

City-wide Affordable Housing Program

March 30, 1995

MEMORANDUM FOR: James Barnes, Director, Community Planning and Development, 5AD

FROM: Andrew Cuomo, Assistant Secretary for Community Planning Development, D

**SUBJECT: Reconsideration of a Wavier Request Community Development Block Grants (CDBG) Program
City of Kankakee, Illinois
City-Wide Affordable Housing Programs**

This is in response to Richard H. Wilson's memorandum of September 23, 1994, regarding a request from the City of Kankakee, Illinois, for reconsideration of the Department of Housing and Urban Development's (HUD's) decision of September 17, 1993, denying a wavier of the CDBG regulations at 24 CFR 570.208 (a) (3).

Kankakee's City-wide Affordable Housing Program uses CDBG funds to acquire and make site improvements to vacant lots which are then sold for \$1.00 to qualified housing construction developers. The developers use the lots as a subsidy/collateral in obtaining construction loans from local participating financial institutions. Single family homes are constructed on the lots and sold at "affordable" prices to qualified applicants.

The Department denied the City of Kankakee's original waiver request dated July 29, 1993, which asked for the authority to sell up to 30 percent of the properties under this program to higher income households and still have them accepted as meeting the national objective of benefit to low- and moderate- income persons, presumably by viewing all of the assisted properties as a single activity and considering that, in the aggregate, at least 70 percent of the benefiting households would be low- and moderate - income. The City has asked that its request be reconsidered by HUD based on the fact that the regulations at 24 CFR 570.208 (a)(3) was waived for Contra Costa County, California, in a memorandum dated December 10, 1993. The City is aware that the project undertaken by Contra Costa County is different than the one it proposed. However, the City of Kankakee argues that HUD denied the City's waiver request solely on the grounds that the requirement is statutory, but then waived it for another community.

Section 105 (c) (3) of the Housing and Community Development Act of 1974, as amended, requires that "any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons." The implementing regulations at 24 CFR 570.208 (a)(3) provide, as a general rule, that for housing activities to meet the national objective of benefit to low- and moderate- income persons, a majority of the units in each assisted structure must be

occupied at completion by low- and moderate- income households. Thus, a one-unit structure must be occupied by a low- and moderate- income household.

The regulation does not provide for one exception to the principle occupancy test. In the case of newly constructed rental housing for the non-elderly, an assisted structure may have as few as 20 percent of the units so occupied, however, there is a limitation on the proportion of the total costs of the project that may be met through the use of CDBG funds. The maximum amount of CDBG funds authorized for use in such a case is determined by the percentage of occupancy by income-qualified households. This can be viewed as pro-rating the CDBG funds and the low- and moderate-income benefits derived from the activity.

In cases in which the CDBG-assisted activity is acquisition of property, there may be several one-unit housing structures developed on the property. The regulation as in effect until a recent revision effective February 6, 1995, made no separate provisions for grouping these structures and viewing them as a single activity. Thus, each structure development on property acquired with CDBG funds would have to be occupied by a low- and moderate-income household. Because this outcome is not required by statute, HUD had the authority to waive the provision to allow all of the structures to be viewed as a single structure for purposes of determining compliance with the national objective requirements. The approved waiver for Contra Costa County related to a project of this type.