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HOUSE OF REPRESENTATIVES

REPORT
109–365

# BRINGING COMMUNITIES INTO THE 21ST CENTURY: A REPORT ON IMPROVING THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

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## FIFTH REPORT

BY THE

## COMMITTEE ON GOVERNMENT REFORM



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JANUARY 31, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## LETTER OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,
*Washington, DC, January 31, 2006.*

Hon. J. DENNIS HASTERT,
*Speaker of the House of Representatives,*
*Washington, DC.*

DEAR MR. SPEAKER: By direction of the Committee on Government Reform, I submit herewith the committee's fifth report to the 109th Congress. The committee's report is based on a study conducted by its Subcommittee on Federalism and the Census.

TOM DAVIS,
*Chairman.*

# CONTENTS


| | Page |
|---|---|
| I. Executive Summary | 1 |
| II. Background | 3 |
| A. History of CDBG | 3 |
| B. CDBG Current Formula | 5 |
| C. CDBG Eligible Use of Funds | 7 |
| D. Current CDBG Performance Measures | 8 |
| E. U.S. Census Bureau Data and CDBG Formula Calculations | 9 |
| F. Strengthening America's Communities Initiative | 11 |
| G. HUD Proposed Changes to CDBG Formula | 13 |
| H. National Academy of Public Administration Study and Recommendations Pertaining to CDBG Performance Measures | 25 |
| I. Integrated Disbursement and Information Systems [IDIS] | 26 |
| J. Proposed Outcome Measurement System | 27 |
| III. Hearings | 28 |
| A. Hearing on the Strengthening America's Communities Initiative, March 1, 2005 | 28 |
| B. Hearing on CDBG Formula Alternatives, April 26, 2005 | 33 |
| C. Hearing on Use of CDBG Funds and Performance Measures, May 24, 2005 | 40 |
| IV. Findings & Recommendations | 51 |
| A. Strengthening America's Communities Initiative [SACI] | 51 |
| B. HUD Proposed CDBG Formula Targeting Reform | 56 |
| C. Current CDBG Formula Grants | 63 |
| D. CDBG Eligible Uses of Funds | 66 |
| E. Performance Measures | 70 |
| F. Census Bureau Products | 72 |

**Union Calendar No. 196**

109TH CONGRESS, *2d Session* } HOUSE OF REPRESENTATIVES { REPORT 109–365

# BRINGING COMMUNITIES INTO THE 21ST CENTURY: A REPORT ON IMPROVING THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

JANUARY 31, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TOM DAVIS, from the Committee on Government Reform submitted the following

## FIFTH REPORT

On December 15, 2005, the Committee on Government Reform approved and adopted a report entitled, "Bringing Communities into the 21st Century: A Report on Improving the Community Development Block Grant Program." The chairman was directed to transmit a copy to the Speaker of the House.

### I. EXECUTIVE SUMMARY

In February 2005, the Bush administration submitted its fiscal year 2006 budget recommendation to the U.S. Congress. Within the budget submission was a new initiative, the Strengthening America's Communities Initiative [SACI], consolidating 18 existing Federal community and economic development direct-grant programs managed by five different agencies into a single program under the oversight of the U.S. Department of Commerce (Commerce). Seven of the 18 programs are currently administered by the Department of Housing and Urban Development [HUD]. Each of the 18 programs would cease to exist independently under the initiative.

In fiscal year 2005, Congress appropriated $5.7 billion for the combined suite of 18 programs. The seven HUD programs account for approximately 84 percent of the funding for all 18 grant programs. The Community Development Block Grant [CDBG] program alone accounts for approximately 82 percent of that combined $5.7 billion in funding with an individual appropriation of $4.71 billion. Highlighting the enormous impact SACI will have on State and local governments and the citizens served by the 18 grant pro-

grams, the President's proposed fiscal year 2006 appropriation for the SAC grant program totals only $3.71 billion.

Considerable stakeholder opposition arose in reaction to the President's proposal. Consequently, the Subcommittee on Federalism and the Census (the Subcommittee), chaired by Mr. Michael R. Turner, devised an oversight agenda to investigate two basic questions regarding CDBG: [1]

(1) Should Congress consolidate CDBG with the 17 other direct-grant programs as proposed in the President's fiscal year 2006 budget request and transfer the administration of the program from HUD to Commerce?

(2) Notwithstanding SACI, should Congress or HUD consider making certain reforms to the CDBG program, either by legislation or by rulemaking?

The Subcommittee held three hearings on these issues. The first hearing, entitled, "Strengthening America's Communities: Is It the Right Step Toward Greater Efficiency and Improved Accountability?," was held on March 1, 2005. The hearing's purpose was to review the proposed SACI and explore the reasons for its creation.

The Subcommittee held its second hearing, entitled, "The 1970s Look: Is the Decades-Old Community Development Block Grant Formula Ready for an Extreme Makeover?," on April 26, 2005. Based on a February 2005 HUD study, the Subcommittee explored the first area of potential reform: the block grant formula. Specifically, the Subcommittee explored: (1) whether the 30-year old formula was appropriate for continued use in today's world; and (2) whether funds are distributed fairly among similarly situated communities.

The Subcommittee held its third hearing, entitled, "Bringing Community Development Block Grant Programs Spending into the 21st Century: Introducing Accountability and Meaningful Performance Measures into the Decades-Old CDBG Program," on May 24, 2005. In that hearing, the Subcommittee examined: (1) how communities spend CDBG moneys (i.e., eligibility of use of funds); (2) whether HUD and grantees effectively target funds toward the needs identified in the program's authorizing legislation; and (3) how, if at all, Congress can measure these expenditures for effectiveness through the institution of performance measures.

This report will first summarize the materials examined by the Subcommittee in chronological order by date of publication. Part II, Background, thus provides a short history of the CDBG program and a summary of various studies suggesting changes to the program. In Part III, Hearings, each of the three Subcommittee hearings that discussed proposed changes will be reviewed. Findings and recommendations are discussed in Part IV.

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[1] Clause 3 of Rule X of the Rules of the U.S. House of Representatives relates to the oversight functions of the committees organized within the House of Representatives. Paragraph (e) of Clause 3 states that "The Committee on Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency." *Rules of the Committee on Government Reform: Together with Selected Rules of the House of Representatives and Selected Statutes of Interest,* House of Representatives, 109th Cong., 1st sess. (March 2005).

## II. BACKGROUND

### A. HISTORY OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Congress authorized the creation of the CDBG program during the Ford administration with the enactment of the Housing and Community Development Act of 1974 [HCDA].[2] CDBG is an offshoot of President Nixon's *Better Communities* proposal, which combined seven individual direct-grant programs into one community development block grant program. The reorganization of these grant programs was the result of "[l]arge-scale dissatisfaction with many [of their] components . . . [leading] to a discussion about how federal community development funds should be allocated."[3]

The vision of Nixon's "New Federalism" included a plan combining existing grant-in-aid programs into a single block grant program that distributed funds directly to local governments—those agencies in the best position to assess local needs.[4] Along with this local decisionmaking came an "unprecedented degree of local control" over the use of Federal dollars on community development programs, "offering city and county officials broad discretion to fund housing, economic development activities, social services, and infrastructure."[5] In 1975, HUD advertised that CDBG funds could be "used anywhere within a local government's jurisdiction to serve the needs of low- and moderate-income persons."[6]

Among the programs unified within CDBG were the Urban Renewal program, the Model Cities program, open space acquisition and beautification grants, neighborhood facilities grants, and water and sewer facilities grants.[7] The roots of CDBG can be traced directly to these grant programs, which focused on restoring urban neighborhoods through acquiring land, clearing blight, and encouraging private development; providing physical development and human services; providing health, welfare, social, and recreational services; and improving existing and developing new low- and moderate-income housing.[8] All of these services function to create better living environments for low- to moderate-income persons, the primary purpose of the HCDA.[9]

State and local governments use CDBG grant moneys to fund various housing, community development, neighborhood revitalization, economic development, and public service provision projects. Such projects must serve at least one of three requirements: (1) to principally benefit low- and moderate-income individuals; (2) eliminate or prevent slums; or (3) remedy urgent threats to the health

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[2] Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301–5321 (2004).

[3] Todd Richardson et al., Office of Policy and Development Research, U.S. Housing and Urban Development, *Redistribution Effect of Introducing Census 2000 Data Into the CDBG Formula* at 11 (2003) [hereinafter *Census Data Study*].

[4] *Id.*

[5] *Id.* at 12, *quoting* U.S. Department of Housing and Urban Development, *Federal Funds, local choices: An evaluation of the Community Development Block Grant Program* (1995).

[6] *Id., quoting* U.S. Department of Housing and Urban Development, *Community Development Block Grant Program: A provisional Report* (1975).

[7] *See id.* at 9.

[8] *See id.*

[9] *See id.* at 11. "The underlying purpose of title I of the Community Development Act is to increase the viability of urban communities by addressing housing needs and creating healthy living environments by expanding economic opportunity primarily for low- and moderate-income persons."

or safety of the community. At least 70 percent of CDBG funds distributed to the States and local governments must be spent on activities for the first requirement—to principally benefit low- and moderate-income individuals.

CDBG funds were originally distributed based upon a single formula that assessed community need using population, poverty, and overcrowded housing data as indicators of community development need.[10] In a 1976 study, HUD determined that the formula "was highly responsive to the poverty dimension but unresponsive to the non-poverty dimensions of community development need."[11] As a result, a second formula was devised using the factors of pre-1940 housing and loss of population to target those communities experiencing decline rather than poverty need alone.[12] These two formulas remain in use today and are now known as "Formula A" and "Formula B," respectively.

In 1981, Congress amended the HCDA once again. The original CDBG formula required 80 percent of CDBG funds be reserved for the formula grant and 20 percent of funds be set aside for non-entitlement jurisdictions. HUD administered this 20 percent through a categorical competition for non-entitlement communities, known then as the CDBG Small Cities Program.[13] In keeping with the idea that local administration of block grant funds is more effective than centralized administration by the Federal Government, HUD granted States the option of directly administering the Small Cities Program in fiscal year 1982. Concurrent with this program change, Congress amended the CDBG formula by adjusting the entitlement community/non-entitlement community split to 70 percent/30 percent.[14] [15] Only these two changes have been made to the formula grant over the 30-year life of the program.

Today, CDBG is one of the largest Federal direct block grant programs in existence. HUD's Office of Community Planning and Development [CPD] administers the program through 800 full-time employees located in Washington, DC, and throughout the country in 42 field offices. In fiscal year 2005, Congress appropriated $4.71 billion for the CDBG program; $4.15 billion of that amount was reserved for CDBG formula grants.[16]

Despite the fact that Congress has generally increased appropriations for CDBG formula grants since the early 1990s,[17] less money in terms of "real dollars" has been available to entitlement and non-entitlement jurisdictions over that same period. This can be attributed to two factors: (1) Congressional allocation of more money

[10] *See Census Data Study* at 12.
[11] *Id.* at 14.
[12] *See id.*
[13] *See id.*
[14] *See id.*
[15] *See* 42 U.S.C. 5302(a). Entitlement jurisdictions are defined by one of five criteria: (1) Central cities of metropolitan areas (MAs); (2) cities located in a MA with a current population of 50,000 or more; (3) cities that previously met criteria for metropolitan cities; (4) urban counties with a population of 200,000 or more excluding the populations of metropolitan cities and eligible Indian tribes; or (5) counties that previously met criteria for metropolitan urban counties.
[16] *See* Consolidated Appropriations Act, 2005 Fiscal Year Public Law No. 108–447, 118 Stat. 2810 (2004).
[17] Congressional appropriations for CDBG formula grants have remained relatively static over the past six budget cycles. However, since fiscal year 2001, Congress has reduced funding for formula grants by roughly $300 million. In fiscal year 2005, Congress reduced funding by nearly $200 milling. This reduction accounted for the program's first "real dollar" decrease in a number of years.

for set-asides and earmarks, thereby decreasing the funds available for distribution under the formula grant; and (2) the growing number of entitlement communities due to natural population growth and other factors.[18]

In addition to the fiscal constraints on the program, commentators have criticized the CDBG program in recent years as cumbersome, inefficient, and unaccountable. During a Senate Budget Committee hearing in February 2000, the Comptroller General of the United States, David M. Walker, suggested that formula-based programs like CDBG are "not well targeted to jurisdictions with high programmatic needs but comparatively low funding capacity."[19]

Criticism of the program has come from within the administration as well. The Office of Management and Budget [OMB] assessed CDBG in 2004 using the Program Assessment Rating Tool [PART]. The administration developed PART to assess the management and performance of individual programs—evaluating the purpose, design, planning, results, and accountability of a program.[20] Based on a weighted average, a program is rated effective, moderately effective, adequate, or ineffective. Under the PART assessment tool, OMB determined that most of the community and economic development programs evaluated "were not accomplishing their intended results" and could not demonstrate "that they [were] having any positive impact on the communities they serve."[21] In particular, OMB rated the CDBG program as ineffective, stating, "The Program does not have a clear, unambiguous mission. Both the definition of community development and the role CDBG plays in that field are not well defined."[22]

### B. COMMUNITY DEVELOPMENT BLOCK GRANT CURRENT FORMULA

HUD allocates the 70 percent of CDBG funds reserved for the grant portion of the program to entitlement jurisdictions using a dual formula system. Formula A allocates funds based on each entitlement community's share of population, poverty, and housing overcrowding as compared to all entitlement communities. Formula B allocates funds based on each entitlement community's share of poverty, aged housing (built prior to 1940), and the lag in population growth rate as compared to the total for all entitlement com-

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[18] *See* Eugene Boyd, American National Government Division, Congressional Research Service, Report No. 96–503 GOV, *Community Development Block Grants: An Overview* at 4, 5 (1998). In fiscal year 1997, set-asides accounted for 6.3 percent of the total CDBG appropriation. In fiscal year 1998, that percentage increased to 10.3 percent, and to 11.1 percent in fiscal year 1999. *Id.* at i.

[19] *Federal Spending Priorities: Exercising Oversight,"* hearing before the Senate Committee on the Budget, 106th Cong. (2000) (statement of David M. Walker, Comptroller of the United States); *see also* David M. Walker, U.S. General Accounting Office, GAO/T–AIMD–00–73, *BUDGET ISSUES, Effective Oversight and Budget Discipline Are Essential—Even in a Time of Surplus* at 7 (2000).

[20] *See* Executive Office of the President, Office of Management and Budget, *Fiscal Year 2006 Budget of the U.S. Government Analytical Perspectives,* H. Doc. 109–2, Vol. III at 10 (2005).

[21] "A Top to Bottom Review of the Three-Decades-Old Community Development Block Grant Program: Is the CDBG Program Still Targeting the Needs of our Communities?" Hearings before the Subcommittee on Federalism and the Census of the House Committee on Government Reform, 109th Cong. 21 (Serial No. 109–7) (2005) [hereinafter *CDBG Hearings*] (statement of Clay Johnson III, Deputy Director for Management, Office of Management of Budget).

[22] Office of Management and Budget, Department of Housing and Urban Development PART Assessments 3 (2004) <http://www.whitehouse.gov/omb/budget/fy2006/pma/hud.pdf>. *See also* Executive Office of the President, Office of Management and Budget, *Fiscal Year 2006 Budget of the U.S. Government Analytical Perspectives,* H. Doc. 109–2, Vol. III at 26 (2005).

munities since 1960. Entitlement jurisdictions receive the greater sum of the two formula calculations.

HUD distributes the remaining 30 percent of CDBG formula funds to 49 States and the Commonwealth of Puerto Rico.[23] The statute requires these jurisdictions to re-distribute the funds to non-entitlement communities (i.e., those communities that do not meet the definition of an entitlement community).[24] These funds are also allocated according to a dual formula system whereby States receive the greater sum of the two formula calculations. Here, however, Formula A allocates funds based on a State's percentage of population, poverty, and housing overcrowding as compared to the aggregate of all non-entitlement areas in all States. Formula B allocates funds based on poverty, age of housing, and population (not population growth or lag) relative to all non-entitlement areas in all States.

The CDBG program, while enabling States and local governments to accomplish many objectives outlined in the original authorization, exhibits several problems that require remedy. A study of the formula allocations reveals two main fairness issues. First, there are numerous instances of "richer" communities receiving higher per capita awards than "poorer" communities. For instance, Wauwatosa, WI, receives a per capita grant of $30.63 though it is assessed as one of the Nation's communities with lowest need.[25] In contrast, Compton, CA, has one of the highest needs of the Nation's communities and yet receives a per capita grant of only $26.18.[26] Second, similarly situated communities often get disparate per capita awards. While Compton, CA, receives a per capita grant of $26.18, St. Louis, MO, a community with a similar (yet lower) need index score receives a per capita grant of $73.58.[27]

While the formula has undergone five major assessments since 1974, only two changes have been made to the program. During this same period, the country's demographics and population trends have shifted dramatically. In particular, the number of entitlement communities has grown substantially. In fiscal year 2004, there were more than 1,100 designated entitlement communities, up from 732 in 1982 when the 70/30 split was first instituted. From 1982 to 1993, an additional 128 jurisdictions qualified as new entitlement communities. Since 1993, more than 250 more communities came online, demonstrating a vast increase in population growth rate. While the number of communities sharing the 70 percent portion of CDBG funds continues to grow, the overall funding has not kept pace. Thus, a larger portion of the population is sharing a relatively static piece of the CDBG pie, resulting in fewer funds per jurisdiction. At the same time, the number of non-entitlement communities declines, effectively increasing their share of the 30 percent portion of CDBG funds.

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[23] The State of Hawaii opts not to participate in the program.

[24] *See supra* n. 16.

[25] *See* Todd Richardson, Office of Policy Development and Research, Department of Housing and Urban Development, *CDBG Formula Targeting to Community Development Need* at B–80 (2005) [hereinafter *CDBG Formula Study*].

[26] *See id.* at B–8.

[27] *See id.* at B–46.

C. CDBG ELIGIBLE USE OF FUNDS

CDBG-funded activities must satisfy a two-part eligibility test. First, these activities must align with 1 of the 25 eligible uses for CDBG funds as authorized by the HCDA.[28] Second, these activities must satisfy one of three national objectives stated in the HCDA.[29]

*1. The Eligible Activities Test*

The HCDA lists 25 activities for which grantees can expend CDBG funds. HUD classifies these activities into two groups: (1) basic eligible activities and (2) eligible rehabilitation and preservation activities.

*a. Basic Eligible Activities*

There are 17 basic eligible activities: (1) acquisition; (2) disposition; (3) public facilities and improvements; (4) clearance activities; (5) public services; (6) interim assistance; (7) payment of non-Federal share of a grant-in-aid program; (8) urban renewal completion; (9) relocation; (10) loss of rental income; (11) housing services; (12) support of privately owned utilities; (13) construction of housing; (14) homeownership assistance; (15) economic development; (16) technical assistance; and (17) assistance to institutions of higher education.[30]

The more common uses of CDBG funds fall within the categories of acquisition, disposition, public facilities and improvements, clearance, and public services.

*b. Eligible Rehabilitation and Preservation Activities*

In addition to the specifically enumerated activities above, CDBG moneys may be used to fund a broad range of rehabilitation and preservation activities, including the rehabilitation and improvement of buildings, code enforcement, historic preservation, the renovation of closed buildings, and the removal of lead based paint.[31] CDBG grantees may use funds for such purposes as assistance to private individuals and entities in acquiring and rehabilitating properties for personal use or resale as residences;[32] funding labor, materials, and other costs associated with the rehabilitation of properties;[33] and rehabilitation activities that increase energy and water consumption efficiency.[34]

With regard to code inspections and enforcement activities, the regulations permit expenditures so long as the enforcement activities are in deteriorating or deteriorated areas when such activity, coupled with private and public improvements, rehabilitation, or services, would obstruct further decline.[35] Within this category, grantees may use funds for "salaries and related expenses of code enforcement inspectors and legal proceedings."[36] Grantees, how-

[28] *See* 42 U.S.C. §§ 5305(a)1–25 (2003).
[29] *See* 42 U.S.C. § 5304(b)(3).
[30] *See* 24 C.F.R. § 570.201 (2005).
[31] *See* 24 C.F.R. § 570.202 (2005).
[32] *See* 24 C.F.R. § 570.202(b)(1) (2005).
[33] *See* 24 C.F.R. § 570.202(b)(2) (2005).
[34] *See* 24 C.F.R. § 570.202(b)(4), (5) (2005).
[35] *See* 24 C.F.R. § 570.202(c) (2005).
[36] *Id.*

ever, may not use the funds to cover the costs of correcting code violations.[37]

*2. The National Objectives Test*

Though the HCDA may specifically permit an activity, the activity must also meet at least one of the three national objectives outlined in the statute before CDBG funds may be expended upon it. Activities must (1) "benefit low- and moderate-income families;" (2) "aid in the prevention or elimination of slums or blight;" or (3) "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. . . ."[38]

These criteria are broad in scope and nearly any activity could be creatively described to meet the "benefit low- and moderate-income persons" objective. Therefore, HUD requires grant recipients "certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives. . . ."[39] Moreover, grant recipients must also ensure that 70 percent of the CDBG grant is expended over a period of 1, 2, or 3 years, as specified in their certification, for activities meeting one of the specified national objectives.[40] These certifications must be included in the grantee's Consolidated Plan.

D. CURRENT CDBG PERFORMANCE MEASURES

HUD requires that each grantee submit a Consolidated Plan ("Conplan"), a comprehensive planning document that doubles as an application for funding under several Community Planning and Development formula grant programs.[41] The Conplan describes a jurisdiction's strategy to pursue the overall goals of the HUD community and economic development programs. These goals include "develop[ing] viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities principally for low- and moderate-income persons."[42] HUD will evaluate a jurisdiction's Conplan and its performance under the plan against these goals.[43]

The Conplan is the tool by which HUD determines whether CDBG-funded activities meet the second part of the two-part test for eligibility. Once HUD asks whether the activities described in the Conplan are eligible for use of funds under the HCDA, HUD then uses the Conplan to evaluate whether the activities satisfy one of the three national objectives. Prior to acceptance of a jurisdiction's annual certifications, HUD also uses the Conplan to determine whether the grantee complied with its HUD-approved plan and whether CDBG-funded activities were consistent with that plan.[44]

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[37] *See id.*
[38] 24 C.F.R. § 570.200(a)(2) (2005).
[39] 24 C.F.R. § 570.200(2); *see also* 42 U.S.C. § 5305 (2005).
[40] *See id. See also* 24 C.F.R. § 570.208 (2005) for the criteria used to determine whether an activity satisfies one or more of the national objectives.
[41] *See* 24 C.F.R. §§ 91.1(b), 91.2(a)–(b) (2005).
[42] 24 C.F.R. § 91.1(a) (2005).
[43] *See* 24 C.F.R. § 91.1(a)(2) (2005).
[44] *See* 24 C.F.R. § 570.903(a) (2005).

According to its own regulations, HUD will accept or reject a jurisdiction's Conplan within 45 days of the date of submission.[45] Additionally, the HCDA generally requires that HUD approve a Conplan submission unless the plan (or a portion of it) is inconsistent with the purposes of the Act or is substantially incomplete.[46]

In addition to the Conplan, grantees must develop a plan that encourages citizen participation in developing the Conplan, particularly by persons of low- or moderate-income living in areas CDBG funds are to be used.[47]

E. U.S. CENSUS BUREAU DATA AND CDBG FORMULA CALCULATIONS

HUD presently uses five variables in its block grant formulas. These variables include (1) total resident population; (2) the number of persons living below poverty level; (3) overcrowding (defined as more than 1.01 persons per room in a housing unit); (4) the number of housing units built before 1940; and (5) population growth lag compared to all metropolitan cities since 1960. HUD relies primarily on the decennial census to provide this data objectively and consistently. In years subsequent to the decennial census, HUD relies upon the annual Boundary and Annexation Survey [BAS] for revised population estimates, incorporations of new cities, and major boundary changes.[48] By law, HUD must use "the latest data consistently available for all areas as of 90 days before the start of the fiscal year."[49]

The decennial census of population traditionally included two questionnaires: the short form and the long form. The Census Bureau uses the short form for a complete population count with basic characteristics such as name, sex, age, and race. The long form, sent to approximately one in six households, collects detailed characteristic data including the poverty and housing data required by HUD for CDBG formula calculations. The strength of using the decennial census data is the near-complete population counts and the very large sample size of the short form. Consequently, the data is statistically sound. The weakness of using decennial census data in CDBG formula allocations is that the Federal Government only collects it once every 10 years.

The Census Bureau provides estimated updates of the population or "short form" data between decennial censuses with information found in the annual administrative records of Federal and State agencies. The Census Bureau and its State partners use statistical models that combine information derived from census and administrative records to produce current population estimates. This information is then benchmarked against the last decennial census

[45] *See* 24 C.F.R. § 91.500(a) (2005).
[46] *See* 24 C.F.R. § 91.500(b) (2005).
[47] *See* 24 C.F.R. § 91.105(a)(2) (2005).
[48] The U.S. Census Bureau conducts an annual survey called the Boundary and Annexation Survey [BAS] to collect information about selected legally defined geographic areas. The BAS provides information documenting the creation of new and dissolution of old incorporated municipalities, minor civil divisions [MCDs], and counties and equivalent areas, and changes in the boundaries of municipalities, MCDs, counties, and federally recognized American Indian areas [AIAs], which include reservations and off-reservation trust lands. *See* U.S. Census Bureau, *Boundary and Annexation Survey* (last modified Apr. 29, 2005) <http://www.census.gov/geo/www/bas/bashome.html>.
[49] *CDBG Formula Study* at 8.

counts.[50] These intercensal population estimates are available at the county level[51] and are used by HUD to make CDBG formula calculations.

While the Census Bureau updates population estimates based on the decennial census short form, it does not update the extensive population characteristics data provided by the decennial long form over the course of the intervening decade. Because no other nationally consistent data is available, HUD has had no choice but to use the aging data between decennial censuses. For example, by 2001, shortly before the Census Bureau released its Census 2000 long form data, HUD would have had to allocate any CDBG funds for that year based on 11-year-old data.[52] HUD draws data for three of the five formula variables from the long form, basing its formula calculations on consistently old data, thereby risking accurate targeting of funds.

The Congress, the administration, HUD, the Census Bureau, and many other Federal agencies recognize this problem of aging long form data between censuses. With congressional support and funding, the Census Bureau launched the American Community Survey [ACS] as a solution. The ACS will produce annual estimates of long form-type data and will replace the decennial long form in 2010. The Bureau successfully implemented the program in the fourth quarter of fiscal year 2004 and the agency is currently conducting the first full year of data collection. Data for areas with a population of 65,000 or more will be available in 2006, data for areas of 20,000 or more will be available in 2008, and data for all areas will be available in 2010. Accordingly, HUD could more accurately target CDBG funds between censuses even if it or Congress made no other changes the program.

The smallest level of delineated geographic areas for which the Bureau provides ACS is the census tract.[53] As a result of the small size of census tracts, there will not be sufficient sample size to annually develop statistically sound estimates. Consequently, the Census Bureau will develop multi-year estimates by averaging data collected over 3 or 5 years depending on the population density. This means that ACS will annually provide updated estimates based on the average of 3 or 5 years of data. The Census Bureau refers to these estimates as "rolling estimates."

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[50] *See* U.S. Census Bureau, *FSCPE History* (last modified Nov. 19, 2003) <http://www.census.gov/population/www/coop/history.html>.

[51] *See* U.S. Census Bureau, *Population Estimates* (visited Aug. 25, 2005) <http://www.census.gov/popest/estimates.php>.

[52] *See* U.S. Census Bureau, *Census 2000 Data Products at a Glance* (last modified Apr. 6, 2005) <http://www.census.gov/population/www/censusdata/c2kproducts.html>.

[53] Census tracts are small, relatively permanent statistical subdivisions of a county. The Census Bureau delineates Census tracts for most metropolitan areas [MA's] and other densely populated counties. Census tracts usually have between 2,500 and 8,000 persons and, when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Census tracts do not cross county boundaries. The spatial size of census tracts varies widely depending on the density of settlement. Census tract boundaries are delineated with the intention of being maintained over a long time so that statistical comparisons can be made from census to census. However, physical changes in street patterns caused by highway construction, new development, etc., may require occasional revisions; census tracts occasionally are split due to large population growth, or combined as a result of substantial population decline. *See* U.S. Census Bureau, *Census Tracts and Block Numbering Areas* (last modified Nov. 14, 2000) <http://www.census.gov/geo/www/cen—tract.html>.

Discussions between the Subcommittee and HUD staff revealed that HUD has yet to determine how it will adapt ACS data, the rolling averages in particular, into CDBG calculations.

### F. STRENGTHENING AMERICA'S COMMUNITIES INITIATIVE

The administration publicized the proposed SACI as "a unified direct-grant program focusing on America's most economically distressed communities."[54] The administration contends SACI would build upon "existing economic and community development efforts."[55]

The President's proposal consolidates 18 existing direct grant economic and community development programs, managed by five Federal agencies, into a single office within the Department of Commerce. The targeted programs include:

*Department of Housing and Urban Development Programs*

- Community Development Block Grants [CDBG]
- Community Development Block Grants Set-Asides [CDBG SA]
- National Community Development Initiative [NCDI]
- Brownfields Economic Development Initiative [BEDI]
- Rural Housing and Economic Development [RHEC]
- Urban Empowerment Zones Round II Grants [UEZ]
- Community Development Loan Guarantees (Section 108) [CDLG]

*Department of Agriculture Programs*

- USDA Rural Business Enterprise Grants
- USDA Rural Business Opportunity Grants
- USDA Economic Impact Grants
- USDA Rural Empowerment Zones [EZ]/Enterprise Communities [EC]

*Department of Treasury Programs*

- Community Development Financial Institutions [CDFI] Program
- Bank Enterprise Award [BEA] Program
- CDFI Native Initiatives

*Department of Health and Human Services Programs*

- HHS Community Services Block Grant
- Community and Economic Development
- Rural Community Facilities

*Department of Commerce Programs*

- Economic Development Assistance Programs

Collectively, these 18 grant programs amounted to $5.7 billion in appropriations for fiscal year 2005. Of the 18 direct-grant programs included in SACI, the largest is the CDBG. With an overall fiscal year 2005 funding level of roughly $4.71 billion, $1 billion more than the President's $3.71 billion request for SACI, CDBG is the

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[54] U.S. Department of Commerce, *Strengthening America's Communities* (February 2005) (unpublished PowerPoint presentation, on file with the Department of Commerce).

[55] Office of Management and Budget, *President Bush Proposes Strengthening America's Communities Initiative* at 1 (last modified Feb. 3, 2005) <http://www.commerce.gov/SACI/Talking%20Points__Strengthening%20Communities%20FINAL%202–03–05.pdf>.

largest direct-grant program to local governments for community and economic development activities.[56]

Under SACI, each grant program would cease to exist independently. The grants previously awarded under these programs would be awarded by the Department of Commerce through the newly created Strengthening America's Communities [SAC] Grant Program. Under the administration's proposal, funding would drop to a combined $3.71 billion for all programs in fiscal year 2006, a decrease of 31 percent or roughly $1.64 billion.

The administration states its primary goal in this initiative is to ensure grant moneys further Congress' original intent: "to create the conditions for economic growth, robust job opportunities, and livable communities."[57] According to an OMB review, most of the 18 direct grant programs lack clear goals or sufficient accountability. Further, OMB contends that many of the grants overlap in key areas, resulting in duplicative efforts and wasted money. According to the administration, the current system of Federal programs "forces communities to navigate a maze of Federal departments, agencies, and programs in order to access economic development assistance programs, each imposing a separate set of standards and reporting requirements."[58] The new $3.71 billion initiative, the administration argues, would "help strengthen America's transitioning and most needy communities, while making better use of taxpayer dollars by reforming and restructuring many of the existing Federal economic and community development programs."[59] The SAC grant program would "simplify access to the Federal system, set new eligibility criteria, and establish strong accountability standards all in exchange for the flexible use of the funds so that communities most in need will be assisted."[60] Thus, SACI intends to: (1) improve the efficiency of community and economic development grant programs; (2) create greater accountability for program success; and (3) simplify access to these grant programs.

The administration has not yet presented a detailed plan for the program or a legislative proposal for codifying the initiative. However, the administration stated that the new eligibility criteria would be based upon job loss, unemployment levels, and poverty. The new accountability measures would include increased job creation, new business formation rates, increased homeownership, commercial development, and private sector investment. If a community fails to meet such measures, the SACI proposal calls for the Commerce Department to work with the community to develop an action plan and to provide technical assistance in the effective use of funds. If a community consistently fails to meet the accountability standards, it may lose future funding.

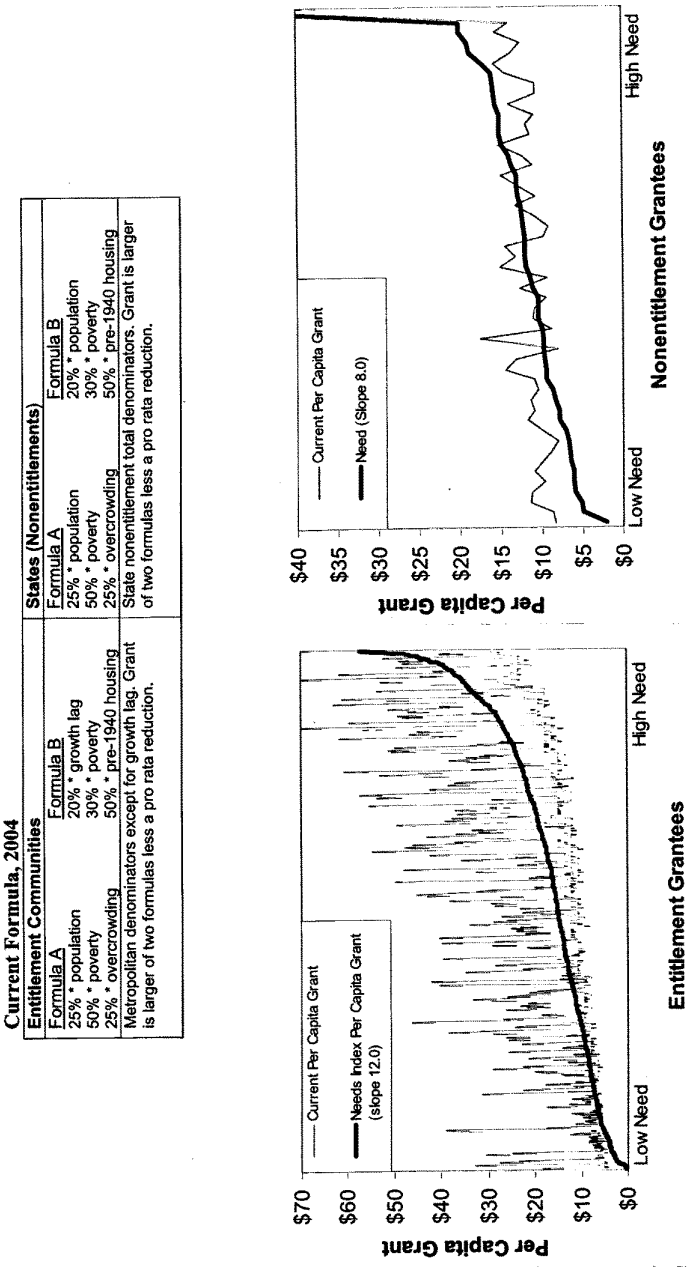
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[56] *See* Consolidated Appropriations Act, 2005, Public Law No. 108–447, 118 Stat. 2810 (2004).
[57] Office of Management and Budget, *President Bush Proposes Strengthening America's Communities Initiative* at 1 (last modified Feb. 3, 2005).
[58] *Id.*
[59] *Id.*
[60] *Id.*

## G. HUD PROPOSED CHANGES TO THE CDBG FORMULA

On February 21, 2005, HUD published a document entitled, *CDBG Formula Targeting to Community Development Need,* the result of a study on the declining effectiveness of the current grant formula in targeting need. The study demonstrates that the current formula continues to target need: the top 10 percent of communities with the greatest need receive four times as much as the 10 percent of communities with the lowest need.[61] However, this targeting is based on *poverty* need. The study shows that the current formula's ability to target *community development* need has substantially declined over the last 30 years. A growing number of communities with similar needs today receive substantially different grants. Further, the per capita grants awarded to the neediest of communities have decreased while the per capita grants awarded to the least needy of communities have increased.[62]

[61] *See CDBG Formula Study* at x.
[62] *See id.* at 37.




The above entitlement grantee chart (left) demonstrates that the amount of funds jurisdictions currently receive (the jagged line) is only slightly in accord with the amount of funds that should be al-

located according to the need index (the solid line), but it also demonstrates that similarly situated communities receive vastly differing grant awards (differing heights of the peaks).[63] HUD posits that one explanation for these two anomalies is the flatness of Formula A and the inequity of Formula B.[64] Formula A places a 25 percent weight on the population variable, resulting in the most needy of grantees not getting substantially more funds than the least needy of grantees simply because two cities may have similar population counts regardless of the need of that population. Conversely, Formula B grantees often receive substantial grants because of the large numbers of pre-1940 housing even though there may be little community or economic need. The non-entitlement grantee chart (right) demonstrates that there is little to no relationship between the need of a community and the funds allocated under CDBG.[65]

To address these deficiencies, HUD proposed four alternative formulas. Three of the four alternatives maintain the 70/30 (entitlement community/nonentitlement community) split.[66] The fourth alternative eliminates the 70/30 split. Only one of the four alternatives maintains the Formula A and Formula B duality[67] while the remaining alternatives simplify the calculation by using one formula each for entitlement communities and non-entitlement communities.

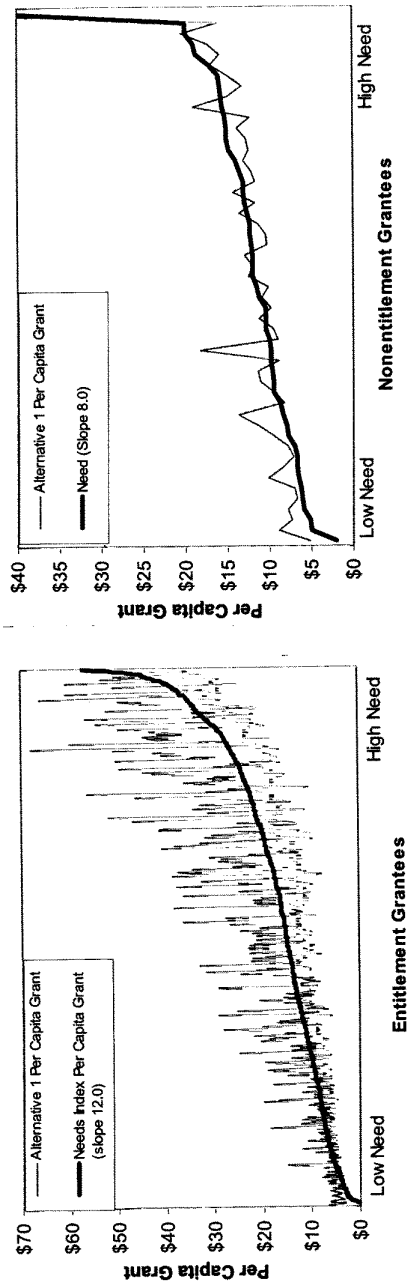
*Alternative 1*

Alternative 1 adjusts the existing formula by changing the weights of the variables in the current formula.[68] Under Formula A, population is weighted at 10 percent (currently 25 percent), poverty is weighted at 60 percent (currently 50 percent), and overcrowding is weighted at 30 percent (currently 25 percent). Under Formula B, the age of housing is calculated as housing 50 years or older occupied by a poverty household (currently pre-1940 housing, without regard to household need) and weighted at 50 percent (currently also 50 percent), poverty is calculated by family and elderly poverty (currently calculated as poverty without regard to family status or age, thus incorporating large student populations) and is weighted at 40 percent (currently 30 percent), and growth lag is weighted at 10 percent (currently 20 percent).

[63] *See id.* at x chart ES–1.
[64] *See id.* at xi.
[65] *See id.* at xii chart ES–2.
[66] *See supra* p. 5.
[67] *See id.*
[68] *See CDBG Formula Study* at xiii–xv, 62–65.

**Alternative 1**

| Entitlement Communities | | States (Nonentitlements) | |
|---|---|---|---|
| Formula A | Formula B | Formula A | Formula B |
| 10% * population | 10% * adjusted growth lag | 10% * population | 10% * population |
| 60% * family & elderly poverty | 40% * family & elderly poverty | 65% * family & elderly poverty | 40% * family & elderly poverty |
| 30% * overcrowding | 50% * housing 50 years or older occupied by a poverty household | 25% * overcrowding | 50% * housing 50 years or older occupied by a poverty household |
| Metropolitan denominators except for growth lag. Grant is larger of two formulas less a pro rata reduction. | | State nonentitlement total denominators. Grant is larger of two formulas less a pro rata reduction. | |




Alternative 1 improves the targeting of each formula (the bouncing line follows the solid need index line more closely) but does not correct the disparities that occur between Formula A recipients and

Formula B recipients (the spiking remains similar to the current formula chart).[69] This alternative also results in the least disruption of funds.[70]

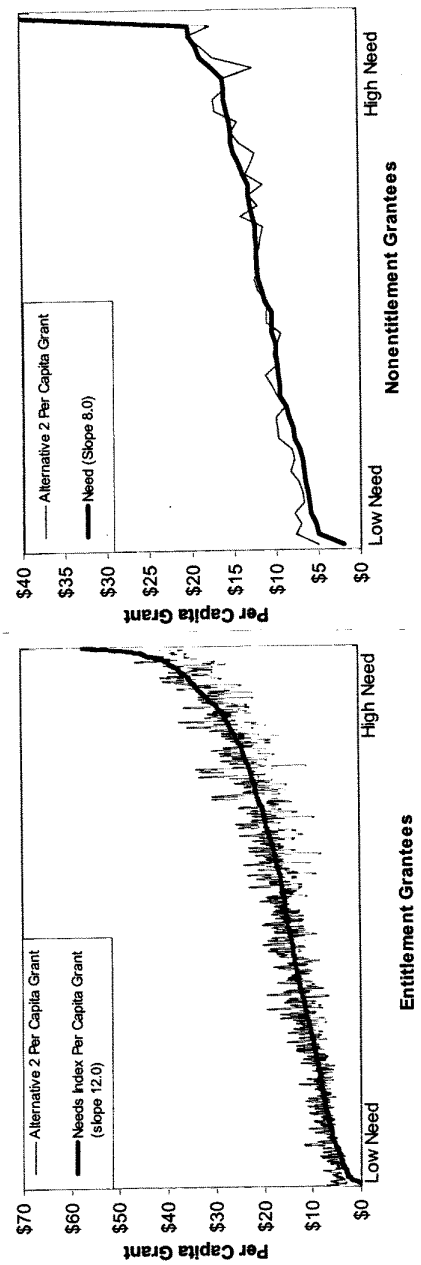
*Alternative 2*

Alternative 2 eliminates the dual formula system and replaces it with one formula.[71] For entitlement communities, allocation is calculated using family and elderly poverty weighted at 50 percent, female-headed households with children under 18 years weighted at 10 percent, overcrowding weighted at 20 percent, and housing 50 years or older occupied by a poverty household weighted at 20 percent. Non-entitlement community allocation is calculated using family and elderly poverty weighted at 60 percent, female-headed households with children under 18 years weighted at 10 percent, and housing 50 years or older occupied by a poverty household weighted at 30 percent. The overcrowding variable is eliminated in the non-entitlement calculation as it bears a high correlation to poverty in non-entitled communities, which is accounted for in the other variables.

[69] *See id.* at xiv–xvi charts ES–3 and ES–4.
[70] *See id.* at xiv, 61.
[71] *See id.* at xvi–xviii, 62, 66–71.

**Alternative 2**

| Entitlement Communities—70% | States (Nonentitlements)—30% |
|---|---|
| 50% * family & elderly poverty<br>10% * female-headed household with children under 18<br>20% * overcrowding<br><br>20% * housing 50 years or older occupied by a poverty household | 60% * family & elderly poverty<br>10% * female-headed household with children under 18<br>30% * housing 50 years or older occupied by a poverty household |
| Entitlement total denominators. | State nonentitlement total denominators. |




The allocations using Alternative 2 closely match the need index (the solid line) and address the inequities between similarly situated communities by eliminating the dual formula (less spiking in

the line representing actual allocation).[72] However, because the allocation so closely matches the need index thereby improving fairness, without increasing funding, some very needy Formula B communities suffer dramatic decreases in funding.[73] Likewise, some high-need communities that are relatively over-funded by Formula A (as compared to the need index) suffer significant funding decreases as well (e.g., St. Louis drops from $74 per capita to $37 per capita). At the same time, high-need communities that were underfunded are awarded larger per capita grants more closely aligned with their needs.

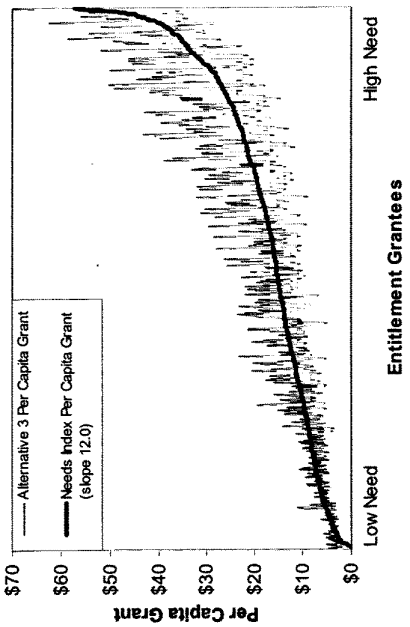
*Alternative 3*

Alternative 3 is very similar to Alternative 2.[74] For entitlement communities, the allocation is calculated using the same formula as in Alternative 2 but with more weight on older housing occupied by a poverty household and less weight on overcrowding. Family and elderly poverty is weighted at 50 percent, female-headed households with children under 18 years is weighted at 10 percent, overcrowding is weighted at 10 percent, and housing 50 years or older occupied by a poverty household is weighted at 30 percent. This shift in weight places more emphasis on communities plagued by aged housing or decline versus communities with growing immigrant populations. The formula also allows for an upward adjustment of up to 25 percent for communities with low per capita income or a downward 25 percent adjustment for areas with a high per capita income, both relative to the metropolitan area per capita income. Additionally, the formula permits a pro rata reduction to ensure aggregate grant allocations do not exceed the program's appropriated funds. The non-entitlement community formula is identical to the formula used in Alternative 2.

[72] *See id.* at xvii–xviii charts ES–5 and ES–6.
[73] *See id.* at xvii, 62, 70.
[74] *See id.* at xviii–xx, 62, 71–73.

**Alternative 3**

| Entitlement Communities—70% | States (Nonentitlements)—30% |
|---|---|
| 50% * family & elderly poverty<br>10% * female-headed household with children under 18<br>10% * overcrowding<br><br>30% * housing 50 years or older occupied by a poverty household | 60% * family & elderly poverty<br>10% * female-headed household with children under 18<br>30% * housing 50 years or older occupied by a poverty household |
| Entitlement total denominators. Adjusted by the ratio of metropolitan area per capita income divided by local per capita income with an adjustment cap of +/- 25 percent. Pro rata reduction of adjusted grant to match grant allocation to appropriations. | State nonentitlement total denominators. |




Alternative 3 addresses the need index by following the solid line but with a steeper slope, meaning more funds are allocated to higher need communities and less funds are allocated to less needy

communities.[75] However, as indicated by the spiking of the allocated per capita grant, there is more variation in the amounts allocated between similarly situated communities than in Alternative 2. While some relatively over-funded high-need communities still suffer decreases in their per capita grant, the decrease is not as significant as under Alternative 2.

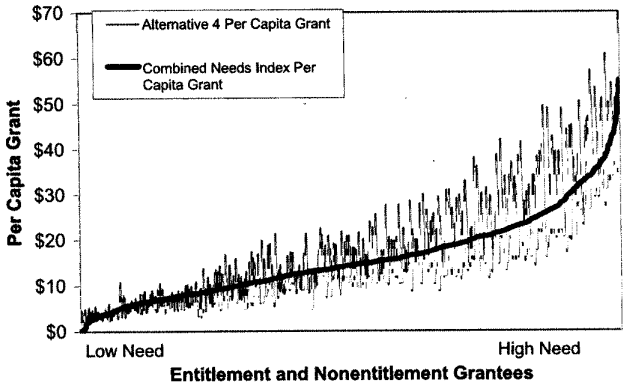
*Alternative 4*

Alternative 4 is a single formula approach. There is no differentiation between entitlement and non-entitlement communities (currently, the 70/30 split).[76] The formula is identical to the formula used for entitlement communities under Alternative 3. Allocations are calculated based upon family and elderly poverty weighted at 50 percent, female-headed households with children under 18 years weighted at 10 percent, overcrowding weighted at 10 percent, and housing 50 years or older occupied by a poverty household weighted at 30 percent. As in Alternative 3, the allocation may be adjusted upward or downward by 25 percent based upon per capita income relative to the metropolitan area per capita income and a pro rata reduction is permitted to match the grant allocations to the program appropriations. Using this formula and fiscal year 2004 figures, the end result is a de facto split of 69 percent of CDBG funds granted to entitlement communities and 31 percent granted to non-entitlement communities. Targeting is improved in the same way as under Alternative 3 as demonstrated by the grant allocation line closely matching the need index line but with a greater slope. Thus, higher need communities receive more funds and lower need communities receive fewer funds.[77]

[75] *See id.* at xix chart ES–7.
[76] *See id.* at xx–xxi.
[77] *See id.* at xxi chart ES–8.

**Alternative 4**

| Entitlement Communities and State (Nonentitlements)—100% |
| --- |
| 50% * family & elderly poverty<br>10% * female-headed household with children under 18<br>10% * overcrowding<br>30% * housing 50 years or older occupied by a poverty household |
| Adjusted by the ratio of metropolitan area per capita income divided by local per capita income (states not adjusted) with an adjustment cap of +/- 25 percent. Pro rata reduction of adjusted grant to match grant allocation to appropriations. |



*Summary of Impact*

Alternative 1 makes only minor modifications to the current formula, resulting in fewer large losses and gains than the other alternatives. Alternatives 1, 3, and 4 result in redistribution of funds from the least needy entitlement communities to the most needy communities, with Alternative 4 causing the largest redistribution. Alternative 2 addresses the anomaly created by using a dual formula system (Formula A versus Formula B), replacing the two formulas with a single formula. However, this leads to significant per capita grant reductions to very needy entitlement communities, a consequence that Alternative 3 attempts to address. Alternative 4 has almost an identical impact as Alternative 3—the upside being the most significant simplification of allocation calculation (one formula without a 70/30 split), with the downside being slightly more losers than winners in the allocation because the share of funds for entitlement communities is effectively reduced to 69 percent.

The following tables demonstrate the effect on jurisdictions under each of the four Alternative formulas. Table ES–1[78] shows the effect on entitlement communities, table ES–2[79] shows the effect on non-entitlement communities (States), and table ES–3[80] shows the redistribution of funds by region.

[78] *See id.* at xxii.
[79] *See id.*
[80] *See id. at xxiii.*

Table ES-1
Percent of Entitlement Grantees Gaining/Losing Funds by Formula Alternative

| | Alternative 1 | Alternative 2 | Alternative 3 | Alternative 4 |
|---|---|---|---|---|
| **Loss greater than 40%** | 5% | 12% | 15% | 15% |
| **Loss 20 to 40%** | 16% | 15% | 18% | 19% |
| **Loss 10 to 20%** | 15% | 9% | 11% | 10% |
| **Loss 0 to 10%** | 20% | 12% | 11% | 12% |
| **Gain 0 to 10%** | 18% | 12% | 12% | 11% |
| **Gain 10 to 20%** | 13% | 11% | 10% | 11% |
| **Gain 20 to 40%** | 11% | 17% | 14% | 13% |
| **Gain greater than 40%** | 1% | 12% | 11% | 9% |
| **Total** | 100% | 100% | 100% | 100% |

N=1,105 (As compared to FY 2004 allocation)

Table ES-2
Percent of Nonentitlement Grantees Gaining/Losing Funds by Nonentitlement Formula Alternatives

| | Alternative 1 | Alternative 2 | Alternative 3 | Alternative 4 |
|---|---|---|---|---|
| **Loss greater than 40%** | 0% | 4% | 4% | 0% |
| **Loss 20 to 40%** | 14% | 18% | 18% | 18% |
| **Loss 10 to 20%** | 20% | 22% | 22% | 20% |
| **Loss 0 to 10%** | 16% | 16% | 16% | 18% |
| **Gain 0 to 10%** | 26% | 6% | 6% | 6% |
| **Gain 10 to 20%** | 20% | 12% | 12% | 16% |
| **Gain 20 to 40%** | 6% | 20% | 20% | 20% |
| **Gain greater than 40%** | 0% | 4% | 4% | 4% |
| **Total** | 100% | 100% | 100% | 100% |

N=51 (using FY 2004 geography)

Table ES-3
Total Regional Shifts for Both Entitlements and States for Each Alternative

| Region | Alternative 1 | Alternative 2 | Alternative 3 | Alternative 4 |
|---|---|---|---|---|
| New England | -22% | -31% | -21% | -21% |
| New York/New Jersey | -2% | -5% | 3% | 2% |
| Mid-Atlantic | -7% | -18% | -11% | -12% |
| Southeast | 8% | 20% | 16% | 16% |
| Midwest | -11% | -19% | -11% | -11% |
| Southwest | 13% | 21% | 15% | 16% |
| Great Plains | -9% | -12% | -8% | -8% |
| Rocky Mountain | -5% | -2% | -4% | -3% |
| Pacific/Hawaii | 9% | 14% | 0% | 1% |
| Northwest/Alaska | -6% | -3% | -7% | -5% |
| Puerto Rico | 33% | 35% | 23% | 24% |

N=1,156

H. THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION STUDY AND RECOMMENDATIONS PERTAINING TO CDBG PERFORMANCE MEASURES

In 2003, the National Academy of Public Administration [NAPA] contracted with QED Group to develop a set of performance measures for the CDBG program. In February 2005, the NAPA panel (the "Panel") published its findings and recommendations for developing performance measures for the CDBG program. The Panel concluded:

> [T]here is sufficient common ground among [CDBG stakeholders] to construct a performance measurement system that can satisfy them and be consistent with the Housing and Community Development Act of 1974, GPRA, and PART. The Panel found that virtually all parties in this discussion, ranging from OMB to HUD to stakeholder groups, are committed to arriving at a viable approach that reflects common agreement.
>
> Generally, entitlement communities and states support CDBG performance reporting as long as it is non-intrusive, extensively used, cost effective, and compatible with existing management systems. Grantees want maximum programmatic flexibility to tailor the investments to their local needs. At the federal level, HUD wants a system that reflects and maintains CDBG's flexibility, and complies with its statutory responsibilities as an executive agency. Meanwhile, OMB wants one that encourages HUD and grantees to demonstrate conclusively that the investments contribute to the development of viable communities and to low- and moderate income beneficiaries. To accomplish this, it wants entitlement communities and states to target CDBG funding to a limited number of neighborhoods.
>
> * * *
>
> To illuminate shared practices in the field, the Panel examined a wide-ranging sample of performance measurement reports issued by federal programs, communities and states, think tanks, university research centers, public interest groups, citizen groups and foundations. . . . The more closely that a CDBG performance measurement system conforms to practices in the field, the more likely entitlement communities and states will be to report performance results and use them in management. The Panel believes that a system proposed for negotiation with grantees must distinguish clearly between realistic expectations of what grantees can reasonably be expected to report and the progress toward national results that HUD should be responsible for determining. The Panel calls on HUD to demonstrate a relationship between locally reported data and accountability standards for grantee performance. In turn, grantees should hold HUD accountable for an effective research and evaluation program that demonstrates the value that taxpayers receive from their investment in CDBG.
>
> * * *

The Panel recommends that performance indicators should:

- Have stakeholder consensus on what should be measured.
- Focus on things that can be quantified—people, businesses or even organizations, rather than notions of community and neighborhood betterment where considerable conceptual ambiguity exists.
- Always report frequencies, rather than percentages or rates, to facilitate aggregation of data across communities and states.
- Avoid use of baselines or benchmarks in reporting due to the sporadic, often one time only nature of CDBG investments (e.g., a single investment in a water system).
- Avoid any arbitrary time qualifiers as much as possible, but should report annual results.
- Allow aggregation from the local to national level.
- Overlap as much as possible with other community planning and development program indicators so that HUD can demonstrate performance across related activities.
- Avoid double counting of benefits across CDBG, ESG, HOPWA and HOME programs if there are any. (footnote omitted)
- Be valid in measuring consistently and correctly over time.

* * *

CDBG's existing performance measurement system relies on data gathering and reporting systems that are common in the department, the field and elsewhere. The Panel is aware of other systems that might complement or supplement performance information reported in more traditional practice. For example, social science findings could be used to impute outcomes to CDBG beneficiaries when it proves cost prohibitive to gather outcome information directly from beneficiaries themselves. It recommends that HUD explore some of these alternative systems, perhaps through a series of demonstration projects, as a way to measure program accomplishments.[81]

I. THE INTEGRATED DISBURSEMENT AND INFORMATION SYSTEMS [IDIS]

Grant recipients currently report their CDBG data to HUD through the Integrated Disbursement and Information System [IDIS]. A companion system known as Community 2020, once considered innovative by stakeholders, has become technologically obsolete and incompatible with newer software.[82] Consequently, the Community 2020 system is now seldom used. According to the

[81] National Academy of Public Administration, *Developing Performance Measures for the Community Development Block Grant* at xi–xv (2005) [hereinafter *NAPA Performance Measures Report*].

[82] *See* National Academy of Public Administration, *Integrating CDBG Performance Measures Into IDIS* at vii (2005).

NAPA study, "neither system has worked well and past efforts to fix each one has failed or been executed in a piecemeal fashion."[83]

HUD posits that much of the problem with the reporting system results from the use of COBAL, a programming language first developed in 1960. Consequently, COBAL and programs developed using COBAL are antiquated and incompatible with today's technologies. HUD indicates that it is reengineering the IDIS in an effort to resolve these problems. To that end, NAPA and other observers have commended HUD for its efforts to upgrade its information management systems.[84]

Commissioned by HUD, NAPA reviewed IDIS and published a report entitled, *Integrating CDBG Performance Measures into IDIS*. NAPA offers several suggestions therein for upgrades to improve existing performance measurement and reporting systems.

### J. PROPOSED OUTCOME MEASUREMENT SYSTEM

In June 2004, a Joint Grantee/HUD/OMB Outcome Measurement Working Group (the "working group") convened to develop an Outcome Measurement System for key Federal community development programs, including CDBG. The Council of State Community Development Agencies [COSCDA], National Community Development Association [NCDA], National Association for County and Community Economic Development [NACCED], National Association of Housing and Redevelopment Officials [NAHRO], HUD's CPD office, and OMB were partners in this effort.

In October 2004, the working group drafted a consensus document on a proposed Outcome Measurement System. According to the proposal, "grantees would use this System in their five-year Consolidated Plans and Annual Action Plans, but are free to add objectives, outcomes and indicators specific to their state or local initiatives or priorities."[85] Under the plan, HUD will alter existing reporting requirements and mechanisms to "include . . . outcomes, indicators and appropriate variable data" proposed by the working group.[86]

HUD published a Notice in the Federal Register on June 10, 2005 regarding the Performance Measurement Outcome System to obtain input from the public to operationalize the proposal.[87] The comment period closed on September 8, 2005 and HUD expects to issue a Final Notice by December 2005. HUD also held regional input sessions in five cities across the country drawing more than 1,000 attendees. HUD plans to provide training to grantees in 2006 and will then phase in the new system by 2007 as the Department's information system is adjusted according to the proposal.[88]

The proposal includes three overarching objectives: (1) "Creating Suitable Living Environments," (2) "Providing Decent Affordable

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[83] *Id.*

[84] Interview with HUD staff, in Washington, DC (Apr. 1, 2005).

[85] *Consensus Document: Joint HUD/OMB/Grantee Outcome Measurement Working Group* at 1 (last modified Nov. 20, 2004) <http://www.coscda.org/CDBGBattleCry2005/CDBGOutcomeMeasures.pdf> [hereinafter *Working Group Consensus Document*].

[86] *Id.*

[87] *See* Notice of Draft Outcome Performance Measurement System for Community Planning and Development Formula Grant Programs; Request for Comments, 70 Federal Register 34,044 (2005).

[88] *See id.* at 34,045.

Housing," and (3) "Creating Economic Opportunities."[89] Within each objective, there are three outcome categories including availability and accessibility, affordability, and sustainability. Under the new system:

> Based on their intent when funding them, Grantees would determine under which of the three objectives to report the outcomes of their projects and activities. Similarly, once the objective is chosen, then the Grantee would also choose which of the three outcome categories best reflects what they are seeking to achieve (the results) in funding a particular activity. Next, Grantees would choose from a list of indicators (also known as outputs) to report on, and supply the data for those indicators to HUD.
>
> The System maintains the flexibility of the block grants [sic] programs, as the objectives and outcomes are determined by the grantees based on the intent of the project and activity. While program flexibility is maintained, the System offers a specific menu of objectives, outcomes and indicators so that reporting can be standardized and the achievements of these programs can be aggregated to the national level.[90]

## III. HEARINGS

### A. HEARING ON THE STRENGTHENING AMERICA'S COMMUNITIES INITIATIVE, MARCH 1, 2005

Given the administration's critique of the CDBG program and, conversely, given the overwhelming opposition to SACI by the stakeholder community, the Subcommittee held its initial oversight hearing into the CDBG program and its proposed consolidation under SACI on March 1, 2005.

This hearing was entitled, "Strengthening America's Communities: Is It the Right Step Toward Greater Efficiency and Improved Accountability?" The Subcommittee received testimony from a number of parties representing a diversity in interests and viewpoints regarding both the CDBG program and SACI.

A total of seven witnesses testified in two panels. The first panel consisted of the Honorable Roy A. Bernardi, Deputy Secretary of HUD; the Honorable Clay Johnson III, Deputy Director of OMB; and the Honorable David Sampson, Assistant Secretary for Economic Development of the Department of Commerce. The second panel, consisting of non-Federal CDBG stakeholders, included U.S. Conference of Mayors President Donald Plusquellic, National Association of Counties President Angelo D. Kyle, National Community Development Association Executive Director Chandra Western, and National League of Cities First Vice President Jim Hunt.

The panel of Federal witnesses centered its attention on the proposed SACI and the administration's argument that the 18 direct grant programs affected are duplicative and ineffective and should therefore be consolidated into one program.

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[89] *Id.* at 34,046.
[90] *Id.*

Assistant Secretary Sampson testified that the administration's proposal "calls for the consolidation of 18 of [the 35 Federal economic and community development] programs which are the direct-grant programs. Some of these programs, based on OMB analysis, duplicate and overlap one another."[91] According to OMB, "[w]ith no administration-wide approach to guide these efforts, many of these investments are: largely uncoordinated, too loosely targeted, weakly leveraged, and not achieving results. Most important, these programs often cannot demonstrate they are having any positive impact on the communities they serve."[92]

Assistant Secretary Sampson likewise criticized the direct grant programs because they allegedly "lack clear accountability goals, and . . . cannot sufficiently demonstrate measurable impact on achieving improved community and economic performance."[93] In addition to improving what the administration considers questionable impact, Sampson continued, the administration intended SACI to reduce duplication and confusion:

> [T]he current system forces communities to navigate a maze of Federal departments, agencies and programs—each imposing a separate set of standards and reporting requirements—in order to access Federal assistance. Some of these programs duplicate and overlap one another, and some have inconsistent criteria for eligibility and little accountability for how funds are spent.[94]

According to the Department of Commerce, "Success is often hampered by this fragmented, and often duplicative, set of programs. In some instances, programs act in isolation from one another, even though they share the exact same purpose . . . [a]s a result, funding is spread thinly and not strategically targeted to have any impact on communities in need."[95] Deputy Director Clay Johnson testified that the administration believes SACI will "better structure our community and economic development programs to get more of the intended results, which are to create vibrant communities that would not exist otherwise."[96]

While the administration has yet to propose specific details of changes to the program concomitant with consolidation under SACI, Mr. Sampson testified that the eligibility criteria will change in order to improve targeting of funds:

> The intent of the proposal is that most entitlement communities will continue to remain eligible. The intent is to graduate from the program the wealthiest communities in America and redirect that funding so that those communities who remain eligible actually receive more money than they currently do. But the specific line where that eli-

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[91] *CDBG Hearings* at 23 (statement of David A. Sampson, Assistant Secretary of Commerce for Economic Development, Department of Commerce).
[92] *Id.* at 21 (statement of Clay Johnson III, Deputy Director for Management, Office of Management of Budget).
[93] *Id.* at 23 (statement of David A. Sampson, Assistant Secretary of Commerce for Economic Development, Department of Commerce).
[94] *Id.* at 26–27.
[95] *Id.* at 28.
[96] *Id.* at 20 (statement of Clay Johnson III, Deputy Director for Management, Office of Management of Budget).

> gibility criteria will be drawn has not yet been established.[97]

Sampson continued, "[T]here are clearly a number of communities in America where you have—I think the number is 38 percent of current HUD CDBG grants go to communities with poverty rates below the national average."[98] "[I]f you look at some of that data and you see communities with poverty rates of 2 to 3 percent, it's pretty clear to us that is a good candidate for retargeting those funds to communities with poverty rates of 20 to 26 percent," Sampson concluded.[99]

Mr. Johnson characterized SACI as "a tremendous opportunity to build more accountability into the programs to ensure that the focus is on what we get for the money, not on how much money we spend."[100] The administration posited that in the new SAC grant program, "communities [will] be required to meet specific accountability measures[.]"[101] Mr. Sampson explained that "[a]ssisted communities [will be required] to track progress toward certain goals, including such things as increasing job creation, new business formation, and private sector investment from an economic development standpoint; and increasing homeownership . . . and commercial development from a community development standpoint."[102] "For those communities that show inadequate progress meeting the program's goals," Johnson explained, "a plan of action will be developed and technical assistance will be provided to ensure that future funds are strategically targeted and invested in proven activities. Communities that are consistently unable to use taxpayer dollars to meet the accountability measures would stand to lose future funding."[103]

In a later hearing, when asked directly whether the administration's assessment was an accurate characterization of the CDBG program, Deputy Secretary Bernardi argued that the purpose and design of the program are clear, contrary to the PART assessment. The program was purposely designed with great flexibility in order to best address local needs:

> [On] the program purpose and design [element of the PART score], we received a zero score. Candidly, the program purpose and design, I think, is spelled out in the Community Development Block Grant Act of 1974. The program was meant to be utilized by local officials with determination after a tremendous amount of community input as to how best they would utilize those resources . . . . So it is a very flexible program; it is a program that was meant to be utilized at the local level.[104]

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[97] *Id.* at 41 (statement of David A. Sampson, Assistant Secretary of Commerce for Economic Development, Department of Commerce).
[98] *Id.* at 42.
[99] *Id.*
[100] *Id.* at 20 (statement of Clay Johnson III, Deputy Director for Management, Office of Management of Budget).
[101] *Id.* at 22.
[102] *Id.* at 30 (statement of David A. Sampson, Assistant Secretary of Commerce for Economic Development, Department of Commerce).
[103] *Id.* at 22.
[104] *Id.* at 208 (statement of Roy A. Bernardi, Deputy Secretary of the Department of Housing and Urban Development).

Touting the flexibility of the program, CDBG stakeholders recounted a wide assortment of activities funded by program dollars. Mayor Plusquellic related Akron's use of funds to demolish dilapidated housing and funds leveraged funds to encourage private sector developers to build new housing in old neighborhoods.[105] The city also used its grant dollars "to induce the private owner of a grocery store chain to open in an area that was not served with a grocery store in many years. And we've helped senior citizens, assisted handicapped children, and . . . helped new homebuyers[.]" [106] NACO President Angelo Kyle cited CDBG funds as the enabler creating the largest high-tech business incubator in California, creating 475 jobs and revitalizing a blighted community.[107] Kyle also ran down the list of programs on which CDBG funds are used in his hometown of Lake County, IL, which include a variety of activities and projects including "daycare, transitional housing, homeless assistance, fair housing, emergency food assistance, homeowner rehabilitation, first-time homebuyer assistance, and employment training, as well as for important infrastructure improvements, public services, and economic development activities." [108] As Councilman Hunt described CDBG, "[It] is not just a jobs creator or economic development tool;" CDBG is also a catalyst for many other types of projects.[109]

In reaction to the administration's primary reason for consolidating the direct grant programs, reducing duplication and increasing efficiency, members of the Subcommittee questioned whether the Department of Commerce has the expertise to manage a program the size of CDBG alone, with an overall fiscal year 2005 appropriation of $4.71 billion, and whether they have the institutional knowledge to administer what is essentially a housing and urban development program. There is a significant internal infrastructure at HUD supporting the administration of the CDBG program—one of many programs HUD administers. Deputy Secretary Bernardi reported that there are approximately 800 employees devoted to the community planning and development program—200 employees are located at HUD headquarters with the remaining 600 employees stationed across the country in 42 field offices.[110] Approximately 40 employees of the 200 stationed in Washington, DC, work full time on the CDBG program in conjunction with the Section 108 Loan Guarantee Program.[111] On average, the 600 field employees "devote at least a third of their time" to administering the CDBG program.[112]

Conversely, Commerce manages a portfolio of grants totaling $2.3 billion.[113] Asked directly whether the Department has the expertise to handle the CDBG program, Deputy Secretary Sampson responded, "we clearly understand that in consolidating all 18 of

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[105] *See id.* at 49 (statement of Don Plusquellic, president, U.S. Conference of Mayors).
[106] *Id.*
[107] *See id.* at 59 (statement of Angelo D. Kyle, president, National Association of Counties).
[108] *Id.*
[109] *Id.* at 63 (statement of James C. Hunt, first vice president, National League of Cities).
[110] *See id.* at 37 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[111] *See id.*
[112] *Id.*
[113] *See id.* at 40 (statement of David A. Sampson, Assistant Secretary of Commerce for Economic Development, Department of Commerce).

these programs, the new entity is going to have to leverage subject matter experts within the different programs in creating this new entity within Commerce that will be responsible for administering Strengthening America's Communities."[114] Sampson further stated, "Commerce has a very extensive grant portfolio currently . . . [b]ut we clearly will have to leverage the subject matter expertise and the lessons learned from other agencies and other programs in creating this new program."[115]

Stakeholders likewise questioned the wisdom of moving a grant program the size of CDBG to Commerce. National League of Cities First Vice President Jim Hunt argued,

> The Administration claims that it is seeking to "retarget and refocus" these funds to create new program efficiencies. However, from a practical standpoint, NLC questions whether moving the programs from HUD, where administrative and professional infrastructures already exist and function well, to the Department of Commerce will generate any real savings because building the agency's capacity to administer the programs alone would likely consume any cost savings derived from consolidating these programs.[116]

Stakeholders also testified to the accomplishments of the CDBG program and panned OMB's criticisms resulting from its PART assessment. In a joint written statement to the Subcommittee, the stakeholders noted that one of the primary criticisms of the PART was the program's alleged lack of performance outcome measures.[117] However, these organizations worked with both HUD and OMB in a joint working group, the purpose of which was to create performance outcome measures and reporting criteria. The stakeholders questioned the credibility of OMB's PART assessment given that "OMB helped develop [the performance and outcome matrix] and . . . signed off on the framework and the outcome measures."[118]

The stakeholders further attacked the PART as an inappropriate tool for measuring performance of a block grant program, positing the tool is better suited for the assessment of categorical programs.[119] Conference of Mayors president, Mayor Don Plusquellic, surmised that the PART "may be factually correct, but it's inferentially wrong."[120] Plusquellic continued that the PART "infers that somehow we're doing something with these moneys other than what was intended, and that we're not meeting some performance standard . . ." but he warned the Subcommittee that CDBG funds are "used in some of the most distressed and difficult areas in the community, and yet they're some of the most important, because what we do is keep from allowing that decay from older buildings

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[114] *Id.*
[115] *Id.*
[116] *Id.* at 69 (statement of James C. Hunt, first vice president, National League of Cities).
[117] *See id.* at 56 (statement of Don Plusquellic, president, U.S. Conference of Mayors).
[118] *Id.*
[119] *See id.* at 57.
[120] *Id.* at 50.

. . . from spreading, and we thereby bring back the whole community." [121]

Councilman James Hunt, testifying on behalf of the National League of Cities, emphasized that the performance measures utilized by the administration in the PART analysis were inapplicable in most circumstances in which CDBG funds are used. "[M]easuring results by [the PART] criteria makes little sense for the communities that are chronically impoverished, have little to offer in the way of resources, and are unlikely to show significant progress over a relatively short period." [122] Additionally, Hunt offered, CDBG funds are used on projects the impact of which is difficult to measure in terms of economics. For instance, the removal or demolition of vacant or dilapidated buildings, which were once crime havens, result in the expansion of businesses or in additional land for garages and yards of private citizens.[123] "It is very difficult to assess the impact of removing a drug den from a neighborhood using economic criteria alone; moreover, it is difficult to assess the economic impact in relation to this type of project over a short period, yet the [A]dministration's proposal appears to do just that." [124]

At the same time it attacked the decision to move CDBG to Commerce and applauded the successes of the program, the stakeholder community admitted that there is room for improvement within the CDBG program. Deputy Secretary Bernardi acknowledged this fact and testified that HUD had demonstrated both willingness and an ability to address the weaknesses in the program. "[E]very program can be improved upon . . . we have good employees. They have the capacity, the experience, [and] the institutional knowledge to improve on any program." [125] Further emphasizing HUD's willingness to better the CDBG program, Bernardi offered, "[W]e are constantly looking, under difficult budget constraints, ways in which we can provide additional resources to those people that need it most." [126]

Emphasizing that change is possible without eliminating the program entirely, in a later hearing, Saul Ramirez, Jr. of NAHRO testified, "CDBG is effective and successful, but there is always room for improvement" and "[w]hen stakeholders agree, CDBG can be improved. Interest groups and grantees are more than willing to come to the table with Congress and the Department to work toward responsible change." [127]

To date, the administration has not transmitted further information detailing its SACI proposal.

### B. HEARING ON CDBG FORMULA ALTERNATIVES, APRIL 26, 2005

A second hearing was held on April 26, 2005, entitled, "The 1970s Look: Is the Decades-Old Community Development Block

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[121] *Id.*
[122] *Id.* at 63 (statement of James C. Hunt, first vice president, National League of Cities).
[123] *See id.* at 64.
[124] *Id.*
[125] *Id.* at 38 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[126] *Id.*
[127] *Id.* at 161 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).

Grant Formula Ready for an Extreme Makeover?" The hearing primarily focused on HUD's report, *CDBG Formula Targeting to Community Development Need.* The report, prepared for the Department's 2004 budget submission,[128] analyzed the distribution of program funds under the current formula as well as four HUD-proposed alternative formulas. Additionally, the report detailed changes to the program's need index analysis, through which HUD assigns a numeric score to entitlement communities based on relative need. This need index score is the basis for the determination of a community's annual CDBG funding.

In examining the formula alternatives presented by HUD, the Subcommittee requested the participation of individuals representing varied groups of CDBG stakeholders including Federal and State government officials, interest groups, associations, and CDBG users. Testifying before the Subcommittee were the Honorable Roy A. Bernardi, Deputy Secretary of HUD; Paul Posner, Director of Federal Budget & Intergovernmental Relations at GAO; Jerry C. Fastrup, Assistant Director of Applied Research and Methods at GAO; and Saul N. Ramirez, Jr., now the executive director of the National Association of Housing and Redevelopment Officials, formerly the Deputy Secretary of HUD in the Clinton administration.

The primary factor for considering a change to the formula is the perceived inequitable distribution of program funds. HUD's analysis revealed "stark examples of funding disparity . . . communities with similar need may receive significantly more or less funding on a per capita basis [and there are] examples of communities with less need receiving roughly the same amount of funding as higher-need areas."[129] According to Deputy Secretary Bernardi, "[i]n 1983 and 1995, [HUD] found that CDBG formulas had become increasingly less effective in targeting need. The problem is that while the variables and the formulas have not changed since 1978, [the] country has."[130] "[T]oday's formula— . . . a formula that [had not] been modified since 1978—places great emphasis on certain variables that may not be a true reflection of today's need," Bernardi concluded.[131] The goal, he continued, is to "chang[e] the program's formula to meet today's needs."[132] According to Jerry Fastrup of GAO, HUD "identified the key factors that are the cause of [widely disparate funding levels], namely the growth lag factor and the pre-1940 housing that [does not] take into account the income status of the households that are living in those houses . . . along with the use of two formulas that work at cross purposes with one another[.]"[133]

HUD proposes altering the formula variables employed in calculating a community's grant award. Those changes in the proposed formulas involve both changes to the underlying variables themselves and a variance in weight. For example, HUD proposes calculating the grant amount based on housing 50 years or older

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[128] *See id.* at 132 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[129] *Id.* at 113.
[130] *Id.*
[131] *Id.* at 115.
[132] *Id.* at 113.
[133] *Id.* at 184 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).

*and* occupied by a poverty household. Currently, aged housing is defined as built before 1940, without regard to the need of the household. Other new variables include family and elderly poverty and female-headed households with minor children.

Members of the Subcommittee questioned whether HUD's proposed changes to variables accurately captured community development need. Chairman Turner explained his concern:

> Dallas has needs, Dallas has poverty[] but intuitively we all know that if you drive through Detroit, and if you drive through Dallas, [with] the issues of community development [in mind], [one would expect] Detroit expressing a higher need and Dallas expressing a lesser need. . . . [However, i]n looking at the four formulas that HUD has prepared, in two out of the four [alternatives] Detroit loses, and in all of the four [alternatives] Dallas wins.[134]

In exploring how disparities still occur under the proposed alternative formulas, the Subcommittee turned to a discussion of the need assumptions. In order to assess "today's needs," HUD "designed an index to try to rank each community based on its relative level of community development need . . . us[ing] variables that relate directly to the statutory objectives of the CDBG program[] such as poverty, crime, unemployment and population loss."[135] HUD employs a number of criterions to calculate this need score. In its 2005 analysis of the CDBG formula, HUD introduces new criterions which it proposes capture new elements of community need, such as that resulting from immigrant population growth. At the same time, other elements that may accurately depict community need are ignored, such as cost of living.

The discussion first turned to the concern that the new need index counts the growing immigration population twice. The need index calculates overcrowding, the occupation of more than 1.01 person per room.[136] However, under the new need index, HUD also includes a separate factor for immigration, weighted at 15 percent of the calculation.[137] As GAO's Jerry Fastrup explained,

> In [HUD's] need criteria, the immigrant population doesn't come into [the] need index directly. It only comes into it indirectly, and it comes in indirectly in two ways: one through the poverty measure, to the extent these immigrants are low-income people that get picked up in the census counts . . .
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> The other way it's picked up is in [HUD's] second factor . . . that's weighted 15 percent in [the] overall need index. The only things in there that capture immigration is overcrowded housing, which the study says is correlated with high immigrant populations, and to the extent that cor-

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[134] *Id.* at 129 (statement of Subcommittee Chairman Michael R. Turner).
[135] *Id.* at 113 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[136] *See id.* at 131.
[137] *See id.* at 129 (statement of Subcommittee Chairman Michael R. Turner).

> relation is there, [HUD's] need index picks up immigration in that way.[138]

Members of the Subcommittee also questioned whether the CDBG program was the correct tool for addressing the growing needs of the immigration population, what HUD called a "new dimension of community distress."[139] As Chairman Turner stated, "[immigration is] not new . . . we've always had immigration. [It is] maybe new in certain concentrations in areas of the South, and it may be new in the composition of that population that are immigrants [but] certainly poverty is not new in concentrations in immigrants."[140] Further, while the Nation experienced a brief immigration surge in the 1990s, the pace of immigration is now similar to that experienced during the formula analyses of the prior two decades.[141] Given that "immigrant populations are going to migrate to areas of the country that have growth, jobs, and opportunity[,]" financing the type of aid required in immigrant communities through CDBG may be shifting CDBG funds to areas of economic growth rather than targeting to communities in decline.[142] Jerry Fastrup later echoed this point when he indicated "overcrowded housing is a sign of a tight labor market and housing market and upward pressure in the housing market . . . is usually a sign of strong growth rather than decline."[143]

Of additional concern to the Subcommittee was the introduction of a ratio comparing community per capita income to metropolitan area income without factoring a ratio of the cost of living in a community versus the greater metropolitan area. The new need index incorrectly assumes that the greater the disparity between a CDBG eligible community's per capita income and its metropolitan area per capita income, the greater the community and economic development need. According to Deputy Secretary Bernardi, "[i]f a local jurisdiction's per capita income is lower than the per capita income of the metropolitan area, that local jurisdiction would receive additional dollars."[144] Without accounting for living costs, however, the new need index builds-in a bias toward communities with a lower cost of living and high area per capita income. GAO indicated that, by not accounting for cost of living, "both the current formula and the two alternatives probably overstate needs in communities with relatively low cost-of-living and understate [needs] in communities with a higher cost-of-living."[145]

According to Paul Posner of GAO, "this [per capita income] factor improves targeting, but additional analysis is needed, because . . . these two specific measures [of per capita income] tend to offset one another[.]"[146] As explained in GAO's written testimony, "[w]hile

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[138] *Id.* at 180 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).
[139] *CDBG Formula Study* at 27.
[140] *CDBG Hearings* at 130 (statement of Subcommittee Chairman Michael R. Turner).
[141] *See id.*
[142] *Id.* at 131.
[143] *Id.* at 180 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).
[144] *Id.* at 113 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[145] *Id.* at 157 (statement of Paul L. Posner, Managing Director of Federal Budget Analysis and Intergovernmental Relations, Government Accountability Office).
[146] *Id.* at 146.

these two factors do direct more funding to high-need communities, they also widen rather than narrow differences in funding among communities with similar needs, in effect, increasing the error rate if measured simply in terms of targeting need." [147] Mr. Posner explains further in his testimony:

> Community per capita income [PCI] is used to increase funding for low-income communities and reduce funding for higher income communities. The metropolitan PCI factor partly offsets the effect of community PCI by increasing funding for communities in high-income metropolitan areas. The net effect of both factors is that the two factors, to some extent, work at cross purposes. For example, if two communities located in different metropolitan areas had the same PCI, the community located in the metropolitan area with a lower area-wide income would receive less aid than the community located in the high-income metropolitan area.[148]

While Deputy Secretary Bernardi stated it is an indicator of a community in decline when a community has a per capita income less than the greater metropolitan area, he later conceded that individuals "would have more of an opportunity . . . in a region where the per capita income in that region is higher even if [their] jurisdiction [per capita income] is lower." [149] Further, the Subcommittee discussed the fact that metropolitan regions with a higher ratio may also have greater regional resources to address their need than communities with a lesser ratio between community versus metropolitan per capita incomes.[150]

Mr. Posner likewise commented that although the introduction of an income variable must be further explored, "fiscal capacity is an important element to consider . . . particularly as [the Federal Government tries to] triage scarce Federal funds." [151] Mr. Posner explained "high income communities generally have stronger tax bases from which to fund program needs without relying on Federal assistance compared to lower income areas." [152] To provide the same services, communities with lower tax bases will raise taxes, further burdening an already distressed population and increasing the need gap between the communities that have and those communities that have not. Mr. Posner continued, "So if we [are] to close the gaps between the lower-income communities and the higher-income communities, some recognition of the relevant capacity as well as the relevant needs among these communities . . . is important [to discuss.]" [153] However, Mr. Posner also reminded the committee that "areas faced with a high cost-of-living . . . would need to pay more for the workers who actually deliver services at the local level."[154]

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[147] *Id.* at 157.
[148] *Id.*
[149] *Id.* at 136 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[150] *See id.* (statement of Subcommittee Chairman Michael R. Turner).
[151] *Id.* at 146 (statement of Paul L. Posner, Managing Director of Federal Budget Analysis and Intergovernmental Relations, Government Accountability Office).
[152] *Id.* at 151.
[153] *Id.* at 146.
[154] *See id.* at 151.

The Members continued questioning the validity of the new need index because of the exclusion of all single, non-elderly poverty households. According to HUD, use of the Census variable captures off-campus college students who may benefit from family support, skewing the poverty variable for a community.[155] However, in excluding all single, non-elderly households, a number of individuals in need are excluded in the need index calculation. Members of the Subcommittee directly questioned the wisdom in excluding all single, non-elderly poverty individuals when HUD can request a tabulation specifically excluding college students alone.[156] Similarly, Saul Ramirez, Jr. of NAHRO argued that even if the college town phenomenon exists, the resulting skew of including off-campus students in the need assessment is not enough to outweigh the skewing caused by failing to accurately account for other single and disabled individuals living in poverty by excluding all single, non-elderly individuals living in poverty.[157]

After debating the new need index criteria at length, the Subcommittee turned to a discussion of whether the variables comprising the current and proposed formulas are objective and whether they operate contrary to the intent of the HCDA. Deputy Secretary Bernardi conceded the existence of "affluent communities . . . that receive above the line in the need index" [158] and that this result can be attributed to disparities in the formula variables. Deputy Secretary Bernardi and other witnesses cited several examples of these disparities.

Designed to improve the targeting of CDBG funds, rather than "counting just the number of units built before 1940, [the new formulas] would measure housing older than 50 years . . . and occupied by a person of poverty." [159] Chairman Turner objected to the new criterion because by mandating that only old homes occupied by a family in need would be counted, the new formulas would penalize communities by "removing a funding source for housing rehabilitation based on the fact that [a community is] experiencing abandoned housing." [160] As an additional reason abandoned housing stock should not be discounted in the need index and formula alternatives, Chairman Turner pointed to the original intent of the statute—"one of the goals and objectives of CDBG is the acquisition and renovation of abandoned housing units, which are a blighting influence, and this ranking of need would specifically remove those units which are targeted for CDBG funds from the indication or the assessment of need." [161] Mr. Ramirez commented that the stakeholder community believes "by removing an accurate assessment of [abandoned] dwellings, . . . it will only accelerate the condition of . . . overall blight of a community[.]" [162]

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[155] *See CDBG Formula Study* at 16.
[156] *See CDBG Hearings* at 137 (statement of Subcommittee Chairman Michael R. Turner).
[157] *See id.* at 178 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).
[158] *Id.* at 137 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[159] *Id.* at 114.
[160] *CDBG Hearings* at 135 (statement of Subcommittee Chairman Michael R. Turner).
[161] *Id.*
[162] *Id.* at 181–182 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).

Moving to the issue of instituting changes to the formula grant, Subcommittee Vice-Chairman Charles W. Dent questioned whether Congress could agree to any of the changes proposed in HUD's study or discussed during the hearing because "most Congressmen . . . will look at their communities and see how they will do under the old system, look how they will do under the new system and that will drive a lot of their decisionmaking [sic]." [163] Deputy Secretary Bernardi noted that Congress phased-in the changes transforming the program from a categorical grant program to a formula-based program in the 1970s and suggested the same could be done with formula changes in the future:

> [W]hen the program went from a categorical grant program to the formula . . . back in the 1970s, there was a phase-in period that was put into place by Congress . . . If [Congress] choose[es] to change the formula, [it] could do the same thing here so that the community would be phased into receiving that extra money so they have the capacity and the wherewithal to use [that extra] capacity at the same time if they were to lose those dollars [they could adjust accordingly].[164]

While the stakeholders "support . . . the notion of a fair and equitable distribution of CDBG dollars," they strongly objected to an "immediate and radical" change in the formula.[165] Mr. Ramirez expressed concern on behalf of the stakeholder community, commenting, "Dramatically changing the formula structure in a swift manner would create uncertainty and inhibit CDBG's current ability to leverage billions of dollars of both private and public investment in some of our poorest neighborhoods." [166] Ramirez further urged, "[t]he pursuit of a more equitable system must be balanced by a desire to avoid the kinds of sudden and dramatic shifts that create uncertainty and undermine a community's ability to . . . strategically plan improvements for the long-term to improve the quality of life of their citizens." [167]

Finally, the Subcommittee questioned the practice of "grandfathering" communities thereby allowing communities that no longer meet the statute's eligibility requirements to remain entitled.[168] Chairman Turner inquired how many communities no longer meet the requirements of an entitlement community yet continue to receive funds under the grandfather provisions.[169] In a post-hearing response, HUD identified 114 communities no longer meeting the statutory requirements of an entitlement community receiving more than $75 million in the aggregate under the entitlement community (the 70 percent) portion of the CDBG formula grant allocation. During the question and answer period, Mr. Ramirez touched briefly on the practice, criticizing the direction of funds

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[163] *Id.* at 139 (statement of Subcommittee Vice-Chairman Charles Dent).
[164] *Id.* at 139 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[165] *Id.* at 162 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).
[166] *Id.*
[167] *Id.* at 163.
[168] *See id.* at 142 (statement of Subcommittee Chairman Michael R. Turner).
[169] *See id.*

to these communities through the grant formula and urging the committee to investigate the issue.

> [T[he grandfathering and perpetuity of communities that are no longer eligible is a growing drag on the intent of the formula in trying to meet the distribution potential of that formula. Close to almost 200 communities now are grandfathered into the current formula that under the guidelines do not qualify any longer to receive these resources under the current definition.[170]

These grandfathered communities receive a significant share of a shrinking portion of money intended for the use of a growing number of entitlement communities. According to GAO, the number of entitlement communities can be expected to grow because population will continue to grow.[171] At the same time, "[w]hen population growth is factored in, the decline in real per capita spending has declined by two-thirds[,]" leaving less money for more entitlement communities to share.[172]

At the close of the hearing, Mr. Fastrup, summarizing the importance of considering changes to the CDBG grant formula, stated, "because of poor targeting of the program, you do run the risk, in tight fiscal times . . . of perceptions of poor targeting, leading people to ask [whether] this [is] really the highest priority use of Federal dollars or not."[173] Fastrup further opined, "to the extent that the targeting of this program is improved, it strengthens the rationale for having this program[.]"[174] As Mr. Posner testified, "when [there is] a shrinking pool of money, it makes targeting arguably more important to address the high-needs communities' needs."[175] With improved targeting of funds, the government can "hold harmless those communities and others with [the] least capacity to absorb the cuts."[176]

The hearing raised several additional issues that are discussed later in this report.

### C. HEARING ON USE OF CDBG FUNDS AND PERFORMANCE MEASURES, MAY 24, 2005

The Subcommittee held its third CDBG hearing May 24, 2005, entitled, "Bringing Community Development Block Grant Programs Spending into the 21st Century: Introducing Accountability and Meaningful Performance Measures into the Decades-Old CDBG Program." As a consequence of the Subcommittee's prior hearings on the administration's Strengthening America's Communities Initiative and the ensuing criticisms of the CDBG program, the Subcommittee held this third hearing to investigate current performance measures in the CDBG program and what improvements, if

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[170] *Id.* at 178 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).
[171] *See id.* at 153 (statement of Paul L. Posner, Managing Director of Federal Budget Analysis and Intergovernmental Relations, Government Accountability Office).
[172] *Id.*
[173] *Id.* at 184 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).
[174] *Id.*
[175] *Id.* at 145 (statement of Paul L. Posner, Managing Director of Federal Budget Analysis and Intergovernmental Relations, Government Accountability Office).
[176] *Id.*

any, could be made in those measures. In particular, the Subcommittee explored HUD's use of the Consolidated Plan (Conplan) as a tool to track an eligible community's plan to spend grant funds as well as use of the IDIS system to track funds after expenditure. The Subcommittee further considered the recommendations of the Joint Grantee/HUD/OMB Outcome Measure Working Group to strengthen the use of these complementary tools to measure program performance. Additionally, the Subcommittee reviewed how eligible communities may currently spend CDBG funds. Specifically, the Subcommittee studied the issues of supplanting funds (the use of CDBG funds on projects for which general revenue funds are typically used) and the apparent lack of limitation on use of CDBG funds for staff functions.

Appearing before the Subcommittee were two panels of witnesses. The Honorable Roy A. Bernardi, Deputy Secretary of HUD, testified on the first panel. Witnesses on the stakeholder panel included the Honorable Ron Schmitt, city councilman of Sparks, NV; Thomas Downs, fellow at the National Academy of Public Administration; Lisa Patt-McDaniel, assistant deputy director of the Community Development Division of the Ohio Department of Development; and Shelia Crowley, Ph.D., president of the National Low Income Housing Coalition.

Beginning its discussion of performance measurement of CDBG grantees, the Subcommittee first focused on the flexibility of the CDBG program and the value of that flexibility to local governments. Numerous commentators have noted that while it is the flexibility of the program that makes CDBG so successful in community and economic development, flexibility is also the reason grantee performance is difficult to measure.

CDBG stakeholders universally agree that "the beauty of the Community Development Block Grant program is its incredible flexibility."[177] This flexibility is necessary to adequately address the problems afflicting communities, which vary from one neighborhood to the next, Lisa Patt-McDaniel testified:

> CDBG is a program that was designed to help many different kinds of communities—those that are growing, those that are fighting off decay and those that are already deteriorated. The current CDBG statute authorizes a menu of eligible activities that recognizes the differences in the types of communities to be served by the program and provides communities with appropriate tools to address their unique problems.
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> The original list of eligible activities was enacted to enable communities to meet the statutory purposes of the program. While those statutory purposes have not changed, and over the years whenever new community problems have emerged, such as brownfields, energy efficiency, economic opportunity, Congress has added eligible activities to help communities address these issues. Certainly not every community eligible for CDBG needs assistance with

[177] *Id.* at 291 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).

> those issues, but again, this approach recognizes that a broad menu of activities must be available in order for communities to address their community development needs.[178]

Describing the flexibility of the program, Deputy Secretary Bernardi testified that the HCDA "allows grantees to determine their own local needs, to set their local priorities, and design programs to address both."[179] Local jurisdictions' use of their CDBG funds is not unfettered, however. Bernardi continued, "There are two limits that help target the use of CDBG funds. First, every assisted activity must [meet one of the statutory objectives]. And the second condition is a grantee must spend at least 70 percent, over 3 years, of its funds for activities that benefit low and moderate-income persons."[180]

While flexibility is the key component to the success of the CDBG program, it is a double-edged sword that hinders measuring grantee performance and accomplishments. Mr. Bernardi explained, "The flexibility of CDBG is of great importance to grantees because it allows them to use the funds in so many different ways to address their needs. However, that flexibility also created difficulty in getting consistency in accomplishments reported by individual grantees."[181]

HUD currently monitors CDBG grantees' use of funds through the Consolidated Planning process.[182] HUD created the Consolidated Plan (Conplan) as a method of combining the applications for CPD's formula grant programs.[183] The Conplan was intended for use as a tool describing how CDBG funds will be spent, thus a tool for monitoring the quality of a community's planned use of funds. According to Mr. Bernardi, however, as a result of numerous congressional mandates, "HUD's major review focus for administration of the CDBG program is [now] monitoring grantees' [*actual*] use of funds."[184] Bernardi explained the evolution of HUD's role from front-end review to back-end review:

> [P]rior to 1981, the law required HUD to make a more qualitative, front end review of a grantee's application to determine whether the activities identified to be undertaken addressed the needs described. In 1981, Congress determined that it would be better for HUD to basically accept what the application said and concentrate its review on after the fact monitoring to be sure that requirements were met.

In 1990, Congress passed the Cranston-Gonzales National Affordable Housing Act. Congress described therein "a more complete outline of what must be included" in a community's grant planning submission. With this new law, "the front-end HUD review was

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[178] *Id.* at 250–251.
[179] *Id.* at 197 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[180] *Id.*
[181] *Id.* at 204.
[182] *See supra* p. 9 for a description of the Consolidated Plan and the planning process.
[183] *See CDBG Hearings* at 202 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[184] *Id.*

limited [by Congress] to whether this plan met the broad purposes of the law and was complete." [185] In 1995, HUD created the Consolidated Plan as a combined application and planning process for the CPD formula grant programs, one of which is CDBG.[186] By this time, HUD's grantee review process had transitioned from monitoring the quality of planned expenditures on the front-end to a back-end review to ensuring compliance in how funds were spent.[187]

Mr. Bernardi's statements support numerous critics' claims that the Conplan is merely a report—completed with sometimes meaningless numbers—that HUD will "rubberstamp" so long as all elements are complete. The Subcommittee directly questioned the effectiveness of HUD's use of grantees' Conplans. Specifically, Chairman Turner asked Deputy Secretary Bernardi about the Department's rejection of Conplans: "Has HUD rejected consolidated plans from communities; and what is the process for rejection of a consolidated plan if one is to be rejected and what type of discussion, feedback, or interaction occurs with the community if a consolidated plan is viewed as either deficient or could be improved?" [188] Bernardi responded, "[T]he consolidated plan is reviewed by each one of our field offices for all of our entitlement grantees, and as long as it adheres to the national objectives . . . [t]here is not a rejection of the consolidated plan per se[.]" [189]

While the Department may "rubberstamp" Conplans and not undertake an in-depth review of all submitted plans, HUD engages in risk monitoring for the grantees deemed at highest risk of non-compliance. "Of our 1,100 approximate grantees, we monitor about a third of those every year to see that they are in accordance with the consolidated plan, that they are spending their money in a timely way, that their goals and objectives and their annual action plan are being realized," Bernardi testified.[190] He continued, "[O]ur [field office] employees . . . know full well who is performing, who is not, who needs information technology, who needs additional capacity, and our staff is always ready and willing and is out there providing it for these folks." [191] When asked directly whether there is a "feedback loop" for Conplans, whether HUD engages grantees in a discussion if their Conplan could be enhanced, Bernardi responded:

> In the early years I believe we were more engaged in the preparation of the consolidated plan. Now we pretty much leave it to the communities to make the determinations they can justify . . . as to how they want to utilize their dollars. We feel very strongly that they know best. Of course, we look at those consolidated plans to make sure that they adhere to the rules that are in place.
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> At the same time, if a community ends up in trouble with a particular project, if the plan is not being adhered to, we

[185] *Id.*
[186] *See id.*
[187] *See id.*
[188] *Id.* at 209–210 (statement of Subcommittee Chairman Michael R. Turner).
[189] *Id.* at 210 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[190] *Id.*
[191] *Id.*

> can take action. We don't like to reclaim dollars unless we absolutely have to . . . We try to work with the grantee so that either the objective can be met or the objective can be changed to something else. In the final analysis, if they are not able to do what they have to do according to the rules and regulations, then we will take that money back.[192]

Commenting on the current HUD review process, Chairman Turner observed:

> [T]here has to be a question of why are you measuring it. Are you measuring it for compliance? And here, with CDBG, we hear that the compliance requirements are very broad, so it [is certain] we will find some people who will be out of compliance and be able to move them back in. But generally the criteria appear to be so broad that measuring for compliance is not going to result in much usefulness in the information.[193]

Turner further noted his surprise at Deputy Secretary Bernardi's description of the Department's limited consultation with grantees on their Conplan. "I was surprised . . . that there is not a significant amount of effort in reviewing consolidated plans and reviewing the information submitted by communities to assist and enhance them in their process of expending CDBG funds."[194]

While the Conplan apparently serves only as a tool for HUD to verify that grantees comply with the law on what activities CDBG funds may be expended, there is no requirement that grantees spend their funds in accordance with their submitted Conplan. Consequently, HUD is unable to enforce compliance with the approved Conplan. Further, because of existing weaknesses in HUD's monitoring mechanisms, HUD has limited ability to supervise grantee actions. These two weaknesses result in narrowed capacity to hold communities accountable for their use of funds. Dr. Crowley explained:

> [T]here are two serious flaws. The first—and this is a huge one—there is no statutory requirement that jurisdictions actually spend their Federal block grant dollars, including CDBG, on any of the needs that they identify in the Conplan. The second flaw is that HUD has limited capacity to monitor what jurisdictions do with their funds and hold jurisdictions accountable for less than adequate performance.[195]

In addition to its limited use of Conplans as a performance measurement tool, another reason HUD cannot engage in meaningful performance-based management of CDBG is the Department's IDIS information management system. Deputy Secretary Bernardi testified, "The concept of IDIS was and is a great idea: it links financial information, i.e., amount of funds used, with actual accomplish-

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[192] *Id.* at 210–211.
[193] *Id.* at 287 (statement of Subcommittee Chairman Michael R. Turner).
[194] *Id.*
[195] *Id.* at 263–264 (statement of Sheila Crowley, Ph.D., president, National Low Income Housing Coalition).

ments." [196] Where the Conplan is a tool to monitor intended use of funds, IDIS is the complementary tool to track actual expenditure of funds. Describing the use of the system, Bernardi explained, "Grantees enter information directly into IDIS on the activities they carryout with their CDBG funds and the accomplishments they achieve, by activity. Also, because CDBG funds are drawn through IDIS, information on funds disbursed, by activity, is readily available." [197]

Thomas Downs of NAPA presented the view of most IDIS critics: "[IDIS] works poorly, if at all, by most standards for the boarder purposes that [HUD] claims. The [NAPA] panel applauds [HUD] for its recent initiatives to clean up grantee data reported in IDIS so that it can be used for management and analysis purposes. It is essentially now an expenditure control system, not a performance management system." [198] Downs later emphasized, "The inability of the IDIS to absorb performance data cannot be overstated. It is basically an accounting system that is used to show where the money goes, it doesn't necessarily have the structure to support performance recording." [199] Ms. Patt-McDaniel echoed Mr. Downs:

> Until now, reporting and capturing many of the achievements of the CDBG program and the others included in the Consolidated Plan have been greatly hampered by HUD's IDIS system. In the Consolidated Annual Performance and Evaluation Report [CAPER], a part of the required Consolidated Plan, citizens are informed about the results of the program's expenditures in a narrative format, but the current IDIS system does not allow this kind of reporting.[200]

Bernardi conceded there are limitations to the system but that HUD is in the process of improving the system:

> Obtaining consistency in reporting and improving the quality of the data on CDBG activities in IDIS has taken years because of both the large number of grantees and the large number of activities that may be assisted under the CDBG program. The flexibility of CDBG is of great importance to grantees because it allows them to use the funds in so many different ways to address their needs. However, that flexibility also created difficulty in getting consistency in accomplishments reported by individual grantees, but HUD has made a concerted effort to address data quality in recent years.[201]

In agreement with Mr. Bernardi's comment, Mr. Downs suggested the difficulty in measuring performance arises because of

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[196] *Id.* at 204 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

[197] *Id.*

[198] *Id.* at 233 (statement of Thomas Downs, fellow, National Academy of Public Administration).

[199] *Id.* at 288.

[200] *Id.* at 250 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).

[201] *Id.* at 204 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

the type of information that a block grant program lends itself to gathering. "It is harder with Community Development Block Grant funds to develop performance measures, particularly outcome measures, not output measures." [202]

To address the performance measurement deficiencies of both the Conplan and IDIS, CDBG stakeholders formed a working alliance with HUD and OMB—the Joint Grantee/HUD/OMB Outcome Measurement Working Group—to develop a framework of common outcome measures that grantees of all government levels could use to report data and demonstrate results to HUD. The stakeholders agreed that while it is difficult to create outcome measures rather than just output measures, it is not an impossible feat. According to Ms. Patt-McDaniel:

> The CDBG program is an inherently flexible program, designed that way by Congress because of the complex and varying natures of our Nation's communities. We believe Congress got it right—we need the flexibility of eligible activities we have to address our communities' problems, achieve the outcomes described above and meet the statutory intent of the program. While that flexibility sometimes makes it difficult to measure the effectiveness of the activities, it can be done and we are confident that the [Joint Working Group's] proposed outcome measurement system will make that possible.[203]

Speaking to the joint effort in creating the outcome performance measurement system, Ms. Patt-McDaniel described the group's aim as creating a tool which would answer the question, "In what way can we best demonstrate that the CDBG program does achieve the results that Congress intended for the program?" [204] Elaborating on the process, Ms. Patt-McDaniel continued:

> Our goal was to develop common outcome measures that States could use in their programming that could also be reported to HUD and aggregated in useful ways that would enable us to tell Congress and our constituents of the results and benefits of the CDBG program, while at the same time encouraging our members to establish additional measures specifically for their own programs and initiatives.[205]

The group achieved this goal by "begin[ing] with the end in mind . . . why did we fund that project, what are we trying to achieve?" [206] The group found that while grantees use CDBG funds for many different kinds of projects, "at the heart of these activities, there are common outcomes that most communities are trying to achieve." [207] Patt-McDaniel continued, "We believe that when this outcome measurement system is implemented, we will begin to

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[202] *Id.* at 288 (statement of Thomas Downs, fellow, National Academy of Public Administration).
[203] *Id.* at 251 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).
[204] *Id.* at 241.
[205] *Id.*
[206] *Id.* at 246.
[207] *Id.*

more clearly tell Congress and OMB more about the benefits of CDBG and the other consolidated plan programs."[208] According to Patt-McDaniel, "Aggregating the results by outcomes can help Federal policymakers assess whether the statutory intent of the program is being met, and the system can be an important management tool at both the grantee and Federal level."[209]

HUD is working to strengthen the IDIS system following the Joint Working Group's outcome measurement system proposal. Bernardi advised the Subcommittee, "[HUD is] committed to improving the way we track performance and show results for our program."[210] Bernardi touted the results of the working group as striking a crucial balance of maintaining the flexibility of the program yet gathering information necessary for meaningful outcome performance management. "While program flexibility is maintained, the [outcome measurement] system offers a specific menu of objectives, outcomes and indicators so that reporting can be standardized and the achievements can be aggregated to the national level," Bernardi advised the Subcommittee.[211] Further, with the new measurement system, HUD wants "to make [reporting] easier[,] to reduce the grantees' time and at the same time be able to consolidate . . . into one format the consolidated plan, the annual performance plan, [and] the CAPER plan so that individuals at HUD . . . can ascertain what has happened over a 5-year period, over a 1-year period of accomplishments."[212] According to Bernardi, the proposed matrix "will produce data to identify the results of formula grant activities. It will allow the grantees and HUD to provide a broader, more accurate picture. The goal is to have a system that will aggregate results across the spectrum of the programs at the city level, the county, [and] State,"[213] thereby "improve[ing] the type and content of reports available to HUD for monitoring."[214] ,[215]

Praising the Working Group's product, Mr. Downs reported, "The [NAPA] panel strongly supports this collaborative effort and urges the Congress and OMB to adopt both the process and the outcome measures produced by [the] Working Group."[216]

Turning away from the issue of performance management, the Subcommittee explored two specific issues regarding grantees' use of funds. The Subcommittee first discussed the supplanting of funds whereby a grantee uses CDBG dollars on projects and activities which are normally paid for out of the grantee's general revenue fund. For example, "if you can afford to do sewers and sidewalks in rich neighborhoods, you shouldn't be spending your CDBG dollars to do sewers and sidewalks in poor neighborhoods. You

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[208] *Id.* at 242–243.
[209] *Id.* at 243.
[210] *Id.* at 198 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[211] *Id.* at 206.
[212] *Id.* at 209.
[213] *Id.* at 198.
[214] *Id.* at 209.
[215] A final rule implementing the new performance measurement system is expected in late December 2005.
[216] *Id.* at 233 (statement of Thomas Downs, fellow, National Academy of Public Administration).

should be spending your general fund dollars to do that."[217] The Subcommittee then turned to the question of how much of their grant dollars a grantee may use to fund staff functions as opposed to bricks-and-mortar activities and programs.

CDBG was never meant as a pool of money to replace general revenue funds on projects a community should underwrite, regardless of whether grant dollars are available. According to Dr. Crowley, "The CDBG statute expressly addresses supplanting by stating that Congress intends that CDBG funds 'not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to' the enactment of CDBG."[218] Despite specific prohibition of supplanting in the statue, "[o]ne of the reoccurring criticisms of CDBG is whether or not the funds have been co-opted for government operations rather than community development functions, even if those government operations support community development functions."[219]

In response to Dr. Crowley's comments, Ms. Patt-McDaniel offered the Subcommittee a counterpoint: "I don't know very many local governments right now who are operating at huge, huge surpluses, or even slight surpluses."[220] Patt-McDaniel continued, offering an example:

> [I]f you have a city . . . which might be considered to have some nicer areas and some poorer areas, my guess is that a local government has a menu of infrastructure or parks, a whole menu of activities that they want to do, and they have resources. They have their own [general revenue fund], they have CDBG, they may have some State resources, but they have a variety of resources. But the total of those resources doesn't add up to all the infrastructure needs of that community.
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> So it only makes good management sense to match the appropriate resource to the appropriate neighborhood so that if you have CDBG, you are in desperate need of replacing the sewer [system], which typically could be across the whole community, you are going to use the CDBG funds where you could benefit the low to moderate-income people and use the [general revenue fund] in the areas where they may not make the low to moderate-income standards.[221]

In either case, it is difficult to determine whether a city is supplanting general revenue dollars with CDBG dollars due to the flexibility of the program—the range of permissible activities is broad. Dr. Crowley opined, "[S]upplanting can only be prevented if HUD is capable of monitoring how funds are used and take action

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[217] *Id.* at 296 (statement of Sheila Crowley, Ph.D., president, National Low Income Housing Coalition).
[218] *Id.* at 267.
[219] *Id.* at 213 (statement of Subcommittee Chairman Michael R. Turner).
[220] *Id.* at 298 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).
[221] *Id.*

if it occurs."[222] Following that line of thought, Ranking Member Wm. Lacy Clay inquired "what mechanisms, if any, have been included in the new outcome framework to ensure that CDBG funds do not supplant local program funding streams?"[223] According to Ms. Patt-McDaniel, "In the outcome framework, we were looking at actual benefits of what we did, and not what percentage of that particular activity would end up paying for staff time."[224]

Closely related to the issue of supplanting, the Subcommittee moved to a discussion of grantee use of funds. Specifically, the Subcommittee asked how much of its CDBG allotment a grantee may expend on staff functions. Not all expenditures on staff functions are impermissible. Congress instituted a 20 percent cap on administration and planning functions to settle the debate of how much money is required for those functions.[225] According to Mr. Bernardi, "There are caps on administration and planning, and that cap is 20 percent. There is also a cap on public service, which is 15 percent. . . . The other areas the communities can pretty much make the determination as to how they want to spend their dollars, in what areas."[226]

Chairman Turner questioned the apparent lack of an overall limitation on how much money may be spent on staff functions. "One of the criticisms that we hear about CDBG is the opportunity for local governments to utilize the funds rather than for community development, but to fund what many people consider local government activities that perhaps the local tax base should be supporting rather than CDBG," Turner stated.[227] Conceivably, the chairman continued, a grantee could spend all of its grant dollars on staff functions in the eligible criteria categories.[228] "As long as the dollars are used to provide goods and services for individuals who meet the low and moderate-income threshold[, the] flexibility of the program allows the entities to use the money as they see fit," Bernardi assented.[229]

Accordingly, grantees may circumvent the 20 percent cap on administration and planning activities by categorizing particular staff functions as one of the enumerated 25 eligible activities. "A government entity could, in going down the smorgasbord of eligible uses, allocate 100 percent of its CDBG moneys for staff functions within those eligible uses and not be in violation of the restrictions placed upon CDBG," Chairman Turner concluded.[230] "I believe you are correct," Bernardi concurred.[231]

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[222] *Id.* at 267 (statement of Sheila Crowley, Ph.D., president, National Low Income Housing Coalition).
[223] *Id.* at 291 (statement of Subcommittee Ranking Member Wm. Lacy Clay).
[224] *Id.* at 291 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).
[225] *See id.* at 201 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development). The spending cap on administration and planning functions is located in the CDBG appropriation laws.
[226] *Id.* at 211.
[227] *Id.* at 212 (statement of Subcommittee Chairman Michael R. Turner).
[228] *See id.* at 211.
[229] *Id.* at 212 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[230] *Id.* at 212 (statement of Subcommittee Chairman Michael R. Turner).
[231] *Id.* at 212 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

In order to determine the overall percentage of grant funds spent on staff functions, the chairman requested information detailing staff-related expenditures by the 100 most populated cities receiving CDBG funds.[232] Subsequent to the hearing, Mr. Bernardi submitted a spreadsheet detailing the administrative expense information as requested. The information provided recounts, in the aggregate, significant portions of grant awards allocated to staff and administrative functions. Although the administrative and planning cap is 20 percent, 19 of the 100 entitlement communities exceeded that cap. According to Mr. Bernardi:

> CPD's investigation of these results indicates the primary factor contributing to this level of performance is the impact of unliquidated obligations from the prior program year. In order to provide a more accurate picture of the planning and administrative costs for these 100 grantees, CPD will collect and forward to the committee additional information based upon the data used to calculate compliance with the twenty percent cap on planning and administrative expenses.[233]

In addition to the information detailing administrative and planning expenditures, the Department also included data for housing rehabilitation administration and code enforcement, the only two categories outside of administrative and planning which exclusively constitute staff expenditures.[234] Fifteen of the 100 grantees expended in excess of 10 percent for the program year 2003 for housing rehabilitation administration. Four of those 15 grantees expended in excess of 15 percent. Fewer exceeded those amounts for code enforcement. Five of the 100 grantees disbursed greater than 10 percent while an additional two grantees disbursed greater than 20 percent.[235]

Finally, Mr. Bernardi informed the Subcommittee that "direct project delivery costs may include the costs of staff carrying out the activity as well as other costs such as architectural and engineering services for construction activities or rent and utilities related to an eligible public service[.]"[236] Unfortunately, Bernardi was unable to detail those expenditures: "such specificity cannot be isolated within the data available to HUD."[237] As a result, HUD is unable to determine what percentage of CDBG funds are expended on staff functions by the 100 most populated entitlement communities.

Mr. Bernardi pointed out, however, that HUD regulations permit the use of funds for "reasonable administrative costs and charges related to the planning and execution of activities assisted with CDBG funds."[238] He continued, "This provision clearly states that staff and overhead costs directly related to carrying out activities

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[232] *See id.*
[233] *Id.* at 302 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[234] *See id.* at 303.
[235] *See id.*
[236] *Id.*
[237] *Id.*
[238] *Id.*

eligible under the CDBG program are eligible as part of those activities." [239]

The congressional prohibition against supplanting notwithstanding, HUD lacks the ability to determine whether funds are supplanted for general revenue funds because it does not collect the necessary data. Anecdotal evidence suggests numerous communities spend beyond the 20 percent cap on program administration functions. Further, HUD is unable to verify or invalidate crtitics' claims concerning communities directing CDBG dollars to support staff functions because it is unable to calculate an overall percentage of CDBG funds expended on staff functions spanning all eligible activity categories with the current data collected.

## IV. Findings and Recommendations

### A. The Strengthening America's Communities Initiative [SACI]

*1. Findings*

a. *HUD has initiated several in-house measures to improve internal administration of the CDBG program, an indication that reform of CDBG can be accomplished within HUD.*

HUD initiated numerous in-house efforts to improve the administration of the CDBG program. With the development of performance measures by the Joint Grantee/HUD/OMB Outcome Measurement Working Group as well as the research and study resulting in the *CDBG Formula Targeting to Community Development Need* publication, HUD demonstrates recognition of the need for improvement and willingness to effect change within its program.

b. *HUD's institutional history, capacity, and expertise enhance the agency's ability to administer the CDBG program. That expertise and capacity is lacking at the Department of Commerce.*

In testimony before the Subcommittee, several stakeholders criticized SACI as fiscally illogical. The stated purpose of SACI is to improve the administration and management of the 18 grant programs, including CDBG. With an overall fiscal year 2005 appropriation of $4.71 billion, CDBG is more than double the size of the Department of Commerce's current grant portfolio, necessitating the development of an infrastructure capable of overseeing such an enormous program.

During the March 1, 2005 hearing, Subcommittee Vice-Chairman Dent questioned whether the Department of Commerce has the housing and community development expertise to manage the program.[240] In response, Assistant Secretary Sampson, acknowledged the agency would have a ramping-up period before it could effectively manage the program:

> Commerce has a very extensive grant portfolio currently. We manage about a $2.3 billion grant portfolio of community and economic development grants currently. But we clearly will have to leverage the subject matter expertise

[239] *Id.*
[240] *See id.* at 39 (statement of Subcommittee Vice-Chairman Charles Dent).

> and the lessons learned from other agencies and other programs in creating this new program.[241]

National League of Cities first vice president, Jim Hunt, echoed Representative Dent in questioning the wisdom of moving such a large program to an agency that does not have the existing infrastructure to support it:

> The administration claims that it is seeking to "retarget and refocus" these funds to create new program efficiencies. However, from a practical standpoint, NLC questions whether moving the programs from HUD, where administrative and professional infrastructures already exist and function well, to the Department of Commerce will generate any real savings because building the agency's capacity to administer the programs alone would likely consume any cost savings derived from consolidating these programs.[242]

Chandra Western, executive director of the National Community Development Association, likewise doubted the efficiency of moving to Commerce a program twice the size of its current portfolio:

> [A]ll the programs that are being proposed for consolidation and [to] be moved over . . . [to] Commerce are already eligible under CDBG . . . I think that the whole proposal is counterproductive in terms of maximizing efficiency to move [a] big program and what it's been doing for 30 years over to Commerce without any infrastructure or any idea [of] how the distribution of funds is going to take place to accomplish the same things we are already doing, and doing very well.[243]

The administration has not yet provided enough details on SACI enabling an evaluation determining whether the proposal would enhance the program's effectiveness. The only SACI details provided to Congress for evaluation of the proposal are that it reduces program funding, consolidates programming, and transfers program administration from HUD to the Department of Commerce. Until additional information is furnished to the committee that would better justify moving the CDBG program to the Department of Commerce, the committee will continue questioning the value of moving the program from HUD.

c. *The administration's PART analysis, while successful in identifying key opportunities for reform of some programs, may not be an appropriate evaluative tool for the Community Development Block Grant program because of its flexibility. The administration should consider whether alternative analytical tools exist that can better measure the CDBG program.*

One of OMB's chief criticisms of the CDBG program resulting from the PART analysis is that "[t]he program does not have a

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[241] *Id.* at 40 (statement of David A. Sampson, Assistant Secretary of Commerce for Economic Development, Department of Commerce).
[242] *Id.* at 69 (statement of James C. Hunt, first vice president, National League of Cities).
[243] *Id.* at 82 (statement of Chandra Western, executive director, National Community Development Association).

clear and unambiguous mission. Both the definition of 'community development' and the role CDBG plays in that field are not well defined."[244] Over the course of the series of hearings detailed within this report, witnesses often questioned whether the PART analysis is an appropriate tool for evaluating large, flexible grant programs administered cooperatively among Federal, State, and local agencies. For example, Angelo Kyle, president of the National Association of Counties, commented, "PART fails to consider the broad and wide-range nature of the [CDBG] program, as well as the role of local governments in designing activities using CDBG [funds] that address challenges that are of a particular value to their community."[245]

Deputy Secretary Bernardi strongly disagreed with OMB's assessment of CDBG's purpose, stating that the difficulty in measuring the program arises in its great flexibility:

> [On] the program purpose and design [element of the PART score], we received a zero score. Candidly, the program purpose and design . . . is spelled out in the Community Development Block Grant Act of 1974. The program was meant to be utilized by local officials with determination after a tremendous amount of community input as to how best they would utilize those resources . . . . So it is a very flexible program; it is a program that was meant to be utilized at the local level.[246]

Ranking Member Clay observed that a program like CDBG may be difficult to measure using PART because "a block grant program with few strings attached make[s] assessment more challenging than other programs with more stringent requirements."[247] Deputy Secretary Bernardi agreed, "[Y]ou are absolutely right. When you have that kind of flexibility, the measurement of those programs becomes more of a challenge."[248]

When Congress created CDBG in 1974, it identified four programmatic goals. Three of those goals include the provision of "[d]ecent housing, suitable living environment[s], and economic opportunities for persons of low and moderate income[.]"[249] Congress identified the fourth goal in its direction that CDBG funds be used "for the support of community development activities" which are intended to: (1) eliminate slums and blight; (2) remove conditions detrimental to the health, safety and welfare of the public; (3) conserve and expand the Nation's housing stock; (4) expand and improve the quality of community services for persons of low and moderate income; (5) create a more rational utilization of land and other resources; (6) reduce the isolation of low and moderate income groups and create greater diversity in neighborhoods; (7) restore and preserve historical and other properties of special value;

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[244] Office of Management and Budget, Department of Housing and Urban Development *PART Assessments 3* (2004) <http://www.whitehouse.gov/omb/budget/fy2006/pma/hud.pdf>.

[245] *CDBG Hearings* at 60 (statement of Angelo D. Kyle, president, National Association of Counties).

[246] *Id.* at 208 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

[247] *Id.* at 217 (statement of Subcommittee Ranking Member Wm. Lacy Clay).

[248] *Id.* (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

[249] 42 U.S.C. § 5301(c).

(8) stimulate private investment in underserved areas; and (9) improve energy efficiency in an effort to preserve scarce energy resources.[250]

Congress also sought to create a program that would provide financial assistance to communities of varying sizes and needs. Specifically, it sought to create a program that:

> (1) provides assistance on an annual basis, with maximum certainty and minimum delay, upon which communities can rely in their planning;
>
> (2) encourages community development activities which are consistent with comprehensive local and areawide [sic] development planning;
>
> (3) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and
>
> (4) fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities.[251]

Throughout the Subcommittee's hearings on CDBG, witnesses referenced numerous projects furthering the statutory goals. For example, one of the primary goals of the program is to benefit individuals and groups of low- and moderate-incomes. National Association of Housing and Redevelopment Officials executive director, Saul Ramirez, Jr. noted, "In 2004, approximately 95 percent of funds expended by entitlement communities and 96 percent of State CDBG funds expended were for activities that principally benefited low and moderate-income persons."[252]

OMB's PART assessment also identifies "weak targeting of funds by the CDBG formula and by grantees to areas of greatest need."[253] The National Academy of Public Administration's report on CDBG points out, however, that "there is no targeting requirement in the legislation."[254] The report continues, "Making CDBG more categorical by concentrating and focusing investments to places seems to contradict the statute's intent."[255] In his testimony, Thomas Downs explained:

> The panel also disagrees with OMB's criticisms that CDBG is not geographically or place targeted. Although the panel appreciates OMB's view that directing funding to distressed areas may provide greater benefits to poor people, the 1974 Housing Act has no such requirements to be geographically targeted. Therefore, the panel believes that

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[250] *Id.*

[251] 42 U.S.C. § 5301(d).

[252] *CDBG Hearings* at 162 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).

[253] Executive Office of the President, Office of Management and Budget, *Fiscal Year 2006 Budget of the U.S. Government Analytical Perspectives,* H. Doc. 109–2, vol. III at 118 (2005).

[254] *NAPA Performance Measures Report* at 29.

[255] *Id.*

> OMB criticized grantees for something they were not required to be doing.[256]

There appears to be support for NAPA's contention in the statute. Specifically, the statute implies that CDBG's objective is to protect "the future welfare of the Nation and the well-being of its citizens."[257] The statute expressly states that, among other objectives, CDBG funds are to be directed toward the provision of "a decent home and suitable living environment for all persons, but principally those of low and moderate income."[258] CDBG funds are therefore meant to benefit all persons, especially if they are of low and moderate income, regardless of where they are located. As Mr. Downs noted, "There is some disagreement in the field as to whether the Secretary of HUD can compel communities to geographically target. Perhaps this is an issue that Congress should or could clarify."[259]

The committee believes that the PART tool, while effective in measuring programmatic success in other government programs, is ineffective at qualitatively measuring the success of flexible block grant programs. Block grant programs that are inherently flexible in order to best address an array of issues do not have a prescriptive set of outcomes by which grantee accomplishments can be easily measured.

d. *Over recent years, the CDBG formula grant program has suffered an aggregate funding reduction, resulting in many communities receiving less funding. The administration's SACI proposal would further reduce appropriations for the consolidated programs without substantiating cost savings or efficiencies.*

In fiscal year 2002, Congress appropriated $4.3 billion for the CDBG formula grant program, down from $4.4 billion in fiscal year 2001.[260] Congress again reduced the CDBG formula grant appropriation in each of the three succeeding fiscal years. In the Fiscal Year 2005 Consolidated Appropriations Act, Congress appropriated only $4.15 billion for the program.[261] In comparison, the administration's fiscal year 2006 budget request for the direct grant portion of SACI was $3.7 billion.

Arguing that the drastic cut in CDBG funding would be irrecoverable, James Hunt of the National League of Cities summarized the potential impact of the SACI proposal:

> The Administration's SAC proposal collapses 18 current programs, whose combined fiscal year 2005 budgets total approximately $5.5 billion, into a single grant program funded at $3.7 billion. The Administration's proposed budget for SAC grants represents a funding cut of nearly

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[256] *CDBG Hearings* at 232 (statement of Thomas Downs, fellow, National Academy of Public Administration).
[257] 42 U.S.C. § 5301(b).
[258] 42 U.S.C. § 5301(c)(3).
[259] *CDBG Hearings* at 232 (statement of Thomas Downs, fellow, National Academy of Public Administration).
[260] *See* Department of Housing and Urban Development, *Community Development Allocations and Appropriations* (last modified Dec. 22, 2004) <http://www.hud.gov/offices/cpd/communitydevelopment/budget/index.cfm>.
[261] *See* Public Law 108–447, House Rept. 108–792.

35 percent from what Congress allocated in fiscal year 2005 for all 18 programs. This cut disproportionately harms CDBG funding because CDBG's [overall] fiscal year 2005 level of $4.7 billion represents nearly 80 percent of the $5.5 billion of combined funding. Moreover, the proposed $3.7 billion for SAC grants is $1 billion short of CDBG's current funding level.[262]

*2. Recommendations*

a. *Congress should refrain from enacting any legislation in the 109th Congress that would either eliminate the CDBG program or move it from the Department of Housing and Urban Development to the Department of Commerce.*

b. *HUD should continue efforts to improve the internal administration of the CDBG program by addressing the issues identified throughout this document.*

c. *The administration should consider reviewing the applicability of the PART analysis for block grant programs that are designed to have broad programmatic goals, provide a high degree of flexibility to recipients, and are administered cooperatively among State and local stakeholders.*

d. *Sustaining funding for the CDBG program should remain a Federal government priority.*

B. HUD PROPOSED CDBG FORMULA TARGETING REFORM

*1. Findings*

a. *The process of selecting the needs index criteria, designed and utilized by HUD in determining the current CDBG formula grant and in HUD's proposed alternatives, is inherently subjective. As a result, the need index may not accurately capture a community's need.*

Studies of the current formula allocations reveal two main fairness issues. First, there are many examples where economically wealthier communities receive higher per capita awards than economically poorer communities. For instance, Wauwatosa, WI, currently receives a per capita grant of $30.63. The city, however, has been ranked by HUD as one of the Nation's lowest need communities.[263] In other words, Wauwatosa is an economically wealthy community. In comparison, Compton, CA, has one of the highest needs ratings in the Nation, yet it only receives a per capita grant of $26.18.[264] The contrast between these two examples highlights a fundamental unfairness.

A second issue is that the current formula produces a result where similarly situated communities will often be awarded disparate per capita grants. As noted above, Compton, CA, receives a per capita grant of $26.18. St. Louis, MO, however, a community with

[262] *CDBG Hearings* at 68 (statement of James C. Hunt, first vice president, National League of Cities).
[263] *See CDBG Formula Study* at B–80.
[264] *See id.* at B–8.

a slightly lower need score than Compton, CA, receives a greater per capita grant of $73.58.[265]

These results point to a significant problem with how HUD weights certain need index variables. In the current CDBG formula, HUD heavily weights the existence of pre-1940 housing within a community, treating it as a proxy of need. This variable alone results in disparate grant awards because it results in a regional bias usually benefiting Northeastern and Midwestern communities. Communities in these areas are more likely to have older housing stock compared to communities in the West and South for two reasons. First, communities in the Northeast and Midwest are typically older communities than those established in the West and South. Second, older homes are routinely restored in wealthier communities whereas communities with fewer resources are more likely to demolish older housing stock. Deputy Secretary Bernardi explained:

> [There] are affluent communities . . . that receive above the line in the need index, the Portsmouths and the Newtons . . . and just by having to indicate that it's pre-1940 housing, they receive a benefit there. And there are many, many individuals there that reside in those properties that are anything but poor people in need.[266]

Although the existence of older housing stock within a community may have served as an indicator of need at one time, the nature and quality of older housing stock in a particular community can change over time due to restoration efforts. The current CDBG formula has no mechanism to account for these changes.

The proposed CDBG formula alternatives also contain other elements that would inappropriately skew funding allocations. By not counting single households living in poverty, the proposed formula alternatives could place communities with a large number of non-elderly, poor, single households at a disadvantage. Similarly, the use of per capita income as a variable without considering cost-of-living pressures, among other variables may also inappropriately skew grant allocations. It is the view of the committee that while the need index criteria are objectively applied, the process by which those criteria are selected by HUD is inherently subjective. Consequently, the need index score may not accurately reflect a community's need.

b. *The proposed need index counts twice a community's immigrant population in need by measuring a community's aggregate expression of poverty as well as its immigrant population, captured by measuring overcrowding.*

HUD's proposed need index measures poverty in factor 1, which captures a community's immigrant population living in need. That factor is weighted at 80 percent. Additionally, factor 2 of the need index measures overcrowding, which according to HUD "represents a new dimension of community need, growing immigrant popu-

[265] *See id.* at B–46.

[266] *CDBG Hearings* at 137 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

lations."[267] HUD posits, "Much of the growing immigrant population is moving into expensive housing markets for work, the consequence is a shortage of [affordable] housing that leads to overcrowding."[268] The need index places a 15 percent weight on the factor 2 score. As GAO points out in its testimony, poverty is a characteristic alone that would capture an immigrant population living in need:

> In [HUD's] need criteria, the immigrant population doesn't come into their need index directly. It only comes into it indirectly, and it comes in indirectly in two ways: one through the poverty measure, to the extent these immigrants are low-income people that get picked up in the census counts . . .
>
> The other way [immigrant population is] picked up is in [HUD's] second factor . . . that's weighted 15 percent in [HUD's] overall need index. The only things in there that capture immigration is overcrowded housing, which the study says is correlated with high immigrant populations, and to the extent that correlation is there, [HUD's] need index picks up immigration in that way.[269]

By considering separately poverty and overcrowding (as an indicator of poverty), the proposed need index essentially counts twice the need resulting from the existence of an immigrant population living in need.

c. *HUD proposes separately acknowledging increased immigrant populations as a unique stress on community development and recommends providing increased CDBG funding to such communities. Immigration and its resulting community pressures are not new, though impacted communities have changed. Immigration poses unique community challenges that may not be appropriate to address using the CDBG program.*

HUD asserts the population growth and economic activity associated with a growing immigrant population "come at the cost of increased fiscal stress associated with providing community services for the growing population of low-wage workers."[270]

A growing population will likely increase the financial burden of any city, but a growing population may also indicate a growing community. As Jerry Fastrup, Assistant Director of Applied Research and Methods at GAO, summarized:

> [I]f you are looking at the CDBG program as a program that's trying to compensate for fiscal distress and economic decline and the need to rehabilitate dilapidated housing and those kinds of things, [it] strikes us that overcrowded housing is a sign of a tight labor market and housing mar-

[267] *CDBG Formula Study* at 27.
[268] *Id.*
[269] *CDBG Hearings* at 180 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).
[270] *CDBG Formula Study* at 27.

> ket and upward pressure in the housing market [is] usually a sign of strong growth rather than decline.[271]

Given the budget realities facing the Federal Government—as well as States and municipalities—it is plausible that Congress would soon be faced with tough policy decisions resulting from the potentially serious drain on CDBG funds caused by this new variable. Therefore, in addition to determining whether HUD's suggested alternatives accurately assess community need created by a growing immigrant population, Congress should also consider whether the CDBG program is the correct vehicle for addressing those needs.

d. *The need index designed and utilized by HUD in formulating its recommendations assumes that a greater disparity in the ratio between a CDBG eligible community's per capita income and its metropolitan area per capita income is an expression of greater need. That assumption may be too simplistic and does not consider other factors that could be at work in any given community. Therefore, HUD's need assumption based on this factor may not accurately express community need.*

In its study proposing changes to the grant formula, HUD proposed considering the relative income of communities. This new element would be calculated by comparing a community's per capita income to the metropolitan area's per capita income. According to Paul Posner, this introduces "an entirely different element into the equation, which is the issue of income and measuring the relative income of communities."[272]

While this element may capture disparity in per capita income, it does not consider factors impacting the resources available to address community need. Chairman Turner inquired, "By taking metropolitan per capita income into consideration and not taking [into consideration] costs . . . aren't you heavily weighting toward what could be low-cost, wealthy communities?"[273] Chairman Turner continued, noting, "[H]igh-growth areas where there is a significant amount of opportunities will have wages that have upward pressure that may not yet have expressed high cost-of-living in either housing or other elements of family support."[274]

Deputy Secretary Bernardi disagreed, arguing:

> Initially [there would be high wages and low costs]; but eventually [cost] catches, and catches up in a hurry." I think what we've done here is to look for jurisdictions where the per capita income is lower, obviously, than the per capita income in that metropolitan area. That would demonstrate to me that's a community that has some concerns, has some decline. And that is why that community

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[271] *CDBG Hearings* at 180 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).
[272] *Id.* at 146 (statement of Paul L. Posner, Managing Director of Federal Budget Analysis and Intergovernmental Relations, Government Accountability Office).
[273] *Id.* at 135 (statement of Subcommittee Chairman Michael R. Turner).
[274] *Id.*

> would receive, according to alternative 3, additional funding.[275]

Deputy Secretary Bernardi indirectly acknowledged, however, that the use of per capita income as a variable in alternative 3 is an imperfect attempt at weighting an assortment of variables in an effort to compensate for disparities between populations that live relatively close to one other. Specifically, Bernardi said:

> [One] can look at a city that has a low per capita income, and then look to the metropolitan area and see a higher per capita income, and the fact is that the people who [designed the alternatives] were looking for a way to weight, if you will, those individuals living just a few miles from other individuals who, because of many varied circumstances, that [sic] per capita income is extremely lower.[276]

Expressing support for HUD's approach, Mr. Ramirez testified:

> We believe that communities, even those that have a higher per capita income, do have pockets of poverty within them. In fact, many of those communities struggle with their labor force that service those communities around the country in providing safe and decent housing, and not forcing many of the service-oriented labor force to seek shelter and grow their communities within blighted areas. . . . And so we do believe that's that balance, to some degree, that this formula has struck. It does allow for communities, high per capita communities to deal with these pockets of poverty and address the low and moderate-income families within those communities.[277]

Mr. Posner, however, questioned the effectiveness of HUD's approach:

> [O]verall I think we [see] the two factors in alternative 3 . . . offsetting one another. On the one hand, you're trying to target aid proportionately to cities and areas that have lower incomes to raise on their own; on the other hand, you're providing greater aid to those communities if they happen to be nested in higher-income metropolitan areas. This is something I think that needs a lot more thinking. I think [HUD is] heading in the right direction by trying to capture the element of capacity and wealth.[278]

Concurring with Mr. Posner, Mr. Fastrup opined that HUD's method of taking into account the differences between high- and low-cost-of-living areas by measuring per capita income assumes areas of high per capita income have a correspondingly high cost of living. "[HUD] basically assumes that all of the difference in per capita income between a low-income metropolitan area and a high-

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[275] *Id.* at 136 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

[276] *Id.*

[277] *Id.* at 182 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).

[278] *Id.* (statement of Paul L. Posner, Managing Director of Federal Budget Analysis and Intergovernmental Relations, Government Accountability Office).

income metropolitan area . . . [is] all cost of living differences, and that's not true," Fastrup told the Subcommittee. "So I think that method of putting metropolitan income into the formula is overdoing it to some extent," he concluded.[279]

The Committee agrees with the conclusions articulated by GAO. The need index designed and utilized by HUD in formulating its recommendations relies too heavily on a potentially flawed assumption that a greater disparity in the ratio between a CDBG eligible community's per capita income and the per capita income of its metropolitan area is an expression of greater need. The committee believes that HUD's assumptions may be too simplistic and does not consider other factors that may be at work in a given community. Consequently, the committee also finds that HUD's assumptions may not accurately express community need.

e. *A community's abandoned and vacant housing stock may represent a significant contributing factor to community blight. However, the need index considers only the condition of occupied structures in a community, ignoring the quality and condition of abandoned and vacant housing stock.*

The elimination of community blight is one of CDBG's enumerated goals. In 1974, Congress found that "the Nation's cities, towns, and smaller urban communities face[d] critical social, economic, and environmental problems arising [in part] from . . . inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight[.]"[280] In order to address the issue, Congress declared the primary objective of the Housing and Urban Development Act to be the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities" through the use of CDBG funds on, in part, "the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities[.]"[281]

While Deputy Secretary Bernardi acknowledged the "obvious" blight created abandoned and vacated housing in communities across the Nation, HUD's formula alternatives ignore the blighting influence of abandoned residential structures.[282] In assessing need, the formula alternatives only count housing units occupied by poverty-stricken families.[283] By not providing for a valuation of these dwellings, HUD ignores the probability that the blighted condition of a neighborhood and the overall community would be accelerated.[284]

In effect, Deputy Secretary Bernardi acknowledged that the current formula penalizes communities for having blighted housing because need is based upon the residence of poverty-stricken families

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[279] *Id.* at 184 (statement of Jerry C. Fastrup, Assistant Director of Applied Research and Methods, Government Accountability Office).
[280] 24 C.F.R. § 5301(a).
[281] 24 C.F.R. § 5301(c).
[282] *See CDBG Hearings* at 134 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[283] *See id.* (statement of Subcommittee Chairman Michael R. Turner).
[284] *See id.* at 181–182 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).

within the community.[285] The committee is concerned that the current formula therefore removes a source funding for housing rehabilitation solely because poverty-stricken households do not occupy abandoned or vacant properties. The committee views this approach as incomplete and urges HUD to recognize vacant and abandoned housing stock as a contributing factor to community blight in its need index.

f. *In order to compensate for distortions caused by student populations in some communities, HUD proposes excluding all single occupant households from the poverty variable in the formula alternatives. In doing so, however, HUD may exclude a significant population of non-elderly individuals living in poverty that should be served by the CDBG program.*

In its formula alternatives, HUD excluded all single, non-elderly households living in poverty to compensate for the distortion in assessing need caused by the presence of off-campus college students. In so doing, HUD also excludes single individuals living in poverty, including the disabled.

In order to verify that the exclusion of single, non-elderly persons in poverty would not "misrepresent the needs of communities with particularly high portions of their population made up of non-college students who are single, non-elderly, and in poverty . . . HUD requested a special tabulation of census data that specifically excluded full-time college students from the poverty count."[286] HUD found that little difference in the need score index results when using a factor discounting student populations versus counting only poverty-stricken elderly or family households, thereby excluding all single, non-elderly households living in poverty.[287] By its own analysis, however, HUD states that a small number of communities would in fact be harmed.[288] Those communities would see as much as a 10 percent reduction in their share of the national poverty total when the poverty-stricken elderly or family household factor is used over the factor discounting student population.[289]

Consequently, it is the view of the committee that if data is available to exclude the off-campus student population without also discounting non-elderly single households living in poverty, that data should be used to more accurately capture a community's need.

*2. Recommendations*

a. *HUD should acknowledge that any proposed "needs test" may be inherently subjective by its nature. Therefore, the policy implications of new or additional "needs tests" should be fully vetted before they are implemented.*

b. *HUD should not count more than once, directly or indirectly, any single element of community need.*

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[285] *See id.* at 134–135 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[286] *CDBG Formula Study* at 16, n. 13
[287] *See id.*
[288] *See id.*
[289] *See id.*

c. *HUD should undertake further study of the community stresses caused by immigrant population growth to determine if the resulting needs should be addressed by a program other than CDBG.*

d. *HUD should reevaluate the use of the ratio between a community's per capita income and its corresponding metropolitan area's per capita income in the CDBG need index.*

e. *HUD should recognize the contributing factor of vacant and abandoned housing stock to community blight in its need index.*

f. *HUD should determine if data is available to exclude off-campus student populations without also discounting non-elderly, single households living in poverty. If that data exists, it should be used to create a more accurate reflection of a community's needs.*

C. CURRENT CDBG FORMULA GRANTS

*1. Findings*

a. *HUD does not operate continuous formula review under a structured program to ensure the CDBG formula grant program keeps pace with rapid changes in the Nation's demographic composition and economic needs. There are factors that would improve the assessment of need and the targeting of funds in addition to those reviewed in the HUD study.*

The current formula grant remains largely unchanged since its inception 30 years ago. Meanwhile, the Nation's demographics have changed dramatically during that same period. Over the previous three decades, HUD only studied the formula five times—in 1976, 1979, 1983, 1995, and 2005.[290] HUD initiated the majority of these studies in-house to ask the question: "[H]ow is the CDBG program doing in terms of meeting the community development need in this country?"[291] The committee believes a more frequent and structured periodic review would keep the formula contemporary with the changes in demographics and need across the country.

In June 2005, Chairman Turner and Representative Robert Ney, chairman of the House Financial Services Subcommittee on Housing and Community Opportunity, requested a GAO study on the CDBG grant formula. The request solicited: (1) a review of the current needs criteria as well as recommendations for new criteria to calculate a more accurate need index; (2) an evaluation of formula options that includes consideration of a community's fiscal capacity to address its needs; (3) an assessment of alternative formulas which distribute funds based on the prevalence of low-income citizens, (4) alternate need criterions and formula options that narrowly focus the targeting of CDBG funds; and (5) an evaluation of whether the current 70/30 split should be maintained, altered, or eliminated. Representatives Turner and Ney expect GAO will finalize this report during the second session of the 109th Congress.

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[290] *See id.*

[291] *CDBG Hearings* at 112 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

b. *Numerous communities are "grandfathered" by the Housing and Community Development Act of 1974 and thus continue receiving funds through the entitlement portion of the CDBG formula grant despite no longer meeting the definition of an "entitlement community." This results in a lower per capita grant per entitlement jurisdiction and therefore less effective targeting of CDBG funds.*

By statute, only entitlement communities may receive allocations from the 70 percent portion of funds reserved for entitlement communities under the CDBG formula grant. Entitlement communities are defined as central cities of metropolitan areas, cities with populations of 50,000 or more, and statutorily defined urban counties.[292] At the program's inception, there were 506 entitlement communities.[293] In fiscal year 2005, there were 1,112 entitlement communities, an increase of 606 communities.[294] During this same time, the amount of funds shared by these communities—that is, the 70 percent portion of grant funds—has remained relatively static. Conversely, the numbers of non-entitlement communities, which share the 30 percent portion of grant funds, dwindled. Consequently, entitlement communities receive shrinking per capita grants while non-entitlement communities receive growing per capita grants.

Under the HCDA, entitlement communities benefit from grandfathering protection when they drop below a population of 50,000 or lose their classification as a central or principal city.[295] At present, there are eight urban counties and 106 central cities grandfathered in the CDBG formula grant program.[296] Collectively, these 114 communities receive more than $75 million in formula dollars that would otherwise fund community and economic development activities in the nearly 1000 other certified entitlement communities.[297]

The committee finds that grandfathered communities do not meet the statutory definition of communities eligible to receive moneys from the entitlement community portion of funds. Therefore, they are not the recipients Congress originally intended for those funds. To address the non-entitlement communities' needs, Congress adopted the 70/30 split thereby reserving funds for non-entitlement communities' use. The grandfathered communities, as they are no longer entitlement communities, should only receive funds from that pool. In specifying a grandfather provision, however, one may reasonably infer that Congress intended to prevent significant disruption in grant funds to communities and the services those funds enable. Not only would "de-grandfathering" these 114 communities result in more funds available for the growing number of entitlement communities, but by moving the communities to the 30 percent portion of the CDBG program, they would

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[292] *See* 42 U.S.C. § 5302.

[293] *See* letter from Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development to the Honorable Michael R. Turner, chairman of the Subcommittee on Federalism and the Census of the House Committee on Government Reform 2 (June 1, 2005) (on file with Subcommittee) [hereinafter *HUD Letter*].

[294] *See id.*

[295] *See* 42 U.S.C. § 5302.

[296] *See HUD Letter* at 2.

[297] *See HUD Letter* at 4–6.

share funds with a decreasing number of other non-entitlement communities.

c. *Any change in the formula grant will lead to significant disruption in funding for some communities.*

The stakeholder community argues that any change to the formula grant will result in significant and abrupt funding changes to already fiscally troubled communities. In challenging the proposition that the current CDBG formula grant no longer effectively targets the needs identified in the HCDA, Saul Ramirez, Jr., executive director of the National Association of Housing and Redevelopment Officials, argued:

> The statute requires that at least 70 percent of all CDBG funds expended go toward activities to benefit low- and moderate-income persons. However, communities are, in fact, targeting much more aggressively than the statute requires. In 2004, approximately 95 percent of funds expended by entitlement communities and 96 percent of State CDBG funds expended were for activities that principally benefited low- and moderate-income persons.[298]

The committee does not disagree with these statistics. Communities currently receiving CDBG funds expend those dollars as legally required by the 70 percent statutory threshold. However, the committee believes that while funds are targeted as required within the community to which they are awarded, CDBG funds as a whole are not targeted to those communities with the greatest need.

The committee recognizes that any change in the formula grant will result in decreased funds to numerous communities and thus disrupt those communities' plans for community and economic development. The stakeholder community supports "the notion of a fair and equitable distribution of CDBG dollars, but urge[s] [Congress] to proceed with caution" and advises that "[i]f Congress feels change is truly necessary, then we would think likely that change could happen in a way that mitigates uncertainty and avoids sudden and substantial losses in funding."[299] The committee fully agrees with this assessment and heeds these cautions. Consequently, the committee suggests a phase-in of any formula changes and the resulting funding adjustments to ease the transition, a tool not foreign to the CDBG program. According to Deputy Secretary Bernardi, Congress instituted a phase-in period when it transformed the program from a categorical grant program to a formula-based program in the 1970s.

> [W]hen the program went from a categorical grant program to the formula . . . back in the 1970's, there was a phase-in period that was put into place by Congress . . . . If [Congress] choose[es] to change the formula, [it] could do the same thing here so that the community would be phased in to receiving that extra money so they have the capacity and the wherewithal how [sic] to use the [extra]

[298] *CDBG Hearings* at 162 (statement of Saul N. Ramirez, Jr., executive director, National Association of Housing and Redevelopment Officials).
[299] *Id.*

capacity at the same time if they were to lose those dollars [they could adjust accordingly].[300]

*2. Recommendations*

a. *Congress should institute a mandatory, periodic review of the CDBG formula grant. Further, HUD should actively work in concert with GAO in the requested study of alternative need index and formula criteria. Any formula grant modifications should respond to two expressed congressional goals: increasing the effectiveness of CDBG targeting and achieving cost savings and efficiencies.*

b. *Congress should consider whether "de-grandfathering" communities that no longer meet the definition of metropolitan city or urban county would result in increased cost savings and more effective targeting to need. If Congress determines to go forward with de-grandfathering, HUD should be tasked with undertaking a review and recommending the least disruptive method.*

c. *If Congress amends the CDBG grant formula, HUD should design a plan to phase in those formula changes over time so that communities marked for funding reductions will experience minimal revenue disruptions.*

D. PERFORMANCE MEASURES

*1. Findings*

a. *Performance measurement for the CDBG program is currently limited to HUD's use of the Consolidated Plan (Conplan), which will more likely than not be approved by HUD if the plan is "complete" or "substantially complete." The Conplan can potentially serve as a mechanism for holding CDBG communities accountable for their program performance. As currently utilized by HUD, however, the Conplan serves no apparent purpose.*

The Conplan was intended for use as a tool describing how CDBG funds will be spent, thus a tool for monitoring the quality of a grantee's planned use of funds. As a result of numerous congressional mandates, however, "HUD's major review focus for administration of the CDBG program is [now] monitoring grantees' [actual] use of funds."[301] Because the statute can be loosely interpreted to require approval unless the plan is incomplete, critics assert that HUD essentially "rubber stamps" most Consolidated Plans. "[A]s long as it adheres to the national objectives . . . [t]here is not a rejection of the consolidated plan per se," Bernardi informed the Subcommittee.[302] Bernardi further conceded that the Department only thoroughly reviews plans that appeared to be

[300] *Id.* at 139 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[301] *Id.* at 202 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[302] *Id.* at 210 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).

"high risk" while approving others that are complete or substantially complete.[303]

Observers also question whether HUD actually reads each Conplan, suggesting that HUD simply does not have the time or manpower to review 1,100 Consolidated Plans within the 45-day time period.[304] In the event they do read every submitted Conplan, there is no process in place to assist communities and enhance their ability to expend their CDBG funds.[305]

While the Conplan apparently serves only as a tool for HUD to verify that grantees comply with the law on what activities CDBG funds may be expended, there is limited utility in monitoring according to the Conplan because there is no requirement that grantees spend their funds in accordance with their submitted Conplan. Consequently, HUD is unable to enforce compliance with a community's approved grant activities and programs.[306]

Accordingly, the utility of the Conplan, which is approved unless substantially incomplete, is unclear to the committee when there is no requirement to comply with an approved Conplan and consequently no ability to enforce expenditures on approved activities and programs.

b. *HUD's IDIS information management system is based on an operating language written over 40 years ago. The program has become obsolete and incompatible with many end-user systems. Even if IDIS was not obsolete, it does not lend itself well to the collection of performance measuring data.*

According to Deputy Secretary Bernardi, "The concept of IDIS was and is a great idea: it links financial information, i.e., amount of funds used, with actual accomplishments."[307] Where the Conplan is a tool to monitor intended use of funds, IDIS is the complementary tool to track actual expenditure of funds. The National Academy of Public Administration concluded, however, "[IDIS] works poorly, if at all, by most standards for the boarder purposes that [HUD] claims."[308] Past efforts to fix the system have either failed or "been executed in a piecemeal fashion."[309] Most witnesses concurred with NAPA's view that the program was time consuming, limited, and inefficient in its use.

While HUD is currently upgrading the system, the process has been slowed for a wide variety of reasons—some attributable to HUD and others attributable to outside factors. However, even if upgrades to the IDIS system were more rapid, the system functions as nothing more than an accounting system. "The inability of the IDIS to absorb performance data cannot be overstated. It is basically an accounting system that is used to show where the money goes, it doesn't necessarily have the structure to support perform-

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[303] *See id.*
[304] *See id.* at 292 (statement of Sheila Crowley, Ph.D., president, National Low Income Housing Coalition).
[305] *See id.* at 287 (statement of Subcommittee Chairman Michael R. Turner).
[306] *See id.* at 263 (statement of Sheila Crowley, Ph.D., president, National Low Income Housing Coalition).
[307] *Id.* at 204 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[308] *Id.* at 233 (statement of Thomas Downs, fellow, National Academy of Public Administration).
[309] *Id.*

ance recording," reported Thomas Downs.[310] According to Lisa Patt-McDaniel, reporting CDBG achievements captured in the Conplan has been difficult due in great part to IDIS. "[In] part of the Consolidated Plan, citizens are informed about the results of the program's expenditures in a narrative format, but the current IDIS system does not allow this kind of reporting."[311]

In essence, IDIS is a tool to track where grantees spend their grant dollars. It is not a tool to measure how effectively those funds are being spent.

The committee is concerned that the IDIS system, as is, does not lend itself well to the collection and analysis of data used to measure performance. Additionally, because the IDIS and other HUD performance measuring computer programs are obsolete, they are proving an impediment to the local jurisdictions in their efforts to create their own performance measures. Accordingly, the committee finds that despite recent efforts to upgrade the IDIS system, more work remains if there is to be meaningful performance measurement and accountability inserted in the CDBG program.

c. *HUD should consider acting on the recommendations of the Joint Working Group and those published by the National Academy of Public Administration in its February 2005 report on performance measures for the CDBG program.*

The committee agrees with NAPA's report that stakeholders "support CDBG performance reporting as long as it is non-intrusive, extensively used, cost effective, and compatible with existing management systems."[312] According to the NAPA report, any successful performance measurement system must be multi-faceted to meet the differing needs of grantees, HUD, and OMB:

> Grantees want maximum programmatic flexibility to tailor the investments to their local needs. At the Federal level, HUD wants a system that reflects and maintains CDBG's flexibility, and complies with its statutory responsibilities as an executive agency. Meanwhile, OMB wants one that encourages HUD and grantees to demonstrate conclusively that the investments contribute to the development of viable communities and to low- and moderate-income beneficiaries. To accomplish this, it wants entitlement communities and states to target CDBG funding to a limited number of neighborhoods.[313]

According to Lisa Patt-McDaniel, the Joint Working Group "succeeded" in developing performance measures upon which all stakeholders can agree.[314]

To address the performance measurement deficiencies of both the Conplan and IDIS as detailed heretofore, CDBG stakeholders

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[310] *Id.* at 288 (statement of Thomas Downs, fellow, National Academy of Public Administration).

[311] *Id.* at 250 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).

[312] *NAPA Performance Measures Report* at xii.

[313] *Id.*

[314] *See id.* at 242 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).

formed a working alliance with HUD and OMB—the Joint Grantee/HUD/OMB Outcome Measurement Working Group—to develop a framework of common outcome measures that grantees of all government levels could use to report data and demonstrate results to HUD. According to Patt-McDaniel, "The CDBG program is an inherently flexible program, designed that way by Congress because of the complex and varying natures of our Nation's communities," however, it is "that flexibility [that] sometimes makes it difficult to measure the effectiveness of the activities[.]" [315]

In designing an outcome performance measurement system, Ms. Patt-McDaniel described the group's aim as creating a tool which would answer the question, "In what way can we best demonstrate that the CDBG program does achieve the results that Congress intended for the program?" [316] Their goal was to create measures that would result in the aggregation of data, demonstrating the results and benefits of the CDBG program.

Beginning with the question, "why did we fund that project, what are we trying to achieve?," the group found that while grantees use CDBG funds for many different kinds of projects, "at the heart of these activities, there are common outcomes that most communities are trying to achieve." [317] With the implementation of this system, Patt-McDaniel believes grantees will be able to report data that can be aggregated by outcomes to "help Federal policymakers assess whether the statutory intent of the program is being met, and the system can be an important management tool at both the grantee and Federal level." [318]

According to Deputy Secretary Bernardi, "While program flexibility is maintained, the outcome measurement system offers a specific menu of objectives, outcomes and indicators so that reporting can be standardized and the achievements can be aggregated to the national level." [319] Further, advised Bernardi, the proposed matrix "will produce data to identify the results of formula grant activities. It will allow the grantees and HUD to provide a broader, more accurate picture. The goal is to have a system that will aggregate results across the spectrum of the programs at the city level, the county, [and] State," [320] thereby "improv[ing] the type and content of reports available to HUD for monitoring." [321] [322]

The committee applauds HUD's collaborative effort with the Joint Working Group to develop a new performance measure matrix for the CDBG program. The Subcommittee also commends HUD for its impending Notice of Final Rule on this matter. The committee acknowledges, however, that upgrading the Consolidated Plan or any performance measure system with the introduction of rigorous performance indicators could represent a significant technical challenge for many jurisdictions.

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[315] *Id.* at 251.
[316] *Id.* at 241.
[317] *Id.* at 246.
[318] *Id.* at 243.
[319] *Id.* at 206 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[320] *Id.* at 198.
[321] *Id.* at 209.
[322] As noted previously, a Final Rule implementing the new outcome performance measurement system is expected in late December 2005.

*2. Recommendations*

a. *Congress should consider revising or eliminating the statue which requires how Consolidated Plans are used in monitoring CDBG targeting and accountability.*

b. *HUD should work closely with OMB to replace the current IDIS system with a system that will measure performance in addition to functioning as an auditing and accounting tool.*

c. *In addition to its efforts implementing the Joint Grantee/HUD/OMB Working Group Outcome Measurement System, HUD should adopt and implement the recommendations presented by the National Academy of Public Administration on performance measures.*

E. CURRENT ELIGIBLE USES OF CDBG FUNDS

*1. Findings*

a. *CDBG programmatic success has been effectively linked to the flexibility of the use of funds. Such broad flexibility should be maintained.*

Flexibility has been the key feature of the CDBG program most often lauded by end-users and other stakeholders. According to the James Hunt, the flexible nature of the program has "allowed local government broad latitude in how it uses grant funds, and whether that use is for the creation of new economic development opportunities, affordable housing, public facilities, or services."[323] Councilman Hunt argued that because of this flexibility, the CDBG program has "given cities the latitude to address 'urgent needs' like eliminating drug dens and other cancers on our communities—latitude not found with other programs."[324] "It is because of CDBG's flexibility and autonomy of local control that the CDBG program has become, from the local perspective, the most effective form of Federal assistance currently available," Hunt concluded.[325]

Thomas Downs of the National Academy of Public Administration also applauded the flexibility of the program, stating, "The 1974 Housing Act clearly gives wide latitude—intentionally, I might add—to States and communities to spend CDBG moneys to meet the needs of poor people and distressed communities."[326] Mr. Downs explained:

> Part of the genius of the program is its breadth of decision making that allows State and local jurisdictions to solve problems that are unique within their community. And we have discovered long ago that there is a fundamental difference between Minot, ND, and Miami. That is built into the program.[327]

The committee agrees with stakeholders that the fundamental element of the CDBG program is its flexibility in the use of funds. While this flexibility may create accountability problems, it also

[323] *Id.* at 72 (statement of James C. Hunt, first vice president, National League of Cities).
[324] *Id.*
[325] *Id.*
[326] *Id.* at 232 (statement of Thomas Downs, fellow, National Academy of Public Administration).
[327] *Id.* at 295.

provides local communities the latitude they require to expend the funds necessary to quickly and reliably address local needs. It has consistently been shown that the Federal Government cannot effectively and efficiently anticipate local needs from inside the Beltway. State and local governments are often far more responsive to the needs of its citizens. Therefore, it is the view of the committee, based on the notion and concept of federalism, that the broad flexibility inherent within the CDBG program should be maintained for the foreseeable future.

b. *Observers routinely criticize the CDBG program because entitlement communities may spend significant portions of their CDBG funds on staff positions and other administrative costs. Although CDBG grantees operate under a spending cap specifically on the administrative and planning activities category, there is not a cap on aggregate spending—spanning all eligible activity categories—for these functions.*

Congress instituted a 20 percent spending cap on items falling within the administration and planning activities category to limit the amount of funds that could be expended on non-program activities, including staff functions. HUD reported that 19 of the 100 most populated entitlement communities exceeded the 20 percent spending cap on administrative and planning activities category. Further, CDBG frequently endures criticism, that grantees spend well beyond that 20 percent on staff functions alone, merely by categorizing a particular function as an eligible activity.

Deputy Secretary Bernardi testified, "As long as the dollars are used to provide goods and services for individuals who meet the low and moderate-income threshold[, the] flexibility of the program allows the entities to use the money as they see fit."[328] Accordingly, grantees could conceivably spend 100 percent of its grant dollars on staff functions by categorizing particular functions as 1 of the 25 eligible activities and not be in violation of the spending restrictions.

There are two additional categories outside of administrative and planning activities that exclusively constitute staff expenditures. In program year 2003, 15 grantees expended more than 10 percent (4 of which exceeded 15 percent) on housing rehabilitation administration while 7 grantees expended more than 10 percent (2 of which exceeded 20 percent) on code enforcement. HUD does not collect the appropriate data, however, to determine the overall amount of CDBG funds spent on staff functions falling outside of the 20 percent spending cap on administrative and planning activities.

Further, Mr. Bernardi testified, "direct project delivery costs may include the costs of staff carrying out the activity as well as other costs such as architectural and engineering services for construction activities or rent and utilities related to an eligible public service[.]"[329] Bernardi was unable to provide details on those activities, however, because "such specificity cannot be isolated with-

[328] *Id.* at 212 (statement of Roy A. Bernardi, Deputy Secretary, Department of Housing and Urban Development).
[329] *Id.* at 303.

in the data provided to HUD."[330] Consequently, HUD is unable to determine what percentage of CDBG funds are expended on staff functions by the 100 most populated entitlement communities.

The committee finds that it is probable some CDBG grantees permissibly spend an excessive amount of grant dollars on administrative and staff functions that could be categorized as an eligible activity. In doing so, these communities spend irreplaceable dollars on functions other than those which are necessary to accomplish the tangible goals of CDBG programs and activities. Because HUD does not have the data necessary to precisely determine the amount of funds expended on such functions, the committee cannot state with certainty how egregious the problem may be.

*2. Recommendations*

a. *Congress should review and consider revising the eligible activities enumerated in Sec. 5305 of Title 42 of the United States Code to maintain a wide degree of flexibility of use within the CDBG program.*

b. *An aggregate cap on spending, applicable to all administrative and staff functions spanning all eligible activity categories, is necessary to ensure CDBG funds are available for the "bricks and mortar" community development functions targeted by the program.*

F. CENSUS BUREAU PRODUCTS

*1. Findings*

a. *The decennial census is the primary source of data currently used for CDBG formula calculations. It currently provides data for all five of the CDBG formula variables. The decennial census long form provides data for three of the five formula variables and other useful data to HUD and State and local planners but has shortcomings because this data is updated once every 10 years and quickly becomes dated. The U.S. Census Bureau, using the American Community Survey, is now providing similar data updated annually. If HUD were to better use this and other Census products it could greatly enhance the targeting accuracy and fairness of CDBG formula allocations.*

Discussions between Subcommittee and HUD staff have revealed that HUD has yet to determine how it will adapt American Community Survey [ACS] data and the rolling averages in particular, into CDBG calculations. Some observers argue that HUD should begin now to examine how it can best use ACS data in the design of its community development policies and formula calculations.

In a separate hearing entitled, "Life in the Big City: What is Census Data Telling Us About Urban America and Are Policymakers Really Listening?," held on May 10, 2005, the Federalism and Census Subcommittee examined the diverse data provided by the U.S. Census Bureau and how it is used by public and private sector planners. For example, the new Longitudinal Employer Household Dynamics [LEHD] program is linking shifts in indus-

[330] *Id.*

trial sectors and workforce requirements. The Bureau also is significantly improving GIS information nation-wide. GIS is becoming an increasingly important planning tool. HUD, in cooperation with the U.S. Census Bureau, should explore opportunities for innovative applications of Census Bureau data to improve the targeting of CDBG funds allocations and for measuring the performance of CDBG projects.

Another issue raised in the May 10, 2005, hearing was the ongoing need for data user education for improved use of Census Bureau data products—simply because the data is available, does not mean that the data is effectively used. In the Subcommittee's May 24, 2005, hearing on CDBG performance measures, Lisa Patt-McDaniel testified that if Congress wishes to address the issue of CDBG program effectiveness, "it should direct HUD to find ways to train local governments on best practices on community planning . . .."[331] The committee understands HUD requires that CDBG applicants and recipients use Census Bureau data and somewhat facilitates that use through certain types of technical assistance. Nonetheless, it is clear from both the May 10, 2005 and May 24, 2005 hearings that there are opportunities for more effective application of the wide variety of data provided by the Census Bureau for community planning purposes. To accomplish that goal, practitioners need more training. This especially holds true in smaller communities where a dedicated demographer may not be on staff. HUD should, in cooperation with the U.S. Census Bureau, explore opportunities for innovative applications of Census Bureau data to improve community development programs.

*2. Recommendations*

a. *The committee recommends that HUD, in cooperation with the U.S. Census Bureau, explore opportunities for innovative applications of Census Bureau data to improve community development programs.*

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[331] *Id.* at 287 (statement of Lisa Patt-McDaniel, assistant deputy director, Community Development Division, Ohio Department of Development, on behalf of the Council of State Community Development Agencies).