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B-214278, JAN 25, 1985

STATES - FEDERAL AID, GRANTS, ETC. - FEDERAL STATUTORY RESTRICTIONS - STATE FUND CONTRIBUTIONS DIGEST: 1. A LOCAL SHARE OF PROGRAM COSTS IS REQUIRED UNDER THE FMHA WATER AND WASTE DISPOSAL DEVELOPMENT GRANT PROGRAM. WHERE A STATUTORY PROVISION SPECIFIES THAT THE FEDERAL CONTRIBUTION TO A LOCAL PROJECT WILL NOT EXCEED A PARTICULAR PERCENTAGE OF PROJECT COSTS, THE REMAINING PROJECT COSTS SHOULD BE FUNDED WITH NON-FEDERAL MONIES IN THE ABSENCE OF A CLEAR INDICATION OF CONTRARY CONGRESSIONAL INTENT. STATES - FEDERAL AID, GRANTS, ETC. - ALLOCATION OF FUNDS 2. IN THE ABSENCE OF A SPECIFIC STATUTORY AUTHORITY, FEDERAL GRANT IN-AID FUNDS FROM ONE PROGRAM MAY NOT BE USED TO SATISFY THE LOCAL SHARE REQUIREMENTS OF ANOTHER FEDERAL GRANT-IN-AID PROGRAM. NEITHER THE FMHA WATER AND WASTE DISPOSAL DEVELOPMENT GRANT PROGRAM NOR THE EPA TREATMENT WORKS CONSTRUCTION GRANT PROGRAM CONTAIN SUCH AUTHORITY. HOWEVER, TWO OR MORE AGENCIES MAY CONTRIBUTE TO THE SAME PROJECT (IF EACH IS AUTHORIZED TO DO SO) PROVIDED THAT THE TOTAL FEDERAL GRANT PAYMENT DOES NOT EXCEED THE STATUTORY LIMIT. WORDS AND PHRASES - "PROJECT COSTS" 3. THE TERM "PROJECT COSTS" MEAN, IN THIS CONTEXT, COSTS ELIGIBLE FOR GRANT ASSISTANCE UNDER A PARTICULAR GRANT PROGRAM PLUS THE REMAINING NON- FEDERAL SHARE. WHILE ANOTHER AGENCY MAY NOT CONTRIBUTE THE SAME PROJECT COSTS IF THE FIRST AGENCY HAS MADE THE MAXIMUM ALLOWABLE GRANT IT IS FREE TO MAKE A GRANT FOR OTHER COSTS, NOT ELIGIBLE UNDER THE FIRST AGENCY'S GRANT AUTHORITY, TO THE EXTENT PERMITTED BY ITS OWN STATUTE.

FARMERS HOME ADMINISTRATION - COST SHARING REQUIREMENTS:

THE ADMINISTRATOR OF THE FARMERS HOME ADMINISTRATION (FMHA) HAS ASKED WHETHER A COST SHARING OR MATCHING FUND REQUIREMENT EXISTS UNDER THE FMHA WATER AND WASTE DISPOSAL (WWD) DEVELOPMENT GRANT PROGRAM. THE WWD AUTHORIZING LEGISLATION LIMITS A GRANT TO A SPECIFIC PERCENTAGE OF PROJECT DEVELOPMENT COSTS WHILE REMAINING SILENT AS TO WHERE THE REMAINING FUNDS WILL ORIGINATE. THE ADMINISTRATOR ALSO ASKS TO WHAT EXTENT WWD GRANT FUNDS MAY BE USED TO SATISFY LOCAL MATCH REQUIREMENTS UNDER THE ENVIRONMENTAL PROTECTION AGENCY'S (EPA) TREATMENT WORKS CONSTRUCTION GRANT PROGRAM. AS EXPLAINED BELOW, WE CONCLUDE THAT A LOCAL SHARE IS REQUIRED UNDER THE WWD DEVELOPMENT GRANT PROGRAM, AND THAT WWD GRANT FUNDS MAY NOT BE USED TO SATISFY THE LOCAL SHARE OF EPA'S TREATMENT WORKS CONSTRUCTION PROGRAM. WE ALSO CONCLUDE IN EXPLAINING SEVERAL HYPOTHETICAL FUNDING ARRANGEMENTS, THAT FMHA MAY BE ABLE TO MAKE A SEPARATE GRANT TO AN OVERALL PROJECT THAT INCLUDES AN EPA GRANT SO LONG AS FMHA DOES NOT PAY FOR COSTS THAT ARE ELIGIBLE FOR ASSISTANCE UNDER THE EPA GRANT AWARD.

BACKGROUND

SECTION 306(A)(2) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT, AS

AMENDED, 7 U.S.C. SEC. 1926(A)(2)(1982), AUTHORIZES THE SECRETARY OF AGRICULTURE TO AWARD GRANTS--

"*** TO FINANCE SPECIFIC PROJECTS FOR WORKS FOR THE DEVELOPMENT, STORAGE, TREATMENT, PURIFICATION, OR DISTRIBUTION OF WATER OR THE COLLECTION, TREATMENT, OR DISPOSAL OF WASTE IN RURAL AREAS ***."

SUCH GRANTS MAY NOT EXCEED 75 PERCENT OF PROJECT DEVELOPMENT COSTS. ID. THE SUBMISSION INDICATES THAT WHERE PROJECT ASSISTANCE IS NECESSARY, LOANS ARE MADE TO THE MAXIMUM EXTENT POSSIBLE AND DEVELOPMENT GRANTS UP TO 75 PERCENT OF PROJECT DEVELOPMENT COSTS ARE THEN USED FOR THE REMAINDER OF THE PROJECT ... COMBINATION OF LOAN AND GRANT FUNDS IS USED TO REDUCE THE COSTS TO A REASONABLE LEVEL. SEE 7 C.F.R. SEC. 1942.356. THE SUBMISSION ALSO NOTES THAT THE FMHA OCCASIONALLY PARTICIPATES WITH OTHER FEDERAL AGENCIES (E.G., THE EPA) IN PROVIDING FINANCIAL ASSISTANCE TO A PROJECT, AND RAISES SEVERAL QUESTIONS, WHICH WE WILL ADDRESS LATER IN THIS DECISION, REGARDING SUCH JOINT PARTICIPATION.

LOCAL MATCH REQUIREMENT UNDER THE WWD DEVELOPMENT GRANT PROGRAM

THE FMHA ARGUES THAT NO LOCAL MATCH IS REQUIRED UNDER THE WWD DEVELOPMENT GRANT PROGRAM SINCE NEITHER 7 U.S.C. SEC. 1926(A)(2) NOR ITS LEGISLATIVE HISTORY SETS FORTH SUCH A REQUIREMENT. WE DISAGREE. WHERE A STATUTORY PROVISION SUCH AS SECTION 1926(A)(2) SPECIFIES THAT THE FEDERAL CONTRIBUTION TO A LOCAL PROJECT WILL NOT EXCEED A PARTICULAR PERCENTAGE, WE NORMALLY INTERPRET IT AS PROVIDING THAT THE REMAINING PORTION OF THE PROJECT COSTS WILL BE FUNDED THROUGH A LOCAL SHARE MADE UP OF FUNDS FROM NON-FEDERAL SOURCES. SEE, E.G., B-167694, MAY 22, 1978; 52 COMP.GEN. 558 (1973). SOME CLEAR EXPRESSION FROM CONGRESS IS REQUIRED TO REACH ANOTHER RESULT. MOREOVER, WE DO NOT AGREE WITH THE FMHA'S ASSERTION THAT THE LEGISLATIVE HISTORY OF SECTION 1926(A)(2) IS SILENT ON THE ISSUE OF A LOCAL SHARE. THE HOUSE REPORT WHICH ACCOMPANIED THE AGRICULTURAL CREDIT ACT OF 1978, PUB.L. NO. 95 334, 92 STAT. 421, EXPLAINED WITH REGARD TO THE WATER AND WASTE DISPOSAL GRANT PROGRAM:

"DEVELOPMENT GRANTS ARE AUTHORIZED TO BE MADE TO PUBLIC OR QUASI PUBLIC AGENCIES FOR THE DEVELOPMENT, STORAGE, TREATMENT, PURIFICATION, AND DISTRIBUTION OF DOMESTIC WATER OR THE COLLECTION, TREATMENT, OR DISPOSAL OF WASTE IN RURAL AREAS. GRANTS MAY NOT EXCEED 50 PERCENT /1/ OF THE DEVELOPMENT COST OF THE PROJECTS AND SUPPLEMENT OTHER FUNDS BORROWED OR FURNISHED BY APPLICANTS TO PAY DEVELOPMENT COSTS." H.R. REP. NO. 986, 95TH CONG., 2ND SESS. 19 (1978).

THE UNDERSCORED LANGUAGE CLEARLY INDICATES THAT A PORTION OF THE DEVELOPMENT COST OF A PROJECT IS TO BE PAID WITH FUNDS PROVIDED BY THE APPLICANT, EITHER DIRECTLY OR THROUGH BORROWING. WE ALSO NOTE THAT IN HIS FLOOR REMARKS OF MAY 1, 1978, SENATOR ALLEN REPEATEDLY STATED THAT THE BILL, THEN UNDER CONSIDERATION BY THE SENATE, WOULD INCREASE THE MAXIMUM ALLOWABLE FEDERAL SHARE ON WATER AND WASTE DISPOSAL PROJECTS FROM 50 TO 75 PERCENT. 124 CONG.REC. 11863, 11864, 11865 (1978). WE INTERPRET SENATOR ALLEN'S REFERENCE TO A MAXIMUM ALLOWABLE "FEDERAL SHARE" OF 75 PERCENT TO MEAN THAT OVERALL FEDERAL (AS OPPOSED TO SIMPLY FMHA) GRANT FUNDING FOR WWD PROJECTS IS NOT TO EXCEED 75 PERCENT.

IT IS ACCORDINGLY OUR OPINION THAT A LOCAL SHARE IS REQUIRED UNDER THE WATER AND WASTE DISPOSAL DEVELOPMENT GRANT PROGRAM.

USE OF FEDERAL GRANT FUNDS FOR LOCAL SHARE

WHEN A FEDERAL AGENCY ENTERS INTO AN ASSISTANCE AGREEMENT WITH AN ELIGIBLE RECIPIENT, AN ENTIRE PROJECT OR PROGRAM IS APPROVED. WHERE A LOCAL SHARE IS REQUIRED, THIS AGREEMENT INCLUDES AN ESTIMATE OF THE TOTAL COSTS, THAT IS, A TOTAL WHICH EXCEED THE AMOUNT TO BE BORNE BY THE FEDERAL GOVERNMENT. THE ADDITIONAL CONTRIBUTION WHICH IS NEEDED TO SUPPLY FULL SUPPORT FOR THE ANTICIPATED COSTS IS THE LOCAL OR NON FEDERAL MATCHING SHARE. ONCE THE AGREEMENT IS ACCEPTED, THE ASSISTANCE RECIPIENT IS COMMITTED TO PROVIDE THE NON-FEDERAL SHARE. E.G., B-130515, JULY 20, 1973. FAILURE TO MEET THIS COMMITMENT MAY RESULT IN THE DISALLOWANCE OF ALL OR PART OF OTHERWISE ALLOWABLE FEDERAL SHARE COSTS.

WE HAVE CONSISTENTLY HELD THAT IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY, FEDERAL GRANT-IN-AID FUNDS FROM ONE PROGRAM MAY NOT BE USED TO SATISFY THE LOCAL SHARE REQUIREMENTS OF ANOTHER FEDERAL GRANT-IN-AID PROGRAM. 56 COMP.GEN. 645, 648 (1977). WE ARE AWARE OF NO AUTHORITY UNDER EITHER THE FMHA WWD DEVELOPMENT GRANT PROGRAM OR THE EPA TREATMENT WORKS CONSTRUCTION GRANT PROGRAM (33 U.S.C. SECS. 1281-1299) WHICH WOULD PERMIT GRANT FUNDS RECEIVED UNDER ONE PROGRAM TO BE USED TO SATISFY THE LOCAL SHARE OF THE OTHER.

WE DISAGREE WITH THE FMHA CONTENTION THAT SECTION 347 OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AUTHORIZES THE USE OF GRANT FUNDS RECEIVED UNDER OTHER FEDERAL PROGRAMS TO FUND PROJECT COSTS NOT COVERED BY A WWD DEVELOPMENT GRANT. SECTION 347, 7 U.S.C. SEC. 1995 (1982), WHICH WAS ADDED BY THE AGRICULTURAL CREDIT ACT OF 1978, PROVIDES THAT:

"NOTWITHSTANDING ANY OTHER PROVISION OF LAW, OTHER DEPARTMENTS, AGENCIES, AND EXECUTIVE ESTABLISHMENTS OF THE FEDERAL GOVERNMENT MAY PARTICIPATE AND PROVIDE FINANCIAL AND TECHNICAL ASSISTANCE JOINTLY WITH THE SECRETARY TO ANY APPLICANT TO WHOM ASSISTANCE IS BEING PROVIDED UNDER ANY PROGRAM ADMINISTERED BY THE FARMERS HOME ADMINISTRATION. PARTICIPATION BY ANY OTHER DEPARTMENT, AGENCY, OR EXECUTIVE ESTABLISHMENT SHALL BE ONLY TO THE EXTENT AUTHORIZED FOR, AND SUBJECT TO THE AUTHORITIES OF, SUCH OTHER DEPARTMENT, AGENCY, OR EXECUTIVE ESTABLISHMENT, EXCEPT THAT ANY LIMITATION ON JOINT PARTICIPATION IS SUPERSEDED BY THIS SECTION."

AS THE SUBMISSION NOTES, THE REPORTS EXPLAINING THIS SECTION CONSIST PRIMARILY OF PARAPHRASES OF THE STATUTORY LANGUAGE ITSELF. H.R. REP. NO. 986, 95TH CONG., 2D SESS. 4, 47 (1978); H.R. REP. NO. 1344, 95TH CONG., 2D SESS. 30-31 (1978). THE ONLY ADDITIONAL CONGRESSIONAL CLARIFICATION COMES FROM THE FOLLOWING FLOOR REMARKS MADE BY SENATOR ALLEN OF ALABAMA ON MAY 1, 1978:

"THIS PROVISION *** WILL AUTHORIZE OTHER FEDERAL DEPARTMENTS AND AGENCIES TO PARTICIPATE WITH THE FMHA IN ITS PROGRAM OF FINANCIAL AND TECHNICAL ASSISTANCE UNDER THE ACT.

"THIS PROVISION WILL PROVIDE AUTHORITY NOW LACKING UNDER LAW FOR THE HERITAGE CONSERVATION AND RECREATION SERVICE TO JOIN WITH THE FMHA IN FINANCING COMMUNITY RECREATION PROJECTS, AND WILL RESOLVE ANY SIMILAR QUESTIONS THAT MAY ARISE AS TO THE ABILITY OF OTHER AGENCIES, WHOSE FUNDING AUTHORITIES MIGHT COMPLEMENT FMHA PROGRAMS, TO PARTICIPATE IN THOSE PROGRAMS." 124 CONG. REC. 11862-3 (1978).

ACCORDING TO THE SUBMISSION, THE HERITAGE CONSERVATION AND RECREATION SERVICE HAD TAKEN THE POSITION THAT IT WAS PRECLUDED FROM CONTRIBUTING FUNDS TO FMHA PROJECTS. WE WERE UNABLE TO LEARN THE VIEWS OF THE SERVICE BECAUSE IT NO LONGER EXISTS AND FMHA WAS UNABLE TO PROVIDE US WITH AN EXPLANATION EITHER.

WE DO NOT THINK THAT 7 U.S.C. SEC. 1995 WAS INTENDED TO OVERCOME THE REQUIREMENT OF A LOCAL SHARE. RATHER, WE THINK THAT THIS SECTION PROVIDES FOR A COLLABORATIVE EFFORT AMONG AGENCIES WITH DIFFERING FUNDING AUTHORITIES TO COORDINATE THEIR ASSISTANCE ON PROJECTS WHICH SERVE A VARIETY OF STATUTORY PURPOSES. THIS AUTHORITY IS CONSISTENT WITH THE AUTHORITY TO COORDINATE FUNDING CONFERRED UPON THE HEADS OF FEDERAL AGENCIES BY THE JOINT FUNDING SIMPLIFICATION ACT OF 1974, 31 U.S.C. SECS. 7101-7112 (1982), DUE TO EXPIRE FEBRUARY 13, 1985.

OFFICE OF MANAGEMENT AND BUDGET (OMB) CIRCULAR A-111 WHICH ESTABLISHED REGULATIONS UNDER THE JOINT FUNDING SIMPLIFICATION ACT RECOGNIZED THAT JOINT FUNDING WOULD HAVE TO BE CARRIED OUT SO AS TO PRESERVE THE LOCAL SHARE REQUIREMENTS OF JOINTLY MANAGED PROGRAMS. SEE OMB CIRCULAR A-111, ATTACHMENT D, PARAGRAPH 6D(1), RESCINDED MARCH 7, 1983. WHILE NO LONGER IN EFFECT AND DESIGNED FOR ANOTHER MORE ELABORATE STATUTORY SCHEME, WE THINK THE POSITION TAKEN IN THAT CIRCULAR ESSENTIALLY REFLECTS THE PROPER INTERPRETATION OF "JOINT PARTICIPATION" AS USED IN 7 U.S.C. SEC. 1995.

WE DO NOT THINK THAT CONGRESS INTENDED THAT WHERE THE FUNDING AUTHORITIES OF TWO DIFFERENT AGENCIES OVERLAP, AN APPLICANT FOR ASSISTANCE WOULD BE ABLE TO RECEIVE COMBINED GRANT SUPPORT IN AN AMOUNT EXCEEDING THE STATUTORILY DESIGNATED MAXIMUM UNDER EITHER AUTHORITY. SENATOR ALLEN REFERS TO THE FUNDING AUTHORITIES OF OTHER AGENCIES WHICH COMPLEMENT RATHER THAN DUPLICATE THOSE OF THE FMHA.

WE ALSO NOTE THAT WHERE CONGRESS HAS AUTHORIZED THE USE OF SEVERAL GRANT FUNDS TO SATISFY LOCAL SHARE REQUIREMENTS, IT HAS VERY CLEARLY CONVEYED ITS INTENT. SEE, E.G., SECTION 105(A)(9) OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, 42 U.S.C. SEC. 5305(A)(9) (1982), WHICH AUTHORIZES THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO PAY THE NON-FEDERAL SHARE REQUIRED IN CONNECTION WITH A FEDERAL GRANT IN-AID PROGRAM UNDERTAKEN AS PART OF A COMMUNITY DEVELOPMENT PROGRAM. THE EPA TREATMENT WORKS CONSTRUCTION GRANT PROGRAM ITSELF PROVIDES THAT CERTAIN SUMS ALLOTTED TO THE COMMONWEALTH OF PUERTO RICO MAY BE USED TO FUND THE NON-FEDERAL SHARE OF FIVE SPECIFIED PROJECTS. 33 U.S.C. SEC. 1282(C) (1982). WE THINK THAT IF CONGRESS HAD INTENDED THROUGH THE ENACTMENT OF 7 U.S.C. SEC. 1995 TO AUTHORIZE THE USE OF EITHER FMHA WWD OR EPA TREATMENT WORKS CONSTRUCTION GRANT FUNDS TO SATISFY A LOCAL SHARE REQUIREMENT, IT WOULD HAVE SO PROVIDED IN FAR MORE EXPLICIT TERMS.

HYPOTHETICAL QUESTIONS

THE ADMINISTRATOR HAS PROVIDED US WITH FOUR GENERAL HYPOTHETICAL EXAMPLES OF VARIOUS PROPOSED FUNDING ARRANGEMENTS WITH THE EPA WASTE TREATMENT CONSTRUCTION PROGRAM. EACH OF THESE EXAMPLES IS DISCUSSED IN ORDER. NOTE THAT OUR RESPONSES ARE INTENDED ONLY TO EXPRESS GENERAL PRINCIPLES AND IN NO WAY APPROVE ANY SPECIFIC GRANT ARRANGEMENT.

EXAMPLE 1: EPA PROVIDES A MAXIMUM GRANT OF 75 PERCENT, WHICH IS ITS MAXIMUM GRANT AUTHORITY ON EPA-ELIGIBLE PROJECT COSTS. MAY FMHA PROVIDE A 40-YEAR LOAN FOR THE BALANCE OF THE PROJECT COSTS?

RESPONSE: THE FMHA MAY LOAN THE LOCAL GOVERNMENT ALL OR A PORTION OF THE 25 PERCENT. AS NOTED IN THE EARLIER DISCUSSION OF THE HOUSE REPORT ON THE AGRICULTURAL CREDIT ACT OF 1978, GRANT FUNDS WERE INTENDED TO SUPPLEMENT OTHER FUNDS FURNISHED DIRECTLY BY THE APPLICANT OR OBTAINED BY THE APPLICANT AS PART OF A LOAN COMMITMENT. IN EITHER CASE, THE APPLICANT IS CONTRIBUTING ITS OWN FUNDS.

EXAMPLE 2: EPA PROVIDES A MAXIMUM GRANT OF 75 PERCENT OF THE EPA ELIGIBLE COSTS. DUE TO EXCESSIVELY HIGH USER OPERATION AND MAINTENANCE COSTS, FMHA COULD MAKE A GRANT FOR THE DIFFERENCE BETWEEN THE AMOUNT OF EPA FUNDS AND THE REMAINING PROJECT COSTS AND STILL BE WITHIN THE FMHA GRANT LIMIT OF 75 PERCENT, MEANING THAT THE ENTIRE PROJECT WOULD BE FUNDED WITH FEDERAL FUNDS. IS SUCH A RESULT PERMISSIBLE, OR MUST THE LOCAL MATCH COME FROM SOURCES OTHER THAN FEDERAL GRANTS?

RESPONSE: WHERE A PROJECT RECEIVES A TREATMENT WORKS CONSTRUCTION GRANT OF 75 PERCENT OF THE EPA PROJECT, IT IS NOT ELIGIBLE FOR FMHA WWD GRANT FUNDING. THE 25 PERCENT NOT FUNDED BY THE EPA GRANT MUST BE FURNISHED BY THE LOCAL GOVERNMENT, EITHER DIRECTLY OR THROUGH BORROWING, AS NOTED IN THE RESPONSE TO THE FIRST EXAMPLE.

EXAMPLE 3: EPA MAKES A GRANT OF ONLY 60 PERCENT OF TOTAL PROJECT COSTS SINCE CERTAIN COSTS (SUCH AS LAND ACQUISITION) ARE SOMETIMES NOT GRANT ELIGIBLE. SHOULD FMHA LIMIT ITS GRANT TO THE DIFFERENCE BETWEEN THE ACTUAL EPA GRANT (60 PERCENT) AND THE FMHA MAXIMUM (75 PERCENT) (I.E. 15 PERCENT)?

RESPONSE: THE EXAMPLE APPEARS TO REFLECT SOME CONFUSION IN THE USE OF THE WORD "PROJECT" IN THE CONTEXT OF THE GRANTS USED IN THE EXAMPLE. WHERE A GRANT MAKING AGENCY IS NOT AUTHORIZED TO PAY FOR A CERTAIN KIND OF COST, THESE COSTS DO NOT FORM A PART OF THE PROJECT GRANT AWARDS MADE BY THAT AGENCY. WHILE IN ONE SENSE A GRANT MAY GO TO PAY FOR A LARGER "PROJECT," THE "PROJECT" COVERED BY THE PARTICULAR AGENCY'S AWARD IS MORE LIMITED. IN EXAMPLE 3, IT APPEARS THAT THE EPA GRANT, WHICH MUST BE 75 PERCENT, NO MORE AND NO LESS, OF THE COSTS COVERED BY THE EPA AWARD (SEE 59 COMP.GEN. 1 (1979)), WOULD COVER ONLY A PORTION OF AN OVERALL PROJECT ENVISIONED BY THE RECIPIENT OR GRANTEE. THE REMAINING COSTS OF THE OVERALL PROJECT MAY BE ELIGIBLE FOR PAYMENT UNDER FURTHER GRANT AWARDS, BUT THESE OTHER AWARDS CANNOT INCLUDE THE LOCAL SHARE REQUIREMENTS OF THE EPA GRANT. BY WAY OF ILLUSTRATION, IF THE EPA GRANT IS FOR AN EPA PROJECT ESTIMATED TO COST $80,000, EPA WOULD PROVIDE $60,000 AND THE GRANTEE WOULD PROVIDE THE $20,000 LOCAL SHARE. IF THE OVERALL PROJECT WILL COST $100,000, ($80,000 EPA PROJECT AND OTHER EPA INELIGIBLE COSTS), THE REMAINING $20,000 MAY BE ELIGIBLE FOR PAYMENT UNDER ANOTHER GRANT PROGRAM, POSSIBLY FROM FMHA, IF THESE COSTS ARE ALLOWABLE UNDER THAT PROGRAM. ASSUMING FMHA HAS AUTHORITY, FMHA COULD MAKE AN AWARD OF UP TO $15,000 OR 75 PERCENT OF THE SECOND GRANT. THIS RESULT WOULD APPEAR TO COINCIDENTALLY RESULT IN FMHA PAYING 15 PERCENT OF THE OVERALL PROJECT, BUT THE FMHA FUNDS CANNOT GO TO EPA ELIGIBLE COSTS.

EXAMPLE 4: IN A $100,000 PROJECT, EPA DETERMINES THAT $80,000 OF THE TOTAL COSTS ARE ELIGIBLE FOR EPA FUNDING. EPA PROVIDES A GRANT FOR $60,000 (75 PERCENT OF $80,000). FMHA PROVIDES A GRANT OF $30,000 (75 PERCENT OF THE COST NOT FUNDED BY THE EPA GRANT), RESULTING IN A COMBINED GRANT COMBINATION OF 90 PERCENT OF PROJECT COSTS. IS THIS RESULT ACCEPTABLE?

RESPONSE: AS INDICATED IN OUR ANSWER TO EXAMPLE 3, THE PROPOSAL TO HAVE FMHA CONTRIBUTE A PORTION OF AN EPA GRANT PROGRAM IS NOT PROPER TO THE EXTENT THAT THEY SERVE TO PAY FOR THE EPA NON-FEDERAL SHARE SINCE THE FMHA FUNDS DO NOT QUALIFY AS NON-FEDERAL SHARE UNDER EPA'S PROGRAM AUTHORITY. AS WE NOTED IN THE RESPONSE TO EXAMPLE 3, THERE IS THE POTENTIAL FOR TWO SEPARATE GRANTS: THE FIRST, AN EPA GRANT AWARD FOR 75 PERCENT OF A $80,000 PROJECT AND, THE SECOND, AN FMHA GRANT AWARD OF 75 PERCENT OF A $20,000 PROJECT. THE TOTAL FUNDING FROM ALL FEDERAL SOURCES WOULD AMOUNT TO $75,000 OR 75 PERCENT OF THE $100,000 OVERALL PROJECT. WE STRESS, HOWEVER, THAT IN THE ABSENCE OF MORE DETAILS, WE ARE

UNABLE TO STATE WITH ANY CERTAINTY THAT THE TWO GRANT ARRANGEMENT IS ACTUALLY AN AVAILABLE OPTION UNDER THE TWO PROGRAMS. THIS MIGHT ALSO BE A SITUATION IN WHICH JOINT PARTICIPATION COULD BE EXPLORED, BUT IN THE ABSENCE OF ANY DETAILS, WE RESERVE OUR VIEWS ON THE APPROPRIATENESS OF THIS AUTHORITY. IN NO CASE CAN WE SEE HOW THE 90 PERCENT PARTICIPATION, AS PROPOSED, CAN BE ACHIEVED WITHOUT FMHA IMPERMISSIBLY PAYING FOR A PORTION OF A REQUIRED LOCAL SHARE.

/1/ SECTION 105 OF PUB.L. NO. 95-334, 92 STAT. 421, SUBSTITUTED 75 PERCENT FOR 50 PERCENT.