



# Housing Law Bulletin

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## HUD PROPOSED RULE ON DECONCENTRATION OF PUBLIC HOUSING

The Department of Housing and Urban Development (HUD) recently published a proposed rule to *Deconcentrate Poverty and Promote Integration in Public Housing*.<sup>1</sup> The purpose

of the rule is to implement a provision of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), which is intended to deconcentrate poverty in public housing, and to affirmatively further fair housing in the public housing admissions process. This article will briefly review the proposed rule as well as comments submitted to HUD by the Loose Association of Legal Services Housing Advocates and Clients (LALSHAC). Both the rule and comments may assist advocates in dealing with public housing authorities (PHAs) that are implementing deconcentration policies locally without the benefit of a formal HUD rule.

<sup>1</sup>65 Fed. Reg. 20,685 (Apr. 17, 2000).

<sup>2</sup>The fungibility provision allows the PHA to deduct one applicant from

### QHWRA Deconcentration Policy

In QHWRA, Congress set forth objectives on income targeting and deconcentration. QHWRA provided that a PHA must rent 40 percent of its turnover and new units (two out of every five) to applicants who have income at or beneath 30 percent of the area median income (AMI). PHAs may lower the 40 percent target for good cause; and under the fungibility provision,<sup>2</sup> they can lower it even further. To address the concern that the income targeting might be applied arbitrarily, Congress provided that PHAs may not meet their quotas by concentrating poor people in particular

the number of accepted public housing applicants who must have income beneath 30 percent of median income for each applicant awarded a voucher above the target requirement that 75 percent of tenant-based assistance be provided to applicants with income below 30 percent of AMI. There is a cap on the fungibility provision. PHAs must, at a minimum, rent 30 percent of the public housing units to tenants with incomes at 30 percent of AMI or below. There are also other limits on the fungibility provision. 42 U.S.C. § 1437n(c) (West Supp. 2000).

<sup>3</sup>42 U.S.C. § 1437n(a)(3)(A).

<sup>4</sup>*Id.* § 1437n(a)(3)(B).

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## 2000 LALSHAC MEETING DATE SET FOR NOVEMBER 19 - 20

— see page 77 for details

projects.<sup>3</sup>

In addition, PHAs are required to submit an admission policy as part of the Public Housing Plan that will provide for the deconcentration of poverty by encouraging higher-income applicants to move into lower-income projects and allow for the admission of lower-income applicants at higher-income projects.<sup>4</sup> Any plan for deconcentration cannot be construed as requiring specific racial or income quotas for any project.<sup>5</sup> Higher-income applicants may be offered incentives to move into lower-income project units and may skip over others to obtain the unit, but if they reject the incentives they may not be penalized.<sup>6</sup> The deconcentration plan also cannot interfere with site-based waiting lists.<sup>7</sup>

### HUD Rules on Deconcentration

HUD previously published final rules on deconcentration in 1999 and intended that all PHAs submit a deconcentration plan as part of their first-year planning process.<sup>8</sup> But HUD withdrew the plan requirement when it became apparent that it had not met the statutory objectives or provided adequate guidance to PHAs.<sup>9</sup> It appears that HUD's current objective is to finalize the deconcentration rule as quickly as possible so that the issue may be addressed in PHAs' second-year plans. If HUD is to finalize the rule for the next set of PHAs (those with fiscal years beginning October 1, 2000), it must issue a final rule prior to July 15, 2000 (i.e. 75 days before October 1, 2000, the date plans are due for PHAs with an October 1, 2000 fiscal year). Whether HUD will meet that date is not clear because the proposed rule is very controversial. Regardless of HUD's action, PHAs are required to address deconcentration in their annual plans.

The rule proposes that PHAs deconcentrate developments by first determining the average income for all general occupancy developments and then comparing that average with the average income of families in each building. As a result of the comparison, buildings will be designated as either high-income or low-income. If a building is designated as high-income (above average for all general occupancy developments), families with income below the PHAs average income for all general occupancy developments would be given an admission preference. The reverse would be true if a building were designated as low-income. At such low-income buildings, families with income above

the average income for all general occupancy developments would be preferred. Although HUD proposed using a single point for establishing average income, it requested comment on whether it would be more desirable to designate a range, above and below average point, as average. For buildings in this middle range, no skipping or deconcentration efforts would apply.<sup>10</sup>

The proposed rule also includes special provisions for mixed finance, newly added units and HOPE VI units. At initial lease-up, a PHA would be required to admit tenants so that the income of the families did not exceed the average income for the general occupancy developments. After initial lease-up, each building would be covered by the deconcentration rule unless it is determined to be a low-income building.

### LALSHAC Comments on the Proposed Deconcentration Rule

LALSHAC's comments supported certain aspects of the proposed rule and requested clarification of other provisions. The comments supported the proposed provision providing that PHAs need not "skip over" households chosen through certain need-based admissions preferences.<sup>11</sup> LALSHAC supported this exception because it reduces the likelihood that the deconcentration rule will lead to reductions in the number of poor families admitted to public housing. LALSHAC further recommended that the final rule should reference all the categories of families included in the former federal preferences. This recommendation, if adopted, would add those involuntarily displaced and living in substandard housing, as defined in the former federal preference definitions, to the list already included in the regulations, namely, those who are homeless, paying more than 50 percent of their income for rent or are victims of domestic violence.

The LALSHAC comments also supported the concept that there should be a middle-tier of buildings or developments that are neither "higher-income" nor "lower-income" to which the deconcentration policy would not apply. This will ensure that there is a material difference between buildings or developments classified as higher- or lower-income that warrants the application of deconcentration policies. It also will reduce substantially the number of buildings, developments and PHAs to which the policy applies; thus reducing administrative burdens and allowing applicants greater freedom in choosing where to live.

LALSHAC's comments also supported the position that data on a building's status as low-income or high-income and the average income of the residents by building should be collected annually and made available to the public on HUD's Multifamily Tenant Characteristics System (MTCs) website.<sup>12</sup> LALSHAC also strongly supported the position that the focus

<sup>3</sup>*Id.* § 1437n(a)(3)(B)(i).

<sup>4</sup>*Id.* § 1437n(a)(3)(B)(iii).

<sup>7</sup>*Id.* § 1437n(a)(3)(B)(iii). For the statutory authority for site-based waiting lists, *see* *Id.* § 1437d(s).

<sup>8</sup>*See* 64 Fed. Reg. 56,843, 56,863, Section 903.7(c)(2) (Oct. 21, 1999) and HUD PHA Plan Template ¶ 3A(6), pg.15 (expires 3/31/02).

<sup>9</sup>65 Fed. Reg. 20,686, 20,687 (Apr. 17, 2000) and HUD Notice PIH 99-51 (issued) 12/14/99, Subject Additional Instructions for Submitting First PHA Plans etc.)

<sup>10</sup>65 Fed. Reg. 20,686, 20,687 (Apr. 17, 2000).

<sup>11</sup>*Id.* at 20,688 (Section 903.2(a)(2)).

<sup>12</sup>At [hud.gov/mtc/public/guest.cfm](http://hud.gov/mtc/public/guest.cfm)

<sup>13</sup>65 Fed. Reg. 20,686, 20,687 (Apr. 17, 2000), Section 903.2(a)(7).

of HUD and PHAs' efforts to deconcentrate families based on income should be on increasing the income of public housing tenants rather than seeking to admit higher-income applicants.

LALSHAC supported the position that small developments in non-poverty areas should be classified as higher-income developments. It was suggested that HUD should modify the proposed rule to ensure that small developments in low-poverty areas are never classified as "lower-income" for purposes of the deconcentration rule. For these buildings or developments, the rule should require the PHA to look at neighborhood characteristics. In support of this position, LALSHAC argued that if the neighborhood characteristics are taken into account for small scattered-site or suburban developments, the buildings would be classified as higher-income and thus provide admission preference to lower-income families. To do otherwise would result in preferring higher-income families in small scattered-site buildings in areas of low poverty. Such a result should not be the intent of a deconcentration policy.

The comments also addressed the issue of holding units vacant while awaiting a higher-income tenant. The regulation proposes to bar any adverse action against an applicant for refusing a unit under the deconcentration policy, but permits PHAs to "limit the number of offers received by applicants."<sup>13</sup> LALSHAC argued that the regulations should be clear that units should not be left vacant while waiting for higher-income applicants. It also suggested that if time delays arise that are attributed to seeking higher-income families, PHAs should be required to document such delays and include this information in the annual plan process. Without this information, PHA's, tenants and HUD will not be able to fully evaluate the true cost, benefit and burden of seeking higher-income families.

The comments supported HUD's position that poor families should have access to public housing units financed through the HOPE VI program, other mixed-finance developments and units newly added to the PHA's stock. The proposed rule for these types of units provides that the average income of the public housing units at initial lease-up shall not exceed the average income for the PHAs "general occupancy public housing developments."<sup>14</sup> After the initial lease-up, the building or development will be designated by reference to the income of the families residing in the building or development as either higher-income or lower-income. If the building or development is designated lower-income, the deconcentration policies would not apply and there would be no skipping to seek out higher-income families. If the public housing building or units are designated as higher-income, skipping would be required for lower-income families.

The comments made several recommendations on HUD's basic approach to all mixed finance developments. First, LALSHAC proposed that the better policy would be

<sup>14</sup>*Id.* (Section 903.2(a)(5)).

<sup>15</sup>*Id.* (Section 903.2(c)).

### *Save the Dates:*

## **2000 LALSHAC MEETING NOVEMBER 19 - 20 HOUSING TRAINING NOVEMBER 18**

The next meeting of the Loose Association of Legal Services Housing Advocates and Clients (LALSHAC) is scheduled to take place on November 19 and 20 in Washington, D.C.

The 2000 LALSHAC meeting will give the various LALSHAC working groups an opportunity to meet in person and continue to work on issues that are of concern to advocates and their clients. This year's meeting will again focus on the recent changes to the housing programs, particularly the Public Housing and Section 8 programs.

LALSHAC meetings are not training conferences and we both prefer and encourage attendance by experienced housing advocates and clients who are familiar with the programs and are willing to participate actively in LALSHAC's ongoing activities (exchanging information on local housing strategies and permissible legislative and administrative advocacy on low-income housing issues at the federal, state and local levels).

We are also planning a one-day training session on the recent legislative and administrative changes that have been made in the Public Housing and Section 8 programs. The training session will take place on Saturday, November 18, immediately preceding the LALSHAC meeting. The training will also take place in Washington and should benefit advocates who are not familiar with the changes in these programs. The training event will be separate from the LALSHAC meeting, although advocates and clients are welcome to attend both.

A more detailed announcement about the 2000 LALSHAC meeting as well as the training event will appear in a future issue of the *Bulletin*, and a summary of the planned activities and registration requirements for both events will be sent to the LALSHAC mailing list and to housing specialists at legal services and other programs. In the meantime, **reserve the dates on your calendar.** If you wish to be added to the LALSHAC mailing list, contact Amy Siemens at the National Housing Law Project: [asiemens@nhlp.org](mailto:asiemens@nhlp.org), by calling her at (510) 251-9400 Ext. 111, or by writing to her at 614 Grand Ave., Suite 320, Oakland, CA 94610. ■

to treat the public housing building or units within a mixed finance development as a higher-income development. Second, they urged that the deconcentration policy should apply to any building receiving operating subsidies regardless of whether it is owned or managed by an entity other than a PHA. Third, the comments recommended that all public housing replacement units should be covered by the provisions of the deconcentration regulations that pertain to mixed finance, HOPE VI and newly added units. LALSHAC urged that all HOPE VI developments, whether they involve rehabilitation or new construction, should be subject to the income standards at the initial lease-up of the average income set at the PHA's average for general occupancy. The comments also proposed the elimination of a preference for high-income applicants if the building is determined to be lower-income because, by design, it is part of a mixed income development. Fourth, LALSHAC stated that any deconcentration policy should not interfere with a displaced public housing tenant's right to reoccupancy. Finally, they urged that any deconcentration policy should not interfere with previously approved HOPE VI financing arrangements.

#### LALSHAC Comments on Fair Housing Rule

The deconcentration regulation also addressed certain fair housing requirements. The proposed regulations were clear that deconcentration policy requirements and the fair housing requirements are separate and independent as they arise under different statutory authorities.<sup>15</sup> Thus, LALSHAC urged that if necessary the two provisions could be separated and finalized independently, especially if the proposed deconcentration rule (as contrasted with the Fair Housing rule) became too controversial. LALSHAC also urged HUD to focus on addressing fair housing issues on a metropolitan-wide basis. Thus, the comments urged that each PHA should be required to provide any applicant or individual who makes an inquiry about the availability of housing with a list of all PHAs and all HUD financed, assisted or formerly assisted properties in the rental market/metropolitan area. Each listing should provide the name, address, telephone number and contact person. The list should further indicate whether the property serves the elderly, disabled, elderly and disabled, or families; whether the units are accessible; and provide the number of units by bedroom size. The purpose of such a requirement is to expand housing choices for the lowest-income and minority applicants who may not be aware that there are other affordable housing options available. Each PHA should be required to certify that this information is given to each applicant and each individual who has made an application inquiry.

A copy of the LALSHAC comments is available to LALSHAC members on the bulletin board at the NHLP website.<sup>16</sup> ■

<sup>16</sup>At [nhlp.org/lalshac/members.htm](http://nhlp.org/lalshac/members.htm)

## SECTION 8 MOBILITY REPORT ISSUED

The recently published Urban Institute report, *Section 8 Mobility and Neighborhood Health*<sup>1</sup>, examines the impact of the tenant-based Section 8 program on neighborhoods. Based on an October 1999 symposium<sup>2</sup> sponsored by the Urban Institute with the support of the Department of Housing and Urban Development (HUD), the report examines three major issues in turn:

- whether Section 8 recipients have a detrimental impact on the neighborhoods into which they move;
- the potential causes of "clustering" Section 8 recipients in certain neighborhoods;<sup>3</sup> and
- the special challenges that public housing authorities (PHAs) can face when attempting to move families relocated from demolished public housing into tenant-based Section 8 units.

In each section, the report examines research findings, analyzes program and policy implications as suggested by symposium participants and presents questions for further research.

The report acknowledges that in many housing markets, and for many families, the Section 8 program is effective. Significantly, there is no empirical evidence that the Section 8 program is undermining the health of the vast majority of urban neighborhoods where it exists.<sup>4</sup> Nevertheless the report concludes that the potential for an adverse impact on neighborhoods should not be ignored. Anticipating and responding to real or perceived adverse impacts on neighborhoods is especially important because the Section 8 program is the chief federal housing program and the only one that is increasing in size. Thus the report concludes that as the program expands, it should be strengthened in order to both increase opportunities for Section 8 recipients and to avoid excessive clustering of families in vulnerable neighborhoods.

<sup>1</sup>See Margery A. Turner et al, *Section 8 Mobility and Neighborhood Health: Emerging Issues and Policy Challenges* (2000). The report is available at [urbaninstitute.org](http://urbaninstitute.org)

<sup>2</sup>There were 50 participants, of which 12 were HUD officials, seven with University affiliation, four were connected to PHAs or state agencies, three were other federal government officials, six were from advocacy groups, six were from HUD consulting firms, three were from foundations, two were from a think tank and six were from the Urban Institute.

<sup>3</sup>Clusters are defined as places where Section 8 recipients make up two-to-three times their expected percentage, given a neighborhood's share of available affordable housing.

<sup>4</sup>Turner, at 11.

## The Impact of Section 8 Residents on Their Neighborhoods

This section of the report breaks down the question of the impact of the Section 8 program on neighborhoods into an examination of problem behavior by Section 8 tenants and abuse of the Section 8 program by landlords. While comprehensive data is not yet available, HUD is conducting new research that appears to show that many Section 8 residents are clustered in high-poverty neighborhoods. Clusters are found in as many as 20 percent of the neighborhoods in the 50 largest urban areas of the country.<sup>5</sup> These clusters may serve as many as 45 percent of Section 8 recipients nationwide.<sup>6</sup>

In addressing problem behavior by tenants, the authors note that there is no definitive evidence to support the claim that Section 8 residents bring an increase of crime into neighborhoods. Instead, opposition to the Section 8 program and what impact it might have on future neighborhood character is most visible in neighborhoods experiencing racial transition and tension.<sup>7</sup> Regardless of the basis, the report concludes that neighborhood residents' complaints should be addressed because doing so may ultimately lead to an increase in support for the Section 8 program.

Symposium participants proposed several potential solutions to the perception problem that Section 8 recipients face in some communities. The potential solutions include more rigorous PHA screening of participants, educating landlords and community groups to help build understanding and support for the program, and dispelling stereotypes about Section 8 participants.<sup>8</sup> The report encourages PHAs to provide more supportive services to residents while also being more responsive to landlord concerns, perhaps by actively helping to evict problem tenants.<sup>9</sup>

The report recommends six questions for future research. These include:

- What is the incidence and severity of actual bad behavior by tenants?
- Does counseling reduce the incidence of bad behavior?
- Do the perceptions of clustering and bad behavior match reality?
- Does the presence of Section 8 tenants affect the quality of neighborhood life and property values?<sup>10</sup>

In addressing the abuse of the program by some Section 8 landlords, the report notes that some landlords in weak hous-

ing markets exploit the guaranteed rent revenue offered by the program by refusing to evict tenants who are violating lease terms. This occurs in some neighborhoods where the Section 8 rents are above market because landlords have no incentive to punish Section 8 tenants for disruptive behavior. In tighter markets, on the other hand, there is evidence that the Section 8 program improves the neighborhood through enforcement of the Housing Quality Standards (HQS).<sup>11</sup>

Race is also a factor in how the Section 8 program affects neighborhoods. Research has shown that minority Section 8 recipients tend to locate in lower-income minority neighborhoods which tend to be more accepting of other minority families. These neighborhoods also tend to be the most economically vulnerable.<sup>12</sup> Thus the clustering of Section 8 recipients and any attendant destabilization of the community may have little to do with the character of the tenants and more to do with the forces that concentrate Section 8 units in areas of weak rental demand.<sup>13</sup> Moreover, there is the potential for landlords to take advantage of the Section 8 program and further destabilize the community because these communities are already at risk due to low or declining property values.

Recommended solutions to these problems include:

- monitoring and responding promptly to neighborhood complaints;
- strengthening local rent reasonableness determinations to ensure that Section 8 rents reflect the true market rents;
- developing programs for landlords to improve their understanding of their responsibilities under the program and addressing issues such as problem tenants; and
- imposing sanctions against bad landlords and encouraging local PHAs to partner with other community agencies to help improve troubled neighborhoods.<sup>14</sup>

Four basic future research priorities were identified in this area. Several of them overlap with recommendations described above. They are:

- whether and under what conditions the entry of Section 8 recipients into a neighborhood affects quality of life and property values;

<sup>11</sup>The presence of Section 8 units in more affluent neighborhoods can actually raise property values for nearby housing because of improvements that are often made to buildings prior to occupancy. See George C. Galster et al, *The Impact of Neighbors Who Use Section 8 Certificates on Property Values*. 10 Housing Policy Debate 879, 912 (1999).

<sup>12</sup>Turner at 23-25. Thus, in neighborhoods that already have a high degree of poverty, the added presence of a large number of Section 8 families can have a destabilizing effect on communities.

<sup>13</sup>*Id.* at 25. It is also true that landlords in more affluent areas can attract market rate tenants at rents equal to or above Section 8 rents and so have no incentive to join the program.

<sup>14</sup>*Id.* at 26-27.

<sup>5</sup>*Id.* at 10.

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

<sup>7</sup>*Id.* at 15.

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

<sup>9</sup>*Id.* at 18.

<sup>10</sup>*Id.* at 20.

- what types of neighborhoods are most likely to be adversely affected by an influx of Section 8 families;
- to what extent and in what types of neighborhoods are Section 8 recipients clustered; and
- what incentives or sanctions would encourage landlords to care for properties and enforce lease terms.

### Causes of Clustering By Section 8 Recipients

Consideration of this issue is split into two parts: supply-side reasons for the clustering, and demand-side reasons for this concentration. On the supply-side, several factors promote clustering. One is simply that more affluent neighborhoods do not have moderate cost rental units. Another potential contributing factor is that Fair Market Rents (FMRs) are now set at the 40<sup>th</sup> percentile of units in the area, rather than the 45<sup>th</sup> percentile. As a result, payment standards and FMRs are below the market rents, making it harder for recipients to move into suburban neighborhoods.<sup>15</sup> Another cause of the clustering is that most voucher recipients rent in place,<sup>16</sup> or in complexes that already accept Section 8.<sup>17</sup> Finally, clustering frequently occurs because of discrimination against low-income people.<sup>18</sup> Efforts to combat clustering have sometimes led to increased community concern about neighborhood stability and, through pressure on landlords, a decrease in the number of units available to Section 8 participants.

To reduce supply-side problems that lead to clustering, the report makes several suggestions. These include changes intended to increase the willingness of landlords to accept Section 8 vouchers, such as strengthening the local administration of the Section 8 program to reduce bureaucratic delays, providing incentives to landlords to compensate them for the time that apartments are off-line pending inspections and increased, sustained outreach to landlords.<sup>19</sup>

Other suggestions include:

- reducing barriers to portability (perhaps by having the Section 8 program administered by a state or regional agency instead of by local PHAs);
- raising FMRs nationally (by returning them to the 45<sup>th</sup> percentile of prevailing rents) thereby making it easier for recipients to move into better neighborhoods; and

<sup>15</sup>*Id.* at 31

<sup>16</sup>*Id.* at 32. Many Section 8 recipients will continue to rent the same apartment as before they became eligible for Section 8 by negotiating with their landlord to accept the voucher if the landlord does not do so already.

<sup>17</sup>*Id.* at 32.

<sup>18</sup>*Id.* at 34.

<sup>19</sup>*Id.* at 34-35.

- allowing recipients to pay more of their income toward rent by removing the 40 percent cap on tenant contribution toward rent for new participants.<sup>20</sup>

There are eight questions set out for future research. These questions include whether landlords are using non-participation in Section 8 as a way to avoid renting to people of color or families with children, whether HUD's Section 8 Management Assessment Program (SEMAP) is improving the way the program is administered and what incentives might encourage more landlords to participate in the program.<sup>21</sup>

On the demand side of clustering, many Section 8 participants chose not to move very far from their pre-program neighborhoods. Some of the reasons given for this lack of mobility are that they want to be closer to services such as public transportation, hospitals and community organizations such as their places of worship, as well as near their family and friends.<sup>22</sup> In order to encourage more demand for Section 8 units in lower-poverty areas, the report suggests that local PHAs will have to do several things:

- improve Section 8 briefings and information material;
- collect and distribute information on services and amenities in outlying communities, such as public transportation;
- provide active support to families during the housing search process, including transportation to and from the housing site; and
- provide follow-up services for several months after the move to help ease the family's transition into the neighborhood.<sup>23</sup>

HUD could also help in this process by providing funding to support mobility counseling and regional collaboration. HUD could further help by making it clear to PHAs that the success they have in moving families out of neighborhoods of high-poverty and minority concentration will be more of a factor in the SEMAP evaluation process.<sup>24</sup>

Several questions for further study are set forth including whether information about mobility opportunities or

<sup>20</sup>*Id.* at 35-36. This recommendation was extremely controversial with almost as many participants opposing it as supporting it. While this change may benefit individual tenants, from a policy standpoint it is likely to be detrimental to tenants since the 40 percent cap was placed in the program to alert HUD of the need to increase FMRs in certain jurisdictions. Without the cap there will be little pressure on HUD to increase FMR rates.

<sup>21</sup>*Id.* at 37.

<sup>22</sup>*Id.* at 39.

<sup>23</sup>*Id.* at 42-43.

<sup>24</sup>*Id.* at 43.

*Job Announcement:*  
**STAFF ATTORNEY**

The National Housing Law Project (NHLP), a national housing law and advocacy center that promotes housing justice on behalf of very low-income persons, is seeking an attorney to begin work immediately in its Oakland office.

The Staff Attorney will be responsible for providing substantive legal and technical support to housing attorneys, other housing advocates, resident organizations and nonprofit agencies in one or more of the following areas: federally-assisted public, Section 8 and rental housing and federally assisted home ownership programs. The staff attorney will also undertake research, draft and edit publications, reports, articles and other materials on the operation of federal housing programs and residents' and homeowner's rights under those programs, train advocates, resident organizers and others, analyze and respond to federal housing legislation and regulations and assist or engage in litigation.

### **Qualifications**

#### *The applicant should have:*

- an understanding of and, preferably, working experience with federal public and assisted housing programs, preservation of federal affordable housing stock (including public housing and project-based Section 8 housing) or federal home ownership programs;
- understanding of rental and home ownership financing;
- five or fewer years of practice as an attorney.

#### *The applicant must have:*

- excellent oral and written communication skills;
- experience in training and litigation is preferred;
- excellent analytical skills;
- a demonstrated strong commitment to advancing the housing rights and interests of very low-income persons and households;
- a willingness to travel;
- a law degree and be admitted to practice in at least one state.

### **Salary**

Salary is based on experience; excellent benefits.

### **Application**

Please send a cover letter, resume, three professional references and a writing sample to Gideon Anders, Executive Director, National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610. The cover letter should indicate the position for which you are applying, your interest in the position, a summary of job qualifications, relevant work experience and salary history. Please, no phone calls or faxes.

### **Deadline**

The position is open until filled. NHLP seeks to hire a qualified individual as soon as possible and would appreciate receiving applications promptly.

NHLP is an affirmative action equal opportunity employer that does not discriminate on the basis of race, color, national origin, ethnic background, religion, sex, sexual orientation or disability. We encourage applications from persons of color.

assistance affects locational outcomes, what percentage of families who move to non-cluster neighborhoods return after a short time, and what mobility counseling tools are the most effective.<sup>25</sup>

### Relocation of Residents from Demolished Public Housing

Former public housing residents face unique challenges when they are forced to move with Section 8 from their long-term public housing homes. They often encounter neighborhood opposition, landlord discrimination, a lack of affordable units, personal problems, a lack of transportation and unfamiliarity with the Section 8 program. Symposium participants recognized that the relocation of public housing tenants raises many of the same issues facing all Section 8 recipients, while at the same time presenting unique concerns. To help reduce these challenges and increase the likelihood of success for this population, symposium participants encouraged local PHAs to engage in better relocation planning. This would allow them to provide more intensive counseling and case management, including one-on-one housing counseling, before the relocation actually occurs. Further, they encouraged local PHAs to also provide follow-up services and support to families.<sup>26</sup>

The report identifies seven areas of future research including:

- how effective search assistance programs are for public housing relocatees;
- whether there are enough low-cost units to meet the needs of increasing numbers of relocatees;
- what are the best ways to encourage landlords to accept these families;
- an analysis of the barriers to housing;
- the incidence and severity of problem behavior among public housing relocatees; and
- public perceptions of clustering.<sup>27</sup>

### Conclusion

This report is a resource for identifying issues that inhibit Section 8 mobility and interfere with the implementation of a relocation plan for tenants displaced from public housing. Advocates should review the report when analyzing a public housing demolition proposal that contains a relocation plan or when reviewing a PHA plan containing strategies to increase the effectiveness of the Section 8 program. The report will also assist advocates in their review of the Section 8 program for purposes of determining compliance with civil rights laws and evaluating a PHA Plan's Civil Rights Certification. ■

<sup>25</sup>*Id.* at 44. Simplifying portability practices and second move counseling were also listed as critical strategies.

<sup>26</sup>*Id.* at 49.

<sup>27</sup>*Id.* at 50.

## NEW STUDIES ASSESSING RISK OF OPT-OUTS ENABLE ADVOCATES TO TARGET PRESERVATION EFFORTS

Starting in the 1960s, the Federal Government provided financing and subsidies for the construction of thousands of affordable housing units. Over the last few years, a substantial portion of the affordable housing stock has become threatened because of the conversion to market-rate housing as Section 8 contracts expire. Although Congress and the Department of Housing and Urban Development (HUD) have provided for the continuation of Section 8 project-based subsidies, property owners have the option at expiration of the Section 8 contract to renew or to terminate participation. A variety of factors influence owners' decisions at this crucial stage, financial returns being the primary one.

Accordingly, the California Housing Partnership Corporation (CHPC) conducted a study of the financial incentives of owners to "opt out" of HUD's Section 8 programs and published the results.<sup>1</sup> A similar assessment of the risk of opt-outs was recently performed by the Washington Low Income Housing Network (WLIHN).<sup>2</sup> The studies enable California and Washington housing advocates to gauge what developments are most at risk of conversion, target and prioritize their preservation efforts, and provide a potentially valuable template for advocates in other states. This article explains the sources of data and methodology employed by CHPC and WLIHN in creating their studies.

### CHPC Study

CHPC's risk assessment study was based principally on comparisons of the current Section 8 contract rent of a project with surrounding comparable market rents. The study also incorporated information on the type of project owner, the Section 8 expiration date, and other restrictions precluding or limiting prepayment or opt-outs. The current Section 8 rent for a project was calculated with the use of data from HUD's Section 8 Expiring Contracts website,<sup>3</sup> specifically the ratio of aggregate current restricted rents to the aggregate Fair Market Rent (FMR). CHPC generated a rough estimate

<sup>1</sup>The study is entitled *Preserving California's Housing Stock: A Risk Assessment of HUD-Assisted Multifamily Housing in California*, and was published in December 1999. CHPC's contact information is as follows: California Housing Partnership Corporation, 369 Pine Street, Suite 300, San Francisco, CA 94104, Ph: (415) 433-6804, Fax: (415) 433-6805.

<sup>2</sup>The study is entitled *Washington State Project-Based Section 8 Housing: A Risk Assessment*, and was published in its most recent version in October 1999. WLIHN's contact information is as follows: Washington Low Income Housing Network, 1000 Eighth Ave., Suite 105, Seattle, WA 98104, Ph: (206) 442-9455.

<sup>3</sup>At [hud.gov/fha/mfh/mfhsec8.html](http://hud.gov/fha/mfh/mfhsec8.html).

of rents per bedroom (and accordingly the current Section 8 rent) by multiplying the aggregate ratio of restricted rents to FMRs by the 1999 FMRs by bedroom size.<sup>4</sup> Besides the current affordable rent, a second variable CHPC identified that influences the project owner's decision to continue or opt out is what rent the property would bring if it is operated as a market-rate development. To determine the market rent, CHPC relied on data furnished by a commercial service, RealFacts, that provides rental data for hundreds of thousands of California apartments. For each expiring Section 8 contract eligible for an opt-out, CHPC searched the RealFacts database for market-rate developments of comparable size, mix of bedroom types, and amenities. CHPC then compared the current affordable rent and the corresponding market rent to determine what additional rental income, if any, would accrue to an owner who opted out of the Section 8 program.

Next, CHPC considered whether the project owner was a nonprofit or profit-motivated. Because nonprofit owners are generally subject to use restrictions precluding opt-outs or choose not to convert to market-rate because of their mission, CHPC automatically assigned a rating of *low risk* of conversion to projects with nonprofit owners.<sup>5</sup> With profit-motivated owners, CHPC employed the affordable rent/market rent comparison discussed above to determine the financial advantage of opting out. Regarding the expiration date of the Section 8 contract, CHPC limited its risk assessment to projects whose contracts are set to expire through 2005.<sup>6</sup>

Finally, CHPC considered other restrictions that might preclude or limit prepayments or opt-outs, whatever the financial advantage of opting out would be. Where data was available, CHPC incorporated information pertaining to project participation in Federal Preservation programs or Flexible Subsidy programs.<sup>7</sup> Regarding the former, under Title II/ELIHPA, which existed from 1988 to 1991, participating projects are required to remain affordable to low-income tenants for an additional 20 years. Regarding the latter, under Title VI/LIHPRHA, participating projects are required to remain affordable for an additional 50 years. The Flexible Subsidy program was a low-interest, deferred loan program to fund capital improvements and repairs on FHA-insured properties lacking adequate replacement reserves. Project participation in the Flexible Subsidy program was conditional to the owner's agreement to maintain the "low- and moder-

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rent for a project is 80 percent of FMR, and the FMR for a one-bedroom unit in that area is \$500, the estimate of the current affordable rent would be \$400 (.8 x \$500).

<sup>5</sup>Note, however, that advocates would be wise to confirm the plans of nonprofit owners directly, since several have converted or sold projects that they own.

<sup>6</sup>Expiration dates were obtained from HUD's database.

<sup>7</sup>CHPC did not actually use the Flexible Subsidy information in its assessment of risk of opt-out (owing to uncertainty about what HUD's policy would be in this area), but included the information in the database anyway because it may be a possible source of effective restrictions on opt-outs, as explained below.

<sup>8</sup>It should be noted that although many such *low risk* properties may be

ate-income character" of the project for some specified period of time, generally for the full term of the underlying 40-year project mortgage. Prepayment under the Flexible Subsidy form Use Agreement requires HUD approval.

A final source of possible restrictions highlighted by CHPC, though not actually used in the assessment, are local government requirements, including:

- redevelopment agency deed restrictions;
- soft second loan agreements;
- conditional use or variance requirements; and
- other restrictions that create an obligation to extend the affordable use of a project.

Pulling the factors together, CHPC categorized the levels of risk for project conversion as follows:

- If the project's Section 8 contract was set to expire within five years, the owner was either profit-motivated or not known to be a nonprofit, and the project did not receive Title II/ELIHPA or Title VI/LIHPRHA incentives and had not had a recent transfer of ownership under any other type of preservation-oriented acquisition, the project was categorized as either *high risk*, *medium risk*, or *low risk/Section 8 Market Factors*.
- If the project's Section 8 rent was 105 percent or less of the estimated potential market rent, the project was then categorized as *high risk*.
- If its Section 8 rent was between 105 percent and 120 percent of estimated potential market rent, it was categorized as *medium risk*.
- If the project's Section 8 rent was above 120 percent of estimated potential market rent, it was categorized as *low risk*.<sup>8</sup>

Projects were also categorized as *low risk/Section 8 Restricted or Nonprofit Ownership* if the owner was a nonprofit, or if the owner was profit-motivated and the Section 8 contracts expired within the next five years, but there were ELIHPA or LIHPRHA incentives already provided or there was a recent transfer of ownership subject to preservation-oriented financing. CHPC did not forecast levels of risk for projects whose Section 8 contracts were set to expire beyond December 31, 2005.

In terms of factual results, CHPC's study assigned a level of *high risk* of conversion to 207 California projects, with 18,752 units, representing 14 percent of the total units assessed by CHPC. A level of *medium risk* of conversion was assigned to 102 projects with 8,958 units, representing

eligible for participation in HUD's Mark-to-Market mortgage restructuring program, many of these properties are at risk of conversion to vouchers through Rental Assistance Assessments conducted by the Participating Administrative Entity.

<sup>9</sup>The percentages do not add up to 100 percent because not all properties

6.7 percent of the total stock assessed. A *low risk* level was assigned to 999 projects, with 82,101 units, representing 61 percent of the stock assessed.<sup>9</sup>

### WLIHN Study

Although WLIHN's study employed some of the same factors as the CHPC study (including the relative values of the current affordable rent, the market rent, and the motivations of the property owners), WLIHN's study used them in a slightly different way, and incorporated other variables also. The variables can be grouped in five categories:

- I. assessment of the property or owner;
- II. effect of HUD-subsidized mortgage;
- III. level of subsidy in relation to FMR or street rent;
- IV. demand in local housing market; and
- V. participation in Mark-to-Market.<sup>10</sup>

Starting with category I, WLIHN examined for each project whether:

- (a) it had failed a HUD physical inspection;
- (b) the owner had given formal or informal notice of intent to opt out;
- (c) the mission of the organization indicated a commitment to stay in the program;<sup>11</sup> or
- (d) the owner had prepaid a HUD-subsidized mortgage (usually under Sections 221(d)(3) BMIR or 236), thus absolving the owner of corresponding rent restrictions.

If (a), (b) or (d) occurred, WLIHN automatically assigned a *higher risk* level to the project. Conversely, if (c) was the case, a *lower risk* level was assigned. If none of those conditions held, WLIHN next assessed the level of subsidy in relation to FMR<sup>12</sup> or "street rent."<sup>13</sup> If the subsidized rent was below 100 percent of FMR or street rent, WLIHN then examined whether there was a HUD-subsidized mortgage, and subse-

were assigned a level of risk. Those not assigned a risk level include 140 properties where prepayment or opt-out already occurred, and the 325 properties whose Section 8 contracts do not expire until after December 31, 2005.

<sup>10</sup>WLIHN's study includes in the appendices a useful and thorough flow chart outlining its method of assessment. The discussion below is intended only to sketch briefly its structure. Those with further interest are encouraged to consult it directly.

<sup>11</sup>Unlike CHPC, WLIHN focused less on whether the owner was profit-oriented or nonprofit, and more on whether the mission of the owners indicated a commitment to affordable housing. WLIHN did so because some nonprofits are not housing-oriented and thus may opt out because of greater commitment to some other cause.

<sup>12</sup>FMR data was obtained from the HUD database.

<sup>13</sup>Data on "street rent" was obtained from the mandatory rent comparability studies that owners must conduct when renewing their contracts. The results of these studies are conveyed to HUD, who furnished the data to WLIHN. Rent data for 119 of the 506 contracts in Washington was obtained in this manner.

quently considered the level of demand in the local housing market.<sup>14</sup> If the subsidized rent was 100 to 120 percent of FMR or 100 to 110 percent of street rent, WLIHN next evaluated whether the project was exempt from restructuring (projects financed under HUD's Section 202 program or RHS's Section 515 program, or through state or local bond financing). If it was, the level of demand in the local housing market was considered as well. A similar analysis was used where the subsidized rent was over 120 percent of FMR or over 110 percent of street rent, except that if the project was not exempt from restructuring, WLIHN considered whether it was eligible for Mark-to-Market restructuring. If so, WLIHN then classified the project at *lower risk*,<sup>15</sup> and if not, then at *intermediate risk*.

In terms of results, WLIHN concluded that of 506 projects with Section 8 contracts remaining in Washington, 215, or 42 percent of projects, representing 8,800 units, were at a *higher risk* of the owner opting out, meaning that the incentives for opting out seemed to be much higher than those for renewing. Another 126 projects, representing 25 percent of the projects and 3,980 units, were classified at an *intermediate risk* level, meaning that the incentives were roughly equal for opting out or for staying. Finally, 165 projects, representing 33 percent of the projects and 6,027 units, were found to be at *lower risk*.

### Conclusion

These studies establish a good starting point for raising awareness about the conversion challenge within specific jurisdictions. Although the studies provide a potentially valuable model, local advocates still need to contact the appropriate organizations to determine the true levels of risk for any particular property. Moreover, it will be crucial over time to monitor and correct the data, and to revise the methodology as conditions and policies evolve. ■

<sup>14</sup>The intensity of demand was measured with the use of either the rental vacancy rate for the county or MSA or the percentage change in the median home price in the past year or, where neither was available, the numbers of home sales and building permits issued.

<sup>15</sup>See note 8, *supra*.

## NEW HUD REPORT DEMONSTRATES GROWING HOUSING CRISIS FOR LOW-INCOME RENTERS

The Department of Housing and Urban Development's (HUD) Office of Policy Development and Research recently submitted to Congress its latest report on the nation's most pressing housing needs. The report, titled *Rental Housing Assistance-The Widening Crisis*,<sup>1</sup> examines the effects of the affordable housing crisis on renters in the United States from 1991 to 1997. Its data confirms that despite economic growth, "worst-case housing needs"<sup>2</sup> continue to increase, and that recently the pace of the increase has accelerated. The report makes a number of important observations, including:

- that families with worst-case housing needs are increasingly likely to include a full-time earner;
- that the stock of affordable housing continues to shrink; and
- that the growth of worst-case needs is particularly strong among those with extremely low incomes, those living in suburbs, and minorities.

The report concludes with several policy recommendations, including:

- an expansion of the Section 8 voucher program;
- increased production of affordable housing through instruments such as FHA Multifamily Insurance and the HOME program;
- renewed investment in economically distressed areas through Community Development Block Grants and other instruments; and
- use of surplus funds from the FHA's Mutual Mortgage Insurance Fund.

### Growing Worst-Case Needs

A central finding of the report is that worst-case housing needs are growing quickly and are greater than ever. The report indicates that from 1991 to 1997 the pace of growth for households with worst-case needs was nearly double the

rate of growth for all households in the United States, and that the pace accelerated from 1995 to 1997. The data suggests that approximately three-quarters of families falling into the worst-case needs category did so solely by paying more than one-half of their income for rent, indicating that while availability of quality housing continues to be a problem, the lack of *affordable* housing is more prominent.

### Families With Worst-Case Needs Include Full-Time Workers

Another key finding of the report is that families with worst-case needs are increasingly likely to include a full-time earner. The number of households with both worst-case needs and a full-time earner grew 28 percent between 1991 and 1997, over three times faster than households without a full-time earner. This implies that the increase in worst-case needs cannot be attributed to lack of work. Among families with a full-time earner, increases were most pronounced for

## NHLP PUBLISHES REPORT ON WELFARE AND HOUSING

NHLP has published a new report entitled *Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients?* It reviews the recent changes to the welfare programs and discusses the impact that these changes will have on welfare recipients and housing providers. It also sets out policies and programs that housing providers can and should adopt that will help welfare recipients secure and keep jobs and otherwise assist them in the transition from welfare to self-sufficiency. The report also discusses actions that advocates should take to encourage housing providers to adopt policies favorable to very low-income households.

A copy of the report has been sent to each legal services office and to public housing authorities with over 125 units of public housing. An electronic version of the report is available in PDF format on the NHLP website at [nhlp.org](http://nhlp.org). If you have not received a copy of the report by the end of July, you may order a hard copy by writing to Amy Siemens at NHLP, 614 Grand Ave., Suite 320, Oakland, CA 94610. Please include a \$5 check, payable to NHLP, for shipping and handling. ■

<sup>1</sup>At [huduser.org/publications/affhsg/worstcase00.html](http://huduser.org/publications/affhsg/worstcase00.html).

<sup>2</sup>"Worst-case housing needs" are defined as the needs of families with very low incomes (i.e. incomes under 50 percent of the local median) who either pay more than one-half of their income for rent or who live in severely inadequate housing and who receive no housing assistance (notably, the "worst-case housing needs" category does not include the homeless).

families with children, families in central cities (the number of which increased by 66 percent from 1991 to 1997), and minority families (with growth rates of 74 percent for African-American families and 31 percent for Hispanic families).

### Decreasing Stock of Affordable Housing

Accompanying these trends is a contraction in the supply of affordable housing.<sup>3</sup> The report indicates that from 1991 to 1997 the supply of affordable housing decreased by 5 percent, representing a loss of over 370,000 units. This trend continued in the face of growth in the nation's overall rental stock and an increase in the vacancy rate. Moreover, the gap between the number of extremely-low-income renters and the number of affordable and available units widened further, with the rate accelerating from 1995 to 1997. Declines in the affordable housing stock were most pronounced in suburban areas, with 10 percent of the stock (200,000 units) disappearing from 1991 to 1997.

### Concentrated Growth of Worst-Case Needs

Although worst-case needs continue to be shared by many different demographic groups, the report identified several populations for whom the growth of worst-case needs was especially strong or for whom worst-case needs were especially aggravated. First, from 1991 to 1997 worst-case housing needs became more concentrated among extremely low-income households. By 1997, over three-quarters of households with worst-case needs had extremely low incomes. Second, worst-case housing needs became more concentrated among minority households, and particularly Hispanic households. Third, low-income families in the suburbs were more likely to have worst-case needs than their counterparts in urban and rural areas, in part because they were less likely to receive assistance. Over one-third of all families with worst-case needs lived in the suburbs by 1997. Next, worst-case needs were disproportionately suffered by non-elderly households and households without children. Finally, the level of worst-case needs continued to be highest in the Western and Northeastern regions of the United States, with the proportions of very low-income renters having worst-case needs at 40 percent and 39 percent, respectively.

The report highlights multiple factors contributing to the increase in families with worst-case needs. These include the following:

- the continuing suburbanization of population and employment;
- regulatory barriers to the development of multi-family housing;

<sup>3</sup>Affordable housing is defined as rental housing costing less than 30 percent of the monthly income of extremely low-income families (families whose monthly income is under 30 percent of the local median).

- under-investment in affordable housing by local communities;
- continuing discrimination;
- the rising incomes of higher-income families, which drive up rents; and
- the elimination of federal appropriations for additional rental vouchers between 1995 and 1998.

### HUD's Policy Recommendations

In view of these factors, the report advances several recommendations. The first is to expand the Section 8 voucher program. The authors note that since most households with worst-case needs suffer only from a severe rent burden, provision of a sufficient number of vouchers would lift most families out of the worst-case needs category.<sup>4</sup> The authors also highlight the portability of vouchers, which aids the mobility of individuals seeking jobs. The second recommendation is to increase the production of affordable housing. In this regard, the report points to the FHA Multifamily Insurance Program, the Low-Income Tax Credit (LIHTC), the HOME program, and the HOPE VI program. Third, the report encourages expanded investment in economically distressed areas, using instruments such as Community Development Block Grants (CDBGs), the Section 108 Loan Guarantee Program, the Economic Development Initiative, Empowerment Zones, and the America's Private Investment Companies initiative (APIC). Finally, the report points to the use of surplus funds generated by FHA's Mutual Mortgage Insurance Fund, which had a surplus of \$16 billion in Fiscal Year 1999.

Notably absent from HUD's policy recommendations is any requirement that the federal government take affirmative steps to preserve and improve the existing stock of public and assisted housing or to strengthen the targeting of existing and new units to meet worst-case needs. Perhaps these simple steps are too obvious to merit special mention. ■

<sup>4</sup>This assumes, however, that property owners will accept the vouchers.

## 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) have recently issued. 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 website 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 Regulations

#### Allocation of Funds Under the Capital Fund; Capital Fund Formula; Amendment; Final Rule 65 Fed. Reg. 25,445 (May 2, 2000)

**Summary:** This rule makes one amendment to the March 16, 2000 final rule implementing the new formula system for allocation of funds to public housing agencies (PHAs) for their capital needs to correct the regulatory provision concerning performance awards for high performing PHAs.

**Effective Date:** June 1, 2000.

#### Adoption of Revisions to OMB Circular A-110; Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Interim rule 65 Fed. Reg. 30,498 (May 12, 2000)

**Summary:** This interim rule revises HUD's regulations that implement the requirements of the Office of Management and Budget (OMB) Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*. OMB issued a final revision to Circular A-110 on September 30, 1999, which was published on October 8, 1999. This interim rule will provide uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

**Effective Date:** June 12, 2000.

**Comment Due Date:** July 10, 2000.

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

<sup>2</sup>At [hudclips.org/cgi/index.cgi](http://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 [rdinit.usda.gov/regs/](http://rdinit.usda.gov/regs/).

#### Supportive Housing Program—Increasing Operating Cost Percentage; Interim rule 65 Fed. Reg. 30,822 (May 12, 2000)

**Summary:** This document amends the Supportive Housing Program regulations by changing the number of years for which the grant can cover 75 percent of operating costs from the first two years of the grant term to all years. This amendment will provide the full statutory flexibility allowed for this activity.

**Effective date:** June 12, 2000.

**Comments Due Date:** July 11, 2000.

### HUD Federal Register Notices

#### Fair Housing Initiatives Program; Notice of Public Forum Focus Group Meeting Information 65 Fed. Reg. 25,431 (May 1, 2000)

**Summary:** This notice announces the availability of information from a Focus Group Meeting held in connection with the preparation for a National Best Practices Symposium for 2000. Among the topics discussed was information that may be related to the Fair Housing Partnership Component (FHPC) of the Fair Housing Initiatives Program (FHIP) funding availability announcement that was part of HUD's SuperNOFA, published February 24, 2000.

**Comment Due Date:** May 31, 2000.

#### Community Development Technical Assistance Programs; Fiscal Year 1999; Announcement of Funding Awards 65 Fed. Reg. 26,625 (May 8, 2000)

**Summary:** This notice announces HUD's funding decisions in a 1999 competition for funding for Community Development Technical Assistance Programs. The notice contains the names of award winners and the amounts of the awards.

#### Notice of PHAs Eligible for FY 2000 Funding and Final Opportunity To Obtain FY 1999 Funding Under the Public Housing Drug Elimination Program (PHDEP); Notice 65 Fed. Reg. 30,317 (May 10, 2000)

**Summary:** Publishes the list PHAs eligible to receive Fiscal Year 2000 PHDEP funding and also notifies PHAs that are eligible, but have not applied, to receive PHDEP FY 1999 funding that they have one final opportunity to apply for this funding.

**Application Due Dates:** June 26, 2000.

#### Fiscal Year 2000 Notice of Funding Availability for the Indian Housing Drug Elimination; Notice 65 Fed. Reg. 30,502 (May 11, 2000)

**Summary:** Announces availability of approximately \$22,000,000 in FY 1999 (\$11 million) and FY 2000 (\$11 million) for Indian Housing Drug Elimination Program (IHDEP) grants. Eligible Applicants: Indian Tribes and recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipients).

**Application Deadline:** July 10, 2000.

**FY 1999 Public and Indian Housing Economic Development and Supportive Services Carryover; Announcement of Funding Awards**  
65 Fed. Reg. 31,182 (May 16, 2000).

*Summary:* Lists funding awards for FY 1999 to housing agencies (HAs), Tribes and Tribally Designated Housing Entities (TDHEs) under the Economic Development and Supportive Services (EDSS) Carryover Program to establish and implement programs that increase resident self-sufficiency, and support continued independent living for elderly or disabled residents.

**Notice of Funding Availability for Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000; Amendments to NOFA and Reopening of Application Period**  
65 Fed. Reg. 31,584 (May 18, 2000).

*Summary:* On March 10, 2000, HUD published its FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding ("Fair Share NOFA"). This document amends the selection criteria of this NOFA primarily to better reflect the appropriate weight in points that should have been assigned to the "housing needs" selection criterion so that need is the most important basis for allocating incremental voucher funding. The points of other selection criteria are also revised to better reflect their appropriate weight, and the separate criterion for portability is removed. This notice also explains that HUD will substitute the number of "contracted units" for "HUD-approved budget" the number of certificates and vouchers on the latest HUD-approved budget when the number of a PHA's contracted units is higher than the number of a PHA's budgeted units. The application period for the Fair Share NOFA closed on April 24, 2000. This notice reopens the application period for an additional 30 day period.

*Dates:* Applications are due on June 19, 2000. Applicants that already submitted applications by April 24, 2000, need not resubmit a new application nor amend their applications, but they may do so if they wish.

**Notice of Annual Factors for Determining Public Housing Agency Ongoing Administrative Fees for the Housing Choice Voucher Program and the Rental Certificate and Moderate Rehabilitation Programs; Technical Corrections**  
65 Fed. Reg. 32,116 (May 22, 2000)

*Summary:* This notice announces technical corrections to the monthly per unit fee amounts for use in determining the on-going administrative fee for PHAs administering the housing choice voucher program and the rental certificate and moderate rehabilitation programs (including Single Room Occupancy and Shelter Plus Care) during Federal FY 2000 published February 25, 2000 in the Federal Register.

*Effective Date:* May 22, 2000.

## HUD Notices

**Guidelines for Continuation of Interest Reduction Payments after Refinancing: "Decoupling", under Section 236(e)(2) and refinancing of insured Section 236**  
Notice: H 00-8 (May 16, 2000)

*Summary:* This notice establishes procedures for the optional continuation of Interest Reduction Payment (IRP) assistance when projects assisted under Section 236 are refinanced. Under two separate options, Section 236(e)(2) or Section 236(b), an IRP subsidy may continue provided owners enter into new IRP Agreements and Use Agreements to maintain the projects as low-income housing resources. In order for HUD to determine what adjustments may need to be made to these guidelines for more effective administration of these procedures, any processing variance from these guidelines need to be sent to Headquarters, attention Office of Portfolio Management, for consideration of the variance. One of the objectives of this notice is for HUD to obtain practical case-by-case experience in processing these types of transactions before promulgating, by regulation, requirements that are applicable to all transactions. Under Section 236(e)(2), a Section 236 mortgage may be prepaid and the IRP subsidy continued provided the owner enters into IRP and Use Agreements that require the continuation of the low-income housing resource for five years beyond the new IRP term. Under Section 236(b), an approved state or local agency Section 236(b) mortgagee must purchase the insured Section 236 mortgage, terminate the FHA insurance, keep the Section 236 mortgage intact, and the owner must enter into new IRP and Use Agreements to maintain the property as a low-income housing resource.

**Guidance on Establishing Cooperation Agreements for Economic Self-Sufficiency between Public Housing Agencies (PHAs) and Temporary Assistance to Needy Families (TANF) Agencies**  
PIH 00-11 (May 9, 2000)

*Summary:* This notice provides guidance to PHAs, TANF Agencies, and others regarding the requirements in the Public Housing Reform Act of 1998 for PHAs to make their best efforts to enter into cooperation agreements with welfare agencies. Cooperation is needed to maximize and target resources, including state and local TANF funds, to help low-income families living in public housing or receiving Section 8 tenant-based assistance become self-sufficient. HUD recognizes the importance of these coordinated efforts and the impact they can have by helping assisted housing families move toward self-sufficiency. New PHRA requirements further encourage coordination by requiring PHAs to:

- assure that an assisted family's loss of welfare assistance due to noncompliance with self-sufficiency requirements or fraud will not result in a reduced rent ;

- determine a public housing resident's eligibility for an earned income disregard; and
- determine if a public housing resident is exempt from HUD's community service requirement.

The notice includes a model Memorandum of Agreement (MOA) to assist PHAs in facilitating the process of coordination. The MOA is a model that is optional for PHAs and should be tailored to address the specific areas that the PHA and their joint welfare agency partners intend to target. PHAs have full discretion to use the model or some similar tool, and no HUD approval is required.

## PIH Notices Extended

**PIH 99-21 which extended PIH 98-24, extended by PIH 00-20 (May 8, 2000)**  
**(Requirements for Designation of Public Housing Projects)**  
**PIH 99-4 (TDHEs) Extended by PIH 00-21 (May 24, 2000)**  
**(Administrative Requirements for Investing Indian Housing Block Grant Funds).**

**Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FY) 2001-2003**  
**CPD 00-7 (May 22, 2000)**

*Summary:* This notice establishes requirements, procedures and deadlines to be followed in the urban county qualification process for FY's 2001-2003, as well as information concerning specific considerations and responsibilities for urban counties. Note: the delay in establishing the participating population in just one urban county may result in delays in determining the final allocations of CDBG funds for all entitlement and State CDBG grantees. Therefore, HUD field offices and urban counties are expected to adhere to the deadlines in this notice.

## Rural Housing Service Notices

**Single Family Housing Guaranteed Loan Program (SFHGLP), Lender Charges and Fees**  
**RD AN No. 3554 (1980-D) (May 30, 2000)**

*Summary:* This Administrative Notice (AN) is intended to elaborate upon RHS SFHGLP requirements for routine charges and fees that lenders may charge borrowers. The purpose of RD Instruction 1980-D, Section 1980.324(a) is to prevent lenders from charging excessive fees for loans guaranteed under the SFHGLP, and to protect low- and moderate-income borrowers from paying excessive loan fees, or borrowing funds for fees that are not reasonable and/or customary. This AN does not apply to SFHGLP maximum interest rate requirements which should be handled according to RD Instruction 1980-D, Section 1980.320.

**Processing Section 515 Loan Requests**  
**Project Designations and Bedroom Mix**  
**RD AN No. 3553 (1944-E) (May 30, 2000)**

*Summary:* When processing Section 515 loan requests, preliminary eligibility and feasibility reviews must be made that include a review of the market and whether requests meet the need and demand for both family and elderly renter households. The type of complex and the bedroom mix of the proposed units must reflect the need in the market area based on renter household size and the bedroom mix. Decisions concerning the type of project that should be built, whether family or elderly, must be based on a determination of proportionate need. Likewise, the bedroom mix of the proposed units must be based on market need. This will often mean that there should be more than just one and two bedroom units.

**Civil Rights Impact Analysis And Environmental Justice**  
**RD AN No. 3548 (2006-P) (Apr. 28, 2000)**

*Summary:* This Administrative Notice (AN) clarifies the requirements of RD Instruction 2006-P, *Civil Rights Impact Analysis*, issued March 1, 1995, and its relationship to Executive Order (E.O.) 12898, *Environmental Justice*, issued February 11, 1994, which requires each federal agency to make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. This Rural Development AN is consistent with the current departmental regulation concerning the implementation of the E.O., issued December 15, 1997. The guidance given by this AN is limited to grant or loan (direct or guaranteed) approvals. It is not intended to give guidance or to change the requirements concerning civil rights impact analyses for administrative actions such as office closures, budgets, contracting, etc.

**Section 515 Preservation Proposals for Equity Funding**  
**RD AN No. 3543 (1965-B) (Apr. 21, 2000)**

*Summary:* RHS has set aside \$4.3 million of Section 515 funds for innovative approaches to preserve rental housing. Proposals for the use of funds were to be submitted to the Office of Rental Housing Preservation (ORHP) by June 1, 2000.

**Section 502 Direct Funding Set-Aside for Innovative Demonstration Initiatives under the Section 502 Direct Loan Program.**  
**RD AN No. 3536 (1940-L) (Apr. 21, 2000)**

*Summary:* \$3 million has been set aside for FY 2000 Innovative Demonstration Initiatives under the Section 502 Direct program. State Directors are authorized to use funds for the Section 502 Direct Innovation Demonstration Initiatives on a project-by-project basis. Under Section 506(b) of the Housing Act of 1949, RHS may provide loans to eligible

Section 502 customers for innovative housing design, units, and systems which do not meet existing published standards, rules, regulations, or policies. These innovative housing units should reduce cost, raise living standards, and improve rural area living environments. ■

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