

Legal Opinion: GCH-0029

Index: 2.5000

Subject: HOPE 3: Replacement Housing

December 3, 1991

MEMORANDUM FOR: David Caprara, Deputy Assistant Secretary for
Resident Initiatives, PR

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

SUBJECT: Replacement Housing for HOPE 3 --
Scattered Site Public and Indian Housing.

This memo responds to your request dated November 13, 1991 in which you requested our legal opinion concerning implementation of the replacement housing requirements for the HOPE 3 scattered site public and Indian housing application package. Our views on this issue are as follows:

As indicated in section 110(a) of the Notice of Program Guidelines (NPG) published on February 4, 1991 (see 56 FR 4458, 4459), Section 18 of the Act applies generally to the conversion of a scattered site public or Indian housing project to the HOPE 3 homeownership program.

However, Section 18 does not apply to the conversion of a homeownership project under the Sections 5(h), 21, Turnkey III or Mutual Help programs to the HOPE 3 homeownership program, since such a conversion does not constitute a "disposition," as contemplated by Section 18 (see, also, 24 CFR 970.2(c)).

We recommend that the HOPE 3 application package be clarified to reflect not only the applicability of Section 18 to the HOPE 3 program (including the requirement for a replacement housing plan) but, in those instances where Section 18 does not apply, the applicability of requirements established pursuant to other HUD homeownership programs (which may or may not include a requirement for a replacement housing plan). We have summarized these requirements, as follows:

1. Conversion of Rental Housing to HOPE 3 Homeownership.

An applicant that wants to convert scattered site rental public or Indian housing to homeownership under the HOPE 3 program must submit a HOPE 3 application in conjunction with a Section 18 application. The Section 18 application must contain

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a replacement housing plan and otherwise comply with the requirements of that section.

2. Sections 5(h) and 21 Homeownership Programs.

(a) Existing Section 5(h) and 21 programs. An applicant that wants to use a HOPE 3 grant in conjunction with an existing Section 5(h) or 21 homeownership program must submit to HUD an application for a HOPE 3 grant, including a certification of compliance with the replacement housing requirements under either Sections 5(h) or 21. The applicant must also request HUD approval of any waivers of Section 5(h) or 21 regulatory program waivers which are needed to accommodate HOPE 3 requirements.

(b) Proposed Section 5(h) and 21 programs. An applicant that wants to convert scattered site public or Indian housing to the Section 5(h) or 21 homeownership programs, to be operated in conjunction with a HOPE 3 grant, must submit to HUD an application for a HOPE 3 grant, and an application under either the Section 5(h) or 21 homeownership program. In addition, the applicant must request HUD approval of any Section 5(h) or 21 regulatory program waivers which are needed to accommodate HOPE 3 requirements, and include a replacement housing plan pursuant to either Sections 5(h) or 21.

3. Turnkey III/Mutual Help Homeownership Programs.

(a) Existing TKIII/MH programs. An applicant that wants to use a HOPE 3 grant in conjunction with an existing Turnkey III or Mutual Help homeownership program, must first obtain HUD approval of any Turnkey III or Mutual Help regulatory program waivers which are needed to accommodate the HOPE 3 requirements. This is necessary for purposes of determining whether the applicant will be required to submit a replacement housing plan under Section 18. If HUD determines that the applicant's request for waivers would not alter significantly the distinct identity of the Turnkey III or Mutual Help program, HUD can approve the waivers and the applicant would not be subject to the replacement housing requirements of Section 18. The applicant would then submit to HUD an application for a HOPE 3 grant, without a replacement housing plan. However, if HUD determines that the applicant's request for waivers would alter significantly the distinct identity of the Turnkey III or Mutual Help program, HUD must notify the applicant that approval of the requested waivers shall result in the applicant's being subject to the requirements of Section 18. In such a case, the applicant would be required to submit to HUD an application for a HOPE 3 grant in addition to a Section 18 application (which must include a replacement housing plan).

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(b) Proposed TKIII/MH programs. An applicant that wants to convert scattered site public or Indian housing to the Turnkey III or Mutual Help homeownership programs, to be operated in conjunction with a HOPE 3 grant, must first obtain HUD approval of its request to convert the projects to either the Turnkey III or Mutual Help programs. In addition, the applicant must obtain HUD approval of any regulatory program waivers which are needed to implement the Turnkey III or Mutual Help program in conjunction with the HOPE 3 grant. If HUD determines that the applicant's request for waivers would not alter significantly the

distinct identity of the Turnkey III or Mutual Help program, HUD can approve the waivers and the applicant may thereafter submit to HUD an application for a HOPE 3 grant without being subject to the replacement housing requirements of Section 18. However, if HUD determines that the applicant's request for waivers would alter significantly the distinct identity of the Turnkey III or Mutual Help program, HUD must notify the applicant that approval of the requested waivers shall result in the applicant's being subject to the requirements of Section 18. In such a case, the applicant would be required to submit to HUD an application for a HOPE 3 grant in addition to a Section 18 application (which must include a replacement housing plan).

If you have any questions or concerns regarding our comments, please call me at 708-0992, or Sharmeen Dosky at 708-0230.