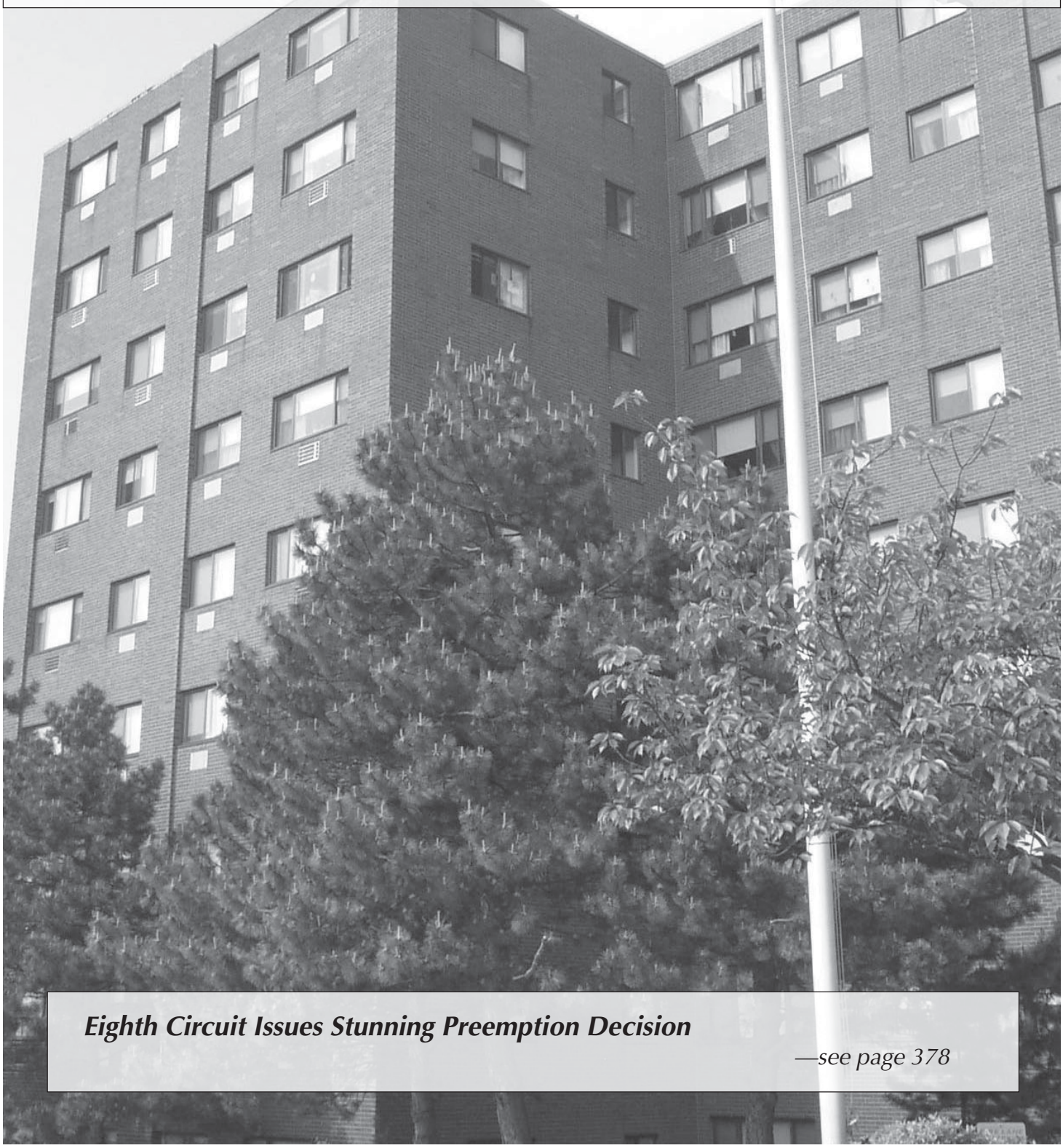
NATIONAL HOUSING LAW PROJECT
advancing housing justice

Housing Law Bulletin

Volume 33 • August 2003
Published by the National Housing Law Project



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Housing Law Bulletin

Volume 33 • August 2003

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Cover: Salem Heights Apartments, a 200-unit apartment complex in Salem, MA. The complex was preserved as affordable housing for the next 100 years by Preservation of Affordable Housing, Inc., a national nonprofit dedicated to preserving affordable housing. The Massachusetts Housing Partnership provided a direct loan of $7.2 million and another $18 million through the sale of tax-exempt bonds. Photo courtesy Massachusetts Housing Partnership Fund.

The *Housing Law Bulletin* is published 10-12 times per year by the National Housing Law Project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions or policy of any funding source.

A one-year subscription to the *Bulletin* is $150.

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Mandatory Community Service Requirements in Public Housing Cause Much Confusion

Background

On June 20, 2003, the United States Department of Housing and Urban Development (HUD) issued a notice to all public housing authorities (PHAs) advising them of the reinstatement of the mandatory community service requirements, originally enacted under Section 512 of the *Quality Housing and Work Responsibility Act of 1998* (QHWRA).[1] That section requires all public housing residents to perform eight hours of community service each month (96 hours per year) or participate in economic self-sufficiency activities unless exempted.[2] Pursuant to PIH Notice 2003-17 (Notice), all PHAs must have notified residents in writing by July 31, 2003, of the reinstatement of this requirement and must assure that all residents are performing their community service or comparable requirements by October 31, 2003. Many PHAs across the country have been scrambling to implement these requirements but are having difficulty given the short time frame imposed by HUD. A review of the notice, regulations, QHWRA and the Public Housing Occupancy Guidebook (PHOG) reveal significant discrepancies that are likely to cause much confusion.

The National Housing Law Project, on behalf of the Housing Justice Network, sent a letter to HUD on July 29, 2003, identifying a variety of issues of concern and seeking clarification of those issues. This article will alert our readers to those discrepancies and how to address them in your local jurisdiction.

HUD's Initial Retroactive Language Is Removed from the June Notice

HUD has issued two versions of the Notice. In its original version, issued on June 20, 2003, HUD stated that the community service requirement was applicable "...to all leases entered into on and after October 1, 2002." This language was removed in the second version of the Notice, which has the same June 30 date and is otherwise identical to the first notice. Therefore, PHAs are not required to force tenants whose leases were entered into on or after October 1, 2002, and before June 20, 2003, to retroactively make up the community service requirements that are nine months old.

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[1]NOTICE PIH 2003-17 Reinstatement of the Community Service and Self-Sufficiency Requirement (June 20, 2003). For background *see Public Housing Mandatory Community Service and Self-Sufficiency Requirements Reinstated,* 33 HOUS. L. BULL. 339 (July 2003); *Public Housing Community Service Requirement Suspended*, 32 HOUS. L. BULL. 12 (Jan. 2002); *see also, Public Housing Community Service Policies: Requirements and Advocacy Tips,* 31 HOUS. L. BULL. 135 (June 2001).

[2]42 U.S.C.A. § 1437j(c)(West 2003). There is no similar community service requirement for Section 8 recipients.

PHAs should therefore enforce the community service requirements prospectively from the date that state law permits landlords to make lease changes following proper notice to the residents.

Public Housing Authorities Must Determine Who Is Exempt from the Community Service Requirement

There are many residents who qualify for an exemption from the community service and self-sufficiency requirements. Under QHWRA and the new Notice, the burden of making the determination of whether or not a resident is exempt from the community service requirement falls upon the PHA.[3] This is likely to lead to significant errors particularly in light of the diminished operating subsidies that PHAs are receiving this year.

Many residents are likely to be told that they are not exempt from the community service requirement even though they are. Advocates should conduct their own analysis of whether or not a resident is exempt and should work with their local PHA to adopt a liberal exemption policy that is distributed to residents in the form of an all-inclusive checklist.

Who Is Exempt from Community Service and Self-Sufficiency Requirements?

There is an extensive list of exemptions from the QHWRA community service and self-sufficiency requirements. Public housing residents are exempt if they are:[4]

- elderly (62 years of age or older);[5]
- blind or disabled and certify that they are unable to comply with the service requirements;[6]
- a primary caretaker of a blind or disabled person even if the blind and disabled person is not a resident of public housing;
- engaged in *work activities*;
- exempt from the work requirements of a state welfare program, including Welfare-to-Work (*e.g.*, in many states pregnant women are exempt from work requirements for a period of time);[7] or
- members of a family which receives Temporary Assistance for Needy Families (TANF) assistance and have not been found to be in noncompliance with TANF or other work requirements.[8]

QHWRA defines "work activities" as those activities are defined in Section 407(d) of the *Social Security Act*.[9] These activities include:

- unsubsidized employment;
- subsidized private sector employment;
- subsidized public sector employment;
- work experience (including work associated with refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- on the job training;
- job search and job readiness assistance;
- community service programs;
- vocational educational training (not to exceed 12 months with respect to any individual);
- job skills training directly related to employment;
- education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- the provision of child care services to an individual who is participating in a community service program.

Exemptions will vary from state to state depending upon local welfare rules. State welfare departments may be involved in verifying whether a resident is exempt from work activity under the state's welfare program.

The vast majority of adult public housing residents should be exempt from the community service requirement because they are working, elderly or disabled. Disabled residents who receive Supplemental Security Income (SSI) may self-certify that they cannot comply with the service

[3] *See* 24 C.F.R. § 960.605(c)(2003), PIH Notice 2003-17(June 20, 2003).

[4] 42 U.S.C.A. § 1437j(c)(2) (West 2003); 24 C.F.R. § 960.601 (2003).

[5] Any tenant who is subject to the community service requirement who is 61 years old at the time of the determination of nonexempt status should also be exempt as that person will turn 62 during the next 12 months and become prospectively exempt by virtue of his or her age. As noted below, the PHA community service policy ought to be that if the resident becomes exempt at any time during the 12-month lease period, the resident's exemption should be retroactive to the beginning of the lease term for which eligibility was determined.

[6] The definition of a "blind or disabled person" is found in Sections 216(i)(1) and 1614 of the *Social Security Act*. 42 U.S.C.A. §§ 416(i)(1) and 1382c (West Supp. 2003). 24 C.F.R. § 960.601(b)(2003) (Exempt Individual).

[7] Congress recognized that the community service requirements would be coordinated with the state welfare agency exemption requirements. In the legislative history, it is noted that "the welfare reform law prohibits states from penalizing a single parent caring for a child under 6 for refusal to work if the parent is able to prove that child care was unobtainable. States can also exempt single parents who are caring for a child under 12 months of age. Lastly, state funded only programs could have additional exemption requirements." S. Rep 21, 105 Cong., 1st Sess. 24 (1997).

[8] It is important to note that if any member of a family (*i.e.* part of the household) is receiving assistance, benefits or service under TANF or any other state welfare program, all members of the family are exempt. It is not necessary for the particular individual claiming the exemption to be receiving the public assistance or to be a member of the TANF or welfare assistance unit. 24 C.F.R. § 960.601(b)(5)(2003).

[9] 42 U.S.C.A. § 607(d)(West 2003); *see* 24 C.F.R. § 5.603 (2003).

requirements.[10] A stay-at-home mother is not exempt from the community service requirement[11] unless she can demonstrate that she qualifies for one of the exemptions listed above. For example, a stay-at-home mother may be exempt if she is providing child-care services to someone who is participating in a community service activity. Also, if the state welfare law provides that a mother with children under a certain age is exempt from work requirements, any resident meeting that state definition would also be exempt.

HUD's Effort to Encourage PHAs to Adopt a 30-Hour Weekly Work Requirement Overreaches and Is Inconsistent with QHWRA

In both its Notice and the *Public Housing Occupancy Guidebook* (PHOG), HUD states that residents should work a minimum number of hours per week in order to qualify for a work activities exemption. Unfortunately, because HUD's Notice, PHOG, and Web site contain three different interpretations of what constitutes an exemption, the issue becomes really confusing. To make matters worse, all three of those guidance tools are inconsistent with QHWRA, which establishes no minimum number of hours.

The Notice provides that the community service and self-sufficiency requirements apply to all adult residents in public housing except for those exempted under 12(C) of the Act. The Notice then discloses individuals who are exempt and further provides that "[p]ublic housing agencies (PHAs) are encouraged to consider **30 hours per week** as the minimum number of hours for a work activity exemption as described in Section 407(d) of the Social Security Act…".[12] This interpretation is inconsistent with the PHOG, published in June 2003, which provides an exemption for residents "currently working at least **20 hours per week.**"[13] At the same time, both the 30-hour minimum suggested in the Notice and the 20-hour minimum suggested in the PHOG are inconsistent with HUD's prior position, taken in its *Frequently Asked Questions* (FAQ) published on HUD's Web site on February 5, 2001, that no minimum number of hours would be established by HUD but would be left in the discretion of the PHAs based on their local circumstances.[14]

Pursuant to QHWRA, which first established community service requirements for public housing tenants, exemptions are provided to individuals who are **"…engaged in a work activity (as such term is defined in section 407 (d) of the Social Security Act (42 U.S.C. § 607(d)), as in effect on and after July 1, 1997)."**[15] The term "work activity" found in Section 407(d) of the *Social Security Act* contains no minimum required number of hours anywhere in the statute and no reference to 45 C.F.R. §261.31,[16] which was cited by HUD in making its 30-hour per week determination. Therefore, HUD's 30-hour per week Notice suggestion is improper because it exceeds the scope of the statute. PHAs should establish their own policies with regard to the number of hours needed to qualify for an exemption.

In discussions with HUD officials regarding this issue, they responded that although the 30 hours is the current HUD policy, they suggested that the minimum number of hours is a mere guidance and is not mandatory. They acknowledged that their interpretation is based upon hours set forth in 45 C.F.R. §261.31, regulations wholly unrelated to housing.

HUD states that residents should work a minimum number of hours per week in order to qualify for a work activities exemption. Unfortunately, HUD has three different interpretations of what constitutes an exemption.

Residents Delinquent in Community Service/ Self-Sufficiency Activities Under a Prior Lease

Residents who were delinquent in community service/ self-sufficiency hours under a prior lease in effect at the time the community service requirements were suspended are obligated to fulfill their FY 2001 community service and self-sufficiency requirements in addition to any new requirements, provided that they were given written "notice" of noncompliance prior to the expiration of the lease in effect at that time. A copy of that noncompliance notice must be included with the new notice sent to residents advising them of the reinstatement of the community service requirements. Advocates should closely review letters that their clients receive for such compliance by the PHA. Retroactivity, for those tenants, can only be enforced if the PHA sent a written notice to the resident at the time of their non-compliance.

[10]24 C.F.R. § 960.601(b)(Exempt Individual), 65 Fed. Reg. 16,692, 16,711 (Mar. 29, 2000).

[11]Frequently Asked Questions (FAQ), IV, Q9 (published on HUD Web site March 29, 2000).

[12]PIH Notice 2003-17, part C (June 2003)(emphasis added).

[13]*See* PHOG, Chapter 15, Section 15.4 (emphasis added). *See also*, PHOG Appendix VI, *Sample Community Service Policy*, Part B. Definitions-Exempt Adult.

[14]See HUD FAQ, Q & A #7 published on February 5, 2001.

[15]42 U.S.C.A. §1437j(c)(2) (West 2003).

[16]These regulations are not housing regulations. They are the public welfare regulations relating to work requirements for recipients of TANF under the Department of Health and Human Services, Administration for Children and Families Section.

A PHA's Determination That a Resident Is not in Compliance with the Community Service Requirement Prompts an Opportunity to Cure

PHAs must review and determine the compliance of each family member who is not exempt from the community service requirement 30 days before the end of the tenant's 12-month lease term.[17] Failure to comply with these community service/self-sufficiency requirements may result in a non-renewal of the resident's lease at end of the 12-month period.[18] However, prior to termination, the PHAs must notify residents of their non-compliance and of their right to an administrative grievance of such a determination, and must further provide an opportunity for the residents to cure the non-compliance by entering into an agreement to make up those hours over the 12-month period of the new lease.[19] If the family member is still non-compliant at the end of the new lease period, the law requires that the lease not be renewed and that the entire family vacate unless the non-compliant member agrees to move out. Therefore, in theory, there is an additional 12-month period in which to cure the community service default and make up the hours.

Advocates should work with their local PHAs to ensure that the verification is as simple as possible to minimize the PHA's paperwork, the resident's burden, and the documentation burden of any organization to which the resident provides volunteer services or which administers an economic self-sufficiency program. For households receiving TANF, PHAs should adopt a verification policy that recognizes that TANF agencies do not typically report families as being "in compliance" with TANF work requirements. Indeed, TANF agencies routinely report that a family is in "non-compliance" with the work requirements and then reduce the family's benefits. In recognition of this practice, PHAs should adopt a policy that makes residents automatically exempt from community service requirements whenever they are receiving TANF assistance and have not received a notice from the TANF program that they are not in compliance with that program's work requirement.[20]

Advocates should also work with their PHAs to encourage a broad range of qualifying activities that meet the community service requirement such as passing out flyers for meetings, making telephone reminder calls, providing child care for residents who attend resident meetings, working to maintain the resident office, attending organizing classes, and attending tenant organization meetings. PHAs should also provide tenants, through postings and individual notices, a list of acceptable community service activities, the groups that sponsor the activities and ways to contact them.[21]

Advocates should work with PHAs to ensure that the verification is as simple as possible to minimize the burden on PHAs, residents, and any organizations at which residents volunteer or participate in economic self-sufficiency programs.

PHOG Requirement that Community Service Must Be Performed Within the Jurisdiction of the PHA Exceeds the Scope of Statute and is Counterproductive to Community Service

The Community Service Requirements set forth in the Notice are also contained in the PHOG, which provides that "[a]ctivities **must** be performed within the community and **not outside the jurisdictional area of the PHA**."[22] This is in a section of the PHOG entitled "Additional HUD Requirements," making it appear that this provision is required by either the statute or regulations.

The statute does not use the term "jurisdiction." Instead, it provides for community service to be carried on "…within the **community** in which that adult resides… ."[23] It does not mandate that the community must be defined as the "jurisdictional area of the PHA."[24] There is a significant difference between someone's *community* and within *the jurisdictional area of the PHA*. For many individuals, their "community" includes schools, churches and associations that are not physically located within the jurisdictional limits or boundaries of their PHA but are still nonetheless part of their community. For example, a parent may wish to volunteer at her child's school, which may not be located in the geographical jurisdiction of the PHA but is part of the parent's. Under these PHOG guidelines, that parent volunteer effort would not satisfy the community service requirements.

In addition, the general "community service" requirement includes "economic self-sufficiency" activities, such as participation in job search, ESL classes, substance abuse counseling,

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[17] 24 C.F.R. § 960.605(c)(3)(2003).

[18] *Id*. §960.607(b).

[19] 42 U.S.C.A. § 1437j(c)(3)(C)(ii)(West Supp. 2003); 24 C.F.R. § 960.607 (b) and (c) (2003).The notice should (1) briefly describe the noncompliance; (2) state that the lease will not be renewed at the end of the 12-month period as a result of the noncompliance unless there is a written agreement with the head of household and the noncompliant family member (if it is someone other than the head of household) to correct the noncompliance or a written statement that the resident or noncompliant family member has moved out; and (3) advise the head of household or other adult member that he or she is entitled to a grievance hearing or to any judicial remedy to contest the PHA's decision.

[20] 65 Fed. Reg. 16,692, 16,711 (Mar. 29, 2000).

[21] 65 Fed. Reg. 16,692, 16,709 (Mar. 29, 2000).

[22] PHOG Part 4, Chapter 15, §15.6 at 176 (June 2003)(emphasis added).

[23] 42 U.S.C.A. §1437j(c)(1)(A)(West 2003)(emphasis added).

[24] *Id*.

or mental health counseling. Here, there is no statutory requirement that the "economic self-sufficiency" activity take place within the community in which the adult resides.[25] In fact, there are many residents that cannot readily obtain these services within the same city or town as their public housing authority. A PHA with a small Limited English Proficiency population, for example, may have most of its ESL resources located in a neighboring metropolis. A mental health agency may require all of the clients seeking services from a large catchment area to go to one location for counseling. Residents who are looking for work must be prepared to do so in a broad geographic area and jobs may not be located in the same city or town.

The PHOG and Sample Community Service Policy do not make the distinction that the statute does between "community service" and "economic self-sufficiency" activities, but instead provides "activities must be performed within the community."[26] This is contrary to QHWRA.[27] Moreover, the interpretation that community service or economic self-sufficiency activities must be carried on in the same city or town where the resident lives is contrary to the statutory intent, which is meant to foster volunteerism and self-sufficiency and would likely run afoul of a person's right to travel. PHAs are free to adopt their own policies that are inclusive of such activities.[28]

The Requirement That Residents Be Prohibited from Doubling Up Monthly Hours Is Contradictory to the Text and Spirit of the Law.

While there is no federal requirement governing when the community service or self-sufficiency work must be performed as long as it is completed within the year, the PHOG and its Appendix VI, titled *Sample Community Service Policy*, provide that "**[a]n individual may not skip a month and then double up the following month, unless special circumstances warrant it."**[29] Because this requirement is set forth in a section of the PHOG called "HUD Requirements," it appears that HUD requires this approach. However, there is no such requirement in the statute or the regulations. Moreover, the approach taken by HUD now appears to be inconsistent with HUD's prior position urging PHAs to allow tenants who cannot perform the service monthly to complete the requirement within a reasonable time frame.[30] QHWRA and implementing regulations[31] notably do not restrict performance of these monthly hours to a given month but merely set minimum guidelines for such service. Furthermore, QHWRA only requires that PHAs review the file and make annual determinations of compliance 30 days prior to the expiration of the 12-month lease term.[32] PHAs should make their own determination of whether to permit a deviation from the schedule in those instances.

Many service activities simply do not provide regular hours by their very nature. To require that every individual be placed in a service program that provides regular monthly hours would impose a severe burden on PHAs and tenants.

Moreover, there are many service activities that simply do not provide regular hours by their very nature. Examples of such programs include: neighborhood groups with special projects such as Habitat for Humanity or work at "holiday shelter programs," cooperative or church food bank programs, etc."[33] Such programs often have seasonal variations in their needs for volunteers. Self-sufficiency activities that may not provide such regular monthly hours include many educational or training activities that are not offered on a year-round basis, such as those on an academic-year schedule. Annual totals for hours of community service that average out to eight hours per month should be sufficient to fulfill the mandates of the statute and regulations.

To require that each and every individual be placed in a service program that provides regular monthly hours would impose a severe burden on PHAs and tenants to locate such programs. Moreover, residents should not be penalized for a program's failure to provide sufficient service hours each and every month.

Must PHAs Amend Their Annual Plan?

Part F of the HUD Notice describes the relationship between implementation of the community service requirements and the PHA plan process. It provides that PHAs do not have to amend their Fiscal Year 2003 approved plans but must merely inform their resident advisory boards (RABs) of any significant policy changes. This instruction is disturbing in that it clearly circumvents the well-established and legally required PHA plan process for any significant changes or alterations in policy and procedures. The PHA plan process, which provides for 45 days' notice to tenants and the public,

[25] *See id.* §1437j(c)(1)(B).

[26] See PHOG, Part 4, Chapter 15, 15.6 and Appendix VI, Sample Community Service Policy C.3, page 310 (June, 2003).

[27] 42 U.S.C.A. §1437j(c.)(1) (West 2003).

[28] NHLP is working with HUD on clarifying this issue.

[29] Public Housing Occupancy Guidebook, Part 4, Chapter 15, Section 15.6 (June 2003)(emphasis added).

[30] 65 Fed. Reg. 16,692, 16,710 (Mar. 29, 2000).

[31] *See* 24 C.F.R. Subpart F §§ 960.600-609 (2003).

[32] 42 U.S.C.A. §1437j(c)(3)(A) (West 2003); *see also* 24 C.F.R.§ 960.605(c)(3) (2003).

[33] *See, e.g.*, HUD Public Housing Occupancy Guidebook, Appendix VI, "Sample Community Service Policy," at 309 (June 2003).

along with an opportunity to provide comments, ensures a fair and accurate implementation of all new or altered policies. In addition, PHAs are required to respond to any comments of their RABs. All of these legal requirements are circumvented through the instructions contained in the Notice. In reinstating the community service/self-sufficiency requirements, Congress in no way altered or suspended the plan process and the instructions are an overreaching on the part of HUD. Any significant changes to the Community Service Policy should be made in accordance with the established plan process. Moreover, reinstatement of the community service requirement is a significant change in a PHA's annual plan and the notice and hearing procedures must be followed. HUD's contrary treatment demonstrates its lack of consideration of the role that tenants and their respective RABs play in providing input into and influencing the PHA policymaking process. This HUD guidance may not be in accordance with the law since the reinstatement of the community service requirement in no way changed the law and regulations governing the annual plan process and significant changes made to the policies contained therein.

What Can Advocates Do?

Advocates should ensure that their local PHAs have fully complied with the tenant notice requirements prior to reinstating the community service requirements. Both state and federal requirements must be complied with in order to properly implement these policies. By checking local policies that are currently in existence, advocates can also determine whether or not there has been a significant change in that policy (*e.g.*, 20-hour minimum work requirement to qualify for an exemption being changed to a 30-hour minimum). When there is a significant change in policy, the PHA must comply with the annual plan process.[34] That means that a 45-day notice must be given to tenants of the change in policy, opportunity must be provided for public comment and PHA board approval must be secured.[35] If a PHA fails to comply with these requirements, advocates may be able to temporarily stay the implementation of such policies pending full compliance with the law. Moreover, advocates may be able to challenge the legality of HUD's establishing guidelines that exceed the scope of the statutory and regulatory requirements, such as the 30-hour minimum, the requirement that tenants not double up their hours, and the mandate that service be performed within the jurisdictional boundaries of the PHA. Advocates should also work with their PHAs in encouraging a broad range of activities and exemptions that work for their local community.

If HUD makes changes to any of these policies, NHLP will publish those changes in future issues of the *Housing Law Bulletin.* ■

[34]24 C.F.R. § 903.21 (2003).

[35]*Id*. §903.17.

HUD New Public Housing Occupancy Guidebook: A Welcome but Imperfect Improvement

The Department of Housing and Urban Development (HUD) released the first Public Housing Occupancy Guidebook in over 20 years in June of 2003.[1] The body of this 400-page document is subdivided into seven parts: Civil Rights, Admissions, Public Housing Income and Rent Programs, Continued Occupancy, the Public Housing Lease, Grievance Procedure, and Domestic Violence. Sample forms, policies and plans are also included. The Guidebook is intended to reduce the number of income and rent errors that were identified during a recent HUD study,[2] and is intended to serve as a reference tool for public housing authorities (PHAs), HUD, and tenants and their advocates as they address the range of issues facing the approximately 1.5 million public housing families.[3]

In August of 2002, HUD published a draft of the Guidebook, and during a very short 18-day comment period several groups compiled and submitted comments to HUD, including the Housing Justice Network (HJN), a national coalition of legal services attorneys who represent public housing tenants in housing matters. Although the draft Guidebook was intended to be comprehensive, HJN identified a number of significant issues that needed to be added and/or corrected. The most significant issues not adequately addressed were: resident rights and participation, access for persons with Limited English Proficiency (LEP), domestic violence issues, and obligations to promote residents' self-sufficiency efforts. While HUD eventually did incorporate a number of the HJN comments into the final publication, several important issues were neglected.[4] The following article will discuss how several sections of the Guidebook were impacted by the HJN comments, as well as how certain exclusions will continue to pose problems in the future. Discussion of issues related

[1]U.S. Department of Housing and Urban Development, *Public Housing Occupancy Guidebook* (June 2003) (hereinafter "Guidebook") available at www.nhlp.org/html/pubhsg/index.htm and www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm.

[2]U.S. Department of Housing and Urban Development, *Quality Control for Rental Assistance Subsidies Determinations* (June 2001); *see also* HUD Notice PIH 2001-15, Integrity in Public and Assisted Housing (May 2, 2001) (HUD survey found that 60 percent of public housing tenants and voucher participants and HUD-assisted and subsidized tenants pay an inaccurate rent).

[3]Notice of Availability of Revised Public Housing Guidebook and Request for Comments, 67 Fed. Reg. 55,861 (Aug. 27, 2002).

[4]HJN made approximately 300 comments, of which over 40 percent were incorporated or recognized in the final Guidebook. However, this percentage includes a disproportionally high success rate for grammatical errors and misstatements (89 percent and 59 percent respectively). A copy of the HJN comments is available at www.nhlp.org/html/pubhsg/index.htm.

to Chapter 15 of the Guidebook, which deals with the Community Service and Self-Sufficiency Programs, are found in *Mandatory Community Service Requirements in Public Housing Cause Much Confusion* on page 365 of this issue of the *Bulletin*.

Domestic Violence

Probably the most significant of HUD's additions to the draft was the section dedicated to domestic violence (Chapter 19). HUD had originally reserved this section; however, given the devastation that survivors of domestic violence often face after being displaced from their homes, the section was eventually included in the final publication. This section discusses a number of topics, including the HUD definition of domestic violence, the type of evidence required to prove domestic violence, screening and admission issues, eviction and termination, and best practices. In an effort to provide the domestic violence survivor with a well-balanced source of assistance, the Guidebook promotes the use of partnerships between PHAs, police and local advocacy groups. The best practices discussion in Chapter 19 should be particularly useful to PHAs and advocates working on these issues.

While the inclusion of a chapter on domestic violence represents a substantial accomplishment, some of the definitions and/or language put forward in the chapter are problematic. For example, in defining "domestic violence," HUD adopted a less expansive federal definition that limits the term to include "actual or threatened physical violence directed against one or more members of the applicant's family by a spouse or other members of the applicant's household."[5] As a result, this definition perpetuates a common problem facing survivors who are applicants for public housing because the perpetrator of domestic violence or abuse may not have been a member of the household, or the survivor cannot prove they resided together.[6] This problem could have been avoided if HUD had adopted the more inclusive definition provided under the *Violence Against Women Act* (VAWA).[7] VAWA's domestic violence definition covers acts or threats of violence committed by:

> a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction...or by any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction...[8]

Furthermore, HUD has chosen to passively instruct PHAs of their responsibility to critically evaluate the needs of domestic violence survivors during the admissions process by stating that "the PHA may [as opposed to shall] exercise discretion and approve admission pursuant to its Admissions and Continued Occupancy Plan (ACOP)."[9] Therefore, while the inclusion of a chapter dedicated solely to domestic violence is important, it should be noted that there are several issues that may limit, and in some instances exclude, a survivor's access to the HUD-prescribed benefits. Advocates should remember that to the extent that the Guidebook is advisory, PHAs may adopt a better local policy. They are urged to use the PHA plan process to do so.

Limited English Proficiency

Although the Guidebook does not provide PHAs with a detailed explanation of their responsibility to ensure equal access for persons with limited English proficiency (LEP), several related HJN comments were incorporated into the document. For example, the Guidebook now states that

> [w]ritten translations and/or interpreter services should also be made available to persons with limited English proficiency in order that they might be afforded equal access to all housing and housing related services. This means more than ensuring that all the PHA offices are accessible to persons with disabilities. PHAs must also provide written translation or interpreter services to persons with limited English proficiency. This may require the PHA to assist persons with limited English proficiency in the application process, including conducting the interview and completing the application.[10]

Unfortunately, the comments relating to PHAs' LEP obligations and the tenant lease were not incorporated into the General Public Housing Lease Requirements section of the Guidebook (Chapter 17). The HJN comments urged HUD to highlight for PHAs the LEP obligation regarding notices to

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[5]*See* 24 C.F.R. § 5.420(b)(4)(ii) (1997). The regulation stated that an applicant was involuntarily displaced by domestic violence if she vacated a housing unit because of domestic violence, or was living in a housing unit with a person who engages in domestic violence; if the applicant was still in the housing unit, the PHA would have to determine that the domestic violence occurred recently or was of a continuing nature. *See* 24 C.F.R. § 5.420(b)(4)(i), (iii)(A) (1997). The applicant would also have to certify that the person who engaged in such violence would not reside with the applicant family unless the PHA had given advance written approval for this. *See* 24 C.F.R. § 5.420(b)(4)(iii)(B) (1997). It should be noted that the violence or threats of violence could be directed against household members, as well as the spouse or intimate partner.

[6]Memorandum from the Housing Justice Network, to Department of Housing and Urban Development, Revised Public Housing Occupancy Guidebook and Request for Comments (September 16, 2002) (available at www.nhlp.org/html/pubhsg/index.htm).

[7]*Violence Against Women Act of 1994*, Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (1994), revised by, *Violence Against Women Act of 2000*, Pub. L. No. 106-386, Division B, 114 Stat. 1464.

[8]*See* 42 U.S.C. §3796gg-2 (1) (West Supp. 2003). In addition, VAWA has recently added a definition of "dating violence," and has directed grantees to provide protective assistance for those individuals as well. *See, Id.* §3796gg-2 (9).

[9]Guidebook at 218.

[10]*Id*. at 2.

program participants. Therefore, while the LEP comments included in the Guidebook are helpful to housing law advocates, many practical problems that could have been resolved will undoubtably arise in the future.

Waiting List Administration and Qualification for Admission

The Waiting List Administration and Qualification for Admission sections of the Guidebook (Chapters 3 and 4 respectively) include a number of HJN comments; however, the majority of HUD-incorporated comments relate to grammatical and misstatement errors more than substantive changes. For example, the Guidebook includes revisions for 92 percent of grammatical and misstatements comments submitted by the HJN (approximately 12 comments); however, only 20 percent of the resident participation and rights comments were included (approximately 2 comments). Therefore, while HJN's overall success rate within these sections totaled an encouraging 48 percent,[11] HUD's failure to address a number of substantive comments is particularly troubling.

The comments that HUD failed to accept related to a PHA's responsibility to properly instruct applicants of their due process rights as they relate to reasonable accommodation for disabilities, removal and withdrawal of names from waiting lists, and the dispute process for inaccurate financial and criminal reports.

Utilities

HUD did an abysmal job of incorporating HJN's comments into the Utilities section of the Guidebook (Chapter 14).[12] Significantly, HJN pointed out instances in which the Guidebook either ignored issues for which a PHA may be confronted with reasonable accommodation requests or where the published regulations are more protective of tenants rights. As a result, PHAs will not be reminded that tenants may request an adjustment in their utility allowances not only as a reasonable accommodation for costs related to a disability, which is mentioned, but also for high usage for reasons beyond their control (*i.e.*, unusual or extreme weather conditions or poor weatherization or extra consumption related to the fact that the tenant is elderly). This latter reason is significant because, as the examples indicate, it may affect a large number of residents. In addition, HUD ignored the HJN comment regarding utility surcharges. HJN argued that when a PHA imposes surcharges for certain large appliances it should allow for exceptions when the appliance is needed as a reasonable accommodation.

[11]HJN made approximately 69 comments on issues within the Waiting List Administration and Qualification for Admission areas (32 and 37 respectively), of which HUD incorporated approximately 33 (17 and 16 respectively).

[12]HJN made approximately 15 comments on issues within the Utilities area, of which only one grammar-related comment was implemented (equating to a 7 percent success rate).

Economic Self-Sufficiency

The HJN comments emphasized that the draft Guidebook did not discuss economic self-sufficiency in a comprehensive manner. There was no discussion of family self-sufficiency or Section 3. The relationship of economic self-sufficiency to the earned income disallowance is not even mentioned let alone emphasized. The final Guidebook ignored these comments and limited the discussion in Chapter 15, Community Service and Economic Self-Sufficiency, to the community service requirement which imposes an eight hours per month or 96 hours per year obligation on certain unexempt adults. The focus on the community service requirement alongside the complete exclusion of the Family Self-Sufficiency Program (FSS) and Section 3 is extremely troubling. It would have been quite easy for HUD to address the more positive and tenant-benefitting self-sufficiency issues. FSS is described in detail in the Guidebook for the voucher program.[13] It would have been easy to adapt those provisions to the Guidebook. Cross-referencing the Earned Income Disallowance discussion to this section could also have been accomplished easily. If it was too much work to add a discussion on Section 3, at a minimum the obligation could have been stated and the published regulations cross-referenced. The administration claims that it is interested in improving and supporting self-sufficiency efforts of public housing tenants, but the efforts continue to be sporadic and disconnected and any results long delayed.

Resident Participation

Resident participation is a key element in the effective management of public housing. The obligation of PHAs to work with duly elected resident groups and the long-term benefits of an effective relationship are not mentioned in the Guidebook. The final version of the Guidebook references the PHA plan process, but there is no reference to the involvement of residents in the process except with respect to the development of a pet policy. The Guidebook should have set forth the basic PHA responsibilities with respect to promoting resident participation and the formation and support of resident councils. At a minimum, the Public Housing Agency (PHA) Plan Desk Guide should have been cross-referenced to aid residents and others who may desire to become involved in developing local PHA policy.

Other Statutory and Possible Civil Rights Infractions

Advocates should also be aware that while the Guidebook was intended to serve as "a handy reference for all aspects of admissions and occupancy administration,"[14] it contains several misstatements that amount to statutory and/or civil rights

[13]HUD, Voucher Program Guidebook Housing Choice, 7420.10G (April 2001), Chpt. 23.

[14]Guidebook at 1.

infractions. The Guidebook deviates from the statutory command in several instances. For example, in the grievance procedure section (Chapter 18), HUD states "[T]he PHA must waive [the escrow deposit] requirement if the tenant is paying minimum rent and the grievance is based on a request for hardship exemption or imputed welfare income."[15] This statement is incomplete and misleading. The regulations state "a PHA must waive the requirement for an escrow deposit where required by § 5.630 of this title (financial hardship exemption from the minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income)."[16] As a result, the Guidebook paragraph should read, "The PHA must waive this requirement if the tenant is paying minimum rent or if the grievance involves a reduction of the resident's welfare benefit income." In another section (Chapter 13), the Guidebook fails to recognize a significant aspect of the statutory protection regarding financial hardship exemption for minimum rent tenants. The statute and regulations make a distinction between a short-term financial hardship, which is 90 days, and a long-term financial hardship, which is greater than 90 days. In the former situation the minimum rent is suspended but the tenant may have to repay the unpaid minimum rent.[17] In the case of a long-term financial hardship, "the agency . . . shall retroactively exempt the resident from the applicability of the minimum rent requirement."[18] The exemption continues for as long as the hardship continues. The Guidebook incorrectly states that in the case of a long-term financial hardship the minimum rent is "suspended" and the term should be changed to exempt or waived so as to make clear that the obligation cannot be reimposed for the hardship period.

The potential for violations of civil rights laws is increased because HUD failed to acknowledge multiple instances where a tenant may seek a waiver of a rule as a reasonable accommodation. Some of these examples are discussed above regarding Utilities and Wait List Administration and Qualifications for Admission. There are other examples. The discussion of occupancy guidelines (Chapter 5) states, "[A] family that chooses to occupy a smaller size unit must agree not to request a transfer until their family size changes."[19] However, such language is too restrictive and may be illegal because there are several other factors (*e.g.*, worsening medical condition or domestic violence) that would necessitate a transfer. The Guidebook should remind PHAs of this possibility.

Based on these and other misstatements, advocates should be aware that although the Guidebook serves as a general reference to HUD policies regarding resident admissions and occupancy, there may be instances where these policies are in direct contradiction of the statute, regulations and civil rights obligations with respect to reasonable accommodation and LEP. The provisions may be invalid and unenforceable or at least misleading and confusing.

General Observations

After comparing and contrasting the Guidebook to the HJN submitted comments, several reoccurring themes become apparent. Specifically, HUD appears reluctant to instruct PHAs of their responsibility to inform tenants of their due process and/or other general rights. This was evident in a number of topics including a tenant's right to obtain reasonable accommodation, dispute inaccurate reports, and have other tenants involved in the application review process. It also applied to the requirement that a PHA's operating guidelines must always comply with state or local laws.

In addition, there are two broad-brushed observations that can be drawn from an analysis of HJN's comment success rate on substantive issues. First, it appears that HUD was much more likely to implement a comment when specific or express language was provided to HUD in the text of the comment. For example, a comment that asked HUD to clarify a particular topic was far more likely to be implemented if the comment included a brief example of the specific language that should be used to clarify the subject. Second, it appears that HUD was more amenable to HJN comments in the first third of the Guidebook, as opposed to the last two-thirds.[20] There are several possible explanations for this variance: perhaps HUD's request for comments was primarily reserved for the wait list, application, admissions, and occupancy guideline discussions,[21] perhaps HUD wanted to implement more of the HJN comments into the Guidebook and simply ran out of time, or perhaps the team working on the later sections just didn't want to make any changes. No matter the cause of these disparities, it should at least be noted that they do exist and they should be appropriately adjusted for in future comment submissions.

Conclusion

Although it is apparent that HUD dedicated a considerable amount of time updating the Guidebook, making it a more user-friendly document, it is just as apparent that HUD's reluctance to proactively support tenants' rights will continue to pose problems for advocates in several of the above-noted areas. As a result, tenants, advocates and other interested parties can only hope it is not another 20 years before the Guidebook is updated again. ■

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[15] *Id*. at 211.

[16] 24 C.F.R. § 966.55(e)(2) (2002).

[17] *Id*. § 5.630(b)(2)(iii).

[18] 42 U.S.C.A. § 1437a(a)(3)(B)(ii) (West Supp. 2003).

[19] Guidebook at 65, ¶ 6.

[20] The HJN success rate for the first third (Intro - Chapter 6), second third (Chapter 7 - Chapter 12), and the final third (Chapter 13 - Chapter 18) was 58 percent, 27 percent, and 21 percent, respectively.

[21] Each of these subjects is addressed specifically within the first six chapters of the Guidebook.

Congress Continues Wrestling With FY 2004 Voucher Funding

Although definitely an improvement on its predecessors, the final version of the House's Fiscal Year (FY) 2004 HUD Appropriations bill contains insufficient funding to ensure renewal funding for all vouchers currently in use. The federal voucher program is the nation's largest housing program, providing assistance to almost 2 million families, seniors and people with disabilities nationwide. Prior to leaving for the August recess, a July 25 floor amendment to the bill moved $150 million from HUD's Working Capital Fund to Section 8 voucher renewals. Added to the additional $685 million not requested by President Bush but restored by the House Subcommittee on July 15,[1] the House has restored a total of $835 million.

The important lesson here is that progress just doesn't come on its own. Outstanding research and analysis by the Center on Budget and Policy Priorities, advocacy work coordinated by the National Low Income Housing Coalition (NLIHC) and its many allies, including housing authorities nationwide and their networks, and political leadership in Congress—all these factors have combined to educate members and deliver concrete results.

Since the President's original budget request was approximately 184,000 vouchers short,[2] about two-thirds of the funds have now been restored in the House. Yet voucher renewal funding still remains at $433 million, or 63,000 vouchers short, of the full renewal funding level. Senate action awaits. Anything less than full funding would be the first time in the history of the voucher program that Congress would break the government's long-standing and oft-repeated commitment to fund the renewal of all existing vouchers and other Section 8 subsidies.

The bipartisan House support for adding funds for Section 8 renewals in the face of current federal budget politics sends a positive signal to the Senate as it prepares to consider its appropriations bill after the recess in September. Congress' restoration of funds so far is especially remarkable in light of the Administration's publicly expressed position attacking the Center on Budget and Policy Priorities' report. Offering no data to counter the Center's analysis or support its position, HUD issued a four-sentence statement[3] simply claiming that the Administration's request for $990 million more than 2003 funding levels would be sufficient for the voucher program. The Center responded quickly with a rebuttal,[4] and so far Congress has remained skeptical.

Offering no data to counter the Center's analysis or support its position, HUD issued a four-sentence statement simply claiming that the Administration's request for $990 million more than 2003 funding levels would be sufficient for the voucher program.

Following the House vote, 17 religious organizations sent a letter to the Senate subcommittee urging full funding for the voucher program on July 31. NLIHC, joined by many members and allies, has made full voucher renewal funding a key legislative priority for this session, and it's obviously making a huge difference.

In other voucher news, the Administration's proposal to block grant the voucher program[5] to the states appears languishing, awaiting key Congressional support. The House Financial Services Committee held field hearings in June and July in Los Angeles and Columbus, where support appeared scarce. Apparently almost everyone except the Administration understands that breaking the link between federal funding levels and actual program costs would simply consign the states to the dirty work of administering real cuts in benefits. But money and politics can prove a volatile mix, so it's probably just "stay tuned for next year." ■

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[1]See Barbara Sard and Will Fischer, *Funding Level Approved by House Subcommittee Would Reduce, But Not Eliminate, Shortfall in Housing Voucher Funding—Reduction in Number of Families Assisted Would Be 85,000 Under House Subcommittee Bill, Compared to 184,000 Under President's Request*, available at www.cbpp.org/7-21-03hous.pdf.

[2]A study by the Center on Budget and Policy Priorities determined that the President's budget would leave unfunded 184,000 vouchers currently in use. *New HUD Data Show Families Will Likely Lose Housing Vouchers if Congress Approves President's Budget Request: Reduction of 184,000 in Number of Households Assisted Would Primarily Affect Low-Income Working Families and Elderly and Disabled People*, available at www.centeronbudget.org/7-11-03hous.htm. This analysis is based on data collected by HUD in April from nearly all housing agencies, and shows a marked increase in both the number of vouchers leased and their cost in the six-month period between August 2002 and January 2003. A description of CBPP's methodology appears in *Estimating the Shortfall in Requested Voucher Funding for Fiscal Year 2004*, available at www.centeronbudget.org/7_22_03hous.htm. This estimate does not include an additional 95,000 authorized vouchers not in use that would also remain unfunded—a situation worsened by the Administration's failure to request funding for any additional "incremental" vouchers. *See* the Center's article cited in note 1, *supra*.

[3]On July 14, HUD issued a statement to reporters entitled "Housing and Urban Development Says Center's Report on Housing Choice Vouchers (Section 8) Funding Erroneous." The entire text of the statement reads: "The Center's report uses incomplete data to draw erroneous conclusions. Over the past two years HUD has substantially increased funding for the Housing Choice Voucher Program to assist families in need. In fact, the Department's FY 2004 budget requests $990 million more than is currently being funded for the program that houses more than 1.9 million families. The Department remains committed to ensuring the Housing Choice Voucher program serves low-income families across America."

[4]*HUD Response to Center Report Fails to Refute Finding That Administration's Budget Request Would Result in Large Reduction in Number of Low-Income Families with Housing Vouchers*, available at www.cbpp.org/7_16_03hous.htm.

[5]*See Housing Assistance for Needy Families Act Threatens Neediest Families*, 33 HOUS. L. BULL. 309 (June 2003).

HUD Voucher Study

In January, 2003, the Department of Housing and Urban Development (HUD) released a study analyzing data compiled from its Housing Choice Voucher program ("Voucher program") that partially subsidizes participants' rent in the private housing market. By potentially involving private owners from a wide range of neighborhoods and enabling local PHAs to establish varying payment standards, the program theoretically enables recipients to live in lower-poverty areas which, statistically, tend to facilitate opportunities for employment, education and upward economic mobility. The HUD study, focusing on the 50 most populous American cities ("Metropolitan Statistical Areas," or "MSAs"), which comprise roughly 50 percent of the Voucher program,[1] found a correlation between voucher utilization in lower-poverty neighborhoods, higher employment rates, and decreased utilization of public assistance. Because the Voucher program has served about 2 million households and is currently HUD's largest program,[2] its strengths and shortcomings can thus inform Congress' and HUD's future approaches to low-income housing, hopefully improving the way the program serves voucher participants.

It is important to recognize that apart from whatever distortions result from data on only half of voucher participants and primarily concentrating on metropolitan areas, HUD's information may be inaccurate due to possible under-reporting by the Public Housing Authorities (PHAs) that submitted the data.[3]

Background

In 1976, following Congress' directive, HUD initiated an experimental program that allowed low-income participants to use governmental subsidies to rent housing units in the private market. The Voucher program, currently HUD's largest housing program,[4] developed from that trial. The Voucher program, like other HUD subsidy programs, targets very low-income households, and more specifically those with extremely low incomes earning less than 30 percent of area median income.[5] Unlike the other programs, however, voucher subsidies are used on the private rental market, including (and for many policymakers, preferably) those that are in lower-poverty neighborhoods. The program's ultimate goal is to give voucher holders the flexibility to find housing in the areas most convenient for each household depending on its own priorities, such as proximity to family and friends, employment opportunities, public transportation and schools. HUD also has created a program assessment structure, SEMAP,[6] which rates PHAs' Voucher programs on various criteria, including how successful they are in promoting housing in low-poverty areas.

For the purposes of this study, HUD analyzed data submitted from PHAs in the 50 most populous MSAs,[7] each comprised of both its urban centers and its suburbs.

Who Are Voucher Recipients?

Although voucher households are varied and diverse, HUD's study discloses certain statistical trends concerning race, age and geographic demographics. For example, blacks and Hispanics are more likely than whites to live in the highest poverty areas,[8] elderly participants tend to stay in the Voucher program longer than their younger counterparts,[9] and 70 percent of voucher holders in the Southwest have children.[10] Particularly interesting, although not surprising, are differences between white and black participants because they comprise the same percentage of total voucher recipients (approximately 40 percent each, with Hispanics making up another 16 percent).[11] Despite equal program shares, however, twice as many blacks as whites live in central cities;[12] more blacks live in neighborhoods that have a significantly higher percentage of people of color than whites;[13] and blacks living in lower-poverty neighborhoods tend to earn higher wages than blacks residing in higher-poverty areas, but white wages seem unaffected by neighborhood poverty level.[14] (*See Table A, page 377.*)

Although there are discernable differences among race, age and location, there are also important findings or trends that are not specific to these categories. In general, voucher recipients tend to live in cities (as opposed to suburbs),[15] have

[1]Unless otherwise noted, the statistics discussed in this article pertain only to the top 50 MSAs.

[2]*Id.* at x.

[3]U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Division of Program Monitoring and Research, *Housing Choice Voucher Location Patterns: Implications for Participant and Neighborhood Welfare*, Washington D.C. (Jan. 2003), at p.11 n.10. The complete text of this report is available at www.huduser.org/publications/hsgfin/location_paper.html.

[4]*Id.*

[5]By statute, 75 percent of new admissions must have incomes less than 30 percent of AMI. 42 U.S.C.A. § 1437n(b) (West Supp. 2002).

[6]Section 8 Management Assessment Program.

[7]The program units in the 50 most populous MSAs cover half of all voucher recipients.

[8]A total of 48.8 percent of whites live in the lowest poverty concentrations (those that are measured at less than 10 percent) whereas only 24.3 percent of blacks and 21.2 percent of Hispanics reside in those areas. In addition, only 8 percent of whites live in the poorest neighborhoods—those with a 30 percent or higher poverty concentration—whereas 25.2 percent of blacks and 27.9 percent of Hispanics live in those areas. (Some cities have particularly disproportional statistics between blacks and whites living in high-poverty areas. For example: Buffalo has 20.4 percent of blacks vs. 2.1 percent of whites in the high-poverty tracts, Detroit: 21.9 percent vs. 2.9 percent; New Orleans: 21.3 percent vs. 1.8 percent). *Id.* at 28.

[9]This is often due to the fact that the elderly have fewer economic changes that would disqualify them from the program. *Id.* at 93.

[10]*Id.*

[11]*Id.* at vi.

[12]*Id.* at 90.

[13]The average neighborhood minority level for blacks is 62.4 percent, whereas for whites it is 21.3 percent. *Id.* at 45.

[14]*Id.* at 28, Table III-3.

[15]*Id.* at 97.

children,[16] and receive their primary source of income from either wages or Social Security/pensions.[17] The average voucher holder income is $10,118 annually,[18] and the median age of the head of household is 41 years, although a plurality of household heads (40 percent) are within the ages of 25-39.[19]

Why Do Congress and HUD Place a Premium on Housing in Lower-Poverty Areas?

The theory is that lower-poverty communities are considered more attractive for businesses, and it is therefore easier for voucher recipients to work in areas that have better employment opportunities, and at higher wages. Throughout HUD's study there was discernable evidence that voucher recipients living in lower-poverty areas are more likely to work and make higher wages, and are less likely to receive welfare in the form of Temporary Assistance for Needy Families (TANF).[20] For example, 58 percent of voucher household heads are employed in 0-10 percent area poverty concentrations, whereas only 46 percent of household heads have jobs in the 40 percent or greater poverty concentrations.[21] Broken down by race, 57 percent of both blacks and Hispanics in the lowest poverty areas (0-10 percent) are employed, whereas only 45 and 42 percent, respectively, have jobs in the highest-poverty neighborhoods.[22] The statistics for white families are unexpected—58 percent employment rate in lowest poverty areas vs. a *69 percent* employment rate in the *highest* poverty areas—but this may be explained by the paucity of white households living in high-poverty areas, and thus constitute insufficient participant numbers.[23] Apart from higher employment rates, voucher recipients in the lowest-poverty areas earn 15-30 percent more money and receive 40 percent less TANF than their counterparts in the highest-poverty neighborhoods.[24] (*See Table B, next page.*)

It is important to keep in mind that although HUD purports to encourage voucher utilization in low-poverty areas, the actual utilization rate often depends upon other administrative actions that truly enable resident choice. Often local PHAs must utilize a variable payment standard to support the higher housing costs of voucher holders living in more expensive low-poverty neighborhoods. Many PHAs may be doubtful that HUD will eventually cover the added costs for these voucher holders under the current renewal funding formula, and are perhaps hesitant to permit higher payment standards without a reliable commitment from the federal government. Thus, HUD's emphasis on providing housing in lower-poverty neighborhoods may be well-intentioned, but in order for the choice to be realized, PHAs may require a dependable assurance that they will be reimbursed for additional subsidy payments. The recent advent of the Administration's Voucher block grant proposal will only add to this uncertainty.

Although HUD purports to encourage voucher utilization in low-poverty areas, the actual utilization rate often depends upon other administrative actions that truly enable resident choice.

Fears Regarding the Voucher Program

The mobility promise of the Voucher program lies in private landlord involvement in lower-poverty neighborhoods, but residents within these communities often believe that participation will cause rents to inflate and eventually property values to decrease. The basis for this assumption is a complicated string of suppositions. It starts with the assumption that participating landlords can set their rents higher than true market value (despite the PHA's duty to assure "rent reasonableness"), producing an incentive to rent out as much of their property as possible to voucher recipients in order to obtain higher rents than otherwise obtainable from unassisted tenants. This could lead to an influx of voucher recipients, which might change the character of the neighborhood, should these new residents bring with them the undesirable crime and social issues they were seeking to leave behind. The study indicates that such fears are usually unfounded.

Although there is some correlation between the poorest neighborhoods and the presence of voucher households,[25]

[16] *Id.* at 93.

[17] A total of 42.5 percent of voucher households derive income from SSI/pensions, 35.4 percent derive income from wages, 12.9 percent derive income from welfare, and the remaining 8.2 percent derive income from "other" sources. *Id.* at 92, Table A-5. On a related note, approximately half of household heads living in 10-30 percent neighborhood poverty concentration earn income from wages, and at the lowest poverty concentration (0-10 percent) approximately 57 percent of voucher holders earn income from wages. This percentage holds across the board for black, white and Hispanic participants. *Id.* at 47.

[18] For the purposes of this study, income from heads of household are calculated only in the households where children are present. *Id.*

[19] Both the income and the age statistics are of the entire voucher recipient population, not just those in the top 50 MSAs. *Id.* at 89, Table A-1.

[20] *Id.* at ix.

[21] *Id.* at 46.

[22] *Id.* at 47.

[23] *Id.*

[24] *Id.* at 51. This holds true for all races and levels of poverty with the exception of whites living in poverty concentrations of 40 percent or greater. At this level they receive less TANF than other white participants in all but the lowest poverty concentrations. Again, this discrepancy may be explained by the low number of whites living in neighborhoods with poverty concentrations of 40 percent or greater. *Id.* at 52.

[25] *Id.* at 53. It is important to note that voucher units comprise a low percentage of the occupied stock in high-poverty areas (5 percent), whereas public housing and non-subsidized affordable housing make up a much larger share of the housing stock in high-poverty neighborhoods (40.5 percent, 52 percent, respectively). *Id.* at 67.

the mean voucher share in high-poverty neighborhoods is 5.1 percent, meaning that vouchers are not driving poverty concentrations in these areas.[26] In addition, other residents overwhelmingly outnumber voucher holders in most neighborhoods—in close to 90 percent of all neighborhoods with voucher units, the program represents less than 5 percent of the occupied housing stock.[27] In any event, if PHAs (within HUD program restrictions) calculate accurate payment standards for each area and inspect prospective units and neighborhoods to ensure rent reasonableness, any potential problem should be avoided.

Realities of the Voucher Program

In spite of HUD's efforts to encourage voucher holders to reside in lower-poverty neighborhoods,[28] 22 percent of all voucher recipients still live in areas that have more than a 30 percent poverty concentration,[29] and 9.5 percent of recipients live in areas that are *above* the *40 percent* poverty concentration level, HUD's threshold for extreme poverty intensity.[30] Some PHAs have been so unsuccessful in encouraging participants to move to lower-poverty neighborhoods that they are under court injunction to curtail the volume of voucher recipients renting in high-poverty or high-minority areas.[31] Undoubtedly, some of the persistent residency patterns also reflect residents' preferred neighborhood choices.

Despite these shortcomings, however, voucher holders are more diversely scattered within different neighborhoods than other types of HUD-assisted households, such as project-based Section 8 and public housing recipients.[32] More than 44 percent of project-based Section 8 households and fully *two-thirds* of public housing recipients live in neighborhoods with 30 percent or above poverty rates, compared to the voucher rate of 22 percent.[33] Sixteen percent of non-subsidized residents reside within these areas. Thus, while the Voucher program can apparently provide greater access to lower poverty neighborhoods than other low-income housing programs, more progress remains to be made.

Conclusion

The Voucher program can provide a diverse array of housing and neighborhood opportunities, along with greater employment rates and higher wages for voucher holders living in lower-poverty neighborhoods. HUD's study shows that those voucher recipients studied were better off living in lower-poverty neighborhoods and had little negative impact on these neighborhoods, despite fears to the contrary. Though it may be useful in assessing certain trends, the study's limitations prevent any far-reaching conclusions about housing policy. For example, the study did not examine why some families but not others move away from higher-poverty areas to lower-poverty neighborhoods and get better-paying jobs, and the role of PHA programmatic activities and individual motivation and choice in such decisions. More work is needed to evaluate the role of such factors, and many others, if vouchers are to be considered more than just one of the vital delivery mechanisms for housing assistance. ■

Table A
Distribution of voucher families by race across neighborhood poverty concentration levels (in 50 largest MSAs and only including households with children).

Neighborhood Poverty Concentration	White Households	Black Households	Hispanic Households
0-10 percent	48.8	24.3	21.2
10-20 percent	32.0	29.4	29.9
20-30 percent	11.2	21.2	21.0
30-40 percent	4.5	14.6	15.3
40 percent or more	3.5	10.6	12.6
TOTAL	100.0	100.0	100.0

Table B
Average wage income of voucher household heads at each neighborhood poverty level, by race (in 50 largest MSAs and only including households with children).

Neighborhood Poverty Concentration	White Households	Black Households	Hispanic Households
0-10 percent	$14,252	$15,041	$15,101
10-20 percent	12,787	14,132	13,969
20-30 percent	11,806	13,832	12,942
30-40 percent	11,983	13,478	12,713
40 percent or more	10,551	13,290	12,704

[26] *Id.* at 71.

[27] *Id.* at ix. This statistic is difficult to take at face value, however, since HUD defines "neighborhood" according to the U.S. Census, *Id.* at 122, which may or may not be broad; it is therefore unclear if HUD is encompassing wide areas in its neighborhood analysis, which could statistically dilute the concentration of reported voucher recipients.

[28] PHA administrators are required to encourage participants to consider ower-poverty areas. *Id.* at 25.

[29] *Id.* at 26.

[30] According to the study, although there is no "absolute threshold above which poverty levels can be said to adversely affect the welfare of all voucher families…families and neighborhoods are assumed to be negatively affected when poverty concentrations reach [the 30-40 percent] levels." Almost one-quarter of voucher holders reside in these areas. *Id.* 26-27.

[31] *Id.* at 26.

[32] *Id.* at 31.

[33] *Id.*

Federal Appellate Court Issues Stunning Preemption Decision

Bucking the trend established by several federal trial courts, the United States Court of Appeals for the Eighth Circuit has ruled that federal law preempts the authority of the state of Minnesota to require owners seeking to convert their federally subsidized property to market-rate use to provide additional notices and tenant impact statements. *Forest Park II v. Hadley*, No. 02-2445 (8th Cir. July 17, 2003). Reversing the decision of the trial court, the Eighth Circuit held that Minnesota's notice law was both expressly and impliedly preempted under the Supremacy Clause of the Constitution. The state of Minnesota, the tenants' association and many individual tenants, as well as the intervenor Family Housing Fund, have indicated they will seek rehearing. The issue is of significant importance to many other states and localities that have passed similar laws to protect residents of properties that are at risk of losing their federal subsidies, and to preserve that housing.[1]

Background

Both before and after the 1998 defunding of the federal preservation program established by the *Low-Income Housing Preservation and Resident Homeownership Act of 1990* (LIHPRHA),[2] numerous state and local governments passed laws to address the threatened conversion of existing federally subsidized properties to market-rate use. In addition to Minnesota, these jurisdictions include the states of Maryland, Rhode Island, Maine, Illinois, California, Texas, and Washington and the cities of San Francisco, Los Angeles, Denver, Portland, Seattle, Stamford (CT), and the District of Columbia. Most of these laws require notices of various lengths to tenants and state and local government about the owner's intentions; some establish rights of first refusal for specified preservation purchasers in the event of sale, or rights of such purchasers to make offers in the event the owner is converting but not selling; still others seek to extend existing rent control systems to cover rents at properties once federal regulation terminates.

LIHPRHA was a federally funded program of mandatory restrictions on prepayments and additional, market appraisal-based, financial incentives provided to owners or purchasers of eligible properties. When LIHPRHA was passed, owners successfully convinced Congress that state and local governments should not be able to reduce their LIHPRHA benefits by passing regulatory laws that targeted them for special disadvantageous treatment. The result was Section 232 of LIHPRHA, which purports to preempt state and local laws that "restrict or inhibit prepayment" for properties that were eligible for that program. While never repealing the LIHPRHA program, Congress reduced funding of approved LIHPRHA-eligible properties beginning in 1995, ultimately terminating all funding beginning in Fiscal Year (FY) 1998. At the same time, Congress restored authorization for owners to prepay without regard to LIHPRHA's restrictions through several appropriations acts, finally establishing more lasting authority with a statute passed in 1998.[3] This is the authority under which the owners of Forest Park sought to prepay their loan and terminate the federal restrictions.

Addressing federal inertia in the face of the expiring federal use restrictions and contracts, Minnesota had enacted two preservation notice laws. One, Minn. Stat. § 504B.255, originally passed in 1989,[4] provides that the owner of a property who seeks to eliminate use restrictions through prepayment or termination of other housing subsidy programs (*e.g.*, project-based Section 8) must provide a one-year written notice to tenants. The other, Minn. Stat. § 471.9997, was adopted in 1998 after Congress began to reduce LIHPRHA funding and had authorized prepayments and owner "opt-outs" of expiring project-based Section 8 contracts.[5] It requires the owner to submit a tenant impact statement to the local government at least 12 months prior to the intended termination of participation in any project-based federal housing assistance program by prepayment or nonrenewal of a Section 8 contract, with copies to the tenants and the state housing agency. At the same time, the Minnesota legislature provided a biannual appropriation of $20 million to the state housing agency to preserve and rehabilitate such properties threatened with conversion to market-rate use. Minnesota's notice and impact statement thus forms an integral part of the state's preservation program, providing information essential to determining priorities for state preservation spending, as well as the allocation of other limited state-controlled subsidy resources that originate under federal laws.[6]

Rather than complying with these basic procedural requirements, the owners sued in federal district court, seeking declaratory relief against the state and the tenants based on a claim that Minnesota law was preempted. The owners

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[1] *See* www.nhlp.org/html/pres/state/index.htm. For more background on these state and local laws, *see Preserving Federally Assisted Housing at the State and Local Level: A Legislative Tool Kit*, 29 HOUS. L. BULL. 183 (Oct. 1999) (survey of state and local preservation initiatives), and *Rights of First Refusal in Preservation Properties: Worth a Second Look*, 32 HOUS. L. BULL. 1 (Jan. 2002) (reviewing state notice laws attempting to support transfers to preservation purchasers).

[2] LIHPRHA is codified at 12 U.S.C.A. §§ 4101-4125 (West 1994 and Supp. 2002), and Section 232's preemption provision is codified at 12 U.S.C. § 4122.

[3] Pub. L. No. 105-276, §219, 112 Stat. 2487 (1998) (uncodified).

[4] 1989 Minn. Laws c. 328, art. II, § 5, recodified in 1999 as § 504B.255 (1999 Minn. Laws, c. 199, art. 1, § 32) (West 2002).

[5] *Multifamily Assisted Housing Reform and Affordability Act* ("MAHRAA"), 42 U.S.C. § 1437f note ("Multifamily Housing Assistance") (West Supp. 2002).

[6] These state-allocated financial resources typically include low-income housing tax credits (I.R.C. § 42) and below-market interest rate bond financing, both of which are limited in amount by federal laws and thus fiercely competitive in most jurisdictions like Minnesota.

relied on LIHPRHA's preemption provision to claim that state and local governments cannot regulate them, even though they never received LIHPRHA benefits and sought to leave the federal Section 236 program. In case that express preemption claim was rejected, the owners also argued that the state laws were preempted by the more general federal policies established under the *National Housing Act* and the 1998 prepayment authorization.

No owner had yet succeeded with these claims, which had been rejected by two other federal trial courts.[7]

The Trial Court's Ruling

The district court found that the Minnesota law was not expressly preempted by LIHPRHA's Section 232, nor was it preempted under the doctrine of conflict preemption.[8] Rejecting the owner's argument that LIHPRHA's express preemption provision displaces state law, the trial court found LIHPRHA inapplicable because the owner sought to prepay under other federal laws. Following other trial court decisions,[9] the court concluded that although Congress did not expressly repeal LIHPRHA, its provisions applied only to properties in the LIHPRHA program, not to other properties such as Forest Park that never executed a LIHPRHA preservation plan.

Even where federal law is silent on the preemption issue, the conflict preemption doctrine permits courts to invalidate state or local laws where it is impossible to comply with both federal and state commands, or where state law frustrates Congress' purposes. On this claim, the court found that dual compliance was not impossible, since the owner could first provide Minnesota's one-year advance notice and impact statement, and later give notice under federal law between 150 and 270 days prior to the anticipated prepayment. The trial court also found no support for the owner's claim that additional state requirements on prepayment frustrates a conjured congressional purpose to "eradicate the 236 program" in favor of tenant-based vouchers.[10] Finding no frustration of congressional purpose, the trial court upheld the Minnesota laws, and issued declaratory judgment to that effect and an injunction against prepayment until compliance.

The Eighth Circuit's Decision

In their appeal raising these federal preemption issues at the appellate level for the first time, the owners prevailed on both arguments.[11] The Eighth Circuit held that Minnesota's state notice law (requiring one year's advance notice prior to conversions) was preempted under the Supremacy Clause, both expressly by LIHPRHA and impliedly by the doctrine of conflict preemption, by frustrating the purposes of Congress in allowing prepayment upon 150 to 270 days' notice. In reaching these conclusions, the court eschewed traditional preemption analysis that seeks to ascertain congressional intent because the federal character of the laws and programs involved made it "difficult to apply."

For the Eighth Circuit, the facts boiled down to the following:

> A private participant in a federal housing program who seeks to withdraw from participation pursuant to the provisions of that program permitting withdrawal is being prohibited by a state law from taking the action that the federal government has otherwise authorized. The effect is that the state law forces the federal government to continue to provide financial assistance to the participant when both the federal government and the participant have chosen to end their relationship. In this way, the state law not only regulates the conduct of the citizen-owner, requiring him to take additional actions in order to withdraw, but also regulates or restricts the actions of the federal government under its own federal program.
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> *Forest Park*, slip op. at 13.

In light of the fact that the federal government has simply authorized owners to prepay and convert, while providing more expensive tenant protections, and thousands of owners remain in the program using long-ago appropriated interest reduction subsidies, this distorted view that the state is somehow coercing the federal government is remarkable, to say the least.

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[7]*Kenneth Arms Tenant Ass'n v. Martinez*, 2001 U.S. Dist. LEXIS 11470 (E.D. Ca. July 3, 2001); *Topa Equities v. City of Los Angeles*, No. CV 00-10455 GHK (RNBx) (C.D. Cal. April 8, 2002), *on appeal*, No. 02-56034 (9th Cir., argued June 4, 2003). *Cf. Cienega Gardens v. U.S.*, 38 Fed.Cl. 64, 89 (1997) (finding Los Angeles rent control law preempted in its application to determining rents and property value for LIHPRHA-eligible properties), *vacated and remanded by Cienega Gardens v. U.S.*, 194 F.3d. 1231 (Fed.Cir. 1998) (no privity of contract), *on remand*, *Cienega Gardens v. U.S.*, 46 Fed. Cl. 506 (2000) (regulatory takings claim unripe for failure to exhaust administrative remedies); *Cienega Gardens v. U.S.*, 265 F.3d. 1237 (Fed. Cir. 2001) (regulatory takings claim ripe for adjudication due to "futility" exception to exhaustion requirement; no *per se* taking under physical occupation doctrine), *Cienega Gardens v. U.S.*, No. 02-5050, 2003 WL 21356416 (Fed. Cir. June 12, 2003) (reversing trial court, finding that statutes effected an unconstitutional taking and adopting trial court's original 1997 ruling on damages for model plaintiffs).

[8]*Forest Park II v. Hadley*, 203 F. Supp. 2d 1071 (D. Minn. 2002). For more on the district court opinion, *see Federal Preemption of State and Local Preservation Acts Rejected by Two Courts*, 32 HOUS. L. BULL. 140 (May/June 2002).

[9]*Kenneth Arms Tenant Ass'n v. Martinez*, 2001 U.S. Dist. LEXIS 11470 (E.D. Ca. July 3, 2001); *Topa Equities v. City of Los Angeles*, No. CV 00-10455 GHK (RNBx) (C.D. Cal. April 8, 2002), *on appeal*, No. 02-56034 (9th Cir., argued June 4, 2003).

[10]To the contrary, the court cited a federal statute that provides incentives for Section 236 owners willing to extend their commitment to remain in the program, now codified at 12 U.S.C.A. § 1715z-1(s) (West Supp. 2001) (authorizing use of recaptured Section 236 interest reduction payments for rehabilitation grants and loans in exchange for continued use restrictions).

[11]NHLP filed an *amicus curiae* brief in the Eighth Circuit on behalf of the California Coalition for Rural Housing, supporting the position of the tenants, the state and intervenors, available to Housing Justice Network members on NHLP's Web site at www.nhlp.org/html/pres/cases.cfm.

While granting that it is certainly not impossible to comply with both the federal and state notice requirements and that the state statutes do not impede the federal goal because both statutes have the same underlying purpose of providing low-income housing, the court found that these arguments failed to address the principal problem that these state statutes violate its view of the Constitution's Supremacy Clause, U.S. Const. art. VI, cl. 2. In the court's eyes, if an owner had complied with federal requirements but not those of the state, the tenants or the state could not prevent the prepayment and release of the property from the program:

> This situation presents the quintessential case of the Supremacy Clause in action.... Simply, state statutes may not interfere with the implementation of a federal program by a federal agency. Under this analysis, legislative history is irrelevant. Minnesota law is preempted because it is inconsistent with the supremacy of the federal law made pursuant to the Constitution.
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> *Forest Park*, slip op. at 13.

Beyond its novel and expansive view of the Supremacy Clause and preemption doctrine, this passage reflects a distorted view of HUD's role in the prepayment transaction.[12] HUD does not accept prepayments, except where it happens to be the holder of the note after an assignment under the insurance contract. Almost always, HUD only receives notice so that it can begin processing replacement vouchers in the event the prepayment is later completed. If that happens, HUD receives notice and its regulatory agreement is released from the property's title at closing. If prepayment does not occur (*i.e.*, where the owners cannot secure refinancing, where the owners change their mind, or where the owners have not complied with other laws or applicable restrictions on the property), the regulatory relationship is maintained and the contracted subsidies continue to flow uninterrupted. There is simply no impairment of any federal program, objective, or mandate.[13]

If that were not enough, the Eighth Circuit turned to express preemption, first reviewing the language of LIHPRHA's express preemption provision and finding that Forest Park qualified as "eligible low-income housing." It then evaluated the state and tenants' claim that LIHPRHA did not apply because the owner did not prepay or execute a preservation plan under LIHPRHA. Because Congress did not specifically limit the coverage of the express preemption provision to properties actually proceeding under the terms of the LIHPRHA program in which it was lodged, the court rejected a claim grounded in the statutory structure and basic logic:

> Congress used very broad language in defining the types of mortgages covered by the preemption provision. To the extent that it intended preemption to apply only to laws affecting mortgages subject to LIHPRHA, it could have stated as much. The fact that Congress no longer funds the incentive programs established by LIHPRHA does not mean that the prepayment provisions contained therein are irrelevant or that the statute is no longer the law.
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> *Forest Park*, slip op. at 14.[14]

On this point the court rejected any deference to HUD's own view, filed in one of the other federal cases raising preemption claims against California's notice law, that LIHPRHA does not preempt state law for properties not under LIHPRHA. Turning to the next question of whether Minnesota's laws "restrict or inhibit" prepayment and thus fall within LIHPRHA's express preemption provision, the court found them covered because their enforcement via an injunction against an owner's noncompliance effectively impedes prepayment that is otherwise authorized by federal law. The net result is that tenants and the affordable housing needs of the community are burdened by one vestige of LIHPRHA, while receiving none of its protections or benefits.

The argument of the state and the tenants that federal law does not impliedly preempt Minnesota's notice laws fared no better. Finding a congressional objective to use prepayment as an incentive to encourage private participation, and that Congress has authorized prepayments under various post-LIHPRHA statutes, the court determined that Minnesota's laws frustrated those apparent goals:

> A further requirement imposed by a state statute would directly interfere with Congress's original intent of offering prepayment as an incentive. Any state statute that forces owners to remain in a federally subsidized program from which Congress has authorized withdrawal would eviscerate the method Congress chose to implement the federal low-income housing scheme.
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> *Forest Park*, slip op. at 16.

This novel and far-reaching concept that state enforce-

[12]The court's opinion suggests an erroneous view of the "absolute" nature of the owners' prepayment option, stating that it was expressly conferred by the HUD regulatory agreement and mortgage, when in fact it was usually contained in the promissory note with the lender, as a result of regulations adopted by HUD in the early 1970s. The court fails to mention another HUD regulation which permitted HUD to change the regulations at any time, so long as the interests of the lender were not adversely affected. 24 C.F.R. §236.249 (1995) ("The regulations in this subpart *may be amended* by the Commissioner *at any time* and from time to time, *in whole* or in part . . . .") (emphasis added).

[13]The court further mischaracterized the nature of the tenant protections vouchers provided by the federal government in case of prepayment as an element of an alleged replacement program funded by rerouted funds from prepayments. Prepayments do not flow into the federal treasury, much less into the voucher program's Housing Certificate Fund. All that is credited to the federal accounts is the recaptured interest reduction subsidies that were previously appropriated. Unless rescinded, those are earmarked for rehabilitation grants and loans to preserve multifamily properties under 12 U.S.C.A. § 1715z-1(s) (West Supp. 2001).

[14]The court's statement and the logic of its reasoning would require that LIHPRHA's restrictive prepayment restrictions (essentially permitting prepayments only where there was no harm to the tenants of the community's affordable housing supply) still apply, which of course they do not.

ment of its requirements impermissibly impedes a federal policy objective contradicts a well-established line of conflict preemption cases developed through the years in the federal housing area. Courts have regularly found that state and local governments may regulate federally subsidized owners, even while they are participants in the federal program.[15] These efforts have concerned rent controls (in the absence of express preemption), habitability laws, and eviction protections. Here, where owners are exiting the federal relationship, a holding that displaces state and local power to regulate the manner of their departure is especially troubling.

Owners are pressing similar preemption claims before the Ninth Circuit to challenge the City of Los Angeles' establishment of base rents for a prepaid property under local rent control.[16] In contrast to Minnesota's law, the Los Angeles law imposes no procedural requirements as prerequisite to prepayment. It requires that rents in properties leaving the federal program be initially established at the last rent in effect under the program, and that subsequent rent increases are then determined under the local rules, including annual and special rent adjustments, and vacancy decontrol. *Forest Park* will no doubt have a bearing on the resolution of that case. In the balance, when the federal government has largely abdicated its role, hangs the power of state and local governments to protect residents and affordable housing in accordance with local needs and conditions. ■

[15]*See, e.g., Kargman v. Sullivan*, 552 F.2d 2, 11 (1st Circ. 1977) (local rent controls; "[t]he federal legislation creating the network of subsidized housing laws is superimposed upon and consciously interdependent with the substructure of local law relating to housing . . . [a]nd . . . the local law here advances significant and uniquely local interests with which the courts should not lightly interfere."); *Rowe v. Pierce*, 622 F. Supp. 1030 (D.D.C. 1985) (local eviction protections); *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973) (holding that state law implied warranty of habitability applies in Public Housing); *Housing Authority of the City of Everett v. Terry*, 114 Wash.2d 558, 560 (Wash. 1990) (state notice provisions); *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602, (N.J. 1999) (state anti-discrimination law based on source of income); *Commission on Human Rights and Opportunities v. Sullivan Assocs.*, 739 A.2d 238 (Conn.1999) (same). *Cf., e.g., Housing Auth. of Fort Collins v. United States*, 980 F.2d 624 (10th Cir. 1992) (state law releasing federal liens preempted by federal statutory provisions extending PHA's non-financial obligations upon debt forgiveness); *Housing Auth. & Urban Redevel. Agency of Atlantic City v. Taylor*, 796 A.2d 193 (N.J. 2002) (federal statutory and regulatory definitions of and limitations on rent preempt state law permitting recovery of other charges as "additional rent" in summary proceeding).

[16]*Topa Equities v. City of Los Angeles*, No. 02-56034 (9th Cir., argued June 4, 2003).

NHLP Testifies on Rural Rental Housing Preservation Issues

Gideon Anders, the National Housing Law Project's Executive Director, appearing before the U.S. House of Representatives' Subcommittee on Housing and Community Opportunity, a subcommittee of the House Committee on Financial Services, recently criticized the Rural Housing Services' (RHS) administration of the Rural Rental Housing Preservation Program operated pursuant to statutory authority enacted in the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA). Mr. Anders' testimony, which was delivered on June 19, 2003, was prompted by concerns that RHS is not adequately enforcing ELIHPA, not preserving units that can and should be preserved and failing to protect residents against displacement.

Mr. Anders began his testimony by affirming the need to maintain an effective rural rental housing preservation program that protects residents against displacement. Rural communities continue to have a greater need for affordable, decent, safe and sanitary housing than their urban counterparts because housing conditions in rural areas have historically been and continue to be worse than in urban areas. The over 450,000 units of Section 515 housing that have been constructed in rural areas continue to serve a critical need in those communities. Frequently, those developments are the only available affordable rental housing that is decent, safe and sanitary. The conversion of Section 515 housing to uses other than low-income housing deprives communities of a critical resource and forces elderly, disabled and working households to relocate to other communities that are tens of miles away from their current homes, jobs and families. Conversion of Section 515 housing is a particularly critical issue in the Central Region of this country, where over 47 percent of the projects financed under the program prior to 1989 are located, and in the South, where another 30 percent of the developments are located.

After supporting the ELIHPA rural housing preservation mechanism as a sound and effective means of preserving the nearly 300,000 units of housing that are covered by the legislation, Mr. Anders focused on four areas where RHS is failing to adequately administer the program.

Program funding. RHS does not have enough funding to meet current preservation needs, has been unwilling to ask Congress for additional funding to meet those needs, and has itself been unwilling to devote more funding to a growing preservation need. He criticized the agency for continuously testifying to Congress that it had sufficient preservation funding while it in fact did not have sufficient funds to fund agreements with owners that would keep them in the program. In a recent Federal Register publication, the agency acknowledged that it does not have sufficient funds to meet all the equity loans that it has agreed to fund and claims to have unfunded agreements that were entered into as early as 1996. To address this problem, RHS does not offer the use of more funds, but instead proposes to allow owners whose

agreements are not funded within 15 months to exit the program by selling the housing to a nonprofit or public agency. Aside from the fact that there is no statutory basis for the RHS proposal, RHS does not disclose that it may not have the funding to finance such sales or to increase the Rental Assistance subsidies that will be necessary to maintain the units' affordability after the sale. What is troubling about this picture is that RHS has not only not disclosed the funding issue to Congress in the appropriations process or otherwise, but also that it is a self-created problem. The RHS Section 515 appropriations do not specify how much money RHS should be using for preservation, maintenance or new construction. Those decisions are made administratively by the agency after it receives its appropriations. Mr. Anders warned that the funding issue will become more significant over the next several years and that inadequate preservation funding may cripple the program. He urged the subcommittee to take a closer look at RHS rural rental housing needs, increase the Section 515 program's authorization and urge the budget committees to specify how RHS should allocate its funding between program components.

What is troubling about this picture is that RHS has not only not disclosed the funding issue to Congress in the appropriations process or otherwise, but also that it is a self-created problem.

Preservation. Mr. Anders contended that RHS is failing to preserve all the units that it can and should preserve and has created, and continues to create, loopholes that allow more owners to prepay their loans without protecting residents from displacement or preserving critically needed housing. The most glaring example is RHS' unwillingness to extend use restrictions through the acceleration and foreclosure process. With one exception, RHS takes the position that an owner who pays the balance due on a loan in response to an acceleration of the promissory note is not prepaying the loan and is free to use the property as it chooses after the loan is paid. A recent court decision upheld RHS' discretion to manage the program in this fashion primarily because there is nothing in ELIHPA or its legislative history that requires the agency to do otherwise. He also pointed out that RHS is also using the acceleration process to avoid dealing with troubled projects and pointed to several instances where Section 515 projects have had maintenance and/or occupancy issues that have caused owners to default on their loans. Rather than work with those owners in resolving the issues and making the developments viable, RHS has used the acceleration and foreclosure process to simply wash its hands of the troubled properties.

Lack of enforcement of owners' obligations. Mr. Anders testified that RHS is not affirmatively enforcing owners' obligations to operate Section 515 housing for its intended purposes either before or after a loan is prepaid. He cited several cases in which owners are either seeking to demolish or sell their developments and RHS has not taken any affirmative action to force compliance with ELIHPA. He cited another case where an owner who prepaid a loan subject to use restrictions violated the use restrictions by illegally displacing residents. Although RHS was aware of the fact that the residents were being displaced, it took no action to protect them. Indeed, he concluded that NHLP is not aware of any case where RHS has sought to enforce use restrictions against owners who have prepaid their loans.

Litigation. Mr. Anders testified that RHS is not effectively directing and controlling litigation that is challenging ELIHPA's prepayment restrictions or seeking damages for its imposition. Currently, there appears to be no concerted effort on the part of RHS, or its counsel, to ensure that ELIHPA, a federal law, is properly enforced. Basic arguments, such as the supremacy of federal laws over state laws, are not being advanced and cases are being settled instead of appealed because certain legal arguments have not been made in the federal district courts where these cases are heard. Moreover, RHS, or at least its counsel, appear intent on settling cases even before the agency's liability has been established. Potentially, these settlements will allow hundreds if not thousands of units to leave the program and may cost the government hundreds of millions of dollars that could have been better spent on preserving the housing in the first place. He criticized the agency for failing to appeal cases that should have been appealed and for leaving it to tenants to enforce laws that the agency should be enforcing. He found it ironic that residents of a development and not RHS are appealing an adverse and unprecedented Idaho prepayment case. Mr. Anders criticized the organization of the Department of Agriculture's Office of General Counsel, which reports directly to its Secretary, and urged that RHS should have its own legal staff that is authorized to coordinate and direct litigation on behalf of the agency. ■

Recent Cases

The following are brief summaries of recently reported federal and state housing cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,[1] Lexis,[2] or, in some instances, the court's Web site.[3] Copies of the cases are not available from NHLP.

People To End Homelessness Inc., v. Develco Singles Apts., ____ F3d. ____, 2003 Westlaw 21757274 (1st Cir. July 31, 2003). The First Circuit affirmed the district court's dismissal of HUD from a nonprofit's lawsuit against it and entry of summary judgment in favor of the owners of four separately owned but jointly managed Section 8 developments. The suit had sought to compel HUD to renew expiring Section 8 contracts when the owners had failed to provide residents the statutorily required one-year notice of intent to terminate their Section 8 contract or, in the alternative, to prevent HUD from issuing enhanced vouchers to the residents when the contracts expired. The trial court issued a voluntary restraining order preventing any evictions or any increase in the tenants' rent contributions for a term of one year from the date of the deficient notice. Thereafter, HUD moved to dismiss for the plaintiffs' failure to state a claim, which the court granted because it found no other available remedy. The owners then moved for summary judgment on the ground that the residents lacked standing to compel the owners to continue renting the units under the Section 8 HAP contracts. Affirming both decisions, the First Circuit concluded that no law required HUD to renew expiring Section 8 contracts when the owners failed to give proper notice. Moreover, it rejected the argument that HUD could not issue enhanced vouchers when the Section 8 contract expired but notice was improper, interpreting statutory authority otherwise. On the standing claim, the court held that there was nothing the trial court could have done to redress plaintiff's injuries beyond issuing the restraining order, and accordingly affirmed the dismissal.

Abdil v. Martinez, 2003 WL 21757499, 2003 N.Y. Slip Op. 16261 (N.Y.A.D. 1 Dept., July 31, 2003). The court reversed a lower court determination that the daughter of a public housing resident had the right to remain in her father's unit after his death even though she had not moved into the unit until several years after the father became a tenant and was never reported to the housing authority as a resident of the unit. The lower court concluded that the housing authority policy regarding the addition of household members had to have been promulgated as an agency regulation, something that the housing authority had never done, and was therefore ineffective. The appellate court reversed. It ruled that the policy was valid since it simply implemented federal regulations. Accordingly, it found that the daughter was a licensee not entitled to remain in the unit as a surviving family member.

Babcock, v. BBY Chestnut Limited Partnership, 2003 WL 21743771 (Minn.App. July 29, 2003) (Unpublished). The appellate court affirmed the lower court's decision that a Minnesota landlord's refusal to participate in the Section 8 program did not violate Minnesota's *Human Rights Act*, which prohibits landlords from refusing to lease a unit because of the applicant's status as a recipient of public assistance. The appellate court held that the Minnesota statute was intended to prohibit renting to particular tenants because of their status as recipients of public assistance. It was not intended to require landlords to participate in the Section 8 program for nondiscriminatory reasons, such as an unwillingness to bear the administrative costs associated with the program. It also rejected the plaintiff's claim that the landlord's refusal to participate in the program constituted an unfair and discriminatory practice because it had a disparate impact on women and female-headed households on the ground that the Minnesota statute only recognizes disparate impact analysis in employment cases. Lastly, it rejected the plaintiff's claim that the landlord's letter to the tenant stating that it would not participate in the program was a discriminatory practice because the underlying refusal to participate in the Section 8 program was not illegal.

Cotton v. Alexiam Brothers Bonaventure House, 2003 WL 21530342 (N.D. Ill., July 7, 2003). Two residents of a supportive residential transitional living facility for people with HIV/AIDS, funded under the Housing Opportunities for People with AIDS (HOPWA) program, challenged their summary and immediate eviction from the facility on the ground that the owner did not provide them with adequate notice or hearing as required by HOPWA and failed to comply with Illinois and Chicago landlord tenant laws governing evictions. After securing a temporary restraining order restoring their right to continue to reside in the facility, the parties moved for cross motions for summary judgment on the plaintiffs' claims which also included a damage claim for intentional infliction of emotional distress. Upon review of the HOPWA regulations the court concluded that the plaintiffs were entitled to a termination hearing but that the HOPWA regulations were silent as to whether the hearing had to be a pre- or post-termination hearing. While agreeing with the plaintiffs that due process generally requires the hearing to be held at a meaningful time and in a meaningful manner, the court refused to find Bonaventure House's involuntary discharge policy facially illegal for failing to provide a pre-termination hearing. It concluded that under certain circumstances, such as when a resident is an imminent threat to others, a post-termination hearing may satisfy the program's due process requirements. Because the residents' behavior was in dispute, the court postponed until trial the decision whether the two terminations in this case were justified without a prior hearing. It did, however, find that the HOPWA regulations require that the initial

[1]www.westlaw.com.

[2]www.lexis.com.

[3]For a list of courts that are accessible through the World Wide Web, see www.uscourts.gov/links.html (federal courts) and www.ncsc.dni.us/COURT/SITES/courts.htm#state (for state courts). See also www.courts.net.

discharge notice must state the reasons for the termination and that the Bonaventure House notices did not comply with that requirement. It thus ruled that the plaintiffs' right to fair notice was violated. Next, the court found that neither the Illinois nor Chicago landlord tenant laws applied to the relationship between the plaintiffs and Bonaventure House because the parties did not enter a landlord-tenant relationship. The development was a community assisted living facility with services that extended beyond the provision of housing. The resident handbook specifically stated that the facility is not an apartment-style living arrangement and that the residents should not construe the relationship as a tenant-landlord relationship. The court noted that the residents did not have exclusive control of their rooms because the agreements between the residents and Bonaventure House gave the administrative staff permission to enter the residents' room at any time. Accordingly, the court concluded that neither Illinois nor Chicago landlord tenant law was applicable to the terminations. Lastly, the court concluded that while Bonaventure House' method of terminating the residents' right to occupancy on a mere several-hour notice may constitute a basis for damages for the intentional infliction of emotional distress, it was an issue to be decided by a jury. Accordingly, it denied Bonaventure House's motion for summary judgment seeking to dismiss the claim and refused to grant plaintiffs' summary judgment motion seeking to declare the terminations as intentional infliction of emotional distress.

Boston Housing Authority v. Bruno, 790 N.E.2d 1121 (Mass. App., July 3, 2003). The housing authority appealed from a judgment denying it possession in a summary eviction proceeding against a resident of more than 21 years. The resident's son had been arrested for the possession of drugs and a dangerous weapon on the grounds of the development in which the father lived. The authority sought to evict on the basis of a lease provision that forbids household members from engaging in violent or drug-related criminal activity on or near the premises. The trial court found, based on evidence presented, that the son had moved out of the residence prior to his arrest and, therefore, refused to grant possession to the PHA. The authority appealed. The appellate court, reviewing the record, concluded that the trial court decision was not clearly erroneous and, therefore, was not reversible. The appellate court also refused to adopt a theory advanced by the authority under which it claimed that the resident's evidence as to the son's residency should have been excluded because the son was listed on the father's lease and on the Tenant Status Review form that was in effect at the time the son was arrested. The authority contended that this created an irrebuttable presumption that the son was a household member. The court found no basis in the lease, statute or regulations for such an irrebuttable presumption and refused to adopt it. Lastly, the court refused the housing authority's invitation to evict the father on the grounds that his son was a guest and that the father should have foreseen his son's criminal propensities. The court declined to adopt the theory because it had not been advanced at trial and could not be raised for the first time on appeal. The trial court judgment was therefore affirmed. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD) and the Department of Agriculture's (USDA) Rural Housing Service (RHS) issued in July of 2003. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

Copies of the cited documents may be secured from various sources, including (1) the Government Printing Office's Web site on the World Wide Web,[1] (2) bound volumes of the *Federal Register*, (3) HUD Clips,[2] (4) HUD,[3] and (5) USDA's/Rural Development Web page.[4] Citations are included with each document to help you secure copies.

HUD Interim Rule

68 Fed. Reg. 44,844 (Jul. 30, 2003)
Distribution of Tax Credit Proceeds

Summary: This interim rule amends the department's regulations with respect to funding for project completion. The current regulations require that funds provided by the mortgagor must be disbursed in full for project work, material and incidental charges and expenses before any disbursement of the mortgage proceeds. An exception is made for federal, state or local government or instrumentality grants or loans. These grants or loans need not be fully disbursed before the disbursement of mortgage proceeds, upon approval of the Assistant Secretary for Housing-Federal Housing Commissioner. This interim rule adds to the exception. This rule provides that the mortgagor's equity from the sale of low-income housing tax credits or historic tax credits, or both, need not be fully disbursed before the distribution of mortgage proceeds.

Effective Date: August 29, 2003.

Comment Due Date: September 29, 2003.

HUD Federal Register Proposed Rules

68 Fed. Reg. 42,327 (Jul. 17, 2003)
Manufactured Housing Consensus Committee—Rejection of Land Use Proposal

Summary: The Secretary has rejected a proposed recommendation by the Manufactured Housing Consensus Committee to promulgate a regulation concerning restrictions

[1] *At* www.access.gpo.gov/su_docs.

[2] *At* www.hudclips.org/cgi/index.cgi.

[3] To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.

[4] *At* www.rdinit.usda.gov/regs.

on the use of land for the placement of manufactured housing. The Secretary has determined that the Department has no legal authority to promulgate such a regulation under the *National Manufactured Housing Construction and Safety Standards Act of 1974.*

68 Fed. Reg. 43,987 (Jul. 25, 2003)
Manufactured Housing Consensus Committee—Rejection of Consumer Complaint Handling Proposal

Summary: The Secretary has rejected a proposed recommendation by the Manufactured Housing Consensus Committee to revise regulations concerning how manufacturers are required to handle reports of problems with manufactured homes. The Secretary has determined that the proposal conflicts in several ways with the requirements of the *National Manufactured Housing Construction and Safety Standards Act of 1974.*

HUD Notices

68 Fed. Reg. 39,110 (Jul. 1, 2003)
Notice of Proposed Information Collection: Comment Request; Eligibility of a Nonprofit Corporation/ Housing Consultant Certification

Summary: HUD is proposing to submit the following information collection proposal to the Office of Management and Budget (OMB) for review. The department wants to prevent incidences in which nonprofit transactions are actually controlled by a profit-motivated entity rather than a nonprofit sponsor/mortgagor. The department is required to make a determination that the nonprofit sponsor/mortgagor is acting on its own behalf and is not, either knowingly or unwittingly, under the influence, control or direction of any outside party seeking to derive a profit or gain from the proposed project. Additionally, the department must determine if housing consultants hired by the sponsor/ mortgagor are acting independently. The department must also determine if the proposed services are sufficient to permit development, completion and successful operation of the project, and if the proposed fees charged by the housing consultants are reasonable. Applicable Agency Forms: HUD–3433, HUD–3434, HUD–3435, and HUD–92531. The department is soliciting public comments on the subject proposal.

Comment Due Date: September 2, 2003.

68 Fed. Reg. 39,400 (Jul. 1, 2003)
Notice of Funding Availability (NOFA) for the Lead Hazard Reduction Demonstration Grant Program for Fiscal Year 2003

Summary: The purpose of the Lead Hazard Reduction Demonstration Grant Program is to assist areas with the highest lead paint abatement needs in undertaking programs for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based paint hazards in eligible privately owned, single-family housing units, and multifamily buildings that are occupied by low-income families. Approximately $49,675,000 Fiscal Year 2003 funds are available. Eligible applicants must be a city, county or similar unit of local government. States and Indian Tribes may apply on behalf of units of local government within their jurisdiction, if the local government designates the state or Indian Tribe as their applicant. Multiple units of a local government (or multiple local governments) may apply as part of a consortium.

Application Deadline: July 31, 2003.

68 Fed. Reg. 39,444 (Jul. 1, 2003)
Changes in Certain Multifamily Mortgage Insurance Premiums

Summary: In accordance with HUD regulations, this notice lowers the mortgage insurance premiums (MIP) for certain Federal Housing Administration (FHA) mortgage insurance programs whose commitments will be issued in Fiscal Year (FY) 2004.

Comment Due Date: July 31, 2003.

68 Fed. Reg. 42,075 (Jul. 16, 2003)
Notice of Proposed Information Collection for Family Report, MTW Family Report, and Reporting Discrepancy in Tenant-Reported Gross Income for Public Comments

Summary: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review and approval. As a preliminary step, HUD is soliciting public comments on the subject proposals. The information collected through the Form HUD–50058 and the Form HUD–50058 MTW will be used to monitor and evaluate Office of Public and Indian Housing programs including the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificate, Section 8 Moderate Rehabilitation, and Moving-to-Work programs. The information collected through the systems to monitor reductions in subsidy payment errors will be used to monitor and report progress towards the Department's Annual Performance Plan goal to reduce subsidy payment errors by 15 percent in 2003, 30 percent by 2004, and the Presidential Management goal of reducing such errors by 50 percent by 2005.

Comment Due Date: September 15, 2003.

68 Fed. Reg. 42,184 (Jul. 16, 2003)
Responses to Notice of Certification and Funding of State and Local Fair Housing Enforcement Agencies Under the Fair Housing Assistance Program (FHAP)

Summary: HUD is required to periodically inform the public of certified and interim certified agencies and identify those agencies where a denial of interim certification or withdrawal of certification has been issued or proposed; and solicit comments from the public, prior to HUD granting certification to state or local fair housing enforcement agencies. On February 27, 2002, a notice fulfilling these requirements was published. The following notice identifies and responds to the comments received.

Effective Date: July 16, 2003.

68 Fed. Reg. 42,818 (Jul. 18, 2003)
Ending Chronic Homelessness Through Employment and Housing

Summary: The Department of Labor (DOL), Office of Disability Employment Policy (ODEP), in cooperation with the Employment and Training Administration (ETA) and the Veterans Employment and Training Service (VETS), announces the availability of $2.5 million to award up to four Cooperative Agreements: Ending Chronic Homelessness through Employment and Housing Cooperative Agreements, ranging from approximately $500,000 to $625,000 per award, designed to increase and improve employment opportunities for persons who are chronically homeless. In partnership with this DOL award, HUD announces the availability of $10 million for permanent housing grants from recaptured *McKinney Act* monies. These funds will be used to supplement each DOL Cooperative Agreement effort with a HUD grant award, ranging from approximately $2–$3 million per award, to support permanent housing for individuals who are ''chronically homeless'' served through the DOL Cooperative Agreement. The goal of these awards is to enable persons who are ''chronically homeless'' to achieve employment, permanent housing and self-sufficiency.

68 Fed. Reg. 43,154 (Jul. 21, 2003)
Notice of Proposed Information Collection for Public Comment—Capital Fund Obligation Deadline Extension

Summary: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review. Public Housing Agencies (PHAs) submit a request to HUD to extend the obligation deadline for their Capital Fund grant based on statutory criteria. The information contained in the request is used as a basis by HUD to evaluate reasons for delay in obligating the funds in a timely manner and to grant or reject the requested time extension. The department is soliciting public comments on the subject proposal.

Comment Due Date: September 19, 2003.

68 Fed. Reg. 43,154 (Jul. 21, 2003)
Revocation and Delegation of Authority Under Title VI of the *Civil Rights Act of 1964*

Summary: The Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) all authority, with a noted exception, to act as the ''responsible Department official'' in all matters relating to the carrying out of the requirements of Title VI of the *Civil Rights Act of 1964*, as this authority is provided in HUD's regulations. In this notice the Secretary delegates to the Assistant Secretary for Public and Indian Housing the authority to approve tenant selection and assignment plans of local housing authorities. The Secretary revokes all prior delegations of this authority made by the Secretary.

Effective Date: July 7, 2003.

68 Fed. Reg. 43,155 (Jul. 21, 2003)
Delegation of Authority Under Section 504 of the *Rehabilitation Act of 1973*

Summary: Through this notice, the Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) all authority to act as the ''responsible civil rights official'' and the ''reviewing civil rights official'' with respect to Section 504 of the *Rehabilitation Act of 1973.* The Secretary revokes all previous delegations of this authority made by the Secretary.

Effective Date: July 9, 2003.

68 Fed. Reg. 43,156 (Jul. 21, 2003)
Revocation and Delegation of Authority Under the *Age Discrimination Act of 1975*

Summary: Through this notice, the Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) authority, with noted exceptions, to act with respect to the *Age Discrimination Act of 1975*. The Secretary revokes all prior delegations of this authority made by the Secretary.

Effective Date: July 7, 2003.

68 Fed. Reg. 43,430 (Jul. 22, 2003)
Homeless Management Information Systems (HMIS) Data and Technical Standards Notice

Summary: This notice states the intent of HUD to implement Homeless Management Information Systems (HMIS).

Comment Due Date: September 22, 2003.

68 Fed. Reg. 43,738 (Jul. 24, 2003)
Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Ending Chronic Homelessness Through Employment and Housing Application

Summary: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval. The Department is soliciting public comments on the subject proposal. This information collection supports the Collaborative Initiative to Help End Chronic Homelessness. Information is needed to assist in the selection of proposals submitted to HUD for the awarded funds.

Comment Due Date: August 7, 2003.

HUD Housing Notices

Notice H 2003-14 (July 3, 2003)
Reinstatement and Extension of HUD Notice H 2002-10, Section 8 Project-Based Rent Adjustments Using the Annual Adjustment Factor (AAF)

Summary: The purpose of this notice is to reinstate and extend Notice H 2002-10 which was originally issued on May 17, 2002, and expired on May 31, 2003. The notice describes procedures for annual adjustment of pre-renewal contract rent for Section 8 projects where rent is adjusted using the HUD-published Annual Adjustment Factor. The notice describes the

procedures for applying statutory comparability requirements in AAF rent adjustments for Section 8 new construction and substantial rehabilitation projects and it provides guidance concerning Rent Comparability Studies (RCS).

Expires: July 5, 2004.

Notice H 2003-15 (July 15, 2003)
Revitalization Area Evaluation Criteria—Single Family Property Disposition

Summary: The purpose of this notice is to provide for the continuation of uniform standards for evaluating and designating Revitalization Areas, provide additional clarification for the application of Revitalization Area criteria and authorize the 2003 review of all Revitalization Areas in each HOC's service area. Technical instructions for recording census block groups identified as a unit(s) of a Revitalization Area in a format suitable for entry into HUD's Revitalization Area Locator (RAL) will be sent separately.

Expires: July 31, 2004.

Notice H 2003-16 (July 17, 2003)
Fiscal Year 2003 Policy for Capital Advance Authority Assignments, Instructions and Program Requirements for the Section 202 and Section 811 Capital Advance Programs, Application Processing and Selection Instructions, and Processing Schedule.

Summary: This notice transmits for Fiscal Year 2003: Changes to Application/Selection Process; Application Processing Schedule; Allocations for Section 202; Allocations for Section 811; Section 811 Workshop Instructions; Section 202 Funding Notification; Section 811 Funding Notification; Applications Processing and Selections Policy; Congressional Notification Memorandum Formats; Section 202 Minority Business Enterprise Goals; Section 811 Minority Business Enterprise Goals; Initial Screening for Curable Deficiencies; Technical Review Sheets; Section 202 Standard Rating Criteria Form; Section 811 Standard Rating Criteria Form; and, Draft Letter to Appropriate State or Local Agency with Enclosures.

Expires: July 31, 2004.

HUD PIH Notice

Notice PIH 2003-18 (HA) (July 28, 2003)
Federal Fiscal Year (FFY) 2003 Issuance of Instructions for Adjustments and Revisions to Operating Subsidy Eligibility, and Updated Information on Proration Factor and Approval of Calculations

Summary: This notice provides Public Housing Agencies (PHAs) with additional information needed to complete the FFY 2003 subsidy eligibility calculations. It includes updated instructions to historical revision and adjustment policies. Additionally, this notice updates the proration factor.

Expires: July 31, 2004.

RHS Notice

68 Fed. Reg. 44,729 (Jul. 30, 2003)
Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

Summary: This notice announces the availability of $6 million in grant funds for the RCDI program through the Rural Housing Service (RHS), USDA. Applicants must provide matching funds in an amount at least equal to the federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This notice lists the information needed to submit an application for these funds.

Dates: The deadline for receipt of an application is 4 p.m. EST, October 28, 2003.

RHS Administrative Notices

RD AN No. 3881 (1980-D) (July 9, 2003)
Eligibility of Non-U.S. Citizens for Single Family Housing Guaranteed Loan Program Assistance

Summary: This administrative notice is intended to furnish guidance concerning what documentation non-U.S. citizens must supply in order to be considered for a loan note guarantee under the Single Family Housing Guaranteed Loan Program (SFHGLP).

RD AN No. 3883 (1980-D)(July 17, 2003)
Single Family Housing Guaranteed Loan Program RD Instruction 1980-D, Section 1980.324 Lender Charges and Fees

Summary: The purpose of this AN is to renew agency requirements under Instruction 1980-D, Section 1980.324(a) for routine charges and fees that lenders may charge borrowers. The agency wishes to prevent lenders from charging excessive fees for guaranteed loans and to protect low- and moderate-income borrowers from paying excessive loan fees, or borrowing funds for fees that are not reasonable and customary. This AN does not apply to maximum interest rate requirements. Maximum interest rates should be handled according to RD Instruction 1980-D, Section 1980.320. ■

NATIONAL HOUSING LAW PROJECT FACT SHEET:

Resident Advisory Boards: What are They and How Can You Get Involved?[1]

What is a Resident Advisory Board?

A Resident Advisory Board (RAB) is a group of tenants who advise a housing authority about its Five-Year and Annual Plans (PHA Plans). The residents on this board should reflect the residents living in units assisted by the housing authority. The housing authority must establish a RAB to advise it on its annual and five-year plans. A housing authority may have more than one RAB.

What are the PHA Plans?

PHA Plans cover many issues important to tenants, including who gets into public housing (admissions), how much rent is charged, where the housing authority uses its money to make repairs or improvements, and what self-sufficiency and resident savings policies are adopted and followed by the housing authority.

Who may be a member of the RAB?

Public housing residents and resident leaders should be on the RAB. The housing authority must follow the rules that allow tenant councils which comply with the resident participation rules to choose members of the RAB. If there is a recognized jurisdiction-wide resident council, then the housing authority must appoint that council or its representatives as the RAB. If there are resident councils at some properties (but no jurisdiction-wide council), then the housing authority must appoint these recognized councils or their representatives as members of the RAB and may select other members to the RAB. If there are no resident councils, the housing authority may select all of the members for the RAB. If the housing authority has a fairly big voucher program in comparison to its public housing program, the housing authority must appoint voucher recipients to the RAB.

What does the RAB do?

The RAB is responsible for reviewing the housing authority's plans and making recommendations on the plans. The housing authority must take RAB recommendations into consideration when writing the plans. The RAB should have meetings with the housing authority and may choose to have other meetings without any housing staff to discuss annual plan issues. The RAB members should represent the views of tenants and should find out what policy issues other tenants want to bring to the housing authority.

What resources are available to the RAB?

The housing authority must make funds available to allow the RAB to understand housing authority policies and programs, communicate with other residents and access the Internet. The housing authority has resident participation funds in the amount of $25 per unit per year. The housing authority may use some of those funds to assist the RAB in doing its job. Resident councils, if they exist, must be involved in deciding how to use the resident participation funds and whether these funds should be used for RAB activities.

How can you get involved with the RAB?

1. If there is a resident council, you can work with the resident council and seek to be the resident council representative on the RAB or provide information to the resident council representative on the RAB.
2. With or without a resident council, you can tell the housing authority that you want to serve on the RAB.
3. You can meet with the RAB. The housing authority should help you meet with the RAB. The housing authority is required to list the names of RAB members with the annual plan.
4. You can ask to attend RAB meetings.

Additional Information and Authority

A more complete review of RAB activity is included in "Residents' Guide to the New Public Housing Authority Plans" by the Center for Community Change, available at: www.communitychange.org/publications/housingcommdev.htm.
42 U.S.C.A. § 1437c–1.
24 C.F.R. Part 903 is available at www.access.gpo.gov/nara/cfr/cfr_table_search.html.

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