Pleadings Book

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 71-1732, 33, 34

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

v.

GEORGE W. ROMNEY,

Defendant,

and

CITY OF CHICAGO, CENTRAL ADVISORY COUNCIL, and CHICAGO HOUSING AUTHORITY,

Intervening Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Illinois

U.S.C.A. — 7th Circuit
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OBJECTIONS OF PLAINTIFFS TO MOTION OF INTERVENOR-APPELLANTS TO SUSPEND AND VACATE AN ORDER OF THE DISTRICT COURT

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INTRODUCTION

The motion of the intervenor-appellants (hereinafter, collectively, the "City Agencies") in effect seeks reversal of an order of the District Court without complying with the rules governing appeals. Among other resulting anomalies,

this Court has not been provided with a statement of facts such as is required in a brief by Appellate Rule 28(a). The "Summary of Relevant Facts" in the Suggestions supporting the motion (pp. 3-4) is but two paragraphs long.

In these circumstances we will first supply the Court with a statement of facts and then respond to the three arguments made in the Suggestions.

STATEMENT OF FACTS

This ancillary proceeding commenced on September 17, 1971 with the filing of a motion by plaintiffs under Federal Rule 62(c) for an injunction pending appeal. Issuance of the mandate pursuant to this Court's opinion of September 10, 1971 in the principal case has been stayed until November 15. Accordingly, the appeal in the principal case is technically still pending. The Rule 62(c) motion sought to stay a threatened unconditional release of funds by the Department of Housing and Urban Development (hereinafter "HUD") for the second year of Chicago's "model cities program" under circumstances now to be described.

1. Model Cities Statutory Provisions

The so-called model cities programs of HUD are authorized by Subchapter I ("Comprehensive City Demonstration Programs") of the Demonstration Cities and Metropolitan Development Act of 1966. 42 U.S.C. §§3301-3313. The statute contains a

Congressional finding that, among other things, "the concentration of persons of low income in older urban areas, and the unmet needs for additional housing ... have resulted in a marked deterioration in the quality of our environment and the lives of large numbers of our people ..." 42 U.S.C. §3301; and that federal assistance, in addition to that already authorized under other programs, is essential to enable cities to, among other things, "increase their supply of adequate housing for low- and moderate-income people ..." Ibid. One of the stated purposes of the statute is to enable cities "to expand housing." Ibid.

Consistent with these findings and this statement of purpose, the statute provides that a local model cities program is eligible for assistance only if the program will contribute, among other things, to a "substantial increase in the supply of standard housing of low and moderate cost [and] maximum opportunities in the choice of housing accommodations for all citizens of all income levels ..." 42 U.S.C. §3303(a)(3), and only if "there exists a relocation plan meeting the requirements of the regulation referred to in section 3307 of this title." 42 U.S.C. §3303(a)(4). Section 3307 provides that a model cities relocation plan shall be consistent with regulations prescribed by the Secretary of HUD to assure that relocation standards equivalent to those prescribed for urban renewal projects are met. 42 U.S.C. §3307(a).

2. Model Cities Regulations

Pursuant to the requirements of 42 U.S.C. §§3303(a)(4) and 3307(a), HUD has promulgated a regulation governing model cities relocation plans. The regulation is entitled "Policies and Requirements for Model Cities Relocation, CDA Letter No. 5 (Revised)," and a copy is attached to these Objections for the Court's convenience. Among other relocation plan requirements of the regulation is the following:

> "Make maximum use, as a rehousing resource, of housing covered by Title VI of the Civil Rights Act of 1964 and Executive Order 11063; for example, federally assisted low-rent public housing ..." Page 3, Appendix A, CDA Letter No. 5.

Other "Policies and Requirements" include the following:

> "The Program must be directed towards providing decent, safe and sanitary low- and moderate-income housing both within and without the model neighborhood." (p.3.)

> "There is no adequate substitute for the public responsibility to plan for, encourage and assist the construction of the necessary volume of low- and moderate-income housing." (p.2.)

The relocation plan is described as "an essential component" of the model cities plan. (p.3.)*

*As noted above, model cities relocation standards must be "equivalent" to relocation standards prescribed for urban renewal projects. 42 U.S.C. §3307(a). HUD's regulations setting forth relocation requirements for urban renewal projects include Regional Circular No. 907 - Urban Renewal Relocation. Among other provisions this Circular states the following as a "Basic HUD Policy on Vacancies and Replacement Housing":

(continued on page 4)

3. The Chicago Model Cities Plan - First Year*

The inception of the Chicago Model Cities Plan is described in Coalition for United Community Action v. Romney, 316 F.Supp. 742, 744-45 (N.D. Ill. 1970), and the Court is respectfully referred to that description.

It was admitted in that case that the first year Chicago Model Cities Program "did not at the time of submission contain a full relocation plan which would meet the procedural and substantive requirements" contained in HUD relocation plan regulations. 316 F.Supp. at 748. However, because HUD regulations were "published and distributed much later than

(Footnote continued from p.3.)

> "[T]he relocation plan may be found approvable on the basis of locality programs which will restore the ... minimum 3 percent [vacancy] rate. This will obviously require provision of additional housing inside and outside the project area through rehabilitation of substandard vacant units or through new construction ... [L]ow rent public housing units programmed to meet relocation needs will be counted as units which fulfill this requirement." (p.11.)

The vacancy rate in Chicago is well below the minimum 3 percent rate. (Plaintiffs' Exhibit No. 2, pp. 5-6.)

*Model cities programs are designed to run for 5 years or periods. (Tr. 448.) The first year or period in Chicago ran from September 1969 to September 1970, but the period was later extended to June 15, 1971. (Tr. 449.) $50,000,000 in federal funding has been made available by HUD to the City of Chicago for the first model cities period. (Tr. 449.) The second model cities period runs from June 15, 1971 to December 31, 1971 (Tr. 451); the City is seeking $26,000,000 from HUD for this period. (Tr. 452.) The third period is expected to run from January 1, 1972 to December 31, 1972 (Tr. 526) and the City intends to apply for $38,000,000 for that period. (Tr. 527.) Funding by HUD is on a reimbursement basis, that is, the City expends funds and is then reimbursed by HUD. (Tr. 463-64, 517.)

expected and because HUD felt that the programs of the early cities would be unable to comply with its standard, interim procedures and requirements on relocation plans were developed. ..." 316 F.Supp. at 748-49. The District Court, finding that the interim procedures were not violative of plaintiffs' rights, and because HUD "has indicated that Chicago's full relocation plan is now being reviewed for formal submission to HUD," 316 F.Supp. at 750, declined to interfere with the first year program.*

4. The Chicago Model Cities Plan - Second Year

Recognizing that, consistent with the model cities statute and HUD regulations, the second year of the model cities program could not be funded without full compliance with relocation plan requirements, HUD and the City set to work to identify those requirements as applied to the Chicago

*The first year program was formally approved by HUD by the letter which is in evidence as Plaintiffs' Exhibit No. 1 in this case. That letter says, among other things,

> "The City has identified discrimination as a basic problem which must be dealt with if the Model Cities program is to succeed. The Department concurs and, in this connection, expects full compliance by the City and all its agencies with all HUD equal opportunity requirements, and with the provisions of any decree finally entered by the U. S. District Court in the case of Gautreaux v. Chicago Housing Authority (Civil Action No. 66 C 1459, U. S. District Court, Northern District of Illinois, Eastern Division)."

facts and to prepare an appropriate plan. In February, 1970, "HUD and the City of Chicago established a joint staff team to review the housing and relocation problems of low and moderate income families in Chicago." Letter dated November 19, 1970 from Don Morrow, Acting Regional Administrator [of HUD] to Honorable Richard J. Daley, Mayor of the City of Chicago, Plaintiffs' Exhibit No. 3, p.1. With respect to that review HUD said:

> "It was anticipated that HUD programs having housing and relocation requirements would not be refunded or newly funded until the City took the appropriate actions to meet the identified housing and relocation problems.
>
> Pursuant to this policy, HUD has held up the execution of the City's second year of Neighborhood Development Program since May 1, 1970. HUD has also postponed until December 1 action on the City's application for the second action year of the Model Cities Program." (Ibid.)*

The joint HUD-City team worked from February to November, 1970, having "frequent and lengthy meetings." (Ibid.) During the latter stages of the team's deliberations, the HUD Regional Administrator met with Mayor Daley to make certain that the

*The "Neighborhood Development Program" is a particular type of urban renewal program which is funded on an annual basis. The team report said that HUD "would not approve for execution any new programs which involved displacement or for which a relocation plan was required" until housing and relocation tests could be met. "The second year of the Neighborhood Development Program (urban renewal) and the second action year of the model cities program are the two primary HUD programs affected by this decision." Plaintiffs' Exhibit No. 2, p.4.

Mayor was aware of the probable team findings "and their consequences for the NDP and Model Cities Program." (Id. pp. 1-2.)

The team report was issued on November 19, 1970. Plaintiffs' Exhibit No. 2. According to HUD, "The thrust of the team report is quite clear. There is a serious need for the City to provide more housing units for low income families." Plaintiffs' Exhibit No. 3, p.2.

HUD then went on to particularize the need: "To maintain the July 1, 1969, housing supply level for low income families demolition must be reduced and new units provided for low income families in some combination of 6200 units." (Ibid.) HUD said, however, that in view of the magnitude of the housing deficiency and the late date at which the necessary information had become available, it would reduce its minimum requirement to 4300 units. (Id. p.3.) It added, "This reduction of the minimum requirement can only be justified if the plans to provide the lesser number of units are quite precise." (Ibid.)

HUD then concluded:

> "Therefore, the City must provide HUD with specific plans to overcome this deficit of 4300 units for low income families and take the necessary actions to implement these plans before HUD can approve the NDP [Neighborhood Development Program] and the Model Cities Program funds. And it should be clear that new units provided must be available for occupancy by June 30, 1971 or very shortly thereafter." (Ibid., emphasis added.)

Subsequently, on May 12, 1971, the Mayor, Charles R. Swibel (chairman of the Chicago Housing Authority), and George J. Vavoulis, the Regional Administrator of HUD, executed a so-called letter of intent setting forth programs "directed at providing 4300 units of low-income housing." Plaintiffs' Exhibit No. 4, p.15. Of the minimum requirement of 4300 units, 1700 units were to be provided through construction by or for the CHA. As to this, the May 12 letter said:

> "It is anticipated, however, that sites suitable for use by Chicago Housing Authority in accord with applicable law* will be identified and processed by the City to permit acquisition by CHA to commence in accordance with the following schedule:
>
> Sites for 500 units by June 15, 1971;
> Sites for 350 units by September 15, 1971;
> Sites for 850 units by December 15, 1971;
>
> To the extent that sites are necessary in addition to those already given preliminary approval by HUD ... such sites will be submitted to HUD for review and determination in an expeditious manner so as not to interfere with the foregoing timetable." (Id. pp. 6-7.)

In the letter of intent HUD agreed, among other things, as follows:

> "Upon acceptance of this letter of intent, HUD will approve an amendment to the first year Model Cities Program, extending through June 30, 1971.

*The phrase, "in accord with applicable law," means in compliance with Judge Austin's decision in the companion case. (Tr. 879.)

> HUD promptly will approve the second year Model Cities Program, said second year ending December 31, 1971, provided that the City by June 15, 1971, has approved sites for 500 units of public housing suitable for use by the Chicago Housing Authority and has made reasonable progress toward achieving the objectives set forth in Part I, above." (Id. p.14, emphasis added.)

The City failed to approve sites for such 500 units of public housing by the June 15 date specified in the letter of intent; instead, sites for only 242 such units were approved by that date. Plaintiffs' Exhibit No. 6, p.2. Nonetheless, HUD determined to approve the second year model cities program, but only conditionally. On June 21, 1971, the Regional Administrator, Mr. Vavoulis, wrote Mayor Daley as follows:

> "The Model Cities funds are being released on the condition that the City Council will continue to approve public housing sites 'suitable for use by Chicago Housing Authority in accord with applicable law' at each regular Council session and that the other City Agencies and Chicago Housing Authority will continue to show progress toward the housing goals set forth in the Letter of Intention." (Ibid., emphasis added.)

Further action on the public housing program as well as on other letter of intent undertakings was described in the letter as "steps toward providing relocation feasibility for the Model Cities and Neighborhood Development Programs." (Id. pp. 2-3.)*

*Mr. Robinson of HUD testified that the relocation plan for the second year model cities program was approved by HUD, but the "approval" to which he referred was Mr. Vavoulis' June 21 letter. (Tr. 255.)

The so-called Letter to Proceed which HUD provided to the City the next day (letter dated June 22, 1971, from Alan Goldfarb to Mayor Daley, City of Chicago Exhibit No. 3; the same document is attached to the Suggestions), reiterated the condition upon which the model cities funds were to be granted:

> "As recited in the Regional Administrator's letter to you dated June 21, 1971, the Model Cities Funds are being released on the condition that the City Council will continue to approve public housing sites 'suitable for use by Chicago Housing Authority in accord with applicable law' at each regular Council session and that other City Agencies and Chicago Housing Authority will continue to show progress toward meeting the housing goals set forth in the City's Letter of Intention dated May 12, 1971." (Id. p.1.)

Although HUD was thus prepared to release the second year model cities funds conditionally in June, in fact the funds were not released because the City Council did not formally approve the second year model cities contract until the middle of September, such approval being a requisite to release of funds. (Tr. 91-92; 97, 258.) The commencement of this proceeding precluded release of the funds at that point. (Tr. 93, 97, 98.) Accordingly, since the beginning of the second model cities period on June 15, 1971, the City has been supporting the program financially. (Tr. 518.)

On September 15, 1971, as required by the letter of intent, the City submitted a report to HUD. Plaintiffs' Exhibit No. 7.

Among other things, the report (and other evidence) disclosed that the condition upon which the funds were conditionally authorized to be released in June had not been met, for the City Council had met in regular session a number of times in June, July and September, 1971, without approving public housing sites. Plaintiffs' Exhibits Nos. 10-14, Tr. 370. Moreover, whereas the letter of intent called for sites for 850 units to be processed by the City so that CHA could commence acquisition of them by September 15, 1971, sites for only 288 units had been approved by the City Council by that date (Plaintiffs' Exhibit No. 8, p.1), and CHA had not yet commenced acquisition of any of them. (Tr. 669, 672-73.)

Many of the other City undertakings in the letter of intent were not complied with at all, or compliance was grossly deficient. (See Plaintiffs' Exhibit No. 8, HUD's Review of the City's Progress Under the Letter of Intent as of September 16, 1971. A review of some of the evidence on this subject in the closing argument of plaintiffs' counsel appears at Tr. 747-52.) The Assistant United States Attorney said:

> "We do not argue nor do we contend in this matter that the city's progress under its letter of intent has met up to full expectations, nor do we contend that there was substantial progress, but we do indicate that there was some progress." (Tr. 799.)*

Following receipt of the City's September 15 report HUD

*The District Judge observed, "That is very wise, to make that admission in view of the evidence in the case." (Tr. 799.)

reviewed the situation. (Tr. 83-84.) Then, on September 20, three days after this proceeding began, Mr. Vavoulis met with Mayor Daley. (Tr. 82.) At the meeting Mr. Vavoulis asked the Mayor for additional information concerning the City's performance and plans with respect to the letter of intent (Tr. 110-111), not including, however, any information with respect to further action on public housing sites. (Tr. 112.)* The Administrator also told the Mayor that until he was provided the information, he

> "was in no position to make an administrative judgment concerning the release of funds ..." (Tr. 110.)

The Mayor agreed to provide the information. (Tr. 110-111.)

Notwithstanding his statement that he was "in no position to make an administrative judgment concerning the release of funds," Mr. Vavoulis testified that he had decided that when the appropriate documents were approved by the City Council, signed and delivered to him, he would release all the model cities

*Mr. Vavoulis testified that he had had no conversations with any city official respecting the City Council's failure to approve sites for 850 units by September 15 (Tr. 82-83), that he had not discussed that question "with anybody" (Tr. 98), that he had received no communications from the City as to when such approval might be expected (Tr. 83), and that he had not sought to obtain that information. (Tr. 84.) He also testified that he did not discuss with the Mayor what effect withholding model cities funds might have on the City Council (Tr. 214) or whether the Mayor was in a position to affect the Council on the question of approving public housing sites. (Tr. 215.) He said, "I just didn't," when asked why he did not discuss these questions. (Tr. 214, 215.)

funds. (Tr. 211.) He said that this decision was based on a review of the situation as of September 15 (Tr. 97), but that public announcement of it was precluded by the commencement of the proceedings below. (Tr. 98.) Since these proceedings commenced on September 17, it appears that Mr. Vavoulis made his decision sometime between September 15 and September 17, that is, before he told Mayor Daley on September 20 that he was in no position to make an administrative judgment concerning the release of funds. In making his decision Mr. Vavoulis did not consider whether the release of funds should be conditional. He testified, "All I knew is that I was going to release the money." (Tr. 217.)

* * *

Following a hearing which lasted four days the District Court entered an order pursuant to Rule 62(c) which stayed the release of second period model cities funds pending termination of the appeal in the principal case, but authorized their release prior to that time if a specified condition (approval of sites for 700 new CHA housing units) were met. The City Agencies, but to date not HUD, have appealed from that order. After filing their notices of appeal, the City Agencies moved to suspend and vacate the District Court's Rule 62(c) order. These objections to that motion are filed pursuant to leave granted by this Court by order entered on October 13, 1971.

ARGUMENT

Three arguments are made in the Suggestions supporting the motion to suspend and vacate. It will be conducive to clarity to respond to these in the reverse order in which they appear there.

I. HUD's Proposed Unconditional Release of Model Cities Funds was Properly Before the District Court (Response to Part III of Suggestions, pp. 9-10.)

The City Agencies argue that the model cities program is "unrelated" to the issues in the two Gautreaux cases (Suggestions, p.9), and that the only "connection" of model cities funds and programs with either Gautreaux case is that HUD happens to administer both public housing and model cities programs. (Suggestions, p.10.) Therefore, it is said, HUD's proposed unconditional release of second year model cities funds was not properly before the District Court for the purpose of granting interim or permanent relief." (Id. p.9.)

The factual assertion in the argument is of course incorrect. We have already seen how public housing and model cities programs are "related" and "connected" by the language of the model cities statute itself and through relocation plan requirements set forth both in the statute and HUD regulations. (See sections 1 and 2 of the Statement of Facts, supra.) It bears repeating in this context that HUD's model cities regulation says that making "maximum use ... [of] federally

assisted low-rent public housing" is one of HUD's "requirements." (CDA Letter No. 5, Appendix A, pp. 2-3.)

Apart from statutes and regulations, although in pursuance of them, we know that HUD itself administratively "connected" Chicago's second year model cities program and its public housing program, including, with special particularity, Judge Austin's decree with respect to the public housing program. Thus, without restating all the facts (see section 4 of the Statement of Facts), HUD ultimately agreed to release the second year model cities funds only upon the condition that the City Council continue to approve public housing sites at each regular Council session; and the sites so approved had to comply with Judge Austin's decree in the Gautreaux case.

The predicate for the City Agencies' argument is thus swept away. The model cities program is not "unrelated" or "unconnected" to the public housing program; on the contrary, the two programs are so closely related that HUD itself made performance in one an express condition for receipt of funds in the other. With its predicate gone, the argument - that by reason of this supposed lack of relation the proposed HUD action was not properly before the court below - obviously falls.

A similar, perhaps identical, argument is that since the model cities programs "have no bearing on the construction

of low income housing, [they] are not part of the status quo ..." which may be preserved by the District Court under Federal Rule 62(c). (Suggestions, p.10.)

Again the predicate is inaccurate: "have no bearing" is but another way of saying "unrelated" or "unconnected." And there is some semantic legerdemain in the formulation of the argument: it is not the model cities programs which are to be retained in status quo but HUD's position with respect to them. More particularly, the status quo to be maintained is HUD's own prior position that funds would not be released without continued performance by the City on the public housing program.*

The District Court's Rule 62(c) order was the appropriate manner of proceeding in these circumstances. Rule 62(c) provides that a district court may in its discretion grant an injunction during the pendency of an appeal "upon such terms ... as it considers proper for the security of the rights of the adverse party." It is established that the Rule authorizes a district court to issue an injunction "throughout the period when the appeal is pending," United States v. El-O-Pathic Pharmacy, 192 F.2d 62, 80 (9th Cir. 1951), specifically including the period following a decision of the Court of Appeals but before issuance of its mandate. See 192 F.2d at 79. Events that occur after the district court's decision, see Pettway v. American Cast Iron Pipe Company, 411 F.2d 998, 1002-03 (5th Cir. 1969),

*HUD's position dates back to at least February, 1970, when the joint HUD-City team to deal with relocation plan requirements was established.

as well as after the appellate decision, see the El-O-Pathic decision, 192 F.2d at 78, may call for such an order. In the court below HUD recognized that the propriety of a Rule 62(c) injunction depends on the circumstances of the particular case. HUD's Memorandum in Opposition to Plaintiffs' Rule 62(c) Motion, p.1. The circumstances of this case, set out in the Statement of Facts above and in the opinion of the District Court, amply support the District Court's decision to exercise its discretion in favor of the issuance of such an injunction.

Apart from the "connection" argument no serious question has been raised as to the power of the district court, as a court of equity, to enter a Rule 62(c) order with respect to HUD's conduct in proposing to release the model cities funds unconditionally. The Pettway case, supra, emphasizes "the flexibility available to the District Judge to prevent a case from getting beyond judicial redress." 411 F.2d at 1003, n.9. In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), involving the scope of a district court's equity powers in fashioning a remedy for a racially separate school system, the Court said:

> "Once a right and a violation have been shown the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." (402 U.S. at 15.)

The Court added that the remedy for school segregation may be "administratively awkward, inconvenient and even bizarre in

some situations and may impose burdens on some." 402 U.S. at 28. But the Court concluded that the remedial techniques used in the district court's order "were within that court's power to provide equitable relief." 402 U.S. at 30. In Louisiana v. United States, 380 U.S. 145, 154 (1965), the Court said:

> "We bear in mind that the court has not merely the power but the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past, as well as bar like discrimination in the future."

See also, Local 53 of International Association v. Vogler, 407 F.2d 1047, 1051-53 (5th Cir. 1969); United States v. Frazer, 317 F.Supp. 1079, 1090 (D.C.M.D. Ala. 1970).*

There can be no doubt that, in the circumstances of this case, the District Judge was authorized to proceed as he did.

II. The District Court's Order Did Not Direct Action Prohibited by Section 602 of the Civil Rights Act of 1964. (Response to Part II of Suggestions, pp. 7-9.)

Next, the City Agencies assert that under section 602 of the Civil Rights Act of 1964, "HUD could not have terminated the Chicago Model Cities funds for ... any alleged non-performance of objectives set forth in the letter of intent of May 12, 1971." (Suggestions, pp. 8-9.) Therefore, the argument

*Federal Rule 54(c) provides that every final judgment "shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

runs, the District Court's order in effect directs HUD to violate section 602. (Id. p.9.)*

No reasoning is advanced to support the obviously incorrect assertion that HUD lacked the power to withhold the model cities funds for a failure of performance of the letter of intent. HUD, of course, consistently asserted precisely that power, in the letter of intent itself, in the conditional release letter of June 21, 1971, and in the letter-to-proceed of June 22, 1971. Nothing in the record indicates that the City ever questioned that power before it filed its Suggestions in this Court - not when the Mayor and the CHA Chairman signed the letter of intent, nor when the Mayor received HUD's conditional letter of approval of June 21 or its conditional letter to proceed of June 22.

The reason is clear. HUD has power - and a duty under the model cities statute and its own regulations - to decline to fund any model cities program which lacks an approved relocation plan. Chicago was 4300 units short of having such an approved plan. "Therefore," HUD said, "the City must provide

*This statement of the argument - "HUD could not have terminated ..." - involves some more semantic dexterity. The statement should read, "HUD was obligated to make a grant of funds although the condition upon which it had offered the grant was not met." So put, the statement is of course its own response.

> "It is settled law that the United States has the authority to fix the terms and conditions upon which its money allotments to states shall be disbursed." U.S. v. Frazer, 317 F.Supp. 1079, 1083 (D.C.M.D. Ala. 1970.)

HUD with specific plans to overcome this deficit of 4300 units for low income families and take the necessary actions to implement these plans before HUD can approve the NDP and the Model Cities Program funds." Plaintiffs' Exhibit No. 3, p.3, emphasis added. The letter of intent became those specific plans, "directed at providing 4300 units of low-income housing." Plaintiffs' Exhibit No. 4, p.15. Thus, the letter of intent and the necessary actions to implement it were an essential component of the required model cities relocation plan, without which HUD could not legally approve funding of the second year model cities program. In the very letter by which it authorized a conditional release of second year funds, HUD termed further action on the public housing and other letter of intent undertakings, "steps toward providing relocation feasibility for the Model Cities and Neighborhood Development Programs." Plaintiffs' Exhibit No. 6, pp. 2-3.

Thus, the assertion of the City Agencies should be turned around: HUD could not legally refuse to withhold model cities funds for non-performance of the letter of intent. In any event, it is clear that HUD clearly had the power to so withhold them.

The City Agencies also assert that under section 602 "HUD could not have terminated the Chicago Model Cities funds for the violations involved in either of the Gautreaux cases." (Suggestions, p.8.) This argument is equally wrong. Section 602 does not require "that a program must be considered in isolation

from its context." Board of Public Instruction v. Finch, 414 F.2d 1068, 1079 (5th Cir. 1969). Withholding of funds under section 602 is proper not only if the funds are administered in a discriminatory manner, but also "if they support a program which is infected by a discriminatory environment ..." 414 F.2d at 1078. Here HUD made a specific determination that the model cities program in Chicago was infected by a discriminatory environment, including particularly the discriminatory environment created by the public housing segregation found in and sought to be remedied in the Gautreaux case. Thus, in its initial approval of the Chicago Model Cities Program HUD said:

> "The City has identified discrimination as a basic problem which must be dealt with if the Model Cities program is to succeed. The Department concurs and, in this connection, expects full compliance by the City and all its agencies with all HUD equal opportunity requirements, and with the provisions of any decree finally entered by the U. S. District Court in the case of Gautreaux v. Chicago Housing Authority (Civil Action No. 66 C 1460. U.S. District Court, Northern District of Illinois, Eastern Division)." Plaintiffs' Exhibit No. 1, p.1.

Accordingly, the City Agencies' assertion that HUD could not have withheld the model cities funds for the violations involved in Gautreaux is also incorrect.*

*Moreover, quite apart from what HUD could or could not do voluntarily under section 602, that section cannot conceivably be read as restricting or withdrawing equitable remedial powers from federal courts. See Swann v. Charlotte-Mecklenberg Board

(continued on page 23.)

III. The District Court's Order is not Contrary to the Public Interest. (Response to Part I of Suggestions, pp. 4-7.)

Finally, the City Agencies argue that because of the "devastating effect" entry of the District Court's order supposedly "will have on the public," the Court's order is contrary to the public interest and should be vacated. (Suggestions, p.7.) The argument is based upon an incomplete summary of the relevant facts as well as on a simplistically narrow assessment of the "public interest."

First, the argument assumes that the effect of the order below will be to terminate the model cities programs, presumably because the money will run out before the order entered below is complied with, or because the condition in the order will not be met. The fact is that the second year model cities program has run without federal funding since June 15 of this year (Tr. 518), and there is no evidence in the record to show that it cannot continue to run until the order below can be

(continued from page 22)

of Education, 402 U.S. 1 (1971), where the Supreme Court gave short shrift to an analogous contention that Title IV of the Civil Rights Act of 1964, 42 U.S.C. §2000c, had limited the equity powers of federal district courts to order busing in school desegregation cases. Rejecting this contention the Supreme Court said, "There is no suggestion of an intention to restrict those powers [of federal courts to enforce the Equal Protection Clause] or withdraw from courts their historic equitable remedial powers." 402 U.S. at 17. See also Board of Public Instruction v. Finch, supra, where, speaking of section 602, the Court said: "The legislative history of 42 U.S.C.A. §2000d-1 ... makes perfectly clear that the requirements of the statute are directed exclusively at the administrative agency." 414 F.2d at 1076, n.13.

complied with.

As to whether this Court should assume that the condition would not be complied with, Youngstown Sheet & Tube Co. v. Sawyer, 103 F.Supp. 569 (D.D.D.C. 1952), aff'd, 343 U.S. 579 (1952), is instructive. There, in the famous "steel seizure" case (Charles Sawyer, the Secretary of Commerce, having been directed by executive order of the President to take possession of such plants of various steel companies as he deemed necessary in the interest of national defense), it was strenuously argued by the Government that the action taken was "necessary to avert a national catastrophe," 343 U.S. at 582, and that an injunction against the proposed steps of the Secretary of Commerce would produce "disastrous effects on our defense efforts and economy." 103 F.Supp. at 576. Among other responses to this in terrorem argument the District Judge declined to accept the hypothetical chain of events urged upon him:

> "[T]he disastrous effects ... can come about only in case of a strike, and that presupposes that the United Steel Workers will strike notwithstanding the damage it will cause our defense effort." 103 F.Supp. at 576.

Paraphrasing to fit this case, the devastating effects can come about only in case of a cessation of the model cities program, and that presupposes the Chicago City Council will refuse to approve public housing sites notwithstanding the damage that would cause to Chicago and its citizens. It should also be added that the devastating effects can come about only if, in case of

a failure to comply with the condition in the District Judge's order, the Court below lacks the power to take other and further steps to avert those effects while at the same time assuring plaintiffs of the equitable relief to which they are entitled. It may not be assumed that a court of equity is without such power. See the authorities cited in Part I of the Argument, supra.

However, apart from the speculative nature of the "public interest" argument of the City Agencies, the conception of the "public interest" it embodies is much too narrow. Thus, the Suggestions fail to take account of the fact that there is a "public interest" in adequate housing as well as in the non-housing model cities programs. Indeed, HUD's initial letter approving the Chicago Model Cities Program said that discrimination had been identified as a basic problem which must be dealt with "if the model cities program is to succeed," and that "in this connection" HUD expected "full compliance by the City and all its agencies" with the order in the Gautreaux case. Plaintiffs' Ex. No. 1, p.1.

Moreover, as we have seen, the model cities statute ties model cities programs to "unmet needs for additional housing," 42 U.S.C. §3301, and to the need of cities to "increase their supply of adequate housing for low- and moderate-income people." (Ibid.) To this end the statute provides that a model cities program is not eligible for federal assistance unless the program

contributes to "a substantial increase in the supply of standard housing of low and moderate cost," 42 U.S.C. §3303(a)(3), and it requires a relocation plan. 42 U.S.C. §3303(a)(4). The Suggestions ignore these strong Congressional expressions of the "public interest" in increasing the housing supply, so strong that model cities programs which fail to comply with relocation plans are not eligible for funding - that is, they are not, in that case, in the public interest.

Finally, the Suggestions ignore the "public interest" which inheres in the duty of a court of equity to remedy fully violations of constitutional rights. In this case the District Court has the obligation, in the public interest as well as in the interest of the plaintiff class, to effect such a remedy. The District Court has determined that in order to preserve its power in that regard it is necessary to preserve the status quo with respect to the model cities program so that the funds for the second period of that program are not released unconditionally, without at least minimal performance of housing obligations by the City and CHA. The Suggestions are silent on the "public interest" in thus preserving to the District Judge the power to grant effective relief in a case in which he has the duty to do so.*

*In Youngstown the District Judge said:

> "... [I]f I consider the public interest from another viewpoint, I believe that the contemplated strike, if it came, with all its awful results,

(continued on page 27)

We think that exactly where the "public interest" lies in the circumstances of this case is clear. But whether all agree with the District Court's judgment in this respect or not is hardly the issue. The question is whether, in exercising his discretion to enter the order below, the District Judge so violated some legal standard or requirement as to have abused his powers. The Suggestions, in their "public interest" argument, point to no such standard or requirement.

The District Judge is plainly in the best position to make the discretionary judgment which is reflected in the order. This Court has recently said that it "would be extremely reluctant to interfere with the exercise of that District Judge's sound discretion in matters pertaining to this controversy ..." Gautreaux v. Romney, No. 71-1073 (7th Cir.

(continued from page 26)

> would be less injurious to the public than the injury which would flow from a timorous judicial recognition that there is some basis for this claim to unlimited and unrestrained Executive power ..." 103 F.Supp. at 577.

Here a comparable injury might flow from a timorous judicial attitude which permitted housing obligations embodied in statutes and regulations, the performance of which had become essential to help remedy "twenty years of deliberate housing segregation" (opinion below, p.2) constituting a gross violation of the constitutional rights of thousands of citizens of Chicago, to be ignored by violators themselves, particularly after more than two years of dilatory tactics had so far frustrated the District Judge's efforts to achieve that remedy.

1971), slip opinion, p.5. Many years ago this Court said a similar view was "bottomed on manifest grounds of propriety." American Strawboard Co. v. Indianapolis Water Co., 81 Fed. 423, 424 (7th Cir. 1894). Here we have not only an exercise of sound discretion to preserve the Court's power to remedy the violations of constitutional rights which have occurred, but also a positive requirement of law - the relocation plan requirement - which dictates the same conclusion that discretion urges. Apart from his discretionary assessment of "public interest" considerations, the District Judge's order is supported by the model cities statute and HUD's own regulations, as interpreted by HUD itself. (HUD, it may be appropriate to recall, has not joined in the motion before the Court.)

It seems plain that the District Judge has weighed the "public interest" factors and weighed them correctly, and that his discretionary judgment in that regard, supported by legal as well as equitable considerations, should not now be interfered with.

CONCLUSION

The motion to suspend and vacate and the suggestions in support of it are predicated on a fundamental inaccuracy: that the model cities program has nothing, or very little, to do with housing. The fact is, as we have seen, that the model

cities statute, and HUD regulations enacted pursuant to it, make housing a major objective and component of a model cities program and an adequate relocation plan a prerequisite to model cities funding. Here, both HUD and the City determined that Chicago's relocation plan was 4,300 units short of adequacy, and a program for meeting the 4,300 unit deficit, eventually embodied in the letter of intent, was agreed upon. The failure on the part of the City to comply with that program left HUD no choice but to decline to fund the second year model cities program. HUD's last-minute decision to release the funds unconditionally cannot be justified under the statute and its own regulations, or in terms of any view of administrative discretion. (Mr. Vavoulis admitted he was "in no position to make an administrative judgment concerning the release of funds.")

Moreover, performance of the public housing undertakings in the letter of intent constituted a vital first step in remedying the constitutional wrongs done to the plaintiff class by CHA and HUD over a period of twenty years. Perhaps it was that fact that led HUD to single out the public housing undertakings and make them in particular a precise and explicit condition of the release of model cities funds - especially in light of the recalcitrance of the local authorities, referred to in the opinion below, in providing the badly needed new housing which it was their duty to provide. Under these

circumstances the District Judge who, as this Court has observed, has a "difficult and time-consuming task, presenting unique problems for resolution," Gautreaux v. Romney, No. 71-1073, slip opinion, p.5., clearly had discretion to preserve the situation intact, pending the return of the mandate in this case.

Thus, apart from Gautreaux considerations, HUD was not free to fund the model cities program without full compliance with relocation requirements. When the heavy obligations now imposed upon the District Judge by this Court's decision of September 10, 1971, are added to those non-Gautreaux considerations, it appears beyond doubt that the District Judge had discretion to enter the order now sought to be vacated. Accordingly, the motion to suspend and vacate his order should be denied.

Respectfully submitted,

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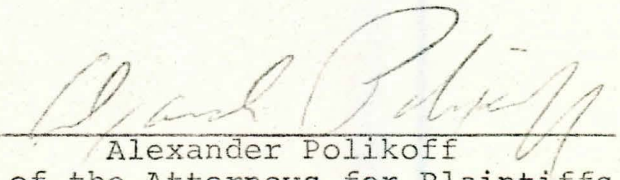
By: 
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October 26, 1971

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MC 3165.1

POLICIES AND REQUIREMENTS FOR MODEL CITIES RELOCATION

CDA Letter No. 5
(Revised)

February 1970

A HUD HANDBOOK

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

TRANSMITTAL NOTICE CDA - 22

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TRANSMITTAL NOTICE CDA-22

MC 3165.1

February, 1970

1. Material Transmitted

Handbook MC 3165.1 (CDA Letter No. 5, revised), Policies and Requirements for Model Cities Relocation

2. Explanation of Material Transmitted

The basic policies and requirements set forth in this handbook remain the same. Only paragraph 7, pages 9 through 14, has been revised to provide a format for the Model Cities relocation submission to include requirements, procedures, and an outline for a complete relocation submission. The HUD Regional Office will provide guidance and assistance in the preparation of the submission and the relocation reports.

3. Existing Issuances Affected

Handbook MCGR-3100.5 (CDA Letter No. 5), dated November 1968 is superseded.

4. Audience

CDA Directors, HUD Regional Offices, and Citizens Groups

5. Comments

a. This handbook contains POLICY and REQUIRED PROCEDURES.

b. It is a HUD Requirement that relocation progress reports be submitted for each program causing displacement in a model neighborhood (see CDA Letter #9 and HUD Circular 2370.4). The reports are submitted directly to HUD by the local agency administering the project that caused the displacement. A copy of each report is to be furnished to the CDA at the same time. The CDA must also submit relocation reports in connection with displacement caused by model cities activities but not covered by reporting requirements under other HUD programs being carried out in the model neighborhood. The required reports are to be submitted semiannually on the following forms:

RECEIVED FEB 19 1970 D. L. L. B. MIC. IV CHICAGO, ILL.

HUD-6149A, Report on Relocation of Families and Individuals

HUD-6149B, Report on Relocation of Business Concerns

HUD-6151, Additional Relocation Payments made to Families and Elderly or Handicapped Individuals

HUD-6152, Report on Displacement of Owner-Occupants and Replacement Housing Payments

c. The Model Cities relocation submission must include a description of all projects and activities causing displacement that are included in the city's Five-Year Forecast and One-Year Action Program. The Five-Year Relocation Forecast is intended to provide an overview of the estimated relocation workload for the duration of the Program, and as such it should include a general discussion of all anticipated displacement-causing projects and activities which will take place as part of the Model Cities program. The One-Year Action Program should supply the details of the plans for relocation resulting from Model Cities related displacement activities in the first year of Program execution.

6. Filing Instructions

File in binder under category 3165.

7. This is the first Transmittal Notice for Category 3165.

Robert H. Baida
Robert H. Baida
Deputy Assistant Secretary for Model Cities

Distribution:

List 1, TABS 1-6, List 2, List 4, List 5, TABS 1-3, W-1, W-2, W-3-1, R-1, R-2, WICC, MC Professional Staff, Regional Administrators, ARA-MC, Regional Support Staff, Office of Audit, Office of Financial Systems and Services, RICC, CDA Directors, Governor's Representatives, Public Interest Groups, Professional Organizations, Evaluation Contractors and Consultants, Assistant Secretaries Working Group.

HUD-Wash., D. C.

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B	Information Statement
C	Summary of Relocation Payments Available

1. PURPOSE. This CDA Letter describes the relocation policies which will govern displacement caused by activities included within a Comprehensive City Demonstration Program. It also sets forth the Five- and One-Year Relocation Submission Requirements which constitute the relocation plan required by the Model Cities statute and which are to be part of the Five-Year Forecast and One-Year Action Program required by CDA Letter No. 4.*

2. POLICIES AND REQUIREMENTS FOR MODEL CITIES RELOCATION. A Comprehensive City Demonstration Program ("Program") must include a plan for the relocation of individuals, families, businesses and nonprofit organizations displaced by the Program. City Demonstration Agency ("CDA") relocation plans will be evaluated in the light of the following general policy criteria.

   a. No family or individual may be displaced from its residence by a capital project or activity included in a Program until that individual or family has chosen and has acquired the present right to occupy suitable relocation housing or has refused a reasonable choice of identified suitable relocation housing. If a family or individual is offered and accepts suitable relocation housing which will become available within one year from its displacement, it may be temporarily relocated into housing which meets the standards for temporary relocation housing set forth in Paragraph 4 of this Letter. If eviction becomes necessary, it must be carried out in accordance with state and local law and the approved relocation standards. Relocation housing listed for referral by the CDA is suitable only when it: (1) is available on a nondiscriminatory basis; (2) meets the physical and occupancy standards defined in Paragraph 4 of this Letter; and (3) is within the financial means of the family or individual, also defined in Paragraph 4.

   b. Program displacement must not result in a permanent reduction in the supply of low- and moderate-income housing within the city. The Program must provide for an increase in the supply of standard, newly-constructed or rehabilitated low- and moderate-income housing units not less than the aggregate number of households displaced as a result of the

* The requirements in this Letter have been cleared with the Budget Bureau -- clearance #63R1216, expires 10/70.

Program.* HUD recognizes that because of the lead time involved in the construction or rehabilitation of housing, displacement of individuals or families and the start of rehabilitation or new construction may not coincide. But those displaced must have suitable relocation housing, as required above, by the time of their displacement. Furthermore, the physical start of new construction or rehabilitation must not be more than one year behind the removal of units from the housing market. For example, if ten units are removed from the market in January, 1969, their replacement must commence not later than January, 1970. The size, price ranges and availability of the replacement units must reflect the housing needs and ability-to-pay of low- and moderate-income neighborhood residents.**

c. Business concerns and nonprofit organizations displaced by projects or activities included in the Program must be provided with services and assistance to aid in their satisfactory reestablishment.

d. Model Cities Program displacement occurring simultaneously with substantial displacement elsewhere in the city may place severe strain on the city's supply of low- and moderate-income housing. The CDA must coordinate its Program to the maximum extent feasible with other activities causing displacement in the city to avoid competition for the same housing units. HUD will expect each CDA to explain what it has done to bring about such coordination. There is no adequate substitute for the public responsibility to plan for, encourage and assist the construction of the necessary volume of low- and moderate-income housing.

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* For the purposes of determining compliance with this section, "household" does not include roomers and boarders, as contrasted with individuals or families occupying separate housekeeping units. Roomers and boarders must, however, be relocated in accordance with paragraph 2.a. above, and are eligible for relocation payments if they meet the criteria of Paragraphs 5 and 6 of this Letter.

** Increases in the supply of low-income housing provided through the Section 23 leasing program (Housing Act of 1937, as amended) may be included in satisfaction of the replacement requirement. Low- and moderate-income housing located outside the boundaries of the city may be included in satisfaction of this replacement requirement if availability will be made known to neighborhood residents through appropriate means, including the citizen participation structure.

e. The relocation plan is an essential component of the Comprehensive City Demonstration Program. Each CDA is therefore responsible for ensuring that the model neighborhood citizen participation structure required by CDA Letter No. 3 is involved in the policy development, planning and execution phases of relocation, including the determination of procedures for handling relocation grievances.

f. The relocation process should contribute to the creation of a well-balanced city through the provision of maximum opportunity for choice in housing to minority-group families and individuals displaced as a result of the Program. All families or individuals displaced by projects or activities included in the Program must be offered housing available on a nondiscriminatory basis within a broad choice of neighborhoods. This Departmental policy is fully set forth in Appendix A to this Letter. In the implementation of the policy, a city must avoid relocation housing projects contributing to the development or perpetuation of housing patterns which concentrate large segments of the population by racial or economic characteristics. The Program must be directed towards providing decent, safe and sanitary low- and moderate-income housing both within and outside the model neighborhood.

3. ORGANIZATION FOR RELOCATION ADMINISTRATION. The CDA is responsible for compliance with the standards set forth in this Letter and shall arrange for an appropriate local agency, preferably a central relocation agency, to administer the CDA's relocation program.* HUD will review each plan to determine whether the agency proposed to administer the program has the capability and authority to conduct a relocation program which will conform to the requirements of the statute and this Letter.

The CDA must work with those responsible for other programs causing displacement in the community to ensure coordination of displacement and relocation activities in a manner which will avoid decreasing the available supply of low- and moderate-income housing. It is understood that displacement in the model neighborhood may be carried out by agencies over which the CDA has no formal authority. The CDA is expected, however, to develop

* Cities needing assistance in the organization and staffing of a relocation agency should seek advice from the HUD Regional Office Relocation Branch.

effective channels of communication with these agencies in order to ensure that they are aware of and comply with CDA relocation policy. CDAs are expected to utilize all available avenues, at local, state and Federal levels, to enlist the cooperation of all displacing agencies. The CDA must maintain adequate and up-to-date records (including records of financial disbursements) sufficient to assure the Department that the CDA complies with the statute and this Letter. Members of the public, including model neighborhood residents, also must have access to records which, while respecting the privacy of individual displacees, are sufficient to assure them of CDA compliance with the requirements set forth in Paragraph 2 of this Letter.

The CDA is also responsible for ensuring that the relocation agency establishes a public information program which will explain relocation policies and relocation services to model neighborhood residents. This information program must provide for the notification at the earliest possible date in the Program of all potential displacees (under any activity or capital project included in the Program) of the policies of this Letter. This notification must be given well in advance of the time at which displacement is expected to become necessary and must be in substantially the form indicated in Appendix B to this Letter. Relocation agency staff must explain in person to each potential displacee the policies and requirements of this Letter.

4. RELOCATION HOUSING AND ABILITY-TO-PAY STANDARDS. Each CDA shall adopt basic housing standards in conformity with local housing codes to be applied as criteria for determining whether a residence constitutes suitable relocation housing. These standards shall be no lower than those which are used as the basic elements of housing standards in the urban renewal program, to be summarized in forthcoming regulations.

Temporary relocation into housing meeting these basic housing standards may be provided for a period of up to twelve months if relocation to permanent housing meeting these standards is not possible at the time the move is required to be made and if such permanent housing is scheduled to become available within one year. Use of temporary relocation housing should normally be limited to displacees waiting to return to rehabilitated or to enter newly constructed housing.

Permanent relocation housing must be located in neighborhoods containing adequate commercial and community facilities, including transportation facilities serving major sources of employment. Permanent relocation housing shall not be in a neighborhood slated for clearance in the near future, or in a neighborhood characterized by significant environmental

deficiencies if these conditions are not being remedied, or are not scheduled to be remedied in the immediate future, by appropriate governmental or private action.

A displacee is not offered a reasonable choice of relocation housing if he is expected to pay more than 25 percent of his annual gross income for rent and utilities, excluding telephone service. For this purpose, gross income is defined as total family income excluding all income of minors and minus $300 for each minor. Neither the exclusion nor the $300 exemption applies to a minor spouse.

5. RELOCATION ASSISTANCE AND RELOCATION PAYMENTS.

a. Relocation Assistance. A relocation program must include a plan for the provision of needed services to displacees. The Model Cities statute indicates that relocation services and assistance must be consistent with the relocation requirements of the urban renewal program, as defined in Title I of the Housing Act of 1949 (hereinafter called "urban renewal relocation"). Section 105 of that Title requires that a relocation assistance program shall determine relocation needs, provide information about available relocation sites, and coordinate relocation activity with other projects within the community.

HUD, however, will require CDAs to go beyond the Housing Act requirements to investigate other ways of improving the relocation process. Existing social and economic assistance programs not administered by the relocation agency should be coordinated to maximize their availability to displacees. Where needs of displacees -- information, counseling, technical assistance -- are not met by existing public and private assistance programs, new ways of meeting these needs should be devised.

A relocation plan must include a program to meet the needs of displaced businesses and non-profit organizations. Business relocation assistance must include the listing and referral of suitable facilities and sites throughout the city, together with the provision of available information on local and regional marketing conditions, regional population projections, and long-run economic trends. The relocation program must refer small businesses to the loan and entrepreneurial development programs of the Small Business Administration, and should refer them to other similar activities in the community.

Businesses and non-profit organizations must be advised well ahead of time of clearance and redevelopment plans and cautioned against relocating in areas scheduled for substantial physical change. They should be encouraged to remain in the model neighborhood, unless incompatible with Program land use plans, in order to maintain employment stability and provide necessary goods and services. The relocation plan must demonstrate a sensitivity to the needs of small businesses.

b. Relocation Payments. The payments required for urban renewal relocation must be made available to all eligible persons displaced by HUD-assisted programs, including the Model Cities Program. The only exception occurs when displacement is caused by a program that provides for relocation payments larger than those required to be paid under urban renewal relocation. The current levels of relocation payments authorized under urban renewal relocation are listed in Appendix C to this Letter.

The CDA is, therefore, responsible for ensuring that all eligible recipients of relocation payments, as defined below, receive no less than the urban renewal relocation payments provides for, at the time such payments are approved, by section 114 of the Housing Act of 1949 with respect to projects assisted under Title I thereof. If the displacement is caused by a Model Cities project or activity for which there is no specific provision for relocation payments, the CDA must make relocation payments equal to and not in excess of the level of relocation payments authorized for urban renewal relocation. If the agency administering the project or activity causing displacement is required by Federal, state or local law to make relocation payments, that agency must provide the funds for such payments up to the full amount authorized. If that agency is not authorized to make relocation payments at least equal to those required for urban renewal relocation, the CDA must include in its budget submission for relocation activities a separate statement of the amount necessary to bring these relocation payments up to but not in excess of urban renewal standards. If that agency is authorized to make larger relocation payments than urban renewal is authorized to make, it must make those larger payments from its own funds.

If an individual or family is temporarily relocated to permit rehabilitation of its dwelling unit, the move into temporary relocation housing and the move back into the dwelling unit shall be deemed to be a single move. The displacee shall receive compensation for both parts of such a move, up to the maximum relocation payment he is authorized to receive for a

single move. In all other instances of temporary relocation of individuals and families, the reasonable and necessary moving expenses applicable to the first move shall be included as an element of project costs or, if such inclusion is prohibited by the laws or administrative requirements of the program causing displacement, shall be financed by Model Cities supplemental grant funds. Such temporary moves must be for the convenience of the program and not solely for the convenience of the displacee.

6. DISPLACEES ELIGIBLE FOR RELOCATION PAYMENTS.

a. Cause of displacement. A site occupant must receive a relocation payment if his displacement is made necessary by a capital project or activity (1) which is financed in whole or in part by supplemental grants under section 105(c) of the Model Cities statute or is otherwise a material part of the Program, or (2) with respect to displacements inside the model neighborhood not covered by (1), which is carried out by a public body or any entity receiving financial assistance from the Federal, state or local government or other public body.

Displacement occurs only when an occupant is required to move, as opposed to a voluntary move resulting from an arms-length transaction between two private parties. For example, if a businessman purchases property from the owner-occupant of the property, the latter is not entitled to relocation payments even though the buyer may have an SBA loan or some other form of governmental financial assistance.

b. Time at which displacement shall be deemed to occur. In the case of a capital project or activity financed in whole or in part by section 105(c) supplemental grant funds, the site occupant shall be deemed displaced if he vacates on or after the earlier of:

(1) HUD approval of the supplemental grant work program and budget for the capital project or activity which contemplates the acquisition of the property for the purpose of demolition or substantial rehabilitation regardless of when or if such events occur; or

(2) receipt of a notice to vacate from the owner of the property.

In all other cases, the site occupant shall be deemed displaced if he vacates:

(3) after the date of the supplemental grant contract for the execution period, or on or after the date on which the city is authorized to incur costs (provided that in the latter case a contract is subsequently executed) and;

(4) after

(a) receipt of a notice to vacate from the owner of a property which is scheduled for demolition or substantial rehabilitation, or

(b) an increase or notice of increase in gross rent (contract rent plus utilities but excluding telephone services) of not less than 25 percent in the case of a business or nonprofit organization or 10 percent in the case of an individual or family, provided that in the latter case the increase results in a rent which exceeds the individual's or family's ability-to-pay defined in accordance with paragraph 4 of this Letter.

7. FIVE- AND ONE-YEAR RELOCATION SUBMISSION REQUIREMENTS

a. Five-Year Relocation Forecast

(1) Overview of Relocation Needs

(a) Describe the model neighborhood area's relocation resource needs and how they relate to the city's housing resource needs for the five-year period, including gross estimates of displacement.

(b) Identify each specific activity in the locality--private and public--which will cause displacement during the five-year period, including displacement by Model Cities activities.

(c) Estimate the volume of residential and non-residential displacement from all projects or activities presently anticipated for each year of the five-year relocation forecast.

(d) Delineate the plans for providing adequate rehousing for all those to be displaced, including specific plans for meeting the housing needs of all families and individuals displaced as a result of all Model Cities activities. Careful consideration should be given to competing demands for housing.

(e) Indicate, in general terms, the approaches to be employed to meet the needs of families, individuals, and non-residential concerns displaced by Model Cities related activities. (Information should relate to descriptions in Part II of the Comprehensive Plan of needed services and facilities and to the specific proposals for responding to the problems identified in Part III.

(f) Describe proposed method of coordinating the activities of various organizations involved in relocation. Include an account of how the city intends to assure that all relocation plans conform to the requirements of CDA #5 and take into consideration the city's relocation needs.

(2) Techniques for Developing Resources. What action will the CDA take during the five-year period:

HUD-Wash., D. C.

(a) To provide displaced families and individuals the maximum opportunity for a broad choice of housing from the community's total housing supply;

(b) To assure the availability of a suitable housing unit, whether new or rehabilitated, for each displaced family and individual and to assure that all planned units will in fact become available as needed;

(c) To increase the overall housing supply, particularly the supply of low- and moderate-cost housing;

(d) To secure adequate commercial and industrial space for business and nonprofit organizations and to aid them in their reestablishment;

(e) To stimulate and enhance business opportunities for small business formation and for the establishment and/or growth of commercial and industrial firms in model neighborhoods;

(f) To provide technical and financial assistance to allow the move to serve as an opportunity to improve and upgrade the living standards and environment of the families and individuals displaced by Model Cities related activities;

(g) To establish a program for training low-income residents for jobs, such as relocation and social services aides, with opportunities for advancement; and

(h) To coordinate information obtained for relocation purposes with other social services surveys to serve as a base for a service referral system.

(3) Budget

Estimate the cost of all relocation activities to be funded by MCA supplemental funds, individually for years I and II and collectively for years III, IV and V.

HUD-Wash., D. C.

b. One-Year Relocation Action Program

(1) Administration Organization

(a) Name of the local agency which will administer and/or coordinate relocation activities. The CDA should encourage the locality to designate a qualified central relocation agency to assume the total responsibility for coordinating and carrying out all relocation activities.

(b) Description of the organization and the staffing pattern of the local agency.

(c) Explain the kind and degree of citizen participation in planning the relocation assistance program, including the selection of needed and appropriate social services. Also describe resident involvement in establishing a relocation grievance procedure, including a mechanism for resolving complaints from families, individuals, and/or business concerns affected by displacement.

(d) Describe the procedure for providing continuous information to families, individuals, and business concerns to be displaced to avoid confusion and the dissemination of erroneous information. Describe the way in which the city will explain to area residents the need for temporary dislocation.

(2) Workload

(a) If the city has already submitted data to HUD on displacement-causing projects or activities (cross-reference relevant sections of other submissions sent to the HUD Regional Office), the city does not have to complete items (b) through (e). For guidance in completing the workload characteristics, see the format prescribed in the NDP relocation activity report in the NDP Handbook, RHA 7384.1, Chapter 7, Section 2. If the CDA does not have this material, check with the HUD Regional Office.

(b) Describe all projects or activities causing displacement that are identified by CDA Letter No. 5. Note that paragraph 6 of CDA Letter No. 5 states that a person is eligible for relocation payments if he is displaced by a capital project or activity (1) which is financed in whole or in part with grants made under Section 105(c) of the Model Cities

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statute or is otherwise a material part of the program, or (2) with respect to displacement inside the model neighborhood not covered by (1) which is carried out by a public body or entity receiving financial assistance from the Federal, state, or local government or other public body.

(c) Estimate the number of families, individuals, business concerns, and nonprofit organizations to be displaced during the first action year under each project or activity identified above.

(d) Identify all other activities in the locality for which there will be concurrent displacement, and estimate the volume involved during the first action year, including businesses and nonprofit organizations.

(e) Describe in detail the characteristics of the estimated Model Cities workload:

1. For all families and individuals to be displaced, summarize data by family composition, age, minority group identification, income, type of tenancy, current housing cost, rehousing preference in terms of unit type and size, location, sales price or rent, etc.

2. For businesses and nonprofit organizations, include a description of the types of business concerns to be displaced and the anticipated relocation needs to effect their reestablishment.

(3) Techniques*

(a) Describe the actions to be taken to provide families and individuals displaced with maximum opportunity for choice in the community's total housing supply. (For guidance, see NDP Handbook, RHA 7384.1, Chapter 7, Section 2.) What steps have been, or will be, taken to lessen racial, ethnic, and economic concentrations, to facilitate desegregation and racially inclusive patterns of occupancy?

* To the extent not described elsewhere (cross reference sections of other submissions sent to Regional Office), complete the following categories of information.

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(b) How is the relocation agency staffed and otherwise prepared to assist business concerns and non-profit corporations to relocate? Describe the arrangements that have been developed to provide managerial and financial assistance to business concerns that must relocate.

(c) Explain in detail the relocation agency's plans to respond to the social, health, and economic needs of the persons to be displaced, in compliance with the relocation assistance requirements in paragraph 5 of CDA Letter No. 5.

(d) Coordination of relocation housing:

1. Describe arrangements with Local Housing Authority, local Workable Program for Community Improvement Staff, the local real estate board, lending institutions and developers for considering the available housing resources in terms of their appropriateness (physical and economic) for the displaced households.

2. If the number of appropriate size units is not adequate to rehouse the anticipated workload, describe plans for the development of additional low- and moderate-income housing for the displaced families and individuals and for assuring the availability of such housing when needed.

   This description should include the housing provided through rehabilitation and through new construction, including but not limited to:

   a. Private rental housing, including the use of FHA programs such as Rent Supplement and Section 221(d)(3), and 236; and

   b. Private sales housing, including the use of Section 235 and other government-sponsored homeownership programs for low- and moderate-income families, and provisions for counseling in money management and acceptable mortgage financing.

   c. Low-rent public housing, Section 23 leasing program, and turnkey construction.

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3. What are the plans for replacement of residential units demolished? How will the city ensure the development of at least an equivalent number of standard, low- and moderate-income housing for each unit removed from the market by the program (as required by paragraph 2 of CDA Letter No. 5)? This description should include:

   a. Number and characteristics, such as size, gross rental costs or purchase prices of units needed;

   b. Explanation of how the city proposes to avoid delays in site acquisition and in obtaining any necessary zoning changes or variances; and

   c. A timetable for scheduling the availability of rehousing units for the persons to be displaced.

4. Describe how the CDA will assure those persons subject to displacement that they will not be displaced from their residences until the individual or family has chosen and has "acquired the present right to occupy" suitable relocation housing.*

5. If temporary housing is to be used, describe the plans for providing standard temporary rehousing for displaced households, why it is necessary, and how long it will be used.

6. Describe how the CDA plans to trace all families and individuals to determine that they have been properly rehoused and to assure that they receive the payments and services for which they may be eligible.

* The CDA is responsible for assuring that at the time of displacement, a person has the present right to occupy another dwelling unit (for example, under a lease or an option to buy) unless he has refused a reasonable choice of identified suitable relocation housing. When an individual prefers to self-relocate, he may waive this right.

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(4) Budget

The cost of all relocation activities (as distinguished from the cost of preparing and revising the relocation component of the comprehensive plan) to be funded by MCA supplemental funds must be shown on a separate activity budget. The budget totals should be shown on the Budget Summary which will be submitted by the city under CDA Letter No. 6. Also, the justification for the amounts should be prepared in the same fashion as justifications for other City budget requests and documented in the city's files. The budget request should also receive the approval of the City's chief fiscal or budget officer.

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Attachment to: Local Public Agency Letter No. 456 Letter No. NF-9
Code Enforcement Letter No. 13 Letter No. OS-15
Demolition Grant Letter No. 7 HAA Circular dated 4-22-68

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D. C. 20410

Appendix A

April 19, 1968

LETTER TO: All HUD Program Participants Planning or Carrying Out Projects Involving Displacement

SUBJECT: Relocation Activities and Equal Opportunity in Housing

It is the policy of the Department of Housing and Urban Development to require and to assure that no person shall on the grounds 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 receiving Federal assistance from HUD. Further, when a HUD-assisted project involves displacement, it is the policy of the Department to encourage utilization of the relocation process as a means for expanding the housing choices available to minority-group families and individuals.

The following are among the HUD programs which may involve displacement: advance acquisition of land, basic water and sewer facilities grant, code enforcement, demolition grant, historic preservation grant, low-rent housing, model cities, neighborhood facilities, open-space land, public facility loans, urban mass transportation, and urban renewal.

HOUSING SUPPLY AND HOUSING CHOICE

In the Housing Act of 1949, the Congress stated as one of the objectives of the National Housing Policy, "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family." This objective is achievable only when all members of the community have full and free access to the total housing supply of the community.

Implicit in this objective are two factors: (1) the availability, in each community, of an adequate supply of housing--widely dispersed throughout the community--which is within the range of all income groups, and (2) access to such housing by all segments of the population.

For too long, minority-group families and individuals have been restricted from moving out of areas of racial concentration into other sections of the community. The perpetuation of the ghetto and restraints on the free movement of all segments of the population are no longer acceptable as a modus operandi in communities where HUD-assisted projects are planned or carried out. In the future, an application for financial assistance will not be approved unless

it can be demonstrated, to the satisfaction of HUD, that, in general, the relocation rehousing aspects of the proposed project will not contribute to the development or perpetuation of housing patterns which concentrate large segments of the population by racial or economic characteristics.

HUD-assisted projects which will reduce or cause a shortage in the existing supply of housing available to minority-group families and individuals will not be approved, unless provision is made for compensatory additions to the housing supply.

THE RELOCATION PROCESS AS A POSITIVE FORCE FOR ACHIEVING EQUAL OPPORTUNITY IN HOUSING

Local agencies carrying out HUD-assisted projects have an opportunity through their relocation assistance programs, to help reduce the racial concentration of minority-group families and individuals and to further racially inclusive patterns of housing.

It is the obligation of the locality carrying out a HUD-assisted project to assure that families and individuals who are displaced as a result of project activities are offered housing available on a nondiscriminatory basis--within a broad choice of neighborhoods--which is decent, safe, and sanitary, is within their financial means, and is conveniently located with respect to transportation and other public facilities.

Relocation plans prepared by local agencies must indicate the measures, facilities, and services which will be provided to accomplish this objective. If new housing is proposed, plans must be initiated early enough to assure its availability and maximum utilization during the execution stage of the project. In most instances, this will require careful staging of relocation activities. It is the policy of this Department that no substantial displacement shall occur until proposed rehousing resources are in fact available to those facing displacement.

Further, in order to assure that the needs of persons to be affected by project activities will be given maximum consideration, such persons shall be afforded the opportunity of participating in the formulation of relocation plans.

ACTIONS WHICH CAN BE TAKEN BY LOCAL AGENCIES AND THE COMMUNITY

Local agencies planning or carrying out HUD-assisted projects must work with other agencies and entities in the community in order to achieve the objectives set forth in this letter.

The following actions are representative of the types of activities which should be undertaken by local agencies and the community in order to achieve the objective of equal opportunity in housing. Some of these measures have already been incorporated as requirements under all HUD programs (e.g., Items No. 5 and 7); others may become requirements, as appropriate, in the future.

1. Enlist the aid of a Citizens' Advisory Committee to encourage, promote, and assist in the development of community-wide programs leading to equal opportunity in housing.

2. Invite the support and participation of organizations, committees, and other groups interested in, or sympathetic to, the achievement of equal opportunity in housing.

3. Obtain the cooperation and assistance of real estate agencies, brokers, and boards, and local lending institutions.

4. Select sites for new or rehabilitated low- and moderate-income housing units which are so located as to further racially inclusive patterns of housing.

5. List only rehousing resources available on a nondiscriminatory basis and refer persons only to such housing.

6. Seek rehousing resources throughout the community and in surrounding suburban areas and advise persons of the availability of such housing. Local agencies may refer persons to the FHA counseling service where available and appropriate.

7. Make maximum use, as a rehousing resource, of housing covered by Title VI of the Civil Rights Act of 1964 and Executive Order 11063; for example, federally assisted low-rent public housing, FHA-insured and VA-guaranteed properties, including those acquired by either agency, Federal rent supplement housing, and housing constructed or rehabilitated with FHA assistance under Sections 220, 221(d)(2), 221(d)(3), and 221(h) of the National Housing Act.

8. Where State or local fair housing statutes, ordinances, or regulations exist, advise persons required to move of their rights and of the procedure to follow if they encounter problems in obtaining housing of their choice. Where there are no existing fair housing statutes, ordinances, and regulations, use the "good offices" of the local agency and other entities to intercede and assist in a resolution of the problem.

9. In coordination with agencies enforcing fair housing laws and other interested groups, establish effective procedures for referral of complaints to the appropriate offices.

IMPLEMENTATION OF THIS LETTER

Forthcoming issuances to HUD program participants will set forth specific procedures under various HUD programs for implementing the policies and requirements enunciated in this letter.

Robert C. Weaver

Robert C. Weaver

Appendix B

INFORMATION STATEMENT

The relocation agency shall deliver an Information Statement to all families, individuals, business concerns, and non-profit organizations occupying and/or owning property who are, or who may be, subject to displacement by Model Cities capital projects or activities. This should include but is not limited to:

A. Families and Individuals

1. Identification of areas in which displacement may occur. A map or sketch outlining such areas should be attached.

2. Statement of the purpose of the relocation program and brief indication of the services and aids available.

3. Assurance that no family or individual will be required to move until that family or individual has chosen and has acquired the present right to occupy suitable relocation housing or has refused a reasonable choice of identified suitable relocation housing.

4. Encouragement to site occupants to visit the relocation office, to cooperate with the relocation staff, to seek their own standard rehousing accommodations, and to notify the relocation office prior to the move if they move on their own initiative.

5. A brief description of what constitutes standard housing, as defined in the forthcoming regulations referred to in paragraph 4 of this Letter.

6. Statement that relocation payments may be made only after completion of the move and that claims must be filed with the relocation agency within six (6) months after displacement.

7. Statement that site occupants should refer to the relocation staff any problems in obtaining housing accommodations listed or referred by the relocation agency.

8. Statement that the Model Cities program will involve substantial physical improvements in the neighborhood and that if a family or individual relocates itself to a substandard housing unit, it may be inconvenienced when action is taken to bring the unit up to code standards.

9. An indication of the availability of relocation payments, including the types of payments and the general eligibility criteria for residential occupants.

10. Address and hours of the relocation office(s).

11. Information as to real estate agencies, brokers, and boards in or near the model neighborhood area which deal in residential property that might be appropriate for the relocating of displaced individuals or families.

B. Businesses and Non-Profit Corporations ("Business Concerns")

1. Identification of areas in which displacement may occur. A map or sketch outlining such areas should be attached.

2. Statement that public action may result in displacement of the business concern, but that no one lawfully occupying property will be required to surrender possession without at least 90 days' written notice from the relocation agency.

3. Statement encouraging business concerns to contact and work with the relocation agency, and indicating the address, telephone number, and hours of the relocation office(s) where relocation services will be provided and additional details may be obtained.

4. Description of the types of relocation payments available, including details regarding eligible moving expenses, maximum amounts for moving expenses and/or property loss, and eligibility requirements for a Small Business Displacement Payment.

5. Statement that relocation payments may be made only after completion of the move or discontinuance of the business and that claims must be filed with the relocation agency within six (6) months of either occurrence.

6. Brief description of conditions governing a self-move.

7. Summary of the relocation agency's policy regarding its management of real property from which tenants have not yet been displaced.

8. Reference to assistance available from the Small Business Administration and, if applicable, local groups and indication of any steps necessary to obtain the assistance.

9. Description of services and assistance relocation agency will furnish, in addition to the making of relocation payments.

10. Information as to real estate agencies, brokers, and boards in or near the model neighborhood area which deal in business property that might be appropriate for the relocating of displaced business concerns of non-profit corporations.

Appendix C

Summary of Relocation Payments Available

Individuals and Families

1. Moving Costs and Direct Loss of Property. Reimbursement will be paid for reasonable moving expenses and the direct loss of property, up to a maximum of $200 for each individual or family. Moving expenses include the costs of packing, storing (limited to a period of one year or less), transporting and insuring property and the incidental costs of disconnecting and reconnecting household appliances. Direct loss of property is defined to mean the loss in the value of property sustained by a family or individual by reason of the disposition or abandonment of property.

2. Additional Relocation Payment. An additional payment (normally payable in monthly payments) not to exceed $500 in the first 12 months after displacement and an additional $500 in the second 12 months will be made to displaced families, displaced individuals 62 years of age or over, or displaced handicapped individuals. The amount of the payment to be made for each of the 2 years (subject to the maximum stated above) must equal an amount which, when added to 20% of the annual income of the individual or family, equals the annual average gross rental required for a decent, safe and sanitary dwelling of modest standards adequate in size to accommodate the family or individual.*

3. Additional Payments to Property Owners

   (a) Settlement Costs. An individual or family who is displaced from its own home (or any other property which it owns) is entitled to reasonable settlement costs incurred in connection with the transfer of the property to a public body under a Model Cities project or activity.

   (b) Replacement Housing Payment

      (1) A relocation payment, not to exceed $5,000, is authorized for displaced owner-occupants of

* These payments must be made in accordance with a HUD-approved schedule of annual average gross rentals for the community.

single- or two-family dwelling units acquired by a public body under a Model Cities project or activity. The displaced owner must have occupied the property for a period of not less than one year prior to the initiation of negotiations for the acquisition of the property; and he must purchase and occupy a replacement dwelling unit within one year following the date on which he is required to move from the dwelling acquired for the project or activity.

(2) The payment is limited to an amount which when added to the acquisition price, will equal the average price required for a decent, safe, and sanitary dwelling of modest standards, adequate in size to accommodate the displaced owner-occupant, which is reasonably accessible to public services and places of employment, and available on the private market.*

An owner-occupant is eligible for this payment only if he does not receive the additional payment described in paragraph 2, above. In addition, the displaced owner-occupant may not receive this payment if he receives a payment required by a state law of eminent domain, and the Secretary finds such a payment to have substantially the same purpose and effect as this payment, and is includable in the cost of the project for which federal financial assistance is available.

Business Concerns and Nonprofit Organizations

1. Moving Costs and Direct Loss of Property. Reimbursement is payable subject to the following maximums. If the claim is for direct property loss only or a combined claim for direct property loss and moving expenses, the maximum payment is $3,000. If the claim is for moving expenses only, the maximum payment is $25,000: Provided, however, that payments in excess of $25,000 are payable if such a policy has been established for renewal projects and other HUD programs in the model neighborhood. In such cases, the city must pay that proportion of the excess over $25,000 which is payable under urban renewal (one-third or one-fourth).

* These payments must be made in accordance with a HUD-approved schedule of average housing sales prices for the community.

Eligible moving costs and direct loss of property are defined in substantially the same manner as for families and individuals.

2. Small Business Displacement Payments. A business concern is entitled to a payment of $2,500 if it meets the requirements of the statute and HUD regulations governing a small business. The principal requirement is that the average annual net earnings before income taxes of the business be less than $10,000 and that it satisfy a minimum gross receipts test.

3. Settlement Costs to Property Owners. Any property owner who is displaced is entitled to reasonable settlement costs incurred in connection with the transfer of the property to a public body under a Model Cities project or activity.

A detailed statement of payment limits and eligibility requirements will be issued as Departmental regulations in the near future.

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