

## Nature of Documentation a Grantee Must Maintain

June 14, 1993

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

Dear Mr. Cataldo:

Thank you for your letter of April 27, 1993, to Andrew Cuomo, Assistant Secretary, regarding the nature of the documentation New York City is required to maintain to demonstrate that Community Development Block Grant (CDBG) assistance provided to In Rem buildings principally benefits low- and moderate-income persons. Mr. Cuomo has asked that I respond to your concerns.

In your letter, you request that the Department of Housing and Urban Development (HUD) allow New York City to use an alternative methodology to document the low- and moderate-income status of In Rem tenants rather than that which is required in the CDBG regulations. The City contends that there are significant logistical obstacles to collecting documentation on each In Rem tenant's household size and income as required by 24 CFR 570.506(b)(4)(iii). Thus, the City requests that HUD accept its Housing Vacancy Survey as sufficient documentation to demonstrate that In Rem tenants are principally low- and moderate-income households. The Housing Vacancy Survey is conducted every three years by the U.S. Census Bureau under a contract with New York City. It scientifically samples the City's entire housing stock, including the In Rem properties. The last survey, conducted in 1991, found that 92 percent of all In Rem households had incomes at or below 80 percent of the median income, of which over 78 percent had incomes below 50 percent of the median.

The record-keeping requirements at 24 CFR 570.506(b)(4) referenced above have been established to ensure that each CDBG grantee maintain sufficient documentation to demonstrate compliance with the program's national objective requirements as well as the requirements governing the level of overall benefit to low- and moderate-income persons. The national objective requirements at 24 CFR 570.208(a)(3) state that, when CDBG funds are used to improve permanent residential structures, such units must be occupied by low- and moderate-income households upon completion. For multi-unit structures, at least 51 percent of the units must be so occupied. The regulations at 24 CFR 570.200(a)(3)(iv) further stipulate that such CDBG expenditures are subject to proration in the calculation of the program's overall benefit to low- and moderate-income persons. All of the above regulatory requirements are based on the 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.

As you are aware, 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.

HUD intends to publish a proposed rule calling for public comment on how the above provision should be incorporated into the CDBG regulations. In that regard, we thank you for your separate letter of April 27, 1993, outlining New York City's perspective on what that proposed rule should entail. The City's views will be considered as HUD drafts proposed regulatory language for the new statutory provision. Until such time as a rule is published for effect in this regard, however, 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, HUD has determined that "essential repairs" qualifying under the new statutory provision would not be considered "rehabilitation" as that term is used in Section 105(c)(3) of the Act. Thus, CDBG expenditures under the new eligibility 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 of the City's record-keeping burdens. However, this will not completely relieve New York City of the requirement in the current CDBG regulations 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 appears to be more extensive than that which would be considered "essential repairs." Such activities would need to remain classified as "rehabilitation" activities eligible 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).

As discussed above, these CDBG regulatory requirements are based on the restrictions imposed by Section 105(c)(3) of the Act. It is noted, however, the statute does not require the specific methodology contained in the regulations. In recognition of the magnitude of the task facing New York City, HUD would be willing to consider a request for a waiver of the current regulatory requirements to permit the City to use its Housing Vacancy Survey as an alternative methodology for documenting the low- and moderate-income status of In Rem tenants for CDBG-assisted rehabilitation activities. In accordance with the provisions of 24 CFR 570.5, HUD may only authorize a waiver of regulatory requirements when it determines that applying the requirements will both result in undue hardship and adversely affect the purposes of the Act. The information in your April 27, 1993, letter is not sufficient to support such a determination at this time. If the City has any additional information to support a formal request for a waiver of the regulations, such a request may be submitted to HUD's New York Regional Office for review and subsequent referral to Headquarters. In addition to addressing the specific requirements of 24 CFR 570.5, any such waiver request should include detailed information regarding the methodology used in the Housing Vacancy Survey and its statistical reliability for demonstrating compliance with the requirements of Section 105(c)(3) of the Act.

Thank you for your continuing interest in the CDBG program.

Very sincerely yours,

Don I. Patch  
Director, Office of Block  
Grant Assistance