

# HOUSING JUSTICE

National Housing Law Project

Newsletter April 2012

## New HUD Regulations Could Improve Section 8 Voucher Families' Ability to Relocate

The Department of Housing and Urban Development (HUD) has published proposed regulations that seek to clarify and improve portability, the process by which tenants may move to another jurisdiction with a Section 8 voucher. Portability is especially critical to domestic and sexual violence survivors who need to relocate for their safety and wellbeing. The proposed rule would, in some cases, increase the amount of time a family has to find a suitable unit when porting to another jurisdiction. It also could help reduce delays in the portability process and unnecessary denials of portability by public housing agencies (PHAs), which may be critical for survivors who need to move as quickly as possible.

Public comments on the proposed rule are due by May 29, 2012. This article focuses on the sections of the proposed rule that are most relevant to domestic and sexual violence advocates.

### Background

Tenants in the Section 8 voucher program can use their rental assistance anywhere in the country where there is a public housing agency (PHA) administering a voucher program. This feature is known as "portability," and it allows tenants to relocate to a rental unit of their choice, including one located outside the jurisdiction of the PHA that initially issued the voucher. PHAs have obligations to assist tenants in moving to another juris-

diction while continuing to use their vouchers. The PHA that first issued the voucher to the tenant is known as the "initial PHA." The PHA in the jurisdiction where the tenant will be moving is called the "receiving PHA."

While portability is a key feature of the voucher program, HUD has identified several issues that delay or impede the ability of families to relocate while retaining their vouchers. To address these issues, HUD has proposed several changes to its portability regulations, which are discussed below.

### Improving the Family's Ability to Find a Unit

HUD's proposed regulations would, in some cases, increase the amount of time a family has to find a suitable unit. This may be an important change for domestic and sexual violence survivors, who sometimes have difficulty securing a rental unit due to poor credit, tenancy, or criminal history. Further, it may take survivors longer to find a suitable home if they need units with certain security or accessibility features.

After a PHA has approved a family's request to move to another jurisdiction, the family has a limited window of time, called the "voucher term," to locate suitable housing. Once the family has found a unit, the family must request that the PHA approve the tenancy. Current law gives PHAs discretion to decide whether to suspend the voucher term while the family is waiting for the tenancy to be approved. Without a suspension, a family may lose critical time on the voucher while waiting for the PHA to conduct inspections and determine whether to approve the tenancy. This can be

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problematic if the PHA rejects the unit, and the family is forced to begin its housing search all over again. HUD proposes to change this policy by requiring PHAs to stop the clock on the family's voucher once the family has submitted a request for tenancy approval. According to HUD, this change would give families the maximum time possible to find a unit.

HUD also proposes to add 30 days to the voucher term for portability moves. Under existing law, after the receiving PHA obtains the family's portability paperwork from the initial PHA, it must issue a voucher to the family for its search for housing in the receiving PHA's jurisdiction. The term of the voucher from the receiving PHA may not expire before the term of the voucher issued by the initial PHA. HUD's proposed regulations would require that the term of the voucher from the receiving PHA be an additional 30 days *after* the expiration date of the voucher from the initial PHA. HUD hopes that this extra 30 days will accommodate the additional time that the portability process requires. For example, the time period when a family is waiting to attend the receiving PHA's briefing session counts against the family's voucher term, reducing the amount of time the family has to find a unit. The proposed rule would provide that if a family still has not found housing during the voucher term, the receiving PHA's local policies on voucher extensions apply.

HUD also seeks public comment on several issues that affect the ability of families to relocate with their vouchers. HUD notes that under current law, a family porting into another jurisdiction must satisfy the receiving PHA's screening criteria, even though the family may have been receiving voucher assistance from the initial PHA for years. This policy causes problems where the receiving PHA has more stringent criteria than the initial PHA and can be especially problematic for survivors with criminal history. For example, a domestic violence survivor may have a criminal record that was acceptable under the initial PHA's screening policy, but is unacceptable under the receiving PHA's criteria. The survivor already may have given notice to end the lease and started

## Upcoming Webinar

**Topic:** The Violence Against Women Act: Housing Protections for Survivors

**Date:** May 22, 2012, 2 pm to 3:30 pm Eastern

**Register:** <https://www3.gotomeeting.com/register/462554398>

**Audience:** OVW Transitional Housing and Legal Assistance for Victims Grantees

**Contact:** [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org)

looking for housing in the new jurisdiction by the time the receiving PHA informs her that she did not pass the criminal background check. HUD seeks comments on how this type of hardship can be prevented, such as by prohibiting screening by the receiving PHA.

Under current regulations, if a family requests to port and there is more than one PHA in the family's desired location, the initial PHA must select the receiving PHA. HUD seeks comments on whether the family instead should be allowed to select the receiving PHA. The opportunity to choose the PHA may be important to domestic violence survivors who want to be in a community that has supportive services or who want their children to attend a particular school. The initial PHA still would be responsible for informing the family of the PHAs that serve the area and providing their contact information.

## Improving Portability Procedures

HUD proposes several changes that could improve the manner in which PHAs process portability requests. The proposed regulations would require the initial PHA to provide written notification to the local HUD field office when the PHA finds that it is necessary to deny moves based on lack of funding. According to HUD, the notification requirement would help ensure that a PHA has

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considered the circumstances of each move before deciding that it lacks sufficient funds. Further, the regulations would provide that a receiving PHA cannot refuse to assist families seeking to port into the PHA's jurisdiction or direct them to a neighboring PHA for assistance. The receiving PHA must have approval in writing from HUD before refusing an incoming family. These changes are significant, because advocates often have questions regarding the circumstances under which a PHA can deny portability.

Under current law, the receiving PHA has the choice of billing the initial PHA for assistance on behalf of the porting family, or of absorbing the family into its own program. In either case, it must promptly inform the initial PHA of its decision. HUD notes that problems can arise where a receiving PHA agrees to absorb the family, but later reverses its decision. The initial PHA often relies on the receiving PHA's promise to absorb the family and plans its budget accordingly. If the receiving PHA later refuses to absorb the family, the family may be forced to relocate back to the initial jurisdiction or give up its assistance entirely. This could be devastating for a domestic violence survivor who needs to move for her safety. To address these issues regarding billing, the proposed regulations would state that if a receiving PHA agrees to absorb the family, it cannot reverse its decision without the initial PHA's consent.

## Conclusion

HUD notes that one of the benefits of the proposed rule is that an efficient portability process would help ensure that victims of domestic violence and stalking have access to the resources necessary to relocate to a safe, stable home. The proposed regulations are titled "Public Housing and Section 8 Voucher Programs: Housing Choice Voucher Program: Streamlining the Portability Process" and were published at 77 Fed. Reg. 18,731 on March 28, 2012. Advocates seeking more information about the proposed rule can view it online at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-28/pdf/2012-7341.pdf>. ■

## Court: Residence for Women Can Proceed with Fair Housing Action

A court has ruled that women living in a Cincinnati affordable housing development can pursue their fair housing case against a developer that is allegedly seeking to shut down the development. The case, *Cooper v. Western & Southern Financial Group, Inc.*, was filed in federal court in 2011. The case may be of interest to domestic violence shelters and transitional housing programs that are facing opposition to expansion or renovation.

### Facts

The Anna Louise Inn's mission is to provide women, including domestic violence survivors, with safe, decent, and affordable housing without regard to their economic condition, race, or lack of employment. The Inn offers supportive services, educational programs, counseling, and emergency shelter. In 2010, the Inn obtained an allocation of \$13 million to renovate its units.

The Inn alleges that developer Western & Southern seeks to drive the Inn and its female residents out of the neighborhood in order to force a sale of the property to the developer. According to the Inn's lawsuit, Western & Southern seeks to redevelop the site for luxury condominiums, a use that the developer deems more compatible with the offices and condominiums it currently owns in the area. According to the lawsuit, the developer has publicly stated that the Inn's residents are not compatible with the character of the area and must be moved elsewhere. The Inn alleges that the developer has photographed the residents without their permission; falsely accused them of engaging in criminal activity; and engaged in frivolous challenges to the Inn's building permit. The Inn asserts that residents have been intimidated and threatened by the developer's acts.

### The Lawsuit

The residents of the Inn filed a lawsuit alleging

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that the developer's actions violate the federal Fair Housing Act (FHA). Specifically, the residents assert that the developer has interfered with their fair housing rights by waging a campaign to coerce them to move out of their neighborhood. The residents argue that these actions are premised on the developer's discriminatory belief that the women residing at the Inn are not compatible with the neighborhood.

The developer filed a motion to dismiss the Inn's lawsuit. The developer argued that it could not disrupt the residents' fair housing rights, because it does not own the Inn. Further, the developer denied that it acted with a discriminatory intent and instead alleged that its actions were motivated by economic considerations.

### **The Court's Opinion**

In ruling on the developer's motion to dismiss, the court first examined whether a non-owner can ever be in a position to directly influence a plaintiff's fair housing rights. The court concluded that the residents' allegations satisfied the elements of a fair housing retaliation claim. According to the court, the developer's alleged actions in pursuing frivolous appeals of the Inn's building permit, photographing the residents, and falsely accusing them of committing crimes could be construed as intimidating and threatening. Thus, the court found that the developer was in a position to disrupt the exercise of the residents' FHA rights. The court also found that these allegations were sufficient to demonstrate that the developer's motivations were not purely economic and that the developer acted with a discriminatory animus.

Ultimately, the court denied the developer's motion to dismiss and found that the residents could move forward with their FHA action. An attorney for the residents stated, "The Anna Louise Inn has been in its only location in Lytle Park for 102 years and its residents do not want to move. They regard the Anna Louise Inn as their home. This is about protecting their rights." It remains to be seen whether the court will set a trial date in the case. ■

## **DOJ Finds North Carolina Courts Failed to Provide Adequate Language Access Services**

An investigation by the Department of Justice (DOJ) recently found that the North Carolina state court system failed to provide meaningful access to limited English proficient (LEP) individuals in violation of federal civil rights laws. According to DOJ, the North Carolina Administrative Office of the Courts (AOC) impermissibly restricted the types of proceedings in which interpreters are provided. The AOC's policies and practices resulted in court proceedings moving forward without language assistance for LEP individuals, who were unable to meaningfully participate in their cases. The investigation is of particular interest to domestic violence and housing advocates, because several of the violations identified by DOJ involved restraining order, custody, and eviction cases.

### **Background**

Title VI of the Civil Rights Act prohibits discrimination on the basis of national origin by recipients of federal financial assistance. Failure of a recipient to provide LEP individuals with meaningful access to its programs can violate Title VI's prohibition of national origin discrimination. Accordingly, federal funding recipients, including courts, must take reasonable steps to provide LEP individuals with meaningful access to their programs.

DOJ initiated an investigation based on a complaint alleging the North Carolina AOC failed to provide LEP individuals with meaningful access to its programs and treated Hispanics unequally as a result of AOC's mandatory policies. The complaint also alleged that AOC does not provide interpreters for LEP Spanish speakers facing eviction.

### **Findings**

DOJ's investigation concluded that AOC's interpretation policies resulted in an impermissible

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discriminatory impact based on national origin. The policies provided that an interpreter would *not* be provided in many types of cases, including child custody and child support hearings; divorce proceedings; restraining order proceedings involving non-intimate partner stalking or sexual assault; and eviction proceedings. These policies resulted in severe consequences for LEP individuals, including loss of custody and housing.

Even in cases where AOC's policies mandated interpretation, the courts did not consistently provide language services. DOJ found instances of interpreters not being appointed in a timely manner and use of friends and family members to interpret. DOJ also uncovered instances where judicial officials proceeded with hearings without interpreters present. Further, DOJ found inconsistent interpreter coverage, absence of translated forms necessary for many court proceedings, and systemic failures to provide notice to LEP individuals of their right to language services.

DOJ provides several examples of gaps in access to competent interpreters. One court regularly proceeded with domestic violence restraining order hearings without an interpreter for either party. The clerk of another court stated that domestic violence restraining order petitioners were not provided interpreters. A victim advocate reported that parties in domestic violence restraining order hearings used friends, family members, and advocates to interpret.

Harmful consequences resulted from the lack of interpreters. One woman lost custody of her children after having difficulty understanding the judge, opposing counsel, and witnesses. Another woman was twice denied an interpreter in domestic violence restraining order proceedings. The judge did not grant her request for a restraining order in part because the judge could not understand her. A tenant who was denied an interpreter in her eviction hearing was evicted but did not know this until it was explained to her afterward.

### Budget Constraints

AOC identified fiscal constraints as one reason

for its failure to provide greater access to court proceedings for LEP individuals. However, DOJ determined that financial constraints would not preclude AOC from taking steps to comply with its Title VI obligations. DOJ noted that the estimated cost of expanding interpreter services would have been only 0.3% of AOC's annual budget. Further, AOC refused to provide interpreter services even where the budget impact was nonexistent or limited. Additionally, DOJ noted that there were resources available to AOC to improve access for LEP individuals, and provided AOC a list of federal funding resources.

### Conclusion

Based on its investigation, DOJ concluded that AOC's policies and practices violated the nondiscrimination provisions of Title VI. DOJ has requested negotiations to remedy AOC's violations of federal law. If AOC does not voluntarily agree to remedy the violations, DOJ may file litigation, which could result in termination of AOC's federal financial assistance. Advocates in jurisdictions where courts or other federal funding recipients are failing to provide meaningful access to LEP individuals can file complaints with DOJ. A complaint form and filing instructions are available at <http://www.justice.gov/crt/about/cor/complaint.php>. ■

### For technical assistance or requests for trainings or materials, please contact:

Meliah Schultzman, [mschultzman@nhlp.org](mailto:mschultzman@nhlp.org)  
 Catherine Bishop, [cbishop@nhlp.org](mailto:cbishop@nhlp.org)  
 National Housing Law Project  
 703 Market Street Ste. 2000  
 San Francisco, CA 94103  
 Phone: (415) 546-7000, x. 3116  
<http://www.nhlp.org/OVWgrantees>

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