

Clarification of Section 104(d)

February 12, 1993

MEMORANDUM FOR: Joseph P. Garaffa, Deputy Regional Administrator, 5SD

ATTENTION: Richard H. Wilson, Regional Director for Community Planning and Development, 5C

FROM: Don I. Patch, Acting Deputy Assistant Secretary for Grant Programs, CG

**SUBJECT: Community Development Block Grant (CDBG) Program
Request for Clarification of Section 104(d)
County of DuPage/Village of Addison**

This is in response to your memorandum of December 18, 1992, transmitting a request from DuPage County, Illinois, for guidance regarding the applicability of Section 104(d) of the Housing and Community Development Act of 1974, as amended, to a specific project proposed in the Village of Addison, Illinois.

The Village of Addison has entered into a subgrantee agreement with DuPage County that would provide CDBG funds for the acquisition of Army surplus property located in the Village. The property in question is a five-acre site on which 12 single-family homes are located. One proposed use of the property would involve the demolition of some or all of these homes and the construction of low-income senior housing. The County has stated that it does not feel the requirements of Section 104(d) would apply in this situation because the property was never available on the open market, and is seeking concurrence from the Department on this determination.

Because the language provided in the statute at Section 104(d) does not provide for the exclusion of housing units on the basis that the units have not been available on the open market, we cannot concur with the County's determination. Therefore, it will be necessary for the County/Village to establish the market rent of each unit to determine if the units are covered by Section 104(d). HUD does not require that an official appraisal be completed to establish the market rent, but it is expected that the services of an individual with a knowledge of real estate values in the area would be used to determine what each housing unit would rent for and provide documentation to support that determination.

The coverage of Section 104(d) is limited to low- and moderate-income dwelling units as defined at 24 CFR 570.606(c)(3)(iii). Therefore, if the market rent of a unit exceeds the Fair Market Rent under the Section 8 program, the unit would not be considered a low- and moderate-income dwelling unit and would not be subject to replacement under Section 104(d).

If you have any questions or need additional information regarding this response, please contact the Entitlement Communities Division.

cc: Robert P. Allen

