty that gave host to a whole panoply of social ills, the categorical forms that urban aid took proved particularly troublesome. Mayors complained that the effectiveness of their efforts to solve urban problems was being severely diminished by their need to devote time to master the intricacies contained in the voluminous programmatic regulations to which they were required to adhere. Moreover, they held that the weighty role granted national bureaucratic overseers of

categorical programs was stripping them of prerogatives to exercise local administrative discretion, leaving them unable to respond to local constituency preferences, and the particularities of their own city's urban needs. Indeed, the history of this categorical grant period is replete with references to the excesses of the categorical framework within which urban aid was provided. Regulations for the Urban Renewal Program, CDBG's chief predecessor program, for example, filled more than four notebook-sized volumes.[1] And a report on a second CDBG precursor, the Model Cities program, charged national officials with "overregulation" which too tightly bound local officials hands.[2]

The Cry for Categorical Reform

The specific concerns felt by mayors and other urban officials regarding the functioning of urban programs fed into a wave of broader and more widespread discontent with the operations of the federal system during the categorical era. Critics charged that the effectiveness of federal grant-in-aid programs was being inhibited by several features inherent in reliance on categorical initiatives as the near exclusive route for federal provision of local aid. The existence of a multitude of highly specified categorical grant programs (each operating autonomously from one another) was rendering coordination of categorical initiatives at the local level problematic. Moreover, the competitive nature of the grant-awards process produced excessive financial uncertainty, making it difficult for localities to predict, in any given year, the level of resources that would be available for addressing local needs. But most importantly, the federal system during the categorical era was felt to have become excessively rule-bound, leaving little room for the tailoring of programs to the needs of individual localities; leaving local officials drowning in a sea of

bureaucratic red-tape.

By the late 1960's, criticism of the intergovernmental grant-in-aid system had reached a high point. In Washington, a new consensus was emerging regarding the need for modification in federal grant-in-aid operations. During the 1968 Presidential election, the platforms of both political parties contained planks calling for simplification of the grant-in-aid system, streamlining of the intergovernmental aid process, and reduction in the volume of red tape to which local authorities were subject. Soon after assuming office in 1968, the Nixon Administration began to tackle the tasks of intergovernmental grant-in-aid reform.

The Nixon New Federalism Initiative

The principles which guided Nixon Administration efforts to reform the grant-in-aid system were derived in part from the predominant critique regarding the inefficiencies of categorical operations. But the overriding influence on the reforms they were to propose stemmed from a more philosophically rooted set of beliefs regarding the proper role of federal, state and local authorities in the federal system.

To Nixon Administration officials, the chief flaw in the categorical grant-in-aid system lay not in the fact that it had proven unwieldy and inefficient, but in the fact that it had produced, in their eyes, a fundamental imbalance of power in the federal system. Under categorical arrangements, they asserted, state and local government had been wrongfully subjugated to national government control.

In a system tightly bound by programmatic aims, rules and procedures forged at the national level, they believed locally-determined priorities were being trammeled. National judgments were routinely supplanting local ones, and in the process, local officials' prerogatives to govern in a

manner responsive to their local constituencies were being quashed under the federal government's heavy hand. Thus, in the eyes of the Nixon Administration, reform of the intergovernmental grant system was to involve not only streamlining of federal administrative procedures and the reduction of red tape (which had proven burdensome to both federal and local authorities) but the decentralization of power and authority over program operations from federal to local officials' hands.

Few statements capsulize the philosophical predispositions which guided the Nixon Administration's reform efforts as well as the statement made by President Nixon in his radio address to the nation in October 1972. In the broadcast, Nixon stated:

> "The central question which goes to the heart of American government ... [is] do we want to turn more power over to bureaucrats in Washington in the hope that they will do what is best for all the people? Or do we want to return more power to the people and to their state and local governments, so that the people can decide what is best for themselves?[3]

To the President and his advisors, the answer was clear. "The most important way of getting better government," he continued, "is to place more emphasis on local control."[4]

Consonant with these philosophical inclinations, the Nixon reform proposals passed on to the Congress for consideration in 1971 called for a massive restructuring of federal intergovernmental arrangements. Appropriately dubbed the "New Federalism" initiative, the package contained two parts. First it proposed the establishment of a General Revenue Sharing program, under which federal funds were to be provided to local governments virtually without federal restriction on how and in what manner the funds were to be used. Monetary allocation was to be automatic; the amount a locality was to receive was set by formula. Federal officials were granted

virtually no role in the conduct of the program. All power and discretion regarding the expenditure of GRS monies was ceded to local officials hands.

Second, it contained plans for the consolidation of 129 major categorical programs into a series of six broad-purpose federal-local grants.[5] Emulating the features of General Revenue Sharing, these consolidated grant funds were to be provided to local governments untethered from the categorical restrictions which accompanied the grants which preceded them. They were to constitute a new form of "special revenue sharing" under which federal funds were to be made available to local government for a wide range of uses within each of the six functionally circumscribed areas into which the grants had been grouped. For the purposes of this study, these special revenue sharing proposals have special relevance. Among the programs slated for consolidation into a special revenue sharing initiative were the nation's chief urban aid categoricals. And while the urban special revenue sharing program did not survive in its original form, the Nixon proposal formed the raw material from which the later CDBG program would be cast.

Special Revenue Sharing for Urban Development: The Nixon Plan

On April 22, 1971, the Nixon administration forwarded to the Congress its plan for Urban Development Special Revenue Sharing.[6] The legislation proposed that four major urban aid programs administered by the Department of Housing and Urban Development -- urban renewal, model cities, rehabilitation loans, and neighborhood facilities grants -- be consolidated into a single federal-local grant initiative. Under the new initiative, federal dollars were to be made available to urban areas for a broad set of community development uses. But the revenue sharing approach inherent in the proposal led the administrative arrangements under which grants were to

be provided to cities was to differ markedly from those which had been employed under the predecessor categorical grants. Major new features of the special revenue sharing initiative included the following.

1) GRANT ENTITLEMENT, ELIMINATION OF APPLICATION PROCESSES AND THE FORMULA ALLOCATION SYSTEM

Under existing urban programs, grants had been awarded on a discretionary basis. Localities were required to submit applications itemizing the particular uses to which funds would be put - applications that were either approved or denied by HUD officials at their discretion. Though in theory decisions regarding grant awards and amounts were to be based on local need and the merits of the applications, in practice the categorical grant awards process had been subject to misuse. Localities had charged that decisions were often made on the basis of political considerations, and that funds were often disproportionately awarded to those localities with skilled grantsmen at the expense of other areas with more stringent needs. As a result, under the special revenue sharing initiative, localities were to be awarded funds on an automatic, non-discretionary basis. Requirements for submission of a local application for grant funds were eliminated. Instead, all localities which met basic criteria regarding eligibility for participation in special revenue sharing (based on city size and other demographic criteria) were automatically "entitled" to receive grant allotments. The amount they were to receive was not subject to discretionary judgment by federal program officials, but was in contrast dictated by a formula set by statute.

2) ADMINISTRATIVE REQUIREMENTS VIRTUALLY ELIMINATED

Under categorical initiatives, localities had been required to conform to a multitude of both substantive and procedural administrative require-

ments attached to the federal grant. (As noted earlier, these included such things as requirements regarding local planning for use of grant funds, citizen participation in local project efforts, etc., as well as requirements for routine reporting to federal officials on the progress and effectiveness of local activities for which federal grant-in-aid monies had been provided). In an effort to eliminate the red tape which had accompanied categorical grant operations, virtually all administrative requirements were to be lifted under special revenue sharing arrangements. Under the legislative proposal, localities were required only to present a broad outline of their plans for use of special revenue sharing funds. Beyond this, there were virtually no restrictions which accompanied the special revenue sharing grants.

3) ELIMINATION OF FEDERAL SUPERVISION OF LOCAL EFFORT

Under urban categorical arrangements, federal program managers in the Department of Housing and Urban Development held a wide range of responsibilities for oversight of local utilization of federal grant funds. Their role included granting prior approval to local plans for use of grant monies, as well as providing supervision and oversight of the conduct of local authorities as these plans were being executed. Under special revenue sharing, the role of HUD program managers was restricted to commenting on, <u>but not granting approval to</u>, local plans for the expenditure of special revenue sharing monies. Beyond that, they were afforded no role in overseeing local grant operations. Their role was limited, in essence, to serving as a non-discretionary disburser of grant funds.

4) MAXIMIZATION OF LOCAL DECISIONMAKING DISCRETION

Under categorical initiatives, local officials had been required to direct grant-funded activities toward attainment of national policy goals

set forth in legislation. Moreover, local discretion had been circumscribed as well by requirements that localities pursue nationally-specified strategies deemed consistent with the attainment of these national aims. Under SRS arrangements neither national goals nor strategies were to be outlined. Local discretion was to be limited only by requirements that grant-funded activities fall within the broad functional areas specified in legislation. Beyond that, all decisions regarding the purposes and strategies for which federal grant-in-aid dollars were to be expended, were to be ceded to local officials' hands.

Congressional Reaction to the SRS proposals

While the 92nd Congress (1971-72) had reacted favorably to Nixon's General Revenue Sharing proposal (it was enacted into law in 1972), the Urban Special Revenue Sharing proposal was far less well-received. The SRS initiative encountered great resistance in the halls of the Congress, despite fundamental Congressional agreement with the Administration on the need for urban grant-in-aid reform.

Both the Administration and the Congress agreed that consolidation and decategorization of urban grant programs was desirable; and both agreed upon the need to reduce bureaucratic red tape, to streamline the administrative process, and to grant localities greater discretion in deciding how federal funds were to be spent. Yet there was substantial disagreement between the two institutions regarding the degree to which control over grant operations was to be decentralized under new grant arrangements.

Members of the 92nd Congress expressed concern that the SRS proposal vested too much decisionmaking authority at the local level while providing inadequate federal checks to avert the potential for local waste, fraud and abuse. Moreover, many members feared that national urban programs would

lose focus without a greater federal presence to assure local adherence to traditional national urban policy aims. Bound up in disputes over the decentralization issue, the SRS measure failed to secure the approval of the Congress by its adjournment date in fall of 1972.

The Better Communities Act: Special Revenue Sharing - Round Two

Undaunted by initial Congressional resistance to the measure, the Administration revived its special revenue sharing proposals in the form of legislation entitled "The Better Communities Act of 1973" (BCA).[7] The renamed bill differed from the original SRS proposal only in that it expanded the number of urban aid programs to be folded into the initiative (three categorical programs were added - open space grants, water and sewer grants, and the public facilities loan program); and in that it broadened eligibility requirements to entitle urban counties to receive funds under the program. All other features of the SRS proposal remained intact.

As in the original SRS proposal, no national goals were specified in the BCA legislation - only a listing of the broad set of eligible community development uses was included. Localities were free to elect community development priorities on which grant funds were to be expended solely as they saw fit. Consistent with this strong emphasis on local discretion, no formal application was to be required of localities. In lieu of an application, localities were required only to file with HUD a general statement outlining their own local community development objectives and their projected uses for grant monies in the coming year. Federal agents were afforded no role in approving local plans for grant expenditure. Once a local statement had been received by HUD, grant approval was to be automatic. Having been introduced into the legislature in early 1973, the fate of the BCA measure was ceded to the hands of the 93rd Congress.

Senate Reaction to the BCA Proposal

The BCA proposal was met with particularly harsh criticism in Senate chambers, where there was little support in any sector for the Administration's decentralization aims. Though the Senate contingent agreed with the basic ideas of consolidating urban categorical programs, increasing local flexibility, and reducing bureaucratic red tape, they differed sharply with the Administration regarding the need for retention of a strong federal role in defining the basic character of, and priorities for, the consolidated program, and in overseeing the conduct of localities who were to receive the federal grant.

The degree of autonomy to be afforded localities in setting priorities for the SRS program greatly troubled Senatorial critics. They charged that acceptance of a major grant initiative in which no national goals were specified would be tantamount to abdication of Congressional "responsibilities to the taxpayer to promote the use of their funds in as productive a manner as possible."[8] Failure to delineate the national goals toward which local grant funded CD efforts were to be directed was seen as eroding the essential national character of urban grant-in-aid programs, which, in the eyes of the Senate, provided justification for expenditure of scarce federal funds. "With the advent of General Revenue Sharing," one Senator asserted, "there is no reason to create another fund transfer program which simply provides localities with more federal money to use virtually as they see fit."[9]

Moreover, other Senators expressed concerns that without strong national directives and purposes, and a federal administrative presence to assure local adherence to those aims, localities would spend federal monies on priorities that deviated sharply from the national policy commitments to

the eradication of urban slum conditions that had guided national urban revitalization efforts for nearly 30 years. Left to their own devices, localities might choose to spend SRS funds for more frivolous urban projects, they contended, undermining the accomplishments that had been made toward remediating conditions in the nations worst urban slum areas and necessitating even greater federal expenditures to reverse urban decline in future years.

But perhaps the most important set of strong Senatorial objections to the SRS legislation had its roots in concerns with how the poor would fare under the proposed SRS arrangements. While some of the smaller categorical programs to be merged into the special revenue sharing initiative had never been tethered to aims of serving urban low income residents, two of the largest categorical programs slated for consolidation - Model Cities and Urban Renewal, which together accounted for 86% of the funds to be pooled - had had, at least in theory, some concern with the poor at heart. Model Cities had been expressly designed to aid low income neighborhoods, and grant funds had been accompanied by weighty federal requirements that benefits be directed to meet low income needs. To a large extent the program had reached its low income targets, but Urban Renewal, in contrast, proved a different story.

Though it had initially been presumed that low income "slum dwellers" would benefit from local renewal projects funded via the categorical grant mechanism, during the 1950's and 60's it became clear that such was not the case. What the experience of the program had graphically demonstrated was that, rather than directing funds toward amelioration of conditions facing impoverished slum dwellers, localities overwhelmingly preferred using federal renewal funds to develop middle and upper income housing and to

revitalize their downtown commercial areas. In the process the poor had been repeatedly not only neglected but harmed by renewal efforts, routinely being evicted and displaced. In light of the history of the urban renewal effort, the Senate pondered, was the removal of all federal strings under a special revenue sharing arrangement justified? Left to their own devices could the cities be trusted in any way to serve the needs of the urban poor?

In the minds of the vast majority of Senators, the answer to this question was "no." Using General Revenue Sharing experiences as an example of what might be expected to happen under the SRS initiative, Senator Taft asserted

> "Many observers, I'd say perhaps even an increasing number, feel that the experience of General Revenue Sharing thus far indicates that the money isn't going ... to address the needs of citizens who most need help."[10]

Acceptance of the Administration's proposal, then, was seen by the Senate as inimical to the interests of low income groups for whom they manifest great concern. In the absence of federal directives mandating a redistributive approach be applied under grant operations, the Senate feared, localities would prove unresponsive to the needs of the poor.

As a result of these objections, the Senate repudiated the Administrations Special Revenue Sharing bill and offered up its own legislative plan for consolidation several urban categoricals into a single Urban Development "Block Grant."[11] Unlike the Administration's SRS initiative, the chief character of the legislation was not driven by the impulse to free localities of federal intervention. Rather it had as its chief intention the provision of a simplified urban grant to localities to be used <u>for the benefit of low income constituencies</u>, incorporating the degree of federal direction and supervision that the Senate felt would be required in order to

bring that end about.

The block grant program advocated in the Senate's legislation, then, different from the SRS initiative in significant ways.

1) NATIONAL GOALS AND REQUIREMENTS AIMED AT DIRECTING PROGRAM BENEFITS TO THE URBAN POOR

Unlike the SRS measure, the Senate bill contained a detailed set of national purposes for which block grant aid to the cities was to be provided. [These included such things as the elimination of urban slums and blight, improvement of essential urban public services, revitalization of urban neighborhoods, and improvement of the urban housing stock]. Each of these purposes was to be suborned in importance to the overarching national goal of the program -- providing federal dollars for urban development projects which would ultimately benefit the poor. The Senate bill declared, in no uncertain terms, "the primary objective of this title is the development of viable urban communities by providing decent housing, and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income."[12]

To underscore the importance of this redistributive aim of the program, the Senate included in the legislation a legal requirement that localities devote at least 80% of their grant allotment to projects designed to be "of direct and significant benefit to families of low or moderate income, or to areas which are blighted or deteriorating."[13]

2) RESTORATION OF AN APPLICATION PROCESS SUBJECT TO FEDERAL REVIEW

While the SRS initiative had sought to eliminate requirements that localities submit applications in order to receive funding, under the Senate measure application requirements were restored. Localities were required to submit applications for block grant funding which contained detailed local

plans for the use of federal monies, and explained how the national aims of the legislation would be furthered by the projects localities proposed to undertake.

3) RETENTION OF A STRONG FEDERAL ADMINISTRATIVE ROLE IN PROGRAM OPERATIONS

Though mindful of the need to avert "unnecessary second guessing by Washington", the Senate eschewed the "hands off" approach to federal involvement the SRS initiative had implied. The Senate manifest great skepticism regarding the competence of local authorities, the degree of their commitment to the national aims of the legislation, and their willingness to provide assistance to the low income constituencies the legislation sought to assist. As a result, the Senate sought to provide, in legislation, a major role for federal bureaucrats in the operation of the block grant program.

Under the Senate bill, federal bureaucratic authorities were charged with major responsibilities for both reviewing and approving local applications for block grant funding. Though their review was to be less extensive than under prior categorical arrangements, their review was to be substantive, not pro forma. Acceptance of a local application was to be predicated on federal bureaucratic assessments of the soundness and comprehensiveness of the locality's community development strategy, as well as its consistency with federal requirements and nationally specified aims, particularly those directing attention to the needs of the poor. (Federal bureaucrats were also charged with responsibilities for monitoring local programmatic execution, to assure the national aims of the legislation were reflected in local activities every step of the way.)

House Reactions to the BCA Proposal

Like the Senate, the House objected to certain aspects of the Special Revenue Sharing approach contained in the BCA legislation. But in contrast to the Senate, the grant-in-aid features the House elected to incorporate into the version of grant consolidation they offered up in 1973 proved considerably more closely aligned to the Administration's decentralization aims.[14]

Representatives, in general, disliked the fully automatic nature of grant distribution specified in SRS arrangements, preferring instead that some federal role in the grant-in-aid process be retained. Thus, like the Senate, they opted for a "block grant" approach in the program they proposed to establish, in which local applications for grant funds would have to be submitted, and in which some federal role in overseeing grant operations would be maintained.

Yet at the same time, the House shared the Administration's disdain for for a strong federal presence in urban grant-in-aid operations. Prerogatives to set specific policy priorities under the new block grant program, the House believed, appropriately belonged to local, not national authorities. Within the framework of a set of diffuse national goals toward which the program was to be directed (goals broadly writ, such as "providing a decent home and suitable living environment for every American family") local discretion to elect priorities and strategies for urban revitalization was to be maximized. In the House view then, the federal bureaucratic role in block grant operations was to be of a minimalist nature, sufficient only to serve as "a safety valve ... in case some community gets blatantly out of line."[15]

The House Bill

In its form and content, the block grant program the House offered up for consideration bore a much closer resemblance to the Administration's SRS initiative than to the block grant program espoused by the Senate. Though it required localities to submit an annual application for block grant assistance -- an application which was subject to federal review -- the nature of the application process as specified in the House bill revealed it to be more a device to "strengthen the ability of local elected officials to determine their community development needs, set priorities, and allocate resources"[16] than a tool through which federal officials could enforce local adherence to set of nationally specified aims. Features of the House block grant initiative were as follows:

1) THE APPLICATION PROCESS

In the applications they were to submit to HUD, localities were to identify the housing and community development needs in their jurisdictions which they believed to merit priority attention. They were then to set forth the set of specific activities on which they proposed to send block grant monies, activities which constituted their chosen strategy for addressing these locally-determined needs. While local applications were to be subject to review by federal bureaucratic agents, the House bill -- unlike the Senate's -- imposed severe limitations on HUD's application review role.

2) PREFERENCES FOR A WEAK OVERSIGHT ROLE FOR FEDERAL AGENTS

Federal authorities were to be afforded only sixty days in which to complete their review of local applications. Moreover, federal administrative discretion in approving or disapproving local grant applications was to be severely constrained. Unless the needs specified by

localities were found to be "plainly inconsistent" with data on local housing and community development conditions or unless local projects slated for grant expenditure were found to be "plainly inappropriate" to meeting locally specified needs, localities were "entitled" to receipt of funds; grant approval by HUD was to be automatic.

Federal agents were also afforded some minimal responsibilities for monitoring local performance under the House block grant program, but again deviating from the Senate measure federal oversight was subject to serious strictures. Federal review was not to be substantive in nature. In reviewing local conduct, federal authorities were to determine only whether grant recipients had carried out their programs substantially as described in its application and whether they demonstrated a continuing capacity to carry out programmatic efforts in a timely manner.

3) NO FEDERAL REDISTRIBUTIVE PREFERENCES WERE INCORPORATED

In crafting the House bill, Representatives failed to reflect the Senate's concern with the well-being of low income constituents. No legal requirements reserving a share of block grant monies for the poor were included, nor were national goals mandating priority attention to their needs specified in the legislation. In the House's eyes, decentralization aims were of paramount importance. Localities were to be free to elect their own priorities for community development; decisions about who should benefit from block grant expenditures, the House held, were properly left to be arrived at in their local domain.

Crafting of the Final CD Legislation: Pressures for a Hasty Compromise

Having been accepted by their respective chambers, the House and Senate versions of the block grant legislation were ceded to a joint Conference Committee in the Spring of 1974. The marked differences between House and

Senate versions of how the block grant was to operate promised to make the Conference process a difficult undertaking. In fact, so far apart were House and Senate positions on the issue of requirements for low income targeting of funds vs. local discretion in priority setting, and on the issue of affording federal agents a weak vs. strong role in overseeing local efforts that the Conference fell into stalemate for a period of six weeks. But weighty pressures were felt for legislative compromise that session, and unforeseen events served to propel the CDBG program into existence in the late summer of that year.

As the Committee deliberated provisions of the two measures before it, it was subject to strong pressures to resolve House-Senate differences regarding CD portions of the bill -- pressures rooted in deep Congressional desire to secure enactment of other titles of the legislation. In 1972, President Nixon had suspended the operation of the nation's major housing subsidy programs, causing a lapse in the federal housing pipeline that had extended by the time of Conference deliberations for a period of 18 months. To the Congress, this lapse in federal housing activities was intolerable. Since the Congress's proposals for reformulation and reinstatement of federal housing programs were contained in other titles of the CD legislation, intense pressures came to bear on the Conference Committee to produce compromise legislation that could be acted upon before the close of the fall Congressional term.

Moreover, the time available to the Committee in which to craft a compromise was foreshortened by a series of dramatic political events. By mid-summer of 1974, the Nixon Administration was becoming evermore deeply embroiled in the Watergate scandal. Nixon's reluctance to resign the Presidency was producing calls for the initiation of impeachment

proceedings. Committee members were aware that impeachment hearings could well tie up legislative forums for the remainder of the legislative term. If any action was to be taken on housing and CD legislation that session, the Committee recognized, a bill would have to reach the floor by summer's end. As a result of these pressures, the Congress reluctantly and hastily crafted a compromise measure which the Committee ceded to the legislature on August 9. On August 22, not two weeks after Nixon resigned from office, the Housing and Community Development Act of 1974 was signed into law by President Ford.[17]

General Features of the CDBG Program as Set Forth in Legislation

With the passage of compromise legislation, a new major urban development program was established. Seven major urban categorical programs were folded into a single Community Development Block Grant. Operational responsibilities for the new grant initiative were assigned to the U.S. Department of Housing and Urban Development. Funded to the tune of $2.5 billion a year at the outset, CDBG was to constitute the largest urban development program HUD had ever undertaken. The CDBG program was to serve as the centerpiece of the nation's system of urban grants-in-aid. The general features of the CDBG program as set forth in the legislation were as follows:

- Under the Act's provisions, CDBG aid was to be provided to a much broader and more diverse set of localities than had participated in CDBG's major predecessor programs like Model Cities and Urban Renewal. Under the major subprogram of the CDBG effort (the "entitlement program" for which 80% of program funds were earmarked) metropolitan suburbs, mid-sized cities and urban counties were to take their place alongside the nation's big cities as eligible recipients of the blocked grants.

- Under the CDBG program, this diverse array of local jurisdictions were each "entitled" to claim an annual share of block grant funding, a share determined by a statutory formula based on "objective" measures of need (the formula counted

population,poverty-weighted twice, and local housing overcrowding as factors).

- Funding could be used to undertake local projects which fell within an expansive set of eligible community development activities set forth in the law, including such things as housing preservation and improvement, public works projects, recreation facilities and programs and urban public and social services.

- To receive federal funding, localities were required to submit to HUD administrators a single broad application which contained a three year plan for attack on local community development conditions in need of remediation, an annual activities plan specifying the projects to be undertaken with grant monies in the coming year, and a housing assistance plan in which housing needs of the locality's low income residents were assessed.

- Localities were also required as a component of the application process to make certain certifications or assurances to federal administrators, eg. that they had afforded local citizens an opportunity to participate in local planning for the use of block grant funds; undertaken appropriate federally-mandated environmental reviews; and complied with the non-discrimination provisions of the Civil Rights Acts of 1964 and 1968. (Note: one additional certification was the object of much confusion and will be discussed in detail in ensuing pages.)

With respect to the features of the CDBG program cited thus far, the provisions of the act reflected genuine consensus among House-Senate Conferees on the basic principles which were to be incorporated into urban grant-in-aid reform. Compared to earlier urban categorical programs, the block grant program established by Conferees and authorized by the Congress provided a more simplified urban grant structure, enhanced local flexibility, and reduction in bureaucratic red tape -- features valued uniformly by both the Senate and the House.

But with respect to other key features of the block grant program, the Act failed to reflect any genuine House-Senate consensus on the policy mandates which were to guide administration of the block grant program. Instead, under provisions of the Act, fundamental issues related to the

appropriate balance of power between national and local authorities under block grant arrangements, and the relative importance of the program's redistributive vs. decentralist aims, were left unresolved in the legislation. In their haste to craft a compromise measure, the House-Senate conferees had simply grafted together the two contradictory pieces of legislation, melding them only uneasily and inconsistently into one.

From the House Bill, a Weak Role for Federal Agents

In a concession to House preferences, the Congress had eschewed the provisions of the Senate bill which sought to provide HUD with broad-ranging powers to exercise federally authority in a manner which would give them great control over the contents of local programs funded with block grants. The Conferees had incorporated instead the legislative sections of the House-authored bill which delineated a weak role for federal officials in overseeing local use of the block grants. While HUD officials were charged with responsibilities for both reviewing and approving local applications, their role was severely circumscribed under these House drafted portions of the CDBG Act. HUD officials were afforded only 75 days in which to complete their review of local grant applications; any application which had not been acted upon by the close of that time period was to be considered automatically approved. Moreover, reflecting the House's preference for maximized local discretion (and a more revenue-sharing-oriented approach to the provision of federal aid) the grounds upon which HUD officials were authorized to deny grant funding were subject to serious strictures.

Under Section 104(c) of the Act, language extracted directly from the House bill was inserted - language specifying that the Secretary shall approve a local grant application unless

"(1) on the basis of significant facts and data...the Secretary determines that the applicant's description of [its community development] needs and objectives is plainly inconsistent with such facts and data; or

(2) ...the Secretary determines that the [local] activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant (emphasis added); or

(3) the Secretary determines that the application does not comply with the requirements of this title."[18]

The basic thrust of these provisions was to sharply circumscribe HUD's typically broad-ranging powers to pass judgement on the appropriateness of the contents of proposed local programs. Implied in the specification of the "plainly inconsistent" and "plainly inappropriate" criteria as the predominant basis upon which denial of grant funds could legitimately be made was a charge to HUD administrators that the substance of local plans for the use of grant monies was not to be subject to federal assessments; that (consistent with the decentralization mandate favored by the House) localities should be afforded the opportunity to set priorities and plans for the use of grant funds consistent with their own local vision of how (and upon whom) federal funds were to be spent.

An Overarching Emphasis on Redistribution from the Senate

Such a strong emphasis on decentralized decisionmaking and a weak constricted role for federal officials would have been fully consonant with a block grant program in which no strong national purposes or priorities were specified (as had been the case with the original SRS proposals). But during the contentious Conference proceedings, the Senate had succeeded (contrary to House wishes) in inserting the final legislation, sections from its bill establishing a major overarching national programmatic goal. With acceptance of this Senate-crafted language into the final Act, a contradictory policy mandate to govern CDBG administrative operations was

also cast forth into law.

In a concession to Senatorial preferences for a strong national emphasis on protecting the interests of the urban poor, the Congress had accepted the Senate's version of national goals for the CDBG program.

The opening "Findings and Purposes" section of the CDBG title of the Act, Section 101(c), contained language drawn directly from the Senate bill, stipulating that

> the primary objective of this [program] is the development of viable urban communities by providing a decent home and suitable living environment and expanding economic opportunities principally for persons of low and moderate income (emphasis added.)[19]

In contrast to the implication of the House-drafted portions of the Act, then, the substance of a local application, at least with respect to how program benefits were to be distributed by a locality, was implied by this national goal statement to be not only a legitimate but an important object of federal concern. In discharging its responsibilities to Congress for stewardship of the CDBG program, HUD would be expected, in accordance with this statement of the primary mission of the program, to find means to assure that localities were targeting grant funds to their low income populace; to assure that the block grant program overall would be administered in a manner which furthered this national redistributive aim.

Maximum Feasible Priority, Maximum Possible Confusion

As if these contradictory portions of the CDBG legislation were not sufficient to obscure the basic character of the block grant enterprise and the nature of HUD's obligations under the Act, the final legislation contained a major compromise provision that would become the object of much confusion for HUD administrators.

In the version of the block grant legislation the Senate carried to

Conference, the Senate had made clear what "principally for (the benefit of) low and moderate income persons" (the language contained in the national program goal) was to mean. Under the Senate version, HUD was permitted to accept a local application only if the locality's program earmarked at least 80% of its grant allotment for use on projects which directly benefited the poor or ameliorated the slum and blighted conditions in which they lived. This Senate provision had made clear that at least 80% of a locality's block grant funds were to be targeted to the poor, and that HUD was required to assure this benefits standard has been met before a local grant was released. Yet in Conference, this Senate requirement was significantly modified from its original format. As this portion of the legislation emerged from the final House-Senate Conference, Section 104(b)(2) of the legislation mandated that a locality, as part of its application responsibilities

> "certify to the satisfaction of the Secretary (of HUD) that its community development program has been developed so as to give maximum feasible priority to activities which benefit low or moderate income persons or aid in the prevention or elimination of slums and blight.[20] (emphasis added)

Alternatively, localities were permitted in the latter portion of Section 104(b)(2) to certify (subject to approval by the Secretary) that their programs had been designed "to meet other community development needs having a particular urgency."

In the eyes of the Senate conferees, this final language of the compromise clause was seen as reinforcing the emphasis established in the national goal that the CDBG program serve "principally ... persons of low and moderate income." The maximum feasible priority language of the provision was seen as a reflection of the strong Senatorial intention that a locality devote virtually all its programmatic efforts toward meeting the

Act's fundamental redistributive aim. While Senate members had been forced in Conference to accede to House arguments against establishing a rigid 80% low income benefit standard in law, they nonetheless viewed the maximum feasible priority clause as having substantive programmatic meaning; localities were not simply to give priority to eradicating slum housing, or otherwise targeting aid in a manner which would improve the conditions in which the poor lived, they were to give maximum feasible priority to these specified areas.

Furthermore, in the eyes of Senate conferees, this application requirement was to serve as the basic tool for assuring the redistributive aim of the program would be met under block grant administrative arrangements.[21] HUD's approval of each grant application was predicted on the locality having certified their application met MFP requirements. ("Any grant under this title shall be made only on condition that the applicant certify," this section read.)[22] In addition, the certification was required to be "to the satisfaction of the Secretary," implying HUD bore some programmatic responsibility for assuring that localities had, in fact given maximum feasible priority to meeting low income needs in the plans they set forth. But in this same language, the House read other contrary meanings.

In the House view, the certification procedure and the vagueness of the maximum feasible priority language were intended to reflect the House preference for a weak oversight role for HUD officials and for the maximization of local freedom to craft a program consonant with their own local constituents desires. While the Senate saw the section 104(b)(2) clause as providing the basis upon which HUD was empowered to exert stringent control over the distribution of benefits in local programmatic proposals (in order to direct local efforts heavily toward attainment of

the program's redistributive aim), the House saw the certification mechanism as a reflection of its desire to lend a revenue-sharing cast to the program's administrative operations, and to preclude HUD from exercising much control over the contents of local programs.

Furthermore, having succeeded in broadening the clause in Conference, to allow localities to certify their programs had given maximum feasible priority to preventing (as well as eliminating existing) slums and blight, and to allow localities the option of certifying that their programs were meeting other "urgent (community development) needs," the House believed that it had succeeded in diluting in the Act's operational provisions the Senate's stringent programmatic emphasis on targeting funds to the urban poor. While serving the poor was an option localities might pursue in establishing their proposals, it was the House's view that the clause afforded localities a broader set of options (serving low and moderate income persons, preventing or eliminating slums and blight, or responding to other urgent needs) from which to choose in designing their local plans for expenditure of grant funds.[23]

Reconciling the Conflicting Provisions, the Guideline Developer's Role

In its haste to enact the CDBG program, the Congress had passed into law a statute which raised more questions than it answered. What did "maximum feasible priority" mean, and was the clause in which the phrase was contained to be read restrictively (as a charge to localities to direct the overriding majority of their grant allocation toward the Act's goal of serving low and moderate income groups, as the Senate intended) or expansively (so as to allow localities to choose relatively freely among a broader array of program priority choices, as the House intended)? Did national bureaucratic officials at HUD bear responsibility during

performance of their application review and monitoring tasks for cross-checking local programs for conformity with the primary national goal (as the Senate intended) or were they to approach disbursal of federal funds in a revenue sharing manner (favored by the House) which effectively put local authorities in the driver's seat? Within CDBG programmatic operations how were the divergent mandates sanctioned in the final legislation (for both redistribution and decentralization) to be reconciled? Given the irresolute nature of this hastily and poorly crafted piece of legislation these issues were left to be clarified in guideline development forums.

Chapter 3 Footnotes

1. Donald Kettl, Managing Community Development in the New Federalism (New York: Praeger, 1980), p. 5.

2. Bernard Frieden and Marshall Kaplan, The Politics of Neglect: Urban Aid from Model Cities to Revenue Sharing (Cambridge, MA: MIT Press, 1975, p. 205.

3. As quoted in William Lilley III, Timothy B. Clark and John K. Inglehart, "New Federalism Report:, National Journal Reports, Volume 5, January 20, 1973, p. 85.

4. Ibid., p. 85.

5. U.S. Advisory Commission on Intergovernmental Relations, Special Revenue Sharing: An Analysis of the Administration's Grant Consolidation Proposals (Washington D.C.: U.S. Government Printing Office, 1971) pp. 9-10.

6. The Urban Community Development Revenue Sharing Act of 1971 (HR 8853), 92nd Congress, 1st Session, 1971; (S1618) 92nd Congress, 1st Session, 1971.

7. The Better Communities Act of 1973 (H.R. 7277), 93rd Congress, 1st Session, 1973; (S1742), 93rd Congress, 1st Session, 1973.

8. Supplemental views of Senator Robert Taft, printed as part of Senate Report #93-693, Housing and Community Development Act of 1974: Report of the Committee on Banking, Housing and Urban Affairs, U.S. Senate; to accompany S3066, 93rd Congress, 2nd session, February 27, 1974, p. 176.

9. Ibid., p. 175.

10. As quoted in Richard Cole, "The Politics of Housing and Community Development in America", in The Politics of Policymaking in America, David Caputo, editor (San Francisco, CA: W.H. Freeman, 1977), p. 111.

11. The Housing and Community Development Act of 1974 (S. 3066), 93rd Congress, 2nd Session, reported out of the Senate Committee on Banking, Housing and Urban Affairs on February 17, 1974; passed by the Senate on March 11, 1974.

12. Ibid, Chapter III, Section 303(a).

13. Ibid, Chapter III, Section 308(b)(1).

14. U.S. Congress, House, The Housing and Urban Development Act of 1974 (HR 1536), 93rd Congress, 2nd Session, reported out of the Senate Committee on Banking, Housing and Urban Affairs on June 17, 1974; passed by the House on June 21, 1974.

15. As quoted by John L. Moore, "Outlook Improves for Passage of Community Development Bill", National Journal Reports, volume 6, 1974, P. 556.

16. U.S. Congress, House, The Housing and Urban Development Act of 1974, Report of the House Committee on Banking and Currency to accompany HR 1536, 93rd Congress, 2nd session, p. 5.

17. The Housing and Community Development Act of 1974 Public Law 93-383.

18. The Housing and Community Development Act of 1974, section 104(c).

19. The Housing and Community Development Act of 1974, section 101(c).

20. The Housing and Community Development Act of 1974, section 104(b)(2).

21. See letter from Senator John Sparkman to Comptroller General Elmer Staats dated June 13, 1975.

22. The Housing and Community Development Act of 1974, section 104(b)(2).

23. Interview with Anthony Valanzano, former Minority Staff Director, House Subcommittee on Housing and Community Development.

CHAPTER 4: CDBG GUIDELINES AND REGULATIONS OF THE FORD ADMINISTRATION ERA

Having received the signature of newly inaugurated President Ford, the CDBG legislation was ceded to the Department of Housing and Urban Development for implementation. Within the HUD bureaucracy, programmatic administrative responsibilities were assigned to the Office of Community Planning and Development (CPD). One of the chief tasks that lay before top-ranking CPD officials was the establishment of rules, guidelines and operating procedures under which the CDBG program would function. Since the actual administrative structure under which the program was to be operated was premised on the two tier model (in which the CPD staff in HUD's area offices would actually conduct local application reviews, approve grants, and monitor local performance, while central office CPD staff would oversee area office performance and set administrative policy), the rules and guidelines crafted at the central CPD offices were expected to serve to instruct Area Office and local authorities regarding the nature of their responsibilities under the CDBG legislation.

The top ranking political appointees and civil service career staff who held positions of high authority in the central CPD office acted quickly to effectuate formal regulations for the program. The initial formal CDBG rules had been drafted and sent to the Federal Register only three weeks after passage of the legislation. Published as proposed rules in the Federal Register on September 17, 1974, [1] the CPD draft regulations were sanctioned as formal rules and operating procedures for the program less than two months later on November 14, 1974.[2]

The initial formal regulations for the program were exceedingly brief given the scope and complexities of the massive new CDBG effort. Compared

to the extensive programmatic detail provided by the 2,600 pages contained in handbooks for the seven categorical programs folded in CDBG, the program's new regulations now filled only about 20 pages of the Federal Register. In part, their brevity was a function of the additional burdens borne by the CPD office during the start-up phase, and the extremely short period of time afforded CPD staff in which to get the program up and running.

The legislation allowed little time for careful and reasoned administrative planning for the management of the program. According to the provisions of the law, the CDBG program was to assume operation on January 1, 1975, only four months after the date of the law's enactment. Moreover, the law stipulated that applications from the 1,344 eligible entitlement grantees be received at HUD offices between January 1 and April 15, 1975, and that processing and approval of each grant application be completed no more than 75 days after its date of arrival at HUD. In practical terms, this meant that CPD officials had a period of only eighteen weeks in which to carry out a whole panoply of administrative start-up functions. In addition to issuing formal rules and regulations to govern the effort, CPD officials were required to determine the formula share of CDBG monies for which each locality was eligible, to develop and issue application forms, to conduct briefings for local officials on the new program, and to hold training sessions for HUD area office field staff. Given the weighty nature of these start-up responsibilities, and the truncated timetable in which they had to be carried out, it was not surprising that the regulations were as spare as they were. But the brevity of the federal administrative rules was only due in part to the abbreviated timetable under which CPD officials were forced to operate. To

a much greater degree, the minimalist nature of the regulations (as well as the interpretive determinations reflected in the regulations' content) was attributable to two other forces. First, the programmatic biases the HUD rulemaking authorities brought to their role in operationalizing the program; and second the pressures emanating from interest groups representing mayors and local officials who formed a key component of CDBG's programmatic constituency.

The Anti-Federal-Government Biases of Guideline Authorities

Initial regulations, operating procedures and guidelines for the CDBG program were crafted at the hands of a small cadre of senior officials in the central CPD office. Chief among those involved in the guideline deliberations were two political appointees, Assistant Secretary for CPD David O. Meeker, and his Deputy Assistant Secretary Warren Butler, both of whom had originally been appointed to their posts by President Nixon and who were subsequently retained in the administration of President Ford. In setting the administrative groundrules for CDBG operations, they were joined by a few of the most senior career staff at CPD. Each of the actors engaged in setting guideline policy had been intimately involved during the preceding four year period in framing and lobbying on behalf of the Nixon Urban Development special revenue sharing in initiatives. Thus they brought to their guideline development role a distinct bias toward an extreme reduction in the degree of federal restrictions that rules and regulations would impose on localities.

Pressures from the Mayors

Moreover, during the period in which regulations and administrative policies were being set for the CDBG program, CPD officials were confronted with intense and persistent pressures emanating from the interest groups

representing the mayors and local officials who were the intended recipients of CDBG grant funds. During the Congressional deliberations over the proposed block grant legislation, key interest groups such as the U.S. Conference of Mayors (USCOM), the National League of Cities (NLC), and the National Association of Counties (NaCo) had pressed hard for legislation that would limit federal restrictions on their grant-funded activities to as great an extent as possible. Their lobbying activities carried over after passage of the CDBG legislation to HUD's administrative forums. Time and again, they urged HUD officials to draft administrative guidelines in a manner which would keep federal rules and regulations to an absolute minimum.

The Biases Reflected in Program Rules: No Standards or Directives Regarding Implementation of the Primary Objective

Although the formal rules issued in 1974 were exceedingly spare, their contents nonetheless reflected some significant interpretations of the law on the part of CPD regulatory draftsman. The language set forth in Section 101(c) of the Act suggested that the program was to be administered in a manner which assured grant benefits would be provided "principally for persons of low and moderate income." Yet the regulatory provisions failed to do more than pay lip service to the low and moderate income mandate of the Act. While the regulations did define for administrative purposes who "low and moderate income persons" were (those with incomes below 80% of the local area's median income level), and while the regulations did mandate that localities provide data in their applications specifying which income groups would be expected to benefit from their planned CDBG activities, they failed to direct HUD officials regarding how they were to make use of this information in conducting their application reviews. No overall low-

income benefit standard for local CD programs was set forth in the regulations; nor were HUD area office officials instructed as to how, or even whether they were in any way to assess local programs for their conformity with the national "primary objective" of the Act.

The reasons for these omissions in the regulations can be found in the meaning HUD officials ascribed to the various provisions of the law. The "primary objective", having been appended at the last stages of Conference action to the main body of the predominantly House-authored version of the final bill, was viewed as little more than symbolic, lofty rhetoric. In the words of one high-ranking HUD official

> [In setting administrative rules] we basically felt it [Section 101(c)] was throw-away language. It had no real substantive meaning for the day to day operation of the program[3]

What did have "real meaning" for the day to day operation of the program, in their eyes, was the latter Section 104(b)(2) provision in the legislation, located in the main body of the 1974 Act. Thus, HUD officials adopted the stance that the Section 104(b)(2) portion of the law (which contained the maximum feasible priority) held the only legislative reference to the low-income benefit issue that would be utilized in setting substantive requirements for the program.

Interpreting Section 104(b)(2): Not Maximum Feasible Priority to the Poor, but a Triad of Broad Local Options

The Section 104(b)(2) portion of the Act contained the ambiguous and unclear language stipulating that a locality must (as a precondition of receipt of CDBG aid) "certify to the satisfaction of then Secretary that its community development program has been developed so as to give maximum feasible priority to activities that will benefit low and moderate income families, or aid in the prevention or elimination of slums and blight."

Yet the ensuing sentence in this Section also allowed HUD to approve funding of local applications which "the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency."

In designing the 1974 program rules, HUD officials preference for allowing maximum local discretion in setting expenditure priorities prompted them to interpret this language in as broad and non-constraining a manner as possible. HUD failed to define in its rules what "maximum feasible priority" was to mean, and failed to direct field staff regarding how local programs were to be reviewed for conformity with this clause. Moreover, the rules also declined to specify the basis upon which area offices were to make the alluded-to determination as to whether locally-certified urgent needs were in fact truly urgent - of a sufficiently critical nature to justify deflection of expenditures away from the other two "maximum feasible priority" aims.

The effect of the regulations' silence in these areas was twofold. First, to signal to HUD field staff that regardless how frivolous projects claimed by localities to be serving "urgent needs" might appear in their eyes, conditions of urgency were to be left for <u>local officials</u> to decide. And second, to send the message to HUD field staff and local officials alike that local programs designed to meet any one of the three aims contained in the Section 104(b)(2) clause were to be considered equally acceptable and legitimate CDBG programs under HUD's chosen strategy for implementing the 1974 Act.

<u>Regulations Regarding HUD's Administrative Role</u>

The programmatic emphasis in HUD regulations on a broad, non-redistributive interpretation of the Section 104(b)(2) provision, and on the

equal acceptability of local programs declared to be directed toward meeting urgent needs (however a locality might define conditions of urgency) with those declared to be directed toward giving maximum feasible priority to aiding the poor or alleviating conditions of slums and blight, had the effect of granting localities the broadest degree of discretion possible in setting priorities for grant expenditure. Localities would be free, under these administrative groundrules, to propose (and have accepted) programs in which very little attention might be given to meeting the needs of the poor. Moreover, this effect was reinforced by the parameters set forth in the CDBG rules on the area offices' role in the application review process.

While the legislation had established the basic format requiring that localities certify they had given maximum feasible priority to activities which would serve low and moderate income families or ameliorate the conditions of slum and blight in which they lived, the certifications, by law, were required to be "to the satisfaction of the Secretary" before the grant funds were to be released. With respect to when these (or urgent needs) certifications were to be deemed acceptable to HUD field staff, CPD guideline developers adopted a policy mandating automatic HUD acceptance of local certifications.

The wording of the regulations signaled HUD's intention to follow a "hands off" administrative strategy by stating, before the first application was even received, that "HUD will normally accept the applicant's certifications."[4] This message was reinforced in training sessions for HUD field staff in which staff members were repeatedly instructed to accept at the application stage, without probing, local certifications that the application faithfully reflected the locality's

fulfillment of its obligations under the terms of Section 104(b)(2) to which the certification provision was tied. And lest wayward HUD field officials act contrary to this policy, local officials were informed during briefing sessions of HUD's intention in this regard. "This is your program," one senior HUD official told local administrators, "we are not going to second guess you nor look beyond your certifications, and if we get any citizen complaints ... we will simply refer them to you."[5]

CPD officials further reinforced their policy of taking a "laissez-faire" stance toward localities in directives regarding the scope of the field staff's review of local applications. According to the legislation, HUD officials were technically granted the authority to disapprove local applications on any one of three grounds (1) that the needs and objectives set forth in the application were plainly inconsistent with available facts and data; (2) that activities listed in the application were plainly inappropriate to meeting local needs or (3) that the applicant failed to live up to the requirements of the Act. While some observers felt that this third criterion afforded HUD the opportunity to reject local applications that failed to reflect the spirit of the national goal of the Act (indeed some felt the insertion of the redistributive national goal even made it an obligation), HUD's administrative demeanor led CPD officials to severely circumscribe the exercise of HUD's authority to reject applications. With respect to HUD's application review and approval powers, the original CDBG regulations stated "HUD will normally accept the applicant's statements of facts and data and other programmatic decisions."[6]

As a result of these constraints on HUD's application review powers, the CDBG applications became less like applications and more like simple

reporting forms. Further, with respect to HUD's responsibilities for application review, the role outlined for HUD field staff in the regulations was little more than one of serving as a federal paperwork monitor. The clear message was that HUD was to presume (during application reviews) that localities were in compliance with the Act's provisions; front-end controls on the grant process were to be kept to a minimum. During the 75 day application review period, HUD field staff were to make sure that the appropriate plans and applications had been submitted, that certifications had been signed by local officials, and that the individual activities proposed in the application were eligible -- no more.

At the pre-funding stage HUD officials were not to assess the substance of local proposals, nor question the validity of local certifications; nor were they to attempt to determine whether local programs were in conformity with the spirit of the national program goal of aiding the poor. Given these stringent constraints on HUD's application review responsibilities, regulatory observers wondered, how then would HUD assure that the program would accomplish its legally mandated goal of "developing viable urban communities ... principally for persons of low and moderate income"?

HUD's Post-Award Monitoring Policies

While some critics charged that the "spartan" nature of HUD's application review role (as sketched out in the 1974 regulations) reflected the agency's wholesale abandonment of its responsibilities to the Congress for assuring the program would further the Act's primary national goal, others disagreed. Federal responsibilities for overseeing local efforts to assure their conformity with the program's overarching objective had not been abdicated, simply shifted to a later point in the grant-funding cycle -- the post award performance review stage. They further maintained that

the legislatively-mandated constraints on the time period afforded HUD officials in which to review local applications signaled the consistency of a post-hoc review emphasis with Congressional preferences regarding the conduct of HUD's role.

And, in fact, there is some support for the view that legislators (at least on the House side) felt that the post-audit performance review period was the proper point at which HUD was to exercise responsibilities for substantive reviews regarding local compliance with the provisions of the Act. In the Committee Report accompanying the House version of the legislation, the House legislation draftsmen note

> "The committee wishes to emphasize the importance of post-audit and review procedures to be conducted by the Secretary. Since federal application reviews are being simplified to such a great extent, the post audit and review requirements will serve as the basic assurance that block grant funds are being properly used to achieve the bill's objectives."[7]

[Note: It is necessary to point out here, however, that the House bill did not contain the version of the primary national objective of aiding the poor that eventually was incorporated into the final legislation. Nonetheless, this House Report language was used by HUD officials during this period to defend their guideline strategy of keeping application reviews both brief and procedural in nature, holding out the prospect that substantive analysis of local efforts was properly to be deferred to a later point in time.]

But as was true of the legislative provisions regarding HUD's application review powers, the poorly crafted final version of the legislation contained in confusing mix of constraints on federal post-audit review criteria, coupled with a broader, more nebulous set of review powers and obligations. The Act, on the one hand, had included House language

which specified a fairly narrow scope for HUD's annual post hoc review of local performance. The agency was to review local performance, first, "to determine whether the grantee has carried out a program substantially as described in the application," and second, "to determine whether the applicant has a continuing capacity to carry out [its program] in a timely manner." But as with its delineation of HUD's application review powers, Congress included provisions here that granted HUD less circumscribed and more broad ranging review authority to assess "whether [the applicant's] program conformed to the requirements of this title ...". This wording again left HUD officials with discretion to define, based on its reading of the Act, what these requirements would be.

In keeping with the strategy HUD officials elected in defining the scope of the application review process, however, CPD officials elected to interpret even HUD's post hoc performance review responsibilities under this phrase in the most narrow and circumscribed fashion possible. In the initial program regulations, CPD officials gave lip service to the notion of reviewing local performance (in the post-hoc review period) for adherence to national program goals, asserting that ["HUD's] review of performance standards will serve as the basic assurance that grants are being used properly to achieve the objectives of [the Act]".[8] But agency officials failed to follow through in this area. They declined to establish any monitoring review standards that would enable area offices to test local programs (post-hoc) for their conformity with either the concept of principally benefitting low and moderate income people or even with the more vague and potentially permissive concept inherent in the maximum feasible priority clause.

The rationale for this stance was presented in HUD's first annual

report to Congress on program operations. In the Section on Performance Monitoring, the document states "[the Department] recognizes the importance of assuring that recipients comply with statutory requirements..." "It also recognizes the danger," the paragraph continues, "that monitoring might lead to overdirectedness and the unwanted infusion (sic) of Federal judgment which the 1974 Act seeks to prevent."[9]

In response to HUD officials' fear of federal "meddling", HUD's regulations and guidelines during the Ford Administration era failed to provide sufficient guidance to field staff regarding how they might review local performance for conformity with either the MFP clause or the primary national objective of the CDBG Act. And though the regulations did specify that localities were to include data on how program benefits had been distributed in their annual performance report to HUD, they failed to establish any performance standards or criteria that would enable area office officials to make use of this information in the monitoring process. Neither the principally benefits language of the primary objective, nor the "maximum feasible priority" provisions of the Act were even mentioned in the regulations' performance review sections. In fact, the only performance standards the regulations directed area office officials to apply were simple procedural standards related to very particularized programmatic issues like local handling of relocation activities, property acquisition, equal opportunity, and citizen participation.

HUD's failure to establish clear performance standards regarding the broader and more central issues of programmatic substance (particularly with respect to the important issue of benefits distribution) signaled to field officials the central CPD office's preference for <u>minimum feasible oversight</u>. As a result of these omissions in the regulations, HUD area

office officials were largely confined in their monitoring role to, once again, assuring local compliance with recordkeeping requirements and with the procedural requirements of the CDBG law.

Implications of the Ford Administration's Guidelines

Operating under these guideline parameters, the CDBG program was run, in these early years, much like a special revenue sharing initiative. The omission in the regulations of any grounds upon which Area Office HUD officials might legitimately review and exert power to shape the substance of local plans and priorities left virtually all decisionmaking authority regarding programmatic content and the distribution of monetary benefits to reside at the local level. With their hands bound by these early guidelines, federal officials were relegated - at all stages in the grant process - to playing a largely meaningless procedural monitoring role. Power to determine the substantive achievements the CDBG program would accomplish as well as whose interests they would serve was ceded virtually entirely to local official's hands.

The most serious consequence of the guidelines and operating procedures set forth by CPD officials during the Ford Administration tenure as stewards of the program was the danger of neglect of the needs of low income residents in the plans made by entitlement jurisdictions. While a national goal had been set forth in the provisions of the final Act, reserving (at least in the minds of the Senate and the low income constituencies who had supported the Senate initiative) a special place for the poor as the program's priority clientele, the regulations fashioned the administrative machinery of the CDBG program in a manner which suggested no such priority was to be afforded to the needs of low income groups. The legislation was treated, for administrative purposes, as though no national goal had been

set forth for the program at all. Instead, the regulations reflected, in toto, the House's revenue sharing vision of how the block grant was to function. While the Senate's low-income-oriented addendums to the House version of the legislation might well have warranted consideration by CPD officials of how to carve out middle territory (balancing the divergent decentralization and redistributive mandates reflected in the final bill) CPD guideline developers opted instead to wholly ignore the Senate's perspectives and to draft guidelines premised virtually entirely on the House's original pre-conference version of the CDBG bill.

Accounting for Guideline Outcomes in the Program's Early Years

If the regulations operating procedures and guidelines sanctioned under the Ford Administration era of management of the program lent a distinct "revenue sharing" cast to program operations, it was no accident. Foremost among the small circle of CPD officials engaged in the guideline enterprise were two political appointees who brought to their guideline development role distinct biases toward the application of a revenue-sharing approach to the provision of federal urban aid.

Both Deputy Assistant Secretary for CPD David Meeker and his Assistant Secretary Warren Butler, who played key roles in the crafting of CDBG regulations, had been originally appointed to their posts by President Nixon. During the four year period preceding enactment of the CDBG legislation, they had been responsible for overseeing the development of the urban special revenue sharing bills which Nixon Administration officials had so forcefully and persistently advanced in the Congress - bills which had proposed elimination of virtually all federal restrictions on local use of grant funds, and which had lacked, by conscious design, both substantive national goals for the grant program, and a meaningful

role for HUD officials in overseeing local grant efforts. Thus both Meeker and Butler brought to bear, in their guideline development role, strong philosophically-rooted biases against the insertion of any but the most minimal role for federal agents in the conduct of the program, and against any meaningful endorsement of the primary national objective which had been written into the final CDBG Act. To these officials, who wielded great power over CDBG guideline content, the implementation effort was to reflect, to the greatest degree possible, the anti-federal-government decentralization aims of the Nixon New Federalism platform. CPD staff with whom they worked in crafting CDBG guidelines were repeatedly instructed that the tone of the regulations was to reflect a stance of "no second guessing of local officials and a minimum of red tape."[10] They were to eschew, in the guidelines set forth for the CDBG program, pursuit of any national aims or strategies which would have the effect of infringing on local prerogatives to set programmatic priorities; they were to approach strategies for disbursal of federal aid funds in a manner which relegated federal officials to a simple "check-writing" role. Management of HUD's administrative effort was to reflect, above all, a "hands off" approach to the provision of urban aid.

While a few of the civil service staff at CPD took issue with the extreme "hands off" stance taken in regulatory issuances for the program, opposition to the approach advanced by Meeker and Butler was ill-defended and weak. The vagueness and ambiguity of the provisions of the CDBG legislation gave dissenters little solid ground on which to argue HUD's stance was inappropriate. Moreover, dissent in the ranks of CPD staff members was further undermined by the political pressures placed on the agency by mayors and local officials who formed a key component of HUD's

bureaucratic constituency.

Interest groups representing mayors and other urban officials (who were the intended recipients of federal CDBG funds) continued to press, as they had during the legislative process, for an approach to grant administration which afforded them the greatest degree of latitude possible in deciding how federal funds would be spent. Thus in the initial years of the program's operation they were supportive of the administrative preferences set forth in the guidelines Ford Administration CPD officials had provided for implementation of the program.

Dissatisfaction on the Part of Interest Groups Representing the Poor

Yet at the same time that interest groups representing mayors were applauding HUD's stance on guidelines for the program, interest groups representing the poor grew increasingly alarmed. Many low income advocacy organizations had pushed strongly for adoption of language emphasizing a special place for the poor in the program. To these groups, the absence of specification of low income benefit standards to which local grant recipients would be expected to adhere, in tandem with the weak role HUD had defined for itself in overseeing local CDBG efforts, signaled they were losing a battle over policy they thought they had won.

Several wrote letters to CPD officials urging that guidelines on low income dimensions of the program and on HUD's role in the pre and post hoc review processes be strengthened. The National Leadership Conference on Civil Rights took issue with HUD's generous delegation of discretion to localities, arguing that the regulations "rely too heavily on the understanding and words of the applicant."[11] And a number of groups wrote letters warning that without stronger directions from Washington, the social goals of the CDBG program would remain unmet. The Urban Affairs

Office of the AFL-CIO reflected the sentiments of these low income advocacy organizations when they stated in a letter to HUD that "the proposed regulations give no indication that HUD's review process will assure that local recipients have fulfilled all statutory requirements of the Act ... National objectives are unlikely to be fulfilled unless HUD's guidelines to applicants [on benefiting low income residents] are very explicit, and HUD's monitoring and enforcement policies are implemented aggressively."[12]

But these attempts to exert influence over HUD's guideline policies proved unsuccessful. CPD officials resisted these early efforts on the part of low income groups to secure guideline change. As HUD continued to pursue its "hands off" special revenue sharing strategy, interest groups representing the poor turned their attention to conducting various studies assessing how the poor were faring under the guideline strategies being followed during the early years of implementation of the Act.

Congress and HUD's Implementation Strategies

While Congress is generally believed to practice "pass it and forget it lawmaking", Congressional concern over how the Act would be implemented was high in the case of CDBG. Interest in HUD policies regarding the low income benefits issue was particularly acute in the Senate where the redistributive language mandating priority attention to the needs of the poor had emerged. Signs of this unusually strong Congressional concern surfaced only a few months after the Act's passage. In January 1975, just as the Act was going into effect, Senator William Proxmire, who had served on the final Conference committee for the legislation, forwarded a letter to HUD Secretary James Lynn. With respect to HUD's implementation actions, Proxmire asked to be advised of, first "the steps HUD had taken to inform staff members and [grant] recipients that community development

applications must show a priority for activities benefiting lower income groups or renewing deteriorated areas of the city"; and second, of "the procedures HUD will follow to monitor the extent to which grantees are living up to the low and moderate income requirements."[13]

Inherent in the wording of Proxmire's questions was the perspective set forth by the Senate that (a) the maximum feasible priority clause in which low income and slum/blight priorities were stipulated was to be construed in a restrictive manner, as a mandate that localities focus their greatest degree of attention on meeting the needs of the poor, and (b) that HUD bore some substantive responsibility for assuring that local funds were expended in that manner. And while HUD officials had already opted to construe the provisions of the legislation in an entirely different way, interpreting the maximum feasible priority clause in a broad, non-redistributive manner and approaching HUD's oversight responsibilities in a more lax fashion, the response to Proxmire's letter (signed by HUD Undersecretary James Mitchell) failed to make HUD's interpretive preferences clear.

In his letter, the Undersecretary assured Proxmire that item 15A of HUD's funding approval forms contained provisions for a specific "finding" on the part of HUD field staff that an approved local program had been developed so as to give maximum feasible priority to activities benefiting low and moderate income persons, or aiding in preventing and eliminating slums and blight. With respect to HUD's post-funding monitoring procedures, the Undersecretary assured Proxmire that though HUD's monitoring procedures had not yet been fully devised, the monitoring system currently being developed would include "compliance monitoring" that would ensure local programs had met the standards specified in law and regulations, including those related to the "maximum feasible priority"

clause.[14] Proxmire, though remaining skeptical about the sufficiency of HUD's evolving administrative policies, was temporarily assuaged by the contents of Mitchell's letter. He opted to adopt a "wait and see" attitude, reserving the right to pursue guideline issues at a later point in his capacity as Chairman of the Senate Banking, Housing and Urban Affairs Committee which handled HUD legislation.

Another Senate actor also manifest skepticism about the potential efficacy of HUD's administrative strategies regarding treatment of the Act's redistributive aims. Senator John Sparkman, like Proxmire, had participated in the Conference Committee which drew up the final bill, and had also helped to assure that the Act's language contained Senate provisions directing the program toward meeting the needs of low and moderate income people.

In his capacity as head of the Senate subcommittee on Housing and Urban Affairs (the subcommittee vested with direct oversight responsibilities for the program) Sparkman enlisted the aid of the Congressional evaluation arm - the U.S. General Accounting Office - in reviewing HUD's implementation activities. In a June 1975 letter, Sparkman made a formal request for a GAO review of HUD's management of the program. In the letter, he asserted the basic Senate view that the legislation's wording linked HUD's application review responsibilities to the "primary objective" language. "The application and review requirements," he asserted, "are contained in Section 104 of the Act and are intended to establish basic tests for approving grants consistent with the objectives of the Act set forth in Section 101" (emphasis added).[15] In reviewing the program, he requested that GAO give special attention to how HUD was implementing "Section 104(b)(2), which requires the locality to certify to the satisfaction of the Secretary that

maximum feasible priority has been given to activities which will benefit low and moderate income families, or will aid in preventing or eliminating slums and blight."[16]

Interest in the House

As with the Senate, the House members showed an unusually high degree of interest early on in the HUD's implementation of the program. But while Senate actors were concerned with HUD's efforts to assure the flow of benefits to low and moderate income families, House actors deviated markedly from the Senate view. In oversight hearings held during this same period by the House Subcommittee on Housing and Community Development, House members stressed entirely different aspects of program implementation. Not a single question was raised regarding actions related to the low income aims of the program. Instead House members (many of whom had, like Proxmire and Sparkman, participated in the Conference shaping the final bill) urged HUD to reduce paperwork requirements and to constrain any impulses to second-guess local determinations of their priority needs.

In response to an assertion by HUD Assistant Secretary Meeker that the length of local applications under the CDBG programs had been reduced to about one-fifteenth the length of those used in urban programs in prior years, Congressman Thomas "Lud" Ashley (chairman of the House Subcommittee responsible for program oversight) praised that achievement. "[In] Conference," he said, "I think we spent something like 10 days on that issue [of reducing local paperwork requirements], and its nice to know that the 10 days of discussion resulted in that kind of compaction."[17]

In discussing with officials the agency's role in overseeing the program, another Conference committee participant, Representative Garry Brown (ranking minority member of the House Subcommittee) used the

opportunity to stress the House's preferences for a minimal federal role. He reminded HUD Secretary Carla Hills "[one] thing we hit very hard in the adoption of this legislation was that with respect to the community development funds, the Department will not substitute [its] judgment [for the localities] ... in many of these things the Secretary can accept certifications. When issues are raised - I suppose they can go back and look behind the certifications ... But I just don't want to get [HUD] back into the business of determining community development needs."[17]

Interest Group Evaluations

The concern low income advocacy groups had expressed in 1974 regarding the potential inadequacies of the regulations in safeguarding a priority place for the poor in the program escalated into alarm as results of their monitoring efforts trickled in. First to be made public was a study conducted by the National Urban League. Having examined the experiences of 17 cities with the first year of the program, the study report reached an ominous conclusion. Despite the Act's injunction to deliver the principal program benefits to the poor, the report concluded "Expenditures under the Act have been largely diverted from the intended low and moderate income beneficiaries."[19]

Individual accounts of blatant disregard for the needs of the poor in the program soon became legion. An NAACP study found a community using its funds to construct a marina. A study of 26 Southern cities, carried out by the Southern Regional Council read like a litany of low income neglect:

> Little Rock, Arkansas allocated $150,000 for construction of a tennis complex in an affluent neighborhood. Asked how the expenditure could be justified, one official told an SRC researcher, "We must remember the needs of the people who vote ... poor people don't vote."
>
> Chattanooga, Tennessee alloted $50,000 for tennis courts in a well-to-do section of the city.

> New Bern, North Carolina dedicated funds to upgrading a stretch of road leading to a country club.
>
> Charlottesville, Virginia pledged $135,000 to construct bicycle paths serving the University of Virginia area on the grounds that students could legitimately be considered low income persons.[20]

Although HUD's response was to assert that these constituted isolated instances of non-responsiveness to the needs of the poor, the SRC staff at its March 31 press conference dismissed that allegation, asserting instead that their study found "local diversions from the national purpose are not just occasional abuses but rather form a pattern inherent in the implementation of the Act."[21]

While these reports contained the kind of sensationalized case accounts favored by the media (which rapidly publicized them) equally damaging accounts were emerging from the drier but more systematic and quantitative analyses of the program.

During the first year of program operations, the National Association of Housing and Redevelopment Officials attempted to assess the share of funds being devoted to low and moderate income needs. Examining a broader set of 86 communities, they approached the evaluation by breaking down the local program expenditures by census tract and aggregating the shares of program allotments according to the median incomes of the tracts. Using this approach, NAHRO reported that during the program's first year of operations, only 51% of cities' allocations were being spent in low and moderate income tracts.[22]

If this amount sharply diverged from earlier Senatorial preferences (dropped as a requirement from the final act) that 80% of the funds reach poor people or areas, it also proved significantly lower than HUD's claim (made in its annual report to Congress only months earlier) that 71% of the

funds had been directed to meeting low and moderate income needs.[23] Overlooking minor variations tied to choice of methodology, the NAHRO figures were generally supported by the findings of other studies conducted by the National Urban League, the Southern California Association of Governments and, later, the Brookings Institution.[24]

These findings provoked a flurry of activity on the part of advocates of the poor. Extensive media attention carried these reports to a wider audience, provoking a more generalized public outrage at the expenditure of CDBG funds on frivolous projects while the poor remained in need. And if the findings served to activate renewed Senatorial interest in oversight of the program, a second event of this period enabled the failures to be directly tied to serious deficiencies in HUD management of the grant effort.

GAO Study

As the evaluation arm of Congressional support operations, the efforts of the General Accounting Office are frequently used by Congressional members to uncover deficiencies in program operations and to identify items in need of further oversight attention by legislators. Coming on the heels of the damaging evaluations reported by interest groups, the release of the GAO study (requested by Senator Sparkman a year earlier) further heightened Senatorial distress over implementation of the CDBG program. Basing its report on the experiences of local officials and HUD field staff in 23 communities, GAO findings were particularly critical of HUD management of the program.

Reviewing HUD's exercise of its responsibilities for local application review, GAO found serious deficiencies, especially with respect to the handling of the "maximum feasible priority" requirements. GAO charged that

HUD's failure to issue instructions to either applicants or its field staff clarifying what the term "maximum feasible priority" was to mean had generated considerable confusion. It found more than half the officials surveyed believed the term as contained in the regulations was undefinable or had little meaning. Among the other half, interpretations varied widely. The report asserted HUD's failure to establish a clear definition of the term - or to set standards enabling a clear determination of when the maximum feasible priority requirement had been met - had rendered the certification process a meaningless exercise. GAO found Area office personnel simply accepting the certification or conducting cursory reviews.[25]

Further, in reviewing the assurances HUD Undersecretary Mitchell had given to Senator Proxmire about the Department's plans to address the maximum feasible priority issue, GAO found instances of misrepresentation of HUD's policies. The Undersecretary had assuaged Proxmire's concern about maximum feasible priority reviews during the application review stage by maintaining that item 15A of HUD's application review documents contained a specific Departmental finding that the application conformed to the maximum feasible priority mandate. But in place of any substantive review of the issue, GAO found the item cited constituted a simple HUD check off, signifying only that the proper local officials had signed the certification required by HUD.[26]

Even more damaging to HUD were GAO's findings regarding the execution of its role in post-audit reviews. While the HUD Undersecretary had assured Senator Proxmire that the maximum feasible priority issue would be carefully addressed in HUD's compliance monitoring process, GAO found that even by the middle of the second year of program operations, HUD had not

taken the necessary steps to see that these compliance reviews were carried out. The report notes:

> "[HUD] did not provide any criteria for determining compliance with the maximum feasible priority requirement ... had not defined maximum feasible priority, nor had it established a policy concerning actions or sanctions to be considered if an applicant was not found in compliance with its certification."[27]

What is more, GAO unveiled evidence that these lapses were not attributable simply to benign neglect of this administrative area. Researchers found HUD not only failing to provide guidance that could facilitate area office post-audit reviews for maximum feasible priority compliance, but also actively constraining area office attempts to undertake such reviews. As evidence, GAO cited a case in which the San Francisco Area Office had submitted to Central Office staff its specific plans to conduct post-audit reviews on the maximum feasible priority (low income benefit) issue. Assistant Secretary Meeker had responded by prohibiting area office officials from activating these plans. Meeker had informed the area office that the issue had been sufficiently addressed in application review procedures, thus only reprogrammed activities (those not contained in the locality's original applications) were to be subjected to post-audit maximum feasible priority reviews. But GAO pointed out the flaw in Meeker's argument. Since HUD's review of the maximum feasible priority issue at the application stage constituted no more than a verification that the locality had signed the relevant certification, GAO noted, "it appears the only time HUD plans to [substantively] view an applicants program in terms of maximum feasible priority is when changes are made in the community's program"[28]

To correct these deficiencies in HUD's management of the program, GAO urged HUD to not only clarify the maximum feasible priority language

contained in the regulations, but to also establish a quantitative standard that could be used for determining local compliance with the law's low income benefits mandate intimated in the maximum feasible priority provision. While HUD officials countered that such standards would be both impossible to apply nationwide and too constraining upon localities, GAO maintained "Quantitative criteria can be established as a general guide and need not be unduly restrictive ... [localities] not meeting the criteria could be provided the opportunity, on a case-by-case basis, to justify their deviation from the general rule."[29]

GAO further recommended not only greater emphasis on "maximum feasible priority" determinations during the monitoring process but also a strengthened review for conformity with MFP requirements before applications were approved. HUD responded to this recommendation by arguing that the Act specifically prohibited these interventions during the application review process. But according to its reading of the Act's language, GAO disagreed. "The Secretary does not appear to be precluded from determining, during application review, whether the applicant's program has been developed so as to give maximum feasible priority to activities benefiting low and modern income families or aiding in ... eliminating slums and blight."[30]

While GAO made some recommendations regarding legislative actions to correct the deficiencies it unveiled, it did not urge legislative clarification of the Act's low income benefit/maximum feasible priority provisions. Implicit in its silence on the issue was GAO's position that the revisions it sought in HUD policies fell well within the boundaries of the then-current law.

Senate Oversight Hearings

With the public release of interest group evaluations of the CDBG program, the groups' concerns with the program's failings attracted considerable Congressional attention. Coupled with GAO findings highlighting HUD's unresponsiveness to Senatorial directives, these reports prompted Proxmire to schedule oversight hearings in August of 1976. The four days of testimony centered almost exclusively on the issue of the Act's failure to serve its proclaimed low and moderate income beneficiaries.[31]

Particularly prominent among the witnesses were spokesmen from civil rights and advocacy groups representing the urban poor. Citing their findings of "misappropriation" of CDBG funds for tennis courts and amenities for localities' more well-to-do residents, they uniformly condemned the program, characterizing it as "a flagrant misuse if millions of tax dollars intended to fight blight and improve the living conditions of poor city dwellers."[32]

Especially harsh criticism was directed at HUD officials for adopting a "hands off" stance in administering the program. Echoing the GAO report findings, these groups charged HUD with abrogating its statutory responsibilities for protecting the poor from local indifference and neglect, citing its failure to set program standards implementing the redistributive goals of the program, and its lax approach to oversight of local CDBG efforts. Alleging HUD was willfully defying Senatorial wishes, one critic charged "The program is being administered just as if Congress had enacted the Special Review sharing proposals you had rejected."[33] These groups strongly urged Senatorial actors to exert pressures on HUD to tighten the program's regulations.

The almost universal condemnation the program received during the hearings led Senator Proxmire to launch a stinging attack on Assistant Secretary Meeker as he testified before the Committee. Referring to the interest groups' testimony as "about as powerful as indictment of an administering agency [as] I have ever heard," Senator Proxmire castigated Meeker. "HUD has clearly gotten this program underway" Proxmire stated "What isn't clear is whether the program you are administering is the program Congress passed."[34]

Meeker attempted to defend HUD actions, reminding Proxmire that Congress "put into law ... some elements which allow this situation to be the way it is." He voiced HUD's view that the oversight stance HUD had adopted was defensible in light of the Act's vague language, arguing "the statutory certification requirement is less simple and straightforward than may first appear ... After all, what does maximum feasible priority mean and in whose eyes?"[35]

Yet Proxmire remained unwaivering in his criticism, holding firmly to his view (voiced earlier in the year to HUD officials) that the primary objective language left no doubt as to Congressional redistributive intent. All other objectives contained in the Act, he reminded HUD Secretary Carla Hills "are all subordinate to the initial statement that '<u>the</u>', not 'a' but '<u>the</u>' primary objective of this title is the development of viable communities ... principally for persons of low and moderate income."[36]

Proxmire cautioned Assistant Secretary Meeker that his review of the program led him to conclude "We are not doing the kind of job we should to help low and moderate income people in this country with this program ... it takes a very forceful, very advanced position ... on the part of this government in order to achieve it for them. I would hope that you ...

would keep that in mind and will work as hard for the poor and the low income people and the minority groups as you can."[37]

Meeker's response to the hearing was to prove remarkably prophetic, as he asserted "I expect that maximum feasible priority will continue as an issue for some time in the future."[38]

Chapter 4 Footnotes

1. Federal Register, Vol. 39, September 17, 1974, pp. 33182-33198.

2. Federal Register, Vol. 39, November 14, 1974, pp. 40136-40154.

3. Interview with staff member, HUD's Office of General Counsel.

4. Federal Register, Vol. 39, September 17, 1974, p. 33489.

5. Donald Kettl, Managing Community Development in the New Federalism (New York: Praeger, 1980), p. 22.

6. Federal Register, Vol. 39, September 17, 1974, p. 33489.

7. U.S. Congress, House, The Housing and Community Development Act of 1974: Report to Accompany HR 1536, House Committee on Banking and Currency, 93rd Congress, 2nd Session, p. 10.

8. Federal Register, Vol. 39, November 14, 1974, pp. 40149.

9. U.S. Department of Housing and Urban Development, Community Development Block Grant Program: First Annual Report (Washington D.C.: U.S. Government Printing Office, December 1975) p. 68.

10. Richard Nathan, et. al., Block Grants for Community Development (Washington D.C.: The Brookings Institute, January 1977) p. 68.

11. Letter from National Leadership Conference on Civil Rights regarding 9/17/74 rules proposal, HUD Docket File 74-292.

12. Letter from Urban Affairs Division, AFL-CIO regarding 9/17/74 rules proposal, HUD Docket File 74-292.

13. Letter from Senator William Proxmire to HUD Secretary James Lynn, January 16, 1975, cited in U.S. General Accounting Office Report, Meeting Application and Review Requirements for Block Grants Under Title I of the Housing and Community Development Act of 1974 (Washington, D.C., GAO, June 23, 1986) p. 9.

14. Letter of response from HUD Undersecretary James L. Mitchell to Senator William Proxmire, February 24, 1975, cited in GAO Report, Ibid., p. 9.

15. Letter from Senator John Sparkman to Elmer Staats, Comptroller General of the United States, June 13, 1975, p. 1.

16. Ibid.

17. U.S. Congress, House Committee on Banking, Currency and Housing, Subcommittee on Housing and Urban Affairs, Oversight Hearings on Housing Assistance Payments, Community Development Block Grants and Section 312 Loans, 94th Congress, 1st session, April 30, 1975, p. 7.

18. Ibid., p. 44.

19. National Urban League, The New Housing Programs: Who Benefits? (New York: National Urban League, 1975) p. 15.

20. Raymond Brown with Ann Coil and Carol Rose, A Time for Accounting: The Housing and Community Development Act in the South (Atlanta, GA: Southern Regional Council, 1976), Chapter 2.

21. As quoted in Housing and Development Reporter, Vol. 3, April 1976, p. 1051.

22. Robert Ginsburg, Mary Nenno and Deena Sosson, NAHRO Community Development Monitoring Report: Year 1 Findings (Washington, D.C.: National Association of Housing and Redevelopment Officials, April 1976).

23. U.S. Dept. of Housing and Urban Development, Community Development Block Grant: First Annual Report, p. 34.

24. See National Urban League, The New Housing Programs: Who Benefits?; Southern California Association of Governments, Review of Housing and Community Development Title I Block Grant Applications (Los Angeles, CA: Southern California Association of Governments, November 1976); Richard Nathan, et. al., Block Grants for Community Development (Washington, D.C.: Brookings Institution, January 1977).

25. U.S. General Accounting Office, Meeting Application and Review Requirements Under Title I of the Housing and Community Development Act of 1974 (Washington, D.C.: General Accounting Office, June 23, 1976), pp. 6-20.

26. Ibid., p. 10.

27. Ibid., p. 11.

28. Ibid., p. 12.

29. Ibid., p. 19.

30. Ibid., p. 20.

31. U.S. Senate, Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, 94th Congress, 2nd session, August 23-26, 1976.

32. Testimony of Peter Petkas, Executive Director, Southern Regional Council, before the Senate Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, August 23, 1976.

33. Testimony of Floyd Hyde, former Undersecretary of the U.S. Dept. of Housing and Urban Development, before the Senate Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, August 25, 1976, p. 572.

34. Statement by Senator William Proxmire, Senate Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, August 25, 1976, p. 505.

35. Testimony by David O. Meeker, Assistant Secretary of Housing and Urban Development, before the Senate Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, August 25, 1976, p. 502.

36. Statement by Senator William Proxmire, Senate Committee on Appropriations, Subcommittee on Department of Housing and Urban Development and Independent Agencies, Hearings on fy '77 Appropriations, April 6, 1976, p. 1240.

37. Statement by Senator William Proxmire, Senate Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, August 25, 1976, p. 533.

38. Testimony by David O. Meeker, Assistant Secretary of Housing and Urban Development, before Senate Committee on Banking, Housing and Urban Affairs, Oversight Hearings on the Community Development Block Grant Program, August 25, 1976, p. 502.

CHAPTER 5: ALTERING PROGRAM DIRECTIONS: BLOCK GRANT REGULATORY REFORM DURING THE CARTER TERM

In the face of both public pressures stemming from the airing of HUD neglect of the Act's low and moderate income provisions and the intensity of Senatorial objections to HUD's practices in implementing the CDBG program, senior HUD officials began to discuss how they might respond to these concerns without impairing the local flexibility they so valued. But before discussions could progress very far, two unforeseen events served to put potential change in HUD policies on temporary hold. In September, Assistant Secretary David Meeker, who headed the division of Community Planning and Development (the organizational home of the program) resigned his post for health reasons, leaving a leadership vacuum in the uppermost ranks of the program staff. And less than six weeks later, President Ford's electoral defeat signaled the impending rise to power of a new set of administrators who would chart the program's future directions.

To head up the Department of Housing and Urban Development, newly-elected President Jimmy Carter selected Washington lawyer Patricia Roberts Harris. It was a nomination that, at the outset, was viewed with disfavor by urban interest groups and several Senators, including Senator Proxmire. Concerned with her lack of experience in housing and urban development, Proxmire used the nomination hearings as an occasion for tough questioning of the Secretary-designate regarding the directions she would chart for the agency, and in particular the emphasis she would place in administering HUD programs on serving the needs of the poor. Harris repeatedly assured Proxmire that she shared his concerns and pledged to use her role as Secretary to serve as "spokesperson for the poor, the ill-housed and the

cities."[1] Harris was confirmed by the Senate, as were three Assistant Secretaries who would later play key roles in shaping the block grant program: Robert Embry, Assistant Secretary of Community Planning and Development (key overseer of the CDBG program), a well-respected community development administrator from Baltimore; Father Geno Baroni, Assistant Secretary of Neighborhoods, Voluntary Associations and Consumer Protection, a community activist who had worked with advocacy groups for the poor; and Donna Shalala, Assistant Secretary for Policy Development and Research, an academic and a member of the board charged with oversight of New York City's fiscal affairs.

Harris and several members of the new administration brought to HUD a special concern regarding lax administration of the CDBG program and HUD's apparent failure to target aid to the neediest populations. The future actions they would take to alter CDBG policies, and the new interpretations of the Act's low income benefit provisions they would apply were presaged in Harris's statements before the House Housing Subcommittee just one month after assuming her office. Discussing her intentions with respect to block grant program management, Harris firmly asserted "We will expect communities to direct development and housing programs toward low and moderate income citizens. I do not consider this to be just an objective of the block grant program -- it is the highest priority of the program and we in the federal government must see to it that the thrust of the program serves that objective."[2]

Strengthening HUD's Role in Application Review

As a first step in tightening HUD's lax administration of the program, Assistant Secretary Embry issued a memo to the field staff in April of 1977 instructing them to undertake more stringent pre-funding reviews of local

applications. While Ford officials had confined area offices to conducting simple assessments of local conformity to the program's procedural requirements, area offices were now being directed to examine the substance of what localities were proposing to do with their funds and assess "how it serves [the program's] statutory objectives."[3]

The directive noted that this change in policy was part of a general reorientation of "HUD's [CDBG] efforts toward the achievement of statutory objectives, particularly those that speak to the interests of low and moderate income people."[4] But while this and other portions of the memo stressed the priority afforded low income persons in the Act by citing wording of the primary objective clause, the detailed review standards set forth in the directive fell back instead on the three priority areas cited in the maximum feasible priority clause.

Field offices were instructed to review each activity proposed by the locality to assure that it served one of the three purposes described in Section 104 - delivering benefits to low and moderate income persons, or aiding in the prevention or elimination of slums and blight, or meeting urgent community development needs. Although the memo for the first time supplied constraining criteria that must be met in order for an activity to qualify under "urgent needs" or "slum and blight" provisions, and although it for the first time established a method for assessing whether an activity could qualify as one benefiting low and moderate income persons, it stopped short of making specific provisions guaranteeing that lower income benefit activities as a class would be given preferential treatment over activities serving the other two aims expressed in Section 104.

Further, though significant for its tone of concern with program responsiveness to the poor, the directive failed to establish concrete

benchmarks which would enable area offices to know whether the share of local program funds being directed toward low income beneficiaries was consistent with HUD's preference for an emphasis on serving the poor. Because of these omissions, the April 15 directive did not represent a marked departure from either the legislative interpretations or the targeting policies instituted by Ford officials.

The reasons for this outcome can be found in the fact that the new program administrator, Robert Embry, having been confirmed as Assistant Secretary only one month earlier, had relied heavily upon the advice of HUD staff who earlier had framed the regulatory issuances under Ford. Few outsiders had been consulted in the drafting of the directive. But before long two forces served to push HUD officials to enact more significant guideline change. The first arose in the findings of monitoring studies covering the program's second year of operations; the second in the emergence of a potent interest group committed to revamping CDBG administration.

CDBG Evaluations: The Poor in Year 2

While the extensive costs involved in monitoring the CDBG program has led most interest groups to abandon any plans to replicate the first year studies which had brought considerable public attention to local government neglect of the poor, the National Association of Housing and Redevelopment Officials proved an exception. One of the most systematic and credible of the independent study efforts, the NAHRO project continued its assessment of low and moderate income benefit under the CDBG program into the second program year. With the release of NAHRO's second year findings in early 1977, HUD guidelines for administering the CDBG program again became the object of sharp criticism as the NAHRO study revealed a marked decline in

benefits directed to the poor.[5] In comparison to the 51% share of program resources low and moderate income groups had attained in the program's first year of operation, the second year report found only 44% of local grant allotments devoted to the needs of this beneficiary class. The 7% drop proved even more alarming in light of HUD's earlier arguments that the low level of benefits NAHRO had found in its initial study was attributable to heavy earmarking of local grant allotments for completion of local urban renewal projects, and in light of its voiced expectations that low and moderate income benefit levels would rise in later years of the program.

Even more damaging to the case for continuation of a "hands off" stance at HUD was the confirmation of this downward trend by the Department's own evaluation team. Though the method employed by HUD research staff yielded a higher overall incidence of low income benefits than NAHRO had reported, HUD's second annual report to Congress, released during this same period, affirmed the severe drop in aid to the poor. According to the HUD study, low and moderate income constituencies were now receiving only a 57.3% share of program funding.[6] In the face of this damning evidence, interest groups intensified pressures on the new HUD administration to institute much stronger administrative measures to insure local government attention to the needs of the poor.

Shifts in the Political Field

In the aftermath of the August 1976 hearings before the Senate, several of the groups representing the poor had grown increasingly restive. While their studies and critical testimony had served to heighten the visibility of the plight of the poor under the program, and had provoked sharp rebukes to HUD officials by sympathetic Senators, they had made no direct and significant inroads in forcing change in HUD's bureaucratic

policies. Amid rising speculation that the second year studies would demonstrate that the poor were losing ground in their efforts to exert a claim over CDBG resources, several of the most active and vocal groups came together to devise a new political strategy. What was needed, they concluded, was for them to unify their political forces - to create a new organization which could serve as the standard-bearer in the movement to reform the program. Buoyed in particular by the prospect for new directions under the incoming Carter Administration, ten civil rights and low income advocacy organizations banded together in late 1976 to form the Working Group for Community Development Reform. (Initial member organizations included the Center for Community Change, the National Urban League, the Southern Regional Council, National People's Action, Suburban Action Institute, the National Center for Policy Review, the Center for the Study of Responsive Law, the Coalition for Block Grant Compliance, Rural America, and the New Jersey Department of the Public Advocate.)

The Working Group immediately mounted a large scale effort to prepare a report for the incoming Carter Administration; a report pinpointing the failures of past program efforts and making specific recommendations for administrative reform. By following this strategy, the group hoped to reserve a place for itself in deliberations over the new administration's programmatic agenda. Delivered to the new officials in January, the resulting sixty page report was an impressive document, carefully researched and containing a well-articulated case for the revisions they recommended. The report covered a wide-ranging set of administrative areas related to citizen participation, housing assistance plans, equal opportunity and other areas they deemed needy of reform. But a major part of the report was devoted to changes that would tighten program requirements

to assure a larger share of local funds would be targeted to meeting the needs of the poor.

Highly critical of the Ford Administration's "no-strings, revenue-sharing" approach to program management, the report charged that CDBG regulations and procedures had "undermined many of the national priorities and standards established by Congress ... led to abuses in several jurisdictions and ... undercut the statutory priority on programs benefiting low and moderate income families."[7] To rectify these deficiencies, the group set forth detailed recommendations for change in HUD regulations, even going so far as to propose new regulatory wording.

With respect to the elements of the maximum feasible priority clause, they proposed specific language tightening the criteria under which individual activities could qualify as meeting "slum and blight" provisions or qualify as a legitimate response to "urgent needs." But of greater importance to the future directions of the program, the Working Group proposed an administrative strategy to implement for the first time the neglected statutory language of the primary objective - that activities funded under the program be directed toward the creation of "viable urban communities ... principally for persons of low and moderate income."

Borrowing this language, the Working Group report recommended that: "Each application should be reviewed by HUD Area Office staff to determine if the dollar benefits of [each locality's] proposed CD program are 'principally persons of low and moderate income' ... [this phrase] should be interpreted to mean that <u>three-fourths</u> of the persons directly benefiting are low and moderate income persons." (emphasis added)[8] More than any other recommendation, this bold proposal represented a significant departure from any previous suggestions for change. Not only did it transform

the primary objective's "principally benefits" language into an active program requirement, but the proposal also put forth a specific benchmark, a minimum percentage standard, by which HUD could assess whether a local program, as a whole, was in compliance with the primary objective of the Act.

Outside the HUD bureaucracy, the Working Group report garnered a great deal of support among interest groups representing the poor. The general thrust of its recommendations secured the endorsement of several other advocacy groups active in the urban policy sphere, such as the Potomac Institute, the NAACP, the National Commission against Discrimination on Housing and the National Low Income Housing Coalition, as well as more generalized interest groups like the AFL-CIO, the League of Women Voters and the Presbyterian Church.

In the early months of its existence, the Working Group had, through its actions, taken a significant step in shaping the future agenda for programmatic reform. Further, it had succeeded in securing a principal place for itself in the impending debates over the program's future in both administrative and legislative forums.

Internal Politics of Regulatory Revision

Following the issuance of HUD's April 15 directive to the field, the agency embarked on the task of overhauling CDBG regulations to more accurately reflect the Department's proclaimed new emphasis on low and moderate income constituencies. While in normal instances the bulk of responsibilities for regulatory revision are passed down into the hands of lower level federal bureaucrats, who argue about the relatively mundane issues of the nuances of alternative wording, the case of CDBG rule revisions proved markedly atypical. Soon after their initiation, delibera-

tions over regulatory reform would come to encompass some of the most fundamental issues in intergovernmental policy, and would engage the vigorous involvement of the highest level actors in the HUD bureaucracy.

Primary responsibility for management of the rulemaking process was vested with Assistant Secretary Robert Embry, who headed the division with jurisdiction over the program, the division of Community Planning and Development (CPD). Although Embry had initially been dependent for advice regarding programmatic issues upon division staff who had helped launch the program in the Ford era, this dependence fell away with the emergence of the Working Group for CD Reform.

Embry had been impressed by the voluminous document they had prepared on CDBG, and persuaded by their arguments asserting need for an expanded federal role in overseeing the program. As the new rules were being drafted, the group soon became a primary source of information and advice to Embry. The Group's leadership was granted ready access to his office, and about 40 meetings were held during the first six months of the Carter era, in which Embry or his staff consulted Working Group members. Embry even brought one of the Group's founding members onto the payroll as his special assistant (Joseph Guggenheim, head of the Coalition for Block Grant Compliance).

Several dimensions of the CD regulations were debated within the agency - how to transform citizen participation into a more meaningful process, and how to strengthen Housing Assistance Plan requirements, among others. But the foremost issue, also the most controversial, revolved around how to implement the maximum feasible priority provisions of the Act in such a way as to assure that the bulk of local funds would be spent to assist lower income persons. While there was widespread consensus among

senior officials on the principle of elevating low and moderate income benefits to priority status in the program, the consensus dissolved as discussions moved to how that might best be accomplished.

Many of the newer members of Embry's staff were inclined to accept the Working Group's assertion that an overall low-income benefits standard needed to be established and enforced by the agency in order to assure localities would target CDBG grant monies to meeting disadvantaged resident's needs. Moreover, their examination of the Senate's pre-conference version of the legislation that would (if passed) have required localities to devote 80% of their grant to low income projects, served to convince them that a standard of 75% low income benefit would be an appropriate level of distribution to require. As a result, they urged Embry to include the 75% standard the Working Group has recommended in HUD's new programmatic rules. In light of Embry's belief that HUD needed in some way to significantly strengthen the low income emphasis of the program, and his conviction that the primary objective language of the Act afforded HUD a legitimate legislative basis upon which to institute such a standard, he encouraged his staff to develop new draft guidelines incorporating the 75% standard, and to circulate them widely within the agency for an informal internal review. Under the guidelines they developed, any locality applying for grant monies would be required to earmark 75% of its grant allotment to projects that benefit low income residents. If it failed to do so, its application was to be automatically disapproved.

An Agency Divided

The new guideline proposal spawned major controversy within the agency during the internal review process that ensued. The proposal found the agency severely divided on the wisdom of applying the new administrative

approach. So deeply held and intensely argued were positions both in defense of and in opposition to the proposal that one long-time CPD career official was prompted to remark "Never in my 10 years at HUD have I seen such a difficult and tortuous issue [debated in the agency]."[9]

Internal Support for the Measure

Nowhere did the new proposal receive as vigorous an endorsement as it received from the staff of the newly created division of Neighborhoods, Voluntary Associations and Consumer Protection (NVACP), and from the division's head Assistant Secretary Father Geno Baroni. Many of the political appointees and civil service staff in the division had, like Baroni, emerged from backgrounds as community organizers in inner-city neighborhoods and as long-time advocates on behalf of the interests of the poor. Their experiences had led them to conclude that local officials could not be counted upon to respond to the needs of low income constituencies if left free to make their own choices regarding how urban resources should be spent. It was a view shared by Baroni himself -- one which prompted him to take a strong personal interest in advocating on behalf of incorporation of the 75% standard into HUD's formal programmatic rules. It was incumbent upon federal officials charged with stewardship of the CDBG program, Baroni and his allies were to repeatedly assert during the internal debates, to exercise federal authority in a manner which assured that the vast majority of scarce programmatic resources would serve the constituencies in greatest need. The use of a 75% low-income targeting standard was not only a permissible course of administrative action, he held, it was an essential component of HUD's fulfillment of its obligations to the Congress to enforce the primary objective of the Act.

Baroni's perspective found strong support from several corners of the

agency where there was grave concern over the damage allegations of programmatic abuse was inflicting on the agency's reputation. But those in other quarters stood vehemently opposed to the measure. Many objected to the idea of imposing a 75% floor on low income benefits and more broadly to the establishment of any uniform benefits standard at all. Some of the CPD civil service corp adhered to this contrary perspective, but the staunchest opposition to the use of a standard emerged from those representing another HUD official holding a rank comparable to that of Father Baroni --Assistant Secretary Donna Shalala, head of the division of Policy Development and Research, a division which had conducted several evaluations of localities' CDBG efforts.

Though Shalala's agents and their supporters in other corners of the agency largely concurred with the need for HUD to initiate some type of substantive review of applicants' local programs for their fealty to the low and moderate income aim of the program, they held that use of a single low income benefits standard was simply not the way to go. Given the nature and the mechanics of the block grant process, they argued, a final determination as to whether a locality was being sufficiently attentive to the needs of its low income populace was best left to the qualitative judgment of Area Office staff who would review the contents of local applications.

Philosophical Issues

Opponents within the agency, headed by Shalala's Deputy Assistant Secretary and others on her staff, argued against the use of a standard on two basic grounds: one philosophical, the other pragmatic. With respect to the first, these critics maintained that such a move would run counter to the basic tenets of the New Federalism. They argued that the block grant

program had had as its principal rationale a desire to eradicate the detailed restraints and rigidity that had characterized intergovernmental aid under the earlier categorical era. The imposition of a binding standard constraining how block grant funds might be spent, they felt, would result in the serious erosion of local flexibility which had been the hallmark of block grant policies. Furthermore, it was feared, such an action would set a dangerous precedent, paving the way for other federal attempts to strip away local authority over, and responsibility for, local community development policy.

Relatedly, they asserted that the establishment of one uniform national standard ignored variability in recipients' local conditions. Whereas categorical programs like urban renewal had been directed toward a smaller set of jurisdictions who shared similar local conditions, block grants, they argued, were designed to address a more diverse set of development needs manifest within a much larger and more heterogeneous class of grant recipients. For some recipient governments, adherence to a nationally-set beneficiaries standard might not prove burdensome. The larger and more deteriorated older cities of the Frostbelt, for example, shared a common need for funds to support renovation of housing and infrastructure for lower income groups who constituted their majority populations. But, they reminded standard advocates, other jurisdictions with legitimate claims to program funds faced differing circumstances. Suburban communities and growing cities of the Sunbelt, for example, had both smaller, more scattered low income populations and other pressing development needs linked to growth in their non-low-income neighborhoods. For these recipients, critics argued, a requirement that 75% of their annual grants be expended on the poor would result in the serious misallocation of

resources and local neglect of burgeoning growth-related development problems. It was this very form of federal-aid-induced distortion in local priorities, they contended, that the New Federalism had been designed to prevent.

Technical Infeasibility

For those left unpersuaded by the philosophical arguments against setting a beneficiaries standard, backers of what became identified as the PDR division's hostatory language alternative (stressing the new low income benefit orientation but leaving Area Offices room to determine what was appropriate case-by-case) stance mounted a second line of attack, this time rooted in more pragmatic bureaucratic concerns. Because of CDBG's nature as a predominantly physical development program, they argued, any methodology employed to demarcate program beneficiaries would be fraught with difficulties. The technical dilemmas involved in implementing quantitative targeting standards, they warned, would ultimately prove so problematic as to render the regulation at best irrational, at worst, unworkable. Their line of argument can be capsulized in the following manner.

Since the program confined social service project expenditures to no more than 20% of a local grant, the vast majority of locally funded projects had physical redevelopment aims--renovation of housing, upgrading of community facilities, and public works improvements such as better street lighting, repair of roads, reconstruction of water and sewer facilities, etc. Of the physical development projects undertaken by localities, only a small portion had been designed in ways that provided direct and specific benefits to individuals -- through housing loans and grants to individual homeowners for example. In these cases, as with CD funded social services, project beneficiaries could be readily identified.

But the greatest proportion of local project activities were of a very different character - as physical improvement efforts they provided far more nebulous and indirect benefits to the geographic area surrounding the project site. Street repair projects, for example, might enhance the environmental quality of an area, thus benefiting in a more indirect fashion the entire set of residents occupying the area surrounding the project location. Because of this "area benefit" quality of most projects, the critics maintained, it would be difficult to arrive at a sensible methodology for measuring "who benefits" from these activities.

Measuring Who Benefits

The regulations drafted by Embry staff had handled the question of determining "who benefits" from physical development projects by employing the census tract as the proxy measure for the geographic area affected by a project. If a project was located in a particular census tract, the collection of residents living in that census tract were assumed to be the beneficiaries of the project. If the residents of the census tracts were predominantly those meeting the definition of low and moderate income families (as provided in the Ford Administration's rules) the cost of that project could be applied toward meeting the 75% benefit standard. Shalala's agents and others were sharply critical of this approach, pointing to four administrative problems that would result from the use of this methodology.

Their first criticism focused on the irrationality of the use of the census tract as the unit of analysis. Small projects, such as the repair of a short section of a street, they argued, would impact on no more than a small subsection of a census tract. To use the entire tract as a basis for assigning benefits (in other words to claim all residents of the tract as project beneficiaries) would result in the serious misrepresentation of the

true beneficiaries pool. This methodology would prove especially problematic when applied to suburban communities and Sunbelt cities, where the poor resided in "pockets of poverty" within higher income census tracts. Even if these local governments sited projects within the low income enclaves of the tract, they argued, the wealth of the tract's majority population would make it appear the project was not serving low and moderate income needs.

Their second objection to the methodology was linked to the approach's heavy reliance on location as an indicator of a project's intent. They argued that even where census tracts were relatively homogeneous, their use as the basis for imputing benefits was subject to distortion. A project located in a largely lower income census tract, for example, might be designed to support the immigration of higher income groups. Thus while actually benefiting more well-to-do individuals, the project would be counted (using the census tract basis) as benefiting the poor. Conversely, activities designed to induce a commercial establishment to locate in a high income tract would be counted as benefiting the tract's wealthier populace, even though the jobs created by the firm might be filled by low income workers. The potential for distortion in benefits attribution, they claimed, was considerable.

Their third criticism revolved around the dependence of the methodology on census data. Because the data was updated only once every ten years, it could not reflect the demographic changes which had occurred between census years. Thus a local government attempting to meet needs in recently formed low income enclaves, might be subject to allegations they were serving the wealthier populace who had resided there nearly 10 years ago.

As a final overarching criticism, they argued that the kind of

detailed and extensive HUD analysis that would be required by this approach (i.e. a line by line, project by project benefit review) would prove unduly burdensome to HUD field staff. Given that a single local application might contain hundreds of discrete project activities, the complexities involved in applying a "bean counting" type of review of benefits derived from local expenditures would severely tax HUD's administrative resources, they warned, impairing the efficiency of bureaucratic operations.

But supporters were largely unmoved by these "technical" objections to the measure. They countered that any errors in attributing benefits to the "wrong class" of beneficiaries would ultimately be expected to cancel one another out, rendering the methodology valid over the long run. And though conceding that the methodology had its limitations, they contended that use of a standard was necessary to provide field staff with a concrete authoritative basis upon which to judge whether localities were sufficiently addressing the redistributive aim of the Act. Furthermore, any administrative burdens that would accompany utilization of the approach, they argued, were the rightful burdens the agency was charged with assuming in order to faithfully execute its responsibilities for stewardship of the program.

Disputes in the Highest Tier

With both pro and con positions on the targeting strategy now being taken by both Baroni's agents and Shalala's, internal debates over the content of new guidelines were by summer's end being argued at the highest levels of the agency. In a series of meetings held in early fall, representatives of four of HUD's Assistant Secretaries - Baroni, Shalala, Embry and McGuire (head of the division of Fair Housing and Equal Opportunity) attempted to hammer out a concensus position on the guidelines. But so sharp were their differences of opinion on the issue,

and so firm their stances both in support of and opposition to a standard that consensus proved elusive.

Spokesmen for the PDR division (Shalala's wing of the agency) continued to press their case for omitting a specific beneficiaries standard, though increasingly they stood alone in that position. McGuire's agents (whose division represented minority interests in the agency) came down in support of the 75% standard, as did those of Embry, who was himself firmly convinced, after hearing all the attendant arguments, that a standard should be imposed. In response to PDR's philosophical objections to the measure, supporters of the standard asserted that the program's mandate for local discretion and flexibility was overridden by a higher bureaucratic charge - to guarantee that federal funds would be used to accomplish the redistributive aim Congress had specified, and which at present was not being met. And though willing to concede that some irrationalities might surface as a result of imposition of the standard, they saw no effective substitute for use of a standard-based approach. Concern was expressed that the alternative Shalala's staff favored of relying on area office promotion of low income projects would prove ineffective, and moreover, that the level of area office discretion inherent in a non-standard-based strategy would open the agency to local allegations of unfairness and arbitrary action in the handling of any particular case. One important function of regulations, as they saw it, was to protect the agency from such charges by providing both clarity and consistency in the treatment of those receiving federal grants. Yet such arguments left opponents of the standard unmoved.

With disagreement still very much in evidence among the Assistant Secretaries involved in the internal regulatory process, the issue passed

upward to the supreme authority in the agency for resolution. Summaries of the diverging perspectives and regulatory alternatives were compiled in an internal options paper forwarded to the agency's Secretary in October 1977. The final verdict regarding the fate of the new CDBG regulations thus came to rest in Secretary Harris's hands.

The Housing and Community Development Act of 1977

During the same period that Harris' administrators were deliberating the next step they should take to advance the low and moderate income emphasis contained in Embry's April 1977 directive, Congress was fashioning legislation to reauthorize the program for another 3 year period. The process of reauthorization, however threatened to give rise to a herculean legislative struggle. Sharp House-Senate disagreements over the contours of the legislation had nearly scuttled the program's enactment in 1974. Three years later, several of the members who had engaged in the original battles over the program still retained places of authority in the Congressional committees with jurisdiction over the program. To the extent that their original positions had not softened, the compromises required to secure passage of a new act would prove difficult to forge. It promised to be a long hard battle over legislative issues, with the low and moderate income targeting question one of the major skirmishes.

Senate Action on the Targeting Issue

At the outset of the legislative process, it was clear that there was sentiment within the Senate to resurrect its original stance on some programmatic issues. At a meeting of the National Association of Counties in November 1976, the Senate Committee staff director Robert Malakoff expressed his expectation that the Committee would attempt to sharpen the program's focus on low and moderate income constituencies, and to strength-

en the program's front-end application reviews, "bringing [provisions] more in line with the intent of the program as originally thought of by the Senate."[10] None of the Senatorial actors would prove to a more avidly pursue this course than Senator William Proxmire.

As head of the Senate Banking, Housing and Urban Affairs Committee, Proxmire occupied a key position of authority in the legislative process. He had been distressed at the allegations made in his Committee's 1976 oversight hearings of the program's neglect of low and moderate income needs. The findings of the NAHRO report in early 1977 that the poor's share of program resources was eroding further heightened his concern. As the reauthorization questions moved into the legislative forum, Proxmire asserted he would oppose approval of any CDBG legislation lacking low and moderate income targeting provisions.

To Proxmire, the reauthorization process represented an opportunity to accomplish two aims: to correct legislative deficiencies that were permitting local neglect of groups and areas in greatest need, and to assure that bureaucratic policies at HUD could not ignore the low and moderate income intentions already contained in the Act. Proxmire had been irked at Secretary Meeker's intransigence in the face of his criticisms, and though he appreciated the new tone set by Meeker's successor, Harris, he wanted to assure such a situation would not arise again.

In regard to the drafting of reauthorizing legislation, the fledgling organization, the Working Group for CD Reform was again to assume a key role. Testifying before Proxmire's Committee in April 1977, four representatives of its member organizations put forth specific proposals for legislative reform.[11] As with the recommendations they had made to HUD, the members offered up detailed and specific legislative wording to be

inserted into the original act's subsections.

The major thrust of the Working Group's legislative proposals was to alter the Act's programmatic requirements in ways that would enforce the Act's avowed emphasis on low and moderate income benefit. The first target for revision was the Act's "maximum feasible priority" certification.

According to the original 1974 legislation, local recipients were required to certify, as a precondition of aid, that their programs had been "designed so as to give maximum feasible priority to activities which will benefit low or moderate income families, or aid in the prevention or elimination of slums and blight"; as an alternative, activities were allowed if they addressed "urgent community development needs." In place of this very loose language, the Working Group proposed new wording that would legislatively narrow the criteria for project eligibility under both "slums and blight" and "urgent needs" certifications. Their proposed legislative language stipulated that projects or activities, in order to meet the slum and blight certification, "must respond to the priority needs of low and moderate income families, and must be designed to eradicate severe physical decay, dilapidation and abandonment, or to ward off imminent danger of decline."[12]

To qualify under the certification that an activity would meet "urgent needs," their amendments proposed, an activity would have to "respond to present conditions [which] pose a serious threat to health, safety or public welfare, require immediate treatment, [are unable to] be addressed through the use of other financial resources, and outweigh in severity the needs of low and moderate income persons and the need for projects which prevent or eliminate slums and blight."[13]

The insertion of these additional provisos into the maximum feasible

priority clause, the Working Group argued, would have a dampening effect on the misuse of "slums and blight" and "urgent needs" criteria as justifications for frivolous urban projects. In addition, by reducing the ease with which these alternative justifications could be claimed, the changes would have the effect of enhancing the flow of funds into projects producing clear low and moderate income benefit.

As a second target, the Working Group sought revision in HUD's authority to disapprove applications. Under Section 104(c) of the original Act, the Secretary's power to disapprove local applications was legislatively constrained. The section required the Secretary to approve an application for block grant funds unless she found evidence that the application's description of local needs and objectives was "plainly inconsistent" with local facts and data; unless the applicant's proposed program was found "plainly inappropriate" to the locally defined needs; or unless "the Secretary determines that the application does not comply with the requirements of this title ..." The Working Group proposed grafting onto this third provision, language which would legislatively grant HUD the unquestionable authority and responsibility to consider in application reviews the degree of attention given to low and moderate income needs. As they amended it, the provision would require approval for applications passing the "plainly inconsistent" and "plainly inappropriate" tests unless "the Secretary determines that the application does not comply with the requirements of this title with specific regard to the primary purpose of principally benefiting persons of low and moderate income."[14] (emphasis added).

Given the disposition of the Senatorial actors on the Banking Committee, these legislative proposals found favor within the Committee as

the reauthorization bill was being drafted. The Working Group's preparedness once again yielded some victories as the Senate bill (sponsored by Proxmire) borrowed liberally from the amendments they had proposed.

Although the final version that emerged from Committee mark-up lacked the "slum and blight" revisions to the maximum feasible priority language, it did retain a somewhat softened rendition of the more stringent criteria for project certification as an "urgent need." But more importantly, the Senate bill incorporated the proposed language granting the Secretary the express authority and responsibility to reject any local application on the basis that it failed to give "specific regard to the primary purpose of principally benefiting persons of low and moderate income."[15]

Lest there be any doubt as to the Senate's perspective on the targeting question, the Committee Report language stressed that the bill's new provisions represented an attempt to emphasize the responsibilities of block grant recipients to conform with "the statute's intent that maximum feasible priority be given to ... activities which benefit low and moderate income persons and the neighborhoods in which they reside."[16] Where opposition arose against these provisions in the Committee, it did not reflect disagreement with the low and moderate income thrust of the provisions, but instead, merely the means to be employed to enforce it. In the only minority report addressing these provisions, the Senate bill's chief opponent Senator John Tower conceded that "no one an argue that [low and moderate income] areas are the areas that are to benefit from the program." "But to accomplish this", he argued, "we do not need to write regulations into the law. HUD has the responsibility to implement the program. If they find non-compliance with the law, then the law states they are to terminate funding for the particular community. To write more laws is not the an-

swer. Better oversight by this Committee and HUD is the best approach."[17] But the overwhelming majority of Senators disagreed with Tower's view and accepted the insertion of new and stronger targeting language. In June of 1977, a bill containing these provisions was adopted by the full Senate by a vote of 79-7.

The House Version of the Legislation

The reauthorizing legislation in the House, meanwhile, was proceeding along a very different track. Although the Working Group's legislative reform package had been presented to the House Housing Subcommittee during its March 1, 1977 oversight hearings, the package had received a notably cooler reception. Like key members on the Senate side, many of the House Subcommittee members were veterans of the 1974 battles over the new block grant's form. Foremost among these influentials was Representative Thomas Ashley, who now served as Subcommittee Chairman. Ashley and several other Representatives who had earlier promoted a true "revenue sharing" approach to CD policy still adhered to their original view that the overriding aim of block grant legislation was to provide greater local discretion in selecting uses for CD funds. The supremacy of the local discretion principle led them to reject the Working Group's proposals, despite the findings of their own subcommittee staff report that "the low and moderate income objectives of the Act are not being met."[18] None of the low and moderate income targeting provisions were incorporated into the House bill. With the passage of this version by a full House vote of 369-20, resolution of the targeting question shifted into the hands of a House-Senate Conference Committee.

Forging the 1977 Act

The Conference Committee convened for the first time in June of 1977.

The composition of the body nearly guaranteed that the original legislative issues would be rehashed during the reauthorization debate. Of the nine Senate Conferees, seven had served on the Senate Committee which drafted that chamber's original CD bill; six were veterans of the 1974 Conference which had produced the final Act. On the House side, nine of the thirteen Conferees had held places on the Banking Committee which had produced the House version of the 1974 Act; here, too, six had been Conferees for the original legislation. As the 1977 Conference opened, each House predictably began to assert its historical position on the true nature of the CDBG program.

Ashley, taking the lead among House members, objected to the new Senate provisions. Inherent in the institution of a block grant approach, he maintained, was acceptance of the principle of expanded local authority over programmatic choice. In order to remain faithful to that principle, the grounds for federal rejection of an application must be kept to a minimum, he argued, to avert the natural impulse of federal bureaucrats to expand their role at the expense of localities.

Furthermore, he claimed, the programmatic requirements written into the maximum feasible priority certification reflected Congress's intent that localities be free to direct their resources toward any one of <u>three</u> community development objectives - alleviating or preventing slums and blight, responding to urgent local needs, or addressing the needs of their low and moderate income residents. On the House side, Ashley maintained, "we like to think of these as coequal requirements."[19] These views led him to oppose the new "urgent needs" criteria supported by the Senate, on the grounds that the new provisions would amount to an unjustified "second guessing" of local judgement regarding what constituted emergency condi-

tions in their own jurisdictions, and would serve to hamper local pursuit of this legitimate goal. Moreover, he argued, acceptance of new grounds for application disapproval (failing to give "specific regard to ... principally benefiting low and moderate income persons") would force redirection of local resources toward low and moderate income objectives, at the expense of the other two Congressionally sanctioned CD aims.

Proxmire, on the other hand, asserted that the voluminous evidence of local neglect of low income needs dictated that Congress act "to strengthen every provision of the Act we can"[20] to increase benefits to lower income groups. And he reminded House members that they had accepted legislative language making low and moderate income benefit the primary objective of the 1974 Act. In the face of local shortcomings in this area, he warned, failure to reinforce the importance of this provision would be tantamount to Congressional endorsement of existing social and economic inequities.

Due to the intensity of differing House-Senate sentiments on the targeting question and on other major issues in the legislation (such as revision in the formula for allocating CD funds among localities, and the shape of a new categorical program of Urban Development Action Grants) the conference soon dissolved into a state of deadlock. Stalemate on the targeting provisions persisted for nearly four months. Under severe pressures to ratify new legislation before Congressional adjournment, the Congress finally reached agreement on reauthorization language which was adopted by both chambers in October of that year.

Once again the legislative provisions reflected the kind of uneasy compromises over the federal role and the Act's objectives which had plagued the block grant legislation throughout its history. With respect to constraints on local discretion regarding urgent needs provisions, the

Senate's view prevailed. In order to qualify as meeting urgent needs requirements, local projects were required to rectify "existing conditions posing a serious threat to the health or welfare of the community [for which] other financial resources are not available."[21] But the Senate amendments fared less well with respect to specifying new grounds for application disapproval. The 1977 Act retained Senate language mandating a more thorough HUD application review, but in deference to the House position, compliance review criteria were expanded to cover "specific regard [given] to the primary purposes (plural) of principally benefiting persons of low and moderate income or aiding in the prevention or elimination of slums and blight, or meeting other community development needs having a particular urgency."[22] Thus the language regarding programmatic requirements supported the notion that localities could choose among three optional programmatic aims. But while this language suggested Congress did not prefer any one of three "purposes" over the others, the legislation failed to alter the "primary objective" language which purportedly lent supremacy to activities designed "principally for persons of low and moderate income." Thus the contradictions in the provisions of the Act were essentially left intact.

Chapter 5 Footnotes

1. Statement by Patricia Roberts Harris before the Senate Committee on Banking, Housing and Urban Affairs, Confirmation Hearings, 95th Congress, 1st session, January 10, 1977, p. 12.

2. Testimony by Patricia Roberts Harris, Secretary of Housing and Urban Development, before the House Committee on Banking, Finance and Urban Affairs, Hearings on the Housing and Community Development Act of 1977, 95th Congress, 1st session, February 24, 1977.

3. Memorandum from Robert Embry, Assistant Secretary of Housing and Urban Development, to Area Office Staff, "Management of the Community Development Block Grant Program", April 15, 1977.

4. Ibid.

5. Robert Ginsburg, "Second Year Community Development Block Grant Experience: A Summary of Findings of the NAHRO Community Development Monitoring Project", Journal of Housing, Vol. 34, February 1977, pp. 80-83.

6. As cited in Housing and Development Reporter, Vol. 4, January 1977, p. 684.

7. Working Group for Community Development Reform, Community Development Block Grants: Implementing National Priorities (Washington, D.C.: Center for Community Change, January 7, 1977) p. 1.

8. Ibid., p. 5.

9. See Housing and Development Reporter, Vol. 5, October 1977, p. 417.

10. See Housing and Development Reporter, Vol. 4, November 1976, p. 558.

11. U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, Hearings on the Housing and Community Development Legislation of 1977, 95th Congress, 1st session, April 18-22, 1977.

12. See Appendix A to testimony by Peter Buchsbaum, Working Group for Community Development Reform, before Senate Committee on Banking, Housing and Urban Affairs, Hearings on the Housing and Community Development Legislation of 1977, April 20, 1977.

13. Ibid.

14. Ibid.

15. U.S. Congress, Senate, S.1523: The Housing and Community Development Act of 1977, 95th Congress, 1st session.

16. U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, Report 95-175: To Accompany S.1523, The Housing and Community Development Act of 1977, 95th Congress, 1st session, ordered printed May 16, 1977.

17. Ibid.

18. U.S. Congress, House Committee on Banking, Finance and Urban Affairs, Community Development Block Grant Program: Staff Report, Committee Print, 95th Congress, 1st session, February 1977, p. 21.

19. As quoted in Housing and Development Reporter, Vol. 5, July 1977, p. 88.

20. Ibid.

21. Housing and Community Development Act of 1977, Public Law 95-128.

22. Ibid.

CHAPTER 6: LEGISLATIVE/BUREAUCRATIC CONFLICT OVER LOW INCOME TARGETING REGULATIONS, 1978-81.

The Bureaucratic Outcome: New Carter Administration Rules

As Harris deliberated what to do with the proposals before her for regulatory change in CDBG operations, she found herself mired in a perplexing and convoluted political environment. Not only was she required to contend with the serious cleavages within her own agency, but she was also required to be heedful of the divisions within the Congress. Even prior to the convening of the 1977 House-Senate Conference Committee, Harris had been subject to confusing and contradictory pressures placed directly upon her by key members of the Congress. The pressures took the form of Congressional reactions to Embry's April 15 directive and to her own proclaimed intent to make the agency more responsive to its low and moderate income constituency.

Proxmire had publicly lauded the new management directions initiated by Harris. During the April 1977 HUD oversight hearings he told the Secretary, "I am delighted to see that you emphasize the fact that HUD ... is now ready for substantive action to see that (CDBG) funds ... are being used primarily to benefit low and moderate income people."[1] Moreover, Harris received broader and more formal Senatorial support with the acceptance of Committee Report language (on the Senate bill) stating "The Committee is cognizant of the new management initiatives instituted by HUD in April of this year, and subscribes to the thrust of those initiatives."[2]

But the signals arising from the House side were as critical as the Senate's were laudatory. While majority (Democratic) members of the House neither applauded nor objected to HUD's April initiatives, minority members

exhibited no such neutrality. In a Minority Report appended to the House version of the reauthorization bill, the nine Republican members of the Housing Subcommittee rebuked Harris for the April memorandum imposing more rigorous application reviews, stating "It is disappointing to see the new administration at HUD retreating on the decentralization and local initiatives of the original program ... Although this situation does not lend itself to legislative correction, this Committee should make the Department aware of its concern over excessive administrative burdens ... upon local communities."[3]

In one sense, the inconsistency among both bureaucrats and legislators proved an asset to Secretary Harris in that it afforded her the freedom to pursue the programmatic preferences she favored. The continuing disputes in Congress and the ambivalence reflected by retention of conflicting low and moderate income provisions in the 1977 Act assured her of a modicum of support regardless of the path she chose. At the same time, though, these very conditions virtually assured the new guideline provisions would provoke political controversy. In the midst of this highly charged political milieu, Harris rendered her final verdict on HUD's new administrative strategies and the targeting question. On October 25, 1977, her stance was made public with the issuance of a new set of proposed rules governing the CDBG program.

Proposals for Regulatory Change

The formal rules proposal sanctioned for public release in October 1977 reflected two fundamental convictions that Harris held - first, that some form of stronger federal role was necessary to protect the program from damaging allegations of low income neglect, and second, that the legislative language of the Act provided sufficient grounds to justify

concentration of program efforts on servicing the Act's low and moderate income aims.

For the first time in the program's history, the proposed rules mandated that the Act's primary objective language be implemented as a specific programmatic requirement. Incorporating the advice of her pro-targeting advisors, Harris proposed the establishment of a national benefits standard in the programmatic rules. Such an action was justified, HUD reasoned, in order to compel local recipients "to assure that low and moderate income persons are the principal beneficiaries"[4] of their CDBG expenditures.

The proposed rules mandated that localities devote no less than 75% of their grant allotment to activities which principally benefit their low and moderate income residents. With the establishment of this 75% standard, HUD's administrative interpretation of the maximum feasible priority requirements had been significantly changed. Under the new policy, low and moderate income objectives of the program were granted weighty precedence over "slums and blight" and "urgent needs" aims.

Although "slums and blight" and "urgent needs" projects were still permitted under the new regulations, the criteria for federal acceptance of these projects was substantially tightened. Most importantly, however, no more than 25% of local block grant resources could be spent for those two purposes. Under the new rules, these options were clearly relegated to secondary status in the program.

To assure fairness in the way the new standard would be administered by field staff, the regulations adopted a uniform method for counting costs which could be applied toward meeting the 75% threshold.

With respect to "direct benefit" activities, the rules stated,

localities could count toward the 75% standard that share of project costs which would actually fall into low and moderate income residents' hands. With respect to the thornier issue of "area benefit" projects, the total cost of the project could be applied toward the 75% threshold if it met the dual criteria of location and intent. To meet the first criteria the rules specified that a project must be located in a census tract with a majority low and moderate income population. To meet the second criteria, the project must be designed to need the "specific needs of low and moderate income persons."

To legitimize HUD's expanded role in enforcing the 75% standard, the proposed rules grafted onto the statutorily restricted grounds for application disapproval, the Act's primary objective language. If the applicants "proposed program does not principally benefit low and moderate income persons"[6] (as measured by the 75% standard) the application could be disapproved on the statutory basis that it proved "plainly inappropriate" to meeting local needs.

While the proposed rules, on the whole were quite rigid, especially in light of the hundreds of grantees who would be required to meet them, Harris did insert a clause to accommodate any irrationalities their application might create. In deference to opponent's arguments, a broad waiver provision was inserted enabling the Secretary, at her discretion, to waive these requirements "where the applicant ... demonstrates that such a waiver is necessary."[7]

The Post-Regulatory Period

The period which followed publication of the proposed rules proved politically one of the most turbulent the Department had ever experienced. While the most intense political battles were played out during the five

months immediately following the rules issuance, the conflicts ignited by the new regulatory emphases would continue to dog HUD officials for a year and beyond.

Although HUD officials had been certain the proposed rules would not meet with universal approval, they were nonetheless unprepared for the fierceness of the political storm they would create. HUD found itself buffeted by strong cross pressures arising from both contending interest groups and feuding legislators. The only thing on which there was agreement, it seemed, was the salience of the issues being debated. During the required public comment period, the proposed rules evoked 1,327 formal comments - the largest number ever received for a single package of regulations in the history of HUD.

Interest Group Pressures

The rules galvanized a broad network of interest groups who voiced differing perspectives on the propriety of their contents. The most hostile opponents were, predictably, local officials. Aggressive attacks on the new proposals were launched by the national organizations charged with protecting their interests. Included were such powerful interest groups as the National League of Cities, the U.S. Conference of Mayors, and the National Association of Counties, as well as those of lesser prominence such as the National Community Development Association and the National Association of Housing and Redevelopment Officials. Each lodged vigorous protests against the new proposals, and along with their member jurisdictions brought considerable pressure to bear on the Department. In attempting to persuade HUD it should abandon the 75% rule, these opponents marshalled three basic lines of attack.

First, they charged HUD officials with violating the most sacred tenet

of the block grant mechanism - the supremacy of local prerogatives over federal aims. "Imposition of percentage (benefit) requirements is clearly inconsistent with the intent of the block grant concept,"[8] the NCDA asserted. The National League of Cities leadership concurred. The infringement on local discretion represented by the new provisions amounted to a kind of "creeping categoricalism"[9] which if adopted, they warned, would negate whole notion of a block grant as a form of local aid.

A second set of criticisms evident in these groups' responses centered on the new administrative burdens of compliance with federal provisions. Many argued that a reduction in paperwork and grant-related red tape had been promised by the legislation. The USCOM voiced the prevailing sentiment that the new rule would "unduly complicate, restrict and undermine successful programs in scores of cities."[10]

Both of these sets of criticisms were near-universally expressed by local government opponents of the rules. But the third set of criticisms was unique in that it highlighted the cleavages present within this otherwise unified set of organizations. Given the method HUD had prescribed for measuring local adherence to the 75% standard, the compliance burdens would weigh disproportionately heavily on the sunbelt cities, the smaller jurisdictions and the urban counties participating in the program. In the light of the smaller size of their poor populations and their scatteration, many of these localities voiced fears that the 75% standard would prove near impossible for them to meet. The National League of Cities (which unlike the USCOM counted many smaller jurisdictions among its members) blasted HUD's insensitivity "to diverse local and regional considerations."[11] And NaCo warned the move would disenfranchise urban counties. Collectively, this subgroup of localities charged HUD with

violation of the program's principle of "entitlement" to federal funds by effecting rules which effectively disqualified a legitimate class of entitlement grantees.

But while the 75% rule drew heavy fire from those governmental interest groups, a second set of organizations simultaneously rose to HUD's defense. Civil rights organizations, community associations, and advocacy groups for the poor from throughout the country lent the new rules their enthusiastic support. Such prominent national organizations as the NAACP, the National Urban League, member organizations of the Working Group and others registered strong approval of the new federal protections afforded the poor under the program, labeling the provisions as long overdue.

The only dissent voiced in this interest group contingent came from those who felt the rules did not go far enough. The Center for Community Change balked at the exclusion of the broad waiver provision and called upon HUD to close this "loophole" in the final CD rules. But the vast majority of the low income advocacy groups were satisfied with the rules proposals and concerned more with protecting the guideline provisions HUD had now pledged it would pursue. Cognizant of the intense lobbying campaign underway to kill the proposed regulations, the National Urban League and others urged Harris to resist the mounting pressures to back down.[12]

Congressional Reaction to the New Rules

While the interest group reactions gained the attention of HUD officials, some of the most important responses were emerging from Capitol Hill. In a jointly authored letter to Secretary Harris, Senators Proxmire and Brooke, the ranking majority and minority members of the Banking Committee voiced their intention "to strongly support [enactment] of the

HUD draft regulations."[13] The expanded federal presence reflected in the proposals was fully justified, they argued, since "federal resources under the program are simply too meager to allow them to be spent frivolously."[14]

In particular, the letter stressed their solid backing of the 75% benefits standard and their firm belief that the language of the 1977 Act rendered the proposed standard both fitting and legally defensible. "It is entirely appropriate that the Department issue regulations requiring this specific numerical figure," they asserted, and moreover "the 75% standard would have been appropriate under the original 1974 Act."[15] Similar letters of endorsement were received from House members Bingham, Fraser, Stark and most notably Parren Mitchell, who like Proxmire had participated in the 1977 Conference Committee.

But the Proxmire/Brooke counterparts on the House side of the Congress strenuously disagreed. Ranking majority and minority members of the House Housing Subcommittee, Thomas Ashley and Garry Brown, fired off a letter charging Harris with writing rules contrary to the intent of Congress. Drawing reference to the tripartite purposes contained in the maximum feasible priority clause, they argued "we do not concur in the requirement for a set percentage of funds at minimum to be spent for the single purpose of benefiting low and moderate income persons ... the placement of one purpose as more primary than another is neither consistent with the language of the statute, nor with the legislative history."[16] As a result, they insisted, the 75% standard must be dropped.

Several other Congressional members also registered their dissent. Five Senators and more than a dozen Representatives wrote Harris urging elimination of that provision.[17] Three House members claiming to represent a newly formed Suburban Caucus even threatened to take Harris to court to

block the action. And lest the intensity of these legislator's objections to the 75% rule be misread by the Secretary, Ashley followed up with a second letter to Harris warning her that failure to delete the 75% standard would lead him to conclude that the Department "believes it can legislate on its own. This is a very grave situation," he cautioned, "and one that I and many of my colleagues on the subcommittee will feel forced to explore with you."[18]

While HUD had intended to put the regulations into effect by year's end (1977), these plans were scuttled by the political controversy the rules had provoked. As HUD officials reopened internal debate on the issues, their attempts to reformulate the provisions were required to contend with a perilous political environment. Since the civil rights/ poverty coalition was no less a part of the bureaucratic constituency than were local officials, neither set of interests could be wholly ignored. Further, among Congressional interests activated by the proposals, many who argued both for and against HUD's stance held positions which afforded them control over the agency's programs and resources. In this contentious environment, officials recognized the political controversies would prove difficult to lay to rest.

Revisions in the Final Regulations

In the final version of these regulations, published 4 months later on March 1, 1978,[19] HUD failed to fully retract its administrative emphasis on low and moderate income provisions of the Act, reaffirming in the document's preface, "Our intention is to carry out the statutory objective of benefiting low and moderate income persons in a strong and committed fashion."[20] In response to allegations made by Ashley and others that HUD lacked legal authority to give greater weight to any one of the three

programmatic purposes, HUD remained adamant. "While this view has been fully considered," the regulations state, "it was concluded that a low and moderate income requirement is statutorily permissible."[21]

But while HUD was unyielding on its right to grant precedence to the low and moderate income aim of the program, and on its right to test local programs for their fealty to the primary objective of the Act, HUD was prompted by the weight of political opposition to back down from its insistence that each local program must in each year meet the 75% low income benefit standard if its grant application was to be approved. In order to temper political opposition to its low income targeting strategy, HUD was forced to withdraw the 75% standard as an absolute enforceable legal requirement, and to opt instead to employ a system of administrative incentives to prod localities to meet the 75% low income benefit goal. The administrative strategy HUD elected to adopt in its final rules worked in the following way.

Before any annual grant allocation could be released to a locality, the locality's annual program of planned expenditures (submitted as part of its application packet) was to be subject for the first time in the program's history to a substantive "program as a whole" benefits test. HUD area offices were instructed as part of their application review responsibilities to conduct a detailed line by line, project by project analysis to determine who would benefit from each of the activities slated for local action that coming year. Having done so, they were to sum up the share of grant benefits that would be directed to low and moderate income persons and adjudge whether the annual local program, taken as a whole, could be considered to "principally benefit" low and moderate income persons as specified in the primary objective of the Act. If the

locality's annual plan for the use of the grant failed to pass the "program as a whole" "principally benefits" test, its annual grant allotment was not to be released. In effect this "principally benefits" test amounted to a general imposition of a 50% floor on the level of benefits to be directed annually to lower income groups if a locality's application was to be approved. Thus HUD had, as an absolute enforceable program requirement, effectively reduced the minimum degree of targeting it would accept from 75 to 50%.

But HUD persisted in its efforts to induce localities to attain a higher level of redistribution by using its administrative powers in a different way. In the final rules, HUD did institute a system of administrative incentives specifically designed to prod localities to reach the higher 75% low income benefit level HUD officials favored. If, in the 3 year CD plan which accompanied its annual proposed program for use of CD funds, a locality could, in a general sense, demonstrate its intention to meet the higher 75% low income benefit level over the course of the three year period, it would be presumed to have met the "program as a whole" benefit test, and thus would be spared the necessity to undergo (during that time span) the detailed in depth annual benefits review.

The incentive being offered to localities meeting the higher benefit standard was the promise of an abbreviated, less time consuming front-end grant review. Given that HUD's "program as a whole" benefits analysis was to involve interviews with local project officials, close scrutiny of each project or activities' files and documents, and an assessment of the extent to which localities were responding to the requests made by low income constituents in drafting their annual plan, adherence to the 75% low-income-benefit target would serve both to significantly reduce the

grantee's paperwork burden and to expedite the flow of funds from federal to local hands. Under these new administrative arrangements then, what had earlier been slated as an absolute compliance standard of 75% had now been converted to an administrative review standard - a benchmark that would be used as a threshold, triggering (for those falling below it) the imposition of a more intrusive, and in a sense more punitive, federal application review.

In its final regulations, HUD also modified its prescribed method for counting low income benefits, in an effort to make it easier for jurisdictions with "scattered poor" to comply with the targeting standards set forth in the new rules. In a significant concession to suburbs, sunbelt cities, and urban counties, the revised regulations permitted the costs of "area benefit" projects to be applied toward meeting both the "principally benefits" standard (construed as the 50% benefit floor) and the 75% benefits threshold, even if the projects were sited in census tracts lacking a majority low income populace. However this exemption from the normal low-income benefit counting rule was still treated as a special exception; its utilization tightly restricted to only those instances in which certain criteria applied: the locality making use of this exception must have few or no census tracts in which the poor constituted a majority populations, the project must still be sited in those census tracts where the highest concentrations of low income constituents resided, and the project still had to be designed so as to truly serve the low income residents' needs.

By making these modifications in the regulations, HUD sought to advance its goal of inducing localities to devote 75% of their grant funds to the poor while at the same time tempering political opposition rooted in

the contention that the original 75% requirement was too stringent and too rigid. Provided localities could demonstrate that their distribution of grant funds did "principally benefit" the poor (by meeting the implied 50% benefit floor), grantees could earmark less than 75% of their funds to the poor and still have their grants approved, though they would have to accept the "penalty" of greater federal scrutiny and questioning of the propriety of project activities that would ensue. In altering the regulations in this way, and providing the "exception" category for smaller grantee jurisdictions, HUD sought to retain the basic thrust of its original targeting strategy while allowing "a reasonable measure of flexibility and responsiveness to varied local circumstances."[22]

Response to the Revised Regulations

The modifications reflected in the final rules delighted local officials, who, in general, felt the changes rendered the low and moderate income provisions flexible enough for them to accept. Predictably, those on the other side of the issue were not so content. Proxmire and the civil rights/poverty coalition notified Harris of their disappointment with the conversion of the 75% standard, but they felt, nonetheless, they had scored a partial victory. The program would now place a significantly greater degree of emphasis on the needs of the poor than was evident under the old Ford Administration policies. Initially it appeared that through the compromises instituted in the final rules, Harris and HUD officials had succeeded in mollifying the contending parties and in laying the targeting controversies to rest. But less than two months after the revisions had been made public, intransigent opponents in the House of Representatives initiated legislative actions that provoked yet another round of programmatic disputes.

In the Spring of 1978, it had been expected that the housing legislation introduced that year in the House and Senate would not address any substantive issues regarding CDBG program, nor attempt to alter the compromises in the legislative language of the 1977 Act forged in the Conference Committee just a few months before. But in April of 1978, only a month after HUD's revised regulations had been issued, Representative Garry Brown proposed a set of changes in the House Subcommittee draft of its housing bill which drastically altered these expectations and transformed the 1978 legislative process into a virtual rerun of the 1977 debates.

House Actions on the 1978 Act

Brown was absolutely unyielding in his opposition to Harris's continued emphasis on low and moderate income aim of the program. In an attempt to force HUD into an even greater retreat on the low and moderate income benefit issue than that which had already occurred, he proposed amendments to the 1978 bill that would effectively preempt HUD efforts to put the new targeting regulations into effect. Specifically, Brown urged the Subcommittee to accept new language stipulating that the three purposes of the program set forth in Section 104(c) of the Act - benefiting low and moderate income persons, preventing or eliminating slums and blight, and meeting other urgent needs - were to be treated as "primary and coequal purposes" (emphasis added).[23] Moreover, Brown sought to cripple HUD's strategy of employing its application disapproval powers as a means of enforcing local low-income targeting by mandating the "the Secretary may not disapprove an application on the basis that such application addresses any of the [three] primary purposes to a greater or lesser degree than any other".[24]

With the assent of the vast majority of the Housing Subcommittee members, the Brown proposals were incorporated into the official text of the 1978 legislative draft. In the full Committee Report on the House bill, even formerly neutral members of the committee joined Brown in expressing opposition to the administrative approach inherent in the new regulations. "The basic thrust of the amendments," the report states "is to assure that the Secretary make a determination to disapprove an application based on the community's individual circumstances, not against an artificial standard of how best to use CD funds."[25] Reiterating the House's original contention that the Act's overriding aim was to shift programmatic control from federal to local hands, the report notes, "The statute leaves the responsibility for determining which of these [three] priorities should be emphasized to the [local] community."[26] These legislative changes were given the full weight of the House when they were adopted by that body mid-summer of that year by a vote of 170-26. (Yet ironically while these amendments effectively touted a new position of coequality among three purposes, the "primary objective" language of Section 101 of the Act was left untouched.)

House Actions to Rein in the Bureaucracy

As the substantive programmatic changes Brown was promoting were advancing through the legislative steps toward adoption by the House, it was clear that this new CDBG language constituted a threat to HUD's ability to administer the program as the final rules had proposed. But at the same time a far more powerful and broad-ranging threat to the agency was evolving as a result of a second set of amendments to the bill which Brown had also proposed. As a direct consequence of the House's CDBG disputes with HUD, Brown has authored a proposal to drastically alter the normal

process by which program rules and regulations were made.

Typically, the bureaucracy is the preeminent power in rulemaking. Through the constitutionally-supported principle of "delegation of (legislative) authority" Congress grants the bureaucracy the authority to promulgate formal administrative rules (rules having the full force of the law) which fill in the gaps left by the legislation and which implement the legislation's (therefore Congress's) intent. The only formal congressional checks on bureaucratic authority in this regard come via Congressional efforts to nullify rules by securing changes in the legislative statue for which the rules were drawn. (Informally, of course, Congress has other channels of influence over bureaucratic activities.) At the same time Brown was acting to force revision in the content of the new CDBG rules through the enactment of formal legislative changes, he was also proposing a new system of Congressional rulemaking restraints, specifically aimed at HUD, in an attempt to rein in the agency's broad regulatory powers.

As the 1978 legislation was being considered on the floor of the House, Brown offered up an amendment to the legislation aimed at granting the Congress broad new authority to exercise direct veto power over the content of HUD's programmatic rules. Known as a "one-house legislative veto," provision, this amendment sought to endow either chamber of Congress with the authority to act unilaterally to block implementation of HUD regulations, which it believed ran contrary to Congressional intent. Under the one-house legislative veto provision, HUD would be required to directly submit to the relevant Committees in both the House and the Senate any formal rules it issued in the Federal Register at the same time they were published. Furthermore, HUD would automatically be prohibited from putting the rules into effect. The rules were to be held up for a period of 90

days of continuous Congressional session to enable Congress to review the appropriateness of their content. During this review period, either Chamber of the legislature would be empowered to permanently veto the regulations by enacting a simple resolution of disapproval backed by a majority of that Chamber's votes. The one-house regulatory veto process had been adopted by Congress before, to strengthen its hand in dealing with other agencies, but only rarely. Brown's proposal to apply it to HUD agency actions, and to force its utilization in all of HUD's program areas, was a sign of just how grave a matter House agency disputes over CDBG regulations had become.

During the floor debate on the amendment, Brown accused HUD of making "legislation by regulation" and charged the agency with enacting regulations which persistently defied the intent of Congress. Drawing reference to his other set of legislative proposals to substantially change the CDBG legislation in order to nullify the new CD rules, Brown argued "Congress should not be forced to reenact the same legislation year after year simply because the administration does not like the law the way it is written."[28]

While several powerful members of the Housing Subcommittee had joined with Brown in his attempt to make specific legislative changes which would block HUD's new regulations, some, like Subcommittee Chairman Ashley, opposed him on this broad rulemaking reform. Ashley called the one house veto provision a "classical case of overkill"[29] and asserted there were other ways to correct what they saw as HUD's defiance. Ashley warned of the serious burdens the veto would place on members of Congress who would be required to oversee innumerable details of the agency's operations. Another who had backed Brown's substantive language revisions in the CD

legislation, John Sieberling, argued that one house veto would pose another kind of danger. He warned that the unilateral action allowed each chamber under the veto provision would prompt each chamber to revert to its original stance on a disputed legislative provision, thereby nullifying the effect of any successful Conference Committee compromises.

While these arguments were persuasive to some members, in the end, Brown prevailed. Too many House members had been angered by the original Harris rules proposals, and inattentive to the significant concessions made in the final version which had followed their rebukes. By an astonishingly wide margin of 244-140, the House voted to add the one-house veto to its 1978 bill.

Senate Actions on the 1978 Legislation

Key Senate actors, in the meantime, were notably incensed by the unexpected actions in the House. In light of the House's acceptance of the 1977 Conference Report language and the significant concessions contained in HUD's revisions of the CDBG rules, many Senators had falsely believed the targeting disputes had finally been quelled. But as Brown's amendments to the 1978 House bill gained momentum, the Senate actors prepared once again to assert their contrary visions of the Act's true legislative intent.

As the chamber's Banking Committee drafted the Senate version of the 1978 bill, Proxmire proposed revisions in the CDBG legislation to even more tightly constrain the eligibility of slums and blight projects. By further impairing local use of "slums and blight" rationale for projects, Proxmire hoped to induce greater local expenditures on projects meeting low and moderate income needs. His proposals were a direct attempt to counteract Brown's "coequality" language, but they were ultimately dropped from the

bill during mark-up because of confusion over their meaning.

While this particular attempt to counter the Brown-authored changes proved unsuccessful, the Senate Committee did, nevertheless, repudiate the coequality language and the restrictions on HUD's application-disapproval powers by consciously omitting counterpart provisions from the text of the 1978 bill.

As the Senate Bill moved from the Committee to the full chamber in late July, the second issue of imposing a one-house veto on HUD-set regulations came to the fore. Senator Harrison Schmitt, a minority member of the Banking Committee lay before the full Senate a one-house veto amendment to the HUD legislation similar to that which Brown had proposed in the House. But Senate members exhibited far grater confidence in HUD's capacity to accurately implement their legislative intent by roundly defeating the amendment.

With the Senate version now lacking both the substantive changes in the CDBG purposes, and the more stringent one-house veto provision which had been accepted by the House, the full text of the 1978 Senate bill received the overwhelming endorsement of that body as it was adopted by the Senate 81-3. Once again, the major issues regarding CD policies were thrown into a House-Senate Conference Committee for resolution.

Conference Action on the 1978 Legislation

The Conference committee that convened in mid-August was profuse with members of both the House and the Senate who were veterans of past attempts to resolve CE disputes. Of the 20 conferees, all but two had sat on the Conference Committee responsible for the language of the 1977 Act. Moreover, more than half of the conferees (and all of the most senior participants) had taken part in the 1974 Conference which shaped the

original CDBG Act. Once again, the stage was set for reenactment of the earlier CD debates.

Though the Conference was required to reach agreement on a sizeable number of non-CD issues in contention, the CD disputes proved the toughest for the Conference to resolve. The arguments traded over CD questions were now familiar ones. Proxmire, representing the Senate view, held firm against acceptance of the "coequality" language on the grounds that it would transform the program into little more than a general revenue sharing bill. And Brown, as a standard-bearer of the House perspective, continued to adhere to the view that local discretion was the true cornerstone of the program, and that HUD intervention into local priority-setting activities must be condemned as an unwarranted intrusion, impairing the program's adaptation to varied local needs. The disputes over the substantive program revisions and the one-house veto amendment continued to block finalization of Conference Report language for two full months. As occurred in both 1974 and 77, the CD portions of the legislation fell victim to stalemate until the waning days of the Congressional session.

Mirroring the circumstances which broke stalemates in the earlier CD legislation, strong pressures began to be placed on the Committee to reach compromises enabling passage of the legislation before the Congress adjourned. Forced into a marathon round-the-clock session just three days prior to the close of the Congressional term, the Committee emerged with a final compromise report. The resulting bill, the "Housing and Community Development Amendments of 1978," was voted into law by both the House and the Senate during the last two days of the 95th Congress.[30]

The Institution of Legislative Review and Veto Mechanism

In the final version of the legislation, the legislative veto

provision had found acceptance, although in a format far less threatening to HUD than that which had originally been accepted by the House. In place of the legislative veto provision that Brown had advocated, an alternative arrangement for a two-house legislative veto had been enacted into law. Under the 1978 Act's provisions, the two house regulatory review and veto process (known as the 7(o) procedure) was to operate in the following way.

Where the Authorization Committee of either chamber of the Congress expressed interest in scrutinizing the formal administrative rules HUD intended to propose, the agency was required to submit the full text of the rules to each Committee for Congressional review. Once submitted, HUD was then permitted to publish the rules in the Federal Register, but was automatically precluded from putting the rules into effect before a specified Congressional review period had passed. Unless waivers to the delay period were granted by the Chairs of both House and Senate Authorization Committees, the rules would be held in suspension for a period of 35 days of continuous Congressional session to afford the Committees time in which to weigh their appropriateness and to initiate veto action if they were deemed contrary to Congressional intent.

But unlike the House version of the legislative veto provision, neither Chamber would be empowered to act unilaterally to permanently veto the proposed rules. In order to block HUD's rule proposal, a resolution of disapproval would have to find acceptance in both the Senate and the House. In this sense, the 7(o) legislative veto provision enacted into law fell short of granting the Congress the sweeping powers to dominate agency rulemaking to the degree the House had earlier sought. Given the requirement for joint House-Senate action, legislative veto of HUD regulations would only be prone to succeed in those instances where dissent

from HUD's interpretation of the law was widely shared.

But neither was the 7(o) procedure a toothless mechanism. While legislative veto required joint action, each Committee of the Congress was still afforded greater leverage over the contents of HUD rules via their unilateral power to prolong the process of regulatory review. Unless waivers were granted by both Committee chairs, the rules would automatically be held in suspension for a period of 35 days of continuous Congressional session; a period which, given Congressional recesses and adjournments could extend in calendar time for several weeks or months. The 7(o) procedures thus promised to cause greater headaches for HUD rulemakers. Requirements for direct submission of HUD rules to legislative overseers would assuredly produce closer Congressional scrutiny of their implementation efforts. Moreover, HUD would be compelled (at least in theory) to be more attentive to Committee preferences if they were to avoid significant administrative delays.

Compromises on the Substantive Provisions of the 1978 Act

While these final compromises on the legislative veto issue were quite clear and straightforward, the final compromises on the substantive issues of CD policy were far less lucid and direct. As had been the case with the 1974 and 77 legislation, the difficulties inherent in resolving hotly contested issues under intense time pressures had taken their toll on the 1978 Act.

The compromises forged in this difficult political environment were so muddled as to be nearly unintelligible. The only clear outcome was that the "coequality" language Brown had sought to inject into the legislation had been dropped. But the legislative wording accepted in lieu of the "coequality" provision only compounded the confusion surrounding the true

purposes of the CD program and their relative importance in HUD's administration of the CDBG Act.

The final legislative text in Section 104 carried over the new reference first made in the 1977 legislation to the three "primary purposes" (plural) of the program -- benefiting low and moderate income persons, preventing or eliminating slums and blight, and meeting other urgent community development needs (needs which in the 1977 law were now more stringently defined). Inherent in this reference to the program's "primary purposes" was the notion that, coequality aside, there were three legitimate national purposes which local grants could be used to address. Yet at the same time the legislative reference to a singular "primary objective" of the program -- "the development of viable urban communities ... principally for persons of low and moderate income" was left intact in Section 101.

And as if these divergent provisions alone were not perplexing enough for HUD to use as a guide to administrative policy, the remainder of Section 104 added new and muddled directives regarding HUD's use of its application disapproval powers. Nowhere is the indeterminant nature of the 1978 CD compromises more clearly apparent than in the text of this new legislative clause:

> The Secretary may not disapprove an application on the basis that such application addresses any one of the primary purposes ... to a greater degree than any other, except that such application may be disapproved if the Secretary determines that the extent to which a primary purpose is addressed is plainly inappropriate to meeting the needs and objectives which are consistent with the community's efforts to achieve the primary objective of this title.[31]

The first portion of the clause is a direct descendant of the House stance that there were three national objectives of the CD program among

which localities should be free to choose --- low and moderate income benefit was only one of the three options. But the second portion of the clause represents the antithetical perspective held by the Senate. In this view, the primary objective of principally benefiting low and moderate income persons remained the supreme purpose of the program, and HUD was to assess whether local programs were clearly in conformance with this overriding programmatic intent.

While in normal cases the Conference report which accompanies compromise legislation serves to clarify ambiguous elements in its companion law, the 1978 Conference Report did little to illuminate the true meaning of the convoluted provisions the Act contained.

On the one hand the conferees asserted in the report that each applicant community was responsible for developing a program "which over a three year period meets [its identified CD] needs while principally benefiting low and moderate income persons." Moreover it stressed HUD's statutory responsibility to assure that this occurred. "The Secretary's review of each application," the language notes "is a review to determine whether the activities designated by the community in its 3 year plan <u>are</u> designed to achieve the overall objective [primary objective] of the program." (emphasis added)[32]

On the other hand, the report at the same time seemed to adopt a counterpoising view. "The amendment is designed to make clear" the conferees claimed, "that a [HUD] determination to disapprove [an application] cannot be made simply because an application gives greater weight to one spending priority [of the three cited] in relation to the others."[33] And in a further attempt to hold HUD to this non-preferential view, the report prohibited use of a national benefits standard -- "any

percentage limit on the level of funds to be allocated shall be strictly avoided." But in an addendum which would generate additional confusion over HUD's role, the ban contained a qualifier. Use of a percentage limit was to be avoided the report notes, "except for review purposes."

HUD's Response to the New Legislation

Soon after the 1978 legislation was signed into law by President Carter on October 31, top HUD officials began to assess the implications of the legislation for the administrative operations of the CD program. While the original House position had posed a serious threat to the way Secretary Harris had proposed to run the program, the compromise forced by the Senate served to shelter the agency from the most potentially damaging changes to the CD Act.

Despite the Act's language prohibiting HUD from disapproving applications for simply favoring one CD purpose over another, HUD staff felt the basic legitimacy of their emphasis on low and moderate income beneficiaries had been upheld. As evidence they pointed to the Senate's success in securing both the deletion of coequality language and a reaffirmation of the importance of the primary objective of the Act.

Furthermore, while duly noting the House's success in banning the use of percentage limits as strict compliance standards, they observed that in writing their March 1978 regulations, they had not imposed any strict percentage compliance standards in the rules. The 50% floor on the level of low income benefits was not written into the regulations, only implied in the nature of the "program as a whole" "principally benefits" test. Moreover, the precise 75% standard they had set forth in the regulations was not a "compliance standard" but an administrative review standard which according to the Conference language would be allowed. Thus they believed

that in creating the new rules for implementation of the new 1978 Act, it would be possible for them to proceed with the administrative targeting strategy fundamentally as they had proposed to do in their old revised rules issued in March of 1978.

Creation of An Application Review Handbook

Having carefully reviewed the October 1978 legislation, HUD officials were now convinced that as a result of the paradoxical language, the legislation would not prove a major impediment to their pursuit of their chosen targeting strategy. As a consequence, they temporarily deflected their attention from submitting regulations designed to implement the new 1978 Act to other administrative tasks.

HUD officials were eager to put in place the internal administrative mechanisms through which Area Offices would clearly be informed of the nature of their new application review responsibilities, and to have the new internal procedures finalized before the bulk of local applications arrived in April 1979. They therefore turned their attention in the period from November 1978 to March 1979 to the tasks of compiling, for the first time in the program's history, a comprehensive handbook specifying how application reviews were to be carried out.

The handbook issued on March 29, 1979, set forth the strategy Area Offices were to use in analyzing local programs for their conformity with the primary objective of the Act. It contained the counting rules on project benefits that had been specified in the March 1978 regulations, and the review standards that were to be applied in conducting the "program as a whole" "principally benefits" reviews.

If the locality had earmarked at least 75% of its 3 year grant allocation for low-income benefit projects, the Area Office was to presume

the locality had met the "principally benefits" test, and was to exempt the locality from more stringent, project by project, front-end benefits reviews. If either the locality's annual or 3 year plan earmarked between 50 and 75% of funds for low income benefit, more lengthy front-end reviews would be triggered. If a locality in either its annual or 3 year plan proposed to spend less than 50% of its grant funds on low income benefit projects, the application was to be neither approved nor disapproved at the Area Office level. Instead it was to be forwarded to the Central Office where even more intensive reviews for local fealty to the primary objective mandate would be undertaken. The final judgment regarding these grant applications could only be rendered by central headquarters staff.

There was little outcry when HUD issued its application review handbook, but when HUD attempted to make very minor revisions in the CD regulations to bring them into conformity with the handbook contents, the CD disputes heated up once again. On April 23, 1979, Harris sent copies of the new draft regulations to the House and Senate committees, both of which had formally notified HUD under the new 7(o) procedures of their intent to review the provisions. While the Senate committee gave the nod of approval to the draft regulations, the House quickly registered its dissent.

House committee staff members charged HUD with devising regulations which once again defied the true Congressional intent. The Committee staff argued that the 1978 Conference Report was explicit in its prohibition of the use of percentage standards in CD application reviews. HUD staff, on the other hand countered that the prohibition applied only to standards which determine automatic non-compliance, not to review guidelines which HUD had proposed. While HUD officials were convinced that the provisions were legally defensible, they did not relish the thought of another round

of battles with the House. As a result, HUD officials decided to temporarily withdraw the regulations (to halt original plans to formally publish them) while they decided upon their next move.

During the next two months, agency officials explored their regulatory options. None proved very attractive. One option, publishing the draft intact as a proposed rule, would in all likelihood trigger another round of Congressional activity similar to that which had yielded threats to HUD's autonomy in 1978. Another option was to undertake yet another lengthy process of redrafting the regulations to accommodate House critics. Pursuing this course, however, would consume a significant share of the agency's time and attention with no real promise that such an effort would succeed. HUD's final option was to circumvent the regulatory process altogether by withholding the regulations and relying on internal directives (in the form of the handbook and memos to the field) to continue to implement their preferred targeting policies.

By default, this final course of action came to be the one HUD officials pursued. While a final decision regarding what to do about House objections was expected from the Secretary in July of 1979, before the month drew to a close Harris had resigned her post to accept an appointment as Secretary of the Department of Health, Education, and Welfare. Two more months passed before Harris's successor, Mayor Moon Landrieu, was confirmed as head of the agency. By that time, other important CDBG policy issues had begun to eclipse the low income targeting issue as an object of primary concern in the House.

A recent GAO study had revealed that the rate at which localities were actually drawing down the funds they had been allotted under the CDBG program was alarmingly low, indicating the existence of a sizeable backlog

of local projects that were failing to get off the ground. Moreover, GAO was severely critical of the HUD agency for failing to adequately monitor the speed and effectiveness with which localities were executing the projects they had planned, and to apply penalties where deficiencies were unveiled. Concerned that continued poor local performance in implementing grant activities would undermine support for the block grant program, the House left the issue of low income targeting in the background, and concentrated instead on efforts to prompt HUD to improve its oversight of local grant recipients in this important area.

As a result, HUD made no attempt to issue new regulations related to targeting. Throughout 1979 and 1980, HUD continued to make use of its application review handbook to enforce local adherence to the redistributive aim of the Act, and localities responded by realigning their priorities to more heavily direct grant resources to low income groups. During this period, more than 2/3 of all entitlement grant recipients opted to meet the 75% benefit threshold. In the absence of further Congressional pressures, low-income targeting of program became a non-issue, but only until the rise to power of the Reagan Administration in 1981.

Chapter 6 Footnotes

1. U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, Hearings on the Housing and Community Development Legislation of 1977, 95th Congress, 1st session, April 19, 1977, p. 121.

2. U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, Report 95-175: To Accompany S.1523, The Housing and Community Development Act of 1977, 95th Congress, 1st session, ordered printed May 16, 1977.

3. U.S. Congress, House Committee on Banking, Finance and Urban Affairs, Report 95-236: To Accompany H.R. 6655, The Housing and Community Development Act of 1977, 95th Congress, 1st session, ordered printed May 2, 1977.

4. Federal Register, Vol. 42, October 25, 1977, pp. 56450-56481.

5. Ibid., p. 56466.

6. Ibid., p. 56475.

7. Ibid., p. 56467.

8. Letter from National Community Development Association regarding rules proposed 10/25/77, HUD Docket File 77-471.

9. Letter from National League of Cities regarding rules proposed 10/25/77, HUD Docket File 77-471.

10. Letter from U.S. Conference of Mayors regarding rules proposed 10/25/77, HUD Docket File 77-471.

11. Letter from National League of Cities regarding rules proposed 10/25/77, HUD Docket File 77-471.

12. Letter from National Urban League regarding rules proposed 10/25/77, HUD Docket File 77-471.

13. Letter from Senators William Proxmire and Edward Brooke to Secretary Harris, November 17, 1977.

14. Ibid.

15. Ibid.

16. Letter from Representatives Thomas Ashley and Garry Brown to Secretary Harris, November 4, 1977.

17. Note: among Senate and House members who authored the letters, the group was about equally composed of Democrats and Republicans.

18. Letter from Representative Thomas Ashley to Secretary Harris, December 6, 1977.

19. Federal Register, Vol. 43, March 1, 1978, pp. 8450-8474.

20. Ibid., p. 8451.

21. Ibid., p. 8451.

22. Ibid., p. 8451.

23. U.S. Congress, House, H.R. 12433: The House and Community Development Amendments of 1978, 95th Congress, 2nd session.

24. Ibid.

25. U.S. Congress, House Committee on Banking, Finance and Urban Affairs, Report 95-1161 to Accompany H.R. 12433, The Housing and Community Development Amendments of 1978, 95th Congress, 2nd session, ordered printed May 15, 1978.

26. Ibid.

27. Congressional Record-House, June 29, 1978, p. 19471.

28. Ibid., p. 19471.

29. Ibid., p. 19473.

30. Housing and Community Development Amendments of 1978, Public Law 95-557.

31. Ibid.

32. U.S. Congress, Conference Report to Accompany the Housing and Community Development Amendments of 1978, 95th Congress, 2nd session.

33. Ibid.

CHAPTER 7: POLITICAL REALIGNMENTS AND POLICY CHANGE: THE REAGAN ADMINISTRATION'S MOVE TOWARD REVENUE SHARING

From mid 1979 to 1981 these disputes over guidelines for the CDBG program appeared to have been quelled. In the absence of persistent open challenges to the softened low income targeting policies instituted by Embry and Harris in 1979, the program entered, at least with respect to that central issue, a period of relative calm. But political events centered around the 1980 elections conspired to shatter the uneasy settlements reached in that earlier era. The 1980 elections brought changes in the set of key political actors holding prime responsibilities for programmatic policies both in the Administration and in Congress. With the landslide election of Ronald Reagan to the Presidency, and concurrent changes in House and Senate composition, the stage was set for a reopening of past disputes over CDBG guidelines - disputes which again came to center around the persisting conflict in the legislation. Did the legislation mandate priority emphasis on serving the needs of the nation's poor, or did it grant localities free rein to choose among the three elements of the maximum feasible priority clause.

Changes in Key Actors in the Senate

In the aftermath of the 1980 elections, Republicans supplanted Democrats as the controlling party in the Senate. Having wrested 33 Senate seats from Democratic hands, the Republicans assumed majority status on that body for the first time since 1955. The realignment brought about significant changes in Committee and Subcommittee leadership, as well shifts in the relative power wielded by various political factions involved in CDBG disputes. Democrats lost their controlling interest over Committee

and Subcommittee matters. Moreover, chairmanship of Senate Committees and Subcommittees passed into Republican hands. Chairmanship of the Subcommittee responsible for community development issues was assumed by Richard Lugar, former mayor of Indianapolis and a well-known conservative with close ties to the new Reagan Administration. Second in rank in the Republican subcommittee was Senator Jake Garn, a close ally of Lugar's, whose new position as head of the full Banking Committee lent his views particular weight in subcommittee deliberations. Like Lugar, Garn had held office as mayor (of Salt Lake City), an experience which had left the two with similar perspectives on CDBG issues.

Gone from the Senate Republican contingent was the more liberal influence of senior Senator Ed Brooke, whose alliance with ranking Democrat William Proxmire had lent their shared view of the CDBG program's "rightful" emphasis on the poor such strong weight in the 1977-78 round of policy disputes. With Brooke's defeat in 1978, the Senate subcommittee of the new Congress lacked the bipartisan leadership alliance on CDBG issues which had solidly shaped the Senate's position on CDBG issues in both the Carter and Ford years. In the absence of Senator Brooke, the new subcommittee now retained only a single Republican Senator who had participated in the original passage of the CD Act in 1974, though four of the six Republican subcommittee members had engaged in CDBG deliberations during the 1977 and 1978 legislation sessions.

Among Senate Democrats, leadership on CD issues changed very little. While Senator Harrison Williams replaced Proxmire as titular head of both the Subcommittee and full Committee, his preoccupation with issues regarding his involvement in the Abscam scandal left Proxmire (the second-most senior minority member) in a position to continue wielding significant

power over Democratic positions on the CDBG program in the ensuing period. Moreover, three of the five remaining subcommittee members had held subcommittee positions at the time of the Act's original passage. All had been involved in subcommittee work on the 1977 and 1978 bills. On the Democratic side of the aisle in the Senate, then, continuity in their positions on CDBG issues was fairly well assured.

House Subcommittee Changes

While the Democrats did not suffer a comparable loss of their majority status in the House chamber, electoral instability had by 1981 produced changes in Subcommittee composition nonetheless -- changes which had significant impact in altering the cast of CD-linked activists on both Republican and Democratic sides. Now gone from the Congress were both key members of the strong alliance which had so vigorously opposed the low income emphasis in the CDBG program during the Carter term. Democratic Subcommittee Chairman Lud Ashley, and ranking Republican minority member Garry Brown, each of whom had played major roles in the forging of the original 1974 Act and in the policy disputes of subsequent years, had suffered loss of their seats -- Ashley in 1980, Brown in late 1978. As a result, the key positions of authority in the House Subcommittee now passed into new hands.

On the Democratic side, Chairmanship of the Subcommittee was assumed by Representative Henry Gonzalez of Texas. Like Ashley who had preceded him, Gonzalez shared a history of Subcommittee involvement in CDBG legislation dating back to its original passage in 1974. But Gonzalez, as would later become quite clear, held a view of that program more akin to that of Proxmire/Brooke than to that espoused by Ashley and Brown. Though his personal views of the mandates contained in the CDBG legislation had

been stifled by Ashley's strong control over Democratic Subcommittee members (in the words of one Subcommittee staff member, "Ashley's view was the Committee's view... Ashley was a very powerful chairman").[1] Gonzalez's new position as head of the Subcommittee would grant him latitude to rechart the Houses's former policy course.

The position of second in rank on the Democratic side of the Subcommittee fell to Fernand St. Germain, who also now held the Chairmanship of the full Banking Committee. Like Gonzalez, St. Germain had deferred to Ashley's interpretations of CDBG legislation. But in the newly inaugurated Congress, he was to prove a strong supporter of Gonzalez's CDBG views. Of the 19 person Democratic Subcommittee contingent, only Gonzalez and St. Germain were veterans of the original 1974 legislative deliberations, though the majority had become familiar with key issues through deliberations over program amendments in 1977 and 78.

On the minority side of the House Subcommittee, Congressional instability yielded significant change as well. The defeat of Garry Brown in 1978 had left a major leadership void on the Republican side of the aisle. Representative William Stanton now held Brown's former post as ranking minority member. Like Brown, Stanton's involvement with the CD legislation dated back to its original passage in 1974. But while Stanton shared Brown's perspectives on the program, he lacked the intensity of conviction and strong impulse toward programmatic stewardship (aimed in the direction of revenue sharing) which Brown had persistently manifest.[2] Of the remaining 12 subcommittee Republicans, none had held their positions in 1974, and only three -- Wylie, McKinney and Evans, had even served on the Subcommittee in 1977 and 78. In short, their lack of familiarity with the program's history, and a slackening in the depth of interest in

programmatic affairs rendered Subcommittee Republicans a lesser force in the events following the 1980 elections.

While the changes the 1980 election wrought within the Congress would prove to have great significance for the dispute over CDBG rules and regulations which was to ensue, none of the changes in the Congress even approached in significance the impact on program directions felt as a result of the ascendance of Ronald Reagan to the Presidency. Campaigning on a platform of a diminished role for the federal government in societal affairs, Reagan won a landslide victory over the incumbent Carter Administration in 1980. The general theme Reagan had adopted of deregulation of national programs began to leave its impact on the Department of Housing and Urban Development even before key personnel appointments within the agency had been made.

Forces of Influence on the New Administration: New Voices or Old?

While the new Administration took no action to revise CDBG guidelines until May of 1981, the seeds of a shift in administrative policy had been sown even before new staffing appointments for the Department of Housing and Urban Development had been made. In preparation for the transition to a new Republican Administration, the Heritage Foundation, a conservative think tank in Washington, had prepared a voluminous document entitled "A Mandate for Leadership."[3] Designed to serve as a blueprint for the new Administration, the document set forth proposals for implementing a new conservative domestic policy agenda. Devoting a chapter to each federal agency, the report contained specific recommendations for policy change in each of the major domestic programs that agency administered. Included in the chapter on HUD programs were proposals to alter the programmatic orientation of CDBG.

The segments devoted to CDBG policy were highly critical of the reforms the Carter Administration had put in place, reiterating in near verbatim terms the arguments made in opposition to those efforts in earlier years. Echoing in the language employed in the passages were vestiges of the prior policy disputes over two central program issues -- priority to assuring overall benefit to low and moderate income people vs. free local choice, and a mandate for a strong national role in overseeing program operations vs. a "hands off" revenue sharing approach. There was little question as to where the report stood on these issues.

"Unfortunately, over the last 3 1/2 years," the report maintains, "the [CDBG] program has been altered drastically through administrative actions which would not have been acceptable to the Congress" (emphasis added).[4] "its stated purpose ... was to provide local governments with a stable flow of funds based on ... the principle of general revenue sharing. CDBG was intended to enhance local government's flexibility and reduce federal intervention."[5]

If this language bore a striking resemblance to rhetoric voiced during the acrimonious debates over guideline policies during the Ford and Carter eras it was no accident. Among the handful of individuals responsible for the section's contents were two key figures from the program's past: Warren Butler, former Deputy Assistant Secretary of the program's division under Ford, who had framed the initial guidelines for the CDBG program, and former Representative Garry Brown, the most vociferous opponent of the Carter policies in the Congress. Arguing that "the principal deficiency of existing policies ... (is) excessive federal control and intervention,"[6] the report urged immediate action to restore local flexibility through "deregulation of the Community Development Block Grant."[7]

The report had great influence on those ascending to power in the White House. Among Reagan's key advisors the document assumed the status of a kind of Bible to guide the transition teams for federal agencies. Within weeks of the inauguration, copies were forwarded by Reagan staff to the Community Planning and Development division at HUD, with indications that these were the new directions to be charted for the program in the post-inaugural period. Soon after Samuel Pierce was appointed as the new Secretary of the Department, efforts to prepare for a shift in CDBG policy were underway. Following the suggestions contained in the report, HUD efforts focused on securing changes in the program via two independent routes: through new legislation and through revision in administrative guidelines governing program operations.

A Shift in Administrative Guidelines

Paralleling the efforts of the Carter Administration officials which had preceded them, Reagan Administration appointees within the agency moved swiftly to lay the groundwork for revising the guidelines under which the CDBG program was being administered. But despite this similarity in the timing of the course of events, the guideline revision process under Reagan differed markedly from that under Carter in its proximate cause. During the Carter Administration, the early clamor for revision in program directions had stemmed in part from concern that the critical studies of program administration and the revelations of program abuse which had been the focus of Senate hearings in 1976 were creating an atmosphere of scandal around the program -- one which officials feared could threaten its continued existence. A comparable atmosphere of impending crisis was notably absent at the outset of Reagan's term.

Moreover, as Carter Administration officials were assuming their

posts, they faced intense pressure to alter the program's directions from interest groups who formed a key segment of the program's constituency. The organizations which banded together to form the Working Group for CD Reform had manifest strong opposition to the way the program had been administered during the Ford years -- opposition which led them very early in Carter's term to mount an intense lobbying campaign to tighten program requirements particularly those aimed at targeting benefits to low and moderate income residents. In contrast, as Reagan officials were taking office, interest group dissatisfaction with existing Carter Administration guidelines in this area was minimal. Though interest groups representing city officials such as the U.S. Conference of Mayors, the National League of Cities and the National Association of Counties had taken a strong stance against Carter's targeting policies when they were first advanced, by 1981 their opposition to the more moderate approach ultimately employed under the Carter administration had in large part fallen away. As one local government interest group lobbyist explained

> Prior to the Administration offering the deregulation proposals, there was no great outcry from our membership about problems [with operating under the current system]. There were some who felt HUD held them up a little bit but we generally found that most did not have a great deal of difficulty complying [with the Carter requirements][8]

In contrast to the impulses which induced guideline change during the Carter era, the Reagan Administration efforts to recast guidelines for the program had their root in a much simpler set of forces -- the philosophy espoused by the President regarding the proper role of federal and local officials in the federal system. While philosophical perspectives on the proper balance in a block grant between enforcement of national program aims and grants of local discretion and flexibility did play a role in prompted guideline change during the Carter years, other forces (such as

direct interest group pressures and bureaucratic concern with the atmosphere of scandal which it was feared would erode political support for the program) appeared equally significant. But during the Reagan term, initial efforts to reformulate guidelines stemmed almost exclusively from a desire to bring the program in line with Presidential philosophies. In the words of one HUD official

> We had had a number of complaints from mayors [about HUD's policies under Carter] but it was not in a volume or intensity that in my mind would generate a rule change on its own ... this was guided by philosophy, very much so.[9]

Moreover, unlike the guideline changes during the Carter years, which had had their origin within the substantive program division at HUD, the new directions charted by the Reagan Administration were more closely orchestrated from the White House. Even before the appointment of Stephen Bollinger as a successor to Robert Embry as Assistant Secretary for CPD, actions were taken by Secretary Pierce's office, at the behest of White House actors, to forge new policies for the program's administration -- policies that would stress the themes of deregulation and maximum local choice.

Consonant with the Heritage Foundation report, Piece instructed CPD staff to prepare an analysis of deregulation options for the program. With an eye toward stripping the program down to its barest essentials, they were asked to identify areas where current administrative requirements could be lifted (via changes in the review handbooks, notices to the field, etc.) without attempting to amend the formal program regulations on the books -- a process which (under the new legislative oversight provisions added to the law in 1978) would induce a formal Congressional review of HUD actions. As a secondary task, the staff was also asked to identify where deregulation might take place by formally proposing new regulations without

seeking change in the present legislation.

At the same time, Pierce's office hired Heritage Foundation report contributor Warren Butler (former Deputy Assistant Secretary under Ford) to serve as a consultant on program deregulation. His assignment was to identify those revisions in handbooks, notices, and regulations made by the previous Administration which deviated from the administrative path charted during the Ford Administration's years. Moreover, he was charged with the task of identifying all administrative policies in the CDBG program which were, in his view, not unquestionably mandated by the existing statute.

Given the approach Butler had followed during his term at the agency, and the strength of his conviction that the primary objective language in the legislation regarding low and moderate income benefit had no substantive meaning as an operational requirement for the program, it was not surprising that the very first issue area addressed in his report touched on the low and moderate income benefit guidelines. Voicing the position held by administrators during the Ford Administration's era, Butler concluded, in his report, that "There is no statutory requirement that an applicant community's program, taken as a whole ... must provide a majority of benefits to low income persons."[10]

Moreover, Butler's report argued, the current system of reliance upon low and moderate income benefit standards (of 50 and 75%) as benchmarks in the review of local programs had led HUD field staff to make presumptive judgements about the legitimacy of the programs localities had constructed -judgements rooted solely in the degree to which localities directed benefits to the poor. Not only were these presumptive judgments not mandated by the statute, Butlers report asserted, they "may themselves be plainly inappropriate" under the directives of the Act.[11] As evidence he

cited the clause inserted in the 1978 statute which prohibited the Secretary from disapproving an application on the basis that it gave greater weight to anyone of the three "primary purposes" than any other, although he failed to add the Senate crafted caveat that was appended to that clause.

Implicit in Butler's analysis was the view that the Carter targeting strategy not only legally could be, but appropriately should be rescinded. As the legality of such a move to lift the targeting directives was not contradicted by the CPD staff report, sentiment began to emerge within the secretary's office that a change in guideline policy should be made.

As these reports were being completed, a new Assistant Secretary for the program office was assuming his post. Reagan appointee Stephen Bollinger, a former community development official from Columbus, Ohio entered his position of authority holding a philosophy toward federal programs consonant with that espoused in the Heritage Foundation report. The consistency of Bollinger's views with those espoused in the White House was no accident. To a far greater degree than had been the case under earlier administrations, the Reagan White House had managed the appointments process overall in such a way as to assure the compatibility of the views of Reagan appointees with those held by the President himself. As one scholar notes of the Reagan appointments process "By carefully screening appointees for ideological consistency, the President secured appointive executives who were, in general, dependable in their commitment to his programs and philosophy".[12] Thus, to observers of HUD in Washington, it came as no surprise that soon after his formal nomination on March 20, 1981, Bollinger publicly stated his intention to reduce the number of administrative requirements attached to the Community Development

Block grant program. "CPD certainly needs to get off of the backs of mayors and development offices," he asserted. "CPD is going on a diet."[13]

With respect to the issue of program benefits for low and moderate income residents of entitlement jurisdictions, it soon became clear that the move toward deregulation of the program would mean reversal of the federal role in assuring that the bulk of CDBG funds served low and moderate income constituencies. As one of his first official acts as new head of the CPD division, Bollinger took firm action to roll back the low income emphasis in the program adopted during the Carter years. On May 15, 1981, Bollinger issued a new notice to the field office staff, who were in the process of reviewing the localities' year 7 applications. The notice, effective immediately, significantly altered the criteria they were to use in evaluating the acceptability of grant applications.

"Local discretion and flexibility are the cornerstones of the CDBG program," the notice stated, "Over the past few years, HUD has imposed additional administrative requirements which have tended to reduce the freedom of localities to decide which activities to fund ... While comprehensive statutory and regulatory changes to reverse this trend are being considered, several steps can be taken immediately within the framework of existing regulations to increase local discretion and flexibility."[14]

The notice retracted several of the administrative requirements that had been added to the program during the Carter term, including those designed to ensure geographic concentration of local efforts, and those aimed at protecting the poor from housing displacement. But clearly the most significant change effectuated by the notice was the dismantling of the administrative strategy employed by the Carter administration to prod

localities to devote a weighty share of their grant resources to serving the needs of the poor. While HUD field staff under Embry had been instructed to do a careful analysis of "who benefits" from grantee's proposed programs, and to utilize percentage benefit thresholds as a means of discerning local adherence to the redistributive mandate of the Act, the notice was emphatic in stating "All such percentage benefit thresholds are hereby revoked." (emphasis in the original).[15]

It is important for the understanding of ensuing events to note that the Bollinger notice did not, at this point in the program's history, go so far as to instruct HUD field staff to assume a stance of complete neutrality on the issue of "who benefits" from the local activities slated to be financed with local block grant funds. Field staff were instructed to conduct a general evaluation of how the needs of low-income residents were addressed in local applications in order to identify any cases where the composition of a local program could be construed as "plainly inappropriate" to local low income needs. Thus for the time being, HUD administrators took the position that the primary objective language did have some supremacy over the other "primary purposes" of the program, and did have the effect of imbuing HUD administrators with some obligation (albeit a most limited one) to assess how local programs were meeting the needs of the poor.

Nonetheless, the notice did have a profound substantive effect on program administration. No longer would localities meeting the 75% benefit standard be granted favored status by HUD officials, and no longer would localities be required to pass a 50% "principally benefits" test unless they were released from that obligation by receiving special dispensation from the Central Office at HUD. Only the most limited assessments of how

local programs were serving low income constituencies would now be conducted, and only the loosest and most nebulous kind of benefit standard (plainly inappropriate) would be applied. The message to HUD field staff and localities in the notice was clear; federal officials were to grant localities far greater latitude than they had been afforded in the preceding years to decide how and upon whom, CDBG grant funds should be spent. Only in the most egregious instances of neglect of low income constituencies would federal grant powers be utilized to afford protections to the poor.

The Interest Groups Respond

The change in HUD policy reflected by the notice drew mixed reactions from HUD's constituency groups. Representatives of the Working Group for CD Reform were understandably "horrified" to learn their hard fought gains in securing a low-income emphasis for the program had so rapidly fallen away. The group's allied Legal Service Task Force fired off a letter to Assistant Secretary Bollinger vigorously protesting the administrative change. In the letter they questioned the legality of the notice (since the lifting of targeting percentages had put the notice at odds with the formal 1978 version of the administrative regulations still on the books), and requested a meeting with Bollinger to discuss their concerns.[16] Acting upon the advice of HUD's Office of General Counsel, Bollinger responded that the action fell within the bounds of his authority. Though contrary to existing regulatory policy, he asserted, the notice was nonetheless consistent with HUD's interpretation of its obligations under the law. With the demise of the Carter Administration, the Working Group had clearly lost influence at the agency. As a result, Bollinger declined their request to meet.

Reactions by other interest groups involved in program politics further weakened the position of the Working Group leaving them isolated in their opposition to the notice. Representatives of the National Association of Counties registered enthusiasm for the new policy. "We're very happy about it," their spokesman said.[17] Other groups representing mayors and city officials (who comprised the largest grantee constituency) were more cautious, but gave the measure a feeble nod of assent. The National League of Cities and U.S. Conference of Mayors had by this time discovered their members had faced few of the grave difficulties they once anticipated in complying with the Carter targeting directives. Thus for these two groups, the May 1981 notice lifting these particular percentage review tests occasioned neither rejoicing nor dissent. However their long-standing advocacy for enhanced local discretion under the program engendered a stance of general support for the new measure, because, in the words of one mayoral lobbyist "when someone tells you they're relaxing a requirement, you just don't say no."[18]

As HUD officials were completing this first phase of their deregulation strategy -- revoking the targeting initiative through new directives to the field, HUD staff were also engaged in drafting a new bill for the Congress to implement its deregulation philosophy through legislative reform.

Legislative Action in 1981

The Community Development Block Grant Program had not been scheduled for Congressional action during the 1981 session. In fact, the program had been reauthorized for a third three-year period only four months before the Reagan Administration took office. The 1980 reauthorization had proceeded with little of the rancor or Congressional infighting which had marked

legislative action on the program in earlier years. Moreover, reflecting fundamental Congressional satisfaction with program operations, the reauthorization process had yielded a statute virtually unchanged from that passed in 1978. Nonetheless, the new Administration, eager to place its legislative imprint on the program, moved quickly to develop new legislation which would significantly alter the Title I CDBG provisions.

As was the case with the administrative notice HUD adopted in May of 1981, the new legislative proposals reflected the policy orientations elected by advisors close to the Presidency. Acting under guidelines set forth by the Office of Management and Budget (OMB) and transmitted to HUD directly by White House counselor Edwin Meese, the new HUD officials drafted legislation designed to "pare the [CDBG] program down to its most essential objectives [and] to clear it of unnecessary requirements and federal interventions ..."[19] While the legislation carried over both the Section 101 primary objective clause, and the three "maximum feasible priority" aims, the new emphasis the bill placed on local discretion presaged a shift in the weight which would be given to each of these provisions. The bill HUD prepared for the Congress in many ways bore a striking resemblance to the Special Revenue Sharing legislation originally proposed by the Nixon Administration in 1972.

The new legislation devised by the Administration sought to strip away virtually all the local application requirements mandated under earlier legislation. Under the provisions contained in the bill, communities would no longer be required to submit to HUD a detailed proposal designating the specific activities, their locations and beneficiaries, on which that years CDBG monies would be spent. Nor would the program require submission by localities of a three year plan outlining the community's needs and

objectives alongside local strategies for how these needs would be met. In place of an application containing these items, the entitlement communities would be required under the proposed legislation to submit only a very general "statement of community development objectives" accompanied by certifications that the localities were in compliance with relevant requirements of the law. In this regard, the new proposals harkened back to the era of the Ford Administration during which certifications were accepted by HUD without any substantive review of their validity.

But the legislation offered by HUD officials moved beyond the approach followed in the Ford years in its attempt to lend a true "revenue-sharing" cast to the program. Under the legislation in the Ford era, HUD held responsibilities for reviewing and approving local grant applications. Under the Reagan Administration proposals, HUD would be stripped of its authority to, at the front end, approve or disapprove local grants. So long as the required statement and certifications had been filed with the agency, grant release was to be automatic, though HUD did retain authority to undertake post hoc reviews and apply sanctions for local misuse of funds.

The interest groups were caught off guard by the proposal. Neither segment of the program's interest groups had been consulted during the drafting process or provided with copies of the legislation before it was forwarded to the Congress. Arriving on Capitol Hill late in the legislative cycle, the timing of the bill's introduction left groups little time in which to formulate or transmit to Congress their views. On the House side, the legislation arrived at the Subcommittee nearly three weeks <u>after</u> interest group testimony on community development issues had been heard. On the Senate side, the bill arrived the evening before groups were to appear at Senate hearings, prompting letters from each of the key

program constituency groups requesting postponement of the hearings until each had an opportunity to review and poll their members to formulate a position on the bill's contents.[20] Though supported by Senate Democrats, Senate Republicans who now controlled the Committee rejected the request, leaving groups with little opportunity to inject into Congressional debates on the legislation, their constituencies' perspectives or policy views.

Reaction to the Administration Bill in the House and Senate

While the Administration bill received an endorsement from the Republican minority on the House Subcommittee, it met stringent opposition from the Democrats who held the majority position on that body. First and foremost among the concerns voiced by Democratic leaders was the fear that elimination of HUD's pre-grant review and approval role, and replacement of the detailed application submission with a vague statement of local community development objectives would serve to erode local fealty to the programs overarching national goal. With the demise of Democratic Chairman Thomas Ashley, the new Democratic standardbearers on the House Subcommittee manifest far greater concern with the role of federal agents in affording protection to local low-income constituencies; far less concern with the provision of local discretion. In opposing the Administration's proposal, Congressman St. Germain reflected the new position taken by House Democrats, asserting that the Administration's bill would cut "not just red tape, but red, white and blue tape". "In essence", he argued, "it turns [CDBG] into another revenue sharing program with few federal controls".[21] Rejecting the Administration's legislative proposal, House Democrats succeeded in reporting out their own version of the bill; one which left CDBG operations virtually intact.

The Administration's bill fared somewhat better on the Senate side.

There, Republicans, who now controlled the Senate Committee, for the most part shared the Administration's conviction that some deregulation of the program was warranted. While they incorporated most of the provisions of the Administration's bill into their own legislative proposal, they did manifest some concern that the legislation not result in a strictly "hands-off" revenue-sharing approach to the program -- an approach which they feared would dilute programmatic emphasis on the attainment of existing national goals. Though their bill did eliminate the detailed local application requirements, and did strip HUD of its pre-grant approval powers, it at the same time added back to the legislation mandates for some citizen involvement in local CDBG efforts, and requirements for the preparation of a housing assistance plan, albeit in less restrictive forms than had been employed under the program to date.

More significantly, though, in an effort to alert HUD to Senate Republican concerns that deregulation not untether the program from its national aims, nor transform the program into a special revenue sharing effort, the Committee Report accompanying the final Senate bill, a report, authored by the Republican staff, contained the following qualifier:

> It should be emphasized that the Committee's intent is to cause procedural simplification rather than substantive change ... (I)n conjunction with the simplification and restructuring of the program, it is desirable to reaffirm the program's overall objective contained in Section 101(c) - the development of viable urban communities by providing decent housing and a suitable living environment, principally for persons of low and moderate income.[22]

In the eyes of the Senate's Democratic contingent, however, these assurances from their Republican counterparts did not go far enough. Senate Committee Democrats were uniformly concerned that the bill, in stripping away HUD's role in reviewing proposed expenditures, would eliminate any effective guarantee that localities would continue to meet

the program's national aims, in particular the aim of serving the nation's poor. Having failed in their attempt to kill the bill in Committee by an 8-7 party line vote, the Democrats took their battle against the new provisions to the Senate floor where Proxmire, long a staunch proponent of the program's low and moderate income emphasis, proposed an amendment to strike the new provisions from the legislative package.

In the lengthy floor debate on the bill, Committee Democrat after Committee Democrat spoke out against the proposed legislative changes. Democratic Senator Alan Cranston captured the Committee minority's concern when he charged that "this change in the formal application procedure ... is a perverse attempt to permit cities to avoid using CDBG funds for low and moderate income persons as set forth in the purposes of the Act."[23] But Republican Senator Richard Lugar spoke on behalf of Senate Committee Republicans against the Proxmire amendment, alleging that "the minority misconstrues our purposes."[24]

Consistent with the Committee majority's assumptions that the bill would produce only procedural simplification, Senate Subcommittee Chairman Lugar argued:

> "We are saying that the application ought to be simple. It ought to hit head on the general objectives of this legislation to help poor people, to help provide decent housing to the poor, to focus our objectives on those who are of poor or at best moderate income in community development activities.
>
> Those have been the objectives from the beginning and they are the objectives now, unchanged. But it makes a whale of a lot of difference how you approach that application situation ... At least some of us felt the public said (last November) we have had enough of overregulation, bureaucracy run amok, control on top of control and we would like somebody to get in with the scissors and start cutting the pages out, and that we have done."[25]

In the end the Proxmire amendment went down to defeat by a 53-37 vote. The Republican crafted legislation then passed the full Senate by a vote of

65-24.

Strategic Legislative Actions in the House

The House bill, in the meantime, was following a very different legislative path, one which would ultimately prove to dilute the influence of its key Banking Committee actors over the legislation, and render the Subcommittee majority's opposition to program deregulation irrelevant.

Rumors were rife on Capitol Hill that the new Administration would attempt to circumvent the substantive legislation approved by various Authorizing Committees within the House by seeking to fold the Administration's legislative proposals into the House's Budget Reconciliation bill. Though a highly irregular route for securing substantive programmatic changes, under Congressional procedures such actions were allowed. Congressional procedures do permit budget legislation to mandate program changes where the changes could affect a program's budgetary outlays. Reinforcing House Democrat's suspicions that the Administration would attempt such a move were arguments being voiced by Administration spokesmen that CDBG deregulation would serve to lower the program's administrative costs.

In a tactical attempt to render acceptance of the Administration's provisions as part of the Budget legislation more difficult, the full Banking Committee pursued a highly unorthodox tack. With the concurrence of both Subcommittee Chair Henry Gonzalez and Committee Chair Fernand St. Germain, the full House Banking Committee acted to remove the Subcommittee legislation from its separate authorization track through the House. On June 9, 1981, the House Banking Committee, on a party line vote, added its housing and community development proposals to that chamber's Budget Reconciliation bill.

Angered by the House move to eschew a separate housing authorization process, Senate Republicans quickly followed suit. With the decision again reflecting party-line divisions, the Senate Banking Committee voted the very next day to add its Republican-crafted housing and community development legislation to the Senate's Budget Reconciliation bill. The fate of the CDBG legislation in both chambers thus came to be tied to Congressional action on the broad-ranging contents of the massive Budget Reconciliation package.

The House Committee's action to fold its legislation into the reconciliation proposals had been initiated as a protective strategy, designed to assure that the housing and community development proposals it had accepted would be approved by the Democratic majority when the package was considered on the House floor. But the effort backfired badly, leaving Committee Democrats with little voice over the legislative directions established for housing and community development programs.

On June 26, 1981, when the Budget Reconciliation bill was put forth for a full vote on the House floor, House Republicans, joined by a series of "Boll Weevil" Democrats, offered up a substitute version of the reconcili-ation legislation known as the Gramm-Latta proposal. Contained in the Gramm-Latta legislation were provisions that replaced virtually all of the current content of the House-Committee-drafted portions of the bill with the original proposals offered by the Administration during the first half of the year. With respect to the Community Development Block Grant program, the amendment contained verbatim the original Administration proposals to convert the block grant to a kind of special revenue sharing program -- proposals the House Banking Committee had earlier rejected in full.

Amidst heavy lobbying by high-ranking Administration officials, including the President himself, a coalition of support for the Administration's version of the sweeping Budget Reconciliation package congealed. After succeeding by a mere seven vote margin in securing a key rule change which would allow only a single up or down vote on the entire budget package, the coalition of House Republicans and conservative Boll Weevil Democrats went on to approve the substitution of existing provisions with the Gramm-Latta legislation by a similar 217-211 vote. In the yes-no vote which followed, the Gramm-Latta legislation was accepted in the House 232-193. The move signaled deep trouble for House Banking Committee Democrats, who now knew they would be forced into Conference on the housing and community development issues with not their own bill but the Administration's version in hand.

Since the full Senate had, the day prior to House action, approved its own version of the Budget Reconciliation measure, one in which the Senate Republicans' housing and community development proposals had been retained intact, a Conference was needed to reconcile the provisions of the House and Senate bills. House and Senate Committee staffers were later to characterize the 1981 Conference as one of the most frustrating conferences the Democrats had ever faced.[26]

The House Democratic contingent to the Conference was lead by St. Germain, Reuss and Gonzalez. Key leaders of the House Authorization Committee, each stood vehemently opposed to deregulation and each had argued in Committee against adopting any major programmatic change. Had they carried their own Committee bill into Conference, they, with backing from Senate Democratic conferees Proxmire and Williams, would likely have succeeded in blocking deregulation changes in the Conference. But House

floor actions which substituted Gramm-Latta proposals for their Committee version of the legislation left them little room to advance in Conference their original views. With great reluctance, House Democrats participating in the Conference were compelled to accept virtually all the Senate bill's CDBG provisions, which they considered a marginal improvement over the Administration's version which had emerged from the House.

Democrats of the Conference from both chambers were highly dissatisfied with the final version of the legislation the Conference had produced. Proxmire argued that inclusion of substantive program changes in the omnibus budget legislation represented "a terrible precedent." "We're short-circuiting the legislative process," the Senator had claimed. [27] Labeling the process through which housing and community development amendments had been made to the legislation "a disgrace", Proxmire joined the other Senate Democratic conferee, Senator Harrison Williams, in refusing to sign the Conference Report.

House Democrats were similarly disgruntled. The Gramm-Latta legislation they were forced to carry to the Conference had, in their view, not resulted from careful deliberation of the implications of policy changes the new legislation proposed. Furthermore, the floor action which yielded the House bill was seen as an affront to the Committee. In substituting provisions the Committee had earlier considered and rejected, the action stripped the Authorizing Committee of its normal prerogatives to exercise policy control. Thus, even as the bill passed from the Conference Committee back to the full chambers, it carried, in the eyes of key Democratic actors a cast of illegitimacy.

House Democrats vowed to introduce legislation to rescind the CDBG changes in the next Congressional session. In addition, one House Democra-

tic Subcommittee staffer predicted Democrats would fight the implementation of the provisions, particularly CDBG provisions, of the Conference bill. Presaging future disputes over CDBG regulations linked to the new legislation, he claimed "We will use the legislative process to the maximum extent possible ... to question the regulations that implement these changes."[28] The full Budget Reconciliation package, of which the CDBG legislation was now a part, emerged from the various Conferences to which its parts had been assigned in late July. Placed before the full Congress, the resulting statute passed both Houses on July 31, 1981.[29] The Omnibus Reconciliation Act, signed into law by President Reagan in August, represented for the CDBG program a clear victory for the Administration's deregulation strategies.

The Provisions of the 1981 Statute

Although Senate Republican-authored modifications to the Administration bill had led the final legislation to fall short of securing the more ambitious, full revenue-sharing type changes the Reagan officials had initially sought for the CDBG program, the Administration had succeeded in altering the legislation in a manner which tilted the program more in that direction. At least in terms of the mechanics of the grant-in-aid process, the CDBG law now more closely resembled the original Nixon bill.

The new law softened several of the federal requirements previously imposed upon local grant recipients, including those related to citizen participation, and to the paperwork documentation localities had been required to submit. Localities were released from their former obligations to submit to HUD a lengthy detailed annual application packet, containing a three year plan for meeting local needs with CDBG resources, and a detailed proposal specifying the particular projects (including costs, locations,

and beneficiaries) upon which their annual grant allotment would be spent. Instead grantees were, under the new law, required only to submit a much more general and abbreviated document to serve as its "final statement of community development objectives" and intended CD strategy. Alongside this brief submission, localities were required to file signed certifications that relevant requirements of the Act and designated civil rights legislation would be met.

Moreover, the legislation recast the role to be played by HUD officials in administering the program. While HUD had, under prior statutes, held responsibilities for reviewing local grant applications, and approving the release of local CDBG funds, the new Act effectively stripped HUD of its authority to conduct pre-funding application reviews. Provided the locality's "final statement" and certifications had been submitted to the agency, HUD was, under the new law, to automatically release the locality's grant allotment. Contrary to past mandates and practices, HUD's role in the program was now confined to conducting post-hoc reviews of local performance.

But bound up in these modifications in the grant-in-aid process were several significant issues regarding the nature of HUD's responsibilities for assuring the program would continue to meet the national aims set for it (aims left intact in the new legislation) and indeed, issues regarding exactly how those aims were to be construed. The 1981 legislation, like the many versions of the CDBG law which preceded it, did little to ultimately resolve questions of HUD's substantive responsibilities for overseeing local CDBG efforts, or to clarify Congressional intentions regarding the seven-year CDBG goals disputes.

Persistent Conflicts in Programmatic Aims

The Section 101(c) clause, specifying the "primary objective" of the program to be "the development of viable urban communities by providing a decent home and suitable living environment and expanding economic opportunities principally for persons of low and moderate income" was retained, as it had been since the program's inception, in the Act's opening "Findings and Purposes" section. But also carried over in the new legislation was the operational provision which had in earlier periods been construed as implying that there might be an alternative and broader triad of national programmatic aims which localities might legitimately employ CDBG funds to pursue. The new legislation reiterated, as well, in near verbatim terms, the confusing provisions related to the maximum feasible priority clause.

Though localities were no longer required to submit applications specifying in detail the projects on which they intended to use CD funds, they were still required to certify at the outset that in designing their projected uses for their annual grant allotment, they had given "maximum feasible priority to activities which will benefit low and moderate income families or aid in the prevention or elimination of slums and blight." Alternatively, as before, localities were permitted to include in their internal planned expenditure program, projects "designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community." Thus in the new legislation both the "primary objective" and the three aims linked to the maximum feasible priority clause were left intact.

The continued inclusion of both these sections in the 1981 legislation

left many questions regarding the intended relationship between these two portions of the law, and the manner in which they were to shape HUD's responsibilities as stewards of the programmatic effort. Moreover, definitive answers to these important questions were rendered even more elusive as a result of the reforms which altered HUD's role in the block grant process.

One factor contributing to the atmosphere of confusion surrounding Congressional intentions with respect to the proper relationship between these two segments of the Act's contents was the fact that certain legislative language adopted during the 1978 legislative session had, as a byproduct of the elimination of HUD's application review role, been deleted from the 1981 statutes. With elimination of segments of the law pertaining to HUD's powers to approve or reject applications, the convoluted language containing the only statutory reference <u>expressly linking</u> the single opening "primary objective" to operational provisions of the law had inadvertently been dropped. (This was the paragraph that read "the Secretary may not disapprove an application on the basis that [it] addresses any one of the primary purposes [found in the paragraph containing the maximum feasible priority clause] to a greater or lesser degree than any other, except ... if the Secretary determines that the degree to which a primary purpose is addressed is plainly inappropriate to meeting the needs and objectives which are consistent with the community's efforts to achieve the primary objective of the Act").

Contorted though it was, this language had lent legislative support to the notion that the primary objective clause was in some way intended to have substantive meaning for programmatic operations. The presence of a reference to the primary objective in the operational provisions of the law

had provided legislative reinforcement to an interpretation of the statute (as had been made by Carter officials) in which the mandate to principally benefit low and moderate income persons was intended to in some fashion overlay local obligations to serve the three aims of the maximum feasible priority clause. With deletion of this paragraph, the operational segments of the law no longer contained any express reference to the singular primary objective of the law -- a factor which would later prove to have significance in the post 1981 guideline disputes.

Moreover, with respect to Congressional intentions regarding HUD's revised role in overseeing local grant efforts, the 1981 legislative machinations had done little to fully clarify the nature of HUD's new obligations under the Act. Though Senate Republicans (who served as the virtual sole Congressional authors of the 1981 legislation) had at the bequest of the Administration acted to delete HUD's role in -- at the front end -- reviewing and approving local grants, they had sought to notify HUD officials that in so doing, they were not attempting to significantly diminish HUD's national responsibilities for overseeing local grant efforts, but rather to shift the point at which they were exercised to the post-audit local performance review stage where sanctions and penalties for inappropriate use of grant funds were to be applied. "It should be emphasized," the Senate Republican crafted Conference Report cautioned "that the Committee's intent is to cause procedural simplification rather than substantive change."

Accordingly, localities were required under the new law to submit an annual performance report, in which they delineated the projects upon which grant funds had been expended -- performance reports subject to a substantive post-hoc federal review. Yet the sections in the 1981 law pertaining

to HUD's post-hoc review duties contained a curious amendment in phraseology; one which served to further perpetuate confusion regarding the character of HUD's post-audit oversight role. Under the new law, HUD officials were now charged with determining, during the post-audit phase, "whether the grantee has carried out [its] activities and its certifications in accordance with the requirements and the primary objectives (plural) of this title" (emphasis added).[30]

Chapter 7 Footnotes

1. Interview with Gerald McMurray, Staff Director, House Housing and Community Development Subcommittee.

2. Interview with Gerald McMurray, op. cit.

3. Charles L. Heatherly, ed., Mandate for Leadership (Washington, D.C.: The Heritage Foundation, 1981).

4. Ibid., p. 318.

5. Ibid., p. 318.

6. Ibid., p. 308.

7. Ibid., p. 309.

8. Interview with Reginald Todd, Legislative Counsel, National League of Cities.

9. Interview with HUD CPD Official.

10. Draft report prepared for the Office of the Secretary, Department of Housing and Urban Development, by Warren H. Butler, untitled, dated 4/81, p. 2.

11. Ibid., p. 2.

12. Margaret Jane Wyszmomirski, "The Roles of a Presidential Office for Domestic Policy," in The Presidency and Public Policy Making, edited by George Edwards, et.al. (Pittsburgh, PA: University of Pittsburgh Press, 1985), p. 141.

13. Housing and Development Reporter, Volume 8, March 30, 1981, p. 897.

14. HUD Notice CPD 81-5, May 15, 1981, p. 1.

15. Ibid., p. 2.

16. Housing and Development Reporter, Volume 9, June 22, 1981, p. 55.

17. Housing and Development Reporter, Volume 9, June 8, 1981, p. 14.

18. Interview with Reginald Todd, op. cit.

19. Housing and Development Reporter, Volume 8, March 30, 1981, p. 894.

20. Interview with Barry Zigas, former Legislative Staff member, U.S. Conference of Mayors.

21. As quoted in "HUD Reauthorization Added to Reconciliation," Congressional Quarterly, Volume 39, June 13, 1981, p. 1048.

22. U.S. Congress, Senate Committee on the Budget, Report 97-139: To Accompany S1377, 97th Congress, 1st Session, ordered printed June 17, 1981, p. 226.

23. Congressional Record - Senate, June 3, 1981, p. S5705.

24. Ibid., p. S5689.

25. Ibid., p. S5698.

26. Interview with Gerald McMurray and Diane Dorius, Staff members, House Housing and Community Development Subcommittee; interview with Donald Campbell, Minority Staff Director, Senate Subcommittee on Housing and Urban Affairs.

27. As quoted in "Conferees Reduce Housing, Eliminate Rent Control Ban from Reconciliation Bill," Congressional Quarterly, Volume 39, July 25, 1981, p. 1347.

28. Housing and Development Reporter, Volume 9, July 6, 1981, p. 80.

29. The Omnibus Reconciliation Act of 1981, Public Law 97-35.

30. The Omnibus Reconciliation Act of 1981, Title III, Section 302 (b).

CHAPTER 8: REGULATORY ACTION AND REACTION: PROGRAMMATIC CONFLICT AND RESOLUTION 1981-83

Changes in the Guideline Process: An Expanded Role for OMB

The manner in which decisions regarding the content of CDBG regulations were reached in the period following passage of the 1981 legislative amendments reflected some significant shifts in the guideline role played by HUD officials vis a vis other institutional actors in the government's Executive Branch. To a far great extent than had been the case in any earlier period of the program's history, the new regulatory decisionmaking process reflected a greatly expanded role for officials in the President's Office of Management and Budget (OMB).

Under prior Presidential Administrations, the staff of OMB had been afforded a role (albeit and relatively weak one) in overseeing the development of formal regulations set forth by administrative agencies. OMB had been charged with the task of reviewing and commenting upon the content of proposed regulations prior to the time they were forwarded to the Congress or published in the Federal Register.

The ostensible purpose of the OMB review was two-fold -- to see to it that regulations proposed would not have a significant negative impact on Executive budgetary considerations, and further, to assure that the regulations elected by administrative agencies were not markedly inconsistent in tone or tenor with the general governmental themes and approaches set forth by the President. Where they found regulations to be at odds with either budgetary or substantive Presidential aims, OMB officials were empowered to send the regulations back to the administrative agency with suggestions regarding how they might be altered to bring their

content more in line with Presidential preferences.

Though this oversight role afforded OMB officials an opportunity to leave their imprint on programmatic rules and regulations, throughout the Nixon, Ford, and Carter Administrations, OMB staff had elected to exercise their oversight authority sparingly. OMB officials rarely voiced objection to rules proposed by HUD authorities, leaving the regulatory review process to function more often than not, in the words of one HUD official, as a simple "courtesy review."[1] Moreover, where disagreement did surface between the two bodies over the substantive content of regulatory issuances, OMB staff were, in the final analysis, inclined to defer to the wishes of the administrative agency assuming the stance that agency representatives were in a better position than they to adjudge the administrative directives called for in any particular case. This largely deferential OMB posture had left agency officials relatively free, under prior Administrations, to craft approaches to the implementation of public programs largely as they deemed fit. But with the rise to power of President Reagan, OMB's role in the process of regulatory craftsmanship underwent radical change.

Under Reagan's Executive Order 12291, issued shortly after his assumption of office, OMB was granted broader and weightier powers to oversee and shape the regulatory initiatives to be employed by administrative agencies.[2] From a stance of passivity and deference to agency officials, OMB staff were now directed to assume a more active and aggressive posture in the exercise of their regulatory oversight role. OMB was now charged, by Presidential order, with keeping a tight rein on agency rulemaking activity; with ensuring, above all, that the content of regulatory initiatives reflected, in toto, the President's favored approaches to policy administration. To lend weight to OMB's exercise of

its oversight responsibilities, OMB officials were granted the authority, under the new Executive Order, to prevent the release of any agency regulatory issuances with which they disagreed.

OMB's Role in the Drafting of the 1982 CDBG Entitlement Regulations

The expanded regulatory oversight role provided OMB under the Executive Order was one OMB staff pursued with great vigor, and had a powerful effect on the way rules for the CDBG entitlement program were developed at HUD. Throughout 1981 and 82, as HUD officials deliberated the guidelines they would use to implement the 1981 legislative amendments, they repeatedly were called into meetings with their regulatory overseers at OMB. During these meetings, HUD officials were given their marching orders. If OMB was to grant approval to the release of the entitlement regulations, HUD staff would be expected to hit hard in crafting regulatory content on two basic Presidential themes.[3]

First, HUD officials were to place an emphasis on reducing the federal role in program operations to the greatest degree possible. In the eyes of the President, federal agencies in the past had all too frequently acted to strip authority for decisionmaking from the hands of state and local officials, in whose hands he felt programmatic decisions rightfully belonged. Consonant with President Reagan's espoused desire to restructure the federal system in a manner which decentralized power away from Washington, HUD officials were (to the maximum extent permissible under statutory edicts) to act, in regulations, to reduce the federal government's role.

Second, in implementing legislative directives, HUD officials were to adopt a strict "constructionist" (legalistic) approach to the interpretation of the law. OMB officials set forth the principle that where specific

provisions of a statute were unclear, HUD's regulations were to reflect a stance of "maximum feasible deference"[4] to interpretations of those provisions that might be made by state or local officials. In other words, HUD was not to include in its regulatory issuances, any administrative embellishments or even clarifying addendums to statutory language that would have the effect of constraining local discretion in interpreting the law. HUD was to interpret legislative provisions regarding its role as program executor in as narrow a manner as legally possible. It was to include in regulations provisions for the imposition of federal constraints on the exercise of local authority only where such constraints were absolutely, clearly and unquestionably mandated by the language of the law.

OMB Perspectives Enforced by HUD's Chief Legal Advisor

Internal enforcement of HUD's fealty to these OMB directives was carried out during the crafting of the new CDBG guidelines by the Reagan political appointee who now headed the HUD Office of General Counsel (the legal advisory arm of the agency) John Knapp. In contrast to the Carter era guideline reformulation process, in which regulatory development had been handled in a more open and "democratic" manner [advisory input had been sought early on from both other divisions of the agency, local officials and constituent interest groups] the content of guidelines to be issued in the post 1981 period was now shaped in a more closed and guarded fashion by the hands of only a few -- Knapp, Assistant Secretary for CPD Stephen Bollinger and a handful of senior CPD career staff. Of this small group of internal actors, it was Knapp who would play the key influential role.

As deliberations regarding the content of new guidelines proceeded, it became clear that following OMB directives to the letter would lead the new

CDBG guidelines to result once again in a radical deviation from HUD's prior administrative practices. As this became apparent to CPD career staff who had held their positions during earlier periods of the program's existence, a few voiced their dissent. Such a marked shift from existing patterns of interaction between federal and local program authorities, they argued, would be severely disruptive to the agency's administrative efforts -- efforts which had already been subject to tremendous instability and confusion as a consequence of prior guideline reforms. Moreover, such a move was in their eyes not only administratively but politically unwise. In too drastically upsetting the carefully crafted balance between the policy mandates for decentralization and redistribution that had emerged during the final period of the Carter term, (a balance which for the first time in the program's history had yielded a modicum of political quiescence), the new guidelines HUD was moving toward adopting would generate a firestorm in the agency's political environment, they warned. But their arguments to proceed with caution fell on deaf ears. CDBG regulations were to fully and unquestionably reflect the preferences held by the President, as conveyed to the agency by their overseers at OMB.

Forging Guidelines Implementing the 1981 Statute

In addition to his formal role as head of HUD's legal advisory division, Knapp had been designated by Secretary Pierce as HUD's "deregulation officer" -- an informal position which lent his views particular authority during the drafting of the new CDBG entitlement rules. As an attorney, Knapp focused his attention (and those at CPD who worked in tandem with him) upon a careful reading of the legal language contained in the amended statue.[5] As a political actor -- a Presidential loyalist and voice for OMB within the agency -- Knapp carried to his reading of the

legislation political aims which would lead him to advance in regulations, an interpretation of the statute in which HUD's role would be reduced to the maximum extent legally permissible.

As Knapp and those operating under his guidance examined the legislation as it stood in the aftermath of the 1981 amendments, three sections of the law drew their attention. First, as had been the case in earlier versions, the 1981 law carried over (in the Act's findings and purposes" section) language declaring "the primary objective of this title is the development of viable urban communities ... principally for persons of low and moderate income."

Second, although detailed application requirements had been deleted, localities were still required in the law to certify (before grant release) that their projected plans for use of their grant allotment had been designed to give maximum feasible priority to either benefiting low and moderate income families or preventing or eliminating slums and blight, or alternatively that they were designed to meet urgent community development needs. And while HUD officials were no longer expected to review the validity of local certifications, or the contents of local plans during the application process they were required to do so during the conduct of their post-hoc review of local performance.

While many had presumed that HUD's responsibilities for overseeing local use of grant funds were only being shifted in time by the new provisions, not altered in substance, the actual wording contained in the legislation provided no clear guidance on this point. Perhaps not surprisingly, given the idiosyncratic history of the CDBG legislation, in this third key segment of the law - the segment specifying HUD's post-hoc review obligations - the language of the 1981 statute contained a curious

linguistic mutation. Under the amended provisions of the statute, the new legislative language specified that "The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary and appropriate to determine ... whether the grantee has carried out (its local program) and its certifications in accordance with the requirements and the primary objectives (plural) of this title."[6] This was the first time any language referring to multiple "primary objectives" had ever appeared in CDBG statutes (prior versions had referred to primary purposes, but the primary objective itself had always stood alone and singular). And as Senate Committee authorities would later assert, the insertion of an "s" in the phrase "primary objectives" had been the result of an unintended misstep in the legislative drafting process.[7]

Nonetheless, this very minor alteration in the language of the legislation afforded HUD officials in legal latitude they sought to remove a low-income emphasis from the CDBG program and thereby free localities from one important set of prior constraints under which they had been compelled to operate. Although the legal logic which Knapp and his CPD cadre elected to apply to the convoluted language of the Act was complex, in simple terms it operated in the following way.

Since the Section 101(c) "primary objective" language was set forth in the Act's findings and purposes" section rather than in the operational requirements sections of the law which delineated HUD's specific responsibilities for programmatic execution, according to legal tenets, it fell into a kind of no man's land. Within the legal community, opinion would be divided as to whether or not HUD would be legally compelled to grant the phrase authoritative, substantive meaning in establishing the regulatory framework under which the program was to be administered. Some

legal scholars would be inclined to assert that the contents of a statute's "findings and purposes" section must be interpreted as bearing power over operational provisions of an Act. They would maintain that statutes are to be read as-a-whole, with the effect that the substance of substantive language contained in the "findings and purposes" section must be read by administering authorities so as to modify the meaning of the specific operational requirements set forth in the law. But other legal scholars would be inclined to assert an antithetical view. They would be on equally solid legal ground in arguing that HUD could view the "findings and purposes" section as symbolic and not substantive -- that the language of this opening section could be ignored in setting administrative guidelines so long as the specific provisions set forth in the statute's operational requirements sections were in fact put into effect. This second perspective was prominent among those sectors of the legal community who advocated (as did OMB and Knapp) a strict constructionist approach to the interpretation of the law.

Since the relevant operational requirements section of the 1981 Act contained language specifying that HUD's post hoc review of local performance was to be aimed at determining whether the local grantee had carried out its program in accordance with the primary objectives (plural) of the legislation, this section of the law could be read as imbuing HUD with the express responsibility to examine only whether localities directed their activities toward serving any one of the three aims referred to in the section containing the maximum feasible priority clause (since these three aims could reasonably be construed as the "primary objectives" to which the new anomalous phrase referred). Viewed in a strict constructionist manner, the new reference in the 1981 law to multiple

"primary objectives" lent additional weight to an interpretation of the law, in regulations, that would give no overriding superiority to the program mandate of "principally benefiting" low and moderate income persons but instead would grant localities free rein in electing which of the three "primary objectives" it might choose to use CDBG funds to address.

The Content of HUD's Proposed Entitlement Regulations

It was almost irrelevant to the initial drafting of the regulations what Congressional actors from either side of the aisle had had in mind in passing the 1981 amendments with language that took the form it did. Operating under OMB directives to look only to the statute, no Congressional advice in framing the new rules proposal had been sought.[8]

Taken solely at face value, the ambiguous provisions of the 1981 statute provided an occasion for HUD to utilize the strict legal constructionist approach advocated by OMB, and in so doing to accomplish OMB's goal of reducing the federal role in the operation of intergovernmental grants. As a result of both the ambiguity of statutory language and OMB's predominance in the guideline development process, the formal entitlement rules HUD proposed diverged markedly from past approaches to the issue of redistribution vs. decentralization. Forwarded to Congressional Committee actors for review (as required under the 7(o) legislative review mandates enacted in 1978) and published in the Federal Register in October 1982, the new guidelines made extensive changes in a variety of program area. But in perhaps the most significant reform advanced by the new regulations, the new guidelines proclaimed:

> In the past, HUD reviewed each entitlement community's (planned program) to determine whether the extent to which the (local) program as a whole would benefit low and moderate income persons would be plainly inappropriate (under the Act)...

> the Congress has stressed that the choice of eligible activities on which block grant funds are to be expended represents the recipients determination as to which approach or approaches will best serve the primary objectives of the program. Therefore ... HUD will no longer conduct any review of the grantee's overall program with respect to benefit to low and moderate income persons (emphasis added).[9]

These changes in the guidelines HUD now proposed to employ represented a virtual 180° turnabout from the guideline approaches used to govern CDBG program implementation during the Harris/Embry years. Not only would HUD no longer apply percentage benefit standards to test localities for conformity with the program mandate to "principally (benefit) persons of low and moderate income," it would no longer review how localities distributed program benefits at all. In the approach they proposed, HUD officials moved to expunge the redistributive mandate of the program and supplant it with a wholehearted emphasis on local discretion and choice.

While each local activity funded with block grant resources still had to be directed toward serving one of the three "primary objectives" of the program (interpreted in regulation as the three aims set forth in the section containing the maximum feasible priority clause) localities' choice of the mix of activities they would fund was no longer required in any way to be directed toward securing the espoused national goal of improving living conditions for the poor. In accord with OMB edicts regarding "maximum feasible deference" to local interpretations of the Act, localities would now be free to approach these aims as coequal objectives-to choose, at their discretion, which of the three "objectives" they might wish to address. Under the new proposed rules, HUD would no longer be afforded any basis on which to challenge a locality's internal distribution of program benefits, even if its allocation of grant monies reflected total neglect of the needs of the jurisdiction's poor.

[Note: As if to add insult to injury the new regulations would inflict on low income constituents, the guidelines further enhanced local discretion by loosening the criteria under which projects could qualify as "preventing/eliminating slums and blight or meeting other urgent community development needs - a shift which would likely have the effect of inducing an even greater deflection of local expenditures away from activities which would benefit the poor.]

Reactions to the Proposed Guideline Changes in the 97th Congress

In light of the CDBG program's history in the Congress, wherein some Congressional faction had always been present to urge an emphasis on its decentralization mandate over its redistributive one, one would have expected the new guideline proposals to engender active support from some Congressional quarter, or at least receive a faint nod of assent. Yet each of the four key legislative factions responsible for oversight of the program at this point in time voiced serious objections to the new administrative measures -- objections centered largely around HUD's assertion that it no longer would conduct for local CDBG programs any overall low income benefit review. While HUD officials had expected to obtain waivers to the Congressional regulatory review period (which delayed regulations for 35 days of continuous Congressional session before they could be put into effect)_ they had clearly misconstrued Congressional sentiment, as each of the four factions rejected the waiver request.

House Republican Subcommittee leaders privately voiced to agency officials their concern that the new regulations swung too far in the direction of downplaying the prior emphasis on low income constituencies. [10] But it was on the Democratic side of the House that opposition to HUD's regulatory issuance was most vitriolic and intense. Having stood staunchly

opposed to the legislative reforms adopted over their objection in 1981, the new guideline proposal was seen by House Democrats as confirmation of their worst fears about the 1981 amendments -- that they would serve to transform the program into no more than a revenue sharing initiative, emphasizing local discretion at the expense of the poor.

Ironically, HUD's proposal would likely have met with acceptance from former House Subcommittee leaders -- Democratic Chairman Thomas Ashley and ranking minority member Garry Brown. (Both had in 1978 asserted the view, albeit unsuccessfully, that the three components of the maximum feasibility priority clause were intended to serve as "coequal" programmatic aims.) But by 1982 neither held positions in the Congress. Replacing Ashley as both Chair of the Subcommittee and spokesman for its Democratic majority was Representative Henry Gonzalez, who held a most contrary vision of the CDBG Act's requirements and intent.

Although Gonzalez had served under Ashley on the Subcommittee both at the time of and after the passage of the original 1974 Act, he had never truly shared Ashley's view of the program's basic character, and had from time to time voiced his dissent. To Gonzalez, the chief overriding purpose of the program from its inception was to enable localities to undertake a diverse array of urban projects which would principally serve the nation's poor; the proper role of federal authorities to impose sufficient federal checks on local behavior to assure that that occurred.[11]

While Gonzalez had been but one small voice in the program's earlier periods (one overridden by Ashley's weighty rule over the Subcommittee) by 1982, many who originally shared and supported Ashley's views were gone. Nearly half the Subcommittee Democrats had been elected in 1980; their views shaped by the unsuccessful battle against program deregulation in

1981. Moreover, many veterans of earlier periods now lent their support to Gonzalez's view. According to a key Democratic Subcommittee aide, the support "was not the result of Gonzalez's heavy hand; he did not operate that way. It reflected a real depth of feeling on the part of Committee Democrats on this issue".[12] Buoyed by the strong backing his view received from his House peers, Gonzalez wasted no time in conveying, both publicly and privately, House Democrat's vigorous opposition to HUD's new rules.

An Escalating HUD/House Leadership Dispute

The opening shots in this new skirmish over regulations were leveled on the editorial pages of the New York Times. In response to a published letter from Assistant Secretary Bollinger in which he (Bollinger) sought to dispel criticism of agency actions by maintaining that HUD fully expected that localities would continue to meet the Act's primary objective, even in the absence of a mandated federal compliance review, Gonzalez launched a stinging attack. In his published retort, Gonzalez accused HUD of willfully undermining the prospects for achievement of the Central legislative goal of the program, and publicly charged HUD officials with negligence of their responsibilities under the law. Labeling the issue as one of "grave significance to the Congress," Gonzalez asserted in no uncertain terms "It is not enough that the Administration 'expects' that the primary objective will continue to be met by communities, it has a legal obligation to issue regulations that assure they (sic) will be met."[13]

Moreover, lest the vehemence of House Democratic objections to the new guidelines still be unclear at HUD headquarters, Gonzalez followed up this public action with a letter sent directly to HUD Secretary Samuel Pierce. The proposed regulations, Gonzalez charged in the correspondence, "fail in major ways to implement the intent of Congress -- that the CDBG program

used to principally benefit low and moderate income families."[14] It is very important, the Subcommittee Chair stressed in his letter "that substantial revisions (to the CDBG regulations) be made."

Gonzalez's letter went beyond voicing objection to HUD's proposal to delineating quite specifically the "substantial revisions" the Subcommittee would seek in the new regulations. In so doing, the Gonzalez letter reflected quite concretely their vision of the intent and requirements of the CDBG law. While several items were mentioned, two fundamental changes emerged as the absolute baseline minimum House Democrats would insist upon if they were to grant the waiver allowing immediate effectuation of new program rules.

First, in the eyes of House Democrats, it was essential that HUD acknowledge in its guidelines both the primacy of the primary objective over the other three aims cited in the Act, and HUD's responsibility to monitor localities to see that their program's served that overarching goal. In practice, HUD was informed, this meant restoring a federal review of how low income persons were served by local expenditures, and the rendering of an annual determination as to whether each localities' program, taken as a whole, principally benefit low and moderate income groups as stipulated in the primary objective of the Act.

In a second concession House Democrats sought for the new regulations, the specific administrative strategy HUD was to employ in making a determination of compliance with the "principally benefits" mandate was concretely spelled out. House Democrats rejected the idea of leaving compliance determinations to the arbitrary judgement of HUD field staff. HUD would be expected to utilize in its review process a standardized low income benefit test. In judging whether a grant recipient had complied

with the primary objective to a degree sufficient to avoid financial penalty, HUD was to utilize a uniform "majority of funds" standard. "The Department (is to) consider the primary objective of the Act to be met," the Subcommittee's letter stated "if a majority of the grantees funds are used ... (for) activities that benefit low and moderate income families." [15] In effect the position taken by the Subcommittee majority bore great resemblance to that advanced in regulations during the Embry/Harris year. Though no preferential treatment would be afforded localities who earmarked 75% of their grant for low income residents, a minimum standard threshold of redistribution would be administratively required of localities under the Gonzalez regulatory plan.

HUD officials were perhaps understandably resistant to the idea of employing a majority-of-funds test for compliance, in light of prior programmatic conflicts over how and whether percentage standards could be used. (Although even at this late date the extent to which the outcome of the 1978 battles precluded HUD use of the majority of funds criterion was subject to dispute). Yet the intransigence of HUD's position in rejecting all aspects of the Gonzalez proposal-including its refusal to restore clear and substantive benefit review procedures of any sort in actuality had a far deeper root in other sources.

In the months immediately following the October 1982 rules proposal, it was the weight of the strict constructionist approach to law OMB had prescribed to govern rulemaking which led HUD officials to be markedly unconciliatory in meetings with their House Democratic opponents. Knapp and others operating under his direction repeatedly informed Gonzalez's emissaries that neither a federal review for compliance with the primary objective nor a majority of funds test for local programs was specifically

mandated in the operational requirements sections of the statute. [16] Employing legalistic arguments as a weapon in the burgeoning political dispute, their reminded agents of the House majority that HUD could and would, despite Congressional objection, consider themselves bound to do no more than was specified in the law during their routine oversight review -- "to determine whether the grantee has carried out (its program) in accordance with the primary objectives of (the Act)."

Reactions in Senate Chambers

Senate Democrat's longstanding advocacy of a targeted low-income oriented approach to the program rendered them similarly hostile to the new rules proposal -- though having fallen to minority party status in 1980, they were even less-well-positioned than their House counterparts to exert through their oversight functions any significant HUD policy control. Nonetheless, seeking to make use of all available tools at their disposal to induce HUD to alter its stance, ranking majority member Donald Riegle fired off a letter to Secretary Pierce on the Committee minority's behalf. Informing Pierce that they were rejecting HUD's request for a review-period waiver, Riegle alleged the regulations were both "inconsistent with the law and (its) legislative intent."[17] The most serious transgression which prompted the allegation, Riegle indicated

> "stem(s) primarily from the Department's decision to eliminate any review ... for overall benefit to low and moderate income persons, despite a clear statutory mandate that the CDBG program principally benefit lower income persons."[18]

Riegle went on to stress the 1978 Congressional actions rejecting the "coequality" principle and reprinted the Section 101(c) primary objective section, underscoring the principally for low and moderate income persons phrase. And while Riegle did not specifically advocate use of a majority-of-funds standard he did seek restoration of some type of an overall

"principally-benefits"-oriented test. Though he advised Pierce to withdraw the regulations "to bring them into compliance with the law," Senate Democrats -- now at the bottom of the Congressional pecking order -- received no more than an acknowledgement their objections had been received.

The Senate Republicans' Response

From HUD's vantage point, perhaps the most significant adverse reaction to the new CDBG guideline proposal emanated from the Senate Republican side of Capitol Hill. Senate Republican Committee members (led by such staunch Administration supporters as Jake Garn and Richard Lugar) had forged a close alliance with HUD officials, and had originally championed the legislative drive to pass deregulatory CDBG amendments in 1981. Moreover, the irregularities in the legislative process which tied the 1981 CDBG amendments to the Omnibus Reconciliation Act's passage had left Senate Republicans the virtual sole Congressional authors of the 1981 statutory reforms. In light of both of these factors, one would have expected little animosity to develop over the new regulations between HUD rulemakers and their Senate Republican partners. Yet, in fact, quite the opposite occurred.

HUD officials had failed to consult with Senate Republicans as the new rules were being drafted -- presuming that, having supported the 1981 deregulation initiative, they would concur with the lifting of low income constraints on localities via the new program rules. But as soon became clear to HUD officials, when it came to the redistributive mandate of the program, and HUD's responsibilities with respect to its attainment, Senate Republicans held a vision of the CDBG legislation more closely aligned to the position of their Democratic opponents than to that of HUD.

In pushing the legislative deregulation package, the Senate majority had sought to reduce existing paperwork requirements and to eliminate an application process which they agreed with HUD officials had become unduly burdensome on localities. But in altering the legislative provisions in 1981, one thing they claimed never to have intended to do was to diminish the power over program operations of the primary objective of the Act. In the words of one key Republican staff member:

> Having asked (HUD) early on (in 1981) whether the procedural changes were going to mean any difference in the substance of the program, and having gotten such ready assurance that it would not, it was a real surprise, then to find this regulatory proposal laid out in such a way that seemed to be so totally at odds with (those assurances).[19]

The Senate majority's deep opposition to the new rules was rooted virtually into toto in their objection to HUD's lifting of the federal low-income benefit review. Angered by what they saw as a betrayal of prior understandings, and convinced HUD's removal of low-income benefit obligations went beyond the terms of the 1981 Act, the Senate Committee Republicans adopted a remarkably public and hostile stance toward the 1982 guideline proposal.

In a formal letter to Secretary Pierce, Committee Chairman Garn charged the regulations "do not reflect the policy intent of Congress" and "vary widely from the letter and spirit of the legislation."[20] Denying HUD's request for a review-period waiver, Garn conveyed the Senate Republicans' belief that HUD had exceeded its legal authority, stating "I strongly urge you to withdraw and redraft with proposed regulations to make only those procedural changes ... which were adopted by Congress in 1981."[21] Even more surprising than the strong language employed by their former Congressional allies was the unconciliatory nature of HUD's response. In

meetings with Garn's agents, HUD cited as justification for their actions statutory language stipulating they were to assess how localities conformed with the now-plural primary objectives on the law. Informed by Garn's staff that the insertion of an "s" resulted from a flaw in the drafting process and that there had been "absolutely no sense (on the part of any Committee Republican) that in adding the "s" we were somehow changing the rules of the game on this issue", HUD officials simply stated that that view was not expressly spelled out in the law.[22]

Marshalling yet other evidence that HUD's stance was inconsistent with Congressional intentions, Republican agents cited language from the 1981 Conference Report accompanying the legislation specifying "It should be emphasized that the Committees intent is to cause procedural simplification rather than substantive change," and language expressly reaffirming "the program's overall objective ... the development of viable urban communities .. principally for person's of low and moderate income." But HUD was immovable, reiterating that "the Conference Report does contain some guidance... but it ain't the law." [23]

The posture taken by HUD officials in dealings with all the Committee players (even their Senate Republican allies) was a rigid and dogmatic one. Faithful to OMB's directives, they took the stance that what each of the factions was seeking in some form -- an overall review for conformity with the Act's redistributive mandate -- was not expressly delineated in the statute. If Congress wished to change the statute, fine; but until then, HUD intended to rely fundamentally on the approach to program administration set forth in the proposed rules.

The Interest Groups Realign

The major players in the 1982-83 guideline battles were Congressional

members, angered at HUD's "impertinence" in suggesting that they had little right (short of statutory redrafting) to try to influence how HUD implemented the CDBG legislation in its rules. Yet as became clear in the aftermath of the 1982 rules issuance, a noteworthy shift in the alignment of key interest groups on CDBG issues had occurred. Though interest group influences were not the prime motivating factor behind Congressional opposition to HUD's actions, neither were they wholly irrelevant to the ultimate outcome of this round of programmatic conflict, for the altered stances taken on the part of key HUD constituencies yielded for the first time in the early 1980's a rough convergence of constituent opinion on regulatory matters -- one that facilitated later Congressional action to compel HUD to make significant changes in the CDBG regulations.

When the 1982 rules proposal was issued, the low income constituencies of the program were predictably outraged, and deluged HUD offices with letters of dissent. While they objected to dozens of items in the new HUD guidelines, deletion of the "principally benefits" review drew the broadest and most severe attacks.[24] Terms like "callous disregard for the nation's neediest" and "wholesale abrogation of federal responsibility" peppered their letters of response. And quite uniformly, the charge was leveled that HUD was in defiance of Congressional intent in passing the 1981 law. In ceding such great discretion to local officials, and so radically reducing federal constraints, the poverty coalition argued, enhanced local flexibility would only come at the cost of expanded local negligence of the needs of the urban poor.

In light of these organizations' historical posture on targeting questions, their opposition to HUD's rules was wholly predictable. Yet not so predictable was the reaction received from the poverty coalition's past

adversaries -- interest groups representing local officials and mayors. Though in the past the local officials' lobbies had vigorously promoted the cause of enhanced local discretion, and had done battle to avert the imposition of targeting directives during the Harris-Embry term, they now took a stance in opposition to the greater flexibility being promised them, and voiced strong objection to HUD's version of the new CDBG rules.

The U.S. Conference of Mayors forwarded a letter to Pierce stating the Conference "opposes strongly HUD's published intention not to conduct an overall (low income benefit) review."[25] Likewise the National League of Cities severely criticized HUD's position, arguing they were "concerned about underregulation as well as overregulation in the CDBG program".[26] And the most die-hard opponent of earlier targeting initiatives, the National Association of Counties -- even while conceding "NACo certainly supports maximizing local flexibility" -- went on to assert localities should be subjected to a program-as-a-while "principally benefits" test.[27] (Moreover, similar letters of dissent were received from local officials throughout the country, suggesting these groups were not significantly out-of-tune with their constituent's desires).

Compared with earlier periods, these responses reflected a surprising and significant turnabout in these groups' stances on issues of decentralization vs. redistribution under the program. Though prior proponents of relatively unfettered local flexibility, these groups now actively sought the imposition of federal restraints designed to enforce local fealty to the redistributive aim of the law.

In fairness, it is likely that some members of these organizations had always favored some low-income targeting restrictions, despite the public protestations of the interest groups who purportedly spoke on their behalf.

As Frieden and Kaplan had observed, some mayors see federal restrictions as performing a useful political function -- enabling them to serve their neediest populations (as they wish to do) while deflecting pressures from politically stronger constituents by claiming they are forced to target as a result of federal rules.[28] While this may account in part for their actions during this period, key actors from the local officials' lobby suggest some even weightier explanatory variables lay behind this apparent shift in public posture toward what constituted appropriate HUD CDBG rules.

During the Reagan term, relations between the interest groups and HUD officials had deteriorated markedly. In a deliberate effort to facilitate advancement of the President's agenda, political appointees at the agency had launched a concerted drive to insulate the CD program office from external political pressures, with the result that interest groups found themselves closed out of deliberations over administrative issues and legislative initiatives to a degree unprecedented in the past. Not only were groups denied an opportunity to offer meaningful advice or input regarding programmatic issues, but even information about the Administration's plans for new policy directions was withheld until presented publicly as a virtual fait accompli.[29] So stringent were controls over release of information, and so restricted was formal access to program career staff with whom they had historically worked, that some program staff resorted to holding clandestine meetings with interest group agents in restaurants and hotel lobbies to deliver even the most basic information on developments within the agency.

While the offense groups like the NLC, the USCOM and others took at being excluded from the agency contributed to their willingness to publicly take HUD to task, in and of itself, it was unlikely to have produced the

significant modification in their stance on CD regulations that was observed. But the atmosphere of suspicion bred by their exclusion, coupled with the prevailing budgetary politics of the day, combined to spark a deliberate shift in their position, leading them to now vigorously urge that some federal targeting restrictions be reimposed.

The Impact of Budgetary Politics

Prior to 1981, the CDBG program had enjoyed consistently escalating levels of financial support (see Table 8-1). Between fy 1975 and fy 1980 the overall CDBG budget (of which 80% was statutorily earmarked for the entitlement portion of the program) rose from $2.43 billion to a peak of $3.75 billion. Although in the final period of the Carter term, inflation had begun to erode the real purchasing power of these grant funds, in nominal terms, the CDBG budget had fared better than many other domestic programs during this era, remaining at what was basically a nominal study-state level of $3.7 billion dollars a year between fy 1979 and fy 1981. In the early years of the Reagan Administration, however, concern with the rising federal deficit served to significantly alter the climate of budgetary politics on Capitol Hill.

TABLE 8-1

CDBG PROGRAM FUNDING BY FISCAL YEAR
(In Billions of Dollars)

1975	1976	1977	1978	1979	1980	1981	1982	1983
$2.433	$2.802	$3.248	$3,600	$3,750	$3.752	$3.695	$3.456	$3.456*

*an additional $1.0 billion dollars was added to the CDBG budget in fy 83 for a one-time emergency jobs program effort, but the routine level of support remained at $3.456 billion.

Source: U.S. Department of Housing and Urban Development, 1984 Consolidated Annual Report to Congress on Community Development Programs (Washington, D.C.: USGPO, 1984), p. 3.

During the 1981-82 period, the Reagan Administration's drive to slash national non-defense expenditure levels had led to the elimination of many federal domestic programs altogether, and the infliction of deep budgetary cutbacks in those that remained. Relatively peaking, the CDBG program fared well during this initial period, suffering a reduction of only $239 million in appropriated funds; a reduction of less than 6.5% from the prior fy 81 amount. Though a victory of sorts for urban areas, local officials were well aware that OMB Director David Stockman had favored elimination of the program and as a consequence were increasingly concerned with sustaining levels of support for the program within the Congress. Some of the mayoral lobbyists had come to believe that Congressional reluctance to extract even deeper cuts from the program emanated from legislators' acceptance, in principle, of the need to protect those programmatic efforts which served the nation's poor. As this belief gained currency within the network of local officials and their interest group representatives, many began to harbor suspicions that the deregulation strategy Reagan officials at HUD were now pursuing was actually only a part of a much broader, clandestine political plan. By reducing the emphasis on low-income targeting under the program, and otherwise seeking to refashion operations to stress special revenue sharing features of the grant, they began to believe, Administration officials were strategically seeking to undermine the program's identity -- paving the way for its later elimination on the grounds that this was merely a revenue sharing program (serving primarily local not national purposes) and that there simply were no longer any excess federal revenues to be shared.[30] Speculation regarding this long run strategy was further fueled when in January 1983, the Administration advocated (though unsuccessfully) a plan to consolidate General Revenue Sharing and CDBG.

Interestingly enough, the issues lying just below the surface during this phase of the guideline controversies were precisely those that had been raised by the Senate during the original deliberations over the program's form and substance in 1974. Did the establishment of a national program require, as justification, achievement of specific compelling national goals? Was the provision of highly-flexible, revenue sharing-type funds to localities simply too frivolous a use of scarce federal resources? While the relative prosperity of the early 1970's rendered answers to these questions clouded at the time of the Act's original passage, they moved steadily into clearer focus in the recessionary atmosphere of 1982.

Mired in an atmosphere of frenzied budget cutting activity, local officials grew increasingly fearful that enhanced local discretion might come at the expense of the program. Pointing out that General Revenue Sharing had not had a funding increase since 1976, while CDBG had registered overall at least a modest gain, one interest group lobbyist explained "the mayors are convinced, and I think rightly so that their (Congress's) support for the CD program is because it is targeted... if there are requirements that nobody is checking, why the heck should they (continue to) fund this program?"[31] Another representative from a different branch of the local officials' lobby expressed the fear that were they to support the effort to lift the targeting regulations "we (would be) playing into the hands of those who wanted to eliminate the program."[32] Increasingly then, local officials felt the need to sacrifice some of the flexibility they had valued, in order to preserve a strong programmatic and budgetary defense. Thus while they earlier had sought greater freedom, they now sought the reinstatement of at least some minimal federal targeting restraints -- restraints they might later offer as evidence of the program's inherent

national value. As a consequence, the historical cleavages in the program's constituency now faded. The traditional adversaries in the interest group network now moved toward greater unity, as both low income advocates and mayoral lobbyists repudiated the co-equality principle reflected in HUD's regulations and called for restoration of a federal low-income benefit test.

Congressional Actions in the 99th Congress

As is evident from the activities described in this chapter, during the 1982-83 period, the issue of low-income targeting vs. local flexibility had once again become the central programmatic issue, eclipsing all others as the focus of the intensifying regulatory dispute. Yet in stark contrast to earlier eras of the program's history, the external actors now manifest a high degree of consensus regarding the supremacy of the primary objective as a mandate to rule HUD's strategies for implementing the CDBG law. In light of the near-universal objections now voiced by key constituents and by all four Congressional oversight factions responsible for the legislation, one might have anticipated from HUD a major reformulation of its position. Yet between October 1982 and February 1983, no genuinely significant shift in HUD's posture on the regulations had occurred. As the 99th Congress convened in January, Congressional leaders from both the House and Senate Committees were returned to their posts, portending continuation of the battles begun in October and rough road for HUD officials in the Congressional session that lay ahead.

As with interest groups, relations between HUD and the Congress had by this time reached a low point, leaving HUD virtually without allies on Capitol Hill. Committee members in both the Republican Senate and the Democratic House had grown increasingly outraged at HUD's intransigence, and increasingly gravely offended that meetings they had intended as

negotiating sessions had so consistently deteriorated into occasions for Knapp and others to "lecture" Congressional members on the lawmaking process and the legalisms involved in the CDBG case.

It soon became clear to Committee members that neither denial of the regulatory review period waiver, not direct warnings to HUD that the regulations were in defiance of the intent of Congress had had their desired impact. Out of frustration, Committee members began to urge that more stringent actions be taken to assure the regulations would not be permitted to take effect. As one Republican staff member asserted "(we) didn't want to beat HUD over the head entirely (on this issue) but it just got to a point where it didn't seem HUD was listening to any reason at all."[33]

One possible course of action for the Congress was to promote passage of a resolution of disapproval of the regulations, as provided under the (7)o legislative regulatory review procedures added to the CDBG Act in 1978. And in both the House and Senate Committees, serious discussion about introducing such a resolution ensued. Though there was considerable sentiment in favor of launching just such an initiative, ultimately both Committees dropped plans for its pursuit.

For the Senate Committee, this would have been an unprecedented course of action, for never before had the Committee seen need to resort to so confrontational a measure to resolve a regulatory dispute. Moreover, there was some concern on the part of key Senate leaders Lugar and Garn about the Republican Senate being seen to "slap the hand" of the President in so public a way.[34] And while the Democratic House Committee had no such reservation abut taking this action, questions regarding the constitutionality of the procedures proved of central concern.

Knapp had informed Gonzalez through Subcommittee staffers that he considered the legislative veto unconstitutional and would not deem the agency bound to respond to such actions - at least until the Supreme Court ruled on a legislative veto case. Uncertain whether the resolution would receive tandem support in the Senate, and concerned that an adverse Supreme Court ruling would send them back to "square one", the House Committee ultimately declined to report out the resolution it was considering. [And, in fact, their concerns were well-founded, for less than six months later, the Supreme Court ruled the legislative veto unconstitutional in the Chada case.]

With some reluctance all Congressional factions came to the conclusion that they would be forced to redraft the legislation. Though time consuming, and fraught with the potential problems of both proprietary House-Senate battles over the wording of particular provisions, and of entanglement with political conflict regarding other elements of the legislative package, Congressional members were firm in their conviction that legislative action was now required. If statutory reform was what HUD was demanding if it was to change it regulatory stance, statutory reform was what it would get, whether or not it like the final outcome.

HUD's Gesture Toward Conciliation

An eleventh hour concession by HUD at the end of February did little to stave off further action in the Congress. In a newly drafted guideline proposal to the Congress, HUD offered to reinstate a "principally benefits" federal review. Under the compromise plan they fielded, HUD officials still rejected use of an absolute majority-of-funds low income benefit standard, but offered to use it as a benchmark for a "safe harbor" benefit test. If a locality devoted a majority of funds to low-income benefit

activities, it could be considered in the "safe harbor" -- its program deemed acceptable and exempt from further benefit compliance reviews. If it did not, its program would be subject to closer federal scrutiny. While this proposal may well have been more favorably received in an earlier period, it now met with a skeptical Congress's eye. Pressed by Congressional members to delineate what minimal level of redistribution would be acceptable upon "close scrutiny", HUD agents demurred, asserting that in keeping with a block grant approach, that determination would depend on the particular local case. But such vagueness was now unacceptable to the alienated majority of Congressional actors. As one staff member related "we felt they were saying 'trust us' ... but too much had transpired for use to be willing to leave things in their hands."[36] In the eyes of the Congress, HUD's last ditch compromise offer was seen as a classic case of "too little, too late."

Legislative Reform: A Move Toward Resolving the Guideline Controversies

By early 1983, then, two basic factors propelled the legislative process -- the alienation external players felt at HUD officials' fundamentally unresponsive posture (linked in large part to their control by OMB) and the rising concern manifest both among interest groups and now the Congress that there was need to statutorily clarify and strengthen the program's redistributive mandate as a shield against future moves to eliminate the program. While it is likely that some Congressional action to force change in HUD's regulatory position would have occurred even had prior interest group cleavages persisted, the softening of constituent differences greatly eased Congress's moves to legislatively resolve the ten year old guideline disputes.

In contrast to the 1977-78 legislative period, the differences of

opinion among Congressional factions were now greatly diminished. No one sought to advance the idea of coequality among low income benefit, slums and blight and urgent needs components, or to stress the special revenue-sharing principle of unfettered local choice. Instead, there was broad and deep consensus within the key Congressional Committees regarding the overriding importance of the Act's primary objective and the attendant responsibility of the federal government to enforce local adherence to that aim. But as if to underscore the difficulties involved when Congress is forced to provide the specificity of regulations as part of legislative text, differences surfaced between the House and Senate over precisely what, in administrative terms, this agreed-upon charge to HUD officials truly meant.

Both Committees quickly reported out their own versions of new CD legislation, versions which passed their respective chambers with significant support from their membership as a whole. Of the two versions the House's was clearly the more exacting measure.

Under the House bill, the amount of redistribution HUD would require of each grant recipient was no longer left open to question -- a uniform, specific national benefits standard was statutorily prescribed.[37] Each locality would be required to demonstrate, on an annual basis, that at least 51% of its yearly grant allotment had been devoted to CD activities that benefit low and moderate income groups. And HUD was expressly charged in the legislation with responsibility for assuring as part of its yearly post hoc review of local performance, that each locality funded had passed the 51% benefit test.

Moreover, reflecting concern that HUD might seek to undermine the standard through use of liberal counting measures, the bill was

extraordinarily specific in delineating not only the standard and the administrative process to be followed but also the counting rules HUD was to utilize in executing the benefit test. On the whole, the legislative counting rules were quite stringent -- more so than the counting rules that had been employed administratively during the Harris-Embry term.

Especially in light of the fact that the 51% standard would have to be met in each program year, without exception, the counting rules would significantly constrain the options available to many localities seeking to pass the annual compliance test. Appropriately so, the House actors felt.

But the Senate was more wary of the stringency and rigidity inherent in the House approach. Though they shared with their House colleagues and belief in the necessity of establishing, once and for all, the clear superiority of the Act's primary objective, and of reinstating a federal review for compliance with this overriding programmatic aim, they differed in their assessment of where to draw the line between targeting and flexibility, as principles molding the administrative process under law. Many felt the block grant character of the grant instrument demanded greater flexibility than the House version provided, to afford HUD some latitude to take into account variations in local conditions and pressing community needs. As a result, they sought a less stringent set of targeting provisions.

The Senate bill declined to prescribe specific counting rules and sought a looser, though still mandatory, low income benefit test.[38] Under the bill's provision, localities were not required to adhere to an annual 51% low income benefit standard, but instead to demonstrate to the satisfaction of HUD agents, that their use of funds, over a three year period "principally benefit" low and moderate income groups.

From Dispute Over Detail to Compromise Resolution

It was uncommon to find Congressional actors taking strong and assertive postures regarding what typically would be viewed as the "minutiae" of governmental policy -- especially since there were dozens of broader and more central issues in contention in the larger housing/development legislative package to which the CDBG amendments were attached. But by now, HUD's regulatory unresponsiveness had forced such prolonged attentiveness in the Congress to programmatic administrative particulars that each Committee felt it had a proprietary claim to authorship of the operational details in the new Act. Thus disputes ensued between House and Senate actors over which version of the CD amendments best reflected both the inherited primary objective mandate and the flexibility due localities under block grants -- disputes which dimmed the prospects for legislative action.

As the 1983 Congressional session moved into its final months before adjournment, however, the desire to bring final closure to the guideline controversies ultimately overrode these proprietary impulses. Congressional members were painfully aware that for a period of nearly ten years since the Act's original passage, a disproportionate share of both agency and Congressional resources had routinely been absorbed by the persistent regulatory conflicts -- conflicts rooted in the imprecision of the provisions of the CDBG Act. Congressional members did not relish the idea of prolonging the controversies and forcing the expenditure of even greater time and energy on regulatory wrangling as they most certainly would be compelled to do in the Congressional session that lay ahead.

Moreover, there was fear that Congressional stalemate on the CDBG provisions would wrongfully be construed as tantamount to endorsement of

the existing CDBG statute, and vindication of HUD's posture that -- in the absence of clear, statutorily prescribed directives -- it was permissible to deny the primary objective any superiority (in regulations) over the other three aims contained in the Act. Mindful that, in contrast to earlier periods, Congressional members were now in basic agreement that redistribution was to be afforded dominance over local discretion as a programmatic mandate, they did not wish to permit HUD the opportunity to ignore Congressional consensus on this fundamental issue as a consequence of their failure to resolve more petty differences over precisely how a test for local compliance with the primary objective was administratively to be done.

As a result, in the atmosphere of late 1983, tenacity gave way to compromise on the CDBG provisions to be advanced in the larger housing bill. In the version the House and Senate Committees jointly offered for floor consideration, the House prevailed on use of a benefit standard, the Senate on the period afforded localities in which to meet it.

Under the compromise bill's provisions, a new test for compliance with the primary objective was statutorily mandated, as were the particulars of the compliance test. Each locality would be required to demonstrate that at least 51% of its funds had been utilized for activities benefiting low and moderate income persons, but each was permitted to meet the new national benefit standard over a period of three years (allowing annual variation so long as the three year average was above 51%). And HUD was expressly charged in the legislation with responsibility for assuring each grant recipient met the uniform 51% benefit test.

Moreover, the bill did prescribe the specific counting rules HUD was to utilize in making its determination of compliance, though they were now

softened to conform to the less stringent benefit-attribution methodology employed earlier during the Embry-Harris term. But on the whole, the legislation was extraordinarily prescriptive, containing the kind of detail one would expect to find not in legislation but in procedural administrative handbooks. Clearly, in 1983, the Congress was unwilling, with respect to treatment of this central programmatic issue, to leave anything open to chance.

Throughout the ten year history of this major national grant initiative, Congressional irresolution regarding the precise balance to be afforded the diverging CDBG mandates for redistribution and decentralization had persistently served to shift battles over policy issues from legislative to bureaucratic regulatory turf. The result was exceptionally intense and protracted political conflict focused on the typically more mundane questions of what constituted appropriate programmatic guidelines to govern implementation in the CDBG case. Moreover, the regulatory resolutions reached at various points in the program's history were rendered no more than uneasy settlements, readily dissolved by the entry of new regulatory masters who had a different view of the legislation's meaning, and considered themselves unbound by the discretionary accommodations reached in the past. The toll legislative ambiguity had extracted on the program by 1983 was significant -- ten years of rampant instability in guideline outcomes, leaving tumult, confusion and eroded confidence in its wake.

Mindful of this, the House and Senate sought to write the provisions of the 1983 legislation in such a level of detail that ensuing guideline activities would be confined to little more than transferring legislative passages into regulatory text. With the passage of these amendments to the prior version of the Housing and Community Development Act, amendments

adopted and signed into law in November 1983, the regulatory controversies which had so plagued the CDBG program, even into its maturity, had legislatively been laid to rest.[39]

Chapter 8 Footnotes

1. Interview with HUD staff member from the Office of General Counsel.

2. Executive Order 12291 - "Federal Regulation", February 17, 1981.

3. Interview with HUD CPD Staff member.

4. Ibid.

5. Interview with HUD staff member from the Office of General Counsel.

6. The Omnibus Reconciliation Act of 1981, Public Law 97-35, Section 302(b).

7. Interview with Philip Sampson, Staff Director, Senate Subcommittee on Housing and Urban Affairs.

8. Interview with HUD CPD Staff member.

9. Federal Register, Volume 47, October 4, 1982, p. 43912.

10. Interview with Peter Harkins, former Staff Director, Senate Subcommittee on Housing and Urban Affairs.

11. Interview with Gerald McMurray, Diane Dorius, Staff Director and staff member (respectively), House Subcommittee on Housing and Community Development.

12. Interview with Gerald McMurray, op. cit.

13. Letter from Representative Henry Gonzalez, published in The New York Times, Letters to the Editor, October 22, 1982.

14. Letter from Representative Henry Gonzalez to HUD Secretary Samuel Pierce, December 10, 1982, p. 1.

15. Ibid., p. 2.

16. Interview with Gerald McMurray, op.cit.

17. Letter from Senator Donald Riegle to HUD Secretary Samuel Pierce, November 19, 1982, p. 1.

18. Ibid., p. 1.

19. Interview with Philip Sampson, op. cit.

20. Letter from Senator Jake Garn to HUD Secretary Samuel Pierce, October 7, 1982.

21. Ibid.

22. Interview with Philip Sampson op, cit,; confirmed in interview with Peter Harkins, op. cit.

23. Interview with HUD CPD staff member.

24. See, for example, letters from the National Housing Law Project, the National Association of Housing and Redevelopment Officials, the National Committee Against Discrimination and others; HUD Docket File R-82-1005.

25. Letter from John Gunther, Executive Director, U.S. Conference of Mayors, December 3, 1982, HUD Docket File, R-82-1005.

26. Housing and Development Reporter, Volume 10, October 25, 1982, p. 438.

27. Letter from John Murphy, Associate Director, National Association of Counties, December 2, 1982, HUD Docket File R-82-1005.

28. Bernard Frieden and Marshall Kaplan, The Politics of Neglect: Urban Aid from Model Cities to Revenue Sharing (Cambridge, MA: MIT Press, 1975), p. 219.

29. Interview with HUD CPD staff member.

30. Interview with Reginald Todd, Legislative Counsel, National League of Cities.

31. Interview with Barry Zigas, former Legislative Staff member, U. S. Conference of Mayors.

32. Interview with Reginald Todd, op. cit.

33. Interview with Philip Sampson, op. cit.

34. Interview with Peter Harkins, op. cit.

35. Housing and Development Reporter, Volume 10, February 28, 1983, p. 817.

36. Interview with Gerald McMurray, op. cit.

37. U.S. Congress, House, The Housing and Urban Rural Recovery Act of 1983, HR1, 98th Congress, 1st Session.

38. U.S. Congress, Senate, The Housing and Community Development Act of 1983, S1338, 98th Congress, 1st Session.

39. Title I, Supplemental Appropriations Acts of 1984, Public Law 98-181.

CHAPTER 9: ANALYSIS AND CONCLUSIONS:
"POST POLICYMAKING" POLITICS AND ADMINISTRATIVE REGULATORY ACTIVITY

Upon successfully securing passage of the legislation which created the CDBG program in 1974, Congressional authors were led to predict that history would prove theirs to be the most noteworthy legislative action in the field of urban policy since passage of the first federal urban renewal initiative in 1949. And on the occasion of his signing the CDBG measure into law, then President Gerald Ford was prompted to prophesy that the new program would have weighty and far reaching significance for the federal government.[1] Ten years after the inauguration of the program, these prognostications carried a cast of irony. For reasons other than those envisioned by the original actors, these predictions had proven woefully accurate. As this detailed case history illustrates, during its first decade of operations, the program had in fact distinguished itself from other initiatives in several areas - in the notoriously high levels of instability reflected in its administrative operations, in the degree of intergovernmental discord the program had generated, and in the unusually protracted and impassioned struggles it had provoked among key national institutional actors over issues of what constituted appropriate guidelines to govern implementation of the program.

At root, the protracted regulatory controversies which plagued the program throughout this ten year period, had their genesis in the conditions surrounding passage of this original CDBG statute. While the conventional wisdom in the field of public policy holds that Congress assumes the central burdens of policymaking, determinatively casting the essential character of policy in the law it passes to the bureaucracy for implementation, the conventional wisdom ill-describes the empirical realities found in the CDBG case.

The Framing of the Original Statute

Spawned in an atmosphere of turbulence and dissension, the original CDBG legislation was a product of Congressional efforts to end a 3 1/2 year legislative struggle over the contours of urban grant in aid reform. Disenchanted with "excessive" federal categorical restrictions yet wary of the "excessive" localism of the special revenue sharing alternative the Nixon Administration offered, the Congress sought to create a new hybrid grant instrument - consolidating the major urban categorical programs into a single federal-local block grant.

While House and Senate legislative craftsmen could agree on many elements to be incorporated into the new block grant experiment, some of the most fundamental issues concerning the block grant's character served as sticking points. To the Senate, it was essential that the new consolidated program carry a strong redistributive mandate - that localities target grant funds near-exclusively to their neediest populations; that federal oversight authority be sufficiently strong to assure attainment of this national end. But to the House, a more revenue sharing approach was strongly favored. A decentralization mandate was to be central to block grant operations; federal authority was to be intentionally weakened to allow localities power (within broad parameters) to determine policy priorities - both how and upon whom grant resources were to be spent.

Unable to reach full accord on these issues, yet unwilling to defer action on grant reform any longer, the Congress papered over their differences with statutory documents. Thus the legislative design for the program they sanctioned proved no more than a patchwork of relatively incongrous ideas.

As a result, the enabling statute contained several confusing

provisions inherited from earlier versions of the legislation: a national primary objective stipulating that funds were to be placed in service such that they "principally benefit" low and moderate income constituencies, coupled with provisions intimating federal deference to local authorities regarding substantive decisions about the utilization of grant funds; a mandate that "maximum feasible priority" be afforded by localities to the needs of low income persons or areas, coupled with stipulation of a more permissive set of aims which could be construed as equally legitimate and eligible targets for expenditure, like averting blight in more well-to-do areas or meeting other locally defined "urgent needs".

Each discrete set of elements incorporated into the final statute reflected one chamber's legislative preferences for either a targeted (redistributive) or a decentralized program, and divorced from the other elements interspersed among them manifest a sound internal logic of its own. Yet jumbled together they yielded an incoherent programmatic blueprint. Having come to understand the final 1974 statute as a product, not of compromise, as was claimed, but of <u>situationally forced agglomeration</u>, I now know why early interviews with key actors proved so difficult to decipher; why so often those involved in programmatic controversies seemed to be talking past one another. Like the blind men describing the elephant, each articulated a programmatic vision rooted in selected segments of the creature; none able to offer a coherent vision of this new legislative creature as a whole.

Though politically expedient for a battle weary Congress, for the bureaucracy, the passage of such an ill defined and Janus-faced piece of legislation had one critically important effect. It served to transform the guideline development process into a surrogate policy process during

the course of which the vaguarities of confusing legislative language would have to be given concrete form and meaning; for while ambiguity can be tolerated in legislative forums, it cannot be tolerated for long in more action-oriented administrative ones where implementing agents seek precise detailed instructions regarding how bureaucratic responsibilities for executing a program are to be met. While Congressional resolution of central programmatic issues in law typically renders guideline development tasks less weighty and politically burdensome, Congressional indeterminacy in the CDBG case had a contrary effect. With respect to this most important urban program, bureaucratic authorities were delegated both responsibility for and discretion to make (through guidelines) crucial determinative decisions regarding the policy's character - whether federal or local judgements would guide the grant process; whether redistribution was to be mandated, and if so, how much.

Bureaucratic Succession and Shifts in Regulatory Policies: The Case Synopsis

Congressional failure to, at the outset, lock the program into a clear legislatively-specified strategy for how the dual aims of redistribution and decentralization were to be reconciled in administrative practice, left the program vulnerable to the forces of bureaucratic transience. With authority to set policy in this area having been ceded from the hands of its legislative to its bureaucratic masters (who would render their policy verdict through the guidelines they crafted) recomposition in the cast of key bureaucratic actors at least held out the possibility that new guidelines would be initiated for the program. Moreover, so broad was the discretionary territory ceded to guideline developers under the legislation that it was conceivable that guidelines established for the program could

result in not just evolutionary but revolutionary programmatic change and that was precisely what occurred. As a consequence of shifts in Presidential administrations, sharp discontinuities in bureaucratic programmatic leadership yielded attendant discontinuities in the program's rules and character.

The Ford and Carter Era

Under the program's original bureaucratic stewards, David Meeker and other Ford Administration appointees, CDBG regulations placed heavy stress on the law's decentralization mandates. Impelled in large part by an ideologically rooted vision of federalism, in which local autonomy would "properly" be emphasized, national government relegated to play a fiscal rather than a substantive priority-setting role,[2] bureaucrats created guidelines which lent a distinct revenue-sharing cast to administrative operations. Consistent with a revenue-sharing approach to national administrative efforts, no substantive low income targeting requirements were incorporated; in fact the redistributive mandate contained in the legislation was wholly ignored. While these guidelines satisfied House Committee leaders who had advanced decentralization provisions in legislative forums, and mayors who formed a crucial component of the program's interest group constituency, they left other key actors in the guideline arena intensely displeased.

Groups representing low income constituents who felt the Act's "primary objective" language and its inclusion of the "maximum feasibility priority" stipulation had guaranteed expenditures would be placed in service of low income residents of recipient jurisdictions, brought increasing pressure to bear on the agency to recast the regulations in a manner which would rein in local discretion and assure priority attention

was given to housing and service needs of the grantee's low income populace. Moreover, Senatorial authors of the legislation, who had advanced legal provisions lending a strong redistributive tilt to the program, began to publicly castigate HUD officials, charging that their elected guidelines failed to reflect "the intent of Congress", meaning their chamber's intention that the more flexible block grant arrangements still weightily focus expenditures toward meeting poverty needs.

Though initially resistent to instituting change in the regulations, as dissent became more focused and intensified, regulatory craftsmen began to deliberate how to alter the guidelines so as to appease their vocal opponents. But before any altered version of the regulations could be developed within the agency, a new regulatory regime had ascended to power.

Under leadership of Carter-era program chief Robert Embry, a new platform for regulatory reform was now advanced, one which - in contrast to the prior administration - reflected a contrary vision of federalism for the program in which the proper national role was to serve as protector of politically and economically disadvantaged interests. While some portion of Embry's reform impulse may have had its root in his (and Secretary Harris's) desire to anticipate what the White House may have wanted, no overt effort to orchestrate change from the White House was evident to CPD staff. To those inside the agency, Embry's personal convictions played a crucial developmental role. "He definitely felt strongly toward making this program benefit lower income persons", one staff member recounted, "and that (conviction) showed up in a number of ways throughout his term."[3] Acting under a reform impetus fueled and fostered by Embry's programmatic inclinations, and bolstered by support from both the low income lobby and Senatorial critics of prior guidelines, the bureaucracy now sought to effectuate targeting

restrictions that would administratively validate the Act's redistributive aim.

Taking their cue from the provisions found in the Senate's predecessor legislation, and the regulatory interpretation the poverty coalition offered of the Act's mandate, HUD bureaucrats proposed new administrative regulations requiring that 75% of each locality's grant expenditures be earmarked for low income projects. Yet when they attempted to institute the new proposals, they found the hefty degree of low-income earmarking they sought to mandate administratively proved more than the political environment would bear. Local officials launched a vigorous campaign in opposition to the measure, charging that the strong targeting requirements constituted an effort to "categoricalize" the program, stripping them of the discretion and autonomy they felt had been promised them under the Act. Moreover, they were joined in their opposition by House Committee leaders who had been responsible for lending a strong decentralization thrust to the provisions of the legislation. Again Congressional charges of administrative "defiance of the intent of Congress" were leveled (this time by House actors); once again regulatory craftsmen found themselves at the center of an intense political dispute.

Believing themselves within the bounds of their legal authority, yet fearful of the consequences of perpetuating such a highly visible and intense political conflict, HUD officials opted to advance a compromise solution.[4] The final regulations they enacted contained a moderated but significant redistributive requirement. Localities would have their discretion constrained to the degree that no less than 51% of their grant could be expended for low income projects, though administrative inducements were provided to prompt localities to meet the higher low income

target of 75%. While House leaders were initially unappeased by the compromise, the slackening of local official's opposition to the measure (as well as their own desire to turn attention to other affairs) rendered the compromise tenable. Thus the final guidelines this regime had crafted attained status as "legitimate" and valid administrative instruments for a period of about three years.

The Reagan Era

With the rise to power of a new regulatory regime in 1981, however, a new set of players were brought into the guideline arena. Reagan-era appointees to positions of programmatic authority, Assistant Secretary Stephen Bollinger and HUD chief legal advisor John Knapp, brought to the agency a new agenda for programmatic reform. In contrast to the Carter-era experience, however, the agenda these new programmatic stewards sought to pursue for the program was less wholly a discretionary one (ie. grounded in their own intra-bureaucratic assessments of what was needed for the program) and more fully an externally-generated one, rooted in the fundamental philosophies of government the President himself had pledged to pursue. In making executive appointments, the Reagan White House had, with great care, screened contenders for their fealty to the conservative vision of governmental operations the Administration sought to advance.[5] Thus as Bollinger and later Knapp moved to institute reforms in the program, their vision of the reforms that should be adopted were virtually inseparable from the overarching White House view.

Like the programmatic stewards that preceded them, the changes they sought to promote were rooted in a federalist philosophy - one which reflected the decentralization theme of the President; one which paralleled the Ford era posture toward the program, favoring expanded subnational

autonomy and severe constraints on the role of national authorities in the grant process. Thus they proposed enactment of new guidelines that stripped the program of its redistributive requirements, and administratively reinstated a revenue-sharing oriented grant form.

While Reagan-era officials may well have anticipated that the political dynamics which had existed during the Ford era would enable them to receive support from mayoral lobbyists and Congressional factions, support that would serve to countermand the adverse pressures they would face from the low income lobby, such was not to be. The political environment in which they sought to resuscitate Ford-era type regulations proved considerably different from that in which Meeker and his colleagues had advanced their regulatory policies in 1974.

No longer were the mayoral lobbyists so militant in their insistence on total autonomy and freedom as their right under the block grant character of the Act. Having discovered that the mild redistributive requirements established during the Carter era had not proven unduly troublesome to live with, they lacked the depth of sentiment necessary to mount a campaign in support of such a major deviation from prior political accommodations that had led to three years of programmatic truce. Moreover, in the new budget-cutting context that marked the Reagan era, they had begun to see utility in preserving an at least minimally redistributive programmatic profile as a defense against future budgetary cuts. Thus when Reagan Administration officials sought to advance their special revenue sharing design in regulations, they confronted a programmatic constituency that was, at least with respect to the extremely non-redistributive stance they were touting, relatively unified and adversarial.

What is more, by the time these actions were taken, the cast of Congressional characters involved in programmatic issues had undergone significant recomposition. Gone were House Congressional Committee leaders who had traditionally defended a singular emphasis on the Act's decentralization mandate, who had eschewed any redistributive requirements as an infringement on local policy setting prerogatives. And though legislative action advanced by new majority Republican Senatorial leaders to simplify block grant administrative procedures had led HUD officials to believe they would receive support for regulatory initiatives to retract all requirements for low income targeting, Congressional sentiment had been misconstrued. No faction of Congressional players now proved willing to accept a programmatic vision of the effort in which federal protection of the interests of low income constituents was to be totally abandoned. As a result, Congressional actors bearing oversight responsibilities for bureaucratic management of the program were now unified in voicing objection that the new regulations bureaucrats were advancing for the program were at odds with the Act's "legislative intent."

In the face of the unanimity of Congressional and interest group objections to HUD's efforts to (through guidelines) reinstate a non-targeted programmatic thrust, one would have expected HUD bureaucrats to recast their regulatory offering in a manner which capitulated, at least to some degree, to Congressional and interest group demands. But this era was marked by the emergence of another new and potent political player in the guideline arena - the President's Office of Management and Budget. Empowered by Presidential order to exert strong executive control over regulatory activities, OMB rigidified HUD's posture on the regulations. It thus served as a crucial countervailing force on the bureaucracy, one which

drove considerations regarding responsiveness to clientele and Congressional forces out.

The Move Toward Congressional Resolution

In this reconstituted political arena, the struggle over guidelines became less one among contending constituency/Congressional interests, and more one of legislative and executive sovereigns battling for policy control. Unwilling to accede to executive branch visions regarding how the law was to be manifest in regulatory edicts, yet unwilling to perpetuate a regulatory battle fought largely on bureaucratic turf (where now, as a result of OMB dominance, their conventional levers of influence over bureaucratic behavior-even the threat of legislative veto-had failed to produce any results) Congress sought to shift the locus of programmatic authority back into the legislative domain.

In recasting the legislation nearly ten years after its initial adoption, the Congress sought to provide specific directives regarding how far decentralist vs. redistributive claims on the administrative process were to be legally permitted to extend. With respect to questions pertaining to in what manner block grant funds were to be expended, decentralization was permitted to prevail as the dominant principle; local authority and discretion to elect particular project approaches was left relatively open and broad in scope. But deviating from past legislative unclarity, questions pertaining to for whom grant funds were to be utilized were now clearly circumscribed as legitimate objects of national dominance and concern. Under the new legislation, localities' subjugation to national tests for how their efforts served the Act's primary objective was no longer to be administratively optional, but mandatory, legislatively formatted, and routine. Local discretion in this area was to be federally

delimited.

Yet in an effort to only moderately constrain the options available to localities under the new provisions, the Congress set the level of low income targeting to be deemed a "nationally acceptable" reflection of local compliance with the Act's primary objective mandate at the very modest level of 51%.

In this legislative compromise, the Congress sought to adhere to the rough contours of the informal political accommodations reached among interested parties in earlier periods of the program's history. Though low income advocates had lost ground with the omission in the law of the administrative inducements used earlier to prod localities to meet a higher 75% benefit standard, they had scored a victory in securing use of a mandatory legislatively-delineated benefits test. And while localities had been stripped of any claim to preeminence in decisions regarding who was to benefit from programmatic expenditures, they had scored a counterpart triumph in the inclusion of a 51% minimum benefits standard which bound them to allocate benefits in a manner which lent the program an only mildly redistributive tilt.

In crafting the legislation such that it provided a degree of balance between the pressures for local discretionary latitude, and for federal protection for the poor from wholesale local neglect, the Congress was able to amass, though not wholehearted enthusiastic support from all constituent quarters for the measure, at least sufficient consent to act; for its main goal in resolving the amorphous conflict in legislation was to reclaim, from the recalcitrant bureaucracy, the discretionary policy-setting prerogatives earlier ceded to bureaucratic hands.[6] While prior battles invoked by the inherent tensions in the program's goals and format might

continue, with respect to the central issues at stake in this dispute, Congress - having not only clarified the priority to be afforded to the decentralist and redistributional aims of the legislation, but having written the detailed regulatory language into law - would in the future serve (via its lawmaking activities) as the ultimate arbiter of competing guideline claims.

Guideline Development: A Review of the Rein, Rabinovitz and Pressman Framework

What the CDBG case reminds us, in a most definitive way is that at root, the guideline process is, in fact, a continuation into another arena of the political process.[7] Though we have conventionally conceived of regulatory craftsmanship as premised either on a model in which bureaucratic agents serve as simple "translators of law" into administrative edicts, or as non-partisan dispassionate "steward technicians" of the administrative machinery of government, neither conception of rulemaking behavior appear to capture the essence of the regulatory process as it was manifest in the CDBG case.

While Rein, Rabinovitz and Pressman point out that "legal imperatives"[8] - the specific directives contained in the statute which empowers an agency to take administrative action - often serve as the major foundational base from which regulatory content will be derived, such a vision is premised on the assumption that the law does in fact offer some guidance to bureaucratic authorities regarding the issues at hand - that it does illuminate bureaucratic agents as to their fundamental statutory responsibilities under the terms of the legislation, and does provide (for the implementing bureaucracy) at least a rough degree of substantive clarity regarding issues of legislative policy intent. But the law clearly did not serve that func-

tion in the CDBG case. Rather, the law incorporated not only excessively vague but equivocal language which, in sanctioning both decentralization and redistribution as overarching principles to govern the programmatic enterprise, delegated to bureaucratic authorities important tasks of determining how these competing principles were to be reconciled in administrative practice.

Moreover, despite repeated Congressional efforts to lend greater specificity to the directives contained in the authorizing statute via amendments made to the law in the period prior to 1983, Congressional deadlock over favored priorities for the program rendered the "legal imperatives" reflected in these amendments as unintelligible a guide to legislative intentions as those contained in the original statute. Thus, with respect to the issues with which this case is concerned, during the first nine years of the program the law was consistently rendered an impotent force in shaping bureaucratic regulatory behavior.

What is more, typical visions of the guideline development process as an administratively-driven enterprise ill-fit the CDBG case history as well. While Rein, Rabinovitz and Pressman suggest that bureaucratic regulatory craftsmen will be impelled (by dint of their posture as stewards of the administrative machinery of government) to cast guidelines such that "bureaucratic rationality" - imperatives embedded in concerns for the efficiency and effectiveness of the administrative process - is granted supremacy over any policy-partisan preferences bureaucratic agents might hold, "bureaucratic imperatives"[9] failed to play a significant role in shaping bureaucratic regulatory actions in the CDBG case. While administrative concerns were manifest among bureaucratic underlings during the regulatory process (as in the Embry era when some objected that pursuit

of a targeting strategy would prove administratively troublesome, or in the Bollinger era when some warned that such a marked deviation from prior administrative practices as was being suggested would generate confusion and administrative disarray) they ultimately had little impact in influencing the choices of the politically appointed bureaucratic leaders who opted to play a major role in electing the guideline choices that were made.

Rather than resembling the process we typically presume it to be - a neat, orderly and dispassionate bureaucratic exercise, conducted in bureaucratic corridors isolated from "infecting" forces of politics-at-large, the CDBG guideline process assumed a highly politicized character with all the earmarkings of a political bar-room brawl. Several external players vigorously sought and with varying degrees of success attained political influence over the regulatory process. Guideline decisions proved a source of conflict and contention throughout.

Yet the overtly politicized qualities of the guideline development process as revealed in the findings of this case study do not necessarily refute the contention that, under other circumstances, the regulatory process may well assume the more apolitical, legalistic, technocratic character often ascribed to it. The demeanor of guideline development proceedings may well be a function of the breadth of discretion delegated to bureaucratic authorities in the post policymaking forum, the stakes involved in bureaucratic rulings for external attentive publics, and the overt character of the issues which bureaucratic authorities are vested with responsibility to resolve - all of which are predetermined by the contents of the law.

In circumscribing those issues ceded to guideline forums for discretionary resolution by bureaucratic actors, the law can be seen to

shape the nature of the conflicts likely to surface during regulatory proceedings, their intensity, and their scope. To illustrate, in some instances the law cedes to guideline developers for resolution, either issues that are of relatively trivial import, or issues which are at least manifestly non-political in character; (e.g., ones which involve setting of scientific "technical" standards as in air pollution policy; or ones which are ostensibly "administrative" in content, such as those tethered to elimination of programmatic "waste, fraud, and abuse").

In either set of circumstances, the law, though indeterminant, serves to suppress the political dimensions of the guideline enterprise - in the first instance because the stakes involved in the discretionary exercise of bureaucratic authority are too low to activate external interests; in the second because the political consequences of guideline choicemaking are masked by the technical complexities of the issues involved, or their allegedly "neutral, administrative" focus.[10] Where these circumstances prevail, the guideline development process will likely be imbued with the essentially technical/administrative character we more conventionally associate with administrative rulemaking behavior. Bureaucratically rooted considerations will be prone to dominate; the broader political environment in which regulatory decisions are crafted will be "de-politicized"; regulatory conflict will likely be more agency-internalized where it develops at all. But such was not the case with CDBG.

In contrast, the issues which the CDBG law, in its equivocation, demarcated as those to be resolved in guideline forums had a markedly different quality. They were neither trivial, nor predominately administrative in tenor; nor were they capable of being disguised as such. Rather they constituted the most salient, most sensitive, and most

intensely political of all programmatic issues - overtly tethered to major questions of the apportionment of power among grant actors, notions of federalism, and the distribution of the tangible benefits of the federal government's largess.

Thus the law set the stage for the ensuing guideline proceedings, virtually ensuring that the process would assume the markedly politicized character that it did - that the scope of conflict would extend beyond the bureaucracy's borders to mobilize external interests as important players in the political contest; that political considerations (whether ideologically or pragmatically rooted) would be ceded a central influential role.

Guideline Development and "Post-Policymaking Politics"

Precisely because the guideline setting process emerged as such an overtly political enterprise, garnering the attention and involvement of a wide variety "outside" players in the rulemaking game, the CDBG case provides an opportunity to examine the key external relationships with which the bureaucracy is engaged in the post-policymaking period, and how these relationships shaped (or failed to shape) bureaucratic discretion over guideline choice. While the implementation literature has little to offer by way of clear hypotheses regarding how these relationships are expected to function, it is possible to extrapolate from the broader political science literature reasonable tenets about the "significant others" in the political arena within which bureaucracies are centered, and how, during implementation, they and their bureaucratic cohorts would be expected to behave.

Interest Groups and the Bureaucracy During the Implementation Period

In the literature on bureaucratic politics, great importance is afforded the relationship bureaucracies maintain with their programmatic

constituencies. From the client groups their programs service, bureaucracies derive the external political backing they need in order to secure (from legislative forums) resources that sustain bureaucratic operations. As Rourke points out, "it is essential to every agency's power position to have the support of attentive groups whose attachment is built on an enduring tie."[11] Since bureaucracies are so dependent upon political support from the interest groups who represent the bureaucracy's constituents, this political reality would lead one to expect bureaucratic agents to seek to maintain a harmonious relationship with the clients they serve; to exercise discretion in a manner which seeks to appease (to the extent feasible within the bounds of the law) the desires of key interest groups to which they are beholden. Yet the manner in which HUD's constituency was structured rendered the blanket appeasement of pertinent constituent groups problematic.

Inherited from the prior urban programs which were consolidated under the block grant banner, (including Model Cities and Urban Renewal), both low income residents of cities and local officials were incorporated as central components of the bureaucracy's programmatic clientele. As a consequence of their involvement with earlier programmatic initiatives, both sets of interests were well organized and well-represented by a panoply of strong and vocal lobbying organizations who had dealt with HUD agency officials before. Yet their policy-preferences with respect to the block grant program left these groups severely divided on the basic issues in contention; their interests fundamentally at odds with one another.

Organizations representing mayors and other local officials who were to be recipients of the grant allocations held an inherent interest in securing for their members the maximum discretion possible in deciding how

grant funds were to be expended; low income advocacy groups, on the other hand, were similarly wedded to attainment of maximum federal protection for their interests via earmarking of funds for use in meeting poverty needs. And while, from time to time, other considerations tempered their singular pursuit of these agendas, at root, each held these goals closest to heart.

Of significant consequence for their involvement in the post-policymaking period was the fact that the legislation's ambiguous wording lead each to believe it had scored a victory in legislatively binding the program to the ends to which they were committed. In the eyes of the mayoral lobby, the block grant's anti-categorical character had promised realization of their goal of fundamental autonomy from federal direction; to the poverty coalition, the law's primary objective and "maximum feasible priority" stipulations pledged pursuit of a federally targeted, low income oriented effort.

It would have been impossible for the bureaucracy, in setting guidelines, to fulfill the high expectations held by both sets of interests, for at root, the contest over these issues was a zero-sum game. But the statutory unclarity served only to compound the dilemmas posed for the bureaucracy in making the difficult post-legislative trade-offs that would have to be made.

The Law's Mobilizing Effect on Interest Groups

In sanctioning the goals of both sets of clientele interests, the law provided each equally with not only an invitation to become active political participants in the guideline arena, but a legislatively rooted basis for staking out their programmatic claim. Though their prior involvement in predecessor programs made it likely each would attempt to garner influence as program regulations were being drafted, had the

legislation failed to (for either or both parties) expressly validate their goals as goals of the program, it is conceivable that one or the other sets of interests might have at some point felt themselves on less politically-defensible territory - more inclined to accept adverse regulatory verdicts as legitimate (though undesirable) ones; to give the battle up. But buoyed by their conviction that the law upheld their claim on programmatic resources, both proved tenacious and vigorous watchdogs of the bureaucratic effort; active political contestants in the policy process even as it extended into guideline forums; forces demanding bureaucratic attentiveness throughout.

While creation of such a divided and highly-mobilized programmatic constituency made HUD's tasks of guideline-writing a difficult exercise at best, there is also evidence in the case history to sustain the view that bureaucracies are less attentive to their "constituency-servicing" functions than the literature on bureaucratic politics would lead one to believe.

It was clear, from the very outset of the administrative effort in 1974, that the two key clientele groupings had staked out significantly divergent positions on the regulations that would be sought for the program; that they would assert on the administrative process virtually antithetical programmatic claims. Had agency officials manifest as great a concern for clientele-responsiveness as is commonly conceived, their inclinations would have been to avoid offering regulations that would significantly "tread on the toes" of one or the other sets of bureaucratic constituents; that could be construed as tantamount to an action to "disenfranchise" either one or the other of the programmatic groups.

Yet in electing the <u>initial</u> contents of the regulatory edicts they

attempted to impose on the program, neither bureaucratic leaders of the Ford era, nor the Carter era, nor the Reagan era sought to play a role as mediator among contending clientele sectors. Instead each opted to advance a set of regulations which were, in their extremism, quite predictably bound to antagonize one or the other constituency groups.

Moreover, even where officials at later stages of their administrative tenure did prove more willing to consider assuming a more middle-of-the-road regulatory posture (as at the end of the Meeker regime when reformulation of initial regulations was being discussed as an option, or at the end of the Embry term when officials did, in fact, back away from the strict 75% benefit rule they favored) it appears the parties they most keenly sought to mollify were not the interest group constituents per se but the more important actors who held positions of authority in the legislative branch. Only at key points at which Congressional members used their oversight authority to bring intense pressure to bear on bureaucratic actors to revise regulatory content did the impulse for mediation emerge within the HUD bureaucracy, and even then, the impulse for mediation did not consistently prove very strong.

Congressional-Bureaucratic Relations During the Implementation Period

The bureaucracy partakes in a special relationship with the Congress because ultimately the bureaucracy acts under legislatively-crafted edicts from whence its implementation powers derive. Nonetheless, most writings on implementation neglect to offer any significant discussion of bureaucratic-Congressional interactions during the implementation period. Having issued their charges in the law, Congressional actors are presumed to remove themselves from the scene, leaving bureaucracies to execute the charges lawmakers rendered unfettered.[12]

This underriding notion of Congressional disinterest in the implementation of policy is also reflected in the bulk of the literature on legislative behavior which, in examining the role of the Congress in the workings of the modern day administrative state, finds that Congress has relegated to itself the role of the "absent partner" in the implementation enterprise. Legislative scholars assert that Congress rarely undertakes any serious effort to conduct surveillance over policy once a statute leaves Congressional hands, and even more rarely manifests the will to make use of the tools available to it to mold bureaucratic behavior in a manner deemed more consistent with legislators' "policy intent".[13] Indeed, many observers of the Congress have long-lamented the unwillingness of lawmakers, even in the face of ever-broadening delegations of authority in enabling statues, to devote time and attention to pursuit during implementation of an aggressive legislative oversight role.[14]

Yet these common assertions regarding Congress's inattentiveness to its legitimate legislative oversight function find little support from the events recounted in the CDBG case. Among key Committee actors vested with oversight responsibilities, Congressional interest in how the CDBG program was being implemented by the bureaucracy proved both widespread and enduring. Moreover, with a notable degree of regularity throughout the nine year period, key oversight authorities sought to periodically intercede directly into the bureaucratic rulemaking process to render implementation outcomes more responsive to "Congressional will."

[Note: One surprising feature of the CDBG case is that these activist inclinations were sustained throughout the comings and goings of several Presidential administrations, and through periods of succession of Committee/Subcommittee leadership in both the House and Senate.

And while the Congressional literature suggests that where legislative oversight is pursued aggressively, partisan politics can be found at its root (stemming from a desire to publicly embarrass administrators of the opposing party),[15] partisan impulses were not at the heart of Congressional-bureaucratic conflict in the CDBG case. During the Ford Administration, oversight challenges emanated from a bipartisan Senatorial coalition; during the Carter Administration from a bipartisan alliance in the House; and during the Reagan Administration from a bipartisan network of actors in both legislative chambers.]

Precisely because legislative efforts to intervene proved so persistent throughout the implementation period in the CDBG case, the experience of the CDBG program might prove informative to the contemporary literature on Congressional behavior; might contribute to an understanding of a newly emerging role of the modern legislature in implementation in some way. Yet for purposes of analysis of this facet of Congressional -bureaucratic relations, lawmakers' efforts to influence bureaucratic guideline activity should be examined separately during two discrete periods of the program's history - one covering the early years of the program's operations (roughly 1974-78), the other covering the years from 1981-83. This is warranted because in each period, the root impulse for Congressional oversight intervention emanated from different sources; bureaucratic-Congressional dynamics varied. Moreover, each period offers a discrete set of insights into the complexities of the legislature's role in policy implementation.

Congressional Interventions into the Guideline Process: 1974-78

While Congressional oversight authorities demonstrated from the very beginnings of the implementation period an uncommonly keen interest in the guidelines under which the program was to be executed, it was not until the

second year of program operations that efforts were initiated in legislative quarters to overtly intervene to shape the process of guideline choice. Having discovered (via interest group studies and a GAO management review they had ordered) that initial rules adopted by agency officials reflected wholesale repudiation of the low-income targeting language they had added to the statute, Senatorial authors of the legislation took the lead in seeking to make strategic use of their oversight prerogatives to prompt bureaucratic reformulation of the regulations in a manner more responsive to their programmatic concerns.

Calling HUD officials to testify before a previously unscheduled oversight hearing, Senatorial critics sought to publicly convey their displeasure with the course of action HUD had elected. While HUD authorities had been well-aware that their guidelines favored the House perspective to the exclusion of the Senate's, the unexpected intensity and openness of Senatorial objections that their actions were in "defiance of the will of Congress" led them to begin a reassessment of the political wisdom of their decisions; an evaluation of how Senatorial oversight activists might be appeased. Despite initial recalcitrance, sentiment began to accumulate in HUD corridors that some modification of guidelines in the direction of affording greater balance between House and Senate-favored mandates would be necessary. Yet the emergence of a bureaucratic impulse toward House-Senate mediation was interrupted by political events.

As Carter era officials replaced their Ford-era predecessors, they received reminders during confirmation hearings of the resoluteness of their Senate overseers' views. And though Senatorial attempts to secure stronger targeting language in the 1977 reauthorization bill had been thwarted by House opponents (leaving the ambivalence of formal legislative

edicts intact), the consonance of HUD officials' perspectives with those held in the Senate emboldened them to recast programmatic guidelines in a manner which placed heavy emphasis on requirements for targeting to the poor.

It soon became clear, however, that in reformulating guidelines so as to impose on localities a 75% low-income targeting standard, HUD officials had run afoul of the decentralist-oriented interests of equally potent oversight players in the House. Their interest in the administration of the program piqued by their 1977 legislative battle with the Senate, House authorities sought to countermand Senatorial influences on the guideline writing process with regulatory oversight interventions of their own.

Through not only hearings but direct official correspondence charging them with "defiance of the intent of Congress", House oversight authorities sought to impel HUD officials to recant their position on the 75% rule and to restore a more fully decentralized managerial approach. Confronted with signs of recalcitrance on the part of agency actors - recalcitrance grounded in Senate oversight authorities' overt support for the proposed rules - House actors initiated legislative amendatory actions that, if adopted, would bind HUD to use of more decentralist-oriented programmatic rules.

Though in 1978, as in earlier periods, the politics of deadlock rendered the House legislative actions unsuccessful (blocked by Senatorial actions which left the legislative ambiguity unperturbed), their success in establishing a new legislative review/veto process for HUD regulations prompted Carter-era officials to reassess their stance. While the legislation left them <u>legal</u> latitude to exercise broad discretion over CDBG regulatory content (much as it had for Ford-era bureaucrats in the past),

the regulatory-review process presented new perils for agency stewards of the administrative effort. Under the newly created regulatory review process, legislative oversight reviews would most assuredly prove more routinized; political conflict with the Congress more protracted and intense. As a result, bureaucratic actors sought to make gestures toward mediation between House-Senate contenders to avert incessant Congressional-bureaucratic struggle over programmatic rules. While their final guideline offering (stipulating a 51% low income benefit standard with inducements to boost targeting to 75%) appeased neither faction fully, it ultimately reduced to a minimal level the degree of residual Congressional dissent. Thus the 51/75% targeting compromise stood without significant challenge in the Congress as program guidelines from 1978-81.

Legislative Specification and Legislative Oversight as Strategies for Congressional Control over Implementation

In legislative theory, it is held that Congress has two routes available to it, through which to exercise control over the bureaucracy - legislative specification and legislative oversight.[16] As a consequence of the rapid expansion in the scope of governmental activity during the last half century, controls via legislative specification have increasingly functioned poorly.[17] By virtue of limitations on its resources, expertise, and time available in the legislative calendar, Congress has increasingly moved away from attempts to forge fully-explicated statutes, opting instead to fairly routinely provide only the broad contours of policy in legislation, and to delegate authority to the bureaucracy to fill in the gaps left in statutes during the implementation process. As Dodd and Schott note "Today there exist so many issues that Congress cannot 'legislate' on all the decisions that face it; it has to delegate some

decisionmaking to executive (branch) officials and agencies. Nevertheless, delegated authority derives from the Congress, which has a responsibility to ensure that this authority is used in a responsible and responsive manner." (emphasis added).[18]

In the eyes of many, this suggests that Congress should more diligently pursue its legislative oversight function; should fulfill its charge to exercise "continuous watchfulness" over bureaucratic actions.[19] Where remediation is deemed called for, the argument holds, Congress can avert use of use of burdensome statutory proceedings by making use of the non-statutory and quasi-statutory tools available to it (hearings, direct correspondence, legislative veto) to bend bureaucratic action to conform more closely to "Congressional will."

Yet the CDBG case history evokes cautions about the ease with which deficiencies in legislative specification can be remedied by reliance on an activist Congressional posture toward the exercise of legislative oversight functions. Because oversight activities are carried out by Committee authorities of each separate chamber, rather than any body which represents the collectivity of the legislative whole (like a joint Conference Committee) there is no assurance that oversight authorities will speak to the bureaucracy in the post-policymaking period with one voice.

In the normative discussions on legislative oversight, it is generally presumed that Congressional oversight interventions will (and should) arise where bureaucratic agents are widely perceived to have exceeded the bounds of their statutorily-delegated authority; Congressional oversight powers invoked in an effort to bind administrators to legislators' common understandings of statutory meaning and intent. Yet in the CDBG case during this particular period, legislative interventions arose not out of a desire

on the part of legislators to steer bureaucratic discretion so as to reflect common Congressional understandings (since at this point no common understanding existed) but rather to attain via influence over the regulatory process what diverging legislative factions could not attain during the forging of the law.

The opposing House-Senate Committee camps can be seen during this period to have persisted in their drive to attain greater "legislative specification" that would have compelled administrators to issue regulations wholly reflective of the programmatic ends they sought. Yet when lawmaking actions in 1974, 1977 and 1978 repeatedly failed to provide a clear victory or clear defeat to either faction, lawmakers, in the legislative interim, turned their attention to the administrative realm. There each legislative coalition sought to make strategic use of its oversight authority to advance, through regulations, the policy perspective they favored, in hopes that quiesance on the part of their opponents would enable them to prevail.

Yet largely as a consequence of legislator's intense ideological commitments to their policy perspective (rooted in conceptions of "proper" federal arrangements), activism on the part of key interest group factions, and a sense of programmatic "proprietorship" which both House and Senate coauthors of the legislation seemed equally to hold, neither faction was prone to assume a stance of passivity in the post-legislative periods of this era.[20]

Only when four years of virtually continous struggle led legislators to the realization that failure to soften their demands on administrators would perpetuate House-Senate battles ad-infinitum, deflecting ever-disproportionate shares of Congressional time and resources away from other

important concerns; and only when the bureaucracy manifest clearly (as it did at the end of the Carter era) an inclination to seek regulations which carved out between House-Senate positions a genuine "middle ground"; only then did House-Senate opponents demonstrate a willingness to desist in efforts to make use of legislative oversight interventions to gain strategic policy-partisan advantage over implementation activities. Acceding (albeit with reluctance) to the compromise regulations Carter era officials offered, legislators informally sanctioned the 51/75% benefits regulations as reflective of Congressional policy intent.

Significance of these Findings for Post-Legislative Implementation Politics

It is left for others to pass judgement on whether the behavior of legislative actors during this period in employing their oversight authority to steer bureaucratic actions in directions they favored represented an appropriate or inappropriate use of Congressional powers. On the negative side, it may be asserted that invocation of the name of the Congress for expressly policy-partisan purposes undermines both the legitimacy and credibility of those who represent the institution to the outside world. On the positive side, these actions did serve as an effective check on the behavior of bureaucratic actors who manifest surprisingly little inclination to fashion (without external prodding) a set of regulations that gave voice (to some degree) to both sets of mandates incorporated by legislative authors into the statute. Via the pressures and cross-pressures imposed by oversight interventions, bureaucratic "excesses" were identified and countermanded; an acceptable vision of Congressional policy intent was over time permitted to emerge.

Regardless of one's posture on the normative questions at issue, however, one implication of the case study findings is clear. To the degree

that the findings regarding the extent of Congressional oversight activism are not idiosyncratic, but reflective of a waxing inclination on the part of lawmakers to take seriously their legislative oversight role, administrative rulemaking forums may increasingly become the arena in which intra-Congressional conflicts will surface, or in which prior disputes unresolved in legislative forums will be perpetuated and played out.

Congressional Intervention into the Guideline Process: 1981-83

During the 1981-83 period, Congressional monitoring of and intercession into the rulemaking process continued, yet the interventions differed from the prior period in their proximate cause and intent. While during the 1974-78 period Congressional involvement was spawned by intra-Congressional Committee battles over the meaning of the statute they had authored, during the 1981-83 period it reflected a pitched battle for dominance over administration between the "institutional Presidency" and the legislative branch.

By 1981, administrative practices premised on the 1978 compromise Carter officials had crafted had become fairly-well institutionalized, remaining in use for what in the CDBG program was an unprecedented tenure of three years. As the absence of conflict during this period attests, among both those Congressional Committee authorities who had partaken the compromise action, and those who had succeeded them in leadership positons, the 51/75% benefits guidelines had attained acceptance as the manifestation of Congressional policy intent.

Yet while the 51/75% guidelines had attained legitmacy as a reflection of statutory meaning, Congressional authorities failed to act to secure codification of the guidelines in law. In the absence of any overt intra-Congressional or Congressional-bureaucratic tensions that would have led

them to believe the compromise was not perceived as binding, Congressional actors had assumed a posture of complacency. Presuming that continuity would prevail, their informal pact hold, legislative actors secured passage of a 1980 reauthorization bill which only perpetuated, rather than elaborated upon, the language of the existing statute. And though, during more controversial legislative action to alter procedural programmatic requirements in 1981, lawmakers had inserted in addition to the primary objective language another ill-worded clause which pluralized the term, they sought in the law's companion Conference Report to convey their expectation that the revised and simplified programmatic format would not result in deviation from the substantive status quo. ("The intent is to cause procedural simplification rather than substantive change," the report read). The law itself, though, perpetuated prior statutory ambiguities, and Congressional authorities' failure to rectify this by codifying the guideline pact in statute would come back to haunt them, as less cooperative agency officials came into positions of bureaucratic control.

The Overhead Executive and Implementation

It has generally been depicted in the policy studies literature that the Chief Executive and his institutional agents exert little direct control over administrative aspects of domestic public programs. Preoccupied with tasks tethered to the President's responsibilities in foreign affairs and with his dealing with the legislature in forging the course of domestic policy through law, these officials have historically manifest relatively little interest in involving themselves intimately with "more mundane" bureaucratic implementation activities.[21] Moreover, even where the executive establishment has shown desire to exert greater control over the day to day functioning of administrative agencies, by and large it

has historically been the case that the Presidential "reach" has exceeded its "grasp".[22] Members of the overhead executive have persistently complained that even the politically appointed staff of bureaucratic agencies (selected by the President) routinely display a tendency to "go native"; to become part of the dominant bureaucratic culture of the agency they are presumed to control.[23] The historical validity of these assertions is sustained in the work of scholars who have described the modern-day prevalence of policy subsystems. In characterizing the "whirlpools" within which policy is made (and administered), bureaucratic agency, interest group and Congressional actors are held to work conjointly; but no mention is made in these works of an activist overhead executive role.[24]

Running contrary to past administrative practices, however, the Reagan administration in 1981 took steps to move OMB more centrally into the administrative act. Having now been granted (under Executive order) authority to guide and veto administrative regulations offered by bureaucratic agencies, OMB was activated as a device for bending bureaucratic actions to greater conformity to Presidential will.

Presidentially Rooted Initiatives, Congressional Response

With this new institutional mechanism set in motion, agency actors were induced to sponsor guidelines more faithful to Presidential values than to those manifest among Congressional authors of the legislation. In the absence of clear statutory specification of the guidelines to be utilized, HUD officials eschewed adherence to existing administrative practices. Instead, they acted to carry forth OMB's charge to reflect Presidential desires for decentralization of government functions by sponsoring new regulations which not only removed a low-income targeting standard but stripped federal agents of any low income advocacy or benefits-oversight

role.

Reflective of a continued commitment to pursuit of an activist oversight posture which had been manifest among previous Congressional program authorities, both House and Senate actors gave close scrutiny to the proposed regulations. Yet in the judgement of key Congressional lawmakers (the selfsame group that had authored and sheparded the most recent 1981 legislation through the Congress) the regulations were uniformly deemed to be grossly deficient. None of the key legislative authorities adjudged them even proximately reflective of Congressional policy intent. As had occurred in prior periods of the program's history, legislators sought to use informal oversight techniques to convey to bureaucratic implementation authorities their dissatisfaction with the new administrative measures. Employing such devices as previously unscheduled oversight hearings, published letters of objection, direct correspondence charging HUD with "defiance of the will of Congress", and threats to make use of legislative veto proceedings, Congressional authorities sought to compel modification in HUD's regulatory design.

But where in earlier periods these tools had, <u>even in the absence of Congressional comity</u>, succeeded in inducing HUD to seek appeasement of legislative stewards of the program by making concessions in its regulatory offering, now bureaucratic implementers assumed a far less deferential stance. Yielding to the weight of OMB counterpressures, HUD moved to willfully exploit the weaknesses in the statute to the advantage of the President by verbally affirming, despite unanimous Congressional objection, its commitment to its regulatory plans. Feeling its prerogatives to set the course of domestic policy trammeled by wayward bureaucrats, Congressional authorities did, finally, move to provide clear unarguable

directives to the bureaucracy by writing their desired regulatory language in the 1983 law.

Significance of Executive Activism for Implementation Politics

As with Congressional actions observed in the 1974-78 period, it must be left to others to assess whether HUD's actions of this era represented an appropriate use or misuse of its delegated powers. Some would argue that Congressional failure to codify guidelines in law during previous periods left HUD with legitimate authority to cast guidelines in accord with Executive wishes. Others would argue with equal vigor that though the statute was ambiguous, a sufficient legislative history had been crafted (sufficient Congressional consensus revealed) that HUD should not have sought to chart, under OMB's guidance, so independent and legislatively errant a guideline path. Indeed so profound and complex are the questions raised by the case history of this period that ultimately their answers hinge on interpretations of Constitutional law and attendant visions of which masters - their legislative or executive ones - bureaucracies are properly meant to serve. Thus, their resolution clearly falls beyond the scope of this work.

Nonetheless, regardless of one's stance on the appropriateness of overhead executive efforts to shape the guideline-setting process, one important observation regarding the timing of OMB attempts to singularly pilot bureaucratic action should be made. While one might not be surprised to find strong Executive initiative to be exercised when programs are fledgling, when Executives may have had a direct role in their legislative creation and feel commitments to sustain their programmatic vision in the guidelines the bureaucracy sets forth, in the CDBG case, OMB's attempts to commandeer bureaucratic operations emerged not at the onset of the

programmatic effort but after the program had been in operation for nearly eight years. This finding suggests that, under the new activism manifest in the overhead executive, significant conflicts with the Congress over the course of domestic policy action may not erupt primarily at junctures where legislative edicts are crafted, nor in the period in which program operations are institutionalized, informal accord over administrative activity reached. Rather with each Executive succession, conflicts may be induced to not only surface but resurface over any administrative issue on which legislative cloture has not definitively been secured.

Overall Implications for Our Understanding of Implementation Politics

Though cognizant that a politics of implementation exists, we have tended, by and large, to approach guideline development as though it were more purely an exercise in neutral technocratic administration.[25] Moreover, even where we have acknowledged that "politics" may have bearing on the process of crafting administrative regulations (that discretionary "policymaking" elements are inherent in this phase of bureaucratic work), we have been inclined to presume that implementation politics - in contrast to the broader politics of lawmaking - encompasses a set of relatively routine and modulated negotiations between "autonomous" bureaucratic discretion-holders and their allied constituent interest groups.[26] Major governmental institutional actors (like Congress and the overhead executive) are held to "opt out" of the political interplay; to seek in implementation proceedings no significant or direct manifest part. Yet in the CDBG rulemaking case, Congressional oversight agents and representatives of the institutional presidency sought recurrently to intervene not only to partake in the political interchange, but to assume a major directorial role in implementation. These interventions can be seen

to have had on the conduct of bureaucratic regulatory tasks significant (albeit erratic) effects. In all eras these institutional forces overshadowed in import direct interest group efforts to attain bureaucratic influence; in one (the Reagan era) they eclipsed direct interest group-bureaucratic ties entirely.

It is possible that the case findings with respect to Congressional/executive activism are idiosyncratic; a false reflection of what might be construed as a broader underlying shift in the inclinations of Congress and the executive establishment to garner strategic control over the conduct of bureaucratic implementation work. But it is also plausible that they are not.

Within the case itself, the pattern of evidence suggests that Congress has undertaken a far more systematic and sustained effort to oversee and pilot urban program implementation than was true in the pre-CDBG programmatic years. Congressional monitoring of and intervention into agency activities proved fairly regularized from the very onset of the implementation effort, and consistently attracted involvement of a surprisingly broad array of participants from both chambers and both sides of the Congressional aisle. The establishment of formal legislative regulatory review and veto procedures in 1978 has served to reinforce and institutionalize these oversight practices, and though the legislative veto elements were invalidated by Supreme Court action in 1983, the legislative review and delay procedures continue to be utilized today.

Moreover, supporting the view that inclinations toward Congressional assumption of a new stewardship role in implementation are <u>not</u> solely case-bound is the fact that the legislative review mechanism, though a direct outgrowth of CDBG controversies, was deliberately constructed so as to have

far broader applicability. It encompasses all regulatory implementation actions in each and every one of HUD's programmatic areas of jurisdiction and has been employed by the Congress in other reported but unanalyzed housing and urban policy cases.

In addition, while we as yet have far too few studies of bureaucratic rulemaking from which to adequately assess whether the kind of aggressive and sustained Congressional activism unveiled in this case history is becoming commonplace, at least one recent study has uncovered similar patterns of Congressional behavior in domestic program implementation outside the urban policy sphere. In his analysis of administrative rulemaking for the foodstamp program, Jeffrey Berry found evidence of "vigorous and continuing legislative intervention",[27] affirming that the CDBG findings may indeed not be at all anomalous but reflective instead of a wider though less-recognized contemporary Congressional trend.

With respect to the overhead executive as well, there are signs that inclinations toward regulatory activism extend well beyond the particulars involved in the CDBG case. OMB's intervention into the implementation process was but one piece of a broader and more concerted strategy on the part of the Reagan administration to secure greater executive control over bureaucratic administrative activity in all areas of domestic policy - a strategy accomplished through formal recasting of OMB's regulatory oversight role. And while it has yet to be seen whether other Presidential successors will pursue this path as avidly as the current President, the institutionalization of OMB as a regulatory control instrument of the White House may serve to induce more fervent Presidential pursuit of this end.

It is plausible then, that what this case has unveiled as a more widespread and generic shift in Congressional and Executive predispositions

toward direct involvement in the administrative process, perhaps in recognition of the important policymaking qualities inherent in modern day bureaucratic regulatory work. It may well be that efforts to commandeer bureaucratic implementation operations are claiming an increasing share of Congressional and Executive energies - that a new era of "administrative politics" has begun to emerge. More studies of contemporary administrative rulemaking are critically needed to assess whether such a change has occurred. If proven to be so, the findings of this case have special relevance, for they portend a more complex and problematic future ahead for administrative agencies; a future in which the bureaucracy (though more "democratized") may increasingly fall victim to intra-Congressional battles over the course policy implementation, and become a pawn in broader struggles for governmental mastery by the Executive and the Legislative branch.

Chapter 9 Footnotes

1. As noted in Richard Cole, "The Politics of Housing and Community Development in America", in The Politics of Policymaking in America, edited by David Caputo (San Francisco, CA: W.H. Freeman, 1977) p. 100.

2. See Donald Kettl, Managing Community Development in the New Federalism (New York, NY: Praeger, 1980) p. 22.

3. Interview with HUD CPD Official.

4. Interview with HUD CPD Official.

5. See Margaret Jane Wyszomirski "The Roles of a Presidential Office for Domestic Policy", in George Edwards, et. al. The Presidency and Public Policymaking (Pittsburgh, PA: University of Pittsburgh Press, 1985) p. 141.

6. Interviews with Gerald McMurray, Staff Director, House Subcommittee on Housing and Community Development and with Philip Sampson, Staff Director, Senate Subcommittee on Housing and Urban Affairs.

7. Francine Rabinovitz, Jeffrey Pressman and Martin Rein, "Guidelines: A Plethora of Forms, Authors and Functions", Policy Sciences, Volume 7, September 1976, p. 400.

8. Martin Rein and Francine Rabinovitz, "Implementation: A Theoretical Perspective", Working Paper No. 43, Joint Center for Urban Studies of MIT and Harvard, March 1977, pp. 9-11.

9. Ibid., pp. 11-14.

10. For a relevant discussion of this phenomenon, see Evelyn Brodkin "Political Management: If We Can't Govern Can We Manage?", Paper presented at the annual meeting of the American Political Science Association, Washington, D.C., August/September 1984.

11. Francis Rourke, Bureaucracy, Politics and Public Policy (Boston, MA: Little Brown, 1984; see also Randall Ripley and Grace Franklin, Bureaucracy and Policy Implementation (Homewood, IL; Dorsey Press, 1982), pp. 45-47.

12. See Daniel Mazmanian and Paul Sabatier, Implementation and Public Policy (Geenview, IL: Scott, Foresman, 1983); Jeffrey Pressman and Aaron Wildavsky, Implementation (Berkeley, CA: University of California Press, 1973); Donald Van Meter and Carl Van Horn, "The Policy Implementation Process", Administration and Society, Volume 6, February 1975, pp. 445-487; Robert Nakamura and Frank Smallwood, The Politics of Policy Implementation (New York, NY: St. Martin's Press,

1980. One exception to the general trend of neglect of the role of legislative actors can be found in Eugene Bardach, The Implementation Game (Cambridge, MA: MIT Press, 1977). In his case, Bardach discusses the role a California state legislator played as "fixer" of the implementation process. Nonetheless, he implies such a post hoc interventionist role by a legislator is more the exception than the norm, and his advocacy of the "fixer" concept neglects the prospect that multiple, adversarial fixers may emerge as they did in the CDBG case.

13. Seymour Scher, "Conditions of Legislative Control", Journal of Politics, Volume 25, August 1963, pp. 526-51; Morris Ogul, Congress Oversees the Bureaucracy, (Pittsburgh, PA: University of Pittsburgh Press, 1973); Randall Ripley and Grace Franklin, Congress, the Bureaucracy an Public Policy (Homewood, IL: Dorsey Press, 1984).

14. Cornelius Cotter, "Legislative Oversight", in Congress: The First Branch of Government, edited by Anthony de Grazia (Washington, D.C.: American Enterprise Institute, 1966) pp. 25-81; Charles Hyneman, Bureaucracy in a Democracy (New York, NY: Harpur and Brothers, 1950) esp. pp. 158-175; Samuel Huntington, "Congressional Responses to the Twentieth Century, in Congress and America's Future, edited by David Truman (Englewood Cliffs, NJ: Prentice-Hall, 1973) pp. 6-38.

15. Lawrence Dodd and Richard Schott, Congress and The Administrative State (New York, NY: John Wiley and Sons, 1979) p. 226; Joseph Harris Congressional Control of Administration (Washington, D.C.: Brookings Institution, 1964), p.6.

16. Jeffrey Berry, Feeding Hungry People: Rulemaking in the Foodstamp Program (New Brunswick, NJ: Rutgers University Press, 1984, pp. 108-113.

17. For discussion of the erosion of legislative specificity see Theodore Lowi, The End of Liberalism (New York, NY: W.W. Norton, 1969) and Kenneth Culp Davis, Discretionary Justice (Urbana, IL: University of Illinois Press, 1971).

18. Dodd and Schott, op. cit., p. 157.

19. Huntington, op. cit; Dodd and Schott, op. cit.

20. Both Representative Ashley and Senator Proxmire in particular were reported by multiple Congressional staffers to have taken a stance of proprietorship toward the program, as each had played key roles in both the crafting and passage of the initial programmatic legislation.

21. Harold Seidman, Politics, Position and Power (New York, NY: Oxford University Press, 1980) pp. 75-77; Ripley and Franklin, Bureaucracy and Policy Implementation, op. cit., p. 194.

22. Hugh Helco, A Government of Strangers: Executive Politics in Washington (Washington, D.C.: Brookings Institution, 1977), pp. 10-15; Richard Nathan, The Plot That Failed: Nixon and the Administrative Presidency (New York, NY: John Wiley and Sons, 1975).

23. Heclo, op. cit., p. 111.

24. See J. Lieper Freeman, The Political Process (New York, NY: Random House, 1965); Douglas Cater, Power in Washington (New York, NY: Random House, 1964); Berry, Feeding Hungry People, op. cit.

25. Rabinovitz, Pressman and Rein, op. cit.

26. See Ripley and Franklin, Bureaucracy and Policy Implementation, op. cit.

27. Berry, op. cit., p. 117.

28. "Under Stockman, OMB Plays Regulatory Cop", National Journal, Volume 17, May 25, 1984, p. 216.

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