

In Rem Program - Compliance with National Objectives

April 27, 1993

MEMORANDUM FOR: Burton Bloomberg, Deputy Regional Administrator-
Regional Housing Commissioner, 2S

ATTENTION: Joan T. Dabelko, Director, Office of
Community Planning and Development, 2C

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

**SUBJECT: Community Development Block Grant (CDBG) Program
In Rem Program - Compliance with National Objectives
City of New York, New York**

This is in response to Ms. Joan T. Dabelko's memorandum of January 26, 1993, requesting guidance regarding the method for determining and documenting compliance with CDBG national objectives for activities implemented under Section 807(a)(4) of the Housing and Community Development Act of 1992 as it relates to the payment for essential repairs and operating costs for housing units acquired through tax foreclosure proceedings.

As Ms. Dabelko's memorandum notes, Section 807(a)(4) of the Housing and Community Development Act of 1992 (P.L. 102-550) adds a new category of eligibility under the CDBG program regarding the provision of assistance to housing units acquired through tax foreclosure proceedings. Specifically, the statute makes eligible the use of CDBG funds for "activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods." The 1992 Act became law on October 28, 1992.

Ms. Dabelko's memorandum states that New York City's 1993 final statement includes In Rem activities that are eligible under this new statutory provision. Most of the City's other CDBG-assisted In Rem activities are eligible rehabilitation activities under 24 CFR 570.202(a). The Regional Office's previous monitoring and Grantee Performance Report (GPR) reviews of those ongoing activities have found that the City is not maintaining low- and moderate-income occupancy data and information regarding total cost, including both CDBG and non-CDBG funds, on an individual structure basis. Such information for each CDBG-assisted structure is necessary to demonstrate compliance with national objective requirements at 24 CFR 570.208(a)(3) as well as overall benefit requirements at 24 CFR 570.200(a)(3)(iv). The City considers the collection of such data to be an undue burden because it is generally believed that In Rem tenants are low-income. To support this claim, the City has provided the Regional Office documentation indicating that based on a 1991 survey conducted by the U.S. Census

Bureau, 92 percent of all In Rem households had incomes at or below 80 percent of the median income, of which 78.6 percent had incomes below 50 percent of the median. The City also claims that obtaining income information from all In Rem tenants would be nearly impossible because of the tenants reluctance to divulge household size and income data to the City. Therefore, the Regional Office suggests that with the establishment of a new eligibility category for In Rem, HUD should permit New York City to consider the majority of its In Rem management and repair programs to be limited clientele activities under 24 CFR 570.208(a)(2)(i)(D) due to their nature and location.

As stated in our January 8, 1993, response to your office's December 1992 request for guidance regarding the change in the statute, Section 807(a)(4) of the Housing and Community Development Act of 1992 became effective upon enactment (October 28, 1992). The Department intends to publish a rule for public comment specifying the kind of operating expenses that may be considered to be necessary to maintain habitability of the housing and to which primarily low- and moderate-income geographic areas the housing must be limited under this authority. This proposed rule will also call for public comment on what may be considered as essential repairs and the standards such activities must meet to demonstrate compliance with national objectives. However, until such time as a rule is published for effect in this regard, New York City may carry out such activities for applicable portions of In Rem housing stock if it can support their eligibility and national objective compliance through a reasonable interpretation of the new statutory provision.

In regard to national objective compliance specifically, we note that the statute requires that the use of CDBG funds for essential repairs and operating expenses for In Rem housing be intended "to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods." Thus, it appears clear that maintaining the viability of such neighborhoods is a principal focus of this new eligibility authorization. With this in mind, a national objective claim of low- and moderate-income area benefit under 24 CFR 570.208(a)(1) would appear to be the most appropriate classification. Also, inasmuch as "essential repairs" qualifying under the new statutory provision would not be considered "rehabilitation," CDBG expenditures under this section would not be subject to the proration required pursuant to 24 CFR 570.200(a)(3)(iv) in the calculation of overall benefit.

Considering those In Rem activities that qualify under Section 807(a)(4) of the 1992 Act to be low- and moderate-income area benefit activities should alleviate some record-keeping burdens. However, this will not completely relieve New York City of the requirement to keep low- and moderate-income occupancy data and project cost information on individual In Rem buildings. The new statutory provision covers only those repairs that are "essential." Much of the In Rem renovation work that New York City assists under the CDBG program is more extensive than that which would be considered "essential repairs." Such activities would need to remain classified as "rehabilitation" activities under 24 CFR 570.202(a). Also, various In Rem buildings are likely located outside primarily low- and moderate-income areas. Any CDBG-assisted repairs to those buildings would also have to remain classified as rehabilitation under CFR 570.202(a) because of the geographic restrictions in the new statutory provision. Thus, in order to claim any of these activities as benefiting low- and moderate-income persons, the City is required to maintain occupancy data and project cost information on an individual structure basis to demonstrate compliance with national objective requirements at 24 CFR 570.208(a)(3) as well as overall benefit requirements at 24 CFR 570.200(a)(3)(iv).

HUD does not have the discretion to consider any other low- and moderate-income national objective claim for such rehabilitation activities because of restrictions imposed by Section 105(c)(3) of the Housing and Community Development Act of 1974, as amended. This section of the Act reads as follows:

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 (emphasis added).

The above statutory language forms the basis for our regulatory requirements for national objective compliance for housing rehabilitation activities and for determining the amount of credit such activities receive in the calculation of the level of overall benefit that a grantee's CDBG program provides for low- and moderate-income persons.

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

cc:Robert P. Allen