

Legal Opinion: GCB-0008

Index: 1.3000

Subject: HOPE 3 NOFA--Departmental Clearance Comments

November 13, 1991

MEMORANDUM FOR: Thomas M. Humbert, Deputy Assistant Secretary
Office of Policy Development, TP

FROM: A. Heaton Nash, Acting Associate General Counsel
Office of Assisted Housing and Community Development, GC

SUBJECT: Departmental Clearance of Notice of HOPE 3 NOFA

This is in response to your subject memorandum calling for comments by November 13 on the draft NOFA.

The system for rating and ranking planning grant applications appears to differ from that proposed in the recent HOPE 3 planning grant guidelines clearance. The previous clearance draft called for funding a number of the top ranking applications per Region "off the top" and then funding the remaining planning grant applications according to their national ranking, without regard to location. Provided that the number of applications funded initially per Region was not excessive, that system met both the requirement for a "national competition" in funding planning grants (section 442(d) of NAHA), and the requirement for selecting housing with "national geographic diversity" as part of that competition (section 442(d)(5) of NAHA).

The proposed new system would eliminate the funding of any specific number of applications per Region, and would substitute a system of "bonus points" for applications in Regions that do not fully utilize their implementation grant allocations, in an attempt to strengthen the capacity of applicants to receive implementation grants in the future in those Regions. However, we must nonconcur because this system fails to implement the statutory requirement of "national geographic diversity" for planning grants. Given the size of the bonus, virtually all planning grants funded could be in one or two Regions. While such a bonus system is not inappropriate per se, care must be taken that the level of the bonus is not excessive, and there needs to be the same assurance of at least minimal "national geographic diversity" for planning grants. One way to satisfy the latter comment is to include a requirement for funding at least a single top ranking application per Region "off-the-top."

We also attach a mark-up with a number of technical drafting and/or policy comments, which do not rise to the nonconcurrency level. An advance copy of the mark-up was previously furnished to your staff and the program office.

Attachment