

Compliance with the National Objective of Low and Moderate Income Benefit for Public Improvements in Single Family Subdivision Development

November 17, 1993

MEMORANDUM FOR: Charles N. Straub, Director, Office of Community Planning and Development, 4C

ATTENTION: Virginia E. Peck, Director, Community Planning and Development Division, 4.7C

FROM: Don I. Patch, Director (Signed)

Office of Block Grant Assistance, CGB

SUBJECT: Compliance with National Objective of Low and Moderate Income Benefit for Public Improvements in Single Family Subdivision Development, Memphis, Tennessee Community Development Block Grant (CDBG) Program

This memorandum responds to your cc:mail message dated May 18, 1993, transmitting a memorandum, from the Knoxville Office requesting a determination on national objective compliance for public improvements in a proposed subdivision development in Memphis, Tennessee. The proposed development consists of vacant land owned by a 24 CFR 570.204 nonprofit subrecipient for the development of a subdivision consisting of 60 to 70 single family homes, with private lending sources paying for construction financing, and CDBG funds being used strictly for public improvements.

The Knoxville Office indicated that it had been advised that the expenditure of CDBG funds for public improvements in the proposed subdivision development would be a "housing" activity under Section 570.208(a)(3) of the CDBG regulation, therefore requiring each structure to be occupied by a low- and moderate-income household in order to meet a national objective. The City is reluctant to fund the public improvements if 100 percent low- and moderate-income occupancy is required because it believes it will further add to the concentration of low income persons. The Knoxville Office is in agreement with the City and points out that the regulation at 24 CFR 570.204(a)(3) allows 51 percent of rental units to be occupied by low- and moderate-income persons if they are contiguous and have a common ownership and management. The Knoxville Office states further that applying the same principal to a 60 unit subdivision would encourage deconcentration of low income persons, and has asked how it can advise the City.

Based on your inquiry, it is clear that a distinction must be made between a housing activity and an area benefit activity and which of these national objectives must be met in order to use CDBG funds for infrastructure of the subdivision. The CDBG statute states that the acquisition or rehabilitation of property to provide housing shall be considered to benefit low- and moderate-income persons only to the extent that upon completion the housing is occupied by such persons. The implementing CDBG regulation at 24 CFR 570.208(a)(3) basically reiterates the statute stating that a housing activity must add or improve permanent residential structures which upon completion will be occupied by low- and moderate-income

households. Thus, a one-unit structure must be occupied by a low- and moderate-income household, and structures containing more than two dwelling units must have at least 51 percent of the units occupied by low- and moderate-income households. It is important to note that under the regulations, except with respect to certain rental properties, each structure is viewed separately for compliance, notwithstanding the fact that a City might consider the activity one project. Only with respect to rental properties located on the same or contiguous properties where the buildings are under common ownership and management may grantees consider all of the buildings a single structure.

On the other hand, for an area benefit activity, the CDBG regulation at 24 CFR 570.208(a)(1) requires at least 51 percent of the residents of the activity's service area to be low- and moderate-income persons. Activities falling into this category include public improvements, such as those to support this proposed housing subdivision, public facilities, and certain kinds of public service activities.

The CDBG regulation at 24 CFR 570.207(b)(3) also 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." Since the proposed use of CDBG funds is limited to public improvements, such as street improvements and water and sewer lines installation, this would be eligible under 24 CFR 570.201(c) of the regulations and would meet the national objective of benefit to low- and moderate-income persons based only on whether at least 51 percent of the residents of the area served by the improvements are low and moderate income.

There are a few residents already located in the area where the subdivision is planned. The public improvements are for a larger body of residents, the income of whom is not yet known. Therefore in determining whether an area benefit national objective will be met, it would be necessary to make a determination on the income levels of future residents. Only if the community has reason to believe that 51 percent of the ultimate residents of the subdivision will be low and moderate income would the expenditure of CDBG funds for the public improvements qualify.

The Knoxville Office presumes that all financing of the construction would be with private financing. However, if this should change and CDBG funds are used, in whole or in part, in the financing of the housing construction, then the regulations at 24 CFR 570.208(a)(3) would require that each single family structure assisted in such manner be occupied at completion by a low- and moderate-income household. In this instance, the City's concern with concentration of low income persons would need to be considered. Avoiding undue concentration could be accomplished by providing subsidies for selected individual units designed to result in a mixed-income development, as desired by the City of Memphis. There is no limit on the extent of subsidy permitted and houses may even be given to qualifying households.

If the use of CDBG funds for down payment assistance and mortgage subsidies on the newly constructed housing should be needed, you should consult policy memoranda in the Guide for Eligible Activities (Notice CPD-93-01) issued on January 8, 1993, or contact the Entitlement Communities Division at 202-708-1577, concerning eligibility issues.