

# Waiver of the Single-family Housing Requirements

November 18, 1994

MEMORANDUM FOR: Steven B. Sachs, Acting Director, Community Planning and Development Division, 9C

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

SUBJECT: Community Development Block Grant (CDBG) Program  
Waiver of single-family housing requirements (24 CFR 570.208(a)(3))  
City of Oakland, California  
CDBG Program No. B-93-MC-06-0013

This is in response to your memorandum of August 15, 1994, which transmitted a request from the City of Oakland, California, for a waiver of the CDBG regulations at 24 CFR 570.208(a)(3). You have recommended approval of the City's request for this waiver to allow less than 100 percent of the single family homes at Oakwood Estates, a 36-unit Planned Unit Development in East Oakland, to be sold to low- and moderate-income households.

The regulations at 24 CFR 570.208(a)(3) require, as a general rule, that CDBG-assisted housing structures must be principally occupied by low- and moderate-income households. In the case of Oakland Estates, this means that 100 percent of the single family homes planned to be assisted with CDBG funds must be occupied by low- or moderate-income households upon completion. At the time the City funded Oakwood Estates in 1990, it believed that only 51 percent of any single-family owner occupied housing must be occupied by low- and moderate-income households. Based on this understanding, CDBG funds were used for acquisition of land and site improvements to accommodate the construction of 36 single-family detached housing units, 19 of which are to be sold to first time homebuyers who are low and moderate income. The City was subsequently advised that its interpretation of this part of the regulations is incorrect.

The current regulations do provide for one exception to the principal occupancy test described above: in the case of newly constructed rental housing for the non-elderly, an assisted structure may have as few as 20 percent of the units occupied by low- and moderate-income households. For any such structures that would have fewer than a majority of the units so occupied, there is a limitation on the proportion of the total costs of the project that may be met through the use of CDBG funds. The maximum amount of CDBG funds authorized for use in such a case is determined by the percentage of occupancy by income-qualified households. This can be viewed as pro-rating the CDBG funds and the low- and moderate-income benefit derived from the activity.

When the CDBG-assisted activity is acquisition of property, there may be several housing structures developed on the property, but the regulation makes no separate provision for grouping these structures and viewing them as a single activity. Thus, each structure developed on property acquired with CDBG

funds would have to be occupied by a low- and moderate-income household. However, because this outcome is not required by statute, HUD may waive the provision to allow all of the structures to be viewed as a single structure. This would permit up to 49 percent of the structures to be occupied by households that are not low- and moderate-income.

Given the above provision for pro-rating for multi-unit multi-structure rental activities and because the restriction on 100 percent occupancy of single-unit structures is regulatory, for a single-unit housing development involving more than one unit on one site, benefit may be pro-rated under the statute. The CDBG funds used in Oakwood Estates constitute less than 10 percent of the total project cost (\$435,000 of \$4.9 million). In Oakwood Estates, the City has planned for 19 of the units (52.8 percent) to be sold to low- and moderate-income homebuyers. Therefore, the low- and moderate-income benefit from the activity substantially exceeds the percent of CDBG funds included in the total project cost.

The City is requesting a waiver of the CDBG regulations, in part, on the basis that requiring all of the units to be sold to low- and moderate-income persons will cause economic hardship for the low- and moderate-income households who cannot obtain full subsidies to make the units affordable. The CDBG assistance for this activity essentially provides a mortgage subsidy for the low- and moderate-income homebuyers of 19 of the 36 units to make the units affordable. If the other 17 units must be sold to low- and moderate-income persons, it will cause an economic hardship for these persons because a similar subsidy will not be available unless additional CDBG funds in the amount of \$255,000 are put into this activity. The City has indicated that it does not have sufficient additional CDBG funds to allocate for this purpose. Also, because this area is highly populated with low- and moderate-income persons (68 percent) and has some existing public housing already, the City believes that a mixed-income development will further the statutory provisions to expand the nation's housing stock and reduce the isolation of income groups within communities and geographical areas. Finally, the City believes that as a mixed-income development, Oakwood Estates will foster more healthy living conditions within the area and aid economic growth in the neighborhood, as a whole.

Section 570.5 authorizes waivers of the CDBG regulations where it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act. Waivers of national objective requirements are rarely granted because the national objective regulatory criteria are designed to ensure that the use of CDBG funds meets the statutory purposes of the program. However, given the information that has been presented by the City, the Department has determined that the City has demonstrated that application of the requirement at 24 CFR 570.208(a)(3) will create an undue hardship and adversely affect the purposes of the Act because it will impose an economic hardship on low- and moderate-income buyers of units other than the number (19) to be subsidized based on the CDBG assistance that has been provided, and it will not serve to reduce the isolation of income groups within the community. Therefore, under the authority of 24 CFR 570.5, I hereby waive the limitations at 24 CFR 570.208(a)(3) to permit the City to use CDBG funds to assist Oakwood Estates. Upon completion of this development, the City must be able to demonstrate that 19 of the 36 housing structures were sold to low- and moderate-income homebuyers.

cc:John E. Wilson, SC