

Legal Opinion: CIM-0114

Index: 3.100

Subject: Section 220 Concentrated Development Areas

August 22, 1995

MEMORANDUM FOR: Linda D. Cheatham, Director, Office of Insured  
Multifamily Housing Development, HMI

FROM: David R. Cooper, Assistant General Counsel,  
Multifamily Mortgage Division, CIM

SUBJECT: Section 220 Concentrated Development Areas

You have requested our legal guidance on the following three issues regarding the approval process for a geographical area designated by HUD as a "concentrated development area," and, therefore, eligible to have projects located within its boundaries that are to be insured under Section 220:

1. How does the Department define the "locally developed strategy" referenced in the statute and regulations?
2. What if any local governmental approvals are legally required of the strategy?
3. Under what circumstances can Housing stop processing of an application for mortgage insurance?

The geographical area that you have referred to in your incoming memorandum as a "concentrated development area" is described in Section 220(d)(1)(v) of the National Housing Act as:

(v) an area designated by the Secretary, where concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation or preservation.

In question no. 1, you asked us to provide you with the Department's definition of "locally developed strategy" as used in the section 220 mortgage insurance program. We refer you to 24 CFR 220.502(e) which permits the provision of section 220 mortgage insurance for a multifamily project that is located in:

(e) An area in which concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation or preservation. The locally developed strategy shall:

- (1) Provide for a combination of physical

improvements, necessary public facilities and services, housing programs, private investment and citizen self-help activities appropriate to the needs of the area;

(2) Coordinate public and private development efforts;

(3) Provide sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time, taking into account the severity of the area's problems.

Any amplification of the statute and the regulations by the Office of Housing is an administrative determination. In this regard, in FHA's mortgage insurance programs, Housing generally establishes its interpretation of statutes and regulations by means of handbook issuances, Housing Notices, and mortgagee letters. The section 220 mortgage insurance program is not newly developed, and, therefore, any guidelines or procedures that the Department has followed in the past for earlier "concentrated development area" designations would, in our opinion, be applicable in the subject case.

Question no. 2 asks us to provide you with a listing of any local governmental approvals that are required to be included in a locally developed strategy submitted to the Department as part of a local government's request that the Secretary designate a geographical area as a "concentrated development area." We have been unable to find a list of "governmental approvals" set out in the statute or regulations that are a prerequisite to a decision by the Secretary that a distinct geographical area is eligible to have section 220 projects located therein. While we defer to your expertise regarding the content of Housing Handbooks, we have reviewed HUD Handbook 4455.1, entitled "Rental Housing in Urban Renewal Areas for Project Mortgage Insurance" and found no express listing of required governmental approvals.

However, the regulations cited above do require a locally developed strategy which "(1) Provide[s] for . . . necessary public facilities and services . . . ; (2) Coordinate[s] public . . . development; and (3) Provide[s] sufficient resources to produce substantial long-term improvements in the area . . . ." In our view, it is an administrative determination regarding the nature of any governmental approvals that would be required to accomplish the quoted public requirements. Consequently, I believe that any guidelines or procedures that the Department has used in the past for evaluating a "locally developed strategy" proposed for a "concentrated development area" would serve as a precedent and would be applicable to the subject case.

Question no. 3 asks us to advise you regarding those circumstances under which Housing can stop the processing of an application for project mortgage insurance. You have attached a copy of an application for a Site Appraisal and Market Analysis (SAMA) letter for FHA Project No. 012-32269 dated March 24, 1995,

which reflects that there was a check attached in the amount of \$355,511.30 in payment of the required fee to accompany an application for a SAMA letter, which fee is one dollar per thousand dollars of the requested mortgage amount. It is our understanding that neither a SAMA letter nor a commitment have been issued by the New York office for this project. However, in the event that a SAMA letter has been issued for Project 012-32269, 24 CFR 207.1(b)(1) clearly states: "The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure." Housing can stop or suspend the processing of an application for project mortgage insurance in any of the FHA multifamily programs without liability as long as a contract has not been entered into, such as a binding commitment. However, a decision by Housing to suspend further processing cannot be made in an arbitrary or capricious manner.

In addition, 24 CFR 207.1(i) sets forth certain examples of when review of applications can be discontinued and fees returned:

If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public, or in such other instances as the Commissioner may determine.

See also paragraph 1-11.A in HUD Handbook 4410.1 REV-2, "Project Fiscal Procedures," which sets out twelve situations when Housing permits a refund of at least a portion of the fees that have been collected in connection with project mortgage applications. In light of the discretion in the regulation quoted above, i.e. "such other instances as the Commissioner may determine," a legitimate fiscal reason, or one related to credit subsidy may be additional examples of defensible bases for the stopping of processing and refunding of fees even if basic eligibility criteria could be satisfied. However, where the reason for refunding of fees is not covered by the itemized list in the

Handbook, or the amount of the fees to be returned is greater than that provided for in the Handbook, such Handbook would need to be waived.

If you have any questions concerning this memorandum, please contact Edward Ferguson at 708-4107.