

Legal Opinion: GCH-0055

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Subject: Cert. & Voucher Programs: 1993 Advance Appropriation

April 21, 1992

MEMORANDUM FOR: Joseph G. Schiff, Assistant Secretary, P

FROM: Robert S. Kenison, Associate General Counsel  
Office of Assisted Housing and Community Development, GC

Subject: Certificate and Voucher Programs: Use of 1993 Advance  
Appropriation

Under the FY 92 HUD appropriation, there is a separate appropriation account for renewal of expiring Section 8 subsidy contracts (P.L. 102-139, October 28, 1991, 105 Stat. 747-748). \$850,000,000 of budget authority in the renewal appropriation is not available for obligation until FY 1993 (October 1, 1992). OMB has asked if this so-called 1993 "advance appropriation" in the FY 92 appropriation act may be used to cover certificate and voucher program expenditures for the period from expiration (in FY 92) of HUD's contractual commitment for a public housing agency (PHA) certificate or voucher program to HUD's obligation (in FY 93) of renewal funds from the advance appropriation.

We conclude that the advance appropriation may be used to cover certificate and voucher program expenditures in this interval. Such use does not violate any requirement of the authorization or appropriation. To understand the basis and effect of this conclusion, it may be helpful to sketch the contractual structure of certificate and voucher program funding.

Funds for a PHA's certificate or voucher program are provided under a consolidated contract instrument between HUD and the PHA (called a "consolidated annual contributions contract" (CACC)). The consolidated contract instrument states all outstanding contractual commitments by HUD for successive funding increments (or "projects") to support the PHA's certificate or voucher program. For each funding increment committed by HUD, the consolidated instrument states the maximum annual payment (contract authority) and the term (to last day of term) over which this amount is available for payment. (Except for amendments of pre-FY 88 certificate commitments, HUD's commitment to make payments for each funding increment is considered a separate annual contributions contract (ACC).)

During a PHA fiscal year, HUD may disburse to the PHA subsidy payments for all funding increments currently "on line" to support the PHA program. Thus HUD may pay the PHA up to the

sum of the maximum annual payments for all of the funding increments listed in the consolidated instrument (prorated for increments beginning or ending during the fiscal year). Amounts not needed for current disbursement to the PHA are set aside by HUD in an unfunded "project reserve," and may be used to supplement annual payments in a future fiscal year.

If a funding increment terminates during the fiscal year, and is not immediately made up by renewal funding obligated to the PHA, the amount of funding previously provided for this increment is no longer available to support the PHA's total program. During the year of termination, the PHA loses the prorated payment for the balance of the fiscal year. Therefore, the amount available to support current participants and new admissions after the termination is the annual funding from remaining funding increments plus any draw against the project reserve.

As noted, renewal "advance funding" is not available until the beginning of FY 93. During FY 92, there is not enough renewal funding to renew all expiring certificate and voucher funding increments. Toward the end of FY 92, funding increments will expire before renewal funding is available through the FY 93 advance funding. To bridge the funding gap -- while continuing to maintain prior program levels -- a PHA will be forced to draw on remaining funding obligated under the consolidated funding instrument, including use of outstanding project reserve.

After the beginning of FY 93, HUD can obligate the advance funding, as intended by Congress, for renewal of the expiring section 8 certificate and voucher subsidy contract commitments. When this is done, the ACC term for the renewal subsidy commitment may be dated to commence at the termination of the expired subsidy commitment, so as to restore the reserves lost because of the subsidy commitment gap. For example, if the ACC term for a PHA's pre-FY 88 certificate program terminated on August 15, 1992 (a month and a half prior to availability of the advance funding appropriation), the ACC term for the renewal funding increment obligated in FY 93 from the 1993 advance appropriation may commence on August 1, 1992 (the normal renewal funding pattern). The budget authority is obligated in FY 1993, and funds are disbursed to the PHA in FY 1993 and subsequent years.

This procedure essentially allows the establishment of PHA reserves and accounts as they would have been if the renewal funding had been immediately available at expiration of prior increments. Moreover, this procedure avoids disruption in program operations. The procedure is consistent with the purpose of the appropriation conferees, in providing additional funding for certificate and voucher renewals, to assure:

. . . that no family should lose its housing assistance due

to a contract terminating . . . . (H. Rpt. 102-226,  
September 27, 1991, p. 25)

We have not previously had occasion to consider use of renewal funding from an appropriation act for the year before funds are available for obligation. However, use of certificate and voucher ACC funding to cover periods prior to obligation to the PHA, or prior to the term of a funding increment, is consistent with prior program practice and OGC advice. The use of an advance appropriation to cover program expenditures or program budgeting for such prior periods does not present any new legal issue.

Although certificate and voucher funding is currently prorated from commencement of the funding increment term, until a recent change in voucher program budgeting procedures, budget procedures for the first PHA fiscal year in which a funding increment commences provided that the full annual maximum (contract authority) was available for liquidation during that PHA fiscal year. Regardless of when the increment term commenced during the PHA's fiscal year, the full annual amount was credited to project reserve if not disbursed during the fiscal year. (The actual draw against the available funds was determined by the PHA's budget.)

In addition, under current program practice, where renewal (or amendment) funds are obligated later than the time needed (as determined under program funding procedures) HUD may establish a commencement date for the funding increment which is earlier than the date the funds are obligated.