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URBAN RENEWAL RELOCATION: PROBLEMS IN ENFORCEMENT OF CONDITIONS ON FEDERAL GRANTS TO LOCAL AGENCIES

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When the government acquires property for public use, the relocation of dispossessed residents normally presents no problem. Isolated acquisitions do not flood the housing market with home seekers, and a condemnation award will usually enable an owner to purchase a new dwelling. Because of its magnitude, however, the urban renewal program has been unable to avoid two problems: finding sufficient new housing, and enabling relocatees to establish themselves in that housing. The Public Works Committee of the House of Representatives has estimated that in the near future 66,000 families¹ will be displaced annually as a result of urban renewal.² This illustrates the increasing involvement of state and federal governments in public works projects,

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¹ The word "family" will be used throughout this paper to include single persons, unless otherwise indicated.

² STAFF OF HOUSE COMM. ON PUBLIC WORKS, STUDY OF COMPENSATION AND ASSISTANCE FOR PERSONS AFFECTED BY REAL PROPERTY ACQUISITION IN FEDERAL AND FEDERALLY ASSISTED PROGRAMS, 88th Cong., 2d Sess. 272 (Comm. Print 1964) [hereinafter cited as HOUSE STUDY OF COMPENSATION], reprinted in ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESSES DISPLACED BY GOVERNMENTS 129 (1965) [hereinafter cited as ADVISORY COMMISSION REPORT]. The House Committee gave the following list of federal agencies responsible for dislocation, in order of impact: Urban Renewal Administration (now Renewal Assistance Administration); Bureau of Public Roads; Public Housing Administration; Defense Department; General Services Administration; Post Office Department; Interior Department; Tennessee Valley Authority; International Boundary and Water Commission; and the Agriculture Department.

especially urban revival, for in 1964 only 34,000 persons were thus affected.³

The problems mentioned are particularly acute in urban renewal projects because these programs only operate in "blighted areas"⁴ of largely substandard housing, where most of the residents are without the financial (and often the social) means with which to reestablish themselves elsewhere. Eighty-eight per cent of the substandard housing in the country in 1958 was occupied by families earning less than \$6,000 a year;⁵ in 1963, twenty-nine per cent of the families in urban renewal projects had incomes of less than \$2,400 a year.⁶ Because relocatees are generally poor they need low-cost housing to move into, as well as funds with which to pay the costs of moving. In addition, two-thirds of current relocatees are nonwhite,⁷ with the result that available housing, already limited to the low-cost market, is restricted still further.⁸ Finally, a 1964 study of relocation by the Census Bureau suggested that two-thirds of all relocatees, and almost three-fourths of nonwhite relocatees, were tenants rather than homeowners prior to relocation.⁹ As tenants, neither the common law nor the Constitution guarantees them any benefits from condemnation (as they do guarantee a homeowner) with which to defray the costs of moving to new neighborhoods, except release from the obligation to pay rent for the condemned premises.¹⁰

Urban renewal legislation has attempted to solve these two problems, and in the past several years Congress has also adopted the urban

³ HOUSE STUDY OF COMPENSATION 272. As of 1964, an average of 74,000 families per year were forced to move due to all government land acquisitions; the estimated number in the near future is 111,000. *Id.*

⁴ 42 U.S.C. § 1460(a) (1964).

⁵ A. SCHORR, SLUMS AND SOCIAL INSECURITY 98 (1963) [hereinafter cited as SCHORR].

⁶ Testimony of William L. Slayton, Commissioner, Urban Renewal Administration, *Hearings on Urban Renewal Before the Subcomm. on Housing, House Comm. on Banking and Currency*, 88th Cong., 1st Sess. 414 (1963) [hereinafter cited as 1963 *Urban Renewal Hearings*]. Some relocatees had incomes so low, or families so large, that even had public housing been available it would not have been open to them, since a public housing project must be able to operate on a solvent basis. See 42 U.S.C. § 1410 (Supp. II, 1966).

⁷ This reflects a downward trend. In 1957, 76% of urban renewal relocatees were nonwhite, compared with 66% in 1961. HOUSING AND HOME FINANCE AGENCY, RELOCATION FROM URBAN RENEWAL PROJECT AREAS THROUGH DECEMBER 1961, at 8 (1962) [hereinafter cited as HHFA DATA ON RELOCATION]. The percentage in 1963 was 63%. ADVISORY COMMISSION REPORT, *supra* note 2, at 25 (by computation; based on unpublished data of the Urban Renewal Administration).

⁸ See, e.g., ADVISORY COMMISSION REPORT, *supra* note 2, at 34-35.

⁹ HOUSING AND HOME FINANCE AGENCY, THE HOUSING OF RELOCATED FAMILIES: A SUMMARY OF A BUREAU OF THE CENSUS SURVEY OF FAMILIES RECENTLY DISPLACED FROM URBAN RENEWAL SITES 10 (1965) [hereinafter cited as CENSUS BUREAU STUDY].

¹⁰ Usually a lease provides that the owner's rights and obligations are terminated when the property is sold, including disposition through eminent domain proceedings. Cf. Comment, *Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses*, 67 YALE L.J. 61 (1957).

renewal pattern and authorized similar relocation assistance for other new government land acquisition programs.¹¹ Yet relocation has been called the "Achilles heel" of urban renewal,¹² and critics have charged the renewal program with everything from exporting slums to being a device for "Negro removal."¹³ Nevertheless, the renewal statute contains provisions that apparently guarantee an improvement in the situation of those relocated. Why these provisions have failed presents an interesting study in the roles of an administrative agency and the courts in implementing a statutorily imposed condition on federal grants to independent local agencies.

I. THE RELOCATION STATUTE AND ITS EFFECTS

A. *Rehousing Requirements*

The basic urban renewal statute was enacted as Title I of the Housing Act of 1949.¹⁴ Provisions of the urban renewal title anticipated the problem of supplying a sufficient number of replacement housing units for those cleared under its slum clearance section. Two solutions were adopted. One was to rely on the "trickling down" to the urban poor of middle-income housing left behind by families moving into the new buildings on the renewal sites or into FHA-sponsored housing in the suburbs. The Senate report on the 1949 Act finds it

perfectly apparent that the elimination of residential slums in central city areas and their redevelopment in accord with a plan for the most appropriate use of the land therein . . . makes necessary a dispersion of the families now living in such slums. Federal loan assistance for the acquisition and preparation of open unplatted urban or suburban land to be developed for predominantly housing use, so that adequate provision can be made for the necessary dispersion of some portion of the central city population is therefore essential to

¹¹ The Public Housing Act contains relocation provisions identical to the urban renewal statute, 42 U.S.C. § 1415(7)(b)(iii) (1964), 42 U.S.C. § 1415(8) (Supp. II, 1966), and the Housing and Urban Redevelopment Act of 1965, 42 U.S.C. §§ 3071-74 (Supp. II, 1966), applied the urban renewal provisions to the following programs authorized by statutes: Urban Mass Transportation Act, 49 U.S.C. §§ 1601-11 (Supp. II, 1966); Public Facilities Construction Act, 42 U.S.C. §§ 1491-97 (1964); Open Space and Urban Beautification and Improvement Act, 42 U.S.C.A. §§ 1500-1500e (Supp. 1967); and the Community Facilities Construction Act, 42 U.S.C.A. §§ 3101-08 (Supp. 1967). A different type of relocation provision was adopted for the Tennessee Valley Authority, 16 U.S.C. § 831(c)(1) (1964); the Interior Department, 43 U.S.C. §§ 1231-34 (1964); the Defense Department, 10 U.S.C. § 268 (1964); and NASA, 42 U.S.C. § 2473(b)(14) (1964).

¹² Millsbaugh, *Problems and Opportunities of Relocation*, 26 LAW & CONTEMP. PROB. 6 (1961).

¹³ D. THURSZ, *WHERE ARE THEY NOW?* 5 (1966).

¹⁴ Ch. 338, tit. I, 63 Stat. 413 (1949).

any effective slum clearance operation, and is entirely appropriate.¹⁵

The other remedy was a statutory guarantee that every relocatee would be able to find a home; section 105(c) of the Act¹⁶ provided that the contract governing the loans and grants made to local public agencies (LPAs) carrying out renewal programs in their communities require that

[t]here be a feasible method for the temporary relocation of families displaced from the project area, and that there are, or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment¹⁷

The Senate report underlined the intent to guarantee that no one would be without a decent place to live as a result of the slum clearance program:

The Bill sets up adequate safeguards against any undue hardship resulting from the undertaking of slum clearance under current conditions. It requires, first, that no slum-clearance project shall be undertaken by a local public agency unless there is a feasible means for the temporary relocation of the families to be displaced, and unless adequate permanent housing is available or is being made available to them.¹⁸

This guarantee of rehousing has been amended only twice; each change has increased the LPAs' responsibility for carrying out effective relocation programs. Since 1964 Congress has required an LPA to provide a "relocation assistance program" that will determine the relocation needs for the city's urban renewal areas, and provide information and assistance to relocatees to "minimize the hardships of displacement."¹⁹ The only specific requirements are that the LPA maintain a listing of real estate brokers able to help relocatees find new housing, and that it consider public housing near the renewal site when identifying relocation housing resources. The second change, in 1965,

¹⁵ S. REP. NO. 84, 81st Cong., 1st Sess. 14 (1949). See also the dissent of Senator Lehman, S. REP. NO. 1472, 83rd Cong., 2d Sess. 151 (1954).

¹⁶ Ch. 338, § 105(c), 63 Stat. 416, as amended, 42 U.S.C. § 1455(c) (Supp. II, 1966).

¹⁷ *Id.*

¹⁸ S. REP. NO. 84, 81st Cong., 1st Sess. 14 (1949).

¹⁹ 42 U.S.C. § 1455(c) (Supp. II, 1966).

was more specific and potentially of greater importance to the relocatee. Now,

a condition to further assistance [is that] the [Secretary] shall require, within a reasonable time prior to actual displacement, satisfactory assurance by the local public agency that decent, safe, and sanitary dwellings as required by the first sentence of this subsection [§105(c)(1)] are available for the relocation of each such individual or family.²⁰

B. *Planning For Relocation*

The guarantee of suitable rehousing was strengthened in 1954 by requiring LPAs to plan in advance to satisfy relocation needs. At that time the emphasis in the legislation shifted from slum clearance to that program of citywide slum prevention known as urban renewal.²¹ Since then a city desiring to undertake urban renewal (or one of several other federally funded city revival programs) has been required to present a "Workable Program for Community Improvement" as part of its application.²² While the statute merely requires in general terms that there be a program for "utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums,"²³ the Department of Housing and Urban Development (HUD) specifically requires as one part of the program²⁴ that the city have a plan projected two years into the future²⁵ for relocating into standard housing²⁶ individuals and families displaced by any government project

²⁰ 42 U.S.C. § 1455(c) (2) (Supp. II, 1966). The Act of May 25, 1967, Pub. L. No. 90-19, § 6(b), 81 Stat. 21, substituted "Secretary" for "Administrator" here and elsewhere in the Act.

²¹ See ADVISORY COMMISSION REPORT, *supra* note 2, at 17.

²² 42 U.S.C. § 1451(c) (Supp. II, 1966). Receipt of funds for public housing, FHA mortgage insurance for urban renewal site housing and rehabilitation, and below-market interest-rate mortgage insurance for displacees from government construction projects was also conditioned on having a Workable Program. *Id.*; see HOUSING AND HOME FINANCE AGENCY, PROGRAM FOR COMMUNITY IMPROVEMENT 6 (1960) [hereinafter cited as WORKABLE PROGRAM].

²³ 42 U.S.C. § 1451(c) (Supp. II, 1966).

²⁴ The other 6 elements are: (1) an adequate health and safety code, and adequate building and occupancy ordinances; (2) a comprehensive community plan for improvement and blight prevention; (3) a neighborhood analysis of the community's blight problems; (4) administrative organization capable of prosecuting a fight on blight; (5) adequate financing by the municipality; and (6) citizen participation in the fight on slums. WORKABLE PROGRAM, *supra* note 22, at 4.

²⁵ WORKABLE PROGRAM, *supra* note 22, at 36.

²⁶ LPA Letter No. 321, at 4 (January 13, 1965), defines "standard housing" as being a

dwelling in sound and weathertight condition, including kitchen with sink and stove, hot and cold running water, a complete private bath, electricity for lighting, and installed heat where required by climatic conditions. It is served by necessary public and community facilities, is in an area generally not less desirable than the urban renewal area with respect to public utilities and public and commercial facilities, is not subject to serious hazards or nuisances, . . . and otherwise conforms to the standards for relocation housing established for urban renewal projects.

Under the guidance of *Technical Guide No. 9*, see text accompanying note 89 *infra*, the local public agency establishes such other standards.

in any part of the community.²⁷

The initial certification requirements are minimal²⁸ since they are aimed only at developing proper planning practices. The city need only designate an individual or office with responsibility for relocation, and commence a survey of community relocation needs for the following two-year period.²⁹ Each year the program must be recertified, for which the city must show completion of the survey, plans for correcting substandard areas of the program, and execution of these remedial plans.³⁰ If the program is not recertified, future proposed projects are rejected, although it appears that projects for which contracts have already been signed are not affected.³¹

C. *Meeting the Costs of Relocation*

The 1949 Housing Act reflected a failure by Congress to recognize and deal with the second relocation problem, that of enabling the relocatee to establish himself in his new home. Part of the problem is simply meeting the cost of moving. Poor tenants, forced to move to a new neighborhood, are particularly in need of financial aid to cover moving costs, wages lost because of time taken from work in order to hunt for and move to a new apartment, and other hidden costs of relocation.³² While regulations implementing the 1949 Housing Act did authorize LPAs to give tenants their moving expenses and the first month's rent in the new quarters, aid was available only if the sum would be less than the cost to the LPA resulting from both eviction proceedings and the consequent project delay. Only by refusing to move could a family receive monetary assistance for moving. The restrictions clearly indicate that the purpose of the payments was to expedite redevelopment rather than to aid relocatees.³³

Since 1956, Congress has authorized similar payments without these restrictions.³⁴ At present the only conditions for receipt of relo-

²⁷ For example, even though the federal highway program does not require relocation assistance by the states or municipalities affected, a city so affected may nonetheless have an obligation to anticipate relocation needs if it is simultaneously using one of the Department of Housing and Urban Development's programs requiring Workable Program certification.

²⁸ See Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 321 n.113 (1958).

²⁹ WORKABLE PROGRAM, *supra* note 22, at 36.

³⁰ WORKABLE PROGRAM, *supra* note 22, at 37. The showing may be made by applications for public housing, etc. *Id.*

³¹ Rhyne, *The Workable Program—A Challenge for Community Improvement*, 25 LAW & CONTEMP. PROB. 685, 693 (1960).

³² See Testimony of Lester Eisner, Jr., Regional Administrator, Housing and Home Finance Agency, *Hearings on Real Property Acquisition Practices and Adequacy of Compensation in Federal and Federally Assisted Programs Before a Select Subcomm. on Real Property Acquisitions of the House Public Works Comm.*, 88th Cong., 2d Sess. 8 (1964).

³³ See ADVISORY COMMISSION REPORT, *supra* note 2, at 17.

³⁴ 42 U.S.C. § 1465 (1964), as amended (Supp. II, 1966).

cation payments are residence within the renewal area at the time of execution by the LPA and the Renewal Assistance Administration (RAA)³⁵ of HUD of a financial assistance contract contemplating acquisition of the particular building.³⁶ Rehabilitation of a building also entitles tenants to receive relocation payments if the subsequent increase in rent is both greater than ten per cent and above the standards of ability to pay as determined by the LPA.³⁷ Since 1956, therefore, payments have been available as soon as the renewal contract is signed, even though the site resident moves before receiving a notice to quit. Families are authorized to receive payments up to \$200 for "reasonable and necessary" moving expenses, plus compensation for "actual direct loss of property."³⁸ Alternatively, the LPA may establish a schedule of fixed payments for relocatees, based on the number of rooms in the site residence, subject to the \$200 maximum per family.³⁹

An additional "relocation adjustment payment" was authorized by Congress in 1964.⁴⁰ The adjustment is not authorized if the relocatee moves into public or substandard housing, since it is designed to assist the relocatee in obtaining standard relocation housing and to compensate for the increased rent he usually must pay.⁴¹ Nor may the relocatee receive the adjustment if he turns down public housing offered him.⁴² Since the RAA requires that all site occupants apply for public housing as a condition to receipt of the adjustment payments,⁴³ the relocatee loses the adjustment if public housing is offered, whether he accepts the housing or not. The adjustment is calculated so that the relocatee

³⁵ The Renewal Assistance Administration (RAA) is the successor within the Department of Housing and Urban Development (HUD) to the old Urban Renewal Administration section of the Housing and Home Finance Agency (HHFA). HUD assumed the duties of the HHFA under the Department of Housing and Urban Development Act of 1965, § 5(a), 5 U.S.C. § 624c(a) (Supp. I, 1966).

For simplicity, actions of the Urban Renewal Administration prior to the change of name will be referred to as those of the RAA, and similarly, actions of HHFA as those of HUD.

³⁶ 24 C.F.R. § 3.103(b) (1968). Evidently it is not necessary that the building actually be acquired if the renewal plan approved by the RAA calls for its acquisition.

³⁷ 24 C.F.R. § 3.103(c) (3) (1968).

³⁸ 42 U.S.C. § 1465(c) (1964), as amended (Supp. II, 1966).

³⁹ The schedule in New York City, for example, ranges from \$45.00 for 1 room through \$95.00 for 4 rooms, to a maximum of \$176.00 for 10 rooms.

⁴⁰ 42 U.S.C. § 1465(c) (2) (Supp. II, 1966).

⁴¹ Testimony of Robert C. Weaver, then Administrator, HHFA, *Hearings on Urban Renewal Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 88th Cong., 2d Sess. 41 (1964) [hereinafter cited as *1964 Urban Renewal Hearings*]. The CENSUS BUREAU STUDY, *supra* note 9, at 1, reported that the median rent increased from \$66 per month paid prior to relocation to \$74 per month afterward. The ratio of rent to income went from 25% to 28% (compared with a United States average of 14.6%, see 1965 DEP'T OF HOUSING AND URBAN DEVELOPMENT, ANNUAL REPORT 1965, at 321, Table 370 (1966), which figure includes all housing services including utilities, rent, etc.).

⁴² See 42 U.S.C. § 1465(c) (2) (Supp. II, 1966); LPA Letter No. 321, at 12 (January 13, 1965).

⁴³ See LPA Letter No. 321, at 11 (January 13, 1965).

pays no more than twenty per cent of his income for rent,⁴⁴ but the RAA has emphasized that the payments are not a license to LPAs to rehouse site residents where the rent would exceed ability-to-pay standards that the LPA must establish when it applies for renewal funds.⁴⁵

There are two limitations upon the amount of adjustment payments available to the relocatee. While a family may receive up to \$500, an individual may receive adjustment payments only if he is more than sixty-two years old.⁴⁶ Second, the monthly payments are made only during the first year after relocation. The rationale behind this latter limitation is not clear. When the RAA originally requested authority to make the payments, it suggested a maximum two-year duration for each family, deeming further assistance unnecessary for several reasons. It was anticipated that there would be a sizable increase of standard low- and middle-income housing in the community by the end of that period, probably as a result of construction on the renewal site. Relocates were expected to increase their income by the end of the two-year period,⁴⁷ and it was felt that after two years of subsidization a family would be able to adjust to the higher housing expenditure.⁴⁸

Several other benefits available to relocatees can in some cases further reduce the cost of moving to standard housing. Amendments in 1965 authorized the payment of some incidental expenses of homeowners, such as penalty payments for early cancellation of a mortgage, costs of conveying the property to the LPA, and any portion of real estate taxes the owner has already paid but that applied to periods after condemnation.⁴⁹ Relocates have preferential status for admission to section 221(d)(3) below-market interest-rate housing,⁵⁰ housing aided under the rent supplement program,⁵¹ and public housing (to the extent that the local housing authority is directed to promulgate rules that give consideration to its responsibility to rehouse displaced

⁴⁴ Compare the 14.6% average national rent-to-income ratio, *supra* note 41.

⁴⁵ LPA Letter No. 321, at 15 (January 13, 1965). As to the LPA standards for ability to pay, see text accompanying notes 91-92 *infra*.

⁴⁶ 42 U.S.C. § 1465(c)(2) (Supp. II, 1966). This is the only relocation provision that does not apply equally to all relocatees.

⁴⁷ HUD claims to have shown that this will be the natural result of the removal of the tensions of living in rundown buildings. The results of a demonstration project in Washington, D.C., announced in January, 1966, showed a 24% income increase among 50 large families, all needing 4 or more bedrooms. Houses were rented for the families, and educational and social services were provided. The demonstration program cost \$194,470. N.Y. Times, Jan. 8, 1966, at 64, col. 1.

⁴⁸ 1964 *Urban Renewal Hearings*, *supra* note 41, at 42.

⁴⁹ 42 U.S.C. § 1465(d) (Supp. II, 1966).

⁵⁰ 12 U.S.C. § 1715l(d)(3) (Supp. II, 1966).

⁵¹ 12 U.S.C. § 1701(s) (Supp. II, 1966). See also the program for putting public housing units in private accommodations, for which relocatees are eligible. 42 U.S.C. § 1421(b) (Supp. II, 1966).

families).⁵² A 1964 amendment authorizes subsidization of local public housing authorities accepting low income relocatees who normally would be excluded because they could not pay the rent necessary for the authority to satisfy the Public Housing Act's requirement that public housing operate on a solvent basis.⁵³ Section 221 of the Housing Act⁵⁴ authorizes relocatees, whether originally owners or tenants, to obtain government insurance on a new home if they buy one, and also provides a guarantee of low down payment provisions. And the Economic Opportunity Act permits the use of Community Action Program funds to provide assistance to relocatees displaced by public or private construction.⁵⁵

D. Decent, Safe and Sanitary Dwellings: The Myth of Relocation Success

The RAA reports that relocation is successful over eighty per cent of the time,⁵⁶ as measured by whether the relocatee moves into a "standard" dwelling satisfying the requirements of section 105(c), including ability of the relocatee to pay. Excluding relocatees whom the LPAs have been unable to trace to their new dwellings, the percentage of successful relocation reaches ninety-three per cent.⁵⁷ The Census Bureau has independently confirmed these statistics after conducting a survey of 2300 families relocated in the summer of 1964.⁵⁸

Many persons have nevertheless doubted the accuracy of these glowing reports. As of 1965, 202,500 families had been relocated, yet only 84,000 housing units had been constructed on renewal sites.⁵⁹ Of these, only 7,900 were low-rent public housing units, and only another 8,600 were low- or moderate-income units constructed under the section 221(d)(3) program.⁶⁰ Moreover, barely one-third of the reusers were nonwhite,⁶¹ although minority groups constituted more than two-

⁵² 42 U.S.C. § 1410(g) (1964); 24 C.F.R. § 1520.4 (1968).

⁵³ 42 U.S.C. § 1410 (1964), as amended (Supp. II, 1966).

⁵⁴ 12 U.S.C. § 1715l (1964), as amended (Supp. II, 1966).

⁵⁵ 42 U.S.C. § 2785 (Supp. II, 1966).

⁵⁶ URBAN RENEWAL ADMINISTRATION, SELECTED DATA ON RELOCATION OF FAMILIES AND INDIVIDUALS 1 (1966).

⁵⁷ DEPT OF HOUSING AND URBAN DEVELOPMENT, ANNUAL REPORT 1965, at 18 (1966).

⁵⁸ CENSUS BUREAU STUDY, *supra* note 9, at 1.

⁵⁹ DEPT OF HOUSING AND URBAN DEVELOPMENT, ANNUAL REPORT 1965, at 18 (1966).

⁶⁰ *Id.* See also Grigsby, *Housing and Slum Clearance: Elusive Goals*, 352 ANNALS 107, 110 (1964); Johnstone, *supra* note 28, at 321 n.113. The ADVISORY COMMISSION REPORT, *supra* note 2, at 30, commented: "Commonly, housing built in the renewed area is for middle and upper income families, beyond the financial means of most of the displaced." However, the Urban Renewal Commissioner testified that as of 1963, 20,000 low-cost units had been built, or were being built, on renewal land. He did not, however, define "low-cost." 1963 *Urban Renewal Hearings*, *supra* note 6, at 428.

⁶¹ DEPT OF HOUSING AND URBAN DEVELOPMENT, ANNUAL REPORT 1965, at 18 (1966).

thirds of the prerenewal occupants. Not unexpectedly, a 1964 survey of urban renewal problems faced by mayors of cities with populations over 100,000 elicited the observation that "[b]y far the problem most frequently mentioned was lack of an adequate supply of standard housing, particularly for large, low-income, and nonwhite families."⁶²

The adjustment payment and the preference given relocatees for rent-supplement housing indicate an implicit recognition by the RAA that there is a shortage of low-cost housing units for relocatees. Yet when Congress in 1966 finally enacted a requirement that all projects intended primarily for residential reuse had to include "a substantial number of" low- and moderate-cost housing units,⁶³ the RAA interpreted "substantial" to mean twenty per cent.⁶⁴ To convince HUD of its concern, Congress used the 1968 Housing Act to remove much of HUD's discretion by changing "substantial number" to "majority."⁶⁵

Thus, the site is not always used, and only two other sources for low income housing remain: "trickle-down" and new private construction. The draftsmen of the Housing Act contemplated that middle-income housing would "trickle down" and become low-income housing available for rehousing relocatees.⁶⁶ But criticism by early skeptics⁶⁷ of the workability of this "trickle down" theory has been borne out.⁶⁸ Early favorable expectations evidently have been defeated by a combination of increased migration to the city by low-income families, impediments such as de facto segregation to the free play of the housing market, normal population expansion within the city, and the reduction in the city's housing supply due to urban renewal clearance, as shown by the gap between the number of families displaced and the number of on-site units built.⁶⁹ The attempt of the cities to lure middle income families in from the suburbs, as well as site reuse for non-residential purposes such as shopping and civic centers, has also made "trickle-down" unworkable. Moreover, the "trickle down" theory has

⁶² ADVISORY COMMISSION REPORT, *supra* note 2, at 27. The survey was conducted jointly by the Advisory Commission and the United States Conference of Mayors. *Id.* at 3.

⁶³ Demonstration Cities and Metropolitan Development Act of 1966, § 703, 42 U.S.C. § 1455(f) (Supp. II, 1966).

⁶⁴ See 113 CONG. REC. 10,405 (daily ed. July 26, 1967) (remarks of Senator Tower).

⁶⁵ Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 512, 82 Stat. 524 (1968), amending 42 U.S.C. § 1455(f) (Supp. II, 1966).

⁶⁶ See text accompanying notes 14-15 *supra*.

⁶⁷ *E.g.*, dissent of Senator Lehman, S. REP. NO. 1472, 83rd Cong., 2d Sess. 151 (1954); Fisher & Winnick, *A Reformulation of the "Filtering" Concept*, 7 J. SOCIAL ISSUES 47-48 (1951); Johnstone, *supra* note 28, at 350.

⁶⁸ J. BELLUSH & M. HAUSNECHT, URBAN RENEWAL: PEOPLE, POLITICS, AND PLANNING 366, 372-73 (1967); DEP'T OF HOUSING AND URBAN DEVELOPMENT, URBAN HOUSING MARKET ANALYSIS 88 (1966) [hereinafter cited as HOUSING MARKET ANALYSIS].

⁶⁹ See HOUSING MARKET ANALYSIS 88; SCHORR, *supra* note 5, at 108-10.

been steadily undermined by Congress since 1956, through the authorization of greater percentages of renewal funds to be available for nonresidential projects. Prior to 1956 a project had to be primarily residential; in that year, ten per cent of renewal funds were exempted from this requirement.⁷⁰ In 1959 the exempted percentage was increased to twenty per cent,⁷¹ in 1961 to thirty per cent,⁷² and in 1965 to thirty-five per cent.⁷³

The second source for new low-cost housing is private construction. However, the failure of the construction industry to develop adequate techniques to keep down the cost of new housing is clear.⁷⁴ The number of both state and federal statutory devices to help builders produce low-rent housing is continually increasing, but without any apparent solution to the low-income housing problem.⁷⁵

Despite the obvious shortage of housing necessary for relocation, the RAA insists that its relocation program is successful. One of the reasons it can do so is that the statistics used as the foundation of its argument do not reflect the true number of persons for whose dislocation the urban renewal program is responsible. An unknown number of site residents move when they first hear of the project, before the first acquisition by the LPA and the commencement of the LPA's obligation to the RAA to maintain relocation records.⁷⁶ These persons are not counted as relocatees, and neither the RAA nor the LPA need concern itself with the condition of their new housing.⁷⁷ One LPA report showed that approximately twenty-five per cent of the site residents on one project had moved in this preacquisition period.⁷⁸ The

⁷⁰ Act of Aug. 7, 1956, ch. 1029, § 302(b) (1), 70 Stat. 1097.

⁷¹ Housing Act of 1959, § 413, 73 Stat. 675.

⁷² Housing Act of 1961, § 308, 42 U.S.C. § 1460(c) (1964).

⁷³ Housing and Urban Development Act of 1965, § 308, 42 U.S.C. § 1460(c) (Supp. II, 1966).

⁷⁴ Johnstone, *supra* note 28, at 351-52.

⁷⁵ See, e.g., the comparison of the Percy and Kennedy plans for solving the low-income housing shortage in Semple, *The Slum Planners*, NEW REPUBLIC, July 22, 1967, at 9. For example, the highly publicized "instant renewal" experiment in New York City, where buildings were gutted and rehabilitated within 48 hours, has recently been found to be too expensive for widespread application. N.Y. Times, Oct. 27, 1968, at 51, col. 1.

⁷⁶ See LPA Letter No. 373 (May 13, 1966).

⁷⁷ *Id.* at 2-3, stating that if these early movers are paid relocation payments the amount must be reported to the RAA even though the relocatees are not listed on the workload of persons for whom the LPA must find adequate relocation housing.

⁷⁸ MINNEAPOLIS HOUSING AND REDEVELOPMENT AUTHORITY, REPORT ON THE RELOCATION OF RESIDENTS AND BUSINESS INSTITUTIONS FROM GATEWAY CENTER RENEWAL AREA 8 (1963). Millspaugh, *supra* note 12, at 20, as long ago as 1961 pinpointed as the "big problem" of urban renewal the fact that a large number of relocatees left the site before the first acquisition, and therefore before they were eligible for relocation assistance. Secretary Weaver testified in 1964, however, that those who do move out prior to acquisition are eligible for relocation. 1964 *Urban Renewal Hearings*, *supra* note 41, at 219. This assumes they can be found, and that the LPA is willing to do so.

Government Accounting Office (GAO) has reported instances where more than fifty per cent of original site residents were not included in relocation figures or provided with relocation assistance.⁷⁹ Those who leave in panic face the same problems in the housing market as do relocatees who wait until acquisition to move. Not having the benefit of the relocation assistance program, they are less likely than assisted relocatees to find "standard" housing, although their plight is due to the same urban renewal project.

A more fundamental reason for the misleading nature of the RAA's success figures is that they are based on data submitted by the LPAs and only spot checked, if checked at all, by the RAA. The LPA must submit high percentages of relocation success to satisfy its contractual promise to the RAA that there is adequate relocation housing in the LPA's community. GAO investigations of renewal projects suggest that the LPA reporting system is far from reliable. In St. Louis, twenty-three of twenty-four randomly selected families from one project, all of whom were reported by the LPA to be relocated in standard housing, were found living in substandard housing. In another project in the same city, the relocation housing of twenty-five of thirty-five families checked had been similarly misreported.⁸⁰ In Kansas City only ten families from one project were originally reported to have been moved into substandard units; after a GAO spotcheck, the LPA estimated that the number should be revised upward by 500 per cent.⁸¹ Moreover, the LPA admitted that "some" inspections of relocation housing were merely "visual inspections through automobile windshields."⁸² RAA officials have engaged in similar practices when spot-checking the LPA reports.⁸³ As a result of such practices, St. Louis in 1959 was estimated to need 63,000 units of low-income housing beyond that planned or under construction in order to adequately rehouse relocatees from projects then being planned or completed.⁸⁴ Nevertheless, the RAA continued to approve LPA findings that relocation was feasible in the city. A 1964 report concerning the District of Columbia,

⁷⁹ COMPTROLLER GENERAL OF THE UNITED STATES, REPORT TO THE CONGRESS OF THE UNITED STATES: INADEQUATE RELOCATION ASSISTANCE TO FAMILIES DISPLACED FROM CERTAIN URBAN RENEWAL PROJECTS IN KANSAS AND MISSOURI ADMINISTERED BY FORT WORTH REGIONAL OFFICE, HOUSING AND HOME FINANCE AGENCY 10 (Report No. B-118754, 1964) [hereinafter cited as GAO FORT WORTH RELOCATION REPORT].

⁸⁰ COMPTROLLER GENERAL OF THE UNITED STATES, REPORT TO THE CONGRESS OF THE UNITED STATES: REVIEW OF SELECTED PHASES OF WORKABLE PROGRAMS FOR COMMUNITY IMPROVEMENT UNDER THE ADMINISTRATION OF THE FORT WORTH REGIONAL OFFICE, HOUSING AND HOME FINANCE AGENCY 68 (Report No. B-118754, 1962) [hereinafter cited as GAO FORT WORTH WORKABLE PROGRAM REPORT].

⁸¹ *Id.* at 64.

⁸² *Id.* See also GAO FORT WORTH RELOCATION REPORT, *supra* note 79, at 7.

⁸³ GAO FORT WORTH RELOCATION REPORT, *supra* note 79, at 5.

⁸⁴ GAO FORT WORTH WORKABLE PROGRAM REPORT, *supra* note 80, at 66-67.

made well after a general improvement of relocation practices in 1961,⁸⁵ indicated that four of twenty randomly selected families—twenty per cent—were living in substandard units despite LPA and RAA reports to the contrary.⁸⁶

II. ADMINISTRATION OF RELOCATION

A. *Establishing Standards*

Since the Housing Act contemplates local initiative in developing and controlling a renewal program, even though the program is financed largely through federal funds, LPAs are given broad powers to define the application of section 105(c) in their relocation efforts.⁸⁷ Some standards are set by the RAA, however, below which the LPAs may not fall. Generally, the standards are those adopted in the local housing and occupancy codes if the codes have been approved by the RAA as part of the city's Workable Program, and those used by the local public housing authority to describe housing so unsafe and unsanitary that the occupants are entitled to public housing accommodations.⁸⁸

The RAA has developed and published a few guidelines to the meaning of the section 105(c) limitations in its *Technical Bulletin No. 9*.⁸⁹ "Decent, safe, and sanitary" has been interpreted to require "standard" housing, as that term is defined for purposes of the Workable Program.⁹⁰ The "ability to pay" criterion may be satisfied in several ways, depending on whether a relocation proposal is being reviewed or relocation is actually taking place. For purposes of the proposal, the LPA may adopt a rent-to-income ratio of twenty to twenty-five per cent for rental housing, and a maximum sales-price-to-income ratio of 250 per cent.⁹¹ During actual relocation, however, the LPA is permitted to ignore these limits in favor of dealing with individual cases according to such variables as family size.⁹² The LPA has even greater discretion in dealing with the location requirements of the statute—that the new housing be in as desirable a location with regard to public and

⁸⁵ See Hartman, *The Housing of Relocated Families*, 30 J. AM. INST. PLANNERS 266, 279 (1964).

⁸⁶ COMPTROLLER GENERAL OF THE UNITED STATES, REPORT TO THE CONGRESS OF THE UNITED STATES: INADEQUATE POLICIES AND PRACTICES RELATING TO THE RELOCATION OF FAMILIES FROM URBAN RENEWAL AREAS, DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND HOUSING AND HOME FINANCE AGENCY 11 (Report No. B-118638, 1964) [hereinafter cited as GAO WASHINGTON, D.C. REPORT].

⁸⁷ URBAN RENEWAL ADMINISTRATION, TECHNICAL GUIDE No. 9, DETERMINING LOCAL RELOCATION STANDARDS 2 (1961) [hereinafter cited as TECH. GUIDE No. 9].

⁸⁸ This code is approved by HUD as part of its Public Housing Program. *Id.* at 3.

⁸⁹ *Id.* at 3-6.

⁹⁰ See note 26 *supra*.

⁹¹ TECH. GUIDE No. 9, at 5-6.

⁹² *Id.* at 5.

commercial facilities as was the old, and reasonably accessible to the jobs of site residents. Although the RAA claims it will look at the LPA's statement of relocation policies to evaluate whether the relocation will "assure equal or better amenities . . . and will involve no unreasonable or excessive financial burden on project families,"⁹³ the proposal need not contain any standards attempting to define these limits for planning purposes.

B. *Enforcing the Standards*

Before funds will be made available for the renewal project, the renewal statute requires that the city council pass a resolution approving the LPA's renewal plan as a whole.⁹⁴ But the application for funds must also contain sufficient information to substantiate the finding of relocation feasibility. Thus, to obtain the initial survey and planning grant (used to prepare a tentative renewal plan and to undertake the surveys necessary to develop it) the LPA must submit details on the city's housing supply, including availability by race, "standardness" by tenure, turnover rates for these categories, the city vacancy rate and number of housing starts by rental or sales price, and the estimated number of site residents to be displaced.⁹⁵ If the project will result in a substantial reduction of housing open to nonwhites "in the project area," the application must give the extent of such reduction, the substitute housing previously unavailable to the affected group that will be open to them, and plans for LPA conferences with responsible local leaders of minority groups.⁹⁶

The tentative renewal plan prepared with the survey and planning grant will include the proposed standards for measuring the acceptability of relocation housing. The RAA requires that the LPA make a site occupancy survey to establish the needs of the site residents for that portion of the community's housing that complies with the standards. The percentage of residents who must be contacted is not fixed, but it must be great enough to enable accurate prediction of the income brackets, race, bedroom need, and eligibility for public housing of all the site residents.⁹⁷

The number of standard vacancies that will exist in the community during the relocation period is the final piece of information the RAA requires in order to determine whether the LPA can relocate resi-

⁹³ *Id.* at 6.

⁹⁴ 42 U.S.C. § 1455(a) (1964).

⁹⁵ URBAN RENEWAL ADMINISTRATION, HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL MANUAL § 16-1 [hereinafter cited as URBAN RENEWAL MANUAL].

⁹⁶ *Id.* § 10-4-1(11).

⁹⁷ *Id.* § 16-2-2, at 3.

dents in accordance with its standards. In smaller cities it is relatively easy to collect this information. In larger communities the RAA requires a survey of vacancies, or other substantive data supporting the LPA's conclusion that sufficient relocation housing is available.⁹⁸ The LPA must also indicate its attitude toward relocation by submitting information concerning its assistance program, eviction policy, method for inspecting proposed relocation housing, the hours and location of the on-site relocation office, the method of making relocation payments, the means to be used to inform site residents of the impending move, and other details.⁹⁹

The regional office of the RAA is then responsible for evaluating the data submitted. Because of the differing quality of the supporting evidence and of the resources available for checking it, the accuracy of this evaluation will vary considerably from project to project. The methodology of the required surveys is one uniformly available check on the proposal. Depending on the existence of Commerce Department housing construction reports for the city, FHA housing surveys, the city's Workable Program submissions, and the statements and statistics the LPA has submitted with requests for aid for other urban programs such as public housing, market analysts may be able to check in further detail the accuracy of its estimate of future housing supply.¹⁰⁰ An "intergroup relations specialist" also reviews the plan to ensure that minority group leaders have been consulted during planning¹⁰¹ and that there is satisfactory assurance of standard housing open to minority groups after site clearance.¹⁰² On-site inspection is used to further check the LPA's estimate.¹⁰³ As a result of the recent addition of section 105(c)(2) to the statute, the LPA will have to submit, before actual relocation begins, an updating of the information it used to support its feasibility finding, which the RAA may then compare with the estimates made several years before. It is not yet clear how the law will operate, or what corrective action the RAA will require should

⁹⁸ Interview with Mel Geffner, Relocation Staff, Office of Community Development, Department of Housing and Urban Development, in Washington, D.C., Aug. 9, 1967 [hereinafter cited as Geffner Interview]. See also HOUSING MARKET ANALYSIS, *supra* note 68, at 29-34.

⁹⁹ URBAN RENEWAL MANUAL, *supra* note 95, § 16-2-1.

¹⁰⁰ Geffner Interview, *supra* note 98; Interview with Herman Hillman, Regional Director, Housing Assistance Administration, Department of Housing and Urban Development, in New York City, Mar. 27, 1967 [hereinafter cited as Hillman Interview].

¹⁰¹ Representative minority group leaders are defined as "persons accepted as such by the minority community itself, such as persons holding office in civic or other responsible organizations of minority citizens." URBAN RENEWAL MANUAL, *supra* note 95, § 10-1, at 2.

¹⁰² See *id.* § 10-1, at 1; cf. 42 U.S.C. § 1455(c) (Supp. II, 1966).

¹⁰³ Interview with Joseph Lopes, Public Information Officer, Department of Housing and Urban Development, Region I, in New York City, Mar. 21, 1967 [hereinafter cited as Region I HUD Interview].

it appear that adequate relocation is jeopardized, since the requirement applies only to projects approved after the passage of section 105(c)(2) in August 1965. If enforced, it could provide a basis for better control of relocation, since the statements submitted to the RAA will concern conditions in the immediate future, and the LPAs will be unable to hide behind the argument that the statements submitted to satisfy statutory requirements are only long range predictions, made several years in advance of actual relocation and therefore subject to honest errors of great magnitude.

C. Enforcement Problems

When the interests of all groups concerned with urban redevelopment are in conflict, the LPA cannot satisfy them all. The interests of relocatees are not always compatible with those of the business and civic leaders of the community. The leaders are interested in the increased tax base that results from a renewal project,¹⁰⁴ in revitalization of the downtown business district to offset competition from suburban shopping centers,¹⁰⁵ and in luring the middle class back into the cities.¹⁰⁶ These goals are achieved by using the renewal land for just about any purpose except low income housing; the more such housing is included in the renewal plan, the less land there is with which to satisfy the major objectives of these groups.

The LPA's continued existence depends on the satisfactory completion of the renewal plan. It therefore must forge an alliance of political interests in the community sufficient to withstand challenges either at the public hearing¹⁰⁷ or when the city council considers the required resolution of support. Rarely, if ever, are the poor who live in those slums designated for clearance (or their allies) able to command the resources necessary to carry out the sponsorship of a renewal project. The resources required are within the control of people concerned with beautification and tax revenues, with the inevitable result that LPAs find it exceedingly difficult to take the side of relocatees in a conflict over the reuse of the land. The small percentage of low- and middle-income units built on renewal sites¹⁰⁸

¹⁰⁴ Cf. the 1966 Washington, D.C. LPA annual report, which, typically, prominently noted that the City's Southwest Urban Renewal Project would generate 8 times the previous taxes when fully developed. New York City's LPA reported in 1965 that New York's renewal projects generated more than twice the previous taxation. The Urban Renewal Commissioner reported to Congress an average tax base increase of 427% in 403 projects on which work had commenced by 1963. 1963 *Urban Renewal Hearings*, *supra* note 6, at 426-27.

¹⁰⁵ See, e.g., Johnstone, *supra* note 28, at 313; Millspaugh, *supra* note 12, at 31.

¹⁰⁶ Johnstone, *supra* note 28, at 313; Millspaugh, *supra* note 12, at 31.

¹⁰⁷ See notes 118-20 *infra* and accompanying text.

¹⁰⁸ See text accompanying notes 59-62 *supra*.

demonstrates the relocatees' lack of power. A successful balance between powerful community interests, achieved by the LPA and reflected in its plan for the site, will not eagerly be undone simply because others in the community complain at the required public hearing held to present the more or less completed plan.¹⁰⁹

Since the LPA must be so involved in community politics, the RAA should be particularly sensitive to infringements of the relocatees' interests. Yet, as has been shown, the RAA has put itself in the position of depending on the LPA not only to develop the specific standards implementing section 105(c)'s protection for relocatees, but also to provide the information necessary to determine in advance if those standards can be met. To compound the problem, the RAA also depends on the LPA for the information necessary to evaluate LPA compliance with the standards in carrying out relocation.

This wholesale turnover of part of the renewal program to an agency compelled to adopt a biased view of the problem perhaps reflects the RAA's response to pressures on itself. The LPA, not disgruntled relocatees, is the RAA's recurring "client"; without the LPA's willingness to undertake second and third renewal projects, the RAA would not exist.¹¹⁰ But by identifying so strongly with one point of view, the RAA, in its supervision of relocation, has become yet another regulatory agency now controlled by the very interests it was designed to regulate. The RAA could tighten up its administration of relocation in several ways. In short, one analysis of the validity of LPA reports on relocation might apply equally well to the RAA's efforts to ensure proper relocation:

[O]ne must question whether local authorities are free to judge and report on the results of their relocation operations in an objective and impartial manner. In effect, the local agency may have no choice but to issue extremely positive re-

¹⁰⁹ Many of the same considerations apply to the issue of the neutrality of the LPA in drawing up an urban renewal plan. See Note, *Scope of Judicial Review in Urban Renewal Legislation*, 17 VAND. L. REV. 1235, 1239 (1964); Comment, *Judicial Review of Urban Redevelopment Agency Determination*, 69 YALE L.J. 321, 328 (1959). Moreover, the cost of preparing the plan is high, further inhibiting openness to change. *Id.*

¹¹⁰ Because action can be taken only through a local public authority, it must be underwritten in terms of political and fiscal responsibility by the city government. While the federal agency has a veto power on the city's program, the city in turn may refuse to co-operate with the agency. Thus, many of the politically unpalatable aspects of the working program are honored in the breach

Greer & Minar, *The Political Side of Urban Development and Redevelopment*, 352 ANNALS 62, 66-67 (1964). The Urban Renewal Agency Commissioner from 1959 to 1961 testified, in defense of a project attacked by the GAO as not conforming to the statutory criteria, that urban renewal was a local program, and that it was felt the particular project was necessary to strike a spark in that community regardless of the satisfaction of the criteria. 1963 *Urban Renewal Hearings*, *supra* note 6, at 354-55.

location reports: anything less than this might produce legal, political, and technical conflicts and could slow up or curtail the entire rebuilding effort, which is the principal goal of the authority and its program.¹¹¹

D. *Minimally Required Administrative Improvements*

Although for planning purposes the establishment of guidelines to define suitable sites for relocation housing may not be effective, certain limits could be set which would bind the LPA during the actual relocation. For example, the relocation of people who live within one transportation fare of their job to a multiple-fare area could be prohibited, as could the transfer of persons from an area with paved roads to areas without them. The result of the RAA's failure to set such binding limitations has been that the relocatees, whose interests the RAA is supposed to protect, have had to fight the RAA as well as the LPA. For example, the RAA recently approved the initial proposal of a town that planned to relocate site residents living in a section of town with all the amenities into an area with dirt roads, and was considering final approval of the project until a formal complaint, with its implied threat of a lawsuit, was filed with the RAA by attorneys for the residents.¹¹² It should not be necessary to take legal action to force an administrative agency to comply with its basic statutory obligations in as clear a case as this.

The RAA could also improve relocation practices by requiring that, as soon as the contract is approved, LPAs distribute to each relocatee printed information describing methods of obtaining relocation payments, the assistance provided by the LPA's relocation staff, and the standards that their new dwelling must meet before relocation may be considered complete. Under the present system, relocatees are unaware of the LPA's contractual promise, and it is too easy for an LPA to ignore the guidelines during actual relocation.

The major area of weakness, however, is the RAA's evaluation of the LPA's estimates of available housing. Much more could be done to insure receipt of adequate information on the city's housing situation. The RAA claims that its market analysts cooperate with those administering the Workable Program carried out by the applicant city, as well as with other government branches having statistical data on the community's housing.¹¹³ This was not always true, and may not be now; a 1962 GAO report cited instances where

¹¹¹ Hartman, *supra* note 85, at 280.

¹¹² See text accompanying notes 123-33 *infra*.

¹¹³ See text accompanying note 100 *supra*.

ineffective Workable Programs of communities were apparently not considered in executing contracts for slum clearance and urban renewal projects. Conversely, we noted that Workable Programs of communities were repeatedly recertified without apparent regard to the difficulties being encountered by the communities in fulfilling the urban renewal objectives of the act.¹¹⁴

The RAA agreed with the criticism;¹¹⁵ nevertheless, another GAO report two years later revealed that urban renewal contracts had been authorized in Cincinnati despite the RAA's refusal to recertify that city's Workable Program.¹¹⁶ Since the RAA is so dependent on the statistics furnished by the LPA, it might consider requiring communities with bad relocation records to produce more detailed surveys of the housing market in support of subsequent renewal requests, even though the cost to the LPA might be high. In any event, certain minimal requirements for the quality of statistical data evidencing compliance with statutory requirements should be established for the submission of all renewal requests. If there are no FHA reports on the housing market, for example, the same information should be compiled from other sources before an agreement is reached to extend aid. Alternatively, a condition could be placed on the grant requiring the grantee to rejustify its estimates at a time nearer the date of actual relocation.

Enforcement would be improved if the RAA were to set up procedures for gathering information from relocatees concerning their experiences with LPA relocation. In 1959, the Court of Appeals for the Second Circuit observed that the Urban Renewal Commissioner had received and considered objections of site residents to the supposed feasibility of relocation from the Lincoln Center redevelopment project, and suggested that the Commissioner was obligated to do so.¹¹⁷ But beyond the statutory requirement of holding a public hearing, the RAA still has not established a procedure for eliciting or determining community response when evaluating relocation proposals of the LPA.¹¹⁸ While the minutes of the public hearing must be submitted to the RAA along with the final project proposal, the LPA need show

¹¹⁴ GAO FORT WORTH WORKABLE PROGRAM REPORT, *supra* note 80, at 41.

¹¹⁵ *Id.*

¹¹⁶ COMPTROLLER GENERAL OF THE UNITED STATES, REPORT TO THE CONGRESS OF THE UNITED STATES: WEAKNESSES IN ADMINISTRATION OF REQUIREMENT FOR THE WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT FOR THE CITY OF CINCINNATI, OHIO 8 (Report No. B-118754, 1964).

¹¹⁷ *Gart v. Cole*, 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959). For a discussion of this case, see notes 152-57 *infra* and accompanying text.

¹¹⁸ Community complaints "will be considered if offered," however. Region I HUD Interview, *supra* note 103.

only that relocation was discussed,¹¹⁹ and has no obligation to report either the specific objections raised by neighborhood residents or the responses of the LPA.¹²⁰ Emphasizing the highly political nature of decisions supposedly controlled by the statute, the RAA has said that the normal route for bringing residents' objections to its attention is through a Senator or Congressman.¹²¹ This is an unsatisfactory situation, since success of any political appeal will depend more on the ability of the site residents to interest a politician in their cause, as well as on the power of the politician involved, than on the merits of the case—in contrast to a more formalized procedure for objection and rebuttal by the LPA.

Finally, the RAA should consider more stringent supervision of those LPAs that do not comply with section 105(c). The statute prohibits the RAA from initially funding projects lacking adequate relocation provisions. The RAA is entirely too reluctant to interfere thereafter if the promises are not met. In 1964, Secretary Weaver opposed legislation introduced in Congress that would have required the RAA to withhold funds as soon as it appeared that a city was not fulfilling the program commitments. He testified that such a measure, which would have given the RAA a means of resisting pressures from the LPA and its allies, would result in "program delays."¹²²

III. REMEDIES FOR INADEQUATE RELOCATION HOUSING

A. *Administrative*

Although the RAA has not established a formal complaint procedure for appeals by site residents, it has, on occasion, refused to permit a project to continue after site residents have complained. One successful complaint on behalf of site residents was filed by attorneys in 1966 concerning a project in Pulaski, Tennessee.¹²³ In addition to raising constitutional objections to the relocation plan,¹²⁴ the complaint challenged the designation of the site as a blighted area,¹²⁵ and the existence of relocation housing;¹²⁶ it also alleged failure of the LPA to

¹¹⁹ URBAN RENEWAL MANUAL, *supra* note 95, § 4-3, at 3.

¹²⁰ Hillman Interview, *supra* note 100. Compare this with the proposed public hearing requirements of the Federal Highway Administration, §§ 3.11(c), 3.15(b) (3), 33 Fed. Reg. 15,663 (1968) [hereinafter cited as Proposed Highway Hearing Requirements], which would require the state highway department to submit a transcript of the hearing and a summary of the views presented with a request for approval of a highway route.

¹²¹ Region I HUD Interview, *supra* note 103.

¹²² 1964 *Urban Renewal Hearings*, *supra* note 41, at 220.

¹²³ Complaint for Plaintiffs, *Allen v. Pulaski Housing Authority* (H.U.D., filed Dec. 15, 1966) [hereinafter cited as *Pulaski Complaint*].

¹²⁴ *Id.* §§ 12, 13.

¹²⁵ *Id.* § 6.

¹²⁶ *Id.* § 8.

consult with community leaders of the minority group being displaced during the project planning.¹²⁷ All these allegations state violations of RAA regulations. The complaint included the affidavits of a city planner hired by the residents' attorneys to inspect and evaluate the renewal site as well as the housing and vacant lots offered to relocatees. The affidavits were supported by films taken at these locations.

In rejecting the city's submission of the final stage of the renewal plan, the RAA cited a change in marketability prospects during the four years since the first approval of the application for planning funds and the inability of the LPA to provide adequate relocation facilities.¹²⁸ The LPA had proposed either building on vacant lots or relying on speculative new housing plus normal housing turnover¹²⁹ for the relocation of those site residents who were ineligible for the public housing then under construction. Rejecting the city's reliance on speculative construction and normal turnover, the RAA noted the absence of a "firm commitment to provide those units at a time, place, and price that meet our requirements."¹³⁰ In addition, the availability of vacant lots deemed by the RAA to meet "statutory standards for relocation housing [was] seriously limited, with the result that the Regional Office [found] the relocation plan presented by the Housing Authority to be unsatisfactory."¹³¹

More significant was the success achieved with a complaint to HUD over the proposed redevelopment of a part of Newark, N. J., primarily with a State Medical College. The complaint filed by the National Office for the Rights of the Indigent alleged specific errors in the Newark LPA's computation of available relocation housing—including the failure of the LPA to subtract from the city's vacancy rate the number of substandard, segregated, and overpriced dwellings; a serious difference between the LPA's estimate of the number of dwellings demolished since the 1960 census and the demolition permits issued by the city during that period; and the failure to recompute the city's population increase since the last census although the LPA had computed the city's increase in dwelling units.¹³² Resulting

¹²⁷ *Id.* § 9.

¹²⁸ Letter from Robert C. Weaver, Secretary, Dep't of Housing and Urban Development, to Jack Greenberg, Director of the NAACP Legal Defense and Educational Fund, Inc., Mar. 22, 1967, at 1 [hereinafter cited as Weaver Letter]; cf. Proposed Highway Hearing Regulations, §§ 3.5(e), 3.5(f), requiring a new hearing if final administrative approval is not sought within 3 years of the public hearing.

¹²⁹ Weaver Letter 1.

¹³⁰ *Id.*

¹³¹ *Id.* at 2. The complaint had also charged that the public housing units were needed for persons already without adequate housing and were therefore unavailable for relocation, but the RAA did not respond to this allegation. Pulaski Complaint, *supra* note 123, § 8A.

¹³² Complaint for Plaintiffs at 1-2, *Epperson v. Housing Authority of the City of Newark* (H.U.D., filed Dec. 17, 1967). See generally 12 WELFARE L. BULL. 10 (1968).

negotiations with the State, HEW, HUD, and the LPA led to the approval of the project several months later, but the college agreed to take a much smaller portion of the site than had been planned, and the state agreed to finance a rent supplement program to the extent necessary to adequately relocate those living in the redevelopment area. The parties also agreed to establish five committees empowered to intervene in the redevelopment at any stage to insure that the site residents would be properly relocated, and that they, as well as the rest of the community, would enjoy better housing, increased employment (including on-site construction job opportunities), and better health services as a result of the project. Representatives of the community are a majority of the members of each committee.¹³³

The RAA does not always consider such complaints. Just prior to the filing of the Newark complaint, the RAA approved the Philadelphia LPA's final plans for a project even though attorneys for a homeowners' association had previously filed a complaint alleging violations of RAA regulations similar to those in *Pulaski*. The group requested an opportunity to submit proof of its charges, but while their petition for a hearing on the merits was pending, the RAA signed the contract with the LPA.¹³⁴

Even if available, administrative hearings would be of limited utility in larger cities. In a community like Pulaski, with a 1960 population of 6,616, the adequacy of relocation facilities can easily be determined prior to relocation. In a large city, however, it is very difficult to demonstrate this adequacy several years in advance of actual relocation. The RAA publication describing how an LPA housing analyst should compute relocation resources emphasizes that estimating the number of relocation resources available in three to five years may produce only "fairly accurate" ¹³⁵ results, and is "not easily or precisely accomplished." ¹³⁶ In many cases, therefore, there must be a large measure of guesswork concerning facilities until actual relocation begins. Although the RAA has sometimes intervened due to complaints in the planning stage, it apparently has not as yet stepped in when residents have filed complaints at the action stage of the project. According to the complaint in a suit now pending in San Francisco, for exam-

¹³³ Agreements Reached Between Community and Government Negotiators Regarding New Jersey College of Medicine and Dentistry and Related Matters, March 14, 1968, on file at National Office for the Rights of the Indigent, New York City.

¹³⁴ *Powelton Civic Home Owners Ass'n v. HUD*, 284 F. Supp. 809, 831 (E.D. Pa. 1968). See also Complaint for Plaintiffs at 3-5. Compare the Proposed Highway Hearing Regulations, § 3.17(b), where no final decision may be made pending the outcome of an administrative appeal.

¹³⁵ HOUSING MARKET ANALYSIS, *supra* note 68, at 29, 35.

¹³⁶ *Id.* at 87. See text accompanying notes 250-53 *infra* for a discussion of the potential impact of the 1968 Housing Act's Neighborhood Development Programs on this inability to accurately predict housing data 3 to 5 years in advance.

ple, a residents' group filed a protest with the RAA regarding inadequate relocation resources for the Western Addition project. The RAA at that time was considering reviving the project, which had been curtailed as part of the HUD suspension of all programs in California during the brief life of Proposition 14. No decision had been made at the time the residents filed their protest and offered to submit documentation of inadequacy. According to the residents' complaint, the RAA nevertheless recommenced the project without listening to their objections.¹³⁷ And in Norwalk, Connecticut, residents' protests after relocation had begun were similarly ignored by the RAA.¹³⁸ It is no doubt true, as the RAA and the LPAs contend, that any delay in the project after relocation has begun creates major problems, among which are increased costs,¹³⁹ nonsatisfaction of the LPA's obligations to redevelopers,¹⁴⁰ and deterioration of the neighborhood.¹⁴¹ Nevertheless, resolution of difficulties that do not surface until relocation has begun remains a major problem in renewal administration.

B. *Judicial Remedies*

1. *Against the Renewal Assistance Administration*

a. *Standing to Sue in Federal Courts*

It is not yet clear whether the courts will assist a residents' group attempting to get the RAA to enforce the LPA's contractual promise to the RAA that "there are or are being provided . . . dwellings equal in number to the number of . . . displaced individuals" ¹⁴² Most cases ¹⁴³ have held that relocatees cannot ask the courts to compel the RAA to enforce the promise or to cease supporting the project, primarily because the relocatees have been found to lack standing to sue. But "the concept of standing is a practical and functional one designed to insure that only those with a genuine and legitimate interest can participate in a proceeding" ¹⁴⁴ Accordingly, the use of that concept should involve a determination of those factors that comprise such a genuine and legitimate interest in the subject matter of a case. Why

¹³⁷ Complaint for Plaintiffs at 5-6, *Western Addition Community Organization v. Weaver*, Civ. No. 49,053 (N.D. Cal., filed April 9, 1968).

¹³⁸ *Norwalk CORE v. Norwalk Redevelopment Agency*, 42 F.R.D. 617 (D. Conn. 1967), *rev'd*, 395 F.2d 920 (2d Cir. 1968).

¹³⁹ See *Phila. Evening Bulletin*, Mar. 5, 1968, at 14, col. 1.

¹⁴⁰ See *Norwalk CORE v. Norwalk Redevelopment Agency*, 42 F.R.D. 617, 620 (D. Conn. 1967), *rev'd*, 395 F.2d 920 (2d Cir. 1968).

¹⁴¹ See text accompanying notes 239-43 *infra*.

¹⁴² 42 U.S.C. § 1455(c) (Supp. II, 1966).

¹⁴³ Typical is *Harrison-Halsted Community Group, Inc. v. HHFA*, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963).

¹⁴⁴ *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994, 1002 (D.C. Cir. 1966).

the courts have been so unwilling in relocation cases to discuss these factors is not clear.¹⁴⁵

Since there is no common law or constitutional requirement that site residents as such be adequately relocated by the project's sponsors,¹⁴⁶ relocatees' standing must rest on a statutory right to have their interests in adequate relocation protected. Such a right may be derived from either the Administrative Procedure Act¹⁴⁷ or the Housing Act. However, it is generally accepted, despite a few cases to the contrary,¹⁴⁸ that section 10(a) of the Administrative Procedure Act,¹⁴⁹ which purports to make a general grant of standing to aggrieved persons, does not create standing where none exists independent of the Act.¹⁵⁰

The issue, then, is whether the Housing Act, specifically section 105(c), elevates the personal interest of the relocatee in adequate relocation to the status of a legally protected right. Most courts have considered section 105(c) to be similar to other sections of the Housing Act, in that the rights created are contractual rights, enforceable only by the parties to the contract, (the RAA and the LPA) and consequently have dismissed all suits for lack of standing. The plaintiffs have no doubt contributed to this result through a failure to distinguish between standing under that section (to obtain resident relocation rights) and standing for a more ambitious attempt to block the renewal project altogether.¹⁵¹ The section 105(c) claim has thus usually been buried among many other arguments advanced to achieve complete project invalidation.

In *Gart v. Cole*,¹⁵² the first court of appeals case involving the issue of relocation, the plaintiffs used this buckshot approach. Plaintiffs there attempted to base standing on the Administrative Procedure Act as well as on several sections of the Housing Act, including section 105(c). The Second Circuit sustained on all but two counts the summary judgment for lack of standing in favor of the RAA and the LPA. It followed the accepted interpretation of section 10(a) rejecting any standing based on the Administrative Procedure Act; it also found that

¹⁴⁵ L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 528-29 n.97 (1965).

¹⁴⁶ See text accompanying note 10 *supra*.

¹⁴⁷ 5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 4301(2) (E), 5335(a) (3) (B), 5362, 7521, App. 1002 (Supp. II, 1966).

¹⁴⁸ The leading case espousing this minority view is *American President Lines, Ltd. v. Federal Maritime Bd.*, 112 F. Supp. 346 (D.D.C. 1953).

¹⁴⁹ 5 U.S.C. § 702 (Supp. II, 1966).

¹⁵⁰ See *Kansas City Power & Light Co. v. McKay*, 225 F.2d 924 (D.C. Cir.), *cert. denied*, 350 U.S. 884 (1955); Eisenberg, *Judicial Standing in Subsidy Cases: Availability of Review Should Be Expanded*, 41 A.B.A.J. 718 (1955).

¹⁵¹ Cf. *Sullivan, Administrative Procedure and the Advocacy Process in Urban Redevelopment*, 45 CALIF. L. REV. 134, 145-48 (1959).

¹⁵² 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959).

only two of the Housing Act provisions cited by the plaintiffs created private rights protectable by the court. Both sections involved relocation. One (since repealed) prohibited the Administrator from delegating the responsibility for reviewing findings by the LPAs of relocation feasibility.¹⁵³ Although the plaintiffs did have standing to demand personal review by the Administrator, inadequate proof had been offered of his failure to review the data. The court made it clear that had the plaintiffs offered such proof, they could have resisted the summary judgment, since the requirement that the Administrator personally review the estimates to determine that relocation requirements are being met "is in protection of the interests of displaced residents such as [plaintiffs, and therefore] they have standing to raise this claim."¹⁵⁴

The court also held the plaintiffs had standing to request a hearing before the Administrator on the feasibility of relocation, although it declined on the merits to order such a hearing because there had already been a public hearing under section 105(d) and the RAA had given the plaintiffs an opportunity to submit documentary information with respect to relocation feasibility. The rationale for the finding of standing is not stated. However, in the previous paragraph in the opinion, when considering the relocatees' allegation that the bidding arrangements followed by the LPA failed to comply with the Housing Act, the court had concluded that the sections on bidding procedures "seem designed to protect not the interest of the landowners or tenants in a development area, but those of the public at large."¹⁵⁵ The Second Circuit thus clearly distinguished between the rights of individuals as relocatees and their rights as taxpaying citizens to contest the LPA's relocation decisions.

The trial court in *Gart* had not made such a distinction.¹⁵⁶ It had entered summary judgment in favor of the RAA and LPA on all counts, based on the accepted interpretation of section 10(a) of the APA as enunciated in *Kansas City Light & Power Co. v. McKay*.¹⁵⁷ The district court found no alternative basis for standing in the Housing Act. It reasoned that without a positive statement of the right to sue, or a clear statement in the legislative history that Congress intended to give certain groups standing, none would obtain. The Second Circuit's decision rejected this narrow view of the evidence required to find authority in a statute to allow individuals standing to contest administrative action under that statute. While agreeing with the trial

¹⁵³ Act of Sept. 9, 1965, Pub. L. No. 89-174, § 7(d), 79 Stat. 670, repealed the nondelegability clause, 42 U.S.C. § 1451(c) (1964), as amended (Supp. II, 1966).

¹⁵⁴ 263 F.2d at 251.

¹⁵⁵ *Id.* at 250.

¹⁵⁶ 166 F. Supp. 129 (S.D.N.Y. 1958).

¹⁵⁷ 225 F.2d 924 (D.C. Cir.), cert. denied, 350 U.S. 884 (1955).

court's dismissal of section 10(a) as a basis for standing, it explicitly found standing conferred by those sections of the Housing Act requiring adequate relocation. The distinctions made by the Second Circuit between standing premised on section 10(a) and on section 105(c), and between the interests protected by section 105(c) and those protected by other sections of the Housing Act, have been ignored in subsequent decisions by courts that nevertheless have purported to follow *Gart*.

An example is *Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency*.¹⁵⁸ The residents' primary complaint in that case was that reuse of the land for the University of Illinois rather than for housing for themselves was improper and should be voided. The plaintiffs also alleged that relocation of the low-income residents in the area was not feasible. Following *Gart*, the plaintiffs should have had standing to obtain some assurance that there would be sufficient relocation housing for site residents, although the remedy they requested—abandonment of the project—was not necessary to protect their interest in adequate relocation. But the court never specifically dealt with relocation in its opinion. There is no discussion of the meaning of section 105(c), nor of the reasons why the court found that relocatees do not have and were not given by section 105(c) sufficient personal interest in relocation to maintain their lawsuit.

Instead, the Seventh Circuit held the plaintiffs had no standing to sue under the Housing Act on *any* issue, because no specific provision for judicial review could be found in that Act.¹⁵⁹ *Gart v. Cole* is not cited in the court's discussion of standing under the Housing Act, even though *Gart* had held standing existed under that Act. But *Gart* was cited in support of the Seventh Circuit's finding of no standing under section 10(a) of the Administrative Procedure Act.¹⁶⁰ The court's failure to recognize that despite this holding the *Gart* court had found standing based on the Housing Act may be due to the Seventh Circuit's apparent reading of the court of appeals' decision in *Gart* as merely having affirmed the district court—which, of course, was true only with respect to the Administrative Procedure Act issue.¹⁶¹

The *Harrison-Halsted* opinion also cited *Pittsburgh Hotels Association, Inc. v. Urban Redevelopment Authority*¹⁶² to support its conclusion that the plaintiffs had no standing under section 10(a) to maintain their suit. That case involved a 1959 amendment to the Housing

¹⁵⁸ 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963).

¹⁵⁹ *Id.* at 104.

¹⁶⁰ *Id.* at 104-05.

¹⁶¹ See 263 F.2d at 250-51.

¹⁶² 202 F. Supp. 486 (W.D. Pa. 1962).

Act¹⁶³ that required a survey of the necessity of new transient housing construction before renewal sites could be used for such purposes. Relocation was not involved; the suit was brought by existing hotels to prevent increased competition. Its only relevance to the *Harrison-Halsted* holding is that the plaintiffs in both cases attempted to enjoin the renewal project. In *Pittsburgh*, the attempt was dismissed because the amendment had been passed after the hotel had been approved for the project site. The court recognized, however, that if the hotel owners could demonstrate that the section was passed for their benefit they could argue that as a result they had standing to enforce the section.¹⁶⁴ On that issue, the *Pittsburgh* court apparently would have decided, had it not been academic because of its holding,¹⁶⁵ that the section was not passed for the benefit of hotel owners.¹⁶⁶ Their economic interest therefore was not protected because they could not assert that the statute was designed to protect them from lawful competition.¹⁶⁷ The *Pittsburgh* holding is a demonstration of the considerations the Seventh Circuit should have addressed—but did not—when determining whether standing is afforded relocatees under the Housing Act's section 105(c).

Yet *Harrison-Halsted* has since been read to have decided that "plaintiffs [relocatees] have no standing to litigate questions arising from alleged violations of the [1949 Housing Act]." ¹⁶⁸ In *Green Street Association v. Daley*,¹⁶⁹ the Seventh Circuit dismissed, with this sweeping pronouncement, the count in the complaint attacking the feasibility of relocation according to the requirements of section 105(c). Thus, without any analysis of the purpose underlying the section, the Seventh Circuit has concluded that it is indistinguishable from the other sections of the Housing Act in the degree of personal interest relocatees have in its proper enforcement.

Recently, the federal district court for Connecticut was reversed when, relying on *Harrison-Halsted* and the cases cited therein, it found relocatees lacked standing to enjoin continuation of federal support for a renewal project in Norwalk. The plaintiffs were families scheduled for relocation from the site and the Norwalk chapter of CORE. The district court dismissed *Norwalk CORE v. Norwalk*

¹⁶³ 42 U.S.C. § 1456(g) (1964).

¹⁶⁴ *Id.* at 492 n.20.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 492; see *Berry v. HHFA*, 340 F.2d 939 (2d Cir. 1965).

¹⁶⁷ 202 F. Supp. at 493. See also, e.g., *Alabama Power Co. v. Ickes*, 302 U.S. 464 (1938).

¹⁶⁸ *Green Street Ass'n v. Daley*, 373 F.2d 1, 8 (7th Cir.), cert. denied, 387 U.S. 932 (1967).

¹⁶⁹ *Id.* The petition for certiorari relied only on the question whether the Civil Rights Act gave Negroes standing to contest a renewal plan allegedly aimed at removing them from a neighborhood; the issue of adequacy of relocation was not raised there. Petition for Certiorari.

*Redevelopment Agency*¹⁷⁰ because it found the plaintiffs unable to satisfy the Federal Rules' requirements for class actions. It also held that even if this ground for dismissal was improper, the plaintiffs nevertheless could not proceed because they lacked standing. The district court rejected plaintiffs' arguments that *Gart* and the Seventh Circuit cases were not in agreement, even though it recognized that *Gart* held that the plaintiffs there were "persons suffering specific injuries incidental to the implementation of a renewal project [and were proper parties to] seek redress in court."¹⁷¹ But because the *Norwalk CORE* plaintiffs brought suit *after* relocation was nearly completed and requested an affirmative order to the LPA to construct on-site relocation housing allegedly needed for adequate relocation, the district court felt that somehow the relocatees were suing as landlords and tenants rather than as relocatees. Seizing on the language in *Gart* that bidding procedures "seem designed to protect not the interest of the landowners or tenants in a redevelopment area, but those of the public at large,"¹⁷² the district court suggested that CORE's requested remedy came under the same exclusion, and hence that the plaintiffs had no standing.¹⁷³ *Taft Hotel Corp. v. HHFA*,¹⁷⁴ a case decided on the ground that an economic injury to hotel owners from urban renewal activities was not protected by the statute, was also held to be relevant to this startling restatement of the plaintiffs' grievance.

The Second Circuit, on appeal, rejected the Seventh Circuit cases¹⁷⁵ and strongly reaffirmed the finding in *Gart* that relocatees have standing to protest infringement of their rights under section 105(c). It also rejected the Ninth Circuit's decision in *Johnson v. Redevelopment Agency*,¹⁷⁶ another relocation case that had followed the Seventh Circuit. *Norwalk CORE* should make it impossible for courts to continue to cite *Gart* to support a finding of lack of standing, and, because of its forthright contradiction of other earlier holdings on relocatees' standing, force courts to begin considering in each case presented the issues involved in the congressional restriction on HUD authority contained in section 105(c), rather than mechanically relying on precedents.

In *Johnson*, for example, the court correctly saw that the issue of relocatees' standing could be framed as whether "Congress intended

¹⁷⁰ 42 F.R.D. 617 (D. Conn. 1967), *rev'd*, 395 F.2d 920 (2d Cir. 1968).

¹⁷¹ 42 F.R.D. at 623.

¹⁷² 263 F.2d at 250.

¹⁷³ 42 F.R.D. at 623.

¹⁷⁴ 162 F. Supp. 538 (D. Conn.), *aff'd per curiam*, 262 F.2d 307 (2d Cir. 1958), *cert. denied*, 359 U.S. 967 (1959).

¹⁷⁵ 395 F.2d at 935-36.

¹⁷⁶ 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963). See discussion in text accompanying note 224 *infra*.

this section of the Housing Act to give a right of action to those not a party to the contract”¹⁷⁷ Nevertheless, without apparently considering the legislative history of the relocation provision, the court adopted the Seventh Circuit’s misinterpretation of *Gart* and its irrelevant citations of other urban renewal cases not involving relocation.

Although the *Johnson* court concluded that there was no indication of congressional intent to provide a right of action to relocatees under section 105(c), the opposite conclusion seems more appropriate. Section 105(c) differs from most other sections of the Housing Act in that, in addition to whatever function it has in serving a more general public interest, it affords protection to a private interest group—relocatees. Most other sections do not even arguably protect any interest other than the public’s desire to see that tax money is not spent on unblighted areas where private industry presumably will do the developing, that the limited land resources are wisely used, or that the city receives the best price for the land commensurate with the intended uses. It can be argued that the relocation section, too, protects the public since proper enforcement will inhibit the growth of new slums through the prevention of the overcrowding of relocatees. But this seems a more remote reason for including section 105(c) in the statute than the more readily apparent purpose of protecting relocatees.

Several arguments suggest that this “private purpose” is the dominant, if not the sole reason for the inclusion of the section in the Act. Although section 105(c) enumerates several minimal standards for relocation housing, all refer to the suitability of housing as a replacement for the dwelling lost, while none attempts to prevent such relocation as will foster the development of new slums. For example, the section does not measure the new dwelling in terms of whether it is overcrowded, but rather in terms of whether it is as convenient to work and commercial facilities as was the former housing. When section 105(c) was passed as part of the 1949 Housing Act, the primary purpose of that Act was slum *clearance*; urban *renewal*, a program in which slum prevention would be as important as slum clearance, did not become the primary focus of federal legislation until the 1954 amendments.¹⁷⁸ The goal of slum prevention was implemented by the addition of the requirement for the Workable Program for Community Improvement. It is the Workable Program, not section 105(c), that requires the LPAs to plan their programs “to eliminate, and prevent the development or spread of, slums. . . .”¹⁷⁹ Section 105(c) was not altered to reflect the new citywide slum prevention approach, as it might

¹⁷⁷ 317 F.2d at 874 (emphasis added).

¹⁷⁸ See text accompanying notes 21-23 *supra*.

¹⁷⁹ 42 U.S.C. § 1451(c) (Supp. II, 1966).

have been by barring relocation into overcrowded facilities.¹⁸⁰ The section thus retained its primary purpose of assisting relocatees in overcoming the problems raised by massive destruction of low-cost housing units.

The Senate report on the Housing Act unequivocally stated that clearance could not begin unless adequate permanent housing was or was being made available for relocatees, as well as temporary housing if necessary.¹⁸¹ A former Housing and Home Finance Agency official, in an article based on research materials provided by HHFA, remarked that the Housing Act might not have been passed without the protection for relocatees embodied in section 105(c).¹⁸² In 1965 Congress strengthened the command to the RAA and the LPAs to protect relocatees with the addition of subsection (2) to section 105(c): LPAs are now required to bring their estimates of relocation resource availability up to date within a reasonable time prior to actual displacement and relocation.¹⁸³ And in 1966, the Widnall amendment partially restricted the wide latitude given the RAA to approve project reuse¹⁸⁴ by requiring new projects that are primarily residential to contain a "substantial number of units" of low or moderate income housing.¹⁸⁵ The RAA was further restricted in 1968, when "substantial number" was replaced by "majority."¹⁸⁶ In the past ten years Congress has adopted a number of relocation requirements for government land acquisition programs other than urban renewal.¹⁸⁷ Many of these new provisions were specifically placed beyond judicial review,¹⁸⁸ yet section 105(c), amended twice during this period, has had no such limitation added to it. Section 105(c), therefore, is and has been viewed primarily as a means of protecting and benefiting relocatees.

Even if section 105(c) is not viewed as having created "private" rights in relocatees, they could be found to have standing to seek review

¹⁸⁰ Both the GAO and the Urban Renewal Administration, while disagreeing on the amount of coordination Congress intended between § 101(c) (Workable Program) and § 105(c) (relocation), did agree that the Workable Program requirement was added to strengthen the effectiveness of relocation by aiming at more long-range problems. GAO FORT WORTH WORKABLE PROGRAM REPORT, *supra* note 80, at 39-45.

¹⁸¹ See text accompanying note 18 *supra*.

¹⁸² Millspaugh, *supra* note 12, at 11, says: "Had the safeguards for displaced families not been included in § 105(c) of the Housing Act of 1949, there is some doubt that the Act could have mustered enough votes for passage."

¹⁸³ 42 U.S.C. § 1455(c) (2) (Supp. II, 1966). See text following note 103 *supra*, and discussion of 1968 Housing Act amendments in text accompanying note 250-53 *infra*.

¹⁸⁴ See discussion in text accompanying note 63 *supra*.

¹⁸⁵ Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, § 703(a), 80 Stat. 1281 [may be found in 42 U.S.C. § 1455(f) (Supp. II, 1966)].

¹⁸⁶ Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 512, 82 Stat. 524; see text accompanying notes 63-65 *supra*.

¹⁸⁷ See note 11 *supra*.

¹⁸⁸ See, e.g., 42 U.S.C. § 2473(b) (14) (1964) (NASA); 43 U.S.C. § 1232 (1964) (Dep't of Interior).

as representatives of the public's interest in enforcement of the section. It is clear that relocatees as a group will be more likely than members of the public at large to seek enforcement of the public's interest in adequate relocation. The principle that citizens need not suffer a personal economic injury before seeking review of the alleged failure of an administrator to protect the public interest has been reaffirmed in two recent decisions in the Second and District of Columbia Circuit Courts of Appeals. In *Scenic Hudson Preservation Conference v. Federal Power Commission*,¹⁸⁹ the Second Circuit was confronted with a challenge to the standing of an association of conservation groups which had brought an action to enjoin an FPC decision to license the construction of a power plant. Observing that the Federal Power Act, under which the decision to license was made, mandated the FPC to consider recreation and conservation implications when making its decisions, and that the plaintiff association was composed of groups "who by their activities and conduct have exhibited a special interest in such area," the court held the association had standing under the Act to challenge the Commission's decision if it alleged that the decision was injurious to recreation and conservation.¹⁹⁰

Similarly, the District of Columbia Circuit held, in *Office of Communication of United Church of Christ v. FCC*,¹⁹¹ that listeners of the only TV station in the area had standing to object to the renewal of a TV license by the FCC, and could intervene in the FCC hearings on the renewal, if any were held. The FCC argued that since it was mandated to protect the consumer, consumer participation was not necessary for enforcement of the statute. The court observed that, even in the case where there are multiple competing stations in an area, "unless the listeners—the broadcast consumers—can be heard, there may be no one to bring programming deficiencies or offensive over-commercialization to the attention of the Commission in an effective manner."¹⁹² Similarly, relocatees "willing to shoulder the burdensome and costly processes of intervention . . . are likely to be the only ones 'having a sufficient interest' "¹⁹³ to challenge the RAA's approval of a decision that relocation resources are adequate. Commenting on the relevance of these cases to its consideration of the *Norwalk CORE* case, the Second Circuit concluded that "the possibility that an administrative agency, charged with enforcing a requirement established by Congress in the public interest, will not adequately perform the task

¹⁸⁹ 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966).

¹⁹⁰ 354 F.2d at 616.

¹⁹¹ 359 F.2d 994 (D.C. Cir. 1966).

¹⁹² *Id.* at 1004-05.

¹⁹³ *Id.* at 1005. See generally L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 459-501 (1965).

is equally great whether enforcement is through contract or through direct regulation.”¹⁹⁴

A federal district court in Philadelphia used the above analysis in a recently contested relocation case. The court enjoined continuation of a renewal project not yet beyond the condemnation stage pending an opportunity for plaintiff homeowners' association to demonstrate to the RAA the inadequacy of relocation resources for the project. In *Powelton Civic Home Owners Association v. Department of Housing and Urban Development*,¹⁹⁵ the court found that section 105(c) creates “substantive legal rights” in the relocatees.¹⁹⁶ The decision specifically followed *Gart*, and the court recognized the distinctions between that case and subsequent decisions misconstruing its holding.¹⁹⁷ The court also held that plaintiffs had standing as representatives of the public interest (citing *Scenic Hudson, Church of Christ*, and a recent district court decision in New York City¹⁹⁸ holding that property owners have standing to question highway routes under the Federal Highway Act).¹⁹⁹ The Highway Act, like the Housing Act, contains no specific authorization for judicial review.²⁰⁰ The district court in *Powelton* noted that both it and the court in *Gart* had only to consider whether relocatees have standing to seek procedural relief; neither had to decide the case on the merits. Thus, while recognizing the standing of relocatees to seek judicial relief, neither court was involved in an examination of the substantive rights of relocatee plaintiffs.²⁰¹

b. *Reviewing Planning Decisions*

If the RAA rejects the views of relocatees, who then return to court for a decision on the substantive issue whether the evidence demonstrates an inadequacy of relocation resources amounting to a violation of the contractual promise required by section 105(c), standing to seek substantive review should follow for the same reasons as justify standing for procedural review. The primary issue then will not be standing, but rather how to evaluate the administrative finding that adequate relocation resources are available.

It has been suggested that one explanation for the confusing holdings in the relocation cases might be the unwillingness of the courts to

¹⁹⁴ 395 F.2d at 934.

¹⁹⁵ 284 F. Supp. 809 (E.D. Pa. 1968).

¹⁹⁶ *Id.* at 821.

¹⁹⁷ *Id.* at 823.

¹⁹⁸ *Road Review League v. Boyd*, 270 F. Supp. 650 (S.D.N.Y. 1967).

¹⁹⁹ 284 F. Supp. at 825.

²⁰⁰ *See id.* at 828.

²⁰¹ *Id.* at 828 n.10.

move into this area of supposed administrative expertise.²⁰² As the court in *Powelton* observed, "Judicial reluctance to intervene in the planning policy decisions of the Secretary [of HUD] is an understandable and recognized phenomenon" ²⁰³ Several cases have demonstrated this reluctance. The *Johnson* court observed that because of the complexity of the urban renewal title of the Housing Act, Congress gave the RAA the duty of "enforcing" the contract conditions, including the required relocation provision of the LPA contract.²⁰⁴ The district court in *Norwalk CORE* construed the plaintiffs' request for adequate relocation housing to be a request for recognition of a right to plan the project, which it termed a request for "drastic judicial intervention into a large, almost fully completed urban renewal project."²⁰⁵ Both statements reject any possibility that courts, using the normal techniques for review of administrative decisions, might be able to determine that at some point the Administrator has exceeded the bounds of his discretion. This rejection is not realistic; a court can always review the Administrator's decisions in light of the standards he himself has published to govern his review of LPA decisions. And given the elements of adequate relocation named in section 105(c), it can determine whether all are being considered and whether the techniques used to evaluate them are valid for that purpose.

In most cases, the administrator's decision will have to be based on the LPA's statistical predictions of economic growth, migration to and from the city, changing housing supply, and so forth, unless the community is so small that housing resources can be actually counted (as in Pulaski, Tennessee). It will probably be three or more years after the decision before clearance and relocation commence and the actual housing conditions under which relocation must occur will be known. Nevertheless, a proper use of statistics can cut down the margin of error involved when predicting housing available in the future. The RAA, however, has not always demanded that the LPA use statistics properly, nor has it always properly evaluated the statistics submitted by the LPAs. In some cases the same housing has been claimed to be available for several simultaneous projects,²⁰⁶ competing demands for housing have not been considered,²⁰⁷ or future availability has been extrapolated from past turnover rates without compensating for for-

²⁰² See L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 529 n.97 (1965).

²⁰³ 284 F. Supp. at 824.

²⁰⁴ *Johnson v. Redevelopment Agency*, 317 F.2d 872, 874 (9th Cir.), cert. denied, 375 U.S. 915 (1963).

²⁰⁵ *Norwalk CORE v. Norwalk Redevelopment Authority*, 42 F. R. D. 617, 623 (D. Conn. 1967), rev'd, 395 F.2d 920 (2d Cir. 1968).

²⁰⁶ See GAO FORT WORTH WORKABLE PROGRAM REPORT, *supra* note 80, at 63.

²⁰⁷ See note 133 *supra*.

merly available housing destroyed by the project.²⁰⁸ Moreover, the available data depend to a large extent on information submitted by LPAs whose commitment to help relocatees is doubtful when such a concern might result in a project less economically successful for the community.²⁰⁹

At the very least, therefore, a court ought to permit inquiry into whether the techniques were properly used. In addition, the feasibility finding must be based on statistical data—the housing census, site occupancy surveys and other information the LPA is required to submit. Examination of the methodology used in obtaining the data, as well as the validity of the conclusion reached with the statistics available, should not be foreclosed. Whether statistics are being misused or whether they are adequate to do the job demanded of them by the RAA and LPA are issues on which private city planners with training in the analysis of housing statistics can certainly speak with as much authority as planners working for the RAA or the LPA. In addition to the use of expert opinion, evidence might be adduced concerning the accuracy of the statistics by introducing the documents that the RAA claims are used—but not always are²¹⁰—to verify the LPA's application. These would include the Workable Program submissions, statements on community housing conditions by the local public housing authority, other renewal applications submitted by the city, and so forth.²¹¹ Another check on the feasibility finding would be to compare the situation depicted in the statistics presented by the LPA with the standards it has adopted as part of the renewal plan.²¹² Subjecting these matters to judicial scrutiny should have the beneficial effect of preventing those relocation problems that have arisen in part, at least, because of misuse of statistical data.

Finally, the standards themselves can be reviewed to see if they conform to the RAA guidelines published in *Technical Guide No. 9*.²¹³ While the standards there established are phrased in terms of "should" rather than "must" (probably in part due to deference to the concept of the LPA's local autonomy), good reason for deviation should be required if they are not adhered to in particular cases. Otherwise the administrator's decision approving them would appear to be arbitrary and capricious, and susceptible to reversal on the grounds that he must treat all beneficiaries—both LPAs and relocatees—alike, unless he has

²⁰⁸ Interview with Walter Thabit, AIP, President, Planners for Equal Opportunity, in New York City, April 27, 1967.

²⁰⁹ See text accompanying note 110 *supra*.

²¹⁰ See text accompanying notes 113-20 *supra*.

²¹¹ Geffner Interview, *supra* note 98.

²¹² See TECH. GUIDE No. 9, *supra* note 87.

²¹³ See text accompanying notes 89-93 *supra*.

a good reason for doing otherwise.²¹⁴ Moreover, the RAA and the LPA rather than the relocatees should have the burden of proving that "there are, or are being provided" to those displaced, units sufficient to rehouse them according to the standards set forth in section 105(c).²¹⁵ Both the positive phraseology of the section and the congressional comments concerning the original legislation dictate this conclusion. The burden should include presentation of sufficient data on which a reasonable estimation of the future housing supply can be based, as well as a showing that the minimal standards of the RAA's *Technical Guide No. 9* have been met.

The court might, should it be unable or unwilling to reverse the RAA's decision that adequate relocation is feasible, retain jurisdiction until actual relocation has been completed, ensuring that "there are, or are being provided" sufficient dwellings satisfying section 105(c) criteria. Alternatively, the plaintiffs might renew their attack after relocation begins, if it turns out that relocation is unsatisfactory. Certainly if the first actual relocations cannot be completed properly, later ones will not be.

c. *Timing of the Suit*

In two instances²¹⁶ relocatees have sought to enjoin the continuation of projects already underway until relocation practices improved. In *Johnson v. Redevelopment Agency*,²¹⁷ the court pointed out that dismissal because of lack of standing did not really deprive the plaintiffs of any means of redress since they could have challenged the plan at preliminary hearings required by the state and federal statutes.²¹⁸ The court reasoned that, in the absence of public objection, the LPA had a right to proceed with the project on the assumption that its plans were acceptable.

This is not always a valid argument. If the project's implementation has been delayed for several years after initial planning there is a good chance that the city's population patterns will have changed. If the actual growth patterns, housing construction starts, or other projections by the housing analyst have not materialized, then what were once perfectly acceptable relocation plans may have become quite un-

²¹⁴ See, e.g., *Merge v. Sharott*, 341 F.2d 989 (3d Cir. 1965) (relocation payments). See also Reich, *The Law of the Planned Society*, 75 YALE L.J. 1227, 1245-46 (1966).

²¹⁵ 42 U.S.C. § 1455(c) (Supp. II, 1966) (emphasis added).

²¹⁶ *Johnson v. Redevelopment Agency*, 317 F.2d 872 (9th Cir.), cert. denied, 375 U.S. 915 (1963); *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968).

²¹⁷ 317 F.2d 872 (9th Cir.), cert. denied, 375 U.S. 915 (1963).

²¹⁸ 317 F.2d at 875. This was cited in *Powelton Civic Home Owners Ass'n v. HUD*, 284 F. Supp. 809, 824-25 (E.D. Pa. 1968), as a basis for distinguishing *Johnson* from *Powelton*.

acceptable. Section 105(c)(2) recognizes this by requiring the LPA, within a reasonable time prior to commencement of actual relocation, to update the data used to support its feasibility finding.²¹⁹ The presence or absence of the plaintiff relocatees at the requisite public hearing should only be considered if the context of actual relocation does not differ from that foreseen in the plan presented at the public hearing.

Norwalk CORE also was first brought after the project had begun—in fact, when the last tract was being cleared. The plaintiffs claimed to have evidence of many improper relocations from earlier stages of the project, which was admitted for purposes of the decision.²²⁰ No suit had been filed before the project began because at the time the relocation plan had been prepared and filed in the late 1950's it was not realized that the LPA's estimate of public housing turnover, the primary relocation resource, was unrealistic. The district court made no mention of the plaintiffs' failure to protest earlier as an objection to the suit. Instead, the suit was dismissed because the plaintiffs could not properly denominate themselves a class within the new Rule 23 of the Federal Rules of Civil Procedure. The court concluded that the plaintiffs' remedy for the admitted improprieties was a series of individual legal actions.²²¹ The Second Circuit summarily reversed the finding on the satisfaction of Rule 23,²²² and also found standing to assert both the claim of a denial of equal protection and of the violation of section 105(c).²²³

2. *Against the Local Public Authority*

a. *Third Party Beneficiary*

In the absence of satisfactory enforcement by the RAA of the contract clause requiring the LPA to ensure that there is an adequate supply of relocation housing before commencing a project, some relocatees have attempted to enforce that clause directly against the LPA under a third party beneficiary contract theory. This analysis also depends on the finding that the primary, if not the sole, reason for the inclusion of the requirement that such a clause be in the RAA-LPA contract is to protect relocatees, and that such is the intent of the promissee (RAA). It is argued that relocatees become third party beneficiaries, and hence entitled in many jurisdictions to enforce the contract clause even though the promisee fails to do so.

²¹⁹ See discussion in text following note 103 *supra*.

²²⁰ *Norwalk CORE v. Norwalk Redevelopment Agency*, 42 F.R.D. 617, 619 (D. Conn. 1967), *rev'd*, 395 F.2d 920 (2d Cir. 1968).

²²¹ 42 F.R.D. at 621.

²²² 395 F.2d at 937.

²²³ See discussion in text accompanying notes 170-75 *supra*.

The theory was rejected when presented to the Ninth Circuit in *Johnson*.²²⁴ Standing was predicated in the action against the LPA on the contractual obligation of the LPA to the RAA, which resulted, it was claimed, in a duty under California law to the third party beneficiaries. Holding that federal rather than California law applied since the dispute arose under a federal statute, the court concluded that federal courts had consistently held that those not a party to the contract had no standing to enforce conditions of the contract. The central issue in a third party beneficiary case, the intention of the parties when including the protective clause, was never pursued by the court. Although this is the same question that was presented in the earlier federal cases on standing, none of those cases had considered the question except *Gart*, where the conclusion was not that stated by the *Johnson* court. Even when squarely presented with the issue of the function of section 105(c) in the Housing Act, *Johnson* elected to rely on decisions that contained no evidence of having considered the issue. None of the prior cases had distinguished between theories supporting an action against the RAA as opposed to one against the LPA, yet *Johnson*, because the RAA was not joined, presented an opportunity to think this issue through as well. In yet another case, *Hunter v. City of New York*,²²⁵ relocatees were told, without much further explanation, that the leading New York case establishing the right of a third party beneficiary to sue on a contract²²⁶ was "without application to the case at bar."²²⁷ The issue of intent, again, was not discussed in the case.

b. State Relocation Laws

Nearly every state has legislation (often containing a relocation provision modeled after section 105(c)) authorizing municipalities to undertake urban renewal projects.²²⁸ However, section 105(c) is part of a system in which an administrative agency performs a significant first line review function by reviewing all applications for assistance and preparing guidelines and standards to implement the legislation. Few states (if any) have established a comparable agency, and state courts therefore are forced to develop guidelines via case decisions. Yet unlike an administrative agency, a court does not review all LPA

²²⁴ *Johnson v. Redevelopment Agency*, 317 F.2d 872 (9th Cir.), cert. denied, 375 U.S. 915 (1963).

²²⁵ 121 N.Y.S.2d 841 (Sup. Ct. 1953).

²²⁶ *Lawrence v. Fox*, 20 N.Y. 268 (1859).

²²⁷ 121 N.Y.S.2d at 846.

²²⁸ See, e.g., CAL. HEALTH & SAFETY CODE §§ 33367(d)(7)-(8) (West 1967); N.Y. GEN. MUN. LAW. § 505(4)(e) (McKinney 1965).

decisions. It does not have an agency's staff nor does it acquire an expertise in reviewing renewal and relocation plans. It is nearly impossible for a court to determine whether or not there has been compliance with general restrictions on LPA conduct, such as those imposed by section 105(c). For this reason, some state courts, faced with challenges to LPA relocation decisions, have concluded that since an LPA is receiving federal money, its relocation planning must be satisfying the requirements of section 105(c), and hence, those of the state statute as well.²²⁹ While not completely unsound, this reasoning makes it impossible for relocatees to win a state court case because the demonstration of unfeasibility is precluded by decisions of RAA administrators, who are not parties to the action and whose bases for decision cannot be known.²³⁰

For example, in New York's *Hunter* case another reason given for not considering whether the RAA had properly enforced section 105(c) was that the agency already had found relocation feasible. This constituted some evidence, the court concluded, that the LPA had not erred in its estimation of feasibility.²³¹ Other state courts have similarly found RAA approval highly persuasive of the propriety of that approval. In *Housing and Redevelopment Authority v. Minneapolis Metropolitan Co.*,²³² evidence was presented that a large percentage of the relocatees would be without housing unless 1250 new units of low income housing were constructed somewhere in the city. The LPA was neither planning nor building the needed units, and no evidence was presented that private industry was supplying them. In fact, the court found that "no express provision was made in the [renewal] plan for [the tenants'] relocation."²³³ Nevertheless, because the city council had passed the federally required resolution that relocation was feasible, and since

the Federal Housing Administration [had] already advanced to the Minneapolis Authority loans and grants in excess of 10 million dollars, [it is assumed] that the standards of compliance established under Federal procedures have been met.²³⁴

²²⁹ See, e.g., *Housing & Redevelopment Auth. v. Minneapolis Metropolitan Co.*, 259 Minn. 1, 104 N.W.2d 864 (1960), discussed in text accompanying notes 232-34 *infra*.

²³⁰ In *Hunter v. City of New York*, 121 N.Y.S.2d 841 (Sup. Ct. 1953), the state court held that the plaintiffs had chosen the wrong forum, even had they been able to maintain their third party beneficiary suit, since it was brought in the state court: "state courts have no jurisdiction over the acts of federal officials acting as such in the administration of the federal laws or as agencies of the federal government." *Id.* at 847-48.

²³¹ *Id.* at 848.

²³² 259 Minn. 1, 104 N.W.2d 864 (1960).

²³³ *Id.* at 11, 104 N.W.2d at 872.

²³⁴ *Id.* at 13, 104 N.W.2d at 873.

At least one state case has also specifically followed the Seventh Circuit's rule that relocatees have no legal standing to complain of relocation, but again without giving any reasons for its conclusion. In *City of Chicago v. R. Zwick Co.*,²³⁵ a condemnation action, site residents asserted that not all the provisions of the Housing Act had been complied with by the LPA. The Illinois Supreme Court did not make clear whether the provisions in question included section 105(c), since the statutory reference in the opinion comprises the entire Act. Perhaps the lack of explicitness made it easier for the court to follow the *Harrison-Halsted* decision, which the Illinois court interpreted as a dismissal of a similar suit both for "want of a substantial Federal question,"²³⁶ and for failure by plaintiffs to distinguish their interests from those of taxpayers in general. "That view seems eminently correct, and it is adopted as the view of this court. Furthermore the question sought to be raised is not a proper issue in a condemnation action."²³⁷ Thus, without any judicial consideration of the issue, relocatees in Illinois can use neither state nor federal courts to protect their interests and must rely solely on the LPA and the RAA to do so.

3. Remedies

In theory, LPAs are local agencies independent of the RAA. Any remedy sought against an LPA will have to relate to its status as a non-federal public agency. For example, the Housing Act does not require the LPA to provide adequate relocation facilities. The federal law applies only to the federal agency, the RAA, and merely prohibits that agency from making grants to, or contracts with, LPAs that will not abide by the standards set in the statute.

While a relocatee should be given standing to question relocation activities as a beneficiary of section 105(c) of the Housing Act, the only LPA-relocatee relationship created by the Act is the third party beneficiary relationship. Perhaps because relocatees have not been content simply to secure adequate housing, and have brought suit to void the entire renewal project, only two cases, *Johnson* and *Hunter*, have even considered this theoretical basis for relief. As has been pointed out, neither court provided any satisfactory reason for not finding liability under this analysis.

Since the Housing Act imposes no obligations on the LPA, only state or local law could impose a duty on the LPA to protect relocatees. Yet the state courts that have considered their urban renewal or condemnation statutes have found that they do not establish a relationship

²³⁵ 27 Ill. 2d 128, 188 N.E.2d 489, *appeal dismissed*, 373 U.S. 542 (1963).

²³⁶ *Id.* at 133, 188 N.E.2d at 492.

²³⁷ *Id.*

between the LPA and the relocatee that would entitle the relocatee to judicial relief.²³⁸ The remedy suggested by several courts,²³⁹ that relocatees can best secure their rights in individual legal actions against the LPA is, if only for this reason, unrealistic. In addition, individual actions would be prohibitively expensive for people who, by definition, have very limited economic resources. The individual action could only be brought at the time of condemnation since, as an individual, the relocatee would be injured only when he personally is offered inadequate housing. But the relocatee who waits for eviction proceedings will be one of the last residents on the site, which by then will probably be a large and deserted area in the middle or on the border of a slum. Municipal services such as garbage collection and police and fire protection will be reduced, if only because fewer residents live nearby. The pressure to move quickly once the majority of residents have left can force a relocatee to accept less than the standard apartment he is guaranteed under federal and state law, rather than resist eviction until the legal requirements are satisfied. An RAA official in 1965 observed that, up to that time, there had been no legal contests over the acceptability of housing offered by the LPA, probably because a holdout cannot wait for a court fight when surrounded by bulldozers instead of neighbors.²⁴⁰ A social worker writing of her experience in Washington, D.C., remarked that "those who were not the first to go . . . were further depressed by living in crumbling and deserted neighborhoods."²⁴¹ Moreover, the more articulate and aggressive site residents, those who might be able to withstand these pressures and seek a remedy in individual condemnation actions are the least likely to need judicial relief to secure proper relocation assistance.²⁴² Large or fatherless families, the elderly, and the poor are more difficult to relocate, and the LPA is more likely to take advantage of them.²⁴³

²³⁸ See text accompanying notes 229-37 *supra*.

²³⁹ See, e.g., *Harrison-Halsted Community Group v. HHFA*, 310 F.2d 99, 106 (7th Cir.), *cert. denied*, 373 U.S. 914 (1962).

²⁴⁰ Franklin, *Expanding Relocation Responsibilities of Local Renewal Agencies*, 11 N.Y.L.F. 51, 74 (1965).

²⁴¹ Quoted in SCHORR, *supra* note 5, at 69.

²⁴² See D. THURSZ, *WHERE ARE THEY NOW?* 3 (1966) (a study of relocation results five years after relocation from the Southwest Urban Renewal Project in Washington, D.C.); L. WATTS, H. FREEMAN, H. HUGHES, R. MORRIS, & T. PETTIGREW, *THE MIDDLE-INCOME NEGRO FAMILY FACES URBAN RENEWAL* 55 (1964). Both books describe how the middle-income residents looked forward to the renewal project because they expected to stay and reap the advantages of the improved neighborhood, schools, municipal services, etc.—an alternative the poor family cannot take advantage of in most instances because of the few low-income units built on renewal sites.

²⁴³ See, e.g., *N.Y. Times*, Jan. 2, 1967, at 20, col. 1, where it was reported that the village of North Tarrytown had "relocated" one of its urban renewal project site residents, a woman with five children and two grandchildren, into a house scheduled for renewal demolition in the adjoining community. The charges and countercharges included an implication that even the Urban Renewal Administration knew of the "relocation," but acquiesced because of the problem posed by the size of the family.

The inability of site residents to obtain adequate rehousing is most probably due to the failure of the LPA to ensure that there were adequate facilities in the first place. A series of individual court actions will not solve the underlying problem of a shortage of necessary low cost housing, since it takes some time to plan and construct such housing. If courts are unwilling to consider, let alone order, corrective action by the LPA as a result of a suit brought at the planning stage of the renewal project, when relief would be effective yet not disrupt the project, it is doubtful that a court would delay a project already underway on the showing by one individual that the accommodations available to him are below standards set by the Act.²⁴⁴ In short, even if the relocatees were to bring individual actions for injunctive relief, or were to defend eviction orders because relocation was not possible, it does not seem likely that they would receive more help than the courts have been willing to give them in their class actions.

Accordingly, the most appropriate source of relief is the RAA. Section 105(c) limits the eligible agencies with which the RAA has the authority to make grants and contracts—that is, the RAA may only negotiate with those local agencies that agree to comply with the statutory requirements. A court, therefore, can enjoin the RAA from continuing to provide funds to a project not complying with the contractual promise concerning relocation feasibility.²⁴⁵ Whether relocatees have standing as representatives of the public interest or as private parties seeking to enforce a private right created by statute, they should be heard when the issue is whether the RAA is complying with the section 105(c) limitations. The remedy provided the plaintiffs for the RAA's failure to abide by the limitation on its authority is judicial enforcement, through an injunction, of the limitation on that authority.

Aside from procedural objections that have usually been decided in favor of the relocatees²⁴⁶ the primary objection to preventing the RAA from continuing to fund a project is the excessive cost that will be incurred by even a temporary cessation of project activity.²⁴⁷ It takes some time for an LPA to plan and construct needed low-cost housing, and presumably this is the only way it could correct a shortage of relocation housing. But a new RAA regulation suggests a means

²⁴⁴ Cf. TECH. GUIDE No. 9, *supra* note 87.

²⁴⁵ Cf. *Road Review League v. Boyd*, 270 F. Supp. 650 (S.D.N.Y. 1967).

²⁴⁶ See, e.g., *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968) (class action requirements); *Gart v. Cole*, 263 F.2d 244, 249-50 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959); *Powelton Civic Home Owner's Ass'n v. HUD*, 284 F. Supp. 809, 832-35 (E. D. Pa. 1968) (service of process and sovereign immunity).

²⁴⁷ See *Phila. Evening Bulletin*, March 5, 1968, at 14, col. 1.

for reducing the delay period to a matter of weeks, thereby eliminating any claim of administrative inconvenience.²⁴⁸ LPA Letter No. 453 "Use of Mobil Homes as Temporary Relocation Resources,"²⁴⁹ permits LPAs to charge to the renewal project the costs of setting up a mobile home facility to be used for temporary relocation. The RAA requires, as a minimum, that the trailers have connected utilities and the other amenities required of relocation housing (location convenient to schools, transportation, etc.), and that permanent relocation resources be planned or underway.

The decision with respect to the form permanent housing should take should be left to the LPA, consistent with its responsibility for planning the city's redevelopment. Construction of more low-cost housing will probably be the only real remedy, unless relocation resources have been inadequate merely because of LPA indifference to its responsibility to locate existing relocation housing. A court should not avoid ordering the RAA to cease supporting the project until the LPA devises a means of complying with the condition it accepted in return for financial support of its project, even if such a decision would require the construction of more low cost housing. The alternative is abdication by the court of its responsibility for ensuring that statutory limitations on legislative delegation are enforced.

C. *The 1968 Housing Act Amendments*

A major change in funding procedure authorized by the 1968 Housing Act²⁵⁰ should result in greater RAA capability for controlling actions of the LPAs during the course of urban renewal. Instead of funding separate projects, the Neighborhood Development Program²⁵¹ puts an LPA on an annual funding cycle rather than a project funding cycle. Funds will be made available at one time during the year for all projects then underway, and net project cost (a percentage of which is paid by the RAA) is recomputed each year to see whether the LPA owes money to the RAA because receipts from sales exceeded cost during the year,²⁵² or whether the RAA owes money to the LPA. The major defect of the new legislation, one which may render the new program completely ineffective, is that the new funding procedure need not be used by LPAs if they prefer the older project-by-project funding technique.

²⁴⁸ This factor evidently weighed heavily with the lower court in *Norwalk CORE v. Norwalk Redevelopment Agency*, 42 F.R.D. 617, 621-22 (D. Conn. 1967), *rev'd*, 395 F.2d 920 (2d Cir. 1968).

²⁴⁹ April 5, 1968.

²⁵⁰ Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476.

²⁵¹ *Id.* §§ 501-16, 82 Stat. 518-20 (title V).

²⁵² *Id.* § 501, 82 Stat. 519, adding a new § 132(b) to the Housing Act of 1949.

This revised method of financing will affect the RAA's ability to evaluate the adequacy of relocation resources because section 134(a) (3)²⁵³ provides that section 105(c) applies to each annual increment provided the LPA. This may be interpreted to mean that each year the LPA must demonstrate to the RAA, as a condition for receipt of its increment for the next twelve months, that housing is available for relocatees to be displaced during the coming year. The RAA will be better able to determine whether adequate housing is available than with its present three-year-plus housing projections, and current data will be available for judicial review of the RAA finding of an adequacy of relocation resources.

IV. CONCLUSION: THE NEED FOR INDEPENDENT REVIEW

When the interests of those carrying out renewal conflict with the interests of those affected by renewal there must be a forum, independent of the RAA which allies itself with the concerns of the LPAs, where relocatees can secure the protection of their interests established in section 105(c). Courts have traditionally provided this forum. They have not hesitated to interfere with the programs of other government agencies when a sufficient showing has been made that the agency is ignoring those limitations on its powers designed to protect certain interests.²⁵⁴

From the LPA's point of view, the best time for review is upon approval by the RAA. A suit at that time would settle the section 105(c) question (except in an unusual case, as *Norwalk CORE*)²⁵⁵ at an early stage, and the project would not be hampered by threats of a suspension of funds after it had begun. This is perhaps the rationale behind a California statute requiring that interested parties objecting to the renewal plan must bring an action within sixty days of approval of the plan by the city government.²⁵⁶ The difficulties involved in providing effective protection at a later time make it incumbent on courts to hear relocatee complaints made at the time of project approval. To follow the Seventh Circuit's refusal to review relocation feasibility will often result in a denial of the benefits of section 105(c) to the relocatees. This is especially so, when, as in Illinois, the state courts have held that a challenge based on section 105(c) is improperly raised in a

²⁵³ *Id.*, 82 Stat. 520.

²⁵⁴ See *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966); Reich, *supra* note 214, at 1248-51.

²⁵⁵ *Norwalk CORE v. Norwalk Redevelopment Agency*, 42 F.R.D. 617 (D. Conn. 1967), *rev'd*, 395 F.2d 920 (2d Cir. 1968).

²⁵⁶ CAL. HEALTH & SAFETY CODE § 33500 (West 1967).

condemnation action.²⁵⁷ However, since the finding must be based on statistical prediction, a sufficient opportunity for error exists even when the data is adequate and the interpretation proper. In such cases, the courts must be prepared to review the evidence of current relocation experience as bearing on the issue of compliance with section 105(c).

It will be argued by the opponents of review of RAA determinations that court tests will delay the renewal program to the point where planning can no longer be effective. Judicial review should not result in such drastic consequences, however. Not every renewal plan will be taken to court, partly because of the cost,²⁵⁸ partly because the availability of the judicial remedy should itself reduce improper administrative determinations. Moreover, enforcement of the requirement of proper relocation preparation and execution will actually further the purposes of urban renewal.²⁵⁹ The slum problem is not solved by moving people from one ghetto to another, especially when, as studies have shown, the net result is an increase in rent²⁶⁰ and a necessarily reduced percentage of income available for food, clothing, and medicine. The core problem is a shortage of low income housing units. Any pressure generated through legal action to increase the number of such units constructed, whether on the site or off, can only further the purposes of urban renewal in preventing the spread of slums as well as providing "a decent home and a suitable living environment for every American family."²⁶¹ The shortsighted policy of the LPAs

²⁵⁷ *City of Chicago v. R. Zwick Co.*, 27 Ill.2d 128, 188 N.E.2d 489, *appeal dismissed*, 373 U.S. 542 (1963), discussed in text accompanying notes 235-37 *supra*.

²⁵⁸ Walter Thabit estimated that it would cost from \$10,000 to \$20,000 to develop the data necessary to show a particular relocation plan was not feasible in a community, and to present this in a court case, "assuming the lawyer will ask only a modest fee." Thabit Interview, *supra* note 208; *cf.* the response of the Supreme Court to the congestion argument in *Stark v. Wickard*, 321 U.S. 288, 310 (1944).

²⁵⁹ Thus the Subcommittee on Housing of the House Committee on Banking & Currency urged in 1966 that

the Federal authorities charged with overseeing relocation responsibilities exercise increased vigilance to make sure that the municipalities are in fact doing an effective and humane job in this area. Every effort should be made to insure a workable relocation plan with adequate personnel to supervise the working out of the program. If displaced families are merely shunted to another slum area or an area which is on the verge of becoming a slum, the problem is only aggravated further.

Report No. 1 to House Comm. on Banking & Currency, Jan. 31, 1956, quoted at length in GAO WASHINGTON, D.C. REPORT, *supra* note 86, at 5.

²⁶⁰ Secretary Weaver has said that, of 789 relocated families observed in one study, the rent paid before renewal was at a median level of \$54.00 per month, that after relocation the median had risen to \$65.00 per month; 19% of the families' rent-income ratio decreased after relocation, 10% experienced no change, 53% an increase of up to 9%, and 19% an increase of over 10%. *Hearings Before the Subcomm. on Housing of the House Comm. on Banking and Currency*, 88th Cong., 2d Sess. 41 (1964). The relocation adjustment payment program, see text accompanying notes 40-48 *supra*, and the rent supplement program for which relocatees are eligible, 12 U.S.C. § 1701(s) (Supp. II, 1966), implicitly recognize the problem.

²⁶¹ 42 U.S.C. § 1441 (1964).

and the RAA in the past has resulted in the creation of greater slums and greater problems. If there are 1250 too few units in Minneapolis to accommodate relocatees,²⁶² or 63,000 in St. Louis,²⁶³ the people have to go someplace; inevitably, they will overcrowd other houses, which will then deteriorate more rapidly, or move to other cities, although of all the members of the general public they have the least resources with which to move.

As it has been implemented, the Housing Act has not always contributed to the well-being of the population of the whole city. Upper- and middle-income groups have been able to take advantage of the subsidy involved in urban renewal to displace the poor, who in turn receive no subsidy for their housing. Yet the public as a whole pays the acquisition cost of the renewal site when it is subsequently resold to private developers at a price substantially lower than that which the city paid.²⁶⁴ It is perfectly reasonable for the public to impose limitations on the use of the subsidy so that those who are able to take advantage of it do not, in so doing, injure the interests of others. When Congress has limited the granting of a subsidy, as it did when it passed section 105(c), the limitation should be respected by the responsible administrative agency and, if necessary, enforced by the court.

²⁶² See case discussed in text accompanying notes 232-34 *supra*.

²⁶³ See GAO FORT WORTH WORKABLE PROGRAM REPORT, *supra* note 80, at 66-67.

²⁶⁴ Grigsby, *Housing and Slum Clearance: Elusive Goals*, 352 ANNALS 107, 112 (1964). Gans, *The Human Implications of Current Redevelopment and Relocation Planning*, 25 J. AM. INST. PLANNERS 15, 23 n.39 (1959), and Hartman, *supra* note 85, at 278, both compare the American redevelopment approach of benefiting the developer and his high-rise, high-income tenants, with the British goal of ensuring rehousing for all classes within the community.