

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

NOV 18 1993

DAVID J. MALAND, CLERK
BY PATRICIA DAVIDSON
DEPUTY

LUCILLE YOUNG, et al,
Plaintiffs,

v.

HENRY G. CISNEROS, et al,
Defendants

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CIVIL ACTION NO.
P-80-8-CA
CLASS ACTION

PLAINTIFFS' MOTION FOR A FINAL REMEDY ORDER

AND

MEMORANDUM IN SUPPORT OF THE MOTION

I. Introduction

HUD's desegregation plans, assertions of unitary status, and other efforts to date have left in place the vestiges of HUD's and the public housing authorities' [PHAs'] discrimination. HUD has represented that it may present new plans. If the new plans do not meet the legal requirements for desegregation plans, the Court will have the responsibility to order the actions necessary to eradicate the effect the vestiges of prior discrimination to the extent practical. Because the timing of the submission of the new plans, February 1, 1994 and court consideration of the plans, April 18, 1994, will leave little time for pleadings and responses, plaintiffs are now filing this motion. If the new plans are inadequate in whole or in part, then the Court can act on plaintiffs' motion and order a final remedy.

A. General remedial principles

The U.S. Supreme Court has ruled that the same equitable

standards applicable to school desegregation remedies govern relief for purposeful discrimination in public housing cases. Hills v. Gautreaux, 425 U.S. 284, 297 (1976). The Secretary of HUD has stated "The duty to disestablish a dual public housing system and to effect a transition to a unitary system is in most significant respects similar to, and is no less than, the duty to disestablish dual school systems." [Pierce to Eudaly, Feb. 28, 1984].

The general standards for desegregation relief are:

a) The nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. The remedy must be related to the condition that violates the constitution and laws.

b) the decree must be remedial in nature, that is it must be designed as nearly as possible to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.

c) the court, in devising a remedy, must take into account the interest of the affected governmental entity in managing its own affairs, consistent with the laws and constitution. Milliken v. Bradley, 433 U.S. 267, 282, 286 n.17, 287 (1977).

The choice of remedies to redress racial discrimination is a balancing process left, within appropriate constitutional and statutory limits, to the sound discretion of the trial court. Young v. Pierce, 685 F.Supp. 975, 979 (E.D. Tex. 1988); U.S. v. Paradise, 480 U.S. 149, 107 (1987); U.S. v. Yonkers Board of

Education, 837 F.2d 1181, 1236 (2d Cir. 1987), cert denied 486 U.S. 1055 (1988).

The facts stated in HUD's plans clearly show the continuing vestiges of the dual system affect much of the housing in each of the PHAs' jurisdiction. There are three primary vestiges which can be categorized for purposes of analysis as follows:

a. Existence of racially identifiable project sites

b. Existence of disparities in unit, site, and neighborhood conditions between the traditionally black projects and the HUD assisted housing in the market area occupied by low income white residents.

c. Lack of desegregated housing opportunities available to class members in non-minority areas of the PHA's jurisdiction. This lack of opportunities may exist due to several factors, including HUD's funding of a disproportionate number of small units designated for the elderly in white areas as opposed to larger units which are needed by non-elderly families, the existence of discrimination in the private housing market that limits participation in white areas by black families, the lack of Section 8 resources available to the PHA, and the development of HUD housing in particular communities where overt racial hostility to black persons makes it unlikely that black persons will reasonably choose to locate in those communities.

B. HUD's Proposed Remedies to Achieve Unitary Status

Although the HUD plans filed to date identify significant, continued vestiges of HUD's and the PHAs' discrimination, HUD's

conclusions as to what is required for a plan that is designed to achieve unitary status with respect to those PHA's do not meet the legal standards for remedial proposals. In most instances there is no basis for asserting that the proposed "remedial action" will remove the vestiges of HUD's and the PHA's discrimination to the extent practical and prevent future violations of the Constitution and laws. HUD's plans and unitary status determinations fail to use many of the practical means and processes which the courts and HUD have found useful in eradicating the effects of racial discrimination in publicly assisted housing, relying in large part on the thoroughly discredited "voluntary" efforts and "recommendations" that have characterized HUD's previous "enforcement" efforts as opposed to "requirements" that specific results be achieved.

Plaintiffs therefore request the Court to modify any HUD plans submitted to the Court to the extent necessary and to order such other relief as is necessary to provide a legally and constitutionally appropriate remedy for the class.

II. Discussion

The public housing system in East Texas is still substantially segregated as measured by the existence of: A) racially identifiable sites and neighborhoods, B) substandard and disparate conditions which disparately affect black tenants receiving HUD low-income housing assistance, and C) the lack of desegregated housing choices for class members.

In addition to HUD's determination that 68 of the PHAs it

funds continue to have one or more vestiges of the dual system established and perpetuated by HUD, HUD has asserted that the facts in 12 or 13 public housing authorities justify a declaration that HUD has achieved unitary status for those authorities.¹ A declaration of unitary status can be justified only if, upon examination of every facet of the system under the desegregation obligation, the vestiges of **de jure** segregation has been eliminated as far as possible. Board of Education v. Dowell, 498 U.S. 237, 250 (1991). In this case it is HUD's discrimination that is the primary focus. The question for unitary status determination is whether HUD has taken the actions within its power to eliminate the vestiges.

There are remaining vestiges of segregation which can still be addressed by actions within the power of HUD and the PHA at several of the phas for which unitary status is asserted.

III. Efficacy of HUD's Remedial Proposals

Plaintiffs' motion and memorandum in support of the relief embodied in the 1990 order under which HUD has submitted its plans and assertions of unitary status set out the legal justification for the inclusion of the various elements in each plan. As set out in that pleading, there are various court and HUD recommended actions, policies, practices and procedures which, if used in an appropriate way, are at least likely to eradicate the vestiges of prior segregation. HUD was ordered to include these

¹ Cooper, Cumby, Crockett, Jasper, Deport, Beckville, Tatum, Center, Malakoff, Mt. Pleasant, Timpson, Talco, and Edgewood.

actions in each remedial plan.

Instead of following the Court order to utilize actions, policies, practices and procedures which, if used in the appropriate way, are at least likely to eradicate of vestiges of prior segregation, HUD's remedial plans consistently rely on either previously attempted and ineffective "voluntary" measures or refuse to even address substantial vestiges.

The only remedy proposed by HUD for existing disparate conditions is for the PHA to apply (and presumably receive) CIAP funds from HUD. To the extent that the disparities involve neighborhood and location conditions, the only remedial actions involve "recommendations" and depend on "voluntary actions", in spite of the other more effective enforcement efforts available to HUD. HUD's "recommendations" to PHAs, cities and the State for actions to remedy the vestiges are not being implemented, and therefore are accomplishing nothing to further unitary status.²

Overt racial hostility and overt support for racial segregation continue to affect local administration of numerous public housing authorities, without any effective enforcement action being initiated by HUD.³ Many of the providers of non-public housing HUD assistance continue to resist the remedial requirements designed to make this housing available to class members as

² This assertion is based on the information in HUD's quarterly reports to the Court.

³ This assertion is based on the information in the HUD plans and the quarterly reports.

a desegregated housing opportunity, without any significant efforts by HUD to utilize the enforcement mechanisms at its disposal to compel them to do so.⁴ In those instances where HUD data documents the disproportionate development of white elderly housing, and the lack of comparable housing units for larger families in spite of demand in the general market area, HUD fails to propose funding of additional housing for families that would remedy this imbalance and create housing opportunities for class members where none currently exist due to past discriminatory actions and decisions by HUD and the PHA.

In summary, the plans submitted to date do not restore the victims of the discriminatory conduct to the position they would have occupied in absence of such conduct. Milliken v. Bradley, 418 U.S. 717, 746 (1974). If these or similar plans are approved by the Court, the most likely and foreseeable result of HUD's plans will be to leave in place most of the vestiges of its prior discrimination.

IV. Other remedial actions

A. Reporting

HUD agreed to the plaintiffs' proposed and submitted reporting format. Plaintiffs still believe that the proposal is adequate.

B. Fair housing organization and housing mobility

HUD advertised a one-year competitive grant for a fair

⁴ This assertion is based on the information in the HUD quarterly reports and the HUD Title VI reviews recently completed.

housing and counseling organization. No one applied. Plaintiffs propose that an organization be formed and funded under Court order. The organization should be formed and organized by Court appointed board members and funded at a level determined by the Court.

C. HUD Title VI and Title VIII enforcement

Despite overt racial segregation and continued refusal to take the actions necessary to end the segregation and remedy its effects, HUD has yet to either defer funds or to initiate administrative proceedings to withhold or condition the receipt of federal low-income housing assistance funds in the class action area. As of 1985, HUD had initiated only one such administrative proceeding under Title VI anywhere in the entire country.

HUD's desegregation plans do not even mention the use of Title VI proceedings to defer, condition, or withhold federal funding from HUD funded providers who refuse or fail to take the steps necessary to end the segregation and remedy its effects. HUD's refusal to use its fair housing and anti-discrimination enforcement powers when combined with its continued provision of federal funds to discriminatory public housing agencies and providers is the result of a conscious policy. This policy results in continued violation of the Constitution and laws. This policy results in class members continuing to suffer from segregated and unequal living conditions. These conditions are often no better than federally financed slums. An effective

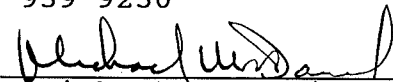
remedial plan must include effective use of Title VI sanctions. HUD's deliberate refusal to enforce Title VI must be remedied by appropriate guidelines. U.S. v. Texas, 447 F.2d 441 (5th Cir. 1971) cert. denied 404 U.S. 1016 (1972); Adams v. Bell, 711 F.2d 161, 165 (D.C. Cir. 1983) cert. denied 465 U.S. 1021 (1984); Heckler v. Chaney, 470 U.S. 821, 833 n.4 (1985).

Conclusion

HUD's desegregation plans and determinations of unitary status proposed to date generally fail to meet the remedial standards for the constitutional and statutory found in this case. HUD has requested the opportunity to review and possibly revise the plans and unitary status assertions. If any or all of the HUD desegregation plans or assertions of unitary status fail to meet constitutional and legal standards, plaintiffs request the Court to enter an order, such as the draft order filed with this motion, requiring appropriate final relief.

Respectfully Submitted,

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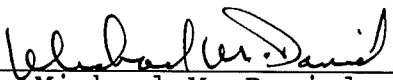
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Certificate of Service

I certify that a true and correct copy of the above document was served upon counsel for defendant by being placed in the U.S. mail, first class postage prepaid, on the 16th day of Nov, 1993.


Michael M. Daniel

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LUCILLE YOUNG, et al,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION NO.
		P-80-8-CA
HENRY G. CISNEROS, et al,	*	
Defendants	*	

FINAL REMEDY ORDER

I. Adequacy of plans and results achieved

On Sept. 10, 1990, the Court ordered HUD to submit desegregation plans or assertions of unitary status for each low rent public housing project in the class action area for HUD approval. HUD began submitting plans and assertions within 90 days of the order and the last submission was in April 1991. HUD began implementation of the plans as the plans were submitted.

HUD has thus had over two years to obtain desegregation under its proposed plans. The results show the inadequacy of the plans. Approximately 52% of the sites are 75% or greater one race. Approximately 53% of the units are in the sites which are 75% or greater one race.

Only 30.5% of the black public housing tenants are in predominantly white neighborhoods while 66.4% of the white tenants are in white neighborhoods. 69.4% of the black tenants and only 33.7% of the white tenants are in predominantly black or mixed race neighborhoods. 58.4% of the black tenants and only 19.8% of the white tenants are in predominantly black neighbor-

hoods.

53 PHAs continue to have, according to HUD's Nineteenth Quarterly report, one or more racially identifiable housing sites as a vestige of the dual system.¹²

Atlanta, Cleveland, Diboll, Hughes Springs, Linden, Maud, Newton, Wills Point, and Winnsboro public housing authorities have at least one predominantly white site and at least one predominantly black site.

Alba, Avery, Blossom, Bogota, Bowie County, Como, Cumby, Deport, Fruitvale, Grand Saline, Huntington, Orange County, and Van public housing authorities are 90% or greater white in their total tenant population.

Beaumont, Cleveland, Crockett, Daingerfield, Garrison, Henderson, Jefferson, Newton, Orange City, Overton, Pittsburg, Port Arthur, and Texarkana, public housing authorities have one or more 95% or greater black project in a predominantly black neighborhood.

A majority of class members continue to receive HUD assistance in units, projects, and neighborhoods that are markedly

¹ The only PHAs with no racially identifiable sites are Alto, Beckville, Center, Detroit, Gilmer, Grapeland, Hemphill, Jasper, Malakoff, Nacogdoches, Omaha, Pineland, San Augustine, Tatum, Timpson, and Trinidad. Alto and Center have segregated sections within the non-racially identifiable sites.

² The large number of vacancies in many of these PHAs make it possible for racial composition to change substantially once the PHA makes offers for the sites. For example, a 50 unit site with 10 vacancies, 11 blacks, and 29 whites is 72.5% white. If four of the vacancies are filled with whites, the site equals the 75% white standard.

inferior to the units, projects, and neighborhoods in which low-income whites receive HUD assistance. The following 48 PHAs are ones for which "disparate conditions" are a continuing vestige of the dual system: Alto, Atlanta, Avinger, Beaumont, Big Sandy, Clarksville, Cleveland, Cooper, Corrigan, Crockett, Daingerfield, Dayton, DeKalb, Diboll, Edgewood, Garrison, Gilmer, Gladewater, Grapeland, Hemphill, Henderson, Hughes Springs, Jefferson, Kirbyville, Linden, Livingston, Malakoff, Marshall, Maud, Mineola, Mt. Pleasant, Mt. Vernon, Nacogdoches, Naples, New Boston, Newton, Omaha, Orange City, Overton, Paris, Pineland, Port Arthur, Tenaha, Texarkana, Trinidad, Wills Point, Winnsboro, and Woodville.

Many of HUD's plans were in violation of the remedial order. That order required HUD to include elements such as mobility programs, equalization of conditions to the same standards as the conditions in which the majority of white tenants receive HUD low income housing assistance, and magnet programs in each plan. HUD refused to include these elements in many of the plans.

Many of the PHAs refused to follow the HUD plans. The inability of the Orange County Housing Authority to desegregate its Vidor and Bridge City projects and the refusal of the Beaumont Housing Authority to provide a mobility program are only two of the many instances of such overt hostility to desegregation requirements. HUD has yet to take any formal action to obtain compliance with its desegregation plans.

Both the State of Texas and the U.S. Department of Agricul-

ture Farmers' Home Administration have provided low income housing assistance which not only did not further public housing desegregation but also impeded desegregation in the class action areas. HUD took no action to prevent or remedy these actions.

The goal of desegregation is to eliminate, to the extent practical, the vestiges of racial segregation and discrimination. The vestiges affecting the class members include: a lack of desegregated housing opportunities outside of the black communities, unequal conditions in and around the predominantly black projects, and overt exclusion from participation on the grounds of race. HUD must take the following actions to remedy these vestiges, comply with the terms of the earlier court orders, and to allow the Court, the master, and the plaintiffs to monitor the desegregation effort.

To the extent that HUD's desegregation plans fail to incorporate the provisions of this order, those plans are disapproved and HUD is ordered to implement new plans which do incorporate the provisions of this order.

II. Unitary Status assertions

HUD has asserted unitary status for 12 PHAs. There are remaining vestiges of segregation which can still be addressed by actions within the power of HUD and the PHA at 7 of the phas for which unitary status is asserted.

The Center HA's single site is separated by race within the site. Transfers and conversions of one bedroom units can eliminate this pattern.

The predominantly black projects in Crockett are still subject to grossly unequal unit, site, and neighborhood conditions. There are few desegregated housing opportunities available. Funding and implementation of improvements can eliminate these vestiges.

Cumby and Deport are one race white phas providing a disproportionate number of elderly designated one bedroom units. Conversion of some of these units and affirmative marketing to non-elderly class members offers a reasonable possibility of eliminating the vestiges.

There are two predominantly white sites in white neighborhoods and one mixed site in a mixed neighborhood in the Edgewood PHA. There are unit, project, and site disparities adversely affecting the mixed occupancy site. Transfers, conversions, and funding and implementation of improvements can remove these vestiges.

The Malakoff pha units are subject to project, site, and neighborhood disparities which funding and implementation of improvements can remove.

The Mt. Pleasant pha units are subject to project, site, and neighborhood disparities which funding and implementation of improvements can remove. Site AC is still segregated by sections. Transfers and unit conversions can remedy this vestige. There is a lack of desegregated housing opportunities which an allocation of housing assistance can remedy.

HUD's assertions of unitary status for these PHAs are

disapproved. HUD is ordered to submit desegregation plans for these PHAs which include the requirements of this order. HUD shall submit the plans to the Court within 60 days of service of this order.

Upon the provision of air conditioning equipment and utility allowances to the units at the Jasper, Talco, Tatum, Timpson, and San Augustine PHAs, then HUD need take no further remedial action involving these PHAs. The black residents of and applicants for these PHAs remain members of the class.

III. Increase desegregated housing opportunities

A. Increase

Less than 1/3 of the class members have been provided with desegregated housing opportunities in predominantly white areas. The burden of this vestige falls particularly heavy on black non-elderly families. Because elderly designated units are disproportionately located in white areas, 52% of all units in white areas are elderly, there are only 1,601 non-elderly units in white areas compared to 2,953 non-elderly units in black areas. Of the 1,601 white area units, 230 non-elderly units are located in predominantly white areas such as Vidor and Grand Saline where overt racial hostility prevents black family access to the units. Thus the approximately 2,500 black families on the waiting lists are competing with the approximately 1,400 white families for only 1,371 units in predominantly white areas.

The lack of non-elderly units in white areas prevents the immediate provision of desegregated housing opportunities through

tenant selection and assignments and transfers. If every vacancy in the predominantly white area units was filled with a class member, only 451 of the 4,069 class member households eligible for such relief ³ could be housed.

Unless there are a significant number of desegregated housing opportunities in predominantly white areas, the class members will continue to be subjected to the vestige of predominantly black projects in predominantly black areas. In order to eliminate this vestige, it is ordered that, by December 31, 1995, HUD shall have created or caused to be created an additional 1,734 housing opportunities for class members in predominantly white areas in the class action counties.

These opportunities shall be created using at least 1,000 Section 8 certificates or vouchers. The remaining opportunities can be created using any of HUD's housing programs so long as the housing units are available on terms, conditions, and costs to the tenant substantially equivalent to the terms, conditions, and costs to the tenant in HUD's low rent public housing program. The tenant based assistance such as Section 8 certificates and vouchers assistance may be used only in predominantly white areas. None of these units can be located in areas in which racial hostility or discrimination will prevent class members from utilizing the opportunities. The units should be allocated

³ As of 12/92 there were 2,559 black non-elderly households on the waiting lists for the class action PHAs and 1,510 black non-elderly households residing in low rent public housing units in predominantly black areas.

according to the relative need in the various housing markets in the class action area. Present and future class members shall be notified of the existence of these units or assistance as the units or assistance become available and given the opportunity to transfer pursuant to ¶ 2.d) of the March 3, 1988 Interim Injunction before applications are taken from non-class members.

The specific plan for providing the units and reporting on the results achieved under the plan will be submitted by HUD to the court for approval within 60 days of the date of this order. Plaintiffs' comments and objections on the plan shall be filed within 30 days of service of the plan. The plan shall not be implemented without specific court approval. If the plan does not meet the requirements of this order and realistically promise to provide desegregated housing opportunities within the two year period, the Court will order implementation of specific actions to achieve desegregation.

B. Other HUD assisted housing programs

The State of Texas and several cities in the class action area receive HUD low-income housing assistance under programs - HOME, HOPE, etc. - which have come into existence since the beginning of this lawsuit and the remedy orders. Other programs may be instituted during the pendency of this remedy. Unless each recipient of any HUD low-income housing assistance funds agrees to implement and actually does implement its HUD funded housing assistance programs in such a manner as to further the desegregation of the housing opportunities afforded to class

members and to avoid inhibiting and frustrating the desegregation of the PHAs in the class action area, HUD shall refuse to accept that entity's certification of compliance with Title VI, Title VIII and the other HUD fair housing and equal opportunity requirements. Each entity's agreement to give class members the same preference and referral treatment in its assisted housing that is required of other HUD assisted low income housing programs under ¶ 5. of the March 3, 1988 Interim Injunction is an example of actions required to meet this standard. HUD shall monitor and investigate each entity's performance and include a report of the monitoring and investigation in the Quarterly report to the Court. Because the entities are not parties to this action, HUD's refusal to accept any entity's certification shall be without prejudice to that entity's rights to challenge the refusal in the appropriate forum.

HUD has no such oversight authority with regard to the FmHA assisted housing. HUD will monitor the development of all FmHA low income housing projects in the class action areas and notify the private sponsors of such housing, the Secretary of the Department of Agriculture, the State of Texas Commission on Human Rights, and the U.S. Department of Justice Civil Rights Division of any development which will tend to inhibit or frustrate the desegregation of the public housing in the class action counties. The specifics of this monitoring and any notices given will be included in HUD's quarterly report for the relevant time period.

The actions required by this section of the order are not

intended to limit the scope of HUD's enforcement actions against the entities described in this section in the event such entities refuse to cooperate with HUD.

C. Mobility program

Previous Court orders have required the use of the other HUD programs such as the Section 8 program to provide desegregated housing opportunities to class members. The September, 1990 remedy order required HUD to include a mobility program in each PHA desegregation plan. No such plans have been implemented. Without the assistance of a mobility program, the Section 8 program will continue to offer class members only a segregated housing choice. No PHA in the class action area has been willing or able to operate an effective mobility program for class members. The Section 8 certificate and voucher programs continue to reflect the racially segregated patterns found in the public housing program. HUD's referral system has failed to provide any significant number of desegregated housing opportunities for class members.

The mobility program for class members will be operated by an independent, non-profit organization and funded by HUD. HUD may either provide funding through its own funds or by requiring recipients of HUD funds such as CDBG or Section 8 to provide funding.

The organization will be responsible to the Court for the results achieved. The organization shall use the funding provided to place class members choosing to participate in the Section 8

program in units in predominantly white areas. There shall be three original board members whose appointment shall be approved by the Court. HUD, plaintiffs, and the Texas Chapter of the NAACP shall be given the opportunity to nominate one initial member. If HUD, the plaintiffs, or the Texas Chapter of the NAACP fail to file their nomination with the court within 15 days of the date of service of this order, then the Court will appoint a person or persons after soliciting recommendations of the parties.

Plaintiffs' counsel shall provide initial representation to the organization for purposes of incorporating and other preliminary matters. The organization shall, after consultation with other organizations or persons operating mobility programs or otherwise knowledgeable about such programs, submit an initial budget request to the Court for approval. The budget request shall be submitted within thirty days after incorporation. The parties will have 15 days to object to or comment on the budget request. Any expenses reasonably incurred in this initial organizational stage may be advanced by plaintiffs' counsel and reimbursed when the initial funding is received.

The Court will set the initial funding and funding period for the organization in an amount sufficient to provide for the start up and operating costs necessary to provide the opportunity to receive mobility services for each class member within one year. Subsequent year's funding will also be set by the Court subject to the parties right to object or comment on the

organization's submitted budget.

D. Private fair housing organization

The Court has already ordered HUD to fund a private fair housing organization to provide counseling and advocacy for class members seeking desegregated housing opportunities. HUD attempted to fund such an organization through several notices of fund availabilities. Rather than fund counseling and advocacy, HUD has funded an education effort by the State of Texas. There is no evidence that this education has provided a single desegregated housing opportunity for class members. Education about civil rights is no substitute for effective assistance to secure redress for violations of those rights. Non-profit fair housing groups through out the country have shown that their advocacy can provide access to housing units previously denied because of race or color.

The mobility organization required above shall also serve as the fair housing organization to provide fair housing counseling and advocacy for class members. Combining these functions in the same organization will strengthen the organization's hand when dealing with potential landlords and help focus its advocacy efforts on behalf of the class members.

In addition to the mobility budgets, the organization shall also submit funding requests, under the same schedule and procedures as for its mobility funding, to the Court for amounts sufficient to provide fair housing services to each class member.

IV. Unequal Conditions in and around the predominantly black projects

The implementation of HUD's desegregation plans has not resulted in the provision of equal conditions in and around the predominantly black projects. These conditions are a direct vestige of the de jure segregation. These unequal conditions also inhibit elimination of the vestige of racially identifiable projects since low income white tenants will not accept units in the conditions existing in many of the predominantly black projects. Class members, however, are forced to accept these units by the lack of other opportunities.

HUD shall make funding available, through its Comprehensive Modernization Program or other sources, for the provision of PHA supplied air conditioning equipment and utility allowances for each unit of non-elderly family housing in the class action counties with the exception of those units in areas where racial hostility bars class member occupancy.

HUD shall require each recipient of its funding operating in the class action area, including the State of Texas, to take all actions necessary to eliminate the unequal conditions identified in Attachment A to this order which includes the unequal conditions identified in HUD's desegregation plans. Until each entity has adopted a plan that realistically provides for the remedy of all unequal conditions within two years from the date of this order, HUD shall refuse to accept that entity's certification of compliance with Title VI, Title VIII and the other fair housing equal opportunity requirements. If an entity fails to implement its plan, HUD shall also refuse to accept that entity's certifi-

cation of compliance with Title VI, Title VIII and the other fair housing equal opportunity requirements until the plan is implemented. HUD shall monitor and investigate each entity's performance and include the actions taken and the specific disparities eliminated in the Quarterly report to the Court. Because the entities are not parties to this action, HUD's refusal to accept any entity's certification shall be without prejudice to any of that entity's rights to challenge the refusal in the appropriate forum.

The actions required by this section of the order are not intended to limit the scope of HUD's enforcement actions against the entities described in this section in the event such entities refuse to cooperate with HUD.

If, at the end of the two year period, significant disparities remain at any historically black project, then HUD will provide a new allocation of housing assistance for units of substantially housing be developed or otherwise made available in predominantly white areas within a one year period. The number of such units to be made available shall equal the number of units in each project and shall remain available until the disparities are eliminated. The new allocations shall be first offered to present residents of the project and then to class members on the waiting list for the PHA administering the project.

V. Title VI enforcement

Throughout its history of involvement with the PHAs in the

class action counties, HUD has not once terminated or refused to grant or to continue federal financial assistance no matter how blatant the discrimination. This is despite scores of Title VI reviews finding non-compliance with Title VI and blatant violations of voluntary compliance agreements signed under Title VI. Within one year of the date of this order, HUD shall initiate and complete a formal Title VI investigation of each PHA in the class action county for which there is no finding of unitary status.⁴ The investigation shall include an analysis of the extent to which the recipient previously discriminated against persons on the basis of race or color and the extent to which the recipient has fulfilled its obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage and to accomplish the purposes of Title VI. 24 CFR 1.4(b)(6). The report of the investigation shall make specific, factual findings on this issue as well as on the cause or causes of each racial disparity or Title VI problem affecting the PHA.

Upon a finding of any condition of noncompliance with Title VI, HUD shall immediately give the PHA notice of the finding and allow for only 60 days to secure voluntary compliance. If at the

⁴ The following predominantly white public housing authorities are in communities which are known to be actively hostile to blacks: Bogota, Bowie County, Blossom, Orange County, Avery, Fruitvale, and Grand Saline. HUD has already determined that overt racial hostility is limiting and denying class member access to these PHAs. HUD shall complete formal Title VI investigations and notify the Court, plaintiffs' counsel and the PHA of the results of the findings within 60 days of this order. All other deadlines imposed apply to HUD's proceedings involving these PHAs.

expiration of the 60 day period, HUD has not obtained full voluntary compliance, then HUD shall immediately initiate proceedings to terminate, refuse to grant or to continue Federal financial assistance pursuant to 42 U.S.C. 2000d, et seq. and 24 CFR 1.8.

In each instance of a finding of a violation of the obligation to take all reasonable action to remove or overcome the consequences of a prior discriminatory practice or usage, HUD is ordered to include in any voluntary compliance agreement the specific remedial actions imposed by this and earlier court orders.

The provisions of this section are not intended to dictate the final result with regard to any PHA. Should a PHA refuse to sign a voluntary compliance agreement containing the required terms, it will have the full panoply of due process protections including judicial review. 42 U.S.C. 2000d, et seq., 24 CFR 1.8.

VI. Reporting and Monitoring

HUD shall continue its present reporting format with the addition that it shall report the actions required by this order and the specific results achieved by those actions. Each quarterly report shall be filed with the Court and a copy furnished to the Master and plaintiffs' counsel within 30 days after the end of the quarter for which the report is made.

VII. Other orders

Except as specifically modified by the terms of this order, all past orders continue to apply. Secretary of Housing and

Urban Development Henry G. Cisneros and Acting HUD Region VI Regional Administrator Frank Davis, and their successors in office, are personally responsible for compliance with this order as well as the terms of the earlier orders which continue in effect.

Date

United States District Judge

ATTACHMENT A

1. The disparities referred to for each PHA include the items listed in the desegregation plan for each PHA.

2. The lack of PHA supplied air conditioning and reasonable utility allowances to operate the air conditioning is a disparity that must be remedied within the two year time frame for each unit of non-elderly family housing in the class action counties with the exception of those units in areas where racial hostility bars class member occupancy.

3. Each unit of non-elderly family housing, with the exception of those units in areas where racial hostility bars class member occupancy, must be provided with laundry facilities, carpet, disposal, and dishwasher.

4. In addition, the disparities include the following project and neighborhood conditions for each listed PHA:

Alto PHA: no playground equipment, abandoned dilapidated buildings and dilapidated dwellings adjacent to the project, a history of inadequate maintenance for the units and the grounds.

Atlanta PHA: The width and quality of street construction (including curbs and gutters) depend on the income and race of the occupants of each site neighborhood. The predominantly minority neighborhood streets are narrow, poor quality streets without sidewalks, curbs, or gutters. Site 1 has no playground equipment.

Avinger PHA: The PHA's site is surrounded by "jungle-like" conditions harboring vermin and breeding mosquitos. There is no

playground equipment or community center.

Beaumont PHA: The streets around the black projects do not have curbs and gutters and are in need of upgrading, maintenance and repair. The Neches Park project is immediately adjacent to the docks and railroad. Maintenance in the black projects is historically inadequate. There are longstanding drug problems at the Magnolia Gardens and Concord sites. See exhibit #9 to the Beaumont PHA desegregation plan for a listing of the disparate conditions affecting the predominantly black projects. The area surrounding the Magnolia, Grand Pine, and Neches Park projects has numerous sites listed on the EPA's CERCLIS file. This listing indicates potential environmental health hazards.

Big Sandy PHA: Streets and street lighting are in poor condition and sidewalks are non-existent. There is no playground equipment.

Clarksville PHA: Site lighting, parking, street conditions, and dilapidated buildings around the black projects are disparate conditions.

Cleveland PHA: The predominantly black sites are located adjacent to neighborhoods that are blighted and considered undesirable because of drug and crime related activities. The tenants are directly exposed to criminal activity at the Boston Circle and Lamar sites. There are junked cars, substandard houses, an absence of street lighting, and narrow, poorly maintained streets around the black projects. There is no playground equipment or community space. In 1985 HUD described the condi-

tions around sites 198-001 C and 198-002 B as "deplorable and depressing" [March 5, 1985 trip visit report]. In the neighborhood that includes the two historically predominantly black sites there is a listing on EPA's CERCLIS file indicating possible environmental health hazards.

Cooper PHA: The units are in poor condition. The streets are in poor condition and do not have curbs and gutters. The housing around the historically black sites is dilapidated. There is no playground equipment or community center.

Corrigan PHA: The physical conditions listed on Exhibit 5 of the Corrigan PHA desegregation plan, drug activity, lack of playground and community center.

Crockett PHA: poor condition of streets, sidewalks, and drainage facilities, dilapidated dwellings [including a HUD assisted project adjacent to a black project], drug and crime problems.

Daingerfield PHA: The conditions listed in exhibits 11 and 12 to the Daingerfield PHA desegregation plan,

Dayton PHA: Some of the streets are not paved, there are no curbs and gutters, and the predominantly black projects do not have street lighting.

DeKalb PHA: The conditions of the streets, curbs/gutters, sidewalks and street lights are much better in the non-PHA neighborhoods.

Diboll PHA: The 221d3 project is dilapidated. The streets around the black projects do not have curbs and gutters. The Site

AC neighborhood needs a program to clear trash, debris, and abandoned automobiles. The Site AC neighborhood is immediately adjacent to the city dump which is listed on the EPA's CERCLIS file indicating potential environmental health hazards. Site AD is better landscaped and maintained.

Edgewood PHA: The neighborhood around the Austin Street site has dilapidated housing, debris, and abandoned cars. There is no playground equipment.

Garrison PHA: The predominantly black site has worse streets, curbs/gutters, sidewalks, street lights, and drainage than the rest of the city. There is no fencing at the black site. The black site is in a neighborhood with dilapidated housing, debris, and overgrown lots. There is suspected drug activity adjacent to the black site.

Gilmer PHA: There are no playgrounds or equipment. The Ervins Hills site is adjacent to an empty, wooded lot that is used as a dump site and for drug activity. There is an abandoned house which is also used for drug activity. The site is also in the immediate vicinity of two locations listed on the EPA's CERCLIS file indicating possible environmental health hazards. The streets, curbs/gutters, and street lights are not as good around the black projects as they are in the rest of the City.

Gladewater PHA: The disparities listed on page 9 of the Gladewater PHA desegregation plan, including the lack of laundry facilities. The housing conditions in the neighborhoods around the black projects are significantly worse than conditions in

other areas of the city. Project 1 is adjacent to "a wooded area which unsavory people tend to congregate in". The streets around the black projects are not well maintained. The predominantly black projects are too densely populated and the apartments are too close together. The predominantly black projects are contaminated with lead based paint.

Grapeland PHA: The predominantly black Site 1 has no playgrounds or community centers. The historically predominantly black project Site 1 has a history of inadequate maintenance and repairs. The neighborhood around site 1 has substandard structures, debris, and junk cars. The streets around Site three are not paved.

Hemphill PHA: The black project is located in the forest accessible only by a narrow, poorly maintained road and adjacent to a cluster of dilapidated, one-room rental houses lacking indoor plumbing with junk and debris. The lack of sanitary facilities in the neighborhood adjoining the site may pose potential health threat to the tenants. The site needs a new sewer line, and fencing. There is an adjacent Texaco terminal. There is no community center.

Henderson: The neighborhoods around the black projects have inadequate drainage, substandard and dilapidated housing and other code violations. The streets are not well maintained. There is a serious drug and crime problem at the Flanagan Heights project. the predominantly black neighborhood has poor streets, no sidewalks, no curbs/gutters. There is a history of inadequate

maintenance and repair of the black projects. There is no community center.

Hughes Springs PHA: project disparities listed in Exhibit 13 of the Hughes Springs PHA desegregation plan. The neighborhood streets around the black projects are of poorer quality and less well maintained. There are no playgrounds or equipment. The adjoining properties have junk, debris, and high weeds on the lots. There are no street lights.

Jefferson PHA: The project disparities set out in Exhibit 3 to the Jefferson PHA desegregation plan. The streets in the neighborhoods are inferior to the other streets in the city. There is an industrial nuisance at Site 1. There are dilapidated structures and overgrown lots in the project neighborhoods. There is a lack of police cooperation regarding gambling and drugs within the PHA.

Kirbyville PHA: There has been an historical flooding problem at the Lanier site. The surrounding streets do not have curbs or gutters.

Linden PHA: The white neighborhoods generally have wider, better constructed, better maintained streets with curbs/gutters/sidewalks than the project neighborhoods.

Livingston PHA: The project disparities listed in Exhibit 12 of the PHA's desegregation plan. The HUD profile states "One should not walk down the street alone there." referring to a site where illicit drugs are sold in the neighborhood.

Malakoff PHA: The site disparities noted on pages 21 and 22

of the PHAs desegregation plan. "Although streets throughout the entire city are bad, they appear to be worse or non-existent in the Black neighborhoods." The Black neighborhood has burned and dilapidated structures with debris and abandoned cars.

Marshall PHA: The predominantly black project is in a neighborhood with substandard structures and other code violations. The other disparities are set out in exhibits 10 and 11 to the PHA's desegregation plan.

Maud PHA: The disparate conditions in exhibit E and page 7-8 of the PHA's desegregation plan. The lack of adequate fire protection for the black site.

Mineola PHA: The streets and the street lighting in the project neighborhood are inferior to the streets in the white part of town.

Mt. Pleasant PHA: inadequate drainage and street maintenance. The buildings at the predominantly black site are crowded together with small yards and little privacy when compared to the predominantly white site. The predominantly black site is adjacent to property with high weeds/grass/brush and is most likely a breeding ground for vermin, snakes, mosquitos and other insects. There is no playground or equipment at the predominantly black site. There is an out of business refining company located at the southeast corner of the Buster-Holcomb site neighborhood which is on the EPA's CERCLIS file indicating potential environmental health hazards.

Mt. Vernon PHA: The streets at the PHA sites were not as

well constructed or maintained as the streets in the non-PHA neighborhoods. The predominantly white elderly units are better landscaped, maintained and repaired than the predominantly black non-elderly units.

Nacogdoches PHA: The black project neighborhood has much more housing in disrepair or in dilapidated condition. The streets do not have curbs or gutters.

Naples PHA: There is a need for an increase in police protection in the black projects neighborhood. Improvements in street maintenance, housing rehabilitation, and code enforcement are necessary to eliminate disparities in these conditions between the neighborhood in which the black units are located.

New Boston PHA: The roofing, fascia/soffit, and area lighting conditions at site AB are inferior to the conditions at site AA.

Newton PHA: the conditions which are listed on pages 13 and 14 of the desegregation plan for the PHA. The neighborhood adjacent to the Odom site has dilapidated housing and other structures, weed lots, and abandoned cars.

Omaha PHA: There is no playground or playground equipment available for the black projects.

Orange City PHA: Inadequate community centers and playground equipment. Inadequate maintenance of units, grounds, streets, and street lights. Location in a high crime area, particularly drug related violence. Deplorable conditions on the sites and in the surrounding neighborhoods. The disparate conditions identified on

pages 15 to 17 and exhibit #10 of the desegregation plan for the PHA.

Overton PHA: No community center or playing fields. Maintenance problems which are adverse and obnoxious conditions. The streets are in poor condition without curbs/gutters or adequate street lighting. Junk, high weeds, and debris are on the lots adjacent to the sites. The black sites lack handicapped access facilities. The disparities identified in Exhibit 5 to the desegregation plan for the PHA.

Paris PHA: The neighborhood around Site 2 has a higher concentration of abandoned nonrepairable structures and the streets have fewer curbs. Security problems are created by the night clubs adjacent to the site. The interior streets of both projects are not maintained to the same standard as the city streets outside the projects. There is an EPA CERCLIS file site immediately adjacent to the Booker T. Washington project site which indicates possible environmental health hazards.

Pineland PHA: The disparate conditions listed on pages 4 and 5 of the desegregation plan for the PHA.

Port Arthur PHA: The lack of a community center. The oil refinery adjacent to site 1. The predominantly black public housing tenants pay gas and electric utility expenses while the predominantly white elderly Section 8 new construction tenants pay no utility expenses. The predominantly black projects need parking spaces, improved streets and more street lights to be comparable to the predominantly white elderly site. The dispari-

ties listed on pages 12 and 15 of the desegregation plan for the PHA.

Talco PHA: There are dilapidated structures and high weed lots adjacent to the project.

Tatum PHA: The only disparities are the unit disparities between the public housing units and the HUD assisted units.

Tenaha PHA: The site 1 disparities referred to on pages 6 and 10 of the desegregation plan for the PHA.

Texarkana PHA: Drug and other crime problems at the predominantly black projects. A history of inadequate maintenance and repairs at the black projects has led to the deplorable and hazardous living conditions in the predominantly black projects. There is inadequate pest control at the black projects. The disparate conditions referred to on page 21 of the HUD 1990 Joint Review Report of the PHA. The disparate conditions referred to on page 19 of the desegregation plan for the PHA. The disparities referred to in the HUD Jan. 10, 1992 Letter of Findings to the PHA. The area surrounding the central city THA projects has two locations listed on the EPA National Priority List as Superfund sites and another location listed on the EPA CERCLIS file indicating possible environmental health hazards.

Trinidad PHA: The streets around the predominantly black project are inferior to the streets in the white areas.

Wills Point PHA: There is a history of substandard landscaping and maintenance of the grounds at the predominantly black site [December 6, 1984 trip report; Management Review/Occupancy

Audit Feb. 9-10, 1988 page 5; page 6 of the desegregation plan]. The tenants at the predominantly white project do not pay gas utilities while the tenants at the predominantly black project do pay for gas utilities. The disparities in neighborhood conditions also include those listed on pages 8-10 of the desegregation plan for the PHA.

Winnsboro PHA: The streets, sidewalks, curbs and gutters in the black neighborhood are inferior to the facilities around the white project. There is a drainage problem in the neighborhood. There is a higher incidence of substandard housing, dilapidated buildings, and other code violations in the black site area. The black site is not as well lighted as the white site. The site disparities listed on page 1 of exhibit 6 to the desegregation plan for the PHA.

Woodville PHA: There are no recreational facilities for children in the southern part of the city.

5. The HUD plans are silent on the plans necessary to correct a serious substandard condition in the predominantly black lrph projects - the presence of lead based paint and the accompanying lead contaminated soil and dust. HUD has the obligation to test for the presence of lead based paint and provide funds for the safe and thorough abatement of any lead based paint hazard found.

The PHAs of Gladewater, Beaumont, Daingerfield, Texarkana, Pittsburg, and Cooper have uncorrected lead based paint problems which is a disparity that must be remedied.

In addition, all units of family housing in the class action area that have not already been tested for lead based paint must be tested immediately and abatement of the lead based paint hazards must be performed before any class members with children under 6 years old may reside in these units. Alternative housing must be given to the class members while abatement is taking place.

The status of lead based paint hazard testing and abatement in the PHAs is to be included in the Quarterly Report to the Court.