

United States Constitution, and certain contracts between HANO and HUD.

The relocation assistance subchapter of the URA entitles involuntarily displaced persons to payments “of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250.” 42 U.S.C. §4624(a). Virtually all of the relocated families on whose behalf this suit has been filed were given Section 8 housing choice vouchers by HANO or were relocated to scattered site public housing; a few moved to private housing. The housing itself is comparable to the public housing from which they were displaced in all ways except cost to them.

For Section 8 and scattered site tenants, regardless of whether they were involuntarily displaced or not, federal law provides that utility allowances shall be “based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality.” 24 C.F.R. 982.517. In contrast, the URA provides for utility payments equal to average estimated utility costs for the particular displaced individual, with no proviso regarding hypothetically “energy-conserving households.” 49 C.F.R. § 24.2. There is a substantial gap between the payments calculated under these two standards. This is why previous litigation under the Uniform Relocation Act was brought in this court on behalf of approximately 100 families who had been involuntarily displaced from Desire, St. Thomas, Florida and C.J. Peete. *Desire Area Resident Council et al. v. HANO et al.*, U.S. District Court Case No. 01-1458 (E.D.La.). That suit, in which the current plaintiffs’ counsel were also counsel for the plaintiffs, was resolved on the basis of a Settlement Agreement executed by HANO in March, 2003. (Exhibit 1, attached hereto) In settling this litigation, HANO properly agreed to treat all similarly situated tenants displaced from

Desire, St. Thomas, Florida and C.J. Peete the same. HUD approval of the HANO Board resolution covering nearly 1000 families is attached as Exhibit 2.

Pursuant to the Settlement Agreement, HANO in fact paid varying amounts, from a few hundred dollars to several thousand, to hundreds of tenants displaced from these four developments. The payment amounts were calculated by HANO for each tenant based on the apartment size, move-out date, and type of utility service. Some of these tenants received payment for the full entitlement period -- 42 months -- since their move-out date. The Settlement Agreement, however, did not extend to all of the tenants displaced from these four developments. Nor did it cover tenants displaced from other developments. Finally, it did not cover the entire 42 months entitlement period of many families who received some payment. This is because in order to expedite settlement of as many undisputed claims as possible, the parties had agreed to exclude from the Settlement Agreement certain classes of claims. The period after 12/31/02 was excluded because HANO stated to plaintiffs' undersigned counsel that it was going to increase its Section 8 utility allowance for all tenants. This would have mooted URA claims for Orleans Parish Section 8 tenants for the period after 12/31/02. HANO, however, did not in fact raise its Section 8 utility allowances until October, 2003 or even later, depending on the tenants' re-certification date. (Affidavit of Laura Tuggle, attached hereto as Exhibit 3, Paragraph 6) Thus individuals who had received payment for some but not all of the 42 months of coverage to which the URA entitles them, have been included in the within litigation (as category A plaintiffs) and are seeking payment for the balance of their 42 month entitlement period. Claims on behalf of tenants who moved to parishes other than Orleans were not explicitly excluded from the Settlement

Agreement. However, in subsequent negotiations, the parties agreed to treat them as having been implicitly excluded. This was done because the study of utility costs conducted by HANO as a result of the above-referenced litigation and which was used to determine payments to the covered tenants only analyzed utility costs in Orleans Parish. Persons with these claims are now Category B tenants. Category C tenants are those displaced from the Fischer housing development. The previous litigation had not included these persons because Fischer was not being demolished at the time that litigation was commenced. Although there is no difference in fact or law between tenants displaced from Fischer and tenants displaced from the four projects covered under the previous settlement, HANO has refused to pay these tenants for reasons unknown to plaintiffs' counsel. Category D tenants, those who moved to scattered sites, are like Category A tenants in that they have received some payment, but only for the time period up to December 31, 2002. Category E plaintiffs, those who moved to private housing, were temporarily excluded from the previous settlement by agreement of the parties because HANO would not agree they were covered under the URA.

Following the March, 2003 settlement, the parties engaged in many months of fruitless negotiation. Counsel for HANO finally informed plaintiffs' counsel that litigation would be necessary, and this supplemental litigation was therefore commenced in December, 2003. (Affidavit of Laura Tuggle, Exhibit 3, paragraph 7)

In response to this new complaint, defendants HANO and its federally-appointed Receiver, currently Carrie Dobbins, have filed a motion to dismiss which is now before the court. Defendants' sole argument is that this court lacks jurisdiction because the Administrative Procedures Act, 5 U.S.C. 701 et seq., is the exclusive remedy for URA claims and plaintiffs have

failed to exhaust their administrative remedies under the Act.¹ This motion lacks merit for several reasons, each of which is discussed *seriatim* below: (1) the Subchapter of the URA pursuant to which this suit is brought and the regulations issued pursuant to it do not provide a right to appeal to a federal agency nor do they require it where, as here, the action causing harm is that of a state agency receiving federal assistance, not that of a federal agency; (2) exhaustion was waived by defendants because they failed to provide an administrative procedure for plaintiffs to follow and never suggested nor demanded that plaintiffs file administrative claims in response to efforts to resolve these claims which have been ongoing for the past year; (3) exhaustion would have been futile for some of these plaintiffs because defendants have contended that certain categories of persons represented in this action are not entitled to *any* payments under the URA; this is a legal issue, not a factual one to be determined by an administrative fact finder; and (4) this court has independent jurisdiction under 42 U.S.C. §1983 for URA claims against state agencies receiving federal funds.

Furthermore, Defendants motion completely ignores plaintiffs' three causes of action which do not arise under the URA: violations of the United States Housing Act of 1937, 42 U.S.C. §1437 *et. seq.*, the due process clause of the United States Constitution, and certain contracts between HANO and HUD. This court has jurisdiction of these claims even if, *arguendo*, it did not have jurisdiction of the URA claim. On this basis alone, the motion should

¹Presumably this motion is made pursuant to Fed. R. Civ. P. 12 (b) (1). It also raises by implication issues of whether plaintiffs have stated a claim upon which relief can be granted under 12 (b)(6). In the interest of judicial economy, plaintiffs will address these issues as well.

be denied. Further, plaintiffs are filing a Motion for Leave to File Amended Complaint which sets forth another claim which, of course, has not been addressed in defendant's motion. This additional claim is that HANO failed to comply with applicable federal regulations which require displacing agencies to provide certain notices to persons scheduled to be displaced, as well as assistance with their claims. HANO's counsel has agreed not to oppose this amendment. All four of these additional claims are discussed in Section III, below.

II. THIS COURT HAS JURISDICTION OF PLAINTIFFS' RELOCATION PAYMENT CLAIMS UNDER 42 U.S.C. § 1983

1. Exhaustion is required for Real Property Acquisition claims under the Act, but is not required for Relocation Payment claims

a. The cases upon which defendants rely are distinguishable or unpersuasive

Defendants assert that plaintiffs should have exhausted administrative remedies, but fail to identify what those remedies were. Instead, defendants simply cite four cases, all but one of which are distinguishable because they interpret the "Uniform Real Property Acquisition Policy" subchapter of the statute, 42 U.S.C. § 4651 *et seq.*, not the "Uniform Relocation Assistance" subchapter, 42 U.S.C. § 4621 *et seq.*, which is at issue in the case now before this court. The distinguishable Property Acquisition cases are *Nat'l R.R. Passenger Corp. v. Faber Enters., Inc.*, 931 F.2d 438, 443 (7th Cir. 1991), *Ackerley Communications of Fla., Inc. v. Henderson*, 881 F.2d 990, 993 (11th Cir. 1989), and *Rhodes v. City of Chicago*, 516 F.2d 1373, 1378 (7th Cir. 1975).

The Real Property Acquisition Policy subchapter addressed in *Nat'l R.R. Passenger Corp.*, *Ackerley* and *Rhodes* is quite different from the Uniform Relocation Assistance subchapter. The Acquisition subchapter includes an explicit congressional statement of a purpose to avoid litigation which is not echoed in the URA subchapter:

“In order to encourage and expedite the acquisition of real property by agreements with owners, **to avoid litigation and relieve congestion in the courts**, ...(emphasis added). 42 U.S.C. § 4651.

In contrast, the stated goal of the Uniform Relocation Assistance subchapter is “the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance.” 42 U.S.C. § 4621(b). Where the state agency causing the displacement fails to provide such treatment, the courts are empowered to act.

The two subchapters are also different because the Acquisitions subchapter governs only direct action by a federal agency, where federal administrative procedures and subsequent federal court review would naturally apply. The relocation assistance subchapter, however, governs not only direct federal action, but also federally-financed state agency action, where such federal procedures do not necessarily apply.

The distinction between the two subchapters and its effect on the exhaustion requirement was recognized in *Tullock v. State Highway Comm. of Missouri*, 507 F.2d 712 (8th Cir. 1974). In an opinion written by retired United States Supreme Court Justice Tom C. Clark, sitting by designation, the court stated:

Finally, appellee-[State] Department of Transportation argues that the Uniform Relocation Assistance Act precludes judicial review of appellant’s claims. We disagree. The decision in *Will-Tex Plastics Manufacturing, Inc. v. H.U.D.*, 346 F. Supp. 654 (E.D.Pa. 1972), on which appellee relies, held only that judicial review of claims under the real property acquisition policies provisions of Title III of the Act was barred. In contrast, *Barnhart v. Brinegar*, 362 F. Supp. 464 (W.D. Mo. 1973), has considered the question here at issue and concluded, correctly we think, that judicial review of claims relating to relocation assistance is permitted.

507 F.2d at 715.

The only case cited by defendants in which the relocation assistance subchapter of the

URA was actually at issue, *Wallace v. Chicago Housing Authority*, 298 F.Supp. 2d 710 (N.D. Ill., 2003), is both distinguishable and was wrongly decided. First, the *Wallace* court mistakenly relied on the above-cited cases (*Nat'l R.R. Passenger Corp.*, *Ackerley Communications* and *Rhodes*) which were decided under the Real Property Acquisition provisions and therefore do not provide useful guidance for the relocation assistance provisions. 298 F.Supp. 2d at 723. Second, while relocation assistance was at issue in *Wallace*, relocation payments were not. The claim was that the Housing Authority had not adequately assessed and met the relocation needs of displaced tenants, not that it had failed to make required payments. The *Wallace*-type claim is more appropriately heard in the first instance by an agency since its resolution may benefit from the agency's expertise. The payment claims at issue in the within litigation, however, require no agency expertise. This court is better qualified to determine the legal issues which govern whether such payments should be made, and is certainly as well qualified to do the math to calculate the payments if they are required. Third, the *Wallace* court never identified the federal regulation which would have justified its holding that there was a federal administrative remedy which required exhaustion. As is explained immediately below, there actually is no such regulation. Finally, in *Wallace*, the URA was one of a dozen claims brought by plaintiffs and was given only superficial analysis by the court. For instance, the court incorrectly held that even if 42 U.S.C. §1983 relief were available under the URA, the plaintiffs were required to exhaust their administrative remedies. This ruling ignores the holding of *Patsy v. Board of Regents*, 457 U.S. 496 (1982), which is directly to the contrary. The court in *Patsy* held that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to section 1983." 457 U.S. at 516.

b. No federal regulation grants a right of appeal to HUD, only a right to seek review

The Department of Transportation has issued regulations as “lead agency” under the URA. These regulations govern all acquisitions and displacements by a federal agency or a state agency receiving federal financial assistance for a particular project. See 49 C.F.R. § 24.1 et seq. However, no federal regulation provides a right to appeal from a state agency decision on relocation payment amounts to HUD or any other federal agency. The closest any regulation comes is 49 C.F.R. §24.970.5(g), which provides:

(g) Appeals. A person who disagrees with the PHA's determination concerning whether the person qualifies as a “displaced person” or the amount of the relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal **may submit a written request for review** of the PHA's determination to the HUD Field Office. (Emphasis added)

Note the contrast between the first sentence, which provides for “a written appeal” to the PHA and the second, which merely authorizes “a written request for review” to HUD. The latter is not the equivalent of a right of appeal to a federal agency. The field office is not required to provide such review. This is a possible remedy, but no more. If HUD declines to grant such review, the tenants would not have a right to federal court review of this decision under the APA because the APA authorizes court review of federal agency action, not inaction. Thus this purely speculative possibility of administrative review should not preclude plaintiffs from invoking federal court jurisdiction of their right to redress their federal law claims under 42 U.S.C. § 1983.

2. Exhaustion would have been futile for certain plaintiffs

Administrative hearings would have been a waste of time for many of the plaintiffs because the issue for these tenants was not how much they are entitled to, but rather whether they are entitled to any payment at all under the URA. HANO’s position is that category B plaintiffs are not covered by the URA because they moved outside Orleans Parish, and category

E plaintiffs are not covered because they moved to private housing.² HANO told counsel for plaintiffs to sue if they wished to vindicate the rights of these tenants, and plaintiffs have done so. (Tuggle Affidavit, Exhibit 3, Paragraph 7)

At least two courts have recognized that where the state agency has adopted a final position denying a claim under the URA, “to require further administrative proceedings would be of no avail.” *Tulloch v. State Highway Comm., supra*, 507 F.2d at 715; *Pou Pacheco v. Soler Aquino*, 833 F.2d 392, 401- 402 (1st Cir. 1987). There is no point to requiring exhaustion of futile administrative remedies.

3. Defendants have waived exhaustion

For all five categories of plaintiffs, HANO has waived exhaustion and indeed should be embarrassed to raise the subject. 49 C.F.R. § 24.207 provides that “A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.” HANO never provided such assistance when these tenants were displaced because its position (until sued) was that persons who were given Section 8 vouchers or placed in scattered site housing were not entitled to receive any payment for utility costs beyond those provided by these programs. Similarly, HANO ignored 49 C.F.R. § 24.203 (a) (5), which provides that displaced persons must be given notices which describe their right to appeal the Agency’s determination as

²Plaintiffs’ counsel do not understand the legal basis for HANO’s position on these two categories, and therefore can not articulate it for this court. Unlike the claims presented in these two categories, the claims in the other three categories in this suit were not dismissed out-of-hand as not being covered by HANO; rather HANO just continually refused to pay them.

to their application for assistance. A sample of the inadequate notices to displaced tenants HANO distributed are attached as Exhibit 4 and 5.

In November, 2000, counsel for one of the involuntarily displaced tenants nevertheless filed an administrative appeal with HANO to contest the failure to pay adequate relocation assistance. HANO, however, refused to schedule a hearing on this appeal. (Affidavit of Laura Tuggle, Exhibit 3, paragraphs 2-4) This is why the *Desire Area Resident Council* suit, supra, was filed in this court in May, 2001. *Desire Area Resident Council* was settled in March, 2003, when HANO agreed that approximately 1000 displaced families were entitled to supplemental utility payments under the URA. (See HANO Board resolution, Exhibit 2) Neither the Board resolution, nor the subsequent Settlement Agreement embodying specific terms and provisos, required any hearings or appeals by these tenants. Even more importantly, payments to these tenants were in fact made by HANO simply on the basis of the information in the tenants' files at HANO regarding their bedroom sizes, move out dates, and subsequent rentals; no claims nor hearings were required. (Affidavit of Laura Tuggle, Exhibit 3, paragraph 5)

Thereafter, negotiations on behalf of those persons who were excluded from the settlement continued until 12/03, just prior to the filing of this action. Counsel for these tenants repeatedly asked for payment on their behalf, with no results. The hundreds of tenants who had received payment for some but not all of their 42 month entitlement period clearly had a claim for payment for the balance of the 42 months. Yet HANO at no time offered, requested resort to, or demanded use of its administrative hearing process for these or any other displaced tenants. (Affidavit of Laura Tuggle, Exhibit 3, paragraph 6) Similarly, HANO failed to give the notice and assistance to displaced tenants required by 49 C.F.R. § 24.207 and 49 C.F.R. § 24.203 (a) (5)

to tenants displaced from Fischer due to redevelopment efforts. (Affidavit of Laura Tuggle, Exhibit 3, paragraph 6)

HANO should certainly not now be heard to contend that displaced tenants seeking payment under the URA are barred from seeking court relief because the tenants did not exhaust administrative remedies which were never mentioned, offered or required.

4. Plaintiffs have a private right of action to enforce the URA

There can be no question but that this court has jurisdiction of plaintiffs' claim that defendants have deprived them of their federally-protected right, as involuntarily displaced tenants, to payments to assist them in paying for comparable housing in the community. The issue, however, is whether such rights are enforceable through a Section 1983 action. This again is a 12(b)(6) issue, but will be addressed here.

The United States Supreme Court most recently addressed the issue of enforcement of federal law through private actions in *Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268 (2002). There, a student had sued Gonzaga University in state court under, *inter alia*, 42 U.S.C. § 1983, alleging a violation of the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g. This statutory provision prohibits the federal funding of schools that have a policy or practice of permitting the release of students' education records without their parents' written consent. The Supreme Court held that the student's action was foreclosed because the relevant FERPA provisions create no personal rights to enforce under § 1983. The court stated:

FERPA's nondisclosure provisions contain no rights-creating language, they have an aggregate, not individual, focus, and they serve primarily to direct the Secretary of Education's distribution of public funds to educational institutions. They therefore create no rights enforceable under §1983.

536 U.S. at 290.

The URA's relocation payment provisions clearly pass all parts of this test. The statutory intent to bestow rights and benefits on tenants regarding relocation payments could not be more explicit. 42 U.S.C. § 4624(a) states that "the head of a displacing agency shall make a payment to or for any displaced person ...[which] shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250." The statute focuses on the individual and his right not to suffer financially because of a project which benefits the community as a whole. Plaintiffs' claims under the URA are similar to those which were approved in *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987), cited in *Gonzaga* with approval. There, the court upheld a § 1983 suit by tenants to recover past overcharges under a rent-ceiling provision of the Public Housing Act, on the ground that the provision unambiguously conferred "a mandatory [benefit] focusing on the individual family and its income." *Id.*, at 430. Similarly, the Supreme Court has found enforceable under §1983 a claim based on payments wrongfully withheld by a state agency in violation of the Social Security Act. *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980). This despite the availability of state agency administrative procedures. And while it is true that in *Wright*, HUD had not provided a procedure by which tenants could complain to it about the alleged failures of the state agency to abide by the Act's rent-ceiling provision," 479 U.S. at 426, here HANO has not provided such a procedure; in addition, even if HANO had provided this initial procedure, federal review of its denial of plaintiffs' URA claims would have been speculative, uncertain, and not necessarily reviewable in federal court. See the discussion at Section II(1)(b), *supra*.

In addition to the specific statutory recognition of a right to such payments in 42 U.S.C. § 4624(a), Department of Transportation regulations amplifying the meaning of some of the statute's terms are enforceable as well. These regulations flesh out the concept of "comparable replacement dwelling" as being a dwelling "within the financial means of the displaced person." 49 C.F.R. § 24.2. For former public housing tenants, "within the financial means of the displaced person" is further defined in this same regulation as one where the rent and estimated average monthly utility costs for the replacement dwelling are no more than they were in public housing.³ These regulations are enforceable under Section 1983 because the statute under which they are issued "display[s] an intent to create a freestanding private right of action to

³49 C.F.R. § 24.2:
8)

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and **estimated average monthly utility costs for the replacement dwelling** do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2)(emphasis added).

49 C.F.R. § 24.402(b)(2) in turn defines "base monthly rental for displacement dwelling" as follows:

- (2) The base monthly rental for the displacement dwelling is the lesser of:
 - (I) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency...For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or
 - (ii) Thirty (30) percent of the person's average gross household income; or
 - (iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

The "average monthly cost for rent and utilities" for the displacement dwelling in public housing of each plaintiff was equal to "thirty (30) percent of the person's average gross household income." 49 C.F.R. § 24.402(b)(2). These are the base monthly rentals for their respective displacement dwellings based on their income at that time.

enforce [such] regulations.” *Alexander v. Sandoval*, 532 U.S. 275 (2001). “A Congress that intends the statute to be enforced through a private cause of action intends the authoritative interpretation of the statute to be so enforced as well.” *Id.*, 532 U.S. at 284.

II. THIS COURT HAS JURISDICTION OF PLAINTIFFS’ NON-URA CLAIMS

1. Defendants have ignored plaintiffs’ claims under the United States Housing Act of 1937, 42 U.S.C. §1437 et. seq and regulations promulgated thereunder.

With respect to tenants temporarily displaced as a result of Public Housing Modernization, 24 C.F.R. § 968.108(b) requires Public Housing Authorities to pay for “all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.” This is a claim under the federal statute and implementing regulations, not the URA. Similarly, with respect to tenants permanently displaced as a result of Public Housing Modernization, 24 C.F.R. 968.108(c) requires Public Housing Authorities to pay “relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970.” (Complaint, Paragraph 17) Many named plaintiffs were displaced due to modernization efforts (as distinct from HOPE VI funding for replacement developments), such as those displaced from C.J. Peete. (Complaint, Paragraph 5) Yet defendants have not argued that there is no jurisdiction of the claims of such tenants or ones merely temporarily displaced.

2. Defendants have ignored plaintiffs’ Due Process claims

Plaintiffs’ complaint alleges as follows:

The actions and inactions of defendants outlined above constitute a violation of

the Due Process guarantee of the U.S. Constitution in that defendants have deprived plaintiffs of their federally guaranteed property interest in adequate rent and utility payments without proper notice and an opportunity to be heard. The Due Process Clause of the Fourteenth Amendment to the United States Constitution is enforceable under 42 U.S.C. 1983.

Numerous decisions have recognized that government benefits are a property interest which are entitled protection under the Due Process clause. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970). This is so as long as the plaintiff is eligible for such benefits, even if she is not already receiving them. See, e.g., *Wood v. Tompkins*, 33 F.3d 600, 602 (6th Cir. 1994)(applicants who alleged violations of the Medicare Act and regulations involving a waiver under the Social Security Act had a cognizable property interest); *Gonzalez v. Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990)(“An applicant for social security benefits has a property interest in those benefits”); *Hamby v. Neel*, 01-5653 (6th Cir. 2004)(“Plaintiffs likewise have a property interest in the TennCare coverage for which they hope to qualify). It is undisputed that all plaintiffs are former public housing tenants who were involuntarily displaced due to federally funded activities and are therefore eligible for relocation payments. Since HANO deprived them of such payments without notice and hearing, this court has jurisdiction of their due process claim. There is no exhaustion requirement for these claims. *Patsy v. Board of Regents, supra*, 457 U.S. at 516.

3. Defendants have ignored plaintiffs’ third party beneficiary claim

Plaintiffs’ complaint alleges as follows:

Plaintiffs are the intended third party beneficiaries of HANO’s contractual agreements with HUD to abide by the requirements of the Uniform Relocation Act.

HANO does not dispute that in obtaining funds from HUD for the demolition and reconstruction of the housing projects from which plaintiffs were displaced, it agreed to abide by

the requirements of the Uniform Relocation Act. The displaced tenants were clearly the intended beneficiaries of this agreement and are entitled to enforce it. *See, e.g., Del A v. Edwards*, 855 F.2d 1148, 1156 (5th Cir. 1988) (“like third party beneficiaries to a contract, the beneficiaries of federal funding statutes may sue for entitlements the states have promised to deliver”). There is no exhaustion requirement for a party seeking to enforce a contract right as third party beneficiary. This court has jurisdiction of such claims under 28 U.S.C. 1331. *See Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 201-02 (1921); *Price v. Pierce*, 823 F.2d 1114, 1120-21 (7th Cir.1987), cert. denied, 485 U.S. 960 (1988); *Almond v. Capital Props., Inc.*, 212 F.3d 20, 23-24 & nn. 2-3 (1st Cir. 2000) (federal jurisdiction exists where a state-law contract claim rests on a federal regulatory requirement and an important federal issue is a central element in the state claim). Moreover, under *Bell v. Hood*, 327 U.S. 678, 685 (1946), and its progeny, the Supreme Court has often said that a colorable claim of a federal cause of action will confer subject matter jurisdiction even though the claim itself may fail as a matter of law on further examination.

4. Plaintiffs are adding a statutory due process claim

Plaintiffs’ amended complaint will add an additional claim: that HANO failed to comply with two federal regulations which require displacing agencies to provide certain notices and assistance to persons scheduled to be displaced. First, HANO failed to follow the mandate of 49 C.F.R. § 24.207(a), which states that “A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.” HANO assisted displaced tenants with moving-related expenses, but it never provided claim forms for increased housing costs, let alone assistance in completing and filing such forms. That is because HANO

did not recognize the right of displaced tenants who were given section 8 vouchers to receive relocation payments for higher utility costs.

A displacing agency is also required to notify a claimant promptly when a claim is disapproved, including in such notice “the procedures for appealing that determination.” 49 C.F.R. § 207(g). Not only did HANO never supply such notice to displaced tenants at or about the time of their relocation, it failed to provide such information about appeals to the tenants, through their counsel at New Orleans Legal Assistance, when it rejected the claims of those who are plaintiffs in this action.

The purpose of these governing regulations was to give injured tenants at least the option to seek meaningful state agency administrative review of their claims for payment. HANO’s failure to follow these regulations is actionable by the tenants because the regulations were intended to benefit them individually. *Sandoval, supra*. It would be completely illogical and unjust – a veritable Catch 22 – for this court to dismiss this claim of failure to notify tenants of their rights and failure to provide them with assistance, including help with appeals, for failure to exhaust the very proceedings HANO should have notified them of and helped them with.

IV. CONCLUSION

For several years, involuntarily displaced tenants have been trying to get HANO to make payments to them so that their new housing will be affordable. The delay in making these payments has caused some tenants to be evicted or to go without other necessities. Further delay in making payments would be unconscionable.

While HANO has paid many displaced tenants, others have been put off continually with promises of a possible amicable resolution. Yet never has HANO mentioned, offered or required

the tenants to file claims administratively, thus waiving any requirement that they do so, if one exists. Even had HANO offered hearings, the tenants would not have had a right to appeal to a federal agency and an assurance of APA jurisdiction. Given these circumstances and the presence of plaintiffs' non-URA claims, they should not be required to resort belatedly to such an uncertain and in many cases patently futile administrative process. This court is therefore urged to overrule defendants' motion to dismiss.

Respectfully submitted:

Charles M. Delbaum (T.A.), LSBA No. 22035
Laura A. Tuggle LSBA No.22171
NEW ORLEANS LEGAL ASSISTANCE
1010 Common Street, Suite 1400 A
New Orleans, Louisiana 70112
Telephone: (504) 529-1000

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on counsel for defendants by facsimile transmission in lieu of hand delivery, by agreement of counsel, and also by depositing same in the U.S. mails, first category postage prepaid, properly addressed, this ___ day of _____, 2004.