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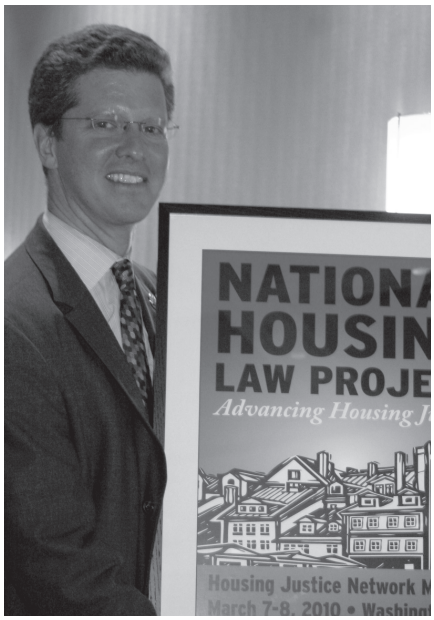

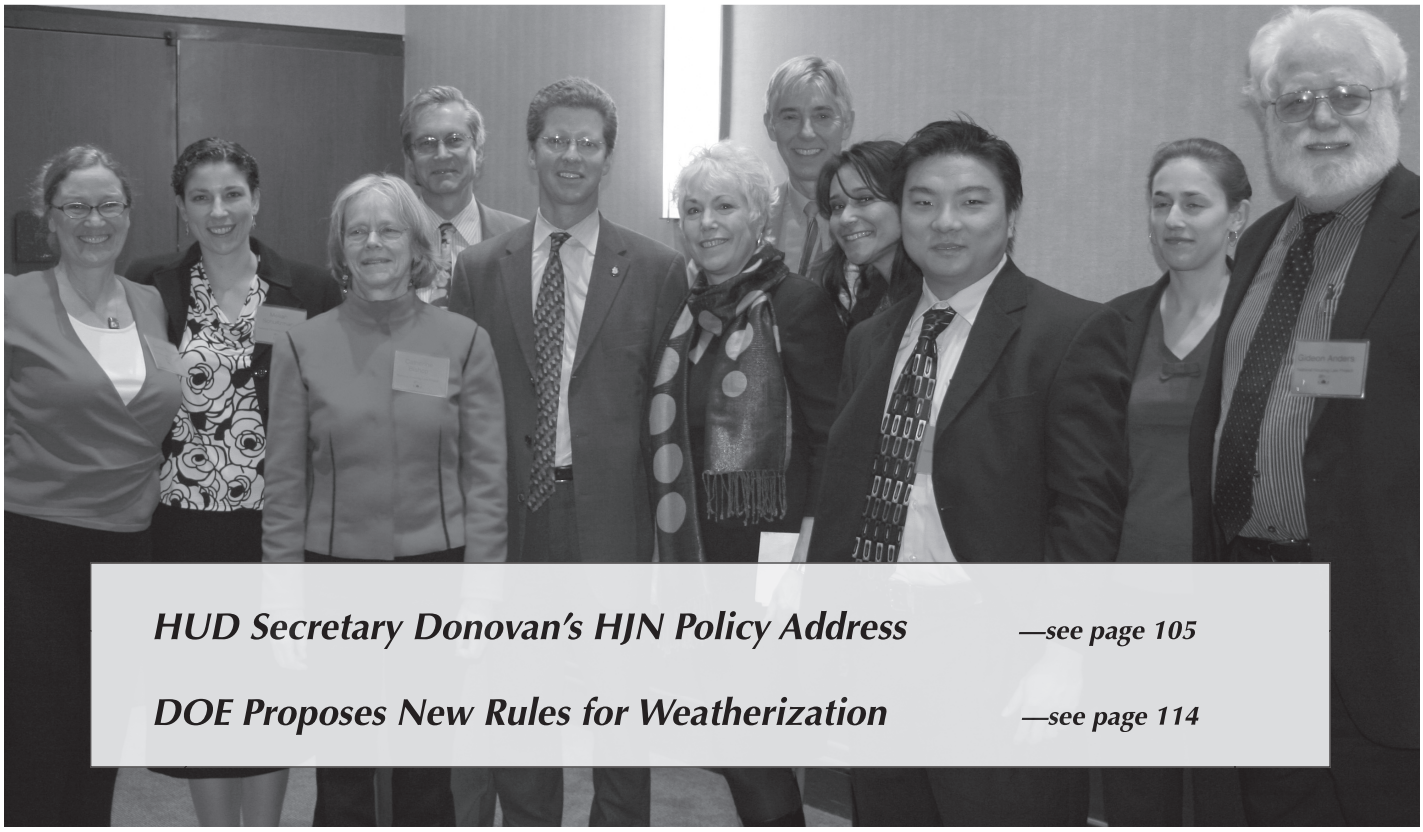

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The *Housing Law Bulletin* is published 10 times per year by the National Housing Law Project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions or policy of any funding source. A one-year subscription to the *Bulletin* is $175. 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

HUD Secretary Donovan Gives Major Policy Address at HJN Conference

During his keynote address at the Housing Justice Network (HJN) conference on March 8th, Department of Housing and Urban Development (HUD) Secretary Shaun Donovan offered his vision for what he called, "the single most important thing we do at HUD—and that is provide rental assistance to America's most vulnerable families." In his first major policy address on the subject, he outlined HUD's proposed Transforming Rental Assistance Initiative. The following is the text of Donovan's keynote address. Secretary Donovan was introduced by Barbara Sard, HUD's Senior Advisor for Rental Assistance.

Thank you, Barbara—for that very generous introduction, but more importantly, for your dedication to HUD's mission. Barbara never fails to remind us at HUD that housing is fundamentally about people and justice. For four decades, the Law Project has reminded us of that as well—and I want to thank all of you, particularly Bob Pearman, Marcia Rosen and Jim Grow. Whether it is fighting to increase the supply of decent affordable housing, preserving existing housing, standing up for the rights of low-income tenants and homeowners, or increasing opportunities for minorities—the Law Project has always spoken for those and with those who need it most.

As some of you know, when I was last at HUD, I served as the Deputy Assistant Secretary for Multifamily Housing. It was Jim and Michael Kane who said the federal government should fund tenant organizing. They argued—very persuasively, I might add—that it would be money well spent because tenants could be HUD's "eyes and ears" on upcoming opt-outs or defaults.

They were right—that advice helped us save dozens of buildings for residents in New York City. That experience reaffirmed for me that housing policy is not about rules and regulations. It's not about bricks and mortar. It's about people.

I wanted to be HUD Secretary for the same reason all of us are here today—to make a difference in the lives of those our society has too often forgotten. And I've brought together a team with a strong record of doing just that. I know many of you have heard from the members of HUD's so-called "Dream Team" earlier today—Barbara and our Assistant Secretary for Fair Housing and Equal Opportunity, John Trasviña. I know many of you have also met with our Assistant Secretary for Public and Indian Housing, Sandi Henriquez, and Carol Galante, our Deputy Assistant Secretary for Multifamily Housing. And many of you already know Erika Poethig, who I understand nominated the Law Project for the MacArthur Award for Creative and Effective Institutions it won in 2007.

This has certainly been a remarkable year for all of us—as we have dealt with a housing crisis that has touched every community, every family, in one way or another. Together, we've implemented the Recovery Act to help the most vulnerable. Along with the budget we passed for FY 2010, we stabilized core housing programs—from Section 8 to public housing—and took the first steps toward restoring balance to our national housing policy—supporting homeownership, but also providing the affordable rental housing families need.

And just recently, we offered a budget that builds on these successes, even in a very difficult fiscal environment with tough choices—including a nearly $200 million increase in homeless assistance funding, a record number of people served by the Section 8 voucher program and a billion dollars to capitalize the National Housing Trust Fund.

Our work is far from over. Too many people are still at risk. And we still need to take fundamental steps to ensure a crisis of this magnitude never happens again—from reforming our financial regulatory system with a strong independent authority that protects consumers to passing health insurance reform that puts families in control of their health care and covers an additional 30 million families.

An Unsustainable System

But this afternoon, I want to focus on what I believe is the single most important thing we do at HUD—and that is provide rental assistance to America's most vulnerable families. Indeed, this crisis has underscored, in many ways, the broad impact HUD has on people's lives, with our public housing programs alone serving some 2.3 million residents in 3,500 communities, two-thirds of whom are elderly or disabled. In all, HUD provides deep rental assistance to more than four-and-a-half million households—helping families and also giving communities the tools they need to tackle their development needs and challenges.

Unfortunately, for all our progress and efforts, our continued ability to serve families in need is at risk. Today, billions of dollars of federal investment in public and assisted housing is in danger of being lost for future generations.

I'm proud that the Obama Administration was able to provide an additional $4 billion in public housing capital funding as part of the Recovery Act last year. But that funding meets only about a fifth of the estimated $20 billion capital backlog in public housing properties. At the same time, we've lost 150,000 units from our inventory of assisted stock through demolition or sale in recent years. Given the size of the federal deficit we've inherited, it's clear the federal government alone will not be able to provide the funds needed to bring properties up to date and preserve them for the next generation.

Of course, as great as capital needs are, you and I both know that the depth of human needs is even greater. Decades after William Julius Wilson awakened America to the shattered lives of those living in public and assisted housing in our poorest neighborhoods with *The Truly Disadvantaged*, countless residents still remain trapped in neighborhoods of concentrated poverty—because moving means giving up their subsidy. These families not only lack mobility—they lack hope. They lack opportunity. They lack choice.

Today, at this moment, we face a choice of our own—we can approach the challenges facing this population ad hoc, piecemeal, from program to program, as we have for decades. Or we can deal with them now—together, in partnership, in a comprehensive way—and put our rental assistance programs on a more sustainable footing for years to come. With this perfect storm of challenges and opportunities before us, I believe now is the moment to permanently reverse the long-term decline in the nation's public housing portfolio and address the physical needs of an aging assisted housing stock—and finally move HUD's rental housing programs—and the people who rely upon them—into the housing market mainstream.

Transforming Rental Assistance

That is why HUD is proposing in our FY 2011 budget to launch a multi-year effort called the Transforming Rental Assistance initiative—or "TRA." As you know, we didn't approach this subject lightly. Through an extensive strategic planning process that engaged over 1,500 internal and external stakeholders, we have heard how our rental programs need to change—and I know some of you joined us at the series of rental assistance convenings we have held. And I want to thank you for the feedback you gave us at those sessions.

The initiative is anchored by four principles. First, that the complexity of HUD's programs and their overlapping delivery systems is part of the problem. Right now, HUD has 13 different deep rental assistance programs, each with its own rules, administered by three operating divisions that contract with more than 20,000 separate entities to deliver rental assistance to 4.6 million households. No one would ever intentionally set up a system this complicated. We've seen how smaller legacy programs like Section 8 Moderate Rehabilitation contracts administered by PHAs and properties assisted under the Rent Supplement or Rental Assistance Programs have become "orphans" at HUD as new housing programs have evolved. And we've seen how this proliferation of programs and delivery systems doesn't make housing more accessible—but less, because it means families have to fill out dozens of applications processed by scores of administrators to have a decent chance of receiving assistance.

The time has come to streamline and simplify our programs so that they are governed by a single, integrated,

coherent set of rules, delivered through a system that better aligns with the requirements of other financing streams and social service providers, be they federal, state, local, from the public, private or third sector of nonprofits.

The second principle is that the key to meeting the long-term capital needs of HUD's public and assisted housing lies in shifting from the federal capital and operating subsidy funding structure we have today to a federal rental subsidy stream that can attract capital from private and other public sources.

The time has come to streamline and simplify our programs so that they are governed by a single, integrated, coherent set of rules, delivered through a system that better aligns with the requirements of other financing streams and social service providers.

Third, the time has come to bring our rental programs into the housing mainstream. What do I mean by that? Today, we have a parallel system where most families live in housing that is financed, developed and managed through mechanisms that can be integrated—literally and figuratively—with the communities around them—while the two-and-a-half million poor families served by HUD's oldest programs live in another. Only when all HUD-assisted housing is built, financed and managed in this 21st century way will we be able to attract the mix of uses, incomes and stakeholders that HUD needs to make its rental assistance programs truly successful—and that families need to live in sustainable vibrant communities with real opportunity.

Fourth, we must combine the best features of our tenant-based and project-based programs to encourage resident choice and mobility. It's wrong that residents of public and assisted housing cannot choose where they want to live without losing the rental assistance that they need. We know that real choice means informed choice—that HUD must work with partners at the state and local level to ensure that families with vouchers can choose to move to neighborhoods of greater opportunity if they want to.

At the same time we recognize that HUD must refocus our programs to revitalize low-income neighborhoods to be true neighborhoods of choice—with opportunity, safety, good schools and a mix of incomes. That is the goal of our Choice Neighborhoods initiative.

TRA reflects HUD's commitment to complementing tenant mobility with the benefits that a reliable, property-based, long-term rental assistance subsidy can have for residents' peace of mind, neighborhood revitalization efforts and as a platform for delivering social services—and to provide access to neighborhoods where vouchers can be difficult to use.

Now, I recognize that policies to "fix" public housing over the last two decades have often involved losing units available to house poor families in your communities—either because the units were demolished or sold and not fully replaced, or because many of the replacement units went to families with higher incomes. I also know that some worry about the so-called "privatization" of public housing, the risk that leveraging private debt may cause these properties to fall into foreclosure or the potential for tenants to lose their rights during this process. So, let me take a moment to address these concerns.

First and foremost, I am absolutely committed to preserving these precious resources, period. That is why TRA maintains targeting and affordability requirements for the lowest-income families. That's why it prioritizes rehabilitation not demolition, and insists on strict one-for-one replacement. Supported by our Choice Neighborhoods proposal to make the redevelopment of distressed public and assisted housing the anchor of broader community development efforts, we are absolutely committed to reversing the loss of units we've seen over the last 15 years. Along the same lines, HUD's new Strategic Plan commits us to reducing homelessness and "worst case" housing needs over the next five years. To ensure we do not tackle this challenge alone, in May, President Obama will unveil the nation's first ever comprehensive federal strategy to end homelessness. I expect to be held accountable for HUD's performance—and for keeping this commitment.

Secondly, the changes we're proposing aren't about who owns public and assisted housing—but how it's funded. For years, we've seen public sector owners dropping out for the simple reason that programs that fund private ownership are more sustainable. By allowing public owners to access the capital and resources private owners can today, we're leveling the playing field to make the preservation of publicly owned housing possible. Further, while it may be somewhat new for public housing to meet its capital needs through tax credits and private debt, this is how new housing has been financed for decades—and having run HUD's multifamily programs and built and preserved tens of thousands of housing units in New York City, I've seen that for myself.

Third, I want you to know that I recognize the tenant rights we have today—in statute, regulations and case law—simply wouldn't exist were it not for people like those in this room. And I know the difference those rights have made in the lives of people. But you know as well as I that 13 different sets of rights governed by 13 different programs doesn't serve anyone's best interests—least of all the tenants or lawyers who have to navigate them. That's why I've asked Barbara to lead an effort across our rental assistance programs to identify the best policies on a broad range of tenant issues. In large part due to the National Housing Law Project, in the coming weeks, for the first time, HUD will be hosting residents from all its major rental programs to discuss this very issue—

to develop recommendations—from tenant organizing and resident participation rights, to supportive services, admissions policies and hearing rights—that should apply to all HUD-assisted tenants.

It's time we all spoke with one voice. To preserve these resources, we must.

Meeting the Housing Needs of Every Family

So, really, this is just beginning—and we look forward to working with you through the budget process and with authorizing committees to ensure we get the transformation of our rental programs right. I recognize change isn't easy. I recognize that it's hard enough for you to help families in these tough economic times, much less take on reform. I mentioned *The Truly Disadvantaged* earlier. Of all the tragedies that book revealed, perhaps the most tragic was that the segregation of the very poorest families into the very poorest neighborhoods across the country didn't happen in spite of government policy—but more often than not, because of it. But that doesn't mean we have to accept it.

In America, we don't accept one public education system for one group of children—and a better one for everyone else. We don't accept one set of rules about what pollutants can be in the water some people drink—and another set for the rest of us. We don't accept a worse set of health outcomes for one population—and another for everyone else. So, why should we with housing—with all that we know about how central housing is to creating a geography of opportunity? Why shouldn't we make this right?

I hope the progress we've begun these last 13 months has demonstrated that we in this Administration are as committed as you to meeting the housing needs of every family in this nation. To putting HUD-assisted rental housing on a strong foundation for decades to come. To building a truly integrated federal housing system that serves families better—every family in every neighborhood in America. That is our goal—and in the days, weeks and months ahead, may we work together to build it. Thank you. ■

Housing Justice Network Meeting Brings Together Advocates from Across the Country

Almost 200 advocates gathered in Washington, D.C., March 6-8 for the 2010 Housing Justice Network (HJN) Meeting and Basic Training to engage in dynamic discussions regarding current housing issues and strategies for ensuring that the country's lowest-income families have access to quality affordable housing. Attendees also heard from keynote speaker Department of Housing and Urban Development Secretary (HUD) Shaun Donovan and celebrated the recipients of the David B. Bryson Memorial Award and the Housing Justice Network Award.

The convening kicked off with a one-day Basic Training, geared primarily to new housing attorneys. The eight-hour training featured National Housing Law Project (NHLP) staff attorneys as well as two guest trainers, Fred Fuchs of Texas RioGrande Legal Aid and Mac McCreight of Greater Boston Legal Services. Ninety people attended the training, which featured sessions on the various subsidized housing programs, admissions and evictions issues, as well as issues related to special topics such as protecting tenants in foreclosure and reasonable accommodations for people with disabilities.

The Meeting itself featured two plenary sessions, 27 workshops, 10 topic-based roundtables, four meetings with government officials, and keynote speaker Secretary Donovan. The Secretary unveiled HUD's proposal for Transforming Rental Assistance (TRA), a plan to streamline funding streams for subsidized housing, at the HJN Meeting luncheon. The full text of his speech is reprinted at page 105 of the *Bulletin*.

The two plenary sessions discussed important housing policy issues—current foreclosure issues and emerging HUD issues. The foreclosure plenary speakers included Kent Qian of NHLP, Mona Tawatao of Legal Services of Northern California, Steve Meacham of City Life/Vida Urbana and David Grossman of Harvard Legal Aid Bureau. Mr. Qian provided an overview of the work that housing advocates have done with regard to protecting tenants in foreclosure. Ms. Tawatao discussed how legal services attorneys can engage in foreclosure litigation. Finally, Mr. Meacham and Mr. Grossman talked about the collaboration of community organizers and lawyers to prevent foreclosure and eviction. The HUD emerging issues plenary featured HUD Assistant Secretary John Trasviña, Deputy Assistant Secretary for Public and Indian Housing Investments Dominque Blom and Special Assistant to the Secretary for Rental Housing Barbara Sard. Assistant Secretary Trasviña discussed HUD's new commitment to affirmatively furthering fair housing and

enforcing Section 3 requirements. Deputy Assistant Secretary Blom presented a controversial portrait of HUD's Choice Neighborhoods initiative. Ms. Sard discussed the TRA proposal. The plenary sessions left advocates engaged and ready to change housing policy to better protect low-income tenants.

In addition to the plenary sessions, participants attended workshops with topics covering a broad spectrum of low-income housing issues. Topics included the public housing and voucher programs, the Low-Income Housing Tax Credit Program, the preservation programs of HUD and the United States Department of Agriculture, and fair housing. Additionally, advocates joined in informal discussions on a wide variety of topics during lunch on Sunday, March 7. The meeting provided an opportunity to recognize excellence in the field, and to present exceptional advocates to an audience of peers and colleagues who have benefited from their work.

Advocates Recognized

Two awards were presented at the March meeting: the David B. Bryson Memorial Award and the Housing Justice Network Award. The David B. Bryson Memorial Award was established in memory of NHLP staff member David Bryson, whose dedicated efforts to advance the housing rights of low-income people and many accomplishments in housing law are legendary. Michael Hanley of the Empire Justice Center received the 2010 David B. Bryson Memorial Award. Mr. Hanley has been fighting for housing justice for over 30 years. Two examples of his major housing cases include *Comer v. Cisneros*, a fair housing case addressing metropolitan-wide issues in public and Section 8 housing in Buffalo, New York, and *Price v. Rochester Housing Authority*, a case involving the rights of people with disabilities in the context of terminations from Section 8. Further, he has been an invaluable resource to advocates, a mentor to new attorneys and one of the first to use the Internet to disperse a library of timely resources.

Anne Smetak, staff attorney at the Affordable Housing Initiative of the Washington Legal Clinic for the Homeless, was honored with the Housing Justice Network Award. This award, created in 2004, was established to recognize new and impressive talent in the field of affordable housing and low-income housing rights. It is also meant to underscore the importance of uniting direct service work with local, state or federal policy advocacy. Ms. Smetak's work encompasses a range of activities designed to preserve and expand the supply of affordable housing. She represents tenants and tenant associations in litigation, advocates with local government agencies for the creation and preservation of affordable housing, conducts trainings and mentors pro bono attorneys on housing cases.

NHLP would like to thank all of the attendees, speakers and the HJN Meeting Advisory Committee for helping to make this year's event another success. ■

Federal Court Requires Owner to Accept Enhanced Vouchers

A federal court in California has issued a preliminary injunction prohibiting an owner from proceeding with threatened rent increases and evictions for nonpayment of rent until it takes steps necessary to participate in the voucher program.[1] Elderly tenants at Park Village Apartments in Oakland had filed suit because the owner had increased rents, but refused to accept their enhanced vouchers, which had been provided after the owner and HUD failed to renew an expiring project-based Section 8 contract. The court's ruling was based upon its interpretation of the federal enhanced voucher statute, as informed by several other federal court decisions, and the owner's certification in its opt-out notice that it would accept vouchers.

Background

Park Village is an 84-unit complex for low-income seniors located in a stable, sought-after neighborhood close to many commercial and social services. It was constructed under a conditional use permit permitting higher density and less parking so long as the property housed seniors for at least 50 years, until 2026. At initial rent-up in 1978, the owner executed a project-based Section 8 contract with HUD for all of the units, and the property has housed low-income seniors ever since. When the original term of the contract expired in 1999, the owner and HUD executed a five-year renewal, followed by another one-year renewal until November 2005.

When that one-year renewal contract approached expiration, the owner and HUD's contract administrator failed to execute another renewal, and the contract lapsed. The tenants continued to pay their Section 8 tenant contributions, while the owner and HUD's administrator continued to haggle about contract language. Finally, in March 2006, the owner sent a notice to each tenant stating that the Section 8 contract had expired and that each tenant must pay the full contract rent of $1,192 or vacate. He later issued a similar notice in October 2006, having rejected HUD's offer to execute a renewal contract with retroactive payments. When the owner persisted and refused to rescind these notices, the tenants filed suit, primarily based on alleged violations of federal and state notice laws, and the court issued a preliminary injunction,[2] which was affirmed by the Ninth Circuit.[3]

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[1]Park Village Apts. Tenants Ass'n v. Mortimer Howard Trust, No. 09cv4780 (N.D. Cal. order Jan. 29, 2010), *available at* http://www.nhlp.org/node/1261 [hereinafter Park Village II].

[2]Park Village Apts. Tenants Ass'n v. Mortimer Howard Trust, 2007 WL 519038 (N.D. Cal. Feb. 14, 2007).

[3]Park Village Apts. Tenants Ass'n v. Mortimer Howard Trust, 252 Fed. Appx. 152 (9th Cir. Oct. 24, 2007).

After the owner served yet another invalid notice in May 2007, the court issued declaratory relief and a permanent injunction prohibiting rent increases until the owner complied with the statutory notice requirements.[4]

In the wake of the judgment in the first suit, the owner gave proper notice to end the project-based contract, to take effect in July 2009. In that notice, per HUD requirements, the owner certified that he would honor the tenants' right to remain in their homes with their enhanced vouchers provided by the Oakland Housing Authority (OHA).[5]

On the likelihood of success on the merits, the court found that federal law required the owner to accept the tenants' enhanced vouchers.

In late 2008, the first suit was settled pursuant to an agreement whereby the tenants agreed to dismiss their claims without prejudice in exchange for the owner's agreement to sell the property to a nonprofit organization under a plan to preserve Park Village as affordable senior housing.[6] The terms of the settlement stipulated that the tenants released any claims concerning the legal sufficiency of the owner's July 2008 one-year termination notice. Unfortunately, the proposed sale transaction never closed, due to issues related to obtaining environmental clearances and financing in a rapidly softening rental market.

The one-year period following the issuance of the notice expired in late July 2009, and the owner once again increased the rents to $1,192 monthly, effective October 1, 2009, but refused to accept the tenants' enhanced vouchers. Unable to pay market rents without vouchers and facing imminent displacement, the tenants then filed another federal action.

The Tenants' Complaint

The tenants' new complaint included claims that the owner's refusal to accept their enhanced vouchers violated the federal enhanced voucher statute,[7] the federal certification requirements,[8] the owner's reasonable accommodation duties under state and federal fair housing laws,[9] and state rent increase notice requirements.[10] After the parties stipulated to temporary relief until the court ruled on the tenants' preliminary injunction motion, the tenants sought to prevent their eviction for nonpayment of any rent beyond their Section 8 contributions, until the owner took the steps necessary to accept their voucher assistance payments.

The Court's Ruling

After a hearing in mid-December, the court issued an order providing the requested preliminary relief.[11] On the likelihood of success on the merits, the court found that federal law required the owner to accept the tenants' enhanced vouchers, relying on the federal statute (42 U.S.C. §1437f(t)),[12] HUD's Section 8 Renewal Policy Guide,[13] and the required certification contained in the owner's July 2008 opt-out notice.[14] The court also relied upon several other federal court decisions that have required acceptance of the enhanced vouchers, whether at the point of conversion or subsequently.[15]

The owner had contended that he could not be required to execute the assistance contracts with OHA or to take other steps necessary to effectuate the tenants' right to remain. The court rejected this position, finding that it would negate the tenants' statutory rights while also violating the certification made in the opt-out notice.[16]

The court found no likelihood of success on the reasonable accommodation claim, on the basis of the Second Circuit's reasoning in *Salute*,[17] which had rejected a similar claim under the Fair Housing Act seeking to require

[4]Park Village Apts. Tenants Ass'n v. Mortimer Howard Trust, 2008 U.S. Dist. LEXIS 54246 (N.D. Cal. Order July 16, 2008) (based on 42 U.S.C. § 1437f(c)(8)).

[5]The Notice stated: "Federal law allows you to elect to continue living at this property provided that the unit, the rent, and I, the Owner, meet the requirements of the tenant-based assistance program. As an Owner, I will honor your right as a tenant to remain at the property on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law."

[6]Park Village Apts. Tenants Ass'n v. Mortimer Howard Trust, No. 06cv7389 (N.D. Cal. Order Nov. 20, 2008).

[7]42 U.S.C. § 1437f(t).

[8]§ 1437f(c)(8).

[9]§ 3604(f)(3)(B); Cal. Civ. Code § 54.1; Cal. Gov't Code § 12955 *et seq.*

[10]Cal. Civ. Code § 827.

[11]Park Village II, No. 09-4780.

[12]As amended by Pub. L. No. 106-246, § 2801, 114 Stat. 511, 569 (July 13, 2000).

[13]HUD, Section 8 Renewal Policy, § 11-3(B) (as revised Jan. 15, 2008) ("[T]enants who receive an enhanced voucher have the right to remain in their units as long as the units are offered for rental housing when issued an enhanced voucher sufficient to pay the rent charged for the unit, provided that the rent is reasonable. Owners may not terminate the tenancy of a tenant who exercises this right except for cause under Federal, State, or local law.").

[14]Park Village II, No. 09cv4780, at 2-4.

[15]*Id.* at 3 (citing Jeanty v. Shore Terrace Realty Ass'n, 2004 WL 1794496 (S.D.N.Y. Aug. 10, 2004); Feemster v. BSA Ltd., 471 F. Supp. 2d 87 (D.D.C. 2007), *aff'd in part, rev'd in part*, 548 F.3d 1063 (D.C. Cir. 2008); Estevez v. Cosmopolitan Assocs., 2005 WL 3164146 (E.D.N.Y. Nov. 28, 2005); Barrientos v. 1801-1825 Morton LLC, No. 06cv6437 (C.D. Cal. Sept. 10, 2007) (order re: plaintiffs' motion for summary judgment), *aff'd on other grounds*, 583 F.3d 1197 (9th Cir. 2009)).

[16]Park Village II, No. 09cv4780, at 4 (N.D. Cal. order Jan. 29, 2010).

[17]Salute v. Stratford Greens Apts., 136 F.3d 293 (2d Cir. 1998).

acceptance of vouchers.[18] At the hearing, the tenants withdrew the state law notice claim as a basis for their motion.

Finally, the court reviewed the issue of whether either party faced irreparable injury from the issuance or absence of an injunction. Just as in the prior action between the parties, the court found that the tenants faced imminent eviction from their homes and thus, irreparable injury from the violations in the absence of an injunction. Since the owner could not cite any specific terms of the voucher housing assistance payments (HAP) contract that were legally objectionable, the court found that the owner would experience no irreparable injury from an order requiring him to sign the HAP contracts. For similar reasons, the court also found that the balance of hardships and public interest factors weighed in favor of the injunction, especially since the owner could receive reasonable market rents under the voucher program. Because of the tenants' indigency, the court waived any bond requirement.

Settlement efforts continue, and the parties are exploring a possible sale of the property to a nonprofit preservation purchaser. The Park Village tenants were represented by co-counsel Bay Area Legal Aid and the National Housing Law Project. ■

[18]This aspect of the ruling fails to account for subsequent developments in the law. *See, e.g.*, Freeland v. Sisao, 2008 WL 906476 (E.D.N.Y. Apr. 1, 2008) (relying on Barnett v. U.S. Airways, 535 U.S. 391, 397 (2002), to distinguish *Salute*); Giebeler v. M & B Assocs., 343 F.3d 1143, 1146-47 (9th Cir. 2003). *See also* NHLP, *Acceptance of Voucher May Be Required as a Reasonable Accommodation*, 38 Hous. L. Bull. 144 (July 2008).

Groups Challenge Texas' Disaster Recovery Plan*

During the 2008 hurricane season, Hurricanes Dolly, Gustav and Ike caused billions of dollars in damage to homes, businesses and infrastructure in the state of Texas. The state was still recovering from Hurricanes Katrina and Rita in 2005. According to preliminary estimates, the total amount of damage from the 2008 hurricane season was over $29.4 billion.[1] Physical structures that were damaged need to be replaced and rebuilt. Many Texas advocacy groups are concerned about the process by which the state plans to rebuild the neighborhoods and communities that are economically vulnerable and have been the hardest hit.

The Department of Housing and Urban Development (HUD) allocated $1.3 billion in disaster recovery supplemental funds from the Community Development Block Grant (CDBG) Program in a first round of funding for hurricane recovery in Texas.[2] States in receipt of these grants are required to publish an action plan for disaster recovery, pursuant to the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act.[3] States must submit a final plan to HUD for approval.

Texas published its action plan in February 2009 and submitted it to HUD in March 2009. According to advocacy groups and HUD, the action plan did not comply with federal requirements. HUD would have rejected the plan but for the fact that Texas had an immediate need for assistance due to the devastating impact of the 2008 hurricane season. Thus, HUD approved the plan in part and refused to allocate another $1.7 billion in a second round of funding unless the state submitted an amended plan that complied with federal requirements.[4] The state submitted its amended action plan to HUD on September 30, 2009. After receiving a complaint from Texas low-income advocacy groups, HUD rejected Texas' amended action plan on November 10, 2009, and has withheld $1.7 billion since that time.

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[1]Office of Cmty. Affairs - Disaster Recovery Div., St. of Tex. Plan for Disaster Recovery 3 (2009).

[2]*Id*. at 4.

[3]Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, Pub. L. No. 110-329, 122 Stat. 3574 (2008).

[4]*See* Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees Under 2008 Supplemental CDBG Appropriations, 74 Fed. Reg. 7,244, 7,250 (Feb. 13, 2009) [hereinafter Allocations] and Additional Allocations and Waivers Granted to and Alternative Requirements for 2008 Community Development Block Grant (CDBG) Disaster Recovery Grantees, 74 Fed. Reg. 41,146, 41,151 (Aug. 14, 2009) [hereinafter Additional Allocations] (announcing the first two allocations of disaster recovery funds).

Advocacy organizations in Texas have been engaged in a coordinated effort to challenge Texas' plans for allocating and using the CDBG funds. These groups have alleged that the state has not allocated enough funds to low-income housing and the rebuilding of public housing. They also allege that the plan for spending will result in discriminatory impact. On December 1, 2009, the Texas Low Income Housing Information Service (TxLIHIS) submitted a fair housing complaint[5] to HUD, alleging that the State of Texas is not doing enough to affirmatively further fair housing choice in its spending of the CDBG funds. This article will focus on HUD's rejection of Texas' action plan and the fair housing complaint.

In light of the defects in the amended plan, Texas Appleseed asked the HUD Secretary to deem the amended plan insufficient to support obligation of CDBG funds and require the state to revise and resubmit a plan that is in accordance with the law.

The Many Versions of the Texas Action Plan

Texas first published its action plan for disaster recovery in February 2009. The plan described the proposed use of CDBG funding and listed as the state's main objective the "long-term recovery and restoration of infrastructure, housing and economic revitalization in areas of Texas affected by Hurricanes Dolly and Ike during 2008."[6] Due to Texas' immediate need for the funds, HUD approved the action plan in part and disbursed $1.3 billion in round one of CDBG funding. Texas submitted an amended action plan in September 2009 as an application for $1.7 billion in round two of CDBG funding.

Texas Appleseed is one of the advocacy groups that has been greatly involved in Texas' disaster recovery process.[7] The group submitted comments to HUD on the Texas action plan, testified to a House Select Committee on the plan, submitted comments to the Texas Department of Rural Affairs (TDRA) on the state's amended plan for disaster recovery, and filed an administrative complaint with HUD alleging that the amended plan "does not comply with applicable laws and regulations and is insufficient to support the obligation of CDBG funds."[8]

In its October 28, 2009, administrative complaint, Texas Appleseed and TxLIHIS alleged that Texas' September 30, 2009, amended plan was not an "action plan" as defined by federal law and regulations because it failed to meet the prerequisites to a grantee's receipt of CDBG disaster recovery assistance. An action plan must detail a state's proposed use of all funds, including criteria for eligibility as required by the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act. Texas Appleseed argued that the state failed to do this and had repeatedly deferred decisions on how the CDBG funds would be used.[9]

The complaint further alleged that Texas failed to make mandatory certifications that are a material condition of eligibility for CDBG funds. The state is required to certify to HUD the following:

- The funds will be used solely for necessary expenses related to disaster relief, long-term recovery and restoration of infrastructure in areas affected by natural disasters.[10]
- The state will allocate enough money to poor- to moderate-income families to repair their hurricane-damaged houses.[11]
- The state will affirmatively further fair housing (AFFH).

In light of the defects in the amended plan, Texas Appleseed asked the HUD Secretary to deem the amended plan insufficient to support obligation of CDBG funds and require the state to revise and resubmit a plan that is in accordance with the law.[12]

HUD's Rejection of the Amended Plan

Texas' action plan had received partial HUD approval solely because of the state's need for immediate relief. The need for relief was no longer so urgent when the state submitted its amended plan in September 2009.[13] HUD had instructed the state that it must comply with the laws before round two of funding would be obligated. Because the state failed to do so, HUD rejected the Amended Plan.

In its November 10, 2009, letter to Governor Rick Perry, HUD noted that the state did not fix problems in the amended plan that had also been present in the action plan. Although the amended plan allocated funds to

[5]Pursuant to 42 U.S.C. §§ 3608 and 3610 (2006).
[6]Office of Cmty. Affairs - Disaster Recovery Div., *supra* note 1, at 8.
[7]Texas Appleseed Disaster Recovery, http://www.texasappleseed.net/content/index.php?option=com_content&task=view&id=18&Itemid=97.
[8]*See id*.
[9]Letter from Texas Appleseed and Texas Low Income Housing Information Service to Shaun Donovan, HUD Secretary (Oct. 28, 2009), http://www.texasappleseed.net/content/index.php?option=com_docman&task=doc_download&gid=194&Itemid=.
[10]*Id*.
[11]Rhiannon Meyers, *State Plan for Ike Money Draws 2nd Complaint*, Galveston County Daily News, Dec. 9, 2009, *available at* http://www.galvnews.com/story.lasso?ewcd=1de84bde0dcc7bf2.
[12]Texas Appleseed and Texas Low Income Housing Information Service, *supra* note 9.
[13]"The state may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount." Allocations, *supra* note 5, at 7246.

councils of government (COGs), it did not include a method of distribution to units of general local government.[14] In addition, the state did not provide citizens with public notice and opportunity to comment on the COGs' method of distribution to units of general local government. The action plan must include "descriptions of the method of allocating funds to units of local government" and "provide for reasonable public notice, appraisal, examination and comment on the activities proposed for the use of the CDBG disaster recovery grant funds."[15]

HUD listed other broader concerns with the amended plan in the letter. It urged the state to revise and update its analysis of impediments to fair housing (AI) because the existing AI from 2003 was outdated. Additionally, a recipient of CDBG funding must certify that it will AFFH. While HUD acknowledged local media coverage of opposition to rebuilding public housing in Galveston, HUD stated that it supported the rebuilding of affordable housing in Galveston for low-income families, and offered technical assistance and guidance on this matter. It also reminded the state of its certification to conduct and administer its CDBG Disaster Recovery program in conformity with the Civil Rights Act of 1964 and the Fair Housing Act.[16]

Texas Low Income Housing Information Service's Fair Housing Complaint

TxLIHIS is an advocacy group whose mission is to work with low-income Texans on attaining a decent, affordable home in quality neighborhoods.[17] With the assistance of the Washington, D.C.-based civil rights firm Relman, Dane & Colfax, TxLIHIS filed a fair housing complaint on December 1, 2009, asking HUD to find that Texas' AI is substantially incomplete and the state's subsequent certifications that it will AFFH are inaccurate because the AI is outdated and because the state's plan for distributing hurricane recovery funds would perpetuate racial and ethnic segregation. The result of such a finding is that HUD must reject the state's action plan, bar it from receiving funds, and require it to conduct a new, AFFH-compliant AI before submitting a revised plan and certifications to HUD.[18]

The TxLIHIS complaint, subsequently joined by Texas Appleseed, alleges that in the administration of its federal housing and community development funds, including CDBG funds, Texas has:

- violated the Fair Housing Act (FHA) by making housing unavailable on the basis of race, color and national origin;[19]
- violated the FHA by discriminating "in the terms, conditions, or privileges of sale or rental of a dwelling, and in the provision of services or facilities in connection therewith, because of race, color, and national origin;"[20] and
- failed to AFFH as required by 42 U.S.C. § 3608 and related federal statutes and regulations.[21]

According to the TxLIHIS complaint, the state cannot certify that it will AFFH because its AI, last revised in January 2003, is outdated and therefore does not reflect the substantially changed fair housing situation in communities that have been affected by the major hurricanes of 2005 and 2008.[22] This is the same concern expressed by HUD in its letter to Governor Perry.[23] Additionally, TxLIHIS alleges that the AI was substantially incomplete at the time of its adoption in 2003 because it failed to thoroughly identify and analyze existing impediments in the state; failed to detail specific appropriate actions to overcome the effects of impediments to fair housing; and failed to identify parties who would be responsible for carrying out those actions and creating timelines for the completion of those actions.[24]

Furthermore, TxLIHIS alleges that the AI does not comply with the statutory and regulatory requirements to AFFH because it lacks definitive goals, strategies, timeframes and actions, and definitive dates by which to accomplish tasks designed to address, reduce or eliminate fair housing impediments.[25] TxLIHIS asserts that the AI incorrectly assumes, implicitly, that Texas' obligation is limited to the extent of federal resources or assets when, in fact, the AFFH obligation "extends to all housing and housing-related activities in the grantee's jurisdictional area whether publicly or privately funded."[26] Further, the AI merely recites that it developed recommendations through a citizen participation process without revealing the actual process or who participated.[27]

The complaint explicitly calls on HUD to ensure that the state of Texas does not resubmit an amended plan with only artificial changes.[28]

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[14]Letter from Mercedes Márquez, HUD Assistant Secretary for Community Planning and Development, to Rick Perry, Governor of Texas (Nov. 10, 2009), http://www.texasappleseed.net/content/index.php?option=com_docman&task=doc_download&gid=226&Itemid=.

[15]Allocations, *supra* note 4; Additional Allocations, *supra* note 4; Márquez, *supra* note 14.

[16]Márquez, *supra* note 14.

[17]Texas Low Income Housing Information Service, http://www.texashousing.org/.

[18]Letter from Michael Allen, Relman & Dane, to Ron Sims, HUD Deputy Secretary (Dec. 1, 2009) (on file with NHLP).

[19]42 U.S.C. § 3604(a) (2006).

[20]§ 3604(b) (2006).

[21]Allen, *supra* note 18.

[22]Texas Low Income Housing Information Service, Fair Housing Compl. against State of Texas at 6 (filed Dec. 1, 2009) (on file with NHLP) [hereinafter Compl.].

[23]*See* Márquez, *supra* note 14.

[24]Compl., *supra* note 22, at 9.

[25]Compl., *supra* note 22, at 12.

[26]Compl., *supra* note 22, at 12-13.

[27]Compl., *supra* note 22, at 13.

[28]National Low Income Housing Coalition, *TX Showdown: Advocates File Fair Housing Complaint Following State's Response to HUD's Denial of Plan*, Dec. 4, 2009, http://www.nlihc.org/detail/article.cfm?article_id=6618&id=72.

Conclusion

HUD requested that the state resubmit its Plan as a series of amendments and gave February 8, 2010, as the deadline for the state to comply with this request.[29] On January 21, 2010, Texas submitted action plan amendment 1 purporting to address HUD's previously expressed concerns.[30] Unlike the February 2009 action plan, the January 2010 amendment 1 specifically includes a provision for fair housing, requiring that each grantee of funds AFFH and, in seeking public participation in planning or implementing housing-related activities, "include participation by neighborhood organizations, community development organizations, social service organizations, community housing development organizations, and members of each distinct affected community or neighborhood which might fall into the assistance category of low to moderate income communities."[31]

By holding Texas accountable for how it spends federal housing and community development funds, HUD is sending a message that state and local officials must abide by federal guidelines and must fulfill their obligation to serve low-income people and advance fair housing choice. Advocacy groups and HUD have been focusing on whether the plan provides for adequate citizen participation and advances fair housing choice. It remains to be seen whether the changes will be sufficient for HUD to approve the latest version of the action plan. ■

[29]National Low Income Housing Coalition, *HUD Highlights Shortfalls in TX Plan for Disaster Recovery*, Jan. 15, 2010, http://www.nlihc.org/detail/article.cfm?article_id=6696&id=72.

[30]Letter from Charles S. Stone, Executive Director of Texas Department of Rural Affairs and Michael Gerber, Executive Director of Texas Department of Housing and Community Affairs, to Mercedes Márquez, HUD Assistant Secretary for Community Planning and Development (January 21, 2010), http://www.tdra.state.tx.us/pdfs/Texas_Action_Plan_Amendment_No1.pdf.

[31]Texas Department of Rural Affairs, State of Texas Plan for Disaster Recovery- Amendment No. 1 35 (2010).

Editor's Note

Page 76 of the March *Bulletin* article titled "HUD Introduces Transformation of Rental Assistance Proposal" should have stated the following: "If so, the question remains as to whether these PHAs will be able to leverage the dollars that HUD believes may be leveraged, $7.5 billion or approximately $25,000 per unit."

Department of Energy Promulgates Weatherization Rules for Subsidized Housing*

In 2009, the American Recovery and Reinvestment Act (ARRA)[1] allotted $5 billion to the Weatherization Assistance Program (WAP), which was established in 1976 "to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety."[2] The infusion of such a large sum led the Department of Energy (DOE) to modify rules to allow for the program's benefits to more easily flow to multifamily rental housing.

When established, the WAP program placed special emphasis on the elderly, the disabled and children.[3] While Congress prioritized single-family dwellings, it determined that additional requirements should govern the use of weatherization funds on multifamily properties.[4] For these properties, Congress requires that the benefits of weatherization must accrue primarily to low-income tenants, a reasonable amount of time must pass before rents are increased, the value of the units must not be excessively enhanced, and 66% of the units in the multifamily property must be eligible for WAP (i.e., the family's income must be below 200% of the poverty level). Federally subsidized properties spend much of their operating income on energy costs, and many are in need of energy-conservation measures. However, major obstacles to weatherizing subsidized rental properties exist, such as the burdensome income verification procedures that must be conducted by subgrantees in order for a multifamily property to receive funds,[5] even if the property is federally subsidized. This and other issues have been at least partially addressed under the DOE's newly promulgated rules on the weatherization program.

ARRA and DOE's Proposed Rule

Because ARRA's $5 billion of additional WAP funding provided an unprecedented opportunity to expand weatherization benefits to rental housing, the DOE issued a Notice of Proposed Rulemaking on May 21, 2009, with

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[1]American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 1201-04, 123 Stat. 115, 214-26 (2009). ARRA also provided $6.3 billion in funding for additional energy efficiency programs.

[2]42 U.S.C.A. § 6861(b) (Westlaw Mar. 20, 2010).

[3]§ 6861(b).

[4]42 U.S.C.A. § 6864(b)(2) (Westlaw Mar. 20, 2010).

[5]75 Fed. Reg. 3,849, col. 2 (Jan. 25, 2010).

the goal of making WAP funds more accessible to subsidized multifamily properties.[6] The proposed rule was intended to ease administrative burdens for determining the eligibility of multifamily properties and to ensure that tenants benefit from weatherization instead of owners. The proposed rule provided that if a property was identified as public and assisted housing by HUD and placed on a list by DOE, the property would be deemed to satisfy DOE income-eligibility requirements, as well as the protections against rent increases and undue enhancement for owners. The proposed rule would have established similar treatment for properties assisted by the Low-Income Housing Tax Credit (LIHTC).

DOE requested comments, specifically on "how States and subgrantees may ensure compliance with the requirement that benefits of weatherization accrue primarily to low-income tenants that reside in such buildings."[7] DOE then issued a final rule on January 25, 2010, largely mirroring the proposed rule, but with two changes. First, DOE identified certain properties assisted by the United States Department of Agriculture's (USDA) Rural Housing Service (RHS) that might be eligible for WAP funds and should receive comparable treatment to other assisted properties. Second, the final rule requires a separate list for HUD properties with less than three years of commitment remaining for the purposes of determining whether the property complies with the requirement that rents may not be increased for a reasonable time after weatherization is complete.[8]

Major Provisions of DOE's Final Rule

DOE's final rule contains several provisions designed to make WAP more accessible to multifamily properties and to add more guidance regarding the limitations on WAP funds. The final rule discusses:

- easing procedural burdens for verification of income eligibility;
- protecting tenants from rent increases and avoiding undue and excessive enhancement of property values;
- ensuring that the benefits of weatherization accrue primarily to residents; and
- comments received during the rulemaking process, including those regarding owner financial participation.

[6]74 Fed. Reg. 23,804 (May 21, 2009).
[7]*Id*. at 23,807, col. 3.
[8]75 Fed. Reg. 3,849, col. 2 (Jan. 25, 2010). This list has already been compiled by HUD and made available on DOE's website at: http://apps1.eere.energy.gov/wip/eligibility_hud.cfm.

Easing the Procedural Burdens for Determining Income Eligibility

DOE's major stated purpose of the final rule is to "reduce the burden on States and subgrantees when evaluating applicability requirements for which HUD or USDA has already collected and verified the necessary data."[9] Citing HUD's rigorous income verification requirements, including annual recertification and the third-party Enterprise Income Verification system, DOE concluded that several types of HUD-assisted housing would be eligible for WAP funds without additional DOE verification.[10] To qualify for WAP funds, 66% of families in a multifamily project must be below 200% of the poverty level.[11] DOE found that nearly 100% of project-based Section 8, Section 202, and Section 811 residents met the 200% income limitation.[12]

Because of these findings, the final rule calls on HUD to identify properties under these programs, which would become automatically eligible for WAP funds. DOE would then publish a list of these properties. The same rules would also apply to LIHTC projects.[13] The automatic eligibility would apply to 221(d)(3) and (d)(5) below-market interest rate and 236 properties if HUD identifies the projects as eligible based on whether 66% or more of the units are receiving Section 8 subsidies.[14] DOE has indicated that other HUD-assisted or subsidized properties and the projects that do not meet the 66% eligibility requirement may still receive funds, but these properties are not automatically eligible.[15] The final rule extends the automatic eligibility to RHS 515 properties if 100% of the tenants are at or below 200% of the poverty level. DOE determined that eligibility should not be based on specific buildings that constitute a project because RHS only maintains data on a project level.[16] As with the HUD properties, RHS projects that do not meet the criteria for automatic eligibility may still receive funds based on a demonstration that 66% of the families fall below the 200% of poverty mark.[17]

Rent Increases and Property Appreciation

WAP requires that tenants may not be subject to rent increases because of weatherization for a reasonable period after the weatherization has been completed. Because tenant rents are capped at 30% of family income, DOE has determined that all eligible HUD properties automatically satisfy this requirement if there are three years or more remaining on the owner's commitment to

[9]*Id*.
[10]*Id*. at 3,850.
[11]10 C.F.R. § 440.22(b)(2) (2009).
[12]75 Fed. Reg. 3,850, col. 1.
[13]*Id*. at 3,850, col. 3.
[14]*Id*. at 3,850, col. 1.
[15]*Id*.
[16]*Id*. at 3,851.
[17]*Id*. at 3,851, col. 2.

HUD.[18] DOE will list all eligible properties, and HUD will indicate how much time is remaining on the commitment. State administering agencies will have the discretion to determine whether projects with less than three years remaining on the commitment satisfy the protection from rent increases requirement.[19] DOE found that, as a whole, despite federal formula rent caps, LIHTC properties do not have sufficient rent control protections to create a presumption that the requirement would be satisfied and that the state would be responsible for formulating policies to ensure rents would not increase due to weatherization.[20] The final rule makes no mention of RHS properties in its discussion of protection from rent increases.

WAP also requires that "no undue or excessive enhancement occur to the value of the dwelling units."[21] Because of the tenant rent caps and the control HUD exercises over capital improvements of eligible properties, DOE concluded that no further conditions or verifications would be needed to ensure that the property does not receive undue or excessive enhancement of value.[22] Despite comments that indicated that maximum rental rates and long-term use restrictions on LIHTC properties served as adequate disincentives to making undue or excessive enhancements, LIHTC properties would not automatically satisfy the requirement.[23] The final rule does not mention RHS properties and their relation to the undue and excessive enhancement requirement. Thus, both LIHTC and RHS properties must independently comply with both the rent increase requirement and the undue or excessive enhancement requirement.

Ensuring that the Benefits of Weatherization Accrue Primarily to Tenants

WAP requires that the benefits of weatherizing a building, including buildings where utilities are included in the rent, primarily accrue to low-income tenants.[24] The final rule states that benefit accrual is most easily demonstrated where tenants have decreased utility costs.[25] Recognizing that utilities are often included in a capped rent and the benefit of utility cost savings may not be realized by tenants whose rents do not change, DOE set forth a number of other methods through which primary benefit accrual may be demonstrated.[26] The rule cites the Washington state program, which recognizes "preserved low-income housing, added comfort, and improved indoor air quality" as benefits to tenants for the purpose of satisfying WAP requirements.[27] States are given discretion as to the exact parameters of what may satisfy this requirement, but the rule points to long-term preservation (e.g., through use restrictions) and healthier living conditions as paradigmatic of primary benefits apart from direct utility cost savings.[28] DOE indicated that it is considering creating a "non-inclusive list of examples of weatherization benefit accrual to low-income tenants."[29] Unlike other WAP requirements, compliance with this requirement is not assured merely from participation in an eligible program, and an applicant for weatherization must still demonstrate that the benefits will accrue to the tenants.[30]

Other Provisions

The final rule makes clear that a subgrantee is still required to receive the owner's permission to undertake weatherization.[31] DOE also emphasized that there would be no change in the regulations regarding owner financial participation,[32] thus a state "may require financial participation where feasible from owners of multifamily buildings."[33] Some states have waived owner financial contribution requirements, and will presumably continue to do so.[34]

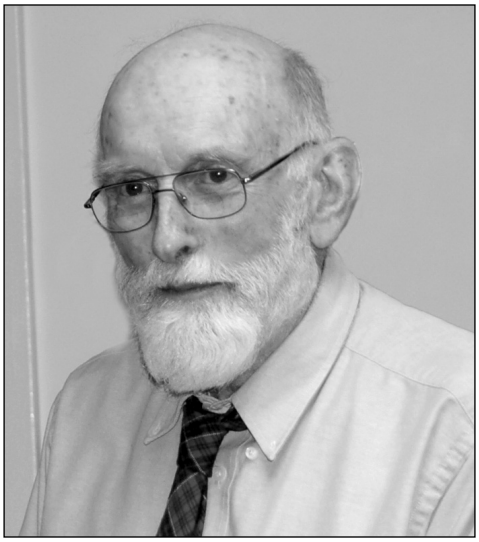
Looking Forward

While the revisions to the WAP regulations are a step in the right direction, the extent to which states and subgrantees will award WAP funds to multifamily properties is unclear. It will be important for advocates to ensure that local Community Action Agencies that administer the funds and owners of multifamily properties do the footwork to weatherize subsidized housing units. DOE's final rule leaves much discretion to the states regarding the regulations of various aspects of WAP, such as rent restrictions and demonstration of accrual of benefits to tenants. Advocates should now engage their jurisdictions in formulating policies that best serve the purposes of WAP and adequately protect tenants. ■

[18] 42 U.S.C.A. § 6863(b)(5)(B) (Westlaw Mar. 20, 2010); 75 Fed. Reg. 3,851-52.
[19] 75 Fed. Reg. 3,852, col. 1.
[20] *Id.* at 3,852.
[21] 42 U.S.C.A. § 6863(b)(5)(D) (Westlaw Mar. 20, 2010).
[22] 75 Fed. Reg. 3,852.
[23] *Id.* at 3,852, col. 3.
[24] 42 U.S.C.A. § 6863(b)(5)(A) (Westlaw Mar. 20, 2010).
[25] 75 Fed. Reg. 3,853, col. 1.
[26] *Id.* at 3,853.
[27] *Id.* at 3,853, col. 3.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 3,854, col. 1.
[32] *Id.*
[33] 10 C.F.R. § 440.22(d) (2009).
[34] 75 Fed. Reg. 3,853, col. 1.

Rural Housing Community Mourns Loss of Passionate and Dedicated Advocate

Arthur M. (Art) Collings, Jr.
April 14, 1928 – March 23, 2010



Art Collings began working in rural housing in 1955. He started in New Jersey as an assistant county supervisor at the Farmers Home Administration (FmHA), quickly moving up to county supervisor and then to a variety of other positions in New Jersey and Washington, D.C. While in New Jersey, Art worked with the American Friends Service Committee to start the first federally assisted self-help housing group in the nation. This led to the formation of the FmHA (now RD/RHS) Self Help Housing program, which continues to flourish to this day. Beginning in 1972, the year in which the newly created Housing Assistance Council (HAC) began hiring staff, Art's jobs at FmHA alternated with periods of work at HAC. He served as special assistant to FmHA Administrator Gordon Cavanaugh from 1977 to 1980. In that capacity, Art was instrumental in ensuring that residents of Section 515 rural rental housing and Section 514/516 farm labor housing could not be evicted without good cause. From 1986 until his reluctant retirement at the end of 2004, Art served as HAC's senior housing specialist.

Cavanaugh, HAC's first executive director, once explained that he hired Art because he was told Art was the most liberal staffer at FmHA. "He taught the rest of us everything we knew," said Cavanaugh. "Arthur was just extraordinarily dedicated, well informed, and a good-humored gentleman."

Art wrote dozens of publications about USDA's rural housing programs, from manuals on how to use them to analyses of how they could be improved. He authored a number of amendments to these programs, advised people all over the country on their use, and conducted countless training sessions.

Art's dedication to improving housing conditions for low-income rural Americans was unmatched. His feistiness and humor, added to his extensive and unmatched knowledge of USDA's rural housing programs, made him unique and well-loved around the country.

Art was recognized by HAC for his lifelong contributions to housing the rural poor when he was awarded the Clay Cochran Award.

Art is survived by his wife of 52 years, Jean Collings, and his sons Arthur M. Collings, III of Red Hook, New York, and David H. (Dawn) Collings of Mercursburg, Pennsylvania. He is also survived by four grandchildren, Sean, Samuel, Margaret and Allison, and a brother, Lawrence Collings of Lady Lake, Florida.

HAC has created a blog at http://artcollingsmemorial.blogspot.com where stories and comments about Art can be shared. ■

Harvard Study: Vouchers Substantially Reduce Risk of Future Homelessness*

The Joint Center for Housing Studies at Harvard University recently released "Housing Patterns of Low Income Families With Children: Further Analysis of Data From the Study of the Effects of Housing Vouchers on Welfare Families." This 2009 study analyzes data from the 2006 Housing Voucher Evaluation of the Department of Housing and Urban Development (HUD). The initial HUD-sponsored study was based upon data collected between 2000 and 2005 from six sites across the United States, including Atlanta and Augusta (Georgia), Los Angeles and Fresno (California), Houston (Texas), and Spokane (Washington). Based upon impact evaluation, experimental design and in-depth interviews, the HUD study served to measure the impact of tenant-based Welfare to Work housing vouchers on several different areas, including the prevention of homelessness.[1]

The Harvard study further explores data from the random assignment of families to a treatment group receiving Housing Choice Vouchers and a control group receiving no housing assistance. With this further analysis, the Joint Center for Housing Studies concludes that housing vouchers produce a substantial reduction in the risk of homelessness, are used for the successful creation of independent households for families previously experiencing housing instability, and serve to improve neighborhood condition for their recipients.[2]

Background

In 1999, Congress appropriated $283 million for tenant-based rental assistance for welfare families transitioning from public assistance to employment. At the same time, it authorized an in-depth study to evaluate the effects of housing assistance in the form of tenant-based vouchers. With the subsequent creation of the Welfare to Work Voucher program, 50,000 new housing vouchers were made available to state and local housing agencies (HAs) for distribution to families who were current or former recipients of public assistance, or those who were *eligible* to receive Temporary Assistance for Needy Families (TANF) benefits and services.[3]

While the rental assistance provided through Welfare to Work differed little from the mainstream Housing Choice Voucher (HCV) program, there were three significant differences. Unlike the HCV program, the Welfare to Work vouchers were *only* to be used for families who either received, had previously received or were eligible to receive TANF benefits and services. Additionally, regular requirements regarding area median income standards for new mainstream program participants could be relaxed for the Welfare to Work program vouchers if the HA could show that compliance with present HCV rules would interfere with the goals of the Welfare to Work program.[4] Finally, the HAs would have the power to terminate a family's Welfare to Work rental assistance if program-specific employment and/or training requirements were not met. Other than these differences, however, families would be free to use their vouchers in the same manner as a mainstream voucher, so long as units met HUD's regular Housing Quality Standards (HQS) and rent requirements.[5]

For the 2006 Housing Voucher Evaluation, families from the six participating sites were randomly assigned to either the treatment group or the control group. Those in the treatment group were offered a Welfare to Work housing voucher, while those in the control group received no rental assistance at the beginning of the 2006 Housing Voucher Evaluation study.

Using a combination of data sources, including baseline surveys, follow-up surveys, TANF data files, participant tracking and in-depth interviews, the Joint Center for Housing Studies further explored several areas of impact for the Welfare to Work housing assistance program. The study focuses on four main areas of impact: Vouchers and Neighborhood Change; Housing Independence and Economic Improvement; Prevention of Homelessness; and Use Versus Relinquishment of Housing Vouchers.

Vouchers and Neighborhood Change

Among the study's main findings is that the voucher has a positive effect on family mobility and neighborhood change. Though a somewhat modest result, the receipt of rental assistance seems to reduce the percentage of families living in highly concentrated poverty. The greatest such effect was seen for families coming from public or assisted housing at the time of voucher receipt, lowering the percentage of those living in the highest-poverty neighborhoods by a remarkable 49%.[6]

However, families appear to transition to areas with "lower" rather than "low" concentrations of poverty.[7] For instance, while many of the program families began in a neighborhood tract with 30% or more poverty, they primarily transitioned to neighborhoods of only a slightly

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[1] D. Gubits Et Al., Housing Patterns of Low Income Families with Children: Further Analysis of Data from the Study of the Effects of Housing Vouchers on Welfare Families (2009).

[2] *Id.* at 15.

[3] *Id.* at 16, (P.L. 105-276).

[4] *Id.* at 17.

[5] *Id.*

[6] *Id.* at 5.

[7] *Id.* at 3.

lower concentration of poverty—10% to 20% poverty. It is important to note that those coming from these highest-poverty neighborhoods also tended to have the highest rates of lease-up after voucher acquisition. This finding suggests that such families are highly motivated to improve their neighborhood condition through use of housing assistance, even if only marginally.[8]

In contrast, for those families coming from low-poverty neighborhoods characterized by less than 10% poor, the voucher seems to have a somewhat negative impact on neighborhood quality after voucher acquisition.[9] Overall, the voucher itself was shown to have *no* effect on the probability of families transitioning to or living in low (less than 10%) poverty neighborhoods, let alone improving neighborhood condition for those already living in low-poverty tracts.[10] Researchers for the Joint Center for Housing Studies suggest two possible explanations for these findings: (1) that housing search is focused on lower-quality neighborhoods through program administration; or (2) that those starting off in relatively better neighborhoods may be using the voucher to reduce their rent burden rather than to improve the neighborhood location of their housing.[11]

In addition to the above findings for neighborhood quality and family mobility, there also exists a "modest" effect of diminishing racial concentration for African-American families. When race is considered overall, however, this result is absent for both white and Hispanic families. As a result of housing assistance, African-American families are also shown to experience an exceptional 18% decrease in the probability of living in the highest-poverty neighborhoods. The families experience a corresponding increase in the probability of living in 10% to 20% poverty neighborhoods.[12]

Despite these positive findings, the Joint Center for Housing Studies concludes that additional mobility efforts beyond vouchers may be needed to continue to reduce racial concentrations and to more dramatically improve the quality of neighborhood change for voucher recipients. Researchers offer possible program remedies, including changes to the way vouchers are currently administered; counseling programs for assistance in the use of vouchers; and the provision of vouchers in combination with a supply-side rental subsidy program.[13]

Housing Independence and Economic Improvement

In looking at the effect of rental assistance on housing independence and economic improvement, the 2009 analysis shows that while vouchers help many families form their own newly independent rental households, they do not seem to "create a platform on which families…can build to ultimately afford to rent on their own without an excessive rent burden."[14] Though the study shows a 20% reduction of families living in multigenerational households, there is a corresponding increase in households consisting of single parents with children and no other adult household members.[15] For these newly independent households, precarious circumstances seemed to remain even after voucher acquisition and lease-up. These families continued to experience food insecurity and tended to receive lower TANF and food stamps benefits.

When comparing voucher recipients in the treatment group, families who were already independently housed at the time of voucher receipt were, unsurprisingly, in a better economic position to begin with than those who later "became independent" through voucher use. The families who lived independently at the study's baseline measurement had higher annual earnings, higher levels of employment, and better transportation.[16] In addition, age and racial composition played a large part in defining the voucher group who began as independent and those who later became independent. The non-independent group was younger than the "remained independent" housing group at baseline, and those who "became independent" were more likely to be African American rather than Hispanic or white.[17]

The voucher is shown to increase housing stability for those who begin with their own housing units and remain independent. The number of moves was reduced by 1.3 over a four- to five-year timeframe.[18] Overall, however, the study concludes that there are no striking differences in characteristics between the group of voucher recipients who began independently and those who later became independent. For the sample as a whole, the 2009 study reports a 23% increase in families who rent or own their own home or apartment at follow-up.[19] Researchers explain that the continued instability of the "became independent" group is likely simply a result of lower household size and fewer children, qualifying the newly independent household for a lower level of TANF and food stamp benefits.[20]

In addition, the study analyzes the ultimate effect of vouchers on housing self-sufficiency, which is defined as no longer receiving housing assistance. In analyzing the impact of vouchers on economic improvement, the study looks at two factors: having independent housing while *not* receiving housing assistance; and having independent housing while *not* receiving housing assistance *and* having

[8] *Id.* at 32.
[9] *Id.* at 27.
[10] *Id.* at 7.
[11] *Id.* at 32.
[12] *Id.* at 38.
[13] *Id.* at 3.
[14] *Id.* at 5.
[15] *Id.* at 11.
[16] *Id.* at 47.
[17] *Id.*
[18] *Id.* at 13.
[19] *Id.* at 12.
[20] *Id.* at 49.

a rent burden of less than 40% of income.[21] Overall, the voucher seems to have a neutral effect on the long-term goal of independent self-sufficiency, as defined by housing independence with a reasonable rent burden in the absence of housing assistance. According to the study,

> We conclude that, while the control group includes more families than the treatment group who live independently without housing assistance, these families live under the weight of high rent burdens. While the voucher does not have the effect of allowing more families to achieve affordable, self-sufficient, housing independence, it has also not prevented families from achieving this.[22]

These study results seem to strongly indicate that setting housing voucher time limits, creating subsidy step-downs, or enforcing program phase-outs would be counterproductive and ultimately leave most recipient families in unstable housing and financial circumstances.

Prevention of Homelessness

While prevention of homelessness has been previously documented as a positive effect of tenant-based housing assistance, the 2009 analysis conclusively shows that housing vouchers do in fact significantly assist in preventing homelessness.[23] The rate of homelessness among those families who were offered and ultimately used a voucher was dramatically lower than for those in the control group who received no housing assistance at all.[24] Use of a voucher was correlated with a significant 35.5% decrease in the probability that a family would experience homelessness in the year prior to study follow-up.[25]

A primary focus of the homelessness prevention analysis was to help "predict" homelessness so that voucher program administration could perhaps then be targeted to the neediest families and those who are at the greatest risk of becoming homeless without housing assistance. Along these lines, the study reveals that a family's housing status at the study baseline is also one of the greatest predictors of later homelessness. For instance, those without their own housing at the beginning of the Housing Voucher Evaluation were the most likely to become homeless at some point in the future (in this case, the span of five years in which the Housing Voucher Evaluation was conducted). Additionally, the study reveals that the receipt of TANF has a beneficial role in prevention for those who were without their own housing at the study baseline. Those who were receiving TANF at the time of voucher receipt and had 18 months or more of TANF eligibility were less likely to later become homeless, despite the fact that they were starting as non-independent households.[26]

In looking at the baseline characteristics of the families studied, the Joint Center for Housing Studies found that African-American families are at a much greater risk of literal homelessness than white or Hispanic families are. This means that African Americans were more likely to live on the streets or in emergency shelter as compared with either of the other two racial subgroups. White families, however, were clearly shown to be no less likely to be homeless and staying with friends or family than their African-American counterparts.[27] The Joint Center for Housing Studies also identified low earning capability, frequent moves, household receipt of Supplemental Security Income (SSI), marital status and age as risk factors which may help to predict the probability of future homelessness.[28] The research suggests that voucher programs should look for these patterns and characteristics in screening interviews to better focus housing assistance on those who may be at the greatest risk of homelessness without it.

Use Versus Relinquishment of Housing Vouchers

While only the study's control group would be offered a housing voucher, many families either did not lease-up with their voucher or ultimately relinquished it. According to the results, of the families who were offered a voucher under the Welfare to Work program, 68% of them proceeded to use it.[29] Those who did not lease-up using the offered voucher tended to be somewhat better off than those families who accepted and used, or accepted and relinquished, the housing assistance. On the whole, this group had more work experience, a higher applicable reservation wage, and was more likely to be white, Hispanic or "other."[30] According to the analysis, there also appears to be a positive correlation between the receipt of public benefits such as TANF and the likelihood of leasing up and keeping a housing voucher. Researchers suggest that this is due either to a heightened level of distress for these families, or that such families are more "savvy" at taking advantage of the benefits for which they qualify.[31]

Evaluation data also show that those program participants who held onto their vouchers unsurprisingly appeared to fare better at the five-year follow up than those who proceeded to later relinquish the housing assistance. In terms of causation, HUD data confirm that those families who relinquish the voucher are not doing so because they have "risen out" of the housing subsidy.[32] Anecdotal

[21] *Id.* at 50.
[22] *Id.*
[23] *Id.* at 4.
[24] *Id.* at 51.
[25] *Id.* at 8.
[26] *Id.* at 9.
[27] *Id.* at 8.
[28] *Id.* at 53.
[29] *Id.* at 57.
[30] *Id.* at 4.
[31] *Id.* at 59.
[32] *Id.*

evidence from in-depth interviews suggests that families often give up vouchers involuntarily because of HA administrative failures, difficulty in navigating program rules and the lack of information provided.[33] For example, the sometimes constrained timelines for finding suitable housing may lead families to involuntarily lose their vouchers for non-compliance if they are unable to find housing and have it properly inspected prior to voucher expiration. As the Joint Center for Housing Studies notes, the voucher program is complex and requires a high degree of participant initiative. Not only must all participants find suitable housing, interact with landlords, turn in required paperwork on time, and comply with other HA obligations, but these tasks are particularly difficult for those who have never rented or owned housing on their own.[34]

In light of these study results, it is clear that tenant-based rental assistance is indeed a valuable tool for helping to support low-income families and improve their quality of life.

Evidence from in-depth interviews of 141 program participants reveals that involuntary loss of vouchers is fairly frequent. Of these 141 interviewees, a total of 30 participants ultimately lost their housing voucher within the five-year evaluation period. The breakdown of causes is as follows: four failed to find units within the time specified; three moved into units that were never approved by the HA; one household lost its voucher after moving out of state; four violated program rules; one interviewee gave up her voucher to continue living with her boyfriend and adult son (whom she mistakenly believed could not be added to the household); five lost vouchers due to temporary absences; eight had assistance terminated due to an increase in household income; and the remaining four voucher losses were due to "unfortunate" decisions.[35] These results may be a strong indication that some of the most needy participants perhaps lose their housing vouchers due to lack of clear communication by HAs and a limited ability to advocate on their own behalf.[36]

Overall, the families who relinquished their vouchers (whether voluntarily or not) were worse off at the five-year follow-up point than those who continued to hold their vouchers. Although relinquishers tended to have higher earnings, they also had a lower receipt of public benefits overall, which ultimately left them worse off in terms of material wellbeing, and far more susceptible to future homelessness. These findings are consistent with information gained through the Evaluation's in-depth interviews and reflect that the relinquishment of vouchers may not truly be a "choice," as previously had been assumed.[37] Voucher program rules should, therefore, be redesigned to help families successfully keep their housing assistance rather than involuntarily or inadvertently relinquishing it and creating further housing instability.

Conclusion

In light of these study results, it is clear that tenant-based rental assistance is indeed a valuable tool for helping to support low-income families and improve their quality of life. Though the resulting improvements in neighborhood condition, family mobility, the risk of homelessness, family independence and economic status are perhaps more modest than ultimately desired, housing vouchers are clearly working to keep many American families in stable housing. Despite these positive results, the data strongly suggest that there is much more to be done. As voucher programs are currently administered, they do not help families to reach eventual housing self-sufficiency—sufficiency which would allow them to comfortably shed their need for the housing subsidy altogether.[38]

Even more alarming, however, are findings revealing that many families have extreme difficulty in using (and keeping) their vouchers to begin with. If families cannot effectively lease-up and keep appropriate housing through the use of housing vouchers, then the potential gains offered by tenant-based rental assistance are effectively nullified for some of our most needy families. One of the main policy implications that can be drawn from this study is that there needs to be radical change in HA policy, procedure and services, particularly for new voucher recipients. In addition, there appears to be a great need for continuing program education and enhanced HA communication for those families who may be at the highest risk of voluntarily or involuntarily relinquishing their housing vouchers through noncompliance or mistake. Overall, tenant-based rental assistance produces a positive and substantial reduction in the risk of homelessness, helps create independent households and improves neighborhood condition. However, much more needs to be done to maximize outcomes for our lowest-income families. ■

[33] *Id.* at 4.
[34] *Id.* at 9.
[35] *Id.* at 77.
[36] *Id.* at 11.
[37] *Id.* at 62.
[38] *Id.* at 5.

HUD Issues Guidance to Multifamily Owners on Social Security Numbers

On April 13, 2010, the Department of Housing and Urban Development (HUD) issued Notice H 10-08, which provides instructions to owners participating in one of Multifamily Housing's rental assistance programs on implementation of the Earned Income Verification system.[1] The Notice addresses production of Social Security numbers (SSN) and other identification requirements for applicants and residents. The new requirements were published in the Federal Register on December 29, 2009.[2]

The Notice instructs owners that 24 CFR § 5.216 now requires that assistance applicants and tenants disclose and provide verification of the complete and accurate SSN assigned to them. There is an exclusion for tenants who were age 62 and older as of January 31, 2010, and whose initial determination of eligibility was begun prior to January 31, 2010. Individuals who do not contend eligible immigration status are also excluded. The Notice instructs owners that the SSN requirement is no longer limited to assistance applicants and tenants 6 years of age and older. The Notice also states that the process of having applicant households certify that they have an SSN for each household member 6 years of age and older, and continuing with the recertification process until the time of their move-in certification, is no longer applicable. The Notice addresses the timeframe for providing SSNs by both applicants and tenants and penalties for a tenant's nondisclosure of her or his SSN.

Importantly, the Notice clearly informs owners that the regulations do not prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, if state law prohibits this, the family must not be admitted into the program.

The Notice also tells owners that the Enterprise Income Verification (EIV) System is mandatory and lays out penalties for owners who fail to use EIV.

Owners are instructed to contact applicants currently on the waiting list to notify them that they must disclose and provide verification of SSNs for all non-exempt household members before they can be admitted. Owners must also notify tenants of the mandatory use of EIV. ■

[1]Implementation of Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments; Final Rule, H 10-08 (Apr. 13, 2010). The Notice applies to project-based Section 8, Section 101 Rent Supplement, Section 202/162 Project Assistance Contract, Section 202 Project Rental Assistance Contract, Section 811 PRAC, Section 236, Section 236 Rental Assistance Payment, and Section 221(d)(3) Below Market Interest Rate.

[2]Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments, 74 Fed. Reg. 68,924 (Dec. 29, 2009), *available at* http://edocket.access.gpo.gov/2009/pdf/E9-30720.pdf.

Recent Cases

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

Housing Choice Voucher Program: Denial of Admission Based on Criminal History

McNair v. N.Y. City Hous. Auth., 2010 WL 1038279 (N.Y. Sup. Ct. Mar. 22, 2010) (unreported). An applicant for Section 8 housing assistance was denied eligibility because of her husband's 26-year-old robbery conviction. Based on the conviction, the housing authority classified the husband as an "offending person." The housing authority determined that the applicant's statement that her husband would live apart with one of their adult children was not credible, given their more than two decades of marriage and the fact that they were living together in a homeless shelter at the time of the application. The housing authority indicated the applicant could not reapply until the reasons for ineligibility were cured. An administrative hearing sustained the finding of ineligibility, despite the applicant's attempts to show she had separated from her husband. On appeal, the court found that, notwithstanding the issue of the applicant's separation from her husband, the housing authority's classification of the applicant's husband's as an "offending person" was without sufficient basis in the record. The court found that the housing authority failed to demonstrate factors essential to that classification under its own guidelines, such as the amount of time the husband had served of his 12-25 year sentence, the length of his parole or probation period, and whether he committed subsequent offenses after his parole ended.

Housing Choice Voucher Program: Discrimination Alleged in Portability Move

Binns v. City of Marietta Hous. Assist. Program, 2010 WL 1138453 (N.D. Ga. Mar. 22, 2010). After her ported voucher was terminated, the plaintiff sued the public housing agency (PHA) for discrimination under the Fair Housing Act and the Americans with Disabilities Act (ADA), and for failure to provide due process in an earlier voucher application denial. The plaintiff, a disabled woman, had been

[1]http://www.westlaw.com.

[2]http://www.lexis.com.

[3]For a list of courts that are accessible online, 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.

on the waiting list for a new voucher when she applied to port in with her disabled son's existing voucher. Her son's voucher had been placed under her name by recent court order in the originating jurisdiction. While the receiving PHA reviewed her applications, the plaintiff was required to undergo an onerous fingerprinting process and to have family members unnecessarily attend eligibility reviews. She also alleged that she was harshly confronted by PHA staff. The receiving PHA eventually processed the port and denied the new voucher application, despite the fact that the ported voucher was vulnerable to termination through a pending appeal in the originating jurisdiction. The plaintiff was not given a written notice or an opportunity to appeal the denial. She later lost her ported voucher when the originating jurisdiction won its appeal. On cross-motions for summary judgment, the court held that the ADA and due process claims were barred by the statute of limitations, because the plaintiff's cause of action arose when her new voucher application was denied, not when she lost the ported voucher and felt the denial's effect. On the fair housing claim, the court held that a denial had occurred when the receiving PHA chose to port the contested voucher rather than grant a new one. Viewing the evidence in a light favorable to the applicant, the court held that a jury could find that the PHA's stated motivation of conserving its own funds was a mere pretext for discrimination against the applicant's disability or that of her son.

Project-Based Section 8: Inadequate Renewal Notices Bar Market-Based Rent

Park Lane Residences, L.P. v. Boose, 2010 WL 838144 (N.Y. Dist. Ct. Mar. 11, 2010) (unreported). A project-based Section 8 landlord sought to evict a tenant for nonpayment after she missed her annual recertification deadline and went for some months without paying the resulting market-rate rent. The landlord had notified the tenant three times of her need to recertify, but the notices did not contain every item specified in the HUD handbook's recertification procedure. The landlord argued it had substantially complied with the handbook, and that the handbook provided mere technical suggestions, not mandatory language. The court held that the landlord was required to provide notices containing all information specified in the handbook. The landlord's notices were insufficient because they omitted the following required items: the address of the apartment complex; the hours of staff availability for recertification; notice that the tenant would lose her assistance and be responsible for market rate rent if she failed to recertify by the deadline; and, in the third notice, the amount of rent the tenant would be required to pay at market rate. The court held that the subsidy termination and application of market-rate rent based on these insufficient notices was improper. The landlord was therefore barred from demanding market-rate rent arrears, but could collect the tenant's proper rent portion under the lease.

Project-Based Section 8: Inadequate Renewal Notices Bar Market-Based Rent

Clinton Towers Hous. Co. v. Ryan, 2010 WL 716164 (N.Y. Civ. Ct. Mar. 1, 2010) (unreported). A project-based Section 8 landlord sued a tenant for nonpayment of market-rate rent. The landlord sought the rent for the months after the tenant had missed his recertification deadline. The court held that the landlord was required by its HUD-prescribed lease to implement changes in the tenant's rent only according to administrative procedures set out in the HUD handbook. The notices were inadequate because they failed to include the following items: days and office hours when property staff would be available for recertification review; the requirement that the tenant recertify annually; and, in the third notice, the exact rent the tenant would be billed if the tenant failed to recertify. The landlord's failure to include all required information in the notice reminders barred it from seeking market rent for the apartment. In addition, the landlord was precluded from relitigating the validity of its renewal notices because it had a full and fair opportunity to contest the adequacy of the notices in a previous action.

Project-Based Section 8: Succession for Tenant Spouse

Bronx 361 Realty, LLC v. Quinones, 2010 WL 761240 (N.Y. Civ. Ct. Mar. 5, 2010) (unreported). An owner brought a holdover proceeding to evict the occupant of a project-based Section 8 apartment. The apartment had been leased to the occupant's husband, but she had contacted the owner on the day of move-in and made an appointment to place her name on the lease as well. Five days after move-in and before the lease had been modified, the occupant's husband died. The owner's staff informed the occupant that putting the lease in her name would not be a problem and gave her a letter confirming her residency and permission to have a dog. Over the months that followed, the owner put off the occupant in her attempts to sign a lease while maintaining it would do so, and the owner eventually brought an eviction action. The owner argued that the occupant was not a legitimate family member entitled to succeed the tenancy. The court held that the absence of the occupant's name from the lease and recertification forms and the short duration of her co-occupancy with the tenant-of-record did not bar her succession claim. The court was persuaded by her credible testimony and by trial evidence concerning her marital history and authorized residency.

Project-Based Section 8: HUD Protocol Must Be Followed in Evictions for Fraud

Southeast Grand Street Guild HDFC v. Holland, __N.Y.S.2d__, 2010 WL 963218 (N.Y. Civ. Ct. 2010). In a summary holdover proceeding brought by Southeast Grand Street Guild

HDFC to recover an apartment, the court granted the tenants' motion to dismiss because Southeast failed to comply with HUD rules and regulations. Southeast's petition had alleged fraud, and by opting to pursue its claim solely on such a basis, the court held that Southeast needed to follow the protocol mandated in HUD Handbook 4350.3. Specifically, as became evident from the testimony presented, Southeast failed to provide the tenants with an opportunity to be heard on the matter, did not give them notice of their right to meet with a representative who was not a party to the investigation, and failed to supply them with a written final decision. In dismissing Southeast's petition, the court held that following HUD protocol was a condition precedent to Southeast being able to pursue this proceeding under a theory of fraud, and noted that Southeast's pleading compliance with federal regulations was insufficient where no evidence of such compliance was submitted at trial.

Section 8 Single-Room Occupancy Program: Specificity Required In Termination Notice

Stewart v. Tacoma Rescue Mission, 2010 WL 437975 (Wash. Ct. App. Feb. 9, 2010) (unreported). This appeal arose out of a landlord's eviction of a tenant in Section 8 Single-Room Occupancy housing. The landlord owned and operated a complex of 42 subsidized single-occupancy studio apartments for homeless people. The landlord served a three-day nuisance notice, alleging violations for noise and threatening behavior and demanding the tenant move out within three days of service. When the tenant failed to vacate, the landlord brought an unlawful detainer action. The trial court found for the landlord and the tenant vacated. On tenant's appeal, the court reviewed adequacy of the termination notice de novo and reversed the lower court's writ, holding that the landlord's termination notice was insufficient under the lease's terms. The court held that the notice did not meet the lease requirement that it "state the date the tenancy shall terminate" because, rather than name a date certain, it called for the tenant to vacate within three days of service. The notice also failed to meet the lease requirement that it enable the tenant to understand the specific grounds for termination, because it did not supply specific dates, times, places, and names of alleged victims in sufficient detail to allow the tenant to prepare his rebuttal.

Rural Development: Eviction Notice Not Waived By Acceptance of Subsidy Payments

Premiere Mgmt., LLC v. Nutt, __ N.E.2d __, 2010 WL 1175201 (Ohio Ct. App. 2010). The Court of Appeals reversed a lower court's dismissal of an unlawful detainer action brought by a landlord participating in the Rural Development Section 515 program. After giving the tenant notice to vacate and commencing the eviction action, the landlord had continued to accept monthly lump-sum subsidy payments from the housing authority that included a subsidy for the tenant's apartment, although the landlord refused rent tendered by the tenant. The lower court reasoned that the landlord's acceptance of housing assistance payments constituted waiver of the tenant's breach and so prevented the eviction action from going forward. In reversing this judgment, the court stated that assistance payments do not constitute "rent" for the purposes of waiver of notice to vacate. The court noted that the landlord was entitled to continue receiving payments on the tenant's behalf as long as she occupied her unit, regardless of the eviction action, and that the housing assistance payments, while providing a personal benefit to the tenant, were not personal in the sense that they were the tenant's money.

Low-Income Housing Tax Credit Program: No Obligation to Report Pending Benefits Application

Amy Lowell Apts. v. Kilbride, (Mass. Hous. Ct. Mar. 22, 2010). An owner sought to evict a tenant from Low-Income Housing Tax Credit-subsidized housing because a compliance audit detected unreported unemployment income and determined her to be noncompliant with LIHTC income limits. The tenant had provided complete and accurate financial information on her application and income certification forms, but did not list the unemployment benefits because they were not approved until later. The housing court found that the tenant had not in fact violated her occupancy agreement or any LIHTC program rules, holding that an LIHTC applicant is not obligated to disclose her pending application for unemployment benefits in her financial statements.

Fair Housing Act: Pleading Requirements

Sanders v. Grenadier Realty, Inc., 2010 WL 605715 (2d Cir. 2010) (unreported). Two tenants in project-based Section 8 housing were denied recertification of their housing subsidy. They sued the owner for violations of the Fair Housing Act (FHA), the First Amendment, and 42 U.S.C. § 1982, alleging that non-black residents were granted subsidies and recertification during the same period that they were denied. The Second Circuit upheld the district court's dismissal of all of their claims for pleading deficiencies. Citing the U.S. Supreme Court's decision in *Ashcroft v. Iqbal*, the court held that the tenants' claim of intentional racial discrimination under 42 U.S.C. § 1982 did not state a plausible claim for relief. Despite their statement of different outcomes for non-black residents, the tenants had not alleged any facts to support an inference of racial animus. The tenants' FHA claim did not sufficiently plead their qualification for the subsidy by alleging timely

submission of their required income and household composition information. Their First Amendment Claim failed to adequately plead that the defendants were state actors or that there was state responsibility for the tenants' recertification. The plaintiffs also appealed a denial of leave to amend their complaint. The Second Circuit held that since the plaintiffs received two opportunities to amend, and because their affidavits in support of proposed additional claims also contained deficient, conclusory allegations, it was reasonable for the district court to rule that leave to amend would be futile.

Fair Housing Act: Right to Housing for Individuals in Recovery from Substance Abuse

Human Res. Research & Mgmt. Group, Inc. v. County of Suffolk, __ F. Supp. 2d __, 2010 WL 547606 (E.D.N.Y. Feb. 17, 2010). A county ordinance regulating substance abuse recovery houses violated the Fair Housing Act because it facially discriminated against the protected class of individuals in recovery from substance addiction without a legitimate purpose. Four provisions of the ordinance were at issue: the site-selection and approval provision, the requirement of a 24/7 on-site manager, the six-person resident limit, and the licensing and inspection requirement. Applying heightened scrutiny, the court found that the county failed to rely on studies or other non-anecdotal evidence showing the legislation would further its asserted interests of preventing crime, overcrowding and excessive littering. The court found no evidence that the restrictions would accomplish the stated purposes or benefit the disabled persons affected, and instead found evidence that the ordinance might undermine the interests of persons in recovery from substance abuse.

Fair Housing Act: Moral Hazard Limits on Home Insurance

Fair Hous. Opportunities of Nw. Ohio v. Am. Family Mut. Ins. Co., __ F. Supp. 2d __, 2010 WL 517390 (N.D. Ohio Feb. 12, 2010). The Toledo Fair Housing Corporation (TFHC) and a homeowner sued a home insurance provider for disparate impact and disparate treatment under the Fair Housing Act. The disparate impact claim turned on the insurer's policy of restricting the amount of insurance available to homeowners based on a home's market value. The plaintiffs argued this practice had a disparate impact on African-American neighborhoods, which have disproportionate numbers of older, lower-valued homes, which could not be insured up to their replacement cost under the insurer's practice. The court granted the insurer's motion for summary judgment because the plaintiffs did not provide any statistical evidence demonstrating their assertion that the practice contributed to urban blight in minority neighborhoods. Even if the plaintiffs had made a prima facie case, the court held that the insurer had a legitimate business reason for its practice. The insurer sought to limit the "moral hazard," the likelihood of claims arising from acts of insured homeowners who realize they would receive a greater payout from an insurance claim than their homes would bring in a sale. The court rejected the notion that assigning insurance purchase limits based on a home's market value, rather than its replacement value, is a subjective or arbitrary practice constituting a mere pretext for discrimination. The court also granted summary judgment to the insurer on the homeowner's disparate treatment claim, because she did not actually apply for insurance. The court rejected the homeowner's argument that applying was a futile gesture, holding that the insurer's actions upon learning the homeowner's address, including failing to call her back and saying it was "really picky" about properties to insure, did not provide the homeowner with reason to believe the insurer had a discriminatory policy that would render her application futile.

Fair Housing Act: Zoning Not Discriminatory

R.J. Invs., LLC v. Bd. of County Comm'rs for Queen Anne's County, 2010 WL 988833 (D. Md. Mar. 15, 2010). A developer sued the Queen Anne's County Board of Commissioners under the Fair Housing Act and the Equal Protection Clause of the U.S. Constitution. The Board had temporarily denied the developer's application to amend the water and sewer classification of its property. The developer planned 168 homes, 10% of which were to be affordable. The Board wanted the developer to reapply when the new water and sewage treatment came online. The developer claimed the Board sought to prevent development of affordable housing that would attract African Americans to the county. Following a bench trial, the court found no evidence whatsoever to suggest discriminatory intent prompted the decision, noting it was the county's own rule that required 10% affordable housing. The court also found insufficient evidence to support a disparate impact claim, because the developer's expert witness used 10-year-old income and home price figures and failed to account for the effects of recent in-migration, the 2005 real estate bubble, and the 2007-2008 economic climate's effect on home-buying, as well as ignoring the fact that other affordable housing in the county was still awaiting qualified purchasers.

Fair Housing Act: Pleading Requirements

Bojorquez v. Gutierrez, 2010 WL 1223144 (N.D. Cal. Mar. 25, 2010). A mortgagor who had no English literacy and minimal Spanish literacy lost his home to foreclosure. He sued his real estate broker under the Fair Housing Act, the Real Estate and Settlement Act (RESPA), California

Civil Code § 1632 and various common law claims. Citing the U.S. Supreme Court's decision in *Ashcroft v. Iqbal*, the court dismissed the mortgagor's FHA claims. The FHA claims, which asserted discrimination on the basis of his inability to speak English, alleged no facts raising an inference that the brokers' conduct was discriminatory, but the court granted leave to amend the complaint. The court found that the mortgagor sufficiently pleaded a claim under California Civil Code § 1632, which requires translation of certain loan documents. The mortgagor alleged that the defendant was a real estate broker, which was sufficient to show that the loan at issue was covered by § 1632. Although the statute of limitations had run on nearly all the mortgagor's claims, the mortgagor's language and literacy issues were sufficiently pleaded to support excusable ignorance. Before deciding whether to apply equitable tolling, the court required additional facts to clarify precisely when the mortgagor discovered the concealment and misrepresentation.

Fair Housing Act: Adjustment of Punitive Damages Award

Quigley v. Winter, __F.3d__, 2010 WL 909603 (8th Cir. 2010). A tenant brought claims against her landlord under the Fair Housing Act (FHA) alleging sexual harassment, sex discrimination, coercion, intimidation, threat and interference with the enjoyment of tenant's housing rights. A jury found in the tenant's favor and awarded her $13,680 in compensatory damages and $250,000 in punitive damages. The district court reduced the punitive damages award to $20,527. The tenant appealed the district court's judgment, arguing that it erred in reducing her punitive damages award. The Eighth Circuit affirmed the district court's holding that a claim for hostile housing environment created by sexual harassment is actionable under the FHA. The appellate court also found that the tenant presented sufficient evidence of numerous unwanted interactions of a sexual nature that interfered with the use and enjoyment of her home. While agreeing with the district court that the initial jury award of $250,000 was too high, the appellate court held that the district court's adjustment of the punitive damages award was too low and found $54,750 to be the proper amount.

Fair Housing Act: Familial Status Discrimination Claim Upheld

Petty v. Portofino Council of Co-owners, Inc., __F. Supp. 2d__, 2010 WL 918740 (S.D. Tex. Mar. 12, 2010). Condominium unit owners, a family, brought suit against the Portofino Council of Co-Owners, Inc. (Council) alleging that the Council had violated the Fair Housing Act. The family alleged that the Council disconnected their phone, interfered with the reasonable accommodation of a service dog for their deaf son, prohibited children from common areas of the condominium, and portrayed one of the plaintiffs as a "hacker" in the presence of potential buyers of the family's unit. The court held that the family had proven a familial status discrimination claim under 42 U.S.C. § 3604(a)-(b) and 42 U.S.C. § 3617, because they had shown that discrimination affected the availability of housing, not merely the habitability of housing. The court noted that a home's availability may refer to the ability to acquire or sell the home. The court stated that the plaintiffs' familial status claims withstood the Council's motion to dismiss because the plaintiffs alleged that the condominium complex was not made available to their children, and a contract to sell their condominium was blocked because of the Council's discriminatory practices against families, both of which implicated the availability of housing. According to the court, discrimination leading to a loss of a specific sale makes housing unavailable in violation of the Fair Housing Act.

Bankruptcy: No Retroactive Stay of Eviction

In re Harris, __ B.R. __, 2010 WL 625011 (Bankr. E.D.N.Y. 2010). A tenant sued for a determination that her eviction violated the automatic stay granted in Chapter 13 bankruptcy proceedings. The landlord had received a judgment of possession prior to the petition for bankruptcy and evicted the tenant the day after she filed her petition. The tenant then amended her petition for bankruptcy with certifications and a rent payment, seeking to reinstate her tenancy with a 30-day stay of eviction under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The court held that under BAPCA, a landlord with a pre-petition judgment of possession is entitled to evict a residential tenant without delay, unless the tenant certifies that she is eligible under non-bankruptcy law to cure the monetary default giving rise to her eviction, and she pays any rent that would be due over the next 30 days into the court. An amended petition could not operate to retroactively grant the 30-day stay of eviction, particularly where the tenant had already been evicted. Furthermore, the provision granting the 30-day stay could not delay the eviction of a holdover tenant, where monetary default was not the issue giving rise to the judgment of possession.

Preemption: Anti-Immigrant Ordinance

Villas at Parkside Partners v. City of Farmers Branch, 2010 WL 1141398 (N.D. Tex. Mar. 24, 2010). Tenants and landlords sued to permanently enjoin enforcement of an ordinance seeking to prevent persons not legally admitted to the United States from residing in Farmers Branch, Texas. The ordinance, the latest in a series of similar attempts, required all prospective tenants to obtain a residential

occupancy license. Licenses were issued only after applicants provided certain identifying information and a statement confirming or disavowing citizenship. The city planned to verify the immigration status of any noncitizen licensees with the federal government, then revoke the license of anyone not lawfully present in the country, causing that person to be evicted. The ordinance also penalized any landlord knowingly providing shelter to a person who lacked a license, and any tenant who had an unlicensed person as more than a temporary guest. The court granted summary judgment, holding that the ordinance was preempted by the Supremacy Clause because it would impermissibly extend the reach of federal immigration classifications, which were designed for purposes other than regulating individuals' participation in the private housing market. The ordinance was also implicitly preempted by the Immigration and Naturalization Act (INA). The ordinance's regulation of alien residence blocked uniform enforcement of the INA and directly and substantially interfered with Congress's chosen method of removing aliens.

Constitutional Law: Unreasonable Search and Seizure in Transitional Housing

Commonwealth v. Porter, __N.E.2d__, (Mass. 2010). While residing at a temporary shelter for homeless families, a juvenile had his room searched by police officers lacking a warrant after the shelter director had alerted the police to the possibility that the juvenile had a gun. The police found the gun, which was housed at the shelter in violation of shelter rules, and the juvenile made an unprompted inculpatory statement suggesting that the gun did indeed belong to him before he was read his Miranda rights. The juvenile was charged with delinquency due to unlawful possession of a firearm. The trial judge ordered suppression of the gun and statement. The Appeals Court reversed, and the juvenile sought review in the state supreme court. The juvenile argued that the warrantless search of his room at the shelter and the seizure of his firearm violated the Fourth Amendment. The state supreme court found that though the shelter was a temporary facility, the juvenile had a reasonable expectation of privacy in his home, and therefore the juvenile had standing to challenge the search under the Fourth Amendment. The court noted that because the police entered his room without a search warrant, the burden was on the Commonwealth to prove that it had the consent of a person with actual or apparent authority over the room. The court held that the shelter director lacked actual authority to consent to a warrantless search and that such a search violated the Fourth Amendment. Therefore, the court affirmed the granting of the motion to suppress. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices recently issued by the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA's Rural Housing Service/Rural Development (RD)), Federal Housing Finance Agency (FHFA), Federal Emergency Management Agency (FEMA) and the Department of Veterans Affairs. 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,[1] (2) bound volumes of the Federal Register, (3) HUD Clips,[2] (4) HUD,[3] and (5) USDA's Rural Development website.[4] Citations are included with each document to help you secure copies.

HUD Federal Register Notices

Fed. Reg. 18,228-18,231 (Apr. 9, 2010)
Notice of Change in Definitions and Modification to Neighborhood Stabilization Program (NSP)

Summary: On October 6, 2008, HUD published a Notice advising the public of the allocation amounts, list of grantees, alternative requirements, and waivers granted under the Housing and Economic Recovery Act (HERA) of 2008, which established the NSP. This Notice advises the public of two definition changes to the October 6, 2008, publication, based on the experiences of grantees in implementing the program and designed to increase the effectiveness of the program and speed its implementation. This Notice changes the definitions for "abandoned" and "foreclosed" properties to assist in targeting NSP funds for the purchase, rehabilitation, or redevelopment of such properties. The effect of these changes will be to broaden the inventory of eligible properties, increase grantee capacity, and to reduce regulatory friction points affecting the speed of the program. NSP grantees may apply the new definitions as of the date of submission of their Substantial Amendment and Action Plan to HUD, regardless of the current status of acquisition, redevelopment or disposition activities already undertaken.

Dated: April 1, 2010.

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[1]http://www.access.gpo.gov/su_docs.
[2]http://www.hudclips.org/cgi/index.cgi.
[3]To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.
[4]http://www.rdinit.usda.gov/regs.

Fed. Reg. 17,942-17,943 (Apr. 8, 2010)
Notice of Proposed Information Collection for Public Comment on the Quality Control for Rental Assistance Subsidy Determinations

Summary: HUD is conducting a study to update its estimates of the extent and type of errors associated with income, rent and subsidy determinations for the 4.3 million households covered by public housing and Section 8 housing subsidies. The quality control process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. This proposed data collection approval request is for studies to be conducted in 2011, 2012, 2013 and 2014 of prior year certification and recertification actions. These studies will provide current information on the quality of tenant interviews (e.g., whether they are being asked about all sources of income) and the reliability of eligibility determinations and income verification.

Comment Due Date: June 7, 2010.

Fed. Reg. 16,819-16,820 (Apr. 2, 2010)
Notice of Proposed Information Collection for Public Comment Civil Rights Front End and Limited Monitoring Review

Summary: In support of the HUD Office of Public and Indian Housing (PIH) and the Office of Fair Housing and Equal Opportunity (FHEO), civil rights Front-End Limited Monitoring reviews shall be conducted for 20 Tier 1 public housing agencies (PHAs). The purpose of the review is to alert PIH and FHEO of a PHA's failure to comply with civil rights requirements.

Comments Due Date: June 1, 2010.

Fed. Reg. 16,493-16,498 (Apr. 1, 2010)
Announcement of Funding Awards for the Public and Indian Housing Family Self-Sufficiency Program Under the Resident Opportunity and Self-Sufficiency (ROSS) Program for Fiscal Year 2009

Summary: This announcement notifies the public of funding decisions made by the department under the FY 2009 Notice of Funding Availability (NOFA) for the Public and Indian Housing Family Self-Sufficiency Program, Resident Opportunity and Self-Sufficiency (ROSS) Program for Fiscal Year 2009. This announcement contains the consolidated names and addresses of those award recipients.

Dated: February 26, 2010.

Fed. Reg. 16,163-16,171 (Mar. 31, 2010)
Announcement of Funding Awards for the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program for Fiscal Years (FY) 2008 and 2009

Summary: This announcement notifies the public of funding decisions made by the department for funding under the FY 2008 and FY 2009 HUD-VASH program. This announcement contains the consolidated names and addresses of those award recipients selected for funding.

Dated: January 8, 2010.

Fed. Reg. 16,161-16,162 (Mar. 31, 2010)
Notice of Proposed Information Collection for Public Comment; Energy Conservation for PHA-Owned or Leased Projects—Audits, Utility Allowances

Summary: The department is soliciting public comments on PHAs' resident inspection upon which PHA-furnished utilities and resident-purchased utilities allowances and schedule surcharges (and revisions thereof) are established. The information is also related to PHA energy audits, benefit/cost analyses for individual vs. master metering and review of tenant utility allowances.

Comments Due Date: June 1, 2010.

Fed. Reg. 12,518 (Mar. 16, 2010)
Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. 531

Summary: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 531, prohibits a landlord from evicting a servicemember (or the servicemember's family) from a residence during a period of military service except by court order. HUD has applied the required inflation index and established the maximum monthly rental eligibility amount as of January 1, 2010, at $2,958.53.

Effective: January 1, 2010.

Fed. Reg. 9,601-9,602 (Mar. 3, 2010)
Low-Income Housing Tax Credit (LIHTC) Tenant Data Collection: Responses To Advance Solicitation of Comment on Data Collection Methodology

Summary: This Notice follows the publication, on March 30, 2009, of an advance notice soliciting public comment on methodology for the collection of data concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United State Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving Low-Income Housing Tax Credits. HUD received public comments on that advance notice, published in the Federal Register (75 Fed. Reg. 8,392, February 24, 2010). Copies of the actual revised forms may be viewed by sending an email to PRA@fcc.gov.

Effective Date: April 2, 2010.

Fed. Reg. 9,244 (Mar. 1, 2010)
Fungibility Plan and Follow-Up Reporting to Implement Section 901 on Voucher Funds for Displaced Hurricane Katrina and Rita Families

Summary: Eligible PHAs in areas most heavily impacted by Hurricanes Katrina and Rita will submit a Notice of Intent and Section 901 Fungibility Plan to inform HUD they will exercise funding flexibility and describe

how program funds will be used. PHAs will submit quarterly and annual reports on fund utilization.

Dated: March 1, 2010.

Fed. Reg. 8,983-8,984 (Feb. 26, 2010)
Notice of Proposed Information Collection for Public Comment: Housing Counseling Outcomes Study

Summary: This request is for the clearance of survey instruments designed to provide statistically accurate information on the outcomes realized by clients of HUD-approved counseling agencies seeking assistance to either purchase a home or to resolve or prevent mortgage delinquency. The department has already recruited counseling clients to voluntarily participate in the study. These counseling clients agreed to be contacted by telephone 12 months following the receipt of counseling to complete a survey about their counseling experience and their current housing situation. The purpose of this survey is to gather information needed to both document the share of clients realizing different outcomes following counseling and to analyze how these outcomes vary with the characteristics of clients and the services they receive.

Dated: February 26, 2010.

Rural Development Federal Register Notices

Fed. Reg. 10,194-10,195 (Mar. 5, 2010)
Direct Single Family Housing Loans and Grants

Summary: The Rural Housing Service (RHS) is proposing to amend its regulations for the Direct Single Family Housing Loans by reinstating language to enable full recapture of the entire subsidy in event of foreclosure or deed-in-lieu of foreclosure (voluntary conveyance).

Comments Due Date: May 4, 2010.

HUD Notices

H 10-08 (Apr. 13 2010)
Implementation of Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs

***Summary*:** The purpose of this Notice is to provide instructions to owners and management agents participating in one of Multifamily Housing's rental assistance programs on the new requirements found in the Refinement of Income and Rent Determination Requirements Final Rule, published in the Federal Register on December 29, 2009. This Notice addresses production of Social Security Numbers and other identification requirements for applicants and residents.

PIH 2010-11 (HA) (Apr. 13, 2010)
Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation

***Summary*:** This Notice extends (with minor revisions) Notice PIH 2008-13 which provided guidance on the process for review and approval of special payment standards under the Housing Choice Voucher program as a reasonable accommodation for a family with a person with disabilities. It clarifies the process for calculating exception payment standards and the type of supporting documentation and information that should be included in the waiver request. ■

NATIONAL HOUSING LAW PROJECT
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