

## Woman's Shelter Loan Payoff

MEMORANDUM FOR: Herbert L. Roberts, Director, Community Planning and Development Division, 9.4C

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

**SUBJECT: Request for Waiver - Women's Shelter Loan Payoff  
Community Development Block Grant (CDBG) Program  
County of San Luis Obispo, California**

This is in response to your memorandum of July 29, 1994, transmitting a request from the County of San Luis Obispo for a waiver of the CDBG regulations under 24 CFR 570.5. The County's request does not identify a specific part of the regulations to be waived, although your memorandum requests a waiver of 24 CFR 570.207, Ineligible activities.

The purpose of the waiver request is to permit the County to use CDBG funds to "pay off an existing site purchase loan on behalf of the battered spouse shelter operating on that site..." A non-profit was provided CDBG funds to pay part of the cost of acquiring the building that houses the Women's Shelter, but it also incurred a bank loan to finance the purchase. The County's letter states that the bank loan is due December 3, 1994, or it will be "converted into a fully amortized loan at market rates." The Women's Shelter does not have adequate funds to provide a full range of services and make monthly mortgage payments.

It is presumed that your request for a waiver of 24 CFR 570.207 is based on your characterization of the loan pay-off as an income payment. However, as discussed below, the use of CDBG funds to refinance or pay off a bank loan is not considered an income payment. Therefore, a waiver of 24 CFR 570.207 is not applicable.

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Under the CDBG regulations, acquisition is an eligible activity at 24 CFR 570.201(a). When a public facility is involved, such as the Women's Shelter, the regulations at 24 CFR 570.201(c) govern. However,

under either part of the regulations, acquisition of a property is typically complete when the entity undertaking the purchase takes title to the property. Therefore, CDBG funds cannot be used to pay off an amount due on, or to refinance, a loan obtained for the purchase of property and have the activity be considered as acquisition because no change in title results from paying off or refinancing the loan. Inasmuch as the activity described is not eligible, there is no basis upon which the Department can grant a waiver to permit such a use of CDBG funds.

Your letter of April 8, 1994, to the County, stated that a grantee may use CDBG funds to pay off or refinance a loan used to acquire property if the activity can meet the requirements at 24 CFR 570.204. Under this part of the regulations, certain subrecipients may be provided CDBG funds to carry out activities that are eligible, as well as activities that are otherwise ineligible, under the CDBG program. Your letter to the County correctly advised that the CDBG regulations do not provide for CDBG funds to be used for loans to refinance existing indebtedness secured by a public facility. The County was also informed that if the requirements identified at 24 CFR 570.204 could be met, the subrecipient could be provided CDBG funds in the form of an income payment for the purpose of paying off the loan on the Women's Shelter. However, as previously stated, the use of CDBG funds to refinance or pay off a bank loan is not considered an income payment. Rather, if the requirements under 24 CFR 570.204 are met, this would be viewed as a grantee carrying out an "otherwise ineligible" activity under the authority provided for in this part of the regulations. But, based on the information provided, it appears the non-profit involved in this activity is not one of the three types of subrecipients permitted to carry out activities under 24 CFR 570.204, nor is this activity part of a neighborhood revitalization, community economic development, or energy conservation project. Because these requirements are statutory, they cannot be waived to permit the Women's Shelter to receive CDBG funds under this part of the regulations.

If the County is not currently providing CDBG assistance to the Women's Shelter to assist in paying for the services it provides, such assistance could be made available under 24 CFR 570.201(e), Public services. While assistance under this eligibility category would be subject to the public service cap, such assistance might permit the non-profit to free up other funds to be used for the entity to make mortgage payments if it is not able to pay off the loan. Further, although mortgage payments cannot be charged to the CDBG program, if assistance is provided under this part of the regulations, the non-profit may charge depreciation or a use allowance on the building to the CDBG program, in accordance with OMB Circular A-122, Attachment B, item 9.

If you have any questions about the information in this response, please contact the Entitlement Communities Division on (202) 708-1577.

cc: John E. Wilson, SC