

Legal Opinion: CIM-0112

Index: 3.600  
Subject: Boston Rent Control - Preservation

July 7, 1995

MEMORANDUM FOR: Miniard Culpepper, Assistant General  
Counsel, IAC

FROM: Nelson A. Diaz, General Counsel, C

SUBJECT: Impact of November 23, 1994 Memorandum Regarding  
Preemption of Vacancy Decontrol Certificates

This is in response to the memorandum from Sharon M. Swain, then acting Assistant General Counsel, asking how the November 23, 1995 Memorandum from me to Ms. Swain (the "November Memorandum") regarding preemption of vacancy decontrol certificates would impact on the appraisals for certain projects seeking participation under the Emergency Low Income Housing Preservation Act of 1987, as amended (ELIHPA/Title II) (12 U.S.C. Section 17151 note) or the Low Income Housing Preservation and Resident Homeownership Act of 1990, as amended (LIHPRHA/Title VI) (12 U.S.C. Sections 4101 et seq.). While the memorandum initially asks generally about projects appraised under ELIHPA or LIHPRHA, the memorandum further specifies that the Boston Office is seeking guidance regarding Burbank Apartments (Project No. 023-55172), Cummins Towers (Project No. 023-44072) and Florence Apartments (Project No. 023-55025) (collectively, "the Projects") which were appraised under ELIHPA.

We have consulted with the Office of Housing, and they have decided that the Boston Office of Housing should process the Section 241(f) loan applications for the Projects in accordance with appraisals already conducted and the Plans of Action already approved. The owners will not be required to resubmit their appraisals in accordance with the November Memorandum. This position is based on the fact that HUD has already executed (and performed under) Use Agreements and Section 8 Housing Assistance Payments ("HAP") Contracts with the owners and has thereby committed the Section 8 funds and established the Section 8 rents for the projects. The Boston Office of Housing, however, may update the Capital Needs Assessments for the Projects to ensure that all necessary repairs are made by the owners. It is our understanding that the necessary repairs will be financed through the Section 241(f) loan.

The Office of Housing has decided that the position in the November Memorandum should be applied prospectively only. In other words, the November Memorandum should be applied to projects that have not executed Use Agreements and Section 8 Agreement to Enter Into a Housing Assistance Payments ("AHAP") Contracts or HAP Contracts.

If you have any questions regarding this memorandum, please contact Gayle E. Bohling at (202) 708-4107.