

Funded Code Enforcement

November 27, 1995

Mr. Paul D. Cataldo
Director, Community Development
Office of Management and Budget
75 Park Place, 8th Floor
New York, NY 10007

Dear Mr. Cataldo:

Thank you for your letter of April 18, 1995, regarding New York City's request for a Department of Housing and Urban Development (HUD) review of a proposal for a Community Development Block Grant (CDBG)-funded code enforcement program to be carried out by the Department of Housing Preservation and Development's (HPD's) Office of Housing Preservation (OHP). HPD is proposing a comprehensive code enforcement initiative in 32 targeted neighborhoods which it believes meets the requirements of 570.202(c) of the CDBG regulations.

The proposed CDBG code enforcement program responds to issues that HUD raised during a January 10, 1995, conference call with the New York City staff regarding use of CDBG funds to cover staff costs of operating a Central Complaint Bureau (CCB). The CCB responds to and addresses tenants' complaints of housing code violations, and the City had initially proposed to classify it as interim assistance. This proposal also results from concerns that HUD raised on an HPD proposal for a Housing Court Code Enforcement Program submitted to the HUD New York Office on June 16, 1992. Guidance was provided to the City on October 27, 1992, regarding ways to make the proposed code enforcement activities eligible for CDBG funding. The City has stated in its April 18, 1995, proposal that HUD's letter dated October 27, 1992, provided the framework for this latest code enforcement proposal.

Description of Proposed Activity

The City proposes to use CDBG funds to partially fund code enforcement inspections. Although OHP's code enforcement inspections are conducted city-wide, the use of the proposed CDBG funds would be limited to inspections in the 32 City-designated code enforcement areas. Inspections are prompted by tenants' complaints of housing code violations or eviction proceedings, as well as heat and hot water complaints, all of which are processed through OHP's Central Complaint Bureau (CCB). The CCB, or "hot line," receives the complaint, determines the nature and seriousness (emergency or non-emergency) of the complaint, and directs the complaint either to the owner for voluntary compliance or to the OHP Borough Office for follow-up, and, if appropriate, a site inspection. Housing inspectors will be deployed to verify conditions deemed to be a threat to public health and safety. All tenant complaints will be logged and routed through the HPD CCB computer system to record and track the status of complaints.

The City expects to charge the salaries of code enforcement inspectors to the CDBG program based on the number of inspections conducted in the 32 eligible CDBG code enforcement areas. Inspections outside of the designated code enforcement areas would be paid from the City's tax levy budget. The

inspector's route sheets for inspections within the 32 areas would be the source documentation for charging the CDBG program for inspections. The salaries of clerical staff who support the inspectors would be based on the same ratio used for delineating the inspectors' salaries. CDBG funding of CCB staff would be based on the ratio of calls coming from eligible census tracts based on complainants' addresses. The City intends to charge all allowable code inspector, supporting clerical staff and CCB staff salaries and fringe benefits to the CDBG program as an activity delivery cost. On June 19, 1995, the City submitted an outline of its proposed methodology for allocating the costs to the HUD New York State Office for approval.

Requirements of 570.202

Section 570.202(c) of the CDBG regulation makes code enforcement an eligible CDBG activity where such code enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

The City was previously advised in HUD's October 27, 1992, letter, that it needed to address certain items and have such documentation in its files in order to support a conclusion that the proposed code enforcement activity was eligible for CDBG funding. Those items were: (a) City's definition of "deteriorated" or "deteriorating;" (b) boundaries of code enforcement areas; (c) description of conditions to qualify the area under the City's definition of (a) above; and (d) the strategy for arresting decline as well as other information to determine what effect the activities are having on the decline of the areas. The City has responded as follows:

In its April 18, 1995, proposal, HPD has defined "deteriorated or deteriorating" areas based on data collected and reported by the U.S. Bureau of the Census in its 1993 Housing and Vacancy Survey (HVS) for New York City. The HVS identified deficiencies in maintenance and equipment in occupied units in the following categories: cracks or holes in ceilings/walls/floors; broken plaster/peeling paint; rodent infestation; inadequate heat or no heat; toilet breakdowns; and water leakage into units. HPD further defines a "deteriorated or deteriorating" neighborhood as one in which three or more of these maintenance deficiencies are present in a significant number of units.

In its April 18, 1995, proposal regarding the area boundaries, HPD states that the expenditure of CDBG funds will be limited to costs associated with the code enforcement inspections conducted in 32 designated target areas. In these areas, at least 51 percent of the residents have incomes below 80 percent of median. Therefore, compliance with the national objective of benefit to low- and moderate-income persons on an area basis at 570.208(a) is not an issue.

Regarding the conditions that qualify the areas as deteriorated or deteriorating, HPD designated the 32 neighborhoods based on each neighborhood exhibiting at least one of the following characteristics of deterioration:

1. 15 percent or more occupied rental units in dilapidated multiple dwellings;
2. 15 percent or more occupied rental units in multiple dwellings with three or more building defects; or
3. 15 percent or more occupied rental units with three or more maintenance deficiencies in multiple dwellings.

With respect to a strategy for using code enforcement together with other activities to arrest the decline in each area, HPD's April 18, 1995, proposal states that the combination of code enforcement, housing litigation, City-supported emergency repairs, housing rehabilitation, economic development, and social service investments to be made in the designated code enforcement areas will help stem the tide of abandonment and arrest the decline in the area. The proposal also indicates that various city agencies operate programs ranging from job training to day care to special community policing initiatives which support revitalization in the 32 designated areas. HPD further points out that it "lacks ready access to the records of these contributing departments" and, therefore, it will "rely on records of housing activities alone to document the City's commitment of significant resources to a revitalization strategy for these areas." The City has targeted significant housing resources in support of an overall revitalization strategy in these areas, and has HPD's Housing Production Database to document City-assisted moderate rehabilitation, gut rehabilitation, and new construction in the designated code enforcement areas. This type of documentation, while perhaps incomplete with respect to documenting all of the improvements in the designated areas, is not a basis for an ineligibility determination of the proposed activity. For purposes of CDBG performance reporting under 24 CFR 91.520 and for HUD's monitoring of the City's performance, this information should be appropriately documented in the City's project files.

It should be noted that Section 807(e) of the Housing and Community Development Act of 1992 permits grantees to take into account privately-funded improvements in addition to public improvements in determining areas in which CDBG-assisted code enforcement may be provided. The City's 1995 Consolidated Plan should already reflect the public and private investments that are expected to be made available to address the needs identified in the plan. Even though other City agencies' records may not be accessible to HPD, to the extent that general documentation of other agencies' improvements, along with any known privately-funded investments in designated code enforcement neighborhoods, is available, it lends further support to the eligibility of the City's code enforcement program.

Justification for the Proposed Cost Allocation Plan:

To simplify its time keeping system, HPD wants to charge salaries and fringe benefits of code enforcement inspectors (who would normally be required to maintain detailed daily time records) on the basis of the number of CDBG-eligible inspections as a percentage of total inspections. The City also requests HUD approval to allocate the salaries and benefits for the clerical support staff for those inspectors to the CDBG program on the same basis and to allocate CCB staff salaries and benefits on the basis of the number of calls from CDBG-eligible areas as a percentage of all complaint calls. The City contends that maintaining a standard time-keeping system is burdensome and that the proposed system would not only be simpler, but would be equally as accurate as are the daily time records in assigning costs to the CDBG program.

Requirements of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments:

Section 570.502(a) of the CDBG regulations requires grantees to meet the requirements and standards of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." The revised OMB Circular A-87, as published in the May 17, 1995, Federal Register, Attachment B,

Item 11.h., Support of salaries and wages, provides standards which require salary costs charged to Federal programs to be based on appropriate personnel activity reports when the subject employees work on multiple cost objectives. Such reports would consist of records that reflect an after-the-fact distribution of the actual activity of each employee paid through a Federal award, unless a statistical sampling system or other substitute system has been approved by the cognizant Federal agency. The HPD's proposed methodologies for charging costs to the CDBG program would (1) take the inspectors' salary costs which are normally direct salaries and wages and allocate them on a unit-of-service basis and (2) use similar methodologies to charge other indirect staff costs of the OHP Code Enforcement section and the CCB to the CDBG program.

The City's letter of June 19, 1995, requests that HUD approve its proposed methodologies for allocating the above-noted costs. It is HUD staff's understanding that the City desires to use these methodologies as a manner for charging direct costs to the CDBG program. However, given that under the City's proposal, various costs would be pooled and then allocated to the CDBG program on the basis of the ratio of tasks eligible for such assistance to the total universe of tasks performed by particular organizational units, HUD considers the proposed methodologies to be an effort to charge these costs to the CDBG program as indirect costs. A principal concern, then, in reviewing the City's proposal is to determine whether the processes described would meet the A-87 requirement that all indirect cost pools be distributed on bases that are equitable.

In this particular instance, for the "number of inspections" and the "number of calls" to be equitable bases for allocating salaries and wages for the Code Enforcement and CCB staff, respectively, the following three conditions must be met. First, OHP must be able to readily identify the total number of such tasks that are performed by the applicable organizational unit. Second, OHP must be able to clearly distinguish between CDBG-eligible and non-CDBG-eligible tasks. Finally, OHP should demonstrate that the time required to perform each task is reasonably consistent, with little variance from one inspection or call, as applicable, to another or between CDBG-eligible and non-CDBG-eligible tasks. If these three conditions can be satisfied, as the City claims they are in its June 19 proposal, then HUD can permit the City to treat the salaries and wages of the respective staff as indirect costs.

In regard to distinguishing between CDBG-eligible and non-CDBG-eligible tasks, the simple geographic distinction indicated in the City's June 19 proposal is sufficient for the code inspections; however, an additional test must be met for the incoming complaint calls to the CCB. Not all complaint calls received by the CCB trigger code inspections. It is HUD staff's understanding that OHP estimates that, historically, out of approximately 300,000 calls received annually, about 80 percent relate to cases that trigger code inspections. Only those calls that pass this threshold and that also relate to properties located in CDBG code enforcement areas may be considered to be CDBG-eligible tasks for the CCB. Thus, while the allocation bases for the Code Enforcement section and CCB are different, the number of CDBG-eligible tasks that each of the units performs should be the same (since it is HUD staff's understanding that the only inspections performed by the Code Enforcement staff are those that relate to cases referred to them by CCB).

The City will then, on an annual basis, need to prepare two indirect cost proposals -- one for each organizational unit as a whole (i.e., one for OHP's Code Enforcement section and one for CCB) -- pursuant to the requirements of OMB Circular A-87 and the guidance stated in the Department of Health and Human Services' (HHS') Publication OASC-10, which is referenced in A-87. It is noted

that in most indirect cost proposals, the preferred allocation basis is usually "direct salaries and wages." However, given the City's proposed methodologies, there may no longer be any direct salaries and wages within OHP's Code Enforcement section or CCB to serve as the allocation bases for the respective indirect cost proposals. While this conflicts with the guidance provided in OASC-10 that the allocation base be some form of direct cost, it is noted that the revised OMB Circular A-87 that was published in the Federal Register on May 17, 1995, is not as stringent as its predecessor in this regard. It simply states that the indirect costs be distributed on bases that will produce equitable results. This does not preclude the use of units other than dollars as the basis for allocating indirect costs. Under the revised A-87, the City can prepare indirect cost proposals that use the number of code inspections, the number of calls, or some other non-monetary allocation basis, as appropriate. Each indirect cost proposal would then take the respective organizational unit's pooled allowable indirect costs and compute the percentage relationship of those indirect costs to the applicable allocation basis. This percentage becomes the organizational unit's indirect cost rate and is used throughout the year to determine the amount of indirect costs to be charged to the CDBG program and any other cost objective. Since this rate is based on estimated costs and units of service, it would be adjusted after the end of the year to reflect the actual rate in accordance with OMB Circular A-87.

If you have any questions concerning this matter, please contact the Entitlement Communities Division at (202) 708-1577.

Very sincerely yours,

(signed)

Kenneth C. Williams
Deputy Assistant Secretary for Grant Programs