

Review of Special Subrecipient and Activity Eligibility

February 5, 1990

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

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

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

**SUBJECT: Community Development Block Grant (CDBG) program
Review of special subrecipient and activity
eligibility, Newark, Ohio**

This is in response to your October 24, 1989 memorandum requesting review of a subrecipient agreement from Newark, Ohio. Although the initial verbal opinion of this office was that the activity was eligible, review of the proposed subrecipient agreement indicates that it is not eligible, for the reasons given below.

Two key eligibility issues were raised by Newark's proposed Home Equity Loan Program (HELP). First, whether the entity chosen to implement HELP is eligible to do so, and second, whether the activity itself is eligible.

The HELP program proposes to provide CDBG loans to eligible households to provide up to 50% of the downpayment on a housing unit in "eligible Census Tracts." 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, discussion begins below with the second requirement.

The primary question raised in your inquiry is whether the Locking County Economic Development Study, Inc. (LEADS) is eligible to carry out the activity. After review, counsel and staff here agree that LEADS is not eligible to carry out the program as it is currently structured. The statute at Section 105(a)(15) makes eligible assistance to certain subrecipients to carry out certain projects. Because projects carried out under this category are often ineligible for the grantee to carry out directly, a corporation would not qualify if were controlled by the recipient.

Review of the proposed subrecipient agreement between the City of Newark and LEADS raises the question of whether LEADS will be carrying out the activity, or whether passing money through LEADS is simply a way for Newark to get around CDBG rules and carry out the activity itself. In particular, this question is raised because 1) the Mayor of Newark must approve each loan, 2) the City reserves the

right to determine the eligibility of each loan, apparently in advance of a funding decision. Further, while LEADS carries out many of the processing tasks associated with originating downpayment loans, the subrecipient must "rely. . . upon legal assistance from the City of Newark's Director's Office, and technical assistance from the City of Newark Division of Community Development" to close each loan.

HUD recognizes that any section 570.204 activity is risky and that Newark retains all responsibility for ensuring that every CDBG loan LEADS makes meets program requirements. And Newark is strongly encouraged to scrupulously monitor all subrecipient activities. However, the statute specifies that the subrecipient must carry out a 105(a)(15) project. In this case, Newark's role in carrying out the project is so extensive that in effect Newark, rather than the subrecipient, is carrying out the project.

If the activity is restructured so that the subrecipient carries out the HELP activity, then the eligibility of the activity must also 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 section 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 and businesses. As the LEADS case does not so qualify, and since the activity similarly 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 buy it is not, per se, a "neighborhood revitalization project" since, in the absence of the assistance, it can generally be assumed that a different buyer will acquire the property. This will be the case even when rental properties being marketed for conversion to ownership are first offered to the present tenants for whom home acquisition assistance is made available. While such a program provides a decided benefit to those assisted, ownership by an assisted buyer 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 home acquisition 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 home acquisition assistance need not itself carry out or control the undertaking of the physical improvements.

In limited circumstances, non-physical improvement activities such as HELP 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, the HELP activity could qualify if the neighborhood has an unusually large or rapidly increasing number of existing units that are abandoned or vacant and unmarketable without the HELP. By bringing homeowners into housing that would otherwise remain vacant over a prolonged period, the activity would impact neighborhood decline associated with such

conditions.

If you have further questions about these policy issues, please contact James R. Broughman, Director, Entitlement Communities Division at FTS 755-5977.

cc: Ed Gardner

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