

Legal Opinion: GCH-0093

Index: 2.296

Subject: Demolition\Disposition of Public Housing Units

March 16, 1994

MEMORANDUM FOR: Joseph Shuldiner, Assistant Secretary  
for Public and Indian Housing, P

FROM: Nelson A. Diaz

SUBJECT: Demolition/Disposition of Public Housing Units -- Level  
of Approval Required for Replacement Housing Plans

This responds to your December 14, 1993, memorandum requesting advice as to whether the requirement under section 18(b)(3)(C) of the United States Housing Act (the Act) for approval of a replacement housing plan by the unit of general local government in which the project is located can be interpreted to permit the required approval to be given by the chief executive officer of such body. You have pointed out that the present requirement for approval by the governing body of the unit of general local government has often resulted in extremely long delays in obtaining such an approval.

This issue was not addressed in the interim rule (24 CFR 970.11(c)) which merely repeats the statutory language, nor was it addressed in the Preamble or the public comments. We have not found any legislative history discussion of this requirement which was adopted as part of section 121 of the Housing and Community Development Act of 1987. On the advice of the Office of General Counsel to promote uniformity, PIH Notice 89-19 and all subsequent notices have provided that, in order to satisfy the requirement for approval by the unit of general local government, "the governing body of the unit of general local government (e.g., City Council, Board of Aldermen) must approve" the replacement housing plan. Compliance with this requirement has been uniformly required of all public housing agencies seeking approval of their replacement housing plans since implementation of the 1987 Act amendments.

It is in the context of the extremely long delays that have resulted from this requirement that you ask whether approval by the unit of general local government can be provided by its chief executive officer. We agree that the governing body approval requirement is inconsistent with the objective of expedited processing of applications for demolition/disposition. We also note that the application of site and neighborhood standards has been postponed until a site has been identified for both the public housing development and section 8 project-based assistance programs under the final rule soon to be placed in clearance. This change will tend to reduce the importance of obtaining local government approval at an early stage. Further, a comparison of the language of the Fiscal Year 1993 HUD Appropriations Act applicable to the Urban Revitalization Program which requires that the program implementation plan "has the approval of the local governing body" suggests that more specific language was used when it was intended to require local governing body approval. We have therefore concluded that it would be legally permissible to interpret the requirement for local government approval under section 18(b)(3)(C) of the Act as permitting such approval to be provided by the chief executive officer.

Since the requirement for approval by the governing body of the unit of general local government has been uniformly applied since implementation of the 1987 Act amendments, this change should be included in the final rule.