

Limitation on Public Service Obligations

March 12, 1990

MEMORANDUM FOR: Sam R. Moseley, Regional Administrator-
Regional Housing Commissioner, 6S

ATTENTION: R.D. Smith, Acting Regional Director
Community Planning and Development, 6C

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

**SUBJECT: Community Development Block Grant (CDBG)
Permission for Waiver on the Limitation on Public
Service Obligations, City of Fort Worth, Texas**

This memorandum responds to your November 21, 1989, request on behalf of the City of Fort Worth, Texas, for a waiver of the regulation at paragraph 570.201(e)(2) that specifies the method for calculating the limitation on obligation of CDBG funds for public service activities.

Before addressing the issues surrounding the waiver, please consider the following guidance in determining the eligibility of the activity. The Rental Assistance Demonstration (RAD) program proposes to provide rental assistance payments for eligible households in conjunction with other services designed to help the participants to become self-sufficient over a two-year period. Such an activity can only be carried out if the requirements in 24 CFR 570.204 are met, that is, 1) if the recipient determines the activity is necessary or appropriate to further its community development objectives, 2) if an eligible subrecipient implements the activity, and 3) if the activity is a neighborhood revitalization, community economic development, or energy conservation project. As the necessary or appropriate determination was not an issue in this case, and the City has apparently found an eligible subrecipient, discussion below concerns only the third requirement.

Assuming that the eligible subrecipient is carrying out the RAD activity, then the eligibility of the activity must be considered in terms of whether the CDBG expenditures are used to assist, in whole or in part, "a neighborhood revitalization, community economic development, or energy conservation project," as required by section 570.204.

To qualify an activity under 570.204 as a community economic development project, the assistance must be provided for businesses to further development of the community economy, i.e. more or improved jobs or businesses. As the RAD case does not so qualify, and since the activity is not part of an energy conservation project, the question is whether home acquisition assistance alone can constitute a neighborhood revitalization project.

Making a house affordable to someone who could otherwise not rent it is not, per se, a "neighborhood revitalization project" since, in the absence of the assistance, it can generally be assured that a different renter will occupy the property. While such a program provides a decided benefit to those assisted, rental by an assisted occupant does not in itself constitute an activity which serves to revitalize the neighborhood.

In terms of community development activities carried out under Title I of the Housing and Community Development Act, which is essentially a physical development program, a "neighborhood revitalization project" must generally include physical improvements. The project must be of sufficient size or scope to have an impact on neighborhood decline. Since CDBG funds can be used to assist eligible activities in whole or in part, the project can include non-CDBG public or private assistance. Consequently, the CDBG funded rental assistance can be carried out in conjunction with neighborhood physical improvements funded from other sources, such as residential rehabilitation financing targeted to the neighborhood, demolition of blighted structures, or street or water and sewer improvements. The subrecipient providing the rental assistance need not itself carry out or control the undertaking of the physical improvements.

In limited circumstances, non-physical improvement activities such a RAD could in and of themselves qualify as a neighborhood revitalization project by being of sufficient size or scope to have an impact on neighborhood decline. In this regard, a rental assistance activity could qualify if the neighborhood has an unusually large or rapidly increasing number of existing housing units that are abandoned or vacant and unmarketable without the RAD assistance. By bringing occupants into housing that would otherwise remain vacant over a prolonged period, the activity would impact neighborhood decline associated with such conditions. After review of the incoming memorandum and its attachments, it appears that Fort Worth's project would qualify as a neighborhood revitalization project.

One further reminder: an activity, other than a direct physical development activity, listed as ineligible in section 570.207(b) and carried out through 570.204 provisions is subject to the 15 percent limitation on public services. The provisions at 570.204 may not be used to circumvent the limitation on public service obligations.

If the activity is eligible, the following waiver may be applied. According to your memorandum, Fort Worth failed for reasons beyond its control, to obligate funds for a Rental Assistance Demonstration (RAD) program during its FY 1988 program year. The RAD program was added to the City's final statement in the middle of its program year, but funds were not obligated by the May 31, 1989, end of the program year. If the City were to obligate funds for the RAD program during its 1989 year (June 1, 1989 - May 31, 1990) it would exceed the limitation on public service obligations for that year.

Requiring the City to obligate funds for public services in accordance with 570.201(e)(2) will render the City "unable to assist eleven (11) families, or approximately forty-four (44) persons, and unable to provide case management to assist the program participants to gain economic stability and long-term self-sufficiency. In addition, we will have to spread the obligation of funds over three fiscal years?" The goal of the RAD program, to provide affordable housing and an opportunity for economic stability to low and moderate income persons clearly furthers the purposes of the Housing and Community Development Act

of 1974 (Act). Therefore, the application of the requirement would cause undue hardship on program beneficiaries and adversely affect the purposes of the Act.

The fifteen percent limitation is statutory, and therefore may not be waived. However, the method of calculating the limitation is regulatory, and may be waived. 24 CFR 570.201(e)(2) is hereby waived to allow the City of Fort Worth to make the following change in calculating the public services limitation.

The public service limitation for the 1989 program year may be calculated by taking 15 percent of the 1989 entitlement amount plus program income received during the 1988 program year. We understand that the amount of such program income is approximately \$349,250 and that using 15 percent of this amount will permit this project to be undertaken. HUD is considering modifying the CDBG regulations to permit recipients to calculate the public services limitation in this manner (including the previous year's program income in the base for calculating the public service limitation). In the event the regulations have not been modified in time for Fort Worth's 1990 program year, a similar waiver may be requested if additional funds are needed to continue this project.