



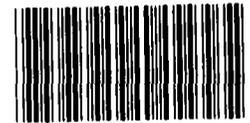
UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

119698

COMMUNITY AND ECONOMIC  
DEVELOPMENT DIVISION

SEP 30 1982

Mr. Philip Abrams  
General Deputy Assistant Secretary for  
Housing - Federal Housing Commissioner  
Department of Housing  
and Urban Development



119698

Dear Mr. Abrams:

Subject: HUD Proposed Legislative Changes To Section 203  
of the Housing and Community Development  
Amendments of 1978, as amended

We have completed a review of the implementation of the policy the Department of Housing and Urban Development (HUD) adopted in 1977 to attach section 8 subsidies to the sales of acquired multifamily housing projects in order to ensure their continued availability for low- and moderate-income tenants. The purpose of our review was to determine the cost and effectiveness of the policy and to determine if other less costly but effective sales methods were adequately considered. In the fall of 1981, however, HUD began to change its policy and is revising its regulations to allow greater flexibility in the use of section 8 subsidies in the sale of its projects. HUD has also proposed to eliminate almost all of the requirements for the management and disposition of its acquired projects that are contained in section 203 of the Housing and Community Development Amendments of 1978, as amended. This section includes the disposition goal of preserving housing units for low- and moderate-income tenants. We agree that HUD's disposition regulations need to be revised to allow more flexibility, but do not agree that the section 203 provisions should be eliminated. HUD's proposed legislative changes go too far in not providing for unit preservation when appropriate.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our primary objectives on this assignment were to (1) determine the cost and effectiveness of HUD's policy to attach section 8 subsidies to the sale of acquired multifamily housing projects and (2) determine if other less costly but effective sales methods were adequately considered. During the course of our audit HUD began to make significant changes to its policies regarding the sale of its acquired multifamily projects and the attachment of section 8 subsidies to project units. Because these changes overcome the problems we identified with HUD's former policy, this report focuses on the need for HUD to ensure that its changes do not go too far

023673

by not, when appropriate, assuring the continued availability of low- and moderate-income housing units.

The review was made in accordance with generally accepted government audit standards. To obtain a broad perspective of HUD's disposition activities work was performed at HUD headquarters, Washington, D.C., and HUD area offices located in Boston, Massachusetts; Chicago, Illinois; and Dallas, Texas. The audit work at HUD field locations was conducted between September 1980 and December 1981. Audit work at HUD headquarters was completed in June 1982.

We selected for detailed review projects that were sold under 32 of 126 sales that occurred or were approved for sale in those area offices between fiscal year 1975 and 1980. To determine their current physical condition, we physically inspected the projects accompanied by HUD property disposition officials.

We interviewed various HUD officials at headquarters and in the field offices that have responsibility for disposing of acquired multifamily projects to discuss specific project sales, and their opinion regarding project disposal policies and procedures. We also met with owners and managers of projects sold by HUD to discuss the projects' current physical and financial condition, and the extent to which the projects were housing low- and moderate-income tenants. We also reviewed disposition decisions made by HUD's Property Disposition Committee between March 15 and May 4, 1982, to determine the extent to which section 8 subsidies are currently being attached to sales of multifamily housing projects.

We reviewed applicable legislation and appropriate HUD regulations and procedures relating to the disposition of multifamily housing projects. We also reviewed HUD's proposed legislative changes to section 203 of the Housing and Community Development Amendments of 1978, as amended, to determine what impact they would have on the sale of HUD-owned multifamily housing projects.

#### HUD ACHIEVING DISPOSITION FLEXIBILITY LACKING UNDER PREVIOUS POLICIES

In fiscal year 1977, HUD established a disposition policy which permitted the sale of its multifamily housing projects with long-term section 8 subsidies attached to the projects' units. This policy was established to help guarantee that decent, safe, and sanitary housing will remain available to and affordable by low- and moderate-income families. Our review showed that from fiscal year 1977 through fiscal year 1981, HUD committed about \$1.3 billion of section 8 housing assistance payments directly to new owners in the sale of its projects. Despite their high cost, HUD has, since 1977, made more frequent use of attaching section 8 subsidies in selling its inventory of acquired projects. In fiscal year 1981, section 8 subsidies were attached to about 67 percent of the multifamily housing units sold--as opposed to 27 percent in fiscal year 1978.

The increased use of section 8 subsidies is largely attributable to the implementing regulations which provided little latitude for HUD field offices to dispose of projects other than with section 8 subsidies attached to the maximum extent the regulations provided. The regulations called for HUD to attach section 8 subsidies to 100 percent of the units in formerly subsidized projects, and in formerly unsubsidized projects to the units occupied by eligible tenants or vacant at the time of acquisition.

In developing and implementing its policy, HUD never performed a thorough analysis of the projects sold without subsidies attached to establish the degree to which these projects were or were not continuing to effectively serve low- and moderate-income tenants. Our review indicated that it may not always be necessary or effective to attach section 8 subsidies to project units to the extent called for in the regulations. Our review of 18 projects sold without subsidies attached to the units and 14 projects sold with subsidies attached showed mixed results. All projects sold without a subsidy continued to serve low- and moderate-income tenants but generally to a lesser extent than projects sold with subsidies. The physical condition of projects sold both with and without subsidies varied from good to bad. Overall project success appeared to be more related to project location, surrounding neighborhood, owner/management competence, and socioeconomic characteristics rather than whether the project was sold with or without section 8 subsidies attached to the units.

In the fall of 1981, however, HUD began to change its policy on the sale of its acquired multifamily housing projects with section 8 subsidies attached. Our review of 48 HUD disposition decisions made between March 15 and May 4, 1982, showed that HUD is achieving disposition flexibility by selling its projects based on each project's individual circumstances rather than rigidly following existing regulatory requirements. Depending on the availability of lower income housing units in the area, HUD is deciding in some cases to attach section 8 subsidies to all units in formerly subsidized projects; in other cases, when justified, it is attaching the subsidy to fewer than 100 percent of the projects' units. Also, in some cases HUD is not attaching any subsidies to the project units but does provide eligible tenants with Section 8 Certificates of Family Participation. To achieve this flexibility, HUD has had to waive its regulations in some instances. We believe, however, that such flexibility is needed and should reduce the level that section 8 subsidies were being attached to project units under the policy established in 1977. HUD is currently revising its regulations entitled "Management and Disposition of HUD-Owned Multifamily Housing Projects" (24 CFR 290) to provide more disposition flexibility.

While we agree with HUD's new flexibility in deciding when to attach section 8 subsidies to project units and its proposal to revise its regulations to allow it to more readily achieve that end, as discussed in the following section we do not agree with its proposal to eliminate almost all of the provisions of

section 203 of the Housing and Community Development Amendments of 1978, as amended.

UNIT PRESERVATION CONSIDERATION  
NOT REQUIRED BY HUD PROPOSED LEGISLATION

As part of its annual legislative package to amend Federal laws relating to housing and to community and neighborhood development programs, HUD has proposed to eliminate provisions of the existing law which contain its multifamily disposition requirements, including the goal of preserving lower income housing units. The changes HUD is proposing would ensure rental assistance to eligible tenants living in projects HUD sells but would not ensure the continued availability of the project units when there is a shortage of such units in the area. However, HUD's Office of Legislation and Congressional Relations told us that it had been advised by the cognizant committees of the House of Representatives and the Senate that it is highly unlikely that any action will be taken on HUD's legislative proposals during the current session of Congress. They also informed us that HUD is currently putting together its legislative proposals for the next session of Congress and that it is scheduled to be forwarded to the Office of Management and Budget on October 15, 1982, for review.

Section 203 of the Housing and Community Development Amendments of 1978, as amended, entitled "Management and Preservation of HUD-Owned Multifamily Housing Projects," establishes requirements for the management and disposition of HUD-owned multifamily housing projects and declares that such projects shall be disposed of in a manner consistent with the National Housing Act and the requirements of section 203. Specifically, this section states that the purpose of HUD's property management and disposition program shall be to manage and dispose of the projects in a manner that will protect the financial interests of the Government and be less costly to the Government than other reasonable alternatives by which the Secretary of HUD can further the goals of

- (1) preserving the housing units so that at least those units which are occupied by low- and moderate-income persons or which are vacant, at the time of acquisition, are available to and affordable by such persons;
- (2) preserving and revitalizing residential neighborhoods;
- (3) maintaining the existing housing stock in a decent, safe, and sanitary condition;
- (4) minimizing the involuntary displacement of tenants;
- (5) minimizing the need to demolish projects; and
- (6) maintaining the project for the purpose of providing rental or cooperative housing.

The act also provides, among other things, that unless it is inappropriate given the manner an individual project is managed or sold, the Secretary shall seek to maintain the projects for the purpose of providing rental or cooperative housing for the longest feasible period. In determining the manner in which a project is to be managed or sold the act states that HUD may balance competing goals relating to individual projects in a manner that will further the achievement of the overall purpose of section 203.

HUD's proposed amendment of section 203 eliminates all of the provisions of the section that are stated above. The only section 203 provisions that are retained relate to (1) the requirement that HUD notify all affected tenants of any displacement that may occur and of any relocation assistance that may be available and (2) permitting HUD to request mortgagees to accept partial insurance benefits in lieu of an assignment.

In conjunction with the section 203 amendments, HUD's legislative proposals also authorize it to provide assistance to eligible tenants living in HUD-acquired projects under a new modified Section 8 Existing Certificate Program--better known as the voucher program. According to HUD, when it sells a project, eligible tenants may receive a section 8 certificate based on their occupancy in the project. Such tenants may be welcome to continue to occupy the same unit but would not be required to occupy that unit as a condition of the receipt of the subsidy certificate. The tenant could use the certificate in connection with that unit, or for any other unit the family chooses. The amount of subsidy provided is determined based on the applicable rent payment standards and appropriate family income data. Under the program rent payment standards are established based on the rental cost in a particular area of modestly priced standard housing of various sizes and types. A tenant is permitted to rent above the payment standard amount but would not receive additional subsidy. On the other hand, a tenant could also rent below the payment standard amount without a reduction in the subsidy amount. HUD wants to adopt this approach because it believes that the primary housing problem of the poor is one of affordability rather than availability of lower income housing--a finding of the President's Commission on Housing as reported in its April 29, 1982, report. HUD believes that such an approach will provide a "shoppers incentive" to tenants that serves to control the inflationary impact on rents that is experienced under the current section 8 program, and permits assisted families a range of choices between housing and other needs that they would exercise if utilizing their own money. HUD also believes that its new approach will allow families, if they choose, to live in neighborhoods with less concentration of low-income residents, thus promoting economically mixed housing. It believes that it will also further its goal of increased opportunity for all people to live where they choose.

There is some question, however, about how successful a "voucher program" can be. In a February 25, 1982, report entitled

"October 1981 Recommendations of the President's Commission on Housing: Issues for Congressional Consideration" (CED-82-42) we raised a number of questions concerning the viability of a housing voucher program, including:

--Is there sufficient existing housing stock for a housing assistance grant program to work effectively and how would supply affect participation? Whether or not there is sufficient supply is controversial and crucial to the ultimate success of a grant program. We previously reported on the rental housing shortage that exists in many areas of the country. <sup>1/</sup> Housing availability varies significantly from locality to locality. Consequently, a short supply of standard quality housing in some communities would very likely drive up the cost of such housing. A compounding problem involving the multifamily property disposition program occurs when tenants of formerly subsidized properties receive vouchers when properties are sold and the properties no longer are reserved for low- and moderate-income tenants.

--Does the structure of such a program tend to exclude the very poor? Several factors may preclude the participation of very poor households and others who have difficulty finding standard housing. For example, the very poor would receive the same maximum subsidy as those with higher incomes so that the incentive to participate increases with income. Also, programs which subsidize tenants in market housing, such as section 8, have been much more effective in reaching tenants already in standard quality housing than those in substandard housing. This has resulted in higher participation by small and elderly households, who are generally perceived as more desirable tenants and who can more readily afford adequate units in the marketplace. Larger households and female-headed minority households are more likely to encounter discrimination and therefore inhabit substandard housing. For them, participating in a grant program could mean (1) having to move to a less desirable neighborhood, (2) incurring moving expenses, or (3) convincing their present landlords to upgrade their housing to meet program standards. Finally, the severity of these problems depends upon the rigidity of the standards used to judge housing adequacy.

According to HUD, its proposed legislative changes are designed to remove the current restrictions on the management and disposition of HUD-owned projects so that it can handle these projects on a business like basis. In the justification for the changes, HUD states that the present law mandates a bias toward the continued use of the projects for low- and moderate-income housing,

---

<sup>1/</sup>"Rental Housing: A Growing National Problem Needing Immediate Attention," (CED-80-11, Nov. 8, 1979).

without a realistic regard for the economic consequences to the Government of such continued use. HUD believes that this is especially true given the more limited potential for the success of already financially troubled projects.

We do not agree that the present law mandates a bias toward continued use of the projects for low- and moderate-income housing. In our opinion, the language of the existing law basically provides sufficient flexibility for HUD to dispose of any particular project in a manner that is in the best interest of the Government, tenants, and community. In disposing of a project HUD should base its disposal decision on an analysis and consideration of the factors contained in the act. We believe that section 203 of the act only mandates that these factors be considered and impact on the decision as appropriate. It is important, however, that the basis for each decision, as well as the analysis and consideration given to the various factors, be thoroughly supported and documented in order to justify the decision and protect the Department against any potential law suits resulting from the decision.

The proposed section 203 entitled "Disposition of HUD-Owned Multifamily Housing Projects" does not actually address the sale of HUD-owned projects. It no longer contains a statement of the purpose of HUD's property management and disposition program, or the goals that HUD is trying to achieve. Unlike the existing section 203, it contains no guidelines or criteria for HUD to follow in disposing of its acquired projects. Therefore, we believe HUD would be subject to the general legislative guidance existing prior to the Housing and Community Development Amendments of 1978, as amended. According to the May 1978 final report of HUD's Multifamily Property Utilization Task Force, inherent in the National Housing Act of 1934; the United States Housing Act of 1937; the Housing Act of 1949; the Housing and Urban Development Act of 1968, and the Housing and Community Development Act of 1974 is a mandate to HUD to preserve projects built under the subsidized programs as desirable housing for low-income families. It was HUD's belief that it would be a breach of the Government's commitment to sell formerly subsidized projects without ensuring that they remained available to and affordable by low- and moderate-income tenants that led to its policy of attaching section 8 subsidies to project units and to formally legislating the goal of preserving these housing units in section 203(a) of the Housing and Community Development Amendments of 1978, as amended.

In its report, the Task Force stated that a number of court opinions affirm HUD's responsibility to preserve lower income projects built under subsidized programs, including Cole v. Lynn (389 F Supp. 99, 102) (D.D.C. 1975). The court's decision in this case, stated that the Secretary of HUD's statutory mandate to seek better housing conditions for low-income groups does not end when a subsidized project comes into HUD's hands through foreclosure. The court stated that HUD must act in an appropriate manner and for a rational reason related to the achievement of the statutory objectives. We believe that the provisions of section 203 help

ensure that HUD approaches each sale in an appropriate and rational manner, and that the needs of lower-income tenants are adequately considered. In turn, by complying with the provisions HUD is provided a strong basis for defending its disposition decision in court if necessary.

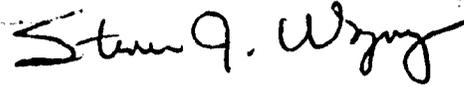
-- While HUD believes that its proposed amendments will give it more flexibility in disposing of acquired projects, we believe that it will in effect be less flexible. Under the proposal, it appears that projects will be sold in one manner--with subsidy vouchers provided to eligible tenants--without assurance that, among other things, the project will continue as a rental or cooperative project or, if appropriate, that all or a portion of the rental units will remain available for low- and moderate-income tenants. This approach makes no provision for the fact that many communities across the country are experiencing--particularly in regard to lower income tenants--either a shortage of adequate rental housing or a situation where the existing stock is in serious need of repair. Although the President's Commission on Housing was of the opinion that affordability is the primary housing problem of the poor, it also recognized that an inadequate supply of rental housing is a problem in many communities. In such a situation, HUD should have the flexibility to attach subsidies to an appropriate number of project units to assure their continued availability as a lower income housing resource or, if appropriate, to take other actions, such as selling the project with a deed restriction, to achieve this end. We believe that the current section 203 provisions should be retained to assure continued consideration of the factors that should affect the sale decisions and to assure maximum flexibility. Also, to formally recognize its proposed approach HUD should propose a new goal of providing eligible tenants with direct rental assistance when there is sufficient low- and moderate-income rental housing in the area where the project is located.

#### RECOMMENDATIONS

In order to ensure that HUD has available to it a variety of options in disposing of its acquired multifamily housing projects and that adequate consideration is given to the factors that impact upon selecting the most feasible way to sell a project, including the need to assure the continued availability of low- and moderate-income housing, we are recommending that HUD propose, in lieu of the elimination of section 203 provisions, the addition of a seventh goal to section 203 of the Housing and Community Development Amendments of 1978, as amended. This goal would provide for assisting low- and moderate-income persons with direct rental assistance--as opposed to attaching a subsidy to project units--when such housing is sufficiently available in the project area. We also recommend that HUD propose that language be added to section 203 requiring that disposal decisions made under section 203 be based on whether or not decent, safe, and sanitary low- and moderate-income housing is available in the area where the project is located.

- - - - -  
We would appreciate being advised of any action taken on the matters discussed in this report.

Sincerely yours,

A handwritten signature in cursive script that reads "Steven J. Wozny". The signature is written in dark ink and is positioned above the typed name.

Steven J. Wozny  
Senior Group Director

(385082)