and that the continuance of the existing plan is likely to result in a greater degree of occupancy and desegregation than the types of plans required under paragraph 1(d)(1) or (2) above.

(b) If after adoption and administration of a plan approved under paragraph 1(d)(1) or (2) above, a Local Authority can show that a different plan is likely to result in a greater degree of occupancy and desegregation than has resulted from its operation under the approved plan during the preceding 12 months, it may apply to the HAA for approval by HUD of such different plan with a statement of the supporting reasons and evidence.

(c) If HUD in its discretion decides to deny a request under paragraph (4)(a) above or to revoke at any time an approval previously granted under paragraph (4)(a) or (b) above, the Local Authority shall, within 90 days of receipt of notice of such decision, comply with the requirements set forth in paragraph 1(d)(1) or (2) above and submit its plan as provided in paragraph 1(d)(3) above.

(d) For purposes of this paragraph (4), the term "substantial desegregation" shall mean that at least two-thirds of the housing projects of the Local Authority are desegregated on more than a token basis.

(5) Where a Local Authority, which has attempted in good faith to operate under a plan approved under paragraph 1d(1) or (2) and to otherwise meet the objectives of Title VI of the Civil Rights Act of 1964, is confronted with extraordinary circumstances causing undue hardship in carrying out the plan, it may apply for, and the Secretary of HUD may grant, exceptions to the provisions of paragraph 1d(1) or (2) /in accordance with Section 1.4(b) of the regulations of the Department of Housing and Urban Development, Title 24 C.F.R. Subtitle A, Part 1/ in order to adjust such provisions to the circumstances involved in a manner to effectuate and insure compliance with said Title VI and the efficiency and economy requirements of the United States Housing Act of 1937.

(6) Under any plan, the Local Authority shall maintain a record of the vacancies offered, including location, date and circumstances of each offer and each rejection or acceptance.

(7) The HAA will from time to time review and determine the adequacy of any plan for selection of applicants and assignment of dwelling units to accomplish the purposes of the Civil Rights Act of 1964 and HUD regulations and requirements pursuant thereto.

e. Nondiscrimination in reassignments or transfers to other dwelling units.

f. Instruction of the Local Authority's staff concerning its obligations under Title VI of the Civil Rights Act of 1964 and HUD regulations and requirements pursuant thereto, by suitable means such as providing them with copies of all pertinent documents, conducting training meetings and maintaining review through regular supervisory channels.

g. Posting, in a conspicuous place in the Local Authority's facilities in which applications are received, of notice that the facilities and services in the Authority's low-rent housing program are provided on a nondiscriminatory basis and of its plan for tenant selection and assignment of units; and inclusion of such information in material distributed to tenants and prospective applicants, to the general public, and to agencies, institutions, organizations, and political subdivisions which may refer applicants, as well as to furnish each applicant, at the time of filing application, with specific information on the local low-rent public housing developments and distribution of the units by number of bedrooms.

h. (1) Receipt and processing by the Local Authority of complaints from or on behalf of any person who believes himself to be subject to discrimination by the Local Authority or its staff; (2) keeping a record of each complaint including the date of the complaint, by whom made, investigation and hearing (if any), and evaluation; (3) a written notice to the complainant of action taken; (4) posting, in a conspicuous place in all facilities of the Local Authority which are open to the public, of a notice that complaints of discrimination may be filed with the Local Authority or the HUD Regional Office, at a designated address, including notice that the filing of a complaint with the Local Authority will not prevent the subsequent filing of a complaint with HUD; and (5) posting with the above notice a copy of the regulation under which complaints may be submitted to HUD (copies available from HUD).

i. A prohibition against intimidatory or retaliatory action or threat thereof by the Local Authority or its staff against any applicant or tenant because of participation in civil rights activities or for having asserted any of his rights under the Civil Rights Act, and HUD regulations and requirements pursuant thereto.

j. Periodic review by the Local Authority of its practices to assure that they are in conformity with its obligations under HUD regulations and requirements.

2. Reports on Complaints. At the end of every calendar quarter, or such less frequent intervals as the Assistant Regional Administrator for Housing Assistance with the approval of the Deputy Assistant Secretary for Housing Assistance may determine to be consistent with the objectives of the provisions of the Civil Rights Act of 1964 and HUD regulations and requirements pursuant thereto, each Local Authority shall furnish the Assistant Regional Administrator for Housing Assistance with a report 1/ showing the number of complaints (if any) filed with the Local Authority during the reporting period, the nature of the matters complained about, and the findings made and action taken on such complaints.

1/ Requirement for this report is approved under Budget Bureau No. 63-R1154.

EXHIBIT B

Model Interim Variance to Standard HUD Approved Tenant Selection and Assignment Plan

PLAN FOR

VOLUNTARY COMPLIANCE

WITH

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Smackover Housing Authority
555 North Street
Smackover, Ozium
(herein referred to as "the Authority")

8040.1

APPENDIX 4.5

GENERAL PROVISIONS

1. The Authority agrees that the Assistant Secretary for Fair Housing and Equal Opportunity (AS/FHEO) on his/her own motion may review compliance with this Plan. As a part of such review, the AS/FHEO may require written reports concerning compliance. This Plan applies to all low-rent housing units managed by, or hereafter acquired by the Authority.

2. It is understood that this Plan does not constitute an admission by the Authority of any violations of Title VI of the Civil Rights Act of 1964 and HUD regulation issued thereunder.

3. The Authority agrees to undertake an affirmative program of nondiscrimination and to assure an Equal Housing Opportunity without regard to race, color, or national origin.

4. The Authority agrees that it shall refrain from committing any act of discrimination against any person in the terms, conditions or privileges of rental of a dwelling unit or in the provision of services or facilities in connection therewith, on the basis of race, color, or national origin.

5. The Authority agrees to refrain from interfering with any person in the exercise or the enjoyment of the right to rent or occupy a dwelling in any manner that might result in discrimination on the basis or race, color, or national origin.

6. The Authority agrees to process the applications of the persons for occupancy of any dwelling unit owned or managed by the Authority in accordance with its own adopted Tenant Selection and Assignment Plan, as modified by the terms of this Plan.

7. The Authority acknowledges receipt of Fair Housing Posters, and Equal Employment Opportunity Posters (HUD 901) which it agrees to post and display in its administrative and rental offices. Failure to display posters shall be deemed prima facie evidence of the intent to discriminate in housing practices. The Authority will certify said posting to the HUD_____ Regional Office within ten (10) days following notice of approval of the Plan.

8. The Authority agrees to refrain from any act of discrimination on the grounds of race, color, or national origin, in the recruitment, hiring, promotion or assignment of its employees, and to refrain from making employee assignments in such a manner as to reinforce the racial identifiability of any housing project.

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APPENDIX 4.5

AFFIRMATIVE ACTION I

It is further agreed that, within 30 days of notification of the approval of the Plan, the Authority shall take the following affirmative steps with regard to dwellings which it owns or manages, in order to disestablish any existing pattern of segregated housing and employment and in order to assure equal housing opportunity and equal employment opportunity in the future.

A. Steps to assure assignment of tenants on a racially non-discriminatory basis:

(1) All applications received for public housing shall be categorized according to the size unit which is appropriate for the applicant family. A waiting list shall be maintained for new applications within each unit size category offered by the Authority.

(2) All applications for public housing shall be dated and time stamped when they are submitted. This time and date stamp shall be used for determining the priority of applications of persons equally eligible.

(3) Applications which are currently on file, or which constitute a waiting list, shall be revised and organized in accordance with the above criteria.

(4) All applicants for public housing shall be assigned to units on a "first-come-first served" basis in accordance with the date and time of their application, within the rent ranges established by the Authority and sanctioned by HUD; provided however, that the Authority, in determining qualifications, or lack thereof, of persons applying for rental of housing shall not be prohibited from applying factors affecting qualifications, preferences of priority which do not involve consideration of race, color, or national origin and which have been approved by HUD, or such factors which are required or are in conformity with directives, circulars or regulations from time to time issued by HUD.

D. Steps to Further Integrate Public Housing

1. New Applicants

(a) Each applicant shall be offered the first available appropriately sized unit in a section in which his race does not predominate.* If more than one appropriate unit is available in a location in which the applicant's race does not predominate, the applicant shall be offered a choice of all such suitable units. If an appropriate unit is not immediately available in such location, the applicant may then be offered a choice of appropriately sized units located in sections in which the applicant's race does predominate. An applicant may refuse to accept a unit offered in a section in which the applicant's race predominates, and may wait until an appropriate unit becomes available in a location in which the applicant's race does not predominate.

(b) If the applicant chooses to wait, the applicant shall not lose his/her place or priority by doing so.

(c) If the applicant refuses all units offered in locations in which his/her race does not predominate, other than for good cause, the applicant shall lose his/her place and be placed at the end of the waiting list.

(d) Each new applicant, at the time offered an application to be completed, shall be advised of options under this provision, and before accepting a unit, shall be informed of the unit number of each dwelling which qualifies under this provision as available for his/her choice.

* The word "section" as used herein shall refer to a project site or portion of a project site which is or has become identified with occupancy by members of a single race. The word "predominate" as used herein shall refer to a situation in which approximately 75% or more of the persons residing in a given project are of the same race.

2. Transfer Applicants

(a) Any present tenant of the Authority who resides in a unit located in a section in which his/her race predominates may apply for a transfer to an appropriately sized unit located in a section in which his/her race does not predominate. A transfer waiting list shall be maintained for each category of unit offered by the Authority.

(b) Each such person who desires to transfer shall submit an application for transfer to the Office of the Executive Director of the Authority within thirty days of being notified of his/her right to do so. The application of each person shall be date and time stamped when submitted, and shall be placed on a "transfer waiting list" within the category of each size unit for which the family is eligible.

(c) Whenever a unit becomes available for which there are no candidates requiring or requesting transfer to such unit under the Authority's existing policy allowing transfers when necessary to place a tenant family in a dwelling unit of a size appropriate to the family size and composition or for health purposes, such unit shall be offered to the person with the highest priority on the "transfer waiting list" for that category, whose race does not predominate in the section in which the offered unit is located.

(d) Persons who apply for transfer under this plan shall not be required to re-establish their eligibility for public housing and shall not be required to provide information on their transfer application other than their name, address race, number of persons in family, and the sex and age of family members.

C. Steps to notify present tenants, prospective tenants and the community at large of the policy of nondiscrimination.

1. In all offices in which applications are taken or in which Authority business is conducted, the Authority shall post and display a sign indicating that all projects are open to all eligible persons without regard to race, color, or national origin. Such sign shall be prominently and conspicuously placed.

2. In all offices in which applications are taken or in which Authority business is conducted, the Authority shall post in a prominent place clearly visible to all applicants and potential applicants, a list of all Authority housing projects, their locations, formal designations, and popular names. Accompanying this list, there shall be a statement indicating that tenants are assigned to appropriately sized units in accordance with priorities and preferences which are not based on discrimination due to race, color, or national origin.

3. The Authority shall distribute to each present tenant a letter explaining that the Authority will be operated as a nonsegregated system without discrimination based on rece, color, or national origin, and explaining that in order to correct the effect of past practices alleged to be discriminatory, present tenants will be given the opportunity to apply for a transfer to a unit located in a section which was previously occupied predominantly by tenants of a different single racial group. Each such letter shall explain the portions of this plan relating to the procedures for accomplishing the transfer. Letters distributed prusuant to this provision shall also indicate that the ability to transfer is limited by the availability of appropriate units and that the application to transfer must be submitted to the Office of the Executive Director within thirty days after receipt by the tenant of the letter. Each letter shall also include, as an attachment, an application form to be used in applying for a transfer.

   The Authority agrees to mail to each person presently on a waiting list a letter explaining that the Authority will be operating as a non-segregated system without discrimination based on race, color, or national origin. Each such letter shall explain the provisions of Paragraph I(B)(I) in language designed to be clearly and easily understood.

   The Authority will certify to the Assistant Regional Administrator for Fair Housing and Equal Opportunity that these acts called for in paragraph 3 and 4 will be carried out within thirty (30) days following receipt of notice of approval of this Plan.

   The Authority agrees to give to each new applicant who submits an application, a written notice explaining that the Authority is operated on a non-segregated system without discrimination based on race, color, or national origin. Such notice shall

explain the relevant aspects of this Plan relating to tenant assignment policies, including the right to refuse a unit as provided in paragraph I(B)(I). At the time an offer is made, the applicant shall furnish a signed statement listing the units shown him and indicating what choice was made or, if no choice was made, his reason for refusing each apartment offered.

Each person who signs a statement or acknowledgment pursuant to this Plan shall be given a copy of the statement or acknowledgment which he or she signed.

AFFIRMATIVE ACTION II

It is further agreed that the Authority shall undertake the following measures in order to implement this Plan.

A. Instruction of Employees

1. Within thirty days after receipt of notice of approval of this Plan, the Authority shall inform each employee in person, or by general meeting of the provisions of this Plan, including any reporting and record keeping provisions hereinafter described. Each employee shall be advised that failure to comply with the provisions of this Plan shall subject him/her to dismissal or other disciplinary action.

2. Within thirty days after receipt of the notice of approval of this Plan, the Authority shall secure from each employee a signed statement that he or she has received the instructions described in the preceding paragraph. Each such statement shall be forwarded to the Assistant Regional Administrator for Fair Housing and Equal Opportunity as provided for under other provisions of this Plan.

3. Within ten days after the employment of any new employee the Authority shall provide such employee with the instructions herein described and shall secure from each person a signed statement as above described. The signed statements of each new employee shall be forwarded to the Assistant Regional Administrator for Fair Housing and Equal Opportunity with the next regular periodic report.

B. Nonracial Assignments of Authority Personnel

* Because the employment practices of the Authority tends, on the ground of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of and/or to subject them to discrimination as a result of the administration and/or management of the _____Authority; the provisions below are included in an effort to assure equality of opportunity to, and nondiscriminatory treatment of, HUD beneficiaries pursuant to 24 CFR 1.4(6)(c)(2) of the Department's Regulation.

*This section to be used only when employment discrimination has been found as required in 24 CFR 1.4(6)(c)(2).

1. Within thirty days after receipt of notice of approval of this Plan, the Authority shall submit to the Regional Administrator a plan for reassignment of employees to eliminate the racial identification of work assignments. This plan will set out a timetable designed to transfer employees in an adequate number and selection of professional, clerical, and maintenance jobs to comparable positions at other projects, in order to achieve integrated staffing patterns.

2. The Authority agrees fully with HUD Notice PIH 73-28 (LHA), Subject: Upward Mobility for Low-Rent Public Housing Residents, and agrees to implement its own adopted plan in a manner that will demonstrate its compliance plan the spirit and intent of the notice.

C. Monitoring Compliance with the Plan.

1. (a) Thirty days after receipt of notice of approval of this Plan by the Assistant Secretary for Fair Housing and Equal Opportunity, the Authority shall submit to the Assistant Regional Administrator for Fair Housing and Equal Opportunity, a report setting forth all steps taken thus far in conformity with the provisions of this Plan. Such report shall include copies of all signs and notices posted pursuant to this Plan and copies of all letters and notices sent, given or to be sent or given pursuant to the Plan, together with the name and address of each recipient and the date mailed or given. Such report shall also include copies of all signed statements received from employees pursuant to paragraph II(A)(2).

2. Three months following receipt of notice of approval of this Plan, and at three month intervals for a period of one year, and every six months thereafter for two years, the Authority shall submit to the Assistant Regional Administrator for Fair Housing and Equal Opportunity the following information:

(a) the address of each unit which has been vacated during the previous three (or six, as applicable) month period, together with an indication of the date it was vacated, the date it became available for re-rental, the date it was re-rented and the number of bedrooms which the unit

contains. The initial report under this paragraph shall provide the above information for all units which were vacant at the time this Plan was adopted, as well as those vacated within three months after receipt of notice of approval of the Plan.

(b) The name, address and race of each person who applied for a unit during the previous three (or six, as applicable) month period, together with the following

(1) Date application submitted;
(2) Number of persons in family;
(3) Size unit for which family is qualified;
(4) Preference or priority to which application is entitled, for reasons not related to this Plan;
(5) If accepted for tenancy, address and size of unit assigned; date moved in;
(6) If not accepted for tenancy, date applicant was so informed; reason not accepting;
(7) If accepted, but withdrew application, date of withdrawal;
(8) If accepted and placed on waiting list, date placed on waiting list and indication of which list placed on.

The initial report pursuant to this paragraph shall include the name, address, race, number of persons in family and unit size for each person on a waiting list at the time of receipt of notice of approval of this Plan, together with the date such person applied.

(c) The name of each person previously reported as being placed on waiting list who moved into a unit, together with the address and size of the unit and the date moved in.

(d) The name of each applicant who, during the preceding three (or six, as applicable) month period exercised his/her right of refusal under paragraph I(B)(1), together with the address of the unit or units refused.

(e) The name, unit number, race and date of application of each tenant who applied for transfer pursuant to paragraph I(B)(2) together with the size units the family qualified for.

If the transfer was granted, the unit number to which he/she moved and date he/she moved. If the transfer was not granted, the present priority position of the transfer application.

(f) Reports filed pursuant to this Plan shall also contain a description of all affirmative steps taken during the preceding reporting period in compliance with this Plan, including copies of all signed statements obtained from applicants or employees, and all notices or letters sent, if any.

(g) For a period of three years following receipt of notice of approval of this Plan, the Authority shall maintain and retain all records which are the source of, or contain any of the information pertinent to its obligation to comply with this Plan.

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APPENDIX 4.5

REPORTS

1. The Authority agrees that a report shall be filed with the HUD Regional Office in reference to matters contained in this plan The Authority shall also notify the AS/FHEO through the ARA/FHEO of any other action taken in compliance with the provisions of this Plan. The reports will be forwarded to:

Assistant Regional Administrator
for Fair Housing and Equal Opportunity
U. S. Department of Housing and
Urban Development
Room 11 Perpoint Plaza
504 Mercy Boulevard
Rotunda, Illinois 30000

2. This Plan gives the AS/FHEO continuing jurisdiction over the matters related hereto. It should be understood that this is a contractual obligation running to the AS/FHEO and that the AS/FHEO may sue on the plan in the event of substantial violation on the part of the Authority.

HUD-Wash., D. C.

8040.1

APPENDIX 4.5

SNACKOVER HOUSING AUTHORITY

By _____ _____
Snackover Housing Authority (Date)
555 North Street
Snackover, Ozium

I recommend approval of this Agreement

_____ _____
Assistant Regional Administrator (Date)
for Fair Housing and Equal Opportunity

I approve this Agreement modifying the
Tenant Selection and Assignment Plan
of the Snackover Housing Authority

_____ _____
Assistant Secretary for Fair Housing (Date)
and Equal Opportunity

HUD-31306

HUD-Wash., D. C.

EXHIBIT C

Remedial TS&A Provisions in Litigations

Litigation	Basis of Action	TSA	Transfers	Other
U.S. v. Alexander County Housing Authority (C.A. No. CV 73-76, E.D., Ill. 1974) (Consent Order)	Assignment of tenants on the basis of race, failing and refusing to rent dwelling units to persons on account of race, maintaining all white projects, all white sections of projects at the same time making such dwellings available to white persons and failing to disestablish the system of segregation which was originally instituted by official action on the part of the authority.	1. Applications received at central office, date and time stamped. First Come, First Served Assignment. 2. A project which are occupied predominately by persons of one race (projects listed as such) currently without a determination but with a statement of the number of moves required to be considered desegregated) assignments to be made as follows: A. Where vacancies exist in projects in which the predominate race is the same as the applicant and in projects in which the predominate race is different from the applicant, the applicant would be offered a choice of all appropriately sized units where his/her race does not predominate. Refusal of such units other than for good cause results in removal to the bottom of the list. B. Where the predominate race in projects is the same as the applicant, the applicant would be offered all appropriately sized units in the projects in which his race predominates. An applicant who refuses these units and elects to wait for a unit in a project in which his/her race does not predominate would not lose her/her place on the waiting list. C. Where vacancies exist only in projects in which the applicant's race does not predominate, applicant is offered all appropriately sized units at those projects. Refusal of such an offer for other than good cause results in removal to the bottom of the list. 3. When racial composition of a project no longer is identified as having a predominance of persons of one race and so long as it continues to maintain such a nonracial identity paragraph 2 would not apply to units at that project.	1. Tenants who reside in a unit located in a section in which their race predominates may apply for a transfer to an appropriately sized unit located in a section where their race does not predominate within 10 days of notification. 2. When a unit becomes available for which there are no eligible new applicants on the new applicant list, the unit would be offered to the person with the highest priority on the transfer list who is not of the predominate race of the persons in the unit project in which the unit is located. 3. Persons applying for transfer under paragraph 1 are not required to reestablish their eligibility. 4. The tenant would provide facilities and assistance for persons moving under paragraph 2. After transfer is complete the authority would give tenant a check for $40 to assist in defraying cost of the move.	1. Training must be provided on the terms of the agreement. 2. Reporting. A. Reports documenting change in TSA policies. B. Quarterly reports for 2 years identifying: (1) Address of any unit becoming vacant, the number of bedrooms, the date vacant, the date available for rental, and date rented. (2) Information on each person applying within quarter (first report to include present wait list) (3) Listing of persons assigned available units (4) Listing of persons who exercised right of choice and those of units where race predominates (5) Listing of person who applied for transfers to units in a section where their race did not predominate and data on transfers.

Litigation	Basis of Action	TSAA	Transfers	Other
U.S. v. Housing Authority of Calhoun, Ga. (C.A. No. C74-438 N.D. Ga., 1974) (Consent Order)	Assignment of tenants on the basis of race, failing and refusing to rent to black persons in all white or virtually all white sections of projects and failing "to disestablish the system of segregation which was originally instituted by official action of the part of the authority.	1. First come - first served assignment of applicants based on the date and time of application. 2. Each applicant would be offered first appropriately sized unit in a section where his/her race does not predominate (projects or sites where 75% or more of the persons residing are of the same race) 3. If no such unit is available the applicant would be offered choice of appropriately sized units in sections where his race does predominate. 4. Refusals A. Applicants could refuse to accept a unit offered in sections in which their race predominates and elect to wait until a unit becomes available in a location where their race does not predominate without loss of place on waiting list B. Applicants refusing all units in locations in which their race does not predominate other than for good cause would be moved to bottom of waiting list.	1. Tenants who reside in a unit located in a section in which their race predominates may apply for a transfer to an appropriately sized unit located in a section where their race does not predominate within 30 days of notification. 2. When a unit becomes available for which there are no eligible applicants or other persons on transfer lists the unit would be offered to the person with the highest priority on this transfer list. 3. Persons applying for transfer are not required to reestablish their eligibility. 4. Authority to provide facilities and manpower for volunteer moves or bear the costs and expenses associated with such moves.	1. Training must be provided on the terms of the agreement. 2. Reporting. A. Reports documenting changes in TSAA policies. B. Quarterly reports for 2 years identifying: (1) Address of any unit becoming vacant, the number of bedrooms, the date vacated, the date available for rental, and date rented (2) Information on each person applying within quarter, (3) Listing of persons who moved into units with unit information, (4) Listing of persons who exercised right of refusal for offers of units where their race predominates, (5) Listing of persons who applied for transfer to unit in a section where their race did not predominate and data on transfers.

Litigation	Basis of Action	TSAA	Transfers	Other
U.S. v. Housing Authority of Chickasaw, Ala. 304 F.Supp. 716 S.D. Ala. 1969 (Title VIII Pattern and Practice. Title VI HUD Review referenced but not part of suit.)	FHA residency requirement has been used to assure that no blacks would apply for or reside in FHA. (Chickasaw, a suburb of Mobile had no black residents, and no blacks ever had resided in an Authority project.) Employment in city did not qualify person for preference.	As a result of a finding of a violation of Title VIII the court ordered the housing authority to implement the following changes in tenant selection and assignment: 1. Remove residency requirement for eligibility for housing. 2. Not provide any priority or preference to any applicant because of residency or citizenship. 3. Outreach to obtain eligible applicants. 4. Assign applicants on the basis of the date and time of application. 5. For ninety (90) days following the entry of the plan all black applicants to the housing Authority would be placed on the waiting list as if they had applied for housing on the date on which this suit was filed. This priority applied only to applications received within the first ninety days following the entry of the plan, but was permanent as to those applicants.	Not involved	1. Educational Program for employees of the housing authority. 2. Semiannual Reports on A. Vacancies B. Applications received C. Applicants assigned units D. Any complaints of discrimination received involving public housing in Chickasaw.

Litigation	Basis of Action	TSAA	Transfers	Other
U.S. v. Housing Authority of Helena, Ark. (C.A. No. H-C-79-59 E.D. Ark. 1979) (Consent Order)	Housing Authority has in the past operated and continues to operate its housing projects on a racially segregated basis and has assigned persons to housing units on the basis of race and color.	1. All applications would be categorized according to unit size and the amount of monthly rent which would be charged to each applicant.* Each application would be dated and time stamped. 2. Until the racial composition of each of the dwelling sites operated by the housing authority approximates the racial composition of the housing authority's tenant population: A. Subject to the availability of qualified applicants, units at sites identified in an Appendix to the order would be filled with white applicants. B. Subject to the availability of qualified applicants, units at sites identified in another Appendix to the order would be filled with black applicants. 3. Applicants refusing an offer of housing lose their place and would be moved to the bottom of the waiting list.	1. Tenants who reside in a unit in a site in which their race predominates may apply for transfer to an appropriately sized and priced unit the other site within 30 days of notification of opportunity for transfer. 2. Tenants residing in units which are too small based on their family size shall receive higher priority. Further, if transfer of such family can not be accomplished to site where their race did not predominate then the authority, with DOJ approval, can transfer the underhoused tenant to any appropriate unit. 4. Persons on transfer list take priority over applicants on waiting list and shall be offered available units for which they qualify first. 5. All reasonable moving expenses would be assumed by the housing authority.	1. Training must be provided on the terms of the agreement. 2. Reporting. A. Report documenting changes in TSAA policies B. Quarterly reports for 2 years identifying (1) Address of any unit becoming vacant, number of bedrooms, the date vacated, the date available for rental, and date rented (2) Information on each person applying within quarter (3) Listing of persons who moved into units with unit information, and (4) Listing of persons who applied for transfer to unit in a section where their race did not predominate and data on transfers.

*Although the housing authority could use an income range priority in tenant selection and assignment, the parties agreed that if the priority impeded achievement of objectives of the order the parties would attempt to negotiate a resolution. It is unclear however how units would be assigned (i.e., is the first priority date and time of application or rent? Order states that the date and time would be used to determine priority of equally qualified persons which appears to support interpretation that rent is an absolute priority.)

232

Litigation	Basis of Action	Transfers	Transfers	Other
U.S. v. Housing Authority of Owensboro, Ky. (C.A. 78-0178-018. W.D. Ky., 1980) (Settlement Agreement)	Assignment of applicants for public housing to projects based on race.	1. Applications would be categorized within income range and unit sizes and priority of equally qualified applicants determined by date and time of application. 2. Until the ratio of minorities in all family projects reached 2A the housing authority would make one black placement out of every five selections in white family projects. 3. Until the ratio of whites at two historically black family sites is approximately 44 at each site vacancies at those sites would be filled with white applicants. 4. Applicants for elderly housing would be assigned units in chronological order. 5. When occupancy at family projects approximates the present minority composition in all public housing (44) the housing authority would revert to a first come/first served, one offer/one refusal system. 6. Persons refusing any offer would be moved to the bottom of the waiting list.	1. Tenants who reside in a unit in a site in which their race predominates may apply for transfer to an appropriately sized and priced unit within 30 days of notification of opportunity for transfer. 2. Tenants residing in units which are too small based on their family size shall receive higher priority. Further, if transfer of such family cannot be accomplished to site where their race did not predominate then the authority, with DOJ approval, can transfer the unterhoused tenant to any appropriate unit. 4. Persons on transfer list take priority over applicants on waiting list and shall be offered available units for which they qualify first. 5. All reasonable moving expenses would be assumed by the incoming authority.	Training must be provided on the terms of the agreement. Reporting. A. Report documenting changes in TSAA policies within 60 days B. Quarterly reports for 2 years identifying (1) Address of any unit becoming vacant, number of bedrooms, the date vacated, the date available for rental, and date rented, (2) Information on each person applying within quarter, (3) Listing of persons who moved into units with unit information, (4) Listing of persons who exercised right or refusal for offers of units where their race predominates, and (5) Listing of persons who applied for transfer to unit in a section where their race did not predominate and data on transfers.

233

Litigation	Basis of Action	TSAA	Transfers	Other
U.S. v. Housing Authority of Shreveport, Louisiana (C.A. No. 74-132, W.D. La., 1974) (Consent Order)	Assignment of tenants on the basis of race failing and refusing to rent to blacks in all white or virtually all white sections of projects and failure to disestablish the system of segregation which was originally instituted by official action on the part of the authority and which was approved by agencies of the Federal government which authorized the initial construction of the dwellings.	1. Applications received at the office of any project, date and time stamped and forwarded to central selection office for processing on a community-wide basis. When assignment is contemplated file is forwarded to project manager for further verification and completion of processing. 2. First come-first served basis. An applicant willing to accept a location where their race does not predominate is fourth in priority below displaced persons, servicemen and elderly and disabled persons. 3. Where vacancies exist in projects in which the predominate race (75%) is the same as the applicant and in projects in which the predominate race is different from the applicant, the applicant is offered a choice of all appropriately sized units where his/her race does not predominate. Refusal of such units other than for good cause results in removal to the bottom of the list. 4. Where vacancies exist only in projects in which the predominate race is the same race as the applicant, the applicant is offered all appropriately sized units in the projects in which his race predominates. An applicant who refuses these units and elects to wait for a unit in a project in which his/her race does not predominate does not lose her/her place on the waiting list. 5. Where vacancies exist only in projects in which the applicant's race does not predominate, applicant is offered all appropriately sized units at those projects. Refusal of such an offer for other than good cause results in removal of the applicant to the bottom of the list.	1. Tenants who reside in a unit located in a section in which their race predominates may apply for a transfer to an appropriately sized unit located in a section where their race does not predominate within 30 days of notification. 2. When a unit becomes available for which there are no eligible new applicants on the new applicant list, the unit would be offered to the person with the highest priority on the transfer list who is not of the predominant race of the residents in the project in which the unit is located. 3. Persons applying for transfer under paragraph 1 are not required to re-establish their eligibility. 4. Authority to provide manpower for moves under paragraph 2 or shall bear the costs and expenses associated with each such move.	1. Training must be provided on the terms of the agreement. 2. Reporting. A. Reports documenting changes in TSAA policies B. Quarterly reports for 2 years identifying (1) Address of any unit becoming vacant, number of bedrooms, the date vacated, the date available for rental, and date rented (2) Information on each person applying within quarter (First report to include present wait list) (3) Listing of persons assigned available units (4) Listing of persons who exercised right of refusal for offers of units where their race predominates (5) Listing of persons who applied for transfers to units in a section where their race did not predominate and data on transfers

234

Litigation	Basis of Action	TSAA	Transfers	Other
U.S. v. Housing Authority of West Helena, Ark. (C.A. No. E.D. Ark. 1979) (Consent Order)	Housing Authority has in the past operated and continues to operate its housing projects on a racially segregated basis and has assigned persons to housing units on the basis of race and color.	1. All applications will be categorized according to unit size and the amount of monthly rent which would be charged to such applicant.* Each application will be dated and time stamped. 2. Until the racial composition of each of the dwelling site operated by the housing authority approximates the racial composition of the tenant population as a whole (at the time of the consent order 60% black, 40% white): A. Subject to the availability of qualified applicants, units at one site (occupancy 90 W, 9 B) would be filled with black applicants, and B. Subject to the availability of qualified applicants, all vacancies at the other housing authority site (Occupancy 0 W 140 B) units would be assigned so that seven out of every ten vacancies would be filled by white applicants 3. Continuation of the use of existing priority for residents of West Helena and persons employed in the city is permitted. 4. Refusal of an offer of housing results in the loss of place on the list and removal to the bottom of the waiting list.	1. Tenants who reside in a unit in a site in which their race predominates may apply for transfer to an appropriately sized and priced unit in another site where his/her race does not predominate within 30 days of notification. 2. Tenants residing in units which are too small based on their family size shall receive higher priority. Further, if transfer of such family can not be accomplished to site where the family's race does not predominate, then the authority, with DOJ approval, could transfer the underhoused tenant to an appropriate unit at any site. 3. Persons on transfer list take priority over applicants on waiting list and shall be offered available units for which they qualify first. 4. All reasonable moving expenses would be assumed by the housing authority.	1. Training must be provided on the terms of the agreement. 2. Reporting. A. A report on implementation of order after 75 days B. Quarterly reports for 2 years identifying (1) Address of any unit becoming vacant, number of bedrooms, the date vacated, the date available for rental, and date rented (2) Information on each person applying within quarter, (3) Listing of persons who moved into units with unit information, (4) Listing of persons who applied for transfer to unit in a section where their race did not predominate and data on transfers.

235

*Although the housing authority could use an income range priority in tenant selection and assignment, the parties agreed that if the priority impeded achievement of objectives of the order the parties would attempt to negotiate a resolution. It is unclear however how units would be assigned (i.e., is the first priority date and time of application or rent? Order states that the date and time would be used to determine priority of equally qualified persons which appears to support interpretation that rent is an absolute priority.)

Litigation	Basis of Action	TSAA	Transfers	Other
Vann v. Housing Authority of Kansas City, Missouri 57 F.R.D. 642 W.D. Mo. 1980 (Decision - Dismissing Complaint Lack of Standing and Mootness)	Plaintiffs alleged implementation of tenant selection and assignment plan developed by housing authority and approved by HUD denies equal housing opportunity for black family applicants and tenants. They also alleged that HUD's failure to authorize construction of units outside the inner city was arbitrary, discriminatory and a contributing factor to racial impact of public housing and Section 8 housing. Although the court dismissed plaintiffs claims regarding TSAA on mootness, the court based the dismissal on two relevant findings. A. The court found that based upon the adoption of the revised TSAA plan that there is no reasonable expectation that the policy which was the basis for the suit would be readopted, and B. The court concluded that changes in occupancy at the white project indicates that relief obtained under the revised plan has eradicated the violation alleged to have occurred.	At time of filing of suit the housing authority TSAA plan had historically and continued to be on providing freedom of choice. However, after the filing of this suit the housing authority adopted a revised plan. The revised TSAA procedures were designed to promote affirmative tenant assignment the housing authority implemented the following procedures: 1. Applicants are assigned to units on a "first come first served" basis in accordance with the date and time of their application. A minority preference allows an applicant to receive a preference in assignment to any project in which that person's race represents less than one-third of the resident population of the project. An applicant who does not exercise the preference remains on the waiting list until his name comes to the top. 2. Immediate Housing Option. Applicants are permitted to choose immediate housing at any of three locations with the highest percentage of vacancies. Adopted in response to a growing number of unfilled vacancies at several locations, this option would be for vacant units in the project which do not meet the needs of applicants already on the housing waiting list.	More Discussed	More Discussed

Litigation	Basis of Action	TSAA	Transfers	Other
Pa. Human Relations Commission v. Chester, Pa. Housing Authority 327 A.2d 358 Pa. Sp. Ct., 1974 (Review of Commission Order to disestablish segregated Public Housing.)	Finding of Commission that blacks denied housing until a unit was available at black projects. Offers made to whites only at white projects. The finding was supported by seventeen incidents of racial discrimination involving assignments of tenants at totally segregated projects. Lower court upheld finding but set-aside portions of remedial plan requiring race conscious assignment decision based on conclusion of insufficient showing of violation to justify racial assignments to achieve integregation. On appeal court holds that use of statistics is sufficient to establish a prima facie case of discrimination and can justify remedial actions. Court also refuses to accept housing authority assertion that compliance with HUD requirements preempts sanction under state law.	1. Cease from renting in one white project to whites until racial composition of project reflects ratio of black to white tenants in all public housing projects. 2. Cease from renting housing in three black projects to blacks until racial composition of projects reflects ration of white to black tenants in all public housing projects.	Commission order does not include special treatment for transferees.	PHA directed to work with School District to establish a priority selection system for placement of families with children which will facilitate desegregation of schools in Chester. Reports required monthly for two years on racial composition projects and waiting list. Report also includes data on vacancies, transfers and assignments.

Litigation	Basis of Action	TSAA	Transfers	Other
Barney v. Housing Authority of Beaver County, Pa. (551 F.Supp. 746, W.D., Pa., 1982) (Decision)	Class action alleging that consent order issued by Pa. Human Relations Commission resulted in denial of housing to blacks. Court overturns TSAA Remedial Plan provided in Consent Order. Applying Constitutional "strict scrutiny" test, court finds that plan violates Fourteenth Amendment and Fair Housing Act because applicants are denied housing because of race and are not offered alternative placements.	Policy - Under the plan Housing Authority required to equalize the racial balance in its projects by giving priority in all projects to tenants whose move would improve the racial balance of the project. (i.e., achieve condition where percent of persons in a project equals the percent of such persons in the total of units owned, operated or managed by the housing authority.) TSAA System - 1. When unit becomes available housing authority would determine the racial balance of the project and the district of the county in which the project is located. 2. After examining applicants for that district, filed in chronological, order the housing authority, depending on the racial balance in the project would attempt to make an appropriate assignment on the basis of the applicant's race. A. If no applicant of the appropriate race from the list for that district accepted the unit then the authority would make offers of the unit to other persons of the appropriate race on lists for other districts. b. If authority could not get applicant under the above, then the unit could be offered to the nonpreferred racial group. C. Persons refusing offers in the district where their applications were held were moved to the bottom of the waiting list. 3. Although Pa. Commission remedial plan was silent on what was to happen when racial balance was achieved, housing authority developed the practice, with implicit approval of the Commission, of seeking to maintain equilibrium at project which achieved the goal.	1. Priority for transfers which would promote racial balance in both the projects involved.	Emergency Housing applicants could be housed at any project irrespective of the impact of the assignment on racial balance as long as there were no available units at locations in which emergency transfer would promote racial balance.

Litigation	Basis of Action	TSAA	Transfers	Other
Middlesboro Housing Authority v. Kentucky Commission on Human Rights (553 S.W. 2d 57 Ky. App., 1977). (Review of Kentucky Commission Order. Requiring implementation of a revised Tenant Selection and Assignment Plan.)	Public Housing Authority challenges commission order which was based on the following facts: 1. The Housing Authority maintained racially segregated projects initially. 2. Between 1965 and 1968 it used a freedom of choice plan. 3. After 1968 the Housing Authority implemented a HUD approved three choice plan. 4. There were some indications of passovers and failures to follow plan. 5. The projects continued to be tenanted by persons of one race. Although court concurred with the findings of fact and conclusions of law, it concluded that the Commission was in error for establishing a quota without additional findings and without first providing the Housing Authority the opportunity to present and try its own affirmative action program to desegregate its public housing. The case was remanded with instructions that the circuit court enter judgment placing the initial and primary burden of designing a plan of desegregation upon the housing authority. If the housing authority failed in that duty, or if the proposed plan is patently inadequate, the Commission may impose its own plan of desegregation, including a ratio-remedy, subject to the basic requirements set forth in this opinion. Housing Authority and Ky. Commission execute agreement without further judicial involvements on record.	1. Under the order proposed by Ky. Commission the housing authority would be required to A. Accept, maintain and implement a policy of insuring that the racial composition of each public housing project reflects the ratio of black to white tenant families in all public housing projects under housing authority's supervision, direction and control. b. Stop assigning white families to those projects which have a higher percentage of whites than reside in all Middlesboro public housing projects and stop assigning black families to those projects which have a higher percentage of blacks than reside in all Middlesboro projects until such time as the racial composition of each project reflects ratio of black to white tenant families in all projects. 2. If in implementing the above ratio it is necessary to maintain a vacancy in a project which could otherwise be filled by a qualified applicant whose occupancy would not contribute to desegregation, then, if it is believed the continued maintenance of a vacancy will create an undue hardship, the Commission may waive the application of the above provision and permit the vacancy to be filled.	The Housing Authority would be required to extend to all current tenants an invitation to transfer from their present unit to a vacant unit in a project in which the racial composition of the project reflects a lower percentage of the tenant's race than is reflected among the occupants of all projects within the housing authority.	1. Quarterly Reporting required on applicant pool, transfers and project occupancy. 2. Housing Authority must seek to place a black on the Board of Commissioners and hire one black employee.

Litigation	Basis of Action	TSAA	Transfers	Other
Schmidt v. Boston Housing Authority (505 F.Supp. 998 D.C. Mass. 1981) (Private Challenge to TSAA Policy designed to address state court finding of racial segregation.)	Plaintiffs allege that policy for selecting and assigning tenants has operated to deprive plaintiff class (whites) of the opportunity to rent units in the predominately white projects in South Boston because of their race. Court finds that plaintiffs have failed to establish discriminatory intent or effect in preference provisions based on conclusion that the plan is facially neutral "both white and non white persons can be classified a minority preference 'applicants' depending on the particular housing developments chosen."	The TSAA Plan reviewed was adopted by the Boston Housing Authority and approved by HUD in a voluntary compliance agreement. It provides that: 1. Applicants be permitted to select three preferred locations and be offered dwellings only at those sites. 2. Any applicant who chooses to be housed at a development in which his/her race is substantially in the minority (percentage at project is less than groups percentage of person eligible) will be given priority over all other applicants for the first available habitable vacancy of suitable size at the development selected, except that white applicants will not be eligible for this priority once the percentage of white tenants in a development reaches 50%.	Under the TSAA Plan any tenant can request a transfer to another unit designating three preferred sites. Transfers will only be made to those sites. Further, any tenant in residence at a project in which his/her race is not substantially in the minority will have the right to apply for a transfer to a location at which his/her race is substantially in the minority, and will receive priority over all other transferees and applicants, except for emergency applicants or transferees, for available vacancies at the project chosen. However, white tenants will not be eligible for this priority if whites occupancy in a project exceeds 50%.	No other provisions under review.

Litigation	Basis of Action	TSAA	Transfers	Other
Clients' Council v. Pierce 711 F.2d 1406 (8th Cir. 1983) (Decree on Remand from Court of Appeals.)	Plaintiffs alleged that the Department and the Texarkana Public Housing Authority were liable for racial discrimination in the operation of public housing in the City of Texarkana, Arkansas.	The Decree provides that 1. HUD require the housing authority to stop invoking its policy of making assignments to achieve a broad range of incomes in projects where this policy interferes with effort to assign or transfer families to projects in which their race does not predominate. 2. With respect to elderly projects the housing authority must A. Make the next five offers of units at one white and one black project to applicants of the opposite races. Refusal results in placement at bottom of list. Offers to persons whose race predominates can be made only after all applicants of other race have refused units. B. With respect to other elderly units and after completion of offers under A. use first come first served method of assignment except that elderly applicant refusing a unit in a family project shall not be moved to bottom of list. 3. With respect to family projects the tenanting of available vacant units is to be accomplished by using a one offer one refusal system without respect to race.	With respect to elderly projects transfer over and under housed tenants to appropriate units so that the maximum number of tenants are transferred to projects at which their race does not predominate. With respect to family projects housing authority required within 30 days to develop a plan for transferring all inappropriately housed tenants to appropriately sized units so as to achieve the maximum number of desegregative moves and upon HUD approval implement the plan.	Reports on implementation to be provided and housing authority must describe further steps necessary to create unitary system after implementation of Decree.

Litigation	Basis of Action	TSAA*	Transfers	Other
Hale v. HUD C.A. No. C-73-410 (W.D. Tenn. 8/23/85) (Settlement Agreement)	Class action by minorities against HUD, the Memphis, Tenn. Housing Authority (MHA), the City of Memphis and the Tenn. Development Authority. Plaintiffs alleged defendants failed to provide adequate integrated housing for blacks, including refusals to provide public housing outside areas of minority concentration.	1. Housing Authority will operate under HUD approved three choice (Plan B) system of Tenant Selection and Assignment except that applicants who wish to move to projects in which their race does not predominate will be provided an "integrative move-in option". 2. The "integrative move-in option" operates as follows: A. Applicants coming to the top of the list will first be offered housing in all projects in which their race does not predominate (more than 30% occupancy) B. If no such units available applicant can wait for a vacancy in at least one project before being offered units under the regular assignment plan. C. MHA will not be required to implement the option when a majority of the units in any family project are occupied by non-black families or a majority of the units in any elderly project are occupied by non-black elderly families.	The Memphis Housing Authority will adopt and implement an integrative transfer program to facilitate transfers from a project in which a household's race predominates to one in which a household's race does not predominate. 1. Integrative transfers will not take precedence over transfers for overcrowding 2. Any resident can request integrative transfer. All requests within 12 month period can be treated as being filed simultaneously and order determined by lottery or applicants can be treated chronologically or 3. Top transfer applicant offered all available units in projects in which his/her race does not predominate. 4. MHA will permit at least 50 moves per year provided there are at least that many requests and available units. 5. Transfers shall be permitted unless and until A. A majority of the units in any family project are occupied by non-black families. B. A majority of the units in any elderly project are occupied by non-black elderly families.	1. HUD agrees to allocate 50 certificates over four years to enhance a Special Mobility Program for applicants willing to move to areas where their race does not predominate. Housing Authority agrees to contract with administering agencies to operate program and provide counseling. Administrative fees will be provided to contracting agency by the housing authority. 2. For next 4 years at least 30% of all units developed under public housing program will be located in census tracts in which minority persons comprise less than 40% of the population and in which less that 15% of units are subsidized. Approval of any units in census tracts with more than 40% black occupancy will not be sought unless the housing authority has first obtained approvals for units outside such census tracts. 4. Annual reports on waiting list characteristics and the racial composition of housing projects and sites are required. 5. MHA must develop and implement an affirmative marketing plan design to attract persons to apply for public housing who would be least likely to apply in the absence of such a plan.

* An almost identical TSAA Transfer System was embodied in a Settlement Agreement in Hutchins v. Cincinnati Metropolitan Housing Authority (C.A. No. C-1-79-131. S.D. Ohio 1984)

Litigation	Basis of Action	TSAA	Transfers	Other
Skidmore v. Perry (C.A. No. C-1-80-346 W.D. Ohio 1981) (Consent Decree)	Racial discrimination in the administration of public housing by the Butler Metropolitan Housing Authority and failure on the part of HUD to affirmatively administer public housing program.	The consent decree provides that the BMHA will establish a goal of disestablishing the racial identifiability* of its projects and sites within a three year period. However the court recognized that lack of applicants and the possible refusal of offers may impede achievement of the goal. 1. Applicants are categorized based on the area** for which they are seeking housing (one of two localities). 2. When a unit becomes available it is to be offered to applicants for that area in the following order: A. Applicants willing to make an integrative move who have a priority. B. Transferees willing to make a integrative move. C. Inappropriately housed tenants. D. Applicants willing to make an integrative move who further achieve most of broad range of income. E. Other new applicants. F. Other persons on transfer lists. 3. When more than one unit is available in a project where an applicant's race does not predominate then applicant is offered all units available at such projects. 4. Applicants can choose to wait for an offer of a unit at a project where their race does not predominate without loss of place on waiting list.	Order only requires that housing authority establish transfer list for each area within its jurisdiction and provides that persons applying for a transfer under the decree shall not be required to provide information other than personal identifiers and the location(s) to which transfer is sought.	1. BMHA shall develop and implement a fair housing education program for its employees. 2. Reporting requirements in standard HUD compliance agreement must be followed.

* Racial identifiability occurs when the percentage of blacks residing in a project or site varies by more than 20% from the racial make up of all tenants in public housing.

** Since this was a county housing authority separate geographic areas are designated for determining goals and implementing the plan.

Appendix 3

EAST TEXAS

In March 1980, Lucille Young and Virginia Wyatt, black residents of Clarksville, Texas, filed suit in Federal District Court, Eastern District of Texas, against Moon Landrieu, then-Secretary of Housing and Urban Development, the Regional Administrator of the HUD Fort Worth Regional Office, and the Clarksville Housing Authority and its Executive Director. 1/

The plaintiffs, asserting that they were applicants for public housing, alleged racial discrimination in housing practices, admission policies and site selection procedures by the Clarksville Housing Authority. They alleged that the Secretary of HUD and the HUD Fort Worth Regional Office had participated in the discriminatory conduct by failing to affirmatively act to prevent such practices and by acquiescing in the alleged segregated housing system.

The plaintiffs further asserted that their claims against HUD were typical of claims of all black applicants for, or residents of, HUD-assisted housing in the counties of East Texas in the planning regions of Deep East Texas, East Texas, Northeast Texas and Southeast Texas. Plaintiffs alleged that similar discriminatory housing practices existed and were sanctioned by HUD throughout East Texas and that HUD had failed to take effective affirmative action to achieve racially integrated housing and to enforce its Federally mandated requirements for nondiscrimination in programs of Federal financial assistance. 2/

HUD's Region VI, headquartered in Fort Worth, Texas, comprises the States of Texas, Oklahoma, Arkansas, Louisiana, and New Mexico. Prior to 1981, the Regional Office had conducted approximately 3,300 equal opportunity complaint investigations and other reviews, including over 200 compliance reviews under Title VI of the Civil Rights Act of 1964. However, Departmental records indicated that since 1977, HUD had conducted only six compliance reviews involving public housing authorities in the 36-county area covered by the litigation. In addition, the Regional Office operating plan for Fiscal Year 1981 included, as a Title VI goal, closure of only 12 Title VI compliance reviews in the Region.

1/ Secretary Pierce was substituted as a defendant for former Secretary Landrieu in 1981. The action thereafter has been entitled Young v. Pierce, No. P-80-8-CA (E.D. Texas).

2/ In 1982, plaintiffs amended their complaint by adding an additional plaintiff, Helen Ruth Jackson, a black resident of Pittsburg, Texas, and an additional defendant, the Pittsburg Housing Authority.

Since the Young complaint alleged widespread discrimination in East Texas, the Department commenced an intense investigation and enforcement effort in the area. From 1981 to 1983, HUD completed Title VI compliance reviews of 61 housing authorities in the East Texas area and made findings of apparent noncompliance in 36 cases. An additional housing authority (Cleveland) had been found in apparent noncompliance in 1979.

In nearly every case, the findings of apparent noncompliance were based on evidence that (1) the housing authority was not following its established tenant selection and assignment procedures and (2) that housing projects and sites were racially identifiable. In each such case, the findings were resolved by "informal means." In most cases, the housing authority executed a standard form of compliance agreement which focused on changes in tenant selection and assignment procedures. The form of agreement generally utilized, called the "Model Interim Variance to Standard HUD Approved Tenant Selection and Assignment Plan" and included as an Appendix to the HUD Handbook "Compliance and Enforcement Procedures for Title VI of the Civil Rights Act of 1964," was patterned after race-conscious remedial tenanting procedures negotiated by the Department of Justice in civil actions against housing authorities in the early 1970s. 3/

Under the terms of the standard compliance agreement, instead of offering the person at the head of the waiting list a unit in the project at which the most vacancies existed without regard to race, an applicant would be offered units only at projects where his or her race did not predominate. Only when there were no vacancies at projects where his or her race did not predominate could the applicant be offered a unit in a project where his race did predominate. For these purposes, a race generally would be deemed to "predominate" at a site if more than 75% of the site occupants were of that race. The standard agreement also established a priority for available dwellings for existing tenants volunteering to move from housing where their race predominated to housing where their race did not predominate.

The standard agreement required the housing authority to give direct notice to tenants and persons on its waiting list of the special tenant selection and transfer policies in the agreement. It provided for an initial implementation of the new policies within 30 days after execution of the agreement, and for quarterly reports during the succeeding 18 months documenting units vacated, units filled, the race of applicants and the current status of persons seeking housing or requesting transfers during the previous three months.

3/ See Appendix 4.5, HUD Handbook 8040.1, published June 1976. For a description of the development of the standard remedial plan, see Appendix 2.

A typical case in which a finding of apparent noncompliance was made, and a standard compliance agreement executed, was that of Clarksville. Because the Clarksville Housing Authority had been named as a defendant in the Young litigation, it was among the first examined. The compliance review, conducted in July 1981, found that the Clarksville Housing Authority managed 104 public housing units, of which 52 located north of Main Street were and had always been occupied by whites and 52 located south of Main Street were and had always been occupied by blacks.

The Clarksville Authority's units were constructed at two separate times. Forty-four units were constructed in 1962 as part of a single project at two sites. Twenty units, all designated for elderly occupancy, were placed at the College Heights site on the north side and 24 units, including four elderly units, were placed at the Cheatham Heights site on the south side.

In 1972, 60 units were added at three sites as part of a single project. Thirty-two units, including 24 elderly units, were added at the College Heights site. Six units, including 2 elderly units, were added at the Cheatham Heights site. And 22 units, including 14 elderly units, were constructed at a second site on the south side known as Dryden.

As a result of this development program, the Authority had 52 units at College Heights, including 44 elderly units; 30 units at Cheatham Heights, including 6 elderly units; and 22 units at Dryden, including 14 elderly units.

As indicated, the College Heights units were occupied exclusively by whites, and the Cheatham Heights and Dryden Block units were occupied exclusively by blacks. Moreover, a review of the offers made to applicants for the last 35 units which became available prior to July 1981 indicated that although 20 of the vacancies occurred at College Heights, no black applicants were offered housing there. Similarly, no white applicants were offered housing at the 15 vacancies which became available at the Cheatham Heights and Dryden Block sites.

The HUD Regional Office found the Authority in apparent noncompliance with Title VI, and in November 1981, the Clarksville Housing Authority and HUD entered into a standard compliance agreement. The Authority submitted the reports required under the compliance agreement, but, as it later developed, no progress was made toward disestablishment of segregated conditions.

Clarksville Decision

As indicated above, the Young litigation was commenced as an individual and class action by the named plaintiffs against the named defendant housing authorities and against HUD, and as a class action against HUD. In June 1982, the District Court

severed the individual and class actions against the Clarksville and Pittsburg Housing Authorities from the class action against HUD. The litigation thereafter continued as three separate cases: plaintiffs Young and Wyatt's case against the Clarksville Housing Authority, plaintiff Jackson's case against the Pittsburg Housing Authority, and the class action against HUD. HUD did not remain a party to the separate actions against the two housing authorities.

Lucille Young, a plaintiff in the Clarksville case, lived with her six children in a private three-bedroom house. In 1983, she was advised that she must vacate because of a pending sale of the house. Accordingly, she moved for a preliminary injunction against the Clarksville Housing Authority in order to obtain a unit.

In a decision entered on October 11, 1983, the District Court found that the Authority had assigned applicants on a racial basis in order to maintain segregated housing. Further, it found that applicants had been assigned to, or allowed to remain in, inappropriately sized units in order to maintain this segregated condition. For example, it found that the two three-bedroom units at College Heights were over-housing two-person households, and one of the two two-bedroom units at College Heights was over-housing a one-person household. The Court found that "no effort has been made . . . to utilize vacancies to reassign tenants to more appropriately sized units, even though to do so would have a positive effect on desegregation of the projects." It also found that Mrs. Young was eligible for a three-bedroom or four-bedroom unit; that based on her application date she was at the head of the waiting list for four-bedroom units and second on the list for a three-bedroom unit; and that "but for the purpose of maintaining racially segregated projects and the manipulation of the tenant selection and assignment process to that end, an appropriately sized unit would be available to plaintiff."

The District Judge ordered the Authority to submit to the Court, within five days, a "mandatory tenant transfer plan." The order required that "enough tenants must be transferred to insure that the racial make up of each site is within five percent of fifty percent white and fifty percent black - the present racial composition of the entire [Authority] tenant population." The order required that all transfers be accomplished within 20 days of the Court's approval of the plan; that "any tenant not desiring to transfer shall be evicted"; that the Authority provide any necessary moving assistance to all transferring tenants; and that the plan include an "immediate offer of a unit" to Mrs. Young. The Fifth Circuit Court of Appeals denied the Authority's application for a stay pending appeal.

Notwithstanding the District Court's focus on over-housed tenants, the Authority did not base its transfer plan on reassignment of tenants in inappropriately sized units. Instead,

it drew names from a hat in a lottery. A result was that the transfer plan submitted to the Court failed to provide a unit for Mrs. Young. After a hearing, the District Court ordered that Mrs. Young be housed and the plan be modified to include certain transfers of inappropriately housed families that would open up a four-bedroom unit for Mrs. Young. The Court approved the modified plan on November 28, 1983, and the transfers were effected on December 15, 1983.

Under the transfer plan, 25 black families were directed to move from Cheatham Heights and Dryden to College Heights, and 26 white families were directed to move from College Heights to Cheatham Heights or Dryden. The 25 black families accepted the transfers. Of the white families, only five accepted the directed moves; three received Section 8 Existing Housing Certificates, three moved to public housing operated by other, nearby authorities, and 15 moved to private housing. 4/ Five units at Cheatham Heights and Dryden were filled quickly by white families from the waiting list, but 16 vacancies existed at the sites in February 1984.

In March 1985, 26 white families and 18 black families were in occupancy at College Heights. There were eight vacancies, seven in 0-bedroom units. Six white families and 20 black families were in occupancy at Cheatham Heights, with four vacancies, and 12 white families and seven black families were in occupancy at Dryden, with three vacancies. The waiting list for elderly units consisted of eight white and five black applicants (including five for two-bedroom units); the waiting list for nonelderly units consisted of 12 white families and 79 black families.

HUD Task Force

The Clarksville decision and order became the focus of immediate attention at the HUD principal staff level for obvious reasons. First, the remedial order required a more drastic upheaval of existing tenants than that contemplated by any previous action and would have dramatic repercussions if repeated elsewhere, such as in the remaining East Texas authorities involved (but not as defendants) in the Young class action still pending before the same Judge. Secondly, the findings made in Clarksville made it apparent that the standard compliance

4/ In March 1984, HUD issued a notice to all public housing authorities and assisted housing managers to the effect that if a tenant family vacates public housing rather than accept a directed transfer pursuant to a remedial court order or compliance agreement, such family should not be considered "displaced" by government action for purposes of qualifying for priority or emergency preference for other housing assistance. Notice PIH 84-3 (March 2, 1984).

agreement had been ineffectual, at least if judged on the basis of tangible results.

In early December 1983, William Wynn, Deputy Assistant Secretary for Enforcement and Compliance in the Office of Fair Housing and Equal Opportunity, traveled to Texas to personally survey public housing conditions in the East Texas area. In his oral report to Secretary Pierce of his survey of 20 housing authorities in East Texas, Mr. Wynn confirmed that housing patterns in East Texas authorities were racially segregated. He described many housing authorities where services and facilities were unequal between white and black projects and where executive directors of local authorities (the persons responsible for selecting and assigning applicants) exhibited ignorance and insensitivity to civil rights requirements and, in some cases, admitted overtly discriminatory conduct. Mr. Wynn also reported from discussions with executive directors and tenants that poor management practices within the housing authorities had exacerbated racially segregated housing conditions and were a contributing primary factor to the continuation of segregated housing patterns.

A telephone survey of public housing occupancy patterns in the East Texas area conducted in late December 1983 added to the picture portrayed by Mr. Wynn. This review documented that almost 60 percent of the 119 project sites in 32 authorities surveyed had occupancy in which one race occupied more than 90 percent of the units. Slightly less than 56 percent of the projects (65 of the 119) remained totally one race.

The HUD principal staff recognized at the outset that the task of addressing discrimination, or the effects of prior discrimination, in public housing required priority efforts and cooperation by several different units within the Department, not solely the Office of Fair Housing and Equal Opportunity. In itself, this recognition marked a fundamental change in Departmental attitude, obvious as the need may have been. Mr. Wynn's reference to management practices, and the District Court's findings regarding the role of over-housing and under-housing in perpetuating segregation, made it clear that programmatic performance was implicated as well as compliance with requirements specifically directed to nondiscrimination. In addition, the program office had a more extensive and immediate contact with the local authorities that made it an important and natural resource in the effort.

Accordingly, a Task Force was established, consisting of the Assistant Secretary for Fair Housing and Equal Opportunity (Chairman), the Assistant Secretary for Public and Indian Housing, the Assistant Secretary for Housing - Federal Housing Commissioner, and the General Counsel. Senior Headquarters staff in each of the four offices supported the Task Force, and comprised its Headquarters Working Group. A similar Task Force, comprising senior members of the same offices, was formed in the Region VI office in Fort Worth.

As a initial step, the Task Force obtained more complete information on housing authorities in the East Texas area. The Fort Worth Regional Office developed profiles of each authority, including data on distribution of units by program type (elderly/nonelderly) and by bedroom size, on occupancy of sites and on applicants for housing by race (distinguishing between elderly and nonelderly), on vacancies, and on patterns of over-housed and under-housed tenants by bedroom size and by race. The Task Force also obtained data on new construction projects under development by housing authorities and approved public housing modernization activities.

Initial analysis of the profiles for authorities previously found in apparent noncompliance indicated, in addition to a continuation of segregated occupancy, a broad pattern of over-housed tenants. HUD programmatic policy requires that public housing tenants reside in units which are appropriately sized for the family composition. Underutilization of space is inconsistent with efficient and economical operation and a waste of scarce housing resources, while overcrowding is inconsistent with the authority's obligation to provide decent, safe, and sanitary housing. The requirement of occupancy of an appropriately sized unit exists both at initial occupancy and thereafter. HUD regulations require that each public housing tenant's lease contain the tenant's agreement "to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available." 24 CFR 966.4(c)(3). A transfer can be directed if a tenant family was placed in an inappropriately sized unit at admission or if an initially appropriate unit later became inappropriate as a result of a change in family composition.

Patterns of over-housing and under-housing appeared important to the Task Force for several reasons. First, there were indications that in a number of cases, applicants had been placed in inappropriately sized units in East Texas projects as a means of maintaining racial segregation. A typical case would be the placement of a white elderly family or individual in a unit for which the more appropriate applicant would be a larger family where the only such large-family applicants on the waiting list were black. This was the pattern found by the District Judge in Clarksville, and it appeared to be present in many of the East Texas authorities.

Secondly, the pattern of over-housing, whether or not deliberate, appeared broad enough in the case of many housing authorities to offer assistance in devising a more effective remedy for unlawful discrimination. Under the standard compliance agreement's provisions relating to individual admissions, only gradual incremental change can occur in the racial composition of a project. In operational terms, the pattern would be for one black family to enter an otherwise all-white project and remain there as the sole black tenant until, at some indefinite later point, another black family accepted a

similar assignment. The same pattern would occur upon admission of a white family to an otherwise all-black project. The prospect of this resulting isolation of the "pioneer" family -- sometimes causing it to vacate before the second family arrived -- could in some instances discourage a family from accepting the assignment in the first place. One possible means to counter such a problem was, in the Task Force's view, to find means of moving, at a single time, blocks of tenants large enough to avoid the sense of isolation. Transfers to correct over-housed and under-housed occupancies appeared to present such an opportunity.

Finally, occupancy of an inappropriately sized unit presented one of the few circumstances - perhaps the exclusive one - in which an authority has the right to direct a tenant family in place to move to another unit or, upon refusal, to evict the tenant. A public housing tenant family can be evicted only "for serious or repeated violations of the terms or conditions of the lease or for other good cause." 5/ Moreover, authority actions involving a tenant's lease which adversely affect the tenant's rights, duties, welfare or status are subject to regulatory and statutory grievance hearing requirements. 6/ Particularly in the context of resolving findings made without a hearing by "informal means," the Task Force considered it doubtful that housing authorities have authority to direct mandatory transfers of tenants occupying appropriately sized units, or that HUD has the right to authorize such transfers.

Secretary Pierce issued a memorandum to the Fort Worth Regional Administrator on February 28, 1984, emphasizing his determination to take effective action to remedy racially discriminatory official actions that had resulted in segregated public housing systems and the Department's commitment to assist housing authorities found in apparent noncompliance with Title VI of the Civil Rights Act of 1964 in their development and implementation of effective remedial plans which considered local circumstances and day-to-day program operations. The Secretary's memorandum appears as Exhibit 1 to this Appendix.

The Secretary's memorandum recognized that an initiative which sought remedial measures other than those which had been tried previously would necessarily involve experimentation in areas where neither judicial or administrative precedent nor experience provided clear direction. The Secretary wrote, "there is no universal answer either to what the racial or other demographic characteristics of a nondiscriminatory public housing system will be or the means by which the transition will be achieved. It is because of the variety of local circumstances as

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5/ 42 U.S.C. 1437d(1), as added by Section 204 of the Housing and Urban-Rural Recovery Act of 1983.

6/ See 24 CFR Part 966, Subpart B; 42 U.S.C. 1437d(k).

well as the statutory structure of the public housing system that initial, primary and inescapable responsibility must rest on the local authority. The Department's response to authority proposals must be equally informed and sensitive to local circumstances as well as to the individual rights of tenants and applicants and the statutory objectives of the public housing program."

The Secretary emphasized that "[d]etailed consideration of local circumstances and the intractable realities of day-to-day program operation and longer-term trends will give rise to many questions requiring sensitive balancing of competing individual and collective interests to which the answers are not yet known." Because of the complexity, novelty and importance of the legal and policy questions which would be faced, the Secretary, in a strong departure from customary Departmental practice, directed that authority to approve Title VI compliance agreements or other remedial actions designed to advance the desegregation of public housing authorities would be reserved to Headquarters.

Following the Secretary's statement, the Assistant Secretary for Public and Indian Housing, Assistant Secretary for Housing - Federal Housing Commissioner, Assistant Secretary for Fair Housing and Equal Opportunity, the General Counsel, and other HUD officials met personally with Executive Directors of 54 of the 62 East Texas housing authorities plus others.

In summary, the attendees were told that:

1. The Department would not tolerate the continuation of unlawful racial segregation in public housing systems resulting from discriminatory official action;

2. HUD's goal was to eliminate such discrimination and to assure that public housing is made available on a nondiscriminatory basis;

3. The primary and affirmative responsibility in the first instance for framing a remedy rested with the individual housing authorities;

4. Measures other than those contained in current standard compliance agreements would need to be considered and attempted; and

5. Each remedial plan should address the particularities of each housing authority and remedies that were appropriate for the specific situation.

The Task Force was encouraged by the apparent receptivity and willingness to confront the task which was demonstrated by the PHA attendees at the East Texas meetings. In order not to lose time or momentum, the Task Force determined to proceed immediately to the task of soliciting further remedial measures

by the housing authorities which had been found in apparent noncompliance in the compliance reviews conducted during the last several years, as described above. The Task Force did not pause at this stage to evaluate the findings made in individual reviews, notwithstanding its recognition that Regional Office compliance investigations tended to concentrate more on procedural matters, such as non-conformity with HUD-approved tenant selection and assignment procedures, than on evidence of historic official discrimination. However, the correctness of this choice as to most of the local authorities involved appeared to be confirmed during the course of the subsequent efforts described below. In most cases the patterns were similar and presented substantial evidence of official discrimination.

The Task Force determined to concentrate its initial efforts on those housing authorities (1) against which findings of apparent noncompliance had been made, and (2) which, according to the profiles, appeared to have instances of both over-housing and under-housing which were extensive enough to present an opportunity for meaningful numbers of transfers. During March 1984, substantially identical letters were sent to each of 27 separate housing authorities. Because each of these letters contemplated at least two separate stages of remedial efforts, with the first stage, built upon transfers of inappropriately housed tenants, being referred to as Phase I, these letters were referred to as "Phase I letters."

The Phase I letter directed the authority to:

1. Submit to the Regional Office within 30 days a plan for transferring all tenant families housed in units either too small or too large for their family size to appropriately sized units. To the maximum degree possible, transfers were to be to projects where the family's race did not predominate. However, in selecting tenant families to be transferred, authorities were to give priority to the most seriously overcrowded families and all instances of over-housing and under-housing were to be corrected unless available units were exhausted.

2. Consider whether the occurrence of these transfers would create an opportunity for other voluntary integrative transfers.

3. Assume the out-of-pocket moving expenses for any family accepting a transfer.

4. Freeze all admissions to existing or new vacancies from the waiting list pending approval of the transfer plan.

5. Following approval of the transfer plan, fill vacancies not covered by the transfer plan in accordance with a one-offer system, taking applicants from the waiting list in chronological order without regard to race.

The Phase I letters also laid the groundwork for further remedial efforts, if necessary, to be undertaken after completion of Phase I. The letter instructed the housing authority to submit to the Regional Office, within 30 days after completion of implementation of its HUD-approved Phase I plan, a plan for such further steps as might be necessary. This further "Phase II plan" was to be developed on the basis of the housing authority's assessment of all relevant factors, including:

1. composition of its public housing waiting list and the need for outreach efforts to families in need who were of a race and household type underrepresented in projects or on the waiting list;

2. reasons for the failure to disestablish segregated conditions under the standard compliance agreement;

3. results of implementation of the approved Phase I plan and of tenant selection and assignment procedures during Phase I;

4. comparison of the maintenance and conditions of facilities to determine if there is a physical disparity between the previously all-black and all-white projects, sites or buildings;

5. utilization of public housing modernization funds to rectify any inequalities that might exist in the housing stock; and

6. examination of any other assisted housing program administered by the housing authority to determine its role, if any, in causing any unlawful segregation of conventional public housing and its possible role in remedying discrimination.

Because the remaining eight housing authorities in East Texas found in apparent noncompliance exhibited little or no pattern of over-housing and under-housing, letters to them directed immediate attention to a "Phase II plan."

All of the recipients of Phase I letters submitted transfer plans, with the requested supporting data, to the Regional Office. Each plan was reviewed in the Region and forwarded, with recommendations, to Headquarters. The plan and Regional recommendations were reviewed by Headquarters staff and ultimately were reviewed by the Headquarters Task Force itself prior to approval.

The Task Force review and analysis of each housing authority Phase I plan was not limited to the specifics of the proposal but

included consideration of any facts relevant to or unique to the housing authority or the jurisdiction in which the authority operated. In many cases, the Task Force review and analysis resulted in modifications of plans. For example, plans were revised to include marketing efforts to attract applicants of a particular race for family or elderly units based on a comparison of the applicant pool to the demographic patterns in the jurisdiction. In some cases where it appeared reasonable to expect that vacancies would be occurring at approximately the same rate in both historically black and white projects, race-conscious offers of units in matched projects were directed in order to assist in disestablishing the segregated character of the project while avoiding significant delay to any applicant in obtaining an offer of housing because of his or her race. 1/ In some cases

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1/ Transfers of overhoused and underhoused tenants, and matched racial preferences of the type described in the text, had recently been proposed and approved in a litigation involving public housing in Texarkana, Arkansas. In June 1983, the Eighth Circuit Court of Appeals, in a 2-1 decision reversing a Distict Court decision, held that HUD had failed to take adequate steps to cause the Texarkana Housing Authority to desegregate its system and that such failure amounted to intentional discrimination by HUD in violation of the Fifth Amendment as well as its duty under the Fair Housing Act to "affirmatively further" the policies of that Act. The Court of Appeals remanded to the District Court with a direction to enter an order directing HUD to "issue orders that will require [the Authority] to desegregate all of its housing projects with all deliberate speed." Clients' Council v. Pierce, 711 F.2d 1406 (8th Cir. 1983).

On remand, the Department of Justice submitted a HUD-recommended remedial plan to the Court in March 1984. The plan illustrated the approach to the specific circumstances of each authority.

The Texarkana Housing Authority operated three projects which were exclusively for elderly occupancy and six projects occupied primarily by families with children. At January 31, 1984, one elderly project of 20 units was all-black; a second elderly project had 14 whites and five blacks; and the third elderly project had 16 white and 13 black households. The elderly waiting list had eight white and seven black applicants.

Three family projects were all-black. One family project had seven white and 55 black nonelderly households; another had two white and eight black; and the sixth project had 10 white and 35 black nonelderly households. In no project, therefore, did whites constitute more than 28.5% of the nonelderly occupants. (In each of these three projects, white elderly occupants outnumbered black elderly occupants, so that white households comprised 27%, 55%, and 32% of the total occupancy in the three (continued)

the approved plan required the housing authority to work with other providers of assisted housing, including regional councils of government (COGs) and private sponsors of HUD-assisted housing, to attract persons in need of housing for the authority waiting list or to enable the housing authority to advise its existing tenants or applicants of other available housing opportunities.

Regional Office teams consisting of staff of the public housing program, equal opportunity and legal staffs focused attention on three activities. First, training programs were developed to provide housing authorities found in apparent noncompliance with information to assist them in reviewing their operations and in developing their Phase I plans. Second, technical assistance was provided to housing authorities in their analysis of local conditions, identification of program deficiencies, and development of Phase I plans. Third, upon

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projects.) Whites were 9% of the entire nonelderly household population, and white applicants constituted 13% of the nonelderly waiting list.

The HUD-recommended remedial plan incorporated devices subsequently utilized in the East Texas process. For example, the plan provided for transfers of overhoused and underhoused elderly households in a manner which would further the racial balance in the all-black and predominantly white elderly projects while retaining the approximate balance existing in the third. The plan also provided that the first five vacancies arising in the all-black elderly project should be offered to white applicant households and the first five vacancies arising in the predominantly white elderly project should be offered to black applicant households. The recommendation made clear that it was anticipated that these limited, matched racial preferences would not have an adverse effect on applicants of either race because there was no reason to anticipate a disparity in turnover rates between the two projects.

The recommendation frankly admitted, however, that because of the high percentage of black occupants in family projects and the small number of white family applicants, it might not be feasible to achieve substantial and stable desegregation in all six family projects. Citing school desegregation cases which had held school systems to be "unitary" despite the continued existence of some one-race schools, the plan provided for interim adoption of a one-offer tenant assignment plan and submission of a plan for transfer of overhoused or underhoused families but did not provide directly for measures which would result in a decrease in white nonelderly occupancy in any project. No alternative plan was submitted by the plaintiffs or the Authority, and the HUD-recommended plan was adopted by the Court in April 1984. Clients' Council v. Pierce, No. 79-4086 (W.D. Ark., decree entered April 25, 1984).

receipt of Phase I plans, in-depth reviews were conducted to determine the extent to which the plans would make maximum use of program opportunities to disestablish segregated conditions while minimizing the impact of the plan on the rights of individual tenants.

By the end of October 1984, the Headquarters Task Force had approved Phase I plans for 27 of 28 housing authorities receiving Phase I letters. Implementation of Phase I plans also signaled the beginning of efforts by housing authorities to develop Phase II plans.

In concept, the Phase II process was intended by the Task Force to be an indepth self-analysis of the housing authority's program including review of existing needs of income-eligible persons and characteristics of housing opportunities available to eligible persons within the housing authority's jurisdiction. As a result of this self-analysis it was expected that housing authorities would identify whether additional actions were necessary to assure that the previously segregated system, in fact, was disestablished. While each housing authority would be expected to complete a full self-analysis, it remained possible that efforts taken during Phase I would have resulted in the achievement of a nonsegregated system and that no further steps would be required beyond implementation of a nondiscriminatory tenant selection process.

In late 1984, at the request of several housing authorities, Regional Office staff visited authorities to assist in the conduct of their Phase II self-analysis. During these visits the HUD staff and the housing authority conducted a review of the implementation of Phase I, and an analysis of the housing authority's methods of operation. The HUD staff discussed additional actions that could be taken by the housing authority to assure that the segregated system was disestablished. The HUD staff also advised the housing authority of changes which could be made to increase the efficiency and economy of housing authority operations and to facilitate the administration of a nondiscriminatory public housing program. A Trip Report documenting each field visit was prepared by HUD staff.

Generally, the Trip Reports included an analysis of applicant pool characteristics and current under- and over-housing conditions. The reports also described vacancies, application processing, waiting list management and composition and tenant selection policies and practices. The reports described outreach efforts to obtain new applicants and their results, provision of maintenance and other services to projects, modernization needs or progress, and where appropriate discussed the impact of program requirements such as the application of broad-range-of-income policies on efforts to disestablish segregated conditions. The reports also identifed other HUD assisted programs administered by the housing authority and examined whether such housing was or could be used in remedying segregation in the public housing projects.

The Trip Reports were forwarded to the Headquarters Task Force in connection with its review of changes in occupancy patterns as a result of Phase I. Since the Trip Reports contained information on housing authority operations and recommendations for additional actions the Task Force determined that the field trips not only would be appropriate for reviewing Phase I implementation but also for determining whether further steps were necessary to disestablish a previously segregated system. In effect, the Trip Reports substituted for the initially contemplated Phase II analyses by the local authorities. Between December 1984 and August 1985 the Regional Office conducted field visits to 34 of the 37 housing authorities found in apparent noncompliance in East Texas, including the Clarksville housing authority.

Based on results of the implementation of the Phase I plans and the further information obtained from the Trip Reports, the Headquarters Task Force, by the end of September 1985, had concurred in Regional Office recommended findings that 17 of the East Texas authorities previously found in apparent noncompliance had taken sufficient corrective actions to achieve compliance with Title VI of the Civil Rights Act of 1964. Among the factors considered by the Task Force in determining whether a housing authority had brought itself into compliance were:

1. Evidence of acceptance by applicants of assignments to projects or sites where tenants of their race had not resided previously.

2. The attitude of the housing authority and its executive director in developing and implementing appropriate steps to assure that housing would be made available on nondiscriminatory basis.

3. Indications that the housing authority had examined additional actions to remedy effects of prior discrimination and had implemented the actions appropriate to local circumstances.

4. The effectiveness of the housing authority in the implementation of actions identified.

In none of the cases where HUD has found that compliance has been achieved has the housing authority achieved a racial balance comparable to that ordered by the District Court in the Clarksville case. The Department does not believe that removal of the effects of prior discrimination requires that result. There is little judicial or administrative precedent for defining just what are the "effects of prior discrimination" in a housing context. As a general principle, HUD has considered the unlawful effects to be effective barriers to open access that might be perceived by applicants as a result of prior history and the weight of local custom and perceptions. It is for that reason that the Department has considered that acceptance of assignment

to projects where members of an applicant's race previously had not resided constitutes strong evidence of effective removal of the effects of prior discrimination.

In the 17 authorities deemed to have achieved compliance, the number of one-race projects has been reduced since December 1983 from 28 to 9. In the 26 authorities which had completed Phase I plan implementation, one-race projects have been reduced from 52 to 19. In the 37 authorities previously found in apparent noncompliance, the number of one-race projects has been reduced from 70 to 30.

In all cases where an authority has been found to have achieved compliance, further requirements designed to maintain compliance have been imposed. In each case, the authority has been directed to follow a one-offer tenant assignment plan rather than the three-offer alternative plan generally allowed. Because of the generally small geographic area covered by the authorities' projects, this requirement is not expected to impose the inconveniences, and even hardships, on applicants that it might impose in larger authorities. In each case, also, special reporting requirements are being imposed.

Each authority is required on a quarterly basis for a period of two years to document its occupancy and waiting list characteristics. Further, the housing authority is required to identify all offers of available units to applicants under its approved tenant selection and assignment system. In some cases initiation or continuation of efforts, such as outreach to attract applicants, is required. In all cases, HUD intends to review monitoring reports and provide technical assistance and guidance to the housing authority in its efforts to assure that public housing continues to be available on a nondiscriminatory basis.

Dallas Morning News Reports

The Dallas Morning News published its series of eight articles, entitled "Separate and Unequal," in February 1985. The newspaper's 14-month inquiry was initiated shortly after the court-ordered transfer of tenants in Clarksville in December 1983, and it began with visits to 13 East Texas housing authorities in February and March 1984. Twelve of the authorities visited were among those HUD had found to be in apparent noncompliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964. During their interviews, several executive directors indicated their resistance to any actions to disestablish segregated housing patterns in their public housing program.

The visits and interviews by the News staff were conducted before initiation of the HUD Phase I process. It is instructive, therefore, to compare the pictures depicted by the News' series with more current data and impressions gained after Phase I implementation.

Following is a discussion of six of the East Texas authorities visited by the Dallas Morning News.

Malakoff, Texas

Malakoff, Texas, located in Henderson County, has a population of approximately 2,000. Its Housing Authority operates two public housing projects, with a total of 46 units. One project opened in 1964 on two sites, and the second project, effectively constituting an addition to one of the 1964 sites, opened in 1980.

HUD found the Malakoff Housing Authority in apparent noncompliance and entered into a standard voluntary compliance agreement with the Authority in 1982. At the time of the compliance review, a 16-unit site of the 1964 project and the 22-unit 1980 addition to the same site were all-white, and an eight-unit site of the 1964 project, located across town, was all-black. The survey made in December 1983 disclosed no change.

The Dallas Morning News visited Malakoff in February 1984. It reported that major aspects of Malakoff's community life - its schools, the City Council, the school board - had become integrated, but its public housing had remained segregated.

The News reported that three members of the Housing Authority (one of them black) were fired in 1978 because they supported the location of a privately developed subsidized project in an integrated area of town. Notwithstanding the firing of the three Authority members, the project apparently was built in an integrated area and with an integrated occupancy.

The News indicated that HUD's finding of noncompliance in 1982 was based on a finding that the Authority was "maintaining segregated public housing by overserving elderly whites." The HUD investigation report did note that there were substantially more elderly occupants than units designed for elderly occupancy, and that the elderly occupants were predominantly white. However, the principal basis of the finding of noncompliance was evidence of unexplained failure to offer vacancies at white sites to eligible black tenants while offering such vacancies instead to whites who were in lower chronological order on the waiting list.

The Malakoff Housing Authority was sent a standard Phase I letter in March 1984. The Authority identified 13 overhoused tenant families but no underhoused families and no current vacancies. It proposed no immediate transfers but, instead, to cure the overhousing conditions as vacancies arose.

On a field visit in March 1985, HUD found that the formerly all-black eight-unit site housed four black and four white families, and that three black families were housed in each of the two adjoining formerly all-white sites. The HUD review

indicated that all sites were well-maintained, and that no problems had accompanied desegregation of the sites.

Based on this report, the Task Force deemed the Authority in compliance, subject to continuation of a one-offer, one-refusal tenanting plan and follow-up reporting.

Trinidad, Texas

Trinidad neighbors Malakoff in Henderson County. Its population is approximately 1,100, and its Housing Authority operates 54 public housing units. One project opened on three sites in 1966, and a single-site 30-unit project opened in 1980.

The 1966 project opened with 10 elderly units on one site, six family units on a second, and eight family units on a third. The first two sites were all-white at initial occupancy and the third site (Birdsong), located in a black neighborhood, initially was all-black. At some point, however, Birdsong became occupied solely by white elderly tenants. For some period, therefore, blacks were excluded totally from Trinidad public housing.

When the new Park Oak project opened in 1980 with 20 elderly and 10 family units, the eight white elderly occupants of Birdsong were transferred to it, and black families were admitted to Birdsong. Park Oak opened with an all-white occupancy.

(The Dallas Morning News report appears to suggest that black occupants of Birdsong were "evicted" and replaced by white elderly tenants during construction of the Park Oak project in 1979. However, the HUD investigation report, written in 1982, indicated that no black tenants were in occupancy in Birdsong in January 1979, and it does not provide data regarding the transition of Birdsong's occupancy from black to white between 1966 and 1979.)

HUD found the Trinidad Housing Authority in apparent noncompliance and entered into a standard voluntary compliance agreement with the Authority in August 1982. At the time of the compliance review, there was one black tenant in occupancy at a site other than Birdsong.

The December 1983 survey indicated continued all-white occupancy at the 10-unit elderly site; an increase in black occupancy at the six-unit family site from one unit to four units; one white family occupant at Birdsong; and no black occupants at Park Oak. None of the elderly occupants in the Authority were black.

The Trinidad Housing Authority initially was unable to identify transfers of overhoused or underhoused families which would contribute to desegregation of its projects. However, transfers were made as vacancies arose, and the Authority made

outreach efforts to attract black elderly tenants, augmented by "word-of-mouth" efforts by Trinidad's black mayor. Efforts to improve the area around Birdsong and to obtain increased municipal services for all public housing sites, all of which are located in the same general area of the City, have been initiated.

A HUD field visit in March 1985 found two white occupants at Birdsong; two black and one Hispanic occupant at Park Oak; one black occupant at the 10-unit elderly site; and two black occupants at the remaining six-unit site.

Based on this report, the Task Force found Trinidad in compliance, subject to continuation of a one-offer, one-refusal tenanting plan and follow-up reporting.

Talco, Texas

Talco is a small (population 750, including 49 blacks) community in Titus County. Its Housing Authority operates one 10-unit public housing project which, in the 15 years before 1983, had never housed a black occupant. The Executive Director had admitted during a HUD program office occupancy review in 1978 that the Authority did not want black tenants and would fill vacancies only with white tenants, but this information did not lead to compliance action under a civil rights authority. The Authority was sent a reminder of the Authority's nondiscrimination obligation under its annual contributions contract.

A Title VI compliance review was conducted in January 1982. There was no available evidence of actual passing over of black applicants, because the Authority had no record of applications and apparently only sought applicants when vacancies arose. Based on past direct evidence of intentional exclusion of black occupants, however, the Authority was found in apparent noncompliance, and a standard compliance agreement was signed.

The Dallas Morning News reported that the Talco Housing Authority "reluctantly" admitted its first black occupant in 1983 "under pressure from HUD." It quoted a former Authority member, in February 1984, as hoping that the one family would be the extent of integration in Talco's public housing.

Later in 1984, the Authority's Executive Director was replaced by the manager of a neighboring authority. In March 1985, the Authority's project had one black and one Indian tenant, and one black and one Indian applicant. Management irregularities, including the failure to record applications and maintain application files, were being addressed. Project management was improved, and the project was clean.

The Authority was instructed to follow a one-offer, one-refusal, first-come, first-served tenanting plan and to submit quarterly follow-up reports.

Gilmer, Texas

The City of Gilmer is located in Upshur County. The population of Gilmer is approximately 5,200, including 1,100 blacks.

The Gilmer Housing Authority operates 140 public housing units at two sites, Sorrells Park and Ervin Hills. Units were built at each of these sites at two separate times. Thirty family units were built at each site in 1953. In 1967, 42 elderly and 20 family units were added at Sorrells Park, and eight elderly and 10 family units were added at Ervin Hills.

Each time units were constructed, it was with the apparently clear intention that the Sorrells Park units be for whites, and the Ervin Hills units for blacks. The Dallas Morning News quoted the Authority's Executive Director, in a 1980 letter to HUD:

> "I guess the reason we can't get our projects together on race [is] because when these projects were built there was no such thing as discrimination. One project was built for minority and the other one for non-minority groups. It seems that is the way they still want it. We really don't mean to discriminate."

HUD conducted a Title VI compliance review in March 1982 and found the Authority in apparent noncompliance. Segregation was complete: no black tenants at Sorrells Park, and no white tenants at Ervin Hills. The Authority's formally established tenant assignment plan provided for one-offer, one-refusal, but evidence (including the Executive Director's admissions) indicated that it was administered in such a way that whites were offered units only at the white site and blacks were offered units only at the black site. The HUD investigation report did not comment on physical conditions at the sites.

HUD entered into a standard compliance agreement with the Authority in July 1982. The agreement provided that applicants would first be offered vacancies, if available, at a site where their race did not predominate, and that existing tenants would be offered the opportunity to transfer to a site where their race did not predominate. The agreement required the Authority to publicize its "non-segregation" policy, which it did by public notice; to provide a copy of its policy to each applicant and obtain a written acknowledgement of receipt, which it did; and to provide a copy of its transfer policy to each existing tenant and obtain a written acknowledgement of receipt, which it also did.

HUD's survey in December 1983 indicated that there had been no change in occupancy at that time; there remained no black tenants at Sorrells Park, and no white tenants at Ervin Hills.

The Dallas Morning News visited Gilmer and interviewed the Executive Director in February 1984. The News reported on two points: (1) the black site was in markedly inferior condition, and (2) the Executive Director remained "firmly committed to racial segregation." On the first point, the News reported:

> "The white project in Gilmer is Sorrells Park in which whites occupied all 92 apartments when The News visited in February 1984.
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> "The brick duplexes and quadraplexes are set on gently sloping hills in a predominately white neighborhood, and the housing authority office is within the complex. Streets surrounding and entering the development are paved. Apartments are connected by concrete sidewalks, surrounded by maintained landscaping and illuminated with extensive lighting. A shopping center is nearby.
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> * * *
>
> "Ervin Hill is the black project. Grass is scarce and landscaping non-existent in the 48-apartment complex occupied exclusively by blacks. Sidewalks are scattered. Unpaved streets surround the project on three sides. The main parking lot is unpaved and, on rainy days, becomes a mass of rutted mud. There are few street lights. There is no nearby shopping center.
>
> "Ervin Hill tenants said the Gilmer Housing Authority usually ignores their requests for repairs."

On the second point, the News quoted the Executive Director as justifying the continuation of racial segregation on the basis of contrasting lifestyles:

> "Their (blacks') customs are different from ours . . . . Their refrigerators are the nastiest things, and the stoves will make you sick. They act like the world owes them a living . . . . They don't care about their kids. They just let them run wild. I can see why the whites wouldn't move over there."

The Gilmer Housing Authority participated in HUD's Phase I process. The Authority had received a $550,000 FY 1983 modernization award, which it proposed to use for 10 units at the all-black Ervin Hills site and 30 units at Sorrells Park. The Authority proposed to address its overhousing and underhousing in the course of this modernization program, including transfers of occupants of units being modernized in a manner that would further desegregation.

On a site visit in March 1985, HUD found eight black occupants at Sorrells Park, with 35 vacancies due to modernization. No whites were in occupancy at Ervin Hills, but there were 15 vacancies due to modernization. (By September 1985, there were 16 white and 31 black families in occupancy at Ervin Hills.) The Authority also managed a Section 8 new construction project financed by Farmers Home Administration which had opened for occupancy in 1980. The project had 57 white and 7 black occupants.

Cleveland, Texas

The City of Cleveland is located in Liberty County. Its population of approximately 6,000 is over two-thirds white.

The Cleveland Housing Authority operates 70 public housing units. Fifty family units are located at three sites, and 18 elderly units are at a fourth site. Two elderly units share a single site with 10 family units.

HUD conducted a Title VI compliance review in 1979 and found all sites segregated totally. A standard compliance agrement was entered, but the December 1983 survey found no change in the occupancy pattern.

The Dallas Morning News visited Cleveland in February 1984 and reported its officials to be intransigent. According to the News, Cleveland's mayor said that if the Federal Court ordered Cleveland to desegregate its public housing, "we'd probably fight it." The Chairwoman of the Authority said, "It just won't work . . . . Their ways of living are different from ours. Their churches are different from ours. They have different morals." The sentiments were echoed by the Authority's Executive Director. (The News pointed out, in ironic contrast, that the Executive Director's daughter-in-law managed a privately-owned Federally-subsidized project which had opened in Cleveland two years earlier on an integrated basis and had eight black, two Hispanic, and 50 white households in March 1984.)

Cleveland participated in HUD's Phase I process shortly after these interviews. Lack of vacancies or available matches of appropriately-sized units made immediate transfers of overhoused and underhoused tenants infeasible.

The HUD Task Force recommended that the Authority offer the next five vacancies at an all-white family site to blacks, and the next five vacancies at an all-black family site to whites. Since there was only one black elderly applicant, the Task Force directed the Authority to utilize outreach efforts in an attempt to attract black elderly applicants.

A field visit in March 1985 found that progress had occurred. Overhousing and underhousing with the exception of one overhoused tenant had been corrected through vacancies. Cross-

racial unit offers to applicants had led to admission of three black families to a previously all-white site and four white families to a previously all-black site. The Authority staff and Board members had talked to black and white ministers, the postman, the City Council, the funeral director, and to Authority tenants, asking that black elderly applicants be referred to the Authority. As a result, the Authority had nine black elderly applicants. The members of the Board of the Authority included two blacks.

The Housing Authority proposed to offer three available units at its historically white elderly projects to eligible black elderly applicants and to work with the City in its efforts to improve conditions in the neighborhoods in which two public housing sites are located.

Based on this progress and implementation of the further actions proposed, the Task Force concluded that equal access to the Authority's projects was now being effectively provided. The Authority was deemed in compliance with Title VI, subject to implementation of a first-come, first-served tenanting policy and follow-up reports.

Texarkana, Texas

Texarkana presents a strikingly dissimilar picture from that of the small authorities in rural areas previously described. Texarkana is a larger city, "cut in half by the Texas-Arkansas state line," as described by the Dallas Morning News. The Texas half has a population of approximately 31,000, which is over two-thirds white.

The Texarkana, Texas, Housing Authority operates nine public housing projects with almost 700 dwelling units. Four projects comprising approximately 450 units are predominantly (375 units) for family occupancy. The remaining five projects contain only units designed for elderly occupancy. Four of the elderly projects (the Robinson Projects), including a 130-unit high-rise, are located at one site. Forty-two elderly dwellings are scattered among four sites.

HUD conducted a Title VI compliance review of the Authority in February 1982. At that time it found only 18 white families in the Authority's 370 occupied family units, compared to 352 black families (95%). Whites constituted 26% of the family occupancy in one project, and less than 3% of the family occupancy in two others. The occupancy of the Authority's elderly units was 70% white. Occupancy of the elderly units then located at the Robinson site other than in the high-rise was 21% black. However, only five units in the high-rise were occupied by blacks.

Texarkana, therefore, was experiencing an occupancy pattern associated with many larger authorities: an inability to attract

or hold white family participants and an increasing demand for family units by blacks, with a resulting overwhelmingly black family occupancy and waiting list. 8/

HUD found the Texarkana Authority in apparent noncompliance with Title VI. With respect to nonelderly occupants, the investigation noted that black nonelderly were being housed by the Authority "in a proportion that is greater than the probable need" but in "segregated sites." Given the overall nonelderly occupancy it would not have been possible to have any nonelderly sites that were not predominantly black. The report appeared to attribute the black predominance of nonelderly public housing occupancy to a pattern of "steering" white nonelderly applicants to the Section 8 Existing Housing program. However, no investigation of that program was conducted, and no provision of the resulting compliance agreement was directed to the Section 8 Existing Housing program. The investigation found that both elderly and nonelderly applicants were assigned units out of order and on the basis of race.

A Dallas Morning News report focused primarily on the elderly high-rise. The News noted that in February 1984, only four black elderly resided in this 130-unit project, and that unlike the other projects which housed the majority of black elderly tenants and all the black family tenants, the high-rise tenants had conveniences such as "central air conditioning and heating, remote security systems, a community center and 75 cent, Federally-assisted lunches". The article quoted the Executive Director of the Authority as explaining the lack of significant black occupancy at the highrise: "Blacks won't take it." "It's a 10-story highrise, and they're afraid of heights." (A similar explanation had been given by the Executive Director to the HUD investigators in 1982.)

Information obtained by HUD in its Phase I communications with the Authority revealed that white nonelderly occupancy had further declined. The Authority indicated that major physical problems existed at two of its family projects and that major social problems involving drugs and prostitution also existed at these sites. There were black occupants at the elderly sites at Robinson other than the high-rise, although some black elderly tenants also were overhoused in family units at the predominantly

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8/ A similar pattern was emerging on the other side of the Arkansas border. A HUD compliance review of the Texarkana, Arkansas, Housing Authority in 1978 found occupancy of the Authority's nonelderly units to be approximately 50% white, but on a segregated basis. Operating under a standard compliance agreement, the Authority achieved desegregation of its white nonelderly projects but not of the black projects. In January 1984, whites occupied only 9% of the nonelderly units and comprised 13% of the nonelderly waiting list. See note 7, supra.

black family projects. The Authority's Phase I plan proposed transfers of inappropriately housed nonelderly occupants within its family projects, and of overhoused black elderly occupants in family projects to elderly sites, and the offer of the next five units at the high-rise to black applicants.

The Task Force approved the Housing Authority plan with respect to elderly public housing. However, the Task Force directed that action on family transfers proposals await development of modernization programs to enhance the family projects.

HUD also found that approximately 60% of units occupied under the Section 8 Existing Housing program were occupied by blacks. Approximately two-thirds of Section 8 applicants granted certificates and seeking housing, and of applicants still awaiting certificates, were black.

In February 1985, black occupancy of the elderly high-rise had increased to 10 units. (An additional 13 black households offered units in the high-rise refused.) Occupancy measures relating to the nonelderly units was deferred while physical and social problems were being addressed. With regard to the family projects:

- Approximately $3.5 million in modernization funding has been approved for the family projects.

- A local task force has been established by the Authority consisting of Authority staff, city officials, tenants, and a HUD Housing Management Officer. Actions taken by the local task force and the Authority include hiring off-duty police to patrol projects and the initiation of crime watch programs.

- HUD funding will be used to repair project streets which were never dedicated to the city, and the use of speed bumps to reduce danger to families is under consideration.

- A secured playground for young children is under consideration.

Conclusion

The foregoing descriptions are limited to localities highlighted by the Dallas Morning News series, but HUD believes they are fairly representative of the results of the process initiated by HUD in early 1984.

Numerical occupancy patterns should not be the sole basis for measuring achievement. However, the numbers alone do suggest

a broader effectuation of change than had been achieved previously through HUD Title VI compliance activities. Permanence of the change is something else. It will remain unknown for some time, for example, whether once-white, now-integrated projects will evolve into all-black projects, repeating a frequent, but not universal, pattern seen elsewhere.

At this point, however, several observations can be offered, all to be further tested over a longer time and in other locales:

- Indispensable ingredients in the process followed in East Texas were the participation of HUD public housing program staff, in addition to the civil rights enforcement (FH&EO) staff, 9/ and the extensive and intense direct contacts between HUD personnel and housing authority members and staffs and local officials. The direct contact and offered guidance produced changes in local attitudes that had been assumed to be unachievable and elicited a readiness to make changes on the part of authority and other local officials that was beyond expectations.

- An equally indispensable ingredient was HUD's insistence that the local authority had initial responsibility for assessing the local situation and devising measures suited to the specific local factors.

- The strategy of seeking movement of tenants and applicants in blocs, rather than individually and incrementally, through correction of overhoused and

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9/ As an outgrowth of the task force approach instituted for the East Texas effort, integration of nondiscrimination requirements and objectives into the programmatic perspective of the public housing program staff has been more broadly institutionalized. In September 1985, HUD published a revision of it Field Office Monitoring of Public Housing Agencies Handbook (HUD Handbook 7460.7 REV, Sept. 1985) and its Public Housing Occupancy Audit Handbook (HUD Handbook 7465.2 REV, Sept. 1985). The former provides instructions for monitoring procedures designed to identify public housing agencies with sufficiently aggravated problems to require more intensive audits. It provides that all reviews will include the collection of data which may be pertinent to a review of Title VI compliance. The revised Occupancy Audit Handbook incorporates procedures for intensive nondiscrimination monitoring, requiring the program staff auditor to obtain data on racial and ethnic characteristics of public housing sites, review a larger sample of tenant files, and review a list of identified factors which may indicate discriminatory conduct or conditions.

underhoused conditions or through management of vacancies caused by modernization programs, appears to have contributed to success. In particular, the East Texas experience appears to have achieved greater success at desegregating formerly all-black projects, in addition to all-white projects, than had been achieved elsewhere - a result essential to avoiding a disproportionate occupancy in the authority as a whole.

The transferability of the East Texas experience to other circumstances also remains a large question. With a few significant exceptions such as Texarkana, most of the East Texas authorities had several important factors in common: a history of separation of the races in public housing attributable to official purpose but to little else; a relatively balanced demand for public housing by race and household type (elderly and nonelderly); waiting lists not so long as to effectively predetermine overall occupancy for years to come; and geographic compactness of a system, making mandatory assignment of applicants to units anywhere in the system not infeasible.

Unquestionably there are many public housing authorities outside the East Texas counties where the same factors exist, and where efforts such as those in East Texas not only are needed but have a fair chance of achieving change. Just as unquestionably, however, there are many areas where some or all of these factors do not exist. It cannot be assumed, for example, that compliance measures that were appropriate and appeared successful in a small East Texas authority would be equally appropriate or effective in a large urban authority, spread over a large area, with a long and predominantly minority waiting list. More fundamentally, it cannot be assumed that the latter circumstance presents a case of discrimination by the authority for which corrective action under the nondiscrimination statutes is required, or would be appropriate.

A final lesson of HUD's East Texas experience which will be equally pertinent elsewhere is simply this: The East Texas process was not one of uniform application of HUD-ordered general instructions based on a priori assumptions. It was casework, highly individualized to specific circumstances, careful and staff-intensive at both the HUD and local authority levels, and inescapably it will continue to be so. There are no shortcuts.

HUD-31328

EXHIBIT 1

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

February 28, 1984

MEMORANDUM FOR: Dick Eudaly, Regional Administrator, 6S

SUBJECT: Public Housing Desegregation

The existence of public housing systems which are racially segregated as a result of discriminatory official action offends the Constitution as well as statutory authorities which the Department is called upon to enforce. The duty to disestablish a dual public housing system and to effect a transition to a unitary system is in most significant respects similar to, and is no less than, the duty to disestablish dual school systems.

The primary and affirmative responsibility in the first instance for framing plans for the disestablishment of dual public housing systems rests on local public housing authorities. The duty of the Department is to monitor and assist the process and to assure meaningful and effective progress. This duty flows from several sources, including the Constitution, Title VI of the Civil Rights Act of 1964, and Section 808(e)(5) of the Fair Housing Act.

The Department has conducted many Title VI compliance reviews of public housing authorities and has entered into many compliance agreements based on precedents developed in court-approved consent decrees. This has occurred in Region VI and elsewhere. However, the test of the adequacy of a remedial plan is whether it works. Plainly, in many instances the compliance agreements obtained have not passed that test.

The goal of a plan to disestablish a dual public housing system must be conversion to a unitary system. As the lessons of the school desegregation experience as well as the variety of local circumstances in the public housing system must make clear, there is no universal answer either to what the racial or other demographic characteristics of a nondiscriminatory public housing system will be or the means by which the transition will be achieved. It is because of the variety of local circumstances as well as the statutory structure of the public housing system that initial, primary and inescapable responsibility must rest on the local authority. The Department's response to authority proposals must be equally informed and sensitive to local circumstances as well as to the individual rights of tenants and applicants and the statutory objectives of the public housing program. Our imperative task, however, is to assure immediate and steady progress toward correction of the condition that offends the Constitution.

This task weighs particularly heavily in Region VI, as the past history disclosed in the Young v. Pierce litigation reveals. Senior

members of your Regional staff are participating in the Task Force recently established which includes the Assistant Secretaries of Fair Housing and Equal Opportunity and Public and Indian Housing and the General Counsel. The Task Force is overseeing and guiding a comprehensive and urgent approach to the task of public housing desegregation in Region VI and elsewhere and will continue to do so.

You are instructed to commence promptly, in accordance with the specific instructions and guidelines of the Task Force, the process of assuring that local public housing authorities (commencing with those located in the 38 counties covered by Young v. Pierce) are fully aware of their Constitutional and statutory obligations in this regard, and that they are equally aware that the Department is cognizant of its own obligations and intends to discharge them.

Authorities found to be in apparent noncompliance as a result of Title VI compliance reviews should be instructed to prepare promptly and submit effective plans for the disestablishment of dual systems. Authorities which have entered into previous compliance agreements which have not produced meaningful results, whether because of deficiencies in implementation or in the plans themselves, should be instructed similarly. Compliance reviews and desegregation plans should include in their scope equality of physical conditions and the direction of modernization programs toward actions facilitating conversion to a unitary system. Violations of programmatic requirements (such as locating tenants in inappropriately sized units) which experience indicates have contributed to creation or maintenance of dual systems should be ordered corrected, in a manner designed to remedy the discriminatory effects of the violations, without regard to separate Title VI process findings.

This inaugurates a more comprehensive and intense response to the persistence of segregated public housing than the Department previously has undertaken. Detailed consideration of local circumstances and the intractable realities of day-to-day program operation and longer-term trends will give rise to many questions requiring sensitive balancing of competing individual and collective interests to which the answers are not yet known. Inevitably there will be trial and error, but through dedication and resolute commitment there also will be progress. It will be essential, however, that there be complete coordination of this Departmental effort. Subject to further instructions issued through the Task Force, all authority to approve Title VI compliance agreements or other actions designed to advance the desegregation of public housing authorities is reserved to Headquarters.

Samuel R. Pierce, Jr.

Appendix 4

CDBG Contract Conditioning

Introduction

The Community Development Block Grant (CDBG) program, authorized by Title I of the Housing and Community Development (HCD) Act of 1974, provides funding to entitlement cities and counties. In FY 1984, 691 cities and 104 counties had entitlement status, up from 637 cities and 98 counties in FY '83.

The CDBG Program was designed to both simplify the administration of urban development programs as well as to increase local flexibility. Prior to 1982, a detailed annual application for funds was submitted for review and approval to HUD Field Offices. After the 1981 Budget Reconciliation Act, entitlement communities were only required to submit a "final statement of community development objectives and projected use of funds." Grantees also submitted an assessment of the prior use of funding to meet national objectives. Such Grantee Performance Reports have been made simpler and the amount of detail is at the discretion of the grantee.

The evolution of the CDBG entitlement program, through legislation and amendments, has therefore emphasized local discretion and a reduction of front end application reviews.[1] Greater emphasis is now placed on post-approval monitoring with reduced emphasis on Housing Assistance Plans (HAPs) due to the shift in HUD assistance to Section 8 Existing certificates.

Conditioning

Section 104(d) of the 1974 HCD Act authorizes the conditioning of entitlement grants. The conditioning or conditional approval of an entitlement award is an administrative action in which all or a portion of a subsequent year's funding is approved subject to certain conditions related to specific areas of performance. The condition is a prior step in a chain of remedial actions which may result in an "appropriate adjustment" under Section 104(d) in which all or part of the conditioned entitlement grant is reduced. That is, an entitlement community's funding will be approved subject to its correcting concerns regarding performance. Typically, either HUD program monitoring or auditing leads to a finding that results in conditioning. When efforts to reach an agreement with a grantee over performance concerns are unsuccessful, HUD may invoke Section 104(d) involving the adjustment authority to reduce a portion or all of the next year's award.

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[1] See Surveys and Investigation Staff. 1985. "The Community Development Block Grant Program of the Department of Housing and Urban Development", (March) Report to the House Committee on Appropriations:32-33; Paul Dommel, et.al. 1983. Deregulating Community Development. A Report to PD&R. HUD-PDR-647 (October). Washington, D.C.: U.S. Department of Housing and Urban Development.

Conditioning may be imposed for deficiencies in a variety of areas including:

- Housing Assistance Plans (HAPs)
- Fair Housing and Equal Opportunity (FHEO)
- Eligible Activities
- Program Benefit
- Program Progress
- Financial Management

There is often an overlapping of these areas of concern, such as fair housing issues may be associated with HAP conditioning. Program benefit and progress may also have equal opportunity implications.

1975 to 1980

Up through 1980, there was relatively a steady increase in the use of conditioning of entitlement communities, with urban counties conditioned at a higher rate than metro cities or Hold Harmless grantees (Annual Report for FY '80: p.90). The percent of grantees conditioned rose from 22 percent in 1977 to 39 percent in 1980. (Few conditions were imposed the first two program years, 1975 and 1976.) In the early years, some conditioning was due to the fact that grantees were unable to resolve deficiencies in their application within the mandatory 75 day review process (Annual Report for FY '80).

The significant growth in the amount of conditioning did not, however, occur uniformly throughout all HUD Field offices. In FY '78, for example, 40 percent of all grantees were conditioned in Region III but only 11 percent in Region I. There was also substantial variation within Regions. Within Region IV, for example, one Area office in FY '78 conditioned 60 percent of their grantees while another conditioned only 14 percent. Again, in FY '80 Region IX conditioned 60 percent of its grantees but Region I only 18 percent. Within Region IX, the Los Angeles office conditioned 83 percent of its grantees while San Francisco conditioned only 21 percent. In the area of fair housing, in FY '78 the Pittsburgh Area Office accounted for nearly half (49 percent) of all FHEO conditions. At the same time, 24 Area Offices imposed no FHEO conditions (FY '78 Contract Conditioning Report). In FY '79, the Birmingham Area Office conditioned 9 percent of its approved grantees while the Jacksonville Area Office conditioned 76 percent of its approved grantees. (FY '79 Contract Conditioning Report, p. 3).

Table 1 provides a summary of contract conditions for entitlement communities for the period of 1977 through 1984. During this period 1,375 grants were conditioned, with more than one condition often imposed on grantees and with few grantees conditioned in successive years (See Table 6). Prior to 1981, 1,195 grantees, or 26 percent of all grantee approvals were conditioned.

Table 1: Summary of Entitlement Contract Conditions: 1977-1984

FY	Grantees Approved	Grantees Conditioned	Percent Conditioned	HAP Conditions		FHEO Conditions	
				No.	Percent	No.	Percent
1977	1313	292	22	15	1	10	.8
1978	1304	318	24	83	6	101	7.7
1979	1294	338	26	144	11	58	4.5
(PHASE out of 600 Hold Harmless Grantees)							
1980	633	247	39	77	12	28	4.4
1981	643	124	19	19	.3	5	.5
1982	715	22	3	10	.1	1	.1
1983	726	15	2	5	.7	2	.2
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Total:	7411	1375	18.5				

Source: Annual Entitlement Contract Conditioning Reports, Office of Field Operations and Monitoring, CPD

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HUD-31329

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The evolution of the CDBG entitlement program, through legislation and amendments, has therefore emphasized local discretion and a reduction of front end application reviews.[1] Greater emphasis is now placed on post-approval monitoring with reduced emphasis on Housing Assistance Plans (HAPs) due to the shift in HUD assistance to Section 8 Existing certificates.

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Source: Annual Entitlement Contract Conditioning Reports, Office of Field Operations and Monitoring, CPD

The substantial variation in contract conditioning across HUD Field Offices, as well as concerns about the merit of some conditioning, led HUD to issue a notice in 1980 to address these issues.[2] Local officials were to be provided the opportunity to correct any deficiencies before the imposition of a contract condition. In addition, HUD Headquarters was to be notified of all decisions regarding special contract conditioning. The latter was an effort to both standardize conditioning as well as to reduce the use of unnecessary special conditioning.

1981-1984

In 1981, Secretary Pierce in his testimony before Congress stated that the Administration would act to "increase local flexibility and minimize Federal involvement, consistent with our desire to return power and decision making to localities and States."[3] At the same time, 1981 legislative amendments for the CDBG program were incorporated into the Budget Reconciliation Act eliminating the application process. In its place, HUD substituted a requirement that a recipient provide a final statement of objectives and use of funds. Program accountability was shifted to the implementation or performance stage of CDBG review.[4]

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[2]Notice CPD 80-10. "Special Concerns in Review of Fiscal Year 1980 Entitlement Applications." The notice contained instructions regarding contract conditioning including: "Chief elected officials should be advised as early as possible...of the prospect of special contract conditions...."

[3]Statement of Samuel R. Pierce in Hearings before the Senate Subcommittee on Housing and Urban Affiars. "Housing and Community Development Admendments of 1981." (April 21) 1981.

[4]This shift was reflected in the language of the report of a Senate Committee:

> We are ... convinced that the integrity of the program will be protected by the present and proposed requirements for performance review as opposed to application review. In recent years, the Department of Housing and Urban Development interpretation of the Act has placed too much emphasis on application review. The HUD regional and area office staff has used the application process far too frequently as a means for imposing HUD's views of acceptable program activity on local entities. The Committee's proposal re-emphasizes the post grant review and audit process as the proper point in time to determine consistency and appropriateness of local CD programs. (Housing and Community Development Amendments of 1981, S. Rept. 97-98, 97th Cong., 1st Sess., p.3.)

The dual objectives of these changes was to simplify the Administration of the Program consistent with the Administration's focus on deregulation, and to provide increased local flexibility.

In 1981, HUD issued a notice to assist in implementing the decisions of the Secretary as well as Congressional concerns.[5] The 1981 notice, not unlike that issued in 1980, required "prior consultation with CPD Headquarters...in all cases where special contract conditions are proposed to address performance deficiencies." The Notice also emphasized the need to resolve differences through negotiation rather than through the withholding of funding. The Notice states:

> "where there is agreement by Headquarters on the need for a special contract condition and the general nature of the condition, the chief elected official of the locality should be advised promptly of the prospect of special contract conditions and the corrective actions or sanctions that HUD may take in the event of failure to satisfy the condition. The locality should be offered the opportunity to meet with Area Office staff concerning the conditions and their effects. Negotiations with the community concerning the situation may resolve the issues in other ways, and thus eliminate the need to impose special contract conditions."

Beginning in 1980, with greater emphasis in 1981, HUD thus stressed both the need for Central Office involvement in special contract conditioning as well as the importance of consultation and negotiation with local officials to eliminate the basis for the proposed conditioning. Technical assistance would be provided to communities to help reduce potential performance or compliance problems.

These changes had a noticeable impact on the volume of CDBG conditioning (see Tables 1 and 2). The number of entitlement communities affected by conditioning decreased by 50 percent from 247 in FY '80 to 124 in FY '81.

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[4](cont'd)"Thus, the focus of HUD involvement in local programs was statutorily shifted from a prospective look at local development strategies through the application process to a retrospective assessment of individual activities and implementation performance. However, the 1981 changes did not alter the three national objectives. In ending the application process, the new law shifted the locus of expressing any preference among the three objectives from HUD to local officials." Paul Dommel, et.al. 1983. Deregulating Community Development. A Report to PD&R. HUD-PDR-647 (October). Washington, D.C.: U.S. Department of Housing and Urban Development.

[5]Notice CPD 81-5, "Review of Community Development Block Grant (CDBG) Entitlement Applications." (May 15) 1981.

This represents a decline from 39 to 19 percent of all approved entitlement communities. Between FY '80 and FY '82 there was an 82 percent reduction in the number of entitlement grantees conditioned. There were 19 grantees conditioned in FY '84.

Table 1 indicates that HAP conditioning constituted 12 percent of all contract conditions when in 1980 77 HAP-related conditions were imposed. Fair Housing and Equal Opportunity issues have constituted a smaller proportion of all grants conditioned. The highest percentage occured in 1978 when 7.7 percent of grantees were conditioned for FHEO reasons, a year in which a few HUD field offices imposed the bulk of conditioning in this area.

Table 2 indicates the number and type of contract conditions imposed during the period 1977 through 1982, with some grantees conditioned for more than one reason. HAP conditioning, for example, increased from 20 percent of all conditions in FY '78 to nearly 30 percent one year later.

A portion of the reason for this increase relates to a 1978 legislative change in the definition of provisions regarding "expected to reside." The change, made during the FY '79 application process, required applicants to restrict the expected to reside provision to employment rather than to allow it to address issues related to (fair share) housing. Forty-eight grantees were conditioned for resubmission of their HAPs to correct this change in scope of the expected to reside provision. A number of grantees conditioned for "other conditions" were also conditioned for application deficiencies which may have related to the change in statutory definitions. Thus a legislative change, occuring in the midst of the FY '79 application review process, generated an atypically large number of conditions for HAP (resubmission) related matters. Most of these conditions were lifted within 60 days.

The data in Table 2 also indicate an atypically large number of "other" conditions in 1980. Over half of these conditions refer to site acquisition issues related to HUD Notice CPD 79-13. This notice was issued in July 1979 at a time when half or more of FY '80 applicants had been processed. The conditions were, therefore, for resubmissions to obtain HUD approval of sites to be acquired for housing developments. An additional 37 of the conditions refer to non-HAP related application deficiencies.

Table 3 indicates that before 1981, HAP conditioning constituted an average of 27 percent of the reasons for grantee conditioning and after 1981 constituted 21 percent. Thus, although the absolute number of grantees conditioned has declined, HAP conditioning has remained relatively constant as a proportion of all conditioning.

Fair housing conditioning declined from an average of 16 percent of all grantees conditioned before 1981 to 5 percent after 1981. Again, the atypically large number of grantees conditioned in FY '78 makes comparison of average FHEO conditioning skewed for the pre-1981 period.

Table 2: Number and Types of Grantee Conditions: 1977-1982

Type of Contract Condition*	No. of Conditions					
	1982	1981	1980	1979	1978	1977
HAP	10	21	77	144	83	26
Financial Management	3	12	13	(included in other)	9	11
FH&EO	1	5	28	58	101	19
Eligible Activities	-	26	59	96	58	5
Program Benefit	-	30	80	90	69	95
Program Progress	-	6	35	50	67	16
Other**	12	66	112	54	28	41
Total	26	166	404	492	415	213

Source: Annual Entitlement Contract Conditioning Reports, Office of Field Operations and Monitoring, CPD.

*Grantees may be placed in more than one category of contract conditioning and therefore may be double counted. There is therefore a larger number of grantee conditions than the number of conditioned grantees shown in Table 1.

**Other includes Labor Standards, Relocation Acquisition, HUD Notice CPD 79-13, Site Acquisition, Environment, and Audit Finding.

Table 3: HAP and FHEO Grant Conditioning: 1977-1984

FY Year	Grantees Conditioned	HAP No.	HAP Percent	FHEO No.	FHEO Percent
1977	292	15	5	10	3
1978	318	83	26	101	32
1979	338	144	43	58	17
1980	247	77	31	28	11
1981	124	19	15	5	4
1982	22	10	45	1	4
1983	15	5	31	2	13
1984	19	4	21	2	10
1977-1980:		$\frac{319}{1195}$ = 26.7%		$\frac{197}{1195}$ = 16.5%	
1981-1984:		$\frac{38}{180}$ = 21.1%		$\frac{10}{180}$ = 5.5%	

Technical assistance, negotiations with grantees, and post award monitoring have therefore been substituted for the more extensive use of conditioning. The reduction in funding of subsidized new construction programs also has substantially limited opportunities to utilize HAPs to promote the location of housing in non-impacted or suburban areas. There have, as a result, been substantially fewer opportunities to condition entitlement awards for HAP related reasons related to the location of assisted family or elderly housing.

Grant Reductions

Only a small percentage of all conditioned grants have led to an actual reduction in the amount of a subsequent year's funding or a grant disapproval.[6] Table 4 indicates that a total of approximately $31 million dollars has been reduced or disapproved from entitlement or discretionary grantees from 1975 through 1984. Only 50 grants were disapproved or reduced during the period from 1975 through through 1984 for HAP or fair housing related reasons with virtually all reductions of funding for HAP related reasons occurring during the period from 1975 through 1980. Three out of the four reductions for fair housing reasons after 1981 were imposed on a single jurisdiction, Oakland County, Michigan. An additional 39 grants were disapproved or reduced for other reasons in the period from 1975 through 1984, including audit findings, lack of capacity to carry out the program, ineligibility, and ineligible costs. Over half (54 percent) of all reductions or disapprovals for reasons other than HAP or fair housing occurred in the period 1981 through 1984. From 1981 through 1984, $5.44 million in grant reductions occurred mostly for reasons related to audit findings.

Non-Participating Communities

A number of entitlement communities do not participate in the CDBG program for a variety of reasons. Some resist applying because they do not wish to accept Federal requirements to accept low- and moderate-income housing (e.g., DuPage County, Illinois - see below). A small number of communities are conditioned and then withdraw from the program. During the period of 1977 to 1980, many Hold Harmless communities failed to apply because of the diminished funding available to them as their Hold Harmless grants were phased out.

Table 5 indicates the number of communities which did not apply for funding from 1975 through 1984. The number appears to increase in direct relation to the increased use of conditioning by HUD, reaching a peak in 1979. Currently eight communities do not apply for $7.1 million in entitlement funds.

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[6]Statutorily and by regulation grants may be reduced without prior conditioning. There have been few such instances.

Table 4: Disapprovals/Reductions of Entitlement Grants: 1975-1984

	HAP	FHEO	OTHER	AMOUNT
1975	3	-	-	$580,000
1976	13	-	1	$2,368,200
1977	11	-	10	$6,292,147
1978	10	1	-	$6,192,000
1979	5	-	5	$8,660,000
1980	3	-	2	$1,675,000
1981	1	-	8	$2,195,908
1982	-	1	4	$2,102,579
1983	-	1	9	$1,024,504
1984	-	1	-	$118,000
Total	46	4	39	$31,208,338

Table 5: Entitlement Communities That Did Not Apply for Funding: 1975-1984

FY	Number of Communities	Amount of Funding Not Applied For (Millions of Dollars)
1984	8	$ 7.1
1983	10	8.4
1982	11	7.7
1981	26	21.1
1980	21	22.9
1979	39	16.9
1978	31	13.4
1977	36	0.3
1976	28	8.6
1975	15	4.4
Total	225*	$119.8

*Number of grants not applied for, since some communities did not apply in more than one year.

Successive Conditioning

A small number of entitlement communities have been conditioned in successive years. Data in Table 6 indicate that there were seven jurisdictions that had been successively conditioned as of 1982. (No new jurisdictions were added to the list of successively conditioned grantees in 1981 or 1982.) One community, Jefferson Parish, Louisiana, was conditioned for several years up through 1982.

A brief examination of these cases reveals issues and recent strategies for resolving recalcitrant HAP and fair housing concerns.

* Jefferson Parish, Louisiana

Jefferson Parish's Block Grants were successively conditioned from FY 1978 through FY 1982 because it had not made progress in carrying out its Housing Assistance Plan (HAP). In June 1980, HUD funded a Section 8 project consisting of 216 units, despite the objections of the Parish Council. The Council took action to block the project, and HUD threatened to reduce the Parish's FY 1979 and 1980 grants as provided in the conditions.

HUD, the Parish, and the developer proceeded to negotiate a compromise in late 1980 that would produce the units in two separate projects. Although the Parish and the developer did not meet all the time deadlines specified in the FY 1981 contract conditions, progress was being made and HUD granted extensions. With continued HUD pressure in FY '81 and '82 two successful projects have now been completed with a total of 194 assisted housing units (funds were not sufficient to build all 216 units).

There are other recent examples of HUD's use of conditioning to achieve effective housing or fair housing goals:

* Steubenville, Ohio

HUD has had a history of fair housing concerns with the city which extend over a decade. In 1973, a conciliation agreement was approved by HUD, but the city's implementation was inadequate. In the first year (FY 1975) of the Block Grant Program, the City was required to revise its Housing Assistance Plan (HAP) to include sites for construction of assisted housing outside racially impacted areas. The assisted family housing called for in the HAP still had not progressed from FY 1979 through FY 1983 and HUD therefore, placed special contract conditions on the city's grants. When the city did not meet specified milestones, despite time extensions granted by HUD, grant reductions totaling $1,848,500 were made. In 1984, the long-sought results were achieved: 60 units of assisted family housing were constructed on sites in non-impacted areas, and another 75 units (acquisition with rehabilitation) are in processing. In FY 1984, Steubenville's Block Grant was approved without special contract conditions.

Table 6: Successive Conditioning: 1977-1982

FISCAL YEAR	NUMBER OF ENTITLEMENT GRANTEES CONDITIONED SUCCESSIVELY
1977, 1978, 1979 1980, 1981 and 1982	3
1978, 1979, 1980, 1981, and 1982	2
1979. 1980, 1981 and 1982	1
1980, 1981, 1982	1
1981 and 1982	0
TOTAL	7

- Alameda, California

Alameda was first denied its Block Grant in FY 1978 because of failure to make satisfactory progress towards HAP goals. The City was again not funded in FY 1979. In FY 1980, the City was given a conditional approval calling for development of 79 units of assisted housing in the next year. The conditions were considered satisfied in 1981 based on a revised housing strategy calling for 54 new construction and 19 substantial rehabilitation units and a commitment of CDBG resources.

Because progress was slow, HUD conditioned the City's FY 1982 grant to require that construction start within 90 days on 40 units of Section 8 housing. The housing was subsequently provided, although this deadline was not met.

In FY 1983, both the City's regular entitlement grant and the Jobs Bill grant were conditioned to require creation (through conversion and rehabilitation) of 40 new rental housing units for low- and moderate-income families (the other 39 units called for in the FY 1980 contract condition, plus 1). The city did not meet the time deadlines established, and the Jobs Bill Grant was reduced to zero. Subsequently, work began on the 40 units and the regular entitlement funds were released to the city when they were completed. The FY 1984 grant funds were approved without conditions.

- DuPage County, Illinois

The Department reduced the County's FY 1979 grant to zero because of serious deficiencies in performance, including performance related to HAP goals. The County chose not to apply in FY 1980 and 1981.

DuPage County re-entered the program in FY 1982. Its grant was conditioned, however, to withhold $1.5 million until actions were taken to provide housing assistance and housing outreach. The required actions were not all taken, so the county's Jobs Bill and FY 1983 grants (totaling $5,795,000) were approved subject to special conditions. During 1984, the various conditions were met and the funds released. (In addition, a Federal Appeals court clarified the fair housing responsibilities of the County in a decision on June 26, 1984) The final hurdle, passage of a fair housing ordinance containing required language, was overcome in August 1984 after Susan Zagame, HUD Deputy Assistant Secretary for Fair Housing and Equal Opportunity, went to DuPage County and met with county officials.

Conclusions

The absolute level of conditioning of entitlement communities has declined since 1981. There are four major reasons for this decline:

1. The decline in the amount of HUD assistance for new housing construction virtually eliminated opportunities for HAP or site acquisition-related conditioning;

2. The elimination of the application process in 1982 eliminated the use of conditioning for application related deficiencies;

3. A decision by the Administration to increase local responsibility and accountability entailed a deregulation of the program, simplifying and streamlining its operation;

4. The emphasis on the provision of technical assistance and support by Field Offices, combined with a process of negotiation with local officials, also reduced the need to condition. (Negotiations and assistance became HUD priorities beginning in 1980.)

The absence of time-series data on the actual performance of grantees, with and without conditioning before and after 1981, prevents making objective assessments of the impact of varying levels of conditioning. No data are available to determine whether negotiations can achieve as effective an impact as conditioning or grant reductions.

The absolute decline in the amount of conditioning should not conceal several facts:

- HAP conditioning declined from 27% of all conditions before 1981 to only 21% after 1981;

- With the exception of 1978, FHEO conditioning has always constituted a small fraction of all grantee conditions; and

- Since 1982, HUD has successfully resolved some of the more difficult cases of successive conditioning.

Appendix 5-A

Lucas County, Ohio

Under a general headline "Stuck in the Ghettos," The Dallas Morning News reported instances of alleged refusal on the part of local housing authorities or other local officials or residents to permit the development of low-income housing outside inner-city areas, and particularly in suburban areas. One such instance involved the Lucas (formerly Toledo) Metropolitan Housing Authority.

Lucas County, Ohio, includes the City of Toledo and its western suburbs. The Authority has county-wide jurisdiction but its nearly 3,000 public housing units are located entirely within the City of Toledo. The Authority also operates a Section 8 Existing Housing program and, in the 1970's operated a Section 23 leased housing program.

In 1974, a private action was commenced against the Authority and HUD by four individuals suing on behalf of a class defined as "all low-income minority persons residing in the Toledo metroplitan area who, by reason of their race and poverty are unable to secure decent, safe and sanitary housing in the Toledo metropolitan area . . . without [Authority-approved] assistance . . . and who would like . . . to live in public housing in suburban communities outside the City of Toledo."

The case was tried before District Judge Young, without a jury, in January 1978. Five years later, in May 1983, Judge Young rendered an opinion holding that the Authority (1) had failed to eliminate the de jure segregation within its public housing projects which had existed prior to a Court desegregation order entered in 1953, and (2) had failed to disperse assisted housing into non-minority-concentrated suburban areas of Lucas County outside Toledo.

The Court found the Authority guilty of intentional discrimination because, notwithstanding a stated policy of integration, its actions had "left its housing as segregated as it was to begin with." The Court also found HUD liable, because "by its control of the purse strings," HUD could "force [the Authority] to dance to its tune." The Court recognized that, except for the Section 8 Existing Housing program, the Authority could not develop assisted housing in the suburban areas unless the local municipalities entered into cooperation agreements with the Authority. The Court nevertheless held both the Authority and HUD liable because they had not taken sufficient steps to "cajole" the suburbs to execute such agreements. The District Court enjoined future discrimination and required the development of plans to desegregate the public housing projects within Toledo and to disperse assisted housing into the suburban areas.

The Dallas Morning News reported that one of the plaintiffs, Thomas Gonzalez, had lived with his five children in a two-bedroom substandard house in a Hispanic community in Sylvania, a Lucas County suburb. The home was condemned, and Mr. Gonzalez could not find afforable housing in Sylvania that could house him and his family. He lost custody of his children and lived in a one-bedroom apartment in Toledo until he died in late 1984. The article noted that the District Court decision was still on appeal when Mr. Gonzalez died.

In March 1985, one month after publication of The Dallas Morning News series, the Sixth Circuit Court of Appeals reversed the District Court decision insofar as it related to dispersal of assisted housing to the suburban areas. The reversal was based on lack of standing because, given the need of obtaining cooperation agreements with the suburban communities, the plaintiffs could not establish that, but for the actions or inactions of the defendants, there was a substantial probability that assisted housing would have been built in the suburbs. A ruling by the District Court that HUD had set Section 8 fair market rents "too low to foster adequate housing outside Toledo" was remanded for further findings, because the record did not indicate whether any of the plaintiffs were eligible for, or had sought to participate in, the Section 8 program. The Sixth Circuit however affirmed the District Court's ruling regarding internal segregation within the Authority's public housing projects, and it upheld the District Court's order requiring preparation of an affirmative action desegregation plan. Jaimes v. Toledo Metropolitan Housing Authority, 758 F.2d 1086 (6th Cir. 1985).

Dispersal to Suburbs

Apart from the technical ground for the reversal, the record does not appear to support a claim of shortcomings, much less intentional discrimination, on the part of either the Authority or HUD with regard to efforts to provide assisted housing in the suburbs. The Authority did actively seek cooperation agreements with the suburbs. None of the suburbs involved were CDBG recipients, so there was no independent HUD leverage. Also, there was no HUD funding available to the Authority for public housing construction during most recent periods prior to the litigation, and three of the five Section 8 New Construction projects in Lucas County approved by HUD by the time of trial were located in areas with less than 1% minority population. (The District Court ignored Section 8 New Construction.)

Section 8 Fair Market Rents

Regarding the "leased housing developments," the District Court held that HUD "did not set rents high enough to obtain property in non-minority tracts, and the defendant [Authority]

supinely accepted these unconsciously low rentals. [The Authority] only made one effort over the years to get higher rents, and that was not made until most of the allotment of rental units had been expended. That one effort was rejected by HUD."

In 1970-71, an additional allocation of Section 23 funds was made to the Authority with an increase in Fair Market Rents (FMRs) for the new funding. When, in a later year, the Authority submitted a survey justifying higher Section 8 FMRs, HUD ultimately granted it. In any case, the Section 8 program had been in operation in Lucas County for less than a year at the time of trial.

At a remedy hearing in 1984, plaintiffs conceded that HUD's then-most recent annual recalculation increased the FMRs to such a level that, according to their post-hearing brief, "there appears to be no need to increase them at the moment." In fact, HUD's 1984 recalculation produced FMRs for three- and four-bedroom units higher than plaintiffs had requested.

Further, at the time of trial, Section 23 units were evenly distributed between areas of minority concentration and the remaining areas of the county. Using definitions employed by plaintiffs, 47% of Section 23 units were outside areas of minority concentration, and 47.3% of Section 8 Existing units were outside minority areas.

Public Housing -- Site Selection

The District Court held that internal segregation in the Authority's public housing projects in Toledo was due, in part, to discriminatory site selection. The Court of Appeals wrote:

> There are . . . difficulties inherent in the District Court's decision concerning the location of housing units in Toledo, particularly in light of the litigation which has delayed or brought about termination of some proposed public housing sites. There were seven projects located in Toledo before 1953, which were ordered to be desegregated at that time . . . . By the time of trial in this case twenty additional projects had been constructed, fourteen of which were located outside Black impacted areas. (Three had been so located by 1953.) Eight of the projects in areas of racial minority concentration . . . were developed under Urban Renewal plans to improve slum areas of the city. This was an effort to provide sanitary and decent housing under the Housing Act to persons in the minority impacted areas who needed this assistance by

> reason of living in substandard slum dwellings. The district court also ignored in its decision the location by defendants of approximately one-half of Section 23 public housing program units outside Minority Concentrated areas.

HUD also took a number of concrete steps to promote location of public housing in sites which would expand housing choice. HUD disapproved sites in minority areas and, when this left no available sites, suggested formation of a committee of the Authority, the Toledo Fair Housing Center, and Advocates for Basic Legal Equality (which represented plaintiffs in the litigation) which located several potential sites in non-impacted areas of Toledo. When the City of Toledo initially refused to grant sewer extensions for two such sites, HUD threatened to cut off CDBG funds to the City unless the action was reversed. The City allowed the extension but a referendum subsequently prevented it. HUD funded litigation by the Authority to challenge the validity of the referendum, but it ultimately was upheld by the Ohio Supreme Court.

The Dallas Morning News reported that the Authority invited the City to veto four projects proposed for predominantly white areas, and the City "complied." An amendment to the City's cooperation agreement had deleted the City's veto power, but when local residents objected to the proposed projects, the Authority advised the City Council, incorrectly, that it had power to veto them. When the City Council purported to exercise the veto, HUD advised the Mayor that it would suspend consideration of several program and project applications unless the veto was overturned. A court decision soon thereafter invalidated the veto.

Public Housing Segregation -- Tenant Assignment

As described in Appendix 2, HUD in 1967 rescinded its prior approval of "freedom of choice" tenant selection and assignment plans and directed local public housing authorities to adopt a "first-come first-served" plan based on a community-wide waiting list. Either of two types of plan were prescribed as acceptable: one permitting an offer of only one unit and one refusal before removal to the bottom of the waiting list, and the other permitting the offer and refusal of up to three units, offered in sequence of locations with the highest number of vacancies. The adoption of one or the other of these plans was required as a means of furthering compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964.

Notwithstanding the basis for its adoption and without evidence that the plan was being misapplied, the District Court found the Authority guilty of intentional discrimination because

it followed a HUD-approved three-offer plan. The totality of the District Court's finding on the issue is as follows:

> It is of course well understood by those who must deal with problems of bigotry and discrimination that the noble words "freedom of choice" often are a euphemism for "racism." If the person at the top of the list of housing applications had to accept the first available unit physically suitable for his individual needs, or else be dropped to the bottom of the list, it is inconceivable that after some twenty-five years the racial complexion of [the Authority's] old housing projects would not at least be the same as the list of housing applicants, if not of the community as a whole.

The District Court ordered the Authority and HUD to submit a "special plan of affirmative action to reduce the racial segregation within [Authority] projects, which shall include, insofar as possible, but not be limited to, the abandonment of the three refusal rule for new applicants, a transfer policy which encourages transfers to create better racial balance, the affirmative marketing of units to applicants where acceptance of the units would create better racial balance, and the earlier housing of applicants on [the] waiting list if they are willinig to reside in a project which would have a better racial balance if they resided in it."

The Court of Appeals found "no clear error in the trial court's findings of serious racial imbalance within the [Authority's] projects, and that this is attributable, at least in part, to past practices of segregation." It therefore affirmed the portion of the District Court's order set forth above.

A survey of the occupancy of the Authority's non-elderly units at the time of trial is interesting. The following table indicates the dates of initial occupancy, whether the location is in a minority-concentrated cencus tract, and the percentages of white and minority occupants at June 30, 1977:

Initial Occupancy	Minority Census Tract	% White	% Minority
1940	Yes	76	24
1940	Yes	2	98
1943	Yes	28	72
1941	Yes	0	100
1943	Yes	0	100
1942	No	49	51
1942	Yes	0	100
1961	Yes	19	81
1965	Yes	0	100
1969	No	40	60
1969	No	41	59
1971	No	43	57
1972	No	28	72
1972	Yes	0	100
1972	Yes	0	100
1970	Yes	11	89

Six of the projects were all-minority. Six of the projects had white occupancy percentages of more than 25% but less than 50%, and one had a white occupancy percentage of more than 50%. Eleven of the 16 projects are in minority-concentrated census tracts, but three of these were not minority-concentrated at the time of construction of the project. In total, the non-elderly units were occupied 25% by whites, 70% by blacks, and 5% by others.

After receiving proposed remedial orders from the parties, the District Judge informed the parties in August 1985 of the substance of the order he intended to enter. He would set a 75% minority occupancy goal for non-elderly units in each project, to be achieved by offering to white applicants only units in projects where the then-current white non-elderly occupancy was less than 27-1/2%, if an appropriately sized unit is available. If units in such projects are available and all are refused, the applicant will be removed to the bottom of the waiting list. By this means, white non-elderly occupancy in the seven projects where it was between 28% and 76% is to be reduced to not more than 27-1/2%. Similarly, black non-elderly applicants will be offered only units in projects where the then-current black non-elderly occupancy is less than 77-1/2%.

The 75% occupancy goal for family units was based on occupancy data at the time of trial. In response to his proposed order, the District Judge was informed by the Authority that the minority occupancy of family units had increased to 80%. The Court's order has not yet been entered, and it is not known whether the Court will adjust the minority occupancy goal for each project to 80%.

Appendix 5-B

Quincy, Massachusetts

The City of Quincy, Massachusetts, lies immediately southeast of Boston. It is one of the several communities located in Norfolk County which comprise an area commonly referred to as the South Shore suburbs. The 1980 census reported the following data regarding the principal South Shore communities:

	Population	% Minority	% Black
Quincy	84,743	2.18	0.2
Weymouth	55,601	1.78	0.4
Braintree	36,337	1.29	0.2
Randolph	28,218	5.09	3.02
Milton	25,860	2.9	1.66
Total	230,759	2.38	0.79

The 1980 census reported a total population of Boston of 526,994, including 205,125 minorities (38.92%) and 126,229 blacks (23.95%).

Massachusetts is one of a few States in the nation with a State-assisted public housing program. The Quincy Housing Authority (QHA) owns and manages four Federally-assisted public housing projects, including one family project of 180 units and three elderly projects aggregating 471 units. The QHA also operates State-assisted projects comprising 438 family units and 470 elderly units. In total, therefore, there are 618 family and 941 elderly units. In addition, the Authority administers a Section 8 Existing Housing Certificates program and a similar State program.

Like most housing authorities, the QHA gives preference in its tenant selection procedures to residents of its own political jurisdiction. HUD's public housing regulations permit a residency preference. 24 CFR 960.204(e) provides:

> Requirements or preferences for those living in the jurisdiction of the PHA at the time of application are permissible subject to the following: No requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are

> hired to work in the jurisdiction shall be treated as residents of the jurisdiction. 1/

1/ The prohibition on durational residency requirements is based on decisions holding that such requirements violate the Constitutional right to travel. See Cole v. Housing Authority of City of Newport, 432 F.2d 807 (1st Cir. 1970); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 (2d Cir. 1971). Inclusion in the term "residents" of persons working or hired to work in the jurisdiction is based on statutory references, in the Housing Assistance Plan provisions of the Housing and Community Development Act of 1974, to persons "expected to reside in the community as a result of existing or projected changes in employment opportunity."

In June 1979, HUD proposed an amendment to its Section 8 New Construction regulations which, among other things, "as part of the Department's efforts to promote the objective of spatial deconcentration of housing opportunities for lower income families," would have (1) required owners of non-elderly family projects located in jurisdictions not having a materially higher concentration of low-income persons than the entire metropolitan area to adopt and implement a marketing plan to promote occupancy by families living in "impacted" jurisdictions (i.e., jurisdictions having materially higher concentrations of low-income persons), and (2) prohibited residency preferences or requirements in the program. 44 FR 33804 (June 12, 1979). In the final rule, published in October 1979, "due to substantial opposition and many comments from individuals, local officials, developers, legislators and others," the prohibition on local preferences was dropped and the requirements for early marketing to impacted areas were altered. 44 FR 59408, 59409 (October 15, 1979). The changes were not sufficient to still the opposition. The published final rule contained a requirement that the owner "must undertake marketing activities in advance of marketing to other prospective tenants in order to provide real opportunities to reside in the project to persons from impacted jurisdictions, persons who are least likely to apply as determined in the affirmative marketing plan, and persons expected to reside in the community by reason of current or planned employment." A resolution of disapproval of the final rule, stating that it would "give preferences to nonresidents of the project area and deny opportunities to the poor, especially low-income senior citizens residing within the assisted housing project area," was introduced in the House of Representatives, and a hearing was held before the Subcommittee on Housing and Community Development. See Disapproving and Invalidating HUD Regulations Concerning Section 8: Hearings on H.J. Res. 424 Before the Subcommittee on Housing and Community Development, Committee on Banking, Finance and Urban Affairs, 96th Cong., 1st Sess. (1979). Following the hearing, HUD revised the final rule to delete the requirement for advance marketing to residents of impacted jurisdictions. See 24 CFR 880.601(a)(3).

Residency preference also is expressly provided by Massachusetts law applicable to State-assisted units. The Massachusetts statute provides:

> There shall be no discrimination or segregation; provided, that if the number of qualified applicants for dwelling accommodations exceeds the dwelling units available, preference shall be given to inhabitants of the city or town in which the project is located, and to the families who occupied the dwellings eliminated by demolition, condemnation and effective closing as part of the project as far as is reasonably practicable without segregation or discrimination against persons living in other substandard areas within the same city or town. For all purposes of this chapter no person shall, because of race, color, creed, religion, blindness or physical handicap, be subjected to any discrimination or segregation. No inhabitant of the city or town or no person employed in the city or town in which the project is located shall be refused eligibility to a waiting list or occupancy based solely upon the grounds of a residency prerequisite. Mass. Gen. Laws Ann. ch. 121B, §32(e).

The Dallas Morning News, under a general headline "Inadequate enforcement helps keep minorities in inner city," reported on the impact and status of the residency preference employed by the Quincy Housing Authority. The News reported that the policy "effectively meant that no blacks were allowed in Quincy's public housing." The News also reported that the "handful" of blacks who have been admitted into a family project have been subjected to harassment. Two white men were prosecuted and convicted for firebombing a black tenant's home; the News reported that the QHA's executive director has "received high marks from all sides for the tough steps taken to prevent harassment of the few black tenants."

The Quincy Housing Authority's residency preference has been the subject of review and controversy for nearly a decade.

In 1978, the HUD Regional Office of Fair Housing and Equal Opportunity conducted a compliance review of the QHA under Title VI of the Civil Rights Act of 1964. A finding of apparent non-compliance was made on September 1, 1978. Because the Investigation Report is not available, the basis for the finding cannot be reported. In a Compliance Agreement dated February 6, 1979, however, the Authority agreed as follows:

> In order to assure compliance with Equal Opportunity Regulations as outlined in the Federal Register dated January 19, 1979 2/ and to offer

> minority applicants fair housing opportunities, the Authority will, for all Federally subsidized units owned or managed by itself;
>
> a) Establish a priority for minorities equal to that priority allowed by law to Quincy residents.
>
> b) Identify all applicants by racial composition.
>
> c) Choose from the established waiting list, following identification of minorities on the basis of one (1) minority selection for each three (3) non-minority applicants selected.
>
> By following this procedure there will be no need of establishing separate lists for minority and non-minority applicants.

Under the Compliance Agreement, the Authority agreed to develop a Tenant Selection and Assignment Plan for later submission to, and approval by, HUD. A Plan was submitted in September 1979 and approved in October 1979. The Plan is silent on the subject of residency preference for applicants for family housing but provides specifically, with respect to elderly units, that priority will be given "within each preference category" for Quincy residents, which is defined, consistent with the HUD regulations, to include persons working within Quincy or notified of hire to work within Quincy. The Plan also provides:

> In accordance with the HUD Compliance Agreement approved on February 6, 1979, one minority applicant will be selected for each three non-minority applicants (i.e., 25%) in each Federally aided public housing development within the City of Quincy, for a period of two years, ending September 1, 1981.

The Authority apparently abandoned the one-for-three selection policy upon expiration of its required use under the Compliance Agreement in September 1981. In mid-1982, three individuals and the South Shore Coalition for Human Rights filed complaints with HUD against the Quincy Housing Authority under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act). The three individual complainants were minority residents who alleged that they had been denied housing by the Authority because of the residency preference. The complainants also

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2/ The reference is to the Equal Employment Opportunity Commission's Guidelines on Affirmative Action Appropriate under Title VII of the Civil Rights Act of 1964, which appear in 29 CFR Part 1608.

alleged that the residency preference had an adverse impact on minorities which violated the Act. Similar complaints were filed with the Massachusetts Commission Against Discrimination.

The HUD Regional Office investigated the complaints. According to the Title VIII Investigation Report, 14 of the Authority's 618 family units (2.26%) were occupied by minorities. 725 applicants were on the family waiting list in September 1982, of whom 199 were Quincy residents, 518 were non-residents, and eight were unidentified. Six of the resident applicants (3%) were minorities and 76 (14.7%) of the nonresident applicants were minorities. Of 131 families who moved into family units between June 30, 1980, and September 9, 1982, ten families (7.63%), including five residents and five non-residents, were minorities. However, the Report discounts the significance of this past record because of the maintenance of the "one-for-three" plan during much of the period.

Five of the Authority's 941 elderly units (.53%) were occupied by minorities. The Authority began noting racial data of elderly applicants in April 1980. Of 501 applicants on the waiting list in September 1982 who applied since April 1980, the Report indicates that 28 were residents and 473 were non-residents. However, only five applicants (one resident and four non-residents) were minorities.

The Quincy Housing Authority also administers a Section 8 Existing Housing Certificate program. According to the Title VIII Investigation Report, approximately 1,100 Certificates had been issued before September 1982, including 843 to residents and 257 to non-residents. 64% of resident applicants and 36% of non-resident applicants received Certificates. The Report notes that "the awarding of Section 8 certificates does not appear to have been as strictly controlled by the residency preference as the Quincy Housing Authority's other housing programs. Approximately 11% of all applicants were minorities, and 65% of minority applicants received Certificates. However, only 9% of the minorities who received Certificates were housed while 45% of Certificates granted to minorities expired before the holder found housing.

To analyze the impact of the Authority's residency preference, the HUD Regional Office determined that the "relevant housing market" for the authority consisted of the City of Quincy, all contiguous areas (including Boston), and the City of Cambridge. This determination was not based on a survey of the residence of actual non-resident applicants but on the Regional Office's determination of "areas from which applications are most likely to be received." (Cambridge, on the north side of Boston, was included because of "its location on the Red Line of the MBTA which runs through Quincy giving relatively easy access to each city from the other.") Compared to the 2.18% minority population of Quincy or the 2.38% minority population of the five South Shore areas shown above, this expanded "relevant housing market" would have a minority population of 26.09%.

Stating that it was following the "discriminatory effects" analysis enunciated in Metropolitan Housing Development Corporation v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977), the Regional Office found that the Authority's residency preference had an "adverse impact" on minorities in need of family or elderly housing. The Report states that the 618 family units managed by the Authority are "not sufficient to fill the needs of income eligible Quincy residents," so that "it is difficult for non-residents to obtain housing at the Quincy Housing Authority." The Report concludes:

> . . . The percentage of local minorities on the waiting list is .82% while the minority population of Quincy is 2.18%; the percentage of non-local minorities on the list is 10.48%, while the percentage of minorities in the housing market area is 26.09%.
>
> It is clear from comparing the percentages of resident and non-resident minorities on the Quincy Housing Authority waiting list that if the residency preference were not in effect, a significantly higher percentage of minorities would gain access to the Quincy Housing Authority, that is 10.48% as compared to 0.82%. This comparison as well as the comparison between the percentage of minorities now in Quincy Housing family housing (2.26%) with the percentage of non-resident minorities on the waiting list (10.48%) make it clear that the residency preference policy has an adverse effect on minorities.3/

3/ The "effects test" enunciated in Arlington Heights is sometimes referred to as a "disproportionate impact" test. It is difficult to see how a finding of "disproportionate impact" could be made in this case, since it is apparent that more non-minorities were excluded by the residency preference than minorities. In Arlington Heights, however, the Court of Appeals said:

> There are two kinds of racially discriminatory effects which a facially neutral decision about housing can produce. The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups. 558 F.2d at 1290.

(continued)

> While the access of non-resident non-minorities to Quincy Housing housing is also limited by the residency preference, the preference does not have an adverse impact on non-minorities as a group. In fact the limiting of the access of minorities to the Quincy Housing Authority has created more openings for non-minority tenants.

The Regional Office found little evidence of discriminatory intent but considered it unnecessary under the Arlington Heights analysis. It also held that, while the residency preference may have furthered legitimate interests of the Authority, the Authority had not met its burden of showing that "no alternative course of action could be adopted which would enable that interest to be served with less discriminatory impact" (citing Resident Advisory Board v. Rizzo, 564 F.2d 124 (3rd Cir. 1977). The Regional Office also held that, by virtue of Section 808(e)(5) of the Fair Housing Act, the Authority was under a duty to "act affirmatively to achieve integration in housing," and that maintenance of its residency preference obstructed compliance with this duty.

Accordingly, the Regional Office determined to attempt to resolve the Title VIII complaint through conciliation. The Massachusetts Commission Against Discrimination made a "probable cause" finding as to the complaints filed with it, and HUD and MCAD attempted to conciliate the complaints jointly. As indicated below, the conciliation attempt was unsuccessful.

Based on the Title VIII investigation, the HUD Regional Office also found the Authority to be in apparent noncompliance with Title VI of the Civil Rights Act of 1964, concluding that "by granting a preference to residents the QHA limits the percentage of minorities who would otherwise benefit from the low income public housing program and elderly housing program." In a separate Report, the Regional Office also found the Authority to be in apparent noncompliance with Title VI with respect to the Section 8 Existing Housing Program. The Report indicated that the residency preference apparently had not been implemented consistently in the Section 8 program and "as a result there has not been a demonstrated adverse impact. However, the policy, if implemented in the same manner as the low income public housing program, would have a discriminatory effect."

The HUD Regional Office apparently found a discriminatory effect of the second type mentioned. For a later decision finding a residency requirement adopted by a housing authority where no blacks resided in the jurisdiction violative of the Fair Housing Act, see U.S. v. Housing Authority of Chickasaw, 504 F. Supp. 716 (S.D. Ala. 1980).

Based on the Title VI findings of apparent noncompliance, the Regional Office entered into a Compliance Agreement with the Authority in August 1983. The key substantive provision of the Agreement provides:

> The Authority agrees that, one minority applicant shall be housed for every three non-minority applicants housed in all federally assisted family units in the Low Rent Public Housing Program and one Section 8 Existing Housing certificate shall be issued to a minority applicant for every three certificates issued to non-minority applicants.

The Agreement provides for reports to be made by the Authority to HUD, at six-month intervals commencing in August 1983 and expiring in August 1985, regarding the name and race of applicants for housing and of persons to whom public housing units were assigned or Section 8 Certificates were granted. The Agreement was stated to expire June 30, 1985, "with revisions to be negotiated in January 1984 or January 1985 if it is determined that the provisions of this Agreement are not effective in achieving the purposes of Title VI."

As indicated above, HUD and MCAD were unsuccessful in their attempts to conciliate the Title VIII complaints, apparently because of the complainants' insistence that a settlement cover the State-assisted projects as well as the Federally-assisted projects and the Authority's insistence that such provisions would be inconsistent with the State residency preference law. However, the complainants also filed a complaint in Federal District Court which alleged that the Authority's application of the Massachusetts residency preference statute violated the Fair Housing Act, the Constitution, and several civil rights statutes. The District Court approved a Consent Decree in March 1985.[4/] The Consent Decree embodies an Affirmative Action Plan which is to be in effect from April 15, 1985, to July 15, 1992. The Affirmative Action Plan applies to both State-assisted and Federally-assisted public housing but not to Section 8 Existing Housing Certificates. It resembles the one-for-three plan embodied in prior compliance agreements, with modifications.

Specifically, the Plan provides for the chronological selection of applicants for State- and Federally-assisted family housing from the highest priority tenant selection categories in which there are eligible applicants, with the requirement that

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4/ Negotiation of the consent decree followed advice by the HUD Regional Office to the Authority that, based on its prior findings regarding Title VI and Title VIII, HUD would not approve the use of HUD program funds for defense of the action but would approve use of a limited amount of funds to facilitate settlement.

there be a preference for Quincy residents. However, this chronological selection is made subject to a Minority Selection Percentage, which is set at 25% for the first four years of the Plan's operation with adjustments for vacancies, and for the last four years of the Plan's operation will be determined by a formula which takes into account the percentage of eligible minorities in the relevant housing market, the number of family units, the number of minority tenants in family units, the number of years remaining to the plan, and the average number of annual vacancies. The plan states that notwithstanding the provision for chronological selection, "minorities shall be placed in federal and state funded housing in accordance with the Minority Selection Percentage," and that minority applicants thus offered housing shall be selected in their order of application and in order of the appropriate tenant selection categories "regardless of whether they are Quincy residents and regardless of whether non-minority applicants have applied before them."

With respect to Federally- and State-assisted elderly housing, the Plan similarly provides for chronological selection of applicants from the highest priority tenant selection category, subject to a local residency preference. However, that selection is made subject to a formula for the placement of minority applicants to be contained in revised affirmative action tenant selection regulations covering elderly housing expected to be promulgated by the Massachusetts Executive Office of Community Development. Those regulations have not yet been issued, but draft regulations have been circulated by the State agency which would apply to State-assisted family units as well as elderly units and would require preferences for minorities similar to those contained in the Federal Court consent decree with the Quincy Housing Authority.

Appendix 5-C

Yonkers, New York

The City of Yonkers (population 192,000), in southern Westchester County, lies immediately north of New York City.

The Dallas Morning News reported that HUD knowingly helped the City of Yonkers build dozens of segregated high-rise subsidized apartment buildings in southwest Yonkers. The News reported that "(t)he segregation was conceived in local policies but nurtured and sanctioned by the federal government. . . ."

In the final months of the Carter Administration, the Department of Justice commenced suit against the City of Yonkers, its Board of Education, and its Community Development Agency, alleging that its public schools were racially segregated and that its public and subsidized housing were located to perpetuate that segregation. Simply put, the basic allegation was that the City had permitted the development of subsidized housing only on the west side of the City -- i.e., west of the north-south Saw Mill River Parkway -- while refusing to permit construction of any subsidized housing east of the Parkway.

In 1981, the City filed a third-party complaint for monetary indemnity against HUD, claiming that HUD had approved all its housing sites. The Yonkers Branch NAACP intervened as plaintiff, naming HUD as a direct defendant in addition to the municipal defendants named in the Justice Department suit.

The case was tried in Federal District Court in 1983 and 1984. After the close of the Government's case against the municipal defendants and the Yonkers Branch NAACP's case against all defendants, including HUD, but before the presentation of HUD's defense, a settlement was reached and a consent decree entered between the Yonkers Branch NAACP and HUD. None of the municipal defendants participated in the settlement. Accordingly, the trial of the Government and Yonkers Branch NAACP claims against the municipal defendants continued, concluding in September 1984. (After trial, the Court dismissed the City's third-party complaint against HUD, holding that a party liable for a civil rights violation had no right of monetary contribution indemnification from the government, as a matter of law.) On November 20, 1985, the District Judge issued a decision that city and school officials had "illegally and intentionally" segregated the city's public schools and its public and subsidized housing. N.Y. Times, November 21, 1985.

The history set out below is based, to a considerable extent, on evidence obtained during discovery or presented at the trial.

HUD's involvement with Yonkers stems from the 1940s, when it financed the first public housing project built there, and has proceeded through an extensive urban renewal funding effort in the 1960s and early 1970s, and, since 1975, through Community Development Block Grant funding. Subsidized housing constructed in Yonkers often

complemented the urban renewal and community development initiatives of the City which were directed toward revitalization and rebuilding of its decaying southwest quadrant.

A. Condition of Structures in West Yonkers

In 1940, when only one federally assisted project had been constructed in Yonkers, the City's slum dwellings and blighted structures were heavily concentrated in its southwest quadrant.

By 1964, the situation had not changed significantly despite the fact that some slums had been cleared and a number of federally subsidized housing projects had been constructed by that time. The Yonkers City Planning Board found that ten neighborhoods, nine of which were in west Yonkers, contained more than their proportionate share of substandard housing. Eight of these neighborhoods now contain federally assisted housing. Indeed, three neighborhoods which in 1964 contained 54.33% of the substandard housing in Yonkers (Getty Square, Old 7th Ward, the Hollows) now have almost half the total number of housing projects in Yonkers. Because urban renewal funds were available only for areas containing substantial numbers of slum dwellings, it was not surprising that HUD accepted proposals that focused urban renewal efforts on the southwest quadrant.

B. Racial Composition Of The Areas In Which The Projects Are Located

Census data demonstrates that the vast majority of the sites for assisted housing in Yonkers were not located in areas of high minority concentration at the time they were approved by HUD, even though most were in the southwest quadrant. From 1940 to the present, HUD or its predecessor agencies approved the construction or rehabilitation of thirty-five federally assisted rental projects in Yonkers. Thirty-four of these thirty-five projects were developed in census tracts in which the majority of the population was white at the time of their approval, and twenty of the projects were developed in areas which were at least 70% white.

When most of the housing was approved in the early 1970s, it was not the view of either the City or the Yonkers Branch, NAACP, that the entire southwest quadrant was an area of minority concentration. For example, Seymour Scher, who was City Manager in Yonkers between 1970 and 1974, stated that no site built upon could be described as predominantly black or hispanic. According to Mr. Scher, there were, in 1970, only pockets of racial concentration in larger areas that were majority white. Morton Yulish, who worked both for HUD and subsequently with the City, stated that in 1970, Valentine Lane and the area west of Hawthorne Avenue, which includes the sites for the Valentine Lane and Buena Vista projects, were predominantly white. Moreover, Herman Keith, president of the Yonkers Branch NAACP when the Yonkers lawsuit was filed, and an employee with the Yonkers Community Development Agency during the 1970s, apparently did not perceive the entire southwest quadrant of Yonkers to be a minority area, he stated that the black population of the Hollows area, site of the Whitney

Young project for families, was no more than 10 or 15 percent black in 1970. He also stated that the Riverview Area, now occupied by Riverview I and II, was predominantly white prior to construction of those projects, as was the area surrounding the Seven Pines project. 1/

C. Efforts To Promote Minority Housing Choice

Although there is no evidence that HUD ever determined that the City had violated either Title VI or Title VIII, HUD nevertheless made efforts aimed at creating a wider choice of housing opportunities for minorities. On September 15, 1972, the Acting Director of the HUD New York Area Office advised the City that approval of funding for the third year of the Neighborhood Development Program was contingent upon the "clear understanding that an acceptable dispersed housing site would be provided. . . ." His letter went on to identify the acceptable site as "the Ramp". That site, although physically within southwest Yonkers, overlooked the Saw Mill River Parkway and was in a census tract that had a minority population of only 7.3 percent. The

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1/ The Dallas Morning News report discussed a memorandum in 1971 signed by Grace Malone, who was then in charge of the Fair Housing and Equal Opportunity (FH&EO) Division of the HUD New York Area Office. The Memorandum is a recommendation to the Area Director to withhold funding under the Neighborhood Development program because FH&EO had determined that the City had violated Title VI and Title VIII by locating all federally assisted housing in areas of minority concentration.

At her deposition, Mrs. Malone testified that she had no present recollection of the circumstances leading to the preparation of the memorandum. She was certain that she did not personally conduct any review of the sites in Yonkers but that she had signed a memorandum prepared by someone on her staff. She could not remember the name of the staff person who was responsible for the review and recommendation. The memorandum itself states that it is based upon information contained in a number of other documents identified as being attached as exhibits. Despite HUD's best efforts, none of those exhibits has been located. It is therefore impossible to determine whether the conclusion reached in the memorandum had any factual support. The memorandum does not state what definition of area of minority concentration was being applied by the writer and, of course, there is no means of determining whether that standard was ever adopted as official HUD policy. It can be stated, however, that thus far, no documents have been produced to prove that the Area Director agreed with the Malone recommendation or that HUD ever officially notified the City that it was in violation of Title VI or Title VIII. Thus, the memorandum is, at best, the conclusion of a single unidentified individual who could not be deposed to determine the basis for those findings. It, therefore, is entitled to little or no weight in determining the racial character of the areas surrounding the projects.

site, according to Mr. Yulish, was clearly associated with the park area east of the Saw Mill River Parkway and not with a bordering, minority-concentrated area known the Hollows. As a result of HUD's insistence, the Ramp project (officially named "Parkledge"), a 310 unit project for families was built.

Based on all information available to HUD, this project was located in a non-minority area. Moreover, Herman Keith, later to be president of the Yonkers Branch NAACP, acknowledged that the Ramp project was in the Nodine Hill neighborhood, a predominantly white area (not the racially concentrated Hollows neighborhood). Anthony Lombardo, past chairman of the Housing Committee of the Yonkers Branch NAACP, stated that Parkledge was a scattered site project.

At the time HUD was insisting that the City continue its approval and support of Parkledge, all of the sites for the other family projects built in Yonkers under the Section 236 program had already been selected. During the 1969 to 1972 period, HUD approved the construction or rehabilitation of 2,487 family units in Yonkers under the 236 program.[2/] This created the possibility of a surplus of such units when all of the projects were completed. In a memorandum of December 5, 1972, HUD's Area Economist recommended that no more 236 housing be programmed for Yonkers until some market experience was obtained with the projects there already under way. The memorandum pointed out that problems of surplus units were not limited to Yonkers but had developed in other communities in New York State. In 1973, the Nixon Administration imposed a nationwide moratorium on development of additional Section 236 projects.

In 1974, Congress amended federal urban renewal law by establishing the Community Development Block Grant program (CDBG), which shifted greater responsibility to local government and placed greater emphasis on rehabilitation and preservation of existing neighborhoods. In 1975 and 1976, the City submitted Housing Assistance Plans ("HAPs") as part of its CDBG applications which emphasized the rehabilitation of housing for families in southwest Yonkers and the construction of new housing for the elderly in east Yonkers. The City's 1976 HAP continued the emphasis on new construction for the elderly, noting that these households had not received significant housing assistance during the prior six years.[3/]

The 1974 Act also created the Section 8 Existing Housing program which was seen as a means of providing a wider opportunity for greater choice in housing for minorities by permitting low income families and individuals to rent apartments in existing dwellings. The City's 1977 and 1978 HAPs continued the general emphasis on rehabilitation for families but also included a goal of 400 Section 8 Existing

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2/ 1811 of these units were located in projects proposed and financed by the New York State Urban Development Corporation.

3/ Of the 14 Section 236 projects in Yonkers, only one, Finian Sullivan Tower, was for the elderly.

certificates, 180 of which were to be for families. Sometime prior to the 1979 CDBG funding year, HUD, through review of monitoring reports, came to the conclusion that the City had not been meeting its objective through the use of the Section 8 Existing program. HUD concluded that the City had been given sufficient time to demonstrate that it could meet the need through the use of existing housing and, having been unable to do so, it would be necessary to change to an approach relying on new construction. In 1979, the City modified its HAP to include a goal for the development of family units outside areas of minority concentration by means which included new construction.

Due to the failure of the City to meet its 1979 HAP goal for the development of family units in nonimpacted areas, as well as other deficiencies in the City's CDBG performance, HUD imposed certain conditions and requirements on its approval of Yonkers' 1980 block grant application. Condition 2 to HUD's approval of the City's 1980 CDBG application required the City to provide 100 new or substantially rehabilitated family rental units in nonimpacted areas of the City in order to meet its 1979 housing goal. The condition was further broken down into three subsections:

a) Submission by the City of an inventory of sites in non-impacted areas where the housing could be located;

b) Submission of an assurance that the City would provide assistance, including, if necessary, the provision of CDBG funds, to ensure the feasibility of housing proposals for the 100 units;

c) In response to a HUD announcement during Fiscal Year 1981 that funding was available for the 100 housing units, either submission by the City of a request for HUD preapproval of a site for the units, or submission by a developer of a preliminary proposal for development of the units.

Additionally, a comment on the 1980 application required the City to develop and implement a Fair Housing Strategy.

Of these conditions and comments, the City satisfactorily performed all but condition 2(c), above, relating to the provision of 100 units of newly constructed or substantially rehabilitated family housing in non-impacted areas. HUD funding for such housing became unavailable after imposition of the conditions.

Recognizing Yonkers' satisfactory performance toward fulfilling the 1980 conditions and comments, HUD did not place a formal condition on Yonkers' 1981 CDBG application. However, because no assisted family housing had been provided in Yonkers in 1981, by comment to its approval of the application HUD required the City to take affirmative action to provide 200 units of assisted housing in nonimpacted areas of Yonkers in order to fulfill the City's 1979 and 1980 HUD goals.[4/] HUD also established a series of timetables for the City to begin implementing the Fair Housing strategy that it had developed in response to HUD's comment to the City's 1980 application approval.

of Yonkers in order to fulfill the City's 1979 and 1980 HUD goals.4/ HUD also established a series of timetables for the City to begin implementing the Fair Housing strategy that it had developed in response to HUD's comment to the City's 1980 application approval. HUD determined that the City made satisfactory progress in complying with the 1981 comment requirements.

D. Lack of Complaints

HUD had no reason to believe that the minority community in Yonkers approved the location of the federally assisted housing projects in Yonkers. The Department never received a complaint from the NAACP or any other organization representing minorities in the community about the site for a specific project. In fact, there was testimony that the NAACP supported many of the projects. In addition, minority organizations and churches sponsored several of the projects in southwest Yonkers.

Given the information available to HUD, the sites for the projects appeared to be within the stated objectives of federal urban renewal policy. A substantial number of the projects were proposed by a state agency whose explicit mission was the rebuilding of declining areas. In the absence of complaints from minorities or other evidence of discriminatory purpose, HUD did not question the urban renewal strategy for which the City, by law, had the primary responsibility.

E. Consent Decree

The principal provisions of the consent decree entered by HUD and the Yonkers Branch NAACP required HUD to provide funding for 200 units of public housing to be developed in East Yonkers, and 175 certificates of Section 8 Existing Housing to be used only in East Yonkers for the first 120 days following a family's receipt of the certificate, and thereafter, if the family has not located housing, usable anywhere in Yonkers. The Court approved the Consent Decree, over the objection of the City of Yonkers, on March 19, 1984.

On May 3, 1984, HUD required the City to submit a list of potential housing sites east of the Saw Mill River Parkway for the development of at least 140 of the 200 family and large family units of public housing that HUD made available to the Yonkers Municipal

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4/ This comment was similar to condition 2(b) of the 1980 approval, except the number of family housing units was changed from 100 units to 200 units reflecting the City's unmet 1979 and 1980 goals for family housing. However, due to budgetary constraints, funding for the 200 units was not available from HUD.

Housing Authority (MHA) pursuant to the Consent Decree.5/ The requirement stemmed from four years of unfulfilled similar requirements, dating from the condition on the City's 1980 Community Development Block Grant Agreement (CDBG), designed to produce assisted housing in nonimpacted areas of East Yonkers. In the May 3, 1984 letter, HUD stated that failure to submit the list of proposed sites within 60 days or by July 2, 1984 would cause HUD to initiate the procedure to reduce funding for the City's 1984-85 CDBG Program, up to the full amount of the grant, pursuant to 24 C.F.R. Section 570.911.

The City did not submit the sites by the required deadline, and on July 10, 1984 HUD notified the City of its intent to reduce its 1984-85 CDBG funding to zero. However, on July 23, the City did submit two sites for public housing, one on Yonkers Avenue, and the other on Tuckahoe Road.

Subsequent to the City's submission of the sites, HUD made repeated written requests to the MHA to submit sufficient information to enable HUD to determine the acceptability of the sites. HUD made these requests for additional information on August 28, October 29, November 28, and December 17; HUD also made oral requests for the additional information.

Finally, on January 5, 1985, the Department notified the City that it, as the recipient of CDBG funding, was responsible for ensuring that the MHA submit the requested information. HUD informed the City that failure of the MHA to submit all the information requested by January 30, 1985 would cause HUD to reject the sites and initiate the procedure to reduce the City's 1984-85 CDBG program to zero. The MHA submitted a response on January 29, 1985.

On March 20, 1985 HUD notified the City of the Department's intention to reduce the City's FY 1984-1985 CDBG funding to zero. The principal reason for the Department's action was that the two sites submitted by the City were unacceptable because the City did not have control over either site. HUD gave the City until April 19, 1985 to consult with HUD regarding the proposed reduction of Block Grant funding. During this consultation period the City met many of HUD's objections to the two sites, and obtained site control over one site. HUD gave the City an additional period of time of the balance of the current session of the State Legislature to obtain legislation dedicating the other site, which is currently state park land, to the City, while HUD completed its site and neighborhood reviews of the two sites. Although the legislature is still in session, the City has not yet obtained the necessary legislation.

Since the City has not yet submitted acceptable sites for the 140 units, its 1984 and 1985 CDBG funding remains tied up.

5/ The 140 units were the City's entire 1982-85 three year HAP goal for family housing. The City refused to increase its HAP goal to include the remaining 60 units, and HUD was legally prohibited either from forcing the City to raise its HAP goal or to accept more units than it had established in its goal. The City must, however, take the resources for the additional 60 units into consideration in establishing its 1985-88 three year goal.

Appendix 5-D

Fulton County, Georgia

The City of Atlanta is located in Fulton County, Georgia. Prior to 1972, the Atlanta Housing Authority ("AHA") had jurisdiction to build projects ten miles beyond the city limits. In 1971, the Federal District Court found that Fulton County officials had deliberately obstructed attempts by the AHA to place low-income public housing in unincorporated areas of the County for racially motivated reasons. Crow v. Brown, 332 F. Supp. 382 (N.D. GA 1971). In 1972, the Fulton County commissioners established their own housing authority, the Housing Authority of Fulton County ("FCHA"), thus revoking the AHA's jurisdiction in unincorporated areas of the County.

The Dallas Morning News reported that for the next twelve years the FCHA did not build a single apartment despite the County's Federally-mandated housing assistance plan ("HAP") indicating a need for 13,919 units of assisted housing, 85% of it for families. The News reported that the FCHA did not even apply to HUD for permission to build units until 1978, after the AHA again tried to build a project outside the city. 1/ HUD set aside funds for 200 units of family housing, and the sites tentatively selected by the FCHA in North Fulton County did not require rezoning. However, HUD could not approve the sites, according to The News, because the County refused to promise that sewer and water services would be provided. The potential sites were then lost to other developers. One of these sites was annexed by the Community of Alpharetta and rezoned for commercial development. The News reported being told by several Councilmembers of Alpharetta that they had annexed the property for the specific purpose of preventing public housing, and "sweetened the deal for the property owner by offering a three-year moratorium on taxes on his land."

Although not reported by The News, in 1981, two class actions were filed in the U.S. District Court alleging that officials of the Fulton County Commission, HUD and the Mayor and Council of Alpharetta had engaged in discriminatory practices that had frustrated the development of low-income public housing in Alpharetta and the unincorporated areas of North Fulton County. The plaintiffs alleged that because HUD knew of these actions and did nothing to alleviate their effects, HUD violated its duties under the Constitution and several statutes, notably

1/ In fact, it was the FCHA which attempted to build a project - the AHA had been divested of jurisdiction in 1972.

Title VI and Title VIII. The District Court denied conditional certification of the classes in both cases, consolidated them, and then dismissed the cases for their failure to state claims upon which relief could be granted.

On appeal 2/ the plaintiffs challenged only the Title VI and Title VIII rulings, 3/ alleging not that HUD had acted wrongly, but that it had not acted at all, thereby breaching its affirmative obligations under Section 808 of the Fair Housing Act. 4/ In plaintiff's view, HUD is guilty of a violation of these sections of the Fair Housing Act whenever it simply "maintains a 'low profile' in the face of known racial opposition to the construction of public housing."

The Court of Appeals rejected this "potentially sweeping re-interpretation of the nature of the affirmative duty imposed upon HUD by the Fair Housing Act", concluding that "it has no support either in the terms of the statute, the statutory history, or the applicable case law." 737 F. 2d at 1534-35. The decision pointed out that "there is little that HUD can do beyond exerting moral suasion to 'pressure' local officials into compliance with the goals of the Fair Housing Act when it is not currently funding a local agency." The effectiveness of the statutory scheme is dependent on citizens' willingness to bring suit as private attorneys general. "Where HUD is not supporting discrimination through its funding practices, there is little to be gained by naming it as a defendant." 737 F. 2d at 1535.

2/ Betty Anderson, et al. v. City of Alpharetta, et al., Cassie Moore, et al. v. William Miller, Director, Housing Division, HUD, et al., 737 F. 2d 1530 (11th Cir. 1984).

3/ The plaintiffs later abandoned the Title VI claim after the Supreme Court's decision in Guardian Association v. Civil Service Commission, 103 S. Ct. 3221, 77 L.Ed. 2d 866 (1983), that a violation of Title VI requires intentional discrimination.

4/ Section 808 provides in relevant part:

(d) The Secretary of Housing and Urban Development shall--

* * * *

(3) cooperate with and render technical assistance to Federal, State and local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.

The Court held that "HUD's affirmative obligation under section 3608(d)(5) may subject it to liability in two types of situations: first, when HUD has taken discriminatory action itself, such as approving federal assistance for a public housing project without considering its effect on the racial and socio-economic composition of the surrounding area, see, e.g., Shannon v. HUD, 436 F. 2d at 811-12; and second, when HUD is aware of a grantee's discriminatory practices and has made no effort to force it into compliance with the Fair Housing Act by cutting off existing federal financial assistance to the agency in question. See, e.g., Client's Council v. Pierce, 711 F. 2d at 1422-23; Gautreaux v. Romney, 448 F. 2d 731, 739 (7th Cir. 1971)."

By a split decision, the Court affirmed the District Court's dismissal of the complaint against HUD since its allegations fell into neither of these categories. 5/ Thereafter, the suit was dismissed as to the remaining defendants. Pending appeal is only the dismissal as to defendant Fulton County.

Fulton County first became entitled to receive Community Development Block Grant (CDBG) funds in FY 1983. 6/ The HAP referred to in the News article covered the three fiscal years 1983 through 1985. A total of 120 units of elderly housing (Section 202) were approved in 1983 and 1984 and are presently under construction. The County's failure to progress in meeting its HAP goal for family housing, however, was pointed out by HUD on three occasions - first, in a May, 1984 monitoring letter; second, in November, 1984 when HUD approved the County's second annual HAP goal and advised the County to concentrate on providing housing assistance to small and large families; and third, in an August, 1985 monitoring letter. In March, 1985 HUD cancelled the County's 1981 application for public housing funds because it could not be funded.

The record in providing assisted housing for families in Fulton County does contain some accomplishments. In the period 1975-1977, the County was given 350 Section 8 certificates -- 175 were recaptured by HUD. Of the remaining 175, 130 have been utilized to lease units (majority for small families) and 30 families are presently attempting to find units. In addition, in July 1985 a low-rent public housing project containing 264 units was completed and accepted by HUD. This was originally a turnkey project to be developed by Crow. The County's obstruction of the project led Crow to institute the case decided by the District Court in 1971, referred to above. The project was completed by the FCHA with the help of CDBG funds.

Other instances of progress include the rehabilitation of 40 units through a CDBG grant to a small city in the County, and the County's commitment to program $150,000 of its 1984 CDBG grant and $600,000 of its 1985 grant for rehabilitation of single-family residences. In June 1985, the City of Roswell (Fulton County) submitted an application to HUD for 20 units of assisted housing for large families. The application is under review.

5/ The dissent agreed with much of what the majority had written, but opined that the majority had prematurely dismissed the complaint upon enormously drawn references in favor of the Federal defendants.

6/ The latest grant, for FY 1985, was $2,129,000. The aggregate grant for FY 1983, FY 1984 and FY 1985 is $6,466,000. The drawdown rate is 29 percent.

Huntington, New York

The Town of Huntington, New York is located in Suffolk County, the eastern half of Long Island, 27 miles from Manhattan. The 1980 census reported the town's population at 201,512, including 14,876 minority (7.4%).

The Housing Authority of the Town of Huntington ("HHA") was established in 1967. It currently manages 40 public housing units in one project. Nine of these are for elderly, of which three are occupied by white and six by non-white. Except for one vacancy, the remaining 30 family units are occupied by non-white families.

The town suffers from an acute shortage of rent-assisted housing. The waiting list is almost exclusively non-white, despite outreach efforts for white families undertaken by the HHA. In 1984, the HHA applied for 50 units of family public housing, 25 two-bedroom and 25 three-bedroom. In January 1985 the regional HUD office reserved funds for construction of these units.

The Dallas Morning News, under a general headline "City roadblocks to projects keep disabled woman on waiting list" reported that:

> "[d]espite the shortage of affordable units for those with low incomes, town leaders since 1980 have blocked two assisted family housing developments. One of the projects had been proposed to the U.S. Department of Housing and Urban Development by the city itself. Town officials said they rescinded their application because HUD would not allow them to keep the project 95 percent white."

The other development was proposed by a fair housing organization for location in a white neighborhood.

The News also reported that HUD has never reduced or restricted the town's grant funds even though HUD is obliged, under the Housing and Community Development Act of 1974, 1/ to withhold community development funds from municipalities that refuse to meet low-income housing needs or that discriminate on the basis of race. The News reported that HUD has approved

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1/ 42 U.S.C. §5301, et seq.

housing plans from the town that HUD's own fair housing staff warned would increase racial segregation.

Funds obtained through Community Development Block Grant ("CDBG") programs under the Housing and Community Development Act of 1974 can only be used to subsidize community development activities, not to build or provide rent subsidies for newly constructed low-income housing. Before such funds are made available, a town must first submit to HUD a Housing Assistance Plan ("HAP"). 42 U.S.C. §5304(a)(2). The HAP, which generally covers a three-year period, must specify the housing needs of the municipality and its realistic goals to accommodate community housing assistance needs, including goals for new construction of HUD assisted rental units. 42 U.S.C. §5304. If the goals for HUD assistance are unrealistic in light of expected availability of funds, HUD cannot approve the HAP submitted. 42 U.S.C. §5304(a); 24 CFR §570.306(e), (g).

The Town of Huntington HAP which provided for years 1979-82, and encompassed fiscal years 1980, 1981 and 1982, had "zero" goals for the new construction of HUD assisted rental units. HUD approved the HAP as the goals provided therein were realistic since there were no funds then available for such construction. A proviso was added that if sufficient funds became available HUD would require an amendment of the HAP to include a goal for the construction of 100 units of new or substantially rehabilitated rental housing.

In response to a June, 1980 Notice of Funding Availability ("NOFA") published by the HUD New York area office for all of Suffolk County, preliminary proposals were received from Housing Help (the aforementioned fair housing organization) and from the town. Both were ranked against fifteen other proposals submitted and both were tied with four other proposals for sixth place. 2/

HUD could not approve the Housing Help proposal ("Matinecock Court") because the town objected to it. An application for housing assistance submitted to HUD from a private developer must be forwarded for "comment" to the municipality in which the proposed project is to be built. If the town objects to the application on the grounds that it is inconsistent with its HAP, and HUD agrees that an inconsistency exists, then HUD cannot approve the application. 42 U.S.C. §1439. Furthermore, if the number of proposed units in the application exceeds the HAP goal by more than 20%, then HUD cannot approve the application.

2/ None of the sixteen proposals were funded because they could not be processed and ranked before September 30, 1980. Section 8 new construction money for fiscal year 1981 had, by this time, been eliminated.

Huntington objected to the Housing Help proposal on two grounds. First, the project was inconsistent with the town's zoning ordinances since the proposed location was not zoned for multifamily housing. Second, the project was inconsistent with the 1979-1982 HAP which set forth "zero" goals for Section 8 assisted rental unit facilities. HUD agreed that there was an inconsistency, in that it could not approve a proposal dependent upon prospective, and therefore uncertain, rezoning action. Accordingly, it did not approve Housing Help's proposal.

Under a second method of funding, known as the "Pre-Approved Site" procedure, municipalities are allowed to receive priority for Section 8 new construction funds so as to permit them to coordinate their community development activities with Section 8 construction. If pre-approval is granted, HUD can reserve the funds necessary to support the proposed construction, thereby ensuring that funds for the ultimate proposal will be available. This also is conditioned upon submission to HUD of a final proposal for a project and its approval. Like NOFA proposals, a proposal via the pre-approved site method must also meet HUD's site and neighborhood standards to receive approval by HUD, but unlike NOFA proposals, it does not compete with other proposals.

Under this procedure HUD granted pre-approval of the town's submission of the "Huntington Station" site, a 150-unit project. The News reported that the site was in an urban renewal area more than 52 percent minority, and that HUD fair housing staff warned that a project on that site would increase segregation. Rejecting the staff recommendation against approval as neither valid nor governing, the manager of HUD's area office considered six factors in authorizing pre-approved site status:

1. The over-riding need for family rental housing (more than half of the town's three year HAP goal would be met by the proposed construction);

2. The shortage of available publicly owned cleared sites in the town which were suitably serviced by public facilities and available at a price which rendered development for assisted housing feasible;

3. The long history (over 12 years) during which the subject site had been available and vacant, but undeveloped at considerable cost to the town in lost tax revenues and frozen capital assets. Development would bring the renewal project close to completion;

4. The fact that the 1970 census-reported minority percentage in the tract in which the site was located, 21.3%, was significantly below the standard of "concentration" usually employed in built-up areas and would be considered a "mixed"

area. Furthermore, examination of the proposed site on a block basis, more appropriate considering the topographic and heavy traffic separations, revealed a minority presense of only 1.8% in an area approximately one third of the census tract;

5. The commitment on the part of local elected leadership to take all steps necessary to assure the successful development of a project on the subject site;

6. The excellent community facilities and services available for the residents of the site, rendering it eminantly suitable for development of the proposed housing.

HUD conditioned its approval upon the town's amendment of its 1979-1982 HAP, which did not provide for new construction of HUD assisted rental units. The sum of $1,012,140.00 which was dependent on compliance with that condition was reserved from 1980 funds.

Before HUD can give final approval to a project, however, the final proposal must include an Affirmative Fair Housing Marketing Plan. 24 CFR §880.308(a)(4). The purpose of this requirement is to ensure that individuals of similar income levels in the same housing market area have a like range of housing choices available without regard to race, color, religion, sex or national origin. This policy stems from HUD's administration of its housing programs affirmatively in accordance with Title VIII of the Civil Rights Act of 1968 3/ and Executive Order 11063. HUD refused to give final approval to the Huntington Station site because the town's proposed Affirmative Fair Marketing Plan contained a condition that minority occupancy be limited to the same percentage as prevailed in the town at the time, viz., five percent. Thereafter, the town withdrew the Huntington Station proposal and revised its 1979-1982 HAP to once again specify "zero" goals for both HUD assisted newly constructed rental units and for HUD assisted substantially rehabilitated rental units.

HUD approved the revised HAP in view of current and projected availability of funding. The town was informed, however, that should funds become available, the town would have to amend its HAP to include goals for Section 8 funding. (Due to the severe cutbacks in funding allocations, HUD's policy is not to disapprove any HAPs which do not increase the goals for HUD assistance and, in light of such cutbacks, are therefore realistic. In its letters approving the town's 1981 and 1982 HAPs, however, HUD directed the town "to take all actions within

3/ 42 U.S.C. 3608.

its control to provide for the construction of 100 newly created units of new or sub-rehab rental housing by household type . . . consistent with and proportional to your established needs.")

The charges against the town and HUD contained in the News article were esentially the same as set forth in a class action brought in the U.S. District in 1981 on behalf of black, Hispanic and lower income persons residing in the Town of Huntington and its surrounding areas who allegedly would qualify for residency in housing areas developed with the support of HUD funds. 4/

The named plaintiffs were the Huntington Branch NAACP, Housing Help, Inc. and several individual plaintiffs who wished to obtain affordable housing in Huntington but were unable to do so because of its unavailability. The defendants named were the town and various of its officials, HUD and the Secretary of HUD.

In the third count, against HUD, the plaintiffs maintained that HUD's approval of the 1979-82 HAP, which contained "zero" goals for newly constructed or rehabilitated HUD assisted rental housing, was a violation of the Housing and Community Development Act of 1974, supra, in that the approval of the HAP with "zero" goal for Section 8 funding "has contributed to the perpetuation of racial discrimination, isolation and segregation in housing in the Town of Huntington and has encouraged and contributed to the discriminatory interference by Huntington Town with the Matinecock Court [Housing Help's] project."

The District Court granted a motion to dismiss the entire complaint on the grounds that the plaintiffs lacked standing. The Court held that the virtually complete absence of Section 8 funds rendered meaningless the relief requested in the complaint. The Court reasoned that because of the lack of such funding, construction of Housing Help's proposed project would not result from either amendment of the "zero" goal HAP or invalidation of the zoning ordinance.

There was no appeal from the dismissal with respect to HUD because, according to the Second Circuit, "Huntington's requisite goal will rise to 100 if Section 8 funds become available and Housing Help can revise downward the number of units proposed in Matinecock. In addition, the Town itself has withdrawn the Huntington Park project, thus rendering Count 2 moot." 5/

4/ Huntington Branch NAACP, et al. v. the Town of Huntington, et al., 530 F. Supp. 838 (U.S.D.C., ED, 1982); reversed and remanded 689 F. 2d 391 (2d Cir. 1982); cert. den. 460 U.S. 1523 (1983).

5/ 689 F. 2d at 393 note 3.

The Second Circuit reversed and remanded with respect to the remaining defendants on the grounds that it could not exclude the possibility of Section 8 monies being available for Matinecock some time in the future, given the fact that the Section 8 program had not been eliminated. Therefore, the relief sought may benefit the plaintiffs. 6/

The Second Circuit did not find fault with HUD's refusal to give final approval to Matinecock Court. In fact, the Court noted that "[p]rivate lenders as well as government agencies will be understandably reluctant to make sizable commitments of funds for projects which violate zoning laws and which, at best, cannot be started before years of litigation are completed." 689 F. 2d at 394.

In FY 1983, the town submitted a HAP which provided for only elderly new construction and did not provide sufficient general locations for assisted housing. Necessary changes were made at HUD's insistence. At the same time the HHA applied for 75 units of family housing. The town was warned in HUD's letter approving the 1983 Community Development Block Grant that any negative actions to block the HHA's housing application would affect the 1984 grant.

In January, 1985, funds were reserved by HUD for 50 units of new family housing in Huntington. No site was specified. The town was awarded its 1984 block grant on May 6, 1985. While approving the town's submission, HUD reiterated its long-standing concern with the town's performance in providing assisted rental housing for families. HUD cautioned that no impediment be raised to the cooperative efforts between the town and the HHA to develop the family housing proposal. The Department warned that the town's failure to permit the development of the 50 units would provide the basis for reducing the town's 1985 block grant.

Thereafter, the HHA proposed a site to HUD which met HUD's site and neighborhood standards. It is located in a residential area with 7.5 percent minority presence. However, the site would require a zoning change as well as a sewer hook-up permit. On May 14, 1985, the Town Board postponed consideration of the zoning change to July 31 at which time it announced that it had taken the matter under advisement.

6/ The Second Circuit relied upon Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977).

Appendix 5-F

MILWAUKEE COUNTY, WISCONSIN

Milwaukee County, Wisconsin, has a population of 964,988 (all data, 1980 Census). It includes the City of Milwaukee (pop. 636,212) The Cities of Milwaukee and West Allis are both within the County and are metropolitan cities eligible for community development block grant entitlement funding. As such, each has its own housing assistance plan, and each administers its own Section 8 Existing Housing program. The County also runs a Section 8 Existing Housing program. The black population rates for the Cities of Milwaukee and West Allis are 23.1 and .1 percent, respectively. The County has a 15.5 percent black population; the black population of the County exclusive of the City of Milwaukee is one percent.

By Wisconsin law, the Cities of Milwaukee and West Allis cannot operate the Section 8 program outside city limits, but the County can operate its Section 8 program throughout the County, including the Cities of Milwaukee and West Allis.

The Dallas Morning News, under a headline captioned "Blacks face barrier to using subsidies in suburban Milwaukee," reported on an application to the County for Section 8 assistance made by Ms. Marilyn Holland, a black resident of the City of Milwaukee. The report indicated that after several months delay Ms. Holland received a housing certificate one day after she sued the County Housing Authority on August 27, 1980. The basis of the action was the County's policy restricting availability of Certificate to City residents.

In June 1976, the County applied for 400 units of Section 8 Existing Housing to be provided in 16 of its included municipalities, excluding West Allis and Milwaukee. In the application review process, HUD's Milwaukee Area Office officials questioned the exclusion of the two Cities from the County's program. On December 23, 1976, HUD's Area Director wrote to the County stating that residency preferences or restrictions were permissible on behalf of residents of the PHA's jurisdiction and applicants who are working, or notified that they are hired to work, in the jurisdiciton of the PHA. He added, however, that a PHA may not limit, by restriction or preference, the quantity or location of housing units within the PHA's jurisdiction. Throughout the history of the section 8 program, Departmental regulations (now at 24 CFR § 882.209(a)(4)(ii)(A)) have so limited selection preferences based on the identity of location of housing.

(For discussion generally as to the permissible scope of PHA residency preferences or requirements, see the discussion in Appendix 5-B, especially footnote 1.)

The December 23 letter called for the County

"to restructure the tenant selection plan and the application to eliminate all restrictions and preferences as they relate to the quantity and location of housing units within the county. Specifically, the application * * * must be amended to indicate that the residents and housing units of the cities of Milwaukee and West Allis are not excluded from program participation."

The issue remained in contention for some time. In a May 10, 1977, letter to the HUD Area Director, the Milwaukee County Executive agreed that

"to assure compliance with the Civil Rights Acts of 1967 and 1968 and various HUD regulations, which require such compliance, certain procedures must be developed regarding the allocation of units to various municipalities within Milwaukee County."

However, the County Executive asserted that in view of the separate allocations being made directly to the Cities of Milwaukee and West Allis, the County should receive an additional allocation of 200 units so as to "equitably allow people to have freedom of movement based on HUD's [allocation] formula within the entire Milwaukee County." On September 15, 1977, an additional 200 units were made available to the County to further mobility goals, although since the Cities of Milwaukee and West Allis had their own section 8 existing housing programs, Milwaukee County could provide units to residents of those cities on a needs basis. Of the 200 units to be distributed in this fashion, 184 units would be provided to residents of the City of Milwaukee.

On April 17, 1980, the HUD Area Office Fair Housing and Equal Opportunity Division advised the County that in order to demonstrate an equitable effort in implementing its assurance under title VIII of the Civil Rights Act of 1968, the County should eliminate its system of maintaining separate waiting lists for suburban residents and for residents of the Cities of Milwaukee, West Allis and Wauwatosa. On June 10, the County replied that it refused to eliminate the dual waiting list, arguing that if a countywide waiting list was intended, then a countywide allocation of all funds should have been made to the County.

Settlement of Ms. Holland's lawsuit was accomplished on March 5, 1984. The settlement agreement was entered into by Legal Action of Wisconsin, Inc. (on behalf of Ms. Holland), the Metropolitan Milwaukee Fair Housing Council, Milwaukee County, and the United States. It expressly provides, among other things, that Milwaukee County will not adopt or implement any policy or practice which in any way

"A. Conditions or limits eligibility for the Rent Assistance Plan based upon the particular Milwaukee County municipality in which an applicant resides;

"B. Establishes a preference in the allocation or issuance of certificates of family participation based upon the particular Milwaukee County municipality in which an applicant resides."

In addition, the County agreed to publish a rent assistance settlement notice extending the benefits under the settlement to City of Milwaukee residents who had applied for the County program prior to March 31, 1981. The County also agreed to put into place a mechanism for affording first priority prospectively to all such applicants. The County agreed to compile a list of all individuals who contact the County claiming to have applied for said program prior to March 31, 1981.

The County also agreed to perform the following actions with respect to affirmative marketing of the rent assistance program:

- Not to distribute any materials indicating that eligibility, the method of allocation or issuance of certificates, is based upon the municipality in which an applicant resides.
- Publish a listing of the rent assistance program telephone numbers in the white pages under "Milwaukee County-Rent Assistance Program."
- Provide certificate holders with adequate information about areas within the County where rental housing may be available.
- Provide counseling and active assistance to minority certificate holders.
- Include the Fair Housing logo and slogan on posters and brochures used in the program.
- Permit the Metropolitan Milwaukee Fair Housing Council to make fair housing law presentations at initial orientation sessions conducted for certificate holders in the County program.
- Purchase advertising in minority newspapers and make a good faith attempt to advertise the program through radio and television and public service announcements.
- Actively recruit suburban property owners to participate in the program.
- Maintain certificate holders' record according to race and ethnic origin.

The County also agreed to submit to HUD, within 120 days after the date of the agreement, a revised Equal Opportunity Housing Plan incorporating the substance of the terms of the settlement. The County's initial submission was on July 2, 1984, but corrective modifications were required. A final revision of the plan was submitted on September 10, 1984, and HUD approved it on September 17, 1984.

Appendix 5-G

DuPage County, Illinois

DuPage County, Illinois, the fourth richest county in the United States, lies directly west of the City of Chicago. Its population is approximately 658,835. The percentage of low- and moderate income persons is 26 percent, with minorities constituting less than one percent of the total population.

The Dallas Morning News, under the captioned heading "DuPage County, Ill., welcomes jobs but fails to provide low-income units," reported that in the 43 years since its creation, the DuPage County Housing Authority had not built a single apartment. The article recounts instances where city officials expressed negative attitudes regarding lower income housing. To a great extent, the newspaper article reflects testimony and other evidence elicited during the trial of Hope, Inc. v. County of DuPage, No. 71C 587 (N.D. Ill. Oct. 1, 1981), a suit brought by low income persons against the County.

In March 1971, ten individuals and Hope, Inc., a DuPage County-based not-for-profit fair housing organization, filed suit against DuPage County, the members of its County Board and certain others. The original complaint claimed that plaintiffs' rights protected by the Thirteenth and Fourteenth Amendments of the Constitution had been violated. In an amended complaint plaintiffs further alleged that DuPage County had engaged in a practice of exclusionary zoning, whereby all new housing units in the County were built for and sold or rented to the relatively wealthy. It was argued that the denial of housing for low income persons resulted in racial and economic segregation. Plaintiffs alleged that such acts were intentionally discriminatory and that there was a conspiracy among the defendants to deprive them of their Constitutional rights.

In October 1981, the United States District Court, following the approach in Arlington Heights. v. Metropolitan Housing Development, 429 U.S. 252 (1977), analyzed the policy and purposes of the County in its land development and planning policy. The court concluded that the County had knowingly and intentionally pursued housing practices intended to exclude minorities and low- and moderate income persons. On February 3, 1982, the court entered its Judgment and Decree, enjoining the County from enforcing provisions of the County zoning ordinance found to be discriminatory. The decree required the County, in consultation with Hope, Inc., to develop a ten-year plan to increase the number of housing units for low- and moderate income families. The Court additionally required the County to submit quarterly progress reports.

On June 26, 1984, the United States Court of Appeals for the Seventh Circuit reversed the ruling of the District Court in Hope, 738 F.2d 797 (1984), holding that the plaintiffs lacked standing. In a footnote the majority opinion stated that the Court had "grave doubts as to whether plaintiffs sufficiently established the necessary intentional and invidious discriminatory purpose on the County Board's part." Id., at 816.

From 1975 through 1978 DuPage County received $10,279,000 in block grant (CDBG) funds. Over this period of time, particularly during the 1978 program year, the HUD Field Office advised the County of serious

program deficiencies. The Department was specifically concerned that the County had not taken steps to implement its Housing Assistance Plan (HAP) in a timely manner, refusing to participate in the public housing program and failing to carry out its rehabilitation program in the face of substantial low income housing needs. The HUD Field Office also cautioned the County that CDBG program expenditures lagged behind other communities of similar size and with similar activities. The County was informed that future funding would be jeopardized unless program performance improved.

A review of the County's performance in connection with the submission of its Fiscal Year 1979 CDBG application showed virtually no improvement, particularly in taking actions to meet housing needs.

- Although funds were budgeted for rehabilitation, almost no rehabilitation had been accomplished and no staff hired to administer the program.
- Acquisition of sites for assisted housing included as funded activities in the fiscal year 1976 and 1978 CDBG programs had not taken place.
- There was only minimal accomplishment of HAP goals for families and large families.

In light of the continued poor performance, by letter dated September 26, 1979, the Department notified the County that its Fiscal Year 1979 grant of $3,907,000 was reduced to zero. DuPage County chose not to submit applications for FY 1980 and 1981.

In response to the County's stated intention of re-entering the block grant program in FY 1982, the Department in early 1982 began a review of issues affecting the County's past problems. In light of Hope, the Department was particularly concerned that relevant evidence existed to question the County's certifications of compliance with title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968. It was determined that a two-stage approach might be effective in improving the County's program performance, including compliance with civil rights laws. First, prior to any action on the 1982 grant submission, the Department required the County to submit special assurances. By letter dated September 3, 1982, the HUD Field Office informed the County that it must submit assurances indicating that the County would:

- develop and pass a County resolution to take immediate steps to make the zoning changes described in the Court Order, and to abide by the other zoning-related provisions set forth in the order;
- develop, adopt and publicize a resolution, or other appropriate document, expressing the County's commitment to use its best efforts to place a significant amount of assisted housing in both the incorporated and the unincorporated areas of the County;

- develop plans for an outreach program to provide minorities and low- and moderate income persons with housing opportunities throughout the County, utilizing all assisted housing resources that may be made available to the County for this purpose; and

- develop and pass a County fair-housing ordinance and resolution stating that persons of all races, creeds and colors are welcome to live in the County and setting forth the County's policy of nondiscrimination in housing.

By letters dated September 20 and 24, 1982 the County provided the required assurances.

As a second measure to induce satisfactory performance, the HUD Field Office placed the following conditions on the FY 1982 grant:

- In order to facilitate the provision of low- and moderate income housing, the Grantee must adopt zoning changes and conform with the other zoning-related provisions described in the February 3, 1982 Order of the Federal District Court in the case of Hope, Inc. v. County of DuPage. Final adoption of these changes will occur by June 30, 1983.

- The Grantee must carry out the actions it had described in a September 20, 1982 letter to Field Office Manager Elmer C. Binford regarding efforts to place a significant amount of assisted housing in the County. This will be evidenced by the budgeting of funds specified by February 28, 1983 to carry out those activities.

- The Grantee must, by February 28, 1983, undertake the specific plans enumerated in the September 20, 1982, letter to Elmer C. Binford for an outreach program to provide minorities and low- and moderate income persons with housing opportunities throughout the County. By that date, the County will have completed its operating plan and will have executed a contract with an administrative agency.

- The Grantee must develop and pass, by March 31, 1983, a fair housing ordinance, or similarly appropriate document, setting forth the County's policy of nondiscrimination in housing, both rental and sales, and establishing an administrative enforcement body to receive and process complaints and delegating to that administrative body enforcement of the ordinance. The ordinance shall prohibit, at a minimum, the discriminatory conduct made unlawful under Federal fair housing law (title VIII of the Civil Rights Act of 1968) and shall contain investigatory and enforcement authority at least as broad as that provided in the Federal fair housing law. Should authority to develop such ordinance not be vested in the County, the Grantee shall submit to the Department by December 31, 1982, the formal opinion of the State Attorney General that the County lacks such authority; pass an appropriate resolution, within the limits of its powers, setting forth the County's nondiscriminatory policies; and submit to the Department by March 31, 1983, appropriate documentation evidencing it has made reasonable efforts to seek authority from the State legislature to enact such ordinance.

The condition restricted the use of $1,500,000 (of a grant of $4,161,000 until such time as the County was in compliance. Additionally, the County was also required to accept any and all housing resources consistent with its HAP which HUD made available to the County and/or to the County Housing Authority.

During the FY 1982 program year, the County urged the Department to release all conditioned funds, stating that all actions had been taken within its power to satisfy HUD's concerns. However, to this point, the County had not adopted zoning changes to facilitate the provision of low- and moderate housing and had failed to enact a County fair housing ordinance or resolution. HUD thus concluded that the County had taken significant positive steps but still fell short of satisfying the contract condition. The Field Office expressed these and other concerns to the County in a monitoring report dated July 8, 1983. The Department took no action to release the $1,500,000.

The Departmental review of the County's FY 1983 submission for its entitlement grant and Jobs Bill funds 1/ revealed that the County had not yet fully complied with the FY 1982 contract conditions. In this connection, the Field Office conditionally approved the 1983 grants, advising the County that its assurances of compliance with title VI and title VIII were still questioned and that by conditioning the grants HUD was affording the County a final opportunity to demonstrate compliance. The conditions imposed on the FY 1983 grants were similar to, but more detailed than, the first and fourth conditions contained in the FY 1982 grant.

As noted above, on June 26, 1984 the United States Court of Appeals for the Seventh Circuit reversed the lower court ruling in Hope. Accordingly, by memorandum dated August 7, 1984, Jack Stokvis, General Deputy Assistant Secretary for Community Planning and Development, advised the Field Office to remove Condition 1(a), which referenced the District Court Order, from the condition in the 1983 entitlement grant.

By memorandum dated August 22, 1984, Mr. Stokvis advised the field to release to the County the $1,500,000 that had been held pending resolution of the FY 1982 contract condition. This action was based on a review of a fair housing resolution adopted by the County on May 29, 1984. While it was determined that this resolution satisfied the FY 1982 special condition regarding a fair housing resolution, it did not fully satisfy the more detailed special condition in the FY 1983 grant. In August 15, 1984, Susan Zagame, Deputy Assistant Secretary for Fair Housing and Equal Opportunity, met with County officials to assist in the development of a fair housing resolution acceptable to HUD. Thereafter, on August 28, 1984, the County adopted a resolution which fully satisfied the special condition in the 1983 grant. On September 17, 1984, the Department released the 1983 block grant funds.

1/ This program was authorized by P.L. 98-8 as a special appropriation, including the provision of additional CDBG funding, to spur economic recovery by creating productive jobs, and to provide humanitarian assistance to the indigent and homeless.

Chairman GONZALEZ. Thank you very much.

I have looked over the submission of your voluminous material, it had not only the Texas case, but others. In appendix 1, in the second paragraph, you say:

> Reliable data on racial occupancy on a programwide basis are available only for the low-rent public housing programs for 1977. Programwide tenant characteristics for the other HUD multifamily programs, including racial characteristics, are substantially incomplete, and, therefore, are not included.

Why would that be? It seems to me that this would reflect an absence of concern about the problem in keeping as accurate documentation as possible or statistical documentation. Or is there some other reason?

Mr. KNAPP. There is another reason for that, and it is an unglamorous kind of reason. Prior to about 1979, the Department required the housing owners, public housing authorities, owners of HUD-assisted projects, to submit annually project occupancy statistics on a racial basis at the project level. We still require and receive that kind of data in the unsubsidized FHA-insured programs.

But a decision was made somewhere in that period for the subsidized programs to rely instead on getting that data from individual tenant data, from individual tenant applications, income certifications and so forth, rather than by a separate project level report. It was, I think, a misplaced confidence in the ability of an automated data system to aggregate that kind of data from all those thousands of individual forms, particularly when it also then developed that there was a very high error rate in the individual forms, and that is what is explained in this footnote 1 to appendix 1.

We are continuing, as it says there, to try to perfect the ability of this system to collect that data from the individual forms, but we are also planning to revert to the project level occupancy data collection in the subsidized project programs in a way that is comparable to the way we continue to do it in the subsidized programs.

Chairman GONZALEZ. It just seemed to me that it would be indispensable for the success of a concerted effort, along the lines that you have indicated the administration wishes to pursue, in respect to formulating policies to reduce the problem, that that be done, so I am glad to hear that that is the intention.

It seems to me, though, that it would really have to be done on a project or building basis to really gain an accurate accounting or picture of the extent and the complexity of the problem, and also the ability to try to forge some coherency in policies and procedures.

Now, you have indicated that public housing authorities signing standard civil rights compliance agreements have continued to discriminate racially. Just how have you changed procedures to assure that such violations don't continue in the future?

Mr. KNAPP. I can only point to what I think are the differences between the ways that we have been proceeding, for instance in the east Texas effort and in region IV now, from the way that we were before. First of all, the compliance agreements are not the standard kind of agreements, but are more aptly tailored to a specific situation and, therefore, the continuing followup monitoring reports are, I hope, more understandable, among other things, and more directly related to that local situation.

In addition to that, we must, and we will be, paying a great deal more attention both to the monitoring reports that we receive and also to the necessity of continuing on-site field visits, whether by the fair housing staff or the public housing staff, which will have expanded—does already have expanded responsibilities to have the civil rights compliance requirements within the scope of their audit responsibilities.

Chairman GONZALEZ. I realize that in the first instance you referred to the east Texas case. You had a court decision that I am sure is very helpful to you compared to the areas where you don't have such an order, but I was just really seriously interested. I also know that in some of these procedural changes desires, am I not correct, you have to have the approval of OMB? What has been your experience with obtaining that approval from OMB?

Mr. KNAPP. I am not certain what you are referring to, Mr. Chairman. General reporting forms, such as the occupancy data——

Chairman GONZALEZ. Right.

Mr. KNAPP [continuing]. That I referred to before, we will need the OMB approval under the Paperwork Reduction Act. The forms for collecting that data on a project-based level for the subsidized programs have not yet been submitted to OMB. However, the forms for collecting that same data in the unsubsidized programs, the insured unsubsidized programs, as I said, have continued to be collected, and the extension of that form was approved by OMB only a few months ago, so that I do not anticipate a difficulty with OMB in that respect.

Chairman GONZALEZ. As I said at the very outset, I am not trying to draw any judgments or conclusions about willingness or willingness to do something, I am just trying to figure out the dimensions of what has always been a failed attempt. It is interesting to note that no President I know has even so much as addressed the question of pursuing the enforcement of civil rights laws and requirements, but one of the several civil rights requirements of the Community Development Block Grant Program is communities, including small cities, certify they are affirmatively furthering fair housing. I know how these things are, how they become sort of a ritual.

But in light of today's situations, circumstances, failure to comply with this provision could result in reducing or terminating CDBG funds. How does the Department determine that a community actually does affirmatively further fair housing, what regulations provide guidance to communities as to activities that would fulfill this requirement?

Mr. KNAPP. We published a proposed revision to the block grant entitlement rules. I can't recall how long ago, some months ago, which for the first time attempted to define standards, at least review standards, safe harbor rules let's call them, that we would apply in accepting a locality's certification of affirmatively furthering. Those rules have not become final yet, but, as I say, that really represents the first attempt to publish a set of standards for just that subject.

Chairman GONZALEZ. Counsel just informs me that Justice is reviewing that because they are looking at it from the standpoint of establishing quotas. Is that correct?

Mr. KNAPP. The Civil Rights Division, as you know, has coordination responsibility under the nondiscrimination statutes, title VI and section 109 of the block grant regulation fall within that responsibility. They have the regulation, they are reviewing it. They have not been back to us on what concerns they may have. They have not yet defined their concerns to us, at least not in any formal manner.

I think it is fair to say that the concern that you mention is one that—they are trying to assess whether or not our proposal really raises that concern. And I don't think that they have concluded, they certainly have not initiated at this point a dialog with us on it.

Chairman GONZALEZ. Well, what do you think, Mr. Knapp, do you think that you do?

Mr. KNAPP. No, I don't think that we do. Because—if I can refer to other things that we have discussed in this subcommittee, as you recall, some of the minority—the primary benefit guidelines, the safe harbor rules that we have, these are essentially of the same kind. It is a set that says if you have done this, then we will assume that you have complied. If you have not, we will look further and look behind it, but it is not going to be an automatic "you failed because you haven't met the numbers."

Chairman GONZALEZ. Fair enough.

My 5 minutes actually are up, and I am going to recognize Mr. McCandless at this point for 5 minutes.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

I would like to preface my remarks by saying that I am in complete accord with the principles of affirmative action, and I would not want any of my comments to be misconstrued.

In reading the literature and information that was provided to me, I am reminded of some personal experiences in the housing authority that I was involved in in another life in which there was a real preference on the part of the ethnic groups to live together as opposed to maybe being integrated, and they expressed this feeling outwardly. Because we had a waiting list, and the waiting list was a means by which the individual participated in public housing, and on a couple of occasions, there was a decline for a unit, waiting for another unit, because of this feeling the individual had.

Well, be that as it may, we for some reason, maybe we were in another world, we didn't have any problem with affirmative action, we ran our show and, by golley, this was the way it was going to be, and so on and so forth, and it turned out that certainly in the process of doing this, we were complying with whatever requirements were necessary and never found ourselves in a situation.

But the concern I have here is the activity or the policing of the affirmative action requirements by your organization on the surface appears to have kind of fallen by the wayside, or at least put on the back burner as far as priorities are concerned, again based upon the information that we are conducting this hearing on.

And also that some of those areas within the Department that would have primary responsibility for this have been cut back in

their size, and I am wondering here if the priorities are essentially correct, as the administration of your organization sees it?

Having made all these statements, let me ask you a couple questions. Would you care to comment?

Mr. KNAPP. One thing that you mentioned in there, just with respect to staffing, the fair housing and equal opportunity staffing has done better in staffing patterns over the last several years than most elements in the Department. In fiscal year 1980——

Mr. MCCANDLESS. May I ask you, what do you mean by better? Have you been able to carry out a better workload?

Mr. KNAPP. I am talking at the moment in terms of staffing numbers, size of the staff. There were 560 positions in fiscal year 1981. There was a decrease from fiscal year 1981 to, I think, 1983 of about 10 percent. But the Departmentwide decrease at the same time was 17 percent. And the fair housing and equal opportunity staff numbers have risen subsequently to that, so that there are now 577 FHEO staff as compared, as I said, to that 560 number in fiscal year 1980. The estimate in fiscal year 1986 is about the same. There are not many areas in the Department that have larger staffs now than they had in fiscal year 1980.

The remainder of your comments about affirmative action efforts I find a little——

Mr. MCCANDLESS. Discrimination, affirmative action, whatever terminology you may want to apply to it.

Mr. KNAPP. I think I can testify to that probably more accurately from a personal standpoint of what I know my time, and senior people close to me, has been occupied by during the last 4½ years. This field of discrimination in housing has not been underrepresented certainly on my timesheets. I don't literally have timesheets, but at the senior level in the Department, including the Secretary, myself, and the Assistant Secretary for Public Housing, in addition to the FHEO staff, it has been a major and continuing preoccupation.

Mr. MCCANDLESS. With the short time I have left, let me go into the nuts and bolts of this. How does the agency handle an observation, a complaint, whatever, at say the regional level? Is there an assigned person—is that assigned person given full time to this objective? If there is not a complaint, does this person do cursory checks from time to time or ask questions of housing authority employees? Do you have a standard procedure in a manual somewhere, or at least there is a complete understanding between management and this responsibility, et cetera, et cetera?

Mr. KNAPP. Yes, there are separate staffs at the regional level within the regional fair housing office, whose responsibilities are the nondiscrimination in assisted programs statutes, namely title 6, section 109 under the Block Grant Program.

Their responsibility is complaints, investigation of complaints that are filed with the agency under those authorities, and the initiation and conduct of self-initiated, HUD-initiated compliance reviews in the absence of complaints.

There is a standard operating plan or management plan requirement that is intended to set the priorities in terms of what kinds of compliance reviews they will conduct and how many compliance

reviews will be conducted in an area, and that is their responsibility and, I believe, their sole responsibility.

Mr. McCandless. Is there a review of these activities at the next highest level to establish that the time allocated to this and the results of that time and the individual's responsibility is being carried out?

Mr. Knapp. That is all done within the context of the regular, I think, headquarter reviews which are usually done now on a joint basis with all program offices participating—headquarter reviews of performance by a regional office or an area office, which does go into whatever work measurement criteria that we have. Yes, it is checked from headquarters in that way.

Mr. McCandless. So, there is a check and balance here.

Mr. Knapp. Yes.

Mr. McCandless. As far as the staff, and they are addressing what is considered to be their primary responsibility.

Mr. Knapp. That is correct, sir.

Mr. McCandless. Thank you very much.

Thank you, Mr. Chairman. My time is up.

Chairman Gonzalez. Mr. Garcia.

Mr. Garcia. Mr. Chairman, I will pass at this time.

Chairman Gonzalez. Mr. Levin was here very early, and we will recognize him.

Mr. Levin. Thank you.

Mr. Knapp, I think more and more we believe in objective management. There are what, 3 years left, of this administration. What would be a reasonable set of objectives in this area for accomplishment by the end of the tenure of the administration?

Mr. Knapp. Are you seeking, if I may, a kind of a numerical definition in terms of, say, the number of housing authorities or something like that, or something less "numbers driven" than that?

Mr. Levin. No, I am really asking respectfully for what you think makes sense. In so many areas, more and more people who manage, they set objectives, right?

Mr. Knapp. Right.

Mr. Levin. Otherwise, not much is likely to happen, or you won't know what would happen, you won't be able to judge your success and failure, so what is a reasonable objective?

I don't mean for you to implement that in your mind today, but as you think about this, what kind of objectives have you set for yourself, or haven't you yet?

Mr. Knapp. I think that in the public housing segregation area, what I would hope that we would have, by that time, would be a clearer understanding, based on enough experience to give us that understanding of what it is possible to achieve in terms of when a public housing authority can be considered to be operating on a nondiscriminatory basis, and what it might look like under those circumstances.

Now, my personal definition of that, I might say, is an authority in which there is access to all projects in the authority by any applicant, no matter of what race. And to me, the measure of that, I think, is the degree to which applicants accept the assignments that they are given and don't reject them, or at least it appears

that units are not being rejected because of the racial character of the project to which the assignment is being made.

We see already signs, I think, of having achieved that in the east Texas authorities, indeed in ways that are surprising even to us, because, in east Texas, I think—of course, we are dealing with small authorities and small projects. But there, more, I think, than in any places that I know of, we have succeeded in desegregating or at least breaking the ice, not only in what were formerly all white projects, but in formerly all black projects, as well.

Not only are blacks being assigned to and accepting the assignments in what were formerly white projects, but whites are being assigned to and accepting assignments to projects that were formerly all black projects.

I would hope that after that period of time, we would have some greater understanding in a range of different kinds of circumstances of how achievable that objective is and how easily maintainable it is, so that they can guide the ongoing efforts with perhaps less of a need for direct personal participation at the headquarters level in every case.

I am sorry to be so vague about that, but I mean that is the way I approach this thing from day to day.

Mr. Levin. I appreciate the intent with which it is given and your candor. Your candor is so sobering that it is not very easy to know how to react to it.

The picture you paint is so bleak, in a way. We have come so little, and there is so far to go that it is hard to know how to respond. I think, though, I would just suggest to HUD that that isn't a very clearcut objective, set of objectives.

It is fuzzy. It is very, very limited in its reach, and it is exceptionally fuzzy as to outcome. It is hard to measure it, and I really think the time has come to be a little more specific about objectives, because when they are that inchoate, not only is it hard to measure progress, but it sets forth the message—it sends forth the message that you are not seeking very much.

I think there has to be, if I might suggest it, respectfully but very strongly, something much clearer than that. Let me suggest or ask another question in that regard.

You said at the beginning that there aren't really standards set out as to what should be achieved, that there are various standards that might be adopted, and I wonder how far HUD is along in determining what those standards should be, what those standards of approach and measurement should be.

You talked about income eligibility standards, et cetera, et cetera. What are you thinking about? You have taken on more responsibility in Washington, but if you don't give to the field some clear guidelines as to how they should approach it, you are going to receive little in return, probably.

So, how far along are you in determining which of the criteria should be used?

Mr. Knapp. Again, I think we are talking within this public housing context, because that is what my prior remark was addressed to. There are objectives beyond that.

First, I would just comment when you say that I am not seeking much, and I would quarrel with that.

Perhaps it didn't come through in the answer that I just gave, but I mentioned before what is a kind of a numerical indicator. I don't want to place that much emphasis on numerical indicators, but I think that the reduction of, say, one-race projects from 70 to 30 within a single area within an 18-month period is not a small result, certainly not when compared to the historical record.

Mr. LEVIN. I agree with that. Just to project that throughout the country, are you going to set any kind of objectives along those lines for other areas of the country?

What do you hope for by the end of 3 more years—have you set any kind of goals as to where we might be 3 years hence?

Mr. KNAPP. I think at this stage, frankly, it would be very arbitrary, the goal.

In other words, as I say, pull out of the air a reduction in one race project, say, across the United States from X to Y. I don't have a confidence right now that I have a base for pulling that number.

Mr. LEVIN. When will you?

Mr. KNAPP. And I want to avoid setting up that kind of thing. Too often, it, I think, becomes a device for skipping the hard case specific examination that has to be made, and I don't think that at this stage we are at the position where we can skip that.

Mr. LEVIN. I was reading, and I will finish off—I was reading the testimony given before the Civil Rights Commission by Jane Lang McGrew who used to head up the HUD counsel office, and she said this:

> Because of this history—and you have gone back over it, and this document, I think, very honestly portrays it—it is essentially the history of tiny progress—it will take more than an annual fair housing week or month to establish fair housing as a top priority, and unless the President himself makes it his message which is repeated over and over, I foresee another generation of reports, hearings, and audits which chastise one administration after the other for failing to make fair housing enforcement effective.

I would just suggest that at some point we have to try to determine some reasonable, realistic objectives beyond understanding, and your statement is one of increased understanding of the problem as an objective and of procedure to solve it is an objective, without any ability to set some kind of aspiration in any concrete form for this Nation.

Mr. KNAPP. Understanding of the problem and understanding of solutions, I think that is a prelude to setting——

Mr. LEVIN. It is.

Mr. KNAPP. The kind of standards that you are speaking of.

We are still at the understanding of solutions stage. I am sorry to say so, but that is where we are.

Mr. LEVIN. So, you are essentially saying setting as an objective for the next few years is understanding of the solution with, likely, inability to set any reasonable goals for implementation of that understanding?

Mr. KNAPP. I am not certain, and I frankly hope that at the end of that kind of period we will not still have an inability to set that kind of standards.

I hope that we will be there by then, by well before then. I am simply saying that I don't feel confident that we are there today.

Mr. LEVIN. I wish you well.

Thank you.

Chairman GONZALEZ. Ms. Kaptur.

Ms. KAPTUR. Thank you, Mr. Chairman.

Good morning, Mr. Knapp. I would like to welcome you and all the people who are with you from HUD.

I haven't had a chance to read the entire report that we have received from the department; however, I have taken special note of a section in appendix 5A, which concerns Lucas County, OH, which is my home.

And as general counsel, I am interested in the extent of your own involvement in the litigation that has occurred with the Lucas County Metropolitan Housing Authority, and based on your involvement, what you see as the prospect for the resolution of some of the issues that have been identified.

Could you tell us something specific about what is really happening there?

Mr. KNAPP. My participation—well, as is made clear in the appendix, the trial in this matter occurred in 1978, which was well before I was with the agency.

The judge took 5 years in issuing the opinion, so I obviously had nothing to do with the trial of the case or the assembly of the record.

Ms. KAPTUR. That is helpful. I wasn't sure of that.

Mr. KNAPP. We are now at the remedial stage after the appeal. I did have some involvement at the appeal level and at the level of determining whether or not to seek certiorari in the case.

I did not take, I don't think, much of a personal role in formulating a proposed remedy that we submitted to the court, and I cannot, frankly, recall exactly what it is that we proposed to the court.

Ms. KAPTUR. Is there anyone here with you from the department that might be able to be a little more specific?

Mr. KNAPP. No; I don't think so, nor for that matter, what the plan proposed.

I am becoming more involved in it right now, as a result of what the district judge himself has indicated is likely to be the form of the remedial order that he is going to enter with regard to public housing.

Ms. KAPTUR. How do you feel you are becoming more involved? What is happening?

Mr. KNAPP. He has indicated the kind of an order that he is going to enter. Frankly, at that point, I am not sure what we will be able to do about it, whether we will perhaps try to seek a modification of the order through a rehearing or an appeal of the order that he submits.

Ms. KAPTUR. What is HUD's relationship to the court order? I am a little unclear. How closely are you monitoring it?

Mr. KNAPP. HUD is a defendant in the case, along with the housing authority.

The judge, as part of his initial order, asked for the submission of an affirmative action plan for the desegregation of the Lucas County housing authority's projects within Toledo.

He has asked for, or he is going to issue, a more detailed order along those lines, which will be essentially a tenant selection order.

It will concentrate on tenant selection and assignment of applicants for housing within the Lucas County housing authority.

As I say, the department made suggestions. I believe the housing authority made suggestions. The plaintiffs made suggestions. I am sorry that I can't report on the details of those different alternative suggestions.

The court has indicated——

Ms. KAPTUR. Could I understand why you can't report on the details? Are you just not familiar with them?

Mr. KNAPP. I am just not familiar with them myself. The court has indicated his intention of imposing a tenant selection and assignment plan which would have as its objective achieving an occupancy mix in each project in the authority that is equal, with respect to both nonelderly units and elderly units separately, an identical mix within 2.5-percent points, give or take, of the racial mix within the entire authority.

That means that, based on the occupancy in 1977, which were the last figures that were before the judge in any kind of a hearing, that each project would have a roughly 50–50 mix between black and nonminority elderly tenants, and each project would have a roughly 25 to 75 percent mix of nonelderly tenants, 25 percent white, 75 percent black.

The concern that I have about that kind of an order is that for one thing, as you can see on page 6 of the appendix that you were referring to—we have a schedule there that shows the 1977 occupancy of the nonelderly units project by project—there are some all black projects in that authority. There are no all white projects. There are a substantial number of projects, about a half dozen or so, that are in the 40 to 60 percent kind of range, which, I think, generally, we would sort of intuitively regard as being a good mix within a project.

In fact, if we listen to some, say, sociologists, who testify on this question from time to time, about tipping theories, they would, in fact, indicate that as far as future stability of integration, perhaps even there, there are not enough white occupancies to maintain those projects as integrated projects.

However, this court has indicated its intention of imposing a tenant selection and assignment plan which would have as its objective to reduce the white occupancy in those projects down to the 25 percent or possibly now, based on current occupancy, the 20-percent level.

Chairman GONZALEZ. Will you yield to me?

Mr. KNAPP. Yes.

Ms. KAPTUR. I yield to the chairman.

Chairman GONZALEZ. I think the point, of course—the listing you have on page 6 is your nonelderly units.

Mr. KNAPP. That is correct.

Chairman GONZALEZ. Your family units.

Mr. KNAPP. That is correct.

Chairman GONZALEZ. But the Dallas Morning News article, an article with reference to this particular situation in Lucas County, was that 13 of the 20 elderly projects were 90 percent one race,

which, I guess, in this case would be minority rather than dominant group or white occupancy.

In the second paragraph, though, in which you are describing the substance of the order, you say, "He would set,"—meaning the judge—"a 75-percent minority occupancy goal for nonelderly units in each project."—so that it wouldn't be a 50–50.

Mr. KNAPP. For elderly units, I think it would be 50–50 based on what was in the occupancy. He was treating the elderly units and the nonelderly units separately.

Chairman GONZALEZ. As I see, the difference here is that here I think you have far more substantial size projects, as distinguished from the Texas case, Henderson County, so that your real challenge is this type of a situation.

Mr. KNAPP. That is right, and what makes it the challenge is not only the size of the projects, the size of the geographic area that you are talking about, where you have, I think because of other interests of tenants, less ability to, let's say, require tenants to be on a different side of town from where they want to be, which you don't really have in the east Texas area, but even more than that, the basic demography that you are dealing with in terms of, particularly in the nonelderly units, its population and the waiting list that you are dealing with.

Chairman GONZALEZ. That is right.

As I see it here, in both instances, though, the compelling force has been judicial intervention.

At no time have we had any kind of initiative from administrations, and I use the plural. Also—and this is a reason that, in a way, the environment I refer to that we confront today is the main thing—in both instances, but particularly in the Texas case, the agency really didn't move and the court didn't intervene ad hoc in the specific individual case of Lucille Young until she lost her three bedroom housing and found that it was difficult to get on that list for the limited number of available three bedroom units and the like, with the concomitant problem of a reversal in the commitment to providing housing for the poor, which we face now.

As you know, the budgetary requests of the administration would zero out all of our assisted housing programs.

I predict that at that point we will have a exacerbation of the problem, very serious, because there is no question from what I have witnessed in the hearings we have had throughout the country that we are confronting a growing housing problem of a very serious proportion, notwithstanding statistics about the existence of units.

We are not talking about the same thing, because usually those statistics are referring to housing, but not for the poor, which is a very specialized area, which this country has found a solution on only through Government intervention; that is, a national commitment.

So that, we are lucky enough to end up with only lawsuits and not rent strikes and squatters riots. We will be most fortunate.

But as I see it, the discriminatory aspect becomes moot. It is very much like union organizations. If a factory isn't there, there is not anything you can unionize, and if you don't have housing for the

poor, be they black, white, blue, or brown, the country is facing a very serious social problem.

It shouldn't deter us, though, as I see it, from redoubling our efforts as hard as it may be. And also, I am very aware and conscious of the fact that of all times, it would be very unjust to point the finger and make demands at this time other than what we can do to point the finger and make demands on the other; that is, to continue a commitment on a national basis to housing.

I thank the gentle lady for allowing me this time, but I did want to bring out that this chart was based on family rental units, that the judge has more or less set a 75-percent minority goal, and that is a substantial assisted housing activity in Lucas County as distinguished from Henderson County in Texas.

Ms. KAPTUR. I am glad you brought up many important points, Mr. Chairman.

For the record and for Mr. Knapp—I don't know if he has ever been to Lucas County, but I wanted to point out some things that I think are important as we observe what happens now in that system.

Our housing authority closed its waiting list sometime ago. This relates to what you were saying abut the growing need. Last year we had over 6,000 families on that list. When you talk to the professional housers in the area today, they say, we probably have a need of about 10,000 in the area. One of my concerns as we move through this process in order to be fair and to support peoples' desire regarding where they want to live as well as meeting fair housing objectives, and acknowledging added constraint of very few available units is the way we treat people who are presently living in that house.

For example, I have a mobile van I take around my district, and I went into one of my neighborhoods this past August. I had the 40-year-old children of seniors living in one project, telling me that seniors, many of whom had lived in this all senior project for over 25 years, were getting notices saying that, they were overhoused and had to leave. And we have women in those projects who are over 90 years of age. For them to leave their little unit is potentially disastrous because they have become so accustomed to that place.

So, I think one of my concerns is what happens as we begin to shift people around to try to meet objectives? Do we treat them in a humane way or don't we?

I found it very interesting in the appendix report on my home county, to see a mention that when the Section 23 Leased Housing Program and section 8, for example, were actively being used, that, in fact, the housing authority in the area did disperse housing in both of those programs in a very effective way, and I think that it met all kinds of objectives that we would be interested in here as people who believe very much in the right of any American to live anywhere he or she wants to.

I guess one of the questions I would have in this community-like mine where we have this tremendous need and where we have over 2,000 abandoned units that presently exist that are in good shape, that we could use them to house people.

We have this tremendous need. What are the prospects for a program like section 23 being coupled with some of these efforts to try to move families around and to try to meet the court's objectives?

What is your view of what has happened with all section 23 Leased Housing Programs which worked very well in our area?

Mr. KNAPP. I don't have a comment specifically on the Section 23 Program. It does seem to me that the combination of rental rehabilitation grants and vouchers or certificates tied to rental rehabilitation is directed at achieving that same kind of result, that same kind of objective.

Chairman GONZALEZ. Pardon me again for interrupting, but if I get the thrust of your concern, what policies or directives is the department devising to accompany the shift in arrangement to bring about the mix, the desirable mix?

For instance, it is fine to say, well, in Henderson County, where the white families had 100 percent occupancy of overhoused situations, that is maybe a couple with a three bedroom unit, but as Ms. Kaptur so well pointed out, suppose you did have an elderly white, 90 years of age, where suddenly she was faced with maybe a transition period in which she wasn't housed.

Is there some accompanying program in implementing the mix to provide for the shelter of these tenants?

And also, cost of moving. What is the actual practice or the mechanics?

Mr. KNAPP. None of the efforts—we have relied upon correction of underhousing-overhousing as a means of also advancing desegregation objectives, but none of those have ever taken the form of removing an overhoused family from a unit without having an appropriately sized unit to go to.

If I understand you, you talked about the transition phase.

Chairman GONZALEZ. Right.

Mr. KNAPP. Where there would be no housing. That has not arisen. Nobody is being put out and then, let's say, put on a waiting list until something comes up.

There is a definite unit to be moved to, and we recognize the human difficulty, particularly when you are dealing with very elderly tenants, and we have been most liberal, I think, in terms of medical and hardship exemptions, based upon frailty and age, even in these areas such as in Henderson County and the others, where the geographic span of the move is not all that far, and would be considerably more so in areas where you are facing the geographic factors as well.

As far as the moving costs are concerned, the moving costs are not being born by the tenants in any of those circumstances.

Chairman GONZALEZ. It is, to be perfectly fair, obvious in your appendix—you pointed out one aspect, and that is that a certain number of white families did not opt to move to the available public housing.

Some were able to accept leased housing certificates, but others went into the private sector.

My question is they are white and all of that, but if they were eligible and lived in public housing, what available private housing was there?

Was there any follow through in those cases to make sure they didn't end up worse off in slum conditions and the like?

Mr. KNAPP. I think that what you are referring to is what happened under the district judge's orders in Clarksville that required mandatory transfer simply drawn by a lottery.

Chairman GONZALEZ. Right.

Mr. KNAPP. Whether people were in inappropriately sized units or not.

Chairman GONZALEZ. That is right.

Mr. KNAPP. There was an exodus from public housing, at least initially, by a number of the white tenants that were affected by that.

I don't think that we have had a repetition of that in the authorities that we have dealt with, and, in fact, what we found with some of those who left, who opted to leave public housing altogether in Clarksville, that they did obtain, say, certificates or admission into neighboring public housing authorities on a priority basis, claiming that they had been displaced by government action.

And we responded to that by issuing a notice saying that persons who had opted to leave public housing rather than to accept a transfer under a court order or pursuant to a compliance agreement could not claim that kind of priority status.

Chairman GONZALEZ. Thank you very much.

Ms. KAPTUR. Mr. Chairman, I know I am going over my time here, but I just want to understand HUD's relationship to the local authority as we move through this kind of major transition.

As you so well point out, Mr. Chairman, in urban areas where people have lived in a certain way, we have this tremendous backlog for use of public housing units.

I would like to understand the administrative process that HUD is using to couple either the leased housing certificates or rental rehabilitation with careful attention to these individual people that are going to have to be moved?

What is the process, the administrative process, set up inside of HUD in order to do this carefully?

Mr. KNAPP. First of all, may I say that in Lucas County, the judge's order is going to affect only, I believe, new admissions into public housing.

It is not going to rely upon transfers or moves of existing tenants within the housing authority.

It is only going to determine where people are placed who are coming into public housing and what kind of offer——

Ms. KAPTUR. It is like a grandfather clause.

Mr. KNAPP. It simply doesn't go to existing tenants. Existing tenants will be given the right to request transfers if, let's say, a black tenant wishes to transfer to a predominantly white project, as it is defined here, or vice versa—they can get, I think, a priority when a unit comes up to make the transfer.

But that is only voluntarily requested transfers. This order is going to rely upon new applicants and what kinds of units will be made available to new applicants.

Ms. KAPTUR. That is a very helpful comment. I was unaware of that, Mr. Chairman.

Mr. KNAPP. I might say that the reason why we have sought transfers of inappropriately housed tenants in the east Texas authorities is because I think that our experience over the years with these compliance agreements, if it tells us anything it is that relying upon the kind of incremental change, one-by-one change that you get from dealing only with new entrants, simply doesn't work very well because of the isolation—asking someone to become the first white or the first black, and maybe to remain that for some period of time—so that on the contrary, by utilizing either the correction of overhousing-underhousing, or the opportunities that you get in connection with a modernization program, where you will have blocs of units to be filled or blocs of people to be moved at a single time, it is a more effective way of breaking the ice in a possibly stable way, and it is what has given us the opportunity in those authorities, as I say, I think to desegregate not only all white projects but some all black projects.

Ms. KAPTUR. Thank you.

Thank you, Mr. Chairman.

Chairman GONZALEZ. Thank you.

Mr. Torres.

Mr. TORRES. Thank you, Mr. Chairman.

In reading your office report, sir, I was struck by a salient point. If I may quote, it says:

> A necessary first point in any exploration of federal housing programs is the limited, essentially reactive Federal role in Federal housing decisions, even where Federal subsidy is involved.

I cite "limit" as a key word in this. At the risk of being redundant, on the questions that Mr. Sander Levin posed earlier, I would like to ask you what do you perceive, Mr. John J. Knapp, General Counsel of HUD, to be the role of HUD in eliminating racial discrimination?

Mr. KNAPP. Our role, as far as the general private market is concerned, is primarily our—a gain, in a different way, our limited role under the Fair Housing Act, where our enforcement powers are limited to being receptive to complaints, accepting complaints, investigating complaints, attempting to conciliate complaints.

Our role with regard to housing discrimination within our own programs, within the assisted housing programs, is a much more active role.

Mr. TORRES. If I may again, sir.

Mr. KNAPP. Yes.

Mr. TORRES. What do you, Mr. John J. Knapp, perceive to be the role of HUD in eliminating racial discrimination?

Mr. KNAPP. That is what I am trying to answer, sir.

I was saying that within the housing that is represented by our programs, I think we have a strong role which in large part is an enforcement role but is in large part furthering the objectives of the programs themselves in providing opportunity, particularly through programs such as the "finders keepers" type programs.

But I think that what the quotation that you read from—and I can't say that I quarrel with it—is that the ability of the HUD housing programs to effect broad change within the entire market is a limited role.

The HUD-assisted programs, HUD-subsidized housing or insured housing, represents not all that large a percentage of the general housing market.

That is as clear or unclear, but as good an answer, I am afraid, as I can provide you, sir.

Mr. TORRES. Would you clarify some of the steps that have been taken by HUD to eradicate racial discrimination? Although some of those are covered here in the report, I wanted to know over and above what is here, perhaps numerical quotations that you have made, what other specific objectives are being pursued, if any.

Admittedly, I wasn't here for your initial testimony, but people have taken notes and have indicated that, admittedly, there are problems in the whole process.

There is recognition that there has been failures at rectifying this problem, and I would simply like to know from you specifically what is being done to really petition this into enforcement, what is being done specifically to work at this whole aspect of racial discrimination in a very significant aspect of our society housing.

Mr. KNAPP. I described earlier the efforts that we are making in public housing and the ways in which we are trying to overcome what we perceive to be the impediments to success in those efforts, that have marred those efforts in the past.

Some of them, as I have mentioned before, take on somewhat unglamorous forms, in that they deal with mundane matters such as organizational structure and reporting lines and what offices get involved in things, and things like that.

But there are a variety of things of that nature that have contributed to the degree of failure in the past. Each one of those that we have succeeded in identifying we think that we have corrected or put at least on the way to correcting and given it enough attention in the process that it will not simply slide back again.

Outside of the public housing area, again, I think that a principal means is to continue to do whatever we can to implement the objectives that the department has always attempted to follow, particularly in the Certificate Program, in the finders-keepers program, to really assure the greatest freedom of choice on the part of certificate holders accompanied by the greatest amount of knowledge of what opportunities are available, following up on discrimination complaints that may be presented, such as by certificate holders in the difficulties they encounter in finding places to rent, in addition to the recommendations that we have made before with regard to strengthening fair housing enforcement under the Fair Housing Act, and for providing an unprecedented form of direct Federal assistance to private enforcement, such as this committee has approved through the private enforcement component of fair housing initiatives proposal.

I think that I can only define our role and our objectives through that kind of a listing of things that I think that we are embarked on.

Mr. TORRES. Thank you, sir.

Thank you, Mr. Chairman.

My time has expired.

Chairman GONZALEZ. I will recognize Mr. Carper.

Mr. Carper. Thank you, Mr. Gonzalez.

Mr. Knapp, welcome.

I apologize for missing your testimony. I was at another meeting. I would just ask you really two very simple questions.

Mr. Torres was asking you about your perceived role of HUD in trying to eliminate discrimination in housing.

My question, and this is one that you may have addressed in your testimony, but just for my edification—of all the things that we can be doing here in this subcommittee and in the House, the things that we could be doing to combat discrimination in federally assisted housing, what would you put at the top of that list?

Mr. KNAPP. What I personally put at the top of the list is something that, again, I am glad and appreciative of being able to say this subcommittee already has done, which is to support what I just described as an unprecedented attempt to directly provide support for private enforcement of the Fair Housing Act. In the legislative area that will do more than anything else.

Mr. CARPER. I don't believe that was for the publicly assisted housing. My question is what can we do to fight discrimination in publicly assisted housing. I appreciate your comment.

Mr. KNAPP. Again, when we are talking about the Certificate Program and the Finders-Keepers Program, we are talking about the market in which the public assistance is going.

In the public housing area, I have been asked before many times, I think, whether I can think of any legislative enactments that will assist this process, and I have not been able to think of any.

In all truth, I think that there are some legislative things, let's say within the structure of the public housing programs, which from some perspectives may be seen as almost tending to complicate the problem in terms of targeting assistance, the priorities and all that, because the more that there is definition through preferences, through other targeting provisions, of those who are most in need of the assistance, the more you are likely, I think, to be only increasing an acknowledgment of the need for minorities to participate in these programs. To lessen that emphasis on those who have the need, in order to reduce, let's say, the minority concentration of public housing, is frankly a tradeoff which I would not recommend.

So that, at this moment, at least, I really don't have a legislative suggestion to make with regard to public housing.

Mr. CARPER. I think in your answer you said what we should not do.

I am going to say it again more succinctly and speak as a layman rather than, perhaps, as counsel.

What should we not do? I think you just told me, but I am not sure I followed every bit of it.

Tell me again.

Mr. KNAPP. I think that you should not lessen the targeting of housing assistance to those most in need, out of a concern, let us say, that the targeting itself contributes to the problem of minority concentration in the assisted programs.

Mr. CARPER. Thank you very much.

Mr. KNAPP. Is that clear?

Mr. CARPER. I think so.

Thank you, Mr. Chairman.

Chairman GONZALEZ. Mr. Carper, thank you, and let me say if you can hold a little, what I think Mr. Knapp is saying as reference to the request the administration made for an authorization of $10 million for the implementation of a Fair Housing Program for it—I imagine in that area that would have a much larger impact on your private housing market.

It was a tough job to get that through the subcommittee and the full committee.

We had strong opposition from both sides of the aisle.

I had to overcome opposition from people that had been fighting for fair housing and civil rights all their lives but for various reasons opposed the administration's recommendations.

I felt the least we should do would be to provide the administration with what it says it needs in order to manage, and I assume a fair and honest attempt to do what can be done by the administration, but we are far from out of the woods, because, as you know, even though we have gotten our reconciliation over in the Senate, we still don't know what will happen, and that is one of the biggest things that we had to fight in order to get it.

Chairman GONZALEZ. So what he said is actually true. I mean this is the specific request the administration has made in an attempt to address this problem. In the area of public housing, which is really what this initial hearing deals with, subsidized, assisted or public housing, we are trying to see what we can do.

I think Mr. Torres was trying to get to what every one of us that has been involved all along as a matter of commitment wants, to get the Department to develop a sense of mission to get up and address the problems without having to have a mandate of a court compelling you to do it. And even in the light of a very contrary atmosphere and environment in this day and time, the challenges are greater, the national interest involved is greater. I think Mr. Torres was trying to say, "Well now I hope you fellows will get gung ho and get up and tell me what you intend to do specifically."

Mr. Knapp, I want to thank you very much. We do have a roll call, but I want to satisfy a very distinguished member of this subcommittee that has been very active and present, Mr. Frank, and I am going to turn the gavel over to him so that he can, for the record, ask some additional questions and probably close out. He is willing to sacrifice——

Mr. FRANK [presiding]. Thank you, Mr. Chairman.

As I understand, we have a quorum call first and then a vote. I don't do quorums, so we have a few more minutes. It seems to me that one of the issues we have here is how we enforce this. HUD has the power, I would assume, in various ways to deny funds to municipalities which are discriminating racially?

Mr. KNAPP. Through the block grant conditioning process——

Mr. FRANK. How many denials have there been in the last 5 years?

Mr. KNAPP. There is an appendix that deals with that, and I am——

Mr. FRANK. How many?

Mr. KNAPP. I don't know the answer offhand.

Mr. FRANK. What is the order of magnitude?

Mr. FRANK. Is it appended to your testimony?

Mr. KNAPP. Yes.

Mr. FRANK. You have a bunch of paper. There is a whole bunch of paper, leave it alone.

How many are we talking about, 1, 3, or 27?

Mr. KNAPP. More than 1 or 3, but less than 27. It is in that area someplace.

Mr. FRANK. Grantees conditioned—this is conditioned. Have we got denials?

Mr. KNAPP. On table 4, I believe, there are disapprovals and reductions of entitlement grants.

Mr. FRANK. Disapproval in reductions—HAP is housing——

Mr. KNAPP. Housing assistance plan.

Mr. FRANK. None in 1982, 1983, or 1984?

Mr. KNAPP. Not under HAP.

Mr. FRANK. What about under FHEO, what is that?

Mr. KNAPP. Those are more specifically fair housing violations of one kind or another. I don't know the nature of them.

Mr. FRANK. We have had three of those in the past—one a year.

Mr. KNAPP. Right.

Mr. FRANK. And "other," it says——

Mr. KNAPP. None in the prior 3 years.

Mr. FRANK. What are they? What does "other" mean? What would they have been denied for?

Mr. KNAPP. Misapplication of funds.

Mr. FRANK. Nothing to do with discrimination?

Mr. KNAPP. That is correct.

Mr. FRANK. All right. So we can forget about those. So how many denials? You have the chart in front of you. How many denials of funds have we had to recipient communities for racially discriminatory behavior?

Mr. KNAPP. From this table, I would say denials of funds in terms of actually knocking out the funds, it looks like three within the last 3 years and once in the 5 or 6 years before that.

Mr. FRANK. That is an outrage, and that is why we have the problem. I don't want to see people moved from one building to another. I don't think that makes any sense. Anybody who reads this says "Hey, we can discriminate all we want and there will be no enforcement." And I think we are unfair to the court sometimes. The court sometimes does things in an awkward fashion, but that is because we at the legislative and executive level ignore things to the point where the courts step in, and they have only got bad things to do. This is a joke, John.

One a year for anything to do with racial discrimination. That is why we have the problem. Who is in charge? Whose has authority for civil rights enforcement?

Mr. KNAPP. The Assistant Secretary for Fair Housing and Equal Opportunity.

Let me just raise one question there.

Mr. FRANK. Let me just——

Mr. KNAPP. As you know, public housing authorities are not the city itself. The grantee is the city. City leverage over the public housing authority has, as you know, been a continuing concern with us and with others. But it is not the same actor.

Mr. FRANK. No, but it is very substantially. Let me say this, having worked for a city for 3 years and having been in the State legislature, it won't always work if you threaten the CDBG grant, but it often would. If we had a pattern of efforts, some of which succeeded and some of which failed, I would accept that. But the Department hasn't even tried. Previous administrations weren't all that better either.

Disapproval under Housing Assistance Program, what would that be for? That is not nonracial too in your first column, table 4?

Mr. KNAPP. Some of those may have been racial, but I would say it is probably more likely failure to provide adequate family housing as opposed to——

Mr. FRANK. With regard to public housing, you say public housing is in the city. You have a public housing authority that is being racially discriminatory, what do you do specifically? What happens? I mean, the *Yonkers* case, a judge says it is pretty clear cut.

Mr. KNAPP. No, that wasn't public housing.

Mr. FRANK. All right, but there is clear-cut evidence of discrimination. What do you do in public housing? Assisted housing you have the cutoff problem. I mention public housing because your argument was well, the city can't control the public housing authority. I mean, you are going back and forth on me here. First of all, you were acting as if we were only talking about public housing.

Let's go back again. With regard to assisted housing, the *Yonkers* case, a CDBG cutoff might be helpful, but you don't do that, so you have no weapon.

Mr. KNAPP. That is not true. We did not cut off, but we did condition in Yonkers, and the HUD part of that case was settled on that basis and 2 years at least of block grant fundings are still unreleased pending the city's providing units for public housing——

Mr. FRANK. Well, I would——

Mr. KNAPP [continuing]. On the east side of Yonkers.

Mr. FRANK. I am told there was an agreement to provide section 8 to help with that, which hasn't been provided yet. Is that accurate in Yonkers? In 1984, there was an agreement to provide section 8 help.

Mr. KNAPP. Certificates?

Mr. FRANK. Yes.

Mr. KNAPP. I am not sure.

Mr. FRANK. All right. In that case, I would say, then, you have miscounted Yonkers here. That would be a reduction.

Mr. KNAPP. Yonkers wouldn't even be on here.

Mr. FRANK. They haven't got their funds for 2 years.

Mr. KNAPP. Yonkers would be off on a separate table.

Mr. FRANK. You say they haven't gotten their funds for 2 years.

Mr. KNAPP. That is correct.

Mr. FRANK. Are there any others? Part of the problem is it is so hard to understand what you are doing. Are there any others from which you have withheld the funds? I asked for how many times you have denied funds. If they haven't gotten it for 2 years, that is a sort of enforcement action, but I don't see it here.

Let me go back to public housing. A public housing authority is being racially discriminatory. What do you do about it? What happens?

Mr. KNAPP. Excuse me, I just want to make one reference there. On table 3, the numbers are not all that much greater I will grant you, but table 3 concerns grant conditioning.

Mr. FRANK. Right, but I don't know what conditioning means, and when nothing is ever cancelled—if by conditioning you mean you didn't give it to them, that is pretty stiff. We have 1, 2 and 2½ in 3 years. That is still not very much. And here, as a matter of fact, staff just pointed out to me, let's take conditioning, and there I think you have now made this a partisan issue. Under conditioning, 10, 101, 51, 28, and you have got 5, 1, 4 and 2. So your basic argument is conditioning is the way to do it.

You are out of condition, John. I mean this is it, you go from the previous administration to this administration, there is an enormous dropoff, and that is undoubtedly one of the messages people get.

Let me ask you about public housing. Somebody says, "We got pretty good evidence these people are discriminating, racially discriminating." What do you do about it? What happens? Who do I report that to? How does that work?

Mr. KNAPP. You file a complaint with the Department.

Mr. FRANK. I understand. What happens within the Department? What are your tools? Maybe you don't have enough tools.

Mr. KNAPP. The theoretical tool that is provided by the statute is termination of funding to the public housing authority.

Mr. FRANK. Has that ever happened?

Mr. KNAPP. No. And for reasons that—you know.

Mr. FRANK. You starve the victims.

Mr. KNAPP. Right.

Mr. FRANK. So, then what? The tool, you said——

Mr. KNAPP. Notwithstanding that there is a certain almost fiction to the likelihood of that ultimate administrative sanction being taken, public housing authorities are not that unwilling to enter into agreements that on the face of it are to reform their manner of administering——

Mr. FRANK. What sanctions do you have for an authority which is engaging in discriminatory segregating behavior and either won't make an agreement or makes an agreement, more likely I would guess, makes an agreement and pays about as much attention to it as, just to take an example, Secretary Pierce pays to our hearings?

Mr. KNAPP. Apart from utilizing that as a means of denying new development plans——

Mr. FRANK. Which a lot of them don't want anyway.

Mr. KNAPP. Correct. I think that the only thing that the Department can do is to refer the matter to the Department of Justice, whose action will be simply to seek specific performance of assurances of compliance.

Mr. FRANK. So, what you are saying, here is why we have the problem, when it comes to reducing or conditioning CDBG, you do no—virtually no cancellations, a minuscule number of conditions, particularly compared to previous administrations, and then you say that doesn't get at public housing.

With regard to public housing, what you are telling me is that there is absolutely nothing the Department can do to deal with

people being racially discriminatory. That is what you are saying. Now, if that is the case, if that is what the Department thinks, that is how it acts. If that is how the Department acts, why is anyone surprised nothing gets done?

Have you come in and asked for more? It just can't be satisfactory. I am not worried about getting the word out, they know that the Department has got absolutely nothing. The Department's attitude, apparently, is that people are going to engage in discriminatory behavior, and there is nothing to do about it but refer it to the Justice Department.

Mr. KNAPP. I don't think all of that is right in this sense. Do we have a really effective ultimate weapon to coerce change? I suspect that the answer is as you suggest.

Mr. FRANK. I only have 5 minutes, I have to go vote. I am going to have to leave.

Mr. KNAPP. I just want to finish one thing. When we do pay adequate direct attention to it and deal with the housing authorities directly to get them to change, in the manner in which we have done in admittedly these small authorities in east Texas, we do not find that much of a resistance to change when we have given that indication of interest. I don't think it is going to be limited to east Texas.

Mr. FRANK. What was the timing of your action in the lawsuit?

Mr. KNAPP. I don't deny for a minute——

Mr. FRANK. I am going to have to leave.

Mr. KNAPP. That is a fact, just like Brown was fact.

Mr. FRANK. It is also a fact—I would like to ask, I would like you to submit in writing to the committee, and I ask you this as a temporary acting chairman, examples of HUD's working with authorities, public housing authorities, to diminish racial segregation before a court, before suit was filed.

Mr. KNAPP. OK.

Mr. FRANK. If you can give me those in writing, I would like to see those.

[Letter of John J. Knapp to Hon. Barney Frank, dated January 7, 1986, with attachment follows:]

HUD-31366

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

THE GENERAL COUNSEL

January 7, 1986

Honorable Barney Frank
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Frank:

At the conclusion of the hearing on November 21 regarding discrimination issues in Federally-assisted housing, you asked that I provide examples of "HUD's working with . . . public housing authorities to reduce racial segregation before . . . suit was filed."

Your question apparently flowed from an immediately preceding reference to the East Texas litigation. We had been discussing the enforcement sanctions that HUD has available to it, and we agreed that funds termination, which is the principal sanction provided by Title VI, is not itself an effective remedy. You went on to say that it is then no surprise that "nothing gets done" because local authorities realize that HUD is unlikely to utilize its most severe sanction.

I took exception to this conclusion. I said that when HUD has dealt with housing authorities directly in a serious effort to get them to change, there has not been real resistance but, instead, willingness to adopt measures that will lead to change. I premised this on there being the kind of intensive, direct effort in conjunction with the local authority that has characterized our recent efforts in East Texas - "casework," as I had described it earlier in my testimony.

It is true enough that the manner in which we have conducted our program in East Texas was developed in response to a lawsuit. But the change was not from a history of taking no action at all. The significance of the East Texas case is that it forced us to face the fact that in too many cases, our previous efforts had failed, and that we therefore had to try something different. But the efforts had been there, and in almost all cases they were self-initiated by HUD, not prompted by lawsuits.

Table I to the "Subsidized Housing and Race" paper that was submitted to the Subcommittee shows that 897 Title VI compliance reviews of public housing authorities were conducted during the period 1977-1985, with 299 resulting in findings of noncompliance. These include the 62 reviews conducted and 37 findings made in East Texas after commencement of the Young case

in 1980, but the balance were conducted in the normal course of HUD's compliance review program. Each of the findings of noncompliance resulted in a compliance agreement between HUD and the authority, the objective of which was to correct the basis of the finding of noncompliance. In most cases, the findings were based on segregated occupancy patterns. A substantial number of these cases are more fully detailed in a recent HUD-funded research report on public housing desegregation efforts which I have furnished to the Subcommittee staff. Miller, DePallo and Rotendaro, Final Report: Feasibility Research for a Public Housing Desegregation Demonstration (International Business Services, Inc. 1985).

The more intensive, locality-specific remedial efforts following a noncompliance finding which we have inaugurated in East Texas were developed after a litigation challenge to the adequacy of our prior efforts. I have made no effort to hide that fact. But the change in our approach to fashioning remedial efforts applies everywhere, not just in East Texas. For approximately a year, similar efforts have been underway in Region IV with a number of housing authorities in Georgia which had previously been found in noncompliance. There are no lawsuits pending in Georgia. The task force approach to nondiscrimination remedies in public housing has been extended to all regions, pursuant to a "cross-cutting objective" set forth in the Department's FY 1986 Management Plan. (A copy of the cross-cutting objective is attached.) There are no lawsuits similar to the East Texas case pending in other regions.

I am not able, at this point, to detail success stories that have been achieved under this approach in other regions. Because we are dealing with systems in place, changes do not occur overnight in any case. But we are working with public housing authorities throughout the country to alter discriminatory patterns, and we are doing it as part of a self-initiated program pursuant to our compliance responsibilities, not simply in response to local litigations.

I am submitting a copy of this letter to the Subcommittee staff for inclusion in the record of the hearing.

Sincerely,

John J. Knapp
General Counsel

Attachment

ATTACHMENT

FY 1986 REGIONAL MANAGEMENT PLAN

OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY
(Cross-Cutting Objectives)

Under the general oversight and direction of a Departmental Task Force (comprised of Assistant Secretaries for Fair Housing and Equal Opportunity, Housing, Public and Indian Housing and the General Counsel) Regional Task Forces were organized in response to the FY 1985 Cross-cutting Objective and charged with the responsibility of eliminating racial segregation which is the result of official action in Public Housing and other HUD-assisted housing programs.

In order to further this objective Regional Task Forces are to initiate actions designed to comply with the below-listed Definitions. In developing strategies for accomplishing this objective the Regional Task Forces are to coordinate closely with and obtain advice from the Headquarters Task Force Working Group (Working Group).

Definition:

1. Conduct an analysis of past investigations, compliance reviews and other information regarding PHA occupancy patterns to determine the cause of racial imbalances, if any. Results of the analysis should be forwarded to the Working Group.

2. Conduct an analysis of past Regional Title VI compliance efforts to determine the effectiveness of past strategies; determine patterns or practices of PHAs and other assisted-housing owners/managers; and where Title VI compliance agreements have been executed, determine the extent to which the implementation of the provisions has resulted in dis-establishment of segregated conditions.

3. Conduct an analysis of past public housing monitoring of PHAs (management and occupancy) to determine patterns of programmatic problems (lack of adherence to the approved tenant selection and assignment policies, over/under housing, improperly utilized broad range and preferences policies, etc.) that frequently exist in PHAs that have been found in apparent non-compliance with Title VI. Results of the analysis should be forwarded to the Working Group.

4. After completion of the analysis under Definitions (1) and (2) and with Working Group approval, develop a Regional strategy for initiating nondiscrimination activity. The strategy should outline the steps to be taken, coordinate the various program components, respond to evaluations conducted of past efforts, and indicate how the newly-developed strategy will fulfill this objective. In developing the strategy each Region should at a minimum:

   (a) establish target dates for the performance of compliance reviews and PHA monitoring;

   (b) indicate how various program resources (CIAP, CDBG, etc.) will be utilized in working with PHAs to develop desegregation plans;

   (c) describe the methods for providing assistance to PHAs in working with local government to address community based problems which impact the public housing program;

   (d) create a system for monitoring the progress of PHAs in addressing findings and recommendations made as a result of Regional compliance reviews and PHA monitoring; and

   (e) indicate the staff, travel and other resources which have been allocated to carry out the Regional strategy.

5. Report on the achievement of the action items in the Regional strategy: Title VI compliance and public housing monitoring reviews; development of desegregation plans by PHAs; program-related corrective actions initiated; HUD programmatic, administrative and financial support provided; innovative strategies, etc.

Data Source: Narrative reports by Regional Administrators and CCRS.

Mr. FRANK. With that, I am going to have to leave. The hearing is adjourned.

[Whereupon, at 12:45 p.m., the committee was adjourned subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR INCLUSION IN THE RECORD

ATTACHED ARE 11 QUESTIONS FROM CONGRESSMAN HENRY B. GONZALEZ TO MR. JOHN KNAPP, HUD, WHICH REQUIRED MR. KNAPP'S RESPONSE

Question 1. Yesterday, a Federal court determined Yonkers, New York, intentionally discriminated against minorities resulting in a segregation school system by consistently opposing the location of subsidized housing in the non-minority areas of the city. The court said in part "the extreme concentration of subsidized housing that exists in southwest Yonkers today is the result of racial discrimination by city officials". Since HUD had to approve the location of every federally assisted housing site and has yet to provide the 175 section 8 certificates HUD agreed to provide in the consent decree entered into in 1984, doesn't the Department have to accept some responsibility for what has happened? How different is your responsibility in the Huntington, New York, situation where the city has not built any assisted housing and HUD lets them continue to play games with their HAP?

Answer. What you say about the 175 Section 8 Certificates for use on the east side of Yonkers is not quite accurate. There has been a delay in providing those Certificates, flowing initially from a failure of the City to amend its Housing Assistance Plan to encompass them, but I understand that the annual contributions contract covering those Certificates has been sent to the public housing authority for execution.

A more important exception that I would take to the implication of your question has to do with the location of subsidized housing in Yonkers. The issue in the suit against the City had more to do with where subsidized housing was not placed than with where it was placed. The Yonkers history is described in Appendix 5–C to the "Subsidized Housing and Race" paper that we have submitted to the Subcommittee. As detailed in that Appendix, we believe that in responding to site proposals presented to us, including projects proposed by the New York State Urban Development Corporation, HUD properly applied its site and neighborhood standards to each proposal. There have been demographic changes since many of the projects were built, and few, if any, were located in areas of minority concentration at the time they were built. So I don't think that there is a basis for suggesting that HUD should "accept responsibility" for the fact that City officials over a period of years prevented, in one way and another, subsidized housing proposals for the east side from reaching approval stage.

As for Huntington, I'm not prepared to accept the statement that we have let Huntington "continue to play games with" its HAP. Huntington's 1983 CDBG entitlement grant was withheld for a year because HUD refused to approve the Town's 1983–85 HAP until it included a goal for HUD-assisted new family units and until it also included general locations for assisted housing which were outside areas of minority concentration.

Question 2. I'm confused. In the part of your report justifying the dramatic reduction after 1981 in conditioning CDBG funds on development of a HAP or meeting civil rights requirements, you say the "decline in HUD assistance for new housing construction virtually eliminated opportunities for HAP conditioning". Then in describing the conditions placed on $1.5 million for DuPage County in fiscal year 1982 HUD required efforts to place a significant amount of assisted housing in the county, must pass a fair housing ordinance, make zoning changes supportive of lower income housing and must accept all housing resources made available by HUD. What exactly is the policy of the Department on conditioning funds for failure to make reasonable progress in meeting the HAP goals? Why should the seventh circuit decision on the private, plaintiffs standing to sue deter your efforts to assure DuPage County is affirmatively furthering fair housing and complying with title VI and title VIII of the Civil Rights Acts?

Answer. Part of the confusion you cite may be attributable to the fact that DuPage County had been determined to have two very different problems. As detailed in Appendix 5-G to the "Subsidized Housing and Race" paper, the HUD review of DuPage County's housing assistance plan (HAP) performance indicated serious program deficiencies. In light of that poor HAP performance, as well as a lack of timeliness in CDBG program expenditures, the Department reduced the FY 1979 grant of $3,907,000 to zero. The County chose not to submit applications for FY 1980 and 1981.

By the time *Hope, Inc.* v. *County of DuPage* had been handed down by the District Court, that decision necessarily called into question the adequacy of the County's certification of compliance with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968.

Accordingly, the conditions imposed on the County in 1982 when it re-entered the program were based on two factors: the previous history of unsatisfactory HAP performance and the recent judicial decision impacting on civil rights certifications. The first three conditions which you mentioned were responsive to the County's civil rights experience. You also refer to a condition that the County accept all housing resources made available by HUD. This condition was designed to ensure acceptable HAP performance in 1982.

In response to your first specific question, "the policy of the Department on conditioning funds for failure to make reasonable progress in meeting the HAP goals" is set out in the CDBG regulations. The tool of conditioning has been used since 1976. Section 570.910(b)(9) includes among the corrective and remedial actions which the Secretary may take on the basis of his review of a recipient's performance, actions to: "condition the approval of a succeeding year's application if there is substantial evidence of a lack of progress, nonconformance, noncompliance, or a lack of continuing capacity. In such cases, the reasons for the conditional approval and the actions necessary to remove the conditions shall be as specified."

The standards for HAP performance are set out at some length at § 570.909(e)(2), the regulatory provision treating "substantial progress" under the HAP. Essentially the first line of performance review is whether grantees have achieved their one-year and three-year HAP goals. Specific measures of such achievement involve firm financial commitments within a two-year period for annual goals and the movement of firm financial commitments to start of construction (or to occupancy in the Section 8 Existing program) within a reasonable period of time for three-year goals.

The regulation expressly provides that "such reasonable period of time may be within the three-year period covered by the most recently approved three-year goals, or, for firm financial commitments received late in the three-year period, it may be a year or more into the next three year cycle."

Second, where performance falls substantially short of meeting HAP goals, HUD will then review "the extent to which the grantee has utilized resources available to it which are consistent with its HAP, and has complied with other HAP requirements including, but not limited to, acceptable sites in approved general locations and the provision of housing assistance within each tenure type by household type in reasonable proportion to the need of each household type." Where such resources have been effectively utilized in the community, HUD does not find HAP performance unsatisfactory.

Finally, the third level of measurement relates to those cases where recipients have not effectively utilized available resources. In such cases, the Department considers negative actions taken to impede the provision of housing. HUD also considers the extent to which actions within the control of the recipient have been taken to achieve HAP goals. Such actions include the removal of local ordinance and land use requirement impediments to the development of housing; formation of a local housing authority or execution of an agreement with a housing authority to provide assisted housing; the provision of sites for assisted housing; establishment, or increased utilization, of a housing rehabilitation program; and cooperation with other entities to facilitate use of the Section 8 Existing program. Sanctions are taken where the opportunity to use a significant proportion of available resources is lost because of overt actions taken by the grantee or because of a failure to act on the part of the grantee.

Although the regulatory standards have been expanded incrementally since 1975 when the initial measurement of HAP performance was the achievement of HAP goals, the framework discussed above has been the Department's regulatory mode for measuring and sanctioning HAP performance since 1978. We believe it has worked well, notwithstanding that this Committee, in its report accompanying the 1980 housing legislation, appeared to say that the Department should not base conditions on performance judgments at all.

In the specific instance of DuPage County, HUD continued to exact satisfactory HAP performance as a condition of receiving CDBG funds. Since that time the County has regularly dedicated $500,000 of its annual CDBG entitlement to a housing development fund designed to assist in that provision of affordable housing for lower income families. In addition, the County is participating in the Rental Rehabilitation program. Although $38,000 of its FY 1984 $155,000 formula allocation for this program was recaptured for slow performance, the County has expressed active interest in obtaining technical assistance from HUD to ensure improved performance. Finally, in September 1985, the County received a reservation of 50 units for participation in HUD's Project Self-Sufficiency program designed to meld employment training and other opportunities for single-headed households with Section 8 Existing Housing assistance.

In response to your second question, we do not believe that the Seventh Circuit decision in *Hope* should, or did, deter Departmental efforts to assure satisfactory fair housing performance by the County. As a consequence of that decision, the Department deleted the zoning change requirement from the condition. It was only the lower court decision which motivated that part of the condition in the first place. Zoning is characteristically a local action and one which is considered within the CDBG funding process only in unusual circumstances such as this case.

However, during the course of the 1983 program year the Department refused to release the $1,500,000 condition until the County satisfied the remaining FY 1982 special conditions. Further, the Department continued in FY 1983 to require passage of a fair housing ordinance, or similarly appropriate document. As described in Appendix 5-G, the County adopted a fair housing resolution on August 28, 1984, which satisfied the special condition in the 1983 grant.

Question 3. In your discussion of CDBG contract conditioning you explain that the Department places reduced emphasis on HAPs due to a shift in HUD assistance to section 8 existing program. Congress has in no way de-emphasized the importance for entitlement communities of meeting HAP goals. Even if section 8 new construction funds have been eliminated, Federal assistance is still available through the section 8 existing, moderate rehabilitation, and voucher program, the public housing and section 202 elderly construction programs, housing UDAGS, HODAG and rental rehabilitation program. In addition, many States and cities (such as San Francisco) have their own low-income construction programs, including the use of tax-exempt revenue bonds. If what has happened in Huntington, New York, is any example, HUD has ignored the requirements of the law and failed to put appropriate pressure on communities to meet low-income minority housing needs by conditioning or reducing CDBG funds. In five years, in spite of the availability of Federal funds (and possibly the availability of State funds), Huntington has made no progress at meeting critical housing needs. Don't the results in Steubenville, Ohio, show what can be accomplished if HUD is firm?

Answer. The Department recognizes the continued importance of HAP goals in the CDBG program. We also recognize the varieties of Federal assistance and non-Federal assistance which can be used to achieve HAP goals. The HUD regulations governing HAPs at § 570.306(e)(3)(i) expressly require that "the three-year goal must include all assisted housing resources which can be expected to be available to the grantee." Similarly, the treatment of annual goals at § 570.306(e)(4)(i) also requires identification of "all assisted housing resources which can be expected to be available to the grantee."

The HAP form spells out the breadth of available resources in Part IV where annual housing assistance goals are to be set out by listing "HUD Assisted Rental Housing Programs first, then other Rental Programs and Owner Programs Separately" At the same time it must be noted that it is more difficult for HUD to measure the total universe of non-Federal resources which may be available to communities. Nevertheless, there is increasing reliance on such alternative resources, especially those utilizing tax-exempt financing of State and local programs which include the provision of low- and moderate-income housing. CDBG funds are increasingly used in connection with Statewide bond issues involving the provision of low- and moderate-income housing.

With respect to Huntington, we believe that the Department's actions are consistent with the approach historically taken in measuring HAP performance. Appendix 5-E sets out in detail an account of the lack of available housing resources which prompted the Department in FY 1981 to advise the Town that it must at least take all actions within its control to provide for 100 units of new construction or substantial rehabilitation rental housing by household type consistent with the proportionate needs in its approved HAP.

When the Town submitted a HAP for FY 1983 which provided for only elderly new construction and insufficient general locations for assisted housing, the Department required modifications of the HAP to increase new and rehabilitation goals and an express commitment from the Town that:

"The Town recognizes that HUD resources are not available to meet new construction or subtantial rehabilitation goals for families at the present time. When such resources are made available by HUD, the Town will take all required actions as are mutually agreed upon with HUD."

In addition, the HAP was amended to include general acceptance of all sites within Town limits consistent with HUD site and neighborhood standards. Working out the foregoing arrangements meant a delay of funding to the Town because the FY 1983 grant was not approved until July 16, 1984. In January 1985 the Huntington Housing Authority, which had applied for 75 units of family housing, was awarded a reservation of 50 units of public housing new construction for family housing. The proposed site is in a non-impacted area. The local site approval process may become lengthy, but not because of any concerns about suitability of the site from an equal opportunity perspective.

It appears, therefore, that progress is being made. The pressure is still on the Town to provide the new construction of assisted units. Moreover, there are other ways in which Huntington has addressed low-income housing needs. The Town's actions taken to met its FY 1983-85 HAP goals include these:

(1) Twelve rental units were rehabilitated using CDBG funds. Three of these units are occupied by whites, two by blacks, and seven by Hispanics.

(2) CDBG funds were used to rehabilitate 123 owner-occupied units. Of these, 93 are owned by whites, 24 by blacks, and 6 by Hispanics.

(3) Eleven FHA foreclosed properties were acquired and then made available for purchase by moderate income households. Five of these homes were purchased by whites, two by blacks, and four by Hispanics.

(4) Ninety-two units were made more energy-efficient through the Town's Weatherization Rehabilitation Program. Forty-one whites, 29 blacks, and 22 Hispanics benefitted from this program.

(5) Of the 80 Section 8 Existing Certificates or Vouchers received by the Town, 27 were awarded to whites, 38 to blacks, and 15 to Hispanics.

In comparison, the Stuebenville case which you cite is one in which the original Title VI conciliation agreement approved by HUD dates back to 1973. The imposition of a contract condition in 1983 and the reduction of the grant upon failure to meet the condition, as indicated in Appendix 4, brought forth satisfactory results in 1984. But that process took 11 years; measurable progress in Huntington's performance appears to have occurred over a five-year term.

The plain truth is that the sanctions process in CDBG is typically one, in all Administrations, in which (1) time is required to test HAP performance, (2) determinations of inadequate performance customarily require communication and transfer of information and views between HUD and the grantee, (3) warning letters are typically furnished in advance of sanctions, and (4) sanctions usually represent a final stage after which (5) either performance generally improves or occasionally the community withdraws from the program. Huntington constitutes a case in which it appears that progress is being made at the third level described above.

Question 4. I understand the Public Housing Authority has a centralized waiting list for public housing and section 8 existing projects, but is it true most communities have no centralized waiting lists or even centralized information center identifying available section 202, privately owned section 8 new construction or section 236 units? How can elderly or low income single parents find out what units, privately owned but federally subsidized, are available? Wouldn't it help eligible tenants, particularly minority applicants, to be aware of all of the housing options available to them by having a centralized source of information and even a centralized waiting list so they don't have to traipse all over town to apply individually?

Answer. It is true that there are no centralized waiting lists for subsidized units available in the privately-owned projects constructed under the several HUD project-based subsidy programs (e.g., Section 202 nonprofit housing for elderly, Section 8 New Construction, Section 236). This is largely a matter of the statutory design of the programs which, as you know, vest the function of tenant selection in the owner. So the projects are marketed separately by their owners, and applications for admission are made directly to the owner or its rental agent.

Let me note that it is not that much different in the Section 8 Existing Housing program. There is a centralized waiting list, and a centralized location where applications are made, for certificates. But a certificate and a lease are two different things. When a family receives a Certificate, it must still find a unit. The housing authority which provides the Certificate may also have information regarding units that are available in the area, owners that have participated in the program, which it will make available to the family. But application for a lease must be made to the owner of the unit.

What I have just said responds to your inquiry regarding centralized waiting lists. Centralized information is a different matter altogether. There is merit to your suggestion about a centralized source of information, and I think that there are ways in which that could be further encouraged.

I believe that you probably can obtain from any HUD field office a list of the HUD-assisted projects in the area served by the office. At least, I know that I have seen such lists, for example, of elderly projects that were provided on request by the Washington, D.C. office. The lists are only that: lists of projects with addresses and telephone numbers, but without current information on availability of units, length of waiting list, and so forth. To keep up-to-date on the latter kind of information would require quite a lot of additional staff work.

There are ways in which we could assure the wider availability of this information. I assume that because it is available, many housing counseling agencies probably seek it, but we perhaps could make more affirmative efforts to put it into their hands. We also could encourage public housing agencies to include the information on what they provide to Certificate-holders, even though the result might be that the family doesn't use the Certificate but instead obtains a subsidy through another program. I would tend to agree with your premise, however, that the advantage in widening the options for the family outweighs the inconvenience to the administering agency of having to take back the Certificate and offer it to another family.

Question 5. What guidelines has the Department issued to help public housing authorities that would like to assure their buildings do not become segregated? I understand Montgomery County, Maryland, and Charlottesville, Virginia, housing authorities have asked for HUD guidance for over a year. Why has it not been provided?

Answer. The two examples that you cite refer to something different from segregation. I regard "segregation" as referring to a situation where both majority and minority races are present, but they are separated: some projects all-minority, or predominantly minority, and other projects all-majority, or predominantly majority. The Montgomery County and Charlottesville cases involved housing authorities that are trying to maintain integration by maintaining a level of majority-race occupancy in their projects rather than let all of their projects become predominantly minority.

In both of these instances, the local authority adopted a race-conscious tenant selection and assignment plan. Neither case involves remedial efforts to overcome the effects of past discrimination. The *Burney* case makes it clear that it is very difficult, if not impossible, in these circumstances to fashion a race-conscious tenant assignment plan that avoids an impermissible burden on minorities.

The Charlottesville Housing Authority has been operating under its plan for several years, during which period the plan itself has been adjusted several times by the Authority in order to accommodate the continuing, predominantly minority demand for units. We have not taken action against the Authority, because it has appeared that, under the way in which that particular plan operates, any hindrance to minorities in obtaining units has been very slight, if it has occurred at all, and as a matter of enforcement priorities we have not thought that it warranted a very active response. But we will continue to monitor it closely.

In the case of Montgomery County, a race-conscious tenant selection and assignment plan was presented to our regional office in late 1984 or early 1985. The plan called for race-conscious tenant selection for "cluster" family projects (i.e., projects of 10 or more units in close proximity), in that if assignment of a minority applicant at the head of the waiting list would cause the minority population of a project to exceed 70%, that applicant would be skipped over in favor of the first non-minority applicant. The plan provided that no applicant could be skipped more than once. The regional office advised the Housing Opportunity Commission (which is the name of the county housing authority) that the proposed plan was rejected, but later newspaper reports indicate that either it or a variation was implemented last summer, at least as to certain projects. That is my understanding of that situation. There has been no direct contact on the issue between HUD Headquarters and the Housing Opportunities Commission, but I expect that there will be.

Question 6. Why has the Department not issued regulations implementing the requirements of title VIII? Weren't these proposed at the end of the Carter administration and withdrawn and not reproposed by the Reagan administration?

Answer. On or about January 8, 1981, the Department transmitted proposed regulations to the Chairmen and Ranking Minority Members of the Senate and House Banking Committees for prepublication review pursuant to Section 7(o). The proposed regulations were described as presenting the Department's interpretation of the Fair Housing Act, including its view of conduct relating to the sale or rental of dwellings made unlawful in connection with financing activities, appraisal practices, and property insurance activities. On January 21, 1981, the Secretary recalled all regulations which had been transmitted to Congress by the prior Administration, including the proposed Title VIII regulations.

I reviewed the proposed regulations when I came to the Department shortly thereafter, and I have reviewed them again from time to time as I have become more familiar with the issues that arise in this area. Frankly, I did not find the proposed regulations very helpful. What they had to say in critical areas, such as where a violation of the Fair Housing Act may be found on the basis of discriminatory "effects," would not, I thought, have advanced the understanding of this question very far.

I should note, at the outset, a reservation about what the regulations purported to be. There is, as you know, a distinction between "substantive," or "legislative," rulemaking and "interpretive" rules. Legislative rules have the force and effect of law—they define, authoritatively, conduct which is unlawful and which can be prosecuted as such. Authority to promulgate legislative rules must be granted explicitly by Congress. No such grant of authority to the Secretary appears in the Fair Housing Act, and I do not construe Section 7(d) of the Department of HUD Act, 42 U.S.C. § 3535(d), to constitute a general grant of such authority. (This is distinguished from the Department's authority to prescribe, by regulation, terms and conditions governing participation in programs administered by the Department, which I believe is granted by Section 7(d). Examples of express delegations of legislative rulemaking authority outside the context of Department-administered programs are Sections 8(c)(4) and 19(a) of the Real Estate Settlement Procedures Act; Section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974; and Section 1403(c) and 1419 of the Interstate Land Sales Registration Act.) Accordingly, to the extent that the proposed regulations purported to define unlawful conduct in an authoritative way that would bind courts, they pretended to much. The regulations didn't explicitly say that they were intended to have that effect, but they were being issued in response to urgings of sources that appeared prepared to claim that effect for them, and that concerned me.

I also did not think that the need for HUD regulations was as great as it was claimed to be. There has been a considerable body of judicial case law developed under the Fair Housing Act, and there are treatises and other summaries that are available, probably not less available than HUD regulations. As just a summary of what courts have held the Fair Housing Act to mean, I'm not sure that preparation of a set of regulations rates as a high priority project for HUD staff resources. And

to the extent that some might be looking for the regulations to forge new ground, to push the prohibitions of the law beyond where the courts have taken it, I have, as I've said, reservations about our authority to do that.

All that being said, I do see that there would be value in publishing a fairly comprehensive set of guidelines which would indicate how HUD would look upon matters in the course of investigating complaints filed with HUD and determining whether to resolve such complaints "by informal methods of conference, conciliation, and persuasion." Because of the educational aspects—consciousness-raising, if you will—of the conciliation process and the fact that it is a voluntary process, the grounds on which we might determine that a complaint is appropriate for conciliation might not be the same as would be required in order to impose liability in a litigated matter. The guidelines, therefore, would not purport to have authoritative standing outside our complaint process. A draft of such guidelines has been prepared by my staff for my review, but I cannot predict a publication date.

Question 7. Secretary Pierce has requested funds from Fair Housing Initiatives Program. Assistant Attorney General Reynolds said monitoring of projects violating fair housing requirements includes use of testers—have you considered using that technique with HUD's Fair Housing and Equal Opportunity employees to assure compliance with fair housing requirements in section 8, section 202, Public Housing and Community Development Block Grant Programs?

Answer. The question is directed at our compliance reviews of participants in HUD programs. We are not talking about the complaint investigation and conciliation procedures under the Fair Housing Act, therefore, but are focusing instead on compliance procedures under Title VI of the Civil Rights Act of 1964, or Section 109 of the Housing and Community Development Act of 1974. The question could also be addressed to Executive Order 11063, which prohibits discrimination in FHA-insured, unsubsidized projects (which are not covered by Title VI).

You are asking, I believe, essentially two separate questions: first, whether we have considered the use of testers to aid us in our compliance reviews of HUD program participants, and second, assuming that we believe testing would be useful for that purpose, would we use HUD employees as the testers.

As to the first question, we have not to date arranged for testing as an investigative device to be utilized in our compliance reviews of Title VI complaint investigations, but I would agree that there appears to be a potential there for such a utilization of testers that we should explore. I would guess that the circumstance of greatest usefulness would be in connection with investigation of a complaint regarding a HUD-assisted project, such as a Section 8 project (including one with a Section 202 loan) or a Section 236 project. I must note, though, that many HUD-assisted projects have long waiting lists, and that could tend to dilute the usefulness of tests. Testing is most effective when housing units are immediately available for occupancy. It is then that dramatic differences in treatment are most clearly demonstrated, e.g., offering a unit to a white but not a black or other minority, or falsely denying to a black that the unit is available, etc. Where units are not immediately available and an applicant must first be placed on a waiting list, testing may be less successful in assuring nondiscrimination. Testing might reveal a situation where whites are placed on a waiting list, while blacks are told that there is no list, or simply not placed on it. But there are opportunities for discriminatory manipulation of a waiting list after the applicant is put on it that will not be discovered through testing. Still, the initial response to the applicant probably remains the point where discrimination is most likely to occur, so that testing can be a useful tool for compliance reviews or complaint investigations of HUD-assisted project owners.

On the question of whether HUD employees should be used as testers, Secretary Harris took the position, in testimony before the House Judiciary Committee in 1979, that Federal employees ought not engage in this role, and HUD has not reopened that question since then. Testing was considered a wholly legitimate investigative device at the time of Secretary Harris' testimony and received even further endorsement subsequently with the Supreme Court's *Havens* decision in 1982, but there are practical reasons that make it inexpedient to consider using HUD employees as testers. In order to achieve credible "matching," a wide pool of available testers is necessary. Testers have to be replaced often, before they become recognizable, which is one reason why many testing programs have to rely on volunteers. Moreover, HUD employees are not geographically present in many markets where testing programs would need to be performed. It would be far more practical, I think, for HUD to consider utilizing private fair housing organizations to provide testing in support of HUD compliance activities. As you know, HUD has provided direct funding to private fair housing organizations in several demonstration projects which provided the principal experience on which the private enforcement component of the Fair Housing Initiatives proposal was based. In addition, many State and local

enforcement agencies have contracted with private groups for testing in connection with agency complaint processing, and this experience provides an even more direct precedent for the kind of testing activity we are discussing here.

In the category of direct HUD funding, there were two major contracting efforts. In 1976, HUD contracted with 40 private fair housing organizations to conduct research tests or audits, in 40 metropolitan areas in order to measure the level and forms of discrimination. All testers were trained, monitored, and debriefed regarding the conduct of over 3,000 tests. The testing procedures developed in this project (the Housing Market Practices Survey), led to HUD's publication of a Guide to Fair Housing Enforcement in 1979. The Guide focuses on the range of procedures necessary to match the credentials of testers and the complainant and on de-briefing. This report, and a related kit of training materials, provide detailed descriptions of the recruitment, necessary qualifications, training, and monitoring of testers.

In 1979, HUD initiated a major, three-year Demonstration providing funding to private fair housing groups to work with HUD in fair housing complaint processing, including the provision of testing evidence in individual and systemic cases. Over 1,000 tests were conducted, leading to higher rates of successful conciliation and to several important pattern and practice cases referred to and processed by the Department of Justice in 1981 and 1982. Most of the individual cases arose from complaints made to the private fair housing groups which referred cases to HUD or to State and local agencies after conducting testing where appropriate. In a few instances, HUD Regional Offices utilized the private groups to conduct testing in connection with HUD's investigation of a Title VIII complaint.

HUD also funded testing for educational purposes in Baltimore in a two-year demonstration linking Realtors and a private fair housing center in voluntary compliance activities.

HUD also provides funding to State and local fair housing agencies under the Fair Housing Assistance Program, and a number of such agencies use a portion of their funding for testing as part of their fair housing complaint investigations. A recently completed evaluation of this program revealed that 14 of the 15 agencies sampled utilized testing evidence. Six of the agencies utilized private fair housing organizations to conduct their tests.

It is interesting to note the experiences of a major State fair housing enforcement agency in its efforts to utilize its own staff in conducting systemic testing. The California Department of Fair Employment and Housing conducted a large-scale systemic testing project and found that it imposed severe constraints on its staff. Nearly 300 tests were done during the period of September 1982 through March 1984 utilizing over 80 staff personnel from the agency, as well as trained volunteers. The final report for the this project reveals a number of findings which are of relevance when assessing the feasibility of utilizing agency employees as testers.

The report indicates that the extensive and time-consuming testing process utilizing staff "disrupted normal case processing activities." The Department discovered that application testing required providing verifiable profiles for their employees as well as submitting an applicant fee. The latter requirement would necessitate the establishment of a separate bank account or "petty case" fund.

The agency also found, and I quote, "there were never enough matched testers. Most audits had to bring in new people midway through the project. These people needed training and skill development. It was time-consuming, disruptive, and difficult to have to keep looking for testers, and training them, while trying to run the site visits. The ongoing workload of the Department did not diminish. The legal requirements for timely processing of the existing caseload could not be suspended. Although staff received modification of then case performance expectations in order to compensate for the time spent testing, this did not alleviate the workload pressure. Most staff considered testing inordinately disruptive of case processing activities.

This experience supports what I said before about the practicability of HUD using its own employees as testers. But the experience of the agencies that utilized private organizations for testing provides a precedent that I agree that we should explore as a means of aiding us in our compliance activities regarding participants in HUD programs.

Question 8. HUD responsibility extends beyond assurances of nondescrimination in housing to the responsibility of affirmatively furthering fair housing in all federal housing and community development programs. How would you distinguish between requirements designed to assure nondiscrimination, those designed to affirmatively further fair housing, and those designed to support efforts to provide integrated housing opportunities?

Answer. There is a great deal of overlap, inasmuch as the basic policy of the Fair Housing Act is one of nondiscrimination. The phrase "affirmatively further fair

Secretary to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title." That takes you back to Section 801, which says that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." When then-Senator Mondale, in the course of debate on the fair housing bill in 1968, was asked what was meant by the phrase "provide . . . for fair housing," he replied: "Without doubt, it means to provide for what is provided in the bill. It means the elimination of discrimination in the sale or rental of housing. That is all it could possibly mean." (114 Cong. Rec. 4975 (1968).)

Requirements designed to assure nondiscrimination generally are phrased in negative, prohibitory terms—"thou shalt not," and so forth. Nondiscrimination in housing consists of avoiding any activity that would constitute a discriminatory housing practice under the Fair Housing Act. These include activities that are unlawful under Sections 804, 805 and 806 of the Act, i.e., discrimination in sale or rental of dwellings, in the provision of financing for dwellings, and in the provision of brokerage services. The prohibitions of Section 804 are quite broad, extending to any act which would "otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, or national origin." In relation to our housing and urban development programs that involve "Federal financial assistance," these same activities generally are prohibited by Title VI of the Civil Rights Act of 1964 and, where programs under Title I of the Housing and Community Development Act of 1974 are involved, by Section 109 of the '74 Act. All of our program regulations contain requirements that prohibit discrimination and require compliance with the relevant nondiscrimination statutes.

I have no succinct definition that encompasses everything that might be included under the rubric "affirmatively further fair housing"; it is easier to approach this by describing some characteristics of these requirements, and by referring to examples.

The prohibitory nondiscrimination requirements are directed mainly to individual responsive actions, mainly by persons outside the Department. I say "responsive actions," because a discriminatory housing practice frequently takes the form of a response—a response to an applicant for a rental unit, for example. The goal of fair housing is the expansion of opportunity for choice. Some "affirmatively further" requirements, therefore, are directed toward expanding availability of the opportunity. Rejection of an application by this or that owner is not the only barrier to opportunity for a person seeking a rental unit, for example; he also must have knowledge of where the opportunities exist, so he can go there and ask. So our Affirmative Fair Housing Marketing regulations require owners and rental agents to carry out a marketing program designed to make knowledge of the opportunity available to members of all minority and majority groups, including those "least likely to apply" in the absence of the specially targetted effort. These requirements are described in the "Subsidized Housing and Race" paper, at pages 49–53.

An additional example is our site selection criteria, or site and neighborhood standards. This is a different type of requirement from affirmative marketing, in that it is directed at an institutional practice of the Department itself, rather than at actors outside the Department. The concern is that, unless the Department takes active steps to avoid it, the scope of housing opportunities available to low-income persons participating in the Department's program may become effectively limited by the placement of all, or nearly all, projects in minority-concentrated areas. The Department, therefore, created an "institutionalized method" for assuring that the foreseeable results in terms of expansion of housing choice are taken into account when a proposed site for new construction of a subsidized project is being considered. These requirements are described generally at pages 20–31 of the "Subsidized Housing and Race" paper.

Another example of a HUD program requirement that is designed to respond to the "affirmatively further" mandate is the equal opportunity housing plan requirement of the Section 8 Existing Housing Certificate program, particularly the obligation of the administering public housing authority to seek to achieve participation in the program by owners of units of suitable price and quality located outside areas of low income or minority concentration.

Program requirements that are responsive to the "affirmatively further" mandate appear throughout the Department's regulations, as well as its other forms of instructions. I would like to submit, for the record, a memorandum dated November 8, 1982, prepared at my request, which catalogs HUD regulatory requirements that are designed to "affirmatively further fair housing."

As you know, State and local governments that participate in the Community Development Block Grant program also are required to certify that they are affirmatively furthering fair housing. In October 1984, we published a proposed general re-

review of the grantees' performance under this obligation. The proposal said that a grantee would be considered to have taken actions in accordance with its certification if it had (1) conducted an analysis of the impediments to fair housing choice in the community, and (2) based on the analysis, taken appropriate official actions to remedy or ameliorate conditions that limit such choice, which might include:

—Enactment and enforcement of a fair housing ordinance consistent with the Federal Fair Housing Act.
—Support of the administration and enforcement of a State fair housing law consistent with the Federal Fair Housing Act.
—Participation in voluntary arrangements to promote achievement of the goal of fair housing choice, including a New Horizons fair housing plan.
—Other actions that are appropriately responsive to the analysis of impediments to fair housing choice.

You also referred to requirements "designed to support efforts to provide integrated housing opportunities." Legitimate efforts directed toward this objective are, I think, included entirely in the category of "affirmatively further fair housing"; I don't see them as a separate category. Efforts that seek more directly to obtain the result of integrated housing and which limit freedom of choice in the process, such as occupancy quotas, are outside the realm of "affirmatively furthering fair housing" and are, I think, illegitimate.

As you know, this is a very difficult area where it is most important to be absolutely precise about what you are talking about. The term "integration maintenance" has become one of frequent usage, and it is used to refer to a wide range of different practices. At the Civil Rights Commission consultation/hearing to which I referred in my testimony, Assistant Attorney General Reynolds observed: ". . . based on what I have seen in the media and the Division's investigations, the phrase appears to mean different things to different people. To some "integration maintenance" seems to mean achieving and then maintaining a particular racial balance of a designed apartment complex or neighborhood. As I have said, when used in this way, the term suggests unlawful conduct. To others, however, "integration maintenance" refers to practices designed to provide all persons seeking housing with complete information on the full range of options available to them. Certainly, under this latter definition the term fits comfortably within the type of affirmative outreach efforts encouraged by Title VIII, a law passed to expand housing opportunities by eliminating discrimination in the housing market."

Another witness at the Civil Rights Commission's hearing, an attorney who has long been associated with efforts to expand the range of housing choices available to minority homeseekers, particularly as counsel for the plaintiffs in the *Gautreaux* litigation, said in his testimony: "Free choice is a higher value than integration" (statement of Alexander Polikoff). (This statement was not lightly made, since Mr. Polikoff actually was quoting a statement he had made over a year earlier, so he had had ample opportunity to reflect on whether he remained comfortable with it.) I do not want, however, to overemphasize the fact that in some particular contexts, the desire for integration may conflict with a respect for choice. More often, the desire for both is congruent and compatible. Secretary Pierce noted, over two years ago:

> Setting the goals of free choice and integration in supposed opposition to each other obscures the issue rather than clarifies it. The issue is free choice, but the unavoidable fact is that the choice is not "free" when it is limited on account of race. The primary concern of our enforcement efforts must continue to be those cases where a minority homeseeker is denied the right to live in a non-segregated community. But, it is my strong conviction that the restriction of choice is no less real—and the denial of free choice is no less unlawful—when a white homeseeker is denied the choice of an integrated community. (Address to Annual Convention of Board of Directors, National Association of Realtors, November 14, 1983.)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

November 8, 1982

OFFICE OF GENERAL COUNSEL IN REPLY REFER TO:

MEMORANDUM TO: John J. Knapp, General Counsel, G

FROM: Charles M. Farbstein, Assistant General Counsel
For Equal Opportunity, GRE

SUBJECT: Title VIII - "Affirmatively further fair housing"

This is in response to your request for a "catalog" of the ways in which regulations and other program issuances incorporate requirements that can be said to address the Secretary's responsibilities under Section 808(e)(5) of Title VIII of the Civil Rights Act of 1968 to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further [fair housing].". You also asked that we include programmatic requirements that arise from related civil rights authorities such as Title VI of the Civil Rights Act of 1964.

We found that there is a surprisingly large and detailed volume of regulation provisions covered by your request; the provisions are so extensive that we have deferred cataloging program issuances other than the regulations themselves pending further advice from you on whether you still wish this additional material.

For convenience, we have grouped the regulation provisions by program area. Where appropriate in order to provide context, we have frequently included provisions that are based on a program statute or other authority aside from the civil rights statutes.

I. COMMUNITY DEVELOPMENT BLOCK GRANTS (Rules currently in effect plus the superseded Small Cities Program Regulation)

This is the Departmental program in which the most extensive efforts have been made to incorporate requirements flowing from Title VIII's "affirmative further" mandate.

Subpart A -- General Provisions

§570.3 Definitions -- Many of the requirements in the CDBG Program refer to the category "identifiable segment of the total group of lower income persons in the community." This is defined in §570.3(n) to mean "female-headed households, and members of a minority group which includes Negroes, Spanish-Americans, Orientals, American Indians and other groups normally identified by race, color, or national origin." §570.3(n) This category will be referred to in this memorandum as "identifiable segment(s)."

HUD-31373

Subpart C - Eligible Activities

§570.200 General Policies -- The listing of eligible activities in this subpart does not by itself render specific activities eligible for block grant assistance. An activity may be assisted only where it complies with the eligibility criteria of this subpart, with all other applicable requirements of this Part as they may apply to applicants under Subparts D, E, F, or G, such as those relating to equal opportunity, and the basic statutory objectives of the block grant program. §570.200(a)

§570.206 Eligible Administrative Costs -- Payment of reasonable administrative costs relating to the planning and execution of community development activities financed, in whole or in part, with funds provided under Part 570 and housing activities covered in the applicant's HAP are authorized for several categories of expenditures. One such category is the provision of fair housing counseling services and other activities designed to further the fair housing provisions of §570.307(i) and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons. For example, activities may include informing members of minority groups, and the handicapped, of housing opportunities in non-traditional neighborhoods and providing information about such areas, and assisting members of minority groups, and the handicapped, through provision of escort services to brokers offices in non-traditional neighborhoods. §570.206(c) (see also a parallel provision in §571.206(c))

Subpart D - Entitlement Grants

This subpart contains basic requirements many of which are referenced as requirements in other CDBG programs as well.

§570.303 Citizen Participation Requirements -- The applicant shall provide a process of citizen participation at the communitywide level with regard to the overall application and program, and, where an applicant has a population of 50,000 or more, at the neighborhood level in areas where a significant amount of activity is proposed or ongoing. These processes shall meet standards which include the following: There shall be involvement of low- and moderate-income persons, members of minority groups, residents of areas where a significant amount of activity is proposed or ongoing, the elderly, the handicapped, the business community, and civic groups who are concerned about the program. Where the applicant chooses to establish, or has established, a general communitywide citizen advisory committee, there shall be substantial representation of low- and moderate-income citizens and members of minority groups. Similarly, where the applicant chooses to establish or recognize neighborhood advisory committees in areas where low- and moderate-income persons or members of minority groups reside, there shall be substantial representation of such persons. §570.303(c)(2)

§570.304 Community Development and Housing Plan -- An entitlement application must be submitted every third year and include a summary of a Community Development and Housing Plan with the applicant's community development and housing needs, its comprehensive strategy for meeting those needs, including short-term and long-term objectives, and the projects and activities planned for the next three years.

The summary of needs shall include a narrative summary of community development and housing needs, particularly any special needs of identifiable segments. §570.304(a)(2)

In a comprehensive strategy the application shall describe how it proposes to meet its identified community development and housing needs, particularly any special needs of identifiable segments. The strategy shall include a community-wide component which describes the development strategy of the applicant, including the factors it has taken into account in designing programs to meet identified needs. §570.304(b)

The applicant shall describe a community-wide strategy to improve housing conditions and to meet the housing needs identified. The strategy shall include a Housing Assistance Plan (HAP) as described in §570.306, as well as the applicant's strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including members of minority groups and female-headed households, including efforts to achieve spatial deconcentration of such housing opportunities and actions to affirmatively further fair housing. §570.304(b)(2) and (b)(2)(iii)

The plan shall include maps on a census tract or enumeration base and include information on the extent and location of minority group residents. §570.304(d)(2)

§570.306 Housing Assistance Plan -- The HAP must propose general locations for assisted housing which promote greater choice of housing opportunities, and which further fair housing. All communities are expected to participate in areawide solutions of housing problems through promotion of spatial deconcentration of housing opportunities for lower-income persons. §570.306(a)(1)

The HAP should affirmatively further fair housing and promote the diversity and vitality of neighborhoods. §570.306(a)(2)

Applicants are expected to take all actions within their control to facilitate the implementation of an approved HAP including those actions specified in §570.306(b)(3)(iii) and (b)(4)(ii), infra. §570.306(a)(3)

Applicants within the jurisdiction of an areawide planning organization having an approved Areawide Housing Opportunity Plan (AHOP) must use the data presented in the plan. §570.306(b)(2)

The applicant shall provide estimates of housing assistance needs of lower-income persons currently residing in the community, by tenure type and by household type, for all households. Such estimates shall also be provided for any identifiable segment. §570.306(b)(2)(i)

The applicant shall provide a narrative statement which summarizes any special housing conditions in the community and special housing needs found to exist in the total group of lower-income households in the community, including discussion of female heads of households and individual minority groups. §570.306(b)(2)(iv)(A) and (B)

The applicant shall describe a three year housing program for implementation of its community development and housing strategy. The program shall identify the general locations of proposed assisted housing units or projects. General locations for housing projects shall contain at least one site which conforms to the site and neighborhood standards established for the appropriate HUD assisted housing program. Where an applicant proposes assisted housing resources in areas of concentration of minorities or federally assisted housing, general locations outside of such areas shall also be proposed in order to ensure the provision of assisted housing in a balanced manner. §570.306(b)(3)(ii)

The three year housing program shall include actions necessary for the applicant to take to address any special housing needs and conditions cited in §570.306(b)(2)(iv), supra. (includes female heads of households and individual minority groups), as well as actions necessary, on the basis of findings of past performance reviews pursuant to Subpart O, to achieve the housing assistance goals, and shall set forth a timetable for such actions. §570.306(b)(3)(iii)

The annual action program for each program year increment in the three year housing program shall specify, by tenure type, household type, and housing type, a realistic annual goal for the number of dwelling units or persons to be assisted, including the relative proportion of new, rehabilitated and exiting units best suited to the needs of lower-income persons identified by the applicant, and set forth specific actions, if any, to be undertaken during the program year to assure the implementation of the three-year housing program including those actions described in §570.306(b)(3)(iii), supra. §570.306(b)(4)(i) and (ii)

One of the standards and criteria that apply to the reviews and determination of acceptability of HAPs is that the applicant demonstrate by its selection of general locations that its HAP will promote greater spatial deconcentration of housing opportunities for lower-income persons, especially minorities. §570.306(c)(2)

§570.307 Certifications -- The applicant shall submit certifications each year providing assurances that it will comply with:

Title VI of the Civil Rights Act of 1964 and 24 CFR Part 1 (provisions of which are briefly described);

Title VIII of the Civil Rights Act of 1968, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the

provision of brokerage services;

Section 109 of the Housing and Community Development Act of 1974 and 24 CFR Part 570.601 (provisions of which are briefly described);

Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance; and

Section 3 of the Housing and Urban Development Act of 1968 (provisions of which are briefly described). §570.307 (1)(1) - (4) and (m)

The certifications shall also provide assurances that the applicant will:

Provide relocation payments and assistance under the Uniform Relocation Assistance Act in a fair and consistent and equitable manner that insures that the relocation process does not result in differences or separate treatment of persons on account of race, color, religion, national origin, sex, or source of income; and

Assure that the range of choices of decent, safe and sanitary replacement dwellings available to all displaced families and individuals will not vary on account of their race, color, religion, national origin, sex, or source of income. §570.307(o)(2) and (3)

§570.311 HUD Review and Approval of Application - HUD review of an application will include the following matters contained in the application and the grantee performance report, or derived from monitoring:

HAP conformity to the requirements of §570.306;

Consistency of needs stated in the plan with generally available data;

Appropriateness of proposed plans and programs to meeting the applicant's needs and objectives;

Experience regarding the effectiveness of the proposed activities in meeting the community development needs in the locality; and

Compliance with this part and other applicable laws and regulations. §570.311(b)(2)(iii),(v),(vi),(viii) and (x)

One criterion for disapproval of the application is a Secretarial determination that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant. Examples of when such activities may be determined to be "plainly inappropriate" to meeting identified needs include:

Proposed activities will have a detrimental effect on low- and moderate-income persons or members of minority groups and adequate measures to mitigate such effects are not proposed; and

Housing goals, locations, and strategy do not meet the criterion of §570.306(c), supra. §570.311(c)(iv) and (v)

Subpart E - Secretary's Fund

§570.400 General -- The policies and procedures set forth in

Subparts A, B, C, J, K, and O of this Part apply to this Subpart E.

§570.402 Technical Assistance Grants and Contracts -- Each grant application or contract proposal must offer one of three categories of technical assistance. The third category, National Technical Assistance, must address one or more specified national priorities, one of which is assistance to fair housing groups, housing agencies and local governments to provide housing in a manner which promotes spatial deconcentration of low- and moderate-income families, implements block grant Housing Opportunity Plans and Housing Assistance Plans or helps to meet the housing needs of households eligible for housing assitance.

§570.403 New Communities -- The grant application of New Community Developers and community associations must include among other certifications the assurances required by §570.307(1), supra. §570.403(c)(3)(i)

The grant application for a governmental enity or other local public body must include among other certifications the assurances required by §570.307(1) and (o), supra. §570.403(c)(3)(ii) and (iii)

Where an applicant proposes the funding of any of a specified list of activities, one of which is the provision of fair housing counseling services (See §570.206(c)), the applicant shall provide for citizen participation activities pursuant to a written plan in accordance with §570.403(c)(6)(iii). §570.403(c)(6)(ii)(M)

§570.404 Areawide Programs -- Grants will be made only for activities which clearly and directly further implement approved AHOPs. Grants may be used only to carry out specified categories of activities, including:

Facilitating the construction, provision, rehabilitation, conversion or acquisition of housing for low and moderate income families and persons outside areas of concentration (rehabilitation activities must be consistent with AHOP program objectives and must facilitate expanded housing choice for persons outside areas of minority and low-income concentration) §570.404(c)(1); and

Conducting outreach programs designed to facilitate movement of low and moderate income minorities and families and persons to housing outside areas of concentration, particularly interjurisdictional moves when necessary to achieve the AHOP program objective, such as (i) Provision of fair housing counseling and legal aid serevices; (ii) Participation in an areawide relocation service; (iii) Provision of information to eligible low and moderate income persons on the availability and locations of housing in areas of communities outside areas of undue concentration; (iv) Provisions of escort, transportation, child care or other services which assist low income and minority persons to shop for housing outside traditional or immediate neighborhoods; (v) Affirmative marketing agreements with builders, apartment managers, and real estate agents; (vi)

Training and education programs, for real estate agents, housing managers, city officials and others to increase knowledge of techniques for promoting economically and racially integrated housing; (vii) Revisions to existing laws or regulations or enactment of new laws or regulations to promote increased interjurisdictional mobility, such as improved fair housing laws, revisions in assisted housing admission practices including the elimination of residency requirements or preferences for admission to Federally assisted housing or State grants or aids to communities accepting low income non-residents. Outreach programs are an eligible Grant activity as set forth in §570.206(e). §570.404(c)(2)

An application will include a HAP or a reference to an existing approved HAP and the certifications described in §570.307. §570.404(d)(3) and (5)

Subpart F - Small Cities Program (Superseded)

§570.420 General -- The policies and procedures set forth in Subparts A, B, C, J, K, and O and cited sections of Subpart D of this Part apply to the Small Cities Program. §570.420(a)

Eligible applicants selected for funding will be those communities having the greatest need as evidenced by poverty and whose applications most adequately address locality - determined needs of low- and moderate-income persons, consistent with one or more stated purposes, including promoting expansion of housing choice for low- and moderate-income persons outside areas of minority and low- and moderate-income concentrations or in revitalizing neighborhoods. §570.420(b)(1)

§570.421 Preapplications and Applications by States and Counties; Joint Preapplications and Applications -- HAP requirements apply with respect to the unit of local government in which activities are to be carried out. §570.421(f)

§570.422 State Participation -- The Secretary may establish an experimental demonstration program with one or more States to determine whether their involvement with HUD in the grantee selection process increases targeting of resources to special problems, including those of minorities. §570.422(a)

HUD will select the best proposals, considering both the State's past progress and extent of future commitment to stated criteria, including demonstrating a system for targeting State resources to all distressed communities and to low- and moderate-income persons and minorities. §570.422(b)(3)

§570.424 Selection System for Comprehensive Grants -- Preapplication scoring includes points -- for outstanding performance for housing, 100 points, and for local equal opportunity efforts, 50 points -- and for AHOP, 50 points, of a total of 995 points.

An applicant must select four of eleven program design criteria relating to how its program benefits low- and moderate-income persons, for the 400 point program factor (impact of the

proposed program). One criterion relates to providing housing choice either outside areas of minority and low- and moderate-income concentration or in neighborhoods experiencing revitalization and substantial displacement. §570.424(c)(iii)

Of the 100 points for housing efforts, 15 points are awarded for demonstrating outstanding performance in each of the following criteria:

(A) Providing housing for low- and moderate-income families located in a manner which provides housing choice either in areas outside of minority and low- and moderate-income concentration or in a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low- and moderate-income persons to remain in their neighborhood; or if the community is predominantly inhabited by persons who are members of minority and/or low-income groups, HUD shall assess the extent to which assisted housing is distributed throughout the community.

(B) Integrated occupancy by race and ethnicity in assisted housing projects and, if the applicant has a Section 8 Existing Housing Program, evidence of locational choice in the Section 8 Existing Housing Program demonstrated in the occupancy of units.

(C) Active enforcement of a fair housing ordinance at least equivalent in scope and coverage to Title VIII of the Civil Rights Act of 1968.

(D) Implementation of a HUD-approved New Horizons Fair Housing Assistance Project (or demonstrated participation in a HUD-approved county/State/regional New Horizons Project) or a fair housing strategy that is equivalent in scope to a New Horizons Project. §570.424(e)(1)(i)(A)-(D)

The 50 points for demonstrated outstanding performance in local equal employment and entrepreneurial efforts are awarded as follows: 25 points for minority employment, 20 points for award of contracts to minority owned and controlled businesses, and 5 points for deposits in minority owned and controlled financial institutions. §570.424(e)(2)(i)-(iii)

The 50 points for AHOP are awarded to a metropolitan applicant that is in its first year of participation in an AHOP or has participated longer and the AHOP certifies that the applicant is adequately carrying out its responsibilites to implement the AHOP. §570.424(f)

§570.425 Preapplications for Comprehensive Grants -- Submission must include a map of the applicant's jurisdiction which clearly identifies location of areas with minorities, showing number and percent. §570.425(a)(4)(iii)

§570.426 Applications for Comprehensive Grants -- Each applicant must submit a summary of its three year community development and housing plan. The requirements for the plan's summary of needs and for a comprehensive strategy are, with respect to items that can be deemed to be derived from the "affirmatively furthering" mandate, the same as those set forth

in §570.304, supra, except that the spatial deconcentration provision of that section is not mentioned here. §570.426(a)(1) and (2)

Each applicant shall submit a HAP in accordance with §570.437. §570.426(e)

The assurances required by §570.307 shall be submitted. §570.426(f)

Maps must be submitted which include, by census tract, location of areas with minorities, showing number and percent. §570.426(g)

Applicants must submit on a HUD form evidence of compliance with Title VI of the Civil Rights Act of 1964 to enable HUD to determine whether the benefits will be provided on a nondiscriminatory basis and will achieve the purposes of the program for all persons, regardless of race, color, or national origin. §570.426(h)

§570.428 Selection System for Single Purpose Grants -- Preapplication scoring includes points -- for outstanding performance for housing, 100 points, and for local equal opportunity efforts, 50 points -- and for AHOP, 50 points, of a total of 1020 points.

For the 400 point program factor -- rating is according to the impact of the proposed project on the needs of low- and moderate-income persons identified, including what steps till be taken to minimize involuntary displacement and to mitigate its adverse effects and related hardships, considering site selection standards where appropriate. §570.428(c)

The 100 points for housing efforts, the 50 points for local equal opportunity efforts and the 50 points for AHOP are awarded exactly as for comprehensive grants, supra. §570.428(e) and (f)

§570.429 Preapplications for Single Purpose Grants -- Submission requirement for a map is the same as for comprehensive grants, supra. §570.429(a)(3)(iii)

§570.430 Applications for Single Purpose Grants -- Each applicant shall submit a HAP in accordance with §570.437. §570.430(b)

The applicant shall assess the housing assistance needs of lower-income households currently residing in the community by tenure and household type, including any identifiable segment and those households to be displaced. §570.430(b)(1)(ii)

The applicant shall propose a realistic goal to address the identified needs, and specify the number of dwelling units or persons to be assisted by housing type, by tenure and by household type, and address relative proportions of need. The applicant shall describe the actions it plans to take to further fair housing for minorities and women pursuant to its certifications under §570.307(1)(2). §570.430(b)(1)(ii)

Maps must be submitted which include, by census tract, location of areas with minorities, showing number and percent. §570.430(c)(1)

Applicants must submit evidence of compliance with Title VI just as for comprehensive grants under §570.426(h). §570.430(e)

The certificates of assurance required by §570.307 shall be submitted. §570.430(f)

§570.431 Citizen Participation Requirements for Comprehensive and Single Purpose Grants -- The written citizen participation plan must provide procedures that solicit and respond in a timely manner to views and proposals of citizens, particularly low and moderate income persons, members of minority groups and residents of blighted areas, and that schedule hearings to obtain citizen views and respond to citizen proposals at times and locations which permit broad participation, particularly by such persons and groups. §570.431(b)(2) and (5)

§570.433 HUD Review and Actions on Full Applications for Single Purpose and Comprehensive Grants -- HUD may disapprove an application if the activities to be undertaken are plainly inappropriate to meeting the identified needs of the applicant. One example is where proposed activities will have a detrimental effect on low- and moderate-income persons or members of minority groups, and adequate mitigating measures are not proposed. §570.433(b)(3)(iii)

§570.436 Special Procedures Applicable to the Commonwealth of Puerto Rico -- This section applies to the Small Cities Program in Puerto Rico. It does not have a point scheme as does the rest of the Subpart that applies everywhere else, and it has much less emphasis on minority persons and groups and their needs.

§570.437 Small Cities Housing Assistance Plan -- The HAP must be designed to increase housing opportunities, promote viable neighborhoods, avoid concentrations of assisted housing, and affirmatively further fair housing. §570.437(a)

The applicant must identify any identifiable segment with special housing assistance needs. §570.437(e)(2)

In its annual goal the applicant shall describe the actions it plans to take to further fair housing for minorities and women pursuant to its certifications under §570.307(1)(2). §570.437(e)(4)(iii)

General locations for housing projects must contain at least one site which conforms to the appropriate HUD site and neighborhood standards. If assited housing is proposed in areas of concentration of minorities, general locations shall also be proposed outside such areas in order to assure the balanced provision of assisted housing. §570.437(e)(5)(ii)

SUBPART F - Small Cities Program (New)

§570.420 General -- The policies and procedures set forth in Subparts A, C, J, K and O of the Part apply to the HUD administered Small Cities Program. §570.420(a)

§570.424 Selection System for Comprehensive Grants -- Application scoring includes points for outstanding performance -- for fair housing, 40 points; for local equal opportunity efforts, 25 points; of a total of 615 points.

An applicant must select four of ten program design criteria for the 400 point program impact factor. HUD measures the impact of the program on the identifiable needs in relation to the amount of funds requested for each of the program design criteria selected, including consideration of such matters as displacement and housing site selection standards. One of the criteria is: provides housing choice either outside areas of minority and low- and moderate-income concentration or in a neighborhood experiencing revitalization and substantial displacement. §570.424(c) and (c)(1)(ii)

The 40 points for fair housing efforts are awarded as follows: (i) Twenty points are awarded to applicants providing assisted housing for low and moderate income families located in a manner which provides housing choice either in areas outside of minority and low and moderate income concentrations; or in a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood. However, if the community is predominantly inhabited by persons who are members of minority and/or low income groups, HUD shall assess the extent to which assisted housing is distributed throughout the community; and (ii) Twenty points are awarded to applicants for implementation of a HUD-approved New Horizons Fair Housing Assistance Project (or demonstrated participation in a HUD-approved county/State/regional New Horizons Project); or implementation of a fair housing strategy that is equivalent in scope to a New Horizons Project. §570.424(d)(1)

Of the 25 points for local equal employment and entrepreneurial efforts, 15 points are for award of contracts to minority owned and controlled businesses and 10 points are for minority employment. §570.424(d)(2)

§570.426 Application for Comprehensive Grants -- The certifications shall be in a form prescribed by HUD. §570.426(c)(1)

In the absence of independent evidence which tends to challenge in a substantial manner the certifications, they will be accepted by HUD. Otherwise, HUD may require further information or assurances in order to find the certifications satisfactory. §570.426(c)(2)

§570.428 Selection System for Single Purpose Grants -- Application scoring points are identical to those for comprehensive grants, supra.

Program impact scoring is the same as for comprehensive grants, except that each project is compared to others addressing the same problem area and there are no program design criteria

listed. Problem areas are housing, deficiencies in public facilities which affect public health and safety, and economic conditions. §570.428(c)

The 40 points for fair housing efforts and the 25 points for local equal employment and entrepreneurial efforts are awarded exactly as for comprehensive grants, supra. §570.428(d)

§570.430 Application for Single Purpose Grants -- The certification provisions are identical to those for comprehensive grants, supra. §570.430(c)

SUBPART I - State's Program: State Administration of CDBG Nonentitlement Funds

§570.490 Submission Requirements -- The State shall submit to the Secretary certifications specified in Section 104(b) of the Act. §570.490(b)(2)

In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the State, such certifications will be deemed satisfactory if made in compliance with the statutory requirement. Otherwise, the Secretary may require such further information or assurance to be submitted by the State as the Secretary may consider warranted or necessary in order to find the State's certifications satisfactory. §570.490(c)

§570.496 Program Requirements -- This section enumerates laws which the Secretary will treat as applicable for purposes of the determinations to be made by the Secretary under Section 104(d)(2) of the Act.

This section notes that Title VI and Title VIII are the statutes specifically referenced in Section 104(b) of the Act. It describes the Title VI nondiscrimination requirement and the directive to issue regulations, and cites HUD's implemennting regulation, 24 CFR Part 1. The section sets forth Title VIII's fair housing policy and discrimination prohibition and states that Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of Title VIII. The section describes Executive Order 11063, as amended by Executive Order 12259, as directing the Department to take action to prevent discrimination respecting residential property and related facilities provided with the aid of the Federal Government, and cites HUD's implementing regulation, 24 CFR Part 107. §570.496(a)

This section also sets forth the nondiscrimination requirements of Section 109 of the Act. §570.496(b)

Further, the section describes the requirements of Section 3 of the Housing and Community Development Act of 1968, provides that States shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive, and notes HUD regulations at 24 CFR Part 135 are not

directly applicable to activities assisted under Subpart I but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts. §570.496(e)

§570.497 Recordkeeping -- Each State must establish and maintain records necessary to facilitate review and audit by the Secretary of the State's administration of grants pursuant to Section 104(d) of the Act. Records shall be sufficient to enable the Secretary to determine whether or not the program is being carried out in accordance with the State's certification and the requirements of the Act and other applicable laws, and to permit audit of the State's activities. §570.497(a)

Each State shall establish recordkeeping requirements for units of general local government receiving assistance which shall be sufficient to facilitate such reviews and audits of such recipients necessary or appropriate to determine whether they have carried out thier activities in accordance with the requirements and the primary objectives of the Act and with other applicable laws. §570.497(b)

§570.498 Performance Reports -- Each State shall submit a performance report providing an adequate basis for the determinations required to be made by the Secretary pursuant to Section 104(d)(2) of the Act. If the report falls substantially short of providing an adequate basis for such determinations the Secretary may require the State to provide the necessary additional information.

§570.499 Reviews and Audits Response -- If the Section 104(d)(2) review and audit results in any negative determination, or if the Secretary otherwise has reason to believe that a State or recipient has failed to comply in a substantial or serious manner with any requirement of the Act, the Secretary may take one or more actions to prevent a continuation of the deficiency, mitigate the adverse effects or consequences of the deficiency, or prevent a recurrence of the deficiency. The actions range from requesting the State to submit additional information and proposals for corrective action through conditioning the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the State, and include proceeding under Section 109 of the Act, when appropriate.

§570.499a Remedies After Hearing -- Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in §570.499 has been taken and the recipient has not made an appropriate and timely response. §570.499a(a)

The actions that may be taken after notice and opportunity for hearing range from making adjustments in the amount of the annual grants through terminating payments to the State. §570.499a(b)

SUBPART G - Urban Development Action Grants

§570.453 Eligible Applicants -- In order to qualify, the community must demonstrate that it has achieved results in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. Among the factors which HUD will consider are:

(1) The location and occupancy characteristics of federally or other assisted housing units provided for families, and the extent to which the use of these programs promotes and show progress in promoting a greater choice of housing opportunity of low- and moderate-income persons in areas outside of low income and minority concentration; (2) whether the distressed community or Pocket of Poverty community is actively engaged in promoting housing choice in all of its neighborhoods through participation in an area-wide affirmative marketing effort, a New Horizons Fair Housing Assistance Project, or other fair housing actions designed to eliminate and prevent discrimination in the private housing market throughout the distressed community's or Pocket of Poverty community's jurisdiction; (3) whether relocation as a result of federally assisted programs has resulted in expanded housing opportunities for minorities outside areas of minority or low-income concentration; (4) whether the distressed community or Pocket of Poverty community is a participating jurisdiction in an approved Housing Opportunity Plan, where such plan includes the community's jurisdiction; (5) whether the distressed community's or Pocket of Poverty community's performance reports to HUD and/or the Equal Employment Opportunity Commission indicate significant progress in hiring, training, and promoting minorities and lower-income persons. §570.453(c)

§570.458 Full Applications -- Applications must include the following:

A statement analyzing the impact of the proposed UDAG program on the residents of any affected residential neighborhood, particularly low- and moderate-income persons and members of minority groups. §570.458(c)(6)

Data on anticipated involuntary displacement and relocation of residents by household type, income level, and minority status and/or businesses displaced and jobs lost due to displacement. The following must be included: A description of the efforts made to minimize involuntary displacement, including an analysis of the feasibility of undertaking any rehabilitation of occupied properties in stages in order to minimize displacement; a description of the efforts which will be made to provide opportunities to low- and moderate-income and minority persons to relocate outside areas of low income and minority concentration; and of the opportunities to be provided to displaced persons and businesses to relocate within the project area. §570.458(c)(11)

Certifications providing assurances that the applicant will comply with Title VI and implementing regulations at 24 CFR Part 1; Title VIII and implementing regulations; Section 109 and regulations issued pursuant thereto (24 CFR §570.601); Section 3

and implementing regulations at 24 CFR Part 135; and Executive Order 11063 and implementing regulations at 24 CFR Part 107. §570.458(c)(14)(A)(B)(C)(D) and (F)

§570.485 Application of Rules and Regulations -- The provisions of Subparts A,B,C,J, K and O apply to this subpart.

SUBPART K - Other Program Requirements

§570.601 Nondiscrimination -- This section states the nondiscrimination requirement of Section 109 of the Act and defines the terms "program or activity" and "funded in whole or in part with community development funds" §570.601(a)

This section also sets forth specific discriminatory actions prohibited and corrective actions, modeled on the Title VI regulations, 24 CFR Part 1, with the addition of provisions on employment and sex discrimination. §570.601(b)

SUBPART N - Urban Renewal Provisions

§570.801 Payment of the Cost of Completing a Project -- Funds made available under this Part may be used by the unit of general local government to acquire cleared project land from the local public agency for a public use or for subsequent disposition to redevelopers. Such acquisition is subject to covenants, one of which is that discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon shall be prohibited, and the unit of general local government and the United States shall be beneficiaries of and entitled to enforce such covenant. §570.801(c)(1)(iv)

SUBPART O - Property Management

§570.900 Performance Standards -- The equal opportunity standards are as follows:

(1) The recipient will be required to document the actions undertaken to assure that no person, on the ground of race, color, national origin, religion, or sex, has been excluded from participation in, denied the benfits of, or otherwise subjected to discrimination under any activity funded under this part. Such documentation should indicate:

(i) Any methods of administration designed to assure that no person, on the ground of race, color, national origin or sex, has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any activity funded under this part.

(ii) Criteria used in selecting sites for public facilities designed to further the accomplishment of the objectives of the programs or activities conducted under this part with respect to any identifiable segment of the total group of lower-income persons in the community.

(iii) Any actions undertaken to overcome the effects of

conditions which may have resulted in limited participation, in the past, in programs or activities of the type funded under this part, by any identifiable segment of the total group of lower-income persons in the community.

(iv) Any actions undertaken to promote equal employment opportunities for any identifiable segment of the total group of lower-income persons in the community.

(2) The recipient will be required to document the actions undertaken to further fair housing. Such documentation should indicate:

(i) Any actions undertaken to encourage the development and enforcement of fair housing laws.

(ii) Any actions taken to prevent discrimination in housing and related facilities developed and operated with assistance under this part, and in the lending practices, with respect to residential property and related facilities, of lending institutions.

(iii) Any action taken to assure that land use and development programs funded under this part provide greater housing opportunities throughout the planning area for any identifiable segment of the total group of lower-income persons in the community.

(iv) Any site selection policies adopted to promote equal opportunity in housing. §570.900(c)

§570.905 Reports to be Submitted by Recipient -- Recipients shall submit such reports as may be necessary, pursuant to the rules and regulations under Title VI, Title VIII, Section 3, Section 109 of the Act, and Executive Order 11063, or any other equal opportunity reports as may be further prescribed by the Secretary. §570.905(d)

§570.907 Records to be Maintained by Recipient -- The equal opportunity records to be maintained by the recipient are as follows:

(1) The recipient shall maintain demographic data by census tract. The data shall include prevailing population characteristics relating to race, ethnic group, sex, age, and head of household.

(2) The recipient shall maintain racial, ethnic, and gender data showing the extent to which these categories of persons have participated in, or benefited from, programs and activities funded under this part.

(3) The recipient shall maintain data which records its affirmative action in equal opportunity employment, including but limited to employment, upgrading demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, pay or other compensation, and selection for training.

(4) The recipient shall maintain data which records its good faith efforts to identify, train and/or hire lower-income residents of the project area and to utilize business concerns which are located in or owned in substantial part by persons residing in the area of the project. §570.907(f)

§570.909 Secretarial Review of Recipient's Performance -- Among the matters to be reviewed by the Secretary is whether the recipient's program complied with the requirements of the Act, this part, and other applicable laws and regulations. §570.909(a)(2)

Among the items of evidence to be considered by the Secretary in reviewing the recipient's annual performance are reports prepared by the recipients, including the annual performance report described in §570.906; records maintained by the recipient pursuant to §570.907; monitoring results and audit reports; and evidence of progress in the provision of housing assistance in accordance with goals in the HAP. §570.909(c)(2)(3)(4)(5) and (7)

HUD will review a recipient's performance to determine whether the recipient has made substantial progress in carrying out its approved community development program and in achieving its one- and three-year HAP goals. §570.909(e)

When recipients have not effectively utilized available resources HUD will consider any negative actions taken to impede the provision of certain types of housing such as refusal to rezone or grant building permits for assisted housing projects. HUD will also consider the extent to which actions within the control of the recipient have been taken to achieve HAP goals. Such actions include the removal of impediments under local ordinances and land use requirements to the development of existing housing and the provision of assisted housing sites that meet the applicable site and neighborhood standards of HUD. §570.909(e)(2)(iii) and (iii)(A) and (C)

§570.912 Nondiscrimination Compliance -- This section describes the Secretary's authority and the procedures to be followed when the Secretary determines that a State or unit of general local government which is a recipient of either grant or loan assistance under this Part has failed to comply with the provisions of §570.601.

II. COMMUNITY DEVELOPMENT BLOCK GRANTS - Interim Rule Published October 4, 1982

Subpart A - General Provisions

§570.1 Purpose -- Subparts A, C, J, K and O apply to the entitlement grants program (Subpart D), the HUD-administered small cities program (Subpart F), the Secretary's fund program (Subpart E), the UDAG program (Subpart G) and loan guarantees, (Subpart M), but not to the State's program (Subpart I). §570.1(b)

§570.3 Definitions -- "Identifiable segment of the total of lower income persons in the community" means "female-headed households, and members of a minority group, which includes Black, American Indian/Alaskan Native, Hispanic, Asian/Pacific

Islander, and other groups normally identified by race, color, or national origin." §570.3(1)

Subpart C - Eligible Activities

§570.200 General Policies -- Each activity must comply with all requirements of this Part as they may apply under Subparts D, E, F and G. §570.200(a)(4)

§570.206 Eligible Administrative Costs -- Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed in whole or in part with funds provided under this Part and housing activities covered under the recipient's HAP are authorized for several categories of expenditures. One such category is the provision of fair housing counseling services and other activities designed to further the fair housing objectives of Title VIII of the Civil Rights Act of 1968 and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower income persons. §570.206(c)

Subpart D - Entitlement Grants

§570.300 General -- This Subpart describes the policies and procedures governing the making of Community Development Block Grants to Entitlement communities. The policies and procedures set forth in Subparts A,C,J,K, and O of this Part also apply to Entitlement grantees.

§570.308 Certifications -- The grantee shall submit certifications that the grant will be conducted and administered in accordance with Title VI and Title VIII, and that it will comply with the other provisions of the Act and with other applicable laws. §570.303(d) and (g)

§570.304 Making of Grants -- The final statement and certifications will be accepted by the responsible HUD Field Office unless it is determined that one or more requirements have not been met. The requirement relating to certifications states that in the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the grantee, such certifications will be deemed satisfactory to the Secretary if made in compliance with the requirements of § 570.303. If such independent evidence is available to the Secretary, however, the Secretary may require such further information or assurances to be submitted by the grantee as the Secretary may consider warranted or necessary in order to find the grantee's certifications satisfactory.

The Secretary will make a grant in the full entitlement amount unless the final statement or certifications are not received by September 30 or are not acceptable under paragraph (a)(1) and (3) of this section, in which case the grantee will

forfeit the entire entitlement amount, or the grantee's performance does not meet the standards prescribed in Subpart O and the grant amount is reduced. §570.304(c)

The Secretary may make a conditional grant in which case the obligation and utilization of grant funds for activities will be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance standards described in Subpart O. In such case, the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions shall be specified. Failure to satisfy the condition may result in a reduction in the Entitlement amount pursuant to Subpart O. §570.304 (d)

§570.306 Housing Assistance Plan -- The grantee's assessment of housing assistance needs shall be accompanied by a narrative statement indicating the composition of the needs of lower income persons including separate numerical estimates, by tenure and household type, for households to be involuntarily displaced, households expected to reside, and total minority households. In addition, the narrative shall include a description which summarizes any special housing conditions and/or any special housing needs of particular groups of lower income households in the community. Such description shall include, but need not be limited to, discussion of the special housing needs and/or conditions of individual minority groups. §570.306(e)(2)(ii)

A grantee having goals for new construction or substantial rehabilitation shall identify general locations of proposed projects with the objective of furthering community revitalization, promoting housing opportunity, enabling persons that are to be voluntarily displaced to remain in their neighborhoods, avoiding undue concentrations of assisted housing in areas containing high proportions of lower income persons, and assuring the availability of public facilities and services. §§570.306(e)(5)(i)

Each general location identified under paragraph (e)(5)(i) of this section must contain at least one site which conforms to the Departmental regulations and policies relating to the site and neighborhood standards established for the appropriate HUD assisted housing program. §570.306(e)(5)(ii)

Subpart K - Other Program Requirements

§570.600 General -- This section states: Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(d)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b)

(Entitlement Grants) and 106(d)(2)(B)(HUD-Administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws . . ." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(d)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Order which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(d)(2) of the Act, see §570.496. In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (Subparts D and F of this Part, respectively), the requirements of this Subpart K are applicable to grants made pursuant to section 107 and 119 of the Act (Subparts E and G, respectively). §570.600(a) and (c)

§570.601 -- Public Law 88-352 and Public Law 90-284, Executive Order 11063 -- This section references the provision of Section 104(b) of the Act that a grant under section 106 shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284, and the provision of section 107 that no grant may be made under that section (Secretary's Discretionary Fund) or Section 119 (UDAG) without satisfactory assurances to the same effect.

The section describes the Title VI (Pub. L. 88-352) nondiscrimination requirement and the directive to issue regulations, and cites HUD's implementing regulation, 24 CFR Part 1. §570.601(a)

The section sets forth Title VIII's (Pub. L. 90-284) fair housing policy and discrimination prohibition and states that Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of Title VIII, and pursuant to this statutory requirement the Secretary requires that grantees administer all programs and activities related to

housing and community development in a manner to affirmatively further fair housing. §570.601(b)

The section describes Executive Order 11063, as amended by Executive Order 12259, as directing the Department to take action to prevent discrimination respecting residential property and related facilities provided with the aid of the Federal Government, and cites HUD's implementing regulation, 24 CFR Part 107. §570.601(c)

§570.602 Section 109 of the Act -- This section sets forth the nondiscrimination requirements of Section 109 of the Act and defines the terms "program or activity" and "funded in whole or in part with community development funds". §570.602(a)

The section also sets forth specific discriminatory actions prohibited and corrective actions, modeled on the Title VI regulations, 24 CFR Part 1, with the addition of provisions on employment and sex discrimiantion, and references to the Age Discrimination Act of 1975 and section 504 of the Rehabilitation Act of 1973 to reflect the statutory addition to Section 109 of specific references to these two statutes. §570.602(b) and (c)

§570.607 Employment and Contracting Opportunities -- This section describes the requirements of Section 3 of the Housing amd Community Development Act of 1968, provides that grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive, and notes HUD regulations at 24 CFR Part 135 are not directly applicable to activities assisted under this Part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

Subpart M - Loan Guarantees

§570.702 Application Requirements -- An application for loan guarantee assistance shall include certifications required pursuant to §570.303 and the terms "grant" and "CDBG" in such certifications shall also mean loan guarantee. §570.702(b)(4)

HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information. §570.702(d)(1)

Among the reasons for which the Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, is that the applicant's performance does not meet the standards prescribed in §570.909. §570.702(d)(3)(iv)

III. HOUSING PROGRAMS

The Department is responsible for the administration of a number of programs which have a direct impact on the provision of housing. These programs fall primarily into two categories: unsubsidized housing programs, and public and lower income housing programs. Unlike Title I of the Housing and Community Development Act of 1974, none of the statutes creating HUD housing programs specifically indicates the application of civil rights laws to projects or requires the submission of certifications in connection with applications. However, the Department has taken steps to assure nondiscrimination in housing under Title VIII of the Civil Rights Act of 1968 and Executive Order 11063 in all housing programs and to carry out the Title VIII directive to the Secretary to administer the Department's housing programs in a manner affirmatively to further fair housing. In addition the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 have been implemented in any program or activity in which Federal financial assistance is provided.

This section describes HUD efforts to assure nondiscrimination and to promote fair housing in the operation of its housing programs. In this regard the section deals with three broad categories of requirements. The first segment discusses civil rights provisions applicable to participants in HUD programs administered under the National Housing Act of 1934 (HUD insurance and subsidy programs). The second segment identifies civil rights requirements applicable to participants in programs assisted under the United States Housing Act of 1937 (Section 8, Public Housing and Section 23). The third segment describes HUD efforts to promote the achievement of the goal of Fair Housing in its administration of housing programs. This segment includes references to administrative sanctions available to the Department in cases where violations of statutory or regulatory civil rights requirements are found.

A. Civil Rights Requirements Imposed on Participants in HUD FHA Housing Programs

Under the National Housing Act of 1934 (as amended) the Department, acting through the Federal Housing Administration, is authorized to provide mortgage insurance and financial assistance for new construction and rehabilitation of sale and rental dwellings and land development projects.

Under the National Housing Act the Department administers the following housing program involving contracts of insurance:

Section 2 - Home Improvement and Mobile Home Loan Insurance,

Section 203 - One to Four Family Mortgage Insurance for New and Rehabilitated Dwellings,

Section 207 - Multifamily Rental Housing and Mobile Home Court Insurance,

Section 213 - Cooperative Housing Project Mortgage Insurance,

Section 221(d)(2) - Mortgage Insurance for Low- and Moderate-Income Families (one to four family (housing),

Section 221(d)(3) and (4) - Mortgage Insurance for Rental or Cooperative Multifamily Housing for Low- and Moderate-Income Families,

Section 223(e) - Mortgage Insurance for the Purchase, Rehabilitation or Construction of Housing in Older, Declining Urban Areas,

Section 223(f) - Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Projects,

Section 231 - Mortgage Insurance for the Construction or Rehabilitation of Multifamily Rental Housing for the Elderly or Handicapped,

Section 234 - Mortgage Insurance for Purchasers of Family Units in Multifamily Condominium Projects,

Section 237 - Special Mortgage Insurance for Low- and Moderate-Income Families which are Marginal Credit Risks,

Title X - Mortgage Insurance for Land Development Projects,

Section 220 - Urban Renewal Mortgage Insurance and Insured Improvement Loans,

Section 232 - Mortgage Insurance for Nursing Homes and Intermediate Care Facilities, and

Miscellaneous Insurance for Housing for Military Personnel and Certain Civilians Employed by the Military.

The following programs involve financial assistance:

Section 221(d)(3) BMIR - Projects Insured under Section 221(d)(3) with Below Market Interest Rates (BMIRs),

Section 101 HUD Act of 1965 - Rent Supplement Payments to Reduce Rents for Disadvantage Low-Income Persons in Project Insured under Section 221(d)(3), 231 and 236 of the National Housing Act and Section 202 of the Housing Act of 1959 (Elderly Housing),

Section 235 - Mortgage Insurance and Interest Subsidy on Behalf of Low- and Moderate-Income Homebuyers, and

Section 236 - Rental Assistance Payments and Interest Reduction Payments

HUD regulations establish a number of fair housing obligations for mortgagees and mortgagors participating in these programs.

1. Nondiscrimination Requirements

Part 200 of 24 CFR sets forth the general requirements applicable to housing insured or assisted by FHA under the National Housing Act. Subpart I of Part 200 itemizes the Nondiscrimination and Fair Housing obligations of participants in insurance and subsidy programs.

§200.315 provides that "no person, firm or other entity receiving the benefits of FHA mortgage insurance, or doing business with the FHA shall engage in a 'discriminatory practice'."

A discriminatory practice under the regulation is:

> . . . any discrimination because of race, color, creed, or national origin in lending practices or in the sale, rental, or other disposition of residential property or related facilities and group practice facilities, or in the use or occupancy thereof, if:
>
> (a) Such property is or will be constructed, rehabilitated, purchased or financed with the proceeds of a loan or investment insured under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962; or

(b) Such property is offered for sale under terms which include financing under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962; or

(c) Such property is improved with a loan reported for insurance under Title I of the National Housing Act, the proceeds of which are disbursed after November 20, 1962; or

(d) Such property is owned by the Federal Housing Administration." §200.310

§§200.320 and .235 require that a statement of compliance with civil rights provisions be included in subdivision reports, multifamily, land development and group practice facility application analysis, and corporate charters and regulatory agreements.

§§207.16, 213.16 and 221.527 require a certification that neither the mortgagor, nor anyone authorized to act for him or her will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property to any person because of race, color, religion, sex, marital status or national origin. Further, the certification states that any restrictive covenant on the property relating to race, color, religion, sex, marital status or national origin is illegal and void and that any such covenant is specifically disclaimed. This provision is incorporated by reference in other multifamily insurance programs. A similar certification is required of mortgagors in HUD one to four family insurance programs. (§203.30) In addition, in order to participate in HUD insurance programs, mortgagees must certify that they will comply with fair housing requirements (§§ 203.2(a)(5) and 207.22).

Recently published regulations (Part 107) implementing Executive Order 11063 describe discriminatory practices which would constitute a violation of the Executive Order (§ 107.15(g)) including discriminatory sale and rental activities and discriminatory lending practices with respect to housing and related facilities (including land for residential uses) insofar as the practices relate to loans insured by HUD.1/

The regulation also provides that persons participating in

1/ It should be noted that although the coverage of Executive Order 11063 was expanded by Executive Order 12259 to include a prohibition against sex discrimination, conforming changes have not been published in 24 CFR.

HUD insurance programs are not precluded from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, creed or national origin. (§ 107.20) Further, the regulation states that:

"all persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, creed, or national origin." (§ 107.25)

2. Affirmative Fair Housing Marketing

HUD regulations (24 CFR 200, Subpart M) issued pursuant to Title VIII and E.O. 11063 require that each applicant for participation in HUD subsidized or unsubsidized housing programs must develop and implement an Affirmative Fair Housing Marketing (AFHM) Plan. The requirement for such plans is based on the Department's policy "to administer its FHA housing programs affirmatively, as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex or national origin." (§ 200.610)

Coverage of the AFHM Regulation

The AFHM regulation applies to any applicant for participation in FHA subsidized and unsubsidized housing programs whose application is approved for development or rehabilitation of: subdivisions, multifamily projects and mobile home parks of five or more lots, units or spaces; or dwelling units, when the applicant's participation in FHA housing programs exceeds or would thereby exceed development of five or more such dwelling units during the year preceding the application. (§200.615)

General AFHM Requirements

The AFHM regulations establish an "affirmative program to attract buyers or tenants, regardless of sex, of all minority and majority groups" to housing for initial sale or rental (§200.620(a)). This section also requires that each applicant must describe the program developed for the housing units and detail the methods to be used in marketing the units to assure that persons are aware of the available housing opportunities.

AFHM Plans

§200.620 provides that the person marketing dwellings subject to AFHM regulation must submit an AFHM Plan.

The plan must:

Establish an affirmative program to attract buyers and tenants, regardless of sex, of all minority and majority groups to the housing for initial sale or rental. The regulation indicates that such a program will typically involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex or national origin, through the type of media customarily utilized by the applicant, including minority publications or other minority outlets which are available in the housing market area;

Provide for the maintenance of a nondiscriminatory hiring policy in recruiting from both minority and majority groups, including both sexes, for staff engaged in the sale or rental of properties and for the instruction of all employees and agents in the policy of nondiscrimination and fair housing;

Include an agreement to specifically solicit eligible buyers or tenants reported to the applicant by HUD offices; and

Require the prominent display in all offices in which sale or rental activity takes place of the Department-approved Fair Housing Poster, the inclusion in any printed material of the HUD-approved Equal Housing Opportunity logo, slogan or statement and the posting, in a conspicuous position on all FHA project sites, of a sign displaying prominently either the Department-approved Equal Housing Opportunity logo, slogan or statement. (§200.620(a)-(f))

§108.15 of the HUD Compliance Procedures for Affirmative Fair Housing Marketing requires persons subject to AFHM regulations to submit a Notification of Intent to Begin Marketing to HUD no later than 90 days prior to engaging in sales or rental activities. At that time the provisions of the plan are reviewed to determine if the plan and/or its proposed implementation requires modification previous to initiation of marketing. Also, after commencing marketing activities the person marketing units must submit to HUD reports documenting the implementation of the plan, including reports of the progress of sales and rentals. (§108.20(a))

Signatories to HUD-approved Voluntary Affirmative Marketing Agreements such as the HUD/NAR Voluntary Affirmative Marketing Agreement are exempt from the submission of an AFHM Plan in connection with the HUD housing programs.

Where an applicant states that he or she is a signatory to such an agreement HUD accepts either a certification under the applicant's letterhead that he/she is a signatory and has made a good faith effort to implement all the terms of the Agreement, or a letter from an official of the local housing industry group attesting to the same.

Duration of Requirements

The duration of AFHM requirements varies with the type of housing involved. In programs involving sales, AFHM requirements apply through completion of initial sales transactions on dwellings covered by the plan. In programs involving multifamily projects, AFHM requirements apply throughout the life of the mortgage. (§200.620(a))

3. Additional Requirements Applicable Where Federal Financial Assistance is Provided

In certain programs under the National Housing Act the Secretary is authorized to provide a subsidy to encourage development and operation of low- and moderate-income housing. Specifically, the Department has provided Rent Supplements on behalf of eligible tenants to private owners of multifamily projects insured by FHA under Sections 221(d)(3), 231 and 236 of the National Housing Act and elderly housing projects insured under Section 202 of the Housing Act of 1959. Rental Assistance Payments on behalf of tenants have been made to owners of certain Section 236 projects. In addition, the Department has subsidized mortgage interest rates through Interest Reduction Payments on rental and cooperative housing for low income families under Section 236 and Below Market Interest Rate Mortgages on certain projects insured under Section 221(d)(3).

HUD also has provided assistance to certain projects in its Flexible Subsidy Program to restore or maintain the financial and physical soundness of projects, to improve their management and to maintain them as projects for low- and moderate-income persons. Projects insured by FHA or developed by State agencies without FHA insurance which are subsidized under the Section 236, 221(d)(3)(BMIR) or Rent Supplement Programs have been eligible for this assistance. With respect to homeownership, HUD has provided mortgage insurance and interest subsidies for low- and moderate-income persons for the purchase of new and existing dwellings under Section 235.

Although HUD regulations regarding the above programs do not indicate that the nondiscrimination requirements in Title VI of the Civil Rights Act of 1964 and HUD implementing regulations (24 CFR Part 1) apply to the assistance, the Department has indicated

that these programs involve Federal financial assistance and are covered by Title VI (Part 1 Appendix A, 10, (Section 235); 27., (Rent Supplement Program); and 28., (Section 236 Program).[2/]

§1.4(a) of the Title VI regulations provides that a recipient of assistance may not directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation, deny them benefits or otherwise subject them to discrimination.

§1.4(b)(1) of the regulation itemizes the conduct prohibited under Title VI and the regulation. It specifically prohibits denials of housing or financial aid, and segregated separate or different treatment.

§1.4(b)(2)(i) of the regulation also provides that:

"A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin."

§1.4(b)(6) states further:

"(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a

2/ Appendix A to Part 1 has not been revised since 1973 and thus does not reference the Flexible Subsidy Program authorized under Section 201 of the Housing and Community Development Amendments of 1978. The Department, however, has applied Title VI and Part 1 of 24 CFR to this program.

particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act."

§1.5 provides for the submission of assurances of compliance with the provisions of Title VI and Part 1 in every contract of assistance. This section also indicates the scope and duration of the assurances. Pursuant to this requirement HUD regulatory agreements and contracts for subsidized housing include an assurance of compliance with Title VI and the HUD regulation.

B. Civil Rights Requirements Imposed on Participants in HUD Assisted Housing Programs Under the United States Housing Act of 1937.

This subsection describes civil rights requirements applicable to housing programs for lower income persons assisted under the United States Housing Act of 1937 (42 U.S.C. Section 1401 et seq.).

These programs include:

- Conventional Public Housing,
- Section 23 New Construction and Substantial Rehabilitation Leased Housing,
- Turnkey III Low Rent Housing Homeownership Opportunity Program,
- Section 8 New Construction,
- Section 8 Substantial Rehibilitation,
- Section 8 Existing Housing and Moderate Rehabilitation,
- Section 8 State Housing Agencies,

- Section 8 New Construction Set-Aside for Section 515 Rural Rental Housing Projects[3/]

- Loans for Housing for the Elderly or Handicapped, and

- Section 8 Special Allocations.

1. Fair Housing Certifications

In general the lower income housing program regulations state that participation "requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order[s] 11063...and all related rules regulations and requirements." (See §800.103(m), Section 23 Leased Housing; §804.104(b), Turnkey III; §841.208(a), Conventional Public Housing; §880.210(a), Section 8 New Construction; §881.210(a), Section 8 Substantial Rehabilitation; §883.312(a), §8 State Housing Agencies; §885.210(a)(7), Direct Loans Elderly Housing; and §§886.114 and 886.311(a); Section 8 Special Allocations. Similar requirements are mandated in the Section 8 Existing Housing and Moderate Rehabilitation Programs (§§882.111 and 882.407(a)).

Provision of assistance to participants in Conventional Public Housing Program, Section 23 Program and Turnkey Housing Program is accomplished through the execution of Annual Contributions Contracts (ACCs) between the Secretary of HUD and a Public Housing Authority. As part of ACCs Public Housing Authorities certify compliance with civil rights laws prohibiting discrimination in housing.

In Section 8 programs participants must supply specific assurances to the Department in connection with their applications for assistance. Generally, the applicant assures and certifies that:

> It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and regulations pursuant thereto (Title 24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant

3/ In the Section 8 New Construction Set-Aside for §515 Rural Housing the acceptability of certifications and administration of other civil rights requirements are assigned to the Farmers Home Administration, Department of Agriculture (See Section 884.207).

> receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of property, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
>
> It will comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, which prohibits discrimination in housing on the basis of race, color, religion, sex or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.
>
> It will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided in Federal financial assistance." (HUD Forms 916, 917, 918, and 920)[4/]

Further, Housing Assistance Payments Contracts also contain similar civil rights certifications.

2. Affirmative Fair Housing Marketing

Subpart M of Part 200, which imposes AFHM requirements on participants in assisted housing programs for lower income families, does not apply by its terms to housing assistance under the United States Housing Act of 1937. However, since the nature of benefits provided, the type of housing involved, and the method of operation vary substantially within the lower income housing programs, different AFHM techniques have been developed.

Turnkey III

The Turnkey III Homeownership Program Regulations require Local Housing Authorities to submit AFHM Plans and comply with the HUD AFHM Regulations (§804.104(a)(2)). The regulations also provide that the LHA, in connection with determinations of homeownership potential of persons and the selection of persons

4/ HUD Form 918 applicable to Conventional Public Housing and Turnkey III Programs was superseded by HUD Form 52471(3-81) which merely references the requirements of Parts 841 and 805 which include the standard civil rights nondiscrimination provisions.

to obtain housing, shall take steps to assure that policies and procedures facilitate the achievement of the objectives of Affirmative Fair Housing Marketing and the AFHM Plan (§§804.104(e)(1) and (f)(1)).

Section 8 New Construction and Substantial Rehabilitation

In the Section 8 New Construction Program preliminary proposals must contain a certification that affirmative marketing activities will be undertaken (§880.305(h)). Affirmative Marketing Plans must be submitted in final proposals for projects of 5 units or more (§880.308(a)(5)). Final proposals must also contain a statement of marketing activities to be taken to assure, with respect to nonelderly family units, that advance marketing to families identified as least likely to apply in the AFHM plan are undertaken (§880.308(a)(5)).

Owner AFHM responsibilities in connection with the management of projects are set forth in §§880.601(a)(1)-(3). These provisions state that an owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of the availability of the first unit of the project and must be done in accordance with the HUD-approved AFHM plan. In addition, with respect to nonelderly family units the owner must undertake marketing activities in advance of marketing to other persons in order to provide opportunities to reside in the project to nonelderly families who are least likely to apply as identified in the AFHM Plan and to nonelderly families expected to reside in the community as a result of current or planned employment.

Identical requirements apply in the Section 8 Substantial Rehabilitation Program in Part 881 and similar requirements attach to new construction and substantial rehabilitation projects in other programs (State Agency Program (§883.403(c), .404(f), .702(a) and .704(b)); Special Allocations (886.105(f), .107(a), .119(a), .313(b) and .321(a) and (b)), and Neighborhood Strategy Areas (881.707(a) and (c)).

Section 23 Housing and Direct Loans to Elderly Projects

The Section 23 leased housing program regulation states that marketing of units by the owner shall be in accordance with the owner's HUD approved AFHM plan and with all regulations relating to fair housing advertising including use of the equal opportunity logo type, statement and slogan (§800.202(b)). Also the submission and review of an AFHM plans is required in the Elderly Housing Direct Loan Program. (Section 885.400(a))

Section 8 Existing Housing Program

The unique nature of the Section 8 Existing Housing Program (i.e. finders keepers) makes the application of standard AFHM requirements inappropriate. However, in connection with the submission of applications for participation in this program Public Housing Authorities must submit an Equal Opportunity Housing Plan (EOHP) (§§882.204(b)(1)).

As part of the EOHP the authority must describe its procedures and policies for:

Fulfilling program requirements to make known to the public the nature of housing assistance for lower income persons through advertising, in general circulation media and minority media; to take affirmative action to provide opportunities to participate in the program to persons who because of such factors as race, ethnicity or sex are less likely to apply for the program and to explain civil rights requirements to persons who have dealings with low income families;

Achieving the participation of owners of units of suitable price and quality in areas outside low income and minority concentrations and outside the local jurisdiction where possible;

Providing assistance in finding a unit to beneficiaries who allege that illegal discrimination is preventing them from finding a suitable unit. (§882.204(b)(1)(i)(A), (B) and (D))

Specific requirements for the development of an EOHP in the Section 8 Moderate Rehabilitation Program were removed in an Interim Rule published on August 26, 1982 which was effective September 28, 1982 (47 F.R. 34376).

In addition, with respect to the accomplishment of §882.204(b)(1)(i)(B) and (D), the Existing Housing regulation directs authorities to consider the possibility of subcontracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in the process of finding housing in the locality. (§882.204(b)(1)(ii))

3. Tenant Selection and Assignment

In connection with the administration of assisted housing programs Departmental regulations prohibit discrimination in the selection and assignment of tenants in rental housing and in the selection of applicants in assisted homeownership housing. (See Appendix A, 14 to Part 1 of 24 CFR and §1.4(b)(1) and (2). The program regulations also contain requirements relating to fair housing in connection with the processing of applications. (§800.202(b), Section 23 Leased Housing; §860.203 and .204(c), Conventional Public Housing; §880.501(a), Section 8 New

Construction; §881.601(a) Section 8 Substantial Rehabilitation; §882.204(b)(1)(iii), .504(b)(1)(ii) and .514(c), Section 8 Existing and Moderate Rehabilitation; §883.704(b), Section 8 State Housing Agencies New Construction and Substantial Rehabilitation; §§886.121 and .321, Section 8 Special Allocations; and §804.104(a)(2) and (f)(1), Turnkey III Homeownership.)

HUD regulations further provide authority to require owners participating in the Section 8 New Construction and Substantial Rehabilitation Programs, including those operated by State Housing Agencies, to maintain and retain, for three years, records on applicants and approved eligible families which provide racial, ethnic and gender data (§§880.603(b)(4), 881.603(b)(4) and 883.704(b)(4))

With respect to the conventional low-rent public housing program the Department's Title VI regulation sets forth specific requirements relating to tenant selection and assignment.

§1.4(b)(2)(ii) states that:

> "A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official." (§1.4(b)(2)(ii))

Further the Title VI regulation provides that:

> "The responsible Department official can prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) in order to effectuate and insure compliance with the requirements imposed thereunder." (§1.4(b)(2)(iii))

Although formal tenant assignment requirements do not apply to Section 8 Existing and Moderate Rehabilitation Programs HUD has imposed nondiscrimination and fair housing obligations on participants in the program.

In the Section 8 Existing Housing Program owners must take affirmative action to provide opportunities to persons least likely to apply because of race, ethnicity or sex (§882.208(a)). Public Housing Authorities in addition to complying with other civil rights must make efforts in the Section 8 Existing Housing Program to provide opportunities for recipients to seek housing outside areas of economic and racial concentrations (§882.117(r)) and provide Section 8 Existing Housing certificate holders with information on fair housing (§882.209(b)(5)), brief certificate holders on significant aspects of Federal, state, and local fair housing laws (§882.209(e)(6)) and, upon request, provide assistance to persons unable to find units because of discrimination (§882.204(b)(1)(iii)(D)).

In the Moderate Rehabilitation program Public Housing Authorities are also required to provide information to persons regarding fair housing. (§882.514(c)) While a requirement that the PHA provide assistance to persons who allege that they have been unable to obtain a dwelling because of discrimination (§882.504(b)(1)(i)(D)) was deleted from the regulation in HUD's Interim Rule, under §882.514 the regulations still provide that an applicant may request PHA assistance in resolving the issue of discrimination.

4. Special Fair Housing Procedures Applicable to Certain Section 8 Moderate Rehabilitation Projects

§882.401 of the HUD Section 8 Moderate Rehabilitation Program stated that the program was designed to achieve one or more of the objectives of:

> providing freedom of housing choice and spatial deconcentration of assisted housing into areas outside of low income and minority concentrations,
>
> preventing displacement of lower income families in areas undergoing private rehabilitation, and
>
> supporting neighborhood preservation and revitalization.

The regulation also provided that applicants indicate which program objective(s) their moderate rehabilitation proposal will achieve.

If the public housing authority proposed to use the program to achieve spatial deconcentration the authority was also required to demonstrate that:

> ". . . there are sufficient units in need of moderate rehabilitation in areas outside of low income and minority concentrations within the area of operation of the PHA which

can be rehabilitated within the Fair Market Rent limitations of the Program. The PHA must also certify that in selecting units for participation in the Program, it will not select units located in: (A) An area of minority concentration unless sufficient, comparable opportunities exist for housing for minority Families outside areas of minority concentration, or (B) a racially mixed area if the units will cause a significant increase in the proportion of minority to non-minority residents in the area." (§882.503(a)(9)(i))

The Interim Rule more broadly describes the objectives of the Moderate Rehabilitation Program indicating generally that programs to achieve local objectives such as deconcentration of assisted housing, revitalization of targeted neighborhoods or minimization of displacement are eligible. Further, specific requirements in §883.503(a)(9)(i) have been omitted and the preamble indicates that the certification requirement in that paragraph has been deleted.

5. Special Fair Housing Procedures Applicable to Section 8 Substantial Rehabilitation Projects in Neighborhood Strategy Areas

The Neighborhood Strategy Areas (NSA) program (Part 881 Subpart G) concentrates Section 8 substantial rehabilitation units in certain areas which also receive Community Development Block Grant funds. Local governments nominate areas for NSA designation and prepare specific revitalization plans using various combinations of HUD's assisted and insured housing, community development programs, and other funds to accomplish their goals.

Approval of a request from a unit of local government to use these special procedures (1) assures the general availability of HUD mortgage insurance in the NSA, (2) sets aside a specific amount of Section 8 substantial rehabilitation contract authority for use in the NSA, and (3) authorizes the local government to solicit Section 8 substantial rehabilitation proposals for up to the amount of contract authority set aside. The concentration of funds and technical assistance provided to the NSAs is expected to accomplish neighborhood revitalization within a five-year period.

As part of a request for NSA designation the local government must provide:

A description of the proposed NSA's demographic and physical characteristics. Demographic characteristics shall include total population, income of households, age, and racial composition (§881.703(c)(2));

A neighborhood revitalization plan describing the

current condition of all major neighborhood public facilities and services and include an assessment of the extent to which the area currently meets the site and neighborhood standards applicable to the Section 8 Substantial Rehabilitation Program (§881.703(c)(4)(i)); and

A relocation statement that relocation services will be provided which are necessary to provide displaced tenants the opportunity to take advantage of housing choices outside areas of minority and low-income concentration. (§881.703(b)(7)(iii))

C. Efforts to Promote Fair Housing in the Operation of Programs Relating to Housing and Urban Development

1. Insurance Programs

The function of the Department in the provision of mortgage insurance is one of meeting demand. HUD does not make loans or build housing in these programs and cannot provide insurance without an applicant about to purchase, construct or rehabilitate particular housing who is seeking mortgage insurance. In this respect, HUD efforts to promote the achievement of the goal of fair housing are focused on making participants aware of civil rights authorities applicable to HUD insurance activities and of their responsibilities to provide for fair housing. Also, in connection with single family mortgage insurance HUD has sought to assure that mortgagors are aware of their right to equal opportunities in obtaining housing.5/

2. Programs Providing Assistance in Aid of Housing

Because funding available through the Department is insufficient to address the universe of proposals for assisted housing, HUD has developed detailed procedures for the allocation of its limited resources and the selection of projects for

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5/ With respect to single insurance programs it should be noted that the Department has funded, on a demonstration basis, counseling for applicants regarding the availability of dwellings in a wide range of locations in order to avoid perceived negative impacts of substantial FHA insurance activities in a small area or neighborhood. This counseling project was conducted in response to a litigation in the Chicago metropolitan area involving FHA and VA insurance activities in communities in Marquette Park, Illinois. The plaintiff had alleged that increased government insurance activity in an area was resulting in rapid racial transition of occupants. Jorman v. HUD and VA, U.S.D.C., N.D. Ill., 1977.

funding. These procedures are designed to assure that projects approved will obtain maximum benefit in terms of the Department's mission and responsibilities. Fair housing and equal opportunity considerations are major factors in these procedures.

Allocation of Assisted Housing.

Part 891 describes the policies and procedures applicable to the allocation of loan and contract authority under the United States Housing Act of 1937, Sections 235 and 236 of the National Housing Act, Section 101 of the Housing and Urban Development Act of 1965 (Rent Supplements) and Section 202 of the Housing Act of 1959 (Elderly Housing).

Subpart D of this Part indicates, in sequence, the actions to be taken in allocating contract authority to areas within the jurisdiction of each HUD office. Generally, these allocations are made based upon a housing needs percentage determination for each lower-income housing program by region and by jurisdiction. This percentage is used to compute the amount of the available assistance which will be provided.

In connection with this allocation procedure HUD field offices must establish allocation areas. Under the regulation these areas can be composed of one or more jurisdictions. An allocation area may be an SMSA central city, a metropolitan county or groups of rural counties.

Several aspects of the administration of the HUD allocation system impact on the achievement of the goals of nondiscrimination and fair housing, as described below.

* * *

Under HUD regulations regarding allocation of assistance in effect prior to July 26, 1982, separate procedures applied for Areawide Housing Opportunity Plans, Neighborhood Strategy Areas and jurisdictions with Housing Assistance Plans.

Areawide Housing Opportunity Plans

Under the regulation an Areawide Housing Opportunity Plan (AHOP) was a strategy for a program of implementation activities developed by an Areawide Planning Organization (APO) to address areawide housing assistance needs and goals with the objective of providing for a broader geographical choice of housing opportunities for lower income households outside areas and jurisdictions containing undue concentrations of low-income and minority households. Also, AHOPs were intended to represent a cooperative effort between the APO and local jurisdictions in the AHOP area to develop and implement a common areawide housing strategy.

Subparts E and F of Part 891 established two potential uses for areawide plans in the process of allocating contract authority. In each subpart fair housing requirements were essential to eligibility.

First, as described above, an areawide plan which met the requirements of Subpart E could have been designated an approved AHOP and as a result the aggregate amount of contract authority allocated to the jurisdictions participating in the plan would have been distributed, to the extent practicable, in accordance with the plan. While this process did not result in an increase of contract authority, under the regulation the geographical distribution of the assistance was decided jointly by HUD and the APO, and, to the extent practicable, reflected the areawide plan.

§891.503 stated that an approvable AHOP must include:

An areawide assessment, of the housing assistance needs of lower income households (including households displaced or to be displaced by governmental action) including the housing assistance needs by household type, housing tenure (owner and renter), and female heads of household and minority households;

A procedure for distributing housing assistance among jurisdictions (including non-participating jurisdictions) within the plan area, taking into account present and potential areas of undue concentration of low income and minority households within the plan area;

A statement regarding the present locations of assisted housing and jurisdictions with undue concentrations of such housing; and

Identification and analysis of all known legal, administrative or other barriers (e.g., residency preferences or requirements, exclusionary zoning, etc.) which restrict the choice or otherwise hinder the fair and equal access of lower income households, particularly large families and minority and female-headed households, to take advantage of available or potentially available housing opportunities (whether assisted or not) outside areas and jurisdictions which contain undue concentrations of low-income or minority households in the plan area.

§891.503(a)(b) and (e)

§891.503(f) stated that an approvable AHOP must also describe activities to implement the plan which included activities designed to remove legal, administrative or other barriers which limit housing opportunities, and to implement areawide affirmative fair housing marketing goals and strategies. This section also required activities to enlist the cooperation of existing PHAs (and/or efforts to create an areawide PHA or other entity) to operate programs designed to achieve the program objective and to coordinate the use of

supportive resources such as Community Development Block Grants or other funds for activities which will help implement the plan, and support outreach to households in areas and jurisdictions of undue concentration to advise them of available housing opportunities.

The second potential use for AHOPs was that under Subpart F of Part 891 additional contract and budget authority for use in the AHOP area through special allocations could be made available.

§891.606, in connection with eligibility requirements for special allocations, provided that priority consideration would be given to plans which met one or more of several criteria:

> The APO has established a program, or is participating in a program which provides housing information, referrals, counseling, and related assistance to lower income and minority households desiring housing assistance outside areas and jurisdictions which contain undue concentrations of low income or minority households;
>
> To the extent that the Section 8 Existing Housing Program is used by participating jurisdictions, eligible families currently are permitted to use and are assisted in using their Section 8 Certificates of Family Participation in two or more participating jurisdictions (half of which do not have undue concentrations of low income households) representing at least 50 percent of the area population;
>
> Residency preferences or requirements for admission to Low-Income Housing have been eliminated in all participating jurisdictions by all PHAs administering such a Program;
>
> The APO has taken an active role in combating discrimination on the basis of race, color, sex, religion, or national origin in the private housing market within the AHOP area;
>
> The AHOP includes as participating jurisdictions 75 to 100 percent of the jurisdictions in the plan area; and
>
> Any other activity or activities, as developed or administered by the APO and acceptable to the Secretary, that address the program objective.

AHOPs which had previously received special allocations were required to meet or demonstrate significant progress in meeting at least three of the above criteria.

Further, §891.607 required AHOP recipients of special allocations to submit a report to HUD which provided information relating to fair housing efforts including; the actual distribution of the special allocation among jurisdictions by program and the number of households assisted or to be assisted (for the Section 8 Existing Housing Program, information must be

by household type, by race and sex of head of household, and by previous jurisdiction of residence, if known); and the actions taken by jurisdictions to implement or to support the implementation of the plan.

Allocations to Neighborhood Strategy Areas

§891.404(a)(2) authorized field offices in connection with allocation procedures to identify contract authority from its overall allocation for use in Neighborhood Strategy Areas (discussed on page 37 above) prior to computation of other allocations to jurisdictions or areas under the section. In addition, this section provided that where the total contract authority for such NSAs exceeded 20% of the field office allocation of Section 8 authority, additional contract authority would be made available from the Secretary's discretionary fund as established under §891.403(b)

Applications for Housing Assistance

Part 891 also established the policies and procedures governing reviews and determinations under Section 213 of the Housing and Community Development Act of 1974. In this regard Subpart B of Part 891 provides the policies and procedures applicable to reviews and determinations with respect to applications for housing assistance to be provided in areas for which a Housing Assistance Plan (discussed in Part I, above) were applicable.

* * *

The Department by Interim Rule has substantially revised its allocation process (47 F.R. 24120, June 3, 1982). The revisions which became effective July 26, 1982 implemented legislative revisions providing for specific allocations of funds, limiting the Secretary's discretionary funds and reducing allocations of assistance available to the Department.

Areawide Housing Plans

The Interim Rule deleted the provisions of Subparts E and F of Part 891 and other discussions of AHOP in Part 891. These deletions were based on the following factors:

> Legislative repeal of Section 701 of the Housing Act of 1954 which provided comprehensive planning assistance eliminated a major source of funding which APOs used to prepare AHOPs and HUD's determination that the development of AHOPs on a voluntary basis and their use in the allocation process could be carried out without the detailed submission requirements imposed under the former rule; and
>
> The fact that reduced funding levels for assisted housing activities make it highly unlikely that any AHOP

bonus funds provided in Subpart F could be made available.

In this connection the Interim Rule defines areawide housing plans as plans for the distribution of assisted housing resources developed by two or more local governments or by an areawide planning organization on behalf of the local governments. Under the regulations plans must include a statement of actions to be undertaken to further fair housing in the area covered by the plan. In addition, the regulation indicates that the term also includes any plan approved by HUD under Subpart E of the old regulation prior to October 1, 1981 ($891.102).

$891.302(a) is revised to require field offices to consider, among other things, the contents of any state or areawide housing plan proposing housing assistance in an area in making initial determinations of housing needs. The revised regulation directs that jurisdictional boundaries of areawide housing plans should be considered in establishing allocation areas and that to the maximum extent practicable the distribution of assisted units within each allocation area, among other matters, shall be consistent with housing type and household type proportions reflected in areawide housing plans. ($891.404(b)(3) and (e))

Prior to final HUD approval of the allocation the regulation requires consultation with local officials in allocation areas. With respect to multijurisdictional allocation areas the regulation provides that where an areawide housing plan has been developed by two or more local governments or by an Areawide Planning Organization (APO) on behalf of the local governments the field office must consult with local government and APO representatives on their preferences and on the need for targeting to previously underfunded localities. ($891.405(b)(2))

In addition, $891.403(b) indicates that a portion of the budget and contract authority for a fiscal year, not to exceed 15%, may be retained and used only for purposes itemized in the section. Lower income housing described in HAPs, including activities carried out under areawide housing plans, can be a basis for allocation from this discretionary fund.

Neighborhood Strategy Areas

The revised regulation deletes from $891.404 special allocation procedures for assisted housing in Neighborhood Strategy Areas.

Housing Assistance Plans

Since Section 321(c) of the Housing and Community Development Act of 1981 limits the percentage of assistance which may be used for existing housing and moderate rehabilitation and for new construction and substantial rehabilitation and permits

local governments to indicate housing type mixes which are different than those in the annual or three year goals of their HAP, the interim rule revises Part 891 to provide for greater flexibility with respect to the use of housing types as a criteria for review of applications where a HAP is applicable. ($$891.202, .203., .205 and .206)

2. Fair Housing and the Selection of Projects

Project Selection Criteria

Subpart N of Part 200 sets forth project selection criteria used in evaluating proposals for subsidized housing projects. The criteria govern the evaluation of projects to receive subsidies under Section 235(i) and Section 236 of the National Housing Act or rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965 ($200.700). $200.710 establishes seven criteria against which proposals must be reviewed:

- Need for low income housing
- Minority Housing Opportunities
- Improved location for Low Income Families
- Relationship to Ordeerly Growth and Development
- Relationship to Physical Environment
- Ability to perform and
- Potential for Creating Minority Employment and Business Opportunities

In addition proposals for multifamily projects must be reviewed by HUD as to provision of sound management.

In accordance with the objective of each criteria projects covered by the regulation are rated as either "Superior", "Adequate" or "Poor". After review, projects are ranked and placed in priority groups. However, in order to be considered for approval a superior or adequate rating is required for all criteria.

The objective of the Minority Housing Opportunities criteria is to provide minority families with opportunities for housing in a wide range of locations and to open up nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination.

Under this criteria a proposed project will be ranked as "Superior" if it is located:

> So that within the housing market area, it will provide opportunities for minorities for housing outside existing areas of minority concentration and outside areas which are

already substantially racially mixed; or,

In an area of minority concentration but the area is part of an official State or local agency development plan, and sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration.

A project will be ranked "Adequate" if it is located:

Outside an area of minority concentration, but the area is racially mixed, and the proposed project will not cause a significant increase in the proportion of minority to nonminority residents in the area; or

In an area of minority concentration and sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration; or

In an area of minority concentration, but is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. (An "overriding need" may not serve as the basis for an "adequate" rating if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, or national origin renders sites outside areas of minority concentration unavailable); or

In a housing market area with few or no minority group residents.

A poor rating will be given to any proposed project which does not satisfy the above conditions, e.g., will cause a significant increase in the proportion of minority residents in an area which is not one of minority concentration, but which is racially mixed. HUD staff are instructed that "superior" and "adequate" ratings must be accompanied by documented findings based upon relevant racial, socioeconomic, and other data and information.

Fair housing and equal opportunity objectives are also addressed in project review under criteria relating to the Ability to Perform.

Site and Neighborhood Standards

The Department has developed fair housing and equal opportunity standards for the consideration of the site and neighborhood in which new construction, substantial

rehabilitation and conventional public housing[6/] assisted under the United States Housing Act of 1937 is proposed.

All Conventional Public Housing and Section 8 New Construction, Substantial and Moderate Rehabilitation proposals must be reviewed to determine that the site and neighborhood is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto. (§841.202(b), Conventional Public Housing; §§880.206(b) and .305, Section 8 New Construction; §881.206(b), Section 8 Substantial Rehabilitation; §882.404(b)(2), Section 8 Moderate Rehabilitation; *§883.309(a), Section 8 State Housing Agencies; and §886.203, Section 8 Special Allocations, Disposition of HUD-Owned Multifamily Projects.*)

With regard to New Construction projects HUD regulations not only require that the site be suitable from a standpoint of facilitating and furthering full compliance with civil rights provisions but also that: "The site must not be located in: (1) An area of minority concentration unless (i) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or (2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area." (§§880.206(b) and (c) and .305, Section 8 New Construction; §§841.202(b) and (c), Conventional Public Housing; and §§883.309(a) and (b), Section 8 State Housing Agencies.)

Where Neighborhood Strategy Areas (NSAs) programs involve concentrated Section 8 Substantantial Rehabilitation activities in an area to promote revitalization, HUD review of proposed sites is significantly different from that of other projects. §881.703(b)(4)(i) requires NSA applicants to submit an assessment of the extent to which the area meets HUD site and neighborhood standards and §881.704(a)(3) and (4)(i) indicate

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6/ Proposed sites for Conventional Public Housing were subject to review under the HUD Project Selection Criteria until 1979.

that in review of such requests HUD will determine whether there are major obstacles to meet site and neighborhood standards that cannot be remedied in an acceptable time period, and that in connection with the revitalization plan that there are a sufficient number of sites for rehabilitation located on sites which are or will be acceptable under the site and neighborhood standards. This section also indicates that project sites will be reviewed individually when they are proposed for approval under the HUD site and neighborhood standards.

Other Fair Housing Related Site Approval Reviews

Project proposals for Section 8 New Construction, Substantial Rehabilitation and requests for NSA designations must contain a statement describing how the proposal is consistent with any applicable Housing Assistance Plan and/or Areawide Housing Opportunity Plan. (§880.305(f), §881.305(k) and §881.703(c)(9)) Consistency with any HAP is also part of the preliminary evaluation and technical processing of an application. (§881.306(b)(1)(ii), §881.306(c)(2) and §881.704(a)(1))

For Section 8 State Housing Agency Program projects sites proposed must comply with any applicable HAP (§§883.206(b), .309(a)(5), and §883.501(c)). In addition PHAs submitting Section 8 Existing Housing program proposals must demonstrate that the project is consistent with any applicable HAP. (§882.204(a)(3)) A requirement in the Section 8 Moderate Rehabilitation Program (§882.503(a)(3)) identical to that contained in the Section 8 Existing Program was removed by Interim Rule.

3. Administrative Sanctions

HUD regulations include a full range of administrative sanctions for violations of its nondiscrimination and fair housing requirements.

Title VI of the Civil Rights Act of 1964 and HUD regulations provide for the suspension or termination of or refusal to grant or to continue assistance to any recipient as to whom a finding of discrimination is made on the record after hearing (§1.8). In implementing EO 11063 HUD regulations provide where a participant is found in violation of the Executive Order or the implementing regulations HUD may cancel or terminate in whole or in part the contract or refuse to approve or withdraw the approval of a lender. (§107.60(b)) In connection with Affirmative Fair Housing Marketing, §108.50 provides that applicants failing to comply with the requirements of Part 108, the AFHM regulations (§200.600) or an AFHM plan make themselves liable to sanctions

authorized by law, regulations, agreements, rules, or policies governing the program pursuant to which the application was made, including, but not limited to, denial of further participation in Departmental programs. Further, under these HUD regulations the Department can refer any determination of a violation to the Department of Justice for initiation of appropriate civil actions to obtain compliance.

Part 24 of HUD's regulations establish procedures for the debarment of persons participating in HUD programs. These regulations describe the causes upon which HUD can exclude participants who are direct recipients of HUD funds or who receive funds indirectly through other sources. §24.6 sets forth the following civil rights related violations as causes and conditions for debarment: violation of any contractual provision requiring affirmative action to provide equal opportunity in the participant's own employment practices and any other cause of such serious compelling nature, affecting responsibility, as may be determined by the appropriate Assistant Secretary, to warrant debarment, or violation of Title VI of the Civil Rights Act of 1964 and HUD implementing regulations, or any rule, regulation or procedure imposed pursuant to E.O. 11063 or any nondiscrimination provision including in any agreement pursuant to the Order or HUD regulations. (§24.6(a)(3)(b),(4),(7) and (8))

§0.735-202(g) of the HUD Standards of Conduct prohibits Department employees from excluding any person from participating in or denying to any person the benefits of any program or activity administered by the Department on the ground of race, color, religion, sex or national origin.

IV. MISCELLANEOUS PROGRAMS

PART 590 -- URBAN HOMESTEADING

§590.11 Applications -- The applicant shall submit certifications in such form as HUD may prescribe, providing assurances that it will not discriminate on the basis of race, creed, color, sex, or national origin in the sale, lease, or rental or in the use or occupancy of the property conveyed in accordance with this Part, and that it will comply with the requirements of Title VI and Title VIII. §590.11(b)(7)(i) and (ii)

§590.29 Applicable Federal Laws and Regulations -- Every phase of an approved local homesteading program is to be implemented in accordance with the requirements of Title VI and Title VIII. §590.29(a)

PART 591 -- NEIGHBORHOOD SELF-HELP DEVELOPMENT PROGRAM

§595.106 Project Selection Criteria -- In evaluating how the proposed project directly benefits low- and moderate-income residents, HUD will consider the extent to which the proposed project eliminates or reduces the magnitude of the special problems of low- and moderate-income persons and minorities (e.g., the relative levels of unemployment and underemployment, discrimination in housing and employment, locational impaction, and lack of sufficient supportive services and facilities). §595.106(c)

§595.112. Other Program Requirements -- Participation in the program requires compliance with Title VI, Title VIII, Executive Order 11063 and Section 3.

PART 600 -- COMPREHENSIVE PLANNING ASSISTANCE

Subpart B -- Special Requirements

§600.70 Required Housing Element -- In developing the required housing element recipients shall provide for the elimination of the effects of discrimination in housing based on race, color, religion, sex, or national origin and provide safeguards for the future. §500.70(a)(2)

§600.75 Equal Opportunity Requirements -- All planning assisted under the Comprehensive Planning Assistance Program is subject to the provisions of:

Title VI of the Civil Rights Act of 1964, which provides that no person on the grounds of race, color or national origin shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VIII of the Civil Rights Act of 1968, which provides that it is the policy of the United States to provide, within constitutional limitations, fair housing throughout the United States, and requires the Secretary of HUD to administer the the Department's programs and activities in a manner affirmatively to further the policies of Title VIII.

The equal opportunity clause included in Part IV of the Grant Document, Terms and Conditions Governing Grants for Comprehensive Planning Assistance.

Section 3 of the Housing and Urban Development Act of 1968 and the regulations and requirements issued by HUD pursuant thereto (24 CFR Part 135). §600.75(a)

States providing planning and management assistance and services to substate applicants shall obtain from such applicants an assurance of compliance with all equal opportunity

requirements; and on a continuing basis the States shall evaluate the substate applicants' performance in determining the scope of equal opportunity activities and programs and in fulfilling the obligations of such assurance. §600.75(c)

Subpart E -- Evaluation and Coordination Procedures

§600.145 Evaluation and Review -- The annual evaluation of each applicant's performance is used in making funding determinations. The major factors considered in the evaluation include program management performance and administration of subgrants. One area of assessment under this factor is the grantee's compliance with all program requirements, including equal opportunity. §600.145(a)(4)(i)

Subpart F - Special Allocations for Areawide Housing Opportunity Plans

§600.210 Eligible Activities -- Grants awarding special allocations of 701 funds made to areawide planning organizations (APOs) in support of AHOPs will be made only for activities which clearly and directly further the implementation of the AHOP, address the AHOP program objective and are otherwise eligible under the comprehensive planning assistance program. APOs must utilize such grants for one or both of these activities:

(a) Develop outreach programs designed to facilitate movement of low and moderate income and minority persons to housing outside areas of concentration, particularly interjuridictional moves when necessary to achieve the AHOP program objective, such as:

(1) Developing a program for the provision of fair housing counseling and legal aid services,

(2) Establishing or strengthening an areawide relocation service,

(3) Working with member jurisdictions on a program to provide information to eligible low and moderate income persons on the availability and locations of housing in areas or communities outside areas of undue concentration.

(4) Working with member jurisdictions on the provisions of escort, transportation, child care or other services which assist low income and minority persons to shop for housing outside traditional or immediate neighborhoods,

(5) Developing affirmative marketing agreements with builders, apartment managers, real estate agents,

(6) Preparing training and educational programs for real estate agents, housing managers, city officials and others to increase knowledge of techniques for promoting economically and racially integrated housing.

(7) Initiating revisions to existing laws or regulations or enactment of new laws or regulations to promote increased interjurisdictional mobility, such as improved fair

housing laws, revisions in assisted housing admission practices, including the elimination of residency requirements or preferences for admission to Federally assisted housing, state grants or aids to communities accepting low income nonresidents.

(b) Develop programs or activities designed to facilitate the construction, rehabilitation, acquisition or renting of housing for low and moderate income and minority persons outside areas of concentration. §600.210(a) and (b)

§600.420 Program Performance Reporting -- This report shall include progress in fostering equal opportunity in employment, housing and participation in the benefits of Federally assisted programs. §600.420(a)(2)(i)

Appendix to Part 600

This appendix lists examples of the types of comprehensive planning and management activities that States, areawide planning organizations and localities may undertake, beginning in FY 1979, which would be clearly supportive of National Policy Objectives. The listing is meant to be illustrative only and should not be construed as being mandatory, exclusionary or finite.

For States, activities to expand housing choice include:

Reform tax policies to ensure equity in property taxes for renters and reform landlord-tenant, consumer protection and fair housing laws, including the strengthening of administration and enforcement actions.

Establish laws and regulations for financial institutions that prevent red-lining.

Develop and carry out a comprehensive fair housing strategy (New Horizons Fair Housing Assistance Project).

For APOs, activities to expand housing choice include:

Develop and carry out a comprehensive fair housing strategy (New Horizons Fair Housing Assistance Program).

Promote fair housing and equal housing and facilitate interjurisdictional mobility, by such means as an Areawide Affirmative Marketing Plan, counseling programs, relocation information and assistance, advertising or promotional campaigns, establishing fair housing groups or agencies, adoption of fair housing ordinance and recommendation for new legislation.

Operate programs to expand housing choice directed at assisting local governments to modify their practices which affect housing cost or restrict housing choice particularly in the area of inclusionary and exclusionary land use and zoning ordinances.

Propose and encourage programs to eliminate redlining or other public or private practices which contribute to the problems of distressed areas.

PART 710 -- FINANCING PRIVATE NEW COMMUNITY DEVELOPMENT

Subpart B -- New Community Criteria and Standards

§710.5 General Criteria for New Communities -- In determining whether a given undertaking is a new community, the Secretary will apply general criteria, one of which is that it must be designed for the fullest possible range of people and families of different compositions and incomes and must be open to members of all national, ethnic, and racial groups. §710.5(d)

§710.7 Other Requirements for New Community Development -- The new community project must be specifically designed and implemented so as to assure compliance with all requirements imposed by, or pursuant to, any applicable statute or executive order treating with discrimination on the basis of race, creed, color, sex, or national origin. These include Title VIII, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, as amended (42 U.S.C. 1981 and 1982); and Executive Order 11063; which apply variously so as to prohibit discrimination in the use, sale, lease, or other disposition of land, housing, or facilities in the new community and in employment in the new community or in the development of the new community project. Pursuant to the authority in each executive department to issue regulations and take other appropriate action under Executive Order 11063 with respect to its programs, discrimination on the basis of race, color, creed, or national origin in the use, sale, lease, or other disposition of any land developed for residential or related uses with assistance under the Act is hereby specifically made a violation of that order enforceable under the terms of section 302 of the Order after due notice and hearing.

In furtherance of the above paragraph and as a condition of granting or continuation of assistance, the developer must formulate and implement an affirmative action program covering all or part of the new community project; include appropriate equal opportunity provisions in pertinent contracts, subcontracts, covenants, or other documents; and take such further steps as the Secretary may direct to carry out the developer's program, including, but not limited to, provision of equal opportunity in employment and encouragement of minority business enterprise. §710.7(b)

PART 720 -- FINANCING PUBLIC AND PRIVATE NEW COMMUNITY DEVELOPMENT

Subpart A --General

§720.1 Statement of Applicable Law -- The declared purposes of Part B of the Urban Growth and New Community Development Act of 1970 include to increase for all persons, particularly members

of minority groups, the available choices of locations for living and working, thereby providing a more just economic and social environment. §720.1(a)(4)

Subpart B -- Criteria and Standards

§720.12 General Criteria -- A Project shall provide an alternative to disorderly urban growth, or so improve general and economic conditions in established communities and rural areas as to help stem migration therefrom and shall in any event help to preserve or enhance desirable aspects of the natural and urban environment. Among the factors to be considered in this context is that the Project shall provide for an increase in available choices for living and working for individuals and families of varying incomes and social needs so as to help relieve pressures causing undue concentration of population by income, race and lifestyle. §720.12(b)(2)

§720.14 Human Service Delivery System -- The plan for delivery of human services shall provide for an ongoing planning and implementation process with Local Public Bodies, residents, community groups and private agencies in order, among other things, to analyze the needs of the population projected for the new community by relevant subgroup to determine the diversity of needs, including consideration of needs by age, race, tenure of residents, sex, national origin, religion, marital status, family size, income and place of employment. §720.14(c)(1)

§720.22 Equal Opportunity -- A Project must be specifically designed and implemented so as to assure compliance with all requirements imnposed by or pursuant to any applicable statute, executive order or regulation (as they have been or may be amended from time to time) concerning discrimination on the basis of race, creed, color, religion, sex, or national origin. These include Title VIII, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866 and 1870 (42 U.S.C. 1981-2); Executive Order 11063 and Executive Order 11625. These authorities apply variously so as to prohibit discrimination and promote equal opportunity in the use, sale, lease or other disposition of land, housing, or facilities in the Project and in employment in, or in the development of, the Project. Pursuant to the authority in each executive department to issue regulations and take other appropriate action under Executive Order 11063 with respect to its programs, discrimination on the basis of race, color, creed, or national origin in the use, sale, lease or other disposition of any land developed for residential or related uses with assistance under the Act is hereby specifically made a violation of that order enforceable under the terms of section 302 of the order after due notice and hearing. A Project must also be specifically designed and implemented to

comply with all requirements imposed by or pursuant to section 3 of the Housing and Urban Development Act of 1968, as it may be amended from time to time, regarding job and business opportunities for Project area residents. §720.22(a)

In furtherance of the above paragraph, and as a condition of the granting or continuation of assistance by the Secretary, the Developer shall formulate and implement an affirmative action program. Such program shall be in addition to any other requirements imposed by or pursuant to the authorities cited in the above paragraph. Such program shall include:

Planning and construction activities as well as marketing practices which provide a full range of individual housing choice and encourage members of various ethnic and racial minorities to live and work in the new community, cooperation with civil rights and civic groups, action to provide equal opportunity with the Developer's staff, and inclusion of equal opportunity provisions in pertinent contracts, subcontracts, covenants, and other documents;

An affirmative action program for equal employment opportunity in direct employment by the Developer and employment by contractors and subcontractors of the Developer. In addition, the Developer is encouraged to take all feasible steps to involve minority entrepreneurs in planning and development of the Project. §720.22(b)

The Developer shall establish methods to periodically assess the results of each portion of his affirmative action program. He shall incorporate, in a timely manner, appropriate adjustments to achieve the goals of such program. §720.22(c)

PARTS 204, 250 AND 255 -- COINSURANCE PROGRAMS

§204.2 provides that a mortgagee in order to be approved for participation in the Coinsurance Program shall establish pursuant to §203.2(a)(8) that it will comply with Title VIII of the Civil Rights Act of 1968. §§250.135 and .119(a)(1) require that mortgagors in State Housing Finance Agency Coinsurance Programs must provide a certification of nondiscrimination which includes a statement that restrictive covenants based on race, color, religion, sex or national origin will be treated as illegal and void and in connection with occupancy agree that residency preferences may be used only to the extent they do not conflict with Affirmative Fair Housing Marketing objectives and their HUD approved AFHM plan. §255.101 provides that private lenders must establish compliance with Title VIII under §203.2(a)(5). Also, §255.224 sets forth detailed nondiscrimination requirements imposed on mortgagors under Title VIII and Executive Order 11063 including the responsibility "to administer the program and related activities in a manner to affirmatively further fair housing". (§255.224(b))

Part 277 -- LOANS FOR HOUSING FOR THE ELDERLY

This Part describes the procedures for providing assistance for the development of rental housing to serve elderly or handicapped persons whose incomes are below that needed to pay the rentals in adequate private market housing under Title II of the Housing Act of 1965. §277.9(c) and (e) indicate the applicability of Title VI and Title VIII and generally describe the conduct prohibited with respect to assistance provided under this Part.

PART 290 -- MANAGEMENT AND DISPOSITION OF HUD OWNED MULTIFAMILY HOUSING PROJECTS

§290.35 requires that disposition analyses contain appropriate demographic data on income ranges and distribution of the minority population by census tract, neighborhood, jurisdiction and SMSA in which the project is located and consider the impact of disposition on the racial composition of the neighborhood as well as the neighborhoods into which tenants might move after displacement.

PART 390 -- GNMA GUARANTY OF MORTGAGE-BACKED SECURITIES

§390.3(e) states that a mortgage lender will not qualify as an eligible issuer if the lending practices of the issuer permit discrimination or if the issuer is not in compliance with rules or regulations issued under Title VIII, Title VI and Executive Order 11063.

PART 43 -- PROVISION OF REPLACEMENT HOUSING UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (UNIFORM ACT)

This part sets forth uniform criteria and procedures for the implementation of Section 206 of the Uniform Act. Under the regulation whenever any Federal agency or state agency receiving Federal assistance determines that adequate housing for persons to be displaced is not available to satisfy the requirements of the Uniform Act or that such housing is not available on a nondiscriminatory basis, the head of the agency must determine whether or not to use project funds to provide replacement housing. In this respect §43.7 requires the development of a replacement housing plan. §43.7(b) requires where an advisory panel is established to aid in development of the plan that it include, as members, private groups knowledgeable about housing discrimination. Where the need for replacement housing is 25 units or less the agency may develop the plan without use of an advisory committee, however, §43.7(c) advises agencies to be guided by HUD project selection criteria (§200.700) and other civil rights requirements in such situations.

§43.8 requires submission of replacement housing plans to HUD (or Farmers Home Administration in appropriate cases) for review and comment including matters regarding civil rights compliance and the plan's compatibility with areawide housing plans.

Subpart B of Part 43 provides procedures for making loans for planning and preliminary expenses relating to relocation. §43.38 requires that loan funds provided shall be administered in compliance with Title VI, Title VIII and E.O. 11063, provides for submission of a Title VI assurance, and indicates that HUD Affirmative Fair Housing Marketing Requirements (§200.600) and Project Selection Criteria (§200.700) are applicable.

PART 42 -- HUD RELOCATION REQUIREMENTS APPLICABLE TO ALL ASSISTANCE PROGRAMS

§42.5 requires the submission of an assurance in accordance with Title VI, Title VIII and E.O. 11063 that the state agency will carry out the policies and practices of this Part in a manner that insures that acquisition and relocation processes do not result in different or separate treatment based on race, color, religion, sex or national origin. This section also requires an assurance from state agencies that within a reasonable time prior to displacement comparable replacement dwellings will be available, that the range of choices will not vary on a prohibited basis, and that relocation services will assure maximum choice in housing that will promote lessening of racial and ethnic concentrations and facilitate desegregation and racially inclusive patterns of occupancy and use of public or private facilities. State agencies are further required to inform affected persons of their rights under Title VI and Title VIII.

§42.211 provides that a state agency must carry out a relocation assistance program which satisfies requirements of Title VI, Title VIII and E.O. 11063 and which insures that the relocation process does not result in different or separate treatment. The section also states that no referrals of listings shall be made to a broker who has not certified compliance with applicable civil rights laws.

§42.413 requires affirmative action for low income and minority persons. The section states that the state agency shall not require a minority or low-income person to move from his dwelling, unless he has been given opportunities to relocate to a comparable replacement dwelling that is not located in an area of low-income and/or minority concentration, if such opportunities are available.

In relocation activities, the state agency shall provide additional assistance in order to assure that full choice and real opportunities exist for low-income and minority families and individuals to select replacement dwellings from the total housing market, thereby facilitating desegregation and racially and economically inclusive patterns of occupancy. All low-income and minority persons must be informed through personal interview of housing opportunities outside of low-income and minority neighborhoods, and of the full scope of additional assistance available, and be encouraged to take advantage of these opportunities. The state agency must provide, or secure through contract with fair housing or civil rights groups, additional assistance. This assistance includes, but not to be limited to:

Services necessary to familiarize low-income and minority persons with non-impacted neighborhoods including transportation, escort services to brokers or rental offices, and counseling, and

Services necessary to insure that in security replacement housing persons are not discriminated against by brokers, rental agents, or mortgagees on the basis of race, color, religion, creed, sex or national origin. These services can be provided by the State agency through a description in lay language (bilingual if appropriate) of varying types of discrimination and of the displaced person's rights to remedy under Title VIII of the Civil Rights Act of 1968; follow-up testers or auditors if discrimination is suspected, and assistance in filing for administrative and judicial relief if discrimination is alleged.

§42.225 requires the State Agency to maintain a separate relocation case file for each displacee which must provide minority group identification and where the displacee is a minority person an indication as to whether or not replacement and referral dwellings are located in an area of low-income and/or minority concentration. The section also requires notation of any referrals of discrimination complaints.

§42.609 requires that last resort replacement housing be provided in compliance with Title VI, Title VIII and E.O. 11063. In addition for last resort housing projects of 26 or more units the regulation provides for the establishment of an advisory committee which must include as members, groups knowledgeable about housing discrimination (§42.607(c))

Department regulations for programs assisted under the United States Housing Act of 1937 indicate the application of the Uniform Act to displacement by PHAs and state agencies (§841.207, Public Housing; §880.209, Section 8 New Construction; §881.209, Section 8 Substantial Rehabilitation; §883.311, Section 8 State

Housing Agency New Construction and Substantial Rehabilitation). §§880.209, 881.209 and 883.209 also require, with respect to residential tenants who will be permanently or temporarily displaced by a PHA or State Agency but who are not subject to requirements of the Uniform Act, that the PHA or state agency must assure that within a reasonable time prior to displacement such displacees will be provided reasonable choice of opportunities to move to a suitable dwelling unit from among available units so located as to promote choice outside areas of low income and minority concentrations. A provision in the Section 8 Moderate Rehabilitation regulation designed to make PHAs aware of the policy that steps be taken to ensure that the limited relocation necessary in assisted projects did not result in different or separate treatment based on race, color, religion, sex or national origin (§882.407(d)(1)) was removed by Interim Rule.

PART 868 -- COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM; LOW INCOME HOUSING

§869.9 requires public housing authorities to comply with Title VI, Title VII and E.O. 11603 as a condition of receipt of HUD allocations of modernization funds. §868.5(1)(5) also requires civil rights compliance certifications in all final applications.

Question 9. On page 43 of your report, you explained that steps are being taken to integrate the non-discrimination requirements into the monitoring procedures of individual program offices. Could you describe more specifically how these requirements will be included in the CDBG, UDAG, section 202, section 8, HODAG and rental rehabilitation programs?

Answer. Please understand the point that I was making in the report. We have long had nondiscrimination requirements in the program regulations for every program, and there also have been monitoring procedures for most programs that are directed specifically to nondiscrimination of equal opportunity reviews. For example, in the Community Development Block Grant program, the proposed rule that we published in October 1984 sets out proposed performance review in employment and in the provision of services; these proposed criteria would be essentially, a codification of monitoring standards that are now used. Similarly, in the UDAG program there are review standards for determining whether an applicant city has met the statutory requirement of having "demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups." These particular monitoring procedures are conducted by Field staff of the Office of Fair Housing and Equal Opportunity. We have no plans at this time to shift these functions to other staffs.

The particular point I was making concerned the addition of a civil rights dimension to the monitoring responsibilities of the program staff. The step that has been taken in this regard concerns Field Office monitoring and occupany audits of public housing authorities. This step involved an extensive revision to a pair of important program Handbooks. We have not yet completed similar changes in other programs, but we are actively exploring the opportunities for incorporating similar requirements in the monitoring procedures of the Office of Housing with respect to insured and assisted housing. We also expect to explore the feasibility of a greater responsibility of the program office staff in connection with Affirmative Fair Housing Marketing Plans and the Equal Housing Opportunity Plan required in connection with the Section 8 Existing Housing Certificate program. Both these are now responsibilities of the Office of Fair Housing and Equal Opportunity, but they seem sufficiently central to the objectives and operation of the programs to merit being brought within the specific program perspectives of the program staffs. As I said, however these changes are still at the development stage.

Question 10. In your description of the Huntington, New York, situation you indicate that the community "suffers from an acute shortage of rent-assisted housing and the waiting list is almost exclusively non-white." Given this severe problem and the failure of Huntington for over 5 years to identify realistic HAP goals for assist

ed housing units, the failure to amend zoning requirements to permit construction of any assisted units, and in one case its insistence on imposing a 5 percent quota for minority occupancy in an assisted housing project, how can HUD continue year after year to provide CDBG funds to a community that shows no evidence of willingness to meet the needs of low-income residents and clearly has not fulfilled a condition of the CDBG program to "affirmatively further fair housing."

Answer. As described in Appendix 5–E and in my answer to a previous question, we believe that the Department is appropriately handling the provision of low- and moderate-income housing for Huntington. The identification of realistic HAP goals had been necessarily qualified by the availability of funds for new construction. The Department refused to permit the imposition of the five percent quota of minority occupancy in assisted housing. The current application for public housing does evidence willingness by the Town to meet the housing needs of its lower income residents, and I suggest that the other actions by the Town apart from new construction that are referred to in my previous answer demonstrate that willingness as well. As for the program requirement that grantees "affirmatively further fair housing," the absence of concrete performance standards in this area has been a serious deficiency since the inception of the block grant program. With the proposal of a regulatory provision on this point in October, 1984, we are reaching a reliable means for measuring this important component of the program.

Question 11. One of several civil rights requirements of the CDBG program is that recipient communities including small cities, certify they are affirmatively furthering fair housing. Failure to comply with this provision could result in reducing or terminating CDBG funds.

What regulations exist to provide guidance to communities as to activities that would fulfill this requirement?

Answer. On October 31, 1984, the Department published a proposed general revision of the Community Development Block Grant regulations. Included in this proposed rule, in the subpart dealing with performance reviews, was a description of the criteria by which HUD would review the grantee's performance in compliance with its certification. The proposed rule provided:

Fair Housing Review criteria. Section 570.601(b) sets forth the general requirements for Title VII of the Civil Rights Act of 1968 and the grantee's certification that it will affirmatively further fair housing. In reviewing a recipient's actions in carrying out its housing and community development activities in a manner to affirmatively further fair housing in the private and public housing sectors, absent independent evidence to the contrary, the Department will consider that a recipient has taken such actions in accordance with its certification if the recipient meets the following review criteria:

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice within its community. The term "fair housing choice" means the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, creed, sex or national origin. This analysis shall include, at minimum, a review for impediments to fair housing choice in the following areas:

(i) The sale of rental of dwellings;

(ii) The provision of housing brokerage services;

(iii) The provision of financing assistance for dwellings;

(iv) Public policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of publicly assisted housing; and

(v) The administrative policies concerning community developing and housing activities, such as urban homesteading, multifamily rehabilitation, and activities causing displacement, which affect opportunities of minority households to select housing inside or outside areas of minority concentration;

(2) Based upon the conclusions of the analysis in paragraph (c)(1) of this section, the recipient has carried out appropriate official actions relating to housing and community development to remedy or ameliorate those conditions limiting fair housing choice in the recipient's community. Such actions may include:

(i) Enactment and enforcement of an ordinance providing for fair housing consistent with the federal fair housing law;

(ii) Support of the administration and enforcement of state fair housing laws providing for fair housing consistent with the federal fair housing law;

(iii) Participation in voluntary partnerships developed with public and private organizations to promote the achievement of the goal of fair housing choice (including implementation of a locally-developed and HUD-approved New Horizons comprehensive fair housing plan); or

(iv) Other actions determined to be appropriate based upon the conclusions of the analysis.

I expect that the final rule will be published in early 1986, and that it will contain this provision in substantially this form.