of the applicant, diversity outreach, effectiveness of temporary relocation and one-for-one replacement plans, achievability of revitalization, performance benchmarks, leveraging, need for additional funding, public and private involvement, need for affordable housing, affordable housing supply, additional on-site mixed income housing, sustaining or creating project-based housing, green developments compliance, the extent the replacement housing plan provides for "hard-to-house" families, and providing sufficient bedrooms to prevent overcrowding.[57]

The bill would also increase from 15% to 25% the amount of any HOPE VI grant that may be used for community or supportive services.[58] It would give HUD the authority to waive the match requirement for grantees in cases of extreme distress or emergency,[59] and prohibit demolition-only grants.[60] The bill would also establish HUD administrative enforcement of certain provisions and create performance benchmarks for the HOPE VI program.[61] Finally, the bill would add significant transparency to the process by requiring HUD to make available, via the HUD website, a wide range of documents submitted by PHAs and other parties throughout the HOPE VI revitalization process. [62]

Next Steps

After fifteen years of experience, it is high time for Congress to address the serious issues presented by HOPE VI's reauthorization, including the loss of non-severely distressed affordable housing, the lack of one-for-one replacement for lost units, and ensuring basic resident protections such as participation, adequate relocation assistance, and a universal right to return to the revitalized site.

Thanks to persistent advocacy by many affordable housing advocates nationwide, H.R. 3524 now addresses many of the substantial deficiencies of the HOPE VI program, while its Senate counterpart ignores almost all of these problems. While significant issues remain with the House bill,[63] hopefully the Senate bill can be amended as it moves forward to resemble its House counterpart and address those shortcomings. A looming risk is continuation of business as usual through the appropriations process, without a new comprehensive reauthorization. Since Congress must reauthorize the program in some way before September 30, the *Bulletin* will cover further developments. ■

[57] *Id*., § 7(a), creating a new § 24(e)(2)(C).
[58] *Id*., § 6.
[59] *Id*., § 3.
[60] *Id*., § 4.
[61] *Id*., § 8, creating a new § 24 (n) and (o).
[62] *Id*., § 10.
[63] These deficiencies include: the amount of potential displacement (up to two-thirds of the tenants) under the ordinary provisions of the House bill, encouraging temporary relocation into segregated areas, and the lack of assurances that HOPE VI requirements will be enforceable.

Public Housing Residents Gain One-For-One Replacement

Residents contesting the demolition of Jane Addams Village, a Rockford, Illinois public housing development, agreed to withdraw their opposition in return for nearly one-for-one replacement and an admissions priority for displaced residents for the redeveloped units. In addition, the settlement includes the institution of a housing mobility program designed to affirmatively further fair housing opportunities for relocated residents, resident participation in the redevelopment process, and supervision by the court. *Jones v. HUD*[1] is noteworthy both for its positive results for the plaintiffs and for the defendants' brazen disregard for the law.[2]

The Litigation

Two tenants, Ms. Jones and Ms. Brown, represented by Prairie State Legal Services and the Sargent Shriver National Center on Poverty Law, objected to a plan to demolish eighty-four low-rise public housing units of Jane Addams Village which the Rockford Housing Authority (RHA) sought to replace with a "green space."[3] While the neighborhood around Jane Addams was gentrifying,[4] Ms. Jones and Ms. Brown faced the prospect of forced relocation either into significantly less desirable public housing or, via housing choice vouchers,[5] into units chosen from an RHA list, located in predominantly poor, minority areas of Rockford.[6]

In June of 2006, RHA submitted its initial partial demolition application to HUD.[7] The application asserted that Jane Addams was obsolete because it was old, in disrepair, an eyesore and a magnet for crime.[8] RHA further asserted that the cost of rehabilitation exceeded 90% of the total development cost.[9] Finally, RHA certified that its relocation activities would comply with the Fair Housing

[1] Jones v. U.S. Department of Housing and Urban Development, No. 07 C 50142 (N.D. Ill. 2008) (Complaint filed July 2007 and Consent Decree filed January 24, 2008), hereinafter referred to respectively as "*Jones* Complaint" or "*Jones* Consent Decree."
[2] HUD has responded by instructing staff to follow the law ("New Processing of Partial Demolition Applications" in the "What's New" section of its Special Applications Center (SAC) website www.hud.gov/offices/pih/centers/sac (content updated January 23, 2008).
[3] *Jones* Complaint, ¶ 32 & 33.
[4] *Id*. at ¶ 40.
[5] *Id*. at ¶ 8 & 9.
[6] *Id*. at ¶ 38.
[7] *Id*. at ¶ 32.
[8] 42 U.S.C. § 1437p(a)(1)(A)(i) (West 2003) requires that the project be obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes.
[9] *Jones* Complaint ¶ 35, formerly required by 24 C.F.R. § 970.6 (2006), now withdrawn.

Act[10] and would affirmatively further fair housing.[11] RHA did *not* also assert, as statutorily required for all allegedly obsolete properties, that "no reasonable program of modifications is cost-effective to return the development or portion thereof to useful life."[12]

HUD approved RHA's application on October 13, 2006, finding that Jane Addams was obsolete, that the partial demolition plan would help ensure the viability of the remaining portion of the project,[13] that the relocation plan was satisfactory, and that the application otherwise complied with statutory and regulatory requirements.[14]

On May 16, 2007, the tenant plaintiffs contested HUD's action through letters from counsel to HUD. They asserted, through an expert, that Jane Addams was a typical townhouse development that had recent improvements and was integrated into the community. The tenants' expert maintained that RHA's rehabilitation cost estimate was inflated. Additionally, in contrast to RHA, the tenants' expert addressed the statute's "reasonable modifications" requirement, identifying numerous alternatives that would extend the useful life of the project. The tenants further contended that the RHA relocation plan discouraged Jane Addams residents from moving into communities of less minority and low-income concentration and that the relocation counseling consisted primarily of providing a list of potential rental units located in racially and poverty concentrated areas.

In June of 2007, HUD conducted an on-site investigation of Jane Addams' obsolescence and RHA's relocation plan. HUD thereafter agreed that RHA had not met the two-part test for obsolescence. HUD's counsel also acknowledged that HUD had misapplied Section 18 of the United States Housing Act and that it would have no choice but to rescind its approval of the partial demolition application.

After the on-site investigation, but before HUD formally acknowledged that the RHA application was legally defective, RHA had submitted to HUD a revised application. This time the application focused only on the partial demolition provisions of the statute, relying only upon the requirement that the demolition of low-rise Jane Addams Village would help to ensure the viability of the high-rise Brewington Oaks.[15] RHA ignored the statute's requirements that the application should have also certified again that the property was obsolete and that no cost-effective program would return the property to useful life. RHA did not consult with the residents or obtain authorization from the RHA Commission before submitting this revised application.

Despite HUD's finding that RHA had not shown that Jane Addams was obsolete,[16] HUD promptly approved the revised application based only on the provisions relating to viability. HUD's response to the tenants' objection to the inadequacy of the relocation plan was to agree to study it.[17] The tenants immediately pointed out to HUD that the RHA application was still fatally defective: even if the viability test had been met, the obsolescence test had not, and both are required by law. HUD responded that its approval was final.[18]

Ms. Jones and Ms. Brown then filed a complaint in federal court, raising three types of claims. First were the claims arising factually from admitted deficiencies in the RHA application: (a) that the application failed to demonstrate that Jane Addams was obsolete, a fatal defect acknowledged by HUD,[19] and (b) that RHA had failed to consult with the residents or obtain the RHA Board's authorization for the revised application.[20] Second were claims based upon the inadequate relocation plan—that the application failed to ensure comparable replacement dwellings for displaced residents, a claim HUD tacitly admitted by having proffered an "ongoing investigation" of RHA's relocation process.[21] Third were the civil rights claims: (a) that RHA's and HUD's actions would have a harmful disparate impact on African Americans, women and families with children,[22] and (b) that the flawed relocation would fail to affirmatively further fair housing.[23] Additionally, the tenants alleged that HUD's approval of the revised demolition application, in the face of the clear and recognized failure of RHA to comply with the law, was arbitrary and capricious in violation of the Administrative Procedures Act.[24]

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[10]*Id*. ¶ 37.
[11]*Id*.
[12]42 U.S.C.A. § 1437p(a)(1)(A)(ii) (West 2003) and 24 C.F.R. § 970.15(a)(1) (2007).
[13]The high-rise portion, known as Brewington Oaks, was to be left standing.
[14]*Jones* Complaint, ¶ 39.
[15]The submission of the revised application was apparently the result of a meeting between RHA and HUD at which the original application's defects were discussed.
[16]This finding was based upon RHA's failure to address the question of a cost-effective return to useful life under 42 U.S.C. § 1437p(a)(1)(A)(ii) (West 2003).
[17]*Jones* Complaint, ¶ 57.
[18]*Id*. at ¶ 59.
[19]*Jones* Complaint, Count I against HUD and Count V against RHA.
[20]*Id*., Count II against HUD and Count VII against RHA.
[21]*Id*., Count III against HUD and Count VIII against RHA.
[22]*Id*., Count IX against both HUD and RHA; Fair Housing Act, 42 U.S.C. §§ 3604, 3613 (West WESTLAW Current through P.L. 110-185 (excluding P.L. 110-181) approved 2-13-08), as further elaborated by 24 C.F.R. §§ 100.50, 100.65, 100.70, 100.75, 100.80 (2007) and the Quality Housing and Work Responsibility Act of 1998, 42 U.S.C. § 1437c-1(d)(15) (West 2003 & Supp. 2007).
[23]*Jones* Complaint, Count X against both HUD and RHA; 42 U.S.C.A. § 3608(e)(5) (West WESTLAW Current through P.L. 110-185 (excluding P.L. 110-181) approved 2-13-08); 24 C.F.R. §§ 960.10(b), 107.20(a), 903.7(o), 982.53(b), (c) (2007); Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (Nov. 20, 1962); Exec. Order No. 12,892, 59 Fed. Reg. 2,939 (Jan. 17, 1994); and the Quality Housing and Work Responsibility Act of 1998 (QHWRA), 42 U.S.C. § 1437c-1(d)(16) (West 2003 & Supp. 2007) (QHWRA was alleged against RHA and not HUD).
[24]*Jones* Complaint, Count IV v. HUD, 5 U.S.C. § 701(b)(1) (West WESTLAW Current through P.L. 110-185 (excluding P.L. 110-181) approved 2-13-08).

The Consent Decree

In the wake of the complaint, the parties commenced settlement negotiations, and in January 2008, the parties submitted a consent decree to the court, which the court entered on January 24. In exchange for the tenants' agreement to the demolition of Jane Addams' eighty-four units, RHA and HUD agreed to numerous substantial obligations and conditions. RHA agreed to construct, acquire, redevelop or otherwise provide seventy-seven replacement low-income homes. The replacement units must be in areas not generally less desirable than that surrounding Jane Addams Village,[25] may be a combination of public housing and project-based Section 8,[26] may be scattered-site or located in mixed-income developments,[27] and must be affordable to families at or below 80% of area median income.[28] Ms. Jones, Ms. Brown and the sixty-nine other families eligible for relocation due to the demolition of Jane Addams will receive first priority to occupy the replacement housing, with Ms. Jones and Ms. Brown having first priority among this group.[29]

RHA also agreed to implement a first-rate mobility program for these relocatees[30] within 180 days of entry of the consent decree,[31] and to make that program a part of its housing voucher program.[32] Part of the program's mission is to allow the relocatees the opportunity to move to low-poverty, integrated neighborhoods.[33] The program will include pre-move, post-move and second-move counseling, assistance in accessing services and housing voucher counseling.[34] Under the program, RHA will pay for both initial relocation and second move expenses for the Jane Addams relocatees.[35]

Finally, the Decree contains provisions designed to support its implementation. First, tenants are guaranteed participation in the process of developing the replacement housing. A plaintiff representative will sit on RHA's panel selecting entities to develop the replacement housing. The plaintiffs will be consulted concerning, among other things, bedroom size of the replacement units and the content of the letter to be sent to the relocatees. RHA will provide to plaintiffs all of the plans, surveys, financing and other documents related to the redevelopment project.[36] Second, RHA must file detailed reports with the court every six months on its progress in developing the replacement units.[37] Third, the court retains jurisdiction of the matter pending the construction, acquisition or redevelopment of the seventy-seven units and the initial and second moves of the relocatees.[38]

HUD's "New" Policy Regarding Partial Demolitions

In addition to agreeing to this settlement, HUD has recently posted a notice on its website effectively acknowledging that it had previously misinterpreted Section 18 when PHAs were applying for partial demolition.[39] Referencing the litigation (i.e., the *Jones* case) the "new" guidance states that, in the case of a partial demolition, Section 18(a)(1)(B) requires the PHA to demonstrate both of the following elements: (1) the units identified for demolition are obsolete as to physical condition, location or other factors, making them unsuitable for housing purposes; and (2) that demolition will help ensure the viability of the remaining portion of the development.[40] The guidance says, in effect, that HUD will henceforth follow the statute when considering applications for partial demolition.

Conclusion

The results in the Jane Addams case point to the fact that every demolition and disposition application should be reviewed carefully. Sometimes, the zeal of HUD and PHAs to demolish or dispose of public housing overcomes careful adherence to statutory requirements. Tenants and advocates can turn these mistakes to their advantage. Even in the absence of a statutory one-for-one replacement requirement, the Jane Addams settlement demonstrates that real benefits may nevertheless be achieved for the residents (relocation benefits and priority for redeveloped housing) and for the future residents of the community (replacing affordable units and mobility programs).

We'll leave to the reader's speculation what lessons must be drawn from a federal agency's need to issue guidance that affirms the plain language of a decade-old amendment to a federal statute regulating the removal of desperately needed affordable housing units. ■

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[25] *Jones* Consent Decree ¶ 3. A.(6), in compliance with 24 C.F.R. § 970.21(a) (2007).
[26] *Id*. ¶ 1. D.
[27] *Id*. ¶ 3. A. (1).
[28] *Id*. ¶ 1. D. and F.
[29] *Id*. ¶ 3. A. (5).
[30] *Id*. ¶ 3. B.
[31] *Id*. ¶ 3. B. (3).
[32] *Id*. ¶ 3. B. (3).
[33] Either in Rockford or elsewhere in the country.
[34] *Jones* Consent Decree, ¶ 3. B. (1).
[35] *Id*.
[36] *Id*. ¶ 4.
[37] *Id*. ¶ 8.
[38] *Id*. ¶ 10.
[39] http://www.hud.gov/offices/pih/centers/sac/demo_dispo/partdem.cfm (content updated October 10, 2007).
[40] HUD in its prior interpretation had ignored the fact that § 18 was amended in 1998 replacing the term "or" with an "and" between what became paragraphs (A) (ii) and (B). *Compare* Pub. L. 105-276 § 531 (codified at 42 U.S.C.A. § 1437p(a)(1) and (2) with Pub. L. 98-181, § 214(a) (Nov. 30, 1983), which added § 18. This statement effectively confirmed that HUD had approved the Jane Addams application by ignoring § 18(a)(1)(A) and basing its approval solely on § 18(a)(1)(B).