HOPE 2--Revision of Implementation Grant Procedures

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Subject: HOPE 2--Revision of Implementation Grant Procedures

December 3, 1992

MEMORANDUM FOR: Margaret Milner, Director
Office of Resident Initiatives, HMR

THROUGH: John J. Daly, Associate General Counsel
Insured Housing and Finance, GH

FROM: David R. Cooper, Assistant General Counsel
Multifamily Mortgage Division, GHM

SUBJECT: Proposed Revision to Implementation Grant Procedures

We have reviewed your proposal for revisions to the HOPE 2 Implementation Grant application procedures. While the summary of proposed changes is very general and brief and does not provide enough information on which we can comment in detail, we are making the following comments and anticipate making additional comments once we receive a more detailed description of the changes.

1. A major change envisioned for the program is to make the application process a two-step process whereby certain requirements would be addressed at the first stage, after which the application would be funded. The second stage would involve working out the specifics of the homeownership program, such as the exact amount of the grant. We have learned from Linda Flister of your staff that the first stage would be considered a "pre-application" stage and the second stage would be the "application" stage.

Section 423(d)(1) of the HOPE statute provides for the submission of "an application," which suggests that funding decisions are to be made on the basis of the submission of one application containing all information necessary to select the highest scoring applicants. Also, considering the fact that many of the statutory requirements for the selection of grantees are based upon the review of an "application," we do not believe it was Congress' intent to have the Department make funding decisions on the basis of a process which is not the formal application process. Further, the legislative history of the Reform Act indicates that Congress warned against making funding decisions in the dark and states that the reform bill was crafted to ensure that all forms of assistance are taken into consideration before any awards are made. Therefore, it is our

opinion that there must be one formal "application" stage at

which applicants must submit all of the information necessary for HUD to score and select applicants and determine the appropriate grant amount.

As a means of hastening the selection process, it still may be possible to have a two-step process as long as the first step is the point at which the applicant submits a formal application containing all information necessary upon which to rate and rank the applicants and base an award, and the second step merely supplements the information presented in the first step. Information necessary to rate and rank should satisfy all statutory requirements of Sections 423(d)(2), 424(e) and (f) of the statute, and any other information required by the statute to be submitted as part of the application. Additionally, the information submitted during the first stage must meet the threshold requirements established by the guidelines published on January 14, 1992. The exhibits you have proposed to be submitted for the first stage do not appear to be sufficient to meet that threshold level. To demonstrate, Section 420(a) of the guidelines states that HUD must determine, as a threshold criterion, that the statute's affordability standards can be met. According to page 2-9 of HUD Notice H 92-32, Processing Instructions for HOPE 2, reviewers must look at application exhibits 19, 21, 26 and 28 to make such a determination. However, these exhibits do not appear on your list. Another example is that Section 425(b)(7), which rates the feasibility and efficiency of the program, requires a review of exhibit 14 (see page 2-12). However, your listing also does not include this exhibit. Other exhibits that the statute would require include the following:

Exhibit 4 - Description of Activities (see Section 423(d)(2)(D))
Exhibit 18 - Management Entity (see Section 423(d)(2)(K))
Exhibit 25 - Financing of Eligible Property (see Sections 423(d)(2)(G) and 424(e))
Exhibit 30 - Section 8 Assistance (see Sections 423(d)(2)(B) and 424(f))

Therefore, your office must reconsider the exhibits which must be reviewed for the first of a two-stage review process to ensure that HUD is collecting information sufficient to satisfy both statutory and guideline requirements for selecting applicants.

2. Another major change you propose is that the Resident Initiatives Specialist (RIS) "have greater involvement in developing the homeownership program -- also have more flexibility to `negotiate' various aspects" of the program. It is our understanding that the RIS would have this greater flexibility after the first stage of the two-stage process (you have proposed).

With regard to whether the RIS could have this greater flexibility, it should be noted that Part 4 of the Department's regulations implementing Section 103 of the Reform Act was amended recently to provide that the prohibitions of Part 4 will

not apply to an assistance program once HUD has determined that a particular level of funding is non-competitive, i.e., all eligible applicants could be funded without competition. Part 4 also allows HUD staff to provide technical assistance or disclose certain information to applicants during a competitive selection process. Section 4.105(a)(1) states that -

> T he term "technical assistance" includes such activities as explaining and responding to questions about program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in a NOFA. Before the deadline for the submission of applications, the term "technical assistance" may include identification of those parts of an application that need substantive improvement, but this term does not include advising the applicant how to make those improvements.

Therefore, prior to the application deadline for a funding round, any conversations HUD staff may have with others are limited to the permissible disclosures in Section 4.105. If the funds available for the funding round could not fund all applications submitted, these limitations would continue to apply for the balance of the selection process. However, if HUD has determined that all applications submitted for a particular funding round could be funded, staff may discuss -- on a uniform basis with all applicants -- program requirements and unpublished policy statements and may provide technical assistance concerning program requirements.

Please note that these conclusions are based on the theory that there is a one-stage application process. While we have stated in item 1 above that it may be possible to have a two-stage process featuring the submission of some application exhibits (containing information not required by statute) at a later time, such a process raises the issue of whether HUD may freely discuss information with applicants when parts of the application are still outstanding. We are seeking advice from the Personnel and Ethics Law Division and expect to provide you with that advice in the near future.

You also have stated that the ability of the RIS to have more of a role is similar to the property disposition process. It is true that the property disposition program provides for more flexibility. However, the difference between HOPE 2 and the property disposition program is that, regarding the latter program, the Secretary's authority to shape the terms of sale is pursuant to statute (specifically, section 203(e)(3) of the Housing and Community Development Amendments of 1978), which is

very specific as to the conditions under which the Secretary may negotiate. There is no corresponding statutory flexibility built into the HOPE 2 statute.

3. The proposal states that the application must include matching funds which amount to $2,000 per unit and the "applicant

would have until preparation of the grant agreement to deliver the balance of the required match based on actual figures."

Section 423(c) of the HOPE statute requires that matching funds equal to not less than 33 percent of the grant amount be provided. However, Section 423(d)(2)(E) states that as a minimum requirement, the application must contain "a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) ...." Thus, it is our opinion that these provisions require the applicant to identify on the application the total matching funds expected to be contributed and to provide commitments for this amount. (See also, Section 415(b)(9) of the guidelines). Since the funds could be delivered at a later date, we recommend that you be more specific as to the time the funds must be provided, e.g., 60 days after execution of the grant agreement. That way, all parties would be on notice as to exactly when funds must be provided.

4. You have also proposed that the funds reservation for each grant would be based on a per unit amount, i.e. the Section 223(f) limits plus a specified percentage for other activities. The initial grant amount would be increased or decreased based upon subsequent processing of the application exhibits.

We do not find any statutory prohibition to establishing grant limitations in accordance with the limits under Section 207 pursuant to Section 223(f). However, we are concerned about having the application propose an estimated grant amount, which is subject to subsequent adjustments, when the statute requires that certain amounts, such as the match and administrative funds, be based on a percentage of the total grant amount. If the total grant amount is not realistically estimated at the time of the application, it would seem to be difficult for the application to stipulate a fixed amount for the match and administrative funds, particularly since we believe the application must identify the source of all the matching funds. Thus, it may be more prudent to require the applicant to request the amount of funds it believes is necessary to carry out its homeownership program so that correlated amounts may also be determined.

5. Assuming that the proposed program changes did not have any legal problems, the development of details during the second stage could result in the reduction or the increase of the grant amount. If there were an increase in grant amounts for a number

of grants, we believe that there is a danger that the amount of available funds could be exceeded. Also, could such subsequent manipulations of the grant amounts interfere with the award of grants in a subsequent round when funds for subsequent rounds are limited?

If you have any questions, please call Monica Jordan on 708-4107