HOPE 2--Implementation Grants

Legal Opinion: GHM-0084

Index: 3.600
Subject: HOPE 2--Implementation Grants

April 19, 1993

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

FROM: Donald A. Franck, Chief Attorney, Loan Management and
Property Disposition Section, GHM

SUBJECT: HOPE 2 Implementation Grant Issues (L-1458)

This responds to your electronic mail message dated January 26, 1993 to David Cooper, Monica Jordan and myself regarding the following issues.

The first issue concerns a planning grant recipient which plans to acquire the property from the RTC prior to applying for an implementation grant with the belief that it will still be eligible to apply for the implementation grant to pay off the bridge loan and fund the homeownership program. You believe that an argument could be made that the original property eligibility status under the planning grant could confer permanent eligibility which would apply to the implementation grant.

The HOPE 2 statute establishes two distinctly separate application processes for the planning and implementation grants. For each grant application, the applicant must identify and describe the property. (See, sections 422(c)(2)(C) and 423(d)(2)(E) of the National Affordable Housing Act). It is our opinion that the reason the requirements for both the planning and the implementation grants specify that the property be identified and described is to enable HUD to determine the eligibility of the property at the time the particular type of application is being submitted. We do not believe the statutory language would support the extension to the implementation grant application of an eligibility determination made at the planning grant stage.

The second question is whether property which is financed by a Federal, state or local agency could be considered to be property "held" by that agency in the same manner as section 202 properties are "HUD-held."

Section 426(3) of the HOPE 2 statute defines "eligible property." Included among eligible properties are those which are "(A) owned or held by the Secretary" and "(B) financed by a loan or mortgage held by the Secretary ...." Some time ago, the HOPE 2 working group discussed the confusion caused by the phrase "owned or held" because of the different meanings in Departmental parlance attributed to each word. That is, the word "owned" traditionally is used in connection with the holding of title to property and the word "held" traditionally is used in connection with the holding

of a mortgage as security for debt on the property. The group consensus was that the term "owned or held" as it appears in subsections (A) and (D) would be read as "owned" only. We believe such an interpretation is warranted given the distinctions between subsections (A) and (B). That is, if subsection (A) were intended to cover not only property owned by the Secretary but also mortgages held by the Secretary, there would be no need for subsection (B). Therefore, when the RTC holds a mortgage on property, it may be considered a mortgage "held" in the same way that section 202 mortgages are "held" by the Secretary. However, under this interpretation, property that is subject to a mortgage held by the RTC is not eligible property.

The third issue concerns whether section 202 housing could be eligible property under the HOPE 2 program if it is developed only as a cooperative. Since your questions relate to restrictions and permissible actions under the Section 202 program, we defer to either Michael Reardon or Betty Park, program counsel for the section 202 program.