Response to Section 104(d) Questions

MARCH 22, 1989

MEMORANDUM FOR: Robert W. Dolin, Manager, Columbus Office, 5.3S

ATTENTION: John E. Riordan, Director, Community Planning and Development Division, 5.3C

FROM: Jack R. Stokvis, Assistant Secretary for Community Planning and Development, C

SUBJECT: Response to Section 104(d) questions

In a memorandum of January 20, 1989, you requested our comments on nine questions pertaining to the requirements of section 104(d) of the HCD Act of 1974 as implemented in the interim rule published on August 17, 1988 (53 FR 31234). We understand that the questions surfaced as a result of the issuance of CPD Notice 88-33, dated September 1, 1988. Following are your specific questions and our comments.

Question 1: Under the "one-for-one replacement" provision at 24 CFR 570.606(b)(1), may nine 1-bedroom LMI units be utilized to replace three 3-bedroom units?

Answer: Under the interim rule the grantee is required to replace the total number of bedrooms removed from the existing housing inventory of low/moderate-income dwellings actually demolished or converted to another use. Therefore, if the grantee determines that its greatest need is for one-bedroom units, the grantee may replace three 3-bedroom units with nine 1-bedroom units. The grantee's program should, of course, be consistent with its HAP. The Department is concerned about the possibility that a grantee with a general need for large units may choose to provide replacement units that contain fewer bedrooms than those in the units removed. Therefore, we are considering the possibility of requiring grantees to provide justification for their determination that (a larger number of) smaller units is an appropriate solution to their replacement needs.

Question 2: How would this relate to the city's HAP if there is an indicated need for 3-bedroom units?

Answer: As currently constructed, the HAP does not directly reflect the extent to which available housing units match the needs of lower-income persons by household type. We are considering whether the HAP should be modified to serve this purpose. In the interim, it would be necessary to consider the relationship between the community's established HAP goals and its replacement housing obligations under section 104(d). If the grantee creates an obligation to provide a substantial number of replacement units and proposes to use public subsidies for that purpose, the HAP should be amended as necessary to facilitate the provision of those units. In so doing, the grantee will need to key its goals proportional to the needs of lower-income households requiring rental subsidy.

Question 3: Are the section 104(d) provisions triggered in a manner similar to the section 104(k) provisions or are they project-based like the provisions of the URA?

Answer: The requirements of section 104(d) apply to CDBG activities where a low/moderate income dwelling unit is demolished or converted to another use (or a low/moderate-income family is displaced by any demolition) as a direct result of a CDBG-assisted activity. Thus, the provisions are triggered in a manner similar to the URA provisions.

Question 4: Will the payment of CDBG optional relocation benefits for code enforcement caused displacement trigger the section 104(d) provisions if the unit is subsequently demolished and the only CDBG funds in the code enforcement/ demolition activity are to provide optional relocation assistance under 570.606(d).

Answer: Every applicant for a CDBG grant, Section 108 Loan Guarantee or UDAG grant must certify that it is following a residential antidisplacement and relocation assistance plan before HUD or the State can make the grant or HUD can make the loan guarantee commitment. However, if the sole use of CDBG funds is to provide relocation assistance as described in 570.496a(d) or 570.606(d), any demolition or conversion of housing and any resulting displacement of low/moderate-income persons that might occur would not result from the CDBG-assisted activity, and, therefore, the replacement housing and relocation assistance obligations of 570.496a(b) and 570.606(b) would not be triggered.

Question 5: Are persons displaced by a CDBG-assisted code enforcement/ demolition program eligible for section 104(d) relocation benefits even though the demolition of their unit might not occur until months after their move?

Answer: If CDBG funds are used to pay the cost of the demolition and the displaced person vacated the property within a reasonable period of time prior to the demolition, we believe the displacement of the occupant and the removal of the unit would be considered to have resulted directly from the demolition and the section 104(d) provisions would be triggered. Different issues arise if CDBG funds are not used to pay the cost of the demolition but are used to pay certain costs of code enforcement. We are reviewing different types of situations now and will provide you with a response at a later date.

Question 6: What if the only CDBG assistance is to pay the code inspectors' salaries?

Answer: As indicated above, we will respond to this question at a later date.

Question 7: Do the section 104(d) provisions apply to the Rental Rehabilitation Program if CDBG assistance is used to pay the cost of providing rehabilitation services as described in 570.202(b)(9).

Answer: Yes.

Question 8: May the City determine what the term "make public" means at 570.606(b)?

Answer: Since the regulation does not define the term, the City may make any reasonable interpretation for the purpose.

Question 9: Does an owner-occupied unit that is being demolished by a CDBG-assisted activity have to be replaced?

Answer: If the market rental of the owner-occupied unit is equal to or below the FMR, the demolition of the unit would trigger the requirement that it be replaced.

We would like to caution that these answers are based on the interim rule, and it is possible that the final rule will contain some policy changes.