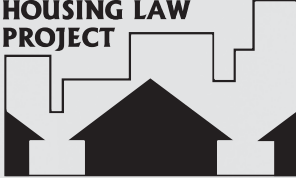


NATIONAL
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PROJECT



advancing housing justice

Housing Law Bulletin

Volume 38 • April-May 2008

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SAVE THE DATES!

HOUSING JUSTICE NETWORK MEETING: December 7-8, 2008

NATIONAL HOUSING TRAINING: December 6, 2008

Public Housing: Regulation Streamlining and Asset Management

—see page 83

Section 8 Reform Bill Introduced in Senate

—see page 87

Job Announcement: NHLP EXECUTIVE DIRECTOR

The National Housing Law Project, renowned for its landmark legal advocacy on behalf of low-income tenants and homeowners, especially those under the federally assisted housing programs, seeks an Executive Director to lead our organization and sustain our national leadership in employing the power of the law to address critical housing problems of low-income persons.

National Housing Law Project—Established in 1968, NHLP’s mission is to advance housing justice for low-income individuals. Primarily focusing upon the federally assisted housing programs, its core activities include legal and technical assistance, policy advocacy and education, litigation, and research. NHLP authors an array of publications, including the authoritative legal manual *HUD Housing Programs: Tenants’ Rights*. NHLP is headquartered in Oakland, California, with a branch office in the District of Columbia. NHLP’s nine-person staff includes six attorneys. In 2007, NHLP was recognized for its distinguished accomplishments by the John D. and Catherine T. MacArthur Foundation when it was selected as one of eight organizations worldwide for the MacArthur Foundation’s “Creative and Effective Institutions Award.”

The Position—NHLP seeks an experienced leader who has demonstrated management and fundraising experience and a commitment to promoting access to justice for low-income people. The Executive Director will work closely with NHLP’s Board of Directors, a highly skilled and committed staff, as well as a broader community of advocates, funders, and individual donors. The Executive Director is the primary spokesperson for the organization, oversees its staff, and is responsible for strategic planning, fundraising, and daily operations. The Executive Director also has a limited opportunity to engage in substantive advocacy.

The ideal candidate will have:

- an established track record with foundation and private donor fundraising;
- financial and personnel management experience;
- experience working collaboratively with a board, staff, and allied organizations;
- strategic planning abilities;
- a demonstrated commitment to social justice and the mission of NHLP;
- excellent oral and written communications skills;
- a willingness and capacity to travel;
- been admitted to the bar in at least one state.

Salary—Salary will be competitive and commensurate with experience. Generous benefits package.

Application Process—Applications will be accepted and considered until the position is filled. Applicants are urged to submit their applications promptly. Candidates should submit:

- a cover letter expressing in detail why they are interested in the position, what they can contribute to the future of the organization, and salary requirements;
- a current resume that includes salary history;
- two writing samples: preferably a legal memorandum and either a fundraising proposal or a memo addressing an important management challenge;
- the names and contact information for three references.

Applications may be submitted electronically to edsearch@nhlp.org or by mail to NHLP Search Committee at 614 Grand Ave., Suite 320, Oakland, CA 94610. Receipt of applications will be acknowledged. We would appreciate no phone calls.

NHLP is an equal opportunity and affirmative action employer that does not discriminate on the basis of race, color, national origin, ethnic background, religion, gender, sexual orientation or disability. Applications are particularly encouraged from people of color, women and others whose backgrounds may contribute to more effective representation of low-income persons.

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Cover: Members of the San Francisco Housing Authority's Section 8 voucher program resident advisory board (RAB) attend a formal RAB meeting.

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Asset Management and Streamlining: Two Edges of the Same Sword?

Over the past several years, the Department of Housing and Urban Development (HUD) has been engaged in sculpting deep and pervasive changes in public housing. It is changing the basic funding and management structure for public housing agencies (PHAs) by installing a system it calls "asset management." It is also moving to alter the manner and degree of resident engagement and protection by "streamlining" regulations and the 5-Year and Annual Plan process, which have traditionally safeguarded residents. While differing in nature and possibly in intent, the coalescence of these two changes deserves attention from residents and their advocates.

Conversion to asset management is not inherently good or bad. But knowledge of this new operational and fiscal structure is critical for those committed to optimizing outcomes for residents and resident organizations.

The streamlining of regulations and the 5-Year and Annual Plan, on the other hand, has almost universally been seen by residents and resident advocates as the stripping away of protections and limiting of access in ways that leave residents more and more at the mercy of agency caprice and less able to shape and to respond to the changes proposed by PHAs, including those wrought by asset management.

The timing of these two weighty changes creates a synergy that must be understood and addressed. Residents may be thwarted, however, in their efforts to understand and take advantage of changes accompanying asset management because of HUD's efforts to minimize resident involvement with PHA management and policy by streamlining the PHA planning process and by efforts to streamline regulations that currently promote resident participation.

What Is Asset Management?

Asset Management (AM) is a framework through which HUD is implementing its new operating fund program. AM is changing the way PHAs allocate resources within the PHA and among individual developments, the way PHAs report their income and expenses to HUD, the way HUD oversees PHAs, and the method by which HUD holds PHAs accountable for their success or failure.¹

¹The history and implications of AM have been addressed in greater detail in earlier *Housing Law Bulletin* articles (NHLP, *HUD Publishes the Final Public Housing Operating Subsidy Fund Rule*, 36 HOUS. L. BULL. 1, 11 (2006); NHLP, *Public Housing; Guidelines for Operating Fund Formula and Asset Management*, 36 HOUS. L. BULL. 53, 65 (2006)) and other advocacy organizations' writings (ASSET MANAGEMENT and PUBLIC HOUSING: A COMPREHENSIVE SUMMARY (updated Feb. 15, 2008),

Asset management has been evolving for nearly ten years. In 1998, Congress mandated that HUD develop a new operating fund distribution system.² In response, HUD initiated a statutorily mandated negotiated rule-making process, which resulted in interim public housing operating fund rules.³ During the initial negotiations, Congress directed HUD to contract with Harvard University to study the costs of operating well-run public housing. The Harvard study recommended that PHAs adopt management systems more like those of private multi-family housing operators.⁴ HUD again initiated a mandated negotiated rule-making process, with the involvement of PHAs, HUD staff and a few representatives of residents, resident organizations and tenant advocates. On September 19, 2005, HUD published its "Revisions to the Public Housing Operating Final Program: Final Rule."⁵

The published AM regulations require all PHAs that own and operate 250 or more public housing units⁶ to group their developments or scattered site units into "projects" which, for reasons of proximity, similarity of design, size, age, tenant characteristics, support systems, and other reasonable guidelines can be managed efficiently and effectively.⁷ Each resulting asset management project (AMP)⁸ will then be managed "according to [a] . . . model consistent with . . . management norms in the broader multi-family management industry."⁹ This includes the implementation of "project-based management, project-based budgeting, and project-based accounting."¹⁰ It also

includes project-based performance and evaluation. HUD notified all PHAs to submit their proposed AMP configurations to HUD no later than April 21, 2006.¹¹ After review, HUD approved the AMPs.

The AM model differentiates between large and long-view issues, such as capital planning, flat or ceiling rent structures, replacement strategy, risk management and regulatory compliance, which are to be managed by the PHA's central office, and property (or project) based issues such as marketing, leasing, resident services, routine and preventive maintenance and security, which are, preferably, to be handled by staff located at the property, but at the very least "charged with direct oversight of operations [at each AMP]."¹²

The regulations create a complex system for determining funding allocations for the PHA's central office and for each AMP.¹³ Under project-based budgeting and accounting each AMP is an independent financial unit so that its fiscal soundness and stability are assessed by review of AMP specific income and AMP specific expenses.¹⁴ The central office of the PHA may charge the AMPs specified asset management fees and may use excess cash flow from the AMPs for certain of its operations.¹⁵ Funding levels are determined, and funds distributed to AMPs and to the PHA's central office, according to a formula based on such factors as "eligible unit months," "project expense levels" and "rolling base [utility] consumption levels."¹⁶ AMP based budgets and year-end financial statements are made available upon request to the public.¹⁷

While HUD currently assesses PHAs in accordance with the Public Housing Assessment System (PHAS), it is working on replacing PHAS with a "property-specific" rather than "entity-wide" system that is consistent with the AMP/central office model of operations.¹⁸

Because of the change in the funding formula for operating subsidies, there are approximately 500 PHAs that will lose funding and others that will receive more, assuming that there are sufficient congressional appropriations to fully fund operating subsidies.¹⁹ For PHAs that will lose funding under AM, the participants in the negotiated rule-making bargained for a system whereby there

National Low Income Housing Coalition; UNDERSTANDING ASSET MANAGEMENT (Oct. 19, 2007), Massachusetts Law Reform Institute). No attempt is made here to duplicate these writings. Detailed descriptions are also available in the Supplementary Information accompanying HUD's Final Rule, the HUD Guidebook and the HUD Asset Management web page. Revisions to the Public Housing Operating Final Program, Final Rule, 79 Fed. Reg. 54,984 (Sept. 19, 2005) (codified at 24 C.F.R. § 990); HUD, OFFICE OF PUBLIC AND INDIAN HOUSING PREPARING FOR ASSET MANAGEMENT UNDER THE NEW PUBLIC HOUSING OPERATING FUND RULE (24 CFR 990): A PLANNING DOCUMENT (June 1, 2006) at <http://www.hud.gov/offices/pih/programs/ph/am/docs/pham.pdf>; and <http://www.hud.gov/offices/pih/programs/ph/am/overview.cfm>.

²Pub. L. 105-276, tit. V, § 519, 112 Stat. 2519, 2551 (1998), Quality Housing and Work Responsibility Act of 1998 codified at 42 U.S.C. § 1437g.

³42 U.S.C.A. § 1437g(f) (West and West Supp 2007); Allocation of Operating Subsidy Under Operating Fund Formula, Interim Rule, 66 Fed. Reg. 17,287 (March 29, 2001).

⁴HARVARD UNIVERSITY GRADUATE SCHOOL OF DESIGN, PUBLIC HOUSING OPERATING COST STUDY, FINAL REPORT (June 6, 2003), at <http://www.hud.gov/offices/pih/programs/ph/am/docs/harvcs-fin rptnoapp.pdf>.

⁵Revisions to the Public Housing Operating Final Program, Final Rule, 79 Fed. Reg. 54,984 (Sept. 19, 2005) (codified at 24 C.F.R. § 990) (Note: Year 2005 was Federal Register Volume 70, not 79, but this Final Rule was published as Vol. 79 and is universally cited as such in subsequent HUD Notices).

⁶24 C.F.R. § 990.260 (2007).

⁷Identification of Projects for Asset Management, PIH 2006-10 (Feb. 3, 2006). The PHAs' groupings are subject to HUD's right to disapprove the grouping(s).

⁸24 C.F.R. § 990.265 (2007).

⁹*Id.* § 990.255.

¹⁰*Id.*

¹¹Identification of Projects for Asset Management, PIH 2006-10 (Feb. 3, 2006).

¹²24 C.F.R. §§ 990.270 and 990.275 (2007).

¹³*Id.* Part 990 subpart C.

¹⁴*Id.* § 990.280.

¹⁵*Id.*

¹⁶*Id.* § 990.115.

¹⁷*Id.* § 990.285.

¹⁸Information on Upcoming Rulemaking Associated with the Public Housing Assessment System as a Result of the Conversion to Asset Management, PIH 2008-18 (March 27, 2008).

¹⁹The operating subsidy fund has been underfunded since 2003 with funding levels of 88.8%, 86.02% and 83.4% of the formula need in years 2005, 2006 and 2007 respectively. HUD, Office of Public and Indian Housing, HUD Operating Fund Annual Report for Calendar Year 2007 (Oct. 31, 2007). The funding level for 2008 is currently estimated at 84%.

was a financial incentive to convert to AM as quickly as possible in exchange for a reduction in the amount of the loss of subsidies. Accordingly, the regulations provide that the amount of the subsidy loss is minimized in exchange for more rapid conversion.²⁰ HUD initially required agencies to submit proof of their so-called “stop-loss” eligibility by October 1, 2006.²¹ This was extended to April 15, 2007,²² and subsequently to October 15, 2007.²³

While driving PHAs to think of themselves as for-profit businesses through the adoption of the asset management system, HUD has simultaneously pursued plans to relieve PHAs of what HUD considers a distracting burden of dealing with engaged residents.

The Consolidated Appropriations Act, 2008²⁴ allows PHAs with between 250 and 400 units to opt out of AM requirements as long as the agency has not applied for stop-loss protection.²⁵ The act also maintains the current provisions allowing agencies to allocate up to 20% of their Capital Fund program grant to pay for central office expenses rather than accept the allocation resulting from application of the asset management formula.²⁶ In March, 2008, HUD issued a guidance describing items that PHAs “should consider” if they choose to take advantage of these provisions.²⁷ The guidance strongly discourages PHAs with 250 to 400 units from opting out of AM by declaring that the legislation is effective only for 2008. Moreover, it creates obstacles for PHAs that want to take advantage of the capital fund for central office expenses, but does not limit the applicability of the legislation to 2008 for those purposes. As HUD has made clear, it remains “strongly committed”²⁸ to the implementation of AM.

²⁰24 C.F.R. § 990.230 (2007). This system is commonly referred to as the “stop-loss” provision.

²¹Operating Fund Program Final Rule: Transition Funding and Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, PIH 2006-14 (March 22, 2006).

²²Operating Fund Program Final Rule: Transition Funding and Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy—Extension of Stop Loss Deadline to April 15, 2007, PIH 2006-35 (Sept. 25, 2006).

²³Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 1 and Year 2 Applications.

²⁴Pub. L. No. 110-161, 121 Stat. 1844 (2008).

²⁵*Id.* § 225.

²⁶*Id.* § 226.

²⁷Guidance on Asset Management Provisions of the Consolidated Appropriations Act, 2008, PIH 2008-16 (March 25, 2008).

²⁸Statement of Administration Policy, H.R. 3521 – Public Housing Asset Management Improvement Act (Feb. 12, 2008) (House Rules).

Streamlining: Theory, Practice and Implication

While driving PHAs to think of themselves as for-profit businesses through the adoption of the AM system, HUD has simultaneously pursued plans to relieve PHAs of what HUD considers a distracting burden of dealing with engaged residents. HUD has pursued this effort on two fronts. One, to streamline the PHA plan process, thereby minimizing resident involvement, and two, by proposing to streamline regulations that encourage resident participation.

On August 2, 2006, HUD announced its plan to streamline the templates for the 5-Year and Annual PHA plans.²⁹ In the face of objections, HUD issued additional announcements and additional proposed templates with some improvements.³⁰ Ultimately, however, the proposed templates dramatically reduce the information and supporting documents that PHAs would be required to include in their plans, making it much more difficult for residents and the public to know and understand the PHAs’ intentions and status.³¹ In a duplicitous and self-serving statement, HUD both objected to proposed legislation endorsing resident participation and emphasized that current HUD “regulations already encourage resident and tenant participation, especially in the adoption of Annual Plans”³² (emphasis in the original). The Office of Management and Budget (OMB) approved the eviscerated and streamlined template on April 21, 2008, and it became effective on May 1, 2008.³³ Significantly, the newly approved template is not available on the HUD PHA Plan webpage, which, as of this writing, still posts earlier templates with an expiration date of August 31, 2009.³⁴ The new templates have also not been announced in any HUD notices.

In the summer of 2007, HUD announced the Public Housing Administrative Reform Initiative (PHARI). A number of residents and resident advocates signed up to

²⁹Notice of Proposed Information Collection for Public Comment: Public Housing Agency Plans, 71 Fed. Reg. 48,934 (Aug. 22, 2006). This proposal was critiqued in NHLP, *New Streamlined PHA Plan Template*, 36 HOUS. L. BULL. 202 (2006). Regulations governing Public Housing Agency Plans are found at 24 C.F.R. Part 903.

³⁰Notice of Proposed Information Collection for Public Comment: PHA Plans Standard Template, 72 Fed. Reg. 45,823 (Aug. 15, 2007); Notice of Submission of Proposed Information Collection to OMB: Public Housing 5-Year and Annual PHA Plan, 72 Fed. Reg. 70,878 (Dec. 13, 2007); See NHLP, *PHA Plan Template Revisions Proposed*, 37 HOUS. L. BULL. 113 (2007).

³¹In response to three of these notices a number of organizations, including NHLP, the National Low Income Housing Coalition and the Consortium for Citizens with Disabilities, filed extensive comments with HUD and the OMB objecting to the revisions.

³²Statement of Administration Policy, H.R. 3521 – Public Housing Asset Management Improvement Act (Feb. 12, 2008) (House Rules).

³³OMB NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION can be accessed through: http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200711-2577-001#; PHA 5-Year and Annual Plan can be accessed through: http://www.reginfo.gov/public/do/PRAICList?ref_nbr=200711-2577-001.

³⁴<http://www.hud.gov/offices/pih/pha/templates/>.

participate in the PHARI. On November 30, 2007, HUD issued a Public Housing Administrative Reform Initiative Interim Report stating in part that HUD "believes that current regulations governing the establishment and recognition of resident councils are too prescriptive and anticipates streamlining these requirements in upcoming rule making."³⁵ By letter, dated January 28, 2008, HUD's Administrative Reform Initiative Resident Involvement Committee informed resident advocate members of that committee that HUD had been working on a streamlined version of the Tenant Participation and Tenant Opportunities in Public Housing regulations³⁶ since at least the fall of 2007.

The PHARI interim report noted that HUD would issue regulations streamlining the rules regarding grievance procedures, annual plans and admissions in early 2008.³⁷ In January 2008, resident advocates were informed that HUD had a near-final version of a streamlined regulation addressing the grievance procedures and the PHA plan process.³⁸ The current grievance regulations provide several options for the selection of a tenant representative on the grievance panel or a hearing officer, including approval by the majority of the tenants in the building or by consultation with the resident organizations.³⁹ They also allow for, among other things, the right to an impartial hearing officer or panel, prior access to relevant agency records, the right to counsel, the right to confront and cross examine witnesses, a decision based upon evidence presented at the hearing, the right to record the hearing, and the right to accommodation for persons with disabilities.⁴⁰ While HUD has not made any public announcement, advocates have been informed that the draft proposal eliminates a number of these due process protections, including resident involvement in the selection of hearing officers.

Advocates have also been informed that the draft of the proposed annual plan streamlining regulations modifies the needs statement, reduces the already cursory financial information, removes PHAs' obligation to report annually on progress in achieving goals, and removes any reference to the voucher administrative hearing. In addition, the draft regulations regarding the selection of the

resident advisory boards (RABs) are removed and replaced with a rule that allows the PHA to determine how RABs are selected. As this goes to press, vocal opposition from public housing residents has resulted in a HUD pledge to delay the publication of the proposed regulations.⁴¹ However, there has been no commitment as to whether the proposed regulations regarding the grievance procedures or the PHA annual plan will be abandoned.

What Does This Mean to Residents and Advocates?

Will AM produce better functioning and more fiscally efficient PHAs, enabling residents and their advocates to better understand who within the agency is responsible for a given situation, and where and why the money is being spent? Will project level management be more responsive to residents' needs? Or will the new funding structure or the new performance assessment system coupled with the dramatic underfunding of operating subsidies drive PHAs to divest or demolish projects that require more resources, or to stop serving the most needy residents and serve higher-income households? Will central offices, which are allowed to charge AMP budgets certain fees, abuse this authority at the expense of residents' quality of life? In the absence of any allocation directed to resident services will residents suffer, and will the AMP use more resident participation activities money to fill the gap, thus under-funding resident associations and participation?⁴² What will be the effect of having resident participation funds decreased if appropriations are inadequate to fund project budgets? The answers to these and innumerable other questions depend upon how well residents and advocates understand and learn to work within this new environment.

It is certain that the streamlining of the 5-Year and Annual Plan template and of HUD regulations⁴³ will make this challenge more difficult. It is certain that PHAs so inclined will be freer to act without concern for resident desires or needs. It is certain that the development and maintenance of strong, positive working relationships between residents and agencies will depend more on the determination and engagement of resident organizations and less on a defined and dependable regulatory mandate. Thus the opportunity presented to residents by the change to asset management may be substantially diminished because of HUD's efforts to streamline the rules and remove any obligation to improve or encourage tenant participation. ■

³⁵HUD, Public Housing Administrative Reform Initiative: Interim Report and Recommendations (November 30, 2007) 14, available at <http://www.hud.gov/offices/pih/programs/ph/phari.cfm>; see also Letter from Representatives Barney Frank, Albio Sires and Maxine Waters to Secretary of HUD, Alphonso Jackson (March 6, 2008).

³⁶24 C.F.R. Part 964 (2007); for information regarding the work of the resident involvement and self sufficiency group see <http://www.hud.gov/offices/pih/programs/ph/phari/triss.cfm>.

³⁷HUD, Public Housing Administrative Reform Initiative: Interim Report and Recommendations (November 30, 2007) Attachment C, Upcoming Rulemaking Actions Related to Asset Management, available at <http://www.hud.gov/offices/pih/programs/ph/phari.cfm>.

³⁸24 C.F.R. Part 966, Subpart B (2007).

³⁹*Id.* § 966.55(b)(2) and (3).

⁴⁰*Id.* §§ 966.55-56.

⁴¹Acting HUD Secretary Roy Bernardi and 500 public housing residents (organized by the National Training & Information Center's Housing Justice Campaign) who visited HUD's Washington, D.C. office on April 14, 2008, reached an agreement that the publication of the proposed streamlined Part 964 regulations will be indefinitely postponed.

⁴²Resident participation funding is included in the operating fund formula. 24 C.F.R. § 990.190(e) (2007).

⁴³Specifically, 24 C.F.R. Parts 903, 964 and 966.

Congress Considers Solutions for the Project-Based Section 8 Funding Crisis

Last fall, the *Bulletin* described HUD's inability to make timely payments to owners with executory project-based Section 8 contracts in the last quarter of FY 2007, and HUD's new practice of renewing contracts for one year but requiring owners to accept increments of only several months' worth of funding, with contract language recognizing that full one-year funding was not being provided all at once.¹

These policies were allegedly driven by HUD's need to comply with the Anti-Deficiency Act, which requires federal agencies to have sufficient budget authority on hand to fulfill the full term of the contractual commitments being made. Apparently, for an undetermined amount of time prior to late 2007, HUD had been renewing contracts for one year, but dividing the necessary funding among two fiscal years: allocating some funds from the applicable year's appropriation, but only enough to carry the property through the end of that fiscal year, and then "backfilling" the remainder of the one-year contract term that ran into the subsequent fiscal year with the next year's appropriated budget authority. Although HUD has still not issued a required finding on whether this prior practice in fact violated the Anti-Deficiency Act, as required by the Act and by the FY 2008 Appropriations Act,² it has proceeded to "short-fund" all project-based contract renewals. The shortfall—the additional funds required to fully back one year renewal contracts—has been acknowledged by HUD and estimated at between \$2.0 and \$2.4 billion,³ fully one-third of the entire \$6.14 billion appropriated for the program in FY 2008.

The Risks Ahead

Nonpayment Problems

Although HUD has recently stated that it has enough funds to carry all contracts requiring either renewal or renewed funding increments through this fiscal year, or possibly into the first two months of the next fiscal year,⁴ the nonpayment problem could crop up again around the end of this fiscal year if HUD's estimates

about total subsidy costs prove incorrectly low. Aside from underestimating the number of units involved that require renewal funding, higher than estimated per-unit subsidy renewal costs could occur as a result of inflation in operating costs, rising market rents for properties entitled to them, or decreases in tenant incomes. Another of these factors could trigger nonpayment problems, similar to those encountered last summer.

Risks to Owners, Lenders and Tenants

Even if the existing funding does not run out earlier, several problems remain front and center in the appropriations process for Fiscal Year (FY) 2009, unless Congress provides additional funding. One risk stems from the continuation of the shortfall itself, which has shaken owner confidence in the predictability of the subsidy guarantee, so that we might see a higher rate of opt-outs at contract expiration. Similarly, lenders and capital investors asked to participate in refinancing transactions necessary to preserve and improve properties that are aging or at risk of market-rate conversion may now be increasingly reluctant to participate. Tenants, who have no clear protection against the consequences of a HUD breach of contract, face growing uncertainty. More than half of the properties with project-based Section 8 contracts have HUD mortgage insurance, so that any funding interruptions could result in mortgage defaults and more costly claims on the mortgage insurance fund.

An Avoidable Train Wreck

Another growing risk is that the FY 2009 funding will be untimely or inadequate, even just to renew expiring funding increments for the necessary period of time. Since the prospects for enactment of a final appropriations bill prior to the end of the fiscal year appear dim in light of the substantial differences between the Administration and Congress on spending priorities, starting the next fiscal year under a Continuing Resolution (CR) looks probable. The funding typically provided under a CR—ordinarily based upon last year's demonstrably inadequate funding level—would not only be insufficient to provide one-year funding for all contracts, but might also prove inadequate to provide sufficient funding increments to all projects requiring them. This could occur for any of several reasons, including an influx of new contracts expiring for the first time, a dramatic increase in the number of properties with simultaneously expiring funding increments during the period covered by the CR (as compared with the same period during FY 2008), as well as the time required to actually provide new paperwork and funds to virtually all properties simultaneously. If these funds run out again, Congress will not be in session to provide emergency funding and HUD may well have no other quick fixes. Mortgage defaults, service reductions, threatened evictions, litigation—all may appear suddenly, with little warning.

¹NHLP, *Growing Reports of a Project-Based Section 8 Funding Crisis as FY 2007 Closes*, 37 HOUS. L. BULL. 149 (Sept. 2007).

²153 CONG. REC. 16514 (Jt. Expl. Stmt. covering FY 08 Transportation-HUD Appropriations, Pub. L. No. 110-161, Div. K., Title II, requiring ADA determination by Jan. 15, 2008).

³Letter from John W. Cox, HUD Chief Financial Officer, to Honorable Maxine Waters, Chairwoman, Subcommittee on Housing and Community, House Committee on Financial Services (Nov. 16, 2007).

⁴See, e.g., *id.*

Obtaining Funding and Other Responsive Policies

Advocates and owners have been seeking the necessary funds to redress the \$2.4 billion shortfall through a supplemental appropriation for FY 2008, whether through the emergency supplemental vehicle being negotiated to fund the Iraq war, or through another supplemental spending bill. In April, twenty-two senators, including five Republicans, sent a support letter requesting such funding to the Appropriations Committee (following earlier successful efforts to increase funding for this purpose in the Budget Resolution), and fifteen House members followed suit. The House Appropriations Subcommittee held a hearing exclusively focused on this topic on April 23. Whatever the outcome of these efforts, by demonstrating an increasing awareness of the need for a solution, they will pave the way for securing increased support for solving this problem in any forthcoming CR or appropriations bill for FY 2009.⁵

Advocates and owners have also been seeking various legislative reforms that would require HUD to provide advance notice of imminent nonpayments to Congress, owners and tenants.

Advocates and owners have also been seeking various legislative reforms that would require HUD to provide advance notice of imminent nonpayments to Congress, owners and tenants. Advocates support requiring HUD to use available funds for tenant protections or even the mortgage insurance fund to provide stopgap funding to properties with expiring funding increments. Owners affected should be authorized to draw on reserves to make mortgage payments or pay operating expenses. Tenants should also receive temporary protection from any threatened rent increases. The House Mark to Market Reform bill, H.R. 3965, as reported by the House Financial Services Committee, contains a provision requiring notice to owners, authorization for use of reserves, and interest for late payments.⁶ ■

⁵Part of the solution for FY 2009 will likely include an "advance appropriation" of FY 2010 funds, which could provide future funding on October 1, 2010, to cover the shortfall represented by contracts with tails hanging over into subsequent fiscal years. This technique, approved by the Senate's version of the FY 2009 Budget Resolution, would effectively provide assured funding when it is needed, without requiring additional scarce budget authority during FY 2009. The technique, which has been employed for many years for funding part of the voucher program, would require repetition every year to avoid a tremendous disruption.

⁶H.R. 3965, § 13, as reported April 10, 2008, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h3965rh.txt.pdf.

Senate Version of SEVRA Introduced

Congress is poised to enact major revisions to the nation's largest affordable housing program serving very low-income families, the Section 8 Housing Choice Voucher program. The Section 8 Voucher Reform Act (SEVRA), passed by the House of Representatives in July 2007,¹ would provide the first comprehensive revisions to the voucher program since 1998.² The House bill focused on better funding mechanisms, streamlining the system, and making the program more flexible for public housing authorities (PHAs).³ On March 3, 2008, Senators Dodd and Schumer introduced the Senate version of SEVRA, which was referred to the Senate Banking Committee.⁴ The Senate bill, S. 2684, strives, like the House version, to improve federal housing assistance programs, but it contains some key differences intended to improve upon the House reforms.⁵ After summarizing the bills' major similarities, this article briefly reviews those provisions.

Common Provisions

Both bills seek to address numerous problems currently troubling the Section 8 Voucher program. One of the most prominent and pressing problems has been the inadequate funding formula, which resulted in underfunding of some PHAs, while creating unusable surpluses for others. Moreover, the voucher program includes numerous complicated and inefficient provisions that impair effective operations. Finally, the bills address other policy changes that make the program more tenant-friendly.

The House and Senate SEVRA bills propose many of the same solutions to these problems. Both versions authorize the appropriation of 20,000 incremental vouchers each year for five years, which would help recover some of the vouchers recently lost under the prior flawed funding formula.⁶ Another important commonality of the bills is the voucher funding formula itself. Both versions use the PHA's actual costs from the prior year, ensuring a more stable funding system.⁷

There are also similarities with regard to setting tenant rents. Both bills maintain a 30% cap on tenant contributions to rent, except as already modified by the voucher

¹H.R. 1851, 110th Cong. (2007).

²Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2518 (1998).

³For a more detailed discussion of H.R. 1851 and SEVRA background, see NHLP, *Proposed Congressional Reforms to the Section 8 Voucher Program*, 37 HOUS. L. BULL. 169 (Oct. 2007).

⁴S. 2684, 110th Cong. (2008).

⁵For a side-by-side analysis, see CBPP, *Comparison of Major Provisions of House and Senate Section 8 Voucher Reform Bills and Current Law*, available at <http://www.cbpp.org/3-10-08hous-tables.pdf>.

⁶H.R. 1851 at § 6; S. 2684 at § 21.

⁷*Id.*

format.⁸ The House and the Senate agree that PHAs would be able to increase the payment standard to 120% as a reasonable accommodation without requesting a waiver from HUD.⁹ With regard to calculating the tenant's share of rent, both bills would exclude imputed income from assets in rent calculation and both would allow PHAs to verify income by using determinations of income by other federal assistance programs, such as Temporary Aid to Needy Families.¹⁰ SEVRA, in both versions, gives PHAs the discretion to make payments to owners of units that failed inspections for non-life-threatening violations, so long as they are fixed within thirty days. Although many other provisions of the House and Senate bills are similar, the bills contain several differences discussed below.

Program Administration

The most significant difference between the two versions of the bill deals with the Moving-to-Work Program. The House bill provided for an increase in the number of PHAs authorized to become Moving-to-Work (renamed "Housing Innovation Program") jurisdictions. Such a provision would allow more PHAs to ignore most federal regulations and increase fungibility between their public housing and voucher funding. PHAs that have become Moving-to-Work already have sometimes implemented flat rents or other policies harmful to tenants. The Senate bill currently omits any such clause, but advocates should watch for further updates, as this may change before passage.

Another administrative change would affect portability requirements. The House bill provided that a PHA would be required to absorb all vouchers ported into its area.¹¹ The Senate bill also provides for mandatory absorption, but qualifies it by reserving to HUD the right to suspend the policy in years that there are not enough funds to pay for it.¹² Portability can often be vital to tenants using vouchers, especially for people with disabilities who cannot find accessible units in the issuing PHA's location, or for victims of domestic violence who need to leave the area for safety.

H.R. 1851 would require all voucher applicants to provide identification compliant with the REAL ID Act.¹³ If every single member of the family could not provide such documentation, no one in the family could receive assistance.¹⁴ This would be a major change from the current system where some members of the family may elect not to provide verification of identity, and instead receive prorated assistance. The Senate bill does not have any such provision, and would maintain the status quo.

⁸H.R. 1851 at § 3(a); S. 2684 makes no change to existing law.

⁹H.R. 1851 at § 12(c); S. 2684 at § 11(c).

¹⁰H.R. 1851 at § 3; S. 2684 at § 3.

¹¹H.R. 1851 at §§ 6(b).

¹²S. 2684 at § 6(4)(b).

¹³H.R. 1851 at § 21.

¹⁴*Id.*

Rent Burdens and Income Calculations

Many of SEVRA's most significant impacts on tenants address the manner in which rent and income are calculated. Although largely similar, the House and Senate bills have a few differences.

PHAs currently have the discretion to set voucher payment standards (the maximum subsidy they will pay, before required tenant contributions) between 90 and 110% of fair market rents for the area. Because voucher payment standards directly affect total rent burdens for many voucher tenants, H.R. 1851 requires a PHA to assess rent burdens and for HUD to adjust the payment standard if the number of assisted families in a housing authority's jurisdiction paying more than 30 or 40% of their income exceeds the national average.¹⁵ This provision would help ensure that payment standards are set fairly and that families will be able to utilize their vouchers. The Senate bill requires adjustment if more than 5% of families pay more than 40% of income for rent and utility costs, or the PHA must explain its reason for not adjusting the payment standard.¹⁶ Its version also adds a number of prerequisites for increasing the payment standard above 120%, requiring the PHA to set its standard at 110% for at least six months, to create procedures ensuring reasonable rents, to meet utility allowance requirements, and to conduct outreach to landlords.¹⁷ Only if a PHA has taken such steps could it qualify for the higher payment standard. This section also ensures that voucher holders' rent burdens in LIHTC buildings are not excessive by limiting their rents to the greater of those for similar LIHTC units or the voucher payment standard.¹⁸

Under the voucher program, much of the tenant's rent contribution is based upon income. Both bills would calculate income based on the family's earnings from the prior year.¹⁹ However, the Senate bill would use projected income for the following year at initial lease up.²⁰ Also, the House bill gives PHAs discretion to include the prior year's unearned income in its calculation, while the Senate bill requires that all income from the prior year be included.²¹

Since numerous other factors are considered in calculating income for the purposes of rent, both bills attempt to simplify this calculation. The Senate would have income from assets included in the income and rent calculation, but would exclude automobiles and necessary items, certain litigation settlements, and the value of retirement accounts.²² It would also exclude the first 10% of a family's

¹⁵H.R. 1851 12(a)-(b); S. 2684 § 11(a)-(d).

¹⁶*Id.* at § 11(a)(3).

¹⁷*Id.* at § 11.

¹⁸*Id.*

¹⁹H.R. 1851 at § 3(a); S. 2684 at § 3(a).

²⁰S. 2684 at § 3(a).

²¹H.R. 1851 at § 3(a).

²²S. 2684 at § 4.

earnings up to \$9000 from income.²³ This is less than the House bill, which simply excludes 10% of all work earnings from income.²⁴ However, the Senate bill attempts to address the problem of childcare for those working or pursuing education by adding an income deduction for unreimbursed childcare costs exceeding 5% of family income for children of preschool age, for before-or after-care for children in school, or for other necessary childcare.²⁵ The House had eliminated any childcare expense provision, in order to simplify calculations.

Participants in federally assisted housing often face difficulties when the housing authority is required to inspect a unit for compliance with housing quality standards.

Under current law, when a resident's income changes, the PHA must review it. To simplify matters, the House bill had set the income review triggers at changes of \$1500 annually.²⁶ This concerns residents because it means that if a tenant's income dropped by \$1400, she would still have to pay the same amount of money toward her rent as previously, until annual recertification. The Senate bill allows for review when income decreases by \$1000, or at any lower amount that a PHA may set. It also requires a review any time that income increases by \$1000.²⁷ The PHA can set the review of increased income at a lower number, but not lower than the amount triggering a review for decreased income.

Finally, the House bill would allow PHAs to set up alternative rent structures, whereas the Senate bill does not.²⁸ Alternative rent structures may include flat rents, tiered rents, or lower percentages of rent contribution, so long as none of these alternatives exceed the 30% income cap.²⁹ The Senate would not allow these alternatives.

Voucher Funding

Prior to FY 2007, each PHA's renewal funding was based on costs and the number of authorized vouchers in use from May-July 2004, with adjustments pursuant to a HUD formula and for additional tenant protection vouchers. Although Congress improved upon the funding formula in appropriations acts for Fiscal Years 2007 and 2008, the prior funding structure caused the loss of

approximately 150,000 vouchers between 2004 and 2006.³⁰ As previously mentioned, the draft of the Senate bill would change the voucher funding framework as well, proposing the same changes as the House bill, funding PHAs using "leasing and cost data from the preceding calendar year," adjusted by an annual factor and other HUD adjustments.³¹ When calculating the prior year's data for funding allocations, any over-leasing of vouchers above 103% would not count.³²

Like the House bill, S. 2684 would also authorize 20,000 incremental vouchers annually for five years.³³ However, it prioritizes the incremental vouchers for use in preserving affordable housing and for entities that provide vouchers on a regional basis.³⁴ These incremental vouchers would help offset the loss of vouchers caused by previously inadequate formulas.

With the loss of public housing units in many markets, permitting more funding tied to hard units is vital. The Senate bill would increase the amount of vouchers that can be project-based to 25% of the PHA's allocation, with an additional 5% allowed for homeless assistance housing.³⁵ Also, owners of converted multifamily units could request project-based vouchers instead of enhanced vouchers if there is sufficient demand or community need.³⁶

Housing Quality Standard Inspections and Repairs

Participants in federally assisted housing often face difficulties when the housing authority is required to inspect a unit for compliance with housing quality standards. SEVRA streamlines the process while allowing the PHA to ensure the unit meets HQS standards. Where units fail inspection, the Senate bill differs slightly from the House version. It allows PHAs to abate voucher subsidy payments for 120 days, whereas the House allowed the PHA to withhold the subsidy for sixty days.³⁷ The abatement may be used to make the repairs if the conditions are life-threatening; H.R. 1851 allows withheld funds to be used for any repairs. Under the Senate bill, the family also has 120 days from the beginning of the abatement period to look for new housing. If it cannot find a new unit in that time, it may choose to extend the voucher search time, or receive a preference for a unit on the public housing waitlist.³⁸ Up to two months of that abated assistance may be used for relocation assistance, such as moving expenses and a security deposit.³⁹

³⁰Chart based upon CBPP data from February 2004 through September, 2006, available at <http://www.cbpp.org/pubs/housing.htm>.

³¹S. 2684 at § 6(a)(2).

³²*Id.*

³³*Id.* at § 21.

³⁴*Id.*

³⁵*Id.* at § 10.

³⁶*Id.* at § 15.

³⁷*Id.* at § 2(a)(3).

³⁸*Id.*

³⁹*Id.*

²³*Id.* at § 3.

²⁴H.R. 1851 at § 3.

²⁵S. 2684 at § 3 (b)(2).

²⁶H.R. 1881 at § 3 (a).

²⁷S. 2684 at § 3(a)(1).

²⁸H.R. 1851 at § 3(a).

²⁹*Id.*

Additionally, S. 2684 allows a PHA to use rent subsidies to pay utilities that the landlord has failed to pay.⁴⁰ The PHA would have to attempt to notify the landlord before paying the utilities, except in emergency situations.⁴¹ Allowing a housing authority to use abated assistance to make repairs is an especially significant issue for many residents, since the repairs may allow them to remain in the unit and avoid the often difficult process of relocating with a voucher.

Tenant Protections

S. 2684 provides some important protections for tenants in properties facing conversion, provisions largely overlooked by the House Bill. It provides that public housing tenants forced to relocate because of demolition or disposition of their building will not be considered new applicants and thus will not be subject to elective screening criteria when they apply for replacement voucher assistance.⁴² Currently, in some demolitions or dispositions, many tenants are refused the right to return or other assistance based on elective screening criteria. Second, for privately owned multifamily units facing conversion actions, the Senate bill clarifies that an owner of a unit must accept a tenant's enhanced voucher and only terminate for good cause, and that these tenants should also not be re-screened by the PHA.⁴³

Conclusion

Like its House counterpart, the Senate SEVRA bill would be a big step in moving toward restoring proper funding and creating a more efficient program that serves both tenants and communities. A hearing on S. 2684 was held in the Subcommittee on Housing and Urban Affairs of the Senate Banking Committee on April 16, 2008. In this election year, the chances of future action to amend the bill and report it to the floor remain uncertain, since floor time becomes increasingly scarce as the session proceeds. The *Bulletin* will report on future developments. ■

HUD's New Guidance on Voucher Payment Standards for People with Disabilities

The Housing Choice Voucher Program has been essential in allowing people with disabilities to access affordable housing.¹ Vouchers give tenants with disabilities flexibility to move near services or find accessible units. However, Congress and HUD have recognized that in order for people with disabilities to fully access the voucher program, it must, beyond the general reasonable accommodation requirement,² specifically provide for certain reasonable accommodations. One such accommodation has been to allow participants to request an increase in the housing authority's payment standard, on a case-by-case basis, in order to find a suitable unit.³ On March 10, 2008, HUD released Notice PIH 2008-13, providing further guidance on exceptions to payment standards for persons with disabilities as a reasonable accommodation.⁴

The Section 8 voucher payment standard is generally set by a housing authority at anywhere within the statutorily provided zone of 90% and 110% of the HUD-published Fair Market Rents (FMR) for the area.⁵ However, the regulations also provide that a person with a disability may request an increase in the payment standard as a reasonable accommodation.⁶ Prior to this new notice, if the requested amount was below 110% of FMR, the housing authority could simply provide the accommodation. If it was above 110%, the housing authority had to request a regulatory waiver from HUD.

HUD's new guidance clarifies and slightly changes the process of requesting an exception payment standard. A PHA may still approve any payment standard up to 110% of FMR without requesting a waiver from HUD. However, the tenant can only request a waiver to the payment standard after the family has located a unit, which could make families less likely to look within the higher range to begin with.⁷ Also, once the exception payment standard is in effect, it does not have to be re-verified

¹For a more detailed discussion on how persons with disabilities can use the Housing Choice Voucher program to access affordable housing, see Allen, Michael, *Increasing Usability of Housing Choice Vouchers for People with Disabilities*, 36 HOUS. L. BULL. 111 (May 2006).

²See Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; Fair Housing Amendments Act, 42 U.S.C. § 3604 *et seq.*; Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.*, for federal statutes requiring reasonable accommodations.

³24 C.F.R. § 982.505(d) (2007).

⁴Notice PIH 2008-13 is available at <http://www.hud.gov/offices/adm/hudclips/notices/pih/>.

⁵24 C.F.R. § 982.503 (2007).

⁶*Id.* § 982.505(d).

⁷Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation, HUD PIH Notice 2008-13 (HA) (March 13, 2008).

⁴⁰*Id.* at § 19.

⁴¹*Id.*

⁴²*Id.* at § 13.

⁴³*Id.* at § 14.

unless a still-higher exception payment standard is necessary. In the past, HUD has sometimes only allowed the waiver to last for a year, or in other cases, families have had to re-verify the need each year.

If the applicant requests a payment standard from 110-120%, the PHA will have to apply to the HUD Field Office Public Housing Director.⁸ The PHA will only have to apply to HUD headquarters for a waiver when requesting an exception payment standard above 120%.

Often, housing authorities either ask for too much or inappropriate documentation for reasonable accommodations. The new PIH notice lists the documentation a PHA must submit to HUD when requesting a waiver of the payment standard. First, the PHA should obtain a statement from a health care provider regarding the need for the reasonable accommodation and the features of the unit that meet the person's needs. These features may include the location and nearby services. Second, the PHA should provide the contract rent and utility allowance for the unit. Third, it should submit a statement that it has determined the rent for the unit is reasonable and meets the requirements noted in the health care provider's letter. Fourth, the PHA must provide the household's monthly adjusted income and the FMR for the unit size for which the family is eligible. Finally, the PHA must include the proposed effective date of the lease or lease renewal.

The notice also describes the calculation process for determining the family's total adjusted gross rent, which in turn determines what payment standard is necessary. This calculation requires subtracting 10% of monthly adjusted income from the gross rent, which is the contract rent plus the utility allowance. The adjusted gross rent is then used as the number that HUD will use to determine the exception payment standard. This calculation caps the family's rent share at 40%, not just for initial occupancy, but also for continued occupancy, a divergence from prior policy, which sometimes required a participant to move to a less expensive unit after the first year, pay the full difference of the unit, or submit a new request. Under this language, it appears that the waiver of the payment standard would remain in effect for continued occupancy, so that a tenant could remain in place without an increased rent burden, so long as the other notice criteria are met.

By clarifying existing rules and policies, HUD's new notice on requesting exception payment standards provides some concrete guidance for PHAs, which hopefully will lead to greater use and faster turnarounds on the approvals required in order to provide this oft-needed accommodation. ■

⁸24 C.F.R. § 982.503(c)(2)(ii) (2007).

RHS Makes Dramatic Changes to Rural Voucher Program

In the Agricultural Appropriations Act of 2006,¹ Congress enacted a Rural Development Demonstration Voucher Program, modeled in part on the rural voucher program authorized in Section 542 of the Housing Act of 1949,² that was designed to protect residents of Section 515 Rural Rental Housing from displacement when owners of the housing prepay their loans. The program has been reauthorized in the Agricultural Appropriations Acts of 2007³ and 2008.⁴ In March of 2006, the Rural Housing Service (RHS) and the Department of Housing and Urban Development (HUD) published in the Federal Register a somewhat surprising Memorandum of Understanding (MOU) that announced the implementation of the program and how RHS was going to turn over primary program administration to HUD.⁵ Under the MOU, HUD agreed to subcontract day-to-day administration to local public housing authorities located in the areas where the RHS prepaid developments were located.

For reasons that have never been made public, the interagency plan proved to be unworkable and in April of 2007, RHS published an internal agency memorandum, claiming to merely clarify the program then in effect.⁶ In fact, the announcement made significant changes to the RHS voucher program including the fact that HUD and local public housing authorities were no longer involved in the program's administration. On March 24 of this year, RHS published a new notice in the Federal Register that puts program administration in the hands of RHS and its subcontractors. At the same time the agency published and distributed, only to USDA Rural Development Offices, the *Rural Development Voucher Program Guide* (April 2008). Both the Federal Register Notice and the Guide announce and disclose major restrictive changes to the program as it will be administered under the 2008 Agricultural Appropriations Act.⁷ This article will summarize and analyze the critical provisions of the Notice and Guide as they relate to the right of tenants who reside in Section 515 housing that is subject to prepayment or foreclosure.

¹Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2006, Pub. L. 109-97, Title III (Nov. 10, 2005).

²42 U.S.C.A. § 1490r (West 2003).

³Revised Continuing Appropriations Resolution, 2007, Pub. L. 110-5, § 101 (Feb. 15, 2007).

⁴Consolidated Appropriations Act, 2008, Public Law 110-161, Tit. III (Dec. 26, 2007).

⁵71 Fed. Reg. 14,084 (March 20, 2006).

⁶Clarification of Issues for Rural Development Voucher Demonstration Program, RD Unnumbered Letter (April 27, 2007).

⁷73 Fed. Reg. 17,473 (March 24, 2008).

Reliance on HUD Section 8 Program Rules

The RHS Notice is by no means exhaustive with respect to its description of how the voucher program is to operate. As a result, the Notice announces that unless otherwise noted, the program is intended to follow the HUD Section 8 Regulations.⁸ Unfortunately, substantial guidance with respect to the operation of the voucher program is included in the Guide. Neither the Notice nor the Guide explain what relationship the Guide has to the HUD regulations. Technically, since the Guide does not have the force and effect of law, conflicts between the Guide and HUD regulations that are not specifically addressed in the Notice should be resolved in favor of the HUD regulations. However, other than directing one of the RHS contractors, Quadel Consulting, to follow the HUD regulations, RHS staff is not advised to follow the HUD regulations or to even review them before meeting with residents and advising them about the voucher program.

Unduly Restrictive Reliance on One Aspect of the Authorizing Legislation

The RHS voucher demonstration program has been authorized for three years in the Agricultural Appropriations Acts, which generally are not vehicles for authorizing legislation. As a consequence, Congress typically drafts authorizing legislation contained in appropriations acts in very condensed form and frequently only gives broad guidance to agencies as to how programs are to be operated. In the 2008 Appropriations, Congress gave RHS broad authority to operate a rural voucher program consistent with Section 542, advised it to also operate the program consistent with the HUD Section 8 voucher program, directed that the amount of subsidy under the voucher program be limited to the difference between the market rent for the unit that the resident is vacating and the rent that the resident was paying for that unit, and authorized the agency to expend funds under the appropriations until they are expended without regard to the fiscal year in which the appropriations were made. Unfortunately, it also directed that voucher spending be subject to annual appropriations.

While RHS has taken many liberties with respect to the program's implementation, it has relied heavily on the appropriations act's voucher subsidy limitation to restrict the program's operations to the point that voucher holders, who encounter circumstances both within and outside their control, may be harmed severely after becoming assisted by the program. Significantly, voucher holders are not adequately advised about the program's limitations.

⁸*Id.*

Subsidy Level

The 2008 Appropriations Act states that the rural voucher subsidy amount "shall be the difference between comparable market rent for the section 515 unit and the tenant paid rent for such a unit."⁹ In other words, unlike in the Rental Assistance or Section 8 programs, the voucher subsidy is not determined by household income, but by the rent that the Section 515 unit will command after prepayment and the rent that the resident was paying before prepayment.¹⁰

RHS has taken the statutory language and has applied it literally throughout the Notice and Guide to limit the amount of subsidy that is available to voucher holders. It has made no accommodations for situations in which tenants receive a utility subsidy, voucher holders lose income due to illness or death of a household member, landlords initiate rent increases, or utility costs increase significantly.

The Guide makes clear that a resident who was living in a Section 515 development who was extremely low income and, as a result, was receiving a subsidy to pay part or all of her utility costs, will no longer receive that subsidy when a voucher is issued. The maximum subsidy that the resident will receive is the difference between the comparable market rent for the unit and the amount that the resident paid to the landlord, which, in the case of residents who received a utility subsidy, is zero.

The problem is worse for households who suffer a loss of income. For example, if a two-person senior household was earning \$8500 per year and paying \$213 for its portion of the rent for a unit that commands a post prepayment rent of \$375, the amount of voucher subsidy that the household receives is capped at \$162. This does not change if one of the two household members dies and the household income is reduced by 50%. Under the RHS Rental Assistance program, and under the HUD Voucher program, the household rent would be adjusted to \$107 after the death of the household member. Under the RHS voucher program it does not change. A household that was paying 30% of its income for rent is suddenly required to pay 60% of income for rent. In most instances, it is not very likely that the remaining individual would be able to afford the increased proportion of income that it is paying for rent and is likely to move, either voluntarily or involuntarily, in a relatively short period of time. Given that nearly 60% of the households living in RHS housing are elderly or persons with disabilities, the likelihood of such an occurrence is extremely high and the consequences are likely to be catastrophic.

⁹Pub. L. 110-161, Consolidated Appropriations Act, 2008 (Dec. 26, 2007).

¹⁰If the resident was receiving a utility allowance, the tenant rent is determined by subtracting the utility allowance from the tenant contribution, provided the total does not go below zero.

Similar or even more severe results are likely to occur when a household has a single earner who is laid off, becomes ill, or is disabled. Less severe but nonetheless significant consequences are likely to occur when the landlord for the unit raises the rent after a year (assuming that the voucher is renewable) or the cost of utilities increases significantly, as they are doing in most areas of the country.

Disturbingly, residents are never directly advised of the potential consequences of accepting an RHS voucher.

Given that RHS is directed to operate the voucher program consistent with Section 542 of the Housing Act of 1949 and with the HUD Voucher program, it is difficult to believe that the agency could not find a way to adjust residents' rents when they are faced with significant hardships, particularly when those hardships are not in the voucher holder's control. It could have done so in a variety of ways but chose not to either as an oversight, lack of insight, or a desire to limit expenditures.

Disturbingly, in the various letters that Section 515 residents receive when the owner chooses to prepay a loan, or when a loan is foreclosed upon, the residents are never directly advised of the potential consequences of accepting an RHS voucher. They are simply advised that an RHS voucher is one of four options available to them. These options are moving to another Section 515 development and, if they were assisted under the Rental Assistance program, taking the subsidy with them; securing a Letter of Priority Entitlement (LOPE) which places them at the top of the waiting list at another RHS development; securing a HUD housing choice voucher (which the agency cautions may be difficult to secure); or securing the RHS voucher.

Indeed, RHS is so cavalier about its vouchers that it urges and facilitates residents and owners, in situations where the owner is required to continue to honor the resident's current lease and rent under RHS use restrictions, to mutually agree to a termination of the current lease so that the resident can begin to receive voucher assistance.¹¹ There are two disturbing aspects to these urgings. First, RHS does not explain to residents that their landlord has an ongoing and sometime indefinite obligation to continue to house them at their current rent and that this obligation may extend beyond the term of the RHS voucher. Second, RHS is willing to indirectly make subsidies available to

owners through the RHS vouchers when the owners have an obligation under RHS deed restrictions to subsidize the residents, sometimes for as long as they continue to reside in the unit. In doing this, RHS is spending money for the benefit of owners that it need not spend. In no instance has it made a similar decision with respect to residents. Significantly, RHS' practice may urge owners to prepay their loans knowing that they do not have to take a risk with respect to continuing to subsidize current residents because they will be able to convince them to convert to vouchers, thereby allowing them to collect market rent for the unit.

Term of Voucher

The Notice makes clear that RHS vouchers have a twelve-month term and that renewals are subject to Congressional appropriations.¹² No comparable notice is provided in the Guide or in any of the letters that residents receive from the agency. They all state and emphasize, without exception, that the voucher term is for twelve months and do not mention renewals or extensions. Such an omission is unjustified.

Voucher Assistance Limited to Thirty-six Months

For the first time, the RHS Notice restricts the assistance that is available to any voucher holder to thirty-six months.¹³ There is no explanation as to the authorization that the agency has to so limit vouchers or why the thirty-six-month limitation was adopted. The Notice simply states that "[t]his short-term subsidy enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance."¹⁴ Ironically, the thirty-six-month limitation is not mentioned anywhere in the Guide or in any of the documents that are made available to residents of Section 515 developments when they are advised about RHS vouchers. Given the omission, it is questionable how a tenant receiving a voucher can make any decision, let alone an informed decision, with respect to his or her options.

The thirty-six-month limitation is not statutory and appears to have been adopted as a means to reduce future appropriations by limiting the number of years that a voucher holder will be able to receive assistance. It will create an extreme hardship for residents of Section 515 housing whose owners prepay their loans because their voucher will terminate in thirty-six months, in all likelihood forcing their displacement.

¹²73 Fed. Reg. at 15,475 (March 24, 2008).

¹³*Id.* at 15,473.

¹⁴*Id.*

¹¹Guide at ¶ 2.6.

Vouchers Available to Residents of Foreclosed Properties

The Notice makes clear that in addition to assisting persons that are threatened with displacement due to an owner prepaying his or her Section 515 loan, vouchers will also be made available to residents of developments that are being foreclosed upon by RHS.¹⁵ The Guide makes clear that the practice, initiated by RHS in 2007, of making vouchers available to residents of developments whose loans have been settled as part of a debt settlement, or compromise process after acceleration of the 515 loan, and to residents who live in developments that have been deeded to the agency in lieu of foreclosure, is being continued.¹⁶ In all instances, the vouchers do not become available until the title to the property is actually transferred.

Ironically, RHS, at least initially, advises residents of properties that are subject to foreclosure that they are eligible to continue to reside in their dwelling.¹⁷ The initial notice sent to residents makes no mention of the fact that the foreclosure may be due to the owner's failure to maintain the development.

Resident Eligibility

Section 515 Resident as of Date of Prepayment

To be eligible for a voucher, a resident must live in a 515 development as of the date of prepayment or the date of actual foreclosure, either of which must have occurred after September 30, 2005, when appropriations for the program were first made available.¹⁸

While included in the Appropriations Act, the requirement that persons must live in the 515 development as of the day of the prepayment or foreclosure is unreasonable, at least with respect to those persons who plan to relocate from the development into other private housing. It effectively forces all persons who want, or are forced, to move from the 515 development to wait until the last minute to make a move and to compete for what is likely to be a very limited market of available decent housing in the community where the development is located. Indeed, given the limitations with respect to identifying a unit to relocate to, securing an inspection and entering a HAP contract, it is possible that residents whose lease expires close to the time of prepayment will not be able to secure a voucher in time to avoid a rent increase. If the vouchers were made available at any time after the owner applied for prepayment, when the owner rejected prepayment incentives, or at the very latest, after RHS approved the prepayment, there is likely to be a more reasonable opportunity for

residents to transition to private rental housing. The same is true for residents who live in a development that is being foreclosed upon. They should become eligible for vouchers as of the date that the agency advises the owner of its intent to foreclose, not on the actual day that title is passed to another person or entity.

Citizen or Permanent Resident

The Notice requires a tenant to be a citizen of the United States, a non-citizen national, or a qualified alien, all in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).¹⁹ While the Notice does not define who a "tenant" is, the Guide makes clear that it is an adult member of the household.²⁰ With respect to the tenant's status, the Notice does not make it clear as to the status that the resident must have and does not extend any of the rights and protections of Section 214 of the Housing and Community Development Act of 1980²¹ to tenants or their household members. The Guide, on the other hand, lists ten documents, one of which the voucher holder must present in order to be determined eligible for a voucher. In fact, it appears that the documents needed to establish eligibility do not conform to the list of persons eligible to receive RHS assistance under Section 214.

Significantly, the Notice and Guide seem to suggest that PRWORA supersedes Section 214 and grants RHS broad discretion to limit assistance and related rights to certain classes of immigrants. In fact, this interpretation is erroneous. PRWORA, in its introductory provisions, states that housing assistance may not be provided to persons who are not citizens or permanent residents. However, in another part of PRWORA, the act, for the first time, explicitly extends the application of Section 214 to the RHS programs, including the voucher program.²²

¹⁹*Id.* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is Pub. L. 104-193.

²⁰Guide at ¶ 1.2.

²¹42 U.S.C.A. 1436a (West 2003). Currently, Section 214 restricts eligibility for certain specified HUD and RHS housing programs to citizens, permanent residents, and persons admitted to the United States for an indefinite period of time. Importantly, Section 214 has been defined to only restrict assistance to ineligible household members, effectively making an entire family eligible to live in federally assisted housing and simply prorating the actual assistance (subsidy) provided to the household based on the number of eligible and ineligible persons that are in that household. Significantly, Section 214 also allows certain elderly persons to self certify their eligibility, allows any person to appeal a status determination through a special hearing process, and allows persons to elect to have themselves categorized as ineligible to receive assistance without going through the certification process. RHS, which attempted to adopt regulations implementing a citizenship and permanent resident requirement for the Section 515 program in 2004, postponed implementation of those requirements on February 22, 2005, two days before the regulations were to go in effect, because they did not conform to Section 214. In over three years, it has not proposed new regulations to deal with the issue. Its effort to circumvent Section 214 for the voucher program by citing PRWORA is truly disingenuous.

²²Pub. L. 104-193, § 441.

¹⁵*Id.* at 15,473.

¹⁶Guide at ¶ 2.4.

¹⁷Guide, Attachment 2F.

¹⁸73 Fed. Reg. at 15,474.

Given that PRWORA amended Section 214 and extended it to the RHS programs, it is inconsistent with the rules of statutory construction to conclude that one general section of PRWORA somehow grants RHS authority that is inconsistent with another section of the same act. Accordingly, it appears that the RHS Notice and Guide are in violation of Section 214 by failing to provide for a proration of voucher assistance, to allow elderly persons to self certify for assistance, to allow household members to appeal the determination of their status, and to choose not to declare themselves eligible for assistance. Given this apparent illegality, it is likely that a significant number of households that are eligible for RHS voucher assistance will be illegally denied it.

The one advantage that appears to be created by the Notice and Guide is the fact that the residents can choose who the “tenant” will be, and thereby ensure that residency status will only be checked with respect to that person. In other words, neither RHS nor the landlord will verify the status of other household members and will not prorate the assistance provided to the household if any of the household members are undocumented. Obviously, some problems will arise when the tenant dies, or, otherwise, wants to transfer the voucher to a co-tenant.

Household Must Be Low-Income

The tenant household must be low income as of the date of the prepayment or foreclosure.²³ Consistent with the appropriations act, this provision denies voucher assistance to households who reside in Section 515 housing who are no longer low income and forces them to pay market rent for the unit if they choose to remain in the former Section 515 development or to pay market rent for another privately owned apartment.

Exercising the Right to Receive a Voucher

If RHS determines a tenant to be eligible for the voucher program, it offers the primary tenant a Voucher Obligation Form, which the resident has ten months to exercise, provided it is exercised before September 15, 2008.²⁴

This provision is internally inconsistent and will make it extremely difficult for households to exercise their voucher rights if the landlord prepays a loan in July, August or September of 2008. This is because vouchers must be requested before September 15, 2008.

Given that the RHS Notice was published in March of 2008, the provision giving a tenant ten months to exercise the voucher cannot be met. At best, any tenant will only have nine months in which to exercise the voucher. Indeed, any household living in a development that prepays in July, August or September will have a difficult

time exercising its voucher altogether if it intends to move from the former Section 515 development. Some of these voucher eligible households may not even have sixty days to locate an acceptable unit and to have it inspected.

Right to Succession

The Notice for the first time states that if the primary tenant dies during the term of the voucher, the use of the voucher passes to an adult co-tenant.²⁵ While this is a commendable addition, it highlights a number of other problems and issues that RHS has created in the program and not adequately addressed. First, it appears that all vouchers are issued to a single adult household member. Typically this is likely to be the adult male household member, who thereby controls the voucher and, indirectly, the other household members. Indeed, the Guide states that in the event a

“voucher holder leaves the household, the voucher will not be transferred. If the voucher holder moves and takes the voucher with her, no new voucher will be issued for the remaining household members.”²⁶

Thus, the male voucher holder can leave the unit, leaving the female co-tenant and children behind without any subsidy. This is exacerbated when the female co-tenant is a victim of domestic violence. The victim who is not the voucher holder is unable to move from the unit because she is unable to take the subsidy with her. Similarly, she is unable to force the batterer from the unit, because he can take the subsidy with him. She thus is faced with the choice of continued victimization or homelessness.

Another issue arises when the surviving adult co-tenant is not a permanent resident. Under the RHS regulations and Guide, the co-tenant would not be eligible to receive the voucher. Under Section 214, the household would be eligible for assistance based on the fact that any of the household members, including minors, are eligible for assistance. This is foreclosed by the Notice and Guide.

RHS’ failure to address these issues is shortsighted and, with respect to immigrant households, it may be illegal.

Appeal Rights

Under the Notice, households that are determined not eligible for a voucher because they are not low income have a right to appeal the RHS decision under the RHS administrative appeals procedure.²⁷ They can also appeal the payment level of their voucher.²⁸ The Notice makes no statement with respect to applicants’ right to appeal if they are determined ineligible on other grounds, such as

²⁵*Id.*

²⁶Guide at ¶ 2.10.

²⁷73 Fed. Reg. 15,474 (March 24, 2008).

²⁸*Id.*

²³73 Fed. Reg. 15,474 (March 24, 2008).

²⁴*Id.*

citizenship. Arguably, the RHS appeals procedure should be applicable to any determination of ineligibility. Indeed, the Guide gives voucher applicants other appeal rights,²⁹ but they are not extended the right to appeal a citizenship/permanent resident status determination. This is in clear violation of Section 214.

Securing a Voucher and Locating a Unit

Once a resident is found to be eligible for the voucher program, RHS, through its subcontractor, will conduct a rent comparability study to determine the level of subsidy that the resident will receive under the voucher. The monthly housing assistance that the resident will receive under the voucher is the difference between the comparable market rent for the family's former Section 515 unit and the tenant contribution for rent as of the date of prepayment.³⁰ The subsidy may not, however, exceed the tenant's actual rent. Moreover, if the resident stays in the unit that was previously financed under the Section 515 program, the voucher amount may never exceed the comparable market rent for the unit as of the date of prepayment.³¹

Arguably, the formula that RHS is using to determine the subsidy level is statutory. Unfortunately, because it is based on the rent that was charged for the former Section 515 development, it significantly limits voucher portability if the resident moves to a community where the prevailing rents are higher than the rent that the resident was paying in the 515 development.

Tenants are given an initial sixty-day period to locate a dwelling that an owner is willing to rent under the voucher program. The sixty-day period may, at the agency's discretion, be extended for another sixty days. Persons with a disability may request an extension for up to a total of 150 days. If a unit is not identified within these time frames, the voucher funding is terminated and the voucher holder becomes ineligible for any further assistance.³²

This provision may be unusually harsh in communities with little decent affordable housing and particularly if a number of former Section 515 residents are all looking for housing at the same time. There simply is no reason why RHS could not have extended the period of voucher eligibility for residents who are displaced by a prepayment.

Owner Must Be Willing to Accept the Voucher

The Notice states that an owner must be willing to accept an RHS voucher.³³ It does not require former Section 515 owners, who have prepaid their loans, to continue

to rent their units to voucher holders as HUD does under the Section 8 program.³⁴ This requirement illegally favors former Section 515 owners over residents of the same housing. It will undoubtedly lead to some owners illegally rejecting voucher holders from their developments.

Inspection of Units and HAP Contract Entry

Once a resident has identified a unit, RHS must inspect the unit and ensure that it meets the agency's standards that are set out in 7 C.F.R. § 3560.103. If the unit is in a former Section 515 development, RHS need not inspect the unit if it had been inspected within one year of the agency's having received a Request for a Tenancy Approval.³⁵

Lease Term and Addendum

The initial lease term for any unit leased under the voucher program must be twelve months.³⁶ All leases must include the Tenancy Addendum that is used for the HUD housing choice voucher program.³⁷

Recertifications

Due to the fact that vouchers will not provide more than thirty-six months of assistance, RHS will not make any income eligibility determinations or income recertifications after the family is determined eligible for a voucher at the time of prepayment or foreclosure.³⁸ What the Notice means, but does not state, is that RHS will not adjust the voucher holder's subsidy if the voucher holder's income goes up or down. While this will benefit households whose income goes up, it may, as explained before, create undue hardships for households whose income decreases. This provision is totally inconsistent with the manner in which HUD operates the voucher program and may be illegal because RHS is required to operate the rural voucher program consistent with the HUD Section 8 voucher program.³⁹

Once a unit is approved, a lease may be entered into between the owner and the resident and RHS will execute a Housing Assistance Payment (HAP) contract with the owner. HAP contracts may be executed up to sixty days after the commencement of the lease and RHS may make retroactive payments for the sixty days. However, it may not make payments for any period beyond the sixty days. It may also not enter into a HAP contract with a Section 515 owner for any period prior to the prepayment of the loan.

²⁹See e.g. Guide Attachment 9-B.

³⁰73 Fed. Reg. 15,474 ¶¶ 2 and 5.

³¹*Id.* at 15,474, ¶ 5.

³²*Id.* ¶ 3.

³³*Id.* 15,473, ¶ II.

³⁴HUD, Section 8 Renewal Policy, ¶ 11-3 B (2/15/08).

³⁵73 Fed. Reg. at 15,474, ¶ 4.

³⁶*Id.* 15,474, ¶ 3.

³⁷*Id.* ¶ 4.

³⁸*Id.* ¶ 5.

³⁹Consolidated Appropriations Act, 2008, Public Law 110-161, Tit. III (Dec. 26, 2007).

Mobility and Portability

RHS vouchers may be used in any locality in the United States provided the unit meets the RHS health standards and the owner is prepared to accept the voucher.⁴⁰ Note, however, that the level of subsidy is not adjusted under the RHS voucher program as it is under the HUD voucher program. Thus, residents that move to high-cost areas will have to pay a greater proportion of their income for shelter.

RHS vouchers may not be used in tandem with any other RHS or HUD subsidy program that may be available in any dwelling. A resident who moves into another RD development that has Rental Assistance available may choose to accept the Rental Assistance at that development. By doing so, the resident gives up further eligibility for an RHS Voucher.⁴¹

While the Guide is available upon request from RD field offices, it is not available on the RHS website. In this day of electronic access, this is hardly the way to operate a federal program.

Transfer of Rental Assistance

Although it is not technically a voucher program issue, the Guide advises residents who are receiving Rental Assistance that they can move with the Rental Assistance to another RHS project that has a vacancy. For reasons that are not disclosed, the resident is advised that he or she only has four months to move under those circumstances.⁴² The problem with that requirement is that the resident may have to terminate his or her current lease in order to do so, something that may not always be possible. If an owner prepays a loan one month after the lease is renewed, the resident has eleven months to remain in the development. If RHS requires the resident to exercise the right to move within four months, there is no way to terminate the lease without being subject to breach penalties unless the owner consents to the termination. While this may be likely, RHS does not explain that to the residents in the notices that it provides them.

Procedural Issues

Although the RHS voucher program has been operating for nearly three years, RHS has chosen not to publish regulations for the program and not even invite comments on its notices or Guide. Moreover, it has announced that it

does not plan to publish regulations for the program.⁴³ The legality of the agency publication position notwithstanding, the practice is unfortunate. There are many instances where provisions in the Notice and Guide are contrary to law, and many instances where information, particularly model letters included in the Guide, could use correction,⁴⁴ simplification,⁴⁵ clarification⁴⁶ and translation⁴⁷.

RHS has also chosen not to make the Guide readily available to the public. While it is available upon request from RD field offices, it is not available on the RHS website.⁴⁸ More significantly, because it is not published on the web, it will be easy for RHS to make changes to the Guide and practically impossible for the public to know about those changes unless they regularly make requests to RHS for changes to the Guide. In this day of electronic access, this is hardly the way to operate a federal program.

Contracting Entities

RHS has chosen two private contractors to assist in administrating the voucher program. The first is Quadel Consulting, which has been engaged to issue vouchers, review leases, and enter into Housing Assistance Payment

⁴³Guide at 2.

⁴⁴It appears that RHS has modified various forms for the voucher program that it previously drafted for the program when it was intended to be administered by HUD and local public housing authorities. When it did so, it was very sloppy in the modifications that it made. For example, the HAP Contract included in the Guide makes many unintended references to HUD, public housing authorities, and to HUD's Housing Quality Standards, all of which are no longer involved in or applicable to the program. See Guide Pgs. 108-114.

⁴⁵All of the letters set forth in the Guide that are sent to residents in Section 515 housing are extremely complex and full of legal expressions that are not likely to be understood by residents. They need to be written in plain English so people with limited education can understand them.

⁴⁶Unfortunately, the RHS Guide letters do not explain to residents the advantages or disadvantages of various alternatives that are being offered to them. For example, there are no statements in the letters advising residents what will happen to their vouchers after the initial twelve-month term. Given that the agency never clarifies its intentions in either the Notice or the Guide as to whether vouchers are subject to renewal, it is quite possible that choosing an RD voucher may be a very poor choice if the voucher will not be renewed after the initial twelve-month period. In one case, the agency advises residents that waiting periods for Section 8 vouchers are long—a phenomenon that is frequently more urban than rural—fails to advise residents that they may qualify for a priority for Section 8 vouchers because they are being displaced, and does not encourage them to apply for Section 8 assistance during the one-year period that they will be receiving the vouchers.

⁴⁷RHS has an obligation under the Civil Rights Act of 1968 and under Executive Order 13166 to communicate in other languages to persons with Limited English Proficiency. None of the letters included in the Guide are in any language other than English and no suggestion is made anywhere in the Notice or Guide that RD staff communicate with Limited English Proficiency residents in languages other than English.

⁴⁸RHS has not posted its previous Guide to its website and has not stated anywhere that it intends to do so. Indeed, the fact that it refers persons to RD offices to ask for copies of the Guide clearly suggests that it has no intentions to make the Guide readily available. Persons wanting to get copies of the Guide must contact state or local Rural Development offices, whose address can be found at <http://offices.sc.egov.usda.gov/locator/app>.

⁴⁰73 Fed. Reg. 15,474 at 15,474-75, ¶ 6 (March 24, 2008).

⁴¹*Id.* 15,474-5, ¶ 6.

⁴²Guide, Attachment 2A.

contracts. The second contractor is the Signal Group, which has been engaged primarily to undertake rent comparability studies to establish the post-prepayment rent for units in a prepaying Section 515 development. These rents are then used to establish the voucher subsidy level. Both Quadel and Signal report to RHS.

Conclusion

The RHS Notice and Guide implement a very harsh and restrictive rural voucher program. In part this is due to the fact that the voucher program was first authorized by the formerly Republican-controlled Congress, and the current Congress has simply extended the prior appropriations acts' provisions without analyzing their impact. Hopefully, the program will be replaced by new comprehensive authorizing legislation that is presently under consideration in the House.⁴⁹ If that legislation is not enacted, the current Congress will likely review the past appropriations language before it extends the program into 2009-10.

The agency's failure to publish the Notice and Guide for comment is very likely illegal and may be subject to challenge for failure to conform with the Administrative Procedures Act and similar RHS statutory requirements.⁵⁰ This is particularly true in light of the fact that the agency has now operated the program for nearly three years under Federal Register notices and one internal notice without inviting public participation. Even if the current Notice is not illegal, the agency's failure to invite public comment on the program is unfortunate. Commentators could have alerted RHS to inconsistencies in the Notice and Guide and could have suggested better ways by which the voucher program could be run. As it is, until someone challenges the Notice or its provisions, or RHS listens to outside comments, residents will have to live with this overly restrictive and owner-favored voucher program. ■

⁴⁹H.R. 4002, Rural Housing Preservation Act of 2007 (110th Cong. 1st Sess.).

⁵⁰42 U.S.C.A. § 1490n (West 2003).

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.

Voucher Program: Voucher Termination Hearing, Reliance on Hearsay

Cintron v. Housing Authority of San Diego County, 2008 WL 1923101 (Cal.App. 4 Dist., May 2, 2008)(Unreported). The appellate court affirmed the trial court decision to uphold a hearing officer's determination that the voucher holder had violated her lease and that the housing authority was justified in terminating her voucher. The appeals court rejected the voucher holder's claim that the hearing officer relied on inadmissible hearsay evidence, concluding that hearsay evidence was permitted under the HUD regulations and that by and large most of the hearsay testimony that was admitted at the hearing was corroborated by another witness' non-hearsay testimony. The appeals court also rejected the voucher holder's claim that the trial court did not exercise its independent judgment in reviewing the evidence and denying relief to the voucher holder.

Voucher Program: Discrimination Based on Source of Income

Bourbeau v. The Jonathan Woodner Co., 2008 WL 1757752 (D.D.C., April 17, 2008). A landlord who refused to rent to voucher holders because it had purportedly reached its limit as to the number of voucher holders it would admit, sought to dismiss an action brought by a voucher holder and a local fair housing organization for the landlord's violation of the District of Columbia's Human Rights Act (DCHRA), which prohibits discrimination based on source of income. The landlord argued that the plaintiffs lacked standing, that the DCHRA was preempted by federal law and that the voucher program was not covered by the DCHRA when the discrimination occurred. The court agreed with the landlord that the civil rights organization lacked standing to pursue violations that occurred while its charter was suspended but upheld its right to pursue violations that occurred once its charter was reinstated.

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

³For 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>.

The court rejected the landlord's preemption claim that was based upon the fact that federal law makes participation in the Housing Choice Voucher program voluntary. It concluded, as other courts have, that the DCHRA provision did not conflict with federal law but simply imposed additional enforceable conditions. The court also rejected the landlord's argument that the DCHRA did not apply to it because a provision in the act technically limited its application for a period of time during which the discriminatory actions occurred. The court found that the act's coverage was clear and subsequent technical amendments were mere clarifications of the law.

Voucher Program: Landlord's Refusal to Accept Voucher as Reasonable Accommodation

Feeland v. Sisao LLC, 2008 WL 906746 (E.D.N.Y., April 1, 2008). The landlord of a resident with a disability sought to dismiss the resident's claim that his failure to accept a Section 8 voucher, which the resident received after moving into the apartment, violated the Fair Housing Act and several New York laws because the landlord failed to make a reasonable accommodation for the resident. The landlord claimed that the resident failed to state a cause of action in that the resident did not seek a reasonable accommodation but an economic accommodation. The court rejected the landlord's argument on the basis that the plaintiff had alleged sufficient facts in support of a plausible claim that acceptance of the Section 8 voucher was a reasonable accommodation of her disability that prevented her from working and earning an income.

Voucher Program: Right to a Hearing to Vacate Default Judgment

Zabolotny v. Andersen, 19 Misc.3d 128(A), 2008 WL 711654 (N.Y.Sup.App.Term, March 7, 2008)(unpublished). The appellate court reversed a trial court's failure to hear a Section 8 resident's petition to vacate a default judgment on the ground that the petitioner failed to deposit her share of the rent into a court escrow account before the hearing. The appellate court held that under New York law, the right to be heard on the merits of a motion to vacate a default judgment cannot be conditioned on the tenant making rent payments to the court.

Voucher Program: Joining Housing Authority in Nonpayment Litigation

Townhouse West, LLC v. Williams, 2008 WL 920744 (N.Y.C. Civ.Ct., March 21, 2008). The court dismissed a landlord's nonpayment suit for failure to include the New York City Housing Authority in the proceeding as required by a consent decree in another case. The tenant was transitioning

from one Section 8 administrator to another when the loan for the building was prepaid. There was a substantial delay in issuing the new Housing Assistance Payment contract, all beyond the control of the resident. Accordingly, joining the housing authority could have resolved the matter.

Voucher Program: Right to Attorneys Fees

Ortiz v. 570156 LLC, 2008 WL 850350 (N.Y.Sup., March 31, 2008). A Section 8 voucher holder, who prevailed in an action against a landlord obligating the landlord to continue to accept a voucher under New York City's rent stabilization ordinance, was denied attorneys fees because neither the city's rent stabilization ordinance nor the Section 8 contract provided for attorneys fees and the rent stabilization ordinance only authorizes fees against a landlord if the landlord was entitled to recover fees from the resident.

Voucher Program: Owner's Right to Due Process upon Termination of HAP Contract

Shad v. Metropolitan Council Housing and Redevelopment Authority, 2008 WL 933463 (Minn.App., April 8, 2008) (unpublished). A landlord whose Housing Assistance Payment contract was terminated for fraud by the housing authority because the landlord lived with the Section 8 voucher holder claimed that his due process was violated when the housing authority failed to provide him with a hearing. He also claimed that the housing authority's decision was arbitrary and capricious. The court rejected both claims, holding that the landlord had no due process rights under the Housing Assistance Payment contract and that the housing authority's decision was based on evidence produced at the voucher holder's hearing and was not arbitrary and capricious.

Public Housing: Eviction for Criminal Activity

Durham Housing Authority v. Partee, 658 S.E.2d 69 (N.C.App., March 18, 2008). The appellate court upheld a trial court conclusion that the defendant's sale of illegally copied DVDs from his Section 8 unit violated North Carolina law and constituted criminal activity which justified the termination of his lease.

Public Housing: Eviction for Criminal Activity

Assenberg v. Anacortes Housing Authority, 2008 WL 598310 (9th Cir. Mar. 5, 2008) (unpublished). A public housing resident whose tenancy was terminated for use of marijuana was not entitled to raise a medical necessity argument in an eviction action and was not discriminated against

by the housing authority's failure to make a reasonable accommodation. Accordingly, the court of appeals affirmed the district court decision.

Public Housing: Eviction for Nondesirability

Bell v. New York City Housing Authority, 49 A.D.3d 284, 853 N.Y.S.2d 43 (N.Y.A.D., March 4, 2008). The court upheld a housing authority's decision to terminate a public housing resident for nondesirability. The court found that the decision was supported by substantial evidence, including the petitioner's prior guilty plea to criminal possession of a controlled substance and testimony of a detective that while executing a search warrant of the tenant's apartment, he saw the tenant holding a gun and found drugs and drug paraphernalia in the apartment. The court concluded that there is no basis to disturb the hearing officer's findings crediting the detective's testimony notwithstanding the fact that criminal charges pertaining to the petitioner's latest arrest were still pending at the time of the administrative hearing and the fact that they were subsequently dismissed.

Public Housing, Fair Housing Act: Obligation to Relocate Victim of Domestic Violence

Robinson v. Cincinnati Metropolitan Housing Authority, 2008 WL 1924255 (S.D. Ohio, April 29, 2008). A public housing resident who was a victim of domestic violence sought a preliminary injunction against the housing authority for its failure to move her into another scattered site public housing unit that was unknown to her batterer. The district court denied the injunction on the basis that she would not prevail on the merits, the injunction would not save the resident from irreparable harm, the harm to the resident did not outweigh the harm to others, and that the public interest would not be served by the issuance of the injunction. On the merits, the court accepted the housing authority's position that its transfer policy did not apply directly to victims of domestic violence, was otherwise gender neutral and nondiscriminatory, and that the resident was not being penalized as a survivor of domestic violence because she is not being evicted or denied admission. With respect to irreparable injury, the court concluded that the resident's exposure to irreparable injury was not caused by the housing authority as it was not denying the resident any services. On the issue of comparative injury, the court held that the housing authority was responsible for providing housing, not protecting residents against criminal activities of third parties, and that placing a relocation burden on the housing authority would burden it with the obligation to protect and relocate other residents. Lastly, it rejected the plaintiff's argument that the public interest would be served by relocating her to other housing on the ground that it

would place significant burdens on the housing authority to relocate other residents, including voucher holders, cause instability in neighborhoods, and discourage private landlords from renting to voucher holders. Accordingly, the court rejected the resident's application for a preliminary injunction.

Public Housing: Surviving Household Member

Johnson v. New York City Housing Authority, 2008 WL 1722807 (N.Y.A.D., April 15, 2008). The appellate court affirmed a lower court decision denying the plaintiff remaining household member status when the plaintiff never applied for permission to live in the public housing unit with his father and the housing authority had no knowledge of his residency as his father's income was the only income reported to the housing authority.

Public Housing: Right to Succession of Departing Household Members

Jacobowitz v. New York City Housing Authority, 49 A.D.3d 278, 854 N.Y.S.2d 341 (N.Y.A.D., March 4, 2008). The court upheld an administrative determination that a plaintiff did not present sufficient evidence to show that she was a member of her parent's household and therefore a successor to their public housing unit.

Public Housing: Operating Business from Apartment Unit

Dzwonczyk v. Syracuse Housing Authority, 2008 WL 1766742 (N.D.N.Y., April 14, 2008). A public housing resident who sought to enjoin a housing authority from increasing his rent due to his intent to operate a travel business out of his home was denied a preliminary injunction because the housing authority had been forbearing collection of the additional rent and had not sought to evict the resident. Accordingly, the court held that the resident had not suffered the irreparable harm necessary to justify the injunction.

HOPE VI Program: Authority to Extend Current Contract

Philadelphia Housing Authority v. U.S. Dept. of Housing and Urban Development (E.D.Pa., March 31, 2008). The Philadelphia Housing Authority sued HUD for threatening to terminate its current HOPE VI contract, refusing to extend that contract, and seeking a preliminary injunction to force the agency to continue the contract. The court denied the housing authority's motion finding that HUD agreed not to terminate the existing HOPE VI contract, offered the housing authority the same new contract that it was

offering other authorities, and that its actions were not arbitrary and capricious. The court also found that it did not have the authority to force HUD to extend its current HOPE VI contract. Lastly, it found that damages to the housing authority were not of a nature to justify the injunction.

Section 236 Program: Residents' Right to Review and Comment on Rent Increase Request

HUD Tenants Coalition v. U.S. Dept. of Housing & Urban Development, 2008 WL 877607 (3rd Cir., April 2, 2008). The court of appeals affirmed a lower court holding that residents of a Section 236 development were provided adequate information to review and comment on the owner's request for a rent increase that was approved by HUD. Because HUD regulations do not define exactly the reports and information that an owner must submit in support of a rent increase request, the court deferred to HUD's implicit conclusion that the information submitted to it was sufficient to meet the agency's requirements. Since the agency must be given deference in interpreting its regulations, the court refused to overturn the district court decision.

All Programs: HUD Policy Requiring Landlords to Communicate with Persons with Limited English Proficiency

National Multi Housing Council v. Jackson, 2008 WL 821701 (D.D.C., March 28, 2008). Landlord representatives brought suit against HUD complaining that its recent policy guidance, which advised federally funded landlords that they must communicate with program beneficiaries in languages other than English if the beneficiaries have limited English proficiency (LEP), exceeds the authority of Title VI and is not supported by a disparate impact treatment. Moreover, they argued that the policy's vagueness makes compliance overly burdensome, rendering it substantively arbitrary and capricious in violation of the Administrative Procedure Act. HUD responded by claiming that the case was not ripe and that the landlords lacked standing. The court ruled in HUD's favor, holding that while the Title VI and disparate treatment arguments were ripe for adjudication the landlords did not have standing to bring them because the relief they seek will not redress their claimed injury. This is because the Department of Justice and HUD adopted regulations nearly thirty-five years ago that make disparate impact a valid approach for measuring compliance under Title VI. Thus, challenging the newly published policy will not address the requirements of the long-standing regulation. Similarly, the Justice Department has had a thirty-two-year regulation requiring federal fund recipients to make reasonable efforts to communicate with LEP beneficiaries in their native languages. While HUD does not have similar

regulations, Executive Order 13166 directed HUD and other agencies to work to ensure that LEP applicants and recipients have equal access to federal programs. The HUD policy statement does precisely that and does not implement new regulations or create new enforcement procedure. Because the policy statement is not a regulation, but merely a statement as to how HUD plans to implement a policy in the future, the court held that the plaintiffs do not have standing to challenge the policy statement. Moreover, the court concluded that since HUD can currently take action against parties that do not make reasonable efforts to communicate with LEP applicants and recipients, the landlords' request for relief, based on the policy statement, is of no avail.

Fair Housing Act: Running of Statute of Limitations

Boykin, v. KeyCorp, 521 F.3d 202 (2nd Cir. March 27, 2008). The court of appeals reversed a lower court ruling that had dismissed the plaintiff's fair housing claim on the ground that the statute of limitations had run and that her complaint was not well pled. The plaintiff had filed administrative complaints with HUD for the lender's failure to approve a home equity loan. HUD referred the matter to the New York State Division for Human Rights (NYSDHR) which processed the claim and closed the case by sending the plaintiff a notice closing the matter without issuing a favorable ruling. HUD subsequently followed up with another letter closing the case. The plaintiff filed her district court complaint more than two years after the NYSDHR letter but less than two years after the HUD letter. The district court ruled that the time for filing the complaint was two years from the date of the NYSDHR letter. The Second Circuit reversed, holding that HUD had not issued any regulations on the issue of when the statute of limitations stops tolling when a matter is referred to a state agency. Based on HUD practices, the methodology of handling a complaint, and clarity of when the statute stops tolling, it rejected HUD's argument that the state agency's final letter starts the running of the statute of limitations. Accordingly, it held that the complaint was filed timely. The Court also reversed the district court with respect to the sufficiency of the plaintiff's disparate impact claim, finding that since the complaint was filed *pro-se* it provided the defendant sufficient notice of her claim.

Fair Housing Act: Statute of Limitations

National Fair Housing Alliance v. A.G. Spanos Const., 2008 WL 927711 (N.D.Cal., April 4, 2008). Apartment builders sought to dismiss a fair housing suit brought by the Fair Housing Alliance alleging that the builders constructed apartment complexes in a manner that denied access to

disabled persons, in violation of the Fair Housing Act (FHA). The court rejected the builders' claims and held that the FHA's statute of limitations did not begin to run until builders' completion of their last noncompliant apartment complex, but that the builders' liability could not be imputed to the owners absent any violation of the FHA by the owners within the limitations period; that Fair Housing organizations had standing to bring the action; and that the owners were necessary parties notwithstanding their lack of liability under the FHA.

Single Room Occupancy: Failure to Allow Children in Violation of Fair Housing Act

Sierra v. City of New York, 535 F.Supp.2d 448 (S.D.N.Y., March 3, 2008). The court sustained a tenant's right to maintain an action against the city on the ground that a provision of the city Housing Maintenance Code prohibiting children from living in single room occupancy units discriminated on the basis of familial status, in violation of the federal Fair Housing Act. The city maintained that the tenant lacked standing because she had settled the claim with her landlord and moved from the SRO unit. The court found that the fact that the tenant was continuing to consider living in SRO housing and that such housing continued to be available in the city, provided the tenant with the necessary standing to maintain suit.

Preservation: RHS Owners' Damages for Passage of ELIHPA

Tamerlane, Limited, v. United States, 2008 WL 928287 (Fed. Cl., April 3, 2008). The court dismissed efforts of the owners of RHS financed Section 515 loans to amend the court's prior judgment, with respect to the owners' damage claim for the breach of their pre-1979 loan agreements. The owners sought to extend judgment to allow them to recover contract damages for the period after which they entered into an extension of their contracts in response to RHS offering them incentives, which they accepted, to remain in the program in lieu of prepaying their loans. The court denied the owners' argument, holding that ELIHPA did not breach their post-ELIHPA contracts and that the judgment did not preclude them from bringing a separate complaint for damages if any accrued under the new contracts.

RHS Farm Labor Housing Program: Right to Bring Enforcement Law Suit

Eliserio v. Floydada Housing Authorities, 2008 WL 901493 (S.D.Tex., March 31, 2008.) In a suit brought by residents of a Section 514/516 Farm Labor Housing development against the owner housing authority and USDA for failure

to maintain the property to adequate health and safety standards, the court, upon recommendation of the magistrate, dismissed some of the residents' claims against USDA, concluding that they have an adequate remedy against the authority and therefore lack the right to bring an action against USDA. In dictum, the court rejected USDA's argument that the residents failed to exhaust their administrative remedies by not filing an appeal with the USDA National Appeals Division. The court ruled that under USDA regulations, residents are not program beneficiaries entitled to benefit under the NAD appeals process and that they, therefore, did not need to exhaust these administrative remedies. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA—Rural Housing Service/Rural Development (RD)), Federal Housing Finance Board, and the Veterans Administration issued in March and April of 2008. 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 Rules

73 Fed. Reg. 13,721 (Mar. 13, 2008) HUD Office of Hearings and Appeals; Conforming Changes To Reflect Organization Regulations

Summary: This final rule revises HUD's regulations to reflect the organization of HUD's Office of Hearings and Appeals (OHA). HUD has established the Office of Hearings and Appeals within the Office of the Secretary. As a result of the organization of the OHA, the position of the Chief Administrative Law Judge has been eliminated. This rule makes conforming changes to HUD regulations to reflect this change.

Effective Date: April 14, 2008.

¹http://www.access.gpo.gov/su_docs.

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

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

⁴<http://www.rdinit.usda.gov/regs>.

HUD Proposed Rules

73 Fed. Reg. 14,029 (Mar. 14, 2008)

Real Estate Settlement Procedures Act (RESPA): Proposed Rule To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs

Summary: This proposed rule presents HUD's proposal to simplify and improve the disclosure requirements for mortgage settlement costs under the Real Estate Settlement Procedures Act of 1974 (RESPA), to protect consumers from unnecessarily high settlement costs. This proposed rule takes into consideration: discussions during HUD's RESPA Reform Roundtables held in July and August 2005; public comments in response to HUD's July 29, 2002, proposed rule that addressed RESPA reform; and comments received and views expressed through congressional hearings; meetings with affected parties; and consultation with other federal agencies, including the Small Business Administration Office of Advocacy.

Comment Due Date: May 13, 2008.

HUD Federal Register Notices

73 Fed. Reg. 17,371 (Apr. 1, 2008)

Notice of Proposed Information Collection: Extension of Comment Request; Management Review for Public Housing Projects

Summary: This notice was previously published on February 8, 2008, and is being republished to extend the comment period until June 30, 2008. On September 19, 2005 (70 Fed. Reg. 54,983), HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990, which was developed through negotiated rulemaking. Part 990 provides a new formula for distributing operating subsidy to public housing agencies (PHAs) and establishes requirements for PHAs to convert to asset management.

Comments Due Date: June 30, 2008.

73 Fed. Reg. 20,701 (Apr. 16, 2008)

Disaster Housing Assistance Program (DHAP)

Summary: HUD has submitted to the OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to all activities related to the Disaster Housing Assistance Program (DHAP) from execution of a grant agreement to case management. HUD will invite public housing agencies that currently administer the Housing Choice Voucher program to administer DHAP based on several factors such as where the DHAP eligible families are currently residing or have indicated they wish to receive DHAP assistance.

Comments Due Date: May 16, 2008.

73 Fed. Reg. 21,972 (Apr. 23, 2008)

HOPE VI Program

Summary: HUD has submitted to the OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates HUD's capacity to obligate grant funds in accordance with the HOPE VI program authorizing statute, and to manage the grants that are awarded.

Comments Due Date: May 23, 2008.

73 Fed. Reg. 21,973 (Apr. 23, 2008)

Privacy Act; Proposed New System of Records, Tracking-at-a-Glance® Case Management Services for the Disaster Housing Assistance Program

Summary: HUD proposes to establish a new Privacy Act record system to add to its inventory of systems of records subject to the Privacy Act of 1974. The proposed new system of records is the TAAG case management system. This record system will be used for program implementation activities related to the Disaster Housing Assistance Program (DHAP) case management services. DHAP is a Federal Emergency Management Agency (FEMA) pilot grant program to provide temporary rental subsidies and case management for non-HUD assisted individuals and families displaced by Hurricanes Katrina or Rita.

Effective Date: May 23, 2008, unless comments are received that would result in a contrary determination.

Comment Due Date: May 23, 2008.

73 Fed. Reg. 22,969 (Apr. 28, 2008)

Notice of Proposed Information Collection: Comment Request; Certification of Multifamily Housing Compliance With State and Local Housing Codes

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to ensure that all projects owned by potential purchasers are in compliance with state and local housing codes in the same locality of the HUD-owned project to be purchased.

Comments Due Date: June 27, 2008.

73 Fed. Reg. 22,969 (Apr. 28, 2008)

Use Restriction Agreement Monitoring and Compliance

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected is necessary for HUD to ensure that owners of certain multifamily housing projects comply with use restriction requirements once the mortgage agreement is terminated. The information is also used to monitor owner compliance with the Use Restriction Agreement provisions. This information is also monitored by HUD to ensure compliance with the executed and recorded Use Agreement.

Comments Due Date: May 28, 2008.

73 Fed. Reg. 11,659 (Mar. 4, 2008)
Housing Counseling Program—Biennial Agency Performance Review

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected allows HUD to monitor and provide oversight for agencies approved to participate in the Housing Counseling Program.

Comments Due Date: April 3, 2008.

73 Fed. Reg. 12,187 (Mar. 6, 2008)
Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected will detail the issues and reasons why a review of the Counsel's decision denying a request for documents or testimony is appropriate.

Comments Due Date: April 7, 2008.

73 Fed. Reg. 12,751 (Mar. 10, 2008)
Admission to, and Occupancy of Public Housing; Admission and Tenant Selection Policies, Verification, Notification, Preference, Waiting List, Exemption of Police Officers

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected is intended to ensure the low-income character of public housing projects and to assure that sound management practices will be followed in the operation of the project.

Comments Due Date: May 9, 2008.

73 Fed. Reg. 13,916 (Mar. 14, 2008)
Notice of Proposed Information Collection: Comment Request Public Housing Inventory Removal Application

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected makes certain changes to the approved information collection in order to make it consistent with HUD's recently issued guidance on eminent domain and to correct certain typographical and other errors in that approved collection.

Comments Due Date: May 13, 2008.

73 Fed. Reg. 14,881 (Mar. 19, 2008)
Policy Requirements and General Section to HUD's FY 2008 NOFAs for Discretionary Programs; Notice

Summary: This notice provides prospective applicants for HUD competitive funding with the opportunity to become familiar with the General Section of HUD's FY

2008 NOFAs, in advance of publication of any FY 2008 NOFAs. HUD plans to publish its annual Super NOFA in spring 2008. Early publication of the General Section is one of several steps instituted to improve the funding process for the grantee community.

73 Fed. Reg. 14,994 (Mar. 20, 2008)
Section 3 Complaint Processing Functions

Summary: This notice announces a change in the investigation of complaints filed pursuant to Section 3 of the Housing and Urban Development Act of 1968.

73 Fed. Reg. 15,168 (Mar. 21, 2008)
Assessing Quality of Life Issues in FEMA's Alternative Housing Pilot Program—Household Outcomes Survey

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the Alternative Housing Pilot Program (AHPP), which is providing FEMA funds to four states (Alabama, Louisiana, Mississippi, and Texas) to test alternative housing types that could be used in place of FEMA trailers or mobile homes following a future disaster. The goal of the AHPP Quality of Life study is to provide FEMA with a rigorous evaluation of the quality of life outcomes for AHPP recipients in the four states that received AHPP grants.

Comments Due Date: May 20, 2008.

73 Fed. Reg. 15,169 (Mar. 21, 2008)
Notice of Regulatory Waiver Requests Granted for the Fourth Quarter, Calendar Year 2007

Summary: HUD is required to publish quarterly Federal Register notices of all regulatory waivers that it has approved. Each notice covers the quarterly period since the previous Federal Register notice. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2007, and ending on December 31, 2007.

73 Fed. Reg. 15,534 (Mar. 24, 2008)
Comment Request Public Housing Financial Management Template

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the requirements of the Public Housing Assessment System (PHAS) rule. The department has developed the financial condition template that public housing agencies (PHAs) use to annually submit electronically specific financial condition information to HUD. HUD uses the financial condition information it collects from each PHA to assist in the evaluation and assessment of the PHA's overall condition. Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD.

Comments Due Date: May 23, 2008.

73 Fed. Reg. 15,535 (Mar. 24, 2008)
Notice of Certification and Funding of State and Local Fair Housing Enforcement Agencies Under the Fair Housing Assistance Program; Request for Comments

Summary: HUD is required to periodically publish a list of all interim and certified agencies, and a list of agencies for which withdrawal of certification has been proposed. The purpose of identifying the agencies in the Federal Register is to solicit public comment on the state or local fair housing laws, as well as the performance of the agencies in enforcing these laws. This notice fulfills this regulatory requirement.

Comment Due Date: April 23, 2008.

73 Fed. Reg. 16,036 (Mar. 26, 2008)
Request for Prepayment of Direct Loans on Section 202 and 202/8 Projects

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to requests from owners to prepay a multifamily housing project mortgage financed under Section 202 with inclusion of FHA insurance guidelines.

Comments Due Date: April 25, 2008.

HUD Notices

Notice PIH-2008- 23 (HA) (May 16, 2008)
Exclusion of Tax Rebates from the Internal Revenue Service (IRS) under the Economic Stimulus Act of 2008

Summary: This notice excludes the one-time IRS economic stimulus payments (tax rebates) from all interim and annual income determinations.

RHS Federal Register Notice

73 Fed. Reg. 19,443 (Apr. 10, 2008)
Advance Notice of Proposed Rulemaking

Summary: The Rural Housing Service is proposing to revise the existing income limit structure for Single Family Housing Guaranteed Loan Program eligibility. Instead of eligible adjusted income based on households ranging from one to eight persons according to 7 CFR 1980.345 (a), a two-tier income structure consisting of a one to four member household and a five to eight member household is proposed. The new adjusted income limit for the one to four member household, for example, would be current adjusted income limit for the four member household. The present add-on income limits for larger households will remain unchanged.

Comment Due Date: May 12, 2008.

73 Fed. Reg. 15,473 (Mar. 24, 2008)
USDA Rural Development Voucher Program

Summary: This notice informs the public that the

United States Department of Agriculture (USDA) has established a demonstration USDA Rural Development Voucher Program, as authorized under Section 542 of the Housing Act of 1949 as amended, (without regard to Section 542(b)), which is being administered by the USDA. This notice informs the public that USDA shall make \$4,965,000 available for this purpose, as appropriated under the Consolidated Appropriations Act, 2008. The notice also sets forth the general policies and procedures for use of these vouchers.

Date: March 24, 2008.

73 Fed. Reg. 13,203 (Mar. 12, 2008)
Notice of Funding Availability for the Section 515 Rural Rental Housing Program for New Construction in FY 2008

Summary: This NOFA announces the timeframe to submit applications for Section 515 Rural Rental Housing loan funds, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities and Rural Economic Area Partnership zones, and a designated reserve for states with rental assistance programs.

RHS Unnumbered Letters

Additional Guidance for Implementation of Payment Assistance Method Two (Apr. 17, 2008).

Summary: This memorandum supplements the guidance issued February 6, 2008, regarding the implementation of a new payment subsidy method. In addition, the interim calculator has been revised to require an entry of the area loan limit and to calculate the reduced interest rate for construction loans. Based on feedback from the two webinar presentations, we have determined that additional documentation is appropriate to ensure the proper method of payment subsidy is applied.

Expiration Date: February 28, 2009.

Federal Housing Finance Board, Federal Register Notices

73 Fed. Reg. 20,552 (Apr. 16, 2008)
Affordable Housing Program Amendments

Summary: The Federal Housing Finance Board is proposing to amend its Affordable Housing Program (AHP) regulation to authorize the Federal Home Loan Banks to establish AHP homeownership set-aside programs for the purpose of refinancing or restructuring eligible households' nontraditional or subprime owner-occupied mortgage loans. The new authority would expire on June 30, 2011.

Comment Due Date: June 16, 2008. ■

NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM

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