

Legal Opinion: GCH-0007

Index: 2.145, 2.230

Subject: PHA Requirement to Pay Cost of Contract Inspections

October 29, 1991

MEMORANDUM FOR: Janice D. Rattley, Director
Office of Construction, Rehabilitation and
Management, PC

FROM: Michael H. Reardon, Assistant General Counsel, Office
of Assisted Housing, GCH

SUBJECT: Legality of Requiring PHAs to Pay the Cost of Contract
Inspections to Supplement HUD Monitoring

Your October 21, 1991, memorandum requests advise as to whether HUD could require, in view of the NAHA amendments to sections 6 and 14 of the USH Act, that PHAs "contract for independent inspections and pay for these inspections from the PHA's modernization and development accounts." You further ask "whether HUD can contract for the inspections and assess the PHA the cost of the inspection, to be paid from the applicable account."

You ask specifically whether section 122 of the ACC provides authority for either of these options. This provision is only applicable to the second alternative since it requires PHAs to provide "a reasonable fixed fee for providing representatives of the Government at the site of each Project in connection with the construction thereof." This ACC provision (which has not been used in recent years) implemented section 7(j) of the Department of HUD Act which authorizes HUD to establish fees and charges to program beneficiaries to cover the cost of inspections, project review and financing services, audits and other services. Attached is a September 16, 1991, note from A. I. Polsby to Casimir Bonkowski, discussing the PIH legislative proposal and concluding that the authority under section 7(j) could be used to accomplish the same objectives as the legislative proposal, but this would need to be reflected in the HUD FY 1993 budget. He indicated that the HUD Office of Budget would strongly oppose the use of fees to fund the cost of inspections and monitoring.

As we have already indicated, section 122 of the ACC does not provide authority for requiring PHAs to hire inspectors and pay the cost from program funds. Since your inquiry does not indicate the specifics of such requirements that you would like to impose, we are unable to address such issues as the procurement process and HUD oversight of the inspectors. In general, we believe that HUD could require PHAs to contract for

and pay for inspectors from development and modernization funds,

but that this would need to be done by regulation. The PHMAP interim rule presently in clearance could afford a convenient regulatory vehicle for this purpose. If PIH wishes the procurement of such inspection services to be by contract (rather than employment) with inspectors from a HUD-approved list, or other departures from 24 CFR Part 85, the regulation would need to provide such procedures as an exception to Part 85. Since the inspectors would either be hired or their services obtained under contract, HUD oversight and direction to their work would need to be consistent with this status.

Attachment