

# Eligibility of a Homeownership Program

May 8, 1991

MEMORANDUM FOR: Raymond A. Harris, Regional Administrator/  
Regional Housing Commissioner, 4S

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

**SUBJECT: Eligibility Determination for the City of Miami Beach's Homeownership Program**

## Background

This is in response to your memorandum of January 17, 1991, requesting a review of the eligibility of the City of Miami Beach's Homeownership Program. The City feels that the activity can qualify in the CDBG program as "acquisition" (24 CFR 570.201(a) of the CDBG regulations), "rehabilitation" (section 570.202(b)), or as a "special activity carried out by certain subrecipients" (section 570.204). The Atlanta Regional Office concurs with the Jacksonville Field Office's determination that this activity should be classified as an "administrative expense to facilitate housing", as described in the CDBG regulations at section 570.206(g). Presumably because of the 20% limitation on planning and administration costs, the City objects to this classification.

The Homeownership Program is being carried out by one of the City's subrecipients, the Miami Beach Development Corporation (MBDC). The program involves identifying and rehabilitating, as necessary, condominium units; matching buyers with these units; assisting the buyers with obtaining financing to purchase the units; and then coordinating and assisting with closing on the units. Funding for the program has come from many sources; CDBG funds have been limited to the subrecipient's staff salaries, benefits and operating costs that are involved in carrying out various activities of the program. No CDBG funds have been used for the actual acquisition or rehabilitation of the properties, or for paying the deposits, downpayments, or first or second mortgages for the buyers; instead, funding for such activities has come from other public programs, private financing and foundation grants and loans.

## Discussion

Since eligibility under 570.206(g) could cause the grantee to exceed its 20% cap, the first issue that must be addressed is whether such costs qualify in the CDBG program in any manner other than as program administrative costs, under section 570.206 of the CDBG regulations. That section provides that the staff and overhead costs directly related to carrying out activities eligible under sections 570.201 through 570.204 are eligible as part of such activities. This is because CDBG funds can be used for the assistance of eligible activities in whole or in part, and such costs are part of the total cost of the activity if they are directly attributable to it. Accordingly, the discussion in this memorandum will focus on assessing the various components of the Homeownership Program, and how each may be eligible in the CDBG program under sections 570.201 through 570.204.

### Acquisition of Real Property

Acquisition is eligible in the CDBG program under section 570.201(a) of the regulations when carried out by a public or private nonprofit entity. It is limited to acquisition of real property, in whole or in part, by purchase, long term lease, donation or otherwise for a public purpose. The property that is acquired may be, for example, land, air or water rights, buildings and improvements, or "other interests" in real property. Specific eligible costs include the various costs necessary to carry out an acquisition, such as the costs of identifying properties to be acquired, legal services for title searches and the drafting of legal documents and fees for recording them.

As explained in a letter dated November 16, 1990 from Mr. Rob W. Parkins, City Manager of Miami Beach, that was included as background information in your memorandum, MBDC's Homeownership Program involves, in part, the following steps:

Identifying "suitable properties within the target area. This includes site inspection, examination of condominium documents, preparation of financial analysis, and unit repair assessment . . . [then] MBDC enters into a contract to purchase the condominium unit and provides an earnest money deposit which is applied against the purchase price... Subsequently a contract to sell is entered into between MBDC and the participant which assigns all MBDC's rights as Buyer to the participant. . ."

The question that needs to be addressed is whether MBDC "acquires an interest in real property" simply by entering into a contract to purchase a condominium unit, since title to the property is not obtained by that transaction, but rather is conveyed by the seller to the participant assignee. Even though title to the property is conveyed to the participant, entering into such a contract would constitute acquiring an interest in the property if it legally commits MBDC to purchase the property. Accordingly, the activities being carried out by MBDC up to that point - identifying properties, site inspections, etc. - would be considered to be directly related to acquiring real property, and thus would be eligible acquisition costs. However, it is not clear from the information provided by your staff that this is the type of contract that MBDC is entering into, even though it was described as such by the City. From conversations with staff in the Jacksonville Field Office and the description of the activity in that Office's monitoring letter, it appears that MBDC may be instead obtaining "options" on these condominiums. An option is not a commitment to purchase the property, but rather an agreement providing MBDC with a right to buy the property. Entering into this type of agreement does not constitute property acquisition in the CDBG program. Therefore, it is important that before a final determination is made on this component, the relevant documents be carefully reviewed by your staff in order to make this distinction.

### Disposition

The CDBG regulations at 570.201(b) authorize the disposition through sale, lease, donation or otherwise of any real property acquired with CDBG funds (emphasis added) . . . including reasonable costs of temporarily managing such property. Disposition of property typically requires payment of fees for appraisals, surveys, marketing the properties, legal services, financial services, transfer taxes and other costs required for the transfer of property ownership.

MBDC's Homeownership Program reportedly involves marketing specific condominium units to qualified buyers by advertising in local newspapers, informing area employers, disseminating program information, interviewing potential participants to determine qualification, and conducting credit checks. MBDC also assists the buyers with obtaining financing, and then coordinates the sellers, buyers, title companies and lenders with the closing on each unit.

If a determination is made by your staff that the MBDC acquired a property interest in these condominium units, as described above, the portions of this activity associated with identifying potential buyers, matching that buyer with the condominium unit, and assisting the buyer with obtaining financing would be eligible in the CDBG program as part of the cost of disposition.

### Public Services

MBDC's Homeownership Program is designed to assist low- and moderate-income persons with the purchase of homes, and as such some activities in this program may constitute a public service under section 570.201(e) of the CDBG regulations. Those activities that are eligible as a public service include helping a person or family locate a property and assisting the homebuyer with obtaining financing to purchase the property, if there is no CDBG-assisted acquisition or disposition involved, and coordinating the closing on the property. Of course, such activities must meet all the other criteria for compliance with this category:

- The service being provided must be a new service or a quantifiable increase in the level of service during the program year above that which has been provided by the unit of general local government in the 12 months prior to the submission of the statement; and,
- The amount of CDBG funds obligated by the community for public service activities during the program year does not exceed 15 percent of that community's annual Community Development Block Grant (n.b., As a result of the Cranston-Gonzalez National Affordable Housing Act, a community's CDBG program income may be included in calculating the public service cap for grants awarded after November 28, 1990. For grants awarded prior to this date, a grantee would need to request and receive a waiver of this regulatory requirement from HUD to carry out this calculation in this manner.)

### Rehabilitation

Since some of the condominium units are being rehabilitated as part of the Homeownership Program, the City of Miami Beach contends that this Program could be considered eligible for CDBG funding under section 570.202(b)(1) of the regulations. The regulations at this section state that CDBG funds may be used to "acquire for the purpose of rehabilitation, and to rehabilitate properties, for the use or resale for residential purposes" (emphasis added).

The rehabilitation that is being carried out as part of this Program is limited to that which is necessary to bring the condominium units into compliance with the Dade County Surtax Program. According to your staff, the rehabilitation consists mainly of painting the interior of some of the units and doing limited rewiring, when necessary. In light of the minimal rehabilitation that is being carried out, it is clearly not the intent or design of MBDC's Homeownership Program to carry out property acquisition for the purpose of

rehabilitation; instead, acquisition is for the purpose of providing housing. To be eligible under the regulations at 570.202(b)(1), it must be clear that the grantee's intention is to upgrade its housing stock through the activity, and the acquisition of the properties is necessary in order to accomplish that end. Accordingly, we do not believe that any CDBG assisted activities under the MBDC program that are determined to support property acquisition would be classified under this provision.

It should be pointed out, however, that the rehabilitation work itself on these units would be eligible for CDBG assistance. The regulations at section 570.202(b)(2) state that "labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures. . . may be undertaken. . ." Since CDBG funds are reportedly being used for the administration of the rehabilitation (loans from charitable foundations are being used to pay for the rehabilitation work itself), supportive costs would be eligible as part of rehabilitation. Section 570.202(b)(9) identifies the supportive costs that qualify for this purpose.

### **Program Administration**

Since the CDBG funded portion of the Homeownership Program does not involve any of the "hard costs" associated with the provision of housing, both the Jacksonville Field Office and the Atlanta Regional Office have taken the position that it is eligible for CDBG assistance under section 570.206(g), "Administrative expenses to facilitate housing". This section of the regulations states that "CDBG funds may be used for the necessary administrative expenses for planning or obtaining financing for housing. . ." Assistance must be limited to those dwelling units identified in the grantee's Housing Assistance Plan (HAP).

Broadly speaking, it can be argued that the kinds of activities carried out under the MBDC Homeownership Program constitute "necessary administrative expenses for . . . obtaining financing for housing." However, this provision was added to the regulations to enable a grantee to support activities needed to carry out its HAP that would not otherwise be eligible under sections 570.201 through 570.204. Funding an activity under this provision that would be eligible elsewhere would be unwise, if it would jeopardize a grantee's compliance with the 20% planning and administration cap. Therefore, the City (and any other affected grantee) should analyze the various activities involved in the MBDC Program to identify those which are eligible under section 570.201 through 570.204, and to determine which, if any, that do not fall under those categories it would want to qualify under 570.206(g) as necessary administrative expenses for obtaining financing for housing included in its HAP. To the extent that specific components of the MBDC program are determined to qualify as acquisition, disposition, rehabilitation, or public services, they would not need to qualify under this provision. If a grantee does qualify any activities under 570.206(g), the CDBG expenditures would be subject to the 20 percent cap.

### **Special Activities by Certain Subrecipients**

Based on the description of the MBDC program provided to us, it does not appear that it could qualify as any of the three kinds of projects eligible for consideration under 570.204. However, in order to provide guidance for possible re-structuring of the MBDC program, or for consideration by other grantees interested in pursuing homeownership objectives in a broader context, the following guidance is provided.

Activities which are not specifically listed as eligible in the CDBG regulations or are identified as ineligible under 570.207(b) may not be undertaken by the grantee, or by subrecipients except for the following three subrecipients that are described at 570.204(c): neighborhood-based nonprofit organizations, Small Business Investment Companies, and Local Development Corporations. (To qualify for such special powers, the subrecipient must also be carrying out a project that is neighborhood revitalization, community economic development, or energy conservation.) It should be noted in this regard that HUD has already determined that homeownership activities, alone, do not constitute "neighborhood revitalization". Thus, such activities would need to be part of a broader effort to revitalize a particular neighborhood. It is also important to note that activities carried out by such subrecipients cannot escape (if applicable to the activity) either the 15 percent cap required of public service activities or the 20 percent cap that applies to planning and administrative activities. Therefore, it is important to analyze and properly classify the individual activities to be carried out by such subrecipients.

Accordingly, to determine if a Homeownership Program should be undertaken under this provision, the following determinations would need to be made:

- the subrecipient involved (such as MBDC) qualifies as one of the subrecipients defined at 570.204(c);
- The CDBG assisted activities are necessary or appropriate for the community to achieve its community development objectives, and are part of a neighborhood revitalization, community economic development or energy conservation project;
- The CDBG assisted activities will be carried out by the subrecipient; and,
- Applicable activities carried out under this category will not lead the grantee to exceed either the cap for public services or the cap for planning and administrative activities.

### Conclusion

It is evident that, because of the variety of functions being carried out with CDBG assistance under the MBDC program, the only categories of CDBG eligibility under which all of the CDBG assisted activities could be classified are 570.201(e), public services, or 570.206(g), administrative expenses for housing. Because of the ceilings on the amount of CDBG funds that may be used for activities qualifying under those categories, it is likely that the City would want to classify as many of them as possible under other categories. Using the guidance provided herein, the field office should secure such additional information from the grantee as may be necessary, and assist the grantee in analyzing the individual components of the MBDC Homeownership Program to determine whether and how each component may qualify for CDBG assistance.

If you have any questions on the issues raised in this memorandum or need further guidance in determining the eligibility of any component of this Homeownership Program or any similar programs, please contact the Entitlement Communities Division on FTS 458-1577.

cc:Linda Marston, SC

