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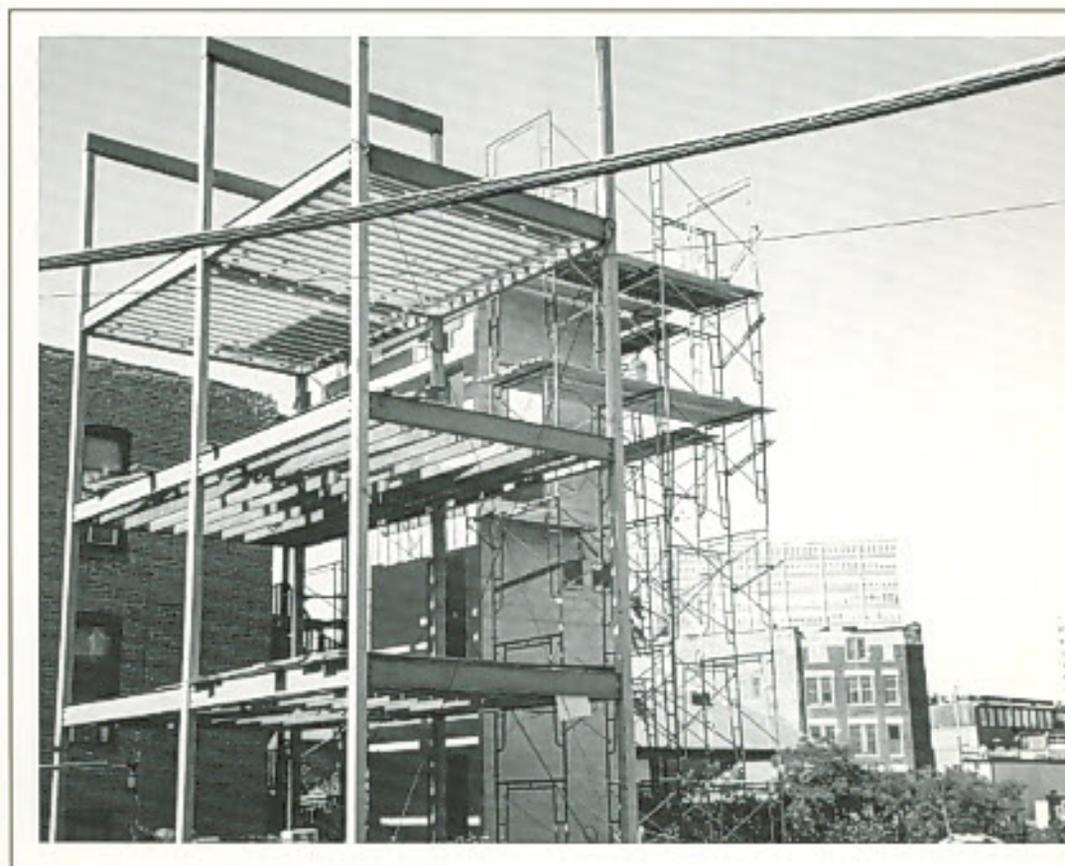
INSIDE

Administrative and
Judicial Enforcement
of Consolidated Plan
Obligations

How to Use the Fair
Housing Laws to Achieve
Your Community
Development Goals

Recipient Concerns with
the Use of Electronic
Benefit Transfer Systems
for the Delivery of State
and Federal Benefits

The Living-Wage
Ordinance: A First Step
in Reducing Poverty



Consolidated Plan and Community Development Block Grant Advocacy

Administrative and Judicial Enforcement of the Department of Housing and Urban Development's Consolidated Plan Obligations

By Michael Rawson. Michael Rawson, codirector of the Public Interest Law Project, 449 15th St., Suite 301, Oakland, CA 94612 (510.891.9794), directs the California Affordable Housing Law Project.

The local Department of Housing and Urban Development (HUD) consolidated plans determine the fate of billions of dollars that should be targeted for lower-income people in our communities.^{[1/](#)} The time for submission of the consolidated plans for the five-year period beginning in the year 2000 is rapidly approaching, and jurisdictions must soon begin developing and instituting their citizen-participation plans.^{[2/](#)} Consequently jurisdictions must begin now to develop the necessary expertise and to identify resources for possible administrative or judicial enforcement.

I. Introduction

Private enforcement of the consolidated plan obligations can be vital to ensuring that a community adopts and implements a plan that best addresses the critical housing needs of lower-income households. Just as citizen participation is fundamental to the development of an effective plan with programs targeted to those with the greatest need, citizen enforcement is sometimes the only option when either HUD or the jurisdiction fails to comply fully with the statutory or regulatory requirements. Because the primary remedy is the withholding of some portion of the community's federal housing and community development funds, heading down this road requires careful deliberation. This article outlines enforcement alternatives and some strategic considerations.

The option of citizen-initiated administrative or judicial enforcement of the consolidated plan obligations can arise in three contexts: (1) procedural noncompliance in preparation, submission, or amendment of the plan; (2) inadequate plan content; and (3) noncompliance in plan implementation. The statutes and regulations provide specific (but in some respects limited) remedies, and fair housing and state laws also may provide some enforcement possibilities. As always, whether to pursue formal enforcement depends on the possible and likely remedies as weighed against local political ramifications and available resources.

Although the statutes and regulations afford local jurisdictions and HUD broad discretion in adoption, review, and **p193** implementation of consolidated plans, they also provide specific mandates in each of these areas and present many prospects for effective enforcement. Examples of circumstances warranting administrative or judicial enforcement include failure to prepare or abide by an adequate citizen-participation plan; a certification that is inaccurate or not supported by the record; failure to include content required by the legislation or the inclusion of content not supported by the record; proposed housing activities that are inconsistent with the plan; failure to include an action program addressing a particular high-priority need; inconsistency of the annual action plan with the five-year strategic plan; failure of the jurisdiction to "follow" its plan because the CDBG activities are not in accordance with the plan or failure of the jurisdiction to take all the actions described in the annual action plan; inaccuracies or omission of required content in the annual performance report; or attempts by the jurisdiction or HUD to allocate funds inconsistent with the consolidated plan or annual action plan or pursuant to a clearly inadequate plan.^{[3/](#)}

II. Statutory and Regulatory Bases for Enforcement

The principal statutory bases for HUD and private enforcement of the consolidated plan requirements are found in the Cranston-Gonzalez National Affordable Housing Act (the comprehensive housing affordability strategy (CHAS) law)^{[4/](#)} and the Housing and Community Development Act of 1974 (the Community Development Block Grant (CDBG) law).^{[5/](#)} The primary regulations are the consolidated plan regulations (by which HUD established the "consolidated submission" of a single plan and performance report for all HUD grant programs, including those mandated by the CHAS and CDBG laws) and the CDBG regulations.^{[6/](#)} These laws set forth the procedures for adoption and review of the consolidated plan, prescribe the content of the plan and the related citizens' participation plan, and specify some administrative and judicial remedies.

Section 105(a) of the CHAS law mandates that "[t]he Secretary shall provide assistance only if-- . . . 2. the jurisdiction submits to the Secretary a comprehensive housing affordability strategy . . . ; 3. the jurisdiction submits annual updates of the housing strategy; and 4. the housing strategy, and any annual update, is approved by the Secretary."^{[7/](#)}

Subsections 104(a), (b), and (d) of the CDBG law provide that a CDBG grant shall be made only if the jurisdiction has prepared a final statement of objectives and projected use of funds and made the certifications required by the statute to the satisfaction of the Secretary.^{[8/](#)} Under subsection 104(c) HUD may make a grant to entitlement jurisdictions only if the locality certifies that it is following an approved housing strategy pursuant to the CHAS statute.^{[9/](#)}

Therefore under the statutes HUD has a mandatory duty to withhold funds if the locality fails to submit timely a five-year consolidated plan, the annual housing strategy updates, or proper CDBG application. It must also withhold funds when it finds that the housing strategy is deficient. Under section 111 of the CDBG law HUD has a further duty to

withhold or reduce *p194* CDBG funds when it finds, after notice and hearing, that the jurisdiction failed to comply substantially with the CDBG law in carrying out any CDBG-assisted activities.[/10/](#) Section 108(a) of the CHAS law and section 104(e) of the CDBG law give HUD the discretion to suspend or withdraw funding if the required annual performance report is untimely or unsatisfactory.[/11/](#) Section 108(c) of the CHAS law authorizes and sets the parameters for private enforcement in the courts.[/12/](#)

III. Review by HUD

The CHAS law requires HUD to review a submitted housing strategy and determine whether it is inconsistent with the purposes of the law and whether the contents are substantially complete.[/13/](#)

A. Consolidated Plan Content

If HUD finds that the plan is inconsistent with the CHAS law or substantially incomplete, it may disapprove the plan and withhold the funds requested by the jurisdiction. The consolidated plan regulations implement this obligation by specifying that HUD may disapprove a consolidated plan or a portion of a plan if it is inconsistent with the purposes of the CHAS law; it is substantially incomplete; or it contains unsatisfactory certifications required by the CDBG law.[/14/](#)

The consolidated plan regulations offer the following examples of when a consolidated plan is "substantially incomplete": a plan that was developed without the required citizen participation or the required consultation, a plan that fails to satisfy all required elements, and a plan for which a certification is rejected by HUD as inaccurate after HUD has inspected the evidence and given "due notice and opportunity to the jurisdiction for comment."[/15/](#)

Similarly the CDBG regulations require that a jurisdiction submit a consolidated plan in compliance with HUD's consolidated plan regulations in order to receive its annual CDBG grant.[/16/](#)

In particular, a locality must certify that it is following a citizen-participation plan; it will conduct an analysis of impediments to fair housing choice; the housing activities undertaken with HUD funds are consistent with the strategic plan portion of the consolidated plan; and in the expenditure of its CDBG funds it is following the consolidated plan.[/17/](#)

Although HUD is unlikely categorically to disapprove a plan if it finds the plan lacking in some respect, HUD may request that the community make revisions, and HUD may withhold the funds of any of the plan's programs affected by the inadequacy.[/18/](#)

B. Implementation of the Consolidated Plan

The CHAS law requires that local jurisdictions prepare and submit an annual progress report.¹⁹ In reviewing performance reports HUD may make on-site visits and must assess the management of funds, the compliance with the housing strategy, the accuracy in preparation of *p194* performance reports, the progress toward the goals stated in the consolidated plan, and the efforts to ensure that HUD-assisted housing are in compliance with contractual requirements and the law.²⁰ HUD must issue a report based on its review, to which the jurisdiction has at least 30 days to respond; within 30 days HUD must then issue a final report containing the comments and any HUD revisions.²¹

In the same fashion the CDBG law requires HUD to review performance annually to determine whether the local jurisdiction has carried out its activities and certifications "in accordance with the requirements and the primary objectives of this title and with other applicable laws. . . ."²² Based on this review HUD may

adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary's reviews and audits under this subsection, except that funds already expended on eligible activities under this title shall not be recaptured or deducted from future assistance to such units of general local government.²³

HUD reviews CDBG-funded activities for compliance with the national objectives, timely performance, consistency with the consolidated plan, and compliance with equal opportunity and fair housing obligations.²⁴ In determining whether the jurisdiction followed its consolidated plan, HUD assesses whether the locality has taken all the actions described in the plan. If HUD determines that the jurisdiction has failed to follow its plan, HUD, considering factors beyond the jurisdiction's control and actions taken in addition to those in the plan, gives the jurisdiction 45 days to demonstrate that it, in fact, has followed its plan.²⁵

As with its review of the content of the consolidated plan submission, HUD is unlikely to exercise its discretion to withhold funds if it finds the community's report or performance inadequate. However, HUD may request revisions, and the failure of the locality to make those revisions would certainly be relevant in any subsequent administrative or judicial enforcement action.

IV. Administrative Complaints

The likelihood of HUD mandating revisions or disapproving all or a portion of a consolidated plan is significantly increased if low-income people, community-based groups, and their advocates get involved at the local level during the preparation of the plan, the annual update, or the annual performance report, and at the HUD level during review of the plan. Pursuant to the citizen-participation requirements, members of the public have the right to file written complaints with the local jurisdiction, and the locality must provide a timely written response.²⁶ Complaints *p195* usually take the form of a letter or memorandum and relevant attachments.

When determining, at the HUD-review stage, whether a plan is "substantially complete" under the CHAS law and regulations, HUD directs its staff to consider citizen complaints filed with the local jurisdiction.^{27/} With respect to review of CDBG-funded activities, HUD may consider, in addition to information from the jurisdiction, information from other sources, "including litigation, citizen comments."^{28/} Consequently written complaints to the local government can play a critical role in shaping the contents of the final consolidated plan or annual updates.

Although filing administrative complaints directly with HUD is not provided for in the CHAS or CDBG law, HUD investigates and responds to complaints from individuals and groups. If a complaint is filed during plan preparation, it serves as an early warning to HUD of potential problems and of the level of citizen interest. If a complaint is filed at submission of the plan, update, or performance report, it helps focus HUD's review and possibly elevate the level of scrutiny given to the jurisdiction. Filing an administrative complaint directly with HUD can range from simply sending HUD a copy of the analysis a citizen submits to the locality, to writing a letter directly to HUD, or to preparing an "administrative complaint" in the form of a pleading. The complaint should be sent to the local or regional HUD office where the jurisdiction files its consolidated plan.^{29/}

Filing a complaint directly with HUD is especially important if a community has failed at adequate citizen participation--through the failure either to adopt an adequate citizen-participation plan or to follow the plan or the federal regulations. Full citizen involvement, particularly of low-income persons, is critical to the development of an adequate plan or an accurate performance report. It is also critical to building an effective record upon which to base an administrative or judicial challenge.

V. Judicial Review

Judicial enforcement may become necessary when an administrative complaint is unsuccessful or when prompt court intervention is essential to prevent an irreparable violation of the statutes or regulations.^{30/}

A. Right of Action

If HUD fails to address individual complaints regarding inadequate citizen participation, litigation may be the only recourse to ensure adequate public involvement in the development of the consolidated plan. Likewise, if the jurisdiction or HUD allocates funds inconsistent with the consolidated plan or annual action plan, or in accordance with a clearly inadequate plan, only a court order may prevent misappropriation of the funds.

1. Violation of Federal Statutes and Regulations

Generally a right of action to enforce federal statutory obligations exists if **p196** Congress intended it.^{31/} The burden is on the plaintiff to demonstrate congressional intent.^{32/} In the context of the consolidated plan Congress obviously intended that the CHAS law be judicially enforceable because it included the express references to judicial

actions. Section 108(c) of the CHAS law authorizes judicial review of the consolidated plan's housing strategy and limits review to determination of whether "the process of development and content of the strategy are in substantial compliance with the requirements of the Act."^{33/} This means that the failure of the local government to comply with any of the statutory mandates related to citizen participation or substance, including the required certifications, is expressly subject to attack in the courts. One aspect of the housing strategy is not reviewable--"the adequacy of information submitted under section 105(b)(4) [the assessment of regulatory barriers]."^{34/} However, by implication, the adequacy of information of the balance of the content of the housing strategy is reviewable.

The only question is whether a particular plaintiff is the intended beneficiary of the obligations under the CHAS or CDBG law. Given the extremely broad objectives, policies, and purposes of the law, both individuals in the community and community-based groups should have a strong argument that they are intended beneficiaries.^{35/}

2. Section 1983

Section 1983 of the Reconstruction Civil Rights Acts provides a right of action when rights established by the Constitution or federal law are violated by persons or government entities acting under color of state law.^{36/} This right of action is in addition to any that may exist under the particular law in question. Because Section 1983 provides an express right of action, a law presumably may be enforced under Section 1983. Hence defendants bear the burden of establishing that Congress intended to prohibit enforcement pursuant to Section 1983.^{37/} Consequently plaintiffs should always plead a Section 1983 claim when attacking the violation of the consolidated plan statutes. Section 1983 furnishes a wide range of legal and equitable remedies, and a successful litigant is entitled to attorney fees under 42 U.S.C. Sec. 1988.

Wright v. Roanoke Redevelopment and Housing Authority made it clear that **p197** federal regulations are enforceable under Section 1983.^{38/} In Wright the Court found that regulations implementing the Brooke Amendment^{39/} were mandatory and therefore enforceable.^{40/} The consolidated plan regulations should likewise be enforceable via Section 1983 to the extent the language mandates actions, procedures, or standards.

Defendants in consolidated plan litigation may argue that Congress intended to preclude enforcement under Section 1983 because the Act and regulations provide for HUD oversight and expressly refer to judicial actions. But the Court held in Wright that HUD's power to defund through a nonadversarial administrative process was insufficient to demonstrate congressional intent to foreclose Section 1983 actions.^{41/} Moreover, while the Act acknowledges the prospect of judicial enforcement, it does not indicate that an action based on violation of the statute itself provides the exclusive vehicle for enforcement.^{42/}

3. The Administrative Procedure Act.

The Administrative Procedure Act (APA)^{43/} authorizes a private right of action to sue federal government agencies by those aggrieved by an agency's acts or omissions.^{44/} The court may set aside an action that is inconsistent with the agency's statutory or regulatory duties or an abuse of discretion.^{45/} Therefore consolidated plan plaintiffs should always include an APA claim when suing HUD.^{46/}

4. Noncompliance with the Fair Housing Laws

In addition to the requirement that the consolidated plan contain a certification that the jurisdiction has conducted an analysis of impediments to fair housing choice, the inadequate preparation and content of a consolidated plan can be attacked as a violation of the Fair Housing Act^{47/} and Title VI of the Civil Rights Act of 1964.^{48/} As discussed in another article in this issue, a prima facie case of discrimination can be shown under these laws by demonstrating that the jurisdiction's noncompliance with the consolidated plan statutes or regulations has a disparate impact on any of the protected classes.^{49/} Consequently, because in many communities a disproportionate number of low-and very low-income households in need of affordable housing are racial or ethnic minorities or families with children, the failure of a locality to allow for adequate citizen participation of poor households, or the preparation of a consolidated plan that is substantially incomplete, would have a disparate impact on those protected classes.

p198

B. State or Federal Court

State courts are generally presumed to have concurrent jurisdiction over federal causes of action.^{50/} In this respect the consolidated plan Act expressly contemplates judicial actions filed in state court.^{51/} Of course, defendants can remove actions to federal court if the action contains a federal question over which the federal court would have original jurisdiction.^{52/} HUD, as a federal agency, may remove to federal court an action in which it is a defendant.^{53/}

In litigation involving a state-consolidated plan, a state agency may be a necessary party. This, in theory, would present an Eleventh Amendment problem if the suit were brought in federal court. However, because the relief sought is primarily prospective, the Eleventh Amendment prohibition against suing a state can be successfully avoided by suing the appropriate state officials in their official capacities.^{54/}

In addition to the federal claims described below, individual states' laws may provide an independent cause of action against state or local government or officials.^{55/} Given that such claims would derive from the jurisdiction's violation of the federal consolidated plan laws, federal courts could exercise pendent jurisdiction. However, if the state claims rely on more liberal state standing or other jurisdictional requirements, a federal court may remand those causes of action as failing to meet federal court subject-matter jurisdiction prerequisites.^{56/} Including a state claim against a state official in a federal court action involving a state consolidated plan risks dismissal under the Eleventh Amendment, although the federal law claims would survive.^{57/} Alternatively an action based on state

claims against the state may be brought in state court. Plaintiffs should resort to this option only if the state forum is not appreciably less favorable than the federal forum.

C. Defendants

Whether to name HUD in litigation alleging violation of the consolidated plan statutes depends primarily upon the relief sought and secondarily on the extent to which plaintiffs have developed a constructive relationship with HUD. When the local government violates the pre-HUD review, citizen participation, or procedural requirements, naming HUD is unnecessary (and probably improper). Similarly a challenge to the jurisdiction's implementation of an adopted plan does not require inclusion of HUD. However, when attacking the substance of an adopted plan, whether approved by HUD or not, plaintiffs must name HUD if they seek an order suspending the expenditure of any federal funds. And, of course, HUD's approval of an inadequate plan or performance report may warrant a direct attack on HUD's decision.

Even though the statutes generally afford HUD discretion in approval and monitoring of consolidated plans, litigants should not be deterred from suing the agency. The standard of review is sufficient to permit successful attack of any HUD action that runs contrary to the specific statutory or regulatory provisions or is without factual basis.

D. Eleventh Amendment Considerations

Challenging a state's role in development or adoption of a state consolidated plan presents Eleventh Amendment problems. Although federal court often is a more sympathetic forum for litigating a **p199** case against a state or state officials, the Eleventh Amendment precludes suing a state in federal court. However, in *Ex parte Young*,^{[/58/](#)} the Supreme Court holds that the Eleventh Amendment does not prevent actions seeking prospective injunctive relief to prohibit violation of federal law against state officials acting in their official capacity.^{[/59/](#)}

When confronted with a federal court action, state officials may argue that, despite *Ex parte Young*, the Eleventh Amendment bars suit against them if plaintiffs seek withdrawal of federal assistance or other remedial relief. The state defendants may contend that such relief goes beyond the prospective injunctive relief permitted by *Young* and improperly seeks monetary relief or relief requiring payment from the state treasury.^{[/60/](#)} But "relief that serves directly to bring an end to a present violation of federal law is not barred by the [Eleventh Amendment] even though accompanied by a substantial ancillary effect on the State Treasury."^{[/61/](#)} Moreover, while the Eleventh Amendment precludes monetary relief to plaintiffs for past harm, it does not preclude an order requiring state officials to expend money to carry out remedial programs necessary to implement prospective injunctive relief.^{[/62/](#)} In consolidated plan litigation, enjoining the expenditure of federal funds may be essential to effective implementation of an injunction compelling the state jurisdiction to comply with the statutes or regulations.

E. Standing

Any individual or group must meet the Article III standing requirement of "injury in fact." This means that plaintiffs must allege that they have suffered "a distinct and palpable injury" as result of the local jurisdiction's noncompliance with the consolidated plan statutes or regulations.⁶³ To meet this test, the plaintiff must have suffered actual or threatened injury that "fairly can be traced" to the defendant's action and "is likely to be redressed by a favorable court decision."⁶⁴ In other words, there must be injury, causation, and remedy.⁶⁵

1. Individual Standing

Any individual who would directly benefit from compliance with a particular aspect of the plan requirements should have standing to challenge the failure to comply with those parts. For instance, any citizen "and other interested parties" are injured when the local government fails to comply with the citizen-participation requirements. Section 108(c) of the CHAS law clearly gives the courts the power to redress the inadequacies by ordering the local government to comply with the law substantially.⁶⁶

Arguably, because the purposes of the statutes are so broad, any very low-, low-, or moderate-income resident, or even would-be resident, in need of affordable housing suffers the requisite injury when a locality adopts a legally **p200** inadequate consolidated plan.⁶⁷ The actual or threatened injury is the loss of federal housing funds or inappropriate allocation of those funds due to the jurisdiction's preparation and submission of an unsatisfactory plan. However, a court may decide that such a general injury is insufficient to establish the requisite "distinct and palpable" harm. The general interest of citizens or taxpayers in ensuring that government obeys the law has been held too remote or abstract to meet this standard.⁶⁸

One way to address the prerequisite of direct and concrete injury is to meet it head on. Allege specific rather than general harm. For example, rather than simply alleging that a plaintiff is in need of affordable housing, allege that plaintiff would apply and qualify for housing that would be developed if the consolidated plan contained an adequate housing strategy.⁶⁹

2. *Organization or Group Standing*

An organization must meet the same standing requirements as an individual; that is, it must suffer direct immediate or threatened injury as a result of violation of the consolidated plan statutes or regulations. It may establish this standing by showing that it is injured in its own right or that it is a representative of its members who have or will suffer specific injury.⁷⁰

To establish standing as a representative, the organization must allege that its members have suffered sufficient injury and that the interests it seeks to protect are within the organization's **p201** corporate purpose.⁷¹ While neither all nor even a substantial number of the organization's members need to face injury, individuals must be actual members of the organization.⁷² Practically speaking, then, to achieve standing in a

representative capacity, an organization must demonstrate injury to specific members sufficient to establish standing for those members as individuals.[/73/](#)

An organization may establish standing also by alleging injury to itself. Direct economic harm is sufficient.[/74/](#) but this may be difficult to show in a case alleging violation of the consolidated plan laws. Much easier to demonstrate is the claim that an inadequate consolidated plan threatens direct economic harm more to individual members of a tenant or community group than to the group itself. However, a court may find standing if the group can allege either that a specific project or program of the organization is jeopardized or that it was forced to devote significant resources to counteract the violation of the consolidated plan laws.[/75/](#)

F. Ripeness, Exhaustion of Administrative Remedies, and Mootness

Timing of litigation is critical. If suit is brought prematurely, plaintiffs risk dismissal due to lack of ripeness or failure to exhaust administrative remedies. On the other hand, delayed filing can result in the inappropriate allocation of precious housing and community development funds. And, although a plaintiff may have standing at the outset of the litigation due to a present violation of the consolidated plan laws, the claim may become subject to dismissal due to mootness if HUD or the jurisdiction corrects the violation during litigation.

Where government agency decisions are concerned, the doctrines of ripeness and exhaustion of administrative remedies overlap. An issue is ripe when the agency action is final or when it is one of law such that nothing further is needed by the court to render a final decision.[/76/](#) Similarly the purpose of the doctrine of exhaustion of administrative remedies is to ensure that governmental agencies are allowed to complete their processes without premature interference so that they can lend their expertise and compile a record adequate for judicial review.[/77/](#) The exhaustion doctrine has been successfully invoked against HUD in a suit challenging the 1987 statute restricting prepayment on low-income housing loans.[/78/](#) The court found that HUD had an obligation to review the prepayment plan in question and the power to grant the plaintiff the relief sought in court--the right to prepay.[/79/](#)

In consolidated plan litigation, whether an action is ripe or whether there is a duty **p202** to exhaust depends, first, on the procedures of the local legislative body and, second, on the nature of the violation challenged. If the substance of the plan (or one of the corollary plans, e.g., the citizen-participation plan) is to be attacked as inadequate, the claim is ripe when the plan is adopted.[/80/](#) If a jurisdiction argues that the court should await HUD's determination, plaintiffs should argue that they are not challenging HUD's action and that the statute expressly limits the extent of preliminary relief available once HUD approves a plan.[/81/](#) Moreover, there is no duty to exhaust because, unlike the HUD prepayment plan procedure, no administrative procedure is available to individuals or groups to challenge the validity of the plan.[/82/](#) Likewise, if challenging the legality of HUD's approval of the plan, the claim is ripe when the approval is final because there are no formal administrative remedies to exhaust.[/83/](#)

If the transgression is the failure to follow the statutorily prescribed procedures in adoption or implementation of a plan, then there are no administrative remedies to exhaust and the claim is ripe when the procedures are violated.

When attacking compliance with or implementation of a consolidated plan, the locality or HUD may argue (although there are no formal administrative remedies available to individuals or groups) that the suit is not ripe until HUD completes its annual performance review. Some courts may agree because they may not want to interfere with HUD's review process or because HUD's review can result in an administrative order curing the alleged violation or can give the court the benefit of HUD's expertise.^{84/}

Generally a claim for injunctive relief--which usually is the primary relief sought in most consolidated plan litigation^{85/} --becomes moot when the illegal conduct or practice is terminated and is unlikely to recur.^{86/} In consolidated plan litigation the most likely scenario is that the local jurisdiction amends its plan or HUD approves the plan and allocates funds soon after the litigation is filed.

When the jurisdiction amends its plan to correct the alleged inadequacy, the claim is arguably moot unless plaintiffs can show that the jurisdiction is somehow likely to adopt a similarly inadequate plan in the future. After HUD disburses funds or the jurisdiction allocates the funds, a claim is moot unless the expenditure of the funds can still be restrained or the expenditure of future allocations to remedy the misappropriation can be enjoined.^{87/} However, if the jurisdiction's conduct is capable of repetition yet evading review--as would be the case when the improper action is based on a misinterpretation of a statute or regulation--at the very least a claim for declaratory relief should survive. The jurisdiction may very **p203** well revert to violation when completing the next annual update, and the period for participating in the development of the update is too short for the judicial review process to protect the statutory mandates effectively.^{88/}

G. Standard of Review

As explained above, the CHAS law provides that court review of the consolidated plan's housing strategy be limited to determining whether the development and content "are in substantial compliance with the requirements of the Act."^{89/} "Substantial compliance" is otherwise undefined, but should be distinguished from the "substantial evidence" standard often used in reviewing the factual determinations of trial courts or administrative bodies.^{90/} "Substantial compliance" most logically means actual compliance with each substantive provision of the statutes and regulations.^{91/} In this regard a court's scope of review should parallel HUD's. Thus if a plan is inconsistent with the purposes of the CHAS law, is "substantially incomplete,"^{92/} or lacks the required certifications, a court, as would HUD, may find that the plan does not substantially comply with the statute or regulations and disapprove it.^{93/} could the court then may issue appropriate injunctive relief compelling the completion of an adequate plan and enjoining expenditure of funds where necessary.

Under an APA claim a court must "hold unlawful and set aside agency action, findings, and conclusions" found not to meet APA-specified standards.⁹⁴ The APA standard of review of HUD actions is generally whether the agency's action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or whether the action fails to meet statutory, procedural, or constitutional requirements.⁹⁵ In determining whether HUD abused its discretion, a court must consider whether "the decision was based on consideration of the relevant factors and whether HUD made a clear error in judgment."⁹⁶ Under an APA claim, **p204** therefore, even if HUD can show that it achieved substantial facial compliance with the consolidated plan statute and regulations, plaintiffs nevertheless may be able to establish that HUD's action ignored clearly relevant factors (e.g., a housing strategy contains programs that only symbolically address a significant identified need).⁹⁷

Certain states also may have APA-like statutes setting forth a state standard for reviewing the actions of local government agencies.

H. Relief

For many reasons plaintiffs should strive for a settlement and consent decree before resorting to the courts. Because the Act and the regulations contemplate a relatively narrow and unimaginative scope of relief--injunctive orders compelling compliance or enjoining expenditure or distribution of funds--settlement makes possible addressing with much more precision clients' particular concerns. This course also avoids the uncertainty of a court decision and recognizes that courts, lacking expertise in the intricacies of the consolidated plan process, may be easily convinced to defer to HUD's or the local government's conclusions.⁹⁸

However, even where settlement is a possibility, moving for preliminary injunctive relief is likely to become necessary. The plan development and approval process is fairly short, and the potential loss or misappropriation of scarce yet relatively substantial housing and community development funds is great. In this respect, during the pendency of a lawsuit the CHAS law limits the court's injunctive powers to some extent. First, a court may not preliminarily enjoin "activities taken by the jurisdiction to implement an approved housing strategy."⁹⁹ By implication, if HUD has not approved a housing strategy, a court may enjoin the locality from implementing the inadequate portions of the strategy until the plan is brought into substantial compliance. Plaintiffs may argue that the court retains the power to enjoin activities if it finds, pursuant to a preliminary injunction motion, that plaintiffs are likely to **p205** succeed on a claim that the approval is unlawful.¹⁰⁰

The CHAS law also provides that "any housing assisted during the pendency of such action shall not be subject to any order of the court. . . ."¹⁰¹ This limitation seems to restrict both preliminary and final relief. However, nothing in the law precludes a court from issuing a final order that affects housing to be assisted after the conclusion of the litigation even if assisted pursuant to an approved consolidated plan. The statute's

prohibition on enjoining activities taken pursuant to an approved plan applies only while the suit is pending./102/

Thus timing is very important. If a submitted plan proposes inappropriate activities or allocation of funds, plaintiffs should file suit and seek a preliminary injunction before HUD completes the approval process./103/ However, even if HUD has approved the plan, the court may find the approval unlawful in one or more respects and, pursuant to the statutory provisions that prohibit appropriation of funds absent an adequate plan, order the jurisdiction to refrain from expending particular funds for future activities and order HUD to withhold or recoup funds./104/ With respect to CDBG-funded activities, the court may award relief commensurate with that available to HUD. The CDBG regulations authorize HUD to order, among others, the preparation and implementation of a new schedule of actions for carrying out activities, the cancellation or revision of activities, the reprogramming of funds, the suspension of disbursement of funds, the repayment of improperly expended funds, and the allocation of future funds conditioned on corrective action./105/

When implementation or performance of an adopted consolidated plan is challenged, a court's discretion to grant preliminary or permanent relief may be more expansive than when the development process and content are attacked. Although the CHAS statute limits review of "a housing strategy" to examining the process and the substance, it does not preclude review of performance under an adopted housing strategy./106/ Moreover, the CHAS and CDBG statutes mandate that the jurisdiction submit a satisfactory performance report and that HUD review the report for adequacy, and they give HUD the discretion to suspend, withdraw, or recoup funds if the report is unsatisfactory./107/ Therefore, pursuant to a statutory, Section 1983, or APA claim, plaintiffs can request that a court enjoin the jurisdiction or HUD from further expenditure or allocation of funds until a satisfactory performance report is submitted. Whether a report is satisfactory should depend on both whether the report is complete and whether the performance described is in compliance with the consolidated plan. *p206*

VI. Conclusion

Although the statutes and regulations grant local governments and HUD wide latitude in the adoption and implementation of consolidated plans, many situations afford concrete opportunities for effective administrative or judicial enforcement. Considering the amount of money at stake, legal services and other poverty law attorneys need to be prepared to enforce the consolidated plan obligations as the plans for the next five-year period are developed and implemented. *p207*

Footnotes¶

/1/The Department of Housing and Urban Development (HUD) consolidated plan obligations are explained and analyzed in Ed Gramlich's Consolidated Plan and Community Development Block Grant Advocacy, in this issue. This article is intended to be read in conjunction with Gramlich's.

/2/The consolidated plan is due 45 days prior to the beginning of the jurisdiction's program year, which was determined by the jurisdiction when it submitted its first five-year plan in 1995 (however, HUD will not accept a submission later than August 16 because that is the statutory deadline for appropriation of Community Development Block Grant (CDBG) funds). 24 C.F.R. Sec. 91.10, 91.15.

/3/See generally Gramlich, *supra* note 1.

/4/Cranston Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, 104 Stat. 4079 (1990) (codified as 42 U.S.C. Secs. 12701 et seq.). Title I of the Act requires jurisdictions to submit a comprehensive housing affordability strategy (CHAS) as a precondition to receiving federal housing assistance, including assistance under the CDBG program, the McKinney Homeless Assistance Act, and the Home Investment Partnership Act. 42 U.S.C. Sec. 12705. See generally *State and Local Housing Strategies* (Title I), 21 HOUS. L. BULL. 1-6 (Jan.-Feb. 1991).

/5/Housing and Community Development Act of 1974, Pub. L. No. 93-303, 88 Stat. 633 (codified at 42 U.S.C. Secs. 5301 et seq.), which established the CDBG program.

/6/24 C.F.R. pts. 91, 570.

/7/42 U.S.C. Sec.12705(a) (emphasis added).

/8/*Id.* Sec. 5304.

/9/*Id.* Sec. 5304.

/10/42 U.S.C. Sec. 5311 permits the Secretary to refer matters of CDBG law noncompliance to the Attorney General to institute civil actions. For local jurisdictions this section also provides for expedited appellate review in the U.S. courts of appeals of HUD administrative hearing decisions terminating or reducing a jurisdiction's CDBG grant. See *Kansas City, Mo. v. HUD*, 669 F. Supp. 525, 527 (D.D.C. 1987).

/11/42 U.S.C. Secs. 12708(a), 5304(e).

/12/*Id.* Sec. 12708(c).

/13/*Id.* Sec. 12705.

/14/24 C.F.R. Sec. 91.500(b) (standard of review).

/15/*Id.*

/16/*Id.* Sec. 570.302-.304.

/17/Id. Secs. 91.225 (local jurisdictions), 91.325 (states), 91.425 (consortia), 570.601 (regarding fair housing), 570.903(b) (regarding following the consolidated plan). See Gramlich, supra note 1.

/18/24 C.F.R. Sec. 91.500(c).

/19/42 U.S.C. Sec. 12708(a).

/20/Id. subsection (b); 24 C.F.R. Sec. 91.525.

/21/24 C.F.R. Sec. 91.525.

/22/42 U.S.C. Sec. 5304(e)(1).

/23/Id. Sec.5304(e)(2). However, as explained in note 10, supra, HUD must give notice and hearing to the jurisdiction before terminating or reducing payments, and the jurisdiction may petition to a U.S. court of appeals. 42 U.S.C. Sec. 5311(a), (c). To the Attorney General HUD may refer the matter with a recommendation that a civil action be instituted in district court. 42 U.S.C. Sec. 5311(b).

/24/24 C.F.R. Secs. 570.901-.905.

/25/Id. Sec. 570.903(b), (c).

/26/Section 107(d) of the CHAS law (42 U.S.C. Sec. 12707(d)); section 104(a)(3)(E) of the CDBG law, 42 U.S.C. Sec. 5304(a); 24 C.F.R. Secs. 91.105(j) (local), 91.115(h) (states), 570.486(a)(7) (small cities).

/27/U.S. DEPT' OF HOUS. & URBAN DEV., HUD GRANTS MANAGEMENT POLICY NOTEBOOK 8 (199). Edwin: author couldn't get this for me right now-he is on vacation. I'll try to get it from him when he returns from Bermuda. mmn

/28/24 C.F.R. Sec. 570.900(b)(3).

/29/For a discussion of administrative relief strategies see NATIONAL HOUS. LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS RIGHTS Sec. 16.1 (1992).

/30/Although no cases have been reported as dealing directly with enforcement of the CHAS law or the consolidated plan regulations, many cases address compliance with the much older CDBG law, and the analyses if not the holdings of many of these decisions are applicable to consolidated plan litigation. See, e.g., the cases cited infra in notes 35, 67-73, 78, 82, 87, 91, 103, and 105. See also An Advocacy Guide to the Community Development Block Grant Program, 12 CLEARINGHOUSE REV. 663-75 (Jan. 1979) (discussing the litigation strategies under the former CDBG statutes and regulations), and Litigation Strategies and Judicial Review Under Title I of the Housing and Community Development Act of 1974, 2 URBAN L. ANN. 37 (1976).

/31/NATIONAL LEGAL AID & DEFENDER ASS'N, FEDERAL PRACTICE MANUAL FOR LEGAL SERVICES ATTORNEYS 157-67 (1989) [hereinafter FEDERAL PRACTICE MANUAL] (discussing the test set forth in *Court v. Ash*, 422 U.S. 66 (1975), as affected by *Wright v. Roanoke Redev. & Hous. Auth.*, 479 U.S. 418 (1987)). See also NATIONAL HOUS. LAW PROJECT, *supra* note 29, Sec. 16.41-43.

/32/FEDERAL PRACTICE MANUAL, *supra* note 31.

/33/42 U.S.C. Sec. 12708(c) (emphasis added).

/34/*Id.* See FEDERAL PRACTICE MANUAL, *supra* note 31.

/35/See, e.g., section 103 of the CHAS law, 42 U.S.C. Sec. 12703, which provides that the purposes of the law include preservation of subsidized housing, extending partnerships between government and nonprofit organizations in the production and operation of low-income housing, expanding rental assistance, and increasing the supply of supportive housing, and discussion of section 101(c) of the CDBG law, 42 U.S.C. Sec. 5301(c), *infra* note 67. See also *Strykers Bay Neighborhood Council Inc. v. New York*, 695 F. Supp. 1531 (S.D.N.Y. 1988) (Clearinghouse No. 28,565) (in which a neighborhood group failed to state a statutory claim adequately because it failed to allege that grants were made pursuant to the CDBG statute); *Montgomery Improvement Ass'n Inc. v. HUD*, 645 F.2d 291, 294 (5th Cir. 1981) (Clearinghouse No. 22,413) (finding a right of action for plaintiffs alleging discriminatory impact of expenditure of CDBG funds in violation of the nondiscrimination certification requirement of 42 U.S.C. Sec. 5304(a)(5), (b)(4)); *Nabke v. HUD*, 520 F. Supp. 5, 8 (W.D. Mich. 1981). But see *Latinos Unidos de Chelsea en Accion v. Secretary of HUD*, 799 F.2d 774 (1st Cir. 1986) (Clearinghouse No. 25,380) (finding no right of action under the CDBG law).

/36/42 U.S.C. Secs. 1981-88.

/37/See FEDERAL PRACTICE MANUAL, *supra* note 31, at 126-34; NATIONAL HOUS. LAW PROJECT, *supra* note 29, Sec. 16.37-38; *Wright*, 479 U.S. at 423-32.

/38/*Wright*, 479 U.S.418.

/39/42 U.S.C. Sec. 1437a(a); implementing regulations 24 C.F.R. Secs. 913, 965.

/40/*Wright*, 479 U.S. at 429-32.

/41/*Id.* at 426-28.

/42/42 U.S.C. Sec. 12708(c). The subsection primarily addresses the extent of permissible judicial review and places limitations on available remedies, but it does not indicate a basis for which an action may be brought.

/43/Administrative Procedure Act, 5 U.S.C. Secs. 701 et seq.

/44/Id. Sec. 702.

/45/Id. Sec. 706(2)(C), (A). See *infra* sec. V.G.)

/46/See generally NATIONAL HOUS. LAW PROJECT, *supra* note 29, Sec. 16.38-41; *Pleune v. Pierce*, 697 F. Supp. 113 (E.D.N.Y. 1988) (Clearinghouse No. 42,180) (residents' challenge of HUD's grant approval dismissed for failure to bring an Administrative Procedure Act (APA) claim).

/47/ Civil Rights Act of 1968, tit. 8, 42 U.S.C. Secs. 3604 *et seq.*

/48/Id. Secs. 2000(d) *et seq.* See *Muñoz-Mendoza v. Pierce*, 520 F. Supp. 180 (D.C. Mass. 1981) (Clearinghouse No. 30,650).

/49/See Laurie Lambrix & Louis Prieto, *How to Use Fair Housing Laws to Achieve Your Community Development Goals*, in this issue. See also SCHWEMM, *HOUSING DISCRIMINATION: LAW AND LITIGATION* Secs. 10.4, 13.4(3)(c) (Clark Boardman Callaghan 1997).

/50/See generally FEDERAL PRACTICE MANUAL, *supra* note 31, at 220-22.

/51/42 U.S.C. Sec. 12708(c) ("any Federal, State, or other court . . .").

/52/28 U.S.C. Sec. 1441.

/53/Id. Sec. 1442.

/54/See discussion *infra* sec. V.D.

/55/E.g., in California, CAL. CIV. CODE Sec. 1085 (West 1997) provides a writ-of-mandamus cause of action for citizens seeking to compel a state or local official to exercise a mandatory duty properly.

/56/28 U.S.C. Sec. 1447(c).

/57/*Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984) (Clearinghouse No. 12,902); FEDERAL PRACTICE MANUAL, *supra* note 31, at 327-29.

/58/*Ex parte Young*, 209 U.S. 123 (1908).

/59/See generally FEDERAL PRACTICE MANUAL, *supra* note 31, at 312-25.

/60/Id. See also *Edelman v. Jordan*, 415 U.S. 651 (1974) (Clearinghouse No. 5000) (in which the Court upheld injunctive relief compelling a state to comply with federal welfare laws but reversed an award of retroactive benefits).

/61/Papasan v. Allain, 478 U.S. 265 (1986).

/62/FEDERAL PRACTICE MANUAL, supra note 31, at 319-22; Milliken v. Bradley, 433 U.S. 267 (1977) (Clearinghouse No. 6632).

/63/See Warth v. Seldin, 422 U.S. 490, 501 (1975) (Clearinghouse No. 12,739).

/64/Valley Forge Christian College v. Americans United for Separation of Church & State Inc., 454 U.S. 464, 472 (1982).

/65/See generally FEDERAL PRACTICE MANUAL, supra note 31, at 230-53.

/66/See 42 U.S.C. Secs. 12707-8.

/67/See sections 102-3 of the CHAS law ("to ensure that every resident of the United States has access to decent shelter . . ."; "to improve housing opportunities for all residents of the United States . . .") (42 U.S.C. Secs. 12702-3) and sections 101-2 of the CDBG law (" [t]he primary objective of this title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities principally for persons of low and moderate income. . .") (42 U.S.C. Sec.5301(c)). See also the cases cited in note 69 infra.

/68/Warth, 422 U.S. at 500; Knoxville Progressive Christian Coalition v. Testerman, 404 F. Supp. 783 (E.D. Tenn. 1975) (taxpayer interest is insufficient to attack release of CDBG funds to allegedly ineligible projects).

/69/See Huntington Branch NAACP v. Huntington, 689 F.2d 391 (2d Cir. 1982), cert. denied, 460 U.S. 1069 (1983) (low-income minority residents of central city had standing to attack suburban city's CDBG application when they alleged that they could expect to reside in the city; application contained "zero" in goals for new construction or rehabilitation of rental housing, yet funding for such housing could become available); Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977) (Clearinghouse No. 15,716) (in which the court found that a prospective tenant of a disapproved affordable housing development had standing to challenge exclusionary zoning actions where tenant allegedly would have qualified for the proposed housing and applied for tenancy); Philadelphia Welfare Rights Org. v. Embry, 438 F. Supp. 434 (E.D. Pa. 1977) (Clearinghouse No. 21,303); NAACP v. Hills, 412 F. Supp. 102 (N.D. Cal. 1976) (in which tenants living in substandard units challenged a community development application alleging that the deficiencies in the application denied them the opportunity to secure habitable housing); Comer v. Cisneros, 37 F.3d 775 (2d Cir. 1994) (Clearinghouse No. 45,360) (Section 8 eligible applicants have standing under APA even though it was not certain they would receive Section 8 benefits; discriminatory administration was injurious in itself); DeLoss v. HUD, 822 F.2d 1460 (8th Cir. 1983) (holding that owners of rental property suitable for housing low-income seniors had standing under APA to challenge HUD's decision to fund a Section 202 project), citing Lower Moreland Homeowners Ass'n v. HUD, 479 F. Supp. 886, 896 (E.D. Penn. 1979) (Clearinghouse

No. 28,148) (regarding the CDBG law, "While the principal beneficiaries of the Act are persons of low and moderate income, it is clear that the statute's purpose is to improve the quality of urban environments for all residents.").

/70/FEDERAL PRACTICE MANUAL, supra note 31, at 245-49.

/71/See *Hunt v. Washington State Apple Growers Comm'n*, 432 U.S. 333 (1977); *Lower Moreland Homeowners Ass'n*, 479 F. Supp. 886 (homeowners' association had standing to challenge a senior citizen project where the injury alleged included impairment of property values, esthetic harm, and increased traffic because these interests are within the "zone of interests" the CDBG law seeks to protect).

/72/FEDERAL PRACTICE MANUAL, supra note 31, at 246 n.57. However, at least two cases find that organizations have standing to represent individuals who are not members. See *NAACP v. Harris*, 567 F. Supp. 637, 640-43 (Mass. 1983); *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972). But see *Coalition for Block Grant Compliance v. Hills*, 450 F. Supp. 43 (E.D. Mich. 1978) (Clearinghouse No. 20,825) (in which organization was denied standing because it was comprised of other organizations).

/73/In *Yesler Terrace Community Council v. Cisneros*, 37 F.3d 442 (9th Cir. 1994) (Clearinghouse No. 48,081), the court held that both a tenant organization and individual tenants had standing to attack HUD's determination that public housing authorities in Washington need not provide grievance hearings in drug-related evictions even though the eviction notices for the individual tenants were withdrawn.

/74/FEDERAL PRACTICE MANUAL, supra note 31, at 248.

/75/In *Arlington Heights*, 429 U.S. 252, 262-63, the Court found that a nonprofit development corporation's social interest in developing an affordable housing project for which the city had refused to rezone property was enough to establish direct injury. In *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (Clearinghouse No. 30,718), the Court found adequate injury to provide standing when an organization alleged that it had expended resources to stop discriminatory practices and that the practices hindered its efforts to provide housing counseling and referral services.

/76/See FEDERAL PRACTICE MANUAL, supra note 31, at 262-64.

/77/*Weinberger v. Salfi*, 422 U.S. 749, 765 (1975) (Clearinghouse No. 11,356).

/78/*Thetford Properties IV Ltd. Partnership v. HUD*, 907 F.2d 445 (4th Cir. 1990) (Clearinghouse No. 44,241).

/79/*Id.* at 449.

/80/Coalition for Block Grant Compliance, 450 F. Supp. 43 (challenge of a CDBG application as inadequate was ripe because application was final).

/81/See discussion of relief, sec. V.H., *infra*.

/82/Coalition for Block Grant Compliance, 450 F. Supp. at 43; *Williams v. St. Louis*, 783 F.2d 114, 117 (8th Cir. 1986); *Montgomery Improvement Ass'n*, 645 F.2d 291, 299; *Hills*, 412 F. Supp. at 102, 106.

/83/See cases cited in note 69, *supra*.

/84/*Id.*; see also *Coalition for Block Grant Compliance*, 450 F. Supp. at 43.

/85/See discussion of relief, sec. V.H., *infra*.

/86/See generally *FEDERAL PRACTICE MANUAL*, *supra* note 31, at 264-72.

/87/See *City of Houston v. HUD*, 24 F.3d 1421 (D.C. Cir. 1994) (in which the court found that when the HUD appropriation had lapsed or been fully obligated, the court lacked the authority to award retroactive monetary relief under APA; however, where violation of the CHAS or CDBG laws continues, HUD's control of current and future funds gives the agency-and the court-"leverage to remedy past and current noncompliance"). *NAACP Boston Chapter v. Kemp*, 721 F. Supp. 361, 367 (D. Mass. 1989) (distinguishing *South East Lake View Neighbors v. HUD*, 685 F.2d 1027 (7th Cir. 1982)). See also *Davis v. HUD*, 627 F.2d 942, 945 (9th Cir. 1980) (holding that an action challenging HUD approval of a CDBG grant was not moot because, even though the grantee had expended the funds, it could still be obligated to satisfy the unmet goals to qualify for future grants). See also discussion of relief, sec. V.H., *infra*.

/88/See *New Haven v. United States*, 809 F.2d 900 (D.C. Cir. 1987) (where an improper deferral of funding is overturned, although a claim for injunctive relief may be moot, a declaratory relief claim may survive if agency's conduct resulted from its erroneous interpretation of the statute or regulations). See also cases in note 87, *supra*.

/89/42 U.S.C. Sec. 12708(c).

/90/E.g., APA, 5 U.S.C. Secs. 701 et seq., provides for setting aside agency action not supported by the substantial evidence in specifically limited situations. 5 U.S.C. Sec. 706(2)(E).

/91/See, e.g., *Camp v. County of Mendocino Bd. of Supervisors*, 123 Cal. App. 3d 334, 348 (1981) (construing California's substantial compliance standard of judicial review for housing elements of the mandatory local general plans; the court defined substantial compliance as "'actual compliance [with] respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form . . .'" (citations omitted)).

/92/See discussion of the "substantially incomplete" standard in sec. III.A, supra.

/93/24 C.F.R. Sec. 91.500(b).

/94/5 U.S.C. Sec. 706.

/95/5 U.S.C. Sec. 706(2)(A)-(D). See generally NATIONAL HOUS. LAW PROJECT, supra note 29, Sec. 16.38-.41; FEDERAL PRACTICE MANUAL, supra note 31, at 146-57.

/96/Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1970).

/97/See *Hartford v. Hills*, 408 F. Supp. 889 (D.C. Conn. 1976), rev'd on other grounds, 561 F.2d 1032 (2d Cir. 1976), cert. denied, 434 U.S. 1034 (1978) (abuse of discretion for HUD to approve CDBG grant to seven suburban communities despite their failure to make realistic projections of influx of new low-income residents as required by the statute); *DeLoss*, 714 F. Supp. 1522 (HUD's approval of Section 202 funding was arbitrary and capricious under APA where HUD misapplied its own policies and methodology when approving the project); *Munoz-Mendoza*, 520 F. Supp. 180 (HUD cancellation of CDBG grant to city was arbitrary where HUD claimed that evidentiary submission in an administrative appeal was untimely, yet records flatly contradicted HUD's records); *Broaden v. Harris*, 451 F. Supp. 1215 (W.D. Pa. 1978) (Clearinghouse No. 22,215) (if a program is certified and HUD approves the certification, then (1) review of HUD's approval must be judged pursuant to an arbitrary and capricious standard of review and (2) review of jurisdiction's compliance with the certification is based on whether the jurisdiction is carrying out the program substantially as discussed in the CDBG application); *Coalition for Block Grant Compliance*, 450 F. Supp. 43 (E.D. Mich. 1978) (HUD approval of CDBG application was abuse of discretion when it acted without considering (1) whether the goals in the plan met the needs identified for those "expected to reside," (2) that the goals in the plan did not even meet the needs of the existing residents, and (3) that the vacancy rate in the application improperly included vacancies in housing that might not be completed before the term of the plan); *Philadelphia Welfare Rights Org.*, 438 F. Supp. at 434 (not abuse of discretion for HUD to approve CDBG application that benefited low- and moderate-income households even though only 16.7 percent of the funds were for low-income households); *Hills*, 412 F. Supp. at 102 (HUD approval of CDBG application not arbitrary even though one-third of grant was for acquisition and clearance for shopping center because center would eliminate blight and where proposed expenditures for housing-related activities were not plainly inappropriate to meet identified needs and objectives).

/98/For an excellent discussion of the factors to consider in negotiating a consent decree see FEDERAL PRACTICE MANUAL, supra note 31, at 368-83.

/99/42 U.S.C. Sec. 12708(c) (emphasis added).

/100/Hartford, 408 F. Supp. at 889 (finding that a court may preliminarily enjoin HUD from disbursing CDBG funds if it determines that the recoupment procedure pursuant to 42 U.S.C. Sec. 5311 is not sufficiently protective of interests of low-income and minority plaintiffs who live in dilapidated or prohibitively expensive housing). See generally 11 WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE Sec. 2948 (1973), for a discussion of the requirements for preliminary injunctions; NATIONAL HOUS. LAW PROJECT, supra note 29, Sec. 16.58-.65; An Advocacy Guide to the Community Development Block Grant Program, supra note 30, at 672-75.

/101/42 U.S.C. Sec. 12708(c).

/102/Declaratory relief is not proscribed either. See discussion of mootness, sec. V.F, supra.

/103/City of Houston, 24 F.3d at 1421 (holding that when an appropriation under which a plaintiff seeks relief has lapsed or has been fully obligated, courts are without authority under APA to award monetary relief; however, where violation of the CHAS or CDBG laws continues, a court probably may enjoin allocation of future funding). See NAACP Boston Chapter, 721 F. Supp. at 361, 367; cases cited in note 87, supra.

/104/42 U.S.C. Sec. 12705(a).

/105/24 C.F.R. Sec. 570.910(b). See Knoxville Progressive Christian Coalition, 404 F. Supp. at 783 (HUD may recover funds appropriated to ineligible projects).

/106/42 U.S.C. Sec. 12708(c).

/107/Id. Secs. 12708(b), 5304(e).

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