

# Request for Waiver of the National Objective of Low and Moderate Income Persons

September 7, 1995

MEMORANDUM FOR: William B. Rotert, Director, Office of Community Planning and Development, 7AD

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

**SUBJECT: Community Development Block Grant (CDBG) Program  
Request for Waiver  
State of Missouri**

This is in response to your memorandum of July 17, 1995, which transmitted a June 28, 1995, letter from Joseph L. Driskill, Director, Missouri Department of Economic Development. Mr. Driskill seeks a waiver of 24 CFR 570.208(a)(3) of the CDBG regulations, which describes the national objective criteria to be met for housing activities undertaken to benefit low- and moderate-income persons.

The State of Missouri wishes to amend its FY 1995 Consolidated Plan to create a new funding category for infrastructure improvements supporting new housing construction. The State is concerned that projects funded under this category would have to demonstrate that 100% of the beneficiaries (housing occupants) are of low or moderate incomes. A waiver is sought to require only 51% low- and moderate-income benefit for projects funded under this new category.

In support of its request, the Department of Economic Development references my November 18, 1994, memorandum granting a waiver to Oakland, California, for a housing development project. As you have noted in subsequent conversations with my staff, there exists an even more relevant policy interpretation governing infrastructure improvements to assist new housing construction. A November 17, 1993, memorandum from Don I. Patch (then-Director of the Office of Block Grant Assistance) discusses a proposal from Memphis, Tennessee, which appears to be very similar to Missouri's proposal.

24 CFR 570.208(a)(3) [and 570.483 (b)(3), its State CDBG Program counterpart] require that, for activities "carried out for the purpose of providing or improving permanent residential structures", each single-family (one unit) structure must be occupied by a low- and moderate-income household. However, 24 CFR 570.203(b)(3) of the CDBG Entitlement regulations states that "activities in support of the development of low or moderate income housing including...provision of public improvements...are not considered as activities to subsidize or assist new residential construction." It must be noted that 24 CFR 570.203 is not applicable to the State CDBG program; however, States may use the CDBG Entitlement program regulations as guidance in interpreting the list of eligible activities found in Section 105 of the Housing and Community Development Act.

Thus, the national objectives criteria at 24 570.483(b)(3) are not applicable to the construction of infrastructure to support new housing construction. Such activities may be shown to meet the low/moderate income benefit national objective through the "area benefit" criteria at 24 CFR

570.483(b)(1). Under that provision, an activity can be shown to meet the national objective if at least 51% of the residents of an area benefitting from the activity are low- and moderate-income.

No waiver is necessary for the State of Missouri to carry out its proposal using the "area benefit" criteria, providing that assistance under the funding category is limited to clearance, site assemblage, provision of site improvements and provision of public improvements. Should Missouri wish to fund individual projects which would involve direct construction of new housing or the provision of downpayment assistance, the State must either meet the requirements of 24 CFR 570.483(b)(3) or request waivers on a case-by-case basis. Please be advised that the Department is not inclined to grant "blanket waivers" for an entire class of actual or proposed projects.

Please thank Mr. Driskill, on my behalf, for his interest in and commitment to meeting the affordable housing needs of the residents of Missouri. A copy of the November 17, 1993, memorandum is attached for the State's further reference. Should you desire additional information on this issue, feel free to contact the State and Small Cities Division at (202) 708-1322.