



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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COMMUNITY AND ECONOMIC  
DEVELOPMENT DIVISION

B-171630

JANUARY 10, 1979

[HUD Processing of Department-Assisted Housing Project in Milford, Ohio]

The Honorable William H. Harsha  
House of Representatives

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Dear Mr. Harsha:

In response to your March 7, 1978, letter and agreements reached with you on May 4, 1978, we have reviewed the Department of Housing and Urban Development's processing of the Oakwood apartments--a 65-unit Department-assisted housing project in Miami Township of Clermont County, adjacent to Milford, Ohio. The Oakwood apartments were proposed in two segments--50 units in March 1976 and 15 units in February 1977--and later combined in a 65-unit final proposal. The project, which is under construction and scheduled for completion in January 1979, will receive both section 8 rental assistance payments for lower income persons and section 221(d)(4) mortgage insurance from the Department. As requested, we inquired into

- whether the Department properly notified the local government of the proposed project and gave it a chance to comment,
- the extent of the Department's responsibility to analyze the adequacy of roads and schools serving the project,
- the Department's policy on whether assisted housing must be located in areas designated for such housing in a jurisdiction's housing assistance plan (this matter was of concern to a local citizen you requested we contact), and
- the status of the sewer tap-in dispute between the Village of Milford and Oakwood's developers.



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report

We examined records and talked to officials at the Department's Cincinnati and Columbus, Ohio, field offices and at its central office in Washington, D.C. We met with officials from the Village of Milford, Miami Township, Clermont County, and the Ohio-Kentucky-Indiana Regional Council of Governments. We also talked to interested citizens and the project developer and his representatives.

We found that although the Department made the required local government notifications by notifying Clermont County before deciding on the Oakwood applications, it did not follow all legislative and Department notification procedures. The Department's Cincinnati <sup>1/</sup> and Columbus offices did not notify Clermont County about the 15-unit segment within the prescribed time period, wait the prescribed time for local comments before approving the application, or notify the local governments after deciding about the applications.

In addition, Department requirements do not insure that all jurisdictions affected by proposed Department-assisted housing projects will be notified and given an opportunity to comment on the proposals. Unless the notifications are expanded, the views of all effected local governments may not be available to the Department.

Although the Department, as required, determined that public facilities and services were adequate to serve the Oakwood project, it has no prescribed procedures for its housing application reviewers to use in assessing adequacy. As a result, the Department's Cincinnati office conclusions during the application review process that schools and roads were adequate to serve the Oakwood project's 50-unit segment were not based on objective data or criteria. Improved procedures and a documentation requirement would make Department reviewers more aware of their assessment responsibilities and help insure that decisions reached are based on objective data and criteria.

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<sup>1/</sup>As a result of a 1978 reorganization of the Department's field office functions, the Cincinnati office is no longer responsible for processing multifamily housing applications.

In addition, the Department could not show whether the local clearinghouse's adverse comments about the adequacy of schools and roads were given proper consideration during the application review process. The Department later concluded that the conditions described in the comments would not have been a sufficient basis for rejecting the Oakwood application.

The Department determined, as required, that the Oakwood application was consistent with Clermont County's Department-approved housing assistance plan. However, the Oakwood project is not located in any of the census tracts which the plan designated for low-income housing. Department officials concluded that Oakwood's location was consistent with the plan because they believe proposed assisted housing projects do not necessarily have to be located in designated census tracts to meet the consistency requirements. Department officials later explained that the proposal was consistent because the location met the same local clearinghouse site selection criteria as the census tracts designated in the Clermont County housing assistance plan.

Certain Department regulations and other documents, however, do not adequately explain this rationale. The Department needs to clearly define and promulgate a policy on whether proposed assisted housing projects must be in locations specified in the local housing assistance plans. The Department's regulations and procedures relating to this issue should be consistent so the local governments, clearinghouses, and developers will clearly understand its position.

The dispute over the use of sewers has been settled. In August 1978, after much debate and disagreement, the Milford council voted to grant Oakwood a sewer tap-in without requiring the property's prior annexation to the Village.

We recommend that the Secretary of Housing and Urban Development:

- Emphasize to the Columbus field office the importance of following all notification requirements relating to proposed Department-assisted housing projects.

- Expand local government notification requirements to insure that all local governments affected by proposed housing projects are notified and given a chance to comment.
- Establish procedures explaining what factors or aspects of public facilities and services need to be assessed, what documentation should be collected and maintained, and what conditions are serious enough to warrant a conclusion that a facility or service is inadequate.
- Clarify the Department's policy on whether proposed assisted housing projects must be in locations specified in local housing assistance plans, make the Department's regulations and procedures consistent with this policy, and communicate this policy to local communities, potential developers, and clearinghouses.

A detailed summary of our findings is presented in enclosure I to this letter. We gave the Department an opportunity to formally comment on a draft of this report, but did not receive a response in time to include it in this report. As you suggested, the Department's comments and our analysis of them will be forwarded to you separately.

Copies of this report are being sent today to the Director, Office of Management and Budget, the Secretary of Housing and Urban Development, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, and the House and Senate Committees on Appropriations.

Sincerely yours,



Henry Eschwege  
Director

Enclosure

SUMMARY OF  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S  
PROCESSING OF THE OAKWOOD APARTMENTS  
NEAR MILFORD, OHIO

BACKGROUND

The Oakwood apartments are receiving assistance from the Department of Housing and Urban Development's (HUD's) lower income rental assistance and mortgage insurance programs. The project consists of 65 units--48 three bedroom apartments and 17 four bedroom townhouses--which will rent for \$373 and \$426 a month, respectively. Oakwood was proposed in two segments. The developer submitted a 50-unit proposal in March 1976 and a 15-unit proposal in February 1977. The two segments were combined in a 65-unit final proposal which HUD approved in July 1977.

The project is located in Miami Township, Clermont County, Ohio, on land abutting Clermont County's incorporated Village of Milford, and is on the outskirts of the Cincinnati, Ohio, metropolitan area. Oakwood is estimated to cost about \$2.4 million.

The Housing and Community Development (HCD) Act of 1974 (Public Law 93-383, Aug. 22, 1974) amended the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and added, under section 8, a program to provide rental assistance to enable lower income families to obtain housing in the private market. Under the program, the assisted family pays 15 to 25 percent of its income for rent, and HUD pays the difference between the family's contribution and the actual rent charged. Families with incomes not exceeding 80 percent of their area's median income generally are eligible to participate in the program. Oakwood apartment tenants and HUD will pay \$301,752 in rent for the first year's occupancy.

HUD--through the Federal Housing Administration--offers many mortgage insurance programs to protect lenders against losses if developers are unable to repay mortgage loans. The Oakwood apartments' \$2.15 million mortgage is insured under section 221(d)(4) of the National Housing Act, which insures loans for developing rental housing affordable to

moderate income families. If the developers of Oakwood apartments are unable to repay the loan, HUD would be responsible for the loan and could acquire title to the property.

Under these programs, HUD has responsibility to notify local jurisdictions about proposed projects and to determine the adequacy of both the public facilities and the proposed location.

LOCAL GOVERNMENT NOTIFICATION MADE,  
BUT PROCESS COULD BE IMPROVED

HUD is required to notify a local government and area-wide and State clearinghouses about proposed HUD-assisted housing located in their jurisdiction. Several local government officials claim that HUD did not meet its local notification requirements for the Oakwood project.

HUD's Cincinnati and Columbus offices made the required local government and clearinghouse notifications before deciding on the Oakwood applications, but did not follow all notification procedures. The director of HUD's Columbus area office acknowledged that the field offices did not comply with several local notification procedures, but said the local jurisdictions were given a fair opportunity to comment on the Oakwood applications.

In addition, HUD's local notification requirements do not insure that all jurisdictions affected by proposed HUD-assisted housing projects will be given an opportunity to provide comments for HUD's consideration on such projects.

HUD is required to notify local  
governments and clearinghouses

Under section 213 of the HCD Act of 1974, HUD is required to notify the local government about proposed assisted housing in its jurisdiction. The notification requirements differ, however, for jurisdictions having a housing assistance plan (HAP) and jurisdictions not having a plan. HAPs are part of the application requirements local jurisdictions must complete to participate in HUD's Community Development Block Grant program. They include a survey of the condition of the community's housing, realistic goals for providing housing assistance, and a list of general locations for proposed assisted housing.

If a local government in which proposed housing will be located has an approved HAP, HUD is required to notify the Chief Executive Officer of the government which originated the HAP within 10 days after receiving a housing assistance application. HUD must give this government 30 days to comment on whether the housing is consistent with the jurisdiction's HAP, and may not approve an application until the 30-day period has expired.

In the absence of a HAP, the legislation requires HUD to allow the general local government unit in which the proposed housing will be located an opportunity to comment on the proposal. HUD regulations currently specify that the notification should be sent to both local government units in those cases where two jurisdictions are responsible for one location, such as a municipality which is also within a county. The government notified may comment on the need for the proposed housing and the adequacy of public facilities and services.

In addition to the legislatively required notifications, HUD regulations provide that local jurisdictions be notified about HUD's preliminary and final decisions concerning housing applications.

The Office of Management and Budget's Circular A-95 further requires HUD to notify appropriate areawide and State clearinghouses about applications for multifamily housing projects of 50 or more units. Circular A-95 establishes a system through which Federal agencies cooperate with State and local governments in evaluating, reviewing, and coordinating many Federal and federally assisted programs and projects. An Office of Management and Budget official informed us that, while Circular A-95 sets notification requirements on Federal agencies, it merely suggests that clearinghouses notify appropriate local governments and agencies about projects affecting their jurisdiction. These notifications do not relieve HUD of its section 213 notification responsibilities.

Notifications made, but not  
all requirements followed

Because the Oakwood project was divided into 50- and 15-unit segments, HUD's Cincinnati and Columbus offices made two notifications to local governments. The clearinghouses were only notified about the project's 50-unit segment because the 15-unit segment was below Circular A-95's housing unit review threshold.

Local notification for 50-unit segment

At the time the 50-unit segment was proposed, Clermont County did not have an approved HAP. HUD satisfied the HCD Act's notification requirements for this segment by notifying Clermont County, because the Oakwood project is located in that jurisdiction. Although the Oakwood project is also located in Miami Township, HUD did not notify the township. The HUD regulations specifying that both jurisdictions be notified in cases where two jurisdictions are responsible for a location had not been issued at the time.

HUD files show that a letter dated March 15, 1976, containing a notification and a copy of the developer's 50-unit proposal was sent to Clermont County. The county did not respond to the notification letter and HUD approved the application after waiting the required 30 days. Clermont County officials did not recall receiving the notification, but acknowledged it could have been overlooked in the large volume of correspondence they receive.

Clearinghouse notification for 50-unit segment

HUD properly notified both the Ohio state clearinghouse and the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) in March 1976 about the Oakwood 50-unit proposal. Both clearinghouses acknowledged receiving the notification and commented on the proposal. OKI clearinghouse files indicate that it further notified Clermont County and nine county agencies, Miami Township, and the Village of Milford about the 50-unit Oakwood project.

Local notification for 15-unit segment

HUD also made the required local government notification for Oakwood's 15-unit segment. It did not, however, properly respond to local confusion about the project's location, notify Clermont County about the proposal within the prescribed time, or wait the required time for local comments before approving the housing application.

At the time the 15-unit segment was proposed, Clermont County had an approved HAP. Therefore, HUD satisfied its notification requirements by informing Clermont County of the 15-unit proposal. Clermont County responded to this notification, but incorrectly informed HUD that the proposal was in Milford's jurisdiction. HUD did not confirm this information

but sent a notification letter to Milford as the county had suggested. As a result of this confusion, Clermont County did not comment on the 15-unit segment.

Further, HUD did not notify the local government about the 15-unit proposal within 10 days after receiving the application, and HUD approved the application before the required 30-day comment period ended. The closing date for receiving applications was March 9, 1977, but the initial notification letter to Clermont County was not sent until April 15, 1977, and the notification letter to Milford was not sent until May 3, 1977. HUD approved the developer's application on May 2, 1977--before Clermont County's 30-day comment period had expired and before Milford was notified. This would not prevent either local jurisdiction from commenting; however, HUD did not receive any comments.

#### Notifications after decisions were made

HUD also did not make the required notifications to the local jurisdictions after it decided on the 15-unit segment's preliminary proposal and the final proposal for the combined project. The HUD regulation providing for a post decision notification was not in effect at the time the 50-unit segment's preliminary proposal was considered. These notifications would not have provided the jurisdictions an opportunity to comment, but would have kept them informed of the proposed project's status.

#### Notifications should be expanded

HUD needs to expand its local government notifications so that all jurisdictions affected by proposed HUD-assisted housing projects will be notified and given an opportunity to comment.

As discussed above, section 213 of the HCD Act of 1974 only requires HUD to allow the local government unit in which the proposed housing will be located an opportunity to comment when the jurisdiction does not have a HAP in effect. If a HAP is in effect, the law only requires that the local government unit which originated the HAP be notified.

The purpose of notifying the local government when there is no HAP is to obtain comments about the need for the housing and the adequacy of public facilities and services. If only jurisdictions in which the project is located are

notified, the views of other local governments responsible for providing essential public services to proposed projects may not be available to HUD. Expanding the notifications, to give all effected jurisdictions an opportunity to comment when no HAP is in effect, would give HUD a better basis for deciding whether the housing is needed and public facilities and services will be adequate.

Expanded local government notifications would also be helpful when a HAP is in effect. By notifying other effected local jurisdictions HUD would have more assurance that the jurisdiction which prepared the HAP had considered the availability and adequacy of all public facilities and services in the locations listed for assisted housing. Such notifications would be even more helpful in assuring public facilities and services are adequate to support housing projects in a location not designated in the HAP.

The Oakwood case illustrates how present procedures do not insure that all effected jurisdictions are notified and given an opportunity to comment on proposed HUD-assisted housing. For the 50-unit segment, for which no HAP was in effect, Clermont County and Miami Township would be notified because the Oakwood project is located in those jurisdictions. For the 15-unit segment, Clermont County, which prepared the HAP, would be notified. No notification would be required for Milford in either case--even though it would provide public schools and sewer service to the Oakwood apartments. Further, no notification of the 15-unit segment would be required for Miami Township even though the project is located within its jurisdiction.

DECISIONS ON THE ADEQUACY OF PUBLIC FACILITIES NOT BASED ON OBJECTIVE DATA OR CRITERIA

In addition to the notification requirements, HUD is required to assess the adequacy of public facilities when the jurisdiction in which proposed assisted housing is located does not have a HAP. Local government officials and private citizens have charged that HUD improperly determined that public schools and roads would adequately serve the Oakwood project.

HUD made the required determinations that public facilities and services were adequate to serve the Oakwood project. However, because HUD has not prescribed any

procedures describing how a housing application reviewer should assess adequacy, its Cincinnati office's decision that the schools and roads were adequate to serve Oakwood's 50-unit segment was not based on objective data or criteria.

In addition, HUD could not demonstrate whether proper consideration was given to the OKI clearinghouse's adverse comments about the schools' and roads' adequacy. HUD later concluded, however, that the conditions described in the comments would not have justified rejecting the Oakwood application.

#### Determining adequacy of public facilities required

Section 213 of the HCD Act specifies that HUD may not approve an assisted housing application located in a jurisdiction without a HAP unless it determines that public facilities are adequate. Neither the legislation nor HUD regulations specify which public facilities HUD must judge as adequate. HUD officials, however, told us that the adequacy of public facilities is addressed during the environmental clearance review and when the proposed location is compared to HUD site and neighborhood standards. HUD guidance for both of these reviews call for evaluating the adequacy of various public facilities, services, and utilities.

#### Public facilities determined adequate, but decision procedures were insufficient

HUD had to determine the adequacy of public facilities for the Oakwood project's 50-unit segment because a HAP was not in effect at the time of its review. Before approving the 50-unit proposal, HUD determined that public facilities such as schools and roads were adequate by rating them as such in its environmental clearance review. The Department also determined that the proposed project complied with applicable site and neighborhood standards.

The only basis listed for these decisions, however, was "field observations." HUD officials who performed the reviews said they made judgmental decisions in reaching their conclusions.

While field observations may be of some benefit in assessing public facilities, they are not by themselves a sufficient basis for determining adequacy. HUD central office

officials from both the environmental assessment and assisted housing development staffs told us that a judgmental decision based on field observation is not a proper method for determining the adequacy of public schools. Rather, they said field office personnel should have contacted local school officials for information about school conditions. HUD reviewing officials, however, said they did not contact Milford school officials or obtain enrollment and capacity statistics. Similarly, although field observation may be an acceptable method for assessing roads, some criteria is needed to judge the adequacy of road conditions.

However, HUD's environmental clearance and site and neighborhood standards review instructions do not describe procedures to follow in determining the adequacy of schools, roads, or other public facilities. Currently, neither reviews' instructions explain what factors or aspects of the facilities and services need to be assessed, what data or documentation should be collected and maintained, or what conditions are serious enough to warrant a conclusion that a public facility or service is inadequate. Improved procedures and a documentation requirement would make HUD reviewers more aware of their assessment responsibilities and help insure that decisions are based on objective data and criteria.

No assurance that clearinghouse views were considered

HUD reviewing officials could not show whether the OKI clearinghouse's adverse comments about the adequacy of schools and roads were given proper consideration.

The clearinghouse had rated the access and capacity of local schools as poor and commented that the road was in need of repair. OKI, however, did not recommend that the application be rejected as a result of these conditions. The Milford school district, in a letter to HUD after the application review process was completed, also stated that the schools were inadequate to support the proposed Oakwood project.

HUD procedures direct that its reviewers meet together to reconcile conflicting review comments and consider local government comments. HUD officials acknowledged that such a meeting was not held to consider the clearinghouse comments about the Oakwood project, but said the project was probably discussed informally.

After considering the clearinghouse and school district views, however, HUD concluded that a temporary overcrowding of the Milford schools would not have been a sufficient reason to reject the Oakwood application. They pointed out that new school construction would be necessary in the Milford area regardless of the Oakwood project because of the area's general housing growth.

HUD'S POLICY ON HAP LOCATIONS FOR ASSISTED HOUSING IS UNCLEAR

If a HAP is in effect for a jurisdiction in which a proposed project is to be located, HUD does not have to assess the adequacy of public facilities, but is required to determine whether the proposal is consistent with that plan.

Interested citizens feel that (1) the Oakwood proposal is not consistent with the Clermont County HAP because it is not located in a census tract the HAP listed as suitable for assisted housing and (2) HUD should have rejected the proposal. HUD officials, however, believe that proposed assisted housing projects do not have to be located in designated census tracts in order to be consistent with a HAP. Yet certain HUD regulations and other documents do not adequately explain this position.

These contradictions have caused confusion about HUD's position. HUD needs to clearly define and promulgate a policy on whether proposed assisted housing projects must be in locations specified in the HAP.

Requirement to determine consistency with HAPs

If there is a HUD-approved HAP in effect for a proposed assisted housing project's location, section 213 of the HCD Act of 1974 requires HUD to determine whether the proposed project is consistent with the HAP before it approves the application. The legislation does not specify which aspects of the housing application must be consistent with the HAP. However, as part of its review of applicants' preliminary proposals, HUD procedures require that its reviewers determine if the number of units, type of housing assistance, and location of proposed housing is consistent with the local HAP.

Project location determined  
to be consistent with HAP

HUD determined that Oakwood's 15-unit segment was consistent with the Clermont County HAP's housing assistance goals in terms of number of units, types of assistance, and location. The latter determination was made even though the Oakwood project is not located in a census tract listed in the HAP as a suitable location for assisted housing.

The HUD officials who made these determinations told us that the location for a proposed housing project does not have to be in any of the designated census tracts in order to be consistent with the HAP. In a recent letter, HUD stated that the Oakwood location is acceptable since it meets the same site selection criteria as those census tracts listed in Clermont County's HAP. Further, the OKI clearinghouse, in its comments on the Oakwood project, concluded that the location of the proposed project was in an area suitable for low- and moderate-income persons.

Many assisted-housing projects are not located in HAP-specified census tracts. An August 1977 draft report prepared for HUD by Berkely Planning Associates pointed out that only slightly more than one-half the assisted housing projects HUD approved in sampled jurisdictions have been located in HAP-specified census tracts.

Regulations do not explain stated position

HUD regulations and documents inadequately explain its position that proposed housing projects do not have to be in a designated census tract to be consistent with a HAP. For example, current HUD regulations do not indicate how the agency determines whether a proposed housing location is consistent with HAP locations. The regulations do require that a jurisdiction objecting to a proposed location must not only point out that it is not within the general locations specified in the HAP, but must give reasons why the proposed location is objectionable. HUD central office officials said that this requirement supports their position that a location is not inappropriate simply because a local community does not designate it in its HAP.

HUD's current instructions on preparing information packets for potential developers further confuses and contradicts its position. The instructions require field offices to inform developers that they must comply with HAP requirements

and use "general locations of lower income housing" as a factor they are expected to meet.

These discrepancies have caused confusion about HUD's position. For example, the OKI clearinghouse believes proposed projects must be located in HAP-designated census tracts in order to be approved by HUD. In a booklet explaining HUD's section 8 housing assistance program, the clearinghouse informs local jurisdictions that once they specify locations for assisted housing in their HAPs, HUD will not accept proposals located outside those general locations. HUD should develop consistent regulations and procedures relating to this issue so that local governments, clearinghouses, and developers will clearly understand its position.

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#### SEWERS WILL BE AVAILABLE

After construction began on the Oakwood project, questions arose concerning whether sewers would be available for Oakwood residents prior to the property's annexation to the Village of Milford. In August 1978, after much debate and disagreement, the Milford council voted to grant a sewer tap-in without requiring prior annexation.

Before HUD's final commitment to provide mortgage insurance to the Oakwood property, the developer provided HUD two letters from the Village of Milford concerning the availability of sewers. The first letter, dated June 30, 1977, stated that the Village would be happy to tie-in its sewer system to the project, but required the property's annexation to the Village as a condition of receiving sewer service. The letter stated that annexation could be accomplished easily since the property is adjacent to an incorporated area of the Village. The second letter, dated July 18, 1977, stated that, based on the developer's meetings with the municipality and its legislative members, sewers were available for the proposed 65-unit apartment complex. HUD accepted the second letter as assuring sewer availability and agreed to provide mortgage insurance.

For a time, the meaning of these assurances was in dispute. The developer and HUD believed that the July 18, 1977, letter meant sewer availability was unconditional, but the Village contended sewer availability remained contingent on the annexation procedure's completion, as stated in the June 30, 1977, letter.

As a result of a complaint by the developer alleging racial discrimination, the Department of Justice investigated the sewer issue. The Department found that Milford had violated the Fair Housing Act (42 U.S.C. 3601 et seq.) by its attempts to delay, without adequate justification, a sewer tap-in to Oakwood until the project's site was annexed. The Department notified Milford officials that it proposed to file a civil suit to stop the Village from further impeding the Oakwood apartments' completion.

As a result of the threatened lawsuit and a recent Federal grant from the Environmental Protection Agency to upgrade the sewer system, the Village council agreed to allow the sewer tap-in.