



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

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FEDERAL RELATIONS:
Distribution of Funds Under
HOME Investment Partnership Act

Honorable Penny L. Severns
Honorable Kathleen L. Wojcik
Co-Chairs
Commission on Intergovernmental Cooperation
707 Stratton Building
Springfield, Illinois 62706

Dear Senator Severns and Representative Wojcik:

I have your letter wherein you inquire regarding the authority of the Illinois Housing Development Authority (IHDA) to distribute funds allocated to the State by the HOME Investment Partnerships Act (42 U.S.C. § 12741 et seq.) to Cook County, a participating jurisdiction which receives a separate allocation of funds under the Act. For the reasons hereinafter stated, it is my opinion that the Federal statutes and regulations governing the distribution of allocated funds authorize the State to distribute funds for use in participating jurisdictions, including Cook County, as well as in areas which are not part of a separate participating jurisdiction.

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The HOME Investment Partnerships program was enacted as a part of the National Affordable Housing Act, P.L. 101-625, effective November 28, 1990, codified at 42 U.S.C. § 12701 et seq. The Act includes a number of programs, and was the subject of extensive congressional hearings, reports and debates. (See U.S. Code Cong. & Adm. News, vol. 8, 6753 et seq.) The legislative intent resulting in the Act is therefore well documented in legislative history as well as in the statutory provisions and in the regulations promulgated pursuant thereto.

The HOME Investment Partnerships program provides Federal funds, administered by the Department of Housing and Urban Development (HUD), on a matching basis with State and local funds, for the construction and rehabilitation of low income housing. Funds are allocated separately, based upon a statutory formula, to "participating jurisdictions", which are local governmental entities or consortia thereof, and to individual States. The statute directs that, of amounts appropriated for the program, save for set asides for Indian tribes and insular areas, 60% is to be allocated among units of local government, and 40% is to be allocated among States (42 U.S.C. § 12747). Funds are allocated to participating jurisdictions based upon a formula using six factors relating to per capita income and existing housing within each jurisdiction. Twenty percent of the funds allocated to States are allocated based upon the formula

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factors for the entire State. Eighty percent of the funds allocated to States are allocated based upon the formula factors for units of general local government within the State that do not receive separate allocations. (24 C.F.R. § 92.50(e).) Thus, conditions in participating jurisdictions within the State impact the State's allocation of funds, but only to the extent of 20% of all funds allocated to the several States.

Section 222 of the Act (42 U.S.C. § 12752) provides, in relevant part:

" * * *

(b) State

Participating States shall be responsible for distributing assistance throughout the State according to the State's assessment of the geographical distribution of the housing need within the State, as identified in the State's approved housing strategy. Participating States shall distribute assistance to rural areas in amounts that take into account the nonmetropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's housing strategy approved under section 12705 of this title. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need."

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Similarly, the regulations implementing the program provide:

" * * *

(b) State. (1) Each participating State is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of the housing need within the State, as identified in the State's approved housing strategy. The State must distribute HOME funds to rural areas in amounts that take into account the nonmetropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's approved housing strategy. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

* * *

(24 C.F.R. § 92.201(b)(1).)

These provisions specifically authorize the State to distribute assistance throughout the State, including within participating jurisdictions. There are, however, limits upon State distributions to participating jurisdictions. Those limits include the provisions of the State's approved housing strategy (a prerequisite to its receipt of funds), distributions to rural areas commensurate with population distribution and rural housing needs, and coordination with participating units. The information you have provided does not indicate that IDHA distributions to Cook County have violated these guidelines.

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That the statutory and regulatory provisions accurately reflect legislative intent with respect to the use of funds made available by this program is evident from the Senate Report which explains it. After explaining that considerable controversy surrounded the question of the distribution formula between States and local governments, the Report states:

" * * *

* * * The Committee finally decided that a 40 percent state, 60 percent local division would be most appropriate for several reasons. First, it reflects the fact that a disproportionate share of the funds in programs consolidated into [HOME] would have gone to local governments [sic]. Second, it recognizes that the CDBG division is not analogous, since under CDBG state funds are to be used only in non-entitlement areas. [HOME] properly would give each participating state responsibility for serving housing needs throughout the entire state, including needs in participating local jurisdictions. The Committee believes that state governments must be given responsibility for the whole state since the achievement of affordable housing will require close coordination among activities of local and state governments.

* * *

(S. Rep. No. 101-316, 101st Cong., 2nd Sess. at 66 (1990); 1990 U.S. Code Cong. & Adm. News, Vol. 8, at 5828.) "

The acronym CDBG refers to the Community Development Block Grant program administered by HUD. In contrast to that program, it is clear that State allocations of HOME funds are

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intended to be used for projects in participating jurisdictions as well as in non-participating areas.

HOME Investment Partnership funds are intended to be used for projects throughout the State. Therefore, it is my opinion that funds allocated to the State under that program may be reallocated for projects in Cook County, notwithstanding that Cook County receives a separate allocation of funds under the program. Although a part of the State allocation can be distributed to Cook County and other metropolitan areas, IHDA, as the agency administering the State allocation of funds, must also ensure that the housing needs of rural communities are supported by the program, in accordance with the requirements of the statute and the clear legislative intent thereof.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL