

Waiver Request of the Regulation Mandating 51% of the Units in a Multi-family Structure Be Occupied by Low and Moderate Income Persons

September 18, 1991

Mr. Joseph M. Hohman
Director, Department of Development
County of Allegheny
400 Fort Pitt Commons
Pittsburgh, PA 15219

Dear Mr. Hohman:

Thank you for your letter of September 18, 1991, and that of your Housing Division Manager, George Arendas, dated August 23, 1991, to me requesting a waiver under 24 CFR 570.5 of the Community Development Block Grant (CDBG) program regulations. Your letter specifically requests a waiver of 24 CFR 570.208(a)(3) which requires that at least 51 percent of the units in a multi-family structure must be occupied by low- and moderate-income persons upon completion of an eligible rehabilitation activity.

The County seeks to loan \$200,000 in CDBG funds, through a local development corporation, to the owners of Birnam Wood, a 336-unit apartment complex, for the purposes of assisting in the refinancing of the project (\$190,000) and for rehabilitation activities such as carpeting and painting of low- and moderate-income units (\$10,000).

You have made this request in order to be able to assist the owners of Birnam Wood, who are facing foreclosure under the FHA 221(d)(4) program because of their inability to make mortgage payments since July 1990. The project currently is financed by tax-exempt bonds issued by the Allegheny County Residential Finance Authority (ACRFA) and, as a result, must maintain 20 percent (67) of the units for low- and moderate-income tenants. You have stated that, if the project goes into foreclosure, the 67 units, which were considered to have met a 1985 Housing Assistance Plan goal, will be lost. If a waiver of 24 CFR 570.208(a)(3) is permitted to allow the 51 percent threshold to be reduced to 20 percent, then the Birnam Wood low- and moderate-income tenants can be assisted. Our understanding is that, if the owners can successfully raise the necessary funds to refinance the project, the ACRFA will refund the bonds at a more favorable interest rate, thereby allowing the owners to make their mortgage payments and avoid foreclosure. Mr. Arendas has stated that a total of approximately \$987,000 is needed to cover the refinancing costs.

We are unable to grant a waiver of the regulations because the refinancing of the Birnam Wood project is not an eligible use of CDBG funds. The use of CDBG funds for refinancing is limited, among other things, to cases where the refinancing is necessary to make feasible the rehabilitation of the property.

In the instant case, the CDBG rehabilitation constitutes only \$10,000 of the proposed \$200,000 loan. The rehabilitation, to consist of "activities such as new carpeting and painting", is clearly incidental to the refinancing. This is supported by the statement in your letter that says the "project is in excellent condition...."

Because we do not consider the activity to be eligible under the CDBG regulations, your request for a waiver of 24 CFR 570.208(a)(3) is denied.

Very sincerely yours,

Anna Kondratas
Assistant Secretary