

Legal Opinion: GCH-0047

Index: 2.250
Subject: Idaho Welfare Rents

February 26, 1992

MEMORANDUM FOR: R.C. Brinck, Manager, Portland Office, 10.3S

FROM: Michael Reardon, Assistant General Counsel
Assisted Housing Division, GCH

SUBJECT: Idaho Welfare Rents

This is in response to your November 8, 1991, memorandum to Don Kaplan, Director, Office of the Multifamily Housing Management, concerning the use of welfare rents in computing tenant rent for Idaho residents of public and assisted housing. It is your opinion that for families living in subsidized housing, Idaho should be considered a flat grant state.

On September 29, 1990, Idaho abolished the utility allowance part of their shelter and utility allowance grant. Since then the shelter allowance is determined by the number of persons in the household. You state that Chris Werner, Policy Writer for the Idaho Welfare Department, advised your office that AFDC households living in subsidized housing receive a flat grant of either \$77 or \$86 depending on the size of the AFDC household; and that the shelter allowance is not modified by the actual rent charged.

Section 3(a)(1) of the United States Housing Act of 1937 (42 USC 1437a) provides that:

A family shall pay as rent for a dwelling unit assisted under this Act (other than a family assisted under section 8(o)) the highest of the following amounts, rounded to the nearest dollar:

- (A) 30 per centum of the family's monthly adjusted income;
- (B) 10 per centum of the family's monthly income; or
- (C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

States may be characterized in their administration of their welfare program as either "as paid" States - those States in which the welfare benefits are calculated based upon a tenant's actual rental costs; or "flat grant" States - those States in which the shelter portion of the grant is based either on family size or circumstance. HUD's determination of a family's rent and consequently housing subsidy is based on the assumption that Idaho is an "as paid" State.

Section 3(a)(1)(C) was intended to apply to "as paid" States. The legislative history made clear that the welfare provision (section 3(a)(1)(C)) would apply "only in States where the housing portion of the welfare payment is adjusted in accordance with actual rent charged"; and not in those States "where public assistance plans provide for payments to families of single cash flat grant payments . . . or to States where housing allocations for public assistance are computed on the basis of a standard such as the size of the family or the size of the housing unit." (Pgs. 24, 190, House Committee Report No. 93-1114 to accompany H.R. 1536)

Based on the information provided by your office concerning the calculation of welfare benefits (AFDC) in Idaho, it is our opinion that for families living in subsidized housing (except for the Section 236 program which is specifically excluded from the definition of "subsidized housing" under the AFDC program) Idaho should be considered a flat grant State. We recommend that owners, IHAs and PHAs be notified of this opinion and that they must change the way they calculate rent for AFDC recipients in Idaho.