

**NATIONAL
HOUSING LAW
PROJECT**



advancing housing justice

Housing Law Bulletin

Volume 34 • January 2004

Published by the National Housing Law Project



Congress Enacts FY 2004 HUD Appropriations —see page 1


Bill to Provide Tax Incentives for Housing Preservation —see page 6


 UPDATED


 3RD
EDITION


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

 EXPANDED


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

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

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

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

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

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

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

CD ROM

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


 SPECIAL
 FEATURE

Housing Law Bulletin

Volume 34 • January 2004

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

Table of Contents

	Page
Congress Enacts Long-Delayed FY 2004 Appropriations	1
Exit Tax Relief Sought by Housing Advocates Begins to Take Shape	6
Another Court Finds Good Cause Required for LIHTC Evictions	9
OIG Audit Chides HUD on Internal Financial and Data Controls	10
GAO Provides Useful Insights into PHA Program Management for Advocates	11
HUD Releases Moving to Opportunity Study Interim Results	13
National Study Documents High Level of Housing Discrimination Against Native Americans	14
District Court Rebuffs HOPE VI Fair Housing Case on Remand	15
Recent Cases	16
Recent Housing-Related Regulations and Notices	17
Index to 2003 Articles	23
Announcements	
Publication List/Order Form	31

Cover: Green Mountain Seminary, Waterbury Center. A largely vacant building acquired and rehabilitated by Central Vermont Land Trust and Housing Vermont. Photo: Chris Wood.

The *Housing Law Bulletin* is published 10-12 times per year by the National Housing Law Project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions or policy of any funding source.

A one-year subscription to the *Bulletin* is \$150.

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

Congress Enacts Long-Delayed FY 2004 Appropriations

Congress once again encountered enormous difficulty in promptly executing one of its most basic functions, that of providing funding for many federal programs for the current fiscal year that began last October 1. Even with Republicans controlling both chambers of Congress and the White House, it took until late January to adopt omnibus legislation funding the programs covered by seven of the thirteen ordinarily separate appropriation bills, including that for programs run by the Department of Housing and Urban Development (HUD). This article briefly reviews the HUD provisions.¹ Accompanying this article is a chart containing the major program funding levels (see page 4).

On December 8, by a vote of 242 to 176, the House passed the Conference Report on H.R. 2673, the Consolidated Appropriations Act for Fiscal Year (FY) 2004. The bill then passed the Senate on January 22, 2004, after the Second Session of the 108th Congress reconvened and there was a successful vote to cut off debate. The President then quickly signed the measure on January 23, 2004.² The bill includes discretionary spending for seven of the thirteen appropriations categories, including that for the Department of Veterans Affairs (VA), HUD and other Independent Agencies, for which bills had not yet been passed, forcing those programs to operate under seven continuing resolutions that had generally provided funding at lower FY 2003 levels.

The long-overdue \$820 billion bill covers funding for most federal activities, in addition to a long list of projects earmarked by legislators. Much of the \$820 billion covers automatic Medicare and Medicaid spending; so-called discretionary spending in the bill is only \$328 billion of the total. The Senate delay resulted from disputes over policy provisions covering issues as varied as food labeling in the wake of mad cow disease, concentration of media ownership, school vouchers for the District of Columbia, overtime rules and several other controversial matters. Since those Democrats objecting to many of the majority positions allied with the Administration were apparently unwilling to risk a government shutdown when

¹For background on some of the factors contributing to the federal budget impasse, see NHLP, *Federal Housing Budget Braces for Approaching Storm*, 33 Hous. L. BULL. 1 (Jan. 2003). Additional substantial spending for military activities in Iraq and "homeland security," and the prospect of additional or extended tax cuts, only exacerbate the current and future pressure on domestic discretionary programs, including housing programs. For updated analyses of the federal budget picture, see the Web site of the Center on Budget and Policy Priorities at <http://www.cbpp.org/index.html>.

²Pub. L. No. 108-199, ___ Stat. ___ (Jan. 23, 2003). The bill text and Joint Explanatory Statement of the Conference Committee are contained in H.R. Rep. 108-401 (1186 pages). The HUD appropriations are in Division G, Title II (pp. 369-396 of the enrolled text of H.R. 2673 or pp. 371-398 of the Report, with "Administrative Provisions" starting on p. 389 of the enrolled text or p. 390 of the Report); the Joint Explanatory Statement comprises the second part of the Report, with report language affecting HUD also found in Division G (pp. 1043 *et seq.*).

it became clear that the proponents would hold firm, a cloture motion to end the two-day debate passed by a single vote. The bill was then approved 65 to 28.

Congress now moves to what by all accounts will be extremely contentious election-year negotiations on the FY 2005 budget, to be kicked off by the issuance of the President's budget on February 2. The Administration may seek to restrain requested increases in domestic discretionary programs, while many legislators may object to such low spending levels, which in some cases will actually reduce services after accounting for minimal inflation.

In light of the Administration's proposed block granting and inadequate funding requests, one important bright spot is the bill's full funding for the Housing Choice Voucher program.

Similar to prior years, the FY 2004 HUD bill generally demonstrated little of the enthusiasm exhibited by the Administration and Congressional leaders for higher spending. Adding to the inadequacy of individual program levels is the .59 percent across-the-board cut mandated in the omnibus bill to fit revised budget targets and fund other Congressional priorities.³ This cut applies proportionately to every program, project and activity within every item of budget authority, with no stated exceptions. The bill provides an overall net appropriation of \$36.1 billion to HUD, approximately the level provided by the earlier Senate version of the bill, about \$91 million less than the House bill. However, the bill is \$876 million above the FY 2003 level and \$157 million above the Administration's FY 2004 request. Lest anyone be misled by the nominal increase, once again virtually all of it (or perhaps even more) simply provides budget authority to renew an increasing number of expiring Section 8 project and tenant-based contracts. FY 2004 funding levels for most programs fall in between the House and Senate proposed levels.

In light of the Administration's proposed block granting and inadequate funding requests,⁴ one important bright spot is the bill's full funding for the Housing Choice Voucher program. The voucher program will receive \$14.18 billion within the \$19.26 billion Housing Certificate Fund, including \$12.8 billion for the renewal of all vouchers currently in use. It also replenishes PHA reserve accounts, providing

\$136 million for the central reserve fund, and \$1.235 billion for PHA administrative fees. The total Housing Certificate Fund also includes \$4.72 billion for renewal of Section 8 project-based contracts. The funds are supposedly sufficient to support the renewal of all expiring contracts with PHAs and owners for project and tenant-based subsidies under current program rules.

After months of educating Congress on the importance of providing full voucher funding, the final House-Senate conference report including funding for all vouchers currently in use represented a substantial victory.⁵ Bipartisan support yielded an additional \$910 million above the proposed House level and about \$1 billion over the Senate level and Administration request, enough to support about 97 percent of all authorized vouchers, which should fund all vouchers in use in FY 2004. Lower voucher funding levels would have resulted in the loss of tens of thousands of existing vouchers, threatening an infamous milestone in the history of the program. This approach differs from that taken by the Senate bill initially supported by advocates. The Senate language would have forced HUD to use any unspent funding from prior years to ensure full funding. The final bill, by increasing the amount of rescissions of previously unspent funds earmarked for voucher appropriations, accomplishes essentially the same result. The final bill rescinded more from prior years (about \$2.8 billion) than had been proposed in both the House and Senate proposals (\$1.3 billion). A one-time surplus in the voucher program for FY 2003 made this possible, which had in turn been created by a change in HUD's actions to implement the new requirement of funding only vouchers in use, not all authorized vouchers.

While there is reason to be pleased with the total voucher funding level, the bill's other voucher-related provisions pose concerns. First, public housing authorities (PHAs) believe that the funding level for PHA administrative fees is about five percent below what is needed. Second, the conference report also instructs HUD to control so-called "spiraling" voucher costs (driven largely by actual housing costs), directing HUD to report to appropriators by July 31, 2004, on the reasons for annual increases in the average voucher costs. Additionally, the final bill omitted the proposed Senate language on overleasing, which would have allowed PHAs the flexibility to temporarily overlease their vouchers in order to ensure maximum voucher utilization throughout the year. Last year's FY 2003 appropriations bill was the first to prohibit the overleasing of vouchers as a utilization tool, and the FY 2004 bill retains this prohibition.

The bill also dropped the Senate's proposed \$36 million for 5,500 new (incremental) vouchers, which would have assisted non-elderly and disabled families harmed by designating public housing as elderly-only. Despite long voucher waiting lists throughout the country, Congress has thus

³Pub. L. No. 108-199, Div. H, § 168, ___ Stat. ___ (Jan. 23, 2003).

⁴NHLP, *FY 2004 Voucher Funding Remains Uncertain; Block Grant Proposal Dead for Now*, 33 Hous. L. Bull. 431 (Oct. 2003); NHLP, *Congress Continues Wrestling with FY 2004 Voucher Funding*, 33 Hous. L. Bull. 374 (Aug. 2003); NHLP, *Housing Assistance for Needy Families Act Threatens Neediest Families*, 33 Hous. L. Bull. 309 (June 2003).

⁵For in-depth analysis of the final bill by the Center on Budget and Policy Priorities, see BARBARA SARD & WILL FISCHER, *OMNIBUS BILL APPROPRIATES SUFFICIENT FUNDING TO RENEW HOUSING VOUCHERS: IMPACT OF SOME NEW PROVISIONS WILL DEPEND ON IMPLEMENTATION BY HUD (2003)*, available at <http://www.cbpp.org/12-24-03hous.htm> and <http://www.cbpp.org/12-24-03hous.pdf>.

refused to fund any incremental vouchers for the second year in a row. Lastly, the final bill provides low funding levels for both Family Self-Sufficiency (FSS) coordinators and new tenant protection vouchers. FSS coordinators help connect families with job training and employment opportunities. Funding for FSS coordinators was held to the FY 2003 level of about \$48 million, despite the budget request and Senate proposed level of \$72 million. Tenant protection vouchers to assist families displaced by changes in other housing programs also received lower funding (about \$205 million) than the budget request (\$252 million), but hopefully this is due to more accurate predictions about the actual need.

Public housing programs remain inadequately funded. After the across-the-board cut is figured in, the public housing capital fund drops below the FY 2003 funding levels of \$2.712 billion by the amount of the cut (to \$2.695 billion), woefully insufficient to address the long-growing estimated capital needs backlog of over \$20 billion. The Administration's Public Housing Reinvestment Initiative was not adopted. The Public Housing Operating Fund, which covers ongoing public housing operating expenses, will receive \$3.6 billion, slightly above the budget request and the FY 2003 level. The bill also retained language from the Senate bill directing HUD to reconvene the negotiated rulemaking committee to propose changes to the formula for HUD's distribution of the operating fund, with HUD issuing a final rule on any new formula by July 1, 2004.⁶

Congress also rejected the Administration's proposed increase in the minimum rents for the poorest tenants in the public housing and Section 8 programs from their current levels to *at least* \$50 monthly.

For HOPE VI, despite the Administration's attempt to defund the program in FY 2004 and other criticisms, the conference agreement provides \$150 million, significantly less than the \$570 million FY 2003 level. These funds will be available through September of 2005. The report affirms that HUD has authority to recapture funds from non-compliant grantees, also directing HUD to report to the appropriations committees by February 1 on needed oversight changes and proposals to mitigate the impact of any funding recaptures on residents.

The HOME program to help states and localities increase the affordable housing supply receives in total just over \$2 billion, slightly more than the FY 2003 level, but less than the budget request. An additional \$87.5 million supports the Administration's American Dream Downpayment Fund,⁷ compared to the budget's \$200 million request. The bill retains housing counseling activities in the HOME program, funded at \$40 million.

⁶Pub. L. No. 108-199, Div. G, § 222, ___ Stat. ___ (Jan. 23, 2003).

⁷The Administration's American Dream Downpayment Act, S. 811, providing homeownership downpayment assistance through the HOME program and signed by the President in mid-December, also addresses other issues, including the reauthorization of HOPE VI. Pub. L. No. 108-186, 117 Stat. 2685 (Dec. 16, 2003). That law incorporated provisions of H.R. 1614, pushed by Representatives Maxine Waters and Mel Watt, to protect residents living in housing slated for redevelopment under HOPE VI. The reauthorization also includes authority for new "Small Community Mainstreet Rejuvenation" grants.

The Community Development Fund receives \$4.95 billion, of which the Community Development Block Grant (CDBG) program gets about \$4.3 billion, less than the \$4.5 billion that either the House or Senate versions would have provided.

Housing Opportunities for People With AIDS (HOPWA) is funded at \$295 million, close to the budget request.

Homeless Assistance Grants, which provide funding for the McKinney-Vento programs (including Shelter Plus Care), would receive \$1.26 billion, about \$53 million more than FY 2003. Nevertheless, this amount threatens insufficient funding for renewals of all expiring Shelter Plus Care contracts (at \$194 million) while funding other McKinney programs, and the expressed preference of the Conferees for prioritizing renewals will reduce funding for the other programs. The bill again requires that at least 30 percent of the funds not used for renewals be used for permanent housing, and that HUD review the U.S. Interagency Council on Homelessness efforts to end long-term homelessness and provide a report to Appropriators by May 15, 2004, on recommendations to develop responsive provisions.

The bill retains the House language to keep as separate line items the Section 202 (Elderly Housing) and Section 811 (Housing for People with Disabilities) programs, in contrast to the Senate and Administration proposal to combine the two programs into one line item called "Housing for Special Populations." The bill provides \$774 million for Section 202, almost matching FY 2003, while also directing HUD to conduct a capital assessment of the stock and report to the Appropriators by August 15, 2004, on alternatives to address its long-term needs. The Section 811 program receives \$249 million, virtually the same as the level proposed by both House and Senate.

Contrary to the Administration's defunding request, the bill funds the Rural Housing and Economic Development program at \$25 million. Similarly, the bill provides \$25 million for the Brownfields Redevelopment program for redevelopment of contaminated sites and providing jobs to low-income people, over Administration opposition.

The Native American Housing Block Grant, which provides funding to Indian tribes and tribally designated entities to provide affordable housing in Native American communities, is funded at \$650 million, a slight increase over FY 2003.

Once again, the bill rescinds \$303 million in recaptured Section 236 interest reduction payments from loans that have been prepaid or foreclosed that had been earmarked for repair and preservation of assisted housing.

The Lead Hazard Reduction fund receives \$174 million, about the same as last year. Funding for fair housing activities will be \$48 million. ■

HUD FY 2004 Appropriations Chart for Selected Programs*

HUD Program <i>(set-asides indented)</i>	FY00 Enacted	FY01 Enacted	FY02 Enacted	FY03 Request	FY03 Enacted	FY04 Request	FY04 Senate Comm.	FY 04 House ¹ Passed Conf. Rpt.
Housing Certificate Fund ²	\$11,376	\$13,941	\$15,641 ³	\$17,527 ⁴	\$17,112 ⁵	\$0 ⁶	\$18,433 ⁷	\$19,257 ⁸
Housing Assistance for Needy Families	—	—	—	—	—	13,607 ⁹	0 ¹⁰	0 ¹⁰
Contract Renewals	10,640	12,972	15,085 ¹¹	16,812 ¹²	16,633 ¹³	13,047 ¹⁴	18,106 ¹⁵	19,001 ¹⁶
New Section 8 Vouchers	346	453	144 ¹⁷	204 ¹⁸	0 ¹⁹	36 ²⁰	0 ²¹	0 ¹⁹
Project-Based Rental Assistance	—	—	—	—	—	4,823 ²²	0 ²³	0 ²³
Contract Administration	194	192	196	196	195	100	100	100
Public Housing Capital Fund	2,900	3,000	2,843 ²⁴	2,426 ²⁵	2,712 ²⁶	2,641 ²⁷	2,641 ²⁸	2,695 ²⁹
Resident Opp'ty & Self Sufficiency	55	55	55	55 ³⁰	55 ³¹	55 ³²	55 ³³	55 ³³
Public Housing Operating Fund	3,138	3,242	3,495	3,530	3,577 ³⁴	3,574 ³⁵	3,576	3,579
Drug Elimination Grants	310	310	0 ³⁶	0	0	0	0	0
HOPE VI	575	575	574	574 ³⁷	570 ³⁸	0 ³⁹	195 ⁴⁰	149 ⁴¹
Native American Housing Block Grants	620	650	649	647	645	647	646	650
Native Hawaiian Housing Block Grant	—	—	—	10 ⁴²	10 ⁴³	10 ⁴²	10 ⁴³	9 ⁴³
Elderly Housing (Section 202)	710	779	783	774 ⁴⁴	778 ⁴⁵	774 ⁴⁶	783 ⁴⁷	774 ⁴⁸
Disabled Housing (Section 811)	201	217	241 ⁴⁹	250 ⁵⁰	249 ⁵¹	251 ⁵¹	251 ⁵¹	249 ⁵¹
Rental Housing Assistance	—	—	—	—	0 ⁵²	0 ⁵³	0 ⁵³	0 ⁵³
HOME Investment Partnership Prog.	1,600	1,800	1,846 ⁵⁴	2,084	1,987	2,197 ⁵⁵	1,925	2,005
Housing Counseling Assistance	15	20	20	35 ⁵⁶	40 ⁵⁷	45 ⁵⁶	40	40
Downpayment Assistance	—	—	50 ⁵⁸	200	75 ⁵⁹	200	50	87 ⁶⁰
Community Development Block Grants	4,800	5,057	5,000 ⁶¹	4,732 ⁶²	4,905 ⁶³	4,732 ⁶⁴	4,950 ⁶⁵	4,921 ⁶⁶
Self-Help Homeownership Opp'ty	20	20	22	65	25	65	12	27
Youthbuild	42.5	60	65	65	60	65	60	65
Economic Development Initiative	256	292	294	0	259	0	140	276
Homeless Assistance Grants	1,020	1,025 ⁶⁷	1,123 ⁶⁸	1,130 ⁶⁹	1,217 ⁷⁰	1,325 ⁷¹	1,325 ⁷²	1,260 ⁷³
Shelter Plus Care Renewals	0	100	0	0	0	0	0	0
Samaritan Housing	—	—	—	—	—	50 ⁷⁴	0	0
Emergency Food and Shelter (FEMA) ⁷⁵	110	140	140	153 ⁷⁶	152 ⁷⁷	153 ⁷⁶	153 ⁷⁷	153 ⁷⁷
Housing for Persons with AIDS	232	258	277	292	290	297	302	295
Rural Housing and Economic Dev't	25	25	25	0	25	0	25	25
Brownfields Redevelopment	25	25	25	25	25	0	25	25
Fair Housing Assistance Program	20	22	26	26	26	30	30	28
Fair Housing Initiative Program	24	24	20	20	20	20	20	20
Lead-Based Paint Hazard Reduction	80	100	110	126	175 ⁷⁸	136	175	174
Salaries and Expenses	1,005	1,070	1,097	1,070	1,083	1,112	1,112	1,116
TOTAL (Discretionary)⁷⁹	\$26,496	\$30,309	\$34,304⁸⁰	\$35,893	\$36,053⁸¹	\$36,899	\$36,086	\$36,782

*This budget chart was prepared by and is printed with permission from the National Low Income Housing Coalition. Dollars are in millions.

Footnotes to HUD FY 2004 Budget Chart

- ¹Takes into account 0.59% across-the-board cut.
- ²Includes \$4.2 billion in advance appropriations in all cases.
- ³Represents actual spending of \$16.3 billion, using \$640 million from the reduction of Section 8 reserves and provides for \$1.2 billion in rescissions.
- ⁴Provides for \$1.1 billion in rescissions.
- ⁵Provides for \$1.6 billion in rescissions.
- ⁶Tenant-based and project-based housing assistance would no longer be funded through Housing Certificate Fund but separated into a tenant-based voucher program called Housing Assistance for Needy Families (HANF) and Project-Based Rental Assistance. HANF will be block granted to the states in FY05. Congress did not approve change.
- ⁷Includes \$1.372 billion in rescissions.
- ⁸Includes \$2.259 billion in rescissions.
- ⁹Includes unobligated balances transferred from the Housing Certificate Fund.
- ¹⁰Does not split tenant-based and project-based accounts as requested by HUD.
- ¹¹Represents actual spending of \$15.7 billion, using \$640 million from the reduction of Section 8 reserves from two months to one month.
- ¹²Does not include \$260 million in tenant protection vouchers and \$52 million for Family Self-Sufficiency coordinators.
- ¹³Includes \$15.3 billion for renewals plus a central fund of \$392 billion and \$1.08 billion in administrative fees (but does not include \$48 million for FSS coordinators or \$234 million in tenant protection vouchers). Directs HUD to use central fund to replenish public housing agency (PHA) reserve accounts when PHAs expend one-half of their reserves; directs HUD to provide quarterly reports on project-based opt-outs, prepayments and repair needs.
- ¹⁴Includes \$11.4 billion for HANF tenant-based renewals, \$1.2 billion for administrative fees, and \$473 million of \$609 million central fund (from which \$36 million for incremental vouchers and \$100 million for capacity building funds for states are subtracted). Does not include project-based renewals, \$252 million in tenant protection vouchers, \$72 million for Family Self Sufficiency (FSS) coordinators, or \$100 million to replenish PHA reserves used in FY03
- ¹⁵Includes \$11.383 billion for voucher renewals, \$461 million in Central Reserve Fund (with \$100 million to replenish reserves used in FY03), \$1.339 billion for administrative fees (minus \$20 million for tenant protection voucher administration), and \$4.823 billion for project-based renewals. Does not include \$252 million for tenant protection vouchers and \$72 million for FSS coordinators.
- ¹⁶Includes \$12,811 billion for voucher renewals, \$136 million in Central Reserve Fund(with \$100 million to replenish reserves used in FY03), \$1,235 billion for administrative fees(includes \$20 million for tenant protection vouchers) and \$4,819 billion for project-based renewals (includes\$99 million for contract administration)
- ¹⁷Funds 26,000 new vouchers, with 18,000 fair share vouchers for PHAs with high utilization and 8,000 for certain non-elderly disabled families.
- ¹⁸Funds Section 8 downpayment assistance (\$15 million) and approximately 33,400 new vouchers, including fair share and others.
- ¹⁹Directs HUD to provide incremental vouchers previously issued for non-elderly disabled families to be reissued to such families.
- ²⁰Funds 5,500 vouchers for certain non-elderly disabled families; additional vouchers to be distributed to states may be funded by the central fund if available, subject to broad statutory and regulatory waiver authority.
- ²¹The Secretary may use up to \$36 million for incremental vouchers for certain non-elderly disabled families if funds are available.
- ²²Funds renewal of project-based housing assistance contracts; includes \$300 million in carryover funds rescinded and reappropriated.
- ²³Assumes \$4,819 billion for renewal of project-based contracts, but not in a separate account, as requested by HUD.
- ²⁴Includes \$15 million for the Neighborhood Networks Initiative and \$10 million in remediation funds for troubled PHAs.
- ²⁵Represents a decrease in unrestricted capital funds of \$441 million due to increased set-asides; proposes conversion of public housing units to project-based voucher assistance to facilitate private financing for capital needs.
- ²⁶Sets aside \$447 million for capital and management activities for PHAs that have obligated all assistance for FY98 through FY01; directs HUD to provide a report by August 7, 2003 on PHAs that have used private financing to meet capital needs.
- ²⁷Proposes public housing reinvestment initiative (PHRI), with conversion of public housing to project-based voucher assistance to facilitate private financing for capital needs, combined with up to \$131 million in loan guarantees.
- ²⁸Does not fund PHRI but allows up to \$125 million to be used for loan guarantees.
- ²⁹Does not fund public housing reinvestment initiative (PHRI) proposal.
- ³⁰In FY01 and FY02, ROSS was a set-aside within CDBG.
- ³¹Follows Administration's request to make this a set-aside within the Public Housing Capital Fund rather than CDBG.
- ³²Set-asides of \$40 million in Public Housing Capital Fund and \$15 million in Public Housing Operating Fund.
- ³³Set-aside within Public Housing Capital Fund only.
- ³⁴Includes \$10 million for anti-drug programs in public, Indian and federally-assisted low income housing administered by the Department of Justice; authorizes the use of up to \$250 million for FY02 operating cost needs, but prohibits use of funds from FY04 or later for FY03 public housing operating costs and instructs HUD to report by May 15, 2003, on actions taken to address the practice of using current year funds for prior year costs.
- ³⁵Includes \$15 million for ROSS.
- ³⁶The conference report noted that PHAs are allowed to use their operating and capital funds for anti-crime and anti-drug efforts.
- ³⁷Includes a set-aside of \$50 million for grants for capital costs associated with conversion from public housing to project-based voucher assistance.
- ³⁸Reauthorizes HOPE VI through the end of FY04.
- ³⁹No funding requested because HUD claims enough funding has been committed to meet 1992 demolition goals, with significant funds in pipeline.
- ⁴⁰Allows for recapture of certain pre-1997 grants and provides \$3 million for technical assistance.
- ⁴¹Includes \$4 million for technical assistance and contract expertise.
- ⁴²Authorized under the Hawaiian Homelands Homeownership Act of 2000, amending the Native American Housing and Self-Determination Act of 1996 and allocating funds for affordable housing for eligible low income Native Hawaiian families; to be funded under its own account.
- ⁴³To be funded under CDBG rather than under its own account as the Administration requested.
- ⁴⁴Includes \$44 million, plus up to \$9 million in recaptured funds, for service coordinators; and \$30 million for conversion to assisted living.
- ⁴⁵Provides \$50 million for service coordinators, \$30 million for conversion to assisted living and \$30 million to facilitate Section 202 projects.
- ⁴⁶Provides \$53 million for service coordinators and \$30 million for conversion to assisted living.
- ⁴⁷Provides \$50 million for service coordinators and \$30 million for conversion to assisted living.
- ⁴⁸Provides \$50 million for service coordinators and \$30 million for conversion to assisted living.
- ⁴⁹Includes \$23 million for the renewal of tenant-based assistance, rather than renewing under the Housing Certificate Fund.
- ⁵⁰The Administration has proposed that up to \$62.5 million can be earmarked for tenant-based assistance.
- ⁵¹The Secretary may designate up to 25% for tenant-based assistance.
- ⁵²Recaptured Section 236 budget authority would be rescinded, despite Senate proposal to make up to \$100 million available for rehabilitation grants.
- ⁵³\$303 million in recaptured Section 236 budget authority would be rescinded.
- ⁵⁴Includes \$50 million set-aside for the Downpayment Assistance Initiative, subject to authorization.
- ⁵⁵Includes \$25 million for lead hazard reduction demonstration program.

Footnotes to HUD FY 2004 Budget Chart, cont'd.

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

⁵⁷Remains a set-aside within HOME.

⁵⁸Appropriation subject to authorization; there was no authorization June 30, 2002 and the funds were rescinded in FY02 Supplemental Appropriations.

⁵⁹Appropriation subject to authorization. Authorization occurred with signing of American Dream Downpayment Act (S.811) on Dec. 16, 2004 making the FY'03 funds available in FY'04.

⁶⁰Total funds available in FY'04 includes \$75 million from FY'03 for a total of \$162 million.

⁶¹Includes \$4.3 billion in CDBG formula block grants and \$659 million in set-asides.

⁶²Includes \$4.4 billion in CDBG formula block grants; would reduce funds for wealthier communities and apply \$16 million Colonias Gateway Initiative.

⁶³Includes \$4.4 billion for formula grants; does not change the CDBG formula or fund the Colonias Gateway Initiative.

⁶⁴Includes \$4.4 billion for formula grants and \$16 million for the Colonias Gateway Initiative, among other set-asides.

⁶⁵Includes \$4.6 billion for formula grants and other set-asides, but does not fund the Colonias Gateway Initiative.

⁶⁶Includes \$4.3 billion for formula grants and \$225 million in set-asides, but does not fund the Colonias Gateway Initiative.

⁶⁷Maintains the requirement that 30% of funds be used for permanent housing. Shelter Plus Care renewals are funded separately.

⁶⁸Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and provides \$500,000 for Interagency Council on Homeless.

⁶⁹Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing and provides \$1 million for Interagency Council on Homeless.

⁷⁰Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and funds Interagency Council on Homeless as separate agency at \$1.5 million. Also funds \$10 million two-year demonstration of programs and best practices.

⁷¹Includes \$194 million for Shelter Plus Care renewals, maintains 30% requirement for permanent housing and provides \$1.5 million for Interagency Council on Homeless. The Administration will submit legislation to consolidate competitive McKinney-Vento programs.

⁷²Includes unspecified amount for Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and funds Interagency Council on the Homeless as a separate agency at \$1 million.

⁷³Includes Shelter Plus Care renewals, maintains 30% requirement for permanent housing, and funds Interagency Council on Homeless as separate agency at \$1.5 million. Also provides \$12 million for national homeless data analysis project and technical assistance.

⁷⁴Proposed competitive grant program in a broader interagency effort to combat long-term homelessness. Administration will submit legislation.

⁷⁵EFSP is currently part of FEMA's budget.

⁷⁶This program would be transferred from FEMA to HUD.

⁷⁷Rejects Administration's proposal to move EFSP to HUD from FEMA.

⁷⁸Includes \$50 million set-aside for an urban lead hazard reduction demonstration program.

⁷⁹This is overall total for HUD's discretionary spending. As the chart shows selected programs, does not include all of HUD's programs and other expenses, and may include programs *proposed* for HUD's appropriation, the numbers above will *not* total the amounts listed at this line. In addition, there is inconsistency from year to year within HUD's own budget documents as to total amount requested and enacted, as HUD makes retroactive adjustments. FY 00 enacted and FY 01 enacted are "net" figures.

⁸⁰This total does not include \$2 billion in emergency supplemental funds in connection with recovery from September 11, 2001 terrorist attacks.

⁸¹Reflects 0.65% across-the-board cut.

Exit Tax Relief Sought by Housing Advocates Begins to Take Shape

To spur a greater nationwide preservation effort, Representatives Jim Ramstad (R-MN) and Benjamin L. Cardin (D-MD) introduced H.R. 3485 in the House of Representatives on November 12, 2003. Entitled the Affordable Housing Preservation Tax Relief Act of 2003 (Preservation Tax Act), the long-awaited bill would amend the Internal Revenue Code to provide incentives for the preservation of affordable multifamily housing units that are sold or exchanged.¹

The Problem

Thousands of affordable multifamily housing owners (both HUD- and USDA-assisted) of properties containing hundreds of thousands of units currently have expiring use restrictions or contracts. Some of these in stable or strong markets face market-rate conversion; others in weaker markets or in poor condition face disinvestment and deterioration as a result of market forces or the growing income tax consequences of declining depreciation and mortgage interest payments. Sale of these properties to preservation purchasers, primarily local nonprofit organizations or other committed and responsive owners, is the best way to preserve and extend the affordability of these units for low-income residents by recapitalizing and rehabilitating them. However, the sale or transfer of many of these properties is impeded because of the prospective capital gains tax liability on depreciated capital accounts of owners and partners. This is especially true in many situations where properties have not significantly appreciated, where the sales price produces insufficient gain over the mortgage balance to pay the tax. This predicament impacts a large portion of the remaining federally subsidized inventory, in both rural and urban communities around the nation, because the most valuable properties have already been converted or sold.

The MHC Report and Recommendation

In 2002, the Millennial Housing Commission (MHC), a bipartisan group of twenty-two commissioners appointed by Congress in 2000, recommended that steps be taken to preserve the affordable housing stock by providing current owners with financial incentives in the tax code to transfer ownership to new owners who commit to long-term affordability.²

Recognizing the twin threats of market-rate conversion and disinvestment and deterioration,³ the MHC Report noted that the 1986 tax code revisions eliminated, for most investors,

¹H.R. 3485, 108th Cong. (1st Sess.), *available at* <http://www.access.gpo.gov> (last visited Jan. 9, 2004).

²MILLENNIAL HOUSING COMMISSION, MEETING OUR NATION'S HOUSING CHALLENGES: REPORT OF THE BIPARTISAN MILLENNIAL HOUSING COMMISSION 31-36 (2002), *available at* <http://www.mhc.gov> (last visited Jan. 9, 2004) [hereinafter MHC Report].

³*Id.* at 32.

the deductibility of a property's tax losses from other taxable income.⁴ In conjunction with the "phantom income"⁵ problem in later years of a project's mortgage, where principal amortization exceeds depreciation and other expenses, creating tax liability with no cash flow to pay it, many investors found themselves with no deferral of tax, and a tax on noncash income—not a good recipe for investor economic interest and maintenance and capital investment. Such properties are ripe for new ownership through preservation tax incentives.

In addition, the MHC Report noted that owners are discouraged from transferring properties (even though they may not be viable for market and tax reasons) because they are subject to a capital gains "exit tax" which largely depends on their negative tax basis, which in turn must reflect the accumulated depreciation previously taken. For owners of those properties that are worth little more than the outstanding mortgage, this exit tax poses a formidable barrier to transfer, because there will be insufficient cash resulting from the sale after satisfaction of the mortgage to pay the IRS. Many properties are therefore effectively locked up, at least until owners die and their heirs receive the benefits of a step-up in basis at death, when no tax whatsoever will be realized.

The MHC Report therefore made both federal- and state-level recommendations. It first recommended that Congress:⁶

- specify the minimum requirements for qualifying transactions (e.g., terms of use agreements, federal subsidy commitments, minimum affordability requirements);
- establish penalties for non-compliance, including tax penalties (for-profits) and a revocation of tax-exempt status (nonprofits);
- establish broad affordability parameters for newly affordable, preserved units;
- establish minimum criteria for qualification as a purchasing preservation entity; and
- clarify that use restrictions, affordability levels, and subsidies can be assumed by other qualified entities.

In its recommendation that states determine which properties or owners should be eligible for exit tax relief, MHC provided suggested criteria:⁷

- *Eligible properties/sellers.* Assisted properties with sales proceeds less than the exit tax.
- *Qualifying preservation entities.* Demonstrated past commitment to affordable housing, demonstrated independence from seller or affiliates, and organizational and financial capability for long-term, successful management.
- *Preservation transactions.* Economically viable transactions (sustainable for at least 30 years), compliant with federal requirements and state criteria.

In addition to setting criteria, MHC recommended that states (1) develop and maintain a list of qualified preservation entities; (2) issue approval letters to sellers and purchasers with eligible proposals; and (3) assure program compliance.⁸ The MHC Report concluded with an illustration of how the exit tax relief mechanism could work.

The Proposed Preservation Tax Act's Exit Tax Relief

Consistent with the MHC's general recommendation, the proposed Preservation Tax Act finally was born from the efforts of housing advocates and owners. The bill seeks to promote preservation by providing capital-gains tax relief on the non-cash gain realized by current owners of multifamily developments serving low- to very low-income residents, where owners sell to buyers that commit to maintain the development for low-income residents, usually for thirty more years, and to comply with other conditions.

Qualifying Properties

Only certain properties could qualify for the tax relief. "Eligible multifamily housing properties" would include those:

- subsidized under Sections 221(d)(3) or 236 of the National Housing Act;⁹
- with project-based Section 8 contracts;¹⁰
- RHS Section 514 and 515 properties; and
- certain Low-Income Housing Tax Credit properties.¹¹

⁴*Id.* at 34. Before 1986, the tax code included incentives to encourage limited partner investors to provide equity to multifamily developers in exchange for current tax savings (against then-higher marginal tax rates). Investors could deduct from taxable income their share of the project partnership's losses, including depreciation, thereby reducing tax liability. In later years of the partnership, when mortgage amortization exceeded depreciation and other expenses, the excess amortization became taxable as ordinary income (so-called "phantom income").

⁵"Phantom income" refers to taxable income which is unassociated with the actual cash flow of a property remaining after debt service and operating expenses. It commonly results from the growing principal amortization of the mortgage over time relative to the amount of deductible interest payments. *See also* note 4 *supra*.

⁶MHC Report, *supra* note 2, at 35.

⁷*Id.* at 35–36.

⁸*Id.* at 36.

⁹The bill requires that these subsidized properties also be subject to the restrictions of former Section 1039(b)(1)(B) of the Internal Rev. Code, former 26 U.S.C. 1039, Pub. L. No. 91-72, § 910(a), 83 Stat. 718 (1969), as amended by Pub. L. No. 94-455, § 1906(b)(13)(A), 90 Stat. 1834 (1976), *repealed by* Pub. L. No. 101-508, § 11801(a)(33), 104 Stat. 1388-5211 (1990).

¹⁰The bill refers to properties described in Section 512(2)(B) of the Multifamily Assisted Housing Reform and Affordability Act of 1997. Normally, HUD's "Mark to Market" program covers properties with a HUD-insured mortgage and above-market Section 8 contract, but this provision references just the description of project-based Section 8 and Rent Supplement contracts.

¹¹H.R. 3485, *supra* note 1, § 2(a), proposed new I.R.C. § 42A(d)(2) (hereafter all references to the bill are to the proposed new sections of the I.R.C., which would be created under § 2(a)).

Limited Amounts

Preservation tax incentives would only be available in limited amounts, allocated on a state-by-state basis each calendar year by state housing credit agencies.¹² Where there is more than one housing credit agency within a state, all of those agencies together would be treated as a single agency.¹³ The proposed allocation ceiling would approximate the state's population in dollars, but would more precisely equal the sum of:

- any unused state preservation credit ceiling from the preceding calendar year;
- \$1.00 for each person in the state;
- \$1 million;
- any amount of state preservation credit ceiling returned in calendar year; and
- any amount allocated under the unallocated credit provision.¹⁴

Amount of Tax Relief

The IRS would provide a tax credit to sellers in an amount equal to the preservation-allocation amount for the taxable year,¹⁵ capped at the gain recognized by the taxpayer from the sale.¹⁶ This effectively credits a seller's non-cash gain.

Which Sales Would Qualify?

Only qualified preservation sales may reap the tax credit. The bill requires that these sales or exchanges be with a preservation entity which agrees to maintain certain affordability and use restrictions regarding the property.¹⁷ These use restrictions must be for a term of not less than the extended use period,¹⁸ legally enforceable, and consistent with the long-term physical and financial viability and character of such housing as affordable housing.¹⁹ The restrictions must bind successors of the preservation purchaser and be recorded as restrictive covenants under state law.

¹²*Id.* at § 42A(e)(1).

¹³*Id.* at § 42A(e)(2).

¹⁴*Id.* at § 42A(e)(3).

¹⁵*See id.* at § 42A(a). The preservation allocation amount is defined as the amount allocated to the taxpayer from a qualified preservation sale by a housing credit agency which does not exceed the excess of "(A) the product of (i) the maximum rate tax . . . multiplied by (ii) the gain recognized by the taxpayer from the qualified preservation sale over (B) the amount of cash or the fair market value of other property received by the taxpayer with respect to the sale." *Id.* at § 42A(c).

¹⁶*See id.* at § 42A(b).

¹⁷*See id.* at § 42A(d)(1).

¹⁸The extended use period begins with the date of sale and ends on the earlier of (A) 30 years after closing or (B) any acquisition by arms-length foreclosure (or instrument in lieu of foreclosure). *See id.* at § 42A(d)(4).

¹⁹*Id.* at § 42A(d).

Role of State Agencies

A housing agency's responsibility would extend beyond simply allocating preservation tax credits. State agencies would be required to determine whether the preservation purchaser's plan for rehabilitation (if any) and operation of the eligible property is viable for at least 30 years, monitor the affordability and use restrictions for the property, and notify the Internal Revenue Service as to any noncompliance.²⁰

Remedies for Noncompliance

The bill also specifies remedies for noncompliance, primarily tax recapture and interest at specified underpayment rates since the credit was claimed.²¹

The Ramstad-Cardin bill raises several important issues, including its apparent omission of some federally assisted properties.

Remaining Matters Worth Watching

The Ramstad-Cardin bill raises several important issues, including its apparent omission of some federally assisted properties.

The current bill omits any preference for local tenant or community participation in the preservation purchaser. First, its language only requires the sale to be to a "preservation entity" without specifying that community-based tax-exempt nonprofit organizations receive any purchase preferences.²² While there may be concerns about capacity of tax-exempt nonprofits to execute this preservation mission nationwide, those must be balanced against the risk that properties would once again be threatened whenever their new restrictions expire. Second, additional requirements are needed to ensure complete independence of the purchaser from both the seller and managing agents. The bill specifies only that "[s]uch preservation entity shall be independent from the seller partnership or its affiliates," which may not reach far enough. Third, the bill fails to require that purchasers be endorsed by or accountable to the residents. With these omissions, the bill disregards certain essential lessons of past transfer initiatives and experiences.

²⁰*Id.* at § 42A(f).

²¹*Id.* at § 42A(g) (also providing no deduction for the back interest).

²²*Id.* at §§ 42A(d)(1) and 42A(d)(5). The bill simply states that a preservation entity includes "a housing credit agency or an organization approved by a housing credit agency that has the capacity and commitment to successfully acquire and preserve eligible multifamily housing property."

In addition, the bill does not assure the long-term economic and physical viability of properties. Although it defines what constitutes a qualified preservation sale and the general characteristics of a preservation entity, it does not set out specific requirements for purchasers and transactions which could facilitate sustainability throughout the extended use restriction period. The current version of the bill requires only that state credit agencies perform this function. It offers no assurance of rehabilitation or improvements of the physical structure, management improvement, or ongoing compliance—needs which prior requirements have often proven insufficient to guarantee. Penalties for noncompliance which focus only on recapture of the credit (from the long-departed seller) may do little to ensure compliance by the purchasing nonprofit or long-term preservation of the housing. More careful forethought will be essential here.

It is also unclear whether the preservation capital gains tax relief credit to the seller should, as a policy matter, actually translate into lower purchase prices for qualified preservation purchasers. Where properties are not worth even their debt obligations, this omission will not matter as it will motivate sellers to unload such low-value properties for the outstanding mortgage balance. Owners of higher-value properties will be able to sell at market prices, but should therefore prefer qualified preservation buyers because such sales will also carry the exit tax relief on the noncash gain. It may be wiser, however, to determine how to devise some apportionment of the benefit of the tax relief for these kinds of higher-value properties between the seller and the buyer, because a full noncash gain credit to the seller (many of whom already are receiving sufficient cash gain to pay their capital gains exit taxes) may be more than required to achieve the salutary public benefit of preservation.

Whether the Preservation Tax Act bill will be attached to a larger tax bill that itself would contain other provisions harmful to low-income people also concerns some advocates.²³

Conclusion: Promoting Long-Term Affordability

Passage of the proposed Preservation Tax Act would significantly improve prospects for the preservation of federally assisted multifamily housing. With diminished exposure to capital gains taxes, owners would have greater motivation to transfer assisted properties to preservation entities. Well-drafted contractual and recorded use restrictions will position purchasers to maintain units as affordable and make necessary physical and management improvements. These results would help stem the loss of safe, habitable and affordable housing units for current and future low-income families.²⁴ ■

²³National Low Income Housing Coalition, *Exit Tax Relief Bill Introduced*, MEMO TO MEMBERS (Nov. 14, 2003), <http://www.nlihc.org/mtm/mtm8-45.html#3>.

²⁴At this writing, the bill awaits hearing or other action by the House Committee on Ways and Means.

Another Court Finds Good Cause Required for LIHTC Evictions

Yet another state appellate court has found that a landlord of a Low-Income Housing Tax Credit (LIHTC) development must show “good cause” before terminating a tenancy. *Carter v. Maryland Management Co.*, 835 A.2d 158, 2003 WL 22533198 (Md. Ct. App. Nov. 10, 2003). The court thus joins the handful of others requiring good cause for LIHTC evictions, as a matter of statutory interpretation or due process,¹ as well as still others evaluating the issue under other subsidy programs that lack explicit rules.² However, the court further held that, on the facts presented, the landlord had indeed established good cause for not renewing the tenant’s expiring lease, and it therefore affirmed the eviction judgment.

The tenant had executed a lease in 1996 with the landlord for a unit in an LIHTC development. Because the tenant had a Section 8 voucher to pay part of the LIHTC-subsidized rent, the parties at that time executed a then-standard voucher lease addendum requiring good cause for termination of the tenancy, which did not appear referenced in subsequent leases. The parties’ relationship then exhibited a history of disputes concerning substandard conditions and needed repairs, resulting in litigation.

Maryland law provides three separate and distinct provisions under which a landlord may recover possession of leased premises: a nonpayment of rent provision, a “breach of lease” provision, and a “holdover” provision (after lease expiration and notice, a tenant has failed to vacate).³

Back in 2001, when the landlord had commenced a holdover proceeding alleging no cause, the trial court had dismissed the action on the ground that cause was required and the landlord was required to serve a good cause notice.

¹*Cimarron Village Townhomes, Ltd. v. Washington*, No. C5-98-15671, 1999 Minn. App. LEXIS 890, 1999 WL 538110 (Minn. Ct. App. July 27, 1999) (LIHTC tenants may be evicted only for good cause), *on appeal after remand*, 659 N.W.2d 811 (Minn. Ct. App. 2003) (upholding finding that good cause existed); *Bowling Green Manor Ltd. Partnership v. Kirk*, No. 94CVG01059, 1995 Ohio App. LEXIS 2707, 1995 WL 386476 (Ohio Ct. App. June 30, 1995) (finding sufficient state action to require good cause for termination of LIHTC and Section 8 tenancy); *Bowling Green Manor Ltd. Partnership v. LaChance*, 1995 Ohio App. LEXIS 2767, 1995 WL 386496 (Ohio Ct. App. June 30, 1995) (same). *See generally* Marc Jolin, *Good Cause Eviction and the Low Income Housing Tax Credit*, 67 U. CHI. L. REV. 521 (2000). While the statute is not entirely clear on whether good cause is required only in certain circumstances, these courts have found that good cause is required in all circumstances.

²*See also, e.g.*, *Hartford Homes, Inc. v. Cruz*, No. SPH 8908-51617, 1990 WL 284003, [Aug./Sept. 1990] 24 Clearinghouse Rev. 373, No. 45,718 (Conn. Super. Ct. May 9, 1990) (Section 221(d)(3) market-rate landlord who leased site under Urban Renewal program must have good cause to evict); *Eastern Dev. Assocs. v. Corriveau*, No. SPNH 8908-2261, 1989 WL 516465, [Apr. 1990] 23 Clearinghouse Rev. 1559, No. 45,487 (Conn. Super. Ct. Nov. 17, 1989) (HODAG landlord cannot evict without good cause); *Ashley Willard Asylum Assocs. v. Rodriguez*, 1993 WL 479824 (Conn. Super. Ct. Oct. 19, 1993) (due process requires state-funded owner to show good cause for eviction).

³MD. CODE ANN., REAL PROP. §§ 8-401, 8-402 and 8-402.1 (West, WESTLAW through end of 2003 Reg Sess.).

Later that year, the landlord served another notice that the lease would not be renewed upon expiration due to the tenant's failure to maintain the premises. When the tenant failed to vacate, the landlord filed new actions under both the breach of lease and holdover provisions. After a hearing, the trial court found that the landlord could use the holdover statute and that good cause existed.

On appeal to the first appellate circuit court, the tenant argued that under the federal law, her lease was an indefinite one, with no fixed term, and that the holdover statute was therefore inapplicable, and that the landlord failed to establish good cause. The circuit court found no merit to either argument.

On subsequent appeal to the court of appeals, the tenant argued that (1) the LIHTC statute⁴ precludes landlords from terminating a lease except for good cause, (2) the tenancy is therefore indefinite, with no fixed term, regardless of whether it contains an expiration date, and (3) that the holdover statute is therefore inapplicable, and that the landlord must proceed under the breach of lease provision, absent nonpayment of rent. The tenant also contended that in any event, the landlord had failed to demonstrate good cause. The owner countered that good cause was not required, and if it was, that the holdover statute could be used and that good cause was shown.

While the court thus had to address all of these issues, that of whether good cause is legally required remains the most important for other advocates. The tenant contended that the LIHTC statute, as amended in 1990,⁵ requires good cause for eviction. The court agreed that, properly interpreted, the LIHTC statute requires good cause during both the initial fifteen-year compliance period and the subsequent fifteen-year extended use period.

In upholding the propriety of using the state holdover statute to prosecute evictions requiring good cause, the court relied heavily on the 1998 revision to the voucher statute that eliminated the requirement for indefinite tenancies. However, it nonetheless found that while voucher tenants no longer had the security of an indefinite lease terminable only for good cause, those residing in LIHTC developments continued to have good cause protection for evictions during the lease term or for end-of-term nonrenewals:

The two statutes can easily be read harmoniously, with each other and with the overall Congressional purpose. We hold that, whatever term may be stated in the lease, a voucher program tenant may not be evicted by a landlord who has qualified for a § 42 tax credit and is continuing to receive rent subsidies, either during the term of the lease or at the expiration of that term, except for conduct or circumstances that qualify under the Federal law as good cause.⁶

⁴26 U.S.C.A. § 42(h)(6)(B) and (E) (West, WESTLAW through P.L. 108-182 (excluding P.L. 108-136, 108-159, 108-173, 108-176 to 108-178) Dec. 15, 2003).

⁵26 U.S.C.A. § 42(h)(6)(E)(ii) (West, WESTLAW through P.L. 108-182 (excluding P.L. 108-136, 108-159, 108-173, 108-176 to 108-178) Dec. 15, 2003).

⁶Carter v. Maryland Management Co., 835 A.2d 158, 2003 WL 22533198, at *10 (Md. Ct. App. Nov. 10, 2003).

For the court, nothing in either the federal LIHTC or voucher statutes precluded use of the holdover statute as a procedural mechanism to remove a tenant remaining in possession after expiration of the lease term. Landlords using that procedure, rather than the breach of lease provision, must follow the specified process while also establishing good cause for refusing to renew the tenancy.

In evaluating whether the landlord had in fact proven good cause, the court used the "clearly erroneous" standard and had no difficulty affirming the trial court's finding on the evidence.⁷ ■

OIG Audit Chides HUD on Internal Financial and Data Controls

On December 19, 2003, the Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) released the results of its audit and assessment of HUD's internal controls and compliance with current laws and regulations.¹ Pursuant to the Government Performance and Results Act of 1993,² HUD was required to submit a Fiscal Year 2003 performance and accountability report to the Office of Management and Budget (OMB) and appropriate committees and subcommittees of Congress by January 31, 2004.

Each year, HUD provides funds to nearly 3,200 housing authorities nationwide and spends approximately \$24.6 billion to benefit nearly 4.8 million households.³ The report finds material weaknesses and reportable conditions regarding internal controls at HUD related to (1) compliance with federal financial management system requirements and information technology systems oversight and (2) monitoring of subsidy calculations and grantee program performance.⁴ While these issues have been ongoing and were previously made known to HUD in prior audits, the report notes that many persist and solutions from the department are slow to materialize.⁵

⁷The court here relied on HUD regulations at 24 C.F.R. § 982.310(d) (2003), providing a non-exclusive list of circumstances possibly establishing good cause for terminating a lease, including "[a] family history of ... destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises." The record demonstrated a history of various tenant-caused conditions found by PHA inspectors that were apparently admitted by the tenant and found by the trial court.

¹RANDY W. MCGINNIS, HUD OFFICE OF INSPECTOR GENERAL, AUDIT OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FINANCIAL STATEMENTS FOR FISCAL YEARS 2003 AND 2002 (2003), <http://www.hud.gov/oig/ig4f0003.pdf>.

²Pub. L. No. 103-62, 107 Stat. 285 (Aug. 3, 1993).

³MCGINNIS, *supra* note 1, at 4.

⁴*Id.* at 1.

⁵*Id.* at 7.

GAO Provides Useful Insights into PHA Program Management for Advocates

One material weakness noted by the report is HUD's inability to oversee and monitor subsidy calculations and program compliance by grantees. The report states that, in 2003, HUD inconsistencies and grantee errors resulted in incorrect payments being made in the amount of \$1.549 billion in annual housing subsidies of which \$987 million were overpayments and \$562 million were underpayments.⁶ This is a drastic increase in discrepancies and billing errors from even the prior year, when they were estimated to be \$614 million (\$379.2 million in overpayments and \$235.2 million in underpayments).⁷

Beyond this, the report notes significant security weaknesses in HUD's computing environment at data centers, the networks and servers that provide critical information for all of HUD's programs.⁸ Weaknesses with general system controls, applications and security management lend themselves to increased risk of loss of information, funds, property or assets, or the misappropriation of information.⁹

The OIG examined the Public and Indian Housing Information Center (PIC) system and the Tenant Rental Assistance Certification System (TRACS) and found significant weaknesses that could affect the integrity, confidentiality and availability of data. For example, inactive contractors and terminated HUD employees continued to have active and usable access codes to the databases more than six months after they should have been purged from the system.¹⁰ The breach of security in these systems is no small matter. Since its inception in 1999, the PIC data system has compiled detailed tenant family data and private information on over 3.5 million households.¹¹ PIC represents the largest internet data base system at HUD with over 3.6 million lines of code.¹² HUD must take seriously its obligation to safeguard residents' private and sensitive information from theft and misuse. With over 7 million victims of identity theft reported each year, these security weaknesses cannot be taken lightly and must be adequately resolved by HUD. ■

A recent General Accounting Office (GAO) report offers helpful insights to advocates trying to understand the perspective of their local public housing authorities (PHAs) on managing voucher or low-rent housing programs.¹ Readers may be surprised by the fact that PHAs of all sizes share similar views on most administrative issues affected by the Quality Housing and Work Responsibility Act of 1998 (QHWRA).² By the same token, the report reveals some areas of divergence that may be unexpected.

The GAO conducted a national study at the request of the Subcommittee on Housing and Transportation, and Committee on Banking, Housing and Urban Affairs of the United States Senate. The study focused on the eighteen QHWRA reforms that PHA industry groups flagged as most critical to PHA management. The reforms at issue range from minimum rent requirements and the repeal of federal preferences to the five-year and annual plan requirements, site-based waiting lists, and deconcentration requirements.

The study incorporates the opinions of PHA directors who responded to a survey, an analysis of data from HUD voucher and public housing assessment systems, and interviews of HUD headquarters and field office staff. The GAO provides easy-to-read charts indicating PHA opinion, by program size, as to whether a particular reform helped, had no impact, or was a hindrance to the PHA in its operation or management of HUD programs. For purposes of the study, PHAs that manage fewer than 250 vouchers or units of low-rent housing or both are considered small. Medium-sized agencies handle 250 to 1249 and large agencies handle 1250 or more.

Some results of particular interest include:

- Most PHAs find the annual plan requirement to be helpful. However, thirty percent of small PHAs find the five-year and annual plan requirements to be a hindrance versus only thirteen percent of large PHAs.
- Most small PHAs find the resident advisory board requirement neutral in impact or a hindrance versus most large PHAs, which find it helpful.
- Late or inadequate guidance from HUD continues to hamper the majority of all PHAs to at least some extent, increasing the staff time spent on HUD programs.
- Most PHAs of all sizes report a lack of resources for hiring and training new staff and report that the need to train staff contributes to increased time spent on HUD programs.

⁶*Id.* at 18.

⁷*Id.* at 19.

⁸*Id.* at 35.

⁹*Id.*

¹⁰*Id.* at 36.

¹¹*Id.* at 38.

¹²*Id.*

¹GAO, PUBLIC HOUSING: SMALL AND LARGER AGENCIES HAVE SIMILAR VIEWS ON MANY RECENT HOUSING REFORMS (2003) (GAO-04-19), available at <http://www.gao.gov/find.html>.

²Pub. L. No. 105-276, tit. V, 112 Stat. 2461, 2518 (Oct. 21, 1998) (codified at scattered sections of 42 U.S.C.).

PHA program administration has real, measurable effects on the programs that low-income families are trying to access. For example, small PHAs have a harder time leasing up vouchers because, the report states, they have less experience managing such units.³ As a consequence, small PHAs tend to receive lower Section 8 Management Assessment Program (SEMAP) scores from HUD. If a PHA's overall SEMAP score is too low, it may not be eligible to apply for additional vouchers needed by its local community or may risk losing the vouchers it already administers. This is a clear-cut example of how knowing and understanding the administrative problems of local PHAs can make a positive difference. Armed with that knowledge, advocates may be able to assist PHAs in addressing problems they are experiencing, either directly or by bringing in outside expertise. Addressing administrative problems with local PHAs can improve local voucher or low-rent housing programs and, in the long-run, free advocates to work on other issues. ■

HUD Releases Moving to Opportunity Study Interim Results

Final Results May Shape National Housing Policy

In December 2003, HUD released the interim results of a new long-term study titled "Moving to Opportunity for Fair Housing Demonstration."¹ The Moving to Opportunity (MTO) demonstration project, originally funded by Congress in Fiscal Year 1992, provided \$70 million in Section 8 rental assistance for a ten-year study of the impact that moving families out of the poorest neighborhoods (with poverty rates of forty percent or more) into areas where less than ten percent of the population was poor would have on their well-being, development and growth. MTO targeted five major cities: Baltimore, Boston, Chicago, Los Angeles and New York.² The study examines the effect that moving families into lower poverty areas has had on family physical and mental well-being, education, youth delinquency, behavior, employment, self-sufficiency, quality of housing, neighborhood safety, income and public welfare assistance in all targeted groups.

³GAO, *supra* note 1, at 35.

¹U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF POLICY DEVELOPMENT & RESEARCH, MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM, INTERIM IMPACTS EVALUATION (2003), <http://www.huduser.org/publications/fairhsg/mtoFinal.html>.

²*Id.* at ii-iii.

Criteria and Control Factors

Between June 1994 and July 1998 families applied to participate in the demonstration.³ In order to be eligible, families had to live in public housing or private assisted housing in areas with very high poverty rates (forty percent or more), have very low incomes and have children under eighteen years of age. Of the 4608 families found to be eligible, 3169 families were offered vouchers and 1676 were able to find a unit and successfully move.⁴

Each family was randomly assigned to one of three groups: the experimental group, the Section 8 group and the control group. The *experimental group* was offered housing vouchers that could only be used in very low poverty neighborhoods (where less than ten percent of the population was poor). This group was provided assistance in securing their housing. The *Section 8 group* was offered vouchers with no geographical restriction or assistance in locating housing. Finally, the *control group* was not offered any voucher assistance but continued to live in public housing or receive other project-based assistance (in an area with a poverty rate of forty percent or more).⁵

Background

Studies such as the MTO are not new in concept. Interest in examining factors such as family mobility and geographic location as a means to shape the future outcomes for low-income families originated over thirty years ago with the *Gautreaux* program. The *Gautreaux* program was a desegregation program sanctioned by a federal district court in Chicago in connection with a class-action lawsuit.⁶ The lawsuit, named for the tenant activist Dorothy Gautreaux, was brought against HUD and the Chicago Housing Authority (CHA) by African-American public housing residents who alleged that the CHA had intentionally chosen public housing sites and established policies that promoted racial segregation.⁷ As a result of that case, HUD and the CHA were ordered to provide a housing mobility option throughout the Chicago area for 7100 African-American families. As the policy took shape in the 1970s, families were helped to move out of racially isolated areas to more integrated settings.⁸ Beginning in the 1980s, research demonstrated that the families who moved to less segregated areas saw measurable improvements in employment, school performance (although there were initial declines), school drop outs, and post-high school degrees.⁹ The *Gautreaux* findings inspired a great deal of interest because the data seemed to suggest that social and

³*Id.* at i.

⁴*Id.* at ii.

⁵*Id.*

⁶*Id.* at iv.-v.

⁷*Id.*

⁸*Id.*

⁹*Id.* at v.

economic improvements could result from removing families from areas of highly concentrated poverty. MTO was designed to test whether the theory that simply moving families to lower concentrated poverty areas could truly accomplish such changes or whether there are factors other than strict poverty ratios that influence such positive results.¹⁰

Interim Results

The interim or short-term results of the MTO study demonstrate mixed outcomes. The anticipated outcomes were categorized as short to mid-term and long-term. In the short to mid-term, the researchers anticipated that there would be improvements in housing, neighborhood safety, health and delinquency. Actual results were mixed. While residents in the experimental and Section 8 groups reported improvements in neighborhood safety, police response, and improved housing conditions, there was a mixed result on youth delinquency and behavior.¹¹ The results show that, among young girls who participated in the MTO, there was a large reduction in the number who were arrested for violent crimes with no effect on the incidence of arrests for other crimes.¹² For young boys in the experimental group, there was an increase in the proportion and frequency of arrests for property crimes. Researchers thought this might be the result of more stringent policing in the new locations rather than increased criminal behavior. For girls aged fifteen to nineteen in the experimental group, there were reductions in “risky” behavior.¹³ Among boys in this age group there were increases in smoking but not other types of risky behavior.¹⁴ Measures of other factors such as health revealed one significant outcome. Adults in the experimental group demonstrated a large reduction in obesity and improvement in mental health with no significant effects on other adult health issues such as asthma or high blood pressure.¹⁵ Among children, the significant effects of MTO were shown in the reduction of psychological stress and reductions in anxiety disorders among girls.¹⁶

The researchers hypothesize that it will take longer than four to seven years to determine MTO effects on education, employment and economic self-sufficiency.¹⁷ The *Gautreaux* research suggests that children moving to schools with drastically different characteristics often demonstrate achievement losses in the short term but are able to integrate and excel in the long run.¹⁸ The interim MTO results indicate

that students in the experimental and Section 8 groups attend schools with an average ranking slightly higher than those of the control group.¹⁹

The interim results on employment and earnings showed no effect. The researchers, however, noted that there was an increase in the number of female youth attending school instead of working. Girls in these groups perceived their chances of going to college and securing higher-paying jobs as much better than their control group counterparts.²⁰ While the receipt of public welfare assistance rates dropped by half, they did so among all three of the groups, indicating no short- to mid-term impact on public welfare assistance under MTO.²¹

One lesson that can be drawn from these interim results is that the placement of families based strictly on regional poverty rate may be too simplistic a measurement to determine long-term well-being and growth.

Conclusion

One lesson that can be drawn from these interim results is that the placement of families based strictly on regional poverty rate may be too simplistic a measurement to determine long-term well-being and growth.²² Residential neighborhoods are multi-dimensional and complex and no single attribute, such as poverty concentration, can capture all of the attributes necessary to succeed in life.²³ Further, the report states that, while some problems do appear to be environmental, it cannot conclude that physical health, educational performance, employment, earnings and welfare dependence are amenable to housing policies that simply change families’ physical environment.²⁴ If this trend is borne out in the final report, it suggests that policies designed to deal directly with these problems themselves, such as educational improvements, employment and job training, and welfare-to-work initiatives, might be more effective long-term solutions than simple environmental change and poverty deconcentration.²⁵ ■

¹⁰*Id.*

¹¹*Id.* at ix.-xi.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at x.

¹⁶*Id.*

¹⁷*Id.* at xi.

¹⁸*Id.*

¹⁹*Id.* at xii.

²⁰*Id.* at xiii.

²¹*Id.*

²²*Id.* at xvii.

²³*Id.*

²⁴*Id.* at xviii.

²⁵*Id.*

National Study Documents High Level of Housing Discrimination Against Native Americans

The groundbreaking third phase of the Department of Housing and Urban Development's (HUD) Housing Discrimination Study 2000 reveals that Native Americans are at the highest risk in the United States of experiencing discrimination when attempting to rent or buy a home. Results of the third phase have been published in a report prepared by the Urban Institute.¹ According to the third phase report, it appears that Native Americans are the least likely to be helped by fair housing groups. Hopefully, the results of this study will spur local fair housing agencies and other advocates that are not already serving Native Americans to focus energies on this underserved group.

The HUD study documents discrimination against Native Americans in metropolitan rental and sales markets, using a rigorous paired testing method. The study focuses on three states: Minnesota, Montana and New Mexico. Testers were drawn from tribes that predominate in each of the states, and the report provides a breakdown of completed tests by tribe. To ensure recognition of tester's ethnicity, testers had Native American surnames and introduced themselves at the beginning of each test.

Housing Availability for Renters

As with testing done for the Asian Pacific Islander report,² the Native American study examines fourteen rental treatment indicators and fifteen pertaining to sales, out of which a composite treatment measure is derived. The results of the study show high levels of discrimination against Native American renters. Property agents consistently withheld information about the availability of units. This occurred 28.6 percent of the time in Montana, 25.7 percent in New Mexico and 33.3 percent in Minnesota. The fact that no statistically significant amounts of adverse treatment were found in the other tested categories of housing inspections, costs and agent encouragement seems unsurprising. Those are activities that can take place only after an applicant is informed that there is housing available in the first place. The report shows that Native Americans are being denied access to housing in the most basic way possible—by being told that the housing is not available in the first place.

¹MARGERY AUSTIN TURNER & STEPHEN L. ROSS, THE URBAN INSTITUTE METROPOLITAN HOUSING AND COMMUNITIES POLICY CENTER, DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: PHASE 3 - NATIVE AMERICANS (2003), http://www.huduser.org/publications/hsgfin/hds_phase3.html.

²MARGERY AUSTIN TURNER & STEPHEN L. ROSS, THE URBAN INSTITUTE METROPOLITAN HOUSING AND COMMUNITIES POLICY CENTER, DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: PHASE 2 - ASIANS AND PACIFIC ISLANDERS (2003), http://www.huduser.org/publications/hsgfin/hds_phase2.html. See also NHLP, *National Report Documents Discrimination Against Asian and Pacific Islanders in Housing Market*, 33 HOUS. L. BULL. 441, 448-9 (Nov./Dec. 2003).

Agent Steering of Homebuyers in New Mexico

Native American homebuyers in New Mexico, the only state in which home sales were tested, do not experience statistically significant amounts of discrimination when it comes to being accurately informed of housing availability. However, they do experience a significant amount of geographic steering, which occurred 16.9 percent of the time.³

Fair Housing Groups and Native Americans

A significant finding of this report is the lack of involvement or connection of fair housing groups to Native Americans in the states included in the study. Few fair housing organizations have ever worked with Native Americans as testers. There are ten states in which Native Americans exceed 50,000 in number and constitute more than 1 percent of the total population: Alaska, Arizona, California, Minnesota, Montana, New Mexico, North Carolina, Oklahoma, South Dakota and Washington. However, the study covered only three of these states because of the lack of capacity of fair housing and other organizations to conduct paired tests. A lack of experienced groups and testers was one of the reasons why sales testing was limited to New Mexico.

The report recommends that fair housing organizations reach out to existing Native American groups to build ties so that Native Americans can be more fully served. Organizations with long-standing relationships with Native American groups were the most successful in testing.⁴ To be able properly to support testers, who may have had little contact with non-Native Americans, careful coordination and a relationship of trust is essential. The results of the study, even taking into account the relatively small number of tests conducted and regions tested, document the need for fair housing assistance for Native Americans, as well as the need for further study of the types and incidence of discrimination taking place. Against the backdrop of a national history that is rooted in the dispossession of and discrimination against Native Americans, the data on sales and rental discrimination should not come as a surprise. Fair housing groups, particularly in states with a critical mass of Native American residents, hopefully will be able to use the report's findings to secure additional resources to provide urgently needed services to Native American communities. ■

³The study notes that results from just one state are insufficient statistically to draw conclusions about the Native American homebuying experience nationally. The incidence of discrimination elsewhere could be higher or lower.

⁴TURNER & ROSS, *supra* note 1, at 2-13.

District Court Rebuffs HOPE VI Fair Housing Case on Remand

On January 6, 2004, Judge Stephen Limbaugh of the United States District Court of the Eastern District of Missouri issued a decision in *Darst-Webbe Tenant Association Board v. St. Louis Housing Authority*, 2004 WL 97624 (E.D. Mo. Jan. 6, 2004). The remarkably frustrating opinion follows a reversal in part and remand in August 2003 of Judge Limbaugh's December 2001 decision in the case¹ by the Eighth Circuit.² The Eighth Circuit decision was the subject of a previous article in the *Housing Law Bulletin*.³

The suit involves the Darst-Webbe and Clinton-Peabody public housing developments operated by the Saint Louis Housing Authority (SLHA), which is the subject of a Fiscal Year 1995 HOPE VI redevelopment grant. Plaintiffs Darst-Webbe Tenant Association and Housing Comes First, Inc. have asserted claims of discrimination on the basis of race, sex, and familial status; violations of HUD program requirements; and the defendants' failure to comply with their affirmative duty to further fair housing. Specifically, the plaintiffs challenge the loss of hundreds of public housing units threatened by the HOPE VI redevelopment, which poses disproportionate harm to African-American families, families with children, and others.

Judge Limbaugh's original decision, which followed a bench trial in the case, was reversed in part by the Eighth Circuit for failure to comply with Rule 52(a), Federal Rules of Civil Procedure, which requires a trial court to state its findings of fact and conclusions of law separately and specifically.⁴ Judge Limbaugh's January 2004 memorandum opinion after remand rules in favor of the defendants HUD and the housing authority, on all remaining counts. The opinion does include specific factual findings and legal conclusions, but they are not sufficient to support the result reached. The opinion confuses the applicable legal standards and makes inadequate factual findings.

First, the January 2004 opinion confuses the legal standards for disparate treatment and disparate impact claims under the Fair Housing Act.⁵ A disparate treatment claim has to do with deliberate or purposeful discrimination; the plaintiff must show "discriminatory animus." A disparate impact claim, however, does not. Disparate impact claims involve "facially neutral" practices that cause disproportionate harm to members of classes protected under the civil

rights laws.⁶ The opinion, which is not crisply organized, appears to elide the distinction between these two standards. For instance, in rejecting the plaintiffs' disparate impact claims, it states that no evidence of "treatment different from any non-protected class" was presented.⁷

The opinion further addresses rebuttal standards as an alternative basis for its conclusion.⁸ It concludes that even if the plaintiffs had made a prima facie showing for their fair housing claims, the defendants adequately rebutted that showing. The opinion focuses on HUD and the housing authority's efforts "to create an economically and racially mixed community."⁹ It cites the activities undertaken by the defendants in preparing a redevelopment plan. However, the opinion merely assumes that the plan will achieve its stated objectives. Further, it does not even mention the expert testimony presented by the plaintiffs regarding patterns of voucher utilization in St. Louis and the reconcentration of displaced families in impacted neighborhoods.¹⁰

The opinion's treatment of the defendants' breach of affirmative duties to further fair housing has an even weaker evidentiary basis. Under the Fair Housing Act and other legal authorities, HUD and public housing authorities (PHAs) have an affirmative obligation to further fair housing in the administration of their programs. This requires HUD to collect relevant racial and socio-economic data and to use these data to inform their program decisions.¹¹ The plaintiffs showed at trial that the defendants failed to do this in conjunction with their HOPE VI project. Apparently a result of a scouring of the record for any evidence to the contrary, the opinion cites an analysis of impediments (AI) report for the city of St. Louis approved by HUD in 1997 in connection with the Community Development Block Grant (CDBG) program.¹² On the basis of this report, which was approved years after the HOPE VI grant was made, the opinion concludes that HUD complied with its affirmative fair housing duty. The opinion does not address the plaintiffs' separate claim against the housing authority for violation of its affirmative fair housing duty.

The plaintiffs' appeal is due in March 2004. ■

¹*Darst-Webbe Tenant Ass'n Bd. v. Saint Louis Housing Authority*, 202 F. Supp. 2d 938 (E.D. Mo. 2001).

²*Darst-Webbe Tenant Ass'n Bd. v. St. Louis Housing Authority*, 339 F.3d 702 (8th Cir. 2003).

³NHLP, *Eighth Circuit Reverses Unfavorable District Court Ruling in HOPE VI Fair Housing Case*, 33 HOUS. L. BULL. 391, 396-7 (Sept. 2003).

⁴*Darst-Webbe Tenant Ass'n Bd.*, 339 F.3d at 711-2.

⁵42 U.S.C.A. §§ 3601 *et seq.* (West 2003).

⁶*See, e.g., Chambers v. Omaha Girls Club* 834 F.2d 697 (8th Cir. 1987) (employment discrimination). *See also* NHLP, *Fair Housing Litigation to Prevent the Loss of Federally Assisted Housing: The Duties of Public Housing Authorities and Project Owners: Part One*, 31 HOUS. L. BULL. 73, 73-86 (APR. 2001).

⁷*Darst-Webbe*, 2004 WL 97624, at *4.

⁸Once a plaintiff makes a prima facie showing of disparate impact or disparate treatment, the burden shifts to the defendant to provide a rebuttal. Where, as in the opinion, it is determined that a plaintiff has not made a prima facie case, a court usually does not need to address the defendant's rebuttal.

⁹*Darst-Webbe*, 2004 WL 97624 at *6.

¹⁰*Id.*

¹¹*See* NHLP, *HUD's Fair Housing Duties and the Loss of Public and Assisted Units*, 30 HOUS. L. BULL. 1 (Jan. 1999); NHLP, *Fair Housing Litigation to Prevent the Loss of Federally Assisted Housing: The Duties of Public Housing Authorities and Project Owners: Part One*, 31 HOUS. L. BULL. 73, 73-86 (Apr. 2001).

¹²*Darst-Webbe*, 2004 WL 97624 at *10.

Recent Cases

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

Affordable Housing Use Restrictions

United States v. East Ridge Associates, 2003 WL 22928887 (D. Me. Dec. 11, 2003). Movant mortgagor and owner of Department of Agriculture (USDA) Multifamily Housing (MFH) program property filed motion for preliminary injunction to bar the foreclosure sale of the MFH property with use restrictions. These use restrictions, required under the Farmer's Home Administration loan agreement for the property and MFH regulations, directed that the property continue to be used as housing for people eligible under the Section 515 program. Movant contended that the use restriction reduced the value of the property by \$1.7 million and that the foreclosure sale was therefore commercially unreasonable and should not proceed with the use restriction. The district court rejected Movant's arguments as directly contrary to the loan agreement and regulations and denied the motion.

Fair Housing

Neudecker v. Boisclair Corp., 351 F.3d 361 (8th Cir. 2003). Pro Se Appellant tenant filed an action in federal court alleging, inter alia, violations of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.* Appellant alleged that other tenants and children of Appellee landlord's employees harassed and threatened Appellant based on his disability, obsessive compulsive disorder (OCD). The complaint further alleged that when Appellant complained, Appellee's employees threatened to evict him. The district court dismissed Appellant's claims. The Eighth Circuit reversed. It concluded that Appellant adequately stated a claim of retaliation under the Fair Housing Act and Section 504. Analogizing to employment discrimination law, it also concluded that a claim of disability harassment is actionable under both statutes and that Appellant adequately stated such a claim.

Wallace v. Chicago Housing Authority, 2003 WL 23144864 (N.D. Ill. Dec. 24, 2003). Movant public housing authority filed a motion to dismiss an action filed by Respondent public hous-

ing residents. Respondents challenged Movant's failure to provide adequate relocation services in connection with the demolition of public housing developments. Respondents alleged that Movant steered public housing families away from relocation into predominantly white or integrated neighborhoods. The district court held, inter alia, that Movant was subject to an affirmative duty to further fair housing and to prevent discrimination under the Fair Housing Act, 42 U.S.C. § 3608, the Quality Housing and Work Responsibility Act, 42 U.S.C. § 1437c-1(d)(15), and Executive Orders 11063 and 12892 and regulations. Distinguishing *Gonzaga University v. Doe*, 536 U.S. 273 (2002), the court held that these legal authorities created federal rights enforceable under 42 U.S.C. § 1983. The court denied Movant's motion as to these claims. The court also denied Movant's motion as to Respondents' claims of racial steering, perpetuation of segregation and disparate impact under the Fair Housing Act, 42 U.S.C. § 3604. The court granted Movant's motion as to Respondents' claims for violations of the Uniform Relocation Act, 42 U.S.C. §§ 4601 *et seq.*, affirmative fair housing duties imposed under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and regulations, and Respondent's third party rights under Movant's Moving to Work (MTW) agreement with the Department of Housing and Urban Development.

Low-Income Housing Tax Credit

Spring Hill, L.P. v. Tennessee State Board of Equalization, 2003 WL 23099679 (Tenn. Ct. App. Dec. 31, 2003). Appellant owners of Low-Income Housing Tax Credit (LIHTC) properties appealed the ruling of a state trial court that county assessors did not improperly include the present value of the tax credits in valuations of the properties. Applying Tennessee constitutional and statutory law, the court of appeals affirmed the trial court's decision. ■

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

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

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD) and the Department of Agriculture's (USDA) Rural Housing Service (RHS) issued in December of 2003. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

Copies of the cited documents may be secured from various sources, including (1) the Government Printing Office's Web site on the World Wide Web,¹ (2) bound volumes of the *Federal Register*, (3) HUD Clips,² (4) HUD,³ and (5) USDA's Rural Development Web page.⁴ Citations are included with each document to help you secure copies.

HUD Federal Register Interim Rules

68 Fed. Reg. 67,316 (Dec. 1, 2003)

Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities and Other Changes to 24 CFR Part 891

Summary: This interim rule implements statutory changes that enable the use of mixed-finance and for-profit participation in the Section 202 supportive housing programs for the elderly and the Section 811 supportive housing program for persons with disabilities, as well as makes other changes to those programs. The rule uses the mixed-finance development model to leverage the capital and expertise of the private developer community to create attractive and affordable supportive housing developments for the elderly or persons with disabilities. In addition, the rule is structured so that tax credits can be used to provide additional units as well as supplement capital advance funds for the Section 202 or 811 project. The rule sets standards for the participation of limited partner investors (who may be for-profit entities) in partnership with a sole-purpose nonprofit general partner; development proposals and supporting documents; eligible fees and expenses; the use of capital advances in the mixed-finance context; and other matters relevant to mixed-finance development of these types of projects. The effective date of the information collection requirements in this rule is delayed pending approval of the information collections required by this rule under the Paperwork Reduction Act. HUD will publish a notice when paperwork approval for this rule is obtained.

Comment Due Date: January 30, 2004.

Effective Date: December 31, 2003.

¹At http://www.access.gpo.gov/su_docs.

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

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

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

68 Fed. Reg. 69,580 (Dec. 12, 2003)

Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments

Summary: This interim rule revises the Community Development Block Grant (CDBG) program regulations by replacing the obsolete term "central city" with a new term "principal city" in the definition of "metropolitan city" and other CDBG regulations referencing "central city." The revisions are necessary because of the recent changes to the Office of Management and Budget's (OMB) Standards for Defining Metropolitan and Micropolitan Statistical Areas (MSAs) and the announcement in 2003 of new definitions for those areas using Census 2000 data. The rule updates the affected CDBG program regulations so that the terminology used by HUD is consistent with OMB standards and the purposes of the Housing and Community Development Act of 1974.

Effective Date: January 12, 2004.

Comments Due Date: February 10, 2004.

HUD Federal Register Semiannual Regulatory Agenda

68 Fed. Reg. 70,046 (Dec. 22, 2003)

Semiannual Regulatory Agenda

Summary: In accordance with Section 4(b) of Executive Order 12866, "Regulatory Planning and Review," as amended, HUD has published its agenda of regulations already issued or that are expected to be issued over the next several months. The agenda also includes rules currently in effect that are under review, and describes those regulations that may affect small entities as required by Section 602 of the Regulatory Flexibility Act.

HUD Federal Register Notices

68 Fed. Reg. 67,201 (Dec. 1, 2003)

Notice of Proposed Information Collection for Public Comment: Project Rent Surveys for Update of Section 8 Fair Market Rents

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for review and approval. The Department is soliciting public comments on the subject proposal. HUD is testing a new methodology to determine if it can be used in place of telephone random digit dialing (RDD) surveys of individuals. While RDD telephone surveys have been used for several years to adjust FMRs, these surveys are becoming more difficult and more costly to conduct. This survey of project rents would replace both the regional and area telephone RDDs with surveys of approximately thirty standard rental projects in 200 areas. These project surveys would provide regional change factors for updating the FMRs and specific change factors will be calculated for FMR areas where the Section 8 program is not working properly. The survey will be conducted in the

field by qualified rental appraisers with the project management staff. In each area, thirty rental projects will be surveyed and questions will cover rent, age of structure, utilities, number and size of units, and recent changes to the area.

Dates: January 30, 2004.

68 Fed. Reg. 68,406 (Dec. 8, 2003)

Announcement of Funding Award for Fiscal Year 2003 to the Housing Assistance Council

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of an award for Fiscal Year 2003 to the Housing Assistance Council.

68 Fed. Reg. 68,406 (Dec. 8, 2003)

Announcement of Funding Awards for Fiscal Year 2003, Research and Technology Unsolicited Proposals

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 unsolicited research. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission and HUD's acceptance of unsolicited proposals for research funding.

68 Fed. Reg. 68,641 (Dec. 9, 2003)

Announcement of Funding Award—FY 2001 Healthy Homes Grant Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of the award.

68 Fed. Reg. 68,642 (Dec. 9, 2003)

Announcement of Funding Award—FY 2002 Healthy Homes Demonstration, and Healthy Homes and Lead Technical Studies Grant Programs

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Lead Technical Studies Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipients and the amounts of the award.

68 Fed. Reg. 68,643 (Dec. 9, 2003)

Announcement of Funding Award—FY 2002 Operation Lead Elimination Action Program (LEAP)

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition

for funding under the LEAP Notice of Funding Availability (NOFA). The purpose of the LEAP program is to leverage private sector resources to eliminate lead poisoning as a major public health threat to young children. This announcement contains the name and address of the award recipient and the amount of the award.

68 Fed. Reg. 68,644 (Dec. 9, 2003)

Announcement of Funding Award—FY 2001 Healthy Homes Grant Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Program Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of the award.

68 Fed. Reg. 68,648 (Dec. 9, 2003)

Public Housing Operating Fund; Notice of Availability of Information and Request for Comments

Summary: Through this notice, HUD invites public housing agencies (PHAs), public housing residents, and other interested members of the public to HUD's Web site that provides information about the Public Housing Operating Fund Formula. The Operating Fund Formula determines the allocation of operating subsidies to PHAs. The Operating Fund Formula currently in effect was established by a March 29, 2001, interim rule, which followed a July 10, 2000, proposed rule developed through negotiated rulemaking procedures. The Web site continues the discussion of possible changes to the Operating Fund Formula, initiated during the development of and continuing through the recent release of a study of the cost of operating public housing conducted by the Harvard University Graduate School of Design. HUD's Web site presents issues for consideration and solicits comments from the public on the substance and form of a revised Operating Fund Formula.

Comment Due Date: January 30, 2004.

68 Fed. Reg. 69,715 (Dec. 15, 2003)

Notice of Funding Awards; Mainstream Housing Opportunities for Persons With Disabilities (Mainstream Program) for Fiscal Year 2003

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Mainstream Program for Fiscal Year (FY) 2003. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.

68 Fed. Reg. 70,284 (Dec. 17, 2003)
Notice of Proposed Information Collection for Public Comment: Telephone Surveys of Nonprofit Sponsors of HUD-Assisted Properties for the Elderly Regarding Knowledge of or Experience with HUD's Assisted Living Conversion Program

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for review and approval. The Department is soliciting public comments on the subject proposal. The information to be collected is part of a larger study, conducted by Econometrica Inc. and Abt Associates, Inc., of the early implementation and outcomes of the Assisted Living Conversion Program. Specifically, the study will look at the characteristics of projects eligible to apply for the ALCP; the characteristics of funded projects and the experience of funded grantees with the conversion process; and, for eligible project sponsors who have not applied for funding, the reasons they have not applied.

Comments Due Date: February 17, 2004.

68 Fed. Reg. 70,831 (Dec. 19, 2003)
Privacy Act of 1974; Establishment of a New System of Records

Summary: Pursuant to the provision of the Privacy Act of 1974 (5 U.S.C. 552a), HUD is giving notice that it proposes to establish a new system of records entitled the "Single Family Neighborhood Watch Early Warning System" (NW). HUD staff and lenders use NW to monitor default and claim rates on FHA insured loans for FHA approved lenders and FHA programs. The system includes records from individuals who have obtained a mortgage insured under HUD/FHA's single-family mortgage insurance programs. It also includes records from individuals involved in the HUD/FHA single-family loan origination process. Specifically, records contained in the system include borrowers' name, property address, Social Security Number or other identifying numbers. NW is a Web-based query tool that displays summary and loan level origination, default and claim information by originating, sponsoring, principal, and agent lenders for two-year periods by beginning amortization date for FHA insured loans, etc.

Effective Date: This proposal shall become effective without further notice on January 20, 2004, unless comments are received on or before that date which would result in a contrary determination.

Comments Due Date: January 20, 2004.

68 Fed. Reg. 70,968 (Dec. 19, 2003)
Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

Summary: HUD has published a proposed "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (Guidance) as required by Executive Order 13166, which addresses assistance to

recipients of federal financial assistance who have limited English proficiency.

Comments Due Date: February 5, 2004 (extended by 69 Fed. Reg. 3,167 (Jan. 22, 2004)).

68 Fed. Reg. 70,982 (Dec. 19, 2003)
Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

Summary: This document designates "Difficult Development Areas" and "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986. The United States Department of Housing and Urban Development (HUD) makes new Difficult Development Area designations annually and makes Qualified Census Tract Designations at this time due to the recent release of relevant data from the 2000 Census.

68 Fed. Reg. 71,121 (Dec. 22, 2003)
Notice of Proposed Information Collection: Comment Request; Customer Satisfaction Surveys

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for review and approval. The Department is soliciting public comments on the subject proposal. The information collection relates to Executive Order 12862, "Setting Customer Service Standards," which requires that federal agencies provide the highest quality service to customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers.

Comments Due: February 20, 2004.

68 Fed. Reg. 71,122 (Dec. 22, 2003)
America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Proposals for Incentive Criteria on Barrier Removal in HUD's Funding Allocations; Extension of Public Comment Deadline

Summary: On November 25, 2003, HUD published a notice that announced HUD's intention to establish in the majority of its FY 2004 Notices of Funding Availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. This new policy priority will be added to the list of policy priorities that HUD traditionally includes in its NOFAs. As a policy priority (and like the other policy priorities), higher rating points will be available to governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and to nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. HUD also solicited comment on the November 25, 2003, notice. The purpose of this notice is to announce that the public comment due date has been extended to January 12, 2004.

Comments Due Date: January 12, 2004.

68 Fed. Reg. 74,629 (Dec. 24, 2003)

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Historically Black Colleges and Universities

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for review and approval. The Department is soliciting public comments on the subject proposal. The information is being collected to select applicants for awards in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Comments Due Date: February 23, 2004.

68 Fed. Reg. 75,268 (Dec. 30, 2003)

Announcement of Funding Award—FY 2000, Lead-Based Paint Hazard Control; Duke University of Durham, NC

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Duke University of Durham, NC. This announcement contains the name and address of the awardee and the amount of the award.

68 Fed. Reg. 75,268 (Dec. 30, 2003)

Announcement of Funding Award—FY 2002 and FY 2003, Lead-Based Paint Hazard Control; National Academy of Sciences

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the National Academy of Sciences of Washington, D.C. This announcement contains the name and address of the awardee and the amount of the award.

68 Fed. Reg. 75,268 (Dec. 30, 2003)

Announcement of Funding Award—FY 2000, Lead-Based Paint Hazard Control; President and Fellows of Harvard College of Boston, MA

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the National Academy of Sciences of Washington, D.C. President and Fellows of Harvard College of Boston, MA. This announcement contains the name and address of the awardee and the amount of the award.

HUD Housing Notices

Notice H 2003-26 (Dec. 1, 2003)

Fiscal Year 2003 Annual Operating Cost Standards - Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs

Summary: This notice provides Operating Cost Standards (OCS), which HUD Office staff should use for calculating the annual per person/per unit Amount of a Project Rental Assistance Contract (PRAC) when making Fiscal Year 2003 subsidy fund reservations for Capital Advance applications under the subject programs.

Expires: December 31, 2004.

Notice H 2003-28 (Dec. 1, 2003)

Guidance on Asset Management Issues Concerning Bond Financed Section 8 Projects

Summary: This notice provides guidance regarding: (1) contract renewals and prepayment of mortgages in projects subject to bond refunding agreements, and (2) the servicing of McKinney Act shared savings bond refundings.

Expires: December 31, 2004.

Notice H 2003-29 (Dec. 9, 2003)

Reinstatement and Extension of Notice 95-7, Summary of HUD Policies on Multifamily Housing Bond Refinancing Transactions and Announcement of Certain Changes and Clarifications

Summary: Notice H 95-7, issued January 18, 1995, which was previously extended by Notice 02-7, is being reinstated and extended to December 31, 2003. In addition, please note that James Mitchell, (202) 708-3944, ext. 2612, is the only contact, and his information has changed since the last publication.

Expires: December 31, 2004.

Notice H 2003-30 (Dec. 23, 2003)

Elimination of Lead-Based Paint Hazards in HUD-Owned Single Family Properties Built Before 1978 and Sold with HA-Insured Financing

Summary: This notice cancels Housing Notice 01-01 and implements the requirements and terminology established by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992) and the lead-based paint regulations (the Lead Safe Housing Rule) at 24 CFR Part 35, Subpart F. The regulations establish procedures to eliminate lead-based paint hazards in HUD-owned single-family properties built before 1978 that are sold with Federal Housing Administration (FHA) insured mortgages (including 203(b) and 203(k) loans).

Expires: December 31, 2004.

Notice H 2003-31 (Dec. 29, 2003)
Reinstatement and Extension of Notice 97-31, Lead-Based Paint: Notification of Purchasers and Tenants in HUD-Insured, HUD-Held and HUD-Subsidized Housing

Summary: Notice H97-31, issued May 29, 1997, which was previously extended by Notice H99-1, is being reinstated and extended to December 31, 2004.

Expires: December 31, 2004.

HUD PIH Notices

Notice PIH 2003-32 (HA) (Dec. 5, 2003)
Extension-Notice PIH 2002-22 (HA), Units with Low-Income Housing Tax Credit Allocations Combined with Housing Choice Voucher Assistance Under the Tenant-Based and Project-Based Programs

Summary: This notice extends Notice PIH 2002-22 (HA), same subject, for another year, until November 30, 2004.

Expires: November 30, 2004.

Notice PIH 2003-33 (HA) (Dec. 19, 2003)
Implementation of the Public and Indian Housing Information Center (PIC) Demolition/Disposition Sub-module and Data Collection for Public Housing Unit Removals

Summary: Effective with the issuance of this notice, PHAs will be required to use a new sub-module in PIC to submit applications to the Special Applications Center (SAC) for units they are proposing to take out of the inventory of public housing, and to promptly record the removal of all such approved units after the action has taken place. HUD Field Offices must confirm in the PIC Demolition/Disposition sub-module the removal of units in order for their change in status to take effect in PIC. The purpose of this notice is to instruct PHAs and Field Office staff about their obligations to maintain up-to-date information in PIC, tracking the inventory of public housing units, and about the transition to the use of the PIC system for this purpose.

Expires: December 31, 2004.

Notice PIH 2003-34 (HA) (Dec. 19, 2003)
Rental Integrity Monitoring (RIM) Disallowed Costs and Sanctions Under the Rental Housing Integrity Improvement Project (RHIP) Initiative

Summary: This notice highlights the importance of timely and accurate income and rent determinations by Public Housing Agencies (PHAs) and the consequences for failure to identify and correct income and rent determination deficiencies. Over the past year, the Department has worked closely with PHAs nationwide in identifying the root causes of such deficiencies and developing corrective action plans to reduce the level of errors in subsidy calculations through the use of RIM reviews. It is now time to move forward with the RHIP goal of fifty percent error reduction by Fiscal Year 2005 and establish consequences for failure to address deficiencies. This notice addresses: incentives, disallowed costs and collection of excess subsidies paid; sanctions for failure to timely

respond to the RIM Review Report and to implement a Corrective Action Plan when required; adjustment of Section 8 Management Assessment Program (SEMAP) scores when inconsistent with the findings of RIM reviews; and Self-Assessment Reviews.

Expires: December 31, 2004.

RHS Federal Register Notice

68 Fed. Reg. 69,649 (Dec. 15, 2003)
Notice of Funds Availability (NOFA) Inviting Applications for the Rural Cooperative Home-Based Health Care Demonstration Program

Summary: This notice announces the availability of \$1 million of grant funds through the Rural Community Development Initiative (RCDI) Home-Based Health Care Demonstration Program through the Rural Housing Service. These grant funds are split into two forms: pre-development grants and revolving loan grants. The pre-development grants will not exceed \$50,000 each and will be made to qualified public bodies or nonprofit organizations to establish a home health care cooperative. The revolving loan grants will be made to qualified nonprofit or public organizations that will provide start-up funds and technical assistance to pre-planning grant recipients and home health care cooperatives established through this program. The intermediary recipients for the revolving loan funds will be required to provide matching funds at least equal to the grant funds awarded. This is a demonstration project intended to result in the establishment and operation of home-based health care cooperatives. As such, pre-development grants will be linked with a revolving loan grant, to the same community, in order that the full operation of the cooperative will occur. This notice lists the information needed to submit an application for these funds.

Deadline: February 13, 2004.

RHS Administrative Notice

RD AN No. 3924 (1930-C) (Dec. 17, 2003)
Servicing On-Farm Labor Housing Borrowers

Summary: This AN clarifies RHS policies with respect to rent charges in on-farm type housing and outlines the steps that field office employees should take to ensure that the regulations are not violated. The AN is issued, in part, to comply with a court order in the case of *Roman v. Korson*, No. 191-CV-274, slip op. (W.D. Mich. March 21, 2000). The court order mandated that the federal government cease its failure to enforce the rollback and rebate or credit provisions set out in paragraph VI of Exhibit C of RD Instruction 1930-C. The court also ordered the federal government to cease its failure to enforce the notice and comment provision set out in Exhibit C of RD Instruction 1930-C to tenants for proposed changes to shelter costs (*i.e.*, rent and utilities). The court also ordered the government to reissue this AN and to enforce its provisions.

Expiration Date: December 31, 2004. ■

INDEX

HOUSING LAW BULLETIN

January – December 2003

	Issue	Page
ARTICLES OF GENERAL INTEREST		
(see also FAIR HOUSING/DESEGREGATION; LEGISLATION; WELFARE AND HOUSING)		
Successful Housing Justice Network Meeting	Jan 03	14
Mac McCreight Honored with the 2002 David B. Bryson Award	Jan 03	15
Faith-Based Initiatives and Community Organizations:		
Government Sponsorship of Religious Activity	Feb 03	39
Federal Agencies Try to Corner the Market in Mortgage Regulation	Mar 03	69
Protections for Military Renter Households Under the Soldiers’ and Sailors’ Civil Relief Act	Apr/May 03	285
2003 Advocates’ Guide to Housing Policy	June 03	320
Business Owned by Low-Income Individuals Entitled to Damages for Violation of Section 3	July 30	356
The Harvard Joint Center for Housing Studies Releases 2003 Report on State of the Nation’s Housing	Sept 03	407
The Harvard Joint Center for Housing Studies Releases 2003 Report on State of the Nation’s Housing (Correction)	Oct 03	426
Building Our Houses: Public Housing and Section 8 at the Crossroads	Oct 03	417
Seniors Raising Children in Subsidized Housing	Nov/Dec 03	441
My Name is Not “Those People”	Nov/Dec 03	451
CASES		
<i>Harris v. United States Dept. of Hous. and Urb. Dev.</i> (Seattle HOPE VI Project Subject to NEPA)	Jan 03	9
<i>Wasatch Property Management v. Degrate</i> (Victory on Hold for Voucher Tenants Facing Evictions)	Jan 03	12
<i>Commonwealth v. Hicks</i> (Supreme Court to Review PHA’s Trespass Policy) (also called <i>Virginia v. Hicks, Hicks v. Commonwealth</i>)	Feb 03	37
<i>Wallace v. Chicago Housing Authority</i> (Chicago Tenants File Suit to Stop Displacement Abuses)	Feb 03	44
<i>Powell v. Housing Auth. of Pittsburgh</i> (Violent Criminal Acts are Grounds for PHA’s Termination of Certificate Even if Not in the Home’s Immediate Vicinity)	Feb 03	46
<i>Langlois v. Abington</i> (Local Residency Preferences for Section 8 Vouchers Violate the Fair Housing Act)	Mar 03	62
<i>Kimberly Associates v. United States</i> (9th Circuit Stays Order Allowing Section 515 Landlord to Prepay Loan)	Mar 03	71
<i>City of Cuyahoga Falls v. Buckeye Community Hope Foundation</i> (Supreme Court Rejects Claims for Damages Arising from City’s Approval of an Allegedly Discriminatory Housing Referendum)	Apr/May 03	301
<i>Cimarron Village v. Washington</i> (Lease Violation Sufficient Good Cause for LIHTC Eviction)	Jun 03	326
<i>Virginia v. Hicks</i> (Supreme Court Reverses Virginia Supreme Court’s Decision Based on First Amendment Overbreadth)	Jul 03	344
<i>Cienega Gardens v. U.S.</i> (Recent Takings Decisions on Preservation Laws Could Subject Feds to Big Liability)	Jul 03	350
<i>Chancellor Manor v. U.S.</i> (Recent Takings Decisions on Preservation Laws Could Subject Feds to Big Liability)	Jul 03	350
<i>Hines v. Charleston Housing Authority</i> (Owner Must Comply with ELIHPA When Prepaying Section 515 Loan)	Jul 03	354
<i>Mannarino v. Morgan</i> (Business Owned by Low-Income Individuals Entitled to Damages for Violation of Section 3)	Jul 03	356
<i>Forest Park II v. Hadley</i> (Federal Appellate Court Issues Stunning Preemption Decision)	Aug 03	378
<i>Darst-Webbe Tenant Ass’n Bd. v. St. Louis Housing Authority</i> (Eighth Circuit Reverses Unfavorable District Court Ruling in HOPE VI Fair Housing Case)	Sep 03	396

	Issue	Page
<i>Baldwin v. Housing Authority of the City of Camden</i> (Voucher Applicant Denied Due Process When Criterion of Creditworthiness Adopted at Informal Hearing)	Sep 03	397
<i>Topa Equities, Ltd. v. City of Los Angeles</i> (Ninth Circuit Rules Los Angeles May Set Base Rents for Converted HUD-Subsidized Properties)	Oct 03	423
<i>People To End Homelessness Inc., v. Develco Singles Apts.</i> (First Circuit Refuses Remedies for Improper Opt-Out Notice)	Oct 03	426
<i>San Francisco Housing Authority v. United States of America</i> (Court Allows Disqualification of HOPE VI Application, Cites Fair Housing)	Oct 03	427
<i>Giebel v. M&B Assocs.</i> (Ninth Circuit Requires Landlords to Adjust Economic Admission Requirements for Disabled Tenants)	Nov/Dec 03	446

CERTIFICATE PROGRAM (see SECTION 8 PROGRAMS—Housing Choice Voucher Program)

CONSTITUTIONAL ISSUES

(see also CRIMINAL ACTIVITY AND DRUGS; DISCRIMINATION; FAIR HOUSING/DESEGREGATION; PUBLIC HOUSING)

Supreme Court Reverses Virginia Supreme Court’s Decision Based on First Amendment Overbreadth	July 30	344
---	---------	-----

DISCRIMINATION (see FAIR HOUSING/DESEGREGATION; SECTION 8 PROGRAMS)

DOMESTIC VIOLENCE

Housing Benefits for Qualified Aliens Who Are Battered Still in Question	Apr/May 03	297
--	------------	-----

EMPLOYMENT (see WELFARE AND HOUSING; ARTICLES OF GENERAL INTEREST)

EVICCTIONS (see also HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF)

Victory on Hold for Voucher Tenants Facing Evictions	Jan 03	12
--	--------	----

FAIR HOUSING/DESEGREGATION

(see also HUD; LEGISLATION; CONSTITUTIONAL ISSUES; PUBLIC HOUSING)

Chicago Tenants File Suit to Stop Displacement Abuses	Feb 03	44
Local Residency Preferences for Section 8 Vouchers Violate the <i>Fair Housing Act</i>	Mar 03	62
NIMBY Report Urges Use of Civil Rights Laws to Advance Affordable Housing	Apr/May 03	295
Supreme Court Rejects Claims for Damages Arising from City’s Approval of an Allegedly Discriminatory Housing Referendum	Apr/May 03	301
Eighth Circuit Reverses Unfavorable District Court Ruling in HOPE VI Fair Housing Case	Sept 03	396
Revised Fair Housing Materials on People With Disabilities from the Bazelon Center	Sept 03	395
Court Allows Disqualification of HOPE VI Application, Cites Fair Housing	Oct 03	427
Seniors Raising Children in Subsidized Housing	Nov/Dec 03	441
Ninth Circuit Requires Landlords to Adjust Economic Admission Requirements for Disabled Tenants	Nov/Dec 03	446
National Report Documents Discrimination Against Asians and Pacific Islanders in Housing Market	Nov/Dec 03	448

FARMERS HOME ADMINISTRATION (FmHA) (see RURAL HOUSING SERVICE)

HOMELESSNESS

Bringing America Home Act Introduced to End Homelessness	Oct 03	425
--	--------	-----

HOMEOWNERSHIP

(see also HUD; LEGISLATION; SECTION 8 PROGRAMS—Homeownership)

Do Alternatives to Traditional Title Insurance Help Low-Income Homebuyers?	Mar 03	70
More Encouragement to Sell Off Public Housing—The Section 32 Homeownership Program	Apr/May 03	286

HOPE VI PROGRAM (see also PUBLIC HOUSING)

Uniform Relocation Act Guidance for HOPE VI Developments Issued	Jan 03	6
Seattle HOPE VI Project Subject to NEPA	Jan 03	9
Chicago Tenants File Suit to Stop Displacement Abuses	Feb 03	44
Incomplete Studies Quick to Laud HOPE VI Program	Apr/May 03	291
HOPE VI Reauthorization Passes House Committee	June 03	319
Eighth Circuit Reverses Unfavorable District Court Ruling in HOPE VI Fair Housing Case	Sept 03	396
Court Allows Disqualification of HOPE VI Application, Cites Fair Housing	Oct 03	427
HUD Issues FY 2004 HOPE VI NOFA	Nov/Dec 03	457

HOUSING ASSISTANCE FOR NEEDY FAMILIES (HANF)

Administration’s Voucher Block Grant Proposal Threatens Future Benefit Levels	Apr/May 03	281
Housing Assistance for Needy Families Act Threatens Neediest Families	June 03	309
Kerry Reintroduces Senate Version of National Housing Trust Fund Legislation	Sept 03	410

HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF (HUD)

(see also ARTICLES OF GENERAL INTEREST; FAIR HOUSING/DESEGREGATION; LEGISLATION; PUBLIC HOUSING; PRESERVATION; SECTION 8 PROGRAMS—Housing Choice Voucher Program)

Federal Housing Budget Braces for Approaching Storm	Jan 03	1
While Bush Issues FY 2004 Budget, Congress Finally Enacts FY 2003 Appropriations	Feb 03	31
Faith-Based Initiatives and Community Organizations:		
Government Sponsorship of Religious Activity	Feb 03	39
Administration’s FY 2004 Budget Poses Major Risks for Federal Housing Programs	Mar 03	55
HUD Reissues PHA Plan Template with No Changes	Apr/May 03	289
More Encouragement to Sell Off Public Housing—The Section 32 Homeownership Program	Apr/May 03	286
HUD Waivers Benefit Individual Program Participants and Facilitate the Use of Project-Based Vouchers	June 03	320
HUD’s New Anti-Flipping Rule—Only as Good as Its Enforcement	June 03	324
Public Housing Mandatory Community Service and Self-Sufficiency Requirements Reinstated	July 30	339
Deregulation of Small Public Housing Agencies and Streamlined HUD Review of All PHA Plans	July 30	341
HUD Publishes New Public Housing Occupancy Guidebook	July 30	345
HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs	July 30	347
HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs (Correction)	Oct 03	426
Mandatory Community Service Requirements in Public Housing Cause Much Confusion	Aug 03	365
HUD New Public Housing Occupancy Guidebook: A Welcome but Imperfect Improvement	Aug 03	370
HUD Voucher Study	Aug 03	375
Building Our Houses: Public Housing and Section 8 at the Crossroads	Oct 03	417
First Circuit Refuses Remedies for Improper Opt-Out Notice	Oct 03	426
HUD Study Identifies Factors Affecting Voucher Utilization and Subsidy Costs	Oct 03	428
HUD Issues Final Required and Voluntary Public Housing Conversion Rules	Nov/Dec 03	450
HUD Issues FY 2004 HOPE VI NOFA	Nov/Dec 03	457
Inspector General Faults HUD on Section 3	Nov/Dec 03	458
CSH Presses HUD on Earned Income Disregards for Persons with Disabilities	Nov/Dec 03	459
New Voucher Homeownership Study Released by HUD	Nov/Dec 03	460

HOUSING PRODUCTION

National Housing Trust Fund Bill Reintroduced	Mar 03	58
Housing Provisions Included in <i>Leave No Child Behind</i> Legislation	Mar 03	61

	Issue	Page
HUD-ASSISTED RENTAL HOUSING		
HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs	July 30	347
HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs (Correction)	Oct 03	426
Ninth Circuit Rules Los Angeles May Set Base Rents for Converted HUD-Subsidized Properties ...	Oct 03	423
IMMIGRANTS AND HOUSING		
Housing Benefits for Qualified Aliens Who Are Battered Still in Question	Apr/May 03	297
JOBS (see WELFARE AND HOUSING)		
LEGISLATION (see also HUD; RURAL HOUSING SERVICE; LOW INCOME HOUSING TAX CREDIT; PREDATORY LENDING)		
National Housing Trust Fund Bill Reintroduced	Mar 03	58
Housing Provisions Included in <i>Leave No Child Behind</i> Legislation	Mar 03	61
Federal Anti-Predatory Lending Bill Introduced	Mar 03	68
Round Up of Recently Introduced Housing Legislation	Apr/May 03	299
Housing Assistance for Needy Families Act Threatens Neediest Families	June 03	309
Tax Credit Program Escapes Serious Damage from Bush Tax Plan	June 03	317
Kerry Reintroduces Senate Version of National Housing Trust Fund Legislation	Sept 03	410
LOW INCOME HOUSING TAX CREDIT (LIHTC)		
Tax Credit Program Escapes Serious Damage from Bush Tax Plan	June 03	317
Lease Violation Sufficient Good Cause for LIHTC Eviction	June 03	326
PHA PLAN PROCESS		
HUD Reissues PHA Plan Template with No Changes	Apr/May 03	289
Deregulation of Small Public Housing Agencies and Streamlined		
HUD Review of All PHA Plans	July 30	341
NHLP Fact Sheet: Resident Advisory Boards:		
What are They and How Can You Get Involved?	Aug 03	388
Voucher Applicant Denied Due Process When Criterion of		
Creditworthiness Adopted at Informal Hearing	Sept 03	397
PREDATORY LENDING		
Federal Anti-Predatory Lending Bill Introduced	Mar 03	68
Federal Agencies Try to Corner the Market in Mortgage Regulation	Mar 03	69
HUD's New Anti-Flipping Rule—Only as Good as Its Enforcement	June 03	324
NHLP and the NCLC Fight Predatory Lending	July 30	343
Do Local Anti-Predatory Lending Laws Help or Hurt?	Sept 03	405
PRESERVATION OF LOW-INCOME HOUSING STOCK		
(see also LEGISLATION; HUD; HUD-ASSISTED RENTAL HOUSING; SECTION 8 PROGRAMS)		
9th Circuit Stays Order Allowing Section 515 Landlord to Prepay Loan	Mar 03	71
Recent Takings Decisions on Preservation Laws Could Subject Feds to Big Liability	July 30	350
Owner Must Comply with ELIHPA When Prepaying Section 515 Loan	July 30	354
Federal Appellate Court Issues Stunning Preemption Decision	Aug 03	378
NHLP Testifies on Rural Rental Housing Preservation Issues	Aug 03	381
Ninth Circuit Rules Los Angeles May Set Base Rents for Converted HUD-Subsidized Properties	Oct 03	423
First Circuit Refuses Remedies for Improper Opt-Out Notice	Oct 03	426
HUD Issues Final Required and Voluntary Public Housing Conversion Rules	Nov/Dec 03	450

PUBLIC HOUSING (see also CONSTITUTIONAL ISSUES; FAIR HOUSING/DESEGREGATION; HOPE VI; HUD; SECTION 8 PROGRAMS)

Supreme Court to Review PHA's Trespass Policy	Feb 03	37
Another Step Towards Deregulation—		
Temporary Suspension of On-Site Reviews for Troubled Agencies	Feb 03	42
Chicago Tenants File Suit to Stop Displacement Abuses	Feb 03	44
NHLP Fact Sheet: Public Housing Facing Threat of Big Cuts in Operating Subsidies	Mar 03	72
More Encouragement to Sell Off Public Housing—The Section 32 Homeownership Program	Apr/May 03	286
FAQ: May a Tenant Commissioner Receive a Stipend?	June 03	319
FAQ: May a PHA Retain \$10 of the \$25 Resident Participation Grant?	June 03	325
Public Housing Mandatory Community Service and Self-Sufficiency Requirements Reinstated ..	July 30	339
Deregulation of Small Public Housing Agencies and Streamlined		
HUD Review of All PHA Plans	July 30	341
HUD Publishes New Public Housing Occupancy Guidebook	July 30	345
Supreme Court Reverses Virginia Supreme Court's Decision		
Based on First Amendment Overbreadth	July 30	344
HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs	July 30	347
HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs (Correction)	Oct 03	426
Mandatory Community Service Requirements in Public Housing Cause Much Confusion	Aug 03	365
HUD New Public Housing Occupancy Guidebook: A Welcome but Imperfect Improvement	Aug 03	370
NHLP Fact Sheet: Resident Advisory Boards: What are They and How Can You Get Involved? ..	Aug 03	388
GAO Releases Information on Receiverships at Public Housing Authorities	Sept 03	399
Building Our Houses: Public Housing and Section 8 at the Crossroads	Oct 03	417
HUD Issues Final Required and Voluntary Public Housing Conversion Rules	Nov/Dec 03	450

RECENT HOUSING CASES*

Arbitration

<i>Patterson v. Piano Craft Guild Associates,</i> No. 01-4376, 2002 WL 31931580 (Mass. Super. Ct. Dec. 30, 2002)	Feb 03	49
---	--------	----

Bankruptcy—Discharge of Debt

<i>Nelson v. McGee</i> , 2003 WL 1989641 (N.D. Ill., April 30, 2003)	June 03	327
--	---------	-----

Bankruptcy—Stay of Proceedings

<i>In re Stoltz</i> , 2002 WL 31845886 (2nd Cir. Dec. 20, 2002)	Jan 03	17
<i>In re Marcano</i> , 2003 WL 223461 (Bankr. S.D.N.Y. Jan. 31, 2003)	Feb 03	48
<i>In re Blaylock</i> , 301 B.R. 443, (Bankr. E.D. Pa. 2003)	Nov/Dec 03	461
<i>In re Moore</i> , 290 B.R. 851 (Bankr. N.D. Ala. 2003)	Apr/May 03	304

Civil Rights Act, 42 U.S.C. § 1983

<i>Missouri Child Care Ass'n v. Martin</i> , 2003 WL 184747 (W.D. Mo. Jan. 13, 2003)	Feb 03	49
<i>Reyes v. Erickson</i> , 2003 WL 42003 (S.D.N.Y. Jan. 3, 2003)	Jan 03	16

Credit Screening

<i>Okabue v. Metropolitan Council HRA</i> , 2003 WL 21150175 (Minn. App. May 20, 2003) (unpublished)	June 03	327
<i>Laramore v. Richie Realty Mgmt. Co.</i> , 2003 WL 22227148 (N.D. Ill. Sept. 25, 2003)	Oct 03	432

Criminal Law—Income Reporting

<i>People v. King</i> , 2003 WL 1710861 (Cal. App. Ct. 4th Dist. April 1, 2003) (unpublished)	June 03	330
---	---------	-----

*This is a very abbreviated index of the cases listed in the Recent Housing Cases in each issue of the Bulletin. For cases reported on in separate articles, see "Cases."

	Issue	Page
Ethics		
<i>Wisdom v. Philadelphia Hous. Auth.</i> , 2003 WL 303945 (E.D. Pa. Feb. 12, 2003)	Mar 03	75
Eviction—Housing Choice Voucher Program		
<i>Nason v. Mike</i> , 2003 WL 21213707 (Conn. Sup., May 19, 2003) (unpublished)	June 03	327
Eviction—Assisted Multifamily Programs		
<i>Riverview Towers Assoc. v. Bateman and Riverview Towers Assoc. v. Jones</i> (consolidated), 2003 WL 55385 (N.J. Super. Ct. App. Div. Feb. 28, 2003)	Mar 03	75
<i>Riverview Towers Assoc. v. Bateman</i> , 817 A.2d 324 (N.J. Super. Ct. App. Div. 2003)	Apr/May 03	304
<i>Woodridge Homes, Inc. v. DeRosa</i> , 782 N.E.2d 1123 (Mass. App. 2003)	Mar 03	75
Eviction—One-Strike		
<i>Boston Hous. Auth. v. Bruno</i> , 790 N.E.2d 1121 (Mass. App. 2003)	Aug 03	384
<i>Holiday v. Martinez</i> , 2003 WL 21242641 (2nd Cir. May 29, 2003) (unpublished)	June 03	328
<i>Philadelphia Hous. Auth. v. Snyder</i> , 2002 WL 31973712 (Pa. Commw. Ct. Feb. 5 2003)	Mar 03	76
<i>Royal Oak Apts. v. Solt</i> , 573 S.E.2d 773 (Table) (N.C. App. 2002) (unpublished)	Jan 03	17
Eviction; Public Housing		
<i>Conway v. Housing Authority of Asheville</i> , 2002 WL 31883046 (W.D.N.C. Dec. 19, 2002)	Jan 03	16
<i>Watt v. Hernandez</i> , 2003 WL 2004197 (N.Y. Super. Ct. Apr. 11, 2003)	June 03	329
Fair Housing—Disability		
<i>Community Hous. Trust v. Dept. of Consumer and Regulatory Affairs</i> , 2003 WL 1887958 (D.D.C. Apr. 16, 2003)	Apr/May 03	302
<i>Giebler v. M&B Assocs.</i> , 2003 WL 22119329 (9th Cir. Sept. 15, 2003)	Oct 03	432
<i>Hand v. Gilbank</i> , 752 N.Y.S.2d 501 (N.Y.A.D. Dec. 30, 2002)	Feb 03	49
Fair Housing—Familial Status		
<i>Hamad v. Woodcrest Condominium Assoc.</i> , 328 F.3d 224 6th Cir. April 22, 2003)	June 03	327
<i>Khalil v. The Farash Corporation</i> , 2003 WL 1995711 (W.D.N.Y. April 23, 2003)	June 03	329
Fair Housing; Race		
<i>Babalola v. B.Y. Equities Inc.</i> , 2003 WL 1868487 (2nd Cir. April 11, 2003) (unpublished)	June 03	330
<i>Neal v. Martinez</i> , 2003 WL 260524 (S.D.N.Y. Feb. 5, 2003)	Mar 03	76
Fair Housing—State Law		
<i>Babcock v. BBY Chestnut Limited Partnership</i> , 2003 WL 21743771 (Minn. App. July 29, 2003) ..	Aug 03	383
<i>McFadden v. Moll</i> , 2003 WL 21341728 (Mass. Super. Ct., May 28, 2003)	July	357
Federal Courts		
<i>Brown v. Philadelphia Housing Authority</i> , 350 F.3d 338 (3rd Cir. 2003)	Nov/Dec 03	461
<i>Chambers v. Habitat Company</i> , 2003 WL 21377492 (7th Cir. June 5, 2003) (unpublished)	July 03	357
HOPE VI		
<i>Coliseum Square Assoc. v. HUD</i> , 2002 WL 31886808 (E.D. La. Dec. 18, 2002)	Jan 03	16
HOPWA		
<i>Cotton v. Alexian Bros. Bonaventure House</i> , 2003 WL 21530342 (N.D. Ill. July 7, 2003)	Aug 03	383
<i>Cotton v. Alexian Bros. Bonaventure House</i> , 2003 WL 22110501 (N.D. Ill. Sept. 9, 2003)	Oct 03	432
Housing Choice Voucher Program—Habitability		
<i>Anderson v. Abidoye</i> , WL 21088004 (D.C. App. Ct. May 15, 2003)	June 03	328
<i>Vandenbosch v. Daily</i> , 785 N.E.2d 666 (Ind. Ct. App. 2003)	Apr/May 03	303

	Issue	Page
Housing Choice Voucher Program—Termination		
<i>Alich v. Dakota Cty. Comm. Dev. Auth.</i> , 2003 WL 230726 (Minn. App. Feb. 4, 2003)	Mar 03	76
<i>Powell v. Dist. of Columbia Hous. Auth.</i> , 818 A.2d 188 (D.C. Ct. App. 2003)	Apr/May 03	303
Lead Paint		
<i>Fisher v. Housing Authority of Kinston</i> , 573 S.E.2d 678 (N.C. App. 2002)	Jan 03	17
<i>McIntyre v. Philadelphia Housing Authority</i> , 2002 WL 31927407 (Pa. Commw. Ct. Jan. 8, 2003)	Feb 03	49
Low-Income Housing Tax Credit Program		
<i>Carter v. Maryland Management Co.</i> , 377 Md. 596 (Md. App. Ct. 2003)	Nov/Dec 03	461
<i>Cottonwood Affordable Hous. v. Yavapai County</i> , 2003 WL 21054392 (Ariz. Tax May 12, 2003)	June 03	330
Project-Based Section 8; Recertification		
<i>East Harlem Pilot Block Building 1 HDFC v. Cordero</i> , 2003 WL 21203084 (N.Y. Civ. Ct., April 28, 2003)	June 03	329
<i>Nelson v. Roberts</i> , 2003 WL 1823267 (N.Y.A.D. Apr. 8 2003)	Apr/May 03	303
Project-Based Section 8—Housing Assistance Payments Contracts		
<i>Carabetta Enterprises v. United States</i> , 58 Fed. Cl. 563 (2003). Nov.-Dec. 03 461		
<i>People to End Homelessness, Inc. v. Develco Singles Apts.</i> , 2003 WL 21757274 (1st Cir. 2003)	Aug 03	382
<i>United States v. Southland Management Corp.</i> , 2003 WL 1711940 (5th Cir. Apr. 1, 2003)	Apr/May 03	303
Public Housing—Admissions		
<i>Abdil v. Martinez</i> , 2003 WL 21757499 (N.Y.A.D. July 31, 2003)	Aug 03	383
<i>McPherson v. District of Columbia Housing Authority</i> , 833 A.2d 991 (App. D.C. 2003)	Nov/Dec 03	462
Public Housing—Safety		
<i>Rodriguez v. Cambridge Hous. Auth.</i> , 59 Mass. App. Ct. 127 (Sept. 3, 2003)	Oct 03	432
Relocation		
<i>Grayden v. Rhodes</i> , 2003 WL 22137047 (11th Cir. 2003 Sept. 17, 2003)	Oct 03	432
Rural Housing Service—Section 502 Program		
<i>Corrales v. United States</i> , 2003 WL 21076837 (Fed. Cl. Ct., April 18, 2003)	June 03	328
Rural Housing Service—Section 515 Program		
<i>Albany Apts. Tenants' Assoc. v. Veneman</i> , 2003 WL 1571576 (D. Minn. Mar. 11, 2003)	Apr/May 03	303
Zoning		
<i>Mount Olive Complex v. Township of Mount Olive</i> , 813 A.2d 581 (N.J. Super. Ct. App. Div. Jan. 10, 2003)	Feb 03	48
RECENT REGULATIONS AND NOTICES		
.....	Jan 03	18
.....	Feb 03	50
.....	Mar 03	77
.....	Apr/May 03	304
.....	June 03	330
.....	July 30	357
.....	Aug 03	384
.....	Sept 03	411
.....	Oct 03	433
.....	Nov/Dec 03	462

RURAL HOUSING SERVICE

9th Circuit Stays Order Allowing Section 515 Landlord to Prepay Loan	Mar 03	71
RHS Proposes Revision to Rental Housing Regulations	June 03	311
NHLP Testifies on Rural Rental Housing Preservation Issues	Aug 03	381
RHS Proposes Revision of Its Rental Housing Regulations	Sept 03	401

SECTION 8 PROGRAMS (see also DISCRIMINATION; HUD; HUD-ASSISTED RENTAL HOUSING; HOUSING ASSISTANCE FOR NEEDY FAMILIES; LEGISLATION; PRESERVATION)

Housing Provisions Included in Leave No Child Behind Legislation	Mar 03	61
Building Our Houses: Public Housing and Section 8 at the Crossroads.....	Oct 03	417

Homeownership

New Voucher Homeownership Study Released by HUD	Nov/Dec 03	460
---	------------	-----

Housing Choice Voucher Program

Victory on Hold for Voucher Tenants Facing Evictions	Jan 03	12
Another Step Towards Deregulation—Temporary Suspension of On-Site Reviews for Troubled Agencies	Feb 03	42
Violent Criminal Acts are Grounds for PHA’s Termination of Certificate Even if Not in the Home’s Immediate Vicinity	Feb 03	46
Housing Provisions Included in Leave No Child Behind Legislation	Mar 03	61
Local Residency Preferences for Section 8 Vouchers Violate the Fair Housing Act.....	Mar 03	62
Administration’s Voucher Block Grant Proposal Threatens Future Benefit Levels.....	Apr/May 03	281
HUD Waivers Benefit Individual Program Participants and Facilitate the Use of Project-Based Vouchers	June 03	320
Congress Continues Wrestling with FY 2004 Voucher Funding.....	Aug 03	374
HUD Voucher Study	Aug 03	375
NHLP Best Practices Guide on Voucher Utilization and Success Rates	Sept 03	391
HUD Study Identifies Factors Affecting Voucher Utilization and Subsidy Costs	Oct 03	428
FY 2004 Voucher Funding Remains Uncertain.....	Oct 03	431
HUD Issues Final Required and Voluntary Public Housing Conversion Rules	Nov/Dec 03	450

VOUCHER PROGRAM (see SECTION 8 PROGRAMS—Housing Choice Voucher Program)

WELFARE AND HOUSING (see also GENERAL INTEREST)

Public Housing Mandatory Community Service and Self-Sufficiency Requirements Reinstated	July 30	339
Mandatory Community Service Requirements in Public Housing Cause Much Confusion.....	Aug 03	365

Publication Order Form

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

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

*Includes postage and handling

** \$5.00 each additional copy

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

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

Subtotal: _____ \$ _____

Tax (California residents only): _____ (Subtotal, excluding Bulletin x 8.25%): \$ _____

Postage and Handling: _____ Number of books _____ x \$5.00 per book: \$ _____

TOTAL AMOUNT ENCLOSED: \$ _____

PLEASE TYPE OR PRINT

Name _____

Organization _____

Address _____

_____ Zip _____

Phone _____

ALL ORDERS MUST BE PREPAID

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

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

I want to charge my credit card. Visa Mastercard

Card # _____ Exp. date _____

Name on card: _____

Credit card billing address _____

Signature (required for credit card) _____



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

First Class Mail