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KENNETH J. MURPHY  
CLERK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

HELEN DERRICK, et al., : Case No. C-1-88-0521  
Plaintiffs : Judge Magistrate Sherman


vs. :


JACK KEMP, Secretary of U.S. : ORDER APPROVING  
Department of Housing & : IMPLEMENTATION PLAN  
Urban Development, :  
Defendant :

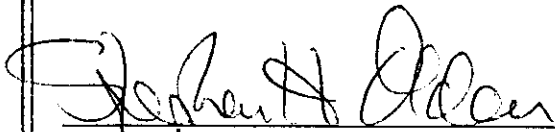
The Court, having considered the attached Implementation Plan For Order Of April 4, 1991 ("Plan"), and having been advised by the parties of their agreement with it, hereby approves the Plan.


IT IS SO ORDERED.

  
MAGISTRATE JUDGE JACK SHERMAN, JR.

  
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IMPLEMENTATION PLAN FOR  
ORDER OF APRIL 4, 1991  
IN DERRICK, ET AL. V. KEMP

I. PREAMBLE

The parties, by and through counsel, agree to this Implementation Plan ("Plan") to effectuate the Court's Order of April 4, 1991 ("Order") in Helen Derrick, et al. v. Jack Kemp, Secretary of the Department of Housing & Urban Development, C.A. No. C-1-88-521 (U.S.D.C., S.D. Ohio). The purpose of the Plan is to ensure that the Order is given effect to the maximum extent possible, as promptly as possible, so as to provide relief to as many class members as can reasonably be done without compromising the intent of the Order.

The general principles underlying the Plan are as follows: (1) the Plan, as a whole, should be tailored to address only the violations of law found by the Court; (2) notification should go to as many class members as can be fairly requested of HUD; (3) the claims process for class members should be simple and expeditious without cutting off class members' rights, and should safeguard, to the extent reasonably possible, against the payment of fraudulent or excessive claims from public funds; (4) the payment of class members' claims should be handled in such a manner that all valid claims are paid as promptly as is reasonably possible; and (5) the existing framework established by federal law with respect to federally subsidized housing should be utilized to whatever extent is reasonably possible in the claims and payment process.

While the parties acknowledge that the Plan may not address all the possible problems that may arise in the implementation of

the Order, the parties agree that the Plan, arrived at after numerous conferences among counsel for the parties and with the Court, reflects an effort to establish a fair and comprehensive process designed to achieve both the letter and spirit of the Order.

## II. DEFINITIONS

The parties agree to the definition of the following terms for purposes of this Implementation Plan:

1. "Federal housing" hereinafter means collectively and during the time period of November 1982 through July 1985, conventional public housing projects in Ohio, which are owned and operated by public housing agencies and are financed by HUD under the U.S. Housing Act of 1937; privately-owned housing in Ohio (including, but not limited to projects funded through the Ohio Housing Finance Agency) for which rental assistance payments are made by HUD under Section 8 of the U.S. Housing Act of 1937, as amended; privately-owned housing projects in Ohio for which Rental Assistance Payments are made by HUD under Section 236 of the National Housing Act; and formerly-subsidized multi-family housing projects in Ohio owned by HUD.

2. "Owner," singular or plural, unless the context clearly indicates otherwise, hereinafter refers to the owner(s) of project(s) in Ohio assisted by HUD under Section 8 of the U.S. Housing Act of 1937, as amended, with which HUD has entered into a Housing Assistance Payments Contract.

3. "Manager" or "managers" hereinafter refers to management agent(s) of owner(s), as defined above.

4. "Owners and managers" hereinafter refers to the owner or manager, as defined above, of each project.

5. "Public agency administering the Section 8 program," singular or plural, hereinafter refers to public agency(ies) administering a program under Section 8 of the U.S. Housing Act of 1937, as amended, under Annual Contributions Contract(s) with HUD.

### III. NOTICE TO CLASS MEMBERS

#### A. Individualized Notice.

1. HUD shall instruct owners and managers of federal housing to distribute a letter or notice to all current tenants residing in federal housing in Ohio informing them in simple terms of the Order in this matter and of the possibility that they may be entitled to a rent reimbursement from HUD. The letter or notice will also provide an "800" toll-free telephone number and address to use for further information and will describe how to obtain a Claim Form. A copy of the letter or notice to be distributed is attached hereto as Exhibit "A". HUD shall instruct the owners and managers to use all best efforts to distribute the letter or notice within 30 days and in no event later than 45 days from the receipt of HUD's instructions referred to in paragraph V(E) of this Plan.

2. HUD shall instruct the owners and managers to mail the letter or notice referred to in paragraph A(1) of this section to the last known address of all tenants who moved from federal

housing during the twelve month period immediately preceding the date on which this Plan is approved by the Court. Said mailing shall be done within 60 days from receipt of HUD's instructions referred to in paragraph V(E) of this Plan. If an owner or manager believes that the identification of former tenants in this category would be unduly burdensome, it may seek a waiver of this requirement from HUD. HUD may grant the waiver upon consideration of the number of former tenants involved and the filing system utilized by that particular owner or manager for the records of former tenants. For any waiver granted, HUD shall forward to plaintiffs' counsel a copy of the request, decision, and any supporting documentation.

3. HUD shall instruct the owners and managers to mail the letter or notice referred to in paragraph A(1) of this section to all former tenants who have moved from federal housing since January 1, 1983 for whom they have a readily accessible forwarding address. By way of example only, a readily accessible forwarding address is one contained on a separate list of such addresses kept by the owner or manager for any purpose or one known to be contained in a conspicuous section of a closed tenant file that can be easily retrieved without a complete review of all closed claimant files. Said mailing shall be done within 60 days from receipt of HUD's instructions referred to in paragraph V(E) of this Plan.

4. HUD shall mail to owners and managers, and to public agencies administering the Section 8 program, posters containing

the information set forth in paragraph A(1) of this section. HUD shall instruct the owners and managers to place the posters in up to three conspicuous public locations in each building. Locations may be the rental office, if any, and other common areas (e.g., lobby and bulletin boards areas). HUD shall instruct the public agencies administering the Section 8 program to place a poster in a conspicuous public location in the waiting area of their offices. A reduced-sized copy of the poster is attached hereto as Exhibit "B". Owners and managers, and the public agencies administering the Section 8 program, shall be instructed by HUD to display the posters for the duration of the claims period.

5. All letters and notices referenced herein shall go out under the owners' and managers' letterhead. Posters shall display the HUD letterhead.

6. HUD shall retain a consultant to review the language proposed by the parties in the above-referenced letters, notices, and posters so as to ensure that they are understandable at the lowest reading level possible consistent with their subject matter.

B. Notice to the Public.

1. The posters referred to in paragraph A(4) of this section may be posted by plaintiffs' counsel as permitted at appropriate local, state, and federal offices. Examples of such offices include Social Security, food stamp, human services (welfare), unemployment, veteran's and legal services offices as well as local social services agencies and churches. HUD shall

provide up to 2,000 posters to plaintiffs' counsel for this purpose. Plaintiffs' counsel may obtain additional posters from HUD by paying the printing costs incurred to produce them.

2. HUD shall issue a statewide press release through its Chicago or Washington office which shall be drafted to the extent practicable with the assistance of plaintiffs' counsel and which shall generally explain the Court's Order, the implementation process, and where further information may be obtained. Said press release shall be issued at a time agreed to by the parties.

3. Plaintiffs' counsel may produce public service announcements for radio stations in Ohio, particularly those in urban areas and/or with a minority population listening audience. Said public service announcements shall be consistent with the Court's Order and shall generally explain the Court's Order, the implementation process, and where further information may be obtained.

4. HUD shall place conspicuous notices in the form of advertisements no smaller than an eighth of a page in newspapers in the five major Ohio cities. The notices shall track the information contained in Exhibit B and shall be placed on or about June 1, 1992. The newspapers in which the notices are to appear are: the Cincinnati Enquirer, the Cleveland Plain Dealer, the Columbus Dispatch, the Dayton Daily News and the Toledo Blade. The notices shall be published in a Wednesday edition of each newspaper, and HUD shall request that the notice appear in each newspaper's section for local or metropolitan news.

IV. CLAIMS PROCESS

A. A simple, easy-to-complete Claim Form will be used by class members seeking rent reimbursement in this matter. The Claim Form shall be of a carbonless, quadruplicate design. A copy of the Claim Form is attached hereto as Exhibit "C". Of the quadruplicate copies, one shall be designated for the owner or manager or the public agency administering the Section 8 program receiving the claim, one shall be designated for plaintiffs' counsel, one shall be designated for HUD, and one shall be designated for the claimant (tenant).

B. A Claim Form shall be mailed or given to any prospective claimant asking for one from HUD, plaintiffs' counsel, any owner or manager of federal housing, or any public agency administering the Section 8 program. HUD shall print and maintain a sufficient supply of such forms for distribution. HUD shall distribute adequate quantities of the Claim Form to all HUD branch offices, owners and managers, the public agencies administering the Section 8 program, and plaintiffs' counsel, and shall supplement promptly said quantities upon request.

C. A simple Claims Protocol shall be used to explain to owners and managers, the public agencies administering the Section 8 program, HUD, and the American Arbitration Association how to evaluate claims for payment. Protocols shall be distributed to all Ohio HUD offices, owners and managers of federal housing, the public agencies administering the Section 8 program, and the



American Arbitration Association. A copy of the protocol to be used is attached hereto as Exhibit "D".

D. An "800" toll-free telephone number shall be established at HUD's expense in either the HUD Columbus or Cincinnati branch office by June 1, 1992 and shall remain for up to 60 days after the close of the claims period. The purpose of the "800" number shall be to provide assistance to claimants seeking to file claims in this matter. HUD shall provide staff and resources to handle calls coming in on the "800" line from 9:00 a.m. to 1:00 p.m. each business day. However, HUD shall use its best efforts to substitute one 1:00 p.m. to 5:00 p.m. period for one 9:00 a.m. to 1:00 p.m. period per week. Plaintiffs' counsel shall have the opportunity to participate in the initial training of HUD personnel responsible for answering calls on the "800" line and, at HUD's discretion, may participate in any supplemental training to be provided during the time the "800" number is in effect. In general, where plaintiffs' counsel are not given the opportunity to participate in supplemental training, counsel for HUD will consult with plaintiffs' counsel before providing such training to the "800" number personnel. Plaintiffs' counsel will be sent copies of any written material provided to the "800" number personnel pertaining to instructions for answering claimants' inquiries.

E. Any person who believes he or she may have a claim for rent reimbursement may file a Claim Form. Claims shall be made by completing the quadruplicate Claim Form as completely as the claimant is able to do and then delivering or mailing the original

to the owner or manager of the federal housing at which the claimant paid the welfare rent. Where the claimant claims a rent refund based on a tenancy under a Section 8 program in which HUD has an Annual Contributions Contract with a public agency, the original Claim Form is to be delivered or mailed to the public agency administering the Section 8 program. The claimant shall mail the designated copies to HUD and to plaintiffs' counsel, and the claimant shall retain the remaining copy. If a claim is inadvertently submitted to HUD, the Claim Form either will be forwarded to the correct owner or manager or the public agency administering the Section 8 program if it can be reasonably determined, or returned to the potential claimant with a reiteration of the foregoing instructions on where to file the claim. HUD shall instruct owners and managers and the public agencies administering the Section 8 program to similarly assist and advise potential claimants concerning any misdirected claims they may receive.

In the event a claimant paid a welfare rent at more than one federal housing project, a separate Claim Form must be filed with the owner or manager or the public agency administering the Section 8 program for each of said projects.

F. All Claim Forms must be presented within the claims period to the owner or manager or the public agency administering the Section 8 program for the project(s) at which the claimant paid a welfare rent. The claims period shall be for five calendar months, starting on June 1, 1992 and ending on October 31, 1992.

G. There shall be the following three-stage process for the evaluation of claims:

- (1) The owners and managers, and the public agencies administering the Section 8 program, in collaboration with HUD;
- (2) Independent arbitrators appointed by the American Arbitration Association; and
- (3) Judicial review commencing with review by Magistrate Judge Sherman.

Claims shall be decided based upon a preponderance of the evidence standard at all stages of review.

Stage one contemplates HUD's collaboration with an owner or manager or the public agency administering the Section 8 program on any or all claims, including instructing the owner or manager or the public agency administering the Section 8 program to pay a claim, seek further information, or take any other steps which HUD feels are reasonable in evaluating the claim.

H. HUD shall instruct owners and managers and public agencies administering the Section 8 program to review each claim in accordance with the Protocol.

Where it is determined that the claimant is eligible for a rent refund, and the amount of the refund can be established by it, the owner or manager or public agency administering the Section 8 program shall compute the amount of the rent refund to which the claimant is entitled and shall forward a check payable to the claimant in that amount. Where it is determined that a claimant is

eligible for a rent refund, but the owner or manager or public agency administering the Section 8 program cannot establish either or both the amount of each month's overcharge or the number of months for which the overcharges were made, the amount of the rent refund to be paid shall be calculated using "plugged-in" figures, as described below.

Where the amount of the rent refund to eligible claimants cannot be immediately established, HUD shall propose a formula to compute the figures to be "plugged in" no later than the end of the fifth month of the claims period and shall use its best efforts to do so earlier. Plaintiffs' counsel shall have 14 days to respond to the formula proposed by HUD, and HUD shall have 14 days to respond to any nonconcurring response from plaintiffs' counsel. If the parties cannot agree on a formula, they shall notify the Court within 14 days, and the Court shall determine the figures to be used.

Owners and managers of Section 8 assisted projects under Housing Assistance Payments Contracts with HUD shall be instructed to submit a voucher to HUD documenting that reimbursement has been made and requesting repayment thereof by HUD. HUD shall make repayment promptly in accordance with its normal procedures for processing vouchers. Public housing authorities and public agencies administering the Section 8 program shall be instructed by HUD to make reimbursement for claims arising from conventional public housing and the Section 8 program under Annual Contributions Contract with HUD out of current operating funds. After final

disposition of all claims, HUD will reimburse each public housing authority and public agency administering the Section 8 program with supplemental funds in an amount equal to the total amount of rent reimbursements, if any, made by that public housing authority or public agency administering the Section 8 program.

I. No claim may be denied, offset, reduced, or in any way treated differently in time or manner for a reason unrelated to this lawsuit; HUD shall so instruct the owners and managers and the public agencies administering the Section 8 program in the Protocol. Examples of such improper reasons are an owner's or manager's claim for back rent, claim for damage to the apartment, or past differences or difficulties with the claimant. However, nothing in this Plan is intended to preclude an owner or manager or the public agencies administering the Section 8 program from proceeding with appropriate process of law to assert any claim that it may have against a tenant or former tenant.

It is the intent of HUD that the first stage of review will be used to resolve as many claims as possible. Further, it is the expectation of HUD that the first stage of review will result in the disposition of all valid claims. It is intended by the parties that the owners and managers and the public agencies administering the Section 8 program evaluate and reimburse promptly, and in no event later than 60 days from the date on which the claim was filed, unless extraordinary circumstances exist or plugged in figures must be utilized. In any case of extraordinary

circumstances, the stage one decision will be made no later than 105 days from the date on which the claim was filed.

A Stage One Decision Form shall be used to give notice of all decisions, including the amount of any reimbursement paid and how it was calculated. Additionally, the Decision Form shall set forth a brief statement of the reasons for denying all or part of any claimed reimbursement, and the claimant's appeal rights. HUD shall instruct the owners and managers and the public agencies administering the Section 8 program to send the original of the Decision Form to the claimant, send a copy to plaintiffs' counsel and to HUD, and retain a copy for itself. A copy of the Stage One Decision Form is attached hereto as Exhibit "E".

All claimants for whom plugged-in figures must be used shall initially be sent the Stage One Decision Form, with an attached Notice of Pending Refund document, by the owner or manager or the public agency administering the Section 8 program. Said Decision Form shall state that a refund has been approved, but that the amount cannot be calculated and paid until some months later. A copy of the Notice of Pending Refund document is attached hereto as Exhibit "F". A second Stage One Decision Form then shall be mailed to the claimants within seven months from the beginning of the claims period to inform them of the amount of the refund. The rent refund check shall be mailed with the second Stage One Decision Form.

J. Any claimant who is dissatisfied with the stage one decision shall have the right to appeal that decision. A

carbonless, triplicate Stage One Appeal Form shall be included with every Decision Form mailed to a claimant. Said Appeal Form shall be used by the claimant if an appeal is to be filed. A copy of the Appeal Form is attached hereto as Exhibit "G".

K. All appeals from a stage one decision shall be to an arbitrator appointed by the American Arbitration Association. A claimant shall be given 30 days from the date of mailing of the stage one decision to appeal HUD's decision. All appeals shall be filed using the carbonless, triplicate Appeal Form on which the claimant shall give a brief explanation as to why he or she believes the decision to be in error. Late appeals shall be accepted if, in the opinion of the arbitrator, good cause is shown for the appeal being filed late. However, in no event shall an appeal be considered if filed more than 10 months after the start of the claims period, extended by any time the stage one decision on that appeal takes beyond 60 days to be issued. Appeals must be filed at the HUD branch office in Columbus or Cincinnati, as determined by HUD. The designated copies of the Appeal Form will be sent by the claimant to HUD and to plaintiffs' counsel.

All stage one appeals shall be held until 60 days after the close of the claims period and then forwarded by HUD to the arbitrator for review and decision. If there are cases involving extraordinary circumstances as referred to in paragraph IV(I) still pending, HUD may take up to an additional 45 days before the appeals are forwarded to the arbitrator. HUD simultaneously will

forward to the arbitrator the "file" or "record" of the claim, including all related documents.

All appeals from a stage one decision shall be conducted in conformity with the Commercial Arbitration Rules of the American Arbitration Association, except when such rules are inconsistent with this Plan. Further, the parties agree that all appeals from a stage one decision shall be submitted to one arbitrator (rather than a panel of three arbitrators) selected from the arbitrators registered with the American Arbitration Association. Moreover, the parties agree that all arbitrators shall be selected by the American Arbitration Association and that challenges to such selections are waived.

L. The arbitrator shall review and decide all appeals as expeditiously as possible. All stage two decisions shall be issued on a Stage Two Decision Form and shall give a brief explanation of the decision reached. The original Stage Two Decision Form shall be sent to the claimant and copies shall be sent to HUD and to plaintiffs' counsel. A copy of the Stage Two Decision Form is attached hereto as Exhibit "H". For each stage two decision in which the arbitrator determines that a rent refund shall be made, HUD shall instruct the appropriate owner or manager or the public agency administering the Section 8 program to make the designated payment to the claimant within 30 days after its receipt of the arbitrator's decision unless HUD determines to appeal the stage two decision.



M. Either HUD or a claimant may appeal a stage two decision to Magistrate Judge Sherman for de novo judicial review. A notice of such appeal rights shall be given on the Stage Two Decision Form.

All appeals of a stage two decision must be filed no later than 15 days from the date of mailing of the stage two decision. All such appeals must be filed using the carbonless, triplicate Appeal Form on which the appealing party shall give a brief explanation as to why he believes that the stage two decision is in error. A copy of the Appeal Form is attached hereto as Exhibit I.

All appeals from a stage two decision shall be filed at the HUD branch office in Columbus or Cincinnati, as determined by HUD. Each appeal will be held by HUD for 45 days during which time HUD and the claimant will make a good faith effort to resolve the appeal. If the appeal cannot be resolved, HUD will forward the appeal and the "file" or "record" of the claim to Magistrate Judge Sherman for disposition. HUD will forward the file within 14 days after its determination that the appeal cannot be resolved.

N. Based upon copies of claims received from claimants and copies of dispositions received from owners and managers and the public agencies administering the Section 8 program, HUD's Columbus or Cincinnati office shall compile a report of the number of claims received, the number approved and paid, and the number pending as of the end of the first 60 days of the claims period and as of the end of each 30-day period thereafter until the stage one decision on all claims has been made. HUD's Columbus or Cincinnati office

shall forward a copy of each report to plaintiffs' counsel within 14 days after the end of each reporting period.

O. HUD shall assign staff of the Columbus or Cincinnati branch office to monitor this Plan's implementation and to report, as provided under this Plan, to counsel for the parties.

V. OTHER OBLIGATIONS OF HUD

A. HUD shall take all reasonable steps to ensure that where owners and managers and the public agencies administering the Section 8 program are required to take some action pursuant to this agreement, that said actions are, in fact, taken, and taken in a timely manner. To this end, HUD shall obtain verification from each owner and manager and public agency administering the Section 8 program that they have given notices and posted posters as required by this Plan. HUD shall instruct all owners and managers and the public agencies administering the Section 8 program to type on their own letterhead the text set forth below, and sign and submit said letter within two weeks of the date they complete the process of giving notice and posting posters. Plaintiffs' counsel shall be given access to all signed and returned verification letters upon reasonable notice.

The text to be typed shall be as follows:

VERIFICATION OF RENT REFUND NOTICE

\_\_\_\_\_ has  
(name of owner or manager)  
distributed notices to tenants and posted  
posters in accordance with instructions from  
HUD for implementation of the U.S. District  
Court's Order in Derrick v. Kemp.

I certify that the above statement is true and correct to the best of my knowledge and belief.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

\_\_\_\_\_  
(type or print name)

Further, HUD will instruct owners and managers and the public agencies administering the Section 8 program that all of HUD's reimbursement of rent monies will be made in accordance with the provisions of paragraph IV(H) of this Plan.

B. For any owner or manager or public agency administering the Section 8 program refusing or failing to carry out the actions envisioned by this Plan, HUD shall specifically instruct that owner or manager or public agency administering the Section 8 program in writing of the obligations referred to in this agreement and that HUD may take further steps pursuant to its oversight powers (i.e., those found in the applicable Regulatory Agreements, Annual Contributions Contracts, and Housing Assistance Payments Contracts) over owners and managers and public agencies administering the Section 8 program to ensure compliance.

C. 1. HUD shall pay the following costs referenced in this Implementation Plan:

- a. The posters referenced in paragraphs III(A)(4) and (B)(1) of the Plan;
- b. The consultant services referenced in paragraph III(A)(6) of the Plan;

- c. The newspaper notices referenced in paragraph III(B)(4) of the Plan;
- d. Printing of the Claim Forms referenced in paragraph IV(A) of the Plan;
- e. Printing of the Stage One Decision Forms referenced in paragraph IV(I) of the Plan;
- f. Printing of the Appeal Forms referenced in paragraph IV(J), (K), and (M) of the Plan;
- g. Printing of the Stage Two Decision Forms referenced in paragraph IV(L) of the Plan;
- h. The "800" toll-free number referenced in paragraph IV(O) of the Plan;
- i. The arbitrators appointed by the American Arbitration Association referenced in paragraph IV(K) of the Plan.

Payment shall be made within six to eight weeks of an invoice being presented unless HUD in good faith questions the invoice.

2. HUD shall authorize owners under HAP Contracts with HUD to use, as an additional management fee, funds in their project accounts to reimburse themselves or their managers for the cost of processing claims properly filed with them or their managers under this Plan, up to \$12.50 for each claim, whether or not a rent refund is ultimately paid on the claim. Additional reimbursement may be permitted at HUD's discretion.

D. This agreement does not, and is not intended to, make any provision regarding plaintiffs' potential claim for attorneys' fees and expenses in this matter. If no settlement on attorneys' fees and expenses is reached, the Court may award attorneys' fees and expenses pursuant to the Equal Access to Justice Act or any other grounds authorizing such relief. HUD reserves the right to oppose any claim for fees and expenses and to raise any defenses to such a claim.

E. HUD shall issue instructions to owners and managers and public agencies administering the Section 8 program concerning their responsibilities under this Plan by May 1, 1992.

#### VI. EXCLUSION OF REIMBURSEMENT PAYMENTS

It is the intent of the parties that the reimbursement payments provided to class members will not have an adverse effect on their eligibility and/or continued participation in any other governmental benefit program based on need. It is agreed that any payments made pursuant to this agreement shall not be included as income, resources or assets under any HUD program where eligibility and/or continued eligibility is defined in terms of a family's or individual's income, resources, or assets.

#### VII. GOOD FAITH ATTEMPT AT RESOLUTION OF PROBLEMS

The parties agree that if either party becomes aware of any problems in the operation of the Plan, that party, through counsel, shall promptly advise counsel for the other party. The parties

further agree that they will make a good faith effort to resolve any such problems before seeking judicial intervention.

VIII. FINALITY

The obligations of HUD with respect to this Court's order of April 4, 1991 shall be fulfilled by execution of this Implementation Plan.

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# NOTICE -- RENT REFUND -- NOTICE

IF YOU WERE ON GENERAL RELIEF AND LIVING IN SUBSIDIZED HOUSING IN OHIO IN 1982, 1983, 1984, OR 1985, YOU MAY BE ABLE TO GET A RENT REFUND.

Some people who were receiving General Relief (GR) (now called General Assistance) AND who lived in public housing (operated by a metropolitan housing authority) or in housing subsidized by HUD (Department of Housing and Urban Development) were charged too much rent in 1982-1985. A federal court has ordered HUD to give refunds to all people who were charged the wrong rent. (Court case Derrick v. Kemp)

If you were on GR and lived in any public or HUD-subsidized housing in Ohio anytime from November 1982 through July 1985, you should have paid no more than 30% of your income in rent. However, many tenants on GR paid their entire shelter allowance as rent instead of only the 30% amount. If you think you might have paid your ENTIRE GR SHELTER ALLOWANCE (MORE THAN 30% OF YOUR INCOME) to your landlord for rent, you should apply for a REFUND. If you remember paying a "WELFARE RENT," that is another way of saying that you paid your entire shelter allowance for rent, and you should apply for a REFUND. In general, IF YOU PAID MORE THAN \$56.00 A MONTH for rent, you should apply for a REFUND.

If, at any time from November 1982 to July 1985, you received GR and you lived in public (metropolitan) or subsidized housing but you do not remember the amount of rent you paid, you still can apply for a refund.

It does not matter whether you are on GR now, or what kind of housing you live in now. **Getting a refund depends on whether you were charged the wrong rent back in 1982 to 1985, were on GR, and were in subsidized or public (metropolitan) housing in Ohio.**

**TO APPLY FOR A RENT REFUND**, you must fill out and turn in a CLAIM FORM. You can pick up a Claim Form from all owners and managers of public and subsidized housing, HUD offices, or the Legal Aid Society of Cincinnati, 901 Elm Street, Cincinnati, Ohio 45202. **All Claim Forms must be filed by \_\_\_\_\_ 1992**, and must be sent to the owner or manager of the place where you were charged too much rent or with the Section 8 office. A decision on your claim for a rent refund may take several months.

IF YOU HAVE QUESTIONS about anything in this notice including questions about where to get a Claim Form, how to file a claim, or whether you are eligible, CALL 1-800-XXX-XXXX Monday through Friday between 9:00 AM and 1:00 PM.

Exhibit A

# RENT REFUND

At any time from November 1982 to July 1985,

did you receive General Relief money?

and

live in HUD or Public Housing in Ohio?

and

pay more than \$56.00 a month (more than 30% of your monthly income) for rent?

If so, you may have a RENT REFUND coming!

To get a RENT REFUND you must file a Claim Form.

Get a Claim Form from an apartment or project manager,  
or from a HUD office or from the Legal Aid Society,  
901 Elm Street, Cincinnati, Ohio 45202.

Send yours today! Don't delay!

Claim Forms for RENT REFUNDS must be sent in by



**RENT REFUND CLAIM FORM**

Use a ballpoint pen.

Call toll-free 1-800-xxx-xxxx, Monday-Friday,  
9:00AM to 1:00PM, if you need help with this claim.

1. Name: \_\_\_\_\_ 2. Social Security #: \_\_\_\_\_
3. Current Mailing Address: \_\_\_\_\_
4. Telephone #: \_\_\_\_\_

Answers below will be checked against Department of Housing & Urban Development (HUD) rent records.

5. Did you receive General Relief (General Assistance) in Ohio at any time from November 1982 up to August 1985?  Yes. Continue to Question 6.  
 No. **STOP NOW.** You do not have a claim.

6. Did you pay the shelter portion of your General Relief (more than 30% of your income) for rent during this time?  Yes, I am sure. Continue to Question 7.  
 I am not sure. Continue to Question 7.  
 No. **STOP NOW.** You do not have a claim.

7. While you received General Relief, and paid the shelter portion of your General Relief (more than 30% of your income) for rent, did you live in any of the following:
- A. public housing, that is, was your landlord a Metropolitan Housing Authority?  
-OR-
- B. HUD-subsidized housing, that is, was the amount of rent you paid supposed to be based on your income (such as Section 8 or Section 236 programs),  
-OR-
- C. housing owned by HUD?
- Yes, I did live in housing described in A or B or C above. Continue to Question 8.  
 No, I did not live in any of the housing described in A or B or C above. **STOP NOW.** You do not have a claim.

If you are making a claim from more than one project, you must fill out a Claim Form for each project.

8. Name of Project or Section 8 office where you were overcharged: \_\_\_\_\_ Your address in that Project: \_\_\_\_\_
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Unit/Apt. # \_\_\_\_\_

Owner and/or manager of Project if you know: \_\_\_\_\_

=====

**You must sign your name below.**

The information asked for below may be helpful to your claim. Please answer if you can. Your claim will be considered even if Questions 9-12 are left blank.

9. Number of bedrooms in apartment listed in Question 8? (Circle one answer): 1 2 3 4

10. Number of persons, including yourself, in household listed in Question 8? (Circle one answer): 1 2 3 4 5

11. Mark an "X" or, if you can, write the rent amount in the boxes for each month you paid your entire shelter allowance (more than 30% of your income) for rent. If you paid \$56.00 or more for rent, it is likely you paid your entire shelter allowance as rent and should mark a box for those months.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1982												
1983												
1984												
1985												

12. Estimate your income for the months you marked an "X" in the boxes above: \$ \_\_\_\_\_

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## RENT REFUND PROTOCOL

This Protocol sets forth the procedures and policies to be followed in the evaluation and disposition of claims for rent refund, which have been ordered by the U. S. District Court in Cincinnati in the case Helen Derrick v. Jack Kemp, Secretary of HUD.

(The responsibility for handling claims from their respective tenants or recipients for rent refund under this Protocol is lodged with the owners or managers of Section 8 and Section 236(RAP) projects which are directly assisted by HUD under HAP Contract with HUD, public housing agencies administering Section 8 programs with assistance from HUD under ACCs and public housing agencies which own and operate HUD-assisted conventional public housing. Accordingly, for purposes of this Protocol, "owner or manager" below means the owner or manager of a Section 8 or Section 236(RAP) project directly assisted by HUD, the relevant administrator of a Section 8 program under ACC with HUD or the public housing agency which owns and operates a HUD-assisted conventional public housing project.)

1. After a Rent Refund Claim Form is received by the owner or manager, the owner or manager will first check whether the Form is signed by the claimant and whether the owner or manager to which it has been submitted is the owner or manager of the

Exhibit D

project identified by the claimant in Question 8 of the Claim Form. Both the name and address listed in Question 8 should be checked because ownership and/or management of the project may have changed since 1982-1985.

If the Claim Form is unsigned, the owner or manager will return it to the claimant, advising in writing that it cannot be accepted because of being unsigned by the claimant and inviting the claimant to sign the Form and refile it. Copies of the written notification should be sent to HUD and the Legal Aid Society of Cincinnati.

If Question 8 of the Form identifies a project other than one currently owned or managed by the owner or manager to which the Form was submitted, the owner and manager will forward the claim to the current owner or manager of that project, if known. If unknown, the owner or manager will advise the claimant that the claim has been misfiled and will invite the claimant to submit it to the owner or manager of the project at which the welfare rent is claimed to have been paid. Claimants should be advised of misdirected and forwarded claims by letter, with copies to HUD and the Legal Aid Society of Cincinnati.

2. The owner or manager of the project identified by the claimant on a signed Claim Form must first determine whether the claimant is eligible for a rent refund.

To be eligible for a rent refund, the claimant must have, at any time from November 15, 1982 to August 1, 1985,

simultaneously, a) been a tenant of the project; b) been receiving General Relief assistance; and c) paid a welfare rent rather than a rent based on percentage of income.

Information relevant to this determination of eligibility includes information in and with the Claim Form; tenant records of the project, such as 50059 forms; the owner's or manager's institutional knowledge, knowledge of employees or former employees of the owner or manager, including whether or not welfare rents were charged at the project; and pertinent information from outside sources, such as the local welfare office. (The Claim Form includes a release from the claimant to enable the owner and manager to obtain information from other sources pertinent to the claim.)

Internal project sources of information, such as historical 50059 forms, should be consulted first and must be thoroughly searched, if necessary. If this internal information is inconclusive, the owner or manager should seek relevant information from known outside sources, at least from the local welfare office.

If the claimant answers "I am not sure" to Question 6 of the Claim Form, concerning whether a welfare rent was paid, the claimant is eligible for a refund only if existing internal project records or information demonstrate that the claimant paid a welfare rent. Accordingly, in this circumstance, only internal sources of information, and not outside sources, should be considered.

3. If the owner or manager determines that the claimant was not a tenant of the project or was not charged a welfare rent anytime during the November 1982 to August 1985 period, the claim should be denied and the claimant should be so advised, using the Decision Form, which should describe the reason(s) for the decision and the evidence relied upon for the decision.

If a claim is denied because the claimant was not a tenant of the project, the Decision Form should also address, if the owner or manager knows, whether the claimant was a General Relief recipient and whether he or she would have been charged a welfare rent had the claimant been a tenant at the project. In addition in these cases, the claimant should be advised in the Decision Form that he or she may file a timely claim at any other project where the claimant lived and paid a welfare rent.

Copies of the Decision Form should be sent to HUD and the Legal Aid Society of Cincinnati.

4. If the owner or manager determines that the claimant was a tenant of the project and did pay a welfare rent there sometime during the November 1982 to August 1985 period, the owner or manager will proceed to determine the amount of the refund to be made to the claimant, as described beginning in item 5, below.

5. If the claimant is eligible for a rent refund in accordance with items 2 and 4, above, the owner or manager must next

D

calculate the amount of rent refund due the claimant. Calculation of the amount of a refund first requires recalculation of rent based on the appropriate percentage of income (e.g., 30%) for the months during which the claimant was a General Relief recipient to whom a welfare rent was charged.

If the 50059 forms for the claimant from the period exist, the information in these shall be used in recalculating rent. Existing 50059 forms, signed by the claimant and by the then owner or manager will be dispositive at all stages of the claims process, both for purposes of establishing eligibility and of providing income information needed to recalculate rents.

If the 50059 forms for the claimant from the period no longer exist, the owner or manager must use any other comparable information available to it, such as other tenant income and rent records of the project, information provided by the claimant in and with the Claim Form, and, if necessary, from outside sources, such as the local welfare office, which may have retained records of General Relief payments made to recipients during the period in question.

If the owner or manager is able to calculate the amount of refund, the owner or manager should proceed in accordance with item 6, below.

If the owner or manager is unable to calculate the amount of refund because of lack of sufficient information of the kind described above to establish either a) the number of months that the claimant was charged a welfare rent, or b) the amount of the

monthly overcharge, or both, the owner or manager should proceed in accordance with item 7, below.

6. For purposes of making and reporting its refund calculations, the owner or manager will calculate the amount by which the welfare rent charged exceeds the appropriate percentage rent for each month that a welfare rent was charged. The owner or manager should then deduct the resulting monthly amounts for any months in which a welfare rent was charged but not actually paid by the claimant, such as by reason of a midterm move-out, if this information is known to the owner or manager. Deducted also should be any welfare rent reimbursement already paid to the claimant for any and all months before August 1, 1985. (Prior reimbursement to a claimant because of the improper charging of a welfare rent after August 1, 1985, such as pursuant to instructions from HUD in late 1985 and 1986, is not a reason to deny or reduce a claim unless that reimbursement also covered months before August 1, 1985.) The resulting figure will be the amount of reimbursement due the claimant.

A Decision Form should then be completed to report the positive determination and amount of refund, the reason(s) for it, the evidence relied upon and the calculation of the amount of reimbursement due. A check in the amount of the reimbursement due should be forwarded to the claimant along with the Decision Form. Copies of the Decision Form should be sent to HUD and the Legal Aid Society of Cincinnati.

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7. In cases where the owner or manager has determined that the claimant is eligible for refund, but after a thorough investigation as described in item 5, above, cannot find information sufficient to calculate the amount of the refund due the claimant, the claim will be held by the owner or manager until the refund amount can be calculated based on figures to be provided at a later date by HUD. (It is expected that these figures will be available between five to seven months after the rent refund claims period opens. HUD will notify owners and managers when they are announced, so that the rent refunds can be made in accordance with them.)

In this circumstance, the owner or manager will send a Decision Form incorporating and attaching an Attachment to Stage One Decision Form-Notice of Pending Rent Refund, which will notify the claimant that a decision has been made to pay a rent refund, but that there will be a delay of up to several months before the amount of the refund can be calculated and the refund can be paid. The Decision Form should also set forth a) the months that the claimant paid a welfare rent or b) the amount of the monthly overcharge during the period claimed, if one or the other has been established by the owner or manager. Copies of the Decision Form should be sent to HUD and the Legal Aid Society of Cincinnati.

8. The owner or manager will decide each claim promptly, in most



cases within 60 days from its receipt of the signed Claim Form. In extraordinary circumstances, such as where relevant information is being sought but is not readily available, a longer period of time, but in no event to exceed 105 days from the date of the Claim Form being filed, is permissible.

9. No claim may be denied, offset, reduced, or in any way treated differently in time or manner for a reason unrelated to this Protocol. For example, a claim for back rent, for damage to the apartment, or past differences or difficulties with the claimant have no place in the evaluation of a claim. However, nothing in this Protocol is intended to preclude an owner or manager from proceeding separately with appropriate process of law to assert any claim that it may have against a tenant or former tenant.

10. The owner or manager will keep a file for each claim, which should contain all information and documentation pertaining to the claim and which was relied upon in making the decision on the claim. Included, as appropriate, should be the Claim Form and any supporting documentation submitted by the claimant, copies of project records, such as 50059 forms for the claimant, other project information, including notes of knowledgeable employees, any information or notes of information derived from contacts with others, such as the local welfare office, and the Decision Form pertaining to the claim.

D

11. All claims will be decided, at all stages of review, using a preponderance of the evidence standard. The relevant sources of evidence include all those referred to in item 2. above.

12. Claimants may appeal a decision of an owner or manager by filing an Appeal Form with HUD explaining why the claimant believes the initial decision to be incorrect. If the claimant appeals such a decision, HUD will request from the owner or manager a copy of the claim file, along with an oath or affirmation from the owner or manager that the information contained therein is true and accurate to the best of its knowledge. HUD may remand any claim appealed to it to the owner or manager with instructions to supplement the file or to pay a claim.

13. Unless HUD remands it to the deciding owner or manager, HUD will refer the appeal to the American Arbitration Association for decision by an arbitrator.

The arbitrator will review the record, which shall consist of the claim file, including any supplements thereto resulting from remand to the owner or manager or HUD investigation, and the claimant's Appeal Form and any response thereto by HUD. The arbitrator will then make a decision to affirm, reverse or modify the owner's or manager's decision.

The arbitrator will notify the claimant, HUD, the owner or

manager and the Legal Aid Society of Cincinnati of the decision, using the arbitrator's Decision Form.

If the arbitrator's decision is to pay a refund, or to pay a refund greater in amount than already decided, the owner or manager will pay the refund or the additional refund to the claimant, with copies of evidence of payment to HUD and the Legal Aid Society of Cincinnati, no earlier than 15 days and no later than 30 days after its receipt of the arbitrator's Stage Two Decision Form, unless the owner or manager is notified by HUD within the first 15 days that a further appeal is being taken, in which case no payment should be made pending disposition of that further appeal and further instruction from HUD.

14. Either HUD or the claimant may appeal the arbitrator's decision to the U. S. District Court, which issued the order following judgment in Helen Derrick v. Jack Kemp, Secretary of HUD. The decision of the Court will be based on the same record that was before the arbitrator, the arbitrator's Decision Form, the appellant's appeal papers and any responsive appeal papers submitted by the appellee. The Court's review and decision will be made on an expedited basis.

15. Copies of documents to the Legal Aid Society of Cincinnati, as described above, should be mailed to it at the following address: Rent Refund, c/o Legal Aid Society of Cincinnati, 901 Elm Street, Cincinnati, Ohio, 45202.

STAGE ONE  
RENT REFUND DECISION FORM

Date: \_\_\_\_\_

Claimant's name: \_\_\_\_\_

Claimant's address: \_\_\_\_\_

\_\_\_\_\_

Project: \_\_\_\_\_

Your Rent Refund Claim for this Project has been reviewed, and a decision has been made. The decision, and a brief description of the reason for it, are as follows:

\_\_\_\_\_  
(signature)

Title: \_\_\_\_\_

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If you believe that this decision is not correct, fill out and submit the enclosed Stage One Rent Refund Appeal Form, as instructed on that Form.