

Monitoring Housing Desegregation Litigation Settlements

by Philip Tegeler & Shelley White

Settlements in complex institutional reform litigation are often only as good as the monitoring and compliance resources devoted to their implementation. When settling a class action containing detailed compliance requirements, it is incumbent on plaintiffs' attorneys to ensure that adequate resources will be available to monitor the court-ordered agreement for its expected useful life.

In our case, one of 17 housing desegregation cases settled during the Cisneros era at HUD, compliance work has been a continuing effort throughout the four years the settlement has been in effect, and we anticipate at least four more years of work to come. Our compliance work has not been particularly "litigious," as not one compliance motion has yet been filed with the Court. But over the years we have had our share of sharply worded letters and compliance motions drafted and withdrawn at the last moment. For the time being, all parties are meeting regularly and working constructively to improve the performance of the settlement agreement.

In this brief update, we will share some of our compliance activities in *Christian Community Action v. Cisneros*, a case originally partially funded by PRRAC.

CCA v. Cisneros originated with a housing demolition and replacement plan for the former Elm Haven high-rises in New Haven, which plaintiffs alleged was being carried out in violation of the Fair Housing Act and HUD siting requirements, as the local housing authority began to locate replacement housing in segregated neighborhoods. The 1995 settlement consisted of two primary elements: 1) a scattered-site housing remedy, requiring defendants to place all of the remaining replacement housing units outside areas of minority concentration within the city, and 2) a regional housing

mobility program, including approximately 450 new Section 8 certificates earmarked for use outside areas of minority concentration, including the New Haven suburbs, along with a HUD-funded mobility counseling program to be administered by a local non-profit agency. The settlement also included a variety of related fair housing provisions, which will not be addressed here.

The Scattered-Site Housing Program

Although the program began ominously with a fire-bombing of one of the scattered-site home locations shortly after a preliminary injunction was entered, since that time over 137 units have been successfully completed in predominantly white areas of New Haven, with occasional local political opposition. Sites for another 36 units have been identified in similar neighborhoods, with development proposals pending at HUD. The only serious opposition centered on a lawsuit filed by a predominantly white community organization challenging the location of a single scattered-site unit in their neighborhood (the challenge was brought on procedural/notice grounds and because of claimed racial changes in the neighborhood since the time of the 1990 Census). The group's preliminary injunction motion was denied, and although the case is pending, we expect it to be dismissed (the family has already moved into the house). We have also experienced some delays by the Housing Authority in siting specific units (particularly single-family homes) in response to sporadic neighborhood opposition, but we have so far been able to successfully resolve these issues without the need for court intervention.

The scattered-site program is being

managed by a local non-profit, HOME, Inc. Based on anecdotal accounts of participants and the management company, the scattered-site housing program in New Haven appears to be a success, echoing many of the positive findings recently reported in Yonkers (see Briggs et al. in the Winter 1999 *APA Journal*). The scattered-site units consist primarily of existing single-family homes, and also newly developed townhouses and duplexes. None of the sites include more than 16 units. Less than eleven units remain to be sited.

Our main frustration with the New Haven program is with the jurisdictional limits of state and federal law — which prevented us from designing a program that would effectively develop or acquire actual public housing units in suburban jurisdictions outside of New Haven (as opposed to portable housing vouchers). To get around these jurisdictional restrictions, we were able to include an innovative provision in the Settlement Agreement which permitted the use of 50-100 project-based Section 8 certificates outside the city, for the primary benefit of (city) class members. Unfortunately, the project-based subsidy alone was not sufficient to lure suburban developers to respond to our initial RFP. If these units are not claimed soon, they will revert to portable Sec. 8 vouchers.

The Mobility Counseling Program

The New Haven mobility counseling program is a five-year effort called "The New Neighborhoods Project" (TNNP). It is housed within the agency that manages the scattered-site program. It includes a project director/counselor, a staff housing counse-

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lor and a consultant who handles landlord recruitment, demographic analysis and similar work. TNNP started up in 1997 and has placed 112 families to date. At this time, more than 300 of the 450 originally-allocated certificates remain to be distributed.

Our major initial frustrations with the mobility counseling program included a slow placement rate and the disappointing number of families placed in suburban towns. As of April 30, 1999, 80% of families placed were located outside areas of minority concentration, although it was the intent of the program to place virtually all mobility certificates in such areas. Approximately 30% of families have located in suburban towns. We suspected that the major causes of these problems had more to do with program design than with the excellent staff who were trying to make the program work, so approximately a year ago, we hired Mary Ann Russ and Hannah Shulevitz of Abt Associates to review the mobility program and to make recommendations to improve the program's success.

Some of the conclusions we have reached about how to operate a mobility program more effectively include:

Security Deposits: One of the initial problems we identified was the inability of many program participants to provide a full security deposit. When we settled the case, the Section 8 regulations still placed a limit on the amount of security a landlord could charge. This restriction was eliminated in 1996, to the detriment of many cities seeking to expand Section 8 mobility. In New Haven, we were fortunate to obtain a grant from a local foundation to create a grant/loan pool to supplement the security deposit resources available to mobility program participants.

Earmarking of Certificates: A more serious problem was that the program had not been initially marketed selectively to families most interested in moving to suburban towns; we have now begun the process of re-market-

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Also, for those connected with the Combined Federal Campaign: PRRAC's number is 2241. Please encourage your co-workers to designate PRRAC as a recipient (we'll be glad to send them information, or send you materials to pass on to them).

ing the program to create a waitlist of families more interested in suburban housing opportunities. A related defect in program design was that, although the certificates were earmarked for use outside of areas of minority concentration, after a period of six months, recipients could use the certificates anywhere; this loophole encouraged people to apply who were not truly interested in a suburban move. We are currently seeking to modify the agreement to eliminate this problem.

Improved Communications: A simple problem that was easy to fix was the lack of communication that sometimes existed between the Housing Authority, which administered the certificates, and the mobility counseling program. After we began regular meetings, we have been resolving most problems as a group instead of approaching implementation issues as adversarial disputes. After the intervention of Abt Associates, all the parties have had a more constructive relationship, with regular monthly problem-solving meetings.

Fair Market Exception Rents & Payment Standards: Like many mobility programs, we have been hampered by low Fair Market Rents (FMRs) for Section 8 certificates, which severely limited access to suburban housing for our clients. (HUD calculates FMRs - the maximum rent that can be paid for a Section 8 apartment - by aggregating rents in a region and selecting a figure which is 40% of the area median rent - a process which obviously excludes much of the more expensive rental housing in lower poverty, less segregated suburbs.) With the help of TNNP and the Housing Authority, we success-

fully applied for exception rents in many of the suburban towns around New Haven, which has increased the number of available suburban units. We are now planning advocacy strategies to maximize suburban rent levels in response to the new HUD regulations which merge the certificate and voucher programs into an all-voucher Section 8 program. We are concerned that, unless suburban PHAs cooperate by adopting high Section 8 "payment standards," these new regulations could have a detrimental effect on mobility programs like the one in New Haven.

Conclusion

Based on our conversations with attorneys involved in implementing desegregation settlements in other cities, we know that our experiences are not unique. We are also anticipating the release later this year of a HUD-funded Urban Institute study on implementation of the Cisneros-era desegregation settlements. As we have learned in New Haven, housing desegregation is a slow, painstaking process, and there is much to be gained from a detailed discussion of common implementation issues.

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