

GAO

Report to the Honorable
Daniel Patrick Moynihan, U.S. Senate

March 1991

PUBLIC HOUSING

Management Issues Pertaining to the Buffalo Municipal Housing Authority



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**Resources, Community, and
Economic Development Division**

B-239934.2

March 1, 1991

The Honorable Daniel Patrick Moynihan
United States Senate

Dear Senator Moynihan:

As requested in your November 16, 1989, letter, we reviewed the (1) potential effectiveness of a voluntary 3-year compliance agreement between the Department of Housing and Urban Development (HUD) and the Buffalo Municipal Housing Authority to correct the Authority's prior tenant assignment practices that violated title VI of the Civil Rights Act of 1964, (2) reasons for the Authority's high vacancy rate, and (3) justification for the Authority's relatively high number of employees. We provided our preliminary observations on these issues in testimony before you in June 1990.¹ This report concludes our review of these issues and includes information on the Authority's affirmative action program for its employees and its federally funded modernization activities. (See app. VI.)

Results in Brief

The voluntary compliance agreement attempts to remedy specific violations of title VI, taking into consideration the Authority's financial position and its high vacancy rate. Since the agreement has not yet been completely implemented, drawing conclusions on its effectiveness would be premature. However, we believe that ultimately, the effectiveness of this agreement, which is the first to contain financial incentives as a remedy, will depend on whether (1) the value of individual incentives will be sufficient to encourage applicants and tenants to move, (2) the value of incentives provided to housing developments will be sufficient to attract applicants or transferees while also encouraging tenants at these developments to more readily accept desegregation; and (3) the Authority is able to attract more white families to its predominately minority waiting list. Aside from the issue of whether individual incentives will be sufficient to encourage moves, we believe that the Authority's operating funds may not be used to pay for certain individual incentives provided for in the agreement. Also, implementing the agreement could adversely affect the Authority's financial condition and its ability to reduce its high vacancy rate. However, HUD believes

¹Issues Pertaining to the Management of the Buffalo Municipal Housing Authority, Testimony at a Field Hearing in Buffalo, New York (GAO/T-RCED-90-87, June 9, 1990).

that the agreement balances civil rights requirements against the financial requirements and the vacancy situation. HUD stated that it will monitor both of these areas.

As of June 1990, about 1,300 of the Authority's approximately 5,000 federally financed units were vacant. This 26-percent vacancy rate far exceeds the 7.5-percent national average and the 7-percent average for 10 housing authorities of similar size. Multiple factors have contributed to the Authority's high vacancy rate. These factors include health hazards in certain developments, the undesirable location and poor condition of some developments, restrictive tenant assignment policies, extensive modernization activities, and the Authority's inability to promptly prepare vacant apartments for reoccupancy. Vacancies are particularly troublesome in light of the more than 2,800 households on the Authority's waiting list and the fact that HUD is paying Buffalo about \$240,000 per month in subsidies on these vacant units.

The Authority's staffing level exceeds HUD's indicators and is about 1.5 times higher than the average for 10 housing authorities of similar size. However, HUD has approved the Authority's staffing level as necessary to improve the management of its modernization program, address the vacancy problem, and provide increased security coverage.

Background

The Buffalo Housing Authority is an independent public entity created in 1934 under New York State law. It is controlled and managed by a board of seven members; five are appointed by the mayor and two are elected from the tenant population. The Authority owns, maintains, and administers over 5,000 public housing units located in 23 federally aided developments.² As of July 1, 1990, more than 7,000 tenants resided in these developments.

In April 1989, HUD found that the Authority's tenant assignment practices violated the regulations implementing title VI of the Civil Rights Act of 1964, as amended. HUD determined that between 1976 and 1985, the Authority's practices of assigning applicants to units on the basis of the applicant's project preference, instead of using a communitywide waiting list, resulted in highly segregated housing developments and discriminated against applicants as well as residents. By using a communitywide waiting list, applicants are offered units on the basis of their

²The Authority also manages four New York State developments—two of which are completely vacant.

availability as opposed to allowing applicants to select units in developments where their race predominates.

HUD also found that the Authority did not take steps to remedy the effects of its past discriminatory practices. Consequently, on May 29, 1990, HUD and the Authority signed a voluntary 3-year compliance agreement designed to (1) bring the Authority into compliance with title VI, (2) provide remedies to current tenants subject to segregation, and (3) require that affirmative actions be taken to remedy the effects of prior Authority actions that resulted in segregation. The implementation of the revised tenant assignment procedures, called for in the agreement, is still pending as of the end of January 1991.

The voluntary compliance agreement represents a new approach to remedy specific violations of title VI. Specifically, this agreement is the first to include incentives as a remedial component. In developing the remedies, HUD sought to tailor the agreement to correct the title VI violations, while also considering problems facing the Authority, including its high vacancy rate and financial condition.

In April 1989, at the same time that HUD issued its preliminary finding concerning the Authority's tenant assignment practices, HUD also directed its regional and field offices to review other housing authorities' tenant assignment plans. This review disclosed that 73 other housing authorities were using project or location preferences that the Assistant Secretary for Fair Housing and Equal Opportunity had not approved and therefore violated the title VI regulatory requirements of a communitywide waiting list. In April 1990, HUD instructed these other housing authorities to stop using tenant preferences immediately and to adopt approved plans. On the other hand, if the authorities wished to continue with project preferences, they could obtain approval from the Assistant Secretary by demonstrating that their project preferences were not inconsistent with fair housing objectives.

Too Early to Assess Agreement's Effectiveness

It is too early to conclude whether the 3-year agreement will achieve its objectives. Until these first-time incentives are offered, it is difficult to predict whether they will be sufficient to encourage people to move to a development where their race/ethnicity is not concentrated.³ The agreement provides incentives to individuals in the form of vouchers for child care, education, and vocational training, as well as improvements to the

³Less than the group's percentage in the total Buffalo public housing population as of June 28, 1990.

recipients' apartments, such as new kitchen appliances and free cable television and telephone hookups. The value of individual incentives for applicants and transferees is limited to \$1,000 each (development incentives are also described below). As additional incentives, applicants and transferees are entitled to select an apartment with one more bedroom than prescribed by normal occupancy standards, and the Authority will also pay moving expenses for transferees.

At our request, HUD's General Counsel provided a legal memorandum in which he concluded that operating funds could be used to pay for all of the individual incentives proposed in the agreement. While we do not disagree with HUD's view that so called "hardware" items (e.g., kitchen appliances and other physical amenities) may be paid for out of operating funds, we believe that the so-called "software" items (e.g., vouchers for child care and vocational education) are not a proper expense. Our analysis of these issues is contained in appendix III.

The agreement also requires the Authority to develop a plan to provide incentives to developments that achieve a 10-percent increase in tenants of a nonconcentrated race/ethnicity. The 10-percent threshold represents HUD's best judgment of the level that would both encourage persons to locate in developments where their race/ethnicity is not concentrated and would encourage present tenants to accept individuals of different races/ethnic backgrounds. The development incentives include such items as additional landscaping, increased security, or new community rooms.

We believe it will be easier to achieve the agreement's objectives in smaller developments that are predominately occupied by elderly white tenants versus larger family developments that are almost exclusively minority. Smaller developments tend to be newer and in better condition and would require only a small number of move-ins to achieve the 10-percent target. For example, at Mullen Manor, a development with 40 units, only four minority applicants need to move in to achieve the 10-percent increase. Conversely, at Commodore Perry, which is a large family development, about 30 families would need to move in to achieve the 10-percent target. Because the development incentives are triggered by achievement of the 10-percent target, these incentives are most likely to go to the smaller and newer developments where they are needed least. HUD must approve the Authority's plan for distributing the development incentives before the Authority's new tenant assignment plan is implemented. Accordingly, HUD can ensure that the planned distribution addresses this appropriately.

A potential problem with the developmental incentives is that HUD capped them at a total of \$1 million over the 3-year term of the agreement to control the financial demands placed on the Authority. Depending on the plan for awarding these funds, it may result in only limited improvements, particularly if they are spread over many developments.

Finally, the Authority may find it difficult to increase the white tenant population at its larger, highly segregated family developments because of the relatively low number of white family applicants. As of April 1990, only 16 percent of the families on the Authority's waiting list were white.

Compliance Agreement May Adversely Affect Housing Authority Finances and Vacancy Rates

Ironically, the more successful the results are of the compliance agreement, the greater the possibility that it will adversely affect the Authority's financial position and ability to correct its serious vacancy problem. The potential adverse financial effects stem from the requirement that the Authority pay for the various financial incentives out of its operating funds and reserves. Although the agreement prescribes ceilings on the major costs, other costs are not capped and will be governed by the number of households opting to take advantage of the one-time voluntary transfers.

The compliance agreement sets total cost limits on individual incentives provided to new applicants (\$500,000) and on the development incentives (\$1 million). The amount selected for these incentives represented the Office of Public and Indian Housing's judgment of what could be made available without jeopardizing the financial viability of the Authority. However, no similar overall limits are set on the \$1,000 incentives for each current household that agrees to transfer within a 45-day time frame, nor are limits set on total moving costs to be paid by the Authority. The total cost of these incentives depends directly on the number of households that opt to take advantage of them. Neither HUD nor Authority officials believe they can precisely predict their costs. However, HUD officials stated that if the incentives threaten the Authority's financial viability, they will consider renegotiating this part of the agreement.

We are concerned about the financial ramifications of the agreement on the Authority's operations. The Authority has budgeted \$2.1 million in fiscal year 1991 to pay for incentives and carry out other provisions of the agreement. This amount represents almost 10 percent of the

Authority's fiscal year 1991 operating budget of \$22.7 million. To avoid the appearance of rewarding the Authority for its prior title VI violations, HUD did not provide additional funding to cover the cost of implementing the agreement. Consequently, to satisfy the provisions of the agreement, the Authority anticipates deferring certain maintenance costs, reducing its energy expenses, and cutting overtime for maintenance and security personnel. Reducing energy expenses may be difficult, given the recent rapid increase in oil prices. Also, as discussed later, HUD has determined that maintenance and security are two problem areas requiring increased management attention and staff.

The Authority also foresees the need to draw upon its operating reserves⁴ in order to meet its projected fiscal year 1991 expenses. These reserves have dropped from \$8.8 million in fiscal year 1988 (about 90 percent of the maximum allowable under HUD standards) to a projected \$4.1 million for fiscal year 1991, or 41 percent of the maximum allowable reserve. With the projected drop in the reserve level, the Authority will begin to approach one of HUD's indicators used to identify troubled housing authorities.

The success of the compliance agreement also could make it more difficult for the Authority to reduce its high vacancy rate. The Authority's past inability to ready a sufficient number of apartments for reoccupancy when tenants move has been a factor in the continued high vacancy rate. (See app. VI.) Until recently, the Authority has just barely kept up with the rate of monthly move-outs, much less made inroads into the backlog of vacant apartments needing work before they can be occupied. Although the Authority has recently increased the number of units prepared for occupancy, the incentives offered in the compliance agreement could prompt a number of current residents to transfer to new apartments. This increase in occupancy would tax the Authority's ability to reduce its backlog of vacant units, since each transfer would require the preparation of two apartments—one for the transferee and one that the transferee vacates. However, HUD believes the agreement will help to reduce vacancies. HUD sees these reductions coming about through changes required by the agreement in the management of the vacancies, methods of preparing and offering units, the effect the incentives will have on attracting applicants and transferees to units, and the new focus on marketing units to prospective applicants.

⁴A public housing authority may establish out of its operating receipts a reserve for its prudent operation of their developments. Operating reserves are limited to either 50 percent of a public housing authority's total routine expenses or \$100,000, whichever is greater.

HUD plans to monitor the Authority's implementation of, and experience with, the compliance agreement by requiring the Authority to submit periodic reports to HUD on such things as move-ins and transfers. In addition, HUD's Buffalo area office plans to track the agreement's effect on the Authority's financial position and vacancy rate.

Reasons for the Authority's High Vacancy Rate

As of June 1990, the Authority reported that 1,314 federally assisted apartments, or 26 percent of its total federal inventory, were vacant. This rate is particularly significant in light of the demand for public housing, which exceeded 2,800 households on the Authority's waiting list in August 1990. Also, this rate is the highest vacancy rate among the 51 housing authorities under the HUD Buffalo area office's jurisdiction, and it greatly exceeds the 1989 national average of 7.5 percent. Buffalo's vacancy rate targets the Authority for special HUD attention and possible future subsidy reductions under a recent HUD national initiative directed toward housing authorities with high vacancy rates, defined by HUD as 10 percent or more. The initiative calls for increased HUD emphasis on working with public housing authorities to identify strategies to reduce their vacancies.

Several key factors have contributed to the Authority's high vacancy rate. The majority of the current vacancies can be attributed to (1) the Authority's inability to rent apartments in developments with potential health hazards (e.g., asbestos and lead-based paint); (2) prospective tenants' rejection of developments whose location, age, and configuration (i.e., small apartments or third-story walk-up apartments for the elderly) were considered undesirable; and (3) the Authority's use of HUD's prescribed tenant assignment practices, which precluded the Authority from filling vacancies at some developments that are in good physical condition and that are located in desirable neighborhoods.⁵ Other factors contributing to the vacancy problem include extensive modernization work that prevented new applicants from being placed and required existing tenants to move, and the Authority's past inability to prepare a sufficient number of vacant apartments for occupancy.

In a January 1989 HUD-approved plan, the Authority outlined a strategy to gradually reduce vacancies to achieve a 97-percent occupancy level by fiscal year 1997. The plan identified changes in the Authority's operations designed to increase occupancy. However, because of the recent

⁵On the basis of limited data, this situation appears to be unique to the Authority and is attributable to its unusually high vacancy rate.

HUD special initiative announced in February 1990 to reduce vacancies nationwide and the mounting pressure from the Authority's board of commissioners, this plan will likely be reassessed.

Buffalo's Staffing Levels Exceed HUD-Suggested Levels but May Be Needed

As of July 1990, Buffalo Housing Authority staff totaled 425 employees—an increase of 73 employees since April 1986. This number is high both in terms of HUD-suggested levels and the staffing levels of housing authorities of similar size. However, HUD has approved the Authority's staffing level as necessary to carry out its responsibilities, including placing additional emphasis on (1) effectively managing its modernization program, (2) addressing its vacancy problem, and (3) increasing security.

HUD staffing indicators state that a public housing authority of Buffalo's size should have approximately 1 administrative employee per 65 apartments and 1 maintenance employee per 40 apartments. It should be noted, however, that these indicators are suggested levels, rather than standards and that they are not applicable to the 90 Authority employees that were assigned to security and modernization functions as of July 1990 (no HUD staffing indicators exist for these functions). Nevertheless, HUD's indicators do provide some basis for assessing the size of the Buffalo Housing Authority's staff. Applying the indicators to staff authorized in the Authority's 1990 HUD-approved budget shows that the Authority exceeds the indicators by 39 administrative and 53 maintenance employees.

Recent HUD monitoring has pointed out the need for more effective use of staff and better coordination between the Authority's maintenance and modernization staffs. The HUD Buffalo area office plans to hold regularly scheduled meetings with the Authority to identify ways to improve the productivity of its maintenance staff.

Conclusions

HUD's voluntary compliance agreement with the Buffalo Housing Authority is the first attempt to use financial incentives to bring an authority into compliance with title VI. We have no legal objection to the use of operating funds to pay for certain financial incentives. However, we believe that current legislation does not authorize the use of operating funds to finance the individual "software" incentives. Aside from our objection to using the Authority's operating funds to pay for certain individual incentives, we believe that the agreement's effectiveness also hinges on whether public housing residents will find the incentives to be

a sufficient inducement to live in a development in which their racial/ethnicity is not concentrated. Also, it seems that the Authority will have to attract more white families through outreach to its predominantly minority waiting list in order to substantially improve the overall racial balance of its family developments.

We support HUD's intention to closely monitor the agreement's potential adverse effects on the Authority's budget and vacancy rate. It is important, however, that HUD closely coordinate implementation of the agreement with HUD's nationwide initiative to reduce high vacancy rates at Buffalo and other housing authorities with a vacancy problem to ensure that both objectives do not work at cross purposes.

Recommendations to the Secretary of Housing and Urban Development

We recommend that the Secretary of HUD, in implementing the voluntary compliance agreement, not require the Authority to finance the individual "software" incentives from the Authority's operating funds. Rather, if HUD chooses to implement these incentives, we recommend that the Secretary of HUD either seek alternative sources of funds or request that the Congress explicitly authorize the use of operating funds for this purpose.

We also recommend that the Secretary of HUD, in monitoring implementation of the title VI voluntary compliance agreement, evaluate the effects that the agreement has on the Buffalo Housing Authority's financial position and vacancy situation in addition to its effects on desegregation. In making its evaluation and while monitoring, HUD should also ensure that the compliance agreement is compatible with its separate national initiative to reduce vacancy rates at public housing authorities where vacancies are unusually high. Should serious conflicts develop between the title VI objectives and prudent management of the Authority, we recommend that the Secretary of HUD and the Buffalo Housing Authority negotiate appropriate adjustments to the compliance agreement.

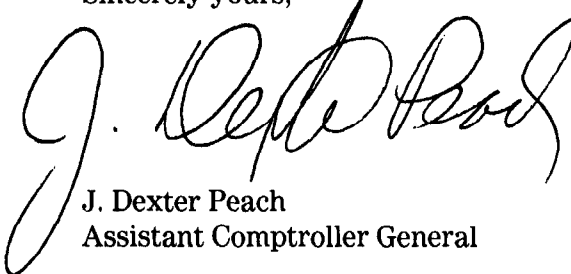
Our review was conducted between January 1990 and September 1990 in accordance with generally accepted government auditing standards. Our work consisted of reviewing applicable documents and interviewing appropriate officials at the Offices of Fair Housing and Equal Opportunity and Offices of Public and Indian Housing at HUD's headquarters in Washington, D.C.; Region II in New York, N.Y.; and Buffalo area office; and at the Buffalo Municipal Housing Authority. As requested, we did

not obtain official agency comments on a draft of this report. However, oral comments from various HUD and Buffalo Housing Authority key officials were obtained and incorporated in the report. In general, the officials agree with the report. (App. I contains a more detailed discussion of our scope and methodology.)

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 20 days after the date of this letter. At that time, we will send copies to the Secretary of HUD; the Chairperson, Board of Commissioners, and the Executive Director, Buffalo Municipal Housing Authority; and other interested parties.

This report was prepared under the direction of John M. Ols, Jr., Director, Housing and Community Development Issues, who can be reached at (202) 275-5525. Other major contributors are listed in appendix VI.

Sincerely yours,



J. Dexter Peach
Assistant Comptroller General

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Abbreviations

BMHA	Buffalo Municipal Housing Authority
CIAP	Comprehensive Improvement Assistance Program
GAO	General Accounting Office
HUD	Department of Housing and Urban Development

Background

The Housing Act of 1937, as amended (42 U.S.C. 1437, *et seq.*), established the public housing program to provide lower income families with decent, safe, and sanitary housing. Although the federal government provides financial assistance, public housing is owned and managed by local public housing authorities. Because rents are too low to cover costs, the Department of Housing and Urban Development (HUD) provides authorities with operating subsidies to help maintain and operate their developments. Through the Comprehensive Improvement Assistance Program (CIAP), HUD also provides housing authorities with modernization funds to help finance capital and management improvements.

Buffalo Municipal Housing Authority

Created in 1934 under New York State law, the Buffalo Municipal Housing Authority (BMHA) manages 23 federally financed public housing developments, 13 of which are exclusively for the elderly, and 10 of which have both elderly and family units.¹ Of BMHA's 5,047 apartments, more than 60 percent were constructed before 1945, and about 73 percent are either one- or two-bedroom units. As of July 1, 1990, more than 7,000 tenants lived in the 23 developments.

In terms of federally financed units, BMHA is the 30th largest public housing authority of the approximately 4,000 authorities in the nation and the largest of 51 housing authorities under the jurisdiction of HUD's Buffalo area office. In the last 5 fiscal years, BMHA's annual HUD operating subsidies averaged about \$8.9 million. In addition, BMHA has received about \$115 million in CIAP funding since the program was implemented in 1981.

BMHA is governed by a seven-member board of commissioners—five appointed by the mayor and two elected by the tenants. The commissioners select the executive director, who manages the Authority's activities. During the last 10 years, BMHA experienced frequent turn-overs in the executive director's position. The current executive director, hired in September 1990, is the fifth to hold that position since 1980.

Objectives, Scope, and Methodology

To determine the potential effectiveness of the voluntary compliance agreement, we reviewed various laws, HUD regulations, and other documentation concerning HUD's title VI investigation, three draft compliance

¹The authority also manages four New York State developments—two of which are completely vacant.

agreements, and the final agreement approved by HUD and BMHA. In addition, we discussed the agreement with numerous HUD and BMHA officials responsible for the issues covered in this report, as well as Buffalo and national housing advocates and critics.

To ascertain reasons for BMHA's high vacancy rate, we analyzed the Authority's prior tenant selection practices; reviewed CIAP applications and budgets to identify the extent and impact of modernization activities, and efforts to abate asbestos and lead-based paint hazards; reviewed the timeliness of BMHA's vacant apartment preparation process; and analyzed applicants' refusal rates for selected developments. We also analyzed documentation regarding Buffalo's housing market, reviewed BMHA's plan to reduce vacancies, analyzed BMHA's applicant waiting list, reviewed HUD occupancy reports, and inspected selected developments. Finally, we compared BMHA's vacancy rates with HUD's national averages, as well as with vacancy rates at housing authorities of similar size.

To determine justifications for BMHA's staffing level, we reviewed the Authority's organization chart, analyzed its budgets, reviewed its payroll and personnel records, and reviewed HUD correspondence approving the Authority's staffing levels. We also compared BMHA's staffing levels with HUD's public housing staffing indicators and staffing at housing authorities of similar size.

In addition to addressing the requester's primary questions, we agreed to provide information regarding BMHA's affirmative action program. Specifically, we agreed to provide information on the racial composition of its staff by position and annual salary. We also reviewed BMHA's affirmative action plan and spoke to BMHA, Department of Justice, HUD, and New York Division of Human Rights officials familiar with BMHA's affirmative action efforts. We also spoke to Department of Justice officials who are currently investigating alleged discriminatory employment practices.

Our overview of BMHA's modernization activities involved reviewing the results of HUD's monitoring of the Authority's expenditures, including the Authority's responses to HUD's findings of deficiencies. As discussed with Senator Daniel Patrick Moynihan's office, we did not audit the modernization expenditures. Such an audit is currently being considered by HUD's Office of the Inspector General.

The Voluntary Compliance Agreement Addresses BMHA's Segregated Housing

Requirements for Fair and Nondiscriminatory Housing

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-7(4)) prohibits discrimination on the grounds of race, color, or national origin in federal programs and activities receiving federal assistance. HUD regulations (24 C.F.R. Part 1.4) apply the statute to public housing and require affirmative action to overcome the effects of past discrimination. HUD prescribes two tenant selection and assignment plans that public housing authorities may implement without further approval in order to comply with title VI. Public housing authorities must have approval from HUD headquarters to implement other plans.

HUD's two prescribed tenant assignment plans are called Plan A and Plan B. Under Plan A, an applicant is offered a single, suitable vacant unit that he/she must accept, unless refused for good cause, or be placed at the bottom of the waiting list. Plan A does not specify how housing authorities are to select the location or one specific unit offered to an applicant; however, the method used must be approved by HUD.

Plan B differs from Plan A in that it prescribes criteria for selecting the units to be offered to applicants and allows the applicants to reject up to two or three units before being placed at the bottom of the waiting list, unless refused for a good cause. Under Plan B, if there is a suitable vacant unit in more than one location, the applicant is sequentially offered units at two or three different locations with the largest number of vacant units. The public housing authority must make all offers in sequence, and there must be a rejection of a prior offer before the applicant is offered a unit in another location.

BMHA's Use of Project/Location Preferences Violated Title VI

In September 1987, HUD initiated a review of BMHA's compliance with title VI. On April 25, 1989, HUD notified BMHA of its preliminary finding that BMHA did not comply with title VI during the period 1976 to 1985. While HUD found no evidence of intentional discrimination by BMHA, it did cite BMHA for assigning applicants to units on the basis of applicants' project preference instead of using a communitywide waiting list. A communitywide waiting list establishes a sequence on a single list for assigning applicants to units on the basis of size and type of unit needed and the date of application wherever the unit is located within BMHA's jurisdiction. In addition, several HUD-approved special factors justify greater priority for placement, for example, applicants currently living in substandard housing and those involuntarily displaced from current housing have greater priority.

Appendix II
The Voluntary Compliance Agreement
Addresses BMHA's Segregated Housing

HUD's compliance review found that rather than using such a list, BMHA had allowed prospective tenants to indicate the developments in which they wanted to live and maintained separate waiting lists for each of its developments. HUD concluded that this practice had resulted in an overwhelming racial imbalance in most of BMHA's developments. Specifically, as of June 28, 1990, more than 80 percent of the tenants in 10 of BMHA's 23 developments were minority, and in another 9 developments more than 90 percent of the tenants were white. (See table II.1.) HUD also concluded that, although BMHA implemented a HUD-allowable tenant assignment plan in May 1988 (Plan B), BMHA must take remedial action to overcome its long-standing use of noncomplying plans and practices and the segregation they had caused.

Table II.1: Racial/Ethnic Characteristics of BMHA's Developments as of June 28, 1990

General Occupancy Development

Name of development	Percent black	Percent white	Percent other race ^a	Total number of units ^a	Vacancies	
					Number	Percent
A. D. Price Extension	99.5	0.0	0.5	300	77	25.7
Langfield	94.4	4.6	1.0	582	169	29.0
Kenfield	91.7	8.3	0.0	658	144	21.9
C. Perry Extension	91.3	4.2	4.6	420	116	27.6
C. Perry Homes	83.4	5.0	11.6	623	235	37.7
Scattered Sites	69.6	17.4	13.0	79	12	15.2
Lakeview	58.0	19.0	22.9	666	221	33.2
Jasper Parrish	46.2	46.2	7.7	212	42	19.8
LaSalle	23.3	74.2	2.5	206	43	20.9
Shaffer Village	21.1	65.1	13.8	233	79	33.9

(continued)

**Appendix II
The Voluntary Compliance Agreement
Addresses BMHA's Segregated Housing**

Elderly Developments

Name of development	Percent black	Percent white	Percent other race ^a	Total number of units ^b	Vacancies ^b	
					Number	Percent
A.D. Price Courts	100.0	0.0	0.0	171	32	18.7
Kelly Gardens	92.5	7.5	0.0	44	5	11.4
Schwab	88.5	11.5	0.0	35	9	25.7
L.B. Johnson	57.5	42.5	0.0	206	27	13.1
Sedita	9.6	90.4	0.0	101	18	17.8
Stuyvesant	8.0	90.6	1.4	155	15	9.7
Msgr. Geary	6.0	92.8	1.2	100	15	15.0
Holling Homes	3.9	96.1	0.0	132	30	22.7
Camden	0.0	100.0	0.0	12	6	50.0
Elmhurst	0.0	100.0	0.0	24	1	4.2
Kowal	0.0	100.0	0.0	24	10	41.7
Mullen Manor	0.0	100.0	0.0	40	3	7.5
Slater	0.0	100.0	0.0	24	5	20.8

^aOther races include Hispanic, American Indian, and Asians; Hispanics constitute 89.2 percent.

^bThese data are as of June 1990.

It should be noted that a compliance review conducted by HUD in July 1983 found BMHA to be in substantial compliance with title VI. However, HUD raised several concerns which it directed BMHA to address. One concern was that BMHA was not maintaining a communitywide waiting list that included the date and time of applications. In addition, the review found that BMHA's tenant assignment plan of allowing each applicant one project choice resulted in self-segregation by applicants in most of the projects. BMHA proposed a new tenant assignment plan to address both of these issues. In December 1983, HUD's Buffalo area office conveyed its approval of BMHA's revised tenant assignment plan. This plan included provisions for both a communitywide waiting list and project preferences under which it allowed applicants to indicate three developments in which they preferred to live. When an applicant would reach the top of the waiting list, the agreement stated that BMHA would attempt to provide him or her with an apartment in one of his/her previously stated preferred developments.

In 1985, HUD's area office determined that BMHA had not fully implemented the approved 1983 tenant assignment plan because it still maintained separate waiting lists for each development. HUD directed that BMHA comply with the approved plan, which it did from 1985 to 1987. In

1987, however, HUD headquarters amended HUD's handbooks to explicitly prohibit tenant assignment practices based on tenant project preferences. In 1987, HUD also directed BMHA to drop the 1983 tenant assignment plan which included project preferences. The Authority then implemented Plan B in May 1988.

According to a HUD Office of Fair Housing and Equal Opportunity official, HUD regulations were never intended to authorize tenant assignment practices on the basis of preferences. He stated that by requiring communitywide waiting lists, the regulations implicitly prohibited the assignment of applicants on the basis of their preferences. However, during 1986 training of regional staff, HUD headquarters discovered that regional staff did not understand that project preferences were inconsistent with the communitywide waiting list requirements in the title VI regulations. HUD modified its Public Housing Occupancy handbook in 1987 to explicitly prohibit the use of project preferences. Also, according to the official, the miscommunication between HUD and BMHA was a reason why HUD determined that BMHA's noncompliance with title VI was unintentional.

In April 1989, at the same time that HUD issued its preliminary finding concerning the Authority's tenant assignment practices, HUD also directed its regional offices to review other housing authorities' tenant assignment plans as well as their prior reviews of the authorities' tenant assignment practices. These reviews disclosed that 73 other housing authorities were using project or locational preferences that had not been approved by the Assistant Secretary for Fair Housing and Equal Opportunity. In April 1990, HUD instructed these other housing authorities to stop using project or locational preferences immediately and to adopt approved plans.

Provisions of the Voluntary Compliance Agreement

HUD and BMHA decided to address Buffalo's noncompliance by developing a voluntary compliance agreement that will be in effect for at least 3 years. The agreement is to bring BMHA into full compliance with title VI, provide remedies to current tenants who experienced prior discrimination, and use affirmative action to remedy the effects of prior Authority actions that resulted in segregation. HUD issued its first proposed agreement to BMHA in September 1989. After negotiations and several revisions, the agreement was accepted by BMHA and HUD on May 29, 1990. The agreement calls for BMHA to develop a revised tenant assignment plan, which originally was to have been approved and implemented by

mid-October 1990. However, HUD approved an extension of the implementation date to mid-December 1990 to allow for the input of BMHA's new executive director, who took office in early September 1990. As of the end of January 1991, the implementation of the plan is still pending.

The agreement contains provisions intended to further promote the desegregation of developments. This agreement will require BMHA to offer all new applicants an opportunity to select a unit in a development of their choice where their race is not concentrated, in addition to their normal offer. When an applicant reaches the top of the list, he/she will be offered the first available unit. Simultaneously, applicants will be informed of which developments their race/ethnic group is not concentrated so that they have the option of selecting a unit from one of them.

Individual incentives are to be offered to applicants and current tenants who agree to locate in developments of their choice where their race/ethnicity is not concentrated. The incentives include vouchers for child care, education, and vocational training. We have determined that this type of incentive, termed "software" by HUD, cannot be financed from BMHA's operating funds. (See app. III.) Other incentives that these individuals can receive include improvements to their apartments, such as kitchen appliances, humidifiers, and utility connections which can be financed from BMHA's operating funds. Applicants and transferees who select developments in which their race/ethnicity is not concentrated are also entitled to select an apartment with one more bedroom than prescribed by normal standards, and BMHA will pay the moving expenses of anyone who transfers to a development where their race is not concentrated.

Once the nonconcentrated race/ethnicity has increased by 10 percent of the overall occupancy in a development, the individual incentives will no longer be offered to new applicants. The value of incentives for new applicants and transferees is limited to \$1,000 each. The total value of incentives for new applicants cannot exceed \$500,000. However, there is no limit on the total value of incentives for transferees who decide to transfer within a one-time 45-day time frame designated by BMHA.

In addition, the Authority is to develop a plan to provide incentives to developments that achieve a 10-percent change in overall occupancy by tenants of the nonconcentrated race/ethnicity. According to HUD, the development incentives are intended to encourage current residents to accept individuals of different races/ethnic backgrounds as well as make the development more attractive to prospective tenants. These

incentives include additional landscaping, improved security, and new community rooms. The total value of development incentives is capped at \$1 million over the 3-year period.

The compliance agreement also calls for applicants and tenants to be given a group orientation on the rules and regulations governing public housing before any offers are made. This orientation will also be open to prospective applicants and will include a discussion of issues that may be of concern to applicants, such as safety and BMHA policies and actions to promote safety in its developments, enforcing lease provisions against tenants who harass other tenants, and tenant cooperation and mutual support activities. BMHA will encourage applicant/transferee participation in tours of developments containing units that have been offered. Whether candidates participate in tours or not, they will receive a description of the neighborhood facilities and services that are available in the areas in which the offered units are located. In addition, a description of the facilities, services, and activities available at the offered developments will be provided.

In addition, the agreement states that BMHA must provide additional information about availability of housing to community groups and place additional advertisements in local newspapers as a means of outreach to white and other (nonblack) minority groups. This outreach effort will not be limited to the Buffalo Metropolitan Area.

Other Changes Initiated by BMHA

Although it is not in the agreement, BMHA has agreed to voluntarily join the city of Buffalo in implementing a cross-listing process that will require that all of BMHA future applicants will automatically be considered for section 8¹ certificates and vouchers, and vice versa. This cross listing will ensure that minority applicants for public housing will also have a chance to consider a housing opportunity outside of public housing. It will also ensure that white applicants for section 8 certificates and vouchers will have an opportunity to choose a public housing unit when faced with long delays in the certificate voucher program. In so doing, cross listing provides another opportunity to attract white tenants to public housing.

¹Section 8 certificates and vouchers are in accordance with Section 8 of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437f.

Analysis of the Use of BMHA's Operating Funds to Pay for Compliance Agreement Incentives

HUD's Legal Opinion
Endorses Broad Use of
Operating Funds



OFFICE OF THE GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

November 16, 1990

MEMORANDUM FOR: Gordon Mansfield, Assistant Secretary
for Fair Housing and Equal Opportunity, E

FROM: Frank Keating, General Counsel, G

SUBJECT: Buffalo Incentives

This is in response to your oral request for a written legal opinion as to the eligibility of "incentives" proposed to be provided to tenants of assisted housing in Buffalo, New York. The incentives are a part of the proposed tenant selection and assignment plan of the Buffalo Municipal Housing Authority.

Specifically, you ask whether (1) making certain incentives available to tenants on the basis of racial underrepresentation in a given project is legally permissible given the Title VI noncompliance findings of the Department, and (2) funding the activities in the proposed incentives constitutes an eligible cost in the public housing program.

Civil Rights Concerns

During 1988, the United States Department of Housing and Urban Development ("HUD" or "the Department") conducted a review to determine whether the Buffalo Municipal Housing Authority ("BMHA") was operating in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. See 24 CFR 1.7(a). Based on that review, HUD found that BMHA had been in noncompliance with the nondiscrimination requirements of 24 CFR 1.4(b)(1)(iii), 1.4(b)(2)(i), and 1.4(b)(2)(ii) from at least 1976 until April 1, 1985. HUD also concluded that BMHA's projects were highly segregated as a result of its longstanding use of project-specific waiting lists and that BMHA's adoption of a community-wide waiting list on April 1, 1985, was not sufficient to remedy that segregation. Accordingly, in April 1989, HUD issued a letter of findings which notified BMHA that it had been found in noncompliance with the regulations implementing Title VI and which expressed the Department's willingness to resolve the matter voluntarily. See 42 U.S.C. § 2000d-1; 24 CFR 1.7(d)(1).

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After the letter of findings was issued, HUD's Office of Fair Housing and Equal Opportunity¹ and BMHA voluntarily agreed upon remedial action necessary to overcome BMHA's longstanding use of tenant selection and assignment plans which did not comply with the Title VI regulations. The Office of General Counsel reviewed the voluntary compliance agreement and concluded that the remedial actions, including the incentives for tenants, proposed by the Office of Fair Housing and Equal Opportunity were reasonably designed to correct the regulatory violations found by the Department and to disestablish the segregated character of BMHA projects. The plan is tailored to address specific violations cited in the administrative record of the compliance review, and takes into account relevant circumstances such as the high vacancy rate in BMHA and the availability of other low-income housing in the area. Specifically, the administrative record supported the conclusion that, absent implementation of the incentives proposed by the Office of Fair Housing and Equal Opportunity, a revised tenant selection and assignment plan was unlikely to be effective in desegregating the BMHA.

The Supreme Court has made clear that entities may adopt certain types of affirmative action or other plans designed to eliminate the vestiges of past discrimination. The voluntary compliance agreement in this case has many characteristics upon which the Supreme Court has looked favorably in Title VII employment cases. It is temporary, designed to eliminate manifest racial imbalance rather than to maintain a specific balance, and does not unnecessarily trammel the rights of applicants to, or tenants of, public housing. Cf. Johnson v. Transportation Agency, 480 U.S. 616 (1987); Local # 93, Int'l Ass'n of Firefighters, 478 U.S. 501 (1986); Local 28 of the Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421 (1986) (Brennan, J.); United Steelworkers of America v. Weber, 443 U.S. 193 (1979). Although the plan is race-conscious, it will not deny anyone housing, nor preclude anyone from taking advantage of the incentives offered, because of race. Further, the plan will not require anyone to be evicted or moved because of race. Accordingly, in my opinion, HUD had authority to approve the remedial actions which BMHA has agreed to take to remedy its past noncompliance with the regulations implementing Title VI.

Eligibility of Costs

The incentives are of two types: "hardware" (e.g., security systems; decorating services; new stoves; new refrigerators) and "software" (e.g., child care vouchers; day care vouchers; adult day care and domestic service vouchers for frail

¹The Assistant Secretary of Fair Housing and Equal Opportunity is authorized to approve remedial plans pursuant to 24 CFR 1.4(b)(2)(iii).

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elderly/handicapped; trade school vouchers; job credit vouchers; moving costs). We believe that both classes of incentives may be funded with public housing project operating revenues derived from rents and operating subsidy under the Performance Funding Systems (PFS). Section 3(c)(2) of the United States Housing Act of 1937, as amended, defines the term "operation" for purposes of public housing to mean "any or all undertakings appropriate for management, operation, services, maintenance, security (including the costs of security personnel), or financing in connection with a lower income housing project." The provision elaborates on this definition to include the financing of "tenant programs and services" which term is, however, geared to "counseling" on household management, housekeeping, budgeting, money management, child care, and similar matters and "advice" as to resources for job training and placement, education, welfare, health, and other community services.

The instant proposal goes beyond counseling or advice in these areas to actual provision. We understand that PIH generally encourages public housing authorities to promote such counseling and advice (but not the actual provision of the kinds of services which the subject proposal characterizes as "software incentives").

Nevertheless, while the proposal may advance beyond customary usage, we believe it is eligible under the statute for two reasons. First, the term "operation" is broader than "tenant programs and services," expressly encompassing "any or all undertakings appropriate for management, operation, services * * * in connection with a lower income housing project." The peculiar history surrounding assisted housing in Buffalo, for the reasons discussed above, demonstrates the conditions (among others) under which HUD administrators can conclude that it is "appropriate" to infuse the tenant selection process with these incentives. We believe the provision of such incentives therefore fits within the overall definition.

Secondly, even the definition of "tenant programs and services" contains language in addition to that of "counseling" and "advice" which is pertinent to the proposal. I refer to the subsequent reference in section 3(c)(2) to "services which are directly related to meeting tenant needs and providing a wholesome living environment." While the statute does not elaborate on the meaning of this provision, certainly the improvement of racial residential patterns to promote nondiscriminatory housing constitutes a much more "wholesome living environment."

Accordingly, in my opinion, the software services are eligible for funding under the 1937 Act in these circumstances. All of the hardware items are directly related to the unit itself and consequently, to the extent they are viewed as desirable or

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necessary to promote nondiscrimination, or improved project conditions, comprise "undertakings appropriate for management, operation, services, maintenance * * * in connection with a lower income housing project.

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GAO's Analysis Supports a
More Restrictive Use of
Funds

Under the voluntary compliance agreement between HUD and the Buffalo Municipal Housing Authority, the Authority will be required to use its operating funds and reserves to pay for various financial incentives aimed at promoting desegregation of the Authority's public housing developments. The incentives consist of physical improvements to certain units, such as the provision of new appliances, and personal benefits to certain tenants and applicants, such as vouchers for child care and vocational education. The legal issue is whether payment for all of these financial incentives may be made from operating funds.

In a memorandum to the Assistant Secretary for Fair Housing and Equal Opportunity, dated November 16, 1990, HUD's General Counsel concluded that all of the various financial incentives are eligible for payment out of operating funds. In that memorandum, the General Counsel divided the incentives into two types: "hardware" (e.g., security systems, new stoves, new refrigerators) and "software" (e.g., vouchers for child care, day care, and vocational education).

As discussed below, we have concluded that operating funds may be used to pay for the so-called "hardware" incentives. However, we also have concluded that operating funds are not available to pay for the so-called "software" incentives.

Section 3(c) of the United States Housing Act of 1937 (42 U.S.C. 1437a (c)) defines the term "operation" as follows:

"The term 'operation' means any or all undertakings appropriate for management, operation, services, maintenance, security (including the cost of security personnel), or

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financing in connection with a lower income housing project. The term also means the financing of tenant programs and services for families residing in lower income housing projects"

"Tenant programs and services" is defined to include the development of tenant management organizations and,

"counseling on household management, housekeeping, budgeting, money management, child care, and similar matters; advice as to resources for job training and placement, education, welfare, health, and other community services; services which are directly related to meeting tenant needs and providing a wholesome living environment; and referral to appropriate agencies in the community when necessary for the provision of such services."¹

In reaching his conclusion that all of the various financial incentives--both "hardware" and "software"--may be paid for out of operating funds, HUD's General Counsel relied on the above statutory definition of the term "operation."

With regard to the incentives he characterized as "hardware," the General Counsel noted that the term "operation" is defined in the statute to mean "any or all undertakings appropriate for management, operation, services, [or] maintenance . . . in connection with a lower income housing project." The General Counsel pointed out that all of the "hardware" items are directly

¹ The section concludes:

"To the maximum extent available and appropriate, existing public and private agencies in the community shall be used for the provision of such services."

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related to the unit itself. "[C]onsequently," he argued, "to the extent they are viewed as desirable or necessary to promote nondiscrimination or improved project conditions," the 'hardware' incentives comprise appropriate undertakings.

We do not dispute the General Counsel's conclusion regarding the use of operating funds to pay for the "hardware" items. As the General Counsel pointed out, these items are attached to the unit itself. Payment for such items with operating funds would appear to constitute an "appropriate" use of such funds in the ordinary course of operating a public housing project. It cannot be plausibly argued that, because these "hardware" items are provided for the purpose of promoting desegregation, use of operating funds is somehow rendered impermissible.

However, we are not persuaded that operating funds are available to pay for the so-called "software" incentives (e.g. vouchers for child care or vocational education). There is nothing in the statutory definition of the term "operation" to suggest that operating funds would be available to pay for these items in the ordinary course of operating a public housing project. Further, we have found nothing in any HUD regulations, handbooks, or other department issuances that support such use of operating funds. Nor did the General Counsel cite any such department issuance. In addition, we do not believe that the fact that these "software" items would be provided for the purpose of promoting desegregation renders them eligible for payment out of operating funds.

First, the "software" items are not directly related to the unit itself, as are the "hardware" items. Thus, they cannot be justified as "appropriate" undertakings on the basis of this rationale. Indeed, the General Counsel did not offer that

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rationale in attempting to justify use of operating funds to pay for the "software" incentives.

The General Counsel did not contend that these "software" incentives constitute "appropriate" undertakings for which operating funds may be used in the ordinary course of operating a public housing project. Rather, he asserted that, "[t]he peculiar history surrounding assisted housing in Buffalo . . . demonstrates the conditions (among others) under which HUD administrators can conclude that it is 'appropriate' to infuse the tenant selection process with these incentives." This statement is not helpful in explaining how or on what basis the "software" incentives can be considered "appropriate" undertakings, within the meaning of the statutory term "operation."

We construe the word "appropriate," within the statutory phrase, "any or all undertakings appropriate . . . in connection with a lower income project," as limiting authorized "software" activities to those having to do with the project, itself, including the housing units and their appurtenances. This construction is consistent with the rationale offered by the General Counsel to justify use of operating funds to pay for the so-called "hardware" items, such as security systems and new appliances.

However, the so-called "software" incentives (e.g., child care vouchers and vouchers for vocational education) do not attach to any particular public housing project or projects, nor to the housing units they contain. Nor are they addressed to the specific needs of public housing residents as tenants. Rather, they are addressed to the more general needs of a substantial percentage of the overall population, many, if not most, of whom are not public housing residents.

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We are unable to find a rationale to justify inclusion of these incentives as "appropriate" undertakings within the definition of "operation." Nor does the General Counsel offer any such specific rationale.

Second, the General Counsel also relied, as justification for the "software" incentives, on the term "tenant programs and services," within the definition of "operation." This term is defined in the statute to include a variety of services and activities. Some have to do with the development and maintenance of tenant organizations and the training of tenants in connection with the management and operation of public housing projects. Others specify "counseling" on such matters as housekeeping and child care, and "advice" as to resources for job training and placement, education, welfare, health, and other community services. The actual provision of "software" incentives, such as vouchers for child care and job training, is not included among the variety of services and activities specified in the definition. We have not found any HUD regulations, handbooks, or other department issuances that suggest that such incentives are contemplated. Nor did the General Counsel cite any such issuance.

As the General Counsel pointed out, the term "tenant programs and services" is also defined to include "services which are directly related to meeting tenant needs and providing a wholesome living environment." He relied on this part of the definition as authority for use of operating funds to finance the "software" incentives. Specifically, he stated: "[C]ertainly, the improvement of racial residential patterns to promote nondiscriminatory housing constitutes a much more 'wholesome living environment.'" On this basis, he argued that, "the software

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services are eligible for funding [out of operating funds] under the 1937 Act in these circumstances."

We are unpersuaded by this argument. Its rationale is overly broad. It follows an attenuated line of reasoning that would lead to the conclusion that the authority for the expenditure of operating funds is virtually unlimited. According to this rationale, so long as the expenditure is for something (in this case, vouchers) that may contribute to furthering a worthwhile purpose (in this case, residential desegregation), which, in turn, will make for a "wholesome living environment," operating funds may be used, regardless of what the expenditure is for. Under this reasoning, there would be no restrictions on the kinds of services or activities for which operating funds could be expended. Nor does the General Counsel's memorandum suggest any such restrictions.

We do not believe the statutory term "operation" can reasonably be interpreted so expansively as to permit the expenditure of operating funds without regard to the kinds of services or activities being financed. The great detail with which the statute defines the term "operation" plainly indicates that the expenditure of operating funds is subject to some restrictions. Indeed, the statutory phrase "tenant programs and services" strongly suggests, by its terms, at least one broad restriction. The "services" must be related to meeting the needs of public housing residents as tenants. They must be, as the statute provides, "services which are directly related to meeting tenant needs."

However, here, the "software" items are addressed to more general needs, such as the need for child care and the need for job training. Such needs plainly are shared by a substantial

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percentage of the general population, most of whom are not public housing residents. They are not addressed to the specific needs of the residents as public housing tenants.

The General Counsel did not argue that the provision of child care or job training--or vouchers for those purposes--constitute "services which are directly related to meeting tenant needs," as contemplated by the statute. Nor is it apparent to us how they might constitute "tenant . . . services," within the meaning of the statute.

Accordingly, we have no objection to use of operating funds to pay for the so-called "hardware" incentives. However, we are unpersuaded that operating funds may lawfully be used to finance the so-called "software" incentives.

Reasons for BMHA's High Vacancy Rate

As of June 1990, BMHA reported that 26 percent of its total federal inventory (1,314 apartments) was vacant. This vacancy rate, which has almost doubled in the last 4 years, greatly exceeds the 1989 national average of 7.5 percent and HUD's acceptable vacancy goal of 3 percent.

Buffalo's high vacancy rate is particularly significant in light of the demand for public housing in the area. As of August 1990, 2,826 households were on BMHA's public housing waiting list. This high vacancy rate has also contributed to a negative public image regarding BMHA's ability to house low-income families. Specifically, our contacts with officials of 19 local community organizations found that all but 2 perceive BMHA as unable to provide housing in a timely fashion.

Another negative result of BMHA's high vacancy rate is the ineffective use of HUD's operating subsidies. Under current procedures, HUD provides BMHA the same operating subsidy for each of its apartments, regardless of whether it is occupied or vacant. For the month of June 1990, HUD subsidies for BMHA's vacant apartments totaled about \$240,000, or \$184 per unit per month. Thus, HUD is providing about \$2.5 million annually in subsidies for units that are unoccupied.¹

Several key factors have contributed to BMHA's high vacancy rate. The majority of the current vacancies can be attributed to (1) BMHA's inability to rent units in projects with potential health hazards (e.g., asbestos and lead-based paint); (2) prospective tenants' rejection of developments whose location, age, or configuration (apartment size or third-story walkups for the elderly) that they considered was undesirable; and (3) BMHA's use of HUD's Plan B, which precluded BMHA from filling vacancies at some developments that are in good physical condition and that are located in desirable neighborhoods. Other factors contributing to the vacancy problem include extensive modernization work that prevented new applicants from being placed and that required current tenants to move, and BMHA's past inability to prepare a sufficient number of vacant apartments for occupancy. Timely preparation of apartments will become more crucial in the future if current tenants exercise their option of transferring to other apartments in accordance with the voluntary compliance agreement.

Although BMHA is taking action to address the above problems, according to its own estimates, vacancies will not be significantly

¹Under its new national initiative to reduce vacancies, HUD plans to propose phasing out operating subsidies for vacant units over a 3-year period.

reduced in the immediate future. A HUD-approved BMHA plan indicates that vacancies will remain higher than 15 percent until fiscal year 1994 and HUD's desired 97-percent occupancy level is not projected to be reached until fiscal year 1997. However, HUD plans to reevaluate these goals as part of its new nationwide initiative to reduce vacancies.

BMHA's Vacancy Rate Exceeds National Average

BMHA's vacancy rate of 26 percent as of June 1990 is almost four times greater than HUD's 7.5 percent national average for all public housing authorities and significantly exceeds the 3-percent vacancy level that HUD generally expects of well-performing authorities. As shown in table IV.1, BMHA's vacancy rate is also significantly higher than that of most housing authorities of similar size.

Table IV.1: Vacancy Rates of Housing Authorities Similar in Size to BMHA as of December 31, 1989^a

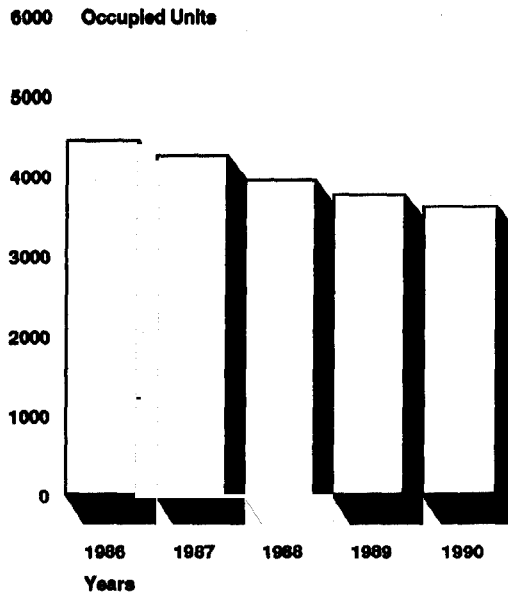
Housing authority	Number of available units	Vacancy rate (percent)
Buffalo	5,004	26.6
Virgin Islands	4,530	17.4
Dayton	4,373	15.3
Columbus	5,639	8.9
Akron	5,100	6.3
Tampa	5,037	6.1
Denver	4,331	5.0
Milwaukee	4,717	4.8
Louisville	6,018	4.4
Hawaii	5,199	1.2
Richmond	4,459	1.1

^aFor comparison, we selected those public housing authorities that were most comparable to BMHA in terms of the number of available units.

As shown in figure IV.1, the number of BMHA-occupied apartments has decreased significantly in the last 4 years, falling from 4,434 as of July 1, 1986, to 3,615 apartments as of July 1, 1990—a reduction of 819 apartments. This decline has been continuous: monthly move-outs exceeded move-ins in 44 of the 48 months during July 1986 to June 1990. The trend of move-outs exceeding move-ins has been reversed in recent months, though. In August 1990, BMHA reported that four more households moved into BMHA developments than left. In September and October 1990, move-ins exceeded move-outs by 35 and 70, respectively.

Appendix IV
Reasons for BMHA's High Vacancy Rate

Figure IV.1: The Number of BMHA's Federally Financed Occupied Units as of July 1, 1986 Through July 1, 1990



Vacancies Are Increasing in Developments With Hazardous Conditions

Two of BMHA's largest developments, Kenfield and Langfield, with a total of 1,240 apartments, have health and safety hazards. Specifically, the Kenfield development has lead-based paint hazards and Langfield has asbestos hazards. As a result, BMHA stopped filling vacancies at Kenfield in November 1989 and at Langfield in April 1990. Since these dates, the combined vacancies at both developments have increased by 102 units. As of June 1990, these developments had a total of 313 vacant apartments. As of September 1990, BMHA still had a ban on placing applicants in these developments. Accordingly, until these problems are resolved, vacancies in these developments will continue to increase. This increase is particularly significant since these vacancies comprise approximately one-fourth of BMHA's 1,314 vacant units.

Developments' Undesirable Location, Appearance, or Physical Condition Affect Vacancies

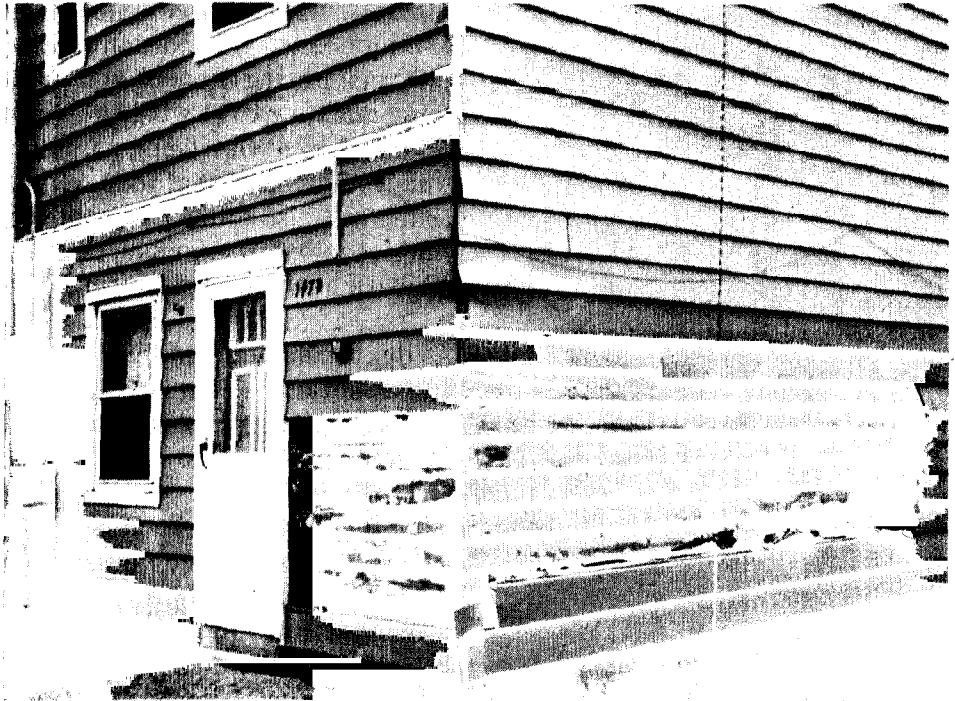
The location of certain developments has affected BMHA vacancies. Our analysis of housing offers from June 1988 to March 1990 revealed that about 70 percent of the more than 1,200 offers of units at the Commodore Perry development were rejected, as were about half of the approximately 500 offers at the A.D. Price development. The developments' undesirable locations were a key reason that applicants gave for refusal.

Although BMHA records did not elaborate on why applicants found the location of these developments to be undesirable, we noted that Commodore Perry is located in an industrial part of Buffalo and has limited shopping facilities close by. In the case of A.D. Price, the development has been the focus of major drug policing efforts. Prospective tenants are likely to perceive the drug problems at the developments as making the location undesirable.

In addition, although no empirical evidence is readily available, we believe the poor physical appearance of certain BMHA developments has contributed to their rejection. For example, to prevent vandalism of vacant apartments, BMHA has boarded up the first and sometimes the second floor windows within certain developments. These red plywood boards have come to symbolize certain BMHA developments. Also, at locations such as Langfield, some units are missing large sections of siding and others have been vandalized with graffiti. (See fig. IV.2.)

Appendix IV
Reasons for BMHA's High Vacancy Rate

Figure IV.2: Damaged and Vandalized
Apartments at the Langfield
Development



Also, HUD has criticized BMHA for inadequate maintenance at certain developments—a condition that we also observed. In April and July 1990 monitoring reports, HUD found that certain developments were being maintained at a below-average level. HUD questioned whether developments were being painted within the required 5-year time frames. We found that four developments had not been painted since 1982.² HUD also found that BMHA was behind schedule in completing work orders. For example, in July 1990, HUD reported that BMHA had a 37-week backlog of plastering work to complete.

Prior Tenant Placement Policies Hampered Filling Vacancies at Smaller Developments

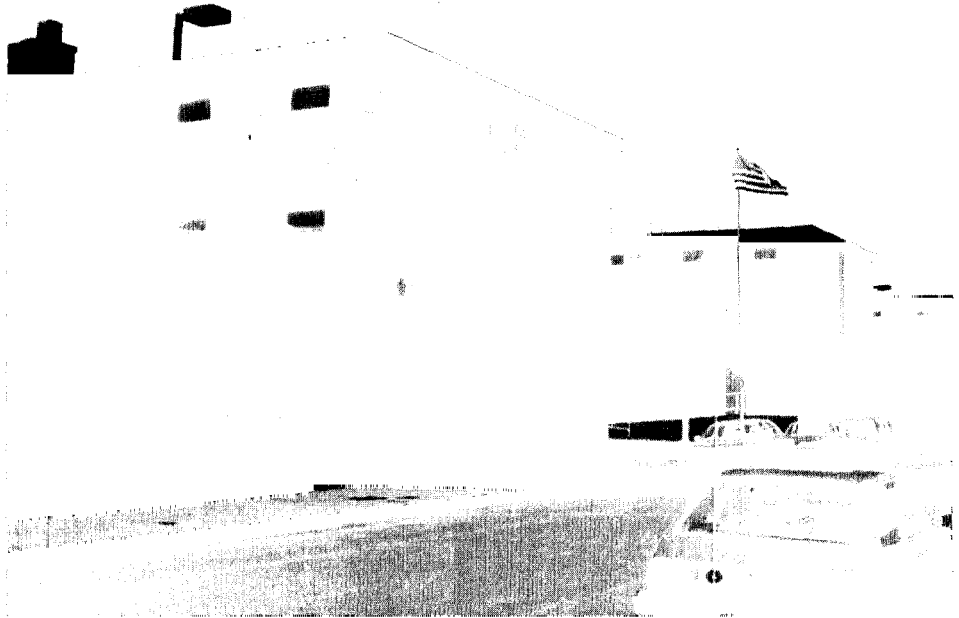
As discussed in appendix II, BMHA implemented a HUD-approved tenant placement plan (Plan B) in 1988. Under Plan B, an applicant is offered up to three units in the three locations³ having the highest number of vacancies.

Plan B increased vacancies at smaller and often newer developments because they never qualified as one of the locations with the largest number of vacancies, which had to be filled first. From the end of June 1988 (the first full month after Plan B was implemented) to March 1990 (Plan B was revised in April), vacancies at the Authority's 16 smallest developments increased from 147 to 326, or more than 120 percent. Figure IV.3 shows the Shaffer Village development, which is generally considered to be a desirable place to live. However, Plan B as initially implemented precluded BMHA from filling vacancies in this development.

²BMHA officials pointed out that three of these four developments are in the current modernization budget for painting. Painting for the fourth development was requested in the present CIAP application.

³A location could consist of more than one development. For example, BMHA considered Commodore Perry Homes and Commodore Perry Extension as one location.

Figure IV.3: Elderly Units at Shaffer Village Development Which Under Plan B Could Not Be Offered



BMHA officials were concerned about selecting Plan B because it would increase vacancies; however, they did so because it provided applicants a greater choice of units than under HUD's Plan A. Under Plan A, an applicant is offered only one suitable unit, but it need not be at the location with the greatest number of vacancies.

BMHA officials originally had planned to reassess the use of Plan B after it had been in operation for 1 year—i.e., about May 1989. However, this planned reassessment did not occur in light of HUD's April 25, 1989, finding that BMHA was in noncompliance with title VI. Rather, Plan B has continued to be used since April 1989, pending the development and implementation of new placement policies mandated by the voluntary compliance agreement. As discussed in appendix II, implementation of the tenant assignment policies was originally scheduled for October 1990 but is still pending agreement as of the end of January 1991.

Plan B's effect on BMHA's smaller developments was more restrictive than necessary. In April 1990, 2 years after Plan B was implemented, HUD found that BMHA's implementation did not distinguish between elderly and family apartments when identifying those with the greatest

number of vacancies.⁴ In May 1990, HUD notified BMHA that it would be acceptable to distinguish between elderly and family apartments. The immediate impact of this clarification was that BMHA could offer units at Shaffer Village that it could not previously offer. However, Plan B still precluded BMHA from offering apartments in some other small developments.

HUD's clarification of Plan B resulted from its monitoring of BMHA's occupancy activities in March, April, and May 1990. HUD's guidance requires that area offices review an authority's, such as BMHA's, occupancy activities at least once every 2 years. HUD's Buffalo area office had previously reviewed BMHA's occupancy function in February 1988 just before BMHA implemented Plan B.

Modernization Activities Have Contributed to Vacancies

Extensive modernization activities at the Commodore Perry developments have created vacancies. BMHA officials told us that during certain periods of modernization work, no new applicants were placed because vacant apartments were reserved to allow current tenants to transfer to other apartments as their apartments underwent modernization. As a result, BMHA placed only seven new applicants at Commodore Perry Homes during the period 1986-87 even though it is one of the largest BMHA developments, with more than 600 apartments. Similarly, during all of 1987, only five new applicants were placed in Commodore Perry Extension, a development of more than 400 apartments. While this modernization work added to vacancies at these developments, as was discussed earlier, the renting of apartments has been difficult because new applicants perceive that the location is undesirable.

Slow Apartment Turnover Contributed to High Vacancy Rate

HUD expects a housing authority to turn over its vacant apartments in 30 days. Turnover time is measured from the date the apartment becomes vacant to the date when it is leased again. BMHA's turnover time has greatly exceeded the 30-day time frame. For example, BMHA reported that average turnover time for the 69 apartments leased in June 1990 exceeded 600 days. This time frame is not surprising, as many BMHA apartments have been vacant for lengthy periods of time. For example, 151 apartments at Commodore Perry Homes had been vacant 2 or more years as of May 1990. (Twenty of these apartments had been vacant for more than 10 years.)

⁴BMHA officials stated, however, that at the time of its Plan B implementation, HUD officials rejected BMHA's verbal proposal to separate the elderly- and family-offer system.

The lengthy turnover time is a function of both applicants' rejection of apartments that are ready for occupancy and the time it takes BMHA to prepare vacated apartments for reoccupancy. As previously discussed, BMHA has been unable to lease apartments in certain developments even when they are ready for occupancy because of the developments' undesirable location and because Plan B precluded certain units from being offered.

At BMHA, preparing apartments for occupancy consists of a four-step process: inspecting the apartment to determine what needs to be done, determining whether BMHA employees or outside contractors should do the work, doing the work, and then inspecting the work to ensure that it was done satisfactorily. In the past, BMHA has been slow to complete this process. For example, per a report to the Director of BMHA's Occupancy and Marketing Department, it took BMHA an average of 86 days to complete the entire four-step process for the apartments leased in June 1990.⁵ BMHA's current goal is to reduce this time to an average of 15 days.

The ability to prepare a greater number of vacant apartments as quickly as possible is crucial if BMHA is to reduce its vacancy rate. During February to June 1990, BMHA's vacant apartment preparation crew was able to ready an average of 67 apartments a month—only about 15 apartments more than the average number of monthly move-outs. In addition, because of expected transfers resulting from the title VI compliance agreement and increased transfers resulting from future modernization activities, BMHA officials estimate that 125 to 150 apartments may have to be prepared monthly just to maintain the current occupancy level.

BMHA conducted a special initiative in August 1990 to ready an increased number of vacant apartments. Specifically, by using employees in other departments, BMHA was able to prepare 250 apartments for occupancy in a 30-day period. This initiative required employees regularly assigned to maintenance, engineering, or buildings and grounds to work 4 hours of their regular day and 4 hours overtime on preparing vacant apartments for occupancy. According to a BMHA official, this initiative cost over \$80,000 in overtime pay during the 30-day period. The official added that a cost-benefit analysis of this initiative needs to be performed to decide whether a continuation of this effort is warranted.

⁵BMHA officials pointed out that delays in the four-step process do occur, which has an impact on the average turnover time. For example, after inspecting the apartment to determine what work is required, actual work may be delayed for several reasons. Also, BMHA officials indicated that the average time shown on their monthly reports is preliminary and may be somewhat inaccurate.

BMHA's Plan to Increase Occupancy

In a plan approved by HUD in July 1989, BMHA outlined a strategy for increasing occupancy. As shown in table IV.2, the projected increase in occupancy is gradual, culminating in HUD's desired target of 97 percent in 1997. The plan addresses short- and long-term actions that include creating a new department to manage the occupancy functions, increasing marketing and outreach activities, intensifying efforts to ready vacant apartments, and improving accountability for Authority-wide activities.

Table IV.2: BMHA's Projected Occupancy Levels for Fiscal Years 1989-97

Fiscal year	Projected level of occupancy (percent)
1989	76
1990	73
1991	73
1992	77
1993	82
1994	87
1995	92
1996	95
1997	97

Substantial changes to the plan appear likely. According to BMHA officials, reducing the vacancies as quickly as possible has been established as a high priority by BMHA's Commissioners. In addition, major events have occurred since the plan's preparation that could affect the implementation. Foremost is the yet to be finalized new tenant assignment plan, as required by the title VI compliance agreement. Also, since preparing the plan, BMHA has embarked on a major effort to abate lead-based paint and asbestos hazards at some of its larger developments. Finally, changes may result from the input of BMHA's new executive director, who took office in September 1990.

HUD undoubtedly will be reevaluating BMHA's 9-year reduction plan as part of a national vacancy reduction initiative announced by the HUD Secretary in February 1990. This initiative, entitled "Operation Occupancy," is targeted to authorities with high vacancy rates, defined as 10 percent or more. The initiative calls for increased HUD emphasis on working with public housing authorities to identify strategies to reduce their vacancies. As part of this strategy, HUD plans to phase out its current practice of paying subsidies for vacant apartments.

BMHA Staffing Levels Exceed HUD's Suggested Levels but May Be Necessary

As of July 1990, BMHA's staff totaled 425 employees—an increase of 73 employees since April 1986. Of this total, 383 employees were allocated to BMHA's federally financed public housing. This number is high both in terms of HUD-suggested levels and the staffing levels at housing authorities of similar size. However, HUD has approved this higher staffing level as necessary to carry out BMHA initiatives such as improving the management of its modernization program, addressing its vacancy problem, and increasing security coverage.

The HUD handbook on monitoring public housing authorities provides suggested indicators for determining how many administrative and maintenance employees are necessary based on the number of apartments under the authorities' jurisdiction. HUD suggests that for an authority the size of BMHA, there should be 1 administrative employee per 65 apartments and 1 maintenance employee per 40 apartments. Applying these indicators to positions authorized in the fiscal year 1990 budget shows that BMHA exceeds the HUD indicators by 92 staff: 39 administrative and 53 maintenance employees.

HUD emphasizes that the above figures are management indicators and not rigid standards. Other factors such as the age and size of developments, the relative number of apartments designed for families and the elderly, and the extent of outside contracting for administrative and maintenance services can influence a housing authority's staffing needs. The type of jobs performed by in-house employees can also be an influence. For example, HUD's indicators do not apply to employees assigned to security and modernization functions. BMHA carries out these functions with its own employees, whereas HUD officials stated that many other authorities use contractors. As of July 1990, 40 employees worked in BMHA's Modernization Department, and 50 were assigned to the Security Department.

The number of BMHA employees allocated to federally financed public housing—383—exceeds the staffing levels of most housing authorities of similar size. Table V.1 shows that BMHA ranks second compared with 10 similar authorities.

**Appendix V
 BMHA Staffing Levels Exceed HUD's
 Suggested Levels but May Be Necessary**

**Table V.1: Staffing Levels of Housing
 Authorities Similar in Size to BMHA**

Housing authority	Number of available units	Staffing levels allocated to federal programs
Hawaii	5,199	405
Buffalo	5,004	383
Louisville	6,018	298
Virgin Islands	4,530	277
Richmond	4,459	270
Denver	4,331	257
Tampa	5,037	211
Columbus	5,639	207
Dayton	4,373	205
Akron	5,100	197
Milwaukee	4,717	182

Note: Authorized staffing levels for fiscal year 1990. Richmond figures also include staff assigned to HUD's section 8 program, which cannot be separately identified.

HUD's Buffalo area office stated its reason for approving the staffing level in a December 1989 letter to BMHA. In that letter, HUD stated:

Our past approval for increased staffing of your Modernization and Occupancy Departments have represented extraordinary situations with the Modernization program having expanded to an approximately \$115 million program and the Occupancy Department facing the demanding task of reducing the high vacancy rate and implementing a new tenant selection plan. Resident security has become an increasing concern in light of the escalation of the drug problems in our society and require increased efforts by housing authorities to keep housing developments safe and secure.

Although HUD has approved increases in BMHA staff levels, it has been critical of BMHA's staff management. In April 1990, HUD concluded that certain BMHA housing projects were being maintained at a "below average" level and that BMHA must improve its management system to define individual work elements, establish accountability, and provide for management follow-up of performance. In July 1990, HUD reassessed BMHA's maintenance operations and recommended more effective use of staff as well as better coordination between the maintenance and modernization departments. To address its concerns, the HUD Buffalo area office has implemented regularly scheduled meetings with BMHA to work specifically on improving the maintenance program.

Other Matters

As requested, we are providing information on BMHA's affirmative action efforts and HUD's monitoring of BMHA's modernization program. Both of these subjects were discussed to some extent during the field hearings on BMHA that Senator Moynihan held in November 1987 and June 1990. Also, the Department of Justice is currently investigating alleged discrimination in BMHA's personnel practices, and HUD's Office of the Inspector General is considering initiating a financial review of BMHA's operations, including the modernization program, in 1991.

Affirmative Action Efforts

BMHA's affirmative action efforts have been criticized by some city of Buffalo council members and BMHA employees as inadequate. Critics point to the absence of minority employees in BMHA's higher paying jobs and the low percentage of BMHA minority employees relative to their representation within the tenant population.

As of July 1990, 89 (21 percent) of BMHA's 425 employees were minority group members. The percentage of minority employees contrasts sharply with the tenant population, which as of June 1990 was 71 percent minority. All 26 BMHA employees whose annual pay exceeds \$40,000 are white, as are all but 1 of the 23 BMHA employees whose annual pay is between \$30,000 and \$40,000.

In February 1990, BMHA adopted a new affirmative action plan designed to promptly achieve full and equal employment for all minorities. BMHA officials stated that they adopted the new plan to more effectively carry out affirmative action activities. Key components of the plan, which as of September 1990 had yet to be implemented, call for employee training, a recruitment plan, and the establishment of time frames for actions. HUD plans to oversee the affirmative action efforts taken by BMHA as part of its monitoring of the title VI voluntary compliance agreement.

HUD's Monitoring of BMHA's Modernization Activities

Since CIAP was implemented in 1981, BMHA has received over \$115 million in federal public housing modernization funds, with over 80 percent going to six general occupancy developments. About \$46 million went to Commodore Perry Homes and Extension to make physical and management improvements.

Prior to December 1989, HUD's CIAP handbook required that all housing authorities receive at least two monitoring reviews a year. In December

1989, HUD increased the required number of reviews to four. More frequent monitoring visits are to be made if the rehabilitation is substantial or if serious problems are identified. From January 1, 1986, through July 1990, HUD conducted 19 monitoring reviews of BMHA's CIAP activities.

The results of these reviews are contained in written reports that are sent to BMHA. BMHA is expected to correct the deficiencies noted and respond to HUD within 30 days.

The most recent HUD monitoring review results, contained in the April 16, 1990, report noted serious shortcomings in BMHA's administration and accounting for CIAP contracts. These deficiencies, which BMHA officials disagree with, included the following:

- BMHA's financial records for CIAP were inadequate.
- BMHA's fiscal oversight of CIAP was unacceptable.
- BMHA's budget line items were over obligated.
- Entries on BMHA's payment ledger were ineligible or in the wrong development account.

HUD's Buffalo area office reviews BMHA's modernization activities more closely than the other 50 authorities within the area office's jurisdiction. Since January 1988, BMHA has been placed under a zero threshold level. This distinction, implemented because of BMHA's problems in administering the CIAP program, requires the area office to approve all contracts and changes regardless of the dollar amount. HUD officials stated that the other authorities are allowed to issue contracts and contract change orders below a certain dollar threshold without HUD's approval.

BMHA's 1990 CIAP funding totaled \$330,440, considerably less than what it received in recent years. (See table VI.1.) HUD gave numerous reasons for the funding reductions, including (1) BMHA's lack of documentation for tenant input regarding the developments that are to be modernized, (2) the lack of an up-to-date comprehensive modernization plan, (3) prior inaccurate financial reporting of modernization activities, and (4) the need for BMHA to focus attention on completing ongoing work activities. Regarding the completion of ongoing work, HUD noted that as of March 31, 1990, BMHA reported \$29.9 million in unobligated modernization funds and \$45.1 million in unexpended modernization funds.

Appendix VI
Other Matters

Table VI.1: CIAP Funding for BMHA for
Fiscal Years 1985-90

Year	Amount
1985	\$7,257,558
1986	9,772,700
1987	18,992,940
1988	15,368,149
1989	13,573,446
1990	330,440

In a September 28, 1990, letter to HUD, BMHA responded to HUD's reasons for deleting CIAP funds. In that letter, BMHA stated it appears that reasons for deletion could be considered a brief summary of the most pressing unresolved issues regarding BMHA's CIAP performance to date. BMHA officials further stated that they would like to meet with HUD to resolve these matters.

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