

# Waiver to Allow Housing Reconstruction

August 13, 1993

MEMORANDUM FOR: Walter G. Sevier, Deputy Regional Administrator - Regional Housing Commissioner, 6S

ATTENTION: R. D. Smith, Regional Director, Office of Community Planning and Development, 6C

FROM: David M. Cohen, Acting Deputy Assistant Secretary for Grant Programs, CG

**SUBJECT: Request for Waiver to Allow Housing Reconstruction: Community Development Block Grant Program City of Temple, Texas**

This is in response to your May 17, 1993, memorandum seeking concurrence and guidance regarding a waiver request made by the City of Temple, Texas. Ms. Donna McClain, the City of Temple's Community Development Coordinator, had sent a March 30, 1993, letter to R. D. Smith, regarding a rehabilitation activity which had been an on-going Community Development Block Grant (CDBG) activity by the City.

In reviewing Temple's 1990 Grantee Performance Report (GPR), the Fort Worth HUD Office determined that the City had used CDBG funds for the construction of new rental units owned by the Temple Housing Authority. The City's original proposed activity had been to rehabilitate the existing units, but they were considered to be too deteriorated to renovate cost-effectively. The CDBG program currently permits substantial reconstruction of housing only in limited circumstances and only for units that are owned and occupied by low- and moderate-income persons.

The U.S. Treasury Department, in 1945, had deeded 82 dwelling units located on two separate sites to the Temple Housing Authority at a cost of \$23,000. By 1991, all 26 units at the Carver site had been rehabilitated and/or replaced; 19 with CDBG funds and 7 with Local Housing Authority (LHA) funds. Of the 56 units at the TemBel site, a total of 32 units have been rehabilitated and/or replaced; 26 units with CDBG funds and 6 with LHA monies. Based upon advice from the field office, the City has ceased funding this activity. The letter to R. D. Smith inquires whether the City can continue to replace deteriorated units under the CDBG regulations or whether it can receive a waiver from HUD in order to do so. Your memorandum states that the Temple Housing Authority lacks sufficient operating reserves to replace the remaining 24 units. The grantee's estimates for rehabilitation exceed the average cost of the replacement units by more than \$13,000 per unit.

The May 17 memorandum to Don Patch further indicates that your office has researched the issue and has determined that, under the current statute and regulations, the City of Temple cannot proceed with this activity. Specifically, sections 105(a)(11), 105(a)(15), 105(a)(18) and 105(a)(19) of the Housing and

Development Act of 1974, as amended, are the provisions which reference the eligibility of new construction of housing in the CDBG program. (The May 17 memorandum referenced section 105(a)(1) but the correct statutory cite is section 105(a)(15).)

Section 105(a)(11) provides for relocation payments and assistance for displaced families and others. The activity contemplated by Temple does not fit this provision. Section 105(a)(15) allows certain subrecipients to carry out new housing construction. However, the Temple Housing Authority does not qualify as one of the eligible entities permitted to construct housing. Section 105(a)(18) refers to housing assisted under section 17 of the United States Housing Act of 1937, the Rental Rehabilitation and HoDAG programs, which must be privately owned rental properties. Since the units in Temple are owned by the Temple Housing Authority, a public entity, this section of the law also does not apply. Although the 1987 amendments to the Housing and Community Development Act of 1974 include a new provision at section 105(a)(19) for "assistance to facilitate substantial reconstruction of housing...", as stated above, it only applies to owner-occupied units. The units in question here would continue to be leased by the Temple Housing Authority; therefore, this provision of the statute is also not applicable.

Your conclusion is correct that the statutory references permitting new construction of housing do not apply in the instant case and further, that the statute is not waivable. Therefore, the City of Temple's request for a waiver cannot be approved.

Regarding further guidance to give to the City of Temple, it is our understanding that these units do not currently qualify for assistance through HUD's Office of Public and Indian Housing (PIH) because they were not constructed under the public housing program. It may, however, be possible to have the project put under an Annual Contributions Contract (ACC) through PIH. Additional information regarding this process can be obtained from Ben Danford in your Housing office. He is also the appropriate contact person for the Comprehensive Grant Program, from which the Temple Housing Authority is receiving funds for the first time this fiscal year. Either of these two avenues may assist the grantee in its efforts to improve the remaining 24 units.

In addition, I understand that the City and HUD have discussed using HOME funds to complete the remaining units. The City received a HOME grant through the State of Texas for single-family activities in Fiscal Year 1992, but has yet to sign a contract and begin spending the money. The State has recently issued guidance for its Fiscal Year 1993 funding, which stipulates a certain expenditure level required for Fiscal Year 1992 funds as a prerequisite to receiving a Fiscal Year 1993 grant. According to staff in your office, that expenditure level is likely to be too high for Temple to qualify for Fiscal Year 1993 HOME funds. However, should such funds become available, note that CDBG funds can be used to pay certain activity delivery costs for activities eligible under the HOME program. Further guidance is available in a January 6, 1993, memorandum to the Field regarding the 1992 statutory amendments and in the February 1993, edition of "Newsbrief."

Another avenue which you may wish to explore is whether the reconstruction could be construed to be housing of last resort. Typically this resource is available to displaced tenants, not the owner of the units. John Davis, your relocation specialist, may be able to research this option in consultation with Headquarters CPD Relocation and Real Estate Division.

As a final alternative, if the City and Housing Authority could create an eligible neighborhood non-profit entity to carry out the activity on their behalf, the reconstruction may qualify under the provisions of 24 CFR 570.204. The non-profit entity must have tenants or other neighborhood residents and/or businesses control its board of directors. Evidence of revitalization efforts in the neighborhood would also be necessary. Should the City desire to pursue this further, please contact the Entitlement Communities Division for additional guidance.

Please note that none of these options is to be construed as an avenue to retroactively approve the activity which was previously funded with CDBG funds at either the TemBel or Carver site.

cc: Robert P. Allen, SC