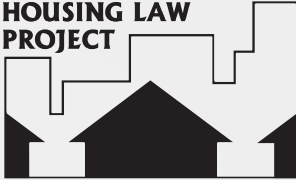


**NATIONAL  
HOUSING LAW  
PROJECT**

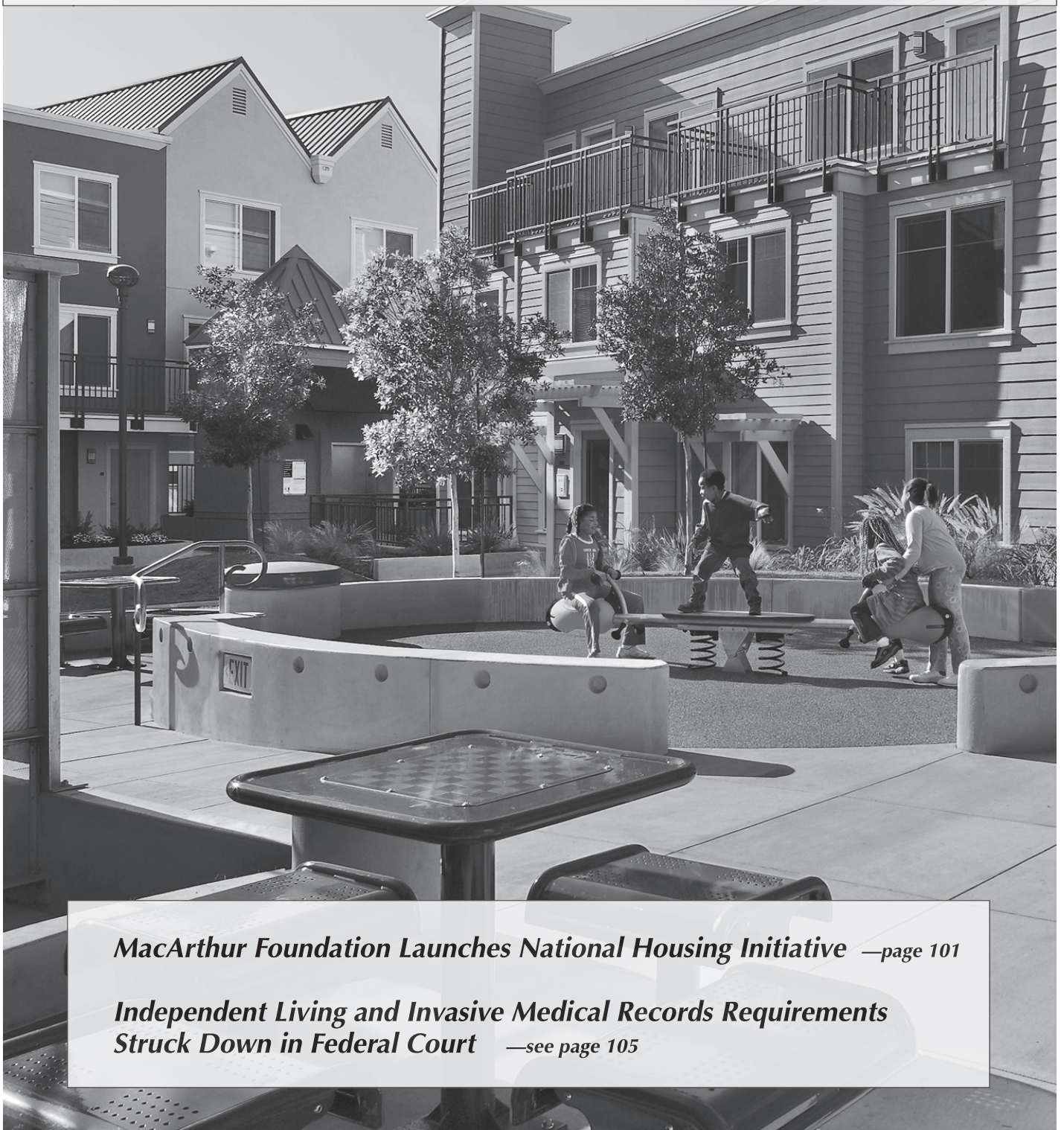


advancing housing justice

# Housing Law Bulletin

Volume 39 • April-May 2009

Published by the National Housing Law Project



***MacArthur Foundation Launches National Housing Initiative*** —page 101

***Independent Living and Invasive Medical Records Requirements  
Struck Down in Federal Court*** —see page 105

# NHLP's HUD Housing Programs: Tenants Rights (3rd Edition 2004) and 2006-2007 Supplement with Updated CD ROM



When HUD's housing laws change,  
When tenants' rights are modified,  
When HUD housing programs are altered...  
You need to know.

↑ LATEST ADDITIONS  
& CHANGES

## NHLP's HUD Housing Programs: Tenants Rights and 2006-2007 Supplement

Dubbed the **Green Book** by users across the country, *HUD Housing Programs: Tenants Rights (3rd Ed. 2004)* is a comprehensive, issue-oriented guide to the federal housing programs. Meticulously researched and clearly written by expert NHLP staff attorneys and outside contributors, it is the only book that explains and analyzes all applicable laws central to effectively representing tenants assisted under the HUD programs. NHLP's comprehensive manual provides a practical road map through the complexity of the federal housing programs, including public housing, subsidized rental housing, vouchers, section 8 homeownership, and others. Evictions, resident participation, loss of units, utility allowances and other key issues are also covered.

The companion *2006-2007 Supplement* offers new information and the latest developments in the law on tenants' rights under the HUD housing programs since publication of the 3rd Edition of the Green Book in 2004. With your purchase of the *2006-2007 Supplement*, you also receive, at no charge, the latest edition of the CD-ROM document library that includes all documents from the 3rd edition and new material from the *2006-2007 Supplement*.

The essential resource for anyone working within the scope of the federal housing programs. The *HUD Housing Programs: Tenants Rights* and the *2006-2007 Supplement* provide the most up-to-date and comprehensive guide to the federal housing programs available anywhere and contain the most recent applicable authorities for virtually all common problems encountered in a federal landlord-tenant relationship including state and federal cases, federal statutes and regulations, and HUD handbooks, notices, and opinion letters.

Complete pricing and order form on page 131.

ORDER NOW! SPECIAL SAVINGS—\$70 OFF SEPARATE VOLUME PRICE

# Housing Law Bulletin

Volume 39 • April-May 2009

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

727 Fifteenth Street, N.W., 6th Fl. • Washington, D.C. 20005

[www.nhlp.org](http://www.nhlp.org) • [nhlp@nhlp.org](mailto:nhlp@nhlp.org)

## Table of Contents

	Page
Philanthropy Must Turn More Attention to Housing Issues .....	99
MacArthur Foundation Launches Preservation Initiatives in Twelve Selected Cities and States ...	101
Federal District Court Strikes Down Independent Living and Invasive Medical Records Requirements.....	105
Doubling of Capital Fund Appropriations Offers Opportunities for Housing Authorities and Residents .....	108
HUD Implements Homelessness Prevention and Rapid Re-Housing Program .....	112
HUD-VASH Notice Guides PHAs in Project-Basing Vouchers.....	116
Recent Cases .....	116
Recent Housing-Related Regulations and Notices.	121
<b>Announcements</b>	
Publication List/Order Form.....	131

**Cover:** North Beach Place, a HOPE VI development, is a low-income, mixed-use rental complex located in San Francisco's popular North Beach area. It consists of 341 units, of which 229 are public housing units replaced one-for-one; 20,000 square feet of commercial space, including a supermarket and 3,000 square feet of incubator space for resident entrepreneurs; and a childcare/community center.

The *Housing Law Bulletin* is published 10 times per year by the National Housing Law Project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions or policy of any funding source. A one-year subscription to the *Bulletin* is \$175. Inquiries or comments should be directed to Eva Guralnick, Editor, *Housing Law Bulletin*, at the National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610, Tel: (510) 251-9400 or via e-mail to [nhlp@nhlp.org](mailto:nhlp@nhlp.org)

## Philanthropy Must Turn More Attention to Housing Issues\*

The American economy cannot recover without a turnaround in housing.

While the federal government considers what additional steps to take to help homeowners and the housing market, American philanthropy need not wait to play a role in solving the crisis and helping to spur a recovery. Grant makers must understand that even if housing is not a part of their direct mission, it affects just about every type of effort to aid American families and improve neighborhoods across the country.

Housing is not just a vital component of the economy, after all. New research shows that stable, affordable housing is central to education, health, employment, and economic development.

Foundations should act promptly to focus on housing issues because the vicious cycle of home foreclosure is likely to get worse before it gets better. As even more adjustable mortgage rates are reset this year, many additional families will not be able to meet the higher payments required to keep their homes.

Home foreclosure filings continue to increase rapidly. The Center for Responsible Lending projects nearly 2.5 million foreclosures nationally this year. In Chicago, where my philanthropy, the John D. and Catherine T. MacArthur Foundation, has its headquarters, foreclosures doubled in 2008; there are two or three foreclosures per block in some of the city's hardest-hit neighborhoods.

The damage the housing crisis is likely to cause could affect families for generations. Research shows that children with a stable place to live are healthier and perform better academically; employment rates for adults are higher when they have a steady residence; and communities with longtime residents have a greater share of citizens actively involved in civic affairs and experience less crime.

For instance, Robert Haveman, a University of Wisconsin researcher, and his colleagues found that frequent moves for a young child or an adolescent have "a strong negative and significant effect on achievement." Indeed, moving as a child has a greater negative impact on high-school graduation rates than does poverty or welfare dependency. Children whose housing is not stable also are at risk of deficient nutrition, as well as poor health.

It is not just homeowners and their families who are affected by the foreclosure crisis. As many as one-third of foreclosed properties are multifamily units, putting renters in jeopardy when building owners can no longer afford their mortgages. In some cases, renters have been

\*Jonathan F. Fanton is President of the John D. and Catherine T. MacArthur Foundation. *Chronicle of Philanthropy*, February 12, 2009.

evicted without legally required notice, losing security deposits, incurring moving expenses, and being forced to double up.

As families lose their homes, neighborhoods also suffer. Vacant houses quickly deteriorate, dragging down property values and encouraging crime and vandalism. The cost to local governments is considerable: up to \$34,000 per house in police and fire protection, trash removal, unpaid water bills, court proceedings, and, in some cases, demolition. The cost to neighbors and the local housing market are equally serious: a drop of up to 1.1% in property value for every home within an eighth-of-a-mile radius.

---

*American philanthropy has a long history of serving the needs of communities and helping to improve the local and national economy.*

---

Foundations are in a strong position to make a difference in resolving the housing crisis. While our resources are much more limited than those of federal and state governments, we can be more nimble and can act more quickly. We know the communities we serve well, including where local needs are greatest. In many cases, foundations have supported and helped to build resilient networks of organizations that are capable, experienced, and ready to expand their efforts to ensure stable and affordable housing.

MacArthur has almost a decade of experience supporting community and economic development in sixteen of Chicago's promising, but low-income, neighborhoods. We are concerned that our investment and the hard work of our grantees may now be put at risk. But we also recognize that our experience—and that of the organizations we have supported over many years—is an asset, enabling us to make a real difference in these troubled times.

Responding to the growing lending crisis and the rise of foreclosures, MacArthur is investing \$68 million in grants and low-interest loans in foreclosure prevention and mitigation efforts in Chicago neighborhoods. We expect our investment to attract more than \$500 million in capital. Our goal is to help local organizations reach 10,000 Chicago households, provide counseling to 6000 of these, and help prevent 2700 foreclosures by 2010.

We recognize that only half or fewer homes in foreclosure can be rescued. Consequently, we are also investing in efforts to reclaim foreclosed properties and to bring them back quickly to productive reuse.

Homeownership is not for everyone. Today one-third of American households, 37 million, rent their homes—including new college graduates, older Americans, and

young families saving to buy their first place. So we are also leading the local Preservation Compact, an effort to reduce the net loss of affordable rental housing in the Chicago area to zero.

Our efforts to prevent foreclosures and mitigate their effects draw on and expand the work of organizations we have supported in these neighborhoods over the years. These groups are familiar with their communities and residents and can best reach those in need. For example, more than half of all borrowers facing foreclosure never contact their lender, though doing so, at any time, can increase the likelihood of avoiding foreclosure.

Neighborhood groups can get the word out—they know where, how, and when to reach troubled borrowers to educate them about the need to contact lenders. They are also in a good position to provide the housing counseling that borrowers need, enabling many to restructure or refinance their troubled mortgages. For many such groups, extending their reach and improving their capacity to respond is the most significant challenge. They simply need more employees and more money to expand their efforts in the face of tremendous need. Foundations can provide that additional assistance quickly.

Foundations can also be of direct help to local governments. In Chicago, MacArthur is working with the city government and local nonprofit groups to acquire and put back to productive use thousands of foreclosed properties, initially with money from the federal Neighborhood Stabilization Program.

MacArthur's investment in housing reflects our values. We know that housing matters to people and neighborhoods. We believe that, in difficult times, foundations should increase, not cut, grant making to help people in need.

American philanthropy has a long history of serving the needs of communities and helping to improve the local and national economy. In uncertain times, investments in housing benefit individuals, families, communities, and the overall economy.

As T.S. Eliot wrote, "Home is where one starts from." ■

### **HJN List-serve Membership**

If you faxed a request to join Housing Justice Network and have not heard from us or do not receive messages from the list-serve within two weeks, please contact Amy Siemens at [asiemens@nhlp.org](mailto:asiemens@nhlp.org) or (510) 251-9400, x3111. There's a chance that we didn't receive your fax request, so please don't hesitate to contact Amy if you're not receiving messages.

# MacArthur Foundation Launches Preservation Initiatives in Twelve Selected Cities and States

Discussing the importance of affordable housing preservation, The John D. and Catherine T. MacArthur Foundation President Jonathon Fanton stated: "The end of the housing bubble and a wave of foreclosures have underscored the importance of affordable rental housing. We now have an opportunity to reset the policy agenda, restore rental housing to its proper place, and reshape the policy environment so that it both encourages rental housing preservation and makes it easier to do."<sup>1</sup> To further its preservation goals, the foundation announced, as part of its Window of Opportunity Initiative, twelve cities and states that will receive grants to implement creative and comprehensive preservation programs.<sup>2</sup> Each city or states faces a unique set of obstacles for affordable housing preservation and will thus use different tools to address them. The twelve project cities or states are: Denver, Florida, Iowa, Los Angeles, Maryland, Massachusetts, Minnesota, Ohio, Oregon/Portland, Pennsylvania, Vermont, and Washington/Seattle.<sup>3</sup>

## Denver

Denver is a rapidly growing city undergoing a massive public transportation expansion. In addition to a greater demand for urban housing by people with higher incomes, a high rate of foreclosures has increased the number of people in the rental market.<sup>4</sup> Because of such high demand for housing in the urban area, Denver's working families spend approximately 59% of their gross income on housing and transportation.<sup>5</sup> In order to address the problem, Denver will use the MacArthur grant to focus on preserving affordable housing near public transportation.<sup>6</sup> This strategy should reduce both housing and transportation costs, while ensuring that low-income families have access to economic opportunities.

Denver's Transit-Oriented Development (TOD) Fund is a ten-year initiative to preserve affordable housing within a half-mile of existing and future rail lines, as well

as housing within a quarter-mile of certain bus routes.<sup>7</sup> MacArthur will issue a Program-Related Investment (PRI) to Enterprise Community Partners in order to capitalize the fund.<sup>8</sup> The resources from the fund will be directed to the Urban Land Conservancy, a nonprofit organization that acquires and controls assets for public and charitable purposes. The Urban Land Conservancy will use the resources to preserve: existing federally assisted rental housing, existing unsubsidized rental housing that is affordable to families at or below 60% of area median income; and vacant and commercial properties on which new affordable housing may be built.<sup>9</sup> These targeted properties will be tracked through a database created using the grant funding.<sup>10</sup>

## Florida

Florida's strategy for affordable housing has been to build new units.<sup>11</sup> However, these units are rarely affordable to the lowest income families—most of whom are paying more than 40% of their income toward rent.<sup>12</sup> Moreover, of the state's more than 253,000 subsidized rental units, over 43,000 of those subsidies will expire by 2015.<sup>13</sup> Therefore, housing groups are working toward a new approach to maintain affordable housing in Florida.

MacArthur's grants to Florida will be given to three organizations—the Shimberg Center for Housing Studies at the University of Florida, the Florida Housing Coalition, and the Florida Housing Finance Corporation. These groups will push to create more mission-driven organizations with the capacity to preserve housing for extremely low-income and special needs populations.<sup>14</sup> To reach that goal, the Florida Housing Coalition will engage in capacity building activities such as workshops for nonprofit developers and local governments regarding preservation, as well as technical support to certain nonprofit developers.<sup>15</sup> The Shimberg Center will undertake research initiatives to analyze information regarding the state's affordable housing supply and who is affected by the loss of assisted housing.<sup>16</sup> These activities, combined with other state preservation initiatives, will help further the goal of getting more mission-driven developers to preserve affordable housing.

---

<sup>1</sup>Preserving 70,000 Affordable Rental Homes (MacArthur Foundation eNewsletter) February 2009, [http://www.macfound.org/site/apps/nlnet/content2.aspx?c=1kLXJ8MQKrH&b=2024163&content\\_id={827BA54E-1D30-4912-95FD-2E78A84E7BB1}&notoc=1](http://www.macfound.org/site/apps/nlnet/content2.aspx?c=1kLXJ8MQKrH&b=2024163&content_id={827BA54E-1D30-4912-95FD-2E78A84E7BB1}&notoc=1).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, City & County of Denver, [www.macfound.org/housing/denver](http://www.macfound.org/housing/denver).

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

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

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

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

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

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

<sup>11</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Florida, [www.macfound.org/housing/florida](http://www.macfound.org/housing/florida).

<sup>12</sup>*Id.*

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

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

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

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

## Iowa

Rural preservation presents important issues slightly distinct from those in urban areas.<sup>17</sup> In Iowa, the population has declined significantly in certain areas, leaving unoccupied subsidized units, while other areas are growing rapidly, creating an undersupply of affordable rental housing. Many of Iowa's 43,000 subsidized units are funded by the Rural Development Section 515 program.<sup>18</sup> Owners of these units have been ending their restrictions and the stock will continue to lose affordability over the next ten years if property owners are unable or unwilling to maintain the properties or continue their participation in the Section 515 program.<sup>19</sup>

MacArthur's grant to the Iowa Finance Authority will help the agency "enhance the overall proficiency of developers to accelerate the preservation of Section 515 properties."<sup>20</sup> Activities will include creating a database of subsidized properties and developing and implementing an analysis tool to determine financial feasibility of preservation.<sup>21</sup> Additionally, the Iowa Finance Authority will recruit and provide technical assistance to developers to assume ownership of Section 515 properties.<sup>22</sup>

## Los Angeles

An overwhelming number of Los Angeles residents are renters.<sup>23</sup> Close to half of those renters spend more than 30% of their income toward rent. Of the city's 65,000 subsidized units, about 22,000 are at risk of losing affordability.<sup>24</sup> One of the city's priorities is to preserve Single Room Occupancy (SRO) units, which provide housing opportunities for its residents most vulnerable to homelessness.<sup>25</sup> While Los Angeles has committed money and resources to the affordable housing problem, the MacArthur grant will provide necessary funds to increase capacity for preservation.

Los Angeles will primarily use its funds to focus on preservation of SRO units and to better coordinate existing programs. The city's Affordable Housing Preservation program will increase coordination of efforts with other city departments, collect data and perform outreach to owners of properties at risk of losing affordability.<sup>26</sup> This will be combined with a program to educate tenants living in expiring properties about their rights. The Affordable Housing Preservation program will also facilitate acquisition

of properties for preservation.<sup>27</sup> The city's Community Redevelopment Agency will focus specifically on the Los Angeles neighborhoods of Central City East and Skid Row, which are home to some of the city's most vulnerable residents.<sup>28</sup> The Agency will hold workshops to build community consensus on preservation and neighborhood transformation issues. Finally, the City will invest in capacity building for two nonprofit SRO developers that have worked with the Skid Row community.<sup>29</sup>

## Maryland

The Base Realignment and Closure (BRAC) process will expand military bases and lead to substantially increased populations in eight Maryland counties—an estimated 25,000 new households by 2011.<sup>30</sup> Thus, because Maryland maintains a strong rental market, it anticipates that, even assuming no current affordable units are lost, it will see a 78,000 affordable rental unit shortfall over the next eight years.<sup>31</sup>

Maryland will use its grant to hire consultants who will expand the information available regarding the eight targeted counties and develop a plan to educate property owners about preservation. The expanded information will include methods for prioritizing buildings for preservation, which will allow the state to do more targeted outreach to owners.<sup>32</sup> Furthermore, Maryland will use the grant money to create a compact between its Department of Housing and Community Development and the eight targeted counties in which they will develop common loan documents, underwriting and rehabilitation standards, and processing times for lenders.<sup>33</sup> The grant will also cover some costs with the Maryland Energy Administration to provide technical and financial assistance regarding energy efficiency improvements.<sup>34</sup> Finally, MacArthur has granted a PRI to Maryland to help capitalize the Maryland-BRAC Preservation Loan Fund, which will help "generate short-term financing for preservation projects over a 10-year period."<sup>35</sup>

## Massachusetts

Almost half of Massachusetts' renters pay over 30% of their income toward rent—its housing is the fifth most expensive in the country.<sup>36</sup> The state's housing will become increasingly unaffordable as an estimated 41,000

<sup>17</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Iowa, [www.macfound.org/housing/iowa](http://www.macfound.org/housing/iowa).

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

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

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

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

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

<sup>23</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Los Angeles, [www.macfound.org/housing/losangeles](http://www.macfound.org/housing/losangeles).

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

<sup>25</sup>*Id.*

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

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

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Maryland, [www.macfound.org/housing/maryland](http://www.macfound.org/housing/maryland).

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

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

<sup>33</sup>*Id.*

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

<sup>35</sup>*Id.*

<sup>36</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Massachusetts, [www.macfound.org/housing/massachusetts](http://www.macfound.org/housing/massachusetts).

units of subsidized housing are expected to be in peril of losing affordability restrictions.<sup>37</sup> Many of those units are properties with forty-year mortgages with no federal protections to encourage preservation. Other units are simply deteriorating because of age. Additionally, many smaller unsubsidized buildings that had been affordable to low-income families have been foreclosed upon.<sup>38</sup>

In order to address some of Massachusetts' affordability problems, the grant will fund the Community Economic Development Assistance Corporation (CEDAC) for a variety of activities. CEDAC will create an Interagency Working Group that will coordinate preservation activities among all levels of government, will advocate for preservation policy changes, create an early-warning system for at-risk properties, and develop a plan for stabilizing properties and establishing priorities for preservation.<sup>39</sup> The funding will also be used to create an advisory committee of preservation stakeholders.<sup>40</sup> Finally, MacArthur has granted a PRI that will provide funds for the Massachusetts Preservation Loan Fund, which provides financing for preservation purchasers.<sup>41</sup>

## Minnesota

Both Minnesota's rural and urban areas are experiencing housing affordability crises. Many of the properties are older and deteriorating.<sup>42</sup> Estimates suggest 52,000 subsidized units may be lost in the next ten years.<sup>43</sup> Of the state's large rural subsidized housing stock, almost 80% are eligible for prepayment.<sup>44</sup> The "key risks to existing affordable housing include increased incentives for owners to opt-out of Section 8 subsidy contracts, conversions of tax credit properties to market-rate rents, expiring rental assistance contracts, demolition of public housing units that are not replaced, and federally-assisted properties at risk of contract termination for poor physical conditions."<sup>45</sup>

The grant's preservation activity will focus on supporting the Preservation Plus Initiative. This initiative will convene a working group to identify and resolve gaps in current procedures and resources for preservation of federally assisted housing, improve early-warning systems for at-risk properties, engage in operational capacity building of owners of existing affordable housing, develop a preservation strategy for unsubsidized affordable housing, and capitalize a flexible revolving loan fund for short-term financing of preservation needs.<sup>46</sup>

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

<sup>38</sup>*Id.*

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

<sup>40</sup>*Id.*

<sup>41</sup>*Id.*

<sup>42</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Minnesota, [www.macfound.org/housing/minnesota](http://www.macfound.org/housing/minnesota).

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

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

## Ohio

Ohio's unemployment and foreclosure rates are exceptionally high and create an increase in demand for affordable rental housing.<sup>47</sup> Almost 25% of the state's subsidized affordable housing stock, about 43,000 units, is at risk of losing affordability over the next ten years.<sup>48</sup>

The Ohio Housing Finance Agency (OHFA) leads a partnership of three statewide organizations to form the Ohio Preservation Compact. These organizations are OHFA, the Coalition on Homelessness and Housing in Ohio, and the Ohio Capital Finance Corporation.<sup>49</sup> OHFA will receive the MacArthur grant to create a comprehensive database of federally subsidized properties and increase outreach to both property owners and tenants living in subsidized housing. This database will allow the partnership to assess properties that should be prioritized for preservation.<sup>50</sup> Ideally, this information will lead to the transfer of ownership of properties to nonprofit organizations that will continue the affordable use restrictions.<sup>51</sup> The member organizations of the Ohio Preservation compact will also provide technical assistance to owners regarding a variety of issues and outreach to tenants to help them engage in the preservation process.<sup>52</sup> Finally, the Ohio Capital Finance Corporation will receive a PRI to establish a preservation loan fund to provide financing to developers.<sup>53</sup>

## Oregon

Oregon suffers from soaring real estate prices and a rapidly increasing population.<sup>54</sup> Over a quarter of the state's population pays more than 50% of its income toward housing.<sup>55</sup> In the next five years, more than 80% of Oregon's federally subsidized housing stock will face contract expiration.<sup>56</sup> Compounding the problem is the closure of numerous manufactured home parks.<sup>57</sup>

In order to address the state's affordable housing problems, the Network for Affordable Housing will receive a grant and a PRI to work on preservation activities. Much of the grant will support the already existing Housing Acquisition Project, a collaboration of various organizations.<sup>58</sup> The activities will include increasing coordination

<sup>47</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Ohio, [www.macfound.org/housing/ohio](http://www.macfound.org/housing/ohio).

<sup>48</sup>*Id.*

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

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

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>*Id.*

<sup>54</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Oregon, <http://www.macfound.org/site/c.lkLXJ8MQKrH/b.4991523/k.C941/Oregon.htm>.

<sup>55</sup>*Id.*

<sup>56</sup>*Id.*

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

between different levels of government housing agencies and improving an existing database of affordable properties.<sup>59</sup> The grant will also require that staff improve tenant outreach, partially by working with an existing tenant advocacy organization network to develop educational materials and outreach.<sup>60</sup> The PRI will help fund the Oregon Housing Acquisition Fund, which provides loans to purchase at-risk properties until a developer procures permanent financing, and engages in other preservation activities.<sup>61</sup>

---

*About 250,000 households in Washington struggle to afford housing. Both federally subsidized units as well as Low Income Housing Tax Credit units have expiring use restrictions in the next five years.*

---

## Pennsylvania

Pennsylvania has an aging federally subsidized housing stock.<sup>62</sup> Almost 50% of the federally subsidized affordable housing in the state is over twenty-five years old.<sup>63</sup> The age of the units, combined with deregulation of utilities in Pennsylvania, will lead to soaring utility costs in the coming years, threatening their affordability.

Because of the costs of maintaining older buildings and the pending increase in utility costs, Pennsylvania's grant will fund its Preservation through Smart Rehab strategy—a strategy that focuses on green building and sustainability.<sup>64</sup> Program activities will include assessing utility expenses, mechanical systems, and physical condition of buildings to determine how they can become more energy-efficient. The Pennsylvania Housing Finance Agency will also create a group of energy auditors that will help owners take advantage of energy-efficient technology. In some cases, the grant will cover the costs of the audits.<sup>65</sup> It will also fund the marketing of this program. Finally, the Pennsylvania Housing Finance Agency will also provide loans for selected projects to upgrade their energy conservation technology.

---

<sup>59</sup>*Id.*

<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

<sup>62</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Pennsylvania, [www.macfound.org/housing/pennsylvania](http://www.macfound.org/housing/pennsylvania).

<sup>63</sup>*Id.*

<sup>64</sup>*Id.*

<sup>65</sup>*Id.*

## Vermont

Vermont has an impressive track record of preserving affordable housing.<sup>66</sup> Vermont's economy remains strong—it faces few foreclosures and low unemployment. However, an increase in lower-wage jobs leaves many residents unable to afford rents and this leaves Vermont with an undersupply of affordable housing. Moreover, almost 60% of the state's federally subsidized housing stock will see expiring use restrictions by 2018.<sup>67</sup>

Because Vermont already maintains an effective preservation system, its grant will focus on increasing the need for loan products and technical assistance. To do this, the state will form a Preservation Council to coordinate new activities with existing ones.<sup>68</sup> The Vermont Housing and Conservation Board will also engage in several technical assistance activities and trainings to assist nonprofit developers. Topics of assistance will include creating a standardized appraisal guide, encouraging owner participation in preservation, and disseminating information to preservation-minded organizations.<sup>69</sup> Furthermore, the grant will provide funding for energy efficiency assessments and expansion of a supportive housing model to meet the needs of seniors. Finally, the Vermont Housing Finance Agency will receive a PRI to help develop new loan products.<sup>70</sup>

## Washington

About 250,000 households in Washington struggle to afford housing.<sup>71</sup> Both federally subsidized units as well as Low Income Housing Tax Credit units have expiring use restrictions in the next five years.<sup>72</sup> Having seen success in preserving housing, Washington will continue its strategy of focusing on long-term viability of properties and assisting nonprofit owners.

The City of Seattle Office of Housing and the Housing Trust Fund will create a best practices guide for nonprofit owners and affordable housing funders on how to evaluate portfolios and recapitalization needs.<sup>73</sup> As a demonstration project, it will also provide portfolio evaluation services to ten to fifteen targeted nonprofit owners.<sup>74</sup> The Housing Trust Fund will also develop a web-based reporting system for affordable housing projects. The City of Seattle Office of Housing will support its asset management program, a network of funders and owners in the

---

<sup>66</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Vermont, [www.macfound.org/housing/vermont](http://www.macfound.org/housing/vermont).

<sup>67</sup>*Id.*

<sup>68</sup>*Id.*

<sup>69</sup>*Id.*

<sup>70</sup>*Id.*

<sup>71</sup>MacArthur Foundation, State & Local Housing Preservation Leaders, Washington, [www.macfound.org/housing/washington-seattle](http://www.macfound.org/housing/washington-seattle).

<sup>72</sup>*Id.*

<sup>73</sup>*Id.*

<sup>74</sup>*Id.*

city that exchange best practices information and engage in discussions about challenges and solutions to maintaining affordable housing.<sup>75</sup>

### Conclusion

As communities search for solutions to the ever-present need to preserve affordable rental housing, the MacArthur Foundation's grants to twelve innovative states and localities will help maintain the current stock. Many of these grantees will develop programs that may be models for others, from methods to increase energy efficiency to developing ways for advocates and developers to work together. Most of the states and localities will work on making more robust tracking and early warning systems to identify at-risk housing. As these programs develop, advocates should both look for successful models and seek to become involved with state or local preservation strategies wherever possible. ■

## Federal District Court Strikes Down Independent Living and Invasive Medical Records Requirements

In *Laflamme v. New Horizons, Inc.*,<sup>1</sup> the United States District Court of Connecticut issued an important ruling analyzing the Fair Housing Act's prohibition on discrimination against people with disabilities. Specifically, the court analyzed three substantive questions:

- Can a housing provider that operates rental housing for people with severe physical disabilities impose independent living requirements?
- Can the housing provider request extensive medical records from prospective tenants?
- Can the housing provider prevent a tenant whom it believes cannot live independently from returning to her housing without violating the Fair Housing Act?

The court held, for each question, that the housing provider cannot.

### Background

New Horizons Village (NHV) is a housing provider that offers rental units for severely physically disabled adults.<sup>2</sup> NHV receives funding from the Connecticut Department of Social Services to help subsidize qualifying tenancies and the costs of employing personal care attendants. Personal care attendants help care for tenants a few hours a day if needed, but are not medical professionals.<sup>3</sup> NHV is not a nursing home or medical facility. Importantly, NHV requires that its tenants be capable of living independently. Furthermore, as part of its application process, NHV requires that tenants sign a release allowing it to access any and all medical records.<sup>4</sup>

Denise Laflamme has cerebral palsy and limited mobility. She also experiences seizures and is diagnosed with depression. In February 2004, she applied to become a tenant at NHV, and after she filled out a medical release form and underwent a rigorous interview process NHV approved her tenancy.

---

<sup>1</sup> \_\_ F.Supp.2d \_\_, 2009 WL 840758 (D.Conn. 2009).

<sup>2</sup>*Id.* at \*2.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.* at \*6. As quoted in the court's decision, New Horizons' chief financial officer characterized the requirements: "To be physically disabled is a necessary but not sufficient condition to live at New Horizons. The other necessary condition is that the person be able to and demonstrate the ability to live independently at New Horizons. This ability requires social and psychological competence to do so."

---

<sup>75</sup>*Id.*

Ms. Laflamme moved into a shared unit at NHV in August 2004.<sup>5</sup> In the following months, Ms. Laflamme repeatedly sought emergency treatment and was twice hospitalized.<sup>6</sup> Later that year, Ms. Laflamme was admitted to the Hartford Hospital's Institute of Living (IOL) to receive treatment for depression and "suicidal ideation."<sup>7</sup> After one week, she was discharged from the hospital, with a doctor's recommendation that she return to NHV and receive outpatient care at a medical center.<sup>8</sup>

---

*This principle of ensuring that people with disabilities are integrated into the mainstream is fundamental to the decision whether or not independent living requirements are valid.*

---

After Ms. Laflamme's discharge from IOL, employees of NHV made clear that she was no longer welcome to live in her unit. First, the manager informed Ms. Laflamme's mother, Carol Laflamme, that Ms. Laflamme could not come back to NHV.<sup>9</sup> Carol Laflamme asked that NHV review the decision.<sup>10</sup> The manager told her to call back at a later date, but repeated the request that Denise Laflamme not return to her unit.<sup>11</sup> To appeal the decision, the manager referred Carol Laflamme to another employee, Michael Shaw.<sup>12</sup> Mr. Shaw instructed Carol Laflamme to remove Ms. Laflamme's belongings and informed her that Denise Laflamme would not be able to return.<sup>13</sup> Thus, while NHV never instituted formal eviction proceedings, they made clear to Ms. Laflamme that she could not return to her unit.

After NHV refused to grant Ms. Laflamme's appeal to keep her tenancy, she filed a complaint with the Connecticut Commission on Human Rights and the Department of Housing and Urban Development (HUD) in June 2005.<sup>14</sup> HUD, however, closed the complaint in 2006.<sup>15</sup>

After HUD closed her administrative complaint, Denise Laflamme and the Office of Protection and Advocacy (OPA) filed suit in federal district court alleging New Horizons had violated the Fair Housing Act "by imposing the independent-living requirement, compelling an overbroad disclosure of medical records and background

information, challenging and making discriminatory statements about Laflamme's ability to live independently, and preventing her from returning to her apartment after being discharged from IOL."<sup>16</sup> The parties requested damages and equitable relief. The OPA initially petitioned for a preliminary injunction that would prevent NHV from enforcing its independent living and medical record requirements.<sup>17</sup> The court granted the motion with regard to the medical records releases but denied it with regard to the independent living requirement.<sup>18</sup>

## The Court's Decision

On summary judgment, the court ruled in favor of Laflamme, as well as OPA, on all issues. It began its analysis by laying out an extensive history of the Fair Housing Act's provisions on disability,<sup>19</sup> which were added in 1988, via the Fair Housing Amendments Act.<sup>20</sup> The Fair Housing Act includes disability as a protected class against whom housing providers cannot discriminate.<sup>21</sup>

### The Fair Housing Act

In explaining the Fair Housing Act's protections, the court cited to the legislative history stating that the law is "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream."<sup>22</sup> This principle of ensuring that people with disabilities are integrated into the mainstream is fundamental to the decision whether or not independent living requirements are valid. The court further noted HUD's regulations promulgating the Fair Housing Act, which limit the scope of questions a housing provider may ask regarding a person's disability.<sup>23</sup> These regulations provide a framework for analyzing NHV's medical records requests. The court also examined the history of the "direct threat" exception that allows housing providers to not lease to people with disabilities who "would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."<sup>24</sup>

### Independent Living Requirement

New Horizons requires that all of its residents are able to "live independently."<sup>25</sup> While the Fair Housing Act protects people with disabilities from discrimination based on the idea that they should be able to live

---

<sup>5</sup>*Id.* at \*4.

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

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

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

<sup>9</sup>*Id.* at \*5.

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

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

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

<sup>14</sup>*Id.* at \*6

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

---

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

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

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

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

<sup>20</sup>42 U.S.C.A. § 3601 *et seq.* (Westlaw April 2009).

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

<sup>22</sup>*Laflamme* at \*7; quoting H.R. Rep. No. 100-711 at 18 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2179.

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

<sup>24</sup>*Id.* at \*8.

<sup>25</sup>*Id.* at \*6.

independently in the community, some housing providers have perverted the term to discriminate against the people whom the statute was designed to protect. In *Cason v. Rochester Housing Authority*, a federal district court in New York found that a public housing authority could not require that residents have the ability to live independently because the only people rejected on such a basis were those with disabilities.<sup>26</sup> Another case used the same reasoning to reach the same result with respect to a Section 811 property for disabled individuals.<sup>27</sup> Distilling such cases, the court concluded that the goal of ensuring that people with disabilities are able to live independently does not allow housing providers to discriminate because a person is deemed unable to do so.<sup>28</sup> Therefore, NHV discriminated against Ms. Laflamme when it insisted that she meet its definition of being capable of living independently throughout her tenancy. An owner cannot insist that a tenant be capable of living independently as a condition of the tenancy.

### Medical Records Requirement

The second issue the court analyzed was NHV's inquiry into prospective tenants' medical records. Prior cases have held that the Fair Housing Act requires minimally invasive procedures to verify an applicant's disability.<sup>29</sup> The court cited to prior case law in which a court found that HUD regulations prohibited a housing provider from requiring that a physician actually describe the prospective tenant's medical condition.<sup>30</sup> Inquiries into medical records must be limited to information needed to establish eligibility for housing. NHV stated that it needed the unfettered access to medical records in order to establish whether or not the applicant was capable of independent living, a criteria prohibited by the Fair Housing Act and unnecessary to determine basic eligibility for housing.<sup>31</sup> Thus, the court found that NHV's broad medical records request also violated the Fair Housing Act.<sup>32</sup>

### Preventing Denise Laflamme from Returning to Her Home

The final substantive issue that the court decided was whether or not NHV's refusal to allow Denise Laflamme back into her apartment constituted discrimination. The refusal to allow Denise Laflamme to return could be characterized in two ways—either as NHV making the unit unavailable because of her disability or as NHV failing to reasonably accommodate her. The court found that in either case, NHV violated the Fair Housing Act.<sup>33</sup> Specifically, it

held that, despite the fact that NHV did not formally evict Ms. Laflamme, it still made clear that she was no longer welcome, and thus was guilty of discrimination.<sup>34</sup>

### Other Issues

New Horizons raised several issues in its defense that the court addressed. The housing provider argued that its actions toward Ms. Laflamme were justified based on the "direct threat" exception to reasonable accommodation.<sup>35</sup> This exception allows a housing provider to refuse to rent to a person with disabilities if she poses a "direct threat to the health or safety of others." The court found that Ms. Laflamme's suicidal tendencies and depression posed no threat to others, as they were simply subjective fears.<sup>36</sup>

New Horizons also argued that because its tenants live in shared housing, it should have additional discretion to ensure that one person's tenancy does not adversely affect another's.<sup>37</sup> The court rejected this argument by noting that New Horizons had no basis to assert third-party rights in order to justify its own discrimination.<sup>38</sup>

Furthermore, New Horizons argued that because certain other states, not Connecticut, authorized independent living facilities, its own policies were lawful.<sup>39</sup> The court quickly rejected this argument by finding those statutes irrelevant, since NHV is not a care facility authorized under statute.<sup>40</sup>

Finally, New Horizons claimed that because it had good intentions, it did not discriminate against Ms. Laflamme.<sup>41</sup> The court noted that the FHA prohibits facially discriminatory policies, regardless of intent.<sup>42</sup> Thus, the court found none of New Horizons' defenses valid.

The court also considered a number of procedural issues, such as whether OPA had standing to join the suit and whether or not to compel NHV to follow the preliminary injunction that the court had issued earlier. It found in favor of OPA on both issues.<sup>43</sup>

## Conclusion

The court's ruling in *Laflamme v. New Horizons, Inc.* is a victory for people with disabilities who strive to live as part of the larger community. By striking down the NHV independent living requirement and its invasive medical records requests, the court helps ensure that people with disabilities can live in a home of their choosing and in privacy. ■

<sup>26</sup>*Id.* at \*10, citing *Cason v. Rochester Housing Authority*, 748 F. Supp. 1002, 1004 (W.D.N.Y. 1990).

<sup>27</sup>*Id.* at \*11, discussing *Jaininey v. Maximum Indep. Living*, No. 00-879, slip op. at 15-16 (N.D. Ohio Feb. 1, 2001).

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* at \*12.

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

<sup>33</sup>*Id.*

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

<sup>35</sup>*Id.* at \*13.

<sup>36</sup>*Id.*

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

<sup>38</sup>*Id.*

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

<sup>40</sup>*Id.* at \*14.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.*

<sup>43</sup>*Id.* at 15-17.

# Doubling of Capital Fund Appropriations Offers Opportunities for Housing Authorities and Residents

After years of volitional neglect, Congress is providing public housing authorities (PHAs) with substantial and new funds for capital improvements<sup>1</sup> to public housing. Residents and advocates should engage with their PHA on the use of these capital funds.<sup>2</sup>

Funds are available both from the annual appropriation process and from the recovery act. For Fiscal Year (FY) 2008<sup>3</sup> Congress appropriated \$2.439 billion for capital funds.<sup>4</sup> For FY 2009, the appropriation is \$2.45 billion.<sup>5</sup> The American Recovery and Reinvestment Act of 2009 (ARRA)<sup>6</sup> appropriated \$4 billion in public housing capital funds of which \$3 billion has been allocated by the same formula used for FY 2008<sup>7</sup> and \$1 billion is to be awarded through competitive grants.<sup>8</sup> Additionally, the FY 2009 bill provides \$3,641,966,875 for carrying out the community development block grant (CDBG) program<sup>9</sup> and ARRA appropriates an additional \$1 billion in CDBG funds to be distributed to grantees that received CDBG funding in 2008.<sup>10</sup> Depending upon local consolidated plans and PHA Five-Year and Annual Plans, portions of the CDBG money may be available for public housing rehabilitation or new construction programs. HUD has posted on its website the amounts available to each local PHA and each state from ARRA for capital funds and that each local jurisdiction

will receive in CDBG funds.<sup>11</sup> The ARRA capital fund allocation is more than 120% of either the FY 2008 or the FY 2009 allocation. By combining FY 2009, ARRA and other applicable recovery funds, many PHAs will have more than twice the amount available in prior years to obligate for public housing capital improvements.<sup>12</sup>

## Time Table

The expenditure of ARRA funds is subject to strict time tables. Congress directed that formula allocation awards of the \$3 billion ARRA capital funds happen within thirty days of the bill's February 17, 2009, enactment.<sup>13</sup> HUD acted quickly and announced the award amounts on HUD's website.<sup>14</sup> HUD must obligate the \$1 billion ARRA competitive capital funds by September 30, 2009.<sup>15</sup> The HUD webpage currently states that HUD will issue a Notice of Funding Availability (NOFA) seeking applications.<sup>16</sup> This NOFA will most likely be published by early May 2009. Residents and advocates should watch the HUD website and the Federal Register for this NOFA. All of the ARRA capital funds must be obligated by March 17, 2010.<sup>17</sup> These funds must then be expended upon a schedule of 60% within two years and 100% within three years.<sup>18</sup> HUD has warned PHAs: "Please note that under the ARRA the Department has no flexibility whatsoever to extend or alter the 1-year obligation deadline or the 2- and 3-year expenditure deadlines."<sup>19</sup> HUD will recapture and

<sup>1</sup>See 42 U.S.C.A. § 1437g(d) (West 2003).

<sup>2</sup>For a primer on capital funds see NHLP, *The Public Housing Capital Plan: Basic Information for Advocates*, 34 HOUS. L. BULL. 223 (Nov.-Dec. 2004).

<sup>3</sup>October 1, 2007, through September 30, 2008.

<sup>4</sup>Pub. L. No. 110-161, Div. K, tit. II, 121 Stat. 1844, 2416-17 (2007) (Consolidated Appropriations Act, 2008, H.R. 2764-573, 574, which appropriated funds for the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g).

<sup>5</sup>Pub. L. No. 111-8, tit. II (2009) (FY09 Omnibus Spending Bill, H. R. 1105-432).

<sup>6</sup>Pub. L. No. 111-5, 123 Stat. 115 (2009).

<sup>7</sup>*Id.* at 214. The Secretary has discretion not to award funds to troubled PHAs or to PHAs that refuse to accept the funds. For an explanation of the FY 2008 allocation formula see: Information and Procedures for Processing American Recovery and Reinvestment Act Capital Fund Formula Grants, PIH 2009-12 (March 18, 2009), IV, available at <http://www.hud.gov/offices/pih/>, hereinafter referred to as "PIH 2009-12."

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

<sup>9</sup>Pub. L. No. 111-8, tit. II (2009).

<sup>10</sup>Pub. L. No. 111-5, 123 Stat. 115, 217 (2009), under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.).

<sup>11</sup><http://www.hud.gov/recovery/>. Nearly every prompt under "Learn More About HUD Recovery Act Programs" can be followed to a wealth of detailed jurisdiction-level data. Also listed on the HUD website is the amount of funds allocated by state for LIHTC properties to use under the HOME program and for funds allocated by state and local jurisdiction for homeless prevention, and the names of the recipients of the funds for lead hazard reduction.

<sup>12</sup>Note that: "the Secretary may determine not to allocate funding to public housing agencies currently designated as troubled or to public housing agencies that elect not to accept such funding." Pub. L. No. 111-5, 123 Stat. 115, 214 (2009).

<sup>13</sup>Pub. L. No. 111-5, 123 Stat. 115, 214 (2009).

<sup>14</sup>See HUD, HUD Speeds Nearly \$3 Billion to Nation's Public Housing Authorities to Improve Housing (March 24, 2009), available at <http://www.hud.gov/recovery/2009/03/24/comms/pr09-027.cfm?CFID=16470960&CFTOKEN=60483115>.

<sup>15</sup>Pub. L. No. 111-5, 123 Stat. 115, 214 (2009).

<sup>16</sup>HUD webpage: Public Housing Capital Fund Stimulus (Competitive) at <http://www.hud.gov/recovery/phcapfundh.cfm> and Recovery Act Capital Fund Formula Grant Frequently Asked Questions As of April 10, 2009, available at <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/rcryact-faq.pdf>, hereinafter referred to as "Capital Grant FAQ."

<sup>17</sup>Pub. L. No. 111-5, 123 Stat. 115, 215 (2009).

<sup>18</sup>*Id.* Committed means generally that a contract has been signed governing the project, while expenditure requires that the PHA has actually spent the funds.

<sup>19</sup>Notice posted on HUD website on March 13, 2009, (emphasis in original) at <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/stimulusannounce.pdf>.

reallocate ARRA capital funds not used according to the schedule.<sup>20</sup> Recaptured funds will be reallocated to PHAs that are in compliance with expenditure schedules.<sup>21</sup>

The ARRA CDBG funds have no similar expenditure schedule, but are available only until September 30, 2010.<sup>22</sup> The FY 2009 CDBG money is available until September 30, 2011.<sup>23</sup>

Capital funds made available through the annual appropriation process also have time limits for obligation and expenditure. The normal process is that such funds must be obligated by a PHA within two years and expended within four years.<sup>24</sup> HUD may extend the time period for obligating and expending the funds for specific reasons.<sup>25</sup> For FY 2009, the appropriation of \$2,450 billion will remain available until September 30, 2012, but extensions of time must be approved by either the Deputy Secretary or the Assistant Secretary for Public and Indian Housing.<sup>26</sup>

When PHAs make significant changes to their annual plans, as they must do to properly authorize projects and expenditures with this new capital money, they must provide advance publication, hold public hearings, solicit public comment and obtain PHA Commission approval.<sup>27</sup> Importantly, all PHAs were notified on March 18, 2009, that the Secretary has “used the waiver authority in the [ARRA] to reduce [the otherwise required 45 day] public notice period to 10 calendar days” so that PHAs may “continue planning and ultimately obligate and expend these funds as intended.”<sup>28</sup> This Notice contains a wealth of information and should be studied by anyone about to engage on these topics. If the work items for which a PHA intends to use newly available capital funds were not included in their approved Annual or Five-Year Action Plan, PHAs were required to inform HUD of the changes by submitting a Capital Fund Annual Statement Parts I & II, form HUD 50075.1 and a supporting Board Resolution to the local HUD field office no later than twenty-one days after the effective date of the grant.<sup>29</sup>

The various time constraints and the threat of reallocation of funds mean that residents must be vigilant in tracking their PHA’s progress, particularly in PHAs with a historic lack of capacity to initiate and execute capital projects.

## Recovery Package Sets Priorities for Funding Certain Projects

With respect to all expenditures of ARRA capital funds, Congress directed PHAs to give a priority to projects, including:

- 1) “capital projects that can award contracts based on bids within 120 days from the date the funds are made available to the public housing authorities” (so called “shovel ready”);
- 2) “the rehabilitation of vacant rental units;” and
- 3) “capital projects that are already underway or included in the [PHA’s] 5-year capital fund plans.”<sup>30</sup>

In obligating the competitive \$1 billion of capital funds provided for in the ARRA, Congress directed the Secretary to consider “investments that leverage private sector funding or financing for renovation and energy conservation retrofit investments.”<sup>31</sup> HUD has posted explanations of these bills on its website, including extensive frequently asked questions regarding the ARRA capital funds.<sup>32</sup> HUD states that PHAs can use ARRA capital funds for such things as renovation of existing units which are not now rentable, new construction of ACC-funded units, acquisition of land and acquisition of PHA units.<sup>33</sup> The ARRA capital funds are to be used “to supplement and not supplant expenditures from other Federal, State or local sources or funds independently generated by the grantee.”<sup>34</sup> PHAs will be required to report to HUD quarterly on their expenditure of ARRA funds.<sup>35</sup>

The only requirement imposed upon grant recipients of CDBG funds from the ARRA is that they must give priority to shovel-ready projects.<sup>36</sup>

## Engage the Local PHA

Every PHA has already made many decisions about how to spend portions of their newly available capital funds. “PHAs [were] to submit a Capital Fund Annual Statement form 50075.1 describing the specific activities that they will undertake with the ARRA Formula grant funds no later than April 10, 2009.”<sup>37</sup>

There remain, however, many issues and decisions regarding use of the new ARRA capital funds as well as the regular fiscal year appropriations. Residents and

<sup>20</sup>Pub. L. No. 111-5, 123 Stat. 115 (2009).

<sup>21</sup>Capital Grant FAQ, *supra* note 16.

<sup>22</sup>*Id.* at 21.

<sup>23</sup>Pub. L. No. 111-8, tit. II (2009).

<sup>24</sup>42 U.S.C. § 1437g(j)(1) and (5)(2007) and 24 C.F.R. § 905.120 (2008).

<sup>25</sup>*Id.*

<sup>26</sup>Pub. L. No. 111-8, tit. II (2009), H. R. 1105—432.

<sup>27</sup>24 C.F.R. § 903.21(b) (2008).

<sup>28</sup>PIH 2009-12, *supra* note 7 (The Notice cross references 24 CFR Parts 905, 941 and 968).

<sup>29</sup>*Id.* The grants are considered to have been effective on March 17, 2009.

<sup>30</sup>*Id.*

<sup>31</sup>Pub. L. No. 111-5, 123 Stat. 115, 214 (2009).

<sup>32</sup>See Capital Grant FAQ, *supra* note 16.

<sup>33</sup>*Id.*

<sup>34</sup>Pub. L. No. 111-5, 123 Stat. 115, 215 (2009).

<sup>35</sup>See Capital Grant FAQ, *supra* note 16.

<sup>36</sup>Pub. L. No. 111-5, 123 Stat. 115, 217 (2009).

<sup>37</sup>Notice posted on HUD website on March 13, 2009, (emphasis in original) available at <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir/stimulusannounce.pdf>.

advocates should engage their PHA, through the plan process or otherwise, to ensure:

- that the allocated funds are used in the most productive and timely manner to benefit residents consistent with the required priorities;
- that the PHA complies with Section 3 obligations (designed to require grantees and contractors using these funds to hire public housing residents and low-income individuals and contract with Section 3 businesses<sup>38</sup> as well as local and minority and women owned business);<sup>39</sup> and
- that the PHA engages the residents in key decisions regarding the contracting for and expenditure of the funds.

Proper identification of capital needs requires residents to obtain and analyze both PHA documents and hard information about the conditions within their communities. The five-year capital fund plan is an attachment to the PHA's Annual Plan that should be available for each PHA at <http://www.hud.gov/offices/pih/pha/>. It may also be available in an updated format as an attachment to the PHA's proposed annual plan. Within the five-year capital fund plan, the five-year action plan lists any anticipated large capital items for the next five-year period by development name, development number, description of the item, estimated cost and planned start date, as well as the total cost of all large capital items per development.<sup>40</sup>

To ensure that the objectives of the recovery package are met and the benefits of the annual appropriations for capital funding are maximized, residents and advocates should consider acquiring and reviewing relevant documents and information, including:

- a copy of the most recent Capital Fund Program Five-Year Action Plan, if it is not available or legible at <http://www.hud.gov/offices/pih/pha/>;
- a copy of any amendments to the most recent (FY 2008 or FY 2009) Capital Fund Program Five-Year Action Plan;
- the most recent Capital Fund Annual Statement Parts I & II
- any additional plans for allocation of the capital funds in 2009, 2010, 2011 and 2012;
- the amount of carry over capital funds currently

<sup>38</sup>12 U.S.C. § 1701u (West 2001); 24 C.F.R. Part 135 (2008).

<sup>39</sup>Memo. from Peter R. Orszag, Director OMB, for the heads of departments and agencies, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, M-09-15 (April 3, 2009), Attachment, § 1.6, available at <http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm>.

<sup>40</sup>See n. 2, *supra*.

available to the PHA, including the dates that such funds were received, must be obligated and must be expended;

- the number, location and estimated cost of repair of each vacant public housing unit;
- an estimate of the time necessary to put contracts for the repair of these vacant units out to bid;
- the number, types and dollar value of capital contracts underway;
- a time table for committing and expending both the ARRA capital funds and the available annually appropriated capital funds.

Due to the speed with which these funds are to be encumbered and expended, HUD and PHAs continue with the process of allocating funds and entering into contracts. In this process the Secretary has statutory authority to "waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of [ARRA capital or community development funds]."<sup>41</sup> This potentially gives PHAs great leeway in structuring their capital programs for the maximum benefit of the residents and improvement of the public housing stock. Whether this waiver authority could be challenged by residents if they believe their PHA is abusing its authority is an open question.<sup>42</sup>

### Section 3 Opportunities

The availability of large sums of capital funding presents important opportunities to obtain Section 3 mandated economic opportunities.<sup>43</sup> As the capital improvement priorities are being discussed and negotiated between residents and the PHA, residents must continuously pursue incorporation of Section 3 employment and contracting requirements in all projects.<sup>44</sup> PHA requests for qualification (RFQs) and requests for proposals (RFPs) must inform prospective contractors of the Section 3 requirement to employ public housing residents and other low-income residents of the affected communities and to engage Section 3 businesses as well as minority- and women-owned businesses under contracts using the federal funds discussed herein.

<sup>41</sup>Pub. L. No. 111-5, 123 Stat. 115, 215 (for capital funds) and 123 Stat. 115, 217 (for community development funds) (Feb. 17, 2009).

<sup>42</sup>HUD explains the authority as permission to assist PHAs to expedite and facilitate the use of the funds. PIH 2009-12, *supra* note 7 at IX.

<sup>43</sup>So called because it is authorized by Section 3 of the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 3, 82 Stat. 476, (Aug. 1, 1968), now codified at 12 U.S.C. 1701u (West 2001). The HUD website contains pages and forms related to Section 3 at <http://www.hud.gov/offices/fheo/section3/section3.cfm>. Note there the "Helpful Tools" link to the "Section 3 Plan," which is a "model" Section 3 plan.

<sup>44</sup>See NHLP, *An Advocate's Guide to the HUD Section 3 Program: Creating Jobs and Economic Opportunity* (February 2009).

Residents should review, with their PHAs, the content of the RFQs and RFPs, how the contracts offered to successful contractors will bind the contractors to this obligation, what penalties will be imposed for non-compliance and how the obligations will be monitored and enforced from day to day as the work progresses. Residents can work with their PHA to conduct employment-needs surveys of their developments asking all employable residents to fill out simple questionnaires about their job skills and aspirations, partner with local workforce investment programs or local unions to facilitate training and apprenticeships, and form a committee to continuously monitor compliance. If a PHA declines to take these actions, the resident councils or Resident Advisory Boards could allocate some of the \$25 per unit per year fees for resident participation to fund such efforts by the residents or a contractor of the residents.<sup>45</sup> Residents should keep in mind that when PHAs spend annual appropriation or recovery funds themselves, without engaging outside contractors, they are bound by Section 3.

In preparation for Section 3 negotiation and implementation, residents should consider locating and developing information helpful to determine compliance, including:

- A copy of the PHA's Section 3 plan.
  - Bid packages that require contractors to provide information (certified payroll) with the name and position (skill level) of the contractor's employees at the time of the bid, and an estimate of the number of new hires that the contractor will require to fulfill the contract.
  - Contract provisions that specify the number of new employees by job title or skill level and the number of Section 3 employees that the contractor anticipates hiring.
  - Contract provisions that require bi-weekly<sup>46</sup> or monthly reports setting forth the number of employees of the contractor, the number of new hires during the period, and the number of Section 3 hires by position (skill level).
  - Information regarding any new hiring that the PHA anticipates as a result of the increased capital funds, as these new employees must be hired in accordance with the Section 3 preferences.
- Information regarding the dollar value of all contracts entered into by the PHA and by any contractor with a Section 3 business.

Section 3 compliance offers an opportunity for direct resident engagement in resident empowerment.

## Conclusion

For many reasons it is important that residents and their advocates monitor the use and expenditure of the capital funds. The need for such funds is great, as much of public housing is suffering from years of deferred maintenance and the wise expenditure of such funds will benefit residents. In addition, in some jurisdictions the expenditure of the funds will result in an increase of affordable housing by placing vacant units back on the market or through the acquisition or development of public housing units. There are also jobs to be had from the expenditure of the funds, which should benefit public housing residents, other low-income residents and Section 3 businesses, as well as, local, minority and women owned businesses through the enforcement of Section 3, and these new jobs and contracts created will stimulate economic activity in the community. Capital funds not expended in the community will be recaptured and distributed to other communities. ■

---

<sup>45</sup>See Interim Instructions on Distribution and Use of Operating Subsidy Funds Received for Resident Participation Activities, PIH 2001-3 (HA) (Jan, 18, 2001); NHLP, *\$27 Million Available for Tenant Participation Activities*, 31 HOUS. LAW BULL. 87 (April 2001).

<sup>46</sup>If employees are paid bi-weekly, then the general contractor will have matching wage disbursement reports listing each employee. These are ready-made compliance tools that do not require the contractor to prepare any special report. The hours worked by each Section 3 employee can then be determined and compared to the general employee pool.

# HUD Implements Homelessness Prevention and Rapid Re-Housing Program

The American Recovery and Reinvestment Act of 2009 allocated \$1.5 billion for the Homelessness Prevention and Rapid Re-Housing Program (HPRP). Almost all of the funding will be allocated in grants,<sup>1</sup> and it must be committed and spent on a very tight schedule. The deadlines that the Department of Housing and Urban Development (HUD) and grantees must abide by are set forth in the chart on page 115 titled "Important Dates for Application and Expenditure of HPRP Funds." Significantly, the chart does not include deadlines under state or local laws.

HUD recently published a Notice regarding the application process and expenditure requirements for these funds.<sup>2</sup> The key provisions of that Notice are discussed below.<sup>3</sup>

## Purpose of HPRP and Eligible Grantees

The purpose of the HPRP is to "provide homelessness prevention assistance to households who would otherwise become homeless...and to provide assistance to rapidly rehouse persons who are homeless."<sup>4</sup> The eligible beneficiaries must have incomes at or below 50% of area median income and must have an initial consultation with a case manager.<sup>5</sup> In addition, the household must be either homeless or at risk of losing its home and "meet both of the following circumstances: (1) no appropriate subsequent housing options have been identified: AND (2) the household lacks the financial resources and support networks needed to obtain immediate housing or remain in its existing housing."<sup>6</sup>

A list of grantees and the amounts they are eligible to receive is included in the Notice.<sup>7</sup> The funds are essentially distributed based on the formula used for the Emergency Shelter Grants (ESG) program. However, HUD

set the grant minimum for the HPRP funds at \$500,000 to increase the number of cities and counties eligible to directly receive HPRP funds.<sup>8</sup> As a result, 485 cities and counties will receive HPRP funding, in contrast to the 305 cities and counties that receive funds under the ESG program.<sup>9</sup> State grantees must allocate virtually all of the funds to subgrantees, such as units of local governments or nonprofit organizations, which are certified by the local government. Counties and cities may carry out the activities directly or distribute the funds to nonprofit organizations.<sup>10</sup>

## Eligible HPRP Activities

Eligible activities include four distinct areas: financial support, housing relocation and stabilization, data collection and evaluation, and administrative costs. Financial support includes payments for short-term rental assistance (one to three months), long-term rental assistance (four to eighteen months, including arrearages), rental arrearages (up to six months), security deposits, utility deposits, utility payments (up to eighteen months, including arrearages), utility arrearages (up to six months), moving costs, and motel and hotel vouchers.<sup>11</sup> The financial support may only be paid directly to third parties, such as landlords or utility companies.<sup>12</sup> Housing relocation and stabilization services<sup>13</sup> include case management, outreach and engagement, housing search and placement, legal services,<sup>14</sup> and credit repair. Data expenses include the use of the Homeless Management Information System. Most administrative costs should be included within one of the other three eligible categories. The remaining administrative expenses, for items such as the cost of an audit, may not exceed 5%.<sup>15</sup>

## Targeting Families with the Greatest Risk of Homelessness or Who Are Homeless

The Notice strongly encourages grantees "to target prevention assistance to those individuals and families at greatest risk of becoming homeless."<sup>16</sup> HUD further

<sup>1</sup>Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees Under the American Recovery and Reinvestment Act of 2009, at 1, 9, available at <http://www.hudhre.info/index.cfm> [hereinafter Notice]; see also NHLP, *Obama Signs Stimulus Bill Providing Major Support for Affordable Housing*, 39 HOUS. LAW BULL. 71 (Mar. 2009).

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

<sup>3</sup>There is helpful information on the HUD Homelessness Resource Exchange web page at <http://www.hudhre.info/index.cfm?do=viewHPRPListservArchive>. In addition, the National Alliance to End Homelessness (NAEH) has developed a planning guide regarding use of the HPRP funds. See National Alliance to End Homelessness, *Creating a Plan for the Homeless Prevention Fund*, Mar. 5, 2009. <http://www.endhomelessness.org/section/prevention/> [hereinafter NAEH Guide].

<sup>4</sup>Notice, *supra* note 1, at 5.

<sup>5</sup>*Id.* at 22-23.

<sup>6</sup>*Id.* at 23 (emphasis in original).

<sup>7</sup>*Id.* at 46-51.

<sup>8</sup>*Id.* at 9.

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

<sup>10</sup>*Id.* at 8, 11-12.

<sup>11</sup>*Id.* at 13-16. A household may not receive duplicative assistance for the same item, i.e., rent, but may receive rental assistance from VASH or vouchers and get security deposit assistance from the HPRP. *Id.* at 16.

<sup>12</sup>*Id.* at 13.

<sup>13</sup>*Id.* at 16-17.

<sup>14</sup>The Notice states, "Legal Services: HPRP funds may be used for legal services to help people stay in their homes, such as services or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist program participants with legal advice and representation in administrative or court proceedings related to tenant/landlord matters or housing issues. Legal services related to mortgages are not eligible." *Id.* at 17.

<sup>15</sup>*Id.* at 18-19.

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

suggests that the test is to determine whether the household would be homeless but for the assistance.<sup>17</sup> The Notice lists eighteen risk factors for homelessness and suggests that a grantee might require that a program participant have at least two of the risk factors to qualify for assistance. However, these factors are optional, and grantees may consider other risk factors in developing their local programs. The Notice's risk factors include:

- Extremely low income (less than 30% of AMI),<sup>18</sup>
- Homeless within the prior twelve months;
- Mental health and substance abuse issues;
- Young head of household (under age twenty-five with children or pregnant);
- Eviction within two weeks from a private dwelling;<sup>19</sup>
- Discharge from an institution in which the individual has been a resident for more than 180 days, including prisons, mental health institutions and hospitals, or past institutional care;
- Sudden and significant loss of income;
- Credit problems that preclude obtaining housing.<sup>20</sup>

Individuals and families who meet HUD's definition of homeless are eligible for rapid re-housing assistance. Individuals or families are considered homeless if they meet one of the following criteria:

- Sleeping in an emergency shelter;
- Sleeping in a place not meant for human habitation;
- Staying in an institution for up to 180 days but was in an emergency shelter or other place not fit for human habitation prior to entry into the institution;
- Timing out of transitional housing; or
- Victims of domestic violence.<sup>21</sup>

HUD has not developed documentation requirements for establishing that an individual is homeless or at risk of homelessness. The agency has provided some examples

of appropriate documentation, including "eviction notice or writ of eviction, documentation of loss of income, pay stubs, letter of eviction from family member, etc."<sup>22</sup> HUD has also directed grantees and subgrantees to use information posted at its Homelessness Resource Exchange website.<sup>23</sup>

## Termination of Assistance and Confidentiality

HPRP participants have some protections against arbitrary terminations of housing assistance. The participant must receive a written notice containing a clear statement of the reasons for termination. The participant is entitled to a review of the termination decision with the opportunity to present written or oral objections. The review must be conducted by a person other than the person or subordinate of the person who made or approved the termination decision, and the participant must receive prompt written notice of the final decision.<sup>24</sup>

Each grantee or subgrantee must develop procedures to protect participants' confidentiality and must ensure that the address or location of any assisted housing available to participants is not made public.<sup>25</sup>

## Maximizing Resources from Recovery Funds

Grantees are strongly encouraged to maximize all resources that may be available with Recovery Act funds.<sup>26</sup> Relevant housing funds may include Neighborhood Stabilization Program (NSP) funds, community development block grant funds and public housing capital funds.<sup>27</sup> For example, a grantee could coordinate with a public housing agency (PHA) to assist a homeless family for up to eighteen months with rent and services in transitional housing. The PHA could then provide a priority to the family for a public housing unit that has been rehabilitated with capital funds. Or, the funds could be used to provide housing assistance—such as rental assistance, security deposit assistance or utility deposits—to a family moving into housing that has been purchased or rehabilitated with NSP funds. Note that if program recipients use HPRP assistance to move into a unit, the unit must meet certain habitability standards.<sup>28</sup>

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

<sup>18</sup>NAEH suggests that the standard should be families with incomes below 15% of AMI. NAEH Guide, *supra* note 4, at 6.

<sup>19</sup>NAEH suggests that eviction from public or assisted housing is also a significant risk factor. *See id.*

<sup>20</sup>The other factors include residency in housing that has been condemned and is no longer meant for human habitation, sudden and significant increase in utility costs, physical disabilities and other chronic health issues, including HIV/AIDS, severe housing cost burden, current or past involvement with child welfare, pending foreclosure of rental housing, high overcrowding, recent traumatic life event, and significant amount of medical debt. Notice, *supra* note 1, at 24-25. NAEH's HPRP planning guide suggests other risk factors. *See* NAEH Guide, *supra* note 4, at 6.

<sup>21</sup>Notice, *supra* note 1, at 25-26.

<sup>22</sup>Homelessness Prevention and Rapid Re-Housing Program (HPRP) Questions and Answers at 9, Mar. 20, 2009 [updated Apr. 3, 2009], <http://www.hudhre.info/index.cfm?do=viewHPRP> [hereinafter HPRP Q&A].

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

<sup>24</sup>Notice, *supra* note 1, at 33.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* at 20.

<sup>27</sup>The NSP and public housing capital funds are not mentioned in the Notice.

<sup>28</sup>*Id.* at 56; *see also* HPRP Q&A, *supra* note 23, at 5.

## Coordination with Continuum of Care and Development of Discharge Policy

The Notice directs grantees to coordinate with local Continuum of Care (CoC) to ensure that the activities are consistent with local strategies for preventing homelessness.<sup>29</sup> In addition, grantees are encouraged to coordinate with other local organizations that are planning and carrying out activities related to prevention and rapid rehousing. The Notice lists as examples FEMA boards, agencies responsible for implementing plans to end homelessness, and agencies that administer mainstream resources such as Temporary Assistance to Needy Families (TANF).<sup>30</sup> NAEH sets forth in its guide a much more extensive list of potential partners, including legal services agencies.<sup>31</sup>

Grantees are also required to develop and implement policies for the discharge of persons from publicly funded institutions, including health care facilities, foster care or youth facilities, or corrections programs and institutions. The purpose of such policies is to prevent homelessness of persons leaving these institutions.<sup>32</sup>

## Job Creation and Training Opportunities

As noted below, HPRP grantees are required to report on the estimated number of new jobs created and jobs retained. In addition, Section 3 of the Housing and Urban Development Act of 1968 requires recipients of certain HUD financial assistance to provide training, jobs and economic opportunity to low- and very low-income residents if the funding is for construction, rehabilitation or other public works. Although HPRP funds may not be used for construction or rehabilitation, a grantee may provide contracting and hiring preferences for Section 3 businesses and residents.<sup>33</sup> The Section 3 rules encourage recipients of other HUD funds “to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons and business concerns owned by low- and very low income persons, or which employ [such] persons.”<sup>34</sup>

## Application for the HPRP funds

Grantees are required to amend their Consolidated Plans (ConPlan) by completing and filing form HUD-40119 by May 18. To aid grantees in meeting this deadline, HUD reduced the public comment period from thirty

days to twelve.<sup>35</sup> The form requires grantees to describe: (1) citizen participation in the planning process; (2) the plan for ensuring effective and timely use of grant funds; (3) the process by which the grantee will select and allocate funds to subgrantees; and (4) the plan for collaborating with local agencies and the CoC. Grantees must also estimate how much they will spend on various HPRP activities, including financial assistance, case management, outreach, legal services, credit repair, data collection and evaluation, and administration. HUD has indicated that grantees may change these allocations during implementation.<sup>36</sup> To improve transparency, “HUD strongly recommends that each grantee post its substantial amendment materials on the grantee’s official web site as the materials are developed and submitted to HUD.”<sup>37</sup>

## Reports

HUD will create a reporting form for grantees. The report will include information regarding:

- the total amount of Recovery Act funds received from HUD by the grantee;
- the subgrantees and the amounts awarded to each;
- funds allocated to the eligible HPRP activities and the amount expended for each category;
- the number of unduplicated families served;
- the estimated number of new jobs created and jobs retained.

## Conclusion

The HPRP funds are substantial and should assist local jurisdictions in addressing and preventing homelessness. The timelines for allocating and spending the funds will present significant challenges for states and local governments. Another challenge is that there are 180 jurisdictions nationwide that have never directly received funds for homelessness prevention and assistance for homeless households. Advocates currently have opportunities to ensure that the HPRP funds are spent in a manner that substantially serves the needs of homeless families, as well as those who are at risk of becoming homeless. Even if advocates miss the deadline for commenting on the ConPlan amendments, allocations set forth in the ConPlans may be changed during the implementation phase.

An additional challenge is that the maximum amount of rental assistance is eighteen months. This is a relatively

---

<sup>29</sup>Notice, *supra* note 1 at 29.

<sup>30</sup>*Id.*

<sup>31</sup>NAEH Guide, *supra* note 4, at 16.

<sup>32</sup>Notice, *supra* note 1, at 21.

<sup>33</sup>24 C.F.R. § 135.5 (2008) (definition of Section 3 resident and Section 3 business).

<sup>34</sup>§ 135.3(d).

---

<sup>35</sup>The regular notice period for a substantial amendment to a ConPlan is thirty days. § 91.105(c)(2).

<sup>36</sup>HPRP Q&A, *supra* note 23, at 9.

<sup>37</sup>Notice, *supra* note 1, at 28-29.

short period of time, especially for families with multiple risk factors for homelessness or who are currently homeless. To address these challenges, PHAs and subsidized housing providers should consider adopting admission preferences for recipients of HPRP assistance.

Preventing homelessness and keeping families in

their homes is a key element of the HPRP, and the provision of legal services is essential to this process. Legal services organizations should contact local HPRP grantees and the CoC to discuss the role that HPRP money should play in funding eviction defense and other types of representation that prevent homelessness. ■

### Important Dates Deadlines for Application and Expenditure of HPRP Funds

Date or Notice Period	Action Necessary to Obtain HPRP Funds
12-day notice to public	Public notice for comment on substantial amendment to Consolidated Plan
5-18-09 or earlier	Grantees must submit and postmark application to HUD field office and HUD headquarters. Application may need to be submitted before May 18 to meet local deadlines for ensuring that funds are allocated by Sept. 30, 2009.
45 days from date application is received by HUD	HUD approves application or application is deemed approved
7-2-09	HUD will complete reviews of all applicants
15 days from HUD notice disapproving application	If HUD disapproves the application, grantee has 15 days to resubmit application
9-01-09 or [date*]	Grant agreement signed by HUD field office and sent to grantee
15 days from 9-01-09 or [date*]	Grantee must sign and return grant agreement
9-30-09	Grantee awards or signs all legally binding agreements with subgrantees. 100% of grantee funds must be allocated
10-10-09	Initial Performance Report due to HUD
1-10-10	Quarterly Performance Report due to HUD
4-10-10	Quarterly Performance Report due to HUD
7-10-10	Quarterly Performance Report due to HUD
10-10-10	Quarterly Performance Report due to HUD
11-30-10	Annual Performance Report
1-10-11	Quarterly Performance Report due to HUD
4-10-11	Quarterly Performance Report due to HUD
7-10-11	Quarterly Performance Report due to HUD
[date*] in 2011	60% of all funds must be expended. HUD will reallocate any unspent funds of the 60% to other grantees
10-10-11	Quarterly Performance Report due to HUD
11-30-11	Annual Performance Report
1-10-12	Quarterly Performance Report due to HUD
4-10-12	Quarterly Performance Report due to HUD
7-10-12	Quarterly Performance Report due to HUD
[date*] in 2012	100% of all funds must be expended

[date\*] is the date that grant agreement is executed

# HUD-VASH Notice Guides PHAs in Project-Basing Vouchers\*

In the 2008 Consolidated Appropriations Act, Congress appropriated \$75 million to assist approximately 10,000 homeless veteran families.<sup>1</sup> On March 16, 2009, the Department of Housing and Urban Development (HUD) issued a Federal Register notice further implementing the program by providing guidance on project-basing HUD-Veterans Affairs Supportive Housing Vouchers.<sup>2</sup>

HUD will consider, on a case-by-case basis, requests from a public housing agency (PHA) to project-base HUD-VASH vouchers in accordance with project-based voucher (PBV) regulations.<sup>3</sup> The request must be jointly signed by a PHA and a Veterans Affairs Medical Center official. It must contain an explanation of why the PHA is proposing to project-base the vouchers rather than providing tenant-based assistance, the particular challenges faced by HUD-VASH voucher holders in the rental market, for newly constructed units the length of time the VASH vouchers will not be in use while awaiting construction of the units<sup>4</sup> and a detailed description of the proposed project. No more than 50% of the PHA's allocation of HUD-VASH vouchers may be project-based.<sup>5</sup> All types of project-based proposals—existing units, newly constructed units, substantially rehabilitated units—will be considered.

It is important to note that, while under most PBV programs no more than 25% of the units (assisted or unassisted) in any one building may receive PBV assistance, this requirement does not apply to HUD-VASH project-based vouchers. HUD-VASH recipients qualify as “families receiving supportive services” and those vouchers are not counted towards the 25% cap.<sup>6</sup>

---

\*The author of this article is Julieanna Vinogradsky, a J.D. candidate at the University of California, Hastings, School of Law and a spring intern at the National Housing Law Project.

<sup>1</sup>Pub. L. 110-161, tit. II, 121 Stat. 1844, 2414 (2007); Section 8 Housing Choice Vouchers: Implementation of the HUD-VA Supportive Housing Program, 73 Fed. Reg. 25,026 (May 6, 2008), corrected by 73 Fed. Reg. 28,863 (May 19, 2008) (providing additional information regarding portability). See also NHLP, *HUD-VASH: Long-Neglected Program Brought Back to Life*, 38 HOUS. L. BULL. 135 (2008), NHLP, *HUD-VASH Notice Reaffirms PHAs' Obligation Regarding Issuance of Vouchers*, 39 HOUS. L. BULL. 58 (2009).

<sup>2</sup>Project-Basing HUD-Veterans Affairs Supportive Housing Vouchers, PIH 2009-11 (HA) (Mar. 16, 2009).

<sup>3</sup>See 24 CFR part 983.

<sup>4</sup>For advocates the amount of time that the units will be held off the market is an important consideration which must be weighed against the benefits of project-basing the units.

<sup>5</sup>Because the VASH units are subject to the overall cap, which provides that no more than 20% of a PHA's vouchers may be project-based, the 50% authorization may not be fully available to some PHAs. 24 CFR § 983.6 (Westlaw, Current through March 27, 2009; 74 FR 13993) (Maximum amount of PBV assistance).

<sup>6</sup>*Id.* at § 983.56 (to qualify, a family must have at least one member

Project-basing may be particularly advantageous for the population that the HUD-VASH vouchers serve. It may be particularly difficult for these hard-to-house families to find landlords who are willing to accept their vouchers. Additionally, living in a fixed location may make it easier for these veterans to receive vital services and sustain a sense of community. ■

---

receiving at least one qualifying supportive service, but it is not necessary that the services be provided at or by the project, if they are approved supportive services).

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

### Fair Housing Act: Policy of Assessing Applicants' Disabilities Constitutes Discrimination

*Laflamme v. New Horizons, Inc.*, \_\_ F. Supp. 2d \_\_, 2009 WL 840758 (D. Conn. Mar. 31, 2009). A detailed review of this decision appears on page 105 of this *Housing Law Bulletin*.

### Public Housing: Resident Adequately Pleaded Claim for Rent Overcharges

*O'Neill v. Hernandez*, 2009 WL 860647 (S.D.N.Y. Mar. 31, 2009). The court found that a public housing resident adequately pleaded a violation of the Brooke Amendment where he alleged that the New York City Housing Authority (NYCHA) deducted non-rent charges from his rent payments, effectively requiring him to pay more than 30% of his monthly income toward rent. The resident also adequately pleaded a Section 1983 claim where he alleged that because of improper training or supervision, NYCHA did not respond to his requests for audits. The court dismissed the resident's Americans with Disabilities

---

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

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

<sup>3</sup>For a list of courts that are accessible 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>.

Act, Rehabilitation Act, and Fair Housing Act claims because he stated no facts to support his claim that he was considered disabled. However, the court found that the resident adequately pleaded a violation of the Equal Protection Clause by alleging that NYCHA sent social workers to harass and coerce disabled tenants into paying illegal charges.

### **Public Housing: Housing Authority May Deny Applicant Based on Pending Criminal Charges**

*Wilson v. Hous. Auth. of City of Omaha*, 2009 WL 906379 (Neb. Ct. App. Mar. 31, 2009) (unreported). A public housing applicant was denied benefits because she had two open felony forgery charges on her record. The applicant had enrolled in a diversion program, and the charges were to be dismissed when she completed that program. The applicant alleged that her due process rights were violated because her background check was not attached to the denial letter or introduced into evidence at the informal hearing. The court rejected this claim, finding that the denial letter adequately informed her that she was ineligible due to the results of her criminal background check and provided contact information for learning more about the results of the check. The court also found that it did not matter that in the letter, the housing authority improperly cited the regulation that was the basis for her denial. The court also rejected the applicant's argument that a criminal charge does not equate to criminal activity, finding that 24 C.F.R. § 960.203 provides that housing authorities may consider "all relevant information" in making admissions decisions.

### **Fair Housing: Reasonable Accommodation to Pet Policy; Acceptance of Section 8 Vouchers Does Not Constitute Receipt of Federal Assistance**

*Echeverria v. Krystie Manor, L.P.*, 2009 WL 857629 (E.D.N.Y. Mar. 30, 2009). The plaintiff was disabled and had a service animal. She applied for a rental unit and was informed by the property manager that pet owners were required to walk dogs outside the premises to let them urinate and defecate. The applicant alleged that she told the manager that she was unable to walk her dog outside the premises, but that she would clean up after it. The applicant alleged that she was denied the unit because the manager was "uncomfortable" with the situation with the service animal. The court denied the complex's motion for summary judgment on the applicant's Fair Housing Act claim, finding that there were disputed facts as to whether the applicant requested a reasonable accommodation and whether the complex denied her request. The court granted the complex's motion for summary judgment on the applicant's Rehabilitation Act claim, finding that the complex's

acceptance of Section 8 vouchers did not, by itself, constitute receipt of federal financial assistance.

### **Project-Based Section 8: Agency's Action Against HUD Must Be Filed in Court of Federal Claims**

*Cathedral Square Partners v. S.D. Hous. Dev. Auth.*, 2009 WL 873998 (D.S.D. Mar. 30, 2009). A project-based Section 8 owner sued the housing development agency for administering its Housing Assistance Payment contracts in accordance with the 1994 amendments to the Section 8 statutes and HUD Notice H 95-12, which limited rent adjustments. The agency filed a third-party complaint against HUD, seeking additional housing assistance payments and indemnification against the project-based Section 8 owner's action. The court granted HUD's motion to dismiss, finding that because the agency's claims could be satisfied only by a money judgment, the proper forum for the agency's action was the Court of Federal Claims.

### **Project-Based Section 8: Agency's Action Against HUD Must Be Filed in Court of Federal Claims**

*Greenleaf Ltd. v. Ill. Hous. Dev. Auth.*, 2009 WL 449100 (N.D. Ill. Feb. 23, 2009). Project-based Section 8 owners sued the housing development agency for breach of Housing Assistance Payment contracts for failure to increase rents by the amounts provided in the contracts and by requiring the owners to submit rent comparability studies. The agency added HUD as a third-party defendant. The court granted HUD's motion to dismiss, finding that the agency must file its action against in the Court of Federal Claims because its claims were contractual and sought monetary relief, rather than solely equitable relief.

### **Section 8 Homeownership Program: Housing Authority Lacked Statutory Basis to Terminate Lifetime Sex Offender Registrant**

*Miller v. McCormick*, \_\_ F. Supp. 2d \_\_, 2009 WL 792833 (D. Me. 2009). The plaintiff, a convicted sex offender, was accepted into Massachusetts' Housing Choice Voucher program. He then ported his voucher to Maine, and was later accepted into the Section 8 Homeownership program. The voucher holder was subsequently arrested for failing to register as a sex offender, but he registered immediately after his arrest. Despite a hearing officer's ruling in the voucher holder's favor, the housing authority terminated his assistance for committing violent criminal activity, namely, the sex offense he had committed almost ten years prior. The voucher holder filed suit against the

housing authority, alleging that the housing authority exceeded its statutory authority and violated his due process rights. The court found no statutory authorization for terminating assistance to a voucher participant who is a lifetime registrant. According to the court, 42 U.S.C. § 13663(a) “is directed to prohibiting the admission of lifetime registrants, not to their removal from participation.” The court also noted that the immediately preceding statutory provision, 42 U.S.C. § 13662, explicitly addresses the termination of a “tenancy or assistance” for illegal drug users and alcohol abusers, but not lifetime registrants. However, the court declined to grant the voucher holder’s motion for summary judgment, finding that the parties had not adequately briefed the issue of whether there were other statutory or regulatory justifications for the termination.

### **Public Housing: Habitability Complaints Do Not Constitute Protected Activities for Purposes of Fair Housing Act Retaliation Claim**

*Williams v. N.Y. City Hous. Auth.*, 2009 WL 804137 (S.D.N.Y. Mar. 26, 2009). A public housing tenant sued the New York City Housing Authority (NYCHA), alleging that the garbage facilities in her building were hazardous and that the defendants failed to accommodate her disability by maintaining the elevator. The court dismissed the tenant’s failure to accommodate claims, finding that she failed to allege that she notified NYCHA of any disability that denied her access to her dwelling. The court also dismissed the tenant’s Fair Housing Act retaliation claims, finding that her complaints about the garbage facilities were not protected activities. However, the court noted that “Plaintiff’s allegations, if true, are serious, and they may support claims under New York State law relating to the habitability of the Frederick Douglass Complex.”

### **Public Housing: Housing Authority’s Liability for Physical Defects**

*Moore v. Lorain Metro. Hous. Auth.*, \_\_\_ N.E.2d \_\_\_, 2009 WL 792277 (Ohio 2009). A public housing tenant sued the housing authority after two of her children were killed in a fire. The tenant alleged that because the housing authority removed the unit’s only working smoke detector and failed to replace it, the children’s father did not wake in time to rescue them. A state statute provided that governmental entities are liable for deaths caused by physical defects within buildings used for a governmental function, including, but not limited to, office buildings and court houses. The court rejected the housing authority’s argument that the statute was intended to apply only to buildings similar to office buildings and court houses, and found that a public housing development is a building

used for a governmental function. The court remanded to the trial court to determine whether the absence of the smoke detector was a physical defect for purposes of the state statute.

### **Housing Choice Voucher Program: Inability to Comply with Program Requirement Due to Limited English Proficiency Did Not Constitute Failure to Cooperate**

*Hassan v. Dakota County Cmty. Dev. Agency*, 2009 WL 749033 (Minn. Ct. App. Mar. 24, 2009) (unreported). A voucher tenant’s assistance was terminated for failing to provide copies of her pay stubs during her recertification. The tenant, whose primary language was Somali, argued that her failure to provide the documents did not constitute a failure to cooperate because she did not read English and did not understand the housing authority’s letter asking her to submit pay stubs. The hearing officer rejected this argument because the letter included an attachment written in Somali that provided a phone number for free translation. The hearing officer also noted that the tenant had received similar letters before and had no difficulties complying with the documentation requirements. However, the record contained neither copies of letters sent to the tenant nor any evidence indicating that the tenant ever received a notice informing her that she could receive translation assistance. As a result, the court reversed the hearing officer’s decision, finding that there was not substantial evidence supporting the determination that the tenant failed to cooperate.

### **Fair Housing Act: Landlord Not Required to Make a Reasonable Accommodation to Criminal History Policy**

*Evans v. UDR Inc.*, 2009 WL 875321 (E.D.N.C. Mar. 24, 2009). The plaintiff had been diagnosed with mental disabilities and was recovering from substance abuse. She applied for entry into SEARISE, a year-long substance abuse program. As part of the program, SEARISE rented a group of apartments in a private complex, and program participants were required to qualify as an occupant of one of these units. The plaintiff applied for one of the units, which were administered by a private property management company. After denial due to a misdemeanor assault conviction, she requested a reasonable accommodation on the grounds that the conviction was a result of her disabilities. The management company refused to provide an accommodation on the basis that it was her conviction, not her disability, that led to the application denial. The applicant filed suit alleging that the failure to accommodate violated the Fair Housing Act. The court granted the management company’s motion for summary judgment,

finding that accommodating the applicant's criminal history was not equivalent to accommodating her mental disabilities. According to the court, "criminal conduct caused by a mental disability is not an effect of a disability with which Congress was concerned in the FHA." The court therefore found that where an individual's mental disability is related to conduct that results in a conviction, the casual connection between the disability and the conviction is insufficient for purposes of the FHA to require a landlord to accommodate the person's criminal history.

### **Fair Housing Act: Voucher Tenant Stated a Disability Discrimination Claim by Alleging that Landlord Refused to Provide Key to Elevator**

*Dinapoli v. DPA Wallace Ave II, LLC*, 2009 WL 755354 (S.D.N.Y. Mar. 23, 2009). A Section 8 voucher tenant with a disability that restricted his mobility filed a suit against his landlord for failure to provide a reasonable accommodation. The tenant alleged that from 5 p.m. to 8 a.m., the landlord restricted the building's elevator from traveling to the basement, which contained the only building exit that did not have stairs. The tenant alleged that the landlord's failure to provide him keys to the elevator and the housing authority's failure to assist him with his complaints against the landlord violated the Fair Housing Act (FHA), the Americans with Disabilities Act, and the Rehabilitation Act. The court dismissed the tenant's claims against the housing authority, finding that the housing authority could not be held liable for failing to prevent a private landlord from discriminating against the tenant. However, the court denied the landlord's motion to dismiss in part, finding that the tenant had stated a claim under the FHA because he alleged that he had a disability, that the landlord knew about the disability, that without a key to the elevator he could not access his apartment, and that the landlord refused to provide a key.

### **Megan's Law: County Ordinance Restricting Residency of Sex Offenders Preempted by State Law**

*Fross v. County of Allegheny*, 2009 WL 763557 (W.D. Pa. Mar. 20, 2009). Allegheny County enacted an ordinance under which registered sex offenders could not live within 2500 feet of any child care facility, community center, public park or recreation facility, or school. The vast majority of the county, and virtually all of the city of Pittsburgh, fell within an area of restricted residency. The court held that the ordinance conflicted with and was preempted by the state's Megan Law provisions. The court found that the ordinance conflicted with the state law goals of rehabilitating and reintegrating offenders by placing strict limits on the areas where they could live. The court also found

that the ordinance conflicted with the state's goal of establishing a uniform, statewide system for the supervision of offenders on probation and parole. Finally, the court found that the ordinance conflicted with state law by prohibiting that which state law allowed. Under the state law, even the most egregious offenders were permitted to live within 2500 feet of a school, college, or day care center, provided the institution was directly notified of their presence.

### **Project-Based Section 8: Review of Eviction Decision Barred by Rooker-Feldman Doctrine; Applicants Not Entitled to Due Process Hearing**

*Fincher v. S. Bend Hous. Auth.*, 2009 WL 790184 (N.D. Ind. Mar. 20, 2009). The plaintiff had been evicted from public housing and subsequently applied for project-based Section 8 housing and was denied. The plaintiff filed suit against the housing authority and the project-based Section 8 owner. The court dismissed the plaintiff's claims against the housing authority, in which he challenged the state court eviction judgment, because review of the state court decision was barred by the Rooker-Feldman doctrine. The court also dismissed plaintiff's claims against the project-based Section 8 owner, which alleged that he had been denied his right to a due process hearing when his application was rejected. The court held that "applicants—as opposed to existing tenants—for Section 8 housing do not have a right to due process hearings to review the denial of their applications."

### **Public Housing: Right of Succession**

*Rivera v. N.Y. City Hous. Auth.*, \_\_ N.Y.S.2d \_\_, 2009 WL 673843 (N.Y. App. Div. Mar. 27, 2009). The court found that a deceased public housing tenant's companion did not qualify as a remaining family member. The housing authority never gave written permission for the companion to join the tenant's household, and the companion acknowledged that no such permission was ever obtained prior to the tenant's death. Further, the companion was never listed on the tenant's annual recertification paperwork.

### **Housing Choice Voucher Program: Breach of Consent Decree Was Immaterial**

*NAACP v. Donovan*, 2009 WL 792301 (D. Mass. Mar. 17, 2009). NAACP filed a supplemental complaint alleging a breach of a consent decree with HUD and Boston Housing Authority (BHA) governing the distribution of 400 tenant-based vouchers. The consent decree arose out of an action NAACP filed against HUD for failing to promote fair housing in connection with its administration of hous-

ing programs in Boston. To enforce the consent decree, NAACP filed a motion for summary judgment alleging that HUD and BHA breached their obligation to restrict the availability of the vouchers to minority families seeking to move to predominantly white neighborhoods. BHA issued some of the vouchers to homeless families “with the intention of replacing such funding through attrition.” The court found that HUD and BHA’s breach of the consent decree was immaterial. Although NAACP alleged that the eligible families faced a four- to six-month delay in obtaining their vouchers, the court found that no facts were presented demonstrating that the families suffered economic or dignitary harm as a result. The court also found that NAACP failed to demonstrate that BHA’s actions resulted in a reduction of renewal funding for the consent decree vouchers, because there was no evidence of how many of the vouchers would have been leased up had BHA not distributed them to ineligible families. Accordingly, the court rejected NAACP’s request for a declaration ordering HUD to make a separate line-item appropriations request for renewal of the consent decree vouchers and reassigning the vouchers to the Metropolitan Boston Housing Partnership.

### **Servicemembers Civil Relief Act: Implied Right of Action**

*Hurley v. Deutsche Bank Trust Co. Americas*, 2009 WL 701006 (W.D. Mich. Mar. 13, 2009). The court previously held that a borrower did not have a private right of action to enforce the Servicemembers Civil Relief Act (SCRA). The borrower filed a motion for reconsideration. The borrower sought relief under Section 533(c) of the SCRA, which provides that a foreclosure shall not be valid if made during, or within ninety days after, the period of the servicemember’s military service, unless done pursuant to a court order. The borrower also sought relief under Section 526(b), which tolls the right of redemption period during the servicemember’s military service. The court held that Congress intended to confer a private right of action to enforce sections 533(c) and 526(b). It noted that the benefits granted under those sections were not available to the public at large, and servicemembers would be unable to obtain relief under the provisions absent an implied right of action. The court then granted the borrower summary judgment on both claims, finding that Deutsche Bank’s non-judicial foreclosure occurred during the borrower’s military service, and that it failed to toll the redemption period during the service period.

### **Housing Choice Voucher Program: Rent Overcharge after Holdover Proceeding**

*Paris v. Oyesanya*, 22 Misc. 3d 141(A), 2009 WL 679504 (N.Y. App. Term Mar. 12, 2009) (unreported). A Section 8 tenant

filed a small claims action against his landlord, asserting that he had been overcharged for rent after a holdover proceeding. The court found that although a Section 8 tenant who holds over generally becomes liable for the full amount of rent for the period after the termination of the Section 8 tenancy, the record showed that there was an agreement that the tenant would continue to pay the same rent he was paying as a Section 8 tenant. The court therefore awarded the tenant the difference between the full rent amount and the share the tenant ordinarily paid as a Section 8 tenant.

### **Fair Housing Act: No Reasonable Accommodation Required Where Tenant Failed to Prove that Condominium Association Knew of His Disability**

*Davis v. Shoreline Towers Phase I Condo. Ass’n*, 2009 WL 691378 (N.D. Fla. Mar. 12, 2009). A tenant sought permission from his condominium association to have a dog to assist him. In a letter, the tenant stated that his ability to walk was restricted due to a leg injury. The tenant attached a letter from a psychologist who opined that the tenant suffered from severe panic attacks, and a letter from a chiropractor who wrote that the tenant had “certain limitations regarding mobility.” The tenant failed to respond to the association’s request for additional documentation to support his alleged disabilities. The tenant then filed an action alleging violations of the Fair Housing Act, and the association filed a motion for summary judgment. The court granted the motion, finding that no reasonable jury could conclude that the association knew that the tenant was disabled. The court noted that the medical provider letters did not indicate whether the tenant’s “limitations and difficulties” were temporary or permanent, nor did they indicate that the dog was necessary to afford him equal opportunity to use his dwelling. The letters also did not describe the providers’ qualifications or treatment history with the tenant.

### **Housing Choice Voucher Program: Assault Conviction Did Not Meet the Regulatory Standard for Violent Criminal Activity**

*Fyksen v. Dakota County Cmty. Dev. Agency*, 2009 WL 605663 (Minn. Ct. App. Mar. 10, 2009). The court reversed the termination of a voucher tenant’s assistance on the basis that a conviction for fifth-degree assault did not meet the standard for violent criminal activity under HUD regulations. The court noted that 24 C.F.R. § 5.100 defines violent criminal activity as involving “serious bodily injury.” In contrast, Minnesota’s definition of fifth-degree assault requires the infliction of “bodily harm,” while first-degree and third-degree assault involve “great bodily harm” and

“substantial bodily harm.” Because “mere bodily harm, as required for a conviction of fifth-degree assault, is not serious bodily injury,” the court found that the termination decision was not supported by substantial evidence.

### **Housing Choice Voucher Program: Class Certification Granted in Disability Discrimination Case**

*Taylor v. Hous. Auth. of New Haven*, \_\_\_ F. Supp. 2d \_\_\_, 2009 WL 650381 (D. Conn. Mar. 9, 2009). Housing choice voucher tenants filed suit against the housing authority for failure to provide a list of accessible housing or mobility counseling. The tenants alleged that the housing authority discriminated against them on the basis of disability in violation of the Fair Housing Act by failing to provide a reasonable accommodation. The tenants sought to certify a class of all voucher households that included an individual with a disability and that did not receive either a list of accessible apartments or mobility counseling. The court found that the tenants met the requirements for class certification. By defining the class as those who were eligible for but did not receive the apartment list or mobility counseling, the tenants “provide[d] objective criteria whose applicability to a given household can be determined in an administratively feasible manner, and thus sets forth a sufficiently ascertainable class.” The tenants satisfied the numerosity requirement by establishing that the number of vouchers that the housing authority issued to households with a disabled family member exceeded forty.

### **Public Housing: Tenant Could Assert Bankruptcy Code as a Defense to Eviction**

*Hous. Auth. of New Orleans v. Eason*, \_\_\_ So. 2d \_\_\_, 2009 WL 553303 (La. Ct. App. 2009). A detailed review of this decision will appear in the June 2009 *Housing Law Bulletin*.

### **Fair Housing Act: Testers Not Required to Complete Applications in Order to Establish Prima Facie Case**

*Fair Hous. Center of Washtenaw County v. Town & Country Apartments*, 2009 WL 497402 (E.D. Mich. Feb. 26, 2009). The court found that fair housing testers were not required to apply for housing in order to establish a *prima facie* case of discrimination under the Fair Housing Act. Under 42 U.S.C. § 3604(d), it is unlawful to misrepresent the availability of housing because of race. Accordingly, the court found that misrepresentations alone based on race regarding the availability of units were sufficient to establish an FHA violation, regardless of whether the testers returned completed applications. ■

## **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’s Rural Housing Service/Rural Development (RD)), Federal Housing Finance Board, Federal Emergency Management Agency (FEMA) and the Veterans Administration issued in March and April of 2009. 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,<sup>1</sup> (2) bound volumes of the Federal Register, (3) HUD Clips,<sup>2</sup> (4) HUD,<sup>3</sup> and (5) USDA’s Rural Development website.<sup>4</sup> Citations are included with each document to help you secure copies.

### **HUD Final Rules**

#### **74 Fed. Reg. 10,172 (Mar. 10, 2009)**

#### **Real Estate Settlement Procedures Act (RESPA): Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Further Deferred Applicability Date for the Revised Definition of “Required Use” and Solicitation of Public Comment on Withdrawal of Required Use Provision**

*Summary:* This final rule delays the effective date of the definition of “required use” as revised by HUD’s November 17, 2008, final rule amending its RESPA regulations, until July 16, 2009. The November 17, 2008, final rule revised HUD’s RESPA regulations to further the purposes of RESPA by requiring more timely and effective disclosures related to mortgage settlement costs for federally related mortgage loans to consumers. The final rule revised the existing definition of “required use,” which revision was directed to enhancing protections for consumers from certain practices conducted by affiliated business arrangements. The revised definition of “required use” would have become effective on January 16, 2009. However, on January 15, 2009, HUD published a final rule that delayed the effective date of the definition of “required use” from January 16, 2009, to April 16, 2009, due to litigation by the National Association of Home Builders, et al., around the time of issuance of the final rule. For this same reason, HUD is further delaying the effective date of required use until July 16, 2009. In this rule, HUD also

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

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

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

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

solicits comment on withdrawing the revised definition of “required use” from the November 17, 2008, final rule. HUD will consider these comments before pursuing new rulemaking process on this definition. Since promulgating the rule on November 17, 2008, HUD has determined to reevaluate the scope and operation of the required use provision. New rulemaking would give HUD the opportunity to present for public consideration a new proposal based upon HUD’s reevaluation of the required use provision to help ensure better consumer protections.

**Dates:** The amendment to Sec. 3500.1 is effective March 10, 2009. The effective date of the definition of “required use” in Sec. 3500.2, as revised by HUD’s final rule published on November 17, 2008, at 73 FR 68204, and further delayed by final rule published on January 15, 2009, at 74 FR 2369, is further delayed to July 16, 2009.

**Comments Due Date:** April 9, 2009.

#### **74 Fed. Reg. 13,339 (Mar. 27, 2009)**

##### **Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Delay of Effective Date**

**Summary:** HUD is delaying the effective date of the rule entitled “Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs” published in the Federal Register on January 27, 2009. The rule, which was originally scheduled to become effective on March 30, 2009, will become effective on September 30, 2009. Today’s action follows publication of HUD’s February 11, 2009, Federal Register notice seeking public comment on whether delay in the effective date of the January 27, 2009, final rule, would be beneficial in further consideration of the rule’s policies. This action is being taken in accordance with the memorandum of January 20, 2009, from the assistant to the President and Chief of Staff, entitled “Regulatory Review.”

**Effective Date:** The effective date of the final rule, which was published on January 27, 2009 (74 FR 4832) is delayed until September 30, 2009.

#### **74 Fed. Reg. 14,725 (Apr. 1, 2009)**

##### **Civil Money Penalties: Certain Prohibited Conduct; Technical Amendment**

**Summary:** On January 15, 2009, HUD published a final rule to revise HUD’s regulations that govern the imposition of civil money penalties. The effect of the rulemaking was to remove one item from the list of actions for which the Mortgagee Review Board may initiate a civil money penalty action against a mortgagee or lender, reducing the list from fifteen numbered items to fourteen and to re-designate the fifteenth item as item number 14. However, a related cross reference was not updated to reflect this change. In addition, a section revised in 2006 involving delinquent mortgages also requires a cross-reference change. This document corrects these cross-references.

**Effective Date:** April 1, 2009.

## **HUD Federal Register Notices**

#### **74 Fed. Reg. 9423 (Mar. 4, 2009)**

##### **Owner Certification with HUD Tenant Eligibility and Rent Procedures**

**Summary:** HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to the collection of tenant data to ensure owners comply with federal statutes and regulations that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants’ incomes and rents must be compiled.

**Comments Due Date:** April 3, 2009.

#### **74 Fed. Reg. 9424 (Mar. 4, 2009)**

##### **Applications for Housing Assistance Payments; Special Claims Processing**

**Summary:** HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to owners/agents submission of payment vouchers to HUD in order to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted by owners/agents to HUD or their CA/PBCA to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses.

**Comments Due Date:** April 3, 2009.

#### **74 Fed. Reg. 10,605 (Mar. 11, 2009)**

##### **Notice of Proposed Information Collection: Comment Request; Mortgagee’s Certification of Fees and Escrow**

**Summary:** HUD is notifying the public of its intent to enter into a new computer matching program with the Social Security Administration (SSA) in May 2009. HUD will obtain SSA data and make the results available to (1) program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs and (2) contract administrators overseeing and monitoring O/A operations as well as independent public auditors that audit both PHAs and O/As. SSA data will also be used to validate information provided by borrowers and co-borrowers applying for and obtaining insurance for Federal Housing Administration mortgages.

The matching program will be carried out to detect inappropriate (excessive or insufficient) rental assistance under sections 221(3), 221(d)(5), and 236 of the National Housing Act, the United States Housing Act of 1937, Section 101 of the Housing and Community Development Act of 1965, Section 202 of the Housing Act of 1959, Section 811 of the Cranston-Gonzalez National Affordable

Housing Act, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998. The program will also provide for verification of Social Security numbers for tenants participating in covered rental assistance programs, and borrowers and co-borrowers applying for mortgage insurance for FHA loans through HUD. This Notice provides an overview of computer matching for HUD's rental assistance programs. Specifically, the Notice describes HUD's program for computer matching of its tenant data to SSA's death data, Social Security and Supplemental Security Income benefits data.

**Dates:** Computer matching is expected to begin April 10, 2009, unless comments are received which will result in a contrary determination, or forty days from the date a computer matching agreement is signed, whichever is later.

*Comments Due Date:* April 10, 2009.

**74 Fed. Reg. 11,127 (Mar. 16, 2009)  
Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Homelessness Prevention and Rapid Re-Housing Program (HPRP) Annual Action Plan Substantial Amendment Form**

**Summary:** HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to the Homelessness Prevention Fund, which is authorized under the American Recovery and Reinvestment Act of 2009. This new program provides \$1.5 billion of formula grant funding for the provision of short-term or medium-term rental assistance, housing relocation and stabilization services, and other appropriate activities for homelessness prevention and rapid re-housing of persons who have become homeless. HUD will administer these funds as the Homelessness Prevention and Rapid Re-Housing Program (HPRP) and require a substantial amendment to the grantee's Consolidated Plan 2008 Annual Action Plan as a condition of receiving funds. HPRP grant amounts will be determined by a formula authorized by Section 413 of the McKinney-Vento Homeless Assistance Act and will be awarded by HUD to the following eligible grantees: states, metropolitan cities, and urban counties that receive over \$500,000 according to the formula allocation, and territories, which receive 0.2% of the total allocation.

*Comments Due Date:* March 23, 2009.

**74 Fed. Reg. 11,127 (Mar. 17, 2009)  
Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2008**

**Summary:** This Notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2008, and ending on December 31, 2008.

**74 Fed. Reg. 13,446 (Mar. 27, 2009)  
Notice of Proposed Information Collection: Comment Request; Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies**

**Summary:** HUD will submit to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage debt.

*Comments Due Date:* May 26, 2009.

**74 Fed Reg. 13,448 (Mar. 27, 2009)  
Announcement of Funding Awards for the Public Housing Family Self-Sufficiency for Fiscal Year 2008**

**Summary:** This announcement notifies the public of funding decisions made by HUD for funding under the FY 2008 Notice of Funding Availability (NOFA) for the Public and Indian Housing Family Self-Sufficiency Program Coordinators under Resident Opportunities and Self-Sufficiency Program for Fiscal Year 2008. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the funding priority categories established in the NOFA.

**74 Fed. Reg. 14,147 (Mar. 30, 2009)  
Notice of Proposed Information Collection for Public Comment Public Housing Lease Requirements**

**Summary:** HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to leases in the public housing program. HUD regulations 24 C.F.R. § 966.4 prescribe the provisions that shall be incorporated in leases by public housing agencies for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to the tenants.

*Comments Due Date:* May 29, 2009.

**74 Fed. Reg. 14,148 (Mar. 30, 2009)  
Notice of Proposed Information Collection for Public Comment Screening and Eviction for Drug Abuse and Other Criminal Activity**

**Summary:** HUD will submit to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to the collection of information that gives public housing agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective and comprehensive policies for screening out program applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity. PHAs that administer a Section 8 or public housing program under an Annual Contributions Contract (ACC) with HUD may request criminal

history records from any law enforcement agency concerning an adult member of a household applying for admission to a public housing or Section 8 program.

*Comments Due Date:* May 29, 2009.

**74 Fed. Reg. 14,149 (Mar. 30, 2009)**

**Low-Income Housing Tax Credit (LIHTC) Tenant Data Collection; Advance Solicitation of Comment on Data Collection Methodology**

*Summary:* The Housing and Economic Recovery Act of 2008 requires state agencies administering properties receiving low-income housing tax credits to submit to HUD, not less than annually, certain demographic and economic information on households residing in such properties. This statute also requires HUD to establish standards and definitions for the information that state housing agencies must submit, and to provide them with technical assistance in establishing systems to compile and submit such information. This Notice seeks early input from applicable state agencies and other interested stakeholders on a methodology or approach to meet this statutory requirement in advance of HUD's submission of a formal proposal for public comment.

*Comments Due Date:* May 29, 2009.

**74 Fed. Reg. 14,575 (Mar. 31, 2009)**

**Notice of Web Site Availability: Allocations, Application Procedures and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees Under the American Recovery and Reinvestment Act of 2009**

*Summary:* Through this Notice, HUD announces the availability on its website of the allocation formula, allocation amounts, list of grantees, statutory and regulatory program requirements, submission deadlines, and other requirements for the Homelessness Prevention and Rapid Re-Housing Program (HPRP) authorized by Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-05, approved February 17, 2009). HPRP funding is focused on providing short- and medium-term rental assistance to individuals and families who are currently in housing but at risk of becoming homeless, and individuals and families who are homeless. Approximately \$1.489 billion will be allocated for these purposes to states, metropolitan cities, urban counties and territories. State sub-grantees and nonprofit sub-grantees are also eligible to receive HPRP funds from grantees. The Notice establishing the program and application requirements for these funds, allocation information, and eligibility criteria is available on the HUD website at: <http://www.hud.gov/recovery/homeless-prevention.cfm>.

**74 Fed. Reg. 15,514 (Apr. 6, 2009)**

**Notice of Proposed Information Collection: Comment Request; Application for HUD/FHA Insured Mortgage "HOPE for Homeowners"**

*Summary:* HUD will submit to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to new mortgages offered by FHA-approved mortgagees to mortgagors who are at risk of losing their homes to foreclosure. The new FHA-insured mortgages refinance the borrower's existing mortgage at a significant writedown. Under the program the mortgagors share the new equity and future appreciation with FHA.

*Comments Due Date:* June 5, 2009.

**74 Fed. Reg. 15,514 (Apr. 6, 2009)**

**Notice of Proposed Information Collection: Comment Request; Application for Multifamily Project Mortgage Insurance**

*Summary:* HUD will submit to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to information that HUD reviews to determine the acceptability of the mortgagor, sponsor, and other key principles for an application for mortgage insurance.

*Comments Due Date:* June 5, 2009.

**74 Fed. Reg. 16,412 (Apr. 10, 2009)**

**Notice of Proposed Information Collection: Comment Request e-Logic Model™ Grant Performance Report Standard**

*Summary:* HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to intended results and impacts that HUD grant recipients must report. Applicants of HUD Federal Financial Assistance are required to indicate intended results and impacts. Grant recipients report against their baseline performance standards. This process standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

*Comments Due Date:* June 9, 2009.

**74 Fed. Reg. 16,413 (Apr. 10, 2009)**

**Notice of Proposed Information Collection for Public Comment for the Housing Choice Voucher Program: Application, Allowances for Tenant-Furnished Utilities, Inspections, Financial Reports, Request for Tenancy Approval, Housing Voucher, Portability Information, Housing Assistance Payments Contracts and Tenancy Addenda, Homeownership Obligations, Tenant Information for Owner, Voucher Transfers, Homeownership Contracts of Sale, Information for Additional Renewal Funding, and the Project-Based Voucher Program**

**Summary:** HUD intends to submit to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to public housing agencies' (PHA) application for funding. PHAs will prepare an application for funding which specifies the number of units requested, as well as the PHA's objectives and plans for administering the HCV program. The application is reviewed by the HUD Field Office and ranked according to the PHA's administrative capability, the need for housing assistance, and other factors specified in the Notice of Funding Availability. The PHAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected using HUD-prescribed forms to determine if the units meet the housing quality standards of the HCV program. PHAs are also required to maintain financial reports in accordance with accepted accounting standards. The PHA is required to submit one financial document into an Internet-based Voucher Management System four times per year. After the family is issued an HCV to search for a unit, the family must complete and submit to the PHA a Request for Tenancy Approval when it finds a unit which is suitable for its needs. Initial PHAs will use a standardized form to submit portability information to the receiving PHA who will also use the form for monthly portability billing. PHAs and owners will enter into HAP Contracts each providing information on rents, payments, certifications, notifications, and owner agreement in a form acceptable to the PHA. A tenancy addendum is included in the HAP contract as well as incorporated in the lease between the owner and the family. Families that participate in the Homeownership program will execute a statement regarding their responsibilities and execute contracts of sale including an additional contract of sale for new construction units. PHAs that wish to voluntarily transfer their HCV programs will notify HUD for approval and, once approved, all affected families and owners of the divested PHA. PHAs participating in the Project-Based Voucher program will enter into Agreements with developing owners, HAP contacts with the existing and New Construction/Substantial Rehabilitation owners, Statement of Family Responsibility with the family and a lease Addendum will be provided for execution between the family and the owner.

*Comments Due Date:* June 9, 2009.

**74 Fed. Reg. 16,414 (Apr. 10, 2009)  
Deed-in-Lieu of Foreclosure (Corporate Mortgages or Mortgages Owning More Than One Property)**

**Summary:** HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to mortgagees having to obtain written consent from HUD's National Servicing Center to accept a deed-in-lieu of foreclosure when the mortgagor is a corporate mortgagor or a mortgagor owning more than one property

insured by HUD. Mortgagees must obtain written consent from HUD's National Servicing Center to accept a deed-in-lieu of foreclosure when the mortgagor is a corporate mortgagor or a mortgagor owning more than one property insured by the HUD.

*Comments Due Date:* May 11, 2009.

**74 Fed. Reg. 16,414 (Apr. 10, 2009)  
Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2009; Revised**

**Summary:** This Notice updates the FMRs for New Orleans, LA and Pearl River, MS based on Random Digit Dialing (RDD) surveys conducted in September and October, 2008.

*Effective Date:* April 10, 2009.

**74 Fed. Reg. 17,685 (Apr. 16, 2009)  
Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs; Amendment to Application Submission Requirements and Other Technical Corrections**

**Summary:** On December 29, 2008, HUD published its Notice of Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY 2009 NOFAs for Discretionary Programs provides the policy requirements applicable to all of the NOFAs that HUD will publish in FY 2009. The General Section also provides important information regarding the application submission requirements. In the December 29, 2008, General Section, HUD noted that applicants would continue to be required to submit their applications electronically through Grants.gov. This publication amends this requirement to provide that application submission requirements will be provided in the individual program NOFAs that HUD will publish throughout FY 2009. This publication also amends the December 29, 2008, General Section to reflect Executive Order 13502, entitled "Use of Project Labor Agreements for Federal Construction Projects." Finally, this publication announces changes in how HUD will notify the public of the issuances of NOFAs and makes minor technical corrections to instructions regarding registration with the Central Contractor Registration.

*Dated:* April 7, 2009.

**74 Fed. Reg. 17,981 (Apr. 20, 2009)  
FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure With Service Members Act**

**Summary:** HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to mortgage loan services, "mortgagees" that service Federal Housing Administration (FHA) insured mortgage loans and the home owners, "mortgagors" who are involved with those activities. The new information

request for OMB review seeks to combine several existing OMB collections under one comprehensive collection for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the homeowners.

*Comments Due Date:* May 20, 2009.

**74 Fed. Reg. 18,247 (Apr. 21, 2009)**

**Federal Housing Administration (FHA) Title I  
Manufactured Home Loan Program: Notification of  
Availability of Program Reform Implementation and  
Request for Comments**

*Summary:* HUD has issued a 2009 Title I Letter 2009 to implement the reforms that were made to the Title I Manufactured Home Loan Program pursuant to the FHA Manufactured Housing Modernization Act. The letter is available at [www.hud.gov/fha](http://www.hud.gov/fha). Through this Notice, HUD solicits comments on the implementation of these reforms as presented in the letter. HUD will take these comments into consideration in the development of a final rule that will follow the letter, and codify in regulation the reforms to the Title I Manufactured Home Loan Program.

*Comment Due Date:* June 22, 2009.

**74 Fed. Reg. 18,590 (Apr. 23, 2009)**

**Notice of Proposed Information Collection:  
Comment Request; Previous Participation Certification**

*Summary:* HUD will submit to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to the Certificate of Previous Participation. This information is necessary to ensure that responsible individuals and organizations participate in HUD's multi-family housing programs. The information will be used to evaluate participants' previous participation in government programs and ensure that the past record is acceptable prior to granting approval to participate in HUD's multifamily housing programs. The collection of this information is designed to be 100% automated and digital submission of all data and certifications is available via HUD's secure Internet systems. However HUD will provide for both electronic and paper submissions until it publishes revised regulations. Regulations are presently being reviewed for revision.

*Comments Due Date:* June 22, 2009.

**74 Fed. Reg. 18,589 (Apr. 23, 2009)**

**FHA-Insured Mortgage Loan Servicing Involving the  
Claims and Conveyance Process, Property Inspection/  
Preservation**

*Summary:* HUD has submitted to OMB for review an information collection requirement about which it is soliciting public comments. The information collected relates to mortgage loan services, insured mortgage loans and the homeowners, "mortgagors" who are involved with those activities. The revised information request for OMB review seeks to combine the requirements of several existing

OMB collections under one comprehensive collection primarily for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the homeowners.

*Comments Due Date:* May 26, 2009.

## HUD Notices

**PIH 2009-9 (Mar. 5, 2009)**

**Using Energy Star to Promote Energy Efficiency in Public Housing**

*Summary:* This Notice updates guidance encouraging Energy Star as the standard for public housing agencies. Purchase of Energy-Star-labeled products, adoption of the whole-house approach *Home Performance with Energy Star*, which emphasizes a holistic approach to building performance and construction of Energy-Star-qualified residential structures (HOPE VI) by PHAs support the goals of the President's National Energy Policy by reducing the burden of public housing energy costs while increasing comfort and reducing health risks to public housing residents.

**PIH 2009-11 (Mar. 16, 2009)**

**Project-Basing HUD-Veterans Affairs Supportive Housing Vouchers**

*Summary:* As noted in Section J of the Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program (Operating Requirements) published in the Federal Register on May 6, 2008, HUD will consider, on a case-by-case basis, requests from a public housing agency (PHA) to project-base HUD-VASH vouchers in accordance with 24 CFR part 983. The purpose of this Notice is to provide guidance to those PHAs that were awarded HUD-VASH vouchers that are interested in project-basing a portion of these vouchers. Please note that HUD and the Department of Veterans Affairs have determined that no more than 50% of a PHA's allocation of HUD-VASH vouchers (rounded down) may be project-based. This number must be within the 20% maximum budget authority that may be allocated to project-based voucher assistance in accordance with 24 C.F.R. § 983.5(a). All types of project-based proposals will be considered: existing units, newly constructed units and substantially rehabilitated units.

**PIH 2009-12 (Mar. 18, 2009)**

**Information and Procedures for Processing American Recovery and Reinvestment Act Capital Fund Formula Grants**

*Summary:* This guidance provides public housing agencies (PHAs) and HUD Field Offices with information and procedures for processing the additional amount of Fiscal Year 2009 Public Housing Capital Fund Grants being provided in accordance with the American Recovery and Reinvestment Act of 2009. This Notice applies to PHAs who received either a Capital Fund Formula and/

or a Replacement Housing Factor Fund Grant in Fiscal Year 2008 under the Capital Fund Program. The Recovery Act includes a \$4 billion appropriation of Capital Funds to carry out capital and management activities for public housing agencies, as authorized under Section 9 of the United States Housing Act of 1937. The Recovery Act requires that \$3 billion of these funds be distributed as formula funds and the remaining \$1 billion be distributed through a competitive process. This Notice provides processing information for PHAs regarding the allocation of the \$3 billion in formula funds; a Notice of Funding Availability for the award of the \$1 billion competitive grant funds will be issued separately. FY 2009 Capital Fund Formula Grants will also be provided through a separate process.

**Notice CPD-09-02 (Apr. 24, 2009)  
Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FYs) 2010-2012**

*Summary:* This Notice establishes requirements, procedures and deadlines to be followed in the urban county qualification process for FYs 2010-2012. Information concerning specific considerations and responsibilities for urban counties is also provided. HUD Field Offices and urban counties are expected to adhere to the deadlines in this Notice. This Notice provides guidance for counties wishing to qualify or requalify for entitlement status as urban counties, as well as for existing urban counties that wish to include previously nonparticipating communities.

## **RHS Federal Register Notices**

**74 Fed. Reg. 10,714 (Mar. 12, 2009)  
Notice of Request for Extension of a Currently Approved Information Collection**

*Summary:* The Rural Housing Service (RHS) intends to request from OMB an extension for a currently approved information collection in support of Housing Application Packaging Grants. The information required for approval of housing application packaging grants is used by RHS personnel to verify program eligibility requirements. The information is collected at the RHS field office responsible for the processing of the application being submitted. The information is also used to ensure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, RHS would be unable to determine if a grantee would qualify for grant assistance. The grantees facilitate the application process by helping applicants submit complete applications to RHS. This saves RHS time by prescreening applicants, making preliminary determinations of eligibility, ensuring that the application is complete, and helping the applicant understand the program.

*Comments Due Date:* May 11, 2009.

**74 Fed. Reg. 10,715 (Mar. 12, 2009)  
Notice of Request for Extension of a Currently Approved Information Collection**

*Summary:* This Notice announces RHS's intention to request an extension for a currently approved information collection in support of the Single Family Housing Direct Loans and Grants programs. The collection involves the use of Form RD 410-8 "Applicant Reference Letter." The form will be used to obtain information about an applicant's credit history that might not appear on a credit report and to provide clarification on the promptness of applicant's payments on debts which enables RHS to make better creditworthiness decisions.

*Comments Due Date:* May 11, 2009.

**74 Fed. Reg. 19,505 (Apr. 29, 2009)  
Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for New Construction in Fiscal Year 2009**

*Summary:* This NOFA announces the time frame to submit initial applications for Section 515 Rural Rental Housing loan funds, including applications for the non-profit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonials (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. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

*Submission Date Deadlines:* June 29, 2009 at 5 p.m. local time for each United States Department of Agriculture (USDA) Rural Development State Office.

**74 Fed. Reg. 19,510 (Apr. 29, 2009)  
Notice of Funding Availability: Rural Development Voucher Program**

*Summary:* This Notice informs the public that the U.S. Department of Agriculture (USDA) has established a demonstration 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 USDA. This Notice informs the public that funding is now available for the Rural Development voucher program. The Notice also sets forth the general policies and procedures for use of these vouchers. Rural Development Vouchers are only available to tenants of Rural Development-financed multifamily properties where the owner pays off the loan, either through prepayment or a foreclosure action, prior to the loan's maturity date.

*Date:* April 29, 2009.

**74 Fed. Reg. 19,513 (Apr. 29, 2009)**

**Notice of Solicitation of Applications: Section 514, 515, and 516 Multi-Family Housing Revitalization Demonstration Program (MPR) for Fiscal Year 2009**

*Summary:* USDA Rural Development, which administers the programs of the RHS, announces the time frame to submit applications to participate in a demonstration program to preserve and revitalize existing rural rental housing projects financed by Rural Development under Section 515, Section 514, and Section 516 of the Housing Act of 1949, as amended. A subsequent Notice of Funding Availability (NOFA) will be published with specific funding information for fiscal year 2009 at a later date. The intended effect is to restructure selected existing Section 515 multi-family housing loans and Section 514 and 516 off-farm labor housing loans and grants expressly for the purpose of ensuring that sufficient resources are available to preserve the rental project for the purpose of providing safe and affordable housing for very low-, low-, or moderate-income residents. Expectations are that properties participating in this program will be revitalized and the affordable use will be extended without displacing tenants because of increased rents. No additional agency rental assistance units will be made available under this program. Once ranking has been established, the agency will conduct a four-step process to select pre-applications for submission of formal applications. This process is needed to assure that the agency can process the proposed transactions within available staffing resources, develop a representative sampling of revitalization transaction types, assure geographic distribution, and assure an adequate pipeline of transactions to use all available funding.

*Application Deadline Date:* June 29, 2009, 5 p.m., Eastern Time.

## **RHS Administrative Notices**

**AN 4429 (1980-D) (Apr. 14, 2009)**

**Single Family Housing Guaranteed Loan Program Acceptable Liquidation Fees and Cost**

*Summary:* This Administrative Notice amends the guidelines regarding reimbursement of attorney and trustee fees incurred for liquidated single family housing loans guaranteed by Single Family Housing Guaranteed Loan Program.

**AN 4428 (1980-D) (Apr. 14, 2009)**

**Single Family Housing Guaranteed Loan Program Foreclosure Sale Bids**

*Summary:* This AN provides guidance on foreclosure sale bids for security property on which there is a Single Family Housing Guaranteed Loan Program loan guarantee.

**AN 4433 (1980-D) (Apr. 17, 2009)**

**Single Family Housing Guaranteed Loan Program Loss Mitigation Comprehensive Policy Clarification**

*Summary:* Rural Development encourages approved Single Family Housing Guaranteed Loan Program (SFHGLP) lender/servicers to exercise loss mitigation techniques to the fullest extent possible when servicing defaulted loans under SFHGLP. This AN clarifies the policies concerning loss mitigation actions. The attached Loss Mitigation Guide describes loss mitigation alternatives, identifies circumstances for use, and discusses situations in which each alternative or a combination of alternatives may be appropriate. Lender/servicers who service Section 502 Guaranteed Loans should use this Guide to give guidance to SFHGLP borrowers when considering loss mitigation alternatives. Agency staff that give guidance to lenders should refer to this Guide when considering the appropriateness of a lender's loss mitigation alternatives.

**AN 4434 (1980-D) (Apr. 30, 2009)**

**Single Family Guaranteed Rural Housing Loan Program Acceptable Foreclosure Time Frames**

*Summary:* This AN clarifies and standardizes the acceptable foreclosure time frame by State for SFHGLP.

**AN 4435 (1980-D) (Apr. 30, 2009)**

**Single Family Housing Guaranteed Loan Program Debt Ratio Waivers and Payment Shock**

*Summary:* This AN clarifies RD Instruction 1980-D and provides guidance on the use of debt ratio waivers and compensating factors when approving loan guarantees and to reiterate agency methodology for evaluating "payment shock." This guidance applies to manually underwritten loan files and Guaranteed Underwriting System files that receive an underwriting recommendation of "Refer" or "Refer with Caution."

## **RHS Unnumbered Letters**

**Guidance on Extension of the Conditional Commitment Section 538 Guaranteed Rural Rental Housing Program (Mar. 4, 2009)**

*Summary:* The purpose of this unnumbered letter is to outline the process to follow when it is necessary to extend a conditional commitment beyond twenty-four months.

**Fiscal Year 2007 Management Control Review of the Section 514 On-Farm Labor Housing-Loan Servicing (Mar. 4, 2009)**

*Summary:* The purpose of this memorandum is to address the concerns raised as a result of the FY 2007 Management Control Review for the Section 514 On-Farm Labor Housing Loan Program. As a result of the Management Control Review there were several internal program weaknesses which need to be addressed.

**Recovery Act Funding Single Family Housing Direct Loan Program (Apr. 10, 2009)**

*Summary:* With the American Recovery and Reinvestment Act of 2009, the Rural Housing Service received net appropriations of approximately \$967 million for the Section 502 Direct Loan Program with the stated purpose of promoting economic recovery and assisting those most impacted by the recession. ■



# NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM



PUBLICATION	UNIT PRICE	QTY.	TOTAL PRICE
<b>Combined Set: HUD Housing Programs: Tenants' Rights (3d ed. 2004) and 2006-2007 Supplement</b>	\$ 415	<input type="checkbox"/>	<input type="text"/>
HUD Housing Programs: Tenants' Rights 2006-2007 Supplement	\$ 130	<input type="checkbox"/>	<input type="text"/>
Housing Law Bulletin (10-issue subscription)	\$ 175	<input type="checkbox"/>	<input type="text"/>
Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)	\$ 5	<input type="checkbox"/>	<input type="text"/>
Housing for All: Keeping the Promise (1995)	\$ 5	<input type="checkbox"/>	<input type="text"/>
The Family Self-Sufficiency Program: An Advocate's Guide (1994)	\$ 10	<input type="checkbox"/>	<input type="text"/>
A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)	\$ 10	<input type="checkbox"/>	<input type="text"/>
An Affordable Home On Reentry: Federally Assisted Housing and Previously Incarcerated Individuals (2008)	\$ 25	<input type="checkbox"/>	<input type="text"/>

.....

SUBTOTAL (All prices include shipping)

CALIFORNIA SALES TAX (Excludes Bulletin | 9.75% in Alameda County | varies in rest of CA)

**TOTAL**

## BILLING INFORMATION

All orders must be prepaid. Please do not send cash.

I've enclosed a check or money order made payable to **National Housing Law Project**

Please bill my  **MasterCard**  **Visa**

card number / exp date

name on card

organization

street address

city / state / zip

signature

## SHIPPING INFORMATION

name

organization

street address

city / state / zip

telephone / fax

email

MAIL TO  
 National Housing Law Project  
 Publications Clerk  
 614 Grand Avenue, Suite 320  
 Oakland, CA 94610

QUESTIONS  
 For information on first-class mailing and large quantity discounts, call 510.251.9400 x3108



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

NONPROFIT ORG.  
U.S. POSTAGE  
**PAID**  
OAKLAND CA  
PERMIT NO. 612