

# Purchase of Portable Fixtures under Public Facilities Improvements

September 29, 1995

MEMORANDUM FOR: Herbert L. Roberts, Director, Community Planning and Development Division, 9DD

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

**SUBJECT: Community Development Block Grant (CDBG) Program  
Request for waiver to allow purchase of portable fixtures under public facilities and improvements Kern County, California (Shafter Neighborhood Activity Center)**

This is in response to your memorandum of August 2, 1995, transmitting a request from Kern County, California, to allow the purchase of fixtures that are not integral to the Shafter Neighborhood Activity Center to be included as part of the cost of constructing this public facility. Your Division has recommended approval of this waiver.

The County has requested a waiver of the CDBG regulation at 24 CFR 570.207(b)(1)(iii) which provides that the purchase of fixtures that are not integral structural fixtures are generally ineligible. The purpose of the waiver is to permit the County to purchase portable basketball goals and bleachers to be used exclusively at the Shafter Neighborhood Activity Center and include the cost of these fixtures as part of the cost of constructing the Center under 24 CFR 570.201(c). The County states that these fixtures are necessary to the function of the proposed facility and would better serve their intended purpose if they can be moved within the building to accommodate a variety of seating and recreational situations. In addition, the cost of portable basketball goals and bleachers is approximately \$22,400 less than if the fixtures were permanently installed. The County states that the cost savings will allow completion of the facility within the budget, which had to be amended because of problems encountered when the prime contractor defaulted on its contract.

The CDBG regulations distinguish between constructing and operating a public facility: construction is eligible under 24 CFR 570.201(c), public facilities and improvements, and operating the facility is eligible under 24 CFR 570.201(e), public service activities. Under 24 CFR 570.201(c), the cost of fixtures that are integral to a facility constructed under this part are eligible as a part of the cost of construction. Notwithstanding the prohibition at 24 CFR 570.207(b)(1)(iii), the purchase of fixtures that are not integral to a structure is allowable as a public service under 24 CFR 570.201(e) if the fixtures/equipment are necessary to permit a public service to be provided. However, your memorandum states that the County has a policy not to assist the public service component of public facilities. Therefore, the County has chosen not to fund the purchase of these fixtures as a public service, but rather to request a waiver to permit the inclusion of their cost under 24 CFR 570.201(c).

The CDBG regulation at 24 CFR 570.5 provides that a regulation may be waived if application of the

requirement would cause undue hardship and adversely affect the purposes of the Act. However, in this case, it is not the application of the requirement that is problematic. Rather, it is the fact that the County has chosen not to fund this activity using the CDBG regulatory provision under which it is eligible. Given this, the Department does not find that application of the regulation of 24 CFR 570.207(b)(1)(iii) will cause undue hardship and adversely affect the purposes of the Act. Therefore, the request for a waiver is denied.

If you have any questions or require additional information on this matter, please contact the Entitlement Communities Division at (202) 708-1577.

cc: John E. Wilson.