

# Using CDBG Funds to Correct Fire Code Violations

December 28, 1994

Honorable Patty Murray  
United States Senate  
Washington, DC 20510-4704

Dear Senator Murray:

Thank you for your letter of October 3, 1994, supporting the application from the City of Tacoma for the urban Empowerment Zone and Enterprise Community program. This application was received and is now being reviewed by the Department of Housing and Urban Development (HUD) along with all other urban applications. Nominations for Empowerment Zone and Enterprise Community designations are being reviewed in accordance with the selection factors defined in the interim rule published by HUD in the January 18, 1994, Federal Register.

HUD believes that the steps communities have gone through to develop comprehensive strategic plans as part of the nomination process will be extremely useful for furthering local revitalization efforts. Please be assured that all applications will be fully considered during the review process.

In your letter you have also requested assistance in resolving a concern raised by the City regarding its Community Development Block Grant (CDBG) program. The Department's Seattle Field Office staff indicates that the City of Tacoma is contemplating changing its fire codes to require sprinkler systems in certain properties, whereby some of its older high-rise buildings would fail City standards should the changes take effect. State legislation in Washington prohibits a city from using local funds, such as its general funds, to correct these code violations. The City of Tacoma seeks a ruling from HUD Headquarters regarding the use of CDBG funds to provide sprinklers in older, dangerous high-rise office buildings, having been advised by the HUD Field Office in Seattle that this may not be an acceptable use of CDBG funds. The City is concerned that the lack of adequate sprinkler systems in privately-owned buildings poses a safety threat which could not be successfully handled by its emergency resources. In its urban Empowerment Zone application, the City submitted a waiver request that addresses this same concern (and which is being reviewed as part of the overall application).

HUD requires that each activity funded by CDBG meet certain requirements, including that it be eligible and meet one of the following broad national objectives: benefit persons of low and moderate income; aid in the prevention or elimination of slums or blight; or meet other community development needs of a particular urgency. In making its determinations about which activities it will fund, a city must first conclude that the activity is both eligible and meets one of these national objectives in accordance with the CDBG regulations at 24 CFR Part 570.

If Tacoma changes its fire codes, resulting in the buildings being in violation of code standards, CDBG assistance for the sprinkler systems may qualify as rehabilitation under the regulations at 24 CFR 570.202(a)(3). Should Tacoma not change its fire codes and these buildings thus not be in violation,

CDBG assistance to the building owners for sprinkler installation would need to qualify as a special economic development activity under the regulations at 24 CFR 570.203(b). In either situation, the activity will also have to meet a national objective.

As indicated above, one of the national objectives of the CDBG program is the prevention or elimination of slums or blight. As outlined in the CDBG regulations at 24 CFR 570.208(b), an activity can generally qualify under this national objective by addressing such blight either on an area basis or a spot basis. The CDBG regulations at 24 CFR 570.208(b)(1) allow a building rehabilitation activity, such as the installation of sprinkler systems, to qualify as addressing blight on an area basis if the activity meets four criteria. Specifically, (1) the area delineated by the City must meet a definition of a slum, blighted, deteriorated or deteriorating area under State or local law; (2) throughout the area, there must be a substantial number of deteriorated or deteriorating buildings or the public improvements must be in a general state of deterioration; (3) documentation must be maintained by the City on the boundaries of the area and the condition which qualified the area at the time of its designation; and, finally, (4) the activity must address one or more of the conditions which contribute to the deterioration of the area. HUD does not consider the lack of a fire sprinkler system in and of itself to constitute "deterioration" of a building. If the area in which the building is located otherwise qualifies as blighted, the lack of sprinklers could be considered a factor that contributed to the deterioration of the area and the sprinkler installation could be done on a blighted area basis.

The CDBG regulations at 24 CFR 570.208(b)(2) also allow a rehabilitation activity outside a designated slum or blighted area to qualify as addressing blight on a spot basis, if the activity is designed to eliminate specific conditions of blight or physical decay. Under this category, rehabilitation of buildings is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety. If the activity is an instance of "spot blight," sprinkler installation work could qualify if the City clearly documents the health and safety issues involved.

Therefore, the installation of a sprinkler system in a high-rise building to meet local or State fire code is eligible for CDBG assistance as described above and provided other applicable requirements of the CDBG program are met. In this regard, it should be noted that over a one-, two-, or three-year period specified by the City of Tacoma in its certifications, at least 70 percent of the CDBG funds expended by the City must be for activities that benefit low- and moderate-income persons. It is my understanding that the concerns previously expressed by Seattle Field Office staff regarding the proposed sprinkler installation center around the ability of the City to meet this requirement.

Thank you for your interest in the Department's programs.

Very sincerely yours,

Andrew Cuomo  
Assistant Secretary