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HUD MUST PAY PHA REPARATIONS

In what has emerged over the past four years as “Donovan’s Folly,” HUD must repay hundreds of public housing authorities tens of millions of dollars in atonement for raiding their operating funds in 2012 to help the Obama administration finance other projects.

The U.S. Federal Court of Claims rules that HUD violated its contracts with 348 PHAs by seizing \$1 billion those agencies had saved through operating efficiencies for rainy day needs.

The Claims Court -- its ruling by Judge Elaine Kaplan is final unless the Justice Department decides to mount a challenge -- says HUD breached the terms of so-called Annual Contributions Contracts with PHAs when it failed to comply with a federal requirement that any reductions to subsidies paid to the agencies be applied on a pro rata basis.

In a budget sleight-of-hand, then-HUD Secretary Shaun Donovan (Office of Management & Budget Director from 2014 until Jan. 20) decided to yank \$1 billion from PHA reserves and apply it to the most needy PHAs, those not able to reserve federal funding allocations through efficient planning and operations.

HUD went to Congress seeking a green light to raid the operating funds despite agreements between PHAs and HUD guaranteeing fixed allocations in the ACCs. Lawmakers agreed to the funding diversion but capped the amount at \$750 million. The move then allowed Congress to use \$750 million to finance other projects.

The Public Housing Authorities Directors Association led the legal charge with the National Association of Housing & Rehabilitation Officials and 348 PHAs joining the lawsuit, claiming that the new HUD allocation formula was unfair and in breach of HUD’s own rules.

Kaplan rules that PHADA and NAHRO have no standing in the lawsuit and they are eliminated. But their only role was to organize PHAs and initiate the legal action. In ruling that HUD’s arguments have no merit, Kaplan upholds the arguments by the 348 PHAs that HUD violated its own rules in upending the ACCs and doling out the seized operating monies on a need basis rather than a pro-rata basis.

The ruling nullifies the congressional authorization to breach the contracts saying the Act of Congress does not shield the law’s implementation by HUD from liability for breach of contract

and appropriate money damages.

Lawyers on both sides must reach an agreement on damages, which are claimed to be approximately \$135 million, payable from a Judgment Fund administered by the Treasury Department.

Info: See Kaplan's ruling at www.cdpublications.com/docs/9065

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