

**NATIONAL  
HOUSING LAW  
PROJECT**

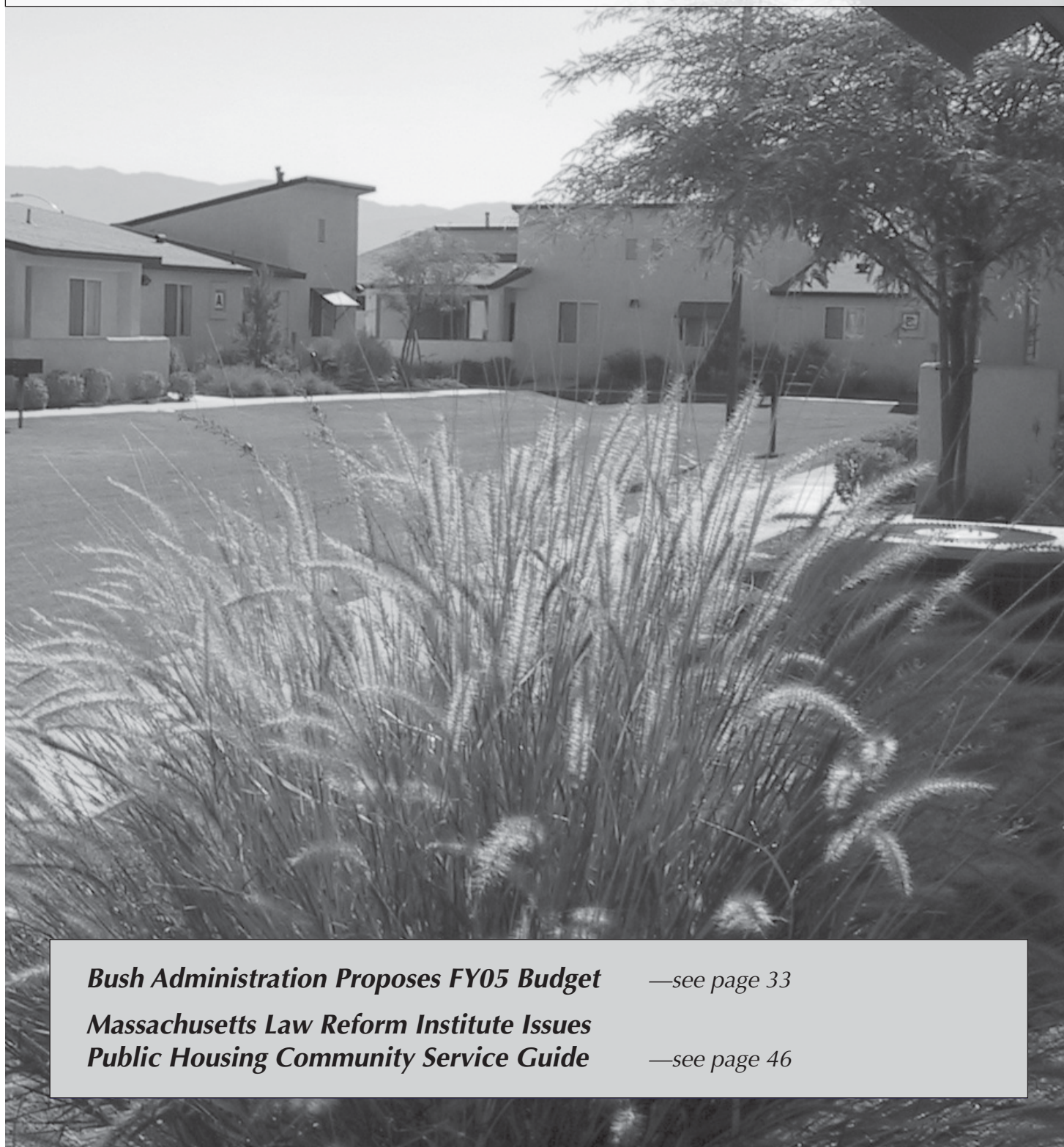


advancing housing justice

# Housing Law Bulletin

Volume 34 • February/March 2004

Published by the National Housing Law Project



***Bush Administration Proposes FY05 Budget***

—see page 33

***Massachusetts Law Reform Institute Issues***

***Public Housing Community Service Guide***


—see page 46


 UPDATED


 3<sup>RD</sup>  
EDITION


 NHLP's  
**HUD  
 Housing Programs:  
 Tenants' Rights**

 EXPANDED


 Originally published in 1981, NHLP's Green Book has proven indispensable to housing law practitioners across the country.

Dubbed the Green Book by users across the country, *HUD Housing Programs: Tenants' Rights* is a comprehensive, issue-oriented guide to the federal housing programs. Last published in 1994, the 3rd Edition has been reworked, updated and expanded to cover recent sweeping changes from Congress, HUD and the courts.

It is the only book that explains and analyzes all applicable laws central to effectively representing tenants assisted under the HUD programs. In a single volume, it provides a practical road map through the complexity of the federal housing programs, including public housing, subsidized rental housing, vouchers, section 8 homeownership, and others. Evictions, resident participation, loss of units and other key issues are covered in depth as well.

Meticulously researched and clearly written by expert NHLP staff attorneys and outside contributors, the Green Book is a unique and invaluable resource for anyone working within the scope of the federal housing programs:

- attorneys and paralegals
- fair housing and other public interest advocates
- HUD offices
- public housing authorities
- nonprofit housing and community organizations
- private owners and managers
- local and state housing agencies
- housing policy organizations and policymakers
- clinical law programs and law libraries

The 3rd Edition contains the most recent applicable authorities for virtually all common problems encountered in a federal housing landlord-tenant relationship, including state and federal cases, federal statutes and regulations, and HUD Handbooks, Notices and opinion letters.

*HUD Housing Programs: Tenants' Rights* may be pre-ordered now. See the Publication Order Form for prices.

**CD ROM**

The 3rd Edition of *HUD Housing Programs: Tenants' Rights* features a complimentary CD-ROM that contains full PDF texts of selected documents referenced within. These documents are not readily available from other sources and not easily located on the internet. They include HUD circulars, Notices, forms, memoranda and correspondence, as well as selected unreported court opinions.


 SPECIAL  
 FEATURE

**AN ESSENTIAL RESOURCE FROM THE NATIONAL HOUSING LAW PROJECT**

# Housing Law Bulletin

Volume 34 • February/March 2004

Published by the National Housing Law Project  
614 Grand Avenue, Suite 320, Oakland CA 94610  
Telephone (510) 251-9400 • Fax (510) 451-2300  
www.nhlp.org • nhlp@nhlp.org

## Table of Contents

|   | Page |
|---|------|
| Administration's FY 2005 Budget Once Again Threatens Federal Housing Programs ..... | 33   |
| The American Dream Downpayment Initiative .....                                     | 40   |
| Congress Enacts Intergenerational Housing Demonstration Program .....               | 41   |
| Voting and Making Sure that Vote Counts! .....                                      | 41   |
| The Servicemembers Civil Relief Act of 2003 .....                                   | 42   |
| California Court Upholds State Preservation Law in Preemption Challenge .....       | 44   |
| MLRI Examines Exemptions to Public Housing Community Service Requirement .....      | 46   |
| OIG's Report on Voucher Portability Reveals Serious Deficiencies .....              | 47   |
| GAO Issues Third Report in HOPE VI Review .....                                     | 48   |
| NCRC Study on Age and Race Discrimination in Subprime Lending .....                 | 49   |
| Recent Cases .....  | 50   |
| Recent Housing-Related Regulations and Notices .....                                | 52   |
| <b>Announcements</b>  |      |
| NHLP Is Coming to Your Town! .....  | 42   |
| Publication List/Order Form .....   | 57   |



**Cover:** Las Mananitas, 128-bed migrant farmworker housing in Mecca, California. Sponsored by Coachella Valley Housing Coalition (CVHA). Photo courtesy CVHA.

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.

Inquiries or comments should be directed to Eva Guralnick, Editor, Housing Law Bulletin, at the National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610, Tel: (510) 251-9400 or via e-mail to [nhlp@nhlp.org](mailto:nhlp@nhlp.org)

## Administration's FY 2005 Budget Once Again Threatens Federal Housing Programs

Repeating a now predictable pattern from past years, the Bush Administration's Fiscal Year (FY) 2005 budget, released February 2,<sup>1</sup> once again proposes insufficient funding levels to sustain current services in federal housing programs. As in prior years, no funds would be provided to address substantial and growing unmet needs. HUD and many other federal agencies administering domestic programs will suffer disproportionately, in order to permit restraints on the growth of federal spending while supporting most favored status for certain other programs, such as farm subsidies, homeland security and the imperative of entitlements. To make the numbers work, the budget also would largely deregulate the largest single HUD housing program, Housing Choice Vouchers. This article provides more detail on the housing budget's major proposals.

Absent from this year's proposals are some of last year's unsuccessful ideas, such as increasing minimum rents for assisted tenants, superwaivers to override federal statutory and regulatory protections, and the public housing reinvestment initiative. The rest is mostly reruns, which we will have to get used to until the overall budget and political picture changes.

### The Bigger Picture

As one of the largest areas of federal domestic discretionary spending, and one which predominantly serves poor people, the federal housing budget stands vulnerable to political pressures to restrain federal spending. Of course, this is not a recent development, as it has occurred with great regularity since the early 1990s, but it has become more obvious as the pressure has mounted from increasingly strong external forces. In recent years under the Bush Administration, those forces have included a ponderous economy, a huge injection of military and security expenditures, and costly tax cuts for the already well-heeled, all of which have combined quickly to produce record federal deficits. Ugly as it looks now, the long-term picture is much worse, as the costs of extending tax cuts appears later in the decade and the huge projected growth in Medicare and Social Security costs from demographic shifts take root.

The Bush FY 2005 federal budget thus reflects these pressures, and resulting priority choices that favor the wealthy at the expense of people with lower incomes who disproportionately benefit from direct federal spending programs. It proposes substantial restraints on federal outlays through reinstated "Pay-Go" rules, for both entitlement and discretionary programs. However, unlike previous versions of the "Pay-Go" rules in the 1990s, increases in the cost of tax breaks

<sup>1</sup>The complete budget submission with supporting documents is available from the Office of Management and Budget's Web site at [www.whitehouse.gov/omb/budget/fy2005/index.html](http://www.whitehouse.gov/omb/budget/fy2005/index.html).

are unmatched by similar restraints. The budget also reserves special hostility for domestic discretionary spending programs that are not part of “homeland security,” such as federal housing programs. Although these programs have not been responsible for the record deficits, the FY 2005 budget actually proposes to increase them only 0.1 percent, which of course amounts to a cut after accounting for inflation. But looking downstream, these programs would be slated for even deeper cuts in 2006, mounting in size each year. Don’t follow the Administration’s rhetoric—add up the numbers.

Later in the decade, by 2009, the budget proposes to cut overall funding for domestic non-security discretionary programs by \$50 billion—or 11.5 percent—below today’s level, adjusted for inflation. The Administration also proposes five-year binding caps on discretionary spending to lock in these big cuts. All kinds of programs would be hit—housing vouchers, child care assistance, Title I education, the National Institute of Health, the Supplemental Food Program for Women, Infants, and Children (WIC), and low-income energy assistance.

---

*The Flexible Voucher program is a more radical retreat of last year’s Voucher Block Grant proposal, without the state administrative layer, but promising even more harm for very low-income people using or needing voucher assistance.*

---

According to the Center on Budget and Policy Priorities (CBPP), “the amount that these cuts would save pales in comparison to the revenue losses from the tax cuts. The savings over the next five years from all of the domestic discretionary cuts combined would be substantially less than the cost of the tax cuts just for the one percent of households with the highest incomes.”<sup>2</sup>

Such is the background for the President’s FY 2005 federal housing budget. It thus comes as no surprise that most programs are level funded, which actually means cuts in current services. For HUD programs overall, the budget proposes \$34 billion in budget authority; last year’s appropriated level was \$34.7 billion.<sup>3</sup> It is also no surprise that the Administration again seeks to shed any increases in the costs of operating the voucher program, and through deregulation set the stage for later reductions in federal contributions.

---

<sup>2</sup>RICHARD KOGAN & ROBERT GREENSTEIN, ANALYSIS OF THE PRESIDENT’S BUDGET 2 (2004), at [http://www.cbpp.org/2\\_2\\_04bud.pdf](http://www.cbpp.org/2_2_04bud.pdf) (revised Feb. 11, 2004).

<sup>3</sup>HUD, FISCAL YEAR 2005 BUDGET SUMMARY 37 (2004) [hereinafter FY 2005 HUD BUDGET SUMMARY].

## The Flexible Voucher Proposal

Chastened by the tepid reception given last year’s block grant proposal, even by Republicans and state agencies, but driven by the need to reduce federal Section 8 spending in order to reduce HUD’s budget, the Administration has reworked the mechanics to provide bait to gain greater support from PHAs in the political conversation. Essentially, the new “Flexible Voucher” proposal promises enormous deregulation in exchange for providing less money this year, and in the future. The link between federal funding levels and actual local housing costs would be severed forever, and with it any pressure to sustain federal funding levels against long-term budget pressures that will mount dramatically in the next two decades. Until Congress formally commences its review process in budget hearings, it is uncertain whether this year’s version of the Trojan Horse will have any better reception.

Presenting a watershed battleground, the Flexible Voucher program is a more radical retreat of last year’s Voucher Block Grant proposal, without the state administrative layer, but promising even more harm for very low-income people using or needing voucher assistance. It would be a dollar-based, not a market-cost based, block grant program, with funding flowing directly to PHAs. Supposedly encouraging “graduation” from assistance, the Administration contends that it would provide greater PHA discretion in meeting local housing objectives, “steady and predictable funding levels adjusted annually for inflation,” and rewards for good PHA managers through performance-based incentives, while holding PHAs accountable for poor performance.<sup>4</sup>

While HUD alleges that the main driver behind the proposal is the “unsustainable cost increases” in recent voucher budgets, closer analysis suggests that these increases are entirely explicable and will begin to abate.<sup>5</sup> However, this does not mean that the Flexible Voucher proposal is simply another solution in search of a problem. What will not abate under the current federal funding system—and it should not—is the federal responsibility for covering future rent increases in local housing markets. It is this special fiscal responsibility that the Administration looks to offload. If local rents go up, the cost has to be shouldered by either the federal government or the tenant. It is clear where this Administration wants that burden to rest.

---

<sup>4</sup>*Id.* at 9-10.

<sup>5</sup>For a detailed analysis of the factors that have driven Section 8 cost growth and the reasons that growth is now slowing markedly, see BARBARA SARD & WILL FISCHER, NEARLY ALL RECENT SECTION 8 GROWTH RESULTS FROM RISING HOUSING COSTS AND CONGRESSIONAL DECISIONS TO SERVE MORE NEEDY FAMILIES (2004), at <http://www.cbpp.org/2-2-04hous.htm>. These recent cost increases have resulted from a period of unusually rapid growth in rental housing costs, combined with an economic downturn that depressed the incomes of low-income families and increased the average rent subsidy, better PHA utilization of voucher allocations, and Congressional decisions in 1999 to 2001 to issue additional vouchers and to protect tenants facing conversion in other assisted housing.

Over the long run, this proposal promises to reduce the number of families served, raise their rent burdens and divert the benefits to higher-income households.<sup>6</sup> The simple reason is that there will not be sufficient federal funding and PHAs will have no choice. The Administration's budget shows the annual levels for each budget account through 2009 in order to comply with their proposed caps. For Section 8, those levels are extremely low: for example, in FY 2009, Section 8 expenditures would be cut \$6.1 billion below Congressional Budget Office estimates for current services. This 2009 level would also be more than \$4 billion below the OMB estimate for Section 8 in 2004, even though rents are almost certain to rise by 2009. PHAs would be driven to eliminate a large number of vouchers or substantially reduce subsidies by raising tenant contributions or serving higher-income families.

Last year's gambit to hand the money over to the states did not find an audience. This year's approach courts PHAs with the lure of new "flexibility," actually a radical plan threatening tremendous harm.<sup>7</sup>

- **Families' current housing assistance could be terminated or reduced immediately.** Of the two million families and elderly and disabled individuals that currently receive vouchers, only one-tenth of one percent (Section 8 homeownership voucher recipients) would be assured that their subsidies would continue. All other families would face the immediate risk of increased rent obligations or outright subsidy termination of their subsidies from severe proposed funding cuts.
- **The number of families receiving vouchers could be substantially reduced.** Although last year's block grant proposal would have generally required states to serve at least the same number of families as were previously served, this year's proposal omits that provision. Current families, or families languishing on long waiting lists, will suffer.
- **The housing voucher program would no longer have to serve any poor families.** Under current targeting requirements created as part of the 1998 statutory overhaul, most vouchers (75 percent) must be allocated to the neediest families (those with incomes less than 30 percent of area median). This proposal would completely eliminate this "targeting" requirement.
- **No affordability protection would remain.** The current proposal would abolish fundamental program rules, most notably payment standards, the Brooke Amendment's 30 percent standard, and rent contribution limits, which effectively control the rent burdens for voucher families. Lower subsidies would limit participants' choice of

neighborhoods, producing further segregation and concentration of poverty, contrary to the purposes of the voucher program. "Enhanced vouchers" to protect tenants from prepayments or project-based opt-outs would be valid only for one year; after this time, as well as for those tenants that have previously received enhanced vouchers, families would be subject to PHA-set payment levels.

By breaking the link between actual housing costs and federal voucher funding, this proposal would allow Congress to set voucher funding at whatever level the political process chooses, regardless of actual housing costs. PHAs will have the untidy job of raising rents for tenants or reducing the number of families served.

## Section 8 Housing Certificate Fund Level

The Section 8 Housing Certificate Fund covers both vouchers and project-based Section 8 assistance. The request for the entire Housing Certificate Fund is \$18.465 billion, with \$16.92 billion for all Section 8 tenant-based and project-based renewals. Funding for all expiring project-based Section 8 contracts would be renewed at a cost of \$5.1 billion. However, the proposed level is at least \$1 billion short of what is needed to fund all currently authorized vouchers and would reduce the number of currently authorized vouchers by more than 10 percent, or 250,000 units nationwide. PHA administrative fees would also be reduced. In addition, funding for Family Self Sufficiency (FSS) coordinators to help participants access job training, child care and other supportive services is proposed for elimination.

## Public Housing Funding

### Inadequate Public Housing Operating Subsidies

The federal government provides PHAs with operating subsidies to cover maintenance, security and other operating costs because tenant rents are generally insufficient to cover them. In recent years, the Administration has requested inadequate funding for these operating subsidies, and this year is no different. The Public Housing Operating Fund would be funded at about \$3.6 billion, including a \$15 million set-aside for bonuses to PHAs that move tenants out of public housing. Also unaddressed is the shortfall from prior years that was temporarily covered by FY 2003 appropriations.

Once again, inadequate operating subsidies impede PHAs' provision of current services to residents and developments. Physical conditions in public housing will deteriorate. With insufficient capital funding, this remains a stealth demolition strategy or a step toward shifting greater funding responsibility to tenants or local governments, neither of which can or should bear it.

### Inadequate Public Housing Capital Funding

PHAs also receive capital funds for rehabilitation and management improvement needs, and the Administration perennially underestimates both needs and funding requirements. While at least a \$20 billion backlog in unmet capital

<sup>6</sup>BARBARA SARD & WILL FISCHER, ADMINISTRATION SEEKS DEEP CUTS IN HOUSING VOUCHERS AND CONVERSION OF PROGRAM TO A BLOCK GRANT (2004), at [http://www.cbpp.org/2\\_12\\_04hous.pdf](http://www.cbpp.org/2_12_04hous.pdf).

<sup>7</sup>*Id.* Most of the following discussion comes from this excellent CBPP paper.

needs continues to mount, the Administration's FY 2005 budget requests only \$2.67 billion, \$21 million less than the FY 2004 appropriation. This inadequate request will accelerate public housing disinvestment by further delay in necessary capital improvements.

---

*Rather than address the deficiencies of the HOPE IV program, the Administration proposes no FY 2005 funds for HOPE VI, and does not seek to add the money to the general Capital Fund.*

---

### **Defunding HOPE VI Without Restoring Funds for Rehabilitation**

Although unsuccessful last year in killing HOPE VI, the FY 2005 budget proposes to do so yet again. In FY 2004, Congress had reauthorized the program with strong bipartisan support, reducing the funding to \$150 million, far below the FY 2003 level of \$570 million.

Over the past decade, the controversial federal HOPE VI program has provided substantial funds to revitalize public housing developments. While providing some substantial improvements in physical conditions, the program has resulted in a net loss of public housing units affordable to extremely low-income residents and widespread displacement from their neighborhoods.<sup>8</sup> Rather than address these deficiencies, the Administration proposes no FY 2005 funds for the HOPE VI program, and does not seek to add the money to the general Capital Fund.

### **"Freedom to House"**

A new twist for FY 2005 is a variant of the Moving to Work program, called the "Freedom to House: Public Housing Reform Demonstration Program," providing \$5 million for each year of the three-year demonstration for evaluation, monitoring and technical assistance for up to fifty PHAs in an experimental group and another fifty in a control group. The experimental group would be given the flexibility to set their own rules, but must operate under an asset-based management and accounting system. The experimental group of PHAs would have the flexibility to set their own rent policies. Certain provisions of the public housing statute would not apply to those PHAs including the provision regarding rental payments and definition of adjusted income, tenant

commissioners, the PHA plan process, the grievance procedures, and the provisions on designated housing, community service and the pet policy.<sup>9</sup> It appears that these PHAs would continue to have to comply with Section 18 of the United States Housing Act which is the demolition and disposition provisions and the certification of compliance with the civil rights laws.<sup>10</sup> The control group would not have the same flexibility or any requirements regarding asset-based management. Annually, the groups' performances would be evaluated based on "parameters of financial health and physical safety and soundness."<sup>11</sup> The Secretary will also be evaluating the experimental PHAs on "whether the increased PHA flexibility results in higher self-sufficiency and turnover rates of public housing residents."<sup>12</sup> Significantly, there is no requirement in the proposal that a PHA consult with anyone, residents or the public, prior to applying to be in the experimental group or at any time during the three-year experiment. Additionally, the PHA has no flexibility to combine voucher funds with public housing funds, as is currently available to certain Moving to Work PHAs.

### **Native American Housing Block Grant**

Native American block grants, which fund Tribes and tribally designated entities to provide affordable housing in Native American communities, would be funded at \$647 million.

### **HOME**

The HOME program would receive \$2.084 billion, with \$200 million earmarked for the Administration's American Dream Downpayment Initiative, a big jump from last year's \$87 million. This represents virtually level funding for HOME's formula distribution.

### **Community Development**

The Community Development Fund, which includes the major funds for cities under the Community Development Block Grant (CDBG) program, would receive only \$4.6 billion, down from \$4.9 billion last year. The FY 2005 proposal proposes no funds for urban empowerment zones.

### **Homeless Assistance**

Despite the Administration's ten-year pledge to end homelessness, the existing Homeless Assistance programs

---

<sup>9</sup>FY 2005 HUD BUDGET SUMMARY, *supra* note 3, at § 224(a) (the section number does not appear in the document, but logic dictates that the section number should be § 224 as it follows § 223), available at <http://www.whitehouse.gov/omb/budget/fy2005/appendix.html>. Significantly, the provision regarding the earned income disregard would continue to apply to the experimental PHAs.

<sup>10</sup>*Id.* at § 224(e)(4)(C)(iv) and (v) (at the end of the year the PHA must provide a Civil Rights Certification and describe what it has to or will do with respect to Section 18).

<sup>11</sup>*Id.* at 11-12.

<sup>12</sup>*Id.* at § 224(a) (purpose of the demonstration).

---

<sup>8</sup>See generally NHLP, ET AL., FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM (2002), available at <http://www.nhlp.org/html/pubhsg/FalseHOPE.pdf>.

would receive only about the same amount of funds as last year, \$1.257 billion. Offered once again is the proposal to consolidate homeless assistance programs into a single program.

The budget proposes an increase of \$25 million in the McKinney program for the Prisoner Re-Entry Initiative, to keep ex-offenders out of the homeless service system upon release, which the President noted in his State of the Union address was slated for \$300 million for four years. Apparently, these funds would pass from HUD to another federal agency, one presumably regarded as better equipped to administer a housing program.

The budget again proposes \$50 million for the Samaritan Housing Initiative Fund, which would provide funding for local collaborative strategies to move people experiencing long-term homelessness into permanent housing. Congress took a pass on this proposal for FY 2004. Similarly, the budget again proposes that the Emergency Food and Shelter program be transferred to HUD from the Federal Emergency Management Agency, with flat funding at \$153 million. Congress declined this for FY 2004 as well.

### Other HUD Programs

Funding for Section 811 housing for people with disabilities and Section 202 housing for seniors would remain at last year's levels, \$249 million and \$773 million, respectively. Housing Opportunities for Persons with Aids (HOPWA) would remain close to prior years' levels at \$295 million. Lead Hazard Reduction would be reduced to \$139 million, from \$174 million in FY 2004. Funding for Fair Housing activities would remain at \$48 million.

For the third year in a row, the budget requests no funds for the Rural Housing and Economic Development program. Congress has consistently funded this over HUD's opposition.

Once again, the Administration requests no funds for Brownfields Redevelopment to redevelop contaminated sites and provide jobs to low-income people.

### Homeownership Initiatives

As previously ballyhooed, HUD is proposing a new FHA program that would insure no-down-payment mortgages for credit-worthy applicants. Participants would be required to pay a higher insurance premium and to participate in homeowner counseling. HUD expects this to be a money-maker for FHA, apparently because premiums will exceed losses and losses will be minimized by continued strength in the housing market.

Once again, the Administration proposes a separate account for housing counseling funded at \$45 million, along with relocation of the program from the Office of Community Planning and Development to the Office of Housing.

Another recycled proposal is the Single Family Affordable Housing Tax Credit, offering tax credits to developers who build single family homes in low-income neighborhoods. The tax credit would provide up to 50 percent of the cost of constructing or rehabilitating a home. Although this

was originally a campaign promise, and has bipartisan support, the Administration has so far made no effort to push this proposal.

### Rural Housing: USDA Section 515 Program

The Section 515 rental housing program, administered by the Department of Agriculture (USDA), also fell victim to the Bush Administration's FY 2005 budget proposal. The Administration's budget proposals for rural homeownership proved consistent with its general preference for homeownership.<sup>13</sup> With 22 percent of working rural residents living below the poverty level,<sup>14</sup> the need for Section 515 funding exists now as much as ever.

The administration's budget fails to provide for Section 515 new construction, even though the number of rural residents who qualify for affordable housing grows at a rapid pace during the current economic crisis. The \$60 million proposed spending level would provide for rehabilitation of the existing housing only, stock that is currently under formal assessment.<sup>15</sup> This abhorrently low level falls \$56 million below the FY 2004 appropriation<sup>16</sup> and \$11 million below the administration's FY 2004 budget proposal.<sup>17</sup>

The growing number of Section 515 units which disappear monthly because of USDA-approved mortgage prepayments only adds to the dim picture on rural rental housing in the context of the overall housing budget. A number of Section 515 developments maintain units that are concurrently subsidized by Section 8, in whole or in part. When Section 515 prepayment occurs, HUD subsidy is often the only subsidy left at these developments. A review of the administration's HUD-side budget clearly shows the administration's consistently expansive abandonment of low-income renters. ■

---

<sup>13</sup>The budget provides \$35 million for Section 504 single family home rehabilitation, the same amount appropriated for FY 2004. In addition to rehabilitation, the administration supports single family homeownership by providing a total of \$3.6 billion for the two Section 502 lending programs with an additional \$34 million for the Section 523 Self-Help program. This brings the total budget for homeownership programs to \$3.669 billion. Housing Assistance Council, Fiscal Year 2005 Budget Emphasizes Homeownership, Cuts Section 515 Rural Rental Housing, Housing Assistance Council (updated Feb. 2, 2004), at <http://www.ruralhome.org/announce/budget2005.htm> (last visited Feb. 19, 2004).

<sup>14</sup>Press Release, Housing Assistance Council, Budget Emphasizes Homeownership, Inadequate for Renters, Says Expert Rural Housing Group (Feb. 2, 2004), at [www.ruralhome.org/pubs/pressrelease/2004/budget](http://www.ruralhome.org/pubs/pressrelease/2004/budget).

<sup>15</sup>Housing Assistance Council, USDA Rural Development Awards Contract to Assess Rental Housing, at <http://www.rurdev.usda.gov/rd/newsroom/2003/mfhcontract.html> (last visited Feb. 17, 2004).

<sup>16</sup>Appropriations for FY 2004 included \$116 million for rural rental housing. HAC News (Housing Assistance Council, Washington, D.C.), vol. 33, no. 4, Feb. 6, 2004, at <http://www.ruralhome.org/pubs/hacnews/2004/0206.htm>.

<sup>17</sup>National Rural Housing Coalition, Federal Appropriations: Ag Appropriations, at <http://www.nrhcweb.org/appropriation/AgAppr.htm> (last visited 2/5/04).

# HUD FY 2005 Proposed Budget Chart for Selected Programs\*

| HUD Program<br><i>(set-asides indented)</i>           | FY03<br>Request       | FY03<br>Enacted       | FY04<br>Request      | FY04<br>Senate<br>Comm. | FY04<br>House <sup>1</sup><br>Passed<br>Conf. Rpt. | FY05<br>Request        |
|---|-----------------------|-----------------------|----------------------|-------------------------|--|------------------------|
| <b>Housing Certificate Fund<sup>2</sup></b>           | \$17,527 <sup>3</sup> | \$17,112 <sup>4</sup> | \$0 <sup>5</sup>     | \$18,433 <sup>6</sup>   | \$19,257 <sup>7</sup>                              | \$18,465 <sup>8</sup>  |
| Housing Assistance for Needy Families                 | —                     | —                     | 13,607 <sup>9</sup>  | 0 <sup>10</sup>         | 0 <sup>10</sup>                                    | 0                      |
| Contract Renewals                                     | 16,812 <sup>11</sup>  | 16,633 <sup>12</sup>  | 13,047 <sup>13</sup> | 18,106 <sup>14</sup>    | 19,001 <sup>15</sup>                               | 18,196 <sup>16</sup>   |
| New Section 8 Vouchers                                | 204 <sup>17</sup>     | 0 <sup>18</sup>       | 36 <sup>19</sup>     | 0 <sup>20</sup>         | 0 <sup>18</sup>                                    | 0 <sup>21</sup>        |
| <b>Project-Based Rental Assistance</b>                | —                     | —                     | 4,823 <sup>22</sup>  | 0 <sup>23</sup>         | 0 <sup>23</sup>                                    | — <sup>24</sup>        |
| Contract Administration                               | 196                   | 195                   | 100                  | 100                     | 100  | 102                    |
| <b>Public Housing Capital Fund</b>                    | 2,426 <sup>25</sup>   | 2,712 <sup>26</sup>   | 2,641 <sup>27</sup>  | 2,641 <sup>28</sup>     | 2,695 <sup>29</sup>                                | 2,674 <sup>30</sup>    |
| Resident Opp'ty & Self Sufficiency                    | 55                    | 55 <sup>31</sup>      | 55 <sup>32</sup>     | 55 <sup>33</sup>        | 55 <sup>33</sup>                                   | 55 <sup>33</sup>       |
| <b>Public Housing Operating Fund</b>                  | 3,530                 | 3,577 <sup>34</sup>   | 3,574 <sup>35</sup>  | 3,576                   | 3,579  | 3,573 <sup>36</sup>    |
| Drug Elimination Grants                               | 0                     | 0                     | 0                    | 0                       | 0  | 0                      |
| <b>HOPE VI</b>  | 574 <sup>37</sup>     | 570 <sup>38</sup>     | 0 <sup>39</sup>      | 195 <sup>40</sup>       | 149 <sup>41</sup>                                  | 0                      |
| Native American Housing Block Grants                  | 647                   | 645                   | 647                  | 646                     | 650  | 647                    |
| Native Hawaiian Housing Block Grant                   | 10 <sup>42</sup>      | 10 <sup>43</sup>      | 10 <sup>42</sup>     | 10 <sup>43</sup>        | 9 <sup>43</sup>                                    | 10 <sup>42</sup>       |
| Elderly Housing (Section 202)                         | 774 <sup>44</sup>     | 778 <sup>45</sup>     | 774 <sup>46</sup>    | 783 <sup>47</sup>       | 774 <sup>48</sup>                                  | 773 <sup>49</sup>      |
| Disabled Housing (Section 811)                        | 250 <sup>50</sup>     | 249 <sup>51</sup>     | 251 <sup>51</sup>    | 251 <sup>51</sup>       | 249 <sup>51</sup>                                  | 249 <sup>51</sup>      |
| Rental Housing Assistance                             | —                     | 0 <sup>52</sup>       | 0 <sup>53</sup>      | 0 <sup>53</sup>         | 0 <sup>53</sup>                                    | 0 <sup>54</sup>        |
| <b>HOME Investment Partnership Prog.</b>              | 2,084                 | 1,987                 | 2,197 <sup>55</sup>  | 1,925                   | 2,005  | 2,084                  |
| Housing Counseling Assistance                         | 35 <sup>56</sup>      | 40 <sup>57</sup>      | 45 <sup>56</sup>     | 40                      | 40   | 200                    |
| Downpayment Assistance                                | 200                   | 75 <sup>58</sup>      | 200                  | 50                      | 87 <sup>59</sup>                                   | 45 <sup>60</sup>       |
| <b>Community Development Block Grants</b>             | 4,732 <sup>61</sup>   | 4,905 <sup>62</sup>   | 4,732 <sup>63</sup>  | 4,950 <sup>64</sup>     | 4,921 <sup>65</sup>                                | 4,618 <sup>66</sup>    |
| Self-Help Homeownership Opp'ty                        | 65                    | 25                    | 65                   | 12                      | 27   | 65                     |
| Youthbuild  | 65                    | 60                    | 65                   | 60                      | 65   | 65                     |
| Economic Development Initiative                       | 0                     | 259                   | 0                    | 140                     | 276  | 0                      |
| <b>Homeless Assistance Grants</b>                     | 1,130 <sup>67</sup>   | 1,217 <sup>68</sup>   | 1,325 <sup>69</sup>  | 1,325 <sup>70</sup>     | 1,260 <sup>71</sup>                                | 1,257 <sup>72</sup>    |
| Shelter Plus Care Renewals                            | 0                     | 0                     | 0                    | 0                       | 0  | 0                      |
| Samaritan Housing                                     | —                     | —                     | 50 <sup>73</sup>     | 0                       | 0  | 64 <sup>73</sup>       |
| <b>Emergency Food and Shelter (FEMA)<sup>74</sup></b> | 153 <sup>75</sup>     | 152 <sup>76</sup>     | 153 <sup>75</sup>    | 153 <sup>76</sup>       | 153 <sup>76</sup>                                  | 153 <sup>75</sup>      |
| Housing for Persons with AIDS                         | 292                   | 290                   | 297                  | 302                     | 295  | 295                    |
| Rural Housing and Economic Dev't                      | 0                     | 25                    | 0                    | 25                      | 25   | 0                      |
| Brownfields Redevelopment                             | 25                    | 25                    | 0                    | 25                      | 25   | 0                      |
| Fair Housing Assistance Program                       | 26                    | 26                    | 30                   | 30                      | 28   | 27                     |
| Fair Housing Initiative Program                       | 20                    | 20                    | 20                   | 20                      | 20   | 21                     |
| Lead-Based Paint Hazard Reduction                     | 126                   | 175 <sup>77</sup>     | 136                  | 175                     | 174  | 139                    |
| Salaries and Expenses                                 | 1,070                 | 1,083                 | 1,112                | 1,112                   | 1,116  | 1,179                  |
| <b>TOTAL (Discretionary)<sup>78</sup></b>             | not available         | \$31,245              | \$31,300             | not available           | \$30,415   | \$31,264 <sup>79</sup> |

\*These figures are drawn from charts prepared by the National Low Income Housing Coalition. Dollars are in millions.

## Footnotes to HUD FY 2005 Proposed Budget Chart

<sup>1</sup>Takes into account 0.59% across-the-board cut.

<sup>2</sup>Includes \$4.2 billion in advance appropriations in all cases.

<sup>3</sup>Provides for \$1.1 billion in rescissions.

<sup>4</sup>Provides for \$1.6 billion in rescissions.

<sup>5</sup>Tenant-based and project-based housing assistance would no longer be funded through Housing Certificate Fund but separated into a tenant-based voucher program called Housing Assistance for Needy Families (HANF) and Project-Based Rental Assistance. HANF would have been block granted to the states in FY05. Congress did not approve change.

<sup>6</sup>Includes \$1.372 billion in rescissions.

<sup>7</sup>Includes \$2.259 billion in rescissions.

<sup>8</sup>Includes \$1.557 billion in rescissions.

<sup>9</sup>Includes unobligated balances transferred from the Housing Certificate Fund.

<sup>10</sup>Does not split tenant-based and project-based accounts as requested by HUD.

<sup>11</sup>Does not include \$260 million in tenant protection vouchers and \$52 million for Family Self-Sufficiency coordinators.

<sup>12</sup>Includes \$15.3 billion for renewals plus a central fund of \$392 billion and \$1.08 billion in administrative fees (but does not include \$48 million for FSS coordinators or \$234 million in tenant protection vouchers). Directs HUD to use central fund to replenish public housing agency (PHA) reserve accounts when PHAs expend one-half of their reserves; directs HUD to provide quarterly reports on project-based opt-outs, prepayments and repair needs.

<sup>13</sup>Includes \$11.4 billion for HANF tenant-based renewals, \$1.2 billion for administrative fees, and \$473 million of \$609 million central fund (from which \$36 million for incremental vouchers and \$100 million for capacity building funds for states are subtracted). Does not include project-based renewals, \$252 million in tenant protection vouchers, \$72 million for Family Self-Sufficiency (FSS) coordinators, or \$100 million to replenish PHA reserves used in FY03

<sup>14</sup>Includes \$11.383 billion for voucher renewals, \$461 million in Central Reserve Fund (with \$100 million to replenish reserves used in FY03), \$1.339 billion for administrative fees (minus \$20 million for tenant protection voucher administration), and \$4.823 billion for project-based renewals. Does not include \$252 million for tenant protection vouchers and \$72 million for FSS coordinators.

<sup>15</sup>Includes \$12,811 billion for voucher renewals, \$136 million in Central Reserve Fund (with \$100 million to replenish reserves used in FY03), \$1,235 billion for administrative fees (includes \$20 million for tenant protection vouchers) and \$4,819 billion for project-based renewals (includes \$99 million for contract administration)

<sup>16</sup>Proposes making vouchers into block grant to PHAs called the Flexible Voucher Program. Includes \$11.9 billion for voucher renewals, \$5.020 billion for project based renewals, a central fund of \$100 million and \$1.176 billion for administrative fees and performance-based fees and bonuses. Does not include \$163 million for tenant protection vouchers. FSS coordinators not funded.

<sup>17</sup>Funds Section 8 downpayment assistance (\$15 million) and approximately 33,400 new vouchers, including fair share and others.

<sup>18</sup>Directs HUD to provide incremental vouchers previously issued for non-elderly disabled families to be reissued to such families.

<sup>19</sup>Funds 5,500 vouchers for certain non-elderly disabled families; additional vouchers to be distributed to states may be funded by the central fund if available, subject to broad statutory and regulatory waiver authority.

<sup>20</sup>The Secretary may use up to \$36 million for incremental vouchers for certain non-elderly disabled families if funds are available.

<sup>21</sup>Directs HUD to provide incremental vouchers previously issued for non-elderly disabled families to be reissued to such families.

<sup>22</sup>Funds renewal of project-based housing assistance contracts; includes \$300 million in carryover funds rescinded and reappropriated.

<sup>23</sup>Assumes \$4,819 billion for renewal of project-based contracts, but not in a separate account, as requested by HUD.

<sup>24</sup>Assumes \$5.020 billion for renewal of project based contracts.

<sup>25</sup>Represents a decrease in unrestricted capital funds of \$441 million due to increased set-asides; proposes conversion of public housing units to project-based voucher assistance to facilitate private financing for capi-

tal needs.

<sup>26</sup>Sets aside \$447 million for capital and management activities for PHAs that have obligated all assistance for FY98 through FY01; directs HUD to provide a report by August 7, 2003 on PHAs that have used private financing to meet capital needs.

<sup>27</sup>Proposes public housing reinvestment initiative (PHRI), with conversion of public housing to project-based voucher assistance to facilitate private financing for capital needs, combined with up to \$131 million in loan guarantees.

<sup>28</sup>Does not fund PHRI but allows up to \$125 million to be used for loan guarantees.

<sup>29</sup>Does not fund public housing reinvestment initiative (PHRI) proposal.

<sup>30</sup>Does not propose PHRI program; includes \$5 million for Freedom to House Demonstration program to test the advantages and disadvantages of a locally determined public housing program.

<sup>31</sup>Follows Administration's request to make this a set-aside within the Public Housing Capital Fund rather than CDBG.

<sup>32</sup>Set-asides of \$40 million in Public Housing Capital Fund and \$15 million in Public Housing Operating Fund.

<sup>33</sup>Set-aside within Public Housing Capital Fund only.

<sup>34</sup>Includes \$10 million for anti-drug programs in public, Indian and federally-assisted low income housing administered by the Department of Justice; authorizes the use of up to \$250 million for FY02 operating cost needs, but prohibits use of funds from FY04 or later for FY03 public housing operating costs and instructs HUD to report by May 15, 2003, on actions taken to address the practice of using current year funds for prior year costs.

<sup>35</sup>Includes \$15 million for ROSS.

<sup>36</sup>Includes \$15 million to fund a Voluntary Incentive Bonus Account to promote graduation so that more families can share in limited housing resources.

<sup>37</sup>Includes a set-aside of \$50 million for grants for capital costs associated with conversion from public housing to project-based voucher assistance.

<sup>38</sup>Reauthorizes HOPE VI through the end of FY04.

<sup>39</sup>No funding requested because HUD claims enough funding has been committed to meet 1992 demolition goals, with significant funds in pipeline.

<sup>40</sup>Allows for recapture of certain pre-1997 grants and provides \$3 million for technical assistance.

<sup>41</sup>Includes \$4 million for technical assistance and contract expertise.

<sup>42</sup>To be funded under its own account.

<sup>43</sup>To be funded under CDBG rather than under its own account as the Administration requested.

<sup>44</sup>Includes \$44 million, plus up to \$9 million in recaptured funds, for service coordinators; and \$30 million for conversion to assisted living.

<sup>45</sup>Provides \$50 million for service coordinators, \$30 million for conversion to assisted living and \$30 million to facilitate Section 202 projects.

<sup>46</sup>Provides \$53 million for service coordinators and \$30 million for conversion to assisted living.

<sup>47</sup>Provides \$50 million for service coordinators and \$30 million for conversion to assisted living.

<sup>48</sup>Provides \$50 million for service coordinators and \$30 million for conversion to assisted living.

<sup>49</sup>Provides \$53 million for service coordinators and \$30 million for conversion to assisted living.

<sup>50</sup>The Administration has proposed that up to \$62.5 million can be earmarked for tenant-based assistance.

<sup>51</sup>The Secretary may designate up to 25% for tenant-based assistance.

<sup>52</sup>Recaptured Section 236 budget authority would be rescinded, despite Senate proposal to make up to \$100 million available for rehabilitation grants.

<sup>53</sup>\$303 million in recaptured Section 236 budget authority would be rescinded.

<sup>54</sup>\$675 million in funds for amendment of Rent Supplements contracts would be cancelled.

<sup>55</sup>Includes \$25 million for lead hazard reduction demonstration program.

<sup>56</sup>This program has been a set-aside in HOME; the Administration proposes to make it a separate program.

## Footnotes to HUD FY 2005 Budget Chart, cont'd.

<sup>57</sup>Remains a set-aside within HOME.

<sup>58</sup>Appropriation subject to authorization. Authorization occurred with signing of American Dream Downpayment Act (S.811) on Dec. 16, 2004 making the FY'03 funds available in FY'04.

<sup>59</sup>Total funds available in FY'04 includes \$75 million from FY'03 for a total of \$162 million.

<sup>60</sup>The President's request would change this program from a set-aside within the HOME program to a stand-alone program, with \$5 million targeted for the proposed FHA Zero Downpayment program.

<sup>61</sup>Includes \$4.4 billion in CDBG formula block grants; would reduce funds for wealthier communities and apply \$16 million Colonias Gateway Initiative.

<sup>62</sup>Includes \$4.4 billion for formula grants; does not change the CDBG formula or fund the Colonias Gateway Initiative.

<sup>63</sup>Includes \$4.4 billion for formula grants and \$16 million for the Colonias Gateway Initiative, among other set-asides.

<sup>64</sup>Includes \$4.6 billion for formula grants and other set-asides, but does not fund the Colonias Gateway Initiative.

<sup>65</sup>Includes \$4.3 billion for formula grants and \$225 million in set-asides, but does not fund the Colonias Gateway Initiative.

<sup>66</sup>Includes \$4.3 billion for formula grants, \$10 million for the Development Challenge pilot program to encourage coordination in community development, and \$5 million for a pilot program to increase faith-based organizations' involvement in community development.

<sup>67</sup>Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing and provides \$1 million for Interagency Council on Homeless.

<sup>68</sup>Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and funds Interagency Council on Homeless as separate agency at \$1.5 million. Also funds \$10 million two-year demonstration of programs and best practices.

<sup>69</sup>Includes \$194 million for Shelter Plus Care renewals, maintains 30% requirement for permanent housing and provides \$1.5 million for Interagency Council on Homeless. The Administration will submit legislation to consolidate competitive McKinney-Vento programs.

<sup>70</sup>Includes unspecified amount for Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and funds Interagency Council on the Homeless as a separate agency at \$1 million.

<sup>71</sup>Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and funds Interagency Council on Homeless as separate agency at \$1.5 million. Also provides \$12 million for national homeless data analysis project and technical assistance.

<sup>72</sup>Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing and provides \$25 million for Prisoner Re-Entry Initiative. ICH funded as separate agency at \$1.5 million. The Administration will submit legislation to consolidate competitive McKinney-Vento programs.

<sup>73</sup>Proposed competitive grant program in a broader interagency effort to combat long-term homelessness. Administration will submit legislation.

<sup>74</sup>EFSP is currently part of FEMA's budget.

<sup>75</sup>This program would be transferred from FEMA to HUD.

<sup>76</sup>Rejects Administration's proposal to move EFSP to HUD from FEMA.

<sup>77</sup>Includes \$50 million set-aside for an urban lead hazard reduction demonstration program.

<sup>78</sup>This is overall total for HUD's discretionary spending. As the chart shows selected programs, does not include all of HUD's programs and other expenses, and may include programs proposed for HUD's appropriation, the numbers above will not total the amounts listed at this line. In addition, there is inconsistency from year to year within HUD's own budget documents as to total amount requested and enacted, as HUD makes retroactive adjustments. This chart shows "net" totals. Recent versions of this chart, through FY04 enacted, used a combination of gross and net totals because net figures were not available in all cases (so total figures from prior chart versions are different from this chart).

<sup>79</sup>"Net" figures provided because total figures are not available. This makes it difficult to compare totals across columns.

# The American Dream Downpayment Initiative

Low-income, first-time homebuyers may now access funds to assist them in purchasing a home through the American Dream Downpayment Initiative (ADDI). Authorized by the Consolidated Appropriations Resolution, 2003,<sup>1</sup> the ADDI provides up to \$10,000 or 6 percent of the home purchase price, whichever is greater, that may be used for downpayment or closing costs on a one- to four-unit building. Buyers may also use the funds towards purchase of a condominium, cooperative unit, or manufactured housing.

The definition of "first-time homebuyer" tracks the current standard of an individual and her or his spouse who have not owned a home for the three years preceding their application for the first-time homebuyer benefit. "Low-income" is defined as no greater than 80 percent of area median income.<sup>2</sup> ADDI funds may also be used by first-time, low-income homebuyers for home repairs.<sup>3</sup>

The ADDI has been structured as an entitlement program and will be woven into the HOME Investment Partnerships Program (HOME).<sup>4</sup> As an entitlement program, awards are made to states and smaller jurisdictions based on a formula that, in this case, has been developed by the Department of Housing and Urban Development (HUD).<sup>5</sup> It is then up to each jurisdiction to administer the funds awarded in accordance with HUD regulations. Public housing authorities, advocates and community members should talk to their local city or county, or contact their current state administrator of HOME funds, to find out how to access the funds.

ADDI funds should be a great complement to the Section 8 homeownership program, as well as other homeownership programs, especially in high-cost and rural jurisdictions where downpayment assistance may be scarce in comparison to the need. The ADDI represents a significant public investment in affordable homeownership in communities across the country. For example, in California, Anaheim will receive \$113,626, Berkeley will receive \$56,781, Fresno will receive \$155,152, and Los Angeles will receive \$1,566,434. In Illinois, Chicago will receive \$1,359,687, Lake County will receive \$96,769, and DuPage County will receive \$147,270. Fiscal Year 2003 funds will be released some time in April of this year. For information about your jurisdiction, visit <http://www.hud.gov/offices/cpd/about/budget/budget04/index.cfm>, and click on your state. ■

<sup>1</sup>Pub. L. No. 108-186, tit. I, § 101, 117 Stat. 2685 (2003).

<sup>2</sup>42 U.S.C.A. § 12821 (West 2003).

<sup>3</sup>Jurisdictions receiving ADDI funds may allocate only 20 percent of their award to this purpose.

<sup>4</sup>HOME regulations appear at 24 C.F.R. pt. 92 (2003).

<sup>5</sup>42 U.S.C.A. § 12821(d) (West 2003).

## Congress Enacts Intergenerational Housing Demonstration Program

An article appearing in the November-December issue of the *Housing Law Bulletin* discussed the growing need for affordable housing that accommodates seniors who have non-seniors—often grandchildren—living in their family.<sup>1</sup> On December 16, 2003, the LEGACY Act of 2003 (Living Equitably: Grandparents Aiding Children and Youth Act) became law, providing for a five-year demonstration program to house intergenerational families.<sup>2</sup> The good news is that the proposal has brought national attention to the issue. What is odd is that the Section 202 program<sup>3</sup> already allows minors to reside in the same household as an eligible senior.

The LEGACY Act provides for development of so-called intergenerational housing using Section 202 elderly housing program funds. Units will be created by: (1) designating and retrofitting existing 202 units as intergenerational housing; (2) providing funding to nonprofit organizations to build housing that contains only intergenerational units; or (3) adding intergenerational units to an existing Section 202 development. Units under this program will be available only to seniors who are the primary caregivers for a minor, though legal custody will not be required.

Because the Section 202 program already allows minors to live with seniors in their units, the question is what difference the LEGACY Act makes. There are some small, but potentially significant, differences. Unlike current Section 202 units, LEGACY intergenerational units will have at least two separate bedrooms and will have design features that accommodate children as well as the elderly. In addition, HUD must ensure that services appropriate to the needs of intergenerational families are provided. For the demonstration program, the Secretary of Housing and Urban Development (HUD) may also waive any other requirements of the Section 202 program as needed in order to carry out the mandate of the LEGACY Act.<sup>4</sup>

In addition, HUD must see that its field office personnel are trained on the special concerns of intergenerational families. HUD must also study the needs of grandparents caring for minors and offer a report to Congress on the topic by the end of 2004. The Act provides authorization to appropriate a small amount of money—\$10 million—for the creation of intergenerational housing.<sup>5</sup> Given pressing needs for affordable housing, these funds should be used to develop new units rather than to retrofit existing housing. ■

<sup>1</sup>NHLP, *Seniors Raising Children in Subsidized Housing*, 33 HOUS. L. BULL. 441, 441 (2003).

<sup>2</sup>Pub. L. No. 108-186, tit. II, 117 Stat. 2685, 2688 (2003).

<sup>3</sup>12 U.S.C.A. § 1701q (West 2003).

<sup>4</sup>Pub. L. No. 108-186, tit. II, § 203, 117 Stat. 2685, 2689-90 (2003).

<sup>5</sup>*Id.* at § 203(f).

## Voting and Making Sure that Vote Counts!

Anyone who works on affordable housing issues in this country knows how desperate these times are for low-income people in the United States. With that in mind, the National Low Income Housing Coalition (NLIHC) has initiated a project to increase the number of low-income people who turn out to vote. The significant disparity between the number of low-income voters who were registered in 2000 and those who actually voted is part of the impetus for NLIHC's efforts. NLIHC is connecting its efforts to those of other national organizations with voter empowerment experience and skills and encourages all organizations, including nonprofits, to participate in any way they can. Addressing the reluctance of some nonprofits to involve themselves in the electoral process, NLIHC notes that all 501(c)(3) nonprofits are allowed to participate in voter registration, education and mobilization projects, as well as to educate politicians about issues of concern. Please contact Katie Fisher at 202-662-1530 ext 222 or [Katie@nlihc.org](mailto:Katie@nlihc.org) today to find out how to get involved.

Of course, it is not enough to vote. That vote must be counted properly. There is a growing concern by governmental officials and the general public that electronic voting machines may be vulnerable to hacking and tampering. Experts have been examining the electronic voting machines that some states have installed and that other states plan to install in the future. The results of their studies are highly disturbing. It is possible for multiple votes to be cast on electronic machines, and for individuals outside of the state to change the results electronically. There are a myriad of ways, in fact, in which votes could be removed or changed.<sup>1</sup> On top of this, most of these machines do not have audit trails, which means that voters have no written proof of whom or what they voted for.

Advocates and the general public should find out whether there are electronic voting machines in their county or elsewhere in their state, whether those machines have audit trails, and whether the machines are tamper-proof. Contact state secretaries of state for this information and to register concerns. Another excellent resource for more information on this topic is [VerifiedVoting.org](http://VerifiedVoting.org), founded by David Dill, a computer science and electrical engineering professor at Stanford University. ■

<sup>1</sup>Nelson Hernandez, *Md. Voting Machines Vulnerable, Firm Says*, WASH. POST, January 30, 2004, available at [http://www.washingtonpost.com/wp\\_dyn/articles/A61661\\_2004Jan29.html](http://www.washingtonpost.com/wp_dyn/articles/A61661_2004Jan29.html). The Diebold Company machines described in this article are already in use in other states, including California.

## NHLP Is Coming to Your Town!

National Housing Law Project provides trainings nationally on a wide variety of subjects, including:

### **Housing Preservation (rural and metropolitan)**

#### **HOPE VI**

#### **Section 8**

### **Section 3 (work and business opportunities for public housing residents)**

#### **Predatory Lending**

#### **Source of Income Discrimination**

#### **Section 8 Homeownership**

#### **Public Housing**

#### **Earned Income Disregard**

This list of topics is not exhaustive, so please let us know about your group's training needs. We are happy to tailor our presentations to the experience level of our audience. If you are interested in having us come to your town to provide training, or if you want to participate in one of our already scheduled trainings listed below, please contact Maeve Elise Brown at [mebrown@nhlp.org](mailto:mebrown@nhlp.org), or call (510) 251-9400, ext. 110. Please keep in mind that we prefer to provide regional or statewide trainings to maximize our efforts.

### **NHLP Training Schedule, January to April 2004**

Predatory Lending, NID-HCA Training:  
Emeryville Marriott, CA, January 23

Predatory Lending: Albuquerque, NM, March 12-13

Earned Income Disregard Teleconference: March 18

Predatory Lending: Oakland, CA, March 22-23

Fair Housing & Frail Elderly, Elder Law Rights Conference:  
Williamsburg, VA, March 22

Predatory Lending: Los Angeles, CA,  
Federal Reserve Board Conference, March 29-31

Predatory Lending Basics and Remedies:  
Two-Day Training, Los Angeles, CA, April 6-7

Federal Housing Law Basics:  
San Diego, CA, April 19-20

## The Servicemembers Civil Relief Act of 2003

In December 2003, President Bush signed the Servicemembers Civil Relief Act (SCRA),<sup>1</sup> replacing the Soldiers' and Sailors' Civil Relief Act of 1940.<sup>2</sup> The SCRA serves as a source of benefits and obligations for servicemembers related to consumer transactions—including homeowner and tenant rights, mining claims, installment contract limitations, life insurance protections, and tax deferral procedures. The SCRA is an important tool that advocates can use to protect the rights of servicemen and women at home and abroad.

The SCRA's stated purpose is to strengthen the national defense by easing the burden of consumer-related obligations on servicemembers. The Act attempts to accomplish this through the temporary suspension of judicial and administrative proceedings that may adversely affect the "civil rights" of members of the military on active duty.

Coverage under the Act extends to all active duty servicemembers in the armed forces—including National Guard members called to active duty for more than thirty consecutive days under 32 U.S.C. § 502(f) in response to a national emergency declared by the President and supported by federal funds—beginning upon induction and terminating upon discharge or death.<sup>3</sup> The large number of National Guard and Army Reserve members called to active duty over the past two years has added considerably to the number of people currently covered by the SCRA.<sup>4</sup>

This brief overview highlights some of the housing and consumer protections provided to servicemembers and their families under the Act.

### **Courts May Stay Proceedings with Proper Documentation**

Upon request by a servicemember, a court<sup>5</sup> before which a servicemember has a matter pending must grant a stay of ninety days following the receipt of a proper affidavit from a servicemember, which must state the reason for the servicemember's absence and date of availability, and a statement from a commanding officer.<sup>6</sup> This ninety-day timeframe applies generally to all provisions of the Act (except those

<sup>1</sup>Pub. L. No. 108-189, 117 Stat. 2835 (2003).

<sup>2</sup>Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 512 (1940).

<sup>3</sup>Pub. L. No. 108-189, § 101(2), 117 Stat. 2835, 2836 (2003).

<sup>4</sup>The number of National Guard and Reserve members on active duty totals 193,959. A cumulative roster of all National Guard and Reserve members who are currently on active duty can be found at <http://www.defenselink.mil/news/Jan2004/d20040107.pdf>.

<sup>5</sup>"[C]ourt" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record." Pub. L. No. 108-189, § 101(5).

<sup>6</sup>*Id.* at § 202(b).

related to eviction), but may be extended for specific provisions or at the court's discretion.

## Interest on Pre-Service Loans Limited to 6 Percent

Upon providing creditors with written notice and a copy of military orders calling the serviceperson to military service (within 180 days<sup>7</sup> of termination of military service), a creditor shall reduce interest on any pre-service<sup>8</sup> loans to 6 percent.<sup>9</sup> The SCRA clarifies that amounts that were due under higher interest rates are outright forgiven, not deferred. In addition, the lender may not accelerate repayment of loan principal.

A lender may escape the interest cap only if a court determines that the servicemember's ability to pay that particular obligation is not "materially affected" by military service.<sup>10</sup>

## No Eviction from Primary Residence Where the Monthly Rent is \$2465 or Less

Without a court order, a landlord cannot evict a servicemember or his or her dependents<sup>11</sup> during a period of military service from premises used as a primary dwelling<sup>12</sup> where the monthly rent does not exceed \$2465.<sup>13</sup> An example of how that could work in practice is that a

servicemember called to active duty finds himself able to pay only half the monthly rent of \$1500. The Act does not provide forgiveness of rent due.

Unfortunately, it is not difficult to imagine scenarios where the Act's eviction provisions offer little protection to servicemembers, as they allow courts discretion as to whether to grant a tenant servicemember a stay in an eviction proceeding.<sup>14</sup> The Act states that a court must grant a ninety-day stay of an eviction proceeding upon the servicemember request, unless justice and equity require a shorter period.<sup>15</sup>

## Rescission of Pre-Service Contracts for Lease or Purchase Limited

A pre-service contract for the purchase or lease of real or personal property cannot be rescinded for breach during service,<sup>16</sup> nor may the property be repossessed without a court order,<sup>17</sup> so long as a deposit or installment payment was paid before military service.<sup>18</sup> This provision of the Act would apply, for example, where a servicemember entered into a lease agreement for a home for herself and her family and paid a security deposit prior to service. This provision could also apply to a lease-to-own auto purchase agreement.

## Foreclosures Are Suspended During Military Service

If a mortgage, trust deed or security was entered into before service, there can be no forced sale, foreclosure or seizure of property during or within ninety days after termination of military service, without a court order.<sup>19</sup> If, after such a court order, a stay of foreclosure is requested and granted, a court may appoint three disinterested appraisers.<sup>20</sup> Based on their appraisal and absent undue hardship on the servicemember's dependents, the court may require that the servicemember's equity be returned as a condition of foreclosure or repossession.<sup>21</sup> In other words, the court may order that any downpayment plus all subsequent payments made by the servicemember be returned to the servicemember in exchange for the return of the house.

---

<sup>7</sup>*Id.* at § 207(b)(1).

<sup>8</sup>The term "military service" means:

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

*Id.* at § 101(2). "Period of military service" means: "the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service."

*Id.* at § 101(3).

<sup>9</sup>*Id.* at § 207(a)(1).

<sup>10</sup>*Id.* § 207(c).

<sup>11</sup>The term "dependent" means a servicemember's spouse, or child (as defined in 38 U.S.C. § 101(4)) or an individual for whom the servicemember provided more than half the individual's support for 180 days immediately preceding the application for protection under this Act. *Id.* at § 101(4).

<sup>12</sup>*Id.* at § 301(a)(1).

<sup>13</sup>This is an annually adjusted figure published by the Bureau of Labor Statistics of the Department of Labor.

---

<sup>14</sup>The court may on its own motion or shall on application by a servicemember (if the servicemember's ability to pay is materially affected by military service) grant a stay of 90 days unless justice or equity require a longer or shorter period or adjust the lease obligations to meet the interests of both parties. Additionally, if a stay is granted, the court may grant the landlord "such relief as equity may require." Pub. L. No. 108-189, § 301(b), 117 Stat. 2835, 2845 (2003).

<sup>15</sup>*Id.* at § 301(b).

<sup>16</sup>*Id.* at § 301(a)(1).

<sup>17</sup>*Id.* at § 301(a)(1)(B).

<sup>18</sup>*Id.* at § 301(a)(2).

<sup>19</sup>*Id.* at § 303(c).

<sup>20</sup>*Id.* at § 304(a).

<sup>21</sup>*Id.* at § 304(b).

## Servicemembers May Terminate Leases on Premises and Motor Vehicles

A servicemember may terminate a pre-service lease of occupied premises if called to active service during the term of the lease. A servicemember may also terminate a lease of occupied premises entered into during service if a permanent change of station (PCS) order is issued or a deployment of more than 90 days is ordered.<sup>22</sup> The same right is extended to leases for motor vehicles intended to be used for personal or business purposes where the servicemember is issued a PCS or subject to a deployment order of 180 days or more.<sup>23</sup>

## Lien Enforcement Suspended During Military Service

Liens for storage, repair or cleaning cannot be enforced during or within 90 days of the termination of military service.<sup>24</sup>

## Dependents May Also Claim Protection Under SCRA if Materially Affected

The protections regarding rent, installment contracts, mortgages, liens, assignment and leases accorded servicemembers under the Act<sup>25</sup> apply to “dependents”—which is defined to include spouses<sup>26</sup>—of servicemembers if it is proven that the dependent’s ability to comply with obligations is materially affected by the servicemember’s military service.<sup>27</sup> Thus, for example, if a servicemember’s dependent child purchased an automobile, the child could be protected. This section does not require the servicemember to be a signatory to any agreement made by a dependent.

## Conclusion

The SCRA’s reach is quite broad. For example, in addition to what is described here, it also prohibits termination of life insurance policies despite unpaid premiums and suspends some personal income and property taxes for the period of active service. The Act should prove to be a flexible and useful tool to protect servicemembers and their families from financial hardship. ■

<sup>22</sup>*Id.* at § 305(b)(1).

<sup>23</sup>*Id.* at § 305(b)(2).

<sup>24</sup>*Id.* at § 307(a).

<sup>25</sup>*Id.* at § 300-8.

<sup>26</sup>See note 11, *supra*.

<sup>27</sup>Pub. L. No. 108-189, § 308, 117 Stat. 2835, 2851 (2003).

## California Court Upholds State Preservation Law in Preemption Challenge

Ruling in the wake of two recent and unfavorable decisions by federal appellate courts, a California state court in Sacramento has rejected an owner’s claim that federal law expressly preempts a state law requiring specified notice prior to an assisted housing project owner’s withdrawal from federal subsidy programs. *College Gardens Preservation Committee v. Eugene Burger Management Corp.*, No. 03 AS02608, slip op. (Cal. Super. Ct. Nov. 19, 2003). Because the owner had never participated in the long-dormant federal preservation program established by the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA), 12 U.S.C. §§ 4101 *et seq.*, the court logically concluded that Congress did not intend LIHPRHA’s preemption provision, 12 U.S.C. § 4122, to displace state or local requirements. The decision is especially notable because the court disagreed with or distinguished the reasoning of two federal appellate panels on a question of federal law. It thus supports the authority of many state and local governments to regulate those HUD<sup>1</sup>-subsidized mortgage prepayments currently occurring outside of LIHPRHA, as well as other federal assisted housing conversions.

After the owner of a 100-unit Section 236 property gave notice under federal law to prepay its HUD-subsidized mortgage, tenants sued in state court to enjoin the transaction on the basis that the owner had failed to comply with California’s separate notice law, CAL. GOV’T CODE §§ 65863.10 and 65863.1. That law requires owners to provide several notices to tenants, local governments and interested prospective preservation purchasers during the year prior to the proposed prepayment or subsidy termination.

After briefing and argument, on May 23, 2003, the court preliminarily enjoined the prepayment, rejecting arguments that the state law was preempted expressly or impliedly by federal law.<sup>2</sup> Specifically, the court concluded that the state notice laws are not expressly preempted by LIHPRHA because they do not “restrict or inhibit” prepayment of the HUD-subsidized mortgage and because they are laws of “general applicability” specifically exempted from LIHPRHA’s preemption clause.<sup>3</sup> In this the court was aided by several federal trial court rulings that had ruled similarly on preemption challenges to state and local laws.<sup>4</sup>

<sup>1</sup>“HUD” refers to the United States Department of Housing and Urban Development.

<sup>2</sup>LIHPRHA’s preemption provision provides in part: “No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that (1) restricts or inhibits the prepayment of any mortgage . . . on eligible low income housing . . .” 12 U.S.C.A. § 4122(a) (West 2001).

<sup>3</sup>12 U.S.C.A. § 4122(b) (West 2001).

<sup>4</sup>*Kenneth Arms Tenant Ass’n v. Martinez*, 2001 U.S. Dist. LEXIS 11470 (E.D. Cal. July 3, 2001); *Topa Equities v. City of Los Angeles*, No. CV 00-10455 (C.D. Cal. April 8, 2002); *Forest Park II v. Hadley*, 203 F. Supp 2d. 1071 (D. Minn. 2002) (subsequently reversed).

A few months later, one of those federal decisions, *Forest Park*, was reversed by the Eighth Circuit.<sup>5</sup> Shortly thereafter, although reaching the right result in another case where an owner had resisted application of a local rent control law's base rent provisions, the Ninth Circuit failed adequately to distance itself from the Eighth Circuit's flawed reasoning.<sup>6</sup>

Because both federal decisions can be read to support the argument that LIHPRHA's preemption provision applies to properties that never participated in LIHPRHA, the owner in *College Gardens* moved to reconsider and dissolve the prior preliminary injunction, asserting that the governing law had changed. The tenants countered that the federal decisions are not binding on the state court, and that the state court should independently evaluate them for their persuasiveness.<sup>7</sup> After first issuing a tentative ruling in the tenants' favor to uphold the injunction,<sup>8</sup> the court held argument and then requested additional briefing on the central question of whether the owner's deed of trust (mortgage) was ever subject to a plan or assistance under LIHPRHA, and, if not, whether LIHPRHA's preemption provision applies to that deed of trust.

In its final ruling, the court first noted that it did not need to follow the various federal court decisions and was free to apply its own analysis and interpretation of the federal laws at issue. It then proceeded directly to the heart of the matter. After considering all of the cases and other arguments, it found that because the property, although nominally eligible to do so, did not participate in LIHPRHA while that program was functional, LIHPRHA's express preemption provision did not invalidate state law.<sup>9</sup> Although LIHPRHA was not repealed, Congress suspended processing of LIHPRHA plans in the late 1990s and withdrew funding for any new properties. The court reasoned,

Although LIHPRHA continues to apply to properties participating prior to 1996, in effect the heart of LIHPRHA has been eviscerated....It does not follow that its preemption provision should be applied to [non-participating properties prepaying under other non-LIHPRHA authority]<sup>10</sup> . . . . The presumption is against preemption unless it can be shown that it is the clear and manifest purpose of Congress to preempt state authority. [citing case]. If Congress had intended... to preempt state notice requirements, it could have included a preemption provision in the [subsequent] act. It did not do so. The fact LIHPRHA was not repealed does not compel the conclusion that its preemption provision apply [sic] to mortgages governed by HOPE.<sup>11</sup>

Although this decision represents an important victory for tenants and state and local authority, other pending cases in state and federal courts in Rhode Island and Maryland demonstrate that the preemption issue will remain hotly disputed in those jurisdictions that have enacted preservation law<sup>12</sup> until Congress settles the matter. Congress must clarify that state and local authority to enact such laws remains intact, in the absence of mandatory preservation policies for this large component of the federal low-income housing stock. After all, it is state and local governments and agencies and tenants and others in need who must wrestle with the impacts of these proposed conversions, and allocate scarce resources to address them. States and local governments must be free to develop responsive policies tailored to local conditions. ■

<sup>5</sup>*Forest Park II v. Hadley*, 336 F.3d 724 (8th Cir. 2003) (ruling that Minnesota's notice and tenant impact statements are expressly and impliedly preempted, as applied to prepayments of HUD-subsidized mortgages). See also NHLP, *Federal Court Issues Stunning Preemption Decision*, 33 Hous. L. Bull. 365, 378 (Aug. 2003).

<sup>6</sup>*Topa Equities, Ltd. v. City of Los Angeles*, 342 F.3d 1065 (9th Cir. 2003) (holding that although LIHPRHA's express preemption provision remained "extant," local rent law's base rent-setting provision did not restrict or inhibit prepayment and was exempted as a law of general applicability).

<sup>7</sup>The tenants also argued that the original federal prepayment notice had expired, and the owner could not prepay under federal law until they served a new notice between 150 and 270 days prior to the date of prepayment. The tenants also claimed that since the owner issued a new one-year state notice after the injunction was issued, it could not prepay until after that notice expired in mid-2004. The court instead chose to rely on the tenant's primary argument—that the state law was not preempted.

<sup>8</sup>This ruling, terming *Forest Park* unpersuasive, had again found that the state notice laws did not "restrict or inhibit" prepayment because it was possible to comply with both state and federal laws, and that the state laws were exempted as "laws of general applicability." *College Gardens*, slip op. at 1-2.

<sup>9</sup>The court also reversed its earlier finding that the state preservation notice law was exempt from LIHPRHA as a law of general applicability, *College Gardens*, slip op. at 2, but that was of no consequence in view of its ruling that LIHPRHA was altogether inapplicable.

<sup>10</sup>Here the court mentioned the Housing Opportunity Program Extension Act of 1996 (HOPE), which first created authority for owners to prepay outside of LIHPRHA, but the *College Gardens* owner actually sought to prepay under the subsequently enacted but similar provisions of Pub. L. No. 105-276, § 219, 112 Stat. 2461, 2487 (1998), which still governs these prepayments. Courts have sometimes referred to all of these non-LIHPRHA prepayment authorities as "HOPE."

<sup>11</sup>*College Gardens*, slip op. at 3.

<sup>12</sup>Numerous state and local governments passed laws to address the threatened conversion of existing federally subsidized properties to market-rate use, by protecting tenants or seeking to preserve the threatened properties. These jurisdictions include the states of Minnesota, Maryland, Rhode Island, Maine, Illinois, California, Connecticut, Texas and Washington, and the cities of San Francisco, Los Angeles, Denver, Portland, Seattle, Stamford (CT) and the District of Columbia. See [www.nhlp.org/html/pres/state/index.htm](http://www.nhlp.org/html/pres/state/index.htm). For more background on these state and local laws, see NHLP, *Preserving Federally Assisted Housing at the State and Local Level: A Legislative Tool Kit*, 29 Hous. L. Bull. 183, 183 (Oct. 1999) (survey of state and local preservation initiatives), and NHLP, *Rights of First Refusal in Preservation Properties: Worth a Second Look*, 32 Hous. L. Bull. 1, 1 (Jan. 2002) (reviewing state notice laws attempting to support transfers to preservation purchasers). Most of these laws require notices of various lengths to tenants and state and local governments 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.

# MLRI Examines Exemptions to Public Housing Community Service Requirement

Last year, the Department of Housing and Urban Development (HUD) began to push housing authorities to reinstate the community service requirement for adult residents of public housing.<sup>1</sup> The community service requirement obligates all adult residents of public housing who are not exempt to perform eight hours per month, or 96 hours per year, of community service or self-sufficiency activities.

One of the key issues is determining who is exempt. Federal law provides that an exempt adult is one who

- is 62 years or older;
- is blind or disabled and who certifies that because of the disability she or he is unable to perform the community service;
- is a primary caretaker of someone who is blind or disabled;
- is engaged in work activities;
- meets the requirements for being exempt from having to engage in work activity under the state welfare program, Temporary Assistance to Needy Families (TANF) or any other welfare program of the state; or
- is a member of a family that is receiving benefits or assistance under TANF or any other state welfare program and has not been found to be in non-compliance.<sup>2</sup>

The federal law sets forth specific exemptions and provides for other exemptions related to state and federal benefit programs. For example, an exemption may apply because of the characteristics of an individual or because that individual is a member of a family that receives certain benefits. Many public housing authorities (PHAs) may not understand the complexities of state welfare laws and thus may fail to provide exemptions to individuals who are entitled to them.

The housing and welfare advocates in Massachusetts have reviewed their state's laws and have determined that "**most public housing tenants in Massachusetts are exempt from**

**the public housing Community Service/Self-Sufficiency requirement.**"<sup>3</sup> The Massachusetts Law Reform Institute (MLRI) has put together a packet of materials on the public housing community service requirement focusing on who is exempt. The materials include an advocates' guide containing questions and answers on who is exempt and exemption verification forms (such as Certification of Inability to Comply with Community Service/Self-Sufficiency Requirements Because of Disability; Verification of Disability and Verification that Caretaker is Required to Provide Care for a Disabled Person).<sup>4</sup> The materials also include a Model Community Service Policy that deals with the exemption issue.<sup>5</sup>

---

*Many public housing authorities may not understand the complexities of state welfare laws and thus may fail to provide exemptions to individuals who are entitled to them.*

---

These materials from MLRI are posted on the National Housing Law Project Web site. They may assist advocates outside Massachusetts in reviewing their state laws and in producing similar guides. Judith Liben of MLRI reports that a substantial number of PHAs in Massachusetts have made use of the materials. Similar materials developed for other states may form the basis of negotiations for the development and implementation of a community service policy that works for residents. ■

---

<sup>3</sup>MASSACHUSETTS LAW REFORM INSTITUTE, ADVOCATES' GUIDE TO THE PUBLIC HOUSING COMMUNITY SERVICE/SELF-SUFFICIENCY REQUIREMENT IN MASSACHUSETTS (2003), 1 (emphasis in original).

<sup>4</sup>*Id.*

<sup>5</sup>MASSACHUSETTS LAW REFORM INSTITUTE, HOUSING AUTHORITY COMMUNITY SERVICE/SELF-SUFFICIENCY POLICY: EXEMPTIONS (undated). HUD has also made available a model community service and self-sufficiency policy. HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK, app. VI (2003), available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>. This model policy, however, has some critical problems. NHLP, NEW MANDATORY COMMUNITY SERVICE REQUIREMENTS IN PUBLIC HOUSING, available at [http://www.nhlp.org/html/pubhsg/community\\_service.htm](http://www.nhlp.org/html/pubhsg/community_service.htm). NHLP has posted another model policy on its Web site. However, it was developed prior to the reinstatement of the community service requirement.

---

<sup>1</sup>NHLP, *Public Housing Mandatory Community Service and Self-Sufficiency Requirements Reinstated*, 33 HOUS. L. BULL. 339, 339 (2003); NHLP, *Mandatory Community Service Requirements in Public Housing Cause Much Confusion*, 33 HOUS. L. BULL. 365, 365 (2003); NHLP, *NEW MANDATORY COMMUNITY SERVICE REQUIREMENTS IN PUBLIC HOUSING*, available at [http://www.nhlp.org/html/pubhsg/community\\_service.htm](http://www.nhlp.org/html/pubhsg/community_service.htm).

<sup>2</sup>24 C.F.R. § 960.601 (2003) (definition of exempt individual); 42 U.S.C.A. § 1437(c)(2) (West 2003).

# OIG's Report on Voucher Portability Reveals Serious Deficiencies

On January 15, 2004, the Office of Inspector General of the Department of Housing and Urban Development (HUD) released the results of its audit of the ability of nine public housing authorities (PHAs) to administer the portability features of the Housing Choice Voucher Program (HCVP).<sup>1</sup> The overall objective of the audit was to determine whether these nine PHAs,<sup>2</sup> all located within six New England states, were properly administering the portability features of the HCVP in the application, transfer, documentation and reporting process that accompanies the "porting" of vouchers to other jurisdictions. The report contains two findings related to the ineffective administration of the HCVP portability features and the inaccurate and incomplete data entry into the PIH Information Center (PIC) System.

The HCVP is one of the federal government's largest housing programs. It provides very low-income, elderly and disabled individuals and families with housing assistance enabling them to find decent and affordable housing in the private market.<sup>3</sup> In theory, a family that has received a voucher from one PHA may lease a unit anywhere in the United States, even if the area to which the family moves is served by another PHA.<sup>4</sup> This is called the "portability" feature of the program.<sup>5</sup> Typically, the housing authority of origin is the *initial* PHA and the recipient jurisdiction's agency is the *receiving* PHA.<sup>6</sup>

In addition to following certain procedures related to the transfer of participants from one jurisdiction to another, the *receiving* PHA must decide whether it will bill the *initial* PHA or simply absorb the family into its own program.<sup>7</sup> If the *receiving* PHA decides to bill the *initial* PHA, it may assess a charge for the housing assistance payments and an additional charge for eighty percent of the initial PHA ongoing administrative fee for each unit month that the family receives

assistance from the *receiving* PHA.<sup>8</sup> If funding is available under the consolidated Annual Contributions Contract (ACC), the housing agency may absorb the family into its own voucher program.<sup>9</sup>

To assist with the ease of the transition from one jurisdiction to another, the *initial* PHA must advise the family how to contact the *receiving* PHA and must promptly notify the *receiving* PHA to expect the family.<sup>10</sup> The *initial* PHA is also required to provide recertification and all related verification information for the family.<sup>11</sup> Although it is not necessary, the *receiving* PHA may decide to conduct its own re-examination, which may not delay the issuance of a voucher except in certain circumstances.<sup>12</sup>

---

## *The OIG audit found a deficiency in reporting between receiving and initial PHAs.*

---

The OIG audit found a deficiency in reporting between *receiving* and *initial* PHAs. In those cases where a *receiving* PHA bills an *initial* PHA, the *receiving* PHA is supposed to notify the *initial* PHA when a family is terminated from the *receiving* PHA's voucher program, so that payments will cease.<sup>13</sup> In many instances, the audit found that this status was not being accurately communicated between PHAs, resulting in overpayments.<sup>14</sup> In thirty-three percent of the 335 terminations reviewed in the HUD audit, the payments from the *initial* PHA to the *receiving* PHA continued after termination.<sup>15</sup> Overpayment periods ranged from one month to twenty-two months in duration, and occurred primarily due to poor communication.<sup>16</sup> The report concluded that because of these errors, housing authorities were needlessly expending resources to correct their mistakes.<sup>17</sup> A total of \$575,188 in overpayments were identified by the audit.<sup>18</sup> In its response to the audit, HUD has agreed to devise and distribute to housing authorities a new notice on portability to address this problem.<sup>19</sup>

---

<sup>1</sup>BARRY L. SAVILLE, HUD OFFICE OF INSPECTOR GENERAL, PORTABILITY FEATURES OF THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM (2004) (Audit No. 2004-BO-0006), at <http://www.hud.gov/oig/ig410006.pdf>.

<sup>2</sup>The nine housing agencies were Brunswick, ME; Biddeford, ME; the Maine State Housing Agency; Somerville, MA, Boston, MA, and Framingham, MA; New Haven, CT; Providence, RI; and the New Hampshire Housing Finance Agency. SAVILLE, *supra* note 1, at 5.

<sup>3</sup>SAVILLE, *supra* note 1, at 1.

<sup>4</sup>24 C.F.R. § 982.353(b)(2004). However, there is a twelve-month initial waiting period for participants if, at the time of their application for entry into the HCVP, either the head of household or spouse were not already domiciled in the jurisdiction of the initial PHA. This requirement may be waived by the initial PHA. See 24 C.F.R. § 982.353(c) (2004).

<sup>5</sup>SAVILLE, *supra* note 1, at 1.

<sup>6</sup>24 C.F.R. § 982.355 (a) (2004).

<sup>7</sup>*Id.* at § 982.355 (c)(5).

<sup>8</sup>*Id.* at § 982.355(d)(3).

---

<sup>9</sup>*Id.* at § 982.355(d)(1).

<sup>10</sup>24 C.F.R. § 982.353(c)(2) (2004).

<sup>11</sup>SAVILLE, *supra* note 1, at 2.

<sup>12</sup>24 C.F.R. § 982.353(c)(4).

<sup>13</sup>SAVILLE, *supra* note 1, at 3.

<sup>14</sup>*Id.* at 7.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*Id.* at 8.

<sup>19</sup>*Id.* at 9.

## GAO Issues Third Report in HOPE VI Review

The second deficiency noted by the audit was the significant amount of inaccurate and incomplete data contained in the Multifamily Tenant Characteristics System (MTCS) module of the PIH Information Center (PIC) System.<sup>20</sup> In the April 29, 2002, issue of the *Federal Register*, HUD announced the creation of PIC, a system that would enable housing authorities to enter program information electronically.<sup>21</sup> This system contains detailed housing authority program information, financial and budgetary data, family records, demographics, rent and income details.<sup>22</sup> The purpose of PIC is to enable housing authorities to identify and eliminate inaccurate and incomplete data through system checks. The MTCS module of PIC is a repository for PHAs' HCVP information, as well as information for other programs.<sup>23</sup> Housing authorities are required to enter the information from the HUD 50058 Family Report form.<sup>24</sup> The audit analyzed over 38 data fields and discovered 567,282 "fatal errors."<sup>25</sup> The report notes that the Information Systems Audit Division (ISAD) of the Office of the Inspector General is currently conducting a system-wide review of PIC. The findings of this report will be forwarded to ISAD for inclusion in their review.<sup>26</sup> ■

In November 2003, the Government Accounting Office (GAO) published its third report in a comprehensive review of the HOPE VI public housing redevelopment program.<sup>1</sup> HOPE VI is a competitive grant program launched in 1992 to address the problem of severely distressed public housing through targeted demolition and redevelopment.<sup>2</sup> The review was conducted in 2002 and 2003 at the request of Sen. Jack Reed (D-RI).<sup>3</sup>

The GAO's first two reports were published in November 2002 and May 2003. The first addressed HOPE VI financing;<sup>4</sup> the second focused on the Department of Housing and Urban Development's (HUD) management of the HOPE VI program.<sup>5</sup> The third and final report examines the impact of HOPE VI on public housing residents and neighborhoods for the 165 awards made through Fiscal Year (FY) 2001.<sup>6</sup> In particular, it provides data on resident relocation, community and supportive services (CSS) provided to residents, replacement housing, and changes in neighborhood demographic indicators.

This third report is valuable, especially given the general lack of concrete information about the HOPE VI program. It offers specific data on numbers of units affected under the program, relocation, and other outcomes.<sup>7</sup> However, GAO often appears to take pains to present a balanced portrayal of the program, even when this might be unwarranted. It does not make any recommendations for amendments or reforms.

On the relocation of residents, the report puts special emphasis on the percentage of displaced public housing residents who have returned or are expected to return to HOPE VI

---

<sup>1</sup>U.S. GOVERNMENT ACCOUNTING OFFICE, PUBLIC HOUSING: HOPE VI RESIDENT ISSUES AND CHANGES IN NEIGHBORHOODS SURROUNDING GRANT SITES (2003) (GAO-04-109) [hereinafter RESIDENT ISSUES], <http://www.gao.gov/new.items/d04109.pdf>.

<sup>2</sup>See generally 42 U.S.C.A. § 1437v (West 2003); NHLP, ET AL., FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM (2002) [hereinafter FALSE HOPE], available at <http://www.nhlp.org/html/pubhsg/FalseHOPE.pdf>. The future of the HOPE VI program is in flux. Congress recently reauthorized and extended the program through September 30, 2006. Pub. L. No. 108-186, Tit. IV, 117 Stat 2685, 2693 (December 16, 2003). However, as with FY 2004, the President's proposed budget for FY 2005 called for a discontinuation of the program. HUD, FISCAL YEAR 2005 BUDGET SUMMARY 30 (2004).

<sup>3</sup>RESIDENT ISSUES, *supra* note 1, at 2.

<sup>4</sup>U.S. GENERAL ACCOUNTING OFFICE, PUBLIC HOUSING: HOPE VI LEVERAGING HAS INCREASED, BUT HUD HAS NOT MET ANNUAL REPORTING REQUIREMENT (2002) (GAO-03-91).

<sup>5</sup>U.S. GENERAL ACCOUNTING OFFICE, PUBLIC HOUSING: HUD'S OVERSIGHT OF HOPE VI SITES NEEDS TO BE MORE CONSISTENT (2003) (GAO-03-555).

<sup>6</sup>RESIDENT ISSUES, *supra* note 1, at 3.

<sup>7</sup>See, e.g., *id.* at 3-5.

---

<sup>20</sup>*Id.* at 13.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.* at 14.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.* The term "fatal error" is not separately defined in the report.

<sup>26</sup>*Id.* at 17.

redevelopment sites.<sup>8</sup> It states that, overall, 46 percent of displaced residents are estimated to return to redevelopment sites.<sup>9</sup> This is significantly higher than the 11 percent return figure cited by NHLP and others in *False HOPE*, a figure based on a HUD-produced data summary for 1993-1999.<sup>10</sup> However, the report notes that the 46 percent figure is based on *estimates* by public housing authority (PHA) HOPE VI grantees as of June 2003. It also notes that these estimates have changed over time. In 1999, FY 1993-1999 grantees estimated that 61 percent of residents would return to HOPE VI sites. By 2003, that number declined to 44 percent, among those same grantees.<sup>11</sup>

The report largely seems to sidestep issues of resident participation. Focusing on FY 1996 grants, it lists a number of examples of efforts by PHAs to include residents in the HOPE VI planning and implementation process.<sup>12</sup> It notes a smaller number of examples of conflict and points out the fact that residents have sued PHAs over their HOPE VI activities.<sup>13</sup> Little real detail is provided.

Most troubling, because of their potential for misuse, are the report's findings regarding neighborhood change and HOPE VI. GAO examined the twenty neighborhoods in which FY 1996 grant sites were located. The report describes positive changes in a number of demographic and housing indicators in many of these neighborhoods, including levels of education attainment, unemployment poverty, housing value, and rental housing costs.<sup>14</sup> GAO also went one step further and examined changes in these indicators in neighborhoods that were determined to be comparable to four of the HOPE VI grant site neighborhoods. It found a somewhat greater amount of positive change, among certain indicators, in the four HOPE VI neighborhoods in relation to their comparables.<sup>15</sup>

The findings on neighborhood effects should not be overgeneralized. First, only a fraction of the total number of grants (20 out of 165) were examined. Fewer still were examined in relation to a comparable neighborhood. Second, positive change in the indicators is not necessarily meaningful evidence of genuinely positive outcomes. These changes may simply be result of exchanging one group of families for another, or simply removing families with the greatest needs from a neighborhood, without actually resolving any

problems. The report describes fairly modest efforts by grantees to provide public housing residents community and supportive services to increase self-sufficiency.<sup>16</sup> It also suggests that demolition of public housing alone may produce many of the changes it discusses.<sup>17</sup>

Ultimately, the GAO report is useful for the information it provides but is limited in scope. Its findings should not be generally assumed to be reflective of the HOPE VI program as a whole. ■

## NCRC Study on Age and Race Discrimination in Subprime Lending

Segments of the subprime lending industry have claimed that the reason why so many high-cost loans with onerous terms (subprime loans) are made to people of color and the elderly is purely a matter of risk: those borrowers have credit scores that indicate they are less likely to pay their obligations or pay them in a timely manner. The National Community Reinvestment Coalition (NCRC) has released the results of a national study that repudiates this claim, documenting that credit scores do not account for the high level of subprime lending to those groups. The study provides further evidence of discrimination by the subprime lending industry.

It is well-documented that the majority of subprime loans in this country are made to people of color and the elderly.<sup>1</sup> They do not seek out these high-cost loans, of course. Rather, it is lenders who tend to steer members of those groups to high-cost loans, often with additional terms that make it difficult for borrowers to refinance their debt at more favorable rates and terms. A national study in 2002 found that 17.42 percent of refinance loans made to white borrowers in 2000 were subprime, whereas 49.28 percent of refinance loans to African-Americans in 2000 were subprime. The rate for Latinos was 30.33 percent. The rate for Native-Americans was 27.94 percent.<sup>2</sup> Some mortgage lenders themselves have acknowledged that at least 50 percent of those who receive subprime loans are qualified to receive lower-cost loans with better terms.<sup>3</sup> Fannie Mae has also estimated that half of all subprime

---

<sup>8</sup>The report bears out previous figures regarding the initial relocation (see *FALSE HOPE*, *supra* note 2, at 25-6), with 50 percent of families transferred to public housing sites and 31 percent receiving Housing Choice vouchers. *RESIDENT ISSUES*, *supra* note 1, at 9.

<sup>9</sup>*RESIDENT ISSUES*, *supra* note 1, at 2.

<sup>10</sup>*FALSE HOPE*, *supra* note 2, at 23.

<sup>11</sup>*RESIDENT ISSUES*, *supra* note 1, at 10.

<sup>12</sup>*Id.* at 17-8.

<sup>13</sup>*Id.* at 18.

<sup>14</sup>*Id.* at 24-6. The report states that rental housing costs increased (from 9 to 69 percent) in fifteen of the twenty neighborhoods and describes this as a favorable indicator that the neighborhoods had become more desirable areas in which to live. *Id.* at 26.

<sup>15</sup>*Id.* at 27-9.

<sup>16</sup>*Id.* at 19-23.

<sup>17</sup>*Id.* at 30-1. The report, however, suggests that it is the removal of "old, deteriorated public housing" that leads to changes in neighborhood indicators, rather than the displacement of residents from these neighborhoods.

<sup>1</sup>AARP, *OLDER SUBPRIME REFINANCE MORTGAGE BORROWERS* (2002), at [http://research.aarp.org/consume/dd74\\_finance.html#pdf](http://research.aarp.org/consume/dd74_finance.html#pdf).

<sup>2</sup>CENTER FOR COMMUNITY CHANGE, *RISK OR RACE? RACIAL DISPARITIES AND THE SUBPRIME REFINANCE MARKET 3* (2002).

<sup>3</sup>INSIDE B&C LENDING, *HALF OF SUBPRIME LOANS CATEGORIZED AS "A" QUALITY* (1996).

borrowers could qualify for lower-cost conventional financing.<sup>4</sup>

NCRC's study draws its data from Atlanta, Baltimore, Cleveland, Detroit, Houston, Los Angeles, Milwaukee, New York, St. Louis and Washington, D.C. It concluded that, even after controlling for risk and housing market conditions, the higher the percentage of people of color and elderly persons in a neighborhood, the more likely were those neighborhoods to be the target of subprime lending. In other words, those neighborhoods, "regardless of creditworthiness of their residents, receive a disproportionate amount of high cost subprime loans."<sup>5</sup>

For example, in Houston, even after controlling for income, creditworthiness and housing market factors, subprime loans were 40 percent more prevalent in African-American neighborhoods than in all-white neighborhoods. In regards to age and controlling for other factors, in seven of the ten jurisdictions examined the study found that the incidence of subprime refinance lending in neighborhoods positively correlated to the number of neighborhood residents aged 65 or older.<sup>6</sup>

### NCRC's Recommendations

NCRC recommends a number of legislative reforms to combat unfair lending practices, from the passage of comprehensive anti-predatory lending legislation at the national level to modernization of the Community Reinvestment Act and improving the quality of home mortgage data that is collected. On the regulatory side, NCRC argues that local and state consumer protection laws should not be preempted by federal laws as these protections are critically important. Fair lending enforcement is also a must, according to NCRC; the Federal Reserve Board should exercise its power to review affiliates of bank holding companies, and large, non-bank lenders should be subject to fair lending investigations. Subprime lenders should be heavily scrutinized and corrective action taken when predatory practices are discovered.

NCRC also urges that the Fair Credit Reporting Act be strengthened to ensure complete and accurate reporting of data, including the on-time payments that consumers make. NCRC cites to comments by the Comptroller of the Currency regarding the fact that a number of large subprime lenders do not report borrowers' on-time payments.<sup>7</sup> As a result, these borrowers' credit scores do not show the improvement that they ought to from their payments.

NCRC's report makes a number of additional suggestions that should be helpful to advocates, especially those new to this field, when considering proactive strategies to combat abusive lending practices. ■

<sup>4</sup>James H. Carr & Jenny Schuetz, *Financial Services in Distressed Communities: Framing the Issue, Finding Solutions*, in FINANCIAL SERVICES IN DISTRESSED COMMUNITIES: ISSUES AND ANSWERS 5, 37 (Fannie Mae Found. 2001), available at <http://www.knowledgeplex.org/kp/report/report/refiles/FinancialServices.pdf>.

<sup>5</sup>NCRC, *THE BROKEN CREDIT SYSTEM: DISCRIMINATION AND UNEQUAL ACCESS TO AFFORDABLE LOANS BY RACE AND AGE 6* (2003).

<sup>6</sup>*Id.* at 7.

<sup>7</sup>*Id.* at 10 (citing John D. Hawke, Jr., Comptroller of the Currency, Address at the Consumer Bankers Association Conference, San Francisco, California (June 7, 1999), at [http://www.occ.treas.gov/ftp/release/99\\_51a.doc](http://www.occ.treas.gov/ftp/release/99_51a.doc)).

## 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,<sup>1</sup> Lexis,<sup>2</sup> or, in some instances, the court's Web site.<sup>3</sup> Copies of the cases are *not* available from NHLP.

### Eviction—Housing Choice Voucher Program; Housing Quality Standards

*Nichols v. Drake*, 2004 WL 189872 (N.Y. City Ct. Jan. 7, 2004). Ruling in a summary process action for possession brought by Petitioner landlord, the city court rejected Respondent housing choice voucher tenant's argument that the failure of the tenant's unit to pass a housing quality standards (HQS) inspection barred Petitioner from pursuing an action for eviction. Citing the Quality Housing and Work Responsibility Act (QHWRA) of 1998 and new "landlord friendly" voucher regulations, 24 C.F.R. § 982.310, the court concluded that "the failure of an HQS inspection and cessation of Section 8 payments does not bar a landlord's relief, as a matter of law, in a nonpayment Summary Proceeding." However, the court also noted that Respondent's unit failed the HQS inspection due to Respondent's poor housekeeping and damage caused by Respondent herself.

### Eviction—One-Strike

*Lakota Community Homes, Inc. v. Randall*, 2004 SD 16 (S.D. Sup. Ct. 2004). Plaintiff-Appellee owner of a single-family cooperative assisted under a HUD housing assistance payment (HAP) contract brought action for forcible entry and detainer against Defendant-Appellant. A member of Defendant-Appellant's household had been charged with the offenses of consumption of alcohol by a minor and possession of drug paraphernalia. At trial, the magistrate found that the household member had vandalized an automobile, consumed alcoholic beverages, and had possessed drug paraphernalia. The magistrate issued judgment in favor of Plaintiff-Appellant. The circuit court affirmed. On further appeal from Defendant-Appellant, the South Dakota Supreme Court also affirmed. Construing 42 U.S.C. § 1437d and 24 C.F.R. pts. 966 and 982, the supreme court concluded, *inter alia*, that the actions of the household member were a sufficient basis on which to evict Defendant-Appellant and that the household member need not have been charged with or convicted of a criminal act.

<sup>1</sup><http://www.westlaw.com>.

<sup>2</sup><http://www.lexis.com>.

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

## **Fair Housing—Disability; Fair Housing—Organizational Standing**

*Smith v. Pacific Props. & Dev. Corp.*, 2004 WL 112633 (9th Cir. Jan. 26, 2004). Plaintiff-Appellants tester and disability rights organization appealed order of the district court dismissing claims against Defendant-Appellee housing developer for failure to design and construct housing in compliance with Fair Housing Amendments Act (FHAA), 42 U.S.C. §§ 3601-3619, 3631, requirements. Extending the reasoning of *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) to the disability discrimination context and reversing the district court's order in part, the Ninth Circuit held that a tester has standing to assert a disability discrimination claim under the FHAA. The Ninth Circuit further held that a disability rights organization may have both representational standing and organization standing for frustration of purpose and diversion of resources, as described in *Havens*. The Ninth Circuit declined to reverse the district court's dismissal of Plaintiff-Appellants' disgorgement claims.

## **Fair Housing—Generally; Federal Courts—Pleading, Rules of**

*Edwards v. Marin Park, Inc.*, 2004 WL 112642 (9th Cir. Jan. 26, 2004). Following *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002) in deciding an appeal of a district court's dismissal of an action for failure to state a claim, the Ninth Circuit held, *inter alia*, that Rule 12(b)(6), Federal Rules of Civil Procedure, does not require a Plaintiff to plead facts sufficient to support a prima facie showing in a claim under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* The Ninth Circuit stated: "The prima facie case is an evidentiary standard, not a pleading requirement. Failure to adduce it may result in a later loss at summary judgment, but failure to plead it does not support dismissal at the outset." (citations omitted).

## **Fair Housing—Generally; Federal Courts—Private Right of Action**

*Godwin v. Sec'y of Hous. & Urban Dev.*, 356 F.3d 310 (D.C. Cir. 2004). Petitioner petitioned for a review of Respondent Secretary of Housing and Urban Development's dismissal of Petitioner's administrative fair housing complaint against her landlord. The D.C. Circuit dismissed the petition for lack of subject matter jurisdiction. The court held that the Fair Housing Act, 42 U.S.C. § 3612, created no private right of action to seek review of Respondent's dismissal of an administrative fair housing complaint. It further held that review under the Administrative Procedure Act, 5 U.S.C. § 704, to be unavailable because the private court action authorized under the Fair Housing Act, 42 U.S.C. § 3613, constituted an adequate alternate remedy.

## **Fair Housing—Intimidation, Threats, and Harassment**

*Walton v. Claybridge Homeowners Assoc., Inc.*, 2004 WL 192106 (S.D. Ind. Jan. 22, 2004). Plaintiff renter filed an action against Defendants homeowners' association and officers under the

Fair Housing Act for intimidation and interference with housing rights. Defendants moved to dismiss Plaintiff's complaint and/or for summary judgment. The district court denied Defendants' motion. The court regarded Plaintiff's fair housing claim as proceeding under 42 U.S.C. § 3617, which makes it unlawful "to coerce, intimidate, threaten, or interfere" with any person in connection with the exercise of rights or protections provided under other specified provisions of the Fair Housing Act. The court held that a claim under § 3617 is not dependent on proving a violation of other provisions of the Fair Housing Act. It further held that in order to establish a claim under § 3617, Plaintiff was required to show that:

- (1) Defendants coerced, intimidated, threatened or interfered with her (a) in the exercise of rights protected by [42 U.S.C. §§] 3603, 3604, 3605, or 3606, (b) on account of having exercised rights protected by [§] 3603, 3604, 3605, or 3606, or (c) on account of having aided or encouraged another person to exercise housing rights; (2) Defendants' conduct was racially-motivated; and (3) the conduct rose to the level of coercion, intimidation or interference that § 3617 was designed to address.

The court concluded that the allegations made in Plaintiff's complaint were sufficient under this test. The court also rejected Defendants' arguments regarding abstention and collateral estoppel.

## **Federal Courts—Private Right of Action**

*Catholic Charities of Maine, Inc. v. City of Portland*, 2004 WL 231778 (D.Me. Feb. 6, 2004)

In an action brought primarily under the ERISA, the district court concluded, *inter alia*, that Plaintiff had no private right of action to seek a judicial declaration that the Housing and Community Development Act (HCDA), preempted a city domestic partners employee health benefits ordinance. The court followed *Latino Unidos De Chelsea En Accion v. Sec. of Hous. & Urban Dev.*, 799 F.2d 774, 794 (1st Cir.1986) and *Williams v. Nat'l Sch. of Health Tech.*, 836 F.Supp. 273, 281 (E.D. Pa.1993).

## **Lead Paint; Federal Courts—Private Right of Action**

*Mair v. City of Albany*, 2004 WL 180418 (N.D.N.Y. Jan. 22, 2004). The district court dismissed the amended complaint of Plaintiff neighborhood organization in part under Rule 12, Federal Rules of Civil Procedure. The court held, *inter alia*, that the Residential Lead-Based Paint Hazard Reduction Act (RLPHRA), 42 U.S.C. § 4851, and the Community Development Act (CDA), 42 U.S.C. § 5304(b)(6), did not provide Plaintiff a private right of action, nor did it create a federal right enforceable via 42 U.S.C. § 1983.

## **Section 236 Program—Mortgage Prepayments**

*Aspenwood Inv. Co. v. Martinez*, 2004 WL 103553 (10th Cir. Jan. 23, 2004). Plaintiff-Appellant Section 236 property owner filed

suit against Defendant-Appellee Secretary of HUD seeking declaratory judgment that Plaintiff-Appellant was entitled to prepay its HUD-insured mortgage. The parties filed cross-motions for judgment on the pleadings. The district court denied Plaintiff-Appellant's motion and granted Defendant-Appellee's motion. Plaintiff-Appellant appealed. Plaintiff-Appellant appears to have alleged that it has met the requirements set forth in the plain terms of the note and the applicable regulation, 24 C.F.R. § 236.30 (1970). Particularly at issue was the construction of an eligibility criterion that a property owner seeking to prepay not be "receiving payments" under a rent supplement agreement. Plaintiff-Appellant appears to have alleged that it was not receiving such payments and otherwise met the other criteria. The Tenth Circuit stated that Defendant-Appellee contended that this criterion be construed as not being "a party to a rent supplement contract for which adequate funding from HUD is available, so that upon the event of an eligible tenant commencing to reside in the project, payments under the rent supplement contract would be made." In rejecting this construction, the Tenth Circuit first pointed out that it does not owe deference to federal agency's construction of contractual terms. It further stated that even in light of the deference owed to a federal agency's construction of its own regulations, such deference does not require a court to "torture" regulatory language to meet an agency's wishes. For these reasons, the Tenth Circuit reversed and remanded the case to the district court for further proceedings. In so ruling, the Tenth Circuit noted that it declined to follow the Federal Circuit's decision in *Cienega Gardens v. United States*, 194 F.3d 1231 (Fed.Cir.1998). ■

## 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 January of 2004. 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,<sup>1</sup> (2) bound volumes of the *Federal Register*, (3) HUD Clips,<sup>2</sup> (4) HUD,<sup>3</sup> and (5) USDA's Rural Development Web page.<sup>4</sup> Citations are included with each document to help you secure copies.

### HUD Federal Register Interim Rule

**69 Fed. Reg. 4 (Jan. 2, 2004)**

#### **FHA TOTAL Mortgage Scorecard**

*Summary:* On November 21, 2003, HUD published an interim rule to codify the procedures that mortgagees and automated underwriting system (AUS) vendors must observe if they opt to use the "Technology Open To Approved Lenders" mortgage scorecard offered by the Federal Housing Administration (FHA). This document corrects the interim rule by changing certain references to "mortgage" to read "mortgagee" and to remove "FHA approved" as a modifier of "AUS" in a certain instance.

*Effective Date:* December 22, 2003.

### HUD Federal Register Proposed Rules

**69 Fed. Reg. 2,094 (Jan. 14, 2004)**

#### **Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting**

*Summary:* This document announces the final meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

*Dates:* The committee meetings were held on Tuesday, January 13, 2004, Wednesday, January 14, 2004, Thursday, January 15, 2004, and Friday, January 16, 2004.

<sup>1</sup>At [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).

<sup>2</sup>At <http://www.hudclips.org/cgi/index.cgi>.

<sup>3</sup>To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.

<sup>4</sup>At <http://www.rdinit.usda.gov/regs>.

**69 Fed. Reg. 4,212 (Jan. 28, 2004)**  
**Operating Fund Program; Notice of Intent to Establish a Negotiated Rulemaking Committee and Notice of First Meeting**

*Summary:* The Department of Housing and Urban Development (HUD) is establishing a Negotiated Rulemaking Advisory Committee (Committee) under the Federal Advisory Committee Act. The purpose of the Committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's "Public Housing Operating Cost Study" (Harvard Cost Study). In accordance with the Negotiated Rulemaking Act of 1990, this document: advises the public of the establishment of the Committee; provides the public with information regarding the Committee; solicits public comment on the proposed membership of the Committee; and explains how persons may be nominated for membership on the Committee.

*Comment Due Date:* February 27, 2004.

**69 Fed. Reg. 7,324 (Feb. 13, 2004)**  
**Nonprofit Organization Participation in Federal Housing Administration (FHA) Single Family Mortgage Insurance Programs**

*Summary:* HUD has issued a proposed rule on the participation of nonprofit organizations in single family mortgage insurance programs. A significant percentage of nonprofit organizations that have obtained FHA financing for an unmanageable number of properties have suffered extraordinarily high rates of default on multiple-unit properties. The intent of this proposed rule is to implement conditions and procedures based on HUD's recent experience with practices and requirements that result in successful participation by nonprofit organizations in FHA single family mortgage insurance programs. Specifically, this rule proposes to require nonprofit organizations that obtain insured financing from the FHA for ten or more properties in a federal fiscal year to prepay at least 80 percent of that total number of FHA insured mortgages by the end of the second fiscal year following the fiscal year in which the FHA insured financing was acquired. Furthermore, this rule would not permit nonprofit organizations to obtain FHA insurance for mortgages secured by single family properties with more than two living units, and the rule would impose additional underwriting guidelines on two-unit properties. The rule also proposes to codify the existing practice to approve as participating nonprofit organizations those organizations that provide evidence of two years of tax-exempt status under the Internal Revenue Code of 1986, and two consecutive years of housing development experience within the previous five years.

*Comment Due Date:* April 13, 2004.

## HUD Federal Register Notices

**69 Fed. Reg. 1,754 (Jan. 12, 2004)**  
**Credit Watch Termination Initiative**

*Summary:* This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

**69 Fed. Reg. 1,996 (Jan. 13, 2004)**  
**Notice of Proposed Information Collection for Public Comment on the Evaluation of the Welfare to Work Voucher Program, Follow-on Survey Data Collection**

*Summary:* HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for review. The Department is soliciting public comments on an evaluation to assess the impacts of receiving a Welfare to Work voucher on improving the housing locations of families with children, on their obtaining and retaining employment, on their levels of welfare dependency, and on the well-being of their children. To assess these program impacts, a large body of data has been collected from a variety of administrative sources, and additional information will be collected using the follow-on survey. Individuals and households that applied to participate in the Welfare-to-Work voucher program in the six evaluation sites (Atlanta and Augusta, Georgia; Fresno and Los Angeles, California; Houston, Texas; and Spokane, Washington) will be interviewed as part of this data collection effort.

*Comments Due Date:* March 15, 2004.

**69 Fed. Reg. 2,719 (Jan. 20, 2004)**  
**Notice of Proposed Information Collection: American Healthy Homes Survey**

*Summary:* The proposed information collection requirement concerning an American Healthy Homes Survey in homes across the country will be submitted to the Office of Management and Budget (OMB) for review. The Department is soliciting public comments on the subject proposal. The information collection will focus on lead and asthma-related allergens.

*Comments Due Date:* March 22, 2004.

**69 Fed. Reg. 2,720 (Jan. 20, 2004)**  
**Notice of Proposed Information Collection for Public Comment—Exigent Health and Safety Deficiency Correction and Remedy Certification**

*Summary:* The proposed information collection requirement will be submitted to the Office of Management and Budget (OMB) for review. The Department is soliciting public comments on the subject proposal. The information collection relates to Exigent Health and Safety Deficiency Correction and Remedy Certification templates, a set of documents on which HUD will collect information from Public

Housing Agencies (PHAs) and multifamily property owners/agents about the correction and mitigation of exigent health and safety deficiencies that are identified in the inspection of assisted properties.

*Comments Due Date:* March 22, 2004.

**69 Fed. Reg. 2,721 (Jan. 20, 2004)**

**Notice of Proposed Information Collection for Public Comment—Housing Choice Voucher Program Forms for Funding Application, Utility Allowances, Inspection, Financial, Tenancy Approval, Voucher, Family Portability, Housing Assistance Payments (HAP) Contracts**

*Summary:* The proposed revised information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review. The Department is soliciting public comments on the subject proposal. The information collection relates to a large number of data reporting forms for the Housing Choice Voucher Program. These forms address a very wide range of program activities, including budgets, subsidy payments, portability and leasing.

*Comments Due Date:* March 22, 2004.

**69 Fed. Reg. 2,723 (Jan. 20, 2004)**

**Announcement of Funding Awards for the Rural Housing and Economic Development Program; Fiscal Year 2003**

*Summary:* In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

**69 Fed. Reg. 3,381 (Jan. 23, 2004)**

**Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request; Self-Help Homeownership Opportunity Program (SHOP)**

*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 is a proposed information collection for reporting requirements under the SHOP. SHOP grants are used to fund acquisition and infrastructure improvements to new self-help housing projects, to be occupied by persons meeting the definition of low-income. Grant recipients are required to report to HUD on a quarterly and annual basis regarding the success of their SHOP programs. Information collected from SHOP recipients includes proposed accomplishments, actual accomplishments, and financial, unit and beneficiary information. The information collected will be used by HUD to assess the performance of SHOP grant recipients and the success of the program.

*Comment Due Date:* February 6, 2004.

**69 Fed. Reg. 3,382 (Jan. 23, 2004)**

**Notice of Availability of a Draft Generic Environmental Impact Statement for the World Trade Center Memorial and Redevelopment Plan in the Borough of Manhattan, City of New York, NY**

*Summary:* The Department of Housing and Urban Development (HUD) gives notice to the public, agencies, and Indian tribes that a draft Generic Environmental Impact Statement (Draft GEIS) for the World Trade Center Memorial and Redevelopment Plan will be available for review and comment on January 21, 2004. This notice is given on behalf of the Lower Manhattan Development Corporation (LMDC). The LMDC is a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York). As the recipient of HUD Community Development Block Grant funds appropriated for World Trade Center disaster recovery and rebuilding efforts, LMDC acts, pursuant to 42 U.S.C. § 5304(g), as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 C.F.R. § 58.4. LMDC also acts under its authority as lead agency in accordance with the New York State Environmental Quality Review Act. The Draft GEIS will also be prepared in cooperation with the Port Authority of New York and New Jersey. This notice is given in accordance with the Council on Environmental Quality Regulations at 40 C.F.R. parts 1500–1508.

*Comment Due Date:* March 15, 2004, 5 p.m. Eastern Time.

**69 Fed. Reg. 3,385 (Jan. 23, 2004)**

**Upcoming Meeting of the Manufactured Housing Consensus Committee**

*Summary:* This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

*Dates:* The meetings were held on Tuesday, February 24, 2004, from 8 a.m. to 5 p.m., Wednesday, February 25, 2004, from 8 a.m. to 5 p.m., and Thursday, February 26, 2004, 8 a.m. to 12 noon.

**69 Fed. Reg. 6,320 (Feb. 10, 2004)**

**Notice of Proposed Information Collection for Public Comment on the Survey of Market Absorption of New Multifamily Units**

*Summary:* HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for review. The Department is soliciting public comments on the subject proposal. The Survey of Market Absorption (SOMA) provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed—that is, taken off the market, usually by being rented or sold, over the course of the first twelve months following completion of a building. The survey provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public. Additionally, beginning with new construction in 2002, the survey will attempt to ascertain the

number and degree of services provided by "Assisted Living" type units.

*Comments Due Date:* April 12, 2004.

**69 Fed. Reg. 7,779 (Feb. 19, 2004)**

**Announcement of Funding Awards for Fiscal Year 2003 for the Housing Choice Voucher Program**

*Summary:* In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2003 to housing agencies (HAs) under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to housing agencies for noncompetitive funding awards such as housing conversion actions, special housing conversion fees, public housing relocations and replacements, Section 8 counseling, and FY 2003 administrative fees for housing conversion actions.

**69 Fed. Reg. 8,219 (Feb. 23, 2004)**

**Housing Counseling Program Announcement of Funding Awards for Fiscal Year 2003**

*Summary:* In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a SuperNOFA competition for funding of HUD-approved counseling agencies to provide counseling services. This announcement contains the names and addresses of the agencies selected for funding and the award amounts. Additionally, this announcement outlines noncompetitive housing counseling grants made by the Department.

**69 Fed. Reg. 8,480 (Feb. 24, 2004)**

**Notice of Submission of Proposed Information Collection to OMB: HUD Initiative for the Removal Regulatory Barriers**

*Summary:* HUD has submitted a proposed information collection to the Office of Management and Budget (OMB) for review. The Department is soliciting public comments on the subject proposal. The information collection is in support of HUD's America's Affordable Communities Initiative focusing on regulatory barriers that impede the production of affordable housing. It is intended to promote efforts by state and local governments, and to provide for incentives, to remove regulatory barriers to affordable housing.

*Comments Due Date:* March 25, 2004.

**69 Fed. Reg. 9,351 (Feb. 27, 2004)**

**Mortgagee Review Board Administrative Actions**

*Summary:* In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of certain administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees. This notice of administrative actions relates solely to the failure of Title I lenders and Title II mortgagees to submit the required audited annual financial statement, an acceptable annual audited financial statement and/or payment of the annual recertification fee.

## HUD Housing Notices

**Notice H 2004-01 (Jan. 6, 2004)**

**Professional Liability Insurance for Section 232 Programs**

*Summary:* On April 10, 2001, HUD issued Notice H01-03, titled "Review of Health Care Facility Portfolios and Changes to the Section 232 Programs." The expiration date of that notice has been extended by Notice H03-21 to October 31, 2004. Section X of Notice H01-03 established the requirement that HUD insured healthcare facilities maintain professional liability insurance. Further, the notice directed Field Office staff in the mortgage underwriting process to require adequate insurance coverage. Since the notice was published, a number of carriers of liability insurance products have decided to stop underwriting policies in several states. Furthermore, liability insurance premiums continue to increase at an alarming rate in some states.

*Expires:* January 31, 2005.

**Notice H 2004-02 (Jan. 30, 2004)**

**Revised Prepayment of Direct Loans on Section 202 and Section 202/8 Projects with Inclusion of FHA Mortgage Insurance Guidelines**

*Summary:* Notice H 2002-16, which was issued on August 23, 2002 and expired on August 31, 2003, is being reinstated and extended to January 31, 2005.

*Expires:* January 31, 2005.

**Notice H 2004-03 (Feb. 13, 2004)**

**Fiscal Year 2004 Interest Rate for Section 202 and Section 811 Capital Advance Projects**

*Summary:* This notice sets forth the Fiscal Year 2004 nominal interest rate for the Section 202 and Section 811 Capital Advance Programs. Based on the formula specified in the Housing and Community Development Act of 1987, the interest rate is 5 3/8 percent.

*Expires:* February 28, 2005

**Notice H 2004-04 (Feb. 24, 2004)**

**Reinstatement and Extension of Notice H 2003-1, Owner-Occupant Purchaser Certifications**

*Summary:* The purpose of this notice is to reinstate and extend Housing Notice H 2003-1, Owner-Occupant Purchaser Certifications, issued January 27, 2003, through February 28, 2005.

*Expires:* February 28, 2005.

## RHS Administrative Notice

**RD AN No. 3928 (1944-D) (Jan. 22, 2004)**

**Section 514/516 Farm Labor Housing Clarifying the Definition of "Farm Labor"**

*Summary:* Various states have expressed confusion over the Section 514/516 Farm Labor Housing Program definition of "farm labor." The purpose of this Administrative Notice (AN) is to provide guidance and to clarify what types of work are, and are not, considered to be "farm labor."

*Expires:* January 31, 2005.

## RHS Federal Register Notices

**69 Fed. Reg. 5,818 (Feb. 6, 2004)**

### **Notice of Timeframe for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2004**

*Summary:* This notice announces the timeframe to submit applications for Section 514 Farm Labor Housing loan funds and Section 516 Farm Labor Housing grant funds for new construction and acquisition and rehabilitation of off-farm units for farmworker households. Applications may also include requests for Section 521 rental assistance (RA) and operating assistance for migrant units. This document describes the method used to distribute funds, the application process, and submission requirements. RHS is publishing this notice prior to passage of a final appropriations act to give applicants the maximum amount of time possible to complete their applications, and to provide the Agency sufficient time to process the selected applications within the current fiscal year. Applications for Fiscal Year (FY) 2004 will only be accepted through the date and time listed in this notice. A Notice of Funding Availability announcing the level of funding for the program will be published upon passage of a final appropriations act in accordance with 42 U.S.C. 1490p and 7 C.F.R. 1944.170.

*Dates:* The closing deadline for receipt of all applications in response to this notice is 5 p.m., local time, for each Rural Development State Office on May 6, 2004.

**69 Fed. Reg. 5,821 (Feb. 6, 2004)**

### **Notice of Timeframe to Submit Applications for the Section 515 Rural Rental Housing Program for Fiscal Year 2004**

*Summary:* This notice announces the timeframe for submitting applications for the Section 515 Rural Rental Housing Program for Fiscal Year (FY) 2004. The Rural Housing Service (RHS) is publishing this notice prior to passage of a final appropriations act to give applicants the maximum amount of time possible to complete their applications, to provide the Agency sufficient time to process the selected applications within the current fiscal year, and in order to comply with 7 C.F.R. 1944.231. Applications may be submitted for Section 515 Rural Rental Housing (RRH) new construction loan funds and Section 521 Rental Assistance (RA). Section 515 funds include the nonprofit set-aside for eligible nonprofit entities and the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act). Section VI of this notice gives additional information regarding the set-asides.

*Dates:* The closing deadline for receipt of all applications, including those for the set-asides, in response to this notice is 5 p.m., local time, for each Rural Development State Office on April 6, 2004.

**69 Fed. Reg. 5,824 (Feb. 6, 2004)**

### **Notice of Timeframe for Section 533 Housing Preservation Grants for Fiscal Year 2004**

*Summary:* The Rural Housing Service (RHS) has announced that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG pro-

gram is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners to repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. RHS is publishing this notice prior to passage of a final appropriations act to give applicants the maximum amount of time possible to complete their applications, and to provide the Agency sufficient time to select and process the selected applications within the current fiscal year. Although a Notice of Funding Availability (NOFA) outlining the level of funding for the program will be published after enactment of a final appropriation act, no additional time for submitting applications will be included in the NOFA. Applications must be submitted within the timeframe set forth in this notice. The FY 2003 funding level for the Section 533 program was \$9,935,000. To the extent an appropriation act provides funding for HPG grants in FY 2004, the actual funds available for FY 2004 will be published at a later date in a subsequent notice.

*Dates:* The closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time, for each Rural Development State Office on May 6, 2004.

**69 Fed. Reg. 5,826 (Feb. 6, 2004)**

### **Notice for Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2004**

*Summary:* This is a request for proposals for guaranteed loans under the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 C.F.R. 3565.4 for Fiscal Year (FY) 2004 subject to the availability of funding. FY 2003 funding for the Section 538 program was \$99.35 million. This notice is being issued prior to passage of a final appropriations bill to allow applicants sufficient time to leverage financing and submit proposals in the form of "RESPONSES", and give the Agency maximum time to process applications within the current fiscal year. A Notice of Funding Availability will be published announcing the funding level for the GRRHP for FY 2004 once an appropriation act has been enacted. Although a complete application is not required in response to this notice, eligible lenders may submit a complete application concurrently with the response. The submission of a complete application will not affect the scoring process.

*Dates:* Program dollars will be allocated through a continuous selection process to the extent and when an appropriation act provides funding for GRRHP for FY 2004. The RHS will review all responses on an ongoing basis through May 14, 2004. Those responses that are selected that subsequently submit complete applications and meet all federal environmental requirements will receive commitments to the extent an appropriation act provides funding for GRRHP for FY 2004 until all funds are expended. If any FY 2004 funds have not been exhausted by May 14, 2004, the Agency will continue receiving and reviewing responses until all funds are expended. A notice will be published in the *Federal Register* when all funds are committed for FY 2004. ■

# Publication Order Form

**National Housing Law Project**  
**614 Grand Avenue, Suite 320 • Oakland, California, 94610**  
**(510) 251-9400; fax: (510) 451-2300**

|   | PRICE     | QTY.  | TOTAL    |
|---|-----------|-------|----------|
| <i>HUD Housing Programs: Tenants' Rights</i> (3d ed. 2004) (forthcoming)  | \$350.00  | _____ | \$ _____ |
| <i>RHCDS (FmHA) Housing Programs: Tenants' and Purchasers' Rights</i> (2d ed. 1995)   | \$55.00   | _____ | \$ _____ |
| Combined <i>HUD Housing Programs</i> (3d ed.) and <i>RHCDS (FmHA) Housing Programs</i> (add \$10.00 postage/handling)   | \$380.00  | _____ | \$ _____ |
| <i>Housing Law Bulletin</i> (annual subscription, 10-12 issues)   | \$150.00* | _____ | \$ _____ |
| <i>Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients?</i> (2000)  | \$5.00*   | _____ | \$ _____ |
| <i>Congress' New Public Housing and Voucher Programs</i> (1998)   | \$10.00** | _____ | \$ _____ |
| <i>Housing for All: Keeping the Promise</i> (1995)  | \$5.00*   | _____ | \$ _____ |
| <i>The Family Self-Sufficiency Program: An Advocate's Guide</i> (1994)  | \$10.00*  | _____ | \$ _____ |
| <i>Let's Choose a New Owner! What Residents Need to Know When an Owner Wants to Sell an Expiring-Use Project Under Title VI</i> (1993) (master for duplicating) | \$10.00*  | _____ | \$ _____ |
| <i>A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs</i> (1991)  | \$10.00*  | _____ | \$ _____ |

\*Includes postage and handling

\*\* \$5.00 each additional copy

All materials are mailed book rate. Allow four weeks for delivery.

For more information on first-class mailing and large quantity discounts, call (510) 251-9400 x108.

|   |  |                 |
|---|--|-----------------|
| <b>Subtotal:</b>                        | _____                                    | \$ _____        |
| <b>Tax (California residents only):</b> | (Subtotal, excluding Bulletin x 8.25%):  | \$ _____        |
| <b>Postage and Handling:</b>            | Number of books _____ x \$5.00 per book: | \$ _____        |
| <b>TOTAL AMOUNT ENCLOSED:</b>           |  | <b>\$ _____</b> |

**PLEASE TYPE OR PRINT**

Name \_\_\_\_\_

Organization \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Zip \_\_\_\_\_

Phone \_\_\_\_\_

**ALL ORDERS MUST BE PREPAID**

Please do not send cash. Make check or money order payable to the NATIONAL HOUSING LAW PROJECT, attach to a copy of this form and send to:

**NATIONAL HOUSING LAW PROJECT • Attn: Publications Clerk**  
**614 Grand Avenue, Suite 320 • Oakland, CA 94610**

I want to charge my credit card.  Visa  Mastercard

Card # \_\_\_\_\_ Exp. date \_\_\_\_\_

Name on card: \_\_\_\_\_

Credit card billing address \_\_\_\_\_

Signature (required for credit card) \_\_\_\_\_



**National Housing Law Project**  
**614 Grand Avenue, Suite 320**  
**Oakland, California, 94610**

*First Class Mail*