AN ANALYSIS OF THE BETTER COMMUNITIES ACT

WARREN E. FARB
Analyst in Housing and Community
Development
Economics Division

June 11, 1973

AN ANALYSIS OF THE BETTER COMMUNITIES ACT

Table of Contents

AN ANALYSIS OF THE BETTER COMMUNITIES ACT

I. Introduction

A number of programs have grown up over the past few decades designed to confront and solve many of the problems facing the urban areas of the United States. Many of these programs were, in fact, enacted in response to the pleas of local areas which were unable or unwilling to raise sufficient revenue to attack these problems on their own. The process of program development usually began with the identification of a specific problem at the local level, and was followed by actions intended to eliminate the problem. Local involvement in these projects was provided through some local financial contributions and by the delegation of the planning, administration, and execution of the project at the local level. Prior approval of project plans from the administering Federal office, however, was necessary before any of these "categorical" projects could be undertaken. While the local authorities provided the planning and initiated the specific projects, Federal approval was required to ensure that the criteria and objectives of the program were being met. In effect this process afforded the Federal government an influence in shaping the social priorities for the local community. The only way a local area could not agree to these Federal priorities established by Congress was to forego Federal funding.

The basic principle behind the Better Communities Act is to provide State and local governments Federal funds to be used with broad local discretion in carrying out community development activities. There would be no Federal requirement for detailed local planning, formal citizen participation or regional coordination. Nor would there be any national priorities established by the Congress which raises the revenue. Also, unlike the previous bill passed by U.S. Senate

in 1972, 1/ but not enacted, the Better Communities Act does not make any mention of guidelines that can be used in determining local priorities.

The Better Communities Act was introduced in the U.S. House of Representatives as H.R. 7277 on April 19, 1973, and in the Senate on May 8, 1973 as S. 1743. The bill states that the "most appropriate levels of government to develop and to carry out community development programs and activities are the States andunits of general local government," and implies, therefore, that the Federal government should relinquish its role in this area to those State and local governments. It further asserts that the current programs are ineffectively using Federal funds devoted to community development because of the fragmented control and bureaucracy that has grown up around the various grant programs. The effectiveness of these funds would be improved, according to the stated purpose of the bill, if these resources would be available to the State and local governments to use as they see fit for purposes of community development. Consequently the bill states that it is intended to:

> help States and units of general and local government to deal more effectively with the broad range of community development concerns by replacing inflexible and fragmented categorical programs of Federal assistance with a simpler, more certain, and more expeditious system of Federal revenue sharing assistance which will encourage the exercise of State and local responsibility. 2/

II. Allowable Activities

In general, the funds made available through the Better Communities Act may be used for any activity previously funded under any of the replaced categorical

---

1/ S. 3248.

2/ H.R. 7277, Section 2, paragraph (3)(b)

grant programs. The seven categorical programs to be replaced by the special revenue sharing proposal would be: model cities, neighborhood facilities, open space land, water and sewer facilities, urban renewal, rehabilitation loans, and public facility loans. In the past these programs have, in the course of assisting projects to serve the foregoing functions, funded the acquisition, clearing, and improving of real property, relocation of people and businesses displaced by community development activities, rehabilitation of residential and commercial properties, and provision of recreational facilities, as well as other community-related projects. While the programs previously funded would be eligible for continuation under this Act, the local governments would be under no obligation to do so. Local decisions could also be made to discontinue or expand the projects, or to start new activities, so long as they are judged to be related to community development. These decisions would be left completely to the recipient governments and would be reviewed in Washington only to assure that the funds spent under the Better Communities Act are being used for community development activities.

Unlike the consolidated block grant proposal passed by the Senate, and the House Banking and Currency Committee in 1972, the Better Communities Act would not require detailed applications, although statements indicating the purpose of proposed expenditures would be required before the disbursement of the funds. Moreover, the administration bill would not include the requirements included in the 1972 House and Senate bills stipulating that communities specify their needs and objectives, that relocation be provided for, and that the cost and location of activities be indicated. Overall, the bills considered by the 92nd Congress do not give the recipient governments complete control over setting priorities. In effect, the Congress has indicated that while it does favor streamlining the community development programs and increasing local discretion, it wants to be sure that Federal funds are used to promote the national priorities.

The Better Communities Act would require a statement of community development objectives and projected use of funds for the coming fiscal year from the recipient government. This statement would also indicate the extent to which these activities relate to area-wide programs. In addition, at least 60 days prior to the submission of this statement, a proposed statement would be published. The purpose of the proposed statement would be to allow public examination and appraisal of the proposed activities. In this way the Administration hopes to enhance public accountability of funds and to facilitate area-wide coordination. The final statement when submitted would then be amended to reflect any consideration given to the comments elicited from the public. It is important to note, however, that there is no formal procedure required or suggested to assure local public hearings or other formal reaction to any citizen comments.

This provision for a proposed, and a final statement is apparently designed to encourage citizen participation merely by providing a published statement of proposed activities. The House bill of 1972, however, specified that

> prior to submission of its application, [the applicant must have] provided citizens likely to be affected by proposed community development activities with adequate information concerning the amount of funds available for such activities, the range of activities that may be undertaken, and other important program requirements....

The House bill further required that prior to application public hearings be held to obtain the views of the local citizens regarding the activities, to assure the citizens of "an adequate opportunity to participate in the development of the application." Another primary goal of this application process would have been to assure, before the expenditure of any funds, that the funds would be used for eligible activities.

The Senate bill passed by the 92nd Congress was not as demanding on public hearings. It did require that there be a certification that the applicant

> has afforded adequate opportunity for citizen participation in the development of the annual application and has provided for the meaningful involvement of the residents of areas in which community development activities are to be concentrated in the planning and execution of these activities, including the provision of adequate information and resources.

A major clause, however, somewhat blunted these legislative requirements by allowing the Secretary of HUD to waive all or part of the requirements under certain circumstances.

These bills, considered by the 92nd Congress, clearly indicate that at that time Congress did not intend to give local communities as much discretion over their share of Federal community development funds as the current Administration bill proposes. Congress did agree that consolidation of the various categorical programs was desirable, but that the Federal government should maintain a role in setting priorities to insure that national objective would be met with Federal funds. These "safeguards", however, primarily consisted of application statements, and requirements to submit plans for housing provision, as well as "certification that the program is consistent with local and areawide development plans and with national growth policy."[1/] As mentioned, the current Administration bill provides for nearly complete local discretion, and no clear requirement of local citizen participation other than that statements would be made available to the public.

> The Administration proposal further specifies that the Act would not be deemed to prohibit a unit of general local government from obtaining loans to finance any community development activity, and from pledging, or offering as security for a loan, any asset which it otherwise has authority to pledge or offer as security. [2/]

1/ S. 3248, p. 12 and 13.

2/ H.R. 7277, Sec. 8.

Also, the Act clearly states that any recipient of these shared revenues may use its portion as its non-Federal share under any Federal program providing assistance for community development activities.

Use of Shared Revenue to Close Out Urban Renewal Projects

Some special provisions are included in the Administration proposal to expedite the termination of urban renewal projects. Even if a local government has received a commitment from the Federal government for an urban renewal capital grant or loan and has begun a project, it is to be financially closed out by the Federal government as soon as practicable after consultation with local authorities. After close out, the local area would have the option of continuing the project, expanding it, or cutting it back through allocation of its special revenue sharing funds or its general revenue. 1/

Moreover, any funds that had been committed for urban renewal projects at the time the project is terminated, but at that time had not been used, would continue to be available to the local government. These funds would be in addition to any Better Communities Act distributions and could be used for any purpose within the scope of the Act. If, on the other hand, the costs incurred and capital grants earned on a project at the time of termination are insufficient to repay the principal and accrued interest on any temporary loans outstanding on the project, the local government would be required to make up the shortfall from its share of Better Communities Act funds. The Secretary of HUD, however, would have the authority to stage payments over an appropriate time period.

In effecting the close out of an underfunded project, the temporary loan made to the local authorities, usually by private lenders rather than directly

---

1/ General revenue would include funds received through the Federal revenue sharing program.

by HUD, would be repaid by HUD under its contractual agreements to guarantee such loans. Under these circumstances, however, the local authorities' liability for the amount not covered would be transferred to HUD, which would make a direct temporary loan for the required amount. It is this loan from HUD that the Better Communities Act stipulates must be paid out of the community development funds distributed to the local government. In the past, urban renewal projects that proved to be underfunded were in effect "bailed out" through amendatory grants. In fact, for a time, a case can be made that many urban renewal projects were purposely underfunded with the understanding that amendatory grants would be made.

To the extent that the older urban renewal projects are the most likely to be underfunded, because of prior funding practices and because the further advanced a project is the more likely its costs have accrued, this provision will fall hardest on central cities. This is true primarily because central cities have tended to make greater use of the urban renewal program than suburban areas. Furthermore, these same cities that have the older urban renewal projects are also likely to suffer the most from the distribution formula's reliance on commitments rather than outlays. If a large urban renewal project was committed prior to 1968, the local government would not receive any hold harmless credit [1/] regardless of when the outlays were actually made. This may be doubly distressing to some cities since these are the same projects that appear most likely to have been knowingly underfunded.

This provision of the Act, perhaps more clearly than any other provision, illustrates the fundamental changes in the way community development priorities are to be set, that would be brought about by the Act. For example, previously Congress would determine that it was in the national interest to eliminate slums and blight and would determine how much money was to be spent for this purpose. Under the Better Communities Act this decision and all others relating to

1/ See explanation of hold harmless credit on p. 12.

community development activities would be made locally. Congress would only determine the total amount of Federal funds to be used for all community development activities, and not what these activities would be or to what extent each individual program would be funded.

III. Authorization of Funds

Section 6 of the Administration's Better Communities Act provides for an authorization to appropriate funds beginning in fiscal year 1975, and the four succeeding fiscal years, without fiscal year limitation. In this way the Administration intends to encourage long-range planning and programs by providing the local recipients with some certainty as to the continuation of funding under this Act. The act, however, does not authorize the appropriation of any funds. At the present time the Administration has indicated elsewhere that it intends to request $2.3 billion for the program in FY 1975. There is, of course, no reason why this figure cannot be adjusted in either direction in coming months, or changed drastically for succeeding fiscal years.

IV. Allocation and Distribution of Funds

The allocation and distribution of funds procedures specified by the Better Communities Act provides for funds to go to local governments of metropolitan cities [1/] and to urban counties [2/] by formula. Another portion of the total funds

---

1/ For purposes of the Better Communities Act a metropolitan city is defined as a city having a population of 50,000 or more or a central city of a standard metropolitan statistical area (SMSA) as defined by the Office of Management and Budget.

2/ For purposes of the Better Communities Act an urban county is defined as any county which is within an SMSA and which has a population of 200,000 or more, excluding the population of the metropolitan cities therein.

available are to be distributed at the discretion of the governor of the State to metropolitan areas[1/] and to any other local government within the State. During the first years of operation of the program, however, regardless of their formula shares, all governments are to receive funds at least equal to their "hold harmless" amounts, which are based on their participation in the previous categorical grant programs.

Formula Entitlement

Section 7(a) of the Administration bill stipulates that 65 percent of the total appropriation for this Act will be distributed by formula to metropolitan cities and urban counties. This distribution is to be made so that each eligible government unit's share of this portion of the total appropriation is proportional to the average of the ratios of 1) the population of the government unit to the population of all eligible government units, 2) the extent of poverty[2/] in the given area to the extent of poverty in all eligible areas, counted twice, and 3) the extent of housing overcrowding[3/] in the recipient area to the extent of housing overcrowding in all eligible areas.

For purposes of equity, since metropolitan cities receive separate distributions, the county shares are not to include any computations based on the city's data. Also, the double counting of the poverty ratio is intended to assure that

---

1/ For the purposes of the Better Communities Act a metropolitan area is defined as a standard metropolitan statistical area (SMSA) as established by the Office of Management and Budget. It is therefore possible that a SMSA will encompass some counties that are not classified as urban counties.

2/ The extent of poverty is measured by the number of persons whose incomes are below the poverty level, as determined by the definition provided by the Office of Management and Budget.

3/ The extent of housing overcrowding is measured by the number of housing units with 1.01 or more persons per room, based on data provided by the United States Bureau of the Census.

those jurisdictions having the greatest need for assistance are given an advantage, since these areas have relatively less ability to raise their own tax revenue.

Hold Harmless

Somewhat complicating the distribution process during the first four years of the revenue sharing program is the "hold harmless" provision which provides a minimum funding level to governments that had previously been active in the categorical grant programs. The intent of this clause is to allow recipient governments sufficient time to adjust their expenditures on previous community development categorical programs to the new system. Because it is possible that an individual government unit may have been receiving larger Federal grants for these programs than it would be entitled to under the Better Communities Act, this provision is needed so that no government unit is suddenly faced with a substantial decline in community development activity necessitated by a severe cutback in Federal funds. In no event will a government unit receive less in Better Communities Act funds during FY 1975 and 1976 than it is entitled to under either the formula or hold harmless provision, whichever is greater. Furthermore, the hold harmless allotment 1/ that any government unit is entitled to would diminish in each successive year.

Again, in an attempt to assure equity among all levels of government -- that no government receive both funds distributed by formula and the hold harmless provision -- the formula distribution to any urban county would be adjusted downward to allow for any hold harmless funds allotted to local government units otherwise included in that county's distribution. The adjustment would be made by exclusion from the urban county's data the population, poverty, and housing overcrowding data from those units of general local government located in the county which qualify for hold harmless funds. For fiscal years 1975 and 1976 this adjustment would include all data from these government units, but for fiscal year 1977

1/ See p. 12 for a detailed description of the hold harmless allotment.

only two-thirds of such data would be excluded, and for fiscal year 1978 one-third. This diminishing exclusion is to offset the diminishing hold harmless distribution.

Furthermore, apparently because of the cost of the Better Communities Act program anticipated from the hold harmless provision, all recipient governments' formula allotments during the first three years of the program would be restricted. In the first year of the program, fiscal year 1975, the qualifying government would only receive one-third of its actual formula allotment, or its hold harmless share, whichever is greater. In the second year it would receive two-thirds of its formula amount, its hold harmless entitlement, or the amount it received the previous year, whichever is greater. By the third year the government unit would be eligible to receive its full formula allotment if it was greater than its hold harmless amount. However, in the third year of the Better Communities Act, fiscal 1977, recipient governments would only be entitled to receive a fraction of their hold harmless shares. This fraction would be two-thirds of the full amount in fiscal 1977, and one-third in fiscal 1978. For fiscal year 1979 there would no longer be a hold harmless allotment. Consequently, non-metropolitan cities which might receive hold harmless funds through fiscal 1978, would no longer be entitled to any direct allocation of Better Communities Act funds thereafter. Any distribution to non-metropolitan cities, therefore, would have to be from the funds allocated to the Governor of the State, to be distributed at his discretion.

The full hold harmless entitlement for any metropolitan city or urban county under the Administration proposal would be based on the amount of funds that the government unit had received commitments for during the five-year period, 1968 to 1972, from the seven community development related programs being discontinued. The provision allowing the five-year period is designed to eliminate disparities that might arise from an uneven flow of fund commitments from year to year. It has been discovered, however, that in at least one case (Eugene, Oregon) the five-year period is

insufficient to effectively adjust for these year-to-year variations. Although it would further complicate the distribution process, a more equitable approach may be to build in an allowance for actual disbursement of funds as well as their initital commitment.

Under the Bill's method of calculating the hold harmless entitlement, three separate allotments would be added. The first of these is the average annual amount of funds committed to the unit of government from 1968 to 1972 for urban renewal projects, rehabilitation loans, open space grants, neighborhood facilities, public facilities' loans, and water and sewer grants. Any commitment of funds prior to 1968, regardless of the duration of the project, would not be included in this average. The second element in the hold harmless calculation would be equal to the annualized amount of neighborhood development program grants that the government unit had received during the life of the program from 1968 to 1972.[1/] An exception, allowing the inclusion of fiscal year 1973 would be permitted in the case of any eligible government unit that first received a neighborhood development grant in fiscal year 1973. The third part of the hold harmless amount would be based on the average annual amount of model city funding the city or county received prior to July 1, 1972. In calculating the annual model city grant it would be permitted to go back to the first grant made under the 1966 program, so long as only five years are included.

In addition to the metropolitan cities and urban counties that would be entitled to hold harmless funding, the Act provides for hold harmless allotments

---

1/ The annualized amount is to be determined by dividing the total amount of the grant by the number of months of authorized program activity and multiplying the result by 12.

to any local government unit that had previously received model cities funding or neighborhood development grants. These local governments would receive funds on the same basis as other governments, except that their formula allotment would be zero. During the first two years of the program they would receive the full hold harmless amount, and only a declining fraction in succeeding years. Just as some government units that had never received Federal community development funds previously will receive only a fraction of their formula entitlement in the first years of the program in order to provide a period of transition, a transition period is to be provided for governments scheduled to lose funding.

State Funds

Of the remaining funds appropriated under this Act after the formula and hold harmless distribution, 90 percent would be distributed to the States. These funds would be distributed by the same formula as the funds that are distributed directly to local governments. The determinants would be the amount of metropolitan area 1) population, 2) poverty, and 3) overcrowding in a given State relative to all states, excluding the metropolitan cities. The exclusion of the metropolitan cities from these calculations is apparently in response to the criticism of the 1972 House and Senate bills that claimed an inordinate portion of the shared funds would be automatically allocated to central cities, making suburban funds dependent on a discretionary allocation of the HUD Secretary.[1/] Overall the current Administration proposal allocates nearly 91 percent of all Better Communities Act funds in the first year to metropolitan areas, while the previously considered House and Senate bills allocate 80 percent

---

1/ Lilley, William. Block-grant reform promise revolution in Federal-city relations. National Journal, v. 4, no. 22, May 27, 1972:892.

and 75 percent, respectively, to metropolitan areas. In later years, however, as little as 81 percent of all community development funds could be distributed to metropolitan areas.

The States, however, are not given complete discretion over the distribution of their portion of community development funds. The States are required to allot at least 50 percent of these funds to the metropolitan area whose population, poverty, and overcrowding data formed the basis of the State's allocation. It should be noted that this area may include more than metropolitan cities and urban counties because of non-urban counties that may be included in SMSA's. The State may then distribute the remainder of their funds to units of local government throughout the State. Also, the State may deduct from the discretionary portion of their community development funds a reasonable amount for administrative expenses, subject to regulations of the Secretary of HUD.

HUD Secretary's Discretionary Funds

The remainder of any funds not distributed directly to metropolitan area local governments would be available to the Secretary of HUD to be used at his discretion. These funds may be distributed to States or local governments, subject to any rules and regulations he may prescribe. Alternatively, the Secretary may use these funds for purposes of evaluating the new program, or for any other purpose consistent with the Act.

Miscellaneous Funds

During the first two years of the Better Communities Act program, fiscal years 1975 and 1976, and those years for which the program is continued following fiscal year 1978, the above provisions would completely exhaust all available funds. In fiscal years 1977 and 1978, however, as a result of the diminishing

distribution of the hold harmless entitlements, additional funds could become available. The Administration's proposal specifies that these funds would be distributed in a manner similar to the previous distribution scheme. Ten percent of these funds would be added to the Secretary of HUD's discretionary funds with the balance going to State and local governments. One-third of the State and local share would be distributed to metropolitan cities and urban counties by the same formula used to determine their initial formula grant, and the remainder would be distributed to States by the State distribution formula. For these State funds, however, metropolitan cities would not be excluded from the calculations, and 50 percent of the funds would be distributed to the metropolitan area whose inclusion was responsible for those funds being distributed to the State. The remaining funds would be distributed by the States to any unit of local government or used for administrative expenses, subject to rules and regulations established by the Secretary of HUD.

One last provision of the Act, however, limits the amount of funds any metropolitan city or urban county may receive to the larger of its full hold harmless entitlement, or the area's formula entitlement plus its extra distribution described in this section. In other words, no local area government would receive any of these "left over" hold harmless funds in excess of its full hold harmless entitlement. An extra payment, however, would be made to those governments whose formula entitlement plus extra payment was greater than its hold harmless amount. It would seem that since the metropolitan cities probably currently make the greatest use of the categorical grant programs, they are likely to benefit the least from this last provision. The suburban areas which comprise the urban county portion in fiscal years 1977 and 1978 are the most likely to be receiving funds on the basis of the formula and, therefore, would be able to add on their "left over" distribution in full. The metropolitan city, however, would be more

likely to be receiving allotments on the basis of their hold harmless entitlement and, therefore, would be limited to the extent they could receive these extra funds.

V. Miscellaneous Provisions

The Better Communities Act also contains numerous additional provisions designed to control the general operation of the program. One of the more important of these clauses states that

> no person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity in whole or in part with funds made available under this Act.

The bill goes on to stipulate particular procedures to be followed in the event of violation of this clause ranging from notification of the chief executive of the recipient government, to the bringing of civil suit by the Attorney General.

The Act further specifies that any work done with funds provided under this program would have to be in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), except for residential properties designed for use by fewer than 12 families. This regulation requires that all laborers and mechanics employed by contractors or subcontractors in performing work financed by Better Communities Act funds be paid wages at rates at least equal to those prevailing on similar construction in the locality as determined by the Secretary of Labor.

In order to assure that the shared revenues are used in accordance with the provisions of this Act, three requirements are placed on all recipients. First, they must use fiscal, audit, and accounting procedures to assure 1) proper accounting for payments received, and 2) proper disbursement of payments. Secondly, all recipients must provide the Secretary of HUD or the Comptroller General of the U.S. access to, and the right to examine all relevant books, documents, papers, and

records. Thirdly, the recipients are required to make reports to the Secretary or Comptroller as they may require. There are no cost criteria, however, that would have to be observed by recipient communities.

Another provision of the bill brings those projects that derive at least 25 percent of their funding through this Act under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601). No further contribution from the Federal government, however, would be made for relocation purposes. Again, this provision may have its greatest impact on central cities where, because of the lack of vacant land and the higher population density, relocation is likely to be more costly and necessarily more frequent than in suburban areas.

The last sections of the bill provide for remedies for non-compliance, authority for the Secretary of HUD to establish rules and regulations necessary to carry out the purposes and conditions of the Act, undertake evaluations, and for the expenditure of funds in accordance with state and local laws, as well as various conforming and technical amendments. The most important of these technical amendments states that no funds shall be allocated prior to fiscal year 1975, even though the only budget request made by the President for a terminated program for fiscal year 1974 was $138 million for urban renewal close outs. This last provision would naturally have the greatest impact on those local governments currently operating or planning community development activities, and the least impact on those areas currently not participating in these programs, generally the suburban areas.

dd