

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

JUN 30 2005

CHICAGO ACORN, et. al)
)
Plaintiffs,)
)
vs.)
)
)
THE UNITED STATES DEPARTMENT OF)
HOUSING AND URBAN DEVELOPMENT)
("HUD"), et. al)
)
Defendants.)

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT
No. 05 C 3049
The Honorable Judge
Blanche Manning

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS MOTION
FOR CLASS CERTIFICATION**

The named Plaintiffs are four families who currently live in the Lawndale Restoration properties and who have brought suit to challenge Defendants' plan to terminate the project-based Section 8 rental subsidy contract on their development. Amend. Compl., Counts 1-9. They have now moved for an order certifying a plaintiff class. Plaintiffs propose the following definition of the class:

All persons who are or have been residents at the Lawndale Restoration property, as that 1240-unit property is defined and specified by the following: HUD Real Estate Management System Identification #800006035; FHA Project Number 071-35622; or Section 8 Contract Number IL06E000105.

ARGUMENT

I. THE PROPOSED CLASS SATISFIES THE STANDARD FOR GRANTING CLASS CERTIFICATION.

A movant for class certification must meet each of the four requirements set forth in Fed.

R. Civ. P. 23(a):

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately represent the interests of the class.

Wallace v. Chicago Hous. Auth., 224 F.R.D. 420, 423 (N.D. Ill. 2004) (citing *Williams v. Chartwell Fin. Servs.*, 204 F.3d 748, 760 (7th Cir. 2000)). In addition, Plaintiffs must satisfy one of the criteria set forth in Fed. R. Civ. P. 23(b). *Id.* In the present case, Plaintiffs proceed based upon grounds set forth in Fed. R. Civ. P. 23(b)(2): “[T]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.”

These are the only considerations before the Court on Plaintiffs’ motion for class certification; it is inappropriate to address the merits of a plaintiff’s case at the class certification stage. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 177-78 (1974); *Walters v. Thompson*, 615 F. Supp. 330, 333 (N.D. Ill. 1985).

A. Numerosity

The class that Plaintiffs seek to represent is so numerous that joinder of all members is impracticable. It is currently composed of approximately 1,240 families who are or were residents at the Lawndale Restoration. Based on the City of Chicago’s Lawndale Restoration Summary of Tenant Characteristics, attached hereto in relevant part as Exhibit A, Plaintiffs estimate their ranks to include a baseline of at least 980 current families and more than 2,885 current residents. Plaintiffs estimate that they also include 260 families consisting of another approximately 806 residents who have or will vacate the properties due to condemnation actions. This good faith estimate of current class composition is sufficient for Plaintiffs to meet their burden for certification. *Gomez v. Illinois State Bd. of Educ.*, 117 F.R.D. 394, 399 (N.D. Ill.

1987); *Borowski v. City of Burbank*, 101 F.R.D. 59, 61 (N.D. Ill. 1984); *Long v. Thornton Township High Sch. Dist. 205*, 82 F.R.D. 186, 189 (N.D. Ill. 1979) (holding that only a good faith estimate of the number of class members is necessary “where it is difficult to assess the exact class membership”).

In addition to the estimated number of individual class members, courts assess numerosity by considering factors such as judicial economy and the ability of individual class members to institute individual lawsuits. *Tinsley v. Kemp*, 750 F. Supp. 1001, 1005 (W.D. Mo. 1990); *Jones v. Bowen*, 121 F.R.D. 344, 348 (N.D. Ill. 1988), *class cert. order vacated on other grounds*, 938 F.2d 801 (7th Cir. 1991); *Tenants Ass'n for Better Spaulding v. HUD*, 97 F.R.D. 726, 729 (N.D. Ill. 1983). In the case at bar, Plaintiffs would be unable to press many of their claims on an individual basis, first, because of their indigence, and second, because their claims of adverse disparate impact involve complex statistical proof. Because of the vast number of Plaintiffs and in the interest of judicial economy, finality, and fairness to Plaintiffs, the Plaintiff class should be certified.

B. Commonality

Rule 23(a)(2) requires that there be at least one issue of law or fact common to all members of the putative class. *National Organization for Women v. Scheidler*, 172 F.R.D. 351, 360 (N.D. Ill. 1997); *Gomez*, 117 F.R.D. at 399; *Beckless v. Heckler*, 622 F. Supp. 715, 720 (N.D. Ill. 1985). In the present case, common issues of law and fact include the following:

- a. Are the Defendants' plans to prematurely terminate the project-based Section 8 contract and not provide continuing subsidies for all of the units that were subsidized

prior to foreclosure in violation of the Multifamily Housing Property Disposition Reform Act, 12 U.S.C. §§ 1701z-11(a), (e) (2005)?

- b. Does Defendants' policy of terminating all project-based Section 8 contracts upon foreclosure breach HUD's duty to transfer title to public purchasers while maintaining prior existing legal obligations as required by 12 U.S.C. § 1715z-11a(b) (2005)?
- c. Have the Defendants failed to guarantee that the property remains in decent, safe, and sanitary condition by illegally conditioning a grant of rehabilitation dollars to the City of Chicago on the condition that it give up its bid for maintenance of the project-based Section 8 contract and thus, once again under-fund repair needs for this project in violation of the Multifamily Housing Property Disposition Reform Act, 12 U.S.C. § 1701z-11(c)(3)(B) (2005)?
- d. Have the Defendants failed to conduct or initiate a market study to determine whether the market area contains an adequate, available supply of habitable, affordable housing for very-low income families and other low-income families prior to providing tenant-based assistance in lieu of project-based assistance, in violation of the Multifamily Housing Property Disposition Reform Act, 12 U.S.C. § 1701z-11(e)(2)(A) (2005)?
- e. Have the Defendants failed to limit the replacement of project-based Section assistance with Housing Choice Vouchers to 10% of the aggregate units in the subsidized or formerly subsidized projects disposed of in this fiscal year, in violation

of the Multifamily Housing Property Disposition Reform Act, 12 U.S.C. § 1701z-11(e)(2)(B) (2005)?

- f. Does Defendants' policy of terminating all project-based Section 8 contracts upon foreclosure breach HUD's duty under the National Housing Act, 12 U.S.C. § 1701t (2005)?
- g. Are the Defendants' plans for disposal of the Lawndale Restoration in a manner that will have an adverse disparate impact on African-Americans, women, and families with children in violation of the Fair Housing Act, 42 U.S.C. § 3604 (2005), and Executive Orders 11063 § 101, 27 Fed. Reg. 11527 (1962) and 12892, §§ 2-201, 2-202, 6-604(b), 59 Fed. Reg. 2939 (1994)?
- h. Do Defendants' plans for the Lawndale Restoration fail to affirmatively further fair housing in violation of the Fair Housing Act, 42 U.S.C. § 3608(e)(5) (2005), and Executive Orders 11063 and 12892?
- i. Is Defendants' national policy of terminating the contracts of all project-based Section 8 properties upon foreclosure a failure to affirmatively further fair housing in violation of the Fair Housing Act, 42 U.S.C. § 3608(e)(5) (2005), and Executive Orders 11063 and 12892?
- j. Are the Defendants' plans to dispose of the Lawndale Restoration without the statutorily required level of project-based Section 8 assistance equal to that which existed before foreclosure arbitrary and capricious, an abuse of discretion, not in accordance with the law, in excess of statutory authority and without observance of

procedures required by law, mandating relief under the Administrative Procedure Act, 5 U.S.C. § 706 (2005)?

- k. Is Defendants' national policy of terminating all project-based Section 8 assistance on foreclosure arbitrary and capricious, an abuse of discretion, not in accordance with the law, in excess of statutory authority and without observance of procedures required by law, mandating relief under the Administrative Procedure Act, 5 U.S.C. § 706 (2005)?

The fact that all members of the class have been subject to the same unlawful scheme is sufficient to meet the commonality requirement: “[w]hen the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.” *Long*, 82 F.R.D. at 189 (citing HERBERT B. NEWBERG, *NEWBERG ON CLASS ACTIONS* § 1110a, at 180-81 (1st ed 1977)). *See also Hispanics United of Dupage County v. Village of Addison*, 160 F.R.D. 681, 688 (N.D. Ill. 1995) (“Where broad discriminatory policies and practices constitute the gravamen of a class suit, common questions of law or fact are necessarily presented.”) (internal quotations and citations omitted).

C. Typicality

The individual Plaintiffs' claims are typical of the claims of the class as a whole. All of the named Plaintiffs' claims arise from Defendants' decision not to preserve the project-based Section 8 contract at the Lawndale Restoration, and all Plaintiffs proceed under the same legal theory—the Defendants' course of conduct will disparately impact Plaintiffs and cause them to lose their current project-based Section 8 housing. *See Long*, 82 F.R.D. at 190 (holding that

paramount typicality inquiry is whether the named plaintiffs' claims arise from a common course of conduct and are based on the same legal theory); *Jones*, 121 F.R.D. at 349 (same). Because the named Plaintiffs do not present unique claims that are personal to themselves and that are likely to be a major focus of the litigation, the typicality requirement of Fed. R. Civ. P. 23(a)(3) is met. *Lewis v. Tully*, 96 F.R.D. 370, 377 (N.D. Ill. 1982).

D. Adequacy of Representation

The adequacy of representation requirement of Rule 23(a)(4) is met where the class representatives have no interests antagonistic to the other class members, have sufficient interest in the outcome of the litigation, and have counsel who are qualified, experienced, and generally able to conduct the litigation. *Long*, 82 F.R.D. at 190.

Each fearing the loss of their project-based Section 8 housing and the likely displacement from their historic community as a result of the Defendants' decision here and policy decision nationally, the named Plaintiffs have the personal interest necessary to prosecute this suit on behalf of the class.

The Sargent Shriver National Center on Poverty Law, the Housing Preservation Project, and Sachnoff & Weaver, Ltd., are adequate class counsel. The principal attorneys of each of the above organizations and firm have had approximately 60 collective years of experience in federal housing or civil rights litigation, have practiced at the federal trial, appellate and United States Supreme Court levels, have been lead counsel in seminal lawsuits concerning project-based Section 8 housing, fair housing, and civil rights, *see, e.g., Wallace v. Chicago Hous. Auth.*, No. 03 C 491 (N.D. Ill. filed March 15, 2004) (successfully settled on May 31, 2005); *Memisovski v. Maram*, No. 92 C 1982, 2004 U.S. Dist. LEXIS 16772 (N.D. Ill. Aug. 23, 2004)

(judgment for plaintiffs); *Concerned Residents of ABLA v. Chicago Hous. Auth.*, No. 66 C 1459 (N.D. Ill. filed May 14, 2004); *Burks v. Martinez*, No. 01-1482 (D. Minn. Oct. 9, 2003); *Kenneth Arms Tenant Ass'n v. Martinez*, No. Civ. S-01-832, 2001 U.S. Dist. LEXIS 11470 (E.D. Cal. July 3, 2001); *215 Alliance v. Cuomo*, 61 F. Supp.2d 879 (D. Minn. 1999); *Yarborough v. Cuomo*, No. 98-933 (D. Minn. Nov. 3, 1998); *Coleman v. HUD*, No. 80 C 4760, 553 F. Supp. 1154 (N.D. Ill. 1982); and *Grand Boulevard Improvement Association v. City of Chicago*, No. 81 C 1284, 553 F. Supp. 1154 (N.D. Ill. 1982), and are supported by staffs of experienced and capable attorneys.

E. Defendants' Actions Make Injunctive and Declaratory Relief Appropriate for the Class as a Whole.


By prematurely terminating upon foreclosure the project-based Section 8 contract at the Lawndale Restoration and thereby disparately impacting Plaintiffs based on their race, sex, and familial status, Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole. The relief that Plaintiffs seek from their common claims is, in fact, entirely declaratory and injunctive, making class certification particularly suitable. "A class action seeking only declaratory or injunctive relief is an appropriate relief mechanism from conduct likely to cause future injuries similar to those suffered contemporaneously." *Tonya K. by Diane K. v. Chicago Bd. of Educ.*, 551 F. Supp. 1107, 1109 (N.D. Ill. 1982).

II. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court certify a plaintiff class in this action as defined above.

Dated: June 30, 2005

Respectfully submitted,



One of the Attorneys for Plaintiffs

Gary S. Caplan
James A. Rolfes
Max A. Stein
Casey L. Westover
SACHNOFF & WEAVER, LTD.
10 S. Wacker Drive
Chicago, IL 60606-7507
Tel: (312) 207-1000

John "Jack" Cann
HOUSING PRESERVATION
PROJECT
570 Asbury Street, Suite 105
St. Paul, MN 55104
Tel: (651) 642-0102

John M. Bouman
Katherine E. Walz
Rajesh D. Nayak
SARGENT SHRIVER NATIONAL
CENTER ON POVERTY LAW
50 East Washington, Suite 500
Chicago, IL 60602
Tel: (312) 263-3830

Attorneys for Plaintiffs

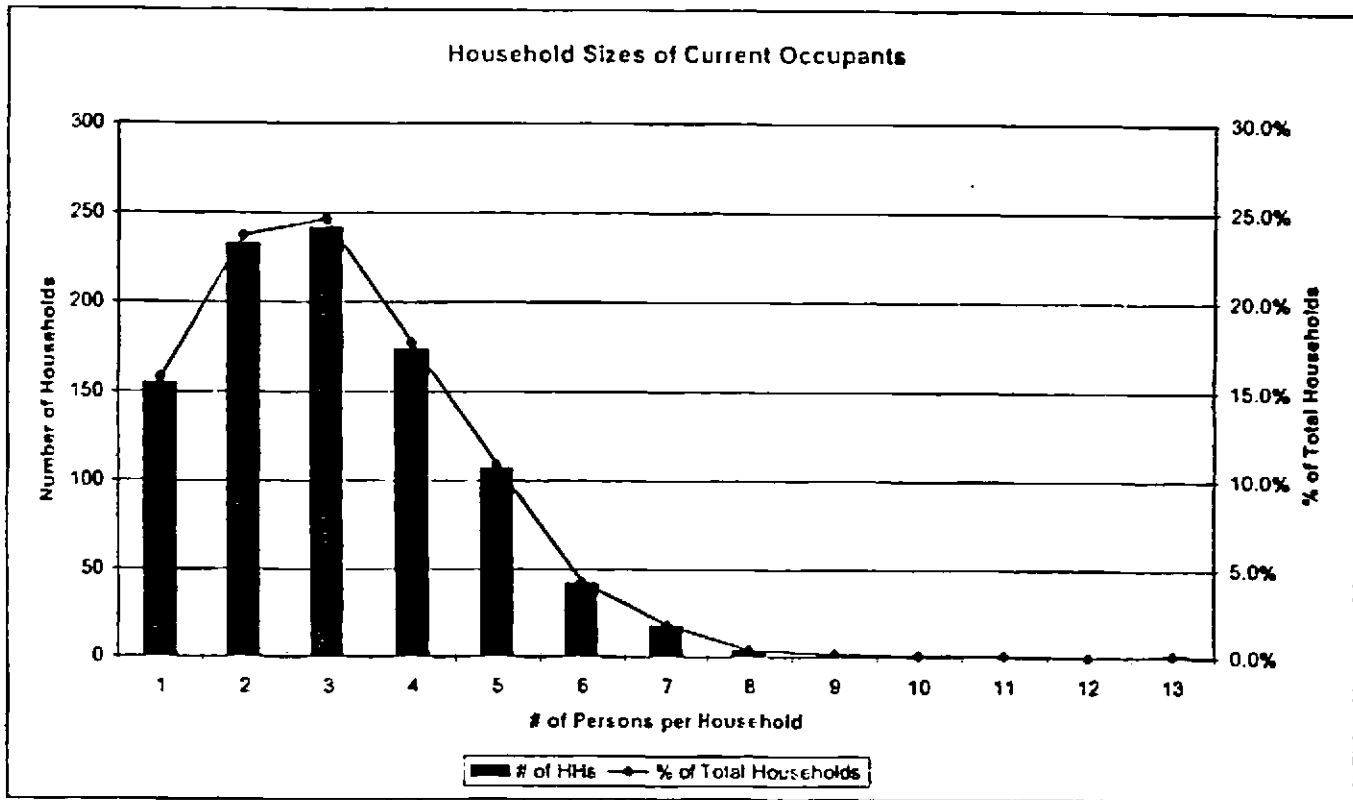
List of Exhibits

<u>Exhibits</u>	<u>Description</u>
A	City of Chicago Report, <u>Lawndale Restoration Summary of Tenant Characteristics</u>

Exhibit A

**Lawndale Restoration Summary of Tenant Characteristics
City of Chicago**

**Lawndale Restoration
Summary of Tenant Characteristics**



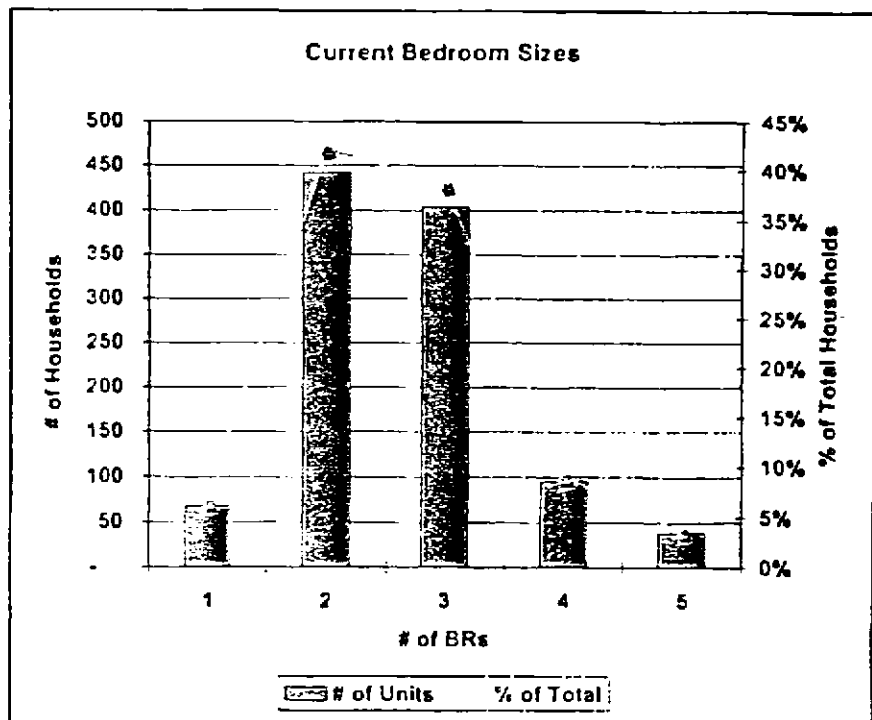
Household Size

# of Persons	# of HHs	% of Total
1	155	15.8%
2	233	23.8%
3	242	24.7%
4	174	17.6%
5	107	10.9%
6	42	4.3%
7	18	1.8%
8	4	0.4%
9	2	0.2%
10	1	0.1%
11	1	0.1%
12	0	0.0%
13	1	0.1%
# Households	960	100.0%

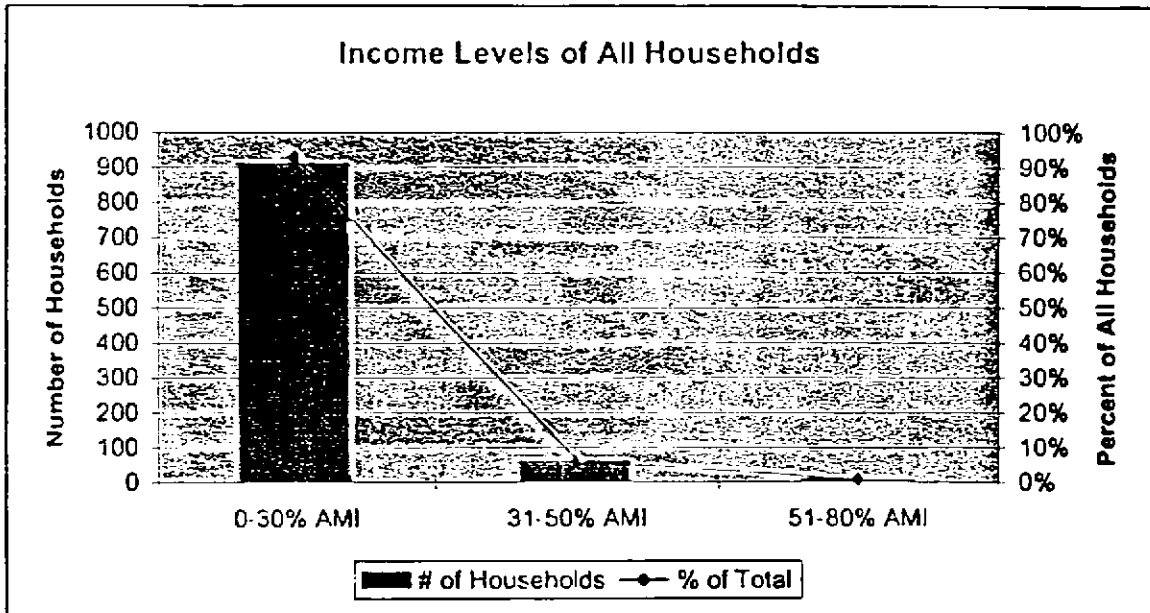
Total Persons 2,885
Average Size 3.10

Bedroom Distribution

# of BRs	# of Units	% of Total
1	68	6%
2	442	42%
3	404	39%
4	95	9%
5	39	4%
Total	1,048	100%

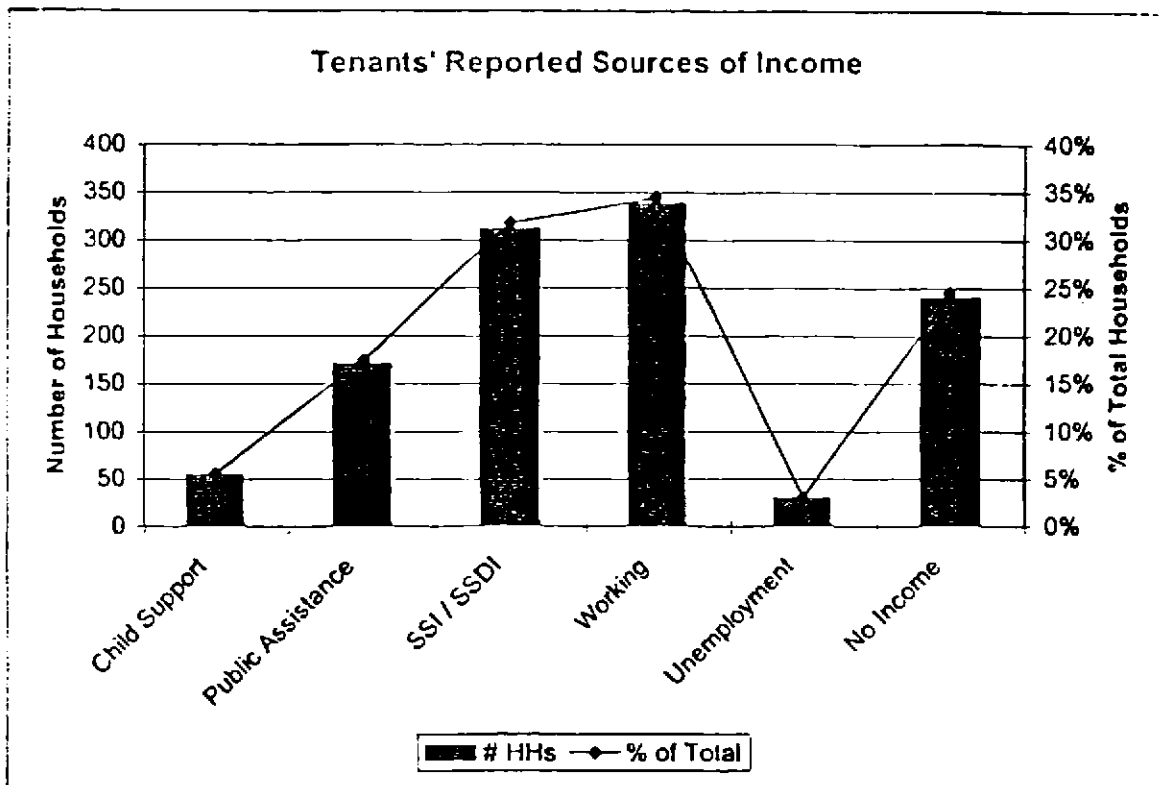


**Lawndale Restoration
Summary of Tenant Characteristics**



Income Levels	3 Person Household		
	Maximum Income	# of Households	% of Total
0-30% AMI	20,370	911	93%
31-50% AMI	33,950	61	6%
51-80% AMI	51,750	8	1%
Total Households		980	100%
HHs headed by single mothers		788	80%

**Lawndale Restoration
Summary of Tenant Characteristics**



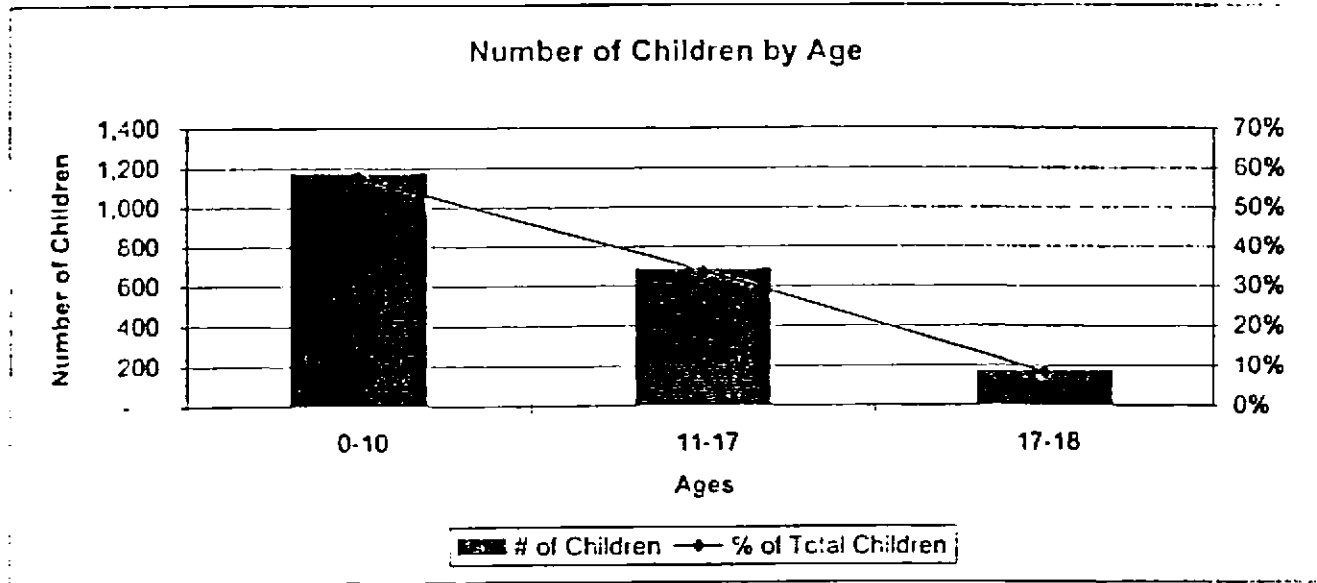
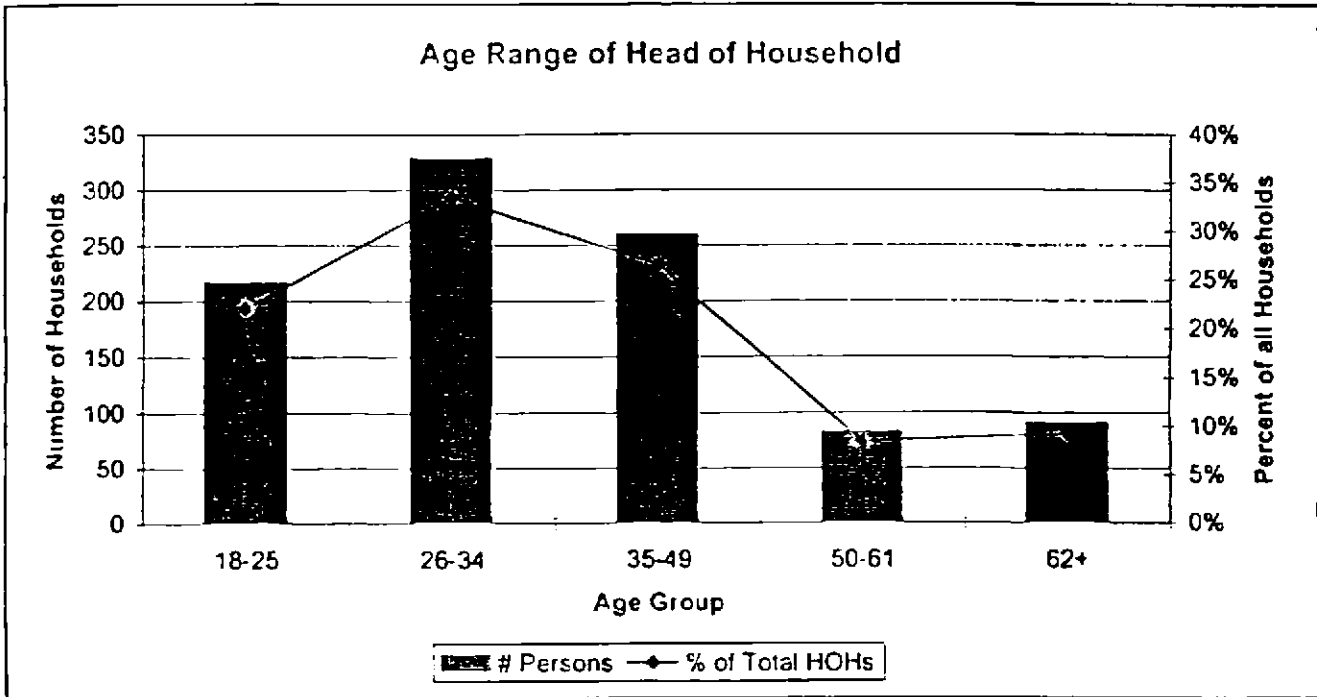
Source of Income (multiple sources possible)

Type of Income	# HHs	% of Total
Child Support	55	6%
Public Assistance	171	17%
SSI / SSDI	312	32%
Working	338	34%
Unemployment	30	3%
No Income	240	24%

Households with Multiple Sources of Income

Number of Sources	# HHs	% of Total
2 Sources of Income	138	14%
3 Sources of Income	14	1%

**Lawndale Restoration
Summary of Tenant Characteristics**



Head of Household Ages

Age Group	# Persons	% of Total HOHs
18-25	217	22%
26-34	329	34%
35-49	260	27%
50-61	83	8%
62+	91	9%
Total	980	100%

Number of Children and Ages

Age Group	# of Children	% of Total Children
0-10	1,175	58%
11-17	685	34%
17-18	172	8%
Total	2,032	100%