

Waiver of the 15% Public Service Cap

11/1/95

Honorable Bruce H. Tobey
Mayor of Gloucester
Gloucester, MA 01930

Honorable Mayor Tobey:

Thank you for your letter of September 7, 1995, requesting a waiver of the 15 percent public service cap for the City of Gloucester, Massachusetts under the Community Development Block Grant (CDBG) program.

Your letter indicates that because of certain administrative difficulties, the City's 1993 and 1994 CDBG-funded public service activities are running almost concurrently. The City is now requesting a waiver of the 15 percent public service cap because recipient agencies have substantial unexpended balances remaining from Fiscal Year (FY) 1994 CDBG funds which will affect the calculation of the public service cap for FY 1995 funds.

In addressing your waiver request, clarification of several issues is needed. It is understood from the Department of Housing and Urban Development (HUD) staff in the Boston Field Office that because of the lateness of submitting the City's CDBG final statement for FY 1994 funds and the subsequent delays in contracting out these funds to public service providers, the obligations from the FY 1994 and FY 1995 grantees are running almost concurrently. Many of the same public service providers funded with FY 1994 CDBG funds were also included in the City's Consolidated Plan for FY 1995 funding, but the City has not offered contracts to many of these non-profits for fear of exceeding the public service cap during the 1995 program year. This Office has been further advised that the City's most recent Grantee Performance Report (GPR), which indicates use of funds in the FY 1994 program year, shows that the City has stayed within the 15 percent public service cap for that program year.

With regard to your waiver request, please be advised that the 15 percent public service cap is statutory and cannot be waived. Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, states that no more than 15 percent of the amount of any assistance under the CDBG program including program income may be used for public service activities with two exceptions, neither of which applies to the City of Gloucester. In implementing this provision of the law, the CDBG regulations at 24 CFR 570.201(e)(1) state that compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that year plus 15 percent of the program income received during the grantee's immediately preceding program year. Your letter indicates a concern because of the unexpended balances remaining for public service activities. Please note that the standard for compliance is based on obligations made during a grantee's program year.

While the Department cannot waive a statutory requirement, the methodology for determining compliance is regulatory and can be waived. Your letter, however, does not contain sufficient information upon which to grant consideration of a waiver. In order to consider a waiver request, HUD will need information, by individual public service activity, on the amount of CDBG dollars newly obligated for public services during your 1995 program year and the total dollar amount of obligations anticipated during the FY 1995 program year. The Department will rely on information from the City's Grantee Performance Reports (GPRs) for 1993 and 1994 in regard to the amount of program income received in those program years on the public service cap calculation (financial summary form, part V). Under the provisions of 24 CFR 570.5, the Secretary may waive any requirement not required by law whenever 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. For HUD to grant a waiver, therefore, it must determine that the waiver request adequately addresses these two regulatory considerations as well as provides adequate substantive information for review. Any such request for this waiver must be submitted initially to HUD's Boston Field Office.

In order to handle this issue as expeditiously as possible, this Office has asked HUD staff in the Boston Field Office to meet with you to discuss the information necessary for a waiver request. The HUD staff has also been asked to review these public service activities to determine whether in light of the new CDBG regulations published on January 5, 1995, any public service activity may be considered eligible under another category of assistance. You may be assured that staff will be contacting you shortly to arrange this meeting.

Thank you for advising HUD of this problem.

Very Sincerely Yours,

(signed AC)

Andrew Cuomo