

Request for National Objective Waiver

August 16, 1995

MEMORANDUM FOR: Joyce M. Gaskins, Director, Office of
Community Planning and Development, 3AD

FROM: Andrew M. Cuomo, Assistant Secretary for
Community Planning and Development, D

**SUBJECT: Request for National Objective Waiver
Community Development Block Grant (CDBG) Program
Wilkes-Barre, Pennsylvania**

This is in response to your April 10, 1995, memorandum forwarding a waiver request from the City of Wilkes-Barre, Pennsylvania, for a waiver of 24 CFR 570.208(b)(1) of the CDBG regulations, which contains the criteria that an activity must meet to be considered to address slums or blight on an area basis. This waiver, if granted, would allow the City to use CDBG funds to develop middle-income housing on a City-owned site. The Philadelphia Field Office recommended that the waiver be denied because the City did not provide sufficient information to justify a waiver. The CDBG regulations at § 570.5 state that waivers may only be granted when failure to grant the waiver would cause undue hardship and applying the subject requirement would adversely affect the purposes of the Housing and Community Development Act of 1974, as amended (the Act).

Background

In an October 27, 1994, letter responding to a request from the Mayor of Wilkes-Barre for clarification of the CDBG's definition of a slum or blighted area, Kenneth C. Williams, Deputy Assistant Secretary for Grant Programs, provided HUD's determination that the area in question did not meet the regulatory requirements for a slum and blighted area because the 40-acre site does not contain "substantial numbers" of deteriorated buildings (it has a total of two structures) or deteriorating public improvements (there are no public improvements on the site). The site contains a large amount of waste products (primarily in the form of culm banks) from a coal mine that operated on the site from the approximately 1870 to the approximately 1950, and it does meet the state and local requirements to qualify as a slum or blighted area.

Adversely affect the purposes of the Act

The City contends that application of the CDBG slum/blight requirement at § 570.208(b)(1) will adversely affect the purposes of the Act by preventing the City from meeting the portion of the primary objective stated at section 101(c) related to developing decent housing and a suitable living environment, principally for persons of low and moderate income. The housing in question is for households whose income exceeds the upper end of the moderate range, and the activity would not meet the low- and moderate-income national objective criteria for housing activities. The City states in its waiver request

that the housing needs of low- and moderate-income persons in its jurisdiction have been adequately met. However, as your office points out on page two of your memorandum, this statement contradicts the needs assessment portion of the City's consolidated plan, which indicates a critical shortage of standard housing available at prices affordable to low- and moderate-income households.

Undue Hardship

The City maintains that failure to grant this waiver will cause the City undue hardship because the City will then be unable to develop middle-income housing. This, in turn will keep it from increasing its tax base, which will keep it from providing needed social services to poorer city residents. You reject this argument as specious because the CDBG program can be used to pay for the social services in question. Even accepting the City's argument, the hardship of failure to so increase the tax base does not seem sufficiently "undue" when balanced against the failure to use the funds to meet the City's community development and Consolidated Plan objectives to relieve some of the housing needs of the 5,884 low- and moderate-income households in Wilkes-Barre with rental housing need and the 3,449 such households with identified homeownership-related needs.

Overall Benefit

Finally, this grantee is one of the very few CDBG entitlements that has failed in the past to meet the statutory CDBG requirement that 70 percent of its funds during a one, two, or three year period specified by the grantee must be spent for activities that benefit low- and moderate-income persons. We share your office's concern that the subject waiver, if granted, could result in the City carrying out an activity that would cause it once again to fail to meet its certification and the primary objective of the CDBG program.

Upon consideration of all the above, I am therefore not approving this waiver request. Please continue to work with the City of Wilkes-Barre to help it to meet the needs of its citizens.

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