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HARRY B. HURD (1904-1943)
ALEXANDER F. REICHMANN (1905-1946)
ANDREW J. DALLSTREAM (1927-1962)

CENTRAL 6-4500
AREA CODE 312
CABLE ADDRESS
DALLSCHIFF

DAVID W. KAHANE
VICTOR C. MILLIKEN
OSCAR D. STERN
OF COUNSEL

June 2, 1969

Honorable Richard B. Austin
United States District Judge
United States Courthouse
219 South Dearborn Street
Chicago, Illinois

Re: Gautreaux v. CHA, 66 C 1459

Dear Judge Austin:

I enclose one copy of a proposed judgment order modified, as described below, largely to take account of comments made by HUD and CHA at our conference on May 16, 1969. The only extant copies of the modified order and of this letter are:

The original, to you.
One copy, to Miss Kula.
One copy, to Mr. Schmetterer.
One copy, for my files.

The modifications include the following:

1. We have adopted HUD's suggestion that construction starts rather than date of occupancy be used as the event to be measured. (III-B, III-C.)

June 2, 1969

2. "Non-White Area" and "White Area" have been changed to "Limited Public Housing Area" and "General Public Housing Area," respectively. (I-D.)

3. The 24 Dwelling Unit limitation has been changed to a limitation expressed in numbers of persons, in accordance with HUD's suggestion. (IV-A.)

4. The three story limitation has been made in-applicable to families without children, as HUD suggested. (IV-C.)

5. Regular semi-annual rather than quarterly reports have been provided for, as suggested by HUD, and fewer statements are required to be filed with the Court. (VI.)

Since this may be our final written communication to you before the signing of a judgment order, I would like to make a few summing-up comments.

1. Neighborhood Definition. It is unsupportable to give greater weight to the nomenclature of your order than to where public housing is in fact located, yet Professor Wade's comments emphasize the label by which a census tract is described in your order and ignore the impact of new public housing (and erroneously assume a complete prohibition against new public housing in non-white areas as well). The "protection" the order gives to neighborhoods having a substantial non-white population (by limiting the amount of additional public housing in them) will be a stabilizing factor; experience shows that the location of large amounts of public housing in or at the edge of neighborhoods having a substantial non-white population will have the opposite effect. Against the possibility that nomenclature may be significant, we have adopted racially neutral designations for census tracts.

2. Location of Dwelling Units. You have already said you favor a specific directive (a numerical requirement

June 2, 1969

of imbalance in favor of white neighborhoods) in your order. We will therefore not repeat the arguments in support of this view except to note that absent such a specific directive it is perfectly clear that a variety of pressures, including political, social and fiscal, would push CHA along the familiar path of least resistance - i.e., locating large amounts of new public housing in or at the edges of the non-white or changing neighborhoods. Such an approach would be bitterly contested with the result that each new CHA proposal would involve a major hearing as to whether CHA should pursue a different course; and your courtroom would become a public housing planning court for Chicago.

3. Leasing. I did not quite get a chance to conclude my remarks on leased dwelling units on May 16. Left unmade were two points:

(1) If leasing becomes an important factor in supplying family public housing, as CHA hopes, it would leave an unjustifiable gap in the remedial arrangement to exclude such housing from the order - as well as provide an incentive to divert resources from new housing in white neighborhoods to leased housing in non-white neighborhoods. (Suppose, for example, CHA leased a substantial number of units in a new development; or that a CHA development were built on long-term leasehold property rather than on property owned outright. In either case the dwelling units are "leased" but should clearly be subject to the full coverage of the order.)

(2) If, as CHA fears, leased housing for families turns out to be more available in non-white than in white neighborhoods, the proposed judgment order accommodates to this possibility by providing (III-D) that leased dwelling units in non-white neighborhoods may be matched with constructed or purchased dwelling units in white neighborhoods.

June 2, 1969

4. Good Faith. CHA's good or bad faith is not the issue. The issue is what constitutes an effective remedy of "the past effects of CHA's unconstitutional site selection and tenant assignment procedures." (Your opinion of 2/10/69, p. 19.) Judge Hoffman observed in the School District 151 case that, "the asserted or actual existence of ... problems does not lessen the constitutional obligation of school authorities ... to disestablish segregation of their systems." United States v. School District 151 et al, ____ F.Supp. ____ (C.A. No. 68C755, N.D.Ill., decided May 15, 1969), slip. op. p. 84. He also stated:

"'...[G]ood faith does not excuse a [school] board's non-compliance with its affirmative duty to liquidate the dual system. Good faith is relevant only as a necessary ingredient of an acceptable desegregation plan.' Henry v. Clarksdale School District, [____ F.2d. ____ (No. 23255, C.A. 5, decided March 6, 1969)] slip. op. at p. 2." Id., p. 90.

These comments are also relevant to the choice of the event to be measured by the site location formula. An acceptable desegregation plan must require that dwelling units be provided in white neighborhoods in fact, not merely that land be acquired there.

5. Fiscal Considerations. In the School District 151 case Judge Hoffman observed that, although the financial resources of the defendant school district should be considered as clearly relevant to the type of desegregation to be required, constitutional rights could not be made contingent upon financial capabilities. He said:

"The constitutional obligation of the defendants to operate a public school system that does not contravene the requirements of the Fourteenth Amendment may not be made contingent upon the financial capabilities of the School District.

June 2, 1969

Constitutional rights may not be denied or abridged because their implementation will require the expenditure of public funds. Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956) ... [P]ublic officials must '... exercise the power that is theirs ... to raise funds adequate ... to maintain a public school system without racial discrimination ...' Griffin v. County School Board, 377 U.S. 218, 233 (1964)." United States v. School District 151 of Cook County, Illinois, et al, supra, p. 85.

Judge Hoffman also observed, "Busing costs money, to be sure, but the hidden costs of discrimination run much higher." Id., p. 6.

It is also appropriate to observe that since HUD supplied the money with which CHA's segregated housing system was created, HUD should have some obligation to supply the money necessary to remedy that segregation effectively. Since, for the reasons given by Mr. Schmetterer, HUD is understandably unwilling to state in advance what amounts of money might be made available in the special circumstances of this case, we will never know whether there is a money problem unless the Court specifically states its desegregation criteria without regard to monetary considerations.

* * * *

We are extremely skeptical of CHA's concern that it may be unable to find white areas of the City in which to locate desired amounts of public housing. But suppose (though we will never know unless you enter a very specific

June 2, 1969

order) it turns out to be truly impossible - for reasons satisfactory to you - to provide the desired amounts of public housing in white neighborhoods of the City. What then? Will the answer be to permit the pattern of the past to be resumed so that most or all future public housing in Chicago is located in the non-white neighborhoods of the central city which are already overcrowded, principally with low-income persons?

There can be only one answer. Anthony Downs points out that "much central-city slum housing is inadequate precisely because of its sardine-can density," and refers to the "inescapability of replacing many inadequate central-city housing units with new units built on vacant land in surrounding suburbs." (An Agenda for the Nation, the Brookings Institution, 1968, pp. 145-46.) He also notes that the "key objective" in future public housing programs must be,

"not to overwhelm the local neighborhood or dominate the local public school with residents of public housing, but rather to have those residents form a relatively small part of both overall and school populations." (Id., p. 173.)

The Kerner Report states:

"Federal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation. If this is not done, those programs will continue to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them. This can only continue to compound the conditions of failure and hopelessness which

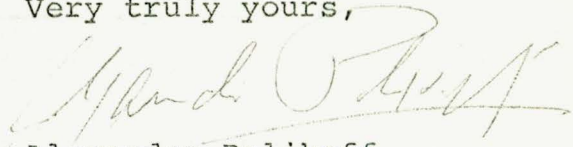
Honorable Richard B. Austin
Page Seven

June 2, 1969

lead to crime, civil disorder and social disorganization." (Report of the National Advisory Commission on Civil Disorders, Bantam edition, p. 474.)

If these views are correct, CHA's speculative forebodings about its ability to supply large additional amounts of public housing within the City in conformity with your order (i.e., a specific preponderance in white neighborhoods) miss the mark. The housing must be supplied within the City in that way or else it must be supplied outside the City in that way. The one thing your order cannot permit CHA to do is "continue to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them."

Very truly yours,



Alexander Polikoff

ALP:mat

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES,)
DOREATHA R. CRENCRAW, EVA RODGERS,)
JAMES RODGERS, ROBERT M. FAIRFAX)
and JIMMIE JONES,)

Plaintiffs,)

v.)

THE CHICAGO HOUSING AUTHORITY, a)
corporation, and C. E. HUMPHREY,)
Executive Director,)

Defendants.)

Civil Action

No. 66 C 1459

JUDGMENT ORDER

This matter coming on to be heard pursuant to this Court's Memorandum Opinion of February 10, 1969, and Orders entered on such date denying defendants' motions for summary judgment, denying plaintiffs' motion for summary judgment as to Count II of the Complaint, and granting plaintiffs' motion for summary judgment as to Count I of the Complaint, and

The Court having conferred with counsel for the parties and having determined that the several provisions of this judgment order are necessary to prohibit the future use and to remedy the past effects of the defendant Chicago Housing Authority's unconstitutional site selection and tenant assignment procedures, to the end that plaintiffs and the class of persons represented by them, Negro tenants of and applicants for public housing in Chicago, shall have the full equitable relief to which they are entitled,

It is hereby ordered:

I. For purposes of this judgment order,

A. "CHA" shall mean the defendant, Chicago Housing Authority.

- B. "Dwelling Unit" shall mean an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA, whether in a structure owned in whole or in part by CHA (whether or not newly constructed) or to be otherwise made available for occupancy by or through CHA to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.
- C. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by CHA from any person, firm or corporation.
- D. "Limited Public Housing Area" shall mean that part of the County of Cook in the State of Illinois which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the County of Cook in the State of Illinois. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this subsection D, results of the 1970 and each subsequent census taken by the United States Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; provided, that any party may, on motion, offer evidence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

For the period from the date hereof until the official publication of such 1970 census results, the census tracts in the City of Chicago listed on Exhibit A, attached hereto, shall be presumed to have 30% or more non-white population; and, subject to evidence offered on motion by either party, the non-white population of census tracts in the County of Cook outside of the City of Chicago shall be presumed to be as stated in the 1960 census of the United States Bureau of the Census.

- E. "Public Housing Project" shall mean any thirteen or more Dwelling Units which are located (1) in the same structure, (2) on the same lot or parcel of real estate, or (3) on two or more lots or parcels of real estate which are contiguous to one another, or are separated only by streets, alleys, bodies of water, railroad tracks or the like.

II. Following the date of this judgment order CHA shall not authorize, approve or implement any plan for Dwelling Units, nor shall CHA seek any approval or request or accept any assistance from any government agency with respect thereto (including without limitation approval of the acquisition of any interest in real estate), unless such plan affirmatively requires that,

- A. All Dwelling Units provided for in such plan shall be located in conformity with the provisions of Article III hereof, and
- B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Article III hereof.

III. Following the date of this judgment order CHA shall provide Dwelling Units as follows, and not otherwise:

- A. The 1330 Dwelling Units provided for by pending CHA projects Ill. 2-27, 2-32, 2-33, 2-51, 2-64, 2-69 and 2-74 may be made available for occupancy without restriction imposed by this order.

- B. CHA shall not commence or cause to be commenced the construction of any Dwelling Units, other than said 1330 Dwelling Units referred to in Subsection A of this Article III, until CHA shall have commenced or caused to be commenced, and shall be continuing or shall have completed, the construction of not less than 1330 Dwelling Units located in the General Public Housing Area of the City of Chicago.
- C. Subject to the provisions of Subsection E of this Article III, CHA shall not commence or cause to be commenced the construction of any Dwelling Units in any Limited Public Housing Area, other than said 1330 Dwelling Units referred to in Subsection A of this Article III, unless as of the time immediately following such commencement of construction at least 75% of the Dwelling Units on which CHA shall have commenced or caused to have commenced construction, and shall have continued or completed construction, since the commencement of construction of the last of said 1330 Dwelling Units shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area of the City of Chicago.
- D. Subject to the provisions of subsection E of this Article III, no Leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area of the City of Chicago (in addition to Leased Dwelling Units in such Area which are already occupied) unless, immediately following such occupancy, at least 75% of the Leased Dwelling Units then occupied are located in the General Public Housing Area of the City of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area of the City of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling Units have been occupied, or are under construction which is continuing, in the General Public Housing Area of the City of Chicago in excess of the 75% minimum requirement of subsection C of Article III hereof.

- E. Not more than 33-1/3% of the Dwelling Units required by subsection C of this Article III to be located in the General Public Housing Area of the City of Chicago, and not more than 33-1/3% of the Leased Dwelling Units required by subsection D of this Article III to be located in the General Public Housing Area of the City of Chicago, may, at the option of CHA, be planned for and located in the General Public Housing Area of the County of Cook in the State of Illinois, outside of the City of Chicago, provided that (whether or not constructed by CHA) the same are made available for occupancy by CHA to, and are occupied by, residents of the City of Chicago who have applied for housing to CHA, and provided further that all such Dwelling Units comply with the provisions of Article IV of this order.

IV. Following the date of this judgment order CHA shall not concentrate large numbers of Dwelling Units in or near a single location. Without limiting the foregoing, unless part of a development specifically designed to assist in achieving the purposes hereof as to which the Court by order shall have given its approval,

- A. No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons.
- B. No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA, in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract; and
- C. No Dwelling Units shall be provided above the third story in any structure except for families without children and except Leased Dwelling Units in a structure in which the number of Dwelling

Units aggregates no more than 20% of the total number of apartments in such structure.

- V. Within 30 days following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs a tenant assignment plan. Such plan shall include, but need not be limited to, provisions having the following purpose and effect:
- A. CHA's tenant assignment policy, adopted by CHA Board Resolution No. 68-CHA-232, a copy of which is attached hereto as Exhibit B, shall be modified to include all Leased Dwelling Units as a single "location" for the purposes thereof and such policy, as so modified, shall be applicable in all instances not otherwise provided for in such tenant assignment plan.
 - B. New registrations on CHA's list of persons desiring housing (the "waiting list") shall be temporarily ended; a determination shall be made promptly as to which registrants remain eligible for and still desire public housing; intensive publicity shall then be employed in such manner as effectively to inform low-income families throughout the City of Chicago, including present CHA tenants, that substantial numbers of Dwelling Units will be made available in the General Public Housing Area of the City of Chicago pursuant to the provisions of this judgment order; and thereafter the "waiting list" shall be reopened to new registrants, including present CHA tenants who wish to apply for Dwelling Units in the General Public Housing Area.
 - C. Not more than 50% of the Dwelling Units in all Public Housing Projects shall be made available as to initial occupancy to eligible neighborhood residents, the remaining Dwelling Units as to initial occupancy, and all Dwelling Units following initial occupancy, to be made available for occupancy in accordance with subsection A of this Article V.

- D. Vacancies in CHA's Trumbull, Lathrop, Lawndale, and Bridgeport projects shall be filled in accordance with subsection A of this Article V, except that such tenant assignment plan may contain provisions designed to assure that such projects do not become racially segregated.
- E. Suitably detailed information shall be regularly filed with the Court and served upon counsel for the plaintiffs showing CHA's compliance with the provisions of this Article V and such tenant assignment plan.

Following the filing and service of such tenant assignment plan the Court will enter such further order as it deems appropriate.

VI. Following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs, the Civil Rights Division of the United States Department of Justice, and the Regional Administrator of the Department of Housing and Urban Development, the following:

- A. A statement of the following information respecting each proposal of a location for one or more Dwelling Units, and respecting each modification or supplement thereof, such statement to be filed and served not less than 45 days before any such proposal, and before any such modification or supplement, is first submitted to the Board of Commissioners of CHA, or to any other government agency or official, for consideration or action:

- (1) the legal description, *or (where available) or where not available, other sufficient description*
(2) the street address;
(3) ~~the acreage;~~
(4) the area location (whether within the Limited or General Public Housing Area);
(5) the census tract number;
(6) the white and non-white population of such census tract;
(7) the aggregate number of apartments and single family residences in such census tract;

- (8) the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families directly or indirectly by or through CHA in such census tract;
- (9) the total number of Dwelling Units proposed to be provided at such location;
- (10) the number of structures, and the number of Dwelling Units in each, in which such Dwelling Units are proposed to be provided; and
- (11) such additional data as will show that such proposed Dwelling Units will be made available for occupancy in conformity with the provisions of Articles III and IV hereof.

B. Statements covering the periods from the date hereof until December 31, 1969, and from the date hereof until the end of each calendar semi-annual period thereafter, containing such data as will show that (1) all plans for Dwelling Units during the period covered by such statements have been in conformity with the provisions of Article II hereof, and (2) all Dwelling Units provided during the period covered by such statements have been in conformity with the provisions of Articles III and IV hereof, such statements to be filed and served not later than twenty days after the end of each calendar semi-annual period beginning with such period ended December 31, 1969.

In addition, CHA shall serve upon counsel for the plaintiffs the following:

C. Statements with respect to each location included in a statement filed and served pursuant to subsection A of this Article VI, and covering the period up to initial occupancy of all Dwelling Units at such location, describing (1) any official action proposed to be taken with respect thereto by CHA, such statements to be served not less than 45 days before such action is proposed to be taken, and (2) any official action of which CHA has knowledge taken with respect thereto

by any other government agency or official, such statements to be served not later than the third business day following CHA's acquisition of such knowledge.

- D. A copy of each written application by CHA to any government agency or official for any form of assistance, participation, approval or other official action respecting Dwelling Units to be provided at any location, covering the period up to initial occupancy of such Dwelling Units, including without limitation requests to the Department of Housing and Urban Development for "program reservations," such copies to be served not later than the date upon which such applications are made.
- E. A copy of each written response to the applications referred to in subsection D of this Article VI, and a copy of any agreements entered into and notice of any government action taken pursuant to such applications, such copies and notices to be served not later than the third business day after which such responses are received, such agreements are entered into, or CHA is advised of such action, as the case may be.

VII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures. Without limiting the foregoing,

- A. CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development; and
- B. CHA is hereby permanently enjoined from invidious discrimination on the basis of race in the

conduct or operation of its public housing system.

- VIII. This order shall be binding upon CHA, its officers, agents, servants, employees, attorneys, and their successors, and upon those persons, including the members of the City Council of the City of Chicago, in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
- IX. Jurisdiction of this cause is retained.
- X. The costs of this action shall be taxed against CHA.

Enter:

Judge, United States District Court

DATED: June _____, 1969

CENSUS TRACT NUMBERS

114 through 116	460 through 467	664
120 through 137	468	666 through 667
280 through 282	469-Z	675 through 678
340 through 347	470	681-Z through 683-Z
348-Z	487	685 through 686
349-Z	519-Z	687-Z
350 through 352	520 through 521	688
353-Z	524	690 through 691
354 through 355	527-Z	695
357 through 362	532-Z	697
363-Z	534-Z	711
364 through 373	539-Z	717-Z
375-Z through 378-Z	541 through 553	719-Z
379 through 383	554-Z	720-Z
384-Z	556 through 562	723
389-Z	564-Z	803 through 805
390-Z	567-Z	852
391 through 392	569-Z	855
395	574 through 610	858 through 859
399-Z	613-Z	861 through 862
401-Z	614 through 619	867-Z
403	620-Z	868 through 895
410-Z	621-Z	897-Z
412 through 420	623 through 641	898 through 900
428 through 429	642-A	903
431-Z	642-B	905 through 911
432	643 through 650	912-A through 912-D
434-Z	652	922
440 through 441	653-Z	923-A
442-Z	655	923-B
444 through 449	656-Z	924 through 927
450-A	657	932
450-B	658-Z	934 through 935
451 through 457	659 through 662	

TENANT SELECTION AND ASSIGNMENT PLAN

Each applicant shall be assigned his appropriate place on a community wide basis in sequence based upon date and time his application is received, suitable type or size of unit, and factors affecting preference or priority established by the Local Authority's regulations. At a given time, the applicant first on the waiting list shall be offered a dwelling unit in accordance with the following plan:

1. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in three or more locations, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the second vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the third vacancy offered he shall be moved to last place on the eligible applicant list. When an offer of a suitable vacancy is made to an applicant, there must be a rejection of such offer before the applicant will be offered another location. Thus, the offering of a unit at the location with the second largest number of suitable vacancies will not be made until the applicant has first rejected the unit offered at the location with the largest number of vacancies. The offering of a unit at the location with the third largest number of suitable vacancies will not be made until the applicant has rejected the unit offered at the location with the second largest number of suitable vacancies.

EXHIBIT B

2. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in only two locations, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the second location. If the applicant rejects the second vacancy offered he shall be moved to last place on the eligible applicant list. When offers of suitable vacancies are made to applicants, there must be a rejection of the first offer before the applicant will be offered the second suitable vacancy.
3. If at the time the applicant comes to the top of the waiting list there is only one location at which a suitable vacancy exists, the applicant will be offered a unit at that location. If the applicant rejects the unit offered, he shall remain at the top of the waiting list until a second offer of a suitable vacancy can be made. Should the applicant reject the second offer of a suitable vacancy he shall be moved to last place on the eligible applicant list.

In carrying out the above plan, should the applicant be willing to accept the unit offered but be unable to move at the time of the offer and presents clear evidence of his inability to move to the Local Authority's satisfaction, refusal of the offer shall not count as one of the number of allowable refusals permitted the applicant before placing his name at the bottom of the eligible applicant list.

In carrying out the above plan, should the applicant present to the satisfaction of the Local Authority clear evidence that acceptance of a given offer of a suitable vacancy will result in undue hardship or handicap not related to considerations of race, color, or national origin, such as inaccessibility to source of employment, children's day care and the like, refusal of such an offer shall not be counted as one of the number of allowable refusals permitted an applicant before placing his name at the bottom of the eligible list.