

## Real Property Purchase Options

NOTE TO: Sue Miller

FROM: Vincent R. Landau

**SUBJECT: Real Property Purchase Options, Eligible CDBG Activity Category**

This is in response to your informal question of whether CDBG expenditures for the subject options are eligible under the category of real property acquisition or some other category, such as overall program administration costs. As we have previously stated, such an option is not a commitment to purchase property, but rather a right to buy the property. The option precludes the property from being sold to anyone else during a specified period. The cost of the option is generally dictated by the length of the option period, the property's salability to other prospective purchasers and the value of the property. The purpose of the option is to provide more time to a prospective buyer before having to commit himself to purchase the property.

An option would generally only be purchased if the purchaser intended to buy the property provided his conditions for buying it were fulfilled. In the context of CDBG eligibility, the cost might be likened to that of an appraisal obtained by a prospective buyer of a property. Even though the option or pre-purchase appraisal does not constitute the acquisition of an interest in the property, where it is an inherent part of the property acquisition process it is, in my opinion, an eligible activity delivery type cost under the category of real property acquisition, even if the option is never exercised. We have never held to the proposition that preliminary costs directly related to a specific activity intended to be carried out in the CDBG program would be declared ineligible if the activity is cancelled or aborted. In the Miami Beach case (see attached), purchase of the option would be eligible as an activity delivery cost of the public services which were provided by the subrecipient to assist low-income families in obtaining homeownership. We held the cost of the option ineligible there as property acquisition of the subrecipient because there was never an intention that the subrecipient would buy the property i.e., it was not an inherent part of property acquisition activities by the subrecipient.