

Legal Opinion: GCB-0005

Index: 1.2000  
Subject: SAFAH Program--Restricting Awards

November 1, 1991

Mr. Martin Sloane  
Assistant General Counsel  
United States Accounting Office  
Washington, D. C. 20548

Dear Mr. Sloane:

This responds to your letter of October 8, 1991, to General Counsel Frank Keating, asking us to address the Department's targeting of grant assistance under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program, as announced in the notice of funding availability (NOFA) published on August 30, 1991. You question the legal basis for restricting awards to only certain of the activities and applicants eligible for assistance under the statute, noting that the purpose of the SAFAH program is much broader than the focus of the NOFA.

As you know, the SAFAH program is authorized by Subtitle D of Title IV of the Stewart B. McKinney Homeless Assistance Act. Two of the three stated purposes in section 102(b) of the Act are to use resources in a more coordinated manner to meet critically urgent homeless needs, and to place special emphasis on assistance to the elderly, handicapped families with children, Native Americans and veterans. Both of these purposes are strongly supported under the funding strategy of the NOFA, by focusing on the capabilities of State recipients in coordinating the provision of available resources and delivery of services, and by targeting the assistance to families with children.

Section 432(a) of Title IV, Subtitle D, states that the Secretary is authorized to provide assistance for the activities there listed. Applicants are listed under the definition in section 431(1). Both listings are in the disjunctive and the funding authority of the Secretary under the program is not phrased in imperative terms. Since SAFAH is a discretionary assistance program, no funding rights are denied by the limitations imposed by the NOFA as would be the case, for example, in the CDBG entitlement program.

We believe that the rationale for the targeting described in the NOFA presents a reasonable exercise of the Secretary's discretion for administering the SAFAH program within his statutory authority. An additional explanation of the Department's funding objectives under the NOFA is contained in the enclosed memorandum of August 30 to our Field Offices. It should be noted that participation by local governments and nonprofit organizations through the State recipients is clearly anticipated. We should note also that there is precedent for

selective competitions for discretionary grants under other HUD programs. For example, technical assistance grant competitions under section 107(b)(5) of the Housing and Community Development Act of 1974, as amended, have at times been limited to historically Black colleges and universities, work-study programs for economically disadvantaged and minority students, and CDBG entitlement grantees, depending on the funding objectives of the assistance to be provided.

In summary, we do not believe that the imposition of limitations in this particular funding round of the SAFAH program subverts the intent of the program or violates the spirit or letter of the law.

Sincerely,

Vincent R. Landau  
Assistant General Counsel  
Block Grants Division