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Revenue Sharing and Relocation: The Administrative Dilemma of Ostensibly Conflicting Congressional Directives*

James A. Kushner** and Frances E. Werner***

INTRODUCTION

The urban poor face a multitude of forces which inhibit the accomplishment of the national goal to provide a decent home and suitable living environment for every American family.1 Attempts to control the effects on the poor of proposed freeway construction, urban renewal, inner-city sports arenas and civic centers, and other public and private programs which decrease the supply of low-income housing can burden even the most efficient public interest lawyers or neighborhood Legal Services offices. To make matters worse, Congress is moving away from traditional funding mechanisms and away from explicit imposition of federal standards and conditions which serve as safeguards for the interests of the poor. Many fear that the State and Local Fiscal Assistance Act of 1972 (popularly known and hereinafter referred to as the General Revenue Sharing Act)2 presages the demise of hard-won federal statutory standards. The Office of Revenue Sharing (ORS) of the United States Department of the Treasury, which is responsible for administering the General Revenue Sharing Act, has proven that these fears are not groundless by its suggestion that the requirements of the Uniform Relocation Assistance and Real Property

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Acquisition Policies Act of 1970 (URA)\(^3\) are inapplicable to projects undertaken with revenue sharing funds.\(^4\) In the absence of URA protections, the displaced poor have no effective legal tools by which to influence or challenge the decision-making process of the expenditure of revenue shared funds. Yet ORS threatens to strip the poor of these safeguards on the rationale that the General Revenue Sharing Act makes no explicit reference to URA’s applicability.

It was primarily the inability of local governments—and particularly those in urban areas—to meet ever-increasing demands for adequate municipal services in the face of a steadily declining tax base that prompted Congress to enact the general revenue sharing bill.\(^5\) However, two years earlier, Congress had embodied in URA a national policy that the provision of municipal services or public projects should not unnecessarily burden those persons who are forced to move from their homes in order to make way.\(^6\) It is the purpose of this article to critically examine the ORS position that URA protections are not applicable to revenue sharing funds. First, the underlying policies and operation of the General Revenue Sharing Act and of URA are briefly described. Next, judicial interpretations of URA are examined to determine whether revenue sharing is among the types of federal financial assistance and federal action contemplated by URA. Third, the implications of the General Revenue Sharing Act’s silence as to the applicability of URA are explored. Finally, problems likely to arise in connection with ORS implementation of URA are discussed.


4. URA has been rather informally written off. See Effect of Other Laws on Revenue Sharing Doubted, Revenue Sharing Bull., Jan. 1973 (interview with ORS Attorney William Sager). Also, in Goolsby v. Simon, Civil No. 75-74 (M.D. Ga., relief denied, Mar. 1, 1976), the Treasury Department failed to require that Macon, Georgia, provide relocation benefits to persons displaced by a project sponsored by revenue sharing funds. Plaintiff relocatees are challenging the government’s position. The district court refused to grant a preliminary injunction but unfortunately failed to discuss the technical application of URA and instead premised its decision on the syllogism that since revenue sharing was intended to avoid “strings,” and URA was a “string,” therefore URA was inapplicable to general revenue sharing. As this article will demonstrate, such a simplistic analysis of the notion of “strings” is untenable.


6. The URA’s Declaration of Policy, 42 U.S.C. § 4621 (1970), states: “The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.”
I

THE STATUTORY FRAMEWORK

A. Uniform Relocation Assistance

In the context of numerous, long-standing, and well-documented abuses visited upon persons subjected to the relocation process, Congress passed URA to assure "fair and equitable treatment" for those destined to suffer the societal burden of displacement. It is no surprise to learn that the politically handicapped—poor and minorities—constitute the bulk of relocatees and, therefore, are the principal beneficiaries of URA. Everyone familiar with the urban landscape knows that the sites of civic "improvements," highways, and other projects once were slums and ghettos. To safeguard against the wholesale removal of persons from existing housing, propelling them into already overcrowded urban housing markets, URA prohibits a federal or federally-assisted agency from displacing any person without first ensuring that suitable replacement housing is available.

The Act defines what constitutes "suitable" replacement housing; grants the displacing agency authority to construct or rehabilitate

7. See generally Hearings on H.R. 14898, H.R. 14899, S. 1 and Related Bills Before the House Comm. on Public Works, 91st Cong., 1st & 2d Sess. (1969-70); Hartman, Relocation: Illusory Promises and No Relief, 57 VA. L. REV. 745 (1971); Eichenberg, From Capital Hill: A Uniform Relocation Act: The Price of Uniformity, 3 URBAN LAW. 480 (1971); E. Cahn, T. Eichenberg, & R. Romberg, The Legal Lawbreakers: A STUDY IN OFFICIAL LAWLESSNESS REGARDING FEDERAL RELOCATION REQUIREMENTS (1970); LeGates, Can the Welfare Bureaucracies Control Their Programs: The Case of HUD and Urban Renewal, 5 URBAN LAW. 228 (1973); Note, The Interest of Rootedness: Family Relocation and an Approach to Full Indemnity, 21 STAN. L. REV. 801 (1969); ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, RELOCATION: UNEQUAL TREATMENT OF PEOPLE AND BUSINESS DISPLACED BY GOVERNMENT (1965); SELECT COMM. ON REAL PROPERTY ACQUISITION, HOUSE COMM. ON PUBLIC WORKS, 88TH CONG., 2d Sess., STUDY OF COMPENSATION AND ASSISTANCE FOR PERSONS AFFECTED BY REAL PROPERTY ACQUISITION IN FEDERAL AND FEDERALLY ASSISTED PROGRAMS 106 (Comm. Print 1964). See also Lathan v. Volpe, 455 F.2d 1111, 1123 (9th Cir.), 3 E.R.C. 1362 (1971), where the court noted that "[u]ntil it enacted URA, Congress had proceeded in piecemeal fashion in providing protection and assistance for persons displaced by federal or federally assisted projects," and that URA "replaces the previous jumble of statutory provisions." Furthermore, legislative revision was necessary because "[w]hen Congress adopted URA, it heard much testimony to the effect that federal agencies, and particularly the Department of Transportation, had engaged in a pattern of evasion of the requirements of . . . Acts relating to relocation."

8. See note 6 supra.


10. 42 U.S.C. § 4626(b) (1970) provides: "No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person."

11. 42 U.S.C. § 4625(c)(3) (1970) provides that the displacing agency shall "assure that, within a reasonable period of time, prior to displacement there will be
replacement housing itself,\textsuperscript{12} grants certain financial benefits;\textsuperscript{13} and requires that the displacing agency make relocation services available.\textsuperscript{14} The Act is implemented at the state and local governmental level by prohibiting the federal funding source from approving any program which will cause displacement unless the state or local agency has filed assurances that replacement housing will be available.\textsuperscript{15} This, in effect, imposes the duty on state and local governments to do relocation planning whenever they use federal funds on a project that will cause displacement. When federal agencies have failed to take seriously their URA responsibilities to require and review state or local relocation assurances, federal courts have not been hesitant to enjoin a project threatening the relocatees' rights.\textsuperscript{16} Thus, the right of the displacing agency to proceed on a project that will include displacement hinges on the guarantee that comparable, decent, safe, and sanitary housing is available to accommodate displacees.\textsuperscript{17}

12. The operative provision is 42 U.S.C. § 4626(a) (1970): "If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project."

13. The agency must reimburse reasonable moving expenses [42 U.S.C. § 4622(a)(1) (1970)] and, in addition, amounts up to $4,000 for tenants [42 U.S.C. § 4624 (1970)] and $15,000 for homeowners [§ 4623 (1970)] to enable the displacee to move into decent, safe, and sanitary housing if otherwise the displacee could not afford such housing [42 U.S.C. § 4624 (1970)].

14. 42 U.S.C. § 4625(c) (1970) requires the displacing agency to plan and implement a relocation program.


17. See notes 9-10 supra.
URA coverage of federally-assisted programs is stated in sweeping terms:

*Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person [unless URA provisions for relocation are complied with].*

"Federal financial assistance" is elsewhere defined as a "grant, loan or contribution provided by the United States, except any Federal guarantee or insurance. . . ." The Senate Report explains that these requirements mean "in essence, that State and local governments administering federally assisted development programs must also agree to provide the relocation payments, services, and assurances of available housing that are required of Federal agencies, as a condition for receiving the Federal assistance for the programs involved." In other words, the same guarantees to displacees required of federal agencies in their acquisition of land are required of state and local political subdivisions.

The emphasis of the Act is on the fact of displacement, not the form or procedure used to reach that result. The federal assistance does not have to be in the form of a monetary contribution to the acquisition of property in order to invoke the requirements of the Act. "The controlling point is that the real property must be acquired for a . . . Federal financially-assisted program or project." As the final House Report indicated:

> It makes no difference to a person required to move because of the development of a postal facility which method the postal authorities use to obtain the facility, or who acquires the site or holds the fee title to the property. Since the end product is the same, a facility which serves the public and is regarded by the public as a public building, any person so required to move is a displaced person entitled to the benefits of this legislation.

The Act's test for coverage seems to be whether the displacement would have occurred "but for" the presence of the federal agency or

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21. It was generally assumed by both houses of Congress that all Federal agencies and federally-assisted programs were to be subject to the Act. Congressman Hall (Mo.) expressed a fear that the Corps of Engineers may not be covered, and he was promptly assured by Congressman Edmondson (Okla.) that it was. 116 CONG. REC. 40168 (1970).
23. Id. 5.
funding. This test, which is in keeping with congressional intent, was applied in a case holding that the General Services Administration's practice of leasing property as opposed to actual "acquisition" would nevertheless be covered by the URA whenever citizens were thereby displaced. 24

B. Revenue Sharing: The "No Strings" Approach to Federal Funding and On-Going Federal Standards

The conference committee report on the General Revenue Sharing Act, which was adopted without amendment by both houses, stated that the bill had three purposes: "to provide payments to localities for high-priority expenditures, to encourage the States to supplement their revenue sources, and to authorize Federal collection of State individual income taxes ... ." 25 The Act is remarkably


While the "but for" formulation of URA applicability has achieved judicial recognition and appears to conform to legislative history and goals, several courts have seemingly avoided its adoption. The cases involve occupants of federally insured or subsidized housing seeking URA benefits where their homes have been foreclosed or scheduled for demolition, resulting in their imminent eviction. The cases turned on an interpretation of the definition of displaced person contained in URA. The Act provides that a "displaced person" is one who "moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance . . . ." 42 U.S.C. § 4601(6) (1970). In Caramico v. Secretary of the Dep't of Housing and Urban Development, 509 F.2d 694 (2d Cir. 1974), the court upheld a lower court's refusal to apply URA to tenants and occupants about to be evicted from federally-insured housing. HUD foreclosure and property disposition regulations required eviction from federal housing which had been foreclosed prior to transfer of the housing to HUD. The court's rationale for rejecting URA applicability was based upon the term "acquisition": the involuntary acquisition involved in foreclosure was not acquisition for a federal program or project. The court did not utilize the "but for" formulation, but it is conceivable that another court could reach the opposite result utilizing the Eighth Circuit's analysis in Tullock; the plaintiffs would not have been displaced "but for" the orders to vacate originating from the HUD mandate. Nevertheless, the factual pattern should not appear in the revenue sharing context, where direct acquisition, or its functional equivalent, will generally be involved.

See also Jones v. Dep't of Housing & Urban Development, Civil No. 74-2628 (E.D. La., filed Nov. 12, 1974), subsequent proceedings, 390 F. Supp. 579 (E.D. La. 1974), and 68 F.R.D. 60 (E.D. La. 1975), where the court held that HUD's involvement in the foreclosure, demolition, and subsequent private redevelopment of HUD-insured housing was not a federal program or project under URA.

Unfortunately, the only opportunity for judicial review of the applicability of URA to general revenue sharing to date has not resulted in any heightened understanding. See supra note 4.

simple in the case with which, over a five-year period, it transfers $30.2 billion of federal revenue to the accounts of state and local governmental units. A formula determines each state's allotment. Two-thirds of that "passes through" to local units who must use the funds within the specified "priority" areas established for local government recipients.\textsuperscript{26} The revenue sharing is subject to the following additional restrictions: (1) the funds must be used in accordance with Title VI of the Civil Rights Act of 1964;\textsuperscript{27} (2) the funds as allocated by the state or local agency may not constitute a nonfederal matching contribution toward a federal grant or contract;\textsuperscript{28} (3) planned use and actual use reports must be filed before and after each entitlement period;\textsuperscript{29} (4) the Davis-Bacon Act must be complied with on all programs where 25 percent of the wages are paid out of the funds.\textsuperscript{30}

The broad consensus on the need for the General Revenue Sharing Act has tended to obscure the subtle but very real differences of opinion concerning purpose and means that existed even among its proponents. General revenue sharing, heralded as "an idea whose time has come," was viewed by many federal, state, and local officials as a positive step toward relieving the acute fiscal problems of their respective governmental units.\textsuperscript{31} There was intense dissatisfaction with


26. Funds received by local governmental units and used for maintenance and operating expenses may only be spent in the priority areas of public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration. Both state and local units may, however, make any capital expenditure authorized by law. 31 U.S.C. § 1222(a) (Supp. II, 1972).

31. See generally the testimony of numerous governors, mayors, and other officers of local governments at the Hearings on General Revenue Sharing Before the House Comm. on Ways and Means, 92d Cong., 1st Sess., pts. 1-8 (1971). However, the General Revenue Sharing Act was received with mixed emotions; reservations centered around the issue of whether the funds would augment extant grant-in-aid programs or simply be an insubstantial replacement for rapidly vanishing and impounded categorical grant funds. See generally Stolz, supra note 25; Revenue Sharing: Some Second Thoughts, 32 CONG. Q. 1755 (1974).
the traditional method of redistributing the federal tax revenues to state and local governmental units through categorical grants-in-aid, and all general revenue sharing proposals possessed the common feature that has come to be known as the "no strings" concept of revenue sharing. When the concept of "no strings" is viewed apart from its proper legislative context, however, revenue sharing might be mistakenly interpreted as a federal bounty visited upon local units which can expend this bounty in any manner they believe appropriate. There is no doubt that the 1972 Act represents a departure from previous revenue redistribution schemes, but an examination is needed of what Congress meant by "no strings."

Richard Nixon, in a message to Congress, made it clear that his plan to accomplish the "New American Revolution" by decentralizing power through a revenue sharing program contemplated a "no strings" approach. The Nixon Administration's complaint about current funding mechanisms focused in part on the tendency of federal red tape to frustrate the effectiveness of the programs. John Connally, as spokesperson for this approach, testified that, in addition to the need to cut back the federal bureaucracy, the local governments should be allowed absolute freedom to determine how the money should be spent. The Senate aligned itself with this approach and voted to adopt a committee bill whose "basic purpose" was "to provide the States and localities with a specified portion of Federal individual income tax collections to be used by them in accordance with local needs and priorities without the attachment of strings by the Federal Government." The Senate rejected any attempt to define for the recipient the use to which the funds could be put.

The original House version, on the other hand, which the Senate had rejected as inconsistent with its view of the object of revenue sharing, specified certain high priority areas and limited expenses and expenditures accordingly. These priorities reflect Congressman Wilbur Mills' insistence that the responsibility for revenue raising cannot be divorced from spending unless guarantees are made that the funds will be spent on projects that comport with congressionally-defined

32. President's Message on Revenue Sharing, 29 CONG. Q. 392 (1971); see also State of the Union Message, 117 CONG. REC. 165 (1971).
35. Id. at 16.
36. H.R. REP. No. 1018, 92d Cong., 2d Sess. 18 (1972) reports that the bill would restrict maintenance and operating expenditures to: (1) public safety, (2) environmental protection, and (3) public transportation; capital expenditures are limited to sewage collection and treatment, refuse disposal systems, and public transportation.
Mills' views ultimately prevailed, albeit in a modified fashion; and the conference committee reported out a bill, quickly adopted by both houses, that included certain priority areas. The compromise broadened maintenance and operating expenses to include areas not covered by the House bill and removed all limitations on capital expenditures.

The recipients were thus allowed to make expenditure decisions within these broad areas of national concern, without the disabling procedures associated with federal grants-in-aid programs. "With regard to eligibility, there are no requirements short of being a particular type of governmental unit as defined by the Bureau of the Census." The resident expert in grantsmanship would no longer be called upon to locate the desired source of funding in the myriad of federal agencies, complete preliminary and final applications, and then consume months in ushering the proposal through the federal agency. Current legislative proposals to extend general revenue sharing for another five years generally continue the program as originally established, although some proposals would alter the allotment formula to provide urban areas with a larger slice of the pie, and at least one proposal would eliminate the priority areas.

This look at the history of revenue sharing schemes indicates that limiting federal control over types of permissible expenditures does not thereby authorize local expenditures which conflict with on-going standards. "Strings"—i.e., federal control over local expenditure decisions—have attached with varying degrees to all forms of federal funding. In the spectrum of funding schemes, general revenue sharing represents the greatest degree of flexibility available to the recipient. Traditionally, funds appropriated by Congress have been made available to state and local governments by either formula grants or project grants. These two funding mechanisms have been described as follows:

Formula grants are distributed to all states according to a predetermined formula spelled out in the enabling statute . . . . Because a state which has an approved plan on file with the federal agency is entitled as a matter of right to the continued payment of its share of any funds authorized and appropriated by Congress for the program, formula grants are sometimes referred to as mandatory grants.

Project grants are disbursed to eligible recipients for specific projects

37. As Chairman Mills stated: "I have never known the Congress to give money to anybody without retaining some control over that money." Hearings on the Subject of Revenue Sharing Before the House Comm. on Ways and Means, 92d Cong., 1st Sess., pt. 1, at 169 (1971).
38. Coleman, General Revenue Sharing, supra note 25, at 531.
on the basis of project applications . . . . Often referred to as discretionary grants, project grants are far more flexible than formula grants and allow federal administrators considerable discretion in deciding which project applications deserve funding.40

If one were to measure the degree of imposition of strings on revenue sharing funds, it is readily apparent that the project grants defined above and the General Revenue Sharing Act stand at opposite ends of the scale. In the past decade, Congress has shown an increasing desire to cede control over spending decisions to smaller, localized units of government; many programs, formerly funded on a project-by-project basis, have been converted to formula grants, also known as “special revenue sharing” acts.41 Whatever combination of forces prompted this movement is beyond the scope of this paper.42 But as the trend toward local control and guaranteed sums of aid was gaining support, Congress by enacting URA also announced its intention to provide increased protections to displacees. One can infer that, at the same time federal control over expenditure decisions was relaxed, Congress believed it appropriate to announce certain on-going standards which had to be observed where federal funds were involved. As a practical matter, it makes no difference whether the federal or the city government has final approval over an urban renewal project if the net effect is to displace persons. Congress has declared that, as long as federal funds are being used, URA must be taken into account.

Thus, the application to revenue sharing of URA, or any other on-going federal standard, does not in any way conflict with the “no strings” approach; indeed, it is a necessary and desirable complement.

II

COVERAGE OF REVENUE SHARING BY URA

Although it is unclear how, in fact, revenue sharing funds have been spent, a recent Note discloses that numerous projects which


41. See the discussion of the Housing and Community Development Act of 1974 at notes 93-95 infra and accompanying text. In addition, manpower programs, formerly funded in categorical grant form by the Department of Labor and Office of Economic Opportunity, are now made available in block grant form by the Labor Department under the Comprehensive Employment and Training Act of 1973, Pub. L. No. 93-203 (Dec. 28, 1973).

42. Two likely factors in the movement toward revenue sharing were disenchantment with the extreme federal control of “Great Society” programs and recognition that many urban areas are fiscally disadvantaged and require a flexible approach to their varied problems.

appear to involve forced relocation and would require URA compliance are being financed by revenue sharing funds:

Initial reports show that local governments are allocating over 70 percent of their allotments to capital projects, primarily road construction, new buildings, sewage lines, and various kinds of new equipment. Some localities have concentrated their aid in only a few major capital projects. For example, Phoenix, Arizona, has reportedly allocated $2.1 million in shared revenues for a two-lane road through part of the Phoenix Mountain Preserve. The plans show the new highway will eventually be combined with an existing road to form the Squaw Peak Freeway. In Davidson County, Tennessee, $1.6 million has been earmarked for paving and landfill operations. Little Rock, Arkansas, plans to spend $107,000 on its transit system, and another $175,000 on landfill. Fresno, California, is projecting the use of $840,000 in federal revenue sharing funds for urban redevelopment.44

Thus, it is known that revenue sharing funds are being utilized for projects which potentially could involve extensive demolition of housing units and displacement of the poor.

Cases interpreting the applicability of URA to federally-assisted projects have almost exclusively involved the question of relocation due to property acquisition under traditional grant-in-aid programs of highway construction and urban renewal. Even in those cases, the question has not been whether URA is applicable, but at what point in the project and to what extent.45 This limited judicial experience is hardly

44. "Id. at 116-17 (footnotes omitted). The author discusses two early studies, ORS, PRELIMINARY STUDY OF GENERAL REVENUE SHARING RECIPIENT GOVERNMENTS (1973) and GENERAL ACCOUNTING OFFICE, REVENUE SHARING: ITS USE BY AND IMPACT ON STATE GOVERNMENTS (1974). It is also pointed out that the League of Cities, the Council on State Governments, and the Brookings Institution are gathering data on revenue sharing expenditures. The National Policy Review Center is studying the expenditures of selected governmental units. Due to the brevity of the forms required for Planned and Actual Use Reports under 31 U.S.C. §§ 1221(a) and (c) (Supp. IV, 1974), it should not be expected that very meaningful data on expenditures will be obtained by ORS. See ORS, GETTING INVOLVED: YOUR GUIDE TO GENERAL REVENUE SHARING (1974).

In a pending suit seeking to establish the applicability of URA to revenue sharing, the city had used revenue sharing funds to acquire and demolish 19 buildings (nine single-family dwellings, eight duplex dwellings, one church, and one convenience store), causing the displacement of six individuals and 18 families for a street widening and paving project designed to meet federal four-lane highway specifications. See supra note 4.

surprising, since URA itself was simply a broader and more detailed restatement of prior relocation planning laws.\textsuperscript{46} 

Only recently have courts been asked to extend URA's coverage beyond the case of direct acquisition resulting in relocation. \textit{In Buzis v. Sampson},\textsuperscript{47} the court held that persons forced to relocate as a result of a federal agency's leasing policies are covered by the Act. A similar effort to restrict the class of relocatees entitled to URA benefits was attempted in \textit{Tullock v. State Highway Commission of Missouri},\textsuperscript{48} where the Federal Highway Administration relied on its regulations to deny benefits to relocatees who had moved into a dwelling subsequent to the start of negotiations for acquisition of the property by the public agency. The Eighth Circuit, through Justice Tom Clark sitting by designation, thought that the congressional intent to include \textit{any} displaced person, regardless of time of occupancy, had been made "crystal clear" in the language of the Act and held the regulations to be an inconsistent and hence invalid "miserly" interpretation.\textsuperscript{49} 

These decisions are consistent with the congressional policy that it is the fact of displacement by a federal or federally-assisted agency, rather than the means used to achieve displacement, for which the Act provides protection. This reasoning would seem to apply equally to the question of type of funding. The form of the federal assistance, whether it be a project grant, formula grant, or general revenue sharing allotment, is but a means to an end and does not affect the fact of displacement or the necessity for URA safeguards.

Any doubts whether revenue sharing funds are to be characterized as "local" rather than "federal" in nature once they reach the local treasuries should have been laid to rest by \textit{Matthews v. Massell},\textsuperscript{50} the first reported decision on revenue sharing funds. The city of Atlanta proposed to spend its revenue sharing on firemen's salaries, and locally raised revenues originally earmarked for those salaries would be used to create water and sewer credits for the city's property owners. The court's opinion expresses little patience with the transparent attempt of the city to circumvent the priority expenditure requirement of the Act and recognizes the validity of the sanctions ORS


\textsuperscript{46. See discussion of URA's history, notes 7-23 \textit{supra}.}

\textsuperscript{47. Buzis v. Sampson, Civil No. 309-73 (D. Utah, filed Dec. 5, 1973).}

\textsuperscript{48. 507 F.2d 712 (8th Cir. 1974).}

\textsuperscript{49. \textit{Id.} at 715-17 & n.5. See discussion, note 24 \textit{supra}, of decisions denying URA applicability in the absence of "acquisition."}

\textsuperscript{50. 356 F. Supp. 291 (N.D. Ga. 1973).}
may impose by requiring repayment of funds spent in a manner that contravenes the Act. Despite the ease with which revenue sharing funds make their way to the local units, Massell illustrates that such funds are still decidedly "federal" in character at the journey's end and still subject to federal restrictions such as URA protections. As one commentator has concluded:

The ORS has full veto power over local use of revenue sharing funds and actively seeks to insure that federal priorities, as listed in the Act, are carried out. The federal government supplies the funds and restricts and oversees their allocation both prior to and during the entitlement period. Furthermore, the Act also requires the ORS to approve of planned and actual expenditures and to perform periodic audits and other investigations to insure that the funds are used to implement 'matters of priority concern to the Federal Government' [citation omitted]. In short, federal participation in revenue sharing is aimed at carrying out certain national policies in an on-going administrative process. The status of the federal government vis-à-vis revenue sharing is neither impartial or disinterested.

III

IMPLICATIONS OF THE GENERAL REVENUE SHARING ACT’S SILENCE AS TO URA

A. Statutory Construction: General Approach

A long-standing canon of statutory construction is that a legislative enactment remains the law until explicitly repealed. The virtue of attaching a presumption of on-going vitality to any prior law is that Congress, not the courts or an administrative agency, has the opportunity to make the final decision if it perceives a conflict between two of its laws. In this section, the question of URA’s applicability is examined in the context of the relationship of other prior laws to revenue sharing.

51. Atlanta's proposed action would, of course, contravene the General Revenue Sharing Act's requirement that operating and maintenance expenditures be made in accordance with the priorities of 31 U.S.C. § 1222(a) (Supp. II, 1972).
52. NEPA and General Revenue Sharing, supra note 43, at 121.
53. See, e.g., the collection of cases in 2A J. SUTHERLAND, STATUTORY CONSTRUCTION § 56.02 (4th ed. C. Sands 1973), which illustrates the time-honored tenet that repeals by implication are not favored. This principle was reiterated in the Supreme Court's 1975 term when the Court stated, "[T]his canon of construction applies with particular force when the asserted repealer would remove a remedy otherwise available." Schlesinger v. Councilman, 420 U.S. 738, 752 (1975). In Morton v. Mancari, 417 U.S. 535 (1974), the Court held that the 1972 Equal Employment Opportunities Act, extending employment discrimination prohibitions to federal employers, did not impliedly repeal an earlier act which granted employment preference to Indians in the federal Bureau of Indian Affairs. The Court stressed that there must be an irreconcilable conflict between two acts for the later to repeal sub silentio the earlier.
B. Express Modification in the General Revenue Sharing Act of Certain On-Going Federal Standards

ORS' approach to administering the General Revenue Sharing Act appears to be based on the belief that standards not specifically enumerated in the Act need not be enforced.\(^5\) Title VI of the Civil Rights Act of 1964\(^5\) and the Davis-Bacon Act,\(^6\) the only standards made expressly applicable, are the only standards ORS enforces. But these two acts are explicitly mentioned only for purposes of congressional modification.

Title VI of the Civil Rights Act of 1964 reads:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.\(^5\)

Thus, Title VI would be automatically applicable to revenue sharing funds. Congress, however, in enacting the General Revenue Sharing Act, saw fit to extend the protections of Title VI by adding the additional basis of sex discrimination.\(^5\) Without this modification, Title VI would offer no relief for persons discriminated against on the basis of sex in programs funded through revenue sharing. The implication is that Title VI would not have been expressly mentioned were it not for this expansion of coverage. Yet, unmodified, Title VI would nonetheless have been fully applicable to revenue sharing funds.

Section 1243(a)(6) of the General Revenue Sharing Act requires that minimum wages set pursuant to the Davis-Bacon Act shall be paid on all construction projects financed in a proportion of 25 percent or more by revenue sharing funds. Subsection 276c of the Davis-Bacon Act would ordinarily require on all “works financed in whole or in part by loans or grants from the United States” that administratively established prevailing minimum wage rates be paid.\(^5\)

The congressionally-imposed limitation of Davis-Bacon’s applicability is instructive for two reasons. First, it is clear that even though

\(^5\) See note 4 supra.
\(^5\) 42 U.S.C. § 1242(a) (Supp. II, 1972) reads: “No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subchapter I of this chapter.” This amendment of Title VI was also embodied in the Housing and Community Development Act of 1974, 42 U.S.C.A. § 5309(a) (Supp. 1976), Pub. L. No. 93-383 (Aug. 22, 1974).
Revenue sharing entitlements are not, in the technical sense, "loans or grants," Congress believed that Davis-Bacon requirements would nonetheless be fully applicable to revenue sharing. URA's statutory language extending that Act's protection to persons who will be displaced by means of federally-assisted programs is similar: URA refers to federal "loans, grants or contributions." In fact, it is arguable that the term "contribution" admits of a broader interpretation than either "grant" or "loan." But even though Davis-Bacon's language referred simply to loans or grants, Congress assumed that a revenue sharing "entitlement" was sufficient federal financial involvement to invoke its protection. Second, unless Congress expressly limited its application, the Davis-Bacon Act would apply whenever any revenue sharing funds were used on a construction project; thus, Congress created a statutory minimum requiring a revenue sharing involvement of 25 percent. The absence of any similar minimum involvement to trigger URA application is thus significant. Silence under these circumstances speaks as loudly as words.

C. Applicability of NEPA to Revenue Sharing

The applicability of the National Environment Policy Act (NEPA) to revenue sharing has been a topic of considerable controversy in the law journals and in the courts. NEPA is not mentioned in the General Revenue Sharing Act, and both ORS and the Council on Environmental Quality (CEQ) have taken the position that NEPA is not applicable to revenue sharing. NEPA case law is relevant here.

62. See two student pieces, NEPA and General Revenue Sharing, note 43 supra, and General Revenue Sharing, NEPA, and the Bureaucratic Paper Shuffle, 25 Case W. Res. L. Rev. 797 (1975) [hereinafter cited as Revenue Sharing and Local Spending]. The former is in favor of NEPA's applicability to revenue sharing on substantive policy grounds; the latter is opposed for reasons of administrative efficiency.
64. See Treasury Department Regulations, 39 Fed. Reg. 14796 (1974), which declare NEPA inapplicable to revenue sharing funds. The CEQ guidelines specifically exempt from NEPA coverage any project or program financed solely with revenue shared funds. 38 Fed. Reg. 20551 (1973). In Greene County Planning Bd. v. FPC, 455 F.2d 412, 421 (2d Cir.), 3 E.R.C. 1595, cert. denied, 409 U.S. 849, 4 E.R.C. 1752 (1972), the Second Circuit rejected the defense of reliance on CEQ guidelines and said that CEQ guidelines were "merely advisory" and that CEQ "has no authority to prescribe regulations governing compliance with NEPA."

In Carolina Action v. Simon, supra note 63, the court acknowledged contrary judicial authority when it found that CEQ guidelines were its "strongest" ground for
to furnish illustrations of the judicial recognition that prior laws require explicit repeal.

1. NEPA, URA, and Their Analogous Relation to Revenue Sharing

In *Ely v. Velde*, the applicability of NEPA to funds made available under the Safe Streets Act and administered by the Law Enforcement Assistance Administration (LEAA) was at issue. The litigation involved the Commonwealth of Virginia’s planned expenditure of LEAA funds for the construction of a correctional facility on which the state had failed to prepare an environmental impact statement. The district court denied NEPA’s applicability because the Safe Streets Act provides: “Upon the filing of an approved comprehensive State plan (not more than one year of age) the Administration [LEAA] shall make grants. The terms of the statute leave no discretion to the Administration, and it cannot be said that they acted unreasonably in their compliance with those terms, while at the same time finding it unnecessary to look beyond those terms for provisions of other acts that might contradict those same terms.”

On appeal, LEAA argued that it was powerless “... when approving block grants, to impose any conditions not found in the Safe Streets Act itself.” The appellate court traced the history of the Safe Streets Act and found that the two goals of the Act—fear of an Orwellian federal police state which federal control of the funds might holding NEPA inapplicable. 389 F. Supp. at 1245. The court further suggested that Congress should expressly confer on CEQ the “power to determine the extent of NEPA’s applicability” to other laws. 389 F. Supp. at 1246. In light of the phenomenally high rate with which NEPA cases make their way into federal courts, it is perhaps understandable that an administrative remedy was appealing.


The resemblance between the Safe Streets Act and revenue sharing is striking and not completely fortuitous. See *LEAA as a Model for Revenue Sharing*, 4 Nat’L J. 181 (1972). In order to receive LEAA funds, which are allocated by Congress on a formula basis to each state, a state must establish by legislative or executive action a planning agency for the purpose of determining needs in law enforcement at the state and local level. 42 U.S.C. § 3721. The planning agency must then submit the results of this study of its needs in the form of a plan for intended use of its preallocated share of funds to LEAA for approval. 42 U.S.C. § 3731. Once the plan is approved, the state is authorized to spend its funds on any or all of the planned uses. 42 U.S.C. § 3734. The similarities to the method of fund distribution set up in the General Revenue Sharing Act are readily apparent: under both acts allotments are made according to a predetermined formula; both acts require minimal steps in order to be eligible for funding; both provide local decisionmaking flexibility; and both impose requirements that projected and actual uses be reported.

68. 451 F.2d at 1135, 3 E.R.C. at 1283.
produce, and the desire to promote efficient local planning and control—were not in any way compromised by the imposition of NEPA requirements. In reversing the district court's finding that the Safe Streets Act sub silentio implied a repeal of NEPA vis-à-vis federally-funded law enforcement activities at the state and local level, the court said:

... [i]n the absence of unmistakable language to the contrary, we should hesitate to read the congressional solution to one problem—protection of local police autonomy—so broadly as unnecessarily to undercut solutions adopted by Congress to preserve and protect other societal values, such as the natural and cultural environment. It is not to be assumed lightly that Congress intended to cancel out two highly important statutes without a word to that effect.69

On analysis, the policies underlying the choice of funding mechanisms to disburse LEAA and revenue sharing funds indicate that the local control requirement of LEAA springs from far more serious congressional concerns than those which motivated local control of revenue sharing funds. The apprehension of a federal police state strikes at the very heart of constitutional notions of federalism. Revenue sharing, by contrast, was the result of less overriding considerations: the high degree of federal control over expenditure decisions required by previous funding schemes had failed to produce programs tailored to local needs, and a shift in decision-making was deemed desirable. True, revenue sharing came in under the banner of the "new federalism," but it is federalism of an entirely different order. Direct federal control was not ceded in revenue sharing because of possible constitutional problems. In contrast, direct federal control of LEAA funds was never even contemplated.

This policy of no implied repealer compelled the result reached in United States v. SCRAP,70 a recent Supreme Court case construing

69. 451 F.2d at 1136, 3 E.R.C. at 1284. Thereafter, the state abandoned the use of LEAA funds for the correctional facility and decided instead to use state revenues. In subsequent litigation, the Fourth Circuit agreed with the district court that federal funding could, under those circumstances, be considered revocable and that no impact statement was now required. However, in reiterating its original decision that if LEAA funds were used then NEPA would be applicable, the court said in an unfortunate, gratuitous dictum that "a block grant is not the same as unencumbered revenue sharing: for the [block] grant comes with strings attached." 497 F.2d 252, 256 (4th Cir. 1974).

This language was picked up by the court in Carolina Action v. Simon, supra note 63, and even though it was not regarded as dispositive, the court observed that revenue sharing funds, compared to LEAA funds, "are disbursed almost automatically and with considerably less federal involvement." 389 F. Supp. at 1248, 7 E.R.C. at 1810. This is simply a restatement of the simplistic rationale that local autonomy in decisionmaking inherently implies freedom from federal standards.

70. 412 U.S. 669 (1973). Similar litigation arose when the Food and Drug Administration declined to regulate nonbiodegradable bottles. FDA claimed that its
NEPA's appliability to rate-making authority conferred on the Interstate Commerce Commission (ICC) prior to the enactment of NEPA. The prior law, the Interstate Commerce Act, prohibits the courts from enjoining interim increases in rail freight rates. The plaintiffs in SCRAP sought to enjoin such a rate increase on the ground that the ICC had failed to comply with NEPA but were denied the injunctive relief usually available for such a claim. The subsequent passage of NEPA was held by the Court not to constitute an amendment sub silentio of the prior law prohibiting injunctions. Thus, in the absence of clear language to the contrary, the prior law was paramount.

The presumption that Congress acts with knowledge of its prior laws and must expressly limit their effect has been illustrated in other cases where NEPA was the prior law. In Davis v. Morton, a case involving the question whether the Department of Interior's approval of a lease of Indian lands constituted a "major federal action" requiring an environmental impact statement, defendants argued that Congress, when it passed NEPA in 1969, did not intend such actions to be covered. The argument was based on the fact that the governing statute for lease of Indian lands was amended after NEPA's passage to include, among other things, environmental concerns. Therefore, the defendants reasoned, the lease in question, because it was approved prior to that amendment, was not then subject to NEPA. While the argument found a receptive audience at the district court, the Tenth Circuit rejected the notion that exceptions could impliedly be carved out of NEPA.

There are other instances where Congress recognized the ongoing vitality of NEPA and explicitly chose to make NEPA inapplicable to subsequent legislation. The Clean Air Act, the Federal Water Pollution Control Act, and the Trans-Alaska Pipeline have been

prior statutory mandate precluded consideration of anything but health and safety and that to expand its regulatory criteria to include environmental concerns would bring its statute into conflict with NEPA. Environmental Defense Fund, Inc. v. Weinberger, Civil No. 75-1444 (D.C. Cir., petition for review filed May 5, 1975); Environmental Defense Fund, Inc. v. Mathews, Civil No. 75-1811 (D.D.C., filed Oct. 31, 1975); Comment, NEPA's Power to Amend Other Federal Laws: EDF Seeks to Compel the FDA to Consider Environmental Criteria, 5 E.L.R. 10104 (1975). See also Milo Community Hospital v. Weinberger, 525 F.2d 144 (1st Cir.), 6 E.R.C. 2025 (1974).

71. 469 F.2d 593 (10th Cir. 1972), rev'g 335 F. Supp. 1258 (1971).
74. An interesting insight into congressional intent might be derived from comparing the General Revenue Sharing Act with the 1972 amendments to the Federal Water
legislatively exempted from NEPA coverage. In addition, Congress has exempted San Antonio's Breckinridge Park from the parklands protective statutes.  

2. **Breadth of URA Compared to NEPA**

The similarities and dissimilarities of URA and NEPA underscore the general applicability of URA, which is even broader than that of NEPA.

NEPA requires "to the fullest extent possible, the preparation of an Environmental Impact Statement" on all "major federal actions significantly affecting the quality of the human environment." In a landmark decision, *Calvert Cliffs' Coordinating Committee, Inc. v. United States,* the court said that "NEPA, first of all, makes environmental protection a part of the mandate of every federal agency and department." The heart of NEPA's requirements is the preparation of an environmental impact statement (EIS) which must contain "the environmental impact of the proposed action and alternatives to the proposed action." In cases too numerous to list exhaustively, minimal federal involvement, comparable to ORS' relationship to revenue sharing recipients, has been declared sufficient to trigger the requirements of NEPA. In *Davis v. Morton,* the Tenth Circuit held that the

Pollution Control Act. That Act was amended (in the same year as the enactment of revenue sharing) to read "no action of the administration taken pursuant to this Act shall be deemed major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969." Had Congress decided to exempt revenue sharing from NEPA's coverage, one would expect the same straightforward draftsmanship. Undoubtedly, fair relocation processes and our national environmental policy constitute higher goals of the legislature than the form of dispensing federal largess. See also Disaster Relief Act of 1974, Pub. L. No. 93-288, § 405 (May 21, 1974); Homeowner's Emergency Life Protection Comm. v. Lynn, 388 F. Supp. 971 (C.D. Cal. 1974).


Interior Department approval of a lease of Indian land was "federal action" requiring an EIS, even though the United States purported to be acting only in its guardianship capacity and did not initiate the lease, participate financially in it, or otherwise benefit from it. The court established that the test of "federal action" is whether the government acted as "more than an impartial, disinterested party." One indication of whether a project is "federal action" for NEPA's purposes is the mere presence of federal funding. In one of a series of highway construction cases, it has been established that if a project is substantially constructed with federal funds, then the activity is covered by NEPA and other federal protective standards.8

The expression "to the fullest extent possible"83 has raised the possibility that, in certain administrative programs, compliance with NEPA may not be necessary. In those judicial decisions creating exceptions to the full applicability of NEPA,84 the courts have either explicitly or implicitly based their rulings on the rationale of a Section 102 conflict, i.e., the clash between NEPA requirements and other circumstances. In Carolina Action,85 the first reported NEPA-revenue sharing case, the district court implied that statutory inconsistency was a circumstance meriting exemption from NEPA under Section 102.86 Such application of a Section 102 defense to revenue sharing is


81. 469 F.2d 593, 596 (10th Cir.), 4 E.R.C. 1735, 1738 (1972). For a related aspect of this case, see text accompanying notes 71-72 supra.

82. Named Individual Members of the San Antonio Conservation Soc'y v. Texas Highway Dept', 400 U.S. 968, 970, 2 E.R.C. 1083, 1085 (1970) (Douglas dissent to denial of certiorari). Following the denial of certiorari, however, the case found its way back to the Fifth Circuit, and that court held that, for purposes of NEPA, federal financial participation established the proposed freeway as a "federal project." 446 F.2d 1013 (5th Cir.), 2 E.R.C. 1871 (1971).


85. See supra note 63.

flawed, since revenue sharing does not possess the qualities of temporariness, emergency, or sensitivity of subject matter present in those cases granting narrowly circumscribed exemptions to agencies established to deal with emergencies, national crises, or national security. In URA, moreover, Congress provided no words whereby compliance may be evaded. The applicability of URA to general revenue sharing is thus distinguishable from the NEPA analysis in Carolina Action.

D. Revenue Sharing and Other Acts

ORS, in keeping with its position that no standards or conditions not specifically enumerated in the General Revenue Sharing Act are applicable, has not held state and local recipients to the requirements of the Hatch Act, the federal law which forbids certain political activity by state and local employees whose salaries are financed in whole or in part by federal funds.87 It would appear that the Hatch Act falls into the same category of federal standards as URA, Title VI, the Davis-Bacon Act, and NEPA: on-going national policies applicable to all federally-assisted programs. Certainly a respectable argument can be made in favor of the Hatch Act's applicability to revenue sharing. The legislative history of the Act evidences a strong congressional intent to ensure that all federally funded state and local employees remain politically neutral with respect to federal elections.88 Decisions construing the Hatch Act have not only uniformly upheld its constitutionality,89 but have also given broad scope to the Act's coverage.90

If the Hatch Act is judicially held to be applicable to revenue sharing, and it is possible that this issue will be resolved first,91 the decision

88. See, e.g., S. REP. No. 1235, 76th Cong., 1st Sess. (1940); H.R. REP. No. 2376, 76th Cong., 3d Sess. (1940); remarks of Representative Gwynne, 86 CONG. REC. 9371 (1940).
90. The Act's coverage is not limited to those funding schemes in existence at the time of the passage of the Act. For example, the "grant-in-aid" funding mechanism, whereby the state expends its own money and later receives reimbursement from the federal government, was held to be covered by the Act. Engelhart v. Civil Service Comm'n, 197 F. Supp. 806 (D. Ala. 1961), aff'd, 304 F.2d 882 (5th Cir. 1962); Palmer v. Civil Service Comm'n, 191 F. Supp. 495 (S.D. Ill. 1961), rev'd on other grounds, 297 F.2d 450 (7th Cir.), cert. denied, 369 U.S. 849 (1962).
91. The Justice Department by way of an informal legal opinion has ruled that the Hatch Act does not apply to revenue sharing, and it is reported that the Civil Service Commission does not intend to seek an attorney general's opinion. Justice Dept. Ruling: Hatch Act Not Applicable to Revenue Sharing Funds, REVENUE SHARING BULL., May 1975. But see Memorandum of Anthony L. Mondello, General Counsel to Civil Service
may have great impact on the answer to the question of URA’s applicability. The broad national policies underlying the two acts in doubt—political neutrality and equitable relocation relief—both loom large enough in national importance to permit reliance on the inference that if one act is held to be applicable, then both should be.92

Finally, a useful parallel to the General Revenue Sharing Act in the context of URA applicability is the recently enacted Housing and Community Development Act of 1974,93 an omnibus housing law which

Commission, to Robert E. Hampton, Chairman, Feb. 4, 1974, taking a contrary position. In the face of the existing legal dispute over Hatch Act applicability, several Congressmen and Senators have issued a statement indicating that it was not the intent of Congress that revenue sharing be affected by federal statutes not set out in the Act. See Statement Issued on Law Affecting Revenue Sharing, REVENUE SHARING BULL., July 1974. The import of such an after-the-fact position paper is certainly questionable. "Congressional purpose as manifested by text and context is not rendered doubtful by legislative history." Addison v. Holly Hill Fruit Products, 322 U.S. 607, 615 (1944); Davis v. Romney, 355 F. Supp. 29, 44 (E.D. Pa. 1973), rev’d on other grounds, 490 F.2d 1360 (3d Cir. 1974). See also Bauman v. Islay, 30 Cal. App. 3d 752, 758 (1973), where the court, in disregarding a post facto construction of the statute in dispute by a co-author of the bill, said, "While official committee reports can be utilized to aid in statutory construction, the views of individual legislators are of little help in determining the intent of the Legislature as a whole." See also Fletcher v. Housing Authority, 525 F.2d 532 (6th Cir. 1975) (rejecting post facto statements of legislators on the meaning of previously passed legislation as it would render judicial review meaningless).

92. The Hatch Act, however, may arguably be distinguishable from the type of ongoing federal standard URA represents, so that URA would apply to revenue sharing even if it were held that the Hatch Act did not. URA requirements relate to a particular use of federal funds; URA is triggered only if a locality chooses to spend such funds in a manner which causes displacement. The requirements of the Hatch Act, on the other hand, are triggered by any acceptance of federal funds and are not so much a restriction on the use of the funds as on the behavior of the state or local officials responsible for administering the funds. A finding of URA applicability is thus a far less massive intrusion into local governmental discretion than if the Hatch Act were found to apply. Courts may consider this factor important, given the "no strings" approach of general revenue sharing.


Congress specifically amended NEPA's requirements with respect to activities carried out with the funds provided by the new Housing Act. In all other situations where NEPA is applicable, the federal funding source must prepare or at least review the EIS and make the final decision whether the proposed activity is feasible in light of its environmental effects. (42 U.S.C. § 4332 specifically refers to the federal official, not the state or local recipients of federal funds). The new housing act requires state and local project applicants to assume all responsibilities for environmental review and decisionmaking. 42 U.S.C.A. § 5304(h)(1). See Comment, Controversial NEPA Implementation at HUD: Shifting Environmental Review Responsibility to Local Grant Applicants, 4 E.L.R. 10193 (1974). The Second Circuit in the Green County case found the federal defendants to be in violation of NEPA when they delegated the preparation of the EIS. Green County Planning Bd. v. FPC, 455 F.2d 412 (2d Cir.), 3 E.R.C. 1595, cert. denied, 409 U.S. 849, 4 E.R.C. 1752 (1972). See additional comments on preparation responsibilities below and note 99 infra.
replaces traditional categorical grants-in-aid and makes all Department of Housing and Urban Development (HUD) programs available to state and local governments in the form of a revenue sharing-type of block grant. The manner in which Congress and HUD have chosen to deal with the applicability of URA is an example of the presumption that a prior law requires explicit repeal. The new Act is silent as to URA's applicability; however, HUD's regulations require recipients to provide relocation assistance and benefits in compliance with the URA. Thus, HUD's regulations indicate that it is taking the position that URA, in the absence of a specific repealer, is still applicable to special revenue sharing. The same reasoning should be applied by ORS to the issue of URA's applicability to general revenue sharing. The differences between special and general revenue sharing do not justify abandonment of the principle that prior laws require explicit repeal.

IV

OBSERVATIONS ON POTENTIAL ENFORCEMENT DIFFICULTIES

URA requires the preparation of detailed plans demonstrating the availability of adequate replacement housing, relocation advisory

Therefore, Congress was under an obligation to explicitly modify NEPA's requirements with respect to the new law if it wished to delegate these NEPA duties to the local governmental unit. Implicit in this modification is Congress' understanding that NEPA, if left unmodified, would continue in full force to govern activities funded by the new law and that the obligation was on the legislature to modify its application. Congress ultimately amended NEPA to avoid the holdings of Green County and Conservation Soc'y of Southern Vt. v. Secretary of Transportation, 508 F.2d 927 (2d Cir. 1974), vacated sub nom. Coleman v. Conservation Soc'y of Southern Vt., 96 S. Ct. 19 (1975), and permit limited delegation of EIS preparation to the states. Act of Aug. 9, 1975, Pub. L. No. 94-83, amending 42 U.S.C. § 4332 (1970). See Comment, Two Amendments Leave NEPA Intact; Congress Confers Limited Authority on State Officials to Prepare NEPA Statements, 5 E.L.R. 10173 (1975). It appears that some agencies will attempt to use recent legislation as a precedent to lessen NEPA's requirements. Comment, Federal Highway Administration Launches New Effort to Win Congressional Reduction of Its NEPA Obligations, 5 E.L.R. 10177 (1975).

94. However, like general revenue sharing, this special revenue sharing act extends civil rights protections to women. 42 U.S.C.A. § 5309 (Supp. 1976).


In addition, 42 U.S.C. §§ 4623(b), 4626, and 4635 establish procedures for providing housing as a last resort. Specifically, section 4626 provides that, where comparable replacement housing is not available and "the head of the federal agency determines that such housing cannot otherwise be made available, he may take such actions as is necessary or appropriate to provide such housing by use of funds authorized for such project." Section 4635 enables a displacing agency to make loans to nonprofit,
assistance, and fair and reasonable relocation payments. In addition, URA permits applicant-prepared plans which are then reviewed by the federal agency. We shall here try to anticipate the problems likely to arise in implementation of URA by ORS and offer some suggestions on devices available to assure meaningful compliance by state and local recipients.

The principal danger which may prevent comprehensive application of federal standards is the possibility that recipients will devise avoidance schemes. Recipients may use revenue sharing funds for local programs which do not entail displacement in order to free up local revenues for projects which, if federal funds were used, would require compliance with URA. It must be recognized that the procedural burdens of URA compliance and its significant replacement housing costs provide incentive to the recipient to avoid compliance whenever possible. Legally, of course, avoidance schemes are invalid, and courts have developed liberal standards to determine citizen standing in order to permit challenges of such abuses. An avoidance tactic was attempted in Matthews v. Massell, where the recipient indirectly spent revenue sharing funds on unauthorized expenditures. But the court's reaction there indicated great willingness to look beyond

limited dividend, or cooperative organizations to cover planning and other reasonable preconstruction expenses necessary to develop replacement housing. Section 4623(b) permits federal agencies to ensure the mortgage on a displacee's replacement home, despite the fact that the displacee does not have some or all of the personal characteristics normally required of applicants for such mortgage insurance.

99. 42 U.S.C. § 4625 (1970). This is a notable distinction between URA and NEPA. ORS is free to delegate to recipients the responsibility for preparation of relocation plans. No doubt a principal consideration in Carolina Action, supra note 63, refusing to apply NEPA to revenue sharing, was the inexpediency of requiring ORS to prepare environmental impact statements for all recipients. See, e.g., cases discussed supra note 93. Cf. Revenue Sharing and Local Spending, supra note 62. NEPA was subsequently amended to permit limited EIS delegation, supra note 93. It should be recognized that only a limited number of general revenue sharing recipients will utilize funds for displacing activities calling for URA compliance; thus, URA implementation problems are on a much smaller scale than those posed by NEPA.


appearances to the substance of a proposed transaction in order to trace
the ultimate use of revenue sharing funds:

Such an attempt to avoid the clear restrictions of a federal statute
cannot be accepted. . . . In the interpretation of federal statutes gen-
erally, the courts have long made it clear that Congressional intent
cannot be overridden by sham transactions . . . . The courts have
consistently refused to exalt artifice over reality or to ignore the actual
substance of a particular set of transactions.102

The defendants in Matthews v. Massell had raised a defense based on
a policy argument articulated in a recent law review article which
cautioned that when revenue sharing funds become commingled with
local funds it will be extremely difficult to discover and prove cases of
avoidance.103 However, the court responded that "[s]uch problems of
proof will undoubtedly arise" but that in the case before it the
violation was clearly proven.104

As a practical matter, the fears of the commentators and public
officials are probably greatly exaggerated. It is more likely that cities
and states, as was the case in Matthews v. Massell, will publicly
announce their shared revenue expenditure intentions and that pro-
posals will be aired in normal legislative budget procedures.105 Never-
theless, the possibility of unlawful avoidance does exist, and ORS is
justified in its concern that it cannot effectively detect decep-
tions.106 Therefore, despite the unlikelihood of widespread fund displacement
practices to avoid URA, it would be wise to fashion, by judicial con-
struction or legislative amendment, safeguards to prevent such abuses.

One such device might be to require that recipients certify that

102. 356 F. Supp. at 299. The decision cited judicial scrutiny of similar avoidance
schemes in the areas of taxation, securities, and antitrust.

103. The Revenue Sharing Act of 1972: Untied and Untraceable Dollars from
Washington, 10 HARV. J. LEGIS. 276 (1973). See also Comment, 47 NOTRE DAME LAW.
1042, 1056 (1972).


105. In Chicago, where a federal court judge has impounded general revenue
sharing funds after finding that the police department discriminates against minorities
and women, Mayor Richard J. Daley recently announced his intention to engage in
budget-shifting, presumably to avoid compliance with the court's affirmative remedial
order. N.Y. Times, Jan. 11, 1976, at 36, col. 4. The article repeated a popular
misconception, apparently shared by the Mayor: "Because revenue sharing funds have so
few restrictions on their use, aside from the prohibition against discrimination, it is
possible for Chicago to withdraw the funds from the police department budget and put
them elsewhere. The resulting deficit in the police department budget could be filled
from the city's general treasury."

106. Revenue Sharing Officials Answer Questions on Program, REVENUE SHARING
BULL., Dec. 1972: "[A]t the local level, if a community decided to put revenue sharing in
policemen's salaries, the other funds that were meant to go into policemen's salaries can
be used elsewhere. There is no way [the ORS] can track down and find out where the
revenue sharing funds actually had impact."
no revenue sharing funds were used directly, indirectly, or by displacing local funds, for projects that would cause relocation or otherwise be considered a project requiring URA safeguards. The essential test for URA coverage would be whether the project would have proceeded "but for" the presence of revenue sharing funds. The shortcomings inherent in the certification system are obvious. While some deterrent value is provided by the required certification, those who are determined to evade the law by bookkeeping subterfuge are not likely to be deterred by the fear of loss of entitlement or the payment of penalties.

Perhaps not as politically viable as a certification system, but undoubtedly more effective in these cases, would be the use of a presumption that all new projects undertaken by a recipient which would, if federally funded, be covered by URA, are in fact made possible by the introduction of revenue sharing funds. The recipient could then rebut the presumption by demonstrating that the project would have been undertaken with local funds in the absence of revenue sharing. For example, offer of such proof as a special bond issue to build a capital improvement project would satisfy the recipient's burden. On the other hand, a community which has had a difficult time making maintenance ends meet over the years would be hard pressed to explain how, in the absence of revenue sharing funds, it would have been able to finance a highway improvement or urban renewal project. Strong evidence of avoidance would exist where a recipient changed the funding source for a project from revenue sharing to local funds after the threat of URA litigation. Thus, the locality would bear the burden of proving that its bookkeeping shift was done for purposes other than evasion of the requirements of URA. The Treasury Department already utilizes a presumption test for determining when revenue sharing funds are used unlawfully as matching shares for other federal grants. Also, presumptions are used regularly in

107. See note 24 supra and accompanying text.
108. This approach has been suggested in NEPA and General Revenue Sharing, note 43 supra.
109. Analogous attempts to avoid NEPA requirements by budget-shifting or segmentation of a project have met with judicial disapproval. Named Individual Members of the San Antonio Conservation Soc'y v. Texas Highway Dep't, 446 F.2d 1013 (5th Cir.), 2 E.R.C. 1871 (1971). The court must be satisfied that the nonfederal portion of a project has independent utility and was not designed to avoid NEPA compliance before the court will sanction the failure to file an EIS for that portion. Compare Indian Lookout Alliance v. Volpe, 484 F.2d 11 (8th Cir.), 5 E.R.C. 1749 (1973), with La Raza Unida v. Volpe, 337 F. Supp. 221 (N.D. Cal.), 3 E.R.C. 1306 (1971), 4 E.R.C. 1797 (1972), aff'd on other grounds, 488 F.2d 559 (9th Cir. 1973), cert denied sub nom. California Highway Comm'n v. La Raza Unida, 417 U.S. 968 (1974).
the area of income taxation. This presumption process is not too strained a definition of the term “federally assisted” found in URA; certainly, if the activity causing displacement could not have been accomplished “but for” the revenue sharing funds’ presence, it has been “federally assisted” in a meaningful sense.

While, historically, administrative enforcement of relocation standards has been unreasonably lax, the courts, from whom we may expect continued aggressive enforcement, should not have to be the principal means of enforcement of federal standards in the revenue sharing area. ORS already has available under its statute several potentially effective sanctions it may impose on noncomplying communities. For example, ORS regulations provide for the reduction of entitlements, withholding of funds, restitution, and, in the case of unauthorized expenditures, reimbursement plus a 10 percent penalty. Thus, ORS has the statutory capability of both implementing and enforcing URA. What is lacking at the present moment is the will.

CONCLUSION

There is no support for the contention that Congress, when it enacted the General Revenue Sharing Act, intended to suspend its formerly declared policies of protecting victims of relocation. The only argument for that position is the simplistic syllogism that because revenue sharing is a “no strings” program, and popular conceptions perceive URA requirements as “strings,” therefore URA is inapplicable to revenue sharing expenditures. But there is nothing in the language or legislative history of revenue sharing which suggests a repeal of URA. Not only do all analyses lead to the opposite conclusion, but URA implementation can be accomplished efficiently and effectively.

111. Under the theory of the “business purpose test,” the party seeking a tax benefit bears the burden of demonstrating that the transaction was entered into for purposes other than tax avoidance. Gregory v. Helvering, 293 U.S. 465 (1935); Britker & J. Eustice, Federal Income Taxation of Corporations and Shareholders 14-99 (1971).

112. See supra note 7.


114. A judicial pronouncement that URA applies to revenue sharing funds is, of course, no guarantee that ORS will enforce these laws with acceptable rigor. ORS has come under harsh criticism for its unwillingness to pursue administrative remedies, including withholding of funds, after findings of discrimination have been made, even where those findings have been made by a federal court. See Sklar, The Impact of Revenue Sharing on Minorities and the Poor, 10 Harv. Civ. Rights-Civ. Lib. L. Rev. 93, 118-22 (1975). It may be possible to prod ORS into action by analogy to the precedent developed in Adams v. Richardson, 480 F.2d 1159 (D.C. Cir. 1973), where it was held that a federal administrative agency had abdicated its enforcement duties under Title VI under the guise of administrative discretion.

115. The only case on point, Goolsby, supra note 4, engages in this superficial analysis.
The dilemma faced by ORS concerning ostensibly conflicting congressional directives could be resolved in three ways. ORS could itself promulgate regulations stating that URA is applicable to projects funded by general revenue sharing.\textsuperscript{116} Should ORS take the position that URA is not applicable even without explicit repeal, a judicial decision on the merits would resolve that issue.\textsuperscript{117} Finally, Congress could address the issue in its next enactment of the general revenue sharing bill, either by open discussion, on the floor or in conference, of URA’s applicability, or by amending the statute to include language that specifically mentions URA or generally acknowledges the continuing applicability of prior laws in the absence of repeal.

It would be a bitter irony if revenue sharing funds were used directly or indirectly to cause displacement without relocation benefits. Congress struck a balance in URA between the necessity for public improvement efforts and the disproportionate hardships borne by displacees. If URA is disregarded in the spending of shared revenue, the funds provided will exacerbate the deterioration of municipal services—the very problem such funds were designed to alleviate.

Moreover, compliance with URA will have a beneficial effect on the local decision-making process. If state and local officials are required in advance to evaluate the impact of a project in terms of relocation and available housing, not only will a reviewable record be made, but affected citizens will have more respect for the decision-making process itself. URA will inject the element of planned decision-making into general revenue sharing expenditures and allay the inevitable suspicion that government, without such safeguards, tends to act arbitrarily. Charles Reich has commented on the real value of the planned, well-considered government decision:

If we cannot guarantee the 'right' decisions, we can perhaps insure that more decisions are made by the right processes.\textsuperscript{118}

Applying URA to projects provided by general revenue sharing will, at this time of vanishing "strings," not only assure that decisions are made through the "right processes," but will also, in part, assure that those decisions are "right."

\begin{footnotes}
\item[116.] See, e.g., notes 93-95 \textit{supra} and accompanying text.
\item[117.] But see note 114 \textit{supra}.
\item[118.] Reich, \textit{The Law of the Planned Society}, 75 \textit{Yale L.J.} 1227, 1251 (1966).
\end{footnotes}