

National Objective Documentation Requirements

December 26, 1995

MEMORANDUM FOR: Joseph D'Agosta, Director, Office of Community Planning and Development, 2AD

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

**SUBJECT: Community Development Block Grant (CDBG) Program
Request for Waiver of National Objective Documentation Requirements for In Rem Housing
New York City, New York**

This responds to your Office's February 24, 1995, memorandum recommending approval of a request for a waiver of the requirements of 24 CFR 570.506(b)(4)(iii) to permit New York City, New York, to use its Housing and Vacancy Survey (HVS) as an alternative methodology for documenting the household size and income of In Rem tenants for national objective compliance.

Background:

New York City's January 25, 1995, waiver request to your office is a follow-up to its previous April 27, 1993, letter concerning the burdens of maintaining the documentation required by the regulations to demonstrate that CDBG assistance provided to In Rem buildings principally benefits low- and moderate-income persons. In a June 14, 1993, response to the City's earlier letter, Don I. Patch, then Director of the Office of Block Grant Assistance, advised the City that "essential repairs" to certain In Rem properties that qualify under Section 105(a)(24) of the Act, as added by Section 807(a)(4) of the Housing and Community Development Act of 1992 (P.L. 102-550) could be considered to meet the national objective of low- and moderate-income area benefit under 24 CFR 570.208(a)(1), thereby alleviating some of the City's record-keeping burdens. The City was also advised that not all of the In Rem renovation work that the City assists under the CDBG program could qualify under the new statutory provision, either because the work is more extensive than that which could be considered "essential repairs" or the properties are located outside of primarily low- and moderate-income areas. Such activities must remain classified as "rehabilitation" activities under 24 CFR 570.202(a). For those activities, pursuant to 24 CFR 570.506(b)(4), the City is required to maintain occupancy data and project cost information on an individual structure basis to demonstrate compliance with national objective housing requirements at 24 CFR 570.208(a)(3), as well as overall benefit housing pro-ration requirements at 24 CFR 570.200(a)(3)(iv). These CDBG regulatory requirements are based on a statutory restriction (Section 105(c)(3) of the Act) which requires that "any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons." The statute does not, however, require the specific methodology described in the regulations. Thus, the Department's June 14, 1993, response to the City concluded by stating that HUD would be willing to consider a request for a waiver to permit the City to use an alternative methodology for documenting the low- and moderate-income status of In Rem tenants for CDBG-assisted rehabilitation activities if the City

could satisfy the waiver provisions of 24 CFR 570.5, which the information in the City's April 27, 1993, letter did not.

Field Office/City Waiver Justification:

As part of its current waiver request, the City states that the HVS is conducted every three years and that it has contracted with the U. S. Census Bureau since 1965. The HVS scientifically samples the City's entire housing stock, including the In Rem properties. Documentation submitted by the Field Office indicates that there are approximately 3,200 occupied In Rem buildings with over 36,000 dwelling units.

For its 1991 and 1993 HVSs, the City requested that the Census Bureau double the number of In Rem units sampled from 300 units surveyed in 1987 to 600 units in 1991 and 682 units in 1993. All In Rem units surveyed were occupied. The 1991 HVS indicated that 92 percent of all In Rem households have incomes at or below 80 percent of the median income, and over 78 percent of the In Rem households had incomes which were below 50 percent of the median. Though compilation of the 1993 HVS data was not completed at the time of staff's review, the City was able to furnish Headquarters with an advance data run of its In Rem properties from the 1993 HVS. That data run indicates that 90.3 percent of all In Rem households have incomes at or below 80 percent of the median income and 79.9 percent have incomes at or below 50 percent of median.

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. The City indicates that a fluctuating tenant population and a strong reluctance on the part of a significant percentage of In Rem households to provide household income data are major obstacles to obtaining reliable data. Also, because of budgetary and time constraints, the City indicates that the Census Bureau is the only agency that has the technical capability to design and undertake an HVS In Rem survey, in terms of both coverage and accuracy, while maintaining the confidentiality of data received from sample households. The City further states that the U.S. Census gathers HVS data through in-person interviews only, and, if necessary, interviewers return several times in order to obtain the data. The information provided by the City on the methodology used for the HVS indicates that it is a statistically reliable means of determining the income characteristics of In Rem tenants taken as a whole. If the City were instead to undertake a full-count, in-person survey of about 36,000 In Rem units instead of a sample, the cost would be approximately \$4,000,000, and it could not be started before 1996. (The cost for the 1993 HVS was \$2,627,000.) The City also contends that it is an undue burden on the existing tenants to require them to provide detailed income and demographic information simply because the City has become their landlord through the property's tax foreclosure. The City indicates that low-income tenants predominate the tax-foreclosed buildings, since persons and families that have the means to leave would not stay in such buildings.

HUD Analysis of HVS:

In reviewing the City's waiver request and analyzing the statistical reliability of the HVS, HUD has determined that while the survey results permit the Department to conclude that 90 percent of the residents residing in the In Rem buildings citywide are low- and moderate-income, they do not demonstrate that 51 percent of the residents of each In Rem building are low and moderate income. Because the data does not permit HUD to determine the income characteristics of the residents of each

In Rem building, this office is willing to waive the building-by-building requirement for such documentation under 24 CFR 570.506(b)(4). Such a waiver would permit the City to treat all In Rem buildings regardless of location as a single structure for purposes of complying with low- and moderate-income housing national objective requirements, but would necessitate that the City refrain from using the area benefit national objective for the In Rem "essential repairs and operating expenses" category of expenditures.

As noted above, HUD has previously determined that activities qualifying under the "essential repairs" category can generally qualify as area benefit activities based on the statutory language that the purpose of such activities is "to prevent abandonment and deterioration of [tax-foreclosed] housing in primarily low- and moderate-income neighborhoods." However, not all of the In Rem renovation work that the City assists under the CDBG program can qualify under the new statutory provision, either because the work is more extensive than that which could be considered "essential repairs" or the properties are located outside of primarily low- and moderate-income areas. It is unclear to what extent the City uses CDBG funds for In Rem property rehabilitation qualifying under 24 CFR 570.202(a) versus "essential repairs and operating expenses" qualifying under the new statutory provision. However, deleting the latter activities that are carried out in low- and moderate-income areas from inclusion in the overall In Rem renovation activities to be classified under the low- and moderate-income housing national objective compromises the statistical reliability of using the HVS data. HUD cannot conclude from the HVS data that general rehabilitation carried out strictly in non-low- and moderate-income areas primarily benefits low- and moderate-income persons which is required by the statute.

Waiver:

Upon consideration of all of the above information, it is clear that failure to grant the waiver request would result in undue hardship for New York City and adversely affect the purposes of the Act if more CDBG funding is diverted for activity delivery and not used for improving In Rem properties. Therefore, under the authority of 24 CFR 570.5, I hereby waive the record-keeping requirements of 24 CFR 570.506(b)(4) to permit New York City to use the HVS data to document the national objective compliance for all CDBG-assisted In Rem activities. This waiver approval is conditioned upon New York City using the low- and moderate-income housing national objective at 24 CFR 570.208(a)(3) and the HVS data for all CDBG-assisted In Rem rehabilitation activities, to be considered as a single structure, and not separately classifying the new Section 105(a)(24) In Rem "essential repair" activities as area benefit. This waiver authority is not granted if the City wishes to classify the Section 105(a)(24) "essential repair" activities separately as area benefit activities for national objective compliance. In such a case, the City would still need to comply with regulatory record-keeping requirements at 24 CFR 570.506(b)(4) for all other CDBG-assisted In Rem rehabilitation activities in order to demonstrate national objective compliance at 24 CFR 570.208(a)(3).

Performance Reporting:

For purposes of CDBG performance reporting required under 24 CFR 91.520, CDBG-assisted In Rem activities classified as either Section 105(a)(24) "essential repairs" activities or 24 CFR 570.202 rehabilitation activities should be reported separately. However, each activity would be reported as involving one multi-unit structure consisting of the City's total number of In Rem units. The performance report should then identify the number of units assisted by the respective activity and indicate the

applicable percentage from the most recently available HVS as the level of low- and moderate-income occupancy for the activity.

Also, the CDBG expenditures for the renovation of In Rem properties remain subject to proration in the calculation of the program's overall benefit to low- and moderate-income persons pursuant to 24 CFR 570.200(a)(3)(iv). The overall percentage of In Rem tenants who are low- and moderate-income, as determined by the most recent HVS, should be used in the calculation as the low- and moderate-income occupancy rate for all In Rem properties. In determining the total project costs to be used in the calculation, all costs for each respective activity should be aggregated as though all the units assisted by that activity are part of a single structure.

Other Terms:

HUD's provision of this waiver does not alleviate the City's responsibility for compliance with other applicable program requirements (i.e., Equal Opportunity, Davis-Bacon, lead-based paint, etc.). This waiver remains in effect until such time as the methodology and/or results of the HVS data fails to support justification of a waiver. The Field Office must ensure that, for each program year, the City uses the most recently available HVS data. The Field Office should also review each successive HVS to determine if there has been any change in either the methodology or the results of the HVS that would warrant reconsideration of this waiver approval. If such changes are found, the Field Office should forward the information with its recommendation to Headquarters for a final determination.

If you have any questions concerning this waiver, please contact the Entitlement Communities Division at (202) 708-1577.

cc: John E. Wilson, SC