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Washington, DC

December 20, 2001

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Ms. Judith Liben  
 Massachusetts Law Reform  
 99 Chauncy Street, Suite 500  
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Dear Judith,

I apologize for this delay in responding to your letter which came three weeks ago. This has been a very disorganized time for us, with the session extending far beyond when it was scheduled to go, and with a consequent need for me to juggle commitments in the district and legislative activities. But I am glad that you wrote because the HUD opinion you gave seems to me clearly to be mistaken in its analysis of the amendment I sponsored in 1987.

The fundamental confusion is over what the distinction between "indirect" and "direct" means. I do not remember any discussion whatsoever that would give support to HUD's interpretation. And, in fact, the quotes from the Senators -- nearly all of whom were opposed to the provision it should be noted and did not want it included in any form -- properly understood do not give HUD's position any support either.

There was a debate about "indirect" and "direct" effects. This related entirely to whether or not the amendment should be interpreted to include economic impacts leading to an increase in rent levels or property values which would drive out poor people. That is, the amendment which made it clear that "indirect" effects were not covered was not intended to deal with a situation such as the one you have described to me in Lowell, but rather was meant to make it clear that this was not an effort to require compensation for gentrification. What we agreed on was that we would have an amendment that triggered a replacement requirement when low income housing units were no longer available as a direct result of public policy. Obviously this included demolition, and it also included situations in which public funds were used to convert housing from low income use to other uses. The objections to "indirect" effects came from municipalities that were concerned that efforts to "upgrade" an area economically would trigger this replacement requirement. And what we agreed to was language that made it clear that we were talking only about direct government action that either destroyed housing units or directly removed them from government subsidy programs.

You will note that all of the comments from the Senators -- who I again stress were all opposed to this provision, and thus are not the best interpreters of it in any case -- reflect this. That is, they show that we agreed to exclude economic effects of CDBG spending from the amendment. As I understand the Lowell situation that you have described, we are talking here about the physical destruction of units. And HUD seems to be arguing that because the CDBG funds were used in part of this process that led to the destruction, but did not cause the physical destruction, the amendment does not apply. While this debate happened 14 years ago and I do not remember all of it, I can tell you that I am certain that no such distinction was involved at that time.

Ms. Judith Liben

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To summarize, the distinction between "indirect" and "direct" which is the subject of the Senate comments quoted in the HUD memo relates to an entirely different point than the one the memo focuses on. The debate between "indirect" and "direct" in 1987 had to do with units becoming immediately physically unavailable to low income people, as a direct result of a government decision either to demolish them or to change their usage, versus the indirect displacement effect that occurs when funding contributes to economic change in a neighborhood that makes housing unaffordable for low income people. There was no discussion that I can remember -- and I doubt that anyone can find one -- that related to the "indirect" vs. "direct" distinction on which HUD rests its analysis.

  
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## FAX COVER SHEET

**DATE:** December 27, 2001

**TO:** Ed Gramlich and Todd Espinosa

**FAX #** 202-333-5462 and 510-451-2300

**FROM:** Judith Liben (Phone Ext. 327; email: [jliben@mlri.org](mailto:jliben@mlri.org))

**RE:** "Barney Frank Amendment" - the Saga Continues

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**INCL. THIS**

Dear Ed and Todd - Barney wrote back with his side of the story on when 104(d) one for one and relocation benefits are triggered. Its a great letter!

Todd - thanks for publishing this issue to the world . And Ed - your memory and documents have been invaluable. Marc Potvin is writing a brief and we go to court at the end of January.

Thanks and Happy New Year - Judith