

Reconsideration of Eligibility

February 28, 1992

Ms. Clara L. Meek
Attorney for Hunterwood MUD
Vinson & Elkins, L.L.P.
Houston, TX 77002-6760

Dear Ms. Meek:

Thank you for your letter dated January 23, 1992, to Secretary Kemp requesting a reconsideration of the decision made by the HUD Regional Office in Fort Worth regarding the eligibility of Hunterwood to participate in the Community Development Block Grant program (CDBG) of Harris County. As the Deputy Assistant Secretary for Grant Programs, I have been asked to respond to your letter.

R. D. Smith, the Community Planning and Development Director in HUD's Fort Worth office, wrote to Mr. Bruce Austin, Acting Director of Harris County Community Development Agency, on October 24, 1991, informing the community that the number of responses it had received to a survey was insufficient to resolve the question of eligibility of Hunterwood to participate in the Harris County CDBG program. In order to carry out CDBG-funded activities that would benefit low- and moderate-income persons on an area basis, at least 51 percent of the residents must be low and moderate income.

Harris County attempted to survey households in Hunterwood in order to comply with the CDBG regulations at 24 CFR 570.208(a)(1)(iv). This section of the regulation permits recipients to conduct a current survey of the residents of an area to determine the percent of such persons that are low- and moderate-income if the recipient believes that census data do not reflect current income levels in an area or the Census boundaries do not coincide sufficiently well with a service area.

The County has indicated that it followed the procedures outlined in a July 1988 memorandum to HUD Field Offices entitled "Survey Methodology to Determine Low/Mod Status of CDBG Service Areas," relying upon advice and guidance from both Mr. Smith's office and that of the HUD Regional Economic and Market Analysis Office. The universe of households in the Hunterwood Municipal Utility District was determined to be 356. The required number of interviews which needed to be completed for that size universe is 200. The memorandum is careful to note that, because there are always nonresponses to surveys, it is important to recognize that more than the required number of surveys must be attempted in order to obtain a statistically accurate response. The instructions also stress the importance of conducting a random sample survey if the community decides not to survey the entire area.

In Hunterwood's case, a survey of all 356 households was attempted. From this effort, 181 responses were received, which is less than the 200 required by the memorandum. Of those responses, 112 households were found to be low- and moderate-income. You are correct that this is 61.88 percent of the responses. However, because the survey was not conducted randomly, there is no way statistically to

know any characteristics of those who did not respond, including whether or not they are low- and moderate-income.

Hunterwood can take one of several actions at this point in order to try to correct the situation. First, it can communicate with Harris County to request that the County plot the locations of those survey responses which have been received to date on a map of Hunterwood, identifying particularly those that are low-and moderate-income households. If the responses are shown to be randomly scattered throughout the community, and there does not appear to be significant clustering of responses in known low- and moderate-income areas, the estimate of 61.88 percent low- and moderate income households would be accepted. Alternately, Hunterwood can ask Harris County if it would begin again and conduct a random sample survey of the appropriate size, following the instructions in the 1988 memorandum, in order to obtain results with an acceptable level of accuracy.

If Harris County is not in a position to either prepare a map of the existing respondents or begin a new survey for Hunterwood, Hunterwood is free to undertake either action itself and inform Harris County of the results, provided the regulatory requirements of 570.208(a)(1)(iv) are met.

Please keep in mind, however, that the CDBG program is designed to allow local discretion to the entitlement grantee to fund those eligible activities which, in its own determination, most meet the community development needs of its residents. Each CDBG grantee such as Harris County is responsible for reviewing and establishing funding priorities and choosing activities to fund, as long as each activity is eligible and meets one of the three broad national objectives specified in the Housing and Community Development Act of 1974, as amended. Even if Hunterwood is able to provide appropriate documentation to show that its population is at least 51 percent low and moderate income, there is no requirement that Harris County provide CDBG funds to it.

You also indicated disagreement with "the Regional Office's assessment that Hunterwood's infiltration problem was not eligible under the urgent needs category." It is my understanding that this subject was discussed by Hunterwood with both Harris County and HUD. HUD concurred with the County's determination that problems with the sewer system had existed for too long a period of time to qualify under the definition for urgent needs in the CDBG regulations at 24 CFR 570.208(c) whereby, among other tests, the condition must have developed or become critical within 18 months preceding the certification of need by the recipient.

I hope that this information is helpful to you. Thank you for your interest in the CDBG program.

Very sincerely yours,

Randall H. Erben
Deputy Assistant Secretary
for Grant Programs