

Legal Opinion: GCH-0072

Index: 2.230, 2.200

Subject: Modernization Funding for Developments with MROP

June 17, 1993

MEMORANDUM FOR: Janice D. Rattley, Director, Office of  
Construction, Rehabilitation and  
Maintenance, PC

FROM: Robert S. Kenison, Associate General Counsel, Office  
of Assisted Housing and Community Development, GC

SUBJECT: Modernization Funding for Developments  
with Completed Major Reconstruction of Obsolete  
Project (MROP)

This is in response to your memorandum, dated April 1, 1993, in which you requested a legal opinion as to when section 14 (of the United States Housing Act of 1937) (Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP)) funds may be used on a development which was rehabilitated with MROP. It is our opinion that CGP or CIAP funds may be used to modernize a development that was rehabilitated with MROP after the date of full availability (DOFA) for the MROP.

Prior to the Housing and Community Development Act of 1992, section 5(j)(2) of the United States Housing Act of 1937 only provided that not more than 20 percent of the funds appropriated for development may be committed for "substantial redesign, reconstruction, or redevelopment of existing public housing projects or units, which work shall be carried out pursuant to rules and regulations applicable to the development of public housing." In my October 5, 1988, memorandum to James E. Baugh, General Deputy Assistant Secretary for Public and Indian Housing, I concluded:

A completed MROP project could subsequently be eligible for modernization funding on the same basis as a project that had previously been comprehensively modernized. Similarly, if an obsolete project has received modernization funding that has not been successful in restoring it to an acceptable level, it could be funded as an MROP project.... modernization funding under section 14 and major reconstruction funding under section 5(j)(2) are separate authorities and may not be treated as fungible. However, they may be used in a harmonious manner to accomplish the overall objective of rehabilitation and modernization of existing public housing projects.

(memorandum attached).

Section 111 of the Housing and Community Development Act of 1992 amended section 5(j)(2) and section 14(c) by adding that modernization assistance could be provided to buildings which are not assisted under section 5(j)(2).

Congress did not limit the period between MROP and modernization funding as it did for MROP and demolition/disposition funding (10 year bar) (section 111 (b)(2) amending section 18(a) of the United States Housing Act). No legislative history is available regarding section 111(b). We conclude that Congress only intended a prohibition against concurrent use of MROP and modernization.

After the completion of an MROP, a DOFA will be determined. Usually within 2 years of DOFA, an actual development cost certificate (ADCC) is issued (after all audits are completed). Between DOFA and ADCC, there may be modernization needs. We suggest that modernization funding could be used as soon as DOFA; however, policy concerns and available funding may call for a longer period before modernization funds can be used. In the preamble to the CIAP interim rule published March 15, 1993 in the Federal Register (58 FR 13921), public comments were requested on the limits of section 111(b). To date, no public comments have been received on this point. In the proposed development rule (which has finished Departmental clearance), PIH has added a requirement in proposed section 941.603 that MROP assistance may not be provided to any project assisted within five years of the MROP application by CIAP or CGP modernization funds. A similar time period between MROP and modernization could be imposed through rulemaking, if desired.

Attachment