

# CDBG Eligibility of Home Acquisition Assistance

February 5, 1990

MEMORANDUM FOR: Sam R. Moseley, Regional Administrator - Regional Housing Commissioner, 6S

ATTENTION: Victor J. Hancock, Director,  
Community Planning and Development, 6C

FROM: Anna Kondratas, Assistant Secretary for Community Planning and Development, C

**SUBJECT: Community Development Block Grant Eligibility of home acquisition assistance issue raised by Dallas County, Texas**

First, thank you, your staff, and Dallas County for your patience while the issues raised by the County were being resolved.

Two key eligibility issues were raised in your November 28, 1988 memorandum about Dallas County's proposed Home Acquisition Assistance (HAA) program. First, whether the entity chosen to implement HAA is eligible to do so, and second, whether the activity itself is eligible.

The HAA program proposes to provide "home acquisition upfront costs" for eligible households through a loan program. As discussed in your memorandum, such an activity can only be carried out if the requirements in 24 CFR 570.204 are met, that is, 1) if the recipient determines the activity is necessary or appropriate to further its community development objectives, 2) if an eligible subrecipient implements the activity, and 3) if the activity is a neighborhood revitalization, community economic development, or energy conservation project. As the necessary or appropriate determination was not an issue in this case, discussion begins below with the second requirement.

The first question raised in your inquiry is whether the Dallas County Housing Finance Corporation (HFC) is eligible to carry out the activity. Dallas County claimed that the HFC could qualify under the local development corporation provision at 570.204(c)(3)(iii). According to a January 31, 1989 opinion from the Associate Regional Counsel, neither the HFC from Dallas County or a comparable corporation in the City of Dallas meet the definitions at 570.204 to qualify as a special subrecipient.

After review, counsel and staff here agree that the HFC of Dallas County does not meet the regulatory definition of a local development corporation, or of any other 570.204 eligible entity. As Counsel states, the HFC is not similar in purpose, function, and scope to 570.204(c)(3)(i) entities because it is a public non-profit created and controlled by the recipient. "The purpose of the Community Economic Development Act is to establish special programs of assistance to nonprofit private locally initiated community development corporations."

Also, because the statute at Section 105(a)(15) makes eligible assistance to certain subrecipients to carry out certain projects, and because projects carried out under this category are often ineligible for the

grantee to carry out directly, even if a corporation which met the definitions in the regulations were established, if it were controlled by the recipient (particularly if the subrecipient appeared as the alter ego of the recipient), it would not be an eligible 570.204 subrecipient.

Review of the County's letters raises the question of whether the HFC will be carrying out the activity, or whether passing money through the HFC is simply a way for the County to get around CDBG rules and carry out the activity itself. In part this question is raised because the HFC is a public nonprofit created by the County. In part this question is raised by the County's power to appoint the Board of Directors of the HFC. Even if this were a case of a private nonprofit, this control argues against the independence of the HFC.

In addition to the above, the admission in the November 18, 1988 letter that the HFC:

"does not currently employ anyone at this time as full-time staff, it is the regular on-going responsibility of Dallas County's Coordinator for Planning and Development, as it has been since April 1986 when this position was created, to monitor, support, and examine the operations of the DCHFC and to advise and assist its Board of Directors. He, in turn, is assisted in performing these tasks by a member of his staff (the County's Housing Financial Officer). . ." further weakens any argument that the HFC functions independently and is capable of carrying out the HAA activity in name and in deed. HUD recognizes that extensive grantee technical assistance may be desirable and necessary in the start-up stages of a new LDC, and further recognizes that the HFC may plan to hire staff once funding is secured; however, the County's letters do not indicate that the County has any plans to relinquish or limit its control over and involvement with the HFC.

Assuming that an eligible subrecipient can be found to carry out the HAA activity, then the eligibility of the activity must also be considered. Although section 570.204 is sometimes called the wildcard, implying that any activity may be carried out by a "special subrecipient," the eligible activity in this category is actually the project carried out by the subrecipient. By law, only three types of projects are eligible: neighborhood revitalization, community economic development, and energy conservation. CDBG funds may be used to assist a 570.204 project in whole or in part, even if the CDBG-assisted activity would be ineligible under section 570.207(b). As will be seen below, the primary issue is whether an HAA activity by itself can constitute an eligible project, or whether the project must include other activities.

In its November 18, 1988 memorandum, the County made an argument that the proposed activity, home downpayment assistance, is part of a neighborhood revitalization and community economic development project, as these terms are used in current city planning and housing development literature. To qualify an activity under section 570.204 as a community economic development project the recipient should establish a direct link between the activity and development of the community economy, i.e. more or improved jobs or businesses. As such a link seems unlikely in the Dallas County HAA case and since the activity similarly is not part of an energy conservation project, the rest of this discussion considers the argument that home acquisition assistance can constitute a neighborhood revitalization project.

Making a house affordable to someone who could otherwise not buy it is not, per se, a "neighborhood revitalization project" since, in the absence of the assistance, it can generally be assumed that a different

buyer will acquire the property. This will be the case even when rental properties being marketed for conversion to ownership are first offered to the present tenants for whom home acquisition assistance is made available. While such a program provides a decided benefit to those assisted, ownership by an assisted buyer does not in itself constitute an activity which serves to revitalize the neighborhood. To revitalize a neighborhood, some change which results in a lasting benefit to the neighborhood must be effected.

Therefore, because the CDBG program is by statute, policy, and history predominantly a physical development program, a physical improvement component is an essential qualifying characteristic of a neighborhood revitalization project. Such a component may be shown in one of the following four ways. First, if the CDBG-funded activity directly physically improves the neighborhood, the assisted activity may qualify alone as an eligible neighborhood revitalization project. An example of this is construction of new housing.

Second and third, the neighborhood revitalization project may consist of CDBG-funded HAA activities carried out in conjunction with non-CDBG publicly or privately funded physical improvement activities in the neighborhood. Examples of publicly funded physical improvement activities may include street and sidewalk improvements in the neighborhood, water and sewer improvements in the neighborhood, a city- or state-funded residential rehabilitation loan or grant program targeted to homeowners in specific low- and moderate-income neighborhoods, demolition of blighted properties in the neighborhood and construction of a neighborhood center, particularly with the intent to foster a sense of neighborhood among the neighborhood residents. Examples of privately funded physical improvement activities may include a residential rehabilitation loan program of a financial institution or nonprofit organization that is targeted to a specific neighborhood. A few isolated cases of housing rehabilitation by individual property owners in the neighborhood would not be sufficient privately funded physical improvements.

The grantee or subrecipient need not have control over the physical improvement activities, but the grantee must document that the CDBG and physical improvement activities can reasonably be considered collectively to constitute a neighborhood revitalization project. The grantee is responsible for monitoring the neighborhood to ascertain that the physical improvements are actually undertaken and for discontinuing the CDBG activity if no physical improvements are made.

Fourth, HAA may stand alone as a neighborhood revitalization project under the following conditions, documented by the grantee. If the neighborhood has an unusually large or rapidly increasing number of existing housing units that are abandoned or vacant and unmarketable without the HAA, the HAA activity which brings homeowners into the housing units constitutes neighborhood revitalization by stemming the tide of physical decay that can be expected to result from prolonged vacancy or abandonment.

If you have further questions about these policy issues, please contact James R. Broughman, Director, Entitlement Communities Division at FTS 755-5977.