

Using CDBG Funds to Pay off an Outstanding Debt

Honorable Bob Filner
U.S. House of Representatives
Washington, DC 20515-0550

Dear Mr. Filner:

On behalf of Secretary Cisneros, thank you for your letter of January 9, 1995, in which you requested a waiver of the regulations under the Community Development Block Grant (CDBG) program to permit the Chicano Federation of San Diego County to use CDBG funds to pay off the outstanding debt on a building it owns at 2130 Market Street in San Diego.

The CDBG regulations at 24 CFR 570.5 provide that the Secretary may waive any requirement in the regulations that is not required by law whenever it is determined that undue hardship would result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act. However, in this instance, the Department has determined that a waiver would not be appropriate. This determination was made because under the CDBG program, the building owned by the Chicano Federation is considered a public facility and 24 CFR 570.201(c) of the CDBG regulations does not provide for CDBG funds to be used for refinancing existing indebtedness on a public facility. This part of the regulations is based on section 105(a)(2) of the Housing and Community Development Act of 1974, as amended, and the Department does not read the statute as permitting refinancing of existing indebtedness on a public facility as an eligible category. Waivers that, in effect, create a new "eligibility category" are not permissible.

In reviewing this request, the Department considered other sections of the CDBG regulations to determine whether this activity could otherwise be carried out. The regulations at 24 CFR 570.201(a) do permit the use of CDBG funds for the acquisition of real property. However, as stated above, because this building is considered a public facility, the regulations at 24 CFR 570.201(c) govern. While acquisition is authorized under either of these sections of the regulations, acquisition of real property is typically complete when the entity undertaking the purchase takes title to the property. Paying off or refinancing a loan obtained for the purchase of real property is not considered acquisition because no change in title results from paying off or refinancing the loan.

Another section of the regulations, 24 CFR 570.204, provides that certain community-based development organizations (CBDOs) may use CDBG funds to carry out activities that are eligible, as well as activities that are "otherwise ineligible," under the CDBG program. If the Chicano Federation could meet the criteria in this part of the regulations, it could be provided CDBG funds for the "otherwise ineligible" activity of paying off the outstanding debt on the property at 2130 Market Street if it is established that paying off the loan is part of a neighborhood revitalization project. The submission from the Chicano Federation states that it does not meet all the criteria set out at 24 CFR 570.204(c) to be considered a CBDO. This determination appears to have been made using a proposed rule published by the Department on May 31, 1994. Because the final rule published on January 5, 1995, included some

changes to this part of the regulations, the Department obtained relevant information from the City on the Chicano Federation's articles of incorporation and by-laws in order to review the Federation's eligibility as a CBDO under the provisions in the final rule at 24 CFR 570.204(c)(3). This section provides that the Department may, based on information in an organization's charter and by-laws, determine that the organization is sufficiently similar in purpose, scope and function to entities qualifying under paragraphs (1) and (2) of this section to be considered a CBDO. However, based on its review, the Department has determined that the Federation is not similar in function because its area of operation extends substantially beyond the jurisdiction of the City. Therefore, a determination has been made that the Federation is not an eligible CBDO under 24 CFR 570.204(c).

It is noted that the City of San Diego is currently providing CDBG assistance to the Chicano Federation in the form of a grant to undertake the historic preservation of this building. The Federation may wish to contact the City concerning the possibility of receiving CDBG funds to pay for the services that the Federation provides because such assistance may be eligible if the requirements of 24 CFR 570.201(e), Public services, can be met. While the total amount of assistance the City can provide under this eligibility category is subject to a statutory limitation, such assistance might free up other funds the Federation could use for payments on the outstanding debt. Further, although mortgage payments cannot be charged to the CDBG program, if assistance is provided under this part of the regulations, the non-profit may charge depreciation or a use allowance on the building to the CDBG program, in accordance with OMB Circular A-122, Attachment B, item 9.

A representative of the Department's Office of Community Planning and Development, Office of Block Grant Assistance, did meet with a representative of the Chicano Federation, Mr. David Valladolid, on February 17, 1995. During the meeting, Mr. Valladolid asked if a non-profit can hold title to property acquired with CDBG funds. He was advised that this is permissible. The CDBG regulations at both 24 CFR 570.201(a) and 24 CFR 570.201(c) permit acquisition by the grantee or a non-profit; they do not restrict or otherwise limit ownership of property acquired with CDBG funds to the grantee. This information has been included in this letter at Mr. Valladolid's request.

The information submitted with your letter has been carefully reviewed to determine what action, if any, could be taken to assist the Chicano Federation, as you have requested. While one suggestion has been provided, the Department has been unable to identify other ways in which CDBG funds could be used to assist this organization.

The Department regrets that a more positive response cannot be provided.

Sincerely,

William J. Gilmartin
Assistant Secretary

cc: Jim Collins, City of San Diego

cc:
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