

Program Eligibility Determination - Housing Code Enforcement

October 1, 1992

MEMORANDUM FOR: Anthony M. Villane, Jr., Regional Administrator-
Regional Housing Commissioner, 2S

ATTENTION: Joan T. Dabelko, Director, Office of
Community Planning and Development, 2C

FROM: Randall H. Erben, Acting Assistant Secretary
for Community Planning and Development, C

**SUBJECT: Community Development Block Grant (CDBG) Program Eligibility Determination -
Housing Court Code Enforcement
City of New York, New York**

This is in response to Ms. Joan T. Dabelko's memorandum dated June 23, 1992, requesting guidance on the eligibility of New York City's proposed use of CDBG funds for a Housing Court Code Enforcement program. The proposed program is to be administered by the City's Department of Housing Preservation and Development (HPD). The City's proposal raised complicated issues which required review by both our office and the Office of General Counsel.

According to Ms. Dabelko, New York City is proposing to use \$998,000 in CDBG funds as partial funding for court-ordered inspections. These inspections are prompted by tenants' complaints of housing code violations or eviction proceedings as well as heat and hot water inspections processed through HPD's Central Complaint Bureau. Overall, such inspections are conducted on a citywide basis. However, the City's proposal indicates that it will limit the use of CDBG funds to only those inspections undertaken in "CD-eligible areas." As part of documenting compliance with CDBG eligibility criteria, the City also indicates that HPD will provide a quarterly report on various neighborhood improvement programs it is implementing in the "CD-eligible areas" in which such inspections are performed.

In the case of Housing Court inspections, the results of the inspections are used by the Court in its decision on the tenant's complaint. In some instances, the Court may order a follow-up inspection to verify compliance. However, in most court cases and HPD's independent heat and hot water inspections, follow-up on corrective actions is done by sending certified letters to the affected tenants advising them to return an enclosed form if the violations have not been corrected. Two such letters are sent to each tenant. If the tenant does not respond to the second certified letter, the code violation is considered corrected.

Your office has indicated that, in the past, it has not accepted this type of program as an eligible CDBG code enforcement activity for two reasons. One, the activities charged to the CDBG program are essentially a subset of a citywide program. There is also no guarantee that the violations are actually

corrected. While these may be reasonable concerns, they are not appropriate bases upon which to exclude such a program from CDBG funding as long as those code inspections charged to the CDBG program comply with all applicable regulations. In the subject case specifically, the critical issue is clarifying what the City considers to be "CD-eligible areas."

Section 570.202(c) of the CDBG regulations authorizes "code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area." New York City's proposal does not define "CD-eligible areas." Your office's memorandum indicates that the term as used by the City is synonymous with "low- and moderate-income areas." Such a definition is not sufficient to comply with the eligibility requirements of §570.202(c) cited above. To be considered an eligible area in which CDBG-funded code enforcement activities may be undertaken, the area must be "deteriorating or deteriorated," as defined by the grantee. Please note that this definition need not necessarily be comparable to HUD's standards for designating a slum or blighted area under §570.208(b)(1)(i) and (ii) unless the activity is to be claimed under that national objective. Because the direction provided by §570.202(c) is limited, HUD is in the process of assessing how best to elaborate on the type of information a grantee should have in its files to reasonably support a conclusion that code enforcement is eligible for CDBG funding. In the interim, the City should be advised to document the following items:

- the City's definition of "deterioration" for purposes of this provision;
- the specific boundaries of the areas to be considered eligible for CDBG-funded code inspections;
- a sufficient description of the conditions in each area to support a determination that the area qualifies as deteriorating or deteriorated under the City's definition;
- a strategy for using code enforcement together with other activities to arrest the decline in each area; and
- such other information as may be necessary to determine the impact that the code enforcement and other activities are having on the decline of the area during the time the CDBG-assisted code enforcement is being carried out.

Another concern with New York City's proposal is how the City will actually calculate the amount of code inspection costs to be charged to the CDBG program. The methodology is not fully defined in the information provided for review. The City's proposal states that HPD's Division of Code Enforcement (DCE) will perform a quarterly analysis to determine the "proportion" of inspections that were performed in CD-eligible areas. However, the Regional Office's memorandum indicates that pursuant to "clarifications" provided by the City's Community Development Unit in the Office of Management and Budget, DCE clerical support staff would review the inspectors' time sheets to identify CD-eligible areas and document the basis for the "staff hours" charged to the CDBG program. New York City should be advised that it is not permissible to simply determine what percentage of the total number of inspections are conducted in CDBG-eligible areas and charge the CDBG program that percentage of the total cost. That methodology is a type of cost allocation plan that is not acceptable under the requirements of OMB Circular A-87. The code inspection direct costs charged to the CDBG program must be based on

appropriate time distribution records that should reflect an after-the-fact distribution of the actual activity of each CDBG-funded employee.

In addition, based on information in the Regional Office's memorandum, it appears that New York City intends to charge the costs for the support staff referenced above to the CDBG program. These staff would be reviewing the inspectors' time sheets and tracking other activities in order to determine which inspections could be charged to the Block Grant program and which should be paid with City funds. As described, these staff costs appear to be indirect costs as defined in Section F of Attachment A of OMB Circular A-87 in that they benefit more than one cost objective and it does not appear to be practical for the support staff to maintain detailed daily time records to identify the time chargeable to each cost objective. To the extent that these staff costs are indirect, the City would need to allocate them through a Federal cost allocation plan. This is to ensure an equitable distribution of the indirect expenses to the cost objectives served. The preferred base for distributing such costs is total direct salaries and wages.

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

cc: Linda Marston