

Transfer of Urban Renewal Surplus Land Proceeds from One Entitlement Grantee to Another

March 2, 1992

MEMORANDUM FOR: Anthony M. Villane, Jr., Regional Administrator-
Regional Housing Commissioner, 2S

ATTENTION: Burton Bloomberg, Acting Manager,
Newark Field Office, 2.5S

FROM: Anna Kondratas, Assistant Secretary
for Community Planning and Development, C

**SUBJECT: Proposed Transfer of Urban Renewal Surplus Land Proceeds from One Entitlement Grantee to Another
Wayne Township, New Jersey**

This memorandum is provided in response to the December 20, 1991, memorandum from Burton Bloomberg to James R. Broughman, Director of the Entitlement Communities Division. In the referenced correspondence, the Newark Field Office requested guidance regarding whether the Township of Wayne could transfer surplus proceeds from the sale of Urban Renewal land to the City of Paterson for use under the State of New Jersey's Fair Housing Act.

Background

In December 1989, Wayne Township sold one of the four quadrants in Urban Renewal project number NJ-R-178 for the fair market value of \$9.3 million. This enabled the Township to fully repay the Categorical Program Settlement Grant (\$2,531,084) and realize a surplus of funds in the amount of \$6,768,916, less eligible expenses necessary to complete the sale. A Closeout Agreement for the Settlement Grant had previously been executed on June 18, 1980, at which time the Township did not have an ongoing CDBG grant received directly from HUD. Wayne Township did not become a CDBG Entitlement grantee until Fiscal Year 1990, with its first grant awarded in September 1990.

Given the above facts, the Office of General Counsel provided an opinion in December 1990 which stated that the program income regulations at 24 CFR 570.504(b)(5) govern the use of the subject surplus land proceeds received by Wayne Township.

Pursuant to that section, the proceeds must be used for activities which meet one of the national objectives in §570.208 and the eligibility requirements described in section 105 of the Housing and Community Development Act of 1974, as amended, but none of the other provisions of 24 CFR Part 570 apply.

Current Issue

In accordance with the State of New Jersey's Fair Housing Act, Wayne Township is required to produce 1,000 affordable units for low- and moderate-income households as its fair share obligation of regional housing needs. As permitted under the State law, however, the Township has entered into a Regional Contribution Agreement (RCA) with the City of Paterson, through which Wayne Township can transfer up to 50 percent of its fair share obligation to the City. The City of Paterson is also a CDBG entitlement grantee. While a copy of the RCA has not been provided, the information provided by the Newark Field Office indicates that the scope of work includes the rehabilitation of 500 substandard units within the City of Paterson. Wayne Township intends to utilize the Urban Renewal surplus land proceeds discussed above to underwrite the cost of this rehabilitation effort. Given that payments will be phased over a 5-year period, the Township anticipates that the existing surplus proceeds fund (approximately \$6 million) together with the future interest to be earned on it will be almost, if not totally, sufficient to pay the \$9,150,000 cost under the RCA.

The Newark Field Office has requested guidance on three issues relating to the above proposal. Each issue is discussed individually below.

The first issue raised by the Field Office is whether it is permissible for the Township to pay the Urban Renewal surplus land sale proceeds to another Entitlement community. Please be advised that such a transaction is permissible. Nothing in section 105 of the Housing and Community Development Act of 1974, as amended, prohibits a recipient from granting funds to another community as payment for eligible activities undertaken outside the recipient's jurisdiction. However, we note that with such an arrangement, Wayne Township is still held responsible by HUD to ensure that the activities for which the funds are used meet the applicable eligibility and national objective requirements. That responsibility cannot be transferred to the City of Paterson through the RCA.

Secondly, the Newark Field Office requests Headquarters' concurrence in its determination that the proposed rehabilitation activities would be eligible under 24 CFR 570.202(a) and (b) and would comply with the national objective requirements delineated at 24 CFR 570.208(a)(3). We first note that pursuant to §570.504(b)(5) as discussed above, the only eligibility requirements the activities must meet are those described in section 105 of the Act. The Township may consult the CDBG regulations for guidance, but formal classification of activities should be based on the Act. With that in mind, we concur that the proposed rehabilitation activities appear to be eligible under section 105(a)(4) of the Act.

In regard to national objectives, the information provided at this time is insufficient to support a determination that the proposed rehabilitation qualifies as a low- and moderate-income housing activity under §570.208(a)(3). First, it must be ensured that the definition of "low- and moderate-income household" under the State of New Jersey's Fair Housing Act is, at minimum, consistent with that term's definition under the CDBG program. Secondly, no information has been provided to indicate whether the State law and/or the RCA entered into by Wayne Township and Paterson include any provision governing the percentage of low- and moderate-income occupancy in any individual multifamily structure. As you are aware, in order for the rehabilitation of a multifamily structure to comply with 24 CFR 570.208(a)(3), at least 51 percent of the units in the structure must be occupied by low- and moderate-income households at affordable rents upon completion of the rehabilitation (or one unit in the

case of a structure containing only two units). If Wayne Township and the City of Paterson wish to assist any properties that do not meet the above low- and moderate-income occupancy standard, they may undertake such rehabilitation if compliance with the slum and blight provisions delineated at 24 CFR 570.208(b) can be documented.

As a third issue, the Field Office asked what mechanisms would be involved in the management and monitoring of the activity by Wayne Township. As discussed above, the requirements to which the surplus proceeds are subject are quite limited. Apart from the noted eligibility and national objective requirements, the standard CDBG provisions do not apply. Thus, the Township is free to establish whatever system it deems most appropriate for monitoring assisted activities carried out by the City of Paterson. However, we reiterate that it is Wayne Township that is still held responsible by HUD to ensure that the activities for which the funds are used meet the applicable eligibility and national objective requirements. That responsibility cannot be transferred to the City of Paterson through the RCA.

General Guidance

The Newark Field Office's memorandum indicates that it anticipates receiving inquiries from other grantees regarding the use of CDBG funds or program income for activities similar to the current case involving Wayne Township. Thus, the Office requests guidance on whether CDBG funds in general may be used in this manner.

Certain aspects of the subject Wayne Township case are unique because of the classification of the income to be utilized to assist the activity. However, it may be permissible for grantees to use CDBG funds in general to undertake similar activities, subject to certain further restrictions.

As discussed above, nothing in section 105 of the Housing and Community Development Act of 1974, as amended, prohibits a recipient from granting funds to another community as payment for eligible activities undertaken outside the recipient's jurisdiction. The regulations at 24 CFR Part 570 also permit such an arrangement. However, the use of CDBG funds for such a purpose must be clearly discussed during the citizen participation processes required at §570.301(b) and §570.305(b). If a grantee then elects to undertake such an activity, the community implementing the activity is responsible for complying with the same requirements as are applicable to subrecipients. Thus, a written agreement meeting the requirements of 24 CFR 570.503 must be executed by both entities. Pursuant to 24 CFR 570.501(b) and 85.40(a), the recipient remains responsible for ensuring that CDBG funds are used in accordance with all program requirements and for monitoring the community. The recipient also remains responsible for complying with all environmental requirements delineated in 24 CFR Part 58 to the same extent as if it were carrying out the activities directly. Moreover, the recipient would be required to report the use of the funds in its Grantee Performance Report, and the community carrying out the activity would not report to HUD on such activities directly, even if that community was itself an Entitlement grantee.

Given the information provided by the Field Office, it appears that the scope of work that may be included in a Regional Contribution Agreement under State law is broader than activities that are eligible under the CDBG program. If CDBG funds are to be utilized, such assistance must be limited to eligible activities as delineated in 24 CFR 570.201 - 570.206. Compliance with the national objective

requirements contained in 24 CFR 570.208 must also be demonstrated.

If you have any questions concerning this guidance, please contact the Entitlement Communities Division at FTS: 458-1577.

cc: Linda Marston, SC