

CDBG Loan to Be Made to a Subrecipient

May 19, 1992

MEMORANDUM FOR: Richard L. Bauer, Regional Administrator- Regional Housing Commissioner, 10S

ATTENTION: John W. Peters, Director
Community Planning and Development, 10C

FROM: Randall H. Erben, Acting Assistant Secretary (Signed)
for Community Planning and Development, C

SUBJECT: Request for Waiver to Allow a Community Development Block Grant Loan to be Made to a Subrecipient in King County, Washington

This is in response to your memorandum dated October 21, 1991, on behalf of King County, Washington. You indicated in that memorandum that the County had requested a waiver of the Community Development Block Grant (CDBG) regulation at 24 CFR 570.200(f)(1)(ii), General Policies, to allow King County to make a CDBG rehabilitation loan to a private non-profit corporation, the Family Resource Center (FRC), for the purpose of refinancing existing indebtedness on a community center.

We had asked by telephone for additional information that would more fully explain the activity and the basis for the County's request. Your office provided a letter dated December 30, 1991, from the County that further explains that the County wants to use \$1.6 million in CDBG funds to refinance an existing bank loan. The information submitted states that this CDBG loan would be used to close the \$50,000 gap in funds needed for rehabilitation by allowing FRC to receive a substantially reduced interest rate from 8.5 percent to 4.5 percent over a two-year period with essentially the same repayment terms as the non-profit agency is currently incurring. Additional communication received recently from FRC stated that if refinancing of a public facility is not eligible under 24 CFR 570.201(c), that the center should be considered a commercial building under 24 CFR 570.202 because the building is zoned commercial, it is privately owned, and FRC rents to private for-profit businesses as well as public service providers. Presumably, FRC believes that such a determination would make the proposed refinancing eligible for CDBG assistance under 24 CFR 570.202(b)(3).

After a review of this matter, we have determined that your request for a waiver to permit a rehabilitation loan to a subrecipient for the purpose of refinancing existing indebtedness would more properly be addressed in the context of the activities eligible for CDBG funds. This requires an examination of the applicable provisions of the block grant statute and regulations.

Section 105(a)(2) of the Housing and Community Development Act of 1974, as amended, (the Act) provides for the acquisition, construction, reconstruction, or installation of public works, facilities, and site and other improvements. The regulation at 24 CFR 570.201(c), which implements this statutory provision,

lists rehabilitation of a public facility as an eligible activity. However, unlike 24 CFR 570.202(b)(3) which implements Section 105(a)(4) of the Act (see below), the regulations do not provide for CDBG funds to be used for loans for refinancing existing indebtedness secured by a public facility being rehabilitated with CDBG funds. Consequently, even if the language of Section 105(a)(2) of the Act were read to permit refinancing of existing indebtedness on a public facility, a waiver to allow such an action would be inappropriate. This is because we cannot by waiver create a category of eligibility not subject to the public rulemaking process.

Section 105(a)(4) of the Act provides for the clearance, demolition, removal, and rehabilitation of buildings and improvements. The implementing regulation at 24 CFR 570.202(a) states that CDBG funds may be used to finance the rehabilitation of privately owned residential buildings, low-income public housing and other publicly owned residential buildings and improvements, publicly or privately owned commercial or industrial buildings, and manufactured housing. The regulations at 24 CFR 570.202(b)(3) further state that CDBG funds can be used for "loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds...." Although the building (a former shopping center) is zoned commercial and a small portion is temporarily rented to private for-profit businesses, this use is in our opinion incidental to the intended use of the property by FRC. Indeed, documentation from FRC and the County clearly shows the building will be used as a public facility with the primary purpose of providing space within a single structure to several public service agencies in order to provide more effective services to their low- and moderate-income clientele. We have, therefore, determined that the building is a public facility, and as such, does not qualify for assistance under section 105(a)(4) of the Act, as implemented by 24 CFR 570.202.

As a final note, with regard to the authority to refinance existing indebtedness, the Department has determined that the clear intent of such a provision is to permit the consolidation of any existing secured loans (typically a mortgage) with a loan to be made for rehabilitation so that the required loan repayments would be financially feasible for the borrower. As indicated above in connection with 24 CFR 570.202(b)(3), such refinancing must be carried out in connection with property being rehabilitated with CDBG funds. The rehabilitation taking place on the FRC property appears to be merely incidental to the main activity of refinancing the present debt. Moreover, we understand that the rehabilitation assistance contemplated by the grantee might not even be in a form requiring repayment. Under such circumstances the proposed refinancing would not qualify even if the regulations allowed the refinancing of a debt on a public facility.

Having said the above, we have determined that the subject activity is not eligible under the block grant statute and existing regulations.

If you have any questions on this, please contact the Entitlement Communities Division on FTS 202-708-1577.

cc:Linda Marston, SC