

Legal Opinion: GCH-0014

Index: 2.5000

Subject: Replacement Housing Requirements--HOPE I and III

November 22, 1991

MEMORANDUM FOR: Thomas M. Humbert, Assistant Secretary for  
Policy Development, TP

FROM: Frank Keating, General Counsel, G

SUBJECT: Replacement Housing Requirements for HOPE I and III

This memorandum is in response to your request for an opinion concerning HUD's ability to link the one-for-one replacement housing requirements applicable to HOPE I (public and Indian housing) and HOPE III (scattered site public housing) to the "supply criterion" under Section 303(e) of the U.S. Housing Act of 1937 and Section 443(e) of NAHA.

After discussing this issue at some length with members of my staff, it is my opinion that it is not legally permissible to link the existence of the replacement housing plan under HOPE I and HOPE III (scattered site public housing only) as a means of automatically determining that the supply criterion has been satisfied.

The one-for-one replacement housing plan is intended to replace each unit lost through a public housing homeownership program with a combination of new or modernized public housing units, section 8 certificates or vouchers, comparable State or locally funded housing assistance programs, or various other types of housing assistance. On the other hand, the supply criterion is intended to evaluate "the extent to which a sufficient supply of affordable rental housing of the type assisted under this title exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units."

I believe the better reading of the law is that "of the type assisted under this title" refers to the public housing stock, rather than to low-income housing in general. Under this interpretation, it is not possible to measure compliance with the supply criterion by determining whether the applicant has submitted a feasible replacement housing plan, since the replacement plan might provide for the replacement of public

housing units with 5-year section 8 certificates, or with other types of non-public housing assistance.

However, it is possible to give meaning to the supply criterion by establishing a certain level at which the implementation of the homeownership program will be deemed by HUD to be appreciably reducing the number of public housing rental

units available to residents.