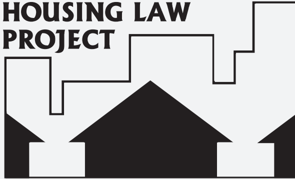

Housing Law Bulletin

Volume 37 • May 2004

Published by the National Housing Law Project

Rural Multifamily Housing Preservation: The Section 515 Prepayment Process —see page 85

NHLP Launches RHS Single Family Foreclosure Avoidance Initiative —see page 88

COMPREHENSIVE CURRENT AUTHORITATIVE

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.

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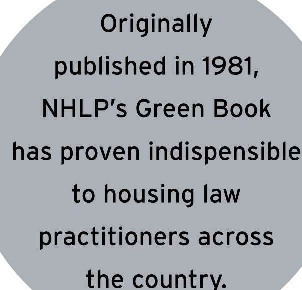

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AN ESSENTIAL RESOURCE FROM THE NATIONAL HOUSING LAW PROJECT

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Cover: Arlington Village Housing, Arlington. The Regional Affordable Housing Corporation developed 24 affordable rental units in a number of historic downtown buildings. Photo courtesy of Vermont Housing and Conservation Board.

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Rural Housing Preservation: The Section 515 Prepayment Process

Housing advocates can play a crucial role by helping residents of Section 515 Rural Rental Housing[1] protect their interests, retain their homes and preserve the housing stock. Preservation of Section 515 developments is governed by the Emergency Low Income Housing Preservation Act (ELIHPA), which sets out a structured prepayment process intended to protect residents from displacement and limit the conversion of the housing stock to other uses.[2]

Section 515 loan prepayments may have significant consequences for residents of Section 515 housing. Legal services and other housing advocates can limit these effects and become effective preservationists by:

- ensuring the timely issuances of required prepayment notices to tenants;
- informing residents about the prepayment process and educating them about their rights;
- contacting the owners and Rural Development (RD) to learn about the owners' prepayment intentions;
- assisting residents with the thirty-day comment period; and
- monitoring the steps of the prepayment process.

The Section 515 Program

Since 1962, Section 515 loans have been, and continue to be, made to nonprofit, for-profit and public entities for the construction of rental or cooperative housing in rural areas, including Indian reservations.[3] The housing may be constructed for low- or moderate-income elderly persons, persons with disabilities, families or persons needing congregate living facilities.[4] Loans are made for a term of thirty years or more and are frequently subsidized to

[1] 42 U.S.C.A. § 1485 (West 2003) (loan authority for the Section 515 Rural Rental Housing Program). The program is administered at the national level by Rural Housing Service (RHS), an agency within the Rural Development (RD) division of the U.S. Department of Agriculture (USDA). Day-to-day field administration of the program is handled by the USDA Rural Development staff in each state.

[2] *Id*. § 1472(c) (amended in 1987 to address Congress' concern about the dwindling supply of low- and moderate-income rural rental housing in the face of increasing prepayments of Section 515 loans); 7 C.F.R. §§ 1965.201 *et seq*. (RHS regulations governing prepayment of Section 515 housing).

[3] 42 U.S.C.A. § 1485(a) (West 2003).

[4] *Id*.

make the units affordable for low- and very low-income persons and households.[5] The Rural Housing Service (RHS) provides two types of rental subsidies for USDA-assisted developments:

(1) Interest Credit[6]—a shallow subsidy which effectively reduces the interest rate to the owner to a rate as low as 1% and in turn reduces the rent charged to the residents, and

(2) Rental Assistance[7]—a deep subsidy which reduces the rent charged to residents, including utilities, to 30% of household income regardless of the amount of that income.

Developments may also receive assistance through the Low Income Housing Tax Credit Program[8] or Section 8's project- and tenant-based programs.

Prepayment of Section 515 loans threatens residents' continued right and ability to live in the developments because all the RHS subsidies which make the units affordable are terminated upon prepayment. When this occurs, owners whose prepayments are not subject to restrictions are able to increase rents to market rate, effectively converting the development to moderate or above moderate income housing. Unprotected residents who are unable to pay the higher rents are thus threatened with displacement or, at the very least, burdened with rents that undermine their capacity to meet other living expenses.

Owners Do Not Have an Absolute Right to Prepay Their Loans

Owners of Section 515 housing who seek to prepay their loans must follow a prescribed prepayment process that begins with their filing a complete prepayment application with RD and RD notifying the residents of the owner's request. The ability of owners to actually prepay and terminate existing use restrictions will vary depending on when the owner originally obtained the RHS loan or secured other assistance. Generally, there are three categories of Section 515 owners:

- *Owners of pre-1979 developments:* These are owners who entered into loan agreements prior to December 21, 1979. While subject to prepayment restrictions, these owners have no obligation to maintain their housing as affordable housing for any term.

- *Owners of post-1979 developments:* Owners who entered into loans after December 21, 1979, but before December 15, 1989, generally have an obligation to maintain their housing as affordable housing for a term of at least twenty years under restrictive use provisions.[9] If the twenty-year use restriction has expired, these owners are treated the same as pre-1979 owners.

- *Owners of post-1989 developments:* Owners who entered into their loans on or after December 15, 1989, may not prepay their loans and must maintain the affordable nature of the housing for the term of the loan.[10]

After submission of a completed prepayment application and RD's review of that application, owners may (1) accept RD's financial incentive offer to stay in the Section 515 program, (2) sell the development to a nonprofit organization or public agency (which, in turn, will maintain the use restrictions and affordable rents) or (3) recommit to prepaying the loan and withdrawing from the program. The options that the owner will and may choose depend upon a number of factors.

First, to encourage owners who may prepay their loans to remain in the program for at least an additional twenty years, RD is required to make a financial incentives offer to the owner.[11] Incentives may consist of an equity loan, an increased rate of return on the owner's investment, and rental assistance to ensure the development's continued affordability.[12]

Owners who reject incentives are required to offer the development for sale to a nonprofit or public agency for at least 180 days.[13] This offer may be bypassed and the owner may prepay the loan if:

- the owner agrees to maintain the housing as affordable for the balance of the term of any existing use restriction and to offer the housing for sale to a nonprofit or public agency at the end of that term;[14] *or*

- RHS determines that the prepayment would not affect minority housing opportunities in the community,[15] *and*

    - the owner agrees to not displace current residents, *or*

    - there is an adequate supply of safe, decent and affordable housing in the community and such rental housing will be made available to tenants upon displacement.

---

[5]*Id*.

[6]42 U.S.C.A. § 1490a(1)(B) (West 2003).

[7]*Id.* at § 1490a(1)(c) (West 2003); 7 C.F.R. § 1930, Subpart C, Exh. E (2003).

[8]26 U.S.C. § 42 (West 2002).

[9]*Id.* § 1472(c)(1)(A). These owners may prepay their loans prior to the expiration of the use restrictions but only if they continue to operate the housing for the benefit of eligible households for the balance of the use restricted term, at which point they will be required to offer the development for sale to a nonprofit or public agency.

[10]42 U.S.C.A. § 1472(c)(1)(B) (West 2003).

[11]*Id.* at § 1472(c)(4)(B); 7 C.F.R. § 1965.213 (2003).

[12]42 U.S.C.A. § 1472(c)(4)(B) (West 2003); 7 C.F.R. § 1965.213 (2003); 7 C.F.R. pt. 1965, subpt. E, Ex. E, ¶ IV.A. (2003).

[13]42 U.S.C.A. § 1472(c)(5)(A) (West 2003); 7 C.F.R. § 1965.216(b)(3) (2003).

[14]42 U.S.C.A. § 1472c(5)(G)(i) (West 2003); 7 C.F.R. § 1965.215 (2003).

[15]42 U.S.C.A. § 1472c(5)(G)(ii)(I)-(II) (West 2003); 7 C.F.R. § 1965.215 (2003).

Housing Advocates Prove Most Effective During the RHS Determination Process

RHS's analysis of a prepayment's effect upon minority housing opportunities requires a detailed review of a number of factors that are detailed in RHS regulations. Unfortunately, the regulations are woefully inadequate in articulating the standards that are to be applied in making the determination as to whether a prepayment will have an adverse impact. As a result, advocates' comments and analysis can substantially influence the RD determination. According to RD Instructions, the determination of whether the housing opportunities of minorities will be materially affected must be based on an assessment of:

- the number of low-income minority households residing in the developments and in the market area;
- the impact of prepayment on minority residents in the development and market area, including whether displaced minority residents will be forced to move to other low-income housing in areas not convenient to their employment, or to areas with a concentration of minorities or substandard housing;
- vacancy trends and the number of potential minority tenants on the waiting list at the development and at other developments in the market area that might attract minority tenants; and
- the impact prepayment will have on the opportunity for minorities who live in substandard housing to move to decent and affordable housing that is comparable to the development in question.[16]

Too many RD offices fail to thoroughly analyze these factors, improperly narrowing their focus to the development whose loan is being considered for prepayment. Thus, they look at the number of minorities residing in the development or who are on its waiting lists, but not in other comparable housing or waiting lists. Moreover, even when looking at broader market area statistics, RD staff frequently look at broad population statistics and fail to look at more specific and relevant data such as the percentage that low-income minority households represent of the total number of low-income households in the community. By asking for and reviewing RD findings and conclusions, local advocates have been successful in forcing agency staff to make more proper determinations that follow statutory and regulatory requirements.[17]

Advocates can also play an important role in influencing the determination that owners may prepay their loans because there is safe, decent and affordable housing in the community to which the displaced residents may be relocated. In order to support such a determination, RD must find that there is no need for the development in the community.[18] This determination examines whether (1) there is adequate alternative affordable housing in the community; (2) if the development will continue to serve the low-income population in the local market; or (3) whether, if the development was funded as a farmlabor housing project, the development is on individual farm land.[19] The determination that adequate and affordable alternative housing exists must be based upon a finding that there exists at least one affordable long-term vacancy in a unit of appropriate size for each eligible tenant who will be displaced by the prepayment.[20] If RD determines that there is no effect upon residents or the community, prepayment may be approved without restrictive use provisions attached to the mortgage release documents.[21] Local housing advocates who are familiar with a community are often qualified and in a postion to review whether RD's findings are in compliance with the regulatory requirements.

Lastly, advocates can represent residents in appeals filed by owners with respect to RD prepayment decisions. Owners are entitled to appeal any RD prepayment decision that is adverse to their interest, such as a determination that they have to offer their developments for sale to a nonprofit or public agency.[22] While residents do not have an independent right to appeal decisions adverse to their interests, RHS must notify residents if an owner appeals an adverse prepayment decision and allow them to have a representative present at such a hearing.[23] In most instances, residents are likely to benefit from an advocate's presence at, and possible participation in, the appeal hearing to ensure that residents' interests and perspectives are properly considered.

The Need for Preservation Exists Now More than Ever

Unfortunately, residents of RHS housing are not likely to know owners' options under the prepayment process, understand the RHS decision-making process, or know about the rights they have to influence RHS decisions and protect their residency. Indeed, due to inadequate regulations and lack of training or experience, RD staff members may themselves fail to make correct decisions throughout the prepayment review and approval process. Advocate participation is therefore critical in ensuring resident protection and housing preservation.

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[16] 7 C.F.R. § 1965, Subpart E, Ex. E, ¶ II. C. (2003) (Administrative Guidance for Making Prepayment Determinations).

[17] 7 C.F.R. § 1965, subpt E, ex. E, ¶ I (2003) (stating that "evaluations and decisions must be completely supported by facts and clearly documented").

[18] 7 C.F.R. § 1965.215 (2003); 7 C.F.R. pt. 1965, subpt. E, ex. E., ¶ V.A.1.

[19] *Id.* at ¶ V.A.1-3.

[20] *Id.* at ¶ V.A.1.

[21] 7 C.F.R. § 1965.215(c)(3) (2003).

[22] *Id.* at §1965.215(g).

[23] *Id.*

A report released by the Housing Assistance Council (HAC) in 2002 indicates that over 38,000 units of RHS housing have been prepaid throughout the United States in the last several years.[24] With prepayments having occurred in all fifty states, this broad-based loss obviously affects the availability of affordable housing in rural communities across the country. NHLP, whose Equal Justice Works Fellow has been tracking prepayment requests since September of 2003, has concluded that owners of over 1400 units of Section 515 housing have sought to prepay their loans between September and March of 2004. This is an extremely significant number in light of the fact that there were only 290,440 pre-1989 housing units in the RHS inventory in 2000, all of which are potentially eligible for prepayment.[25]

The residents of RHS housing need to be protected and the units in which they reside can and should be preserved. Resident involvement and pro-active advocacy can achieve both of these goals. Housing advocates who are prepared to get involved in this exciting preservation process should contact Demetria McCain at NHLP, 510-251-9400 ext. 116, dmccain@nhlp.org. ■

[24] Housing Assistance Council, Inc., Rural Rental Housing Preservation and Nonprofit Capacity to Purchase and Preserve Section 515 Projects 180 (2002).

[25] *Id.* at 1.

SAVE THE DATES

2004 Housing Justice Network Meeting October 3-4

Housing Training October 2

The next meeting of the Housing Justice Network (HJN) is October 3 and 4 in Washington, D.C. HJN is a national association of attorneys and other advocates focusing on federal low-income housing programs. The 2004 HJN meeting will give members of the various HJN working groups—which address issues from public housing to federal relocation requirements to civil rights—an opportunity to meet in person and work on issues of concern to housing advocates and their clients.

A one-day training session will be held on October 2, immediately preceding the HJN meeting to address recent judicial, legislative and administrative changes affecting the federal housing programs. The training and meeting are separate events, although many participants attend both.

A more detailed announcement about the 2004 HJN meeting and the training event will appear in a future issue of the *Housing Law Bulletin*. To be added to the HJN mailing list, contact Amy Siemens at NHLP, 510-251-9400 ext. 111, asiemens@nhlp.org.

NHLP Launches RHS Single Family Foreclosure Avoidance Initiative

The Rural Housing Service (RHS), an agency within the Rural Development (RD) division of the United States Department of Agriculture, operates three single family home loan programs. The first and largest is the Section 502 direct loan program, under which RHS makes loans to purchase existing, construct new or repair existing single family homes in rural areas. Most of these loans are subsidized by RHS through a reduction in the interest rate that the homeowner pays on the RHS loan. The second program is the Section 502 guaranteed loan program, whose purposes are identical with the direct Section 502 loan program except that the agency does not make the loans directly, relying instead on private lending institutions to make the loans, which are then guaranteed by RHS. The Section 502 guaranteed loan program also does not have a subsidy attached to the program. As a consequence, the program beneficiaries are more moderate-income households. The third program, the Section 504 loan program, is a more limited program under which RHS makes direct loans of $20,000 or less to homeowners whose homes are in need of repairs that will eliminate conditions that affect the health or safety of existing homeowners.

RHS has over 750,000 borrowers under the three programs and the programs are generally considered to be highly successful, with a relatively low default and foreclosure rate. Notwithstanding, the agency and the private lenders, under the guaranteed program, foreclose on thousands of borrowers each year, primarily due to borrowers' financial default. Under the direct loan programs, RHS has a number of foreclosure avoidance mechanisms that help borrowers who have defaulted for reasons beyond their control overcome temporary periods of hardship and avoid foreclosure on their loans. The primary mechanisms are increased interest subsidies or moratorium relief, a payment forbearance program under which borrowers can forgo making any mortgage payments to the agency for up to two years.

Unfortunately, not all eligible borrowers benefit from these programs. Historically, borrowers are deprived of relief because they are not adequately advised of its availability, do not understand eligibility criteria, are discouraged from applying, or are improperly rejected for assistance.

More significantly, guaranteed borrowers are not even considered for foreclosure avoidance assistance because RHS has never implemented the foreclosure avoidance mechanisms that are available as part of the Housing Act of 1949, or that were incorporated into the guaranteed loan program when it was first authorized in 1990. Under Section 517(d)(3) of the Housing Act of 1949, 42 U.S.C.

§ 1487(d)(3), RHS is directed to accept assignment of guaranteed loans and to provide various foreclosure relief mechanisms to borrowers who have defaulted for reasons beyond their control. RHS, however, has never adopted regulations for such a process and is not known to have ever followed the statutory mandate to assist defaulting guaranteed loan program borrowers.

In order to increase the number of RHS borrowers who benefit from RHS foreclosure avoidance programs, NHLP has begun a new Ford Foundation funded initiative to increase housing advocates' and borrowers' awareness of the existing RHS foreclosure avoidance mechanisms and to challenge the agency for its failure to implement similar programs for its guaranteed loan borrowers.

Under the initiative, NHLP will publish information about the RHS single family loan programs and its foreclosure avoidance programs, train advocates about program eligibility, provide technical and legal assistance with respect to individual cases, conduct trainings on the programs and, when necessary, assist advocates in litigating RHS' failure to consider borrowers for assistance or the improper denial of assistance. NHLP staff will also conduct in-person and audio training sessions about the programs and about the foreclosure avoidance mechanisms that are available to borrowers.

With respect to the guaranteed loan program, NHLP

Are You Representing a Client Whose RHS Single Family Guaranteed Home Loan is Being Foreclosed?

The National Housing Law Project (NHLP) is looking to hear from and work with advocates who represent homeowners facing foreclosure of their Rural Housing Service (RHS)/Rural Development (RD) Guaranteed Single Family Home Loans who defaulted on their loans for reasons beyond their control. NHLP is seeking to work with housing advocates representing such borrowers because, as discussed below, we believe that such borrowers have rights to foreclosure avoidance assistance that they are not currently receiving from RHS.

RHS/RD single family guaranteed home loans are made by private lenders throughout the country. In order to encourage lenders to make loans to low- and moderate-income households, these loans are guaranteed by RHS/RD. This means that if the borrower defaults on the loan and the lender, after acceleration or foreclosure, experiences a loss, RHS/RD will reimburse the lender for 90% of that loss.

RHS/RD guaranteed single family home loans are made pursuant to Section 502(h) of the Housing Act of 1949, 42 U.S.C. § 1472(h). That section authorizes the agencies to make loans and requires that they comply with 42 U.S.C. § 1487(d) in doing so. In particular, Section 1487(d)(3) states:

> Each loan made by the Secretary of other lenders under this subchapter that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by agreements for the benefit of the borrower under the loan that provide that—
>
> (A) the purchaser or any assignee of the loan shall not diminish any substantive or procedural right of the borrower arising under this subchapter;
>
> (B) upon any substantial default of the borrower, but prior to foreclosure, the loan shall be assigned to the Secretary for the purpose of avoiding foreclosure; and
>
> (C) following any assignment under subparagraph (B) and before commencing any action to foreclose or otherwise dispossess the borrower, the Secretary shall afford the borrower all substantive and procedural rights arising under this subchapter, including consideration for interest subsidy, moratorium, reamortization, refinancing, and appeal of any adverse decision to an impartial officer.

To NHLP's knowledge, RHS/RD has never implemented any provisions for assigning defaulted loans to the agency and has never considered defaulting a borrower for assistance under any of the agency's foreclosure avoidance programs; nor has RHS/RD ever considered guaranteed loan borrowers for relief under the moratorium program, authorized by Section 505 of the Housing Act of 1949, 42 U.S.C. § 1475. NHLP believes that the agency may have an affirmative obligation to do so and that its failure to accept loan assignments and consideration for foreclosure avoidance relief may constitute a defense to a foreclosure. Consequently, NHLP is interested in working with housing advocates who represent defaulting RHS/RD guaranteed single family home loan borrowers in order to explore and determine whether the statutory rights guaranteed these borrowers can be interjected effectively as a defense to an impending foreclosure.

Advocates interested in working with NHLP or who are seeking more information about guaranteed loan borrowers' rights should contact Gideon Anders at ganders@nhlp.org.

is looking to work with local advocates in identifying borrowers who may be eligible for assistance and in challenging RHS for its failure to implement the guaranteed loan foreclosure avoidance programs. For more information on this effort, see the box on page 89.

Lastly, as part of this initiative, NHLP is proposing to analyze the effectiveness of the RHS foreclosure avoidance programs in an effort to document that they are not only effective in reducing the number of RHS foreclosures but also that they are less expensive than foreclosures. In other words, NHLP hopes to show that RHS saves money by extending the foreclosure avoidance mechanisms instead of foreclosing on borrowers.

The NHLP initiative will be administered by Maeve Elise Brown, and persons seeking more information should contact her at mebrown@nhlp.org. ■

Secretary of Agriculture Held in Contempt for Failure to Collect Farmworker Housing Rent Overcharges

A group of farmworkers initiated a nationwide class action in 1991 against the Secretary of Agriculture and the Rural Housing Service[1] (RHS), an agency within the department. At issue was their systematic failure to enforce mandatory regulations that obligate farmers who obtained farm labor housing loans from the agency under Section 514 of the Housing Act of 1949 to roll back and refund rent and utility charges that were not approved by the agency. Under provisions of the Section 514 loan program, several thousand farmers secured thirty-three-year 1% loans from RHS for the purpose of providing housing to their farmworkers under the condition that they would not charge any rent to farmworkers living in the housing. In return, the farmers did not have to certify tenant eligibility to the agency and did not have to submit monthly reports that other rural rental and farm labor housing owners were required to submit.

Unfortunately, a significant number of the farmer borrowers violated their agreement with RHS and charged farmworkers living in the housing both rent and utilities on a regular basis. Indeed, in the case of several of the plaintiffs, the charges totaled several hundred dollars a month. While the RHS national staff was aware of the farmer violations from Office of Inspector General reports, it did not take any action to correct the violations because it did not want to devote agency resources to enforce its agreements and regulations against what agency staff viewed as a small number of farmer violators.

In response to the lawsuit, the agency argued that its regulations did not prohibit the farmers from charging for the cost of utilities and that it had unreviewable discretion to enforce its regulations. Judge Alan Enslen of the Federal District Court for the Western District of Michigan disagreed. The court held that RHS regulations precluded the farmers from charging for rent or utilities and that the agency's total abdication of responsibility with respect to mandatory regulations made its failure to enforce the regulations reviewable. Accordingly, the court ordered the agency to cease its continued failure to enforce its rent rollback and refund regulations.[2]

In 1998, the plaintiffs sought to determine whether the agency was complying with the court's order. When the agency did not respond to the plaintiffs' information requests, the court allowed for further discovery in the case, which showed that while the agency had sent letters to offending borrowers advising them of their violations, it did little else to enforce its rent rollback and refund regulations. In response, the court issued an affirmative injunction against the agency ordering it to comply with its regulations and to report for three years to the court and the plaintiffs the progress that it was making in enforcing its regulations and collecting the improperly charged rents.[3] In its opinion, the court warned the defendants that they should not allow offending borrowers to avoid their repayment obligations by allowing them to prepay their loans.[4]

During the three-year reporting period, plaintiffs' counsel regularly reviewed RHS reports. While those reports showed that several hundred thousand dollars had been credited or refunded by farmer-borrowers to farmworkers, RHS was not taking any action against farmer-borrowers who were uncooperative. Indeed, RHS allowed many of the borrowers to avoid making refunds by accepting prepayment of their loans—thereby terminating their participation in the program—or providing the borrowers exceptions from having to refund the illegally collected rents. Plaintiffs' counsel complained to RHS about its continued failure to enforce its regulations and when RHS did nothing to alter its practices, they filed a show cause motion with the court in September of 2003. The motion asked why the Secretary of Agriculture should not be held in contempt for failure to comply with the court's 2000 injunction.

RHS sought to dismiss the plaintiffs' motion based on the grounds that the plaintiffs lacked standing and that there were no violations of a clear and definite court order as shown by clear and convincing evidence. On the standing issue, the government argued that the class

[1]In fact, the loans were made by the Farmers Home Administration (FmHA), the predecessor agency to RHS.

[2]Roman v. Korson, 918 F. Supp. 1108, 1113-14 (W.D. Mich. 1995).

[3]89 F. Supp 2d. 899, 908-09 (W.D. Mich. 2000).

[4]*Id*. at 903 n. 3.

representatives lacked standing because their claims had been mooted by refunds that they received in 1995 and that no other injured class members have sought to intervene and seek relief for the remaining injured class members. The court summarily dismissed the government's standing contentions, finding that the named plaintiffs had clear standing to ensure relief for the entire class and that the injuries to the remaining class members could not be mooted by simply compensating the named class members. It concluded that the entire class action process would be undermined by a requirement that each class member participate in the proceeding as a condition for securing relief.[5]

> *"The record in this case evidences that Federal Defendants, through both the national office and their Arkansas state office, knowingly engaged in a policy of not subjecting noncompliant borrowers to servicing actions."*

The court also rejected the federal defendants' contempt argument. Holding that in order to enforce mandatory regulatory duties the plaintiffs needed to prove only that the enforcement of regulatory duties had gone unfulfilled,[6] it then proceeded to review the six government acts that the plaintiffs contended were contemptuous and found in favor or the plaintiffs on two of those acts. Specifically, the court found that the agency's acceptance of prepayments without enforcement of the rent rollback and refund regulations was contemptuous because the agency had been warned specifically in the court's 2000 order not to avoid servicing actions against violating borrowers by allowing them to prepay their loans. It rejected the government's argument that the acceptance of prepayments was not contemptuous because prepayment was specifically authorized by statute, finding first that the agency failed to contend that all the prepayments were in conformance with the prepayment statute, and second that even if they were, the agency's Administrative Notices, which implement agency policies, made it clear that prepayments do not terminate the agency's capacity to sanction noncompliance. Accordingly, the court found that the federal defendants' knowing abandonment of enforcement of prepaid noncompliant borrowers constituted contempt.

The court also found the federal defendants in contempt for allowing widespread exceptions to the regulatory rebate requirement. According to the court, the number of cases in which the agency had granted retroactive approval of rent increases proves "by clear and convincing evidence that Federal Defendants have again adopted policies of non-enforcement of the mandatory regulatory duty to refund tenant rents and utility charges, which were not approved in advance by the regulators."[7] It found further support in the agency's failure properly to service loans in certain states. "The record in this case evidences that Federal Defendants, through both the national office and their Arkansas state office, knowingly engaged in a policy of not subjecting noncompliant borrowers to servicing actions."[8] This, the court found, is contemptuous.

Notwithstanding the fact that the court found the federal defendants in contempt, it refused to award the plaintiffs monetary damages because it did not find the case appropriate for such damages. The court recognized that the federal defendants had taken actions that resulted in some rebates and refunds and believed that with limited resources agency funds could better be used for enforcement than compensation. Accordingly, it ordered RHS to continue to publish and enforce its Administrative Notice, first published in 1996, with respect to servicing of noncompliant borrowers for at least one year but no more than three. Second, it ordered RHS to complete servicing all the noncompliant borrowers within the time that it continues to publish the Administrative Notice (i.e., no more than three years). Further, it prohibited the agency from accepting prepayments from violating farmers until they refunded or rebated illegally collected charges and from retroactively approving rent increases. Lastly, it required the agency to continue to file quarterly reports with the court and plaintiffs until such time as the agency completes all the servicing actions.[9]

The plaintiffs in this case are represented by April Roach and Fred Wagner of Beveridge and Diamond, an environmental law firm based in District of Columbia that has taken the lead in the case since 1999. They are also represented by the Migrant Legal Action Program and NHLP. ■

[5]2004 WL 438318, *5-6.

[6]*Id*. at *6.

[7]*Id*. at *9.

[8]*Id*. at *10.

[9]*Id*. at *11-13.

Art Garcia Leaves Rural Housing Service

On May 14, RHS Administrator Art Garcia left RHS to take a position as director of the community development financial institutions fund of the Department of the Treasury.

James Alsop, assistant administrator for community programs, will serve as acting administrator.

GAO Report Warns of Maturing HUD Multifamily Mortgages

A recent report of the U.S. General Accounting Office (GAO) provides a preliminary exploration of the scope of yet another threat to the privately owned multifamily housing stock subsidized under HUD mortgage insurance and rental assistance programs.[1] Rather than focusing on the problems created by mortgage prepayments and expiring Section 8 contracts, this report instead highlights another facet of the federal government's time-limited use restriction policy—this time presented by the repayment of the mortgage loan at maturity. Because most mortgages carry use restrictions co-extensive with the existence of the HUD-subsidized mortgage, for those mortgages not terminated by prepayment, the low-income rent and occupancy restrictions cease to exist when the mortgage is fully paid off, typically forty years after origination. Since these mortgages were not originated until after 1965, repayment has been an extremely rare occurrence to date. The report details the scope of the potential problem ahead, which will grow rapidly in the latter part of the next decade and beyond, as the fourty-year anniversary of an increasing number of properties approaches.

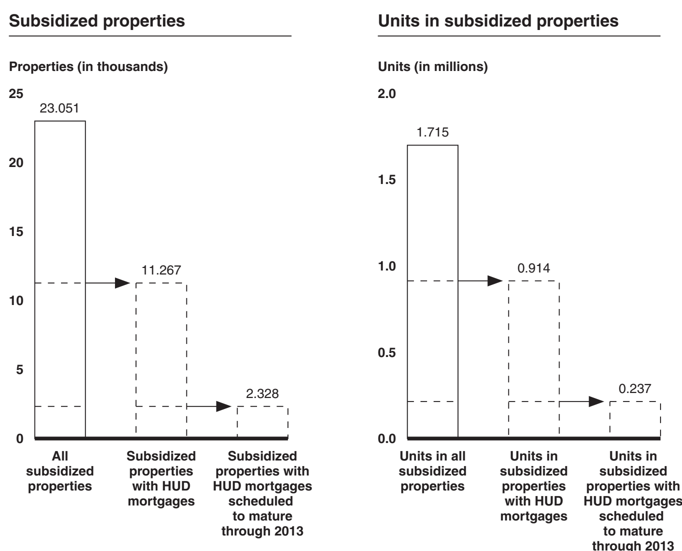
Background

Prior to the creation of the Section 8 program, which authorized both tenant based vouchers and project-based rental assistance, from 1965 through 1979 the federal government subsidized the production of both privately owned and public housing to provide affordable units for low- to moderate-income households. The most commonly used of these subsidized mortgage programs were the Section 236, Section 221(d)(3) Below-Market Interest Rate, and Section 202 programs. While each carried specific eligibility and rent requirements, they shared the common feature of restrictions on tenant eligibility and HUD rent controls that were based upon costs of debt service and operations. In the late 1980s, as many of the owners of these subsidized properties became eligible to leave HUD programs by prepaying their mortgages after their twenty-year restrictions expired or by opting out of their Section 8 contracts, Congress first enacted preservation programs in 1988 and 1990, which were phased out from 1996 to 1998 as funding was withdrawn and prepayments were again permitted. In order to protect tenants of properties whose owners pursued conversion to market-rate use, Congress then provided enhanced vouchers, which offered a higher subsidy and granted tenants the right to remain in their homes after developments were converted. A variety of other federal programs also offer limited funding to subsidized owners—such as bond financing and low-income housing tax credits allocated by state and local governments—to preserve these threatened subsidized properties.

To assist Congress in determining the nature of any policy response, the GAO report appraises the mortgage repayment problem for the remainder of the stock which has not already converted. Currently, no programs or tenant protections are specifically designed to address maturing mortgages. Beyond understanding the scope of what lies ahead, developing responsive policies requires consideration of the possible impacts both on the affordable housing stock and the tenants who live there.

Maturing HUD-Subsidized Mortgages

The GAO report first compiles the current data on the extent of the expiring mortgage problem. There are 23,051 subsidized properties with HUD-subsidized mortgages, rental assistance contracts or both, representing 1,715,000 units. The majority of these, about 1.1 million units in 18,553 properties, face maturing HUD mortgages and/or expiring rental assistance contracts over the next ten years (through 2013). However, the number of properties with maturing mortgages only is far smaller, only about half the total, or 11,267 properties with 914,441 units. And of these, because most were originated after 1973, only 21% (2,328 properties with about 236,000 units) are scheduled to mature by 2013.[2] Of those pre-2013 maturing mortgages, roughly 75% will mature in the last three years of the ten-year period.[3] Almost all of this first wave (97%) were financed under the Section 236, Section 221(d)(3) BMIR and Section 221(d)(3) market-



[1] U.S. General Accounting Office, Multifamily Housing: More Accessible HUD Data Could Help Efforts to Preserve Housing for Low-Income Tenants, No. GAO 04-20 (2004), *available at* www.gao.gov/cgi-bin/getrpt?GAO-04-20 [hereinafter GAO].

[2] *Id*. at 8.

[3] *Id*.

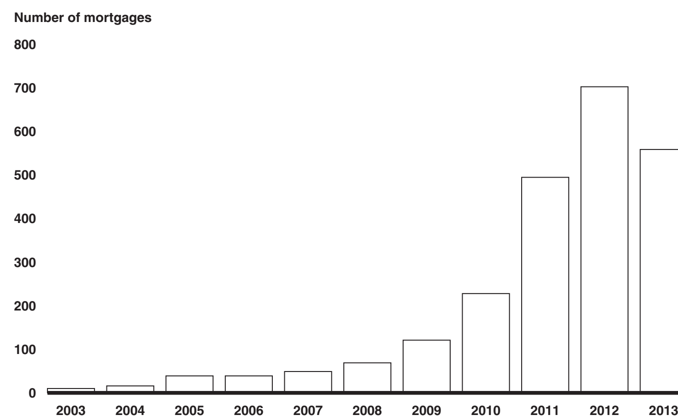
rate programs, with Section 236 properties accounting for the majority.[4]

The lion's share of HUD-subsidized properties (79%, or more than 8900 properties with about 680,000 units) have mortgages scheduled to mature after 2013.

Many of the subsidized properties, and many of those with maturing HUD-subsidized mortgages, have rental assistance contracts as well. About 60% of the units in the 2300 properties with pre-2013 maturing HUD-subsidized mortgages (134,000 units) have project-based Section 8 or similar assistance contracts.[5] About 85% of the 8900 post-2013 maturing mortgage properties have project-based Section 8 or similar assistance contracts, most of which (8166 properties with 530,000 Section 8 assisted units) expire prior to 2013.[6] The presence of a rental assistance contract affects whether tenants will face a rent increase upon cessation of the mortgage-based rent and occupancy restrictions, because tenants in those properties with unexpired rental assistance contract terms or where owners opt-out are protected to some extent under current law and appropriations policies by those subsidies or enhanced voucher replacements.

The number of maturing HUD mortgages prior to 2013 varies by state and year. Their distribution fluctuates dramatically by state, from 273 in California (more than 100 more than Michigan, the second highest with 154) to three in Vermont.[7] The incidence of maturing mortgages remains small (less than 100 nationwide annually) over the next few years, but tops 100 for the first time in 2009, ramping up rapidly to more than 200 in 2010 to about 500 in 2011 and 700 in 2012, before ebbing slightly in 2013.

Figure 2: HUD Mortgages Scheduled to Mature Annually through 2013



Source: GAO analysis of HUD data.

Owner Decisions and Tenant Impacts

While no current statute protects tenants from increases in rent upon mortgage maturity, those tenants residing in assisted units where owners also opt-out of their Section 8 contracts are eligible to receive enhanced vouchers.[8] At mortgage maturity, an unexpired Section 8 contract will protect tenants as long as it exists.[9] Tenants without rental assistance remain exposed to market value rents upon mortgage maturity and deregulation, although the GAO's data indicates that some may have higher incomes and thus be better able to cope with rent increases.[10] There is no current advance notification requirement for tenants when HUD mortgages mature, in contrast to those that apply when owners prepay (150 to 270 days) or opt-out (one year).[11]

What remains unknown is whether owners can or will move to increase rents upon deregulation of these properties. Many who could obtain higher profits by converting to market-rate rents have already done so or will do so by prepayment prior to mortgage maturity. What the GAO report does not provide is any information comparing current rents in these properties to prevailing market rents for units in similar condition in the same location. Those units with Section 236 mortgages will lose their interest reduction subsidies at mortgage maturity. If rents obtainable in the private market are higher than HUD basic rent levels, then owners will probably choose to raise rents, over time if not immediately. How much of this stock faces this risk remains unclear. More project-specific information on rents, physical conditions and amenities, and prevailing market rents will be needed to evaluate this risk.

By ending existing debt service, mortgage maturity frees up more money for repairs and maintenance in order to keep the property affordable. Deregulation at that point also creates additional flexibility to increase rents within market constraints. Since a considerable portion (38%) of maturing mortgage properties are owned by nonprofit organizations,[12] which are presumably mission-driven and influenced more by cash flow than profits, further rent increases may not be necessary in light of the debt service relief from mortgage maturity. For these owners, the key variable is likely the physical needs of the property.

[4] *Id*. at 8-9: 57% Section 236, 22% Section 221(d)(3) BMIR, 19% Section 221(d)(3) market, with the balance of 3% Section 202, 221(d)(4) and 231.

[5] *Id*. at 9-10 and Table 1.

[6] *Id*. at 12. These expiring Section 8 contracts prior to 2013 are part of the larger expiring contract problem, which affects more than 18,000 properties and 1.1 million units nationwide during this period, most of which have HUD mortgages, mostly HUD-subsidized mortgages. *Id*. Most contracts expire before 2007, and if renewed, are placed under new one-year contract terms. If past trends hold, most owners will renew these expiring contracts, but Section 8 budget uncertainty and new policies may alter the picture significantly.

[7] *Id*. at 10-11 and Fig. 3.

[8] *Id*. at 16. *See* 42 U.S.C.A. § 1437f(t) (West 2003) (enhanced voucher authority).

[9] GAO, *supra* note 1, at 18.

[10] *Id*. at 17.

[11] *Id*. at 18. *See* Pub. L. No. 105-276, § 219, 112 Stat. 2487 (1998) (prepayment notice); 42 U.S.C.A. § 1437f(c)(8) (West 2003) (Section 8 expiration or termination).

[12] GAO, *supra* note 1, at 19.

Past experience with HUD mortgages that have matured over the last ten years shows that of the thirty-two HUD mortgages that matured, sixteen are still serving low-income tenants via rental assistance contracts. Of the remaining sixteen, ten are still offering affordable rents for households with incomes below 50% of the area median income,[13] but not necessarily affordable to tenants with incomes similar to those who occupied the developments while the developments were regulated.

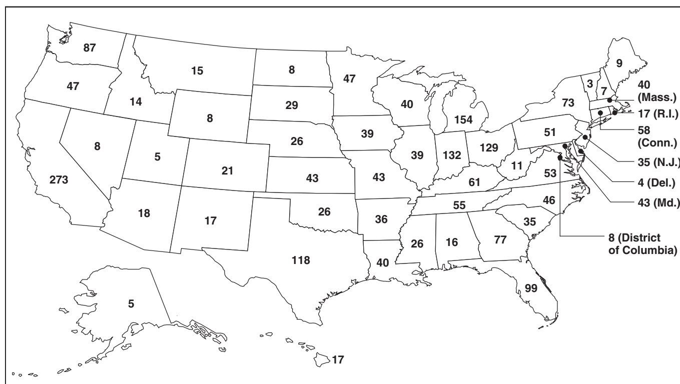
Tools and Incentives for Preservation and Rehabilitation

HUD currently offers no specific tools or incentives to keep properties with maturing HUD mortgages affordable. Because so few have matured to date, state and local agencies have had no need to develop such specific policies.[14] However, state and local agencies have a variety of general incentives that could be used in conjunction with preserving affordability, such as tax credits or bonds, housing trust funds and other financial support for nonprofit organizations.[15] Although many state agencies identify tax credits as the most effective incentive for this purpose, most of those responding to the GAO's survey have no tracking system to monitor maturity dates.[16] Many suggested that it would be helpful if HUD would produce a watch list updated annually to provide notice of which HUD properties were approaching maturity.[17]

Conclusion

Accompanying the GAO report is a free CD ROM[18] with some useful data on HUD-subsidized properties with maturing mortgages which may be downloaded and manipulated. In addition to national and state-by-state summary information on properties with mortgages expiring before 2013 within the database, specific information for each property includes the property name, city, MSA, state, number of total and assisted units, congressional district, financing program, mortgage maturity date, Section 8 or other contract expiration date, rental assistance utilization level, occupancy type and level, ownership type, and Real Estate Assessment Center (REAC) score. This initial data will help to identify properties requiring further examination.

Figure 3: Subsidized Properties with HUD Mortgages Scheduled to Mature through 2013, by State



Source: GAO analysis of HUD data.

More detailed analysis is needed to ascertain the nature of the threat facing tenants and the local affordable housing stock from maturing mortgages. Even without the threat of immediate rent increases, mortgage maturity means no continuing regulatory oversight and no future regulation when local markets improve. Much of the maturing mortgage stock may not present more than a marginal preservation threat. If owners could have increased profits through market-rate conversion, they would have already done so via prepayment, which has been permissible for most of the HUD-subsidized inventory since 1996.

Some properties will nevertheless present more significant risks of conversion or of rent increases. Profit-motivated owners may not have gotten around to converting even where it was advantageous to do so, or perhaps values may increase between now and the maturity date, making conversion more profitable. Also, some properties have been locked into the HUD-subsidized program for their entire mortgage term, because they were originally or currently owned by nonprofit organizations, have a Rent Supplement contract, accepted Flexible Subsidies with Use Agreement lasting for the full mortgage term, or executed a preservation incentive plan binding for the full mortgage term.[19] These properties may explode at maturity with big rent increases if current ownership is profit-motivated and local markets are strong. Even properties owned by nonprofits may face rent increases upon maturity if capital for rehabilitation is needed and market rents are higher. In most cases, mortgage maturity for the remaining stock may mean modest rent increases of up to about $100 monthly where the market can support them. The problem is determining which properties fall into specific kinds of risk categories. Assessing those risks will require more detailed information and local market data. ■

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[13] *Id*. at 20.

[14] *Id*. at 22.

[15] *Id*. at 24.

[16] *Id*. at 24.

[17] *Id*. at 27.

[18] U.S. General Accounting Office, HUD's Inventory of Affordable Multifamily Properties, No. GAO-04-210SP (2004) (data as of April 2003).

[19] Under the rules implementing the Emergency Low-Income Housing Preservation Act of 1987, 24 C.F.R. pt. 248, subpt. C (2003), incentive plans required renewed commitments for the full original mortgage term. These units will be concentrated in states where owners were heavy users of the Title II program, such as California, Massachusetts and Illinois. However, since all of these ELIHPA properties were assisted with additional Section 8 subsidies at mortgage maturity and Section 8 opt-out, the tenants will be partially protected by enhanced vouchers (if the law remains as it exists currently), in contrast to the risk faced by other tenants without assistance.

New HUD Constraints Threaten Some PHAs' Voucher Programs

Funding constraints in the Housing Choice Voucher program are creating problems for public housing authorities (PHAs) and in some cases are driving their local policy. Some of the voucher funding rules are dictated by the Fiscal Year (FY) 2004 appropriations.[1] HUD is developing additional rules. Unfortunately, HUD is taking a very restrictive view. Until, April 22, 2004, it was further exacerbating the problems by not putting any of the new rules in notices or other official documents. Letters, oral communication and emails up until recently were the primary guidance. This left PHAs and advocates to ferret out the policy and rules and to take risks without being sure of the consequences, which may be severe

HUD recently posted a new notice on its public housing Web page regarding FY 2004 voucher renewal funding.[2] Since HUD had for quite some time refused to post any of its new rules regarding the program on its Web site, instead communicating only through letters, oral communication and emails, this notice is in some ways welcome. However, it is clear through a review of this notice that HUD has overstepped its bounds and formed policies that are significantly more restrictive than Congress intended. This article reviews those policies that may be of concern to housing advocates.

Structure of Funding for the Voucher Program

To understand issues addressed in the notice, an advocate must know a little about the structure of funding for the voucher program. Of primary importance is that for FY 04, HUD has adequate funding to continue to support all vouchers in use.[3] In addition, Congress has created three appropriation funds to support different aspects of the voucher program. The *renewal fund* is used to fund the authorized number of units under Section 8 Housing Assistance Payments (HAP) contracts that PHAs enter into with local landlords. The *central fund* is used to support additional authorized vouchers after a PHA uses its one-month program reserve. The *administrative fee fund* provides money to PHAs for their administration of the voucher program.

In addition, PHAs may have access to program reserves which could be used to address inadequate funding. HUD holds one-month reserve funds for PHAs, funds which may be composed of money from different fiscal years. For FY 03, HUD did not replenish program reserves for all PHAs and as a result these PHAs may have little or no reserves.[4] However, PHAs may also have a fund which they hold which is comprised of administrative fees which were not used in prior years; new funds added to the administrative fee reserve must be used for the voucher program.[5] HUD may also hold other reserves for a PHA from other programs such as mainstream or moving to opportunity or other tenant based programs.

New Rules and Policies

The following are the new rules and policies set forth in the HUD notice.

HUD funds PHAs quarterly. PHAs must report quarterly to HUD their average costs and the number of units under lease; HUD continues to fund PHAs in three-month increments.[6]

HUD funds the number of authorized units under lease on a monthly basis. During FY 2004, HUD will fund PHAs based on the average number of authorized units under lease as set forth in the most recent quarterly report. The amount funded may be higher than the amount in use as of August 1, 2003.[7] These payments will be made by HUD from the renewal fund. The exception to the monthly funding scheme is when a PHA has increased leasing above the level of the last quarterly report and needs additional

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[1]Pub. L. No. 108-199, div. G, tit. II (1), 118 Stat. 3, 369-371 (2004). For background on the FY 2004 appropriations and an extensive discussion of the issues, see Barbara Sard & Will Fischer, Omnibus Bill Appropriates Sufficient Funding to Renew Housing Vouchers: Impact of Some New Provisions Will Depend Upon Implementation by HUD (Dec. 24, 2003), *available at* http://www.cbpp.org/pubs/housing03.htm.

[2]HUD Notice PIH 2004-7 (HA), Implementation of FFY 2004 Consolidated Appropriations Act Provisions for the Housing Choice Voucher Program (Apr. 22, 2004), *available at* http://www.hud.gov/offices/pih. The notice was posted the following day at http://www.hudclips.org. HUD issued the notice nearly three months after the FY 2004 appropriation act became law and five months after the FY 2004 appropriation act was reported out of the House-Senate conference committee. For an in-depth analysis of the HUD notice, see Barbara Sard & Will Fischer, New HUD Policy Will Force Immediate Cuts In Housing Voucher Assistance for Low-Income Families: HUD Acted to Force Cuts Even Though Congress Provided Sufficient Funding to Support All Vouchers (Apr. 26, 2004), *available at* http://www.cbpp.org/pubs/housing.htm.

[3]Sard & Fischer, *supra* note 2, at p. 1.

[4]*Id*. at 2. HUD recently announced that it has $525 million to fund the reserves of 525 PHAs. Press Release, HUD, Jackson Unveils Funding Assistance for Public Housing Authorities (May 20, 2004) (HUD No. 04-046), *available at* http://www.hud.gov/news/release.cfm?content=pr04-046.cfm.

[5]HUD Notice 2004-7, *supra* note 2, at ¶ 8.

[6]*See* HUD Form 52681-B, *available at* http://www.hudclips.org; HUD Notice PIH 2003-23 (HA), Implementation of FFY 2003 Omnibus Appropriations Act Provisions for the Housing Choice Voucher Program (Sept. 22, 2003), *available at* http://www.hudclips.org; *see also* HUD Notice PIH 2004-7, *supra* note 2, at ¶ 3.

[7]Pub. L. No. 108-199, div. G, tit. II (1), 118 Stat. 3, 369-370 (2004). The best way to determine the number of units that were authorized for a PHA as of August 1, 2003, is to ask the PHA for the number. Information on the authorized number of units for each PHA is also available from three other sources which are available on the Web. These sources will not necessarily reveal the number of units reserved for a particular PHA as of today and the figures may not be the same from all three sources, but these sources will give an approximation of what the number may be:

funds during the quarter to support vouchers under lease. In that situation, the PHA must submit revised budget documents, draw on its reserves, and if reserves are insufficient, it may request additional funding from the central fund.[8]

There is a cap on the number of units HUD will fund. HUD will not fund units in excess of those authorized on August 1, 2004. In other words, HUD will not support overleased units.

HUD is implementing a new formula for determining the cost per voucher. Beginning in April 30, 2003, HUD funded PHAs quarterly based upon their actual average cost and the number of units under lease. That practice continued through the beginning months of calendar year 2004. HUD recently individually informed some PHAs and formally announced in the new HUD notice that it will now calculate the average annual cost of vouchers based upon the average annual cost per voucher as of August 1, 2003 (the May/June/July average costs) plus an inflation factor. The inflation factor HUD is using is the Annual Adjustment Factor (AAF), which was developed for the project-based Section 8 program.[9] The recent HUD Notice states that "adjustments to the published AAF may be warranted in some cases. A PHA may present a case to HUD that clearly and objectively demonstrates the need for an increased inflation factor."[10] However, HUD apparently takes the position that the only cost increase that it will consider is an increase in local rents. At this point in time, cost increases due to other factors such as a decrease in overall average voucher family income or the number of enhanced vouchers[11] administered by a PHA will not be considered.

HUD apparently takes the position that the only cost increase that it will consider is an increase in local rents.

The new formula is effective January 1, 2004. HUD is seeking to collect overpayments (amounts paid in excess of the May/June/July average annual costs plus inflation factor) made to PHAs since January 1, 2004.

PHA reserves, if available, may be used to address funding shortfalls. PHAs may use their one-month reserves for some but not all expenses which HUD is not currently covering and HUD may reimburse PHAs for only some of the withdrawals.

Use of reserves to address overleasing. If a PHA has more units under lease on average for FY 2004 than authorized as of August 1, 2003, it may pay for those overleased units from its one-month reserves, if available. But the PHA is limited in its use of the reserves, because it may only use those funds in the one-month reserve that are other than FY 2003 or FY 2004 funds to pay for overleased units, i.e., those units leased in excess of the authorized level.

A PHA may use its one-month reserves for units leased up to the authorized level, but not in excess of the number which were under lease on August 1, 2003. It must use up to one-half of its reserves before it may request reimbursement from HUD and HUD will not replenish the reserves until the beginning of the PHA's fiscal year.

Use of reserves to address issues of cost per voucher. A PHA may use its one-month reserves to pay for costs in excess of the average annual cost determined on August 1, 2003, plus the AAF. It is not clear whether HUD will reimburse the PHA for these expenditures. HUD is prohibited from using the central reserve fund to reimburse PHAs for increases in costs,[12] but it could use the renewal fund.

Use of a PHA's administrative fee reserve. PHAs may

PHA Profile
Provides information on Section 8 inventory number of units.
http://www.hud.gov/offices/pih/systems/pic/haprofiles/

Resident Characteristics Report
Provides information by PHA on the "Total Available Units" and the "Total Occupied Units."
http://www.hud.gov/offices/pih/systems/pic/50058/rcr/index.cfm

Center for Budget Policy and Priorities, *The Local Impact of Proposed Cuts in Federal Housing Assistance* (Mar. 17, 2004)
Provides information by PHA on the number of authorized vouchers as July 2003.
http://www.cbpp.org/pubs/housing.htm

Explanations of why the figures are different in the various data sources include the fact that a PHA may have received additional vouchers because of subsidized housing units opt-outs and families receiving "enhanced vouchers" which should be reflected contemporaneously in the HUD Form 52681-B but are not likely to be reflected in the other data sources. In addition, the data may be incorrect because of human error and the time period used by the different sources.

[8]Congress in FY 2003 reduced PHA program reserves from two months to one month. As an additional safeguard for PHAs, Congress provided money for HUD's central fund to pay for these additional units and must make the funds available within thirty days of a request from a PHA. Pub. L. No. 108-199, div. G, tit. II (1), 118 Stat. 3, 371 (2004). "The Department will respond to a PHA's request and will obligate any additional HAP funds as HUD determines necessary within 30 days of receiving a complete document package." HUD Notice PIH 2004-7, ¶ 5 (emphasis in original). It appears that a complete package is a written request for funding, a completed HUD form 52681-B and a completed HUD form 52681-B for every unreported month that has ended at the time the request is submitted. However, the notice is not as clear as it could be as to what constitutes a complete package.

[9]*See* Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2003; Notice, 68 Fed. Reg. 3,116 (Jan. 22, 2003).

[10]HUD Notice PIH 2004-7, *supra* note 2, at ¶ 3. HUD will provide more specific guidance at a later time, but a request for a higher inflation factor must be submitted to HUD by July 15, 2004. *Id.* Presumably, "at a later time" means within weeks not months due to the deadline for submitting a request for additional funds.

[11]The enhanced voucher program is inherently a more expensive program than other voucher programs. *See* Sard & Fischer, *supra* note 2, at 6.

[12]H. R. Conf. Rep. No. 108-401, at 1045 (2003).

use excess administrative funds to pay for overleasing and for excess costs in the voucher program. Not all PHAs have administrative fee reserves and for others the amounts in the reserves may not be large.[13] Significantly, Congress provided HUD up to $50 million for administrative fees "to allocate to public housing agencies that need additional funds to administer their Section 8 programs."[14] HUD has not indicated how it will distribute these funds.

HUD suggests ways that PHAs can reduce costs. Because of the new stringent and apparently retroactive application of a new cost formula, HUD sets forth a series of actions which PHAs may engage in to reduce costs. These items include: reducing the payment standard; reviewing rents to owners to determine if they are reasonable; with respect to individual participants, increasing income matching and verification efforts and anti-fraud activities; reviewing and changing, if necessary, PHA policies relating to the reporting of increases in family income and adjustment of the subsidy calculation; and increasing the minimum rent and reviewing the subsidy standards used to determine the bedroom size for the family voucher.[15] The HUD notice does not address other significant issues that affect the costs of the vouchers. The costs include rising rents, which cannot be reduced by application of rent reasonableness determinations, and decreasing average family income of participants or average family income which is not keeping abreast with rising rents. Moreover, the notice fails to mention that these cost reduction strategies are long term and are not designed to reduce costs quickly. In addition, most of the recommended steps require amendments to the PHA Annual Plan and the Section 8 Administrative Plan[16] and some will have a delayed effective date for the majority of program participants.[17]

[13]Sard & Fischer, *supra* note 2, at 2.

[14]Pub. L. No. 108-199, div. G, tit. II (1), 118 Stat. 3, 371 (2004).

[15]HUD Notice PIH 2004-7 (HA), *supra* note 2, at ¶ 6.

[16]The federal regulations set forth rules for amending a PHA plan. 24 C.F.R. § 903.21 (2003); HUD, Public Housing Agency Plan Desk Guide § 7 (2001), *available at* (listed in "what's new"). If a modification or amendment to a PHA Plan is "a significant amendment" or a "substantial deviation/modification" then the PHA must comply with requirements (notice, consultation with the Resident Advisory Board, a public hearing and approval by the PHA Board) similar to those required when the PHA plan is developed. 24 C.F.R. § 903.21 (2003); *see also* 24 C.F.R. §§ 903.13 and 903.17 (2003). HUD has provided a definition of the terms "a significant amendment" and a "substantial deviation/modification." Alternatively the PHA may define the terms. If the PHA defines the terms, they must be attached to the PHA's plan and should be available at http://www.hud.gov/offices/pih/pha/ click on approved plans. Any revisions to the Administrative Plan must be formally adopted by the PHA Board of Commissioners. 24 C.F.R. § 982.54(a) (2003).

[17]24 C.F.R. § 982.505(c)(3) (2003) (a decrease in the payment standard is effective for current residents at the second annual reexamination after the decrease).

Possible Bases for Challenging HUD's New Policy

HUD is taking a variety of actions, each of which has its consequences and may be challenged by PHAs or advocates. For example, HUD has interpreted the FY 2004 Appropriations Act to determine costs based upon those established as of August 1, 2003, plus the AAF. This language is contrary to HUD's prior interpretation of similar language and is contrary to the intent of Congress. In FY 2003, HUD was instructed to fund PHAs "by applying an inflation factor based on local or regional factors to the actual per unit costs as reported on [the most recent year end financial] statement."[18] HUD interpreted and implemented this FY 2003 language by requiring PHAs to submit quarterly data on voucher costs (plus an inflation factor) to determine the average cost of vouchers to be renewed.[19] Using that data, HUD began a practice of funding PHAs on a quarterly basis. The FY 2004 Appropriations Act altered the language relating to determining the total number of unit months by removing the language relating to the most recent year end financial statement and replacing it with a specific date of August 1, 2003.[20] Congress also removed the language on how to determine costs by removing the reference to "[the most recent year end financial] statement." These actions did not compel HUD to use August 1, 2003, plus an inflation factor to establish average annual costs. In fact, the change in the FY 2004 appropriation language, removing the reference to year end financial statements, is consistent with the actual practice adopted by HUD for FY 2003 which was to fund on the basis of quarterly reports, not year-end reports. HUD apparently believes that the statutory change adding the August 1, 2003, date affects how costs should be determined. But that date refers to the date for which the total number of unit months is determined, not the date for determining the costs.

As further support for the argument that Congress did not intend to change the funding formula so as to reduce the amount paid the PHAs, the funds provided for voucher renewals represent an increase of approximately $1.8 billion over FY 2003 and approximately $1 billion more than was requested by the Administration or which was in the House or Senate bills.[21] The purpose of the funding increase was to ensure that all authorized units under lease would be renewed. In addition, Congress requested that HUD submit quarterly reports "on the obligation of

[18]H.R.J. Res. 2, 108 Cong. 1st Sess. 474 (2003) (Consolidated Appropriations Resolution, 2003).

[19]HUD Notice PIH 2003-23 (HA), *supra* note 6, at ¶ 3; *see also* Sard & Fischer, *supra* note 1, at p. 6

[20]Pub. L. No. 108-199, div. G, tit. II (1), 118 Stat. 3, 370 (2004) ("and by applying an inflation factor based on local or regional factors to the actual per unit cost").

[21]Sard & Fischer, *supra* note 1, at 3.

funds." Congress did not expect that changes in the funding formula would be made in this fiscal year. Rather the conference report instructed that the HUD reports were to address the issue of "alarming increases to the cost of rents" by addressing laws and policies currently governing the setting of voucher rents, reviewing implementation where these costs appear to be inconsistent with the costs of comparable housing and to make recommendations for "maximizing the delivery of assistance."[22] Congress wanted information and recommendations in quarterly reports which it would take into account to fashion changes, if any, in future legislation.

HUD's actions to make the cost formula retroactive to January 2004 and requiring PHAs to absorb the negative impact of the new cost formula prior to the end of a PHA's fiscal year are also an abuse of discretion. Assuming that HUD is correct in its interpretation of the appropriation language, there is no authority for it to apply the formula retroactively. PHAs have received payments based upon actual costs through March 2004 and have relied upon that funding and entered into contracts on the basis of that formula. To recoup alleged overpayments while simultaneously reducing payments prospectively for some PHAs is an abuse of discretion especially when there is no indication that HUD does not have sufficient funds to meet all current obligations by applying the new formula only prospectively. Moreover, it is an abuse of discretion to require a PHA with a fiscal year of July 1 to absorb any overpayments by the end of their fiscal year. In the context of seeking claims from the central fund, HUD recognizes that PHAs have until December 1, 2004, to make claims and adjust their funding.[23] At a minimum, a similar amount of time should be allowed to adjust funding for make up for any retroactive recoupment.

Early Successes Achieved by Massachusetts Advocates

Many PHAs are faced with or believe that they will be faced with inadequate funding, which may affect the number of families that they may serve.[24] PHAs and advocates have responded to these funding restraints in different ways. The advocacy efforts in Massachusetts have been substantial and effective, in the short term. At the end of March, HUD verbally informed the Massachusetts Department of Housing and Community Development that it had a shortfall of $3.1 million in its fiscal year ending June 30, 2004. The shortfall was created because HUD was going to begin to fund the DHCD on the basis of actual costs as of August 1, 2003, plus the AAF and sought to recoup the costs in excess of the new formula paid since January 2004. The DHCD currently serves approximately 18,000 voucher families, and it determined that it would have to terminate from its program two thousand families in June 2004 to avoid a shortfall.

Many PHAs are faced with or believe that they will be faced with inadequate funding, which may affect the number of families that they may serve.

With pressure from the advocacy community and the network of private regional nonprofit agencies that administer the voucher program for DHCD, DHCD held hearings to determine how to respond to the crisis. Letters were sent to all of the voucher participants, including residents and landlords, asking them to attend the hearing.[25] The letter briefly outlined the problem, stating that HUD is changing the way it is funding the voucher program and that, in response, DHCD will have to terminate up to two thousand voucher holders. The letter also stated that DHCD's proposal was to terminate the contracts for those families for the most recent participants and to consider reducing the payment standard. The tenants and landlords were also invited to submit written comments to DHCD. A press release was also issued. The media responded to the press release and the crisis.

In addition, the Republican Governor of Massachusetts, Mitt Romney, sent a letter to HUD pointing out that HUD was making a historic change in its policy of funding based on average actual costs, providing an unrealistic time table and noting that Congress had always provided adequate funding for the program. The Governor concluded that he found "it difficult to imagine that the intent of those preparing the FFY 2004 budget was to break with this tradition [of providing adequate funds to renew all currently authorized vouchers]."[26] HUD has responded to the demands for assistance and "is freeing up about

[22]H. R. Conf. Rep. No. 108-401, at 1044 (2003).

[23]HUD Notice 2004-7, *supra* note 2, at ¶ 5.

[24]*See e.g.*, Geraro C. Armas, *U.S. Housing Voucher Changes May Mean Cuts*, Associated Press, April 20, 2004 (Stanislaus County Housing Authority may have to drop 120 families); Amy Goldstein, National Association of Housing and Redevelopment Officials (NAHRO), Administration Alters Rules for Rent Aid Housing: Advocates Criticize Section 8 Changes (Apr. 21, 2004) (analysis suggests that at least 900 local housing authorities, spanning virtually every state, will end up this year with less money than they need to cover their vouchers' cost). Advocates have reported that the Housing Authority of San Mateo says that it may have to cut ninety-two vouchers and the Housing Authority of San Luis Obispo may have to cut 120.

[25]Letter from Julia Kehoe, Executive Director, Metropolitan Boston Housing Partnership, to Program Participant (Apr. 10, 2004) (on file with the National Housing Law Project).

[26]Letter from Mitt Romney, Governor of Massachusetts, to Alphonso R. Jackson, Secretary of HUD (April 13, 2004) (a copy of the text is on file with the National Housing Law Project).

$2.6 million to avert the threatened loss of 2,000 housing vouchers."[27] The money will help address the problem in the short term. What remains outstanding is the continuing conflict regarding the interpretation of how costs should be determined in the future, whether they can be based upon actual costs or are restricted to annual average costs as of May/June/July 2003 plus the inflation factor and whether HUD can recoup payments retroactive to January 1, 2004.[28]

There were substantial benefits from making the problem public and holding a public hearing. First, it provided a forum for sharing information about the problem, thereby attracting the attention of the decision-makers and policymakers. Second, it engaged all sectors of the community who have an interest in the program to assist with formulating a solution. Third, by making the issue public, it minimized misunderstandings and disputes between the affected parties and focused attention on the problem and its possible solution.[29] Fourth, and most significantly, the pressure resulted in HUD finding other funds that it may have owed DHCD to help fill the gap created by its policy.

Materials Available on the NHLP Web Site

On April 14, 2003, NHLP held a teleconference on the FY 2004 voucher funding issues. The issues outlined above were addressed as well as the historical background and more information on strategies for addressing the problem. The PowerPoint file used in the teleconference will be posted on the NHLP Web site[30] in the near future. An audio of the teleconference can also be obtained from NHLP for a fee of $25. ■

[27]Matthew Rodriguez, *Relief Expected for Section 8 Cut: Voucher Program to Get $2.6 Million*, Boston Globe, Apr. 17, 2004 (copy of the text is on file with the National Housing Law Project).

[28]As HUD continues to make rules on an ad hoc basis, other issues are arising. For example, HUD is currently applying the AAF as of January 1, 2004. That creates an eight-month gap for which no inflation factor is applied. The costs are currently based upon costs as of May/June/July 2003 and there are eight months between May and January.

[29]See Press Release, National Association of Housing and Redevelopment Officials (NAHRO) HUD Implements Deficient Section 8 Renewal Policy (no date) (on file with the National Housing Law Project) ("Public meetings between LHAs and stakeholders are an important step in sharing information about the FY 2004 renewal formula, amending their plans and taking actions . . . .").

[30]http://www.nhlp.org.

California Tenant Sues Landlord for Refusal to Accept Voucher

California law provides that it is unlawful for a landlord to discriminate based upon source of income. Source of income "means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant."[1] The legislative history of this provision makes clear that the California legislature intended the provision to include housing assistance payments under the Housing Choice Voucher program.

A voucher holder recently filed suit in state court to enforce the statute. The plaintiffs, Elisheba Sabi and her now-deceased husband, received a housing choice voucher in July 2003, after five years on the Santa Monica Housing Authority (SMHA) voucher waiting list. They asked their current landlord, who also owns or has an interest in over 10,000 units in the Los Angeles area, to accept their voucher. Despite a seventeen-year rental history, their landlord, the Donald T. Sterling Corporation, refused.[2]

The Sabis later requested, as reasonable accommodation of Mr. Sabi's illness-related disability, that the corporation waive any policy regarding nonacceptance of a voucher. The corporation failed to respond.

When Mrs. Sabi next requested reasonable accommodation on her own behalf, the corporation, through its attorney, responded that it "does not choose to participate in the Section 8 program." It also rejected Mrs. Sabi's reasonable accommodation claim, citing Salute v. Statford Greens.[3] After noting that Mrs. Sabi relocated from Iran when she was 55 years of age, the corporation's attorney concluded that "[u]nfortunately, sometimes events and choices necessitate that sacrifices are required, such as leaving ones homeland, which is 'familiar,' or relocating to a more affordable apartment, from one that is 'familiar.'"

On April 6, 2004, Mrs. Sabi filed suit against her landlord and other defendants, alleging violation of California laws prohibiting discrimination against source of income[4] and for failure to reasonably accommodate disability as required under the California Fair Employment and Housing Act.[5] Mrs. Sabi also stated a cause of action

[1]Cal. Gov. Code § 12955(a) and (p) (West, WESTLAW through Ch. 33 & Res. Ch. 1 of 2004 Reg.Sess., Ch. 1 (end) of 3rd Ex.Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58)

[2]The Sabis' current rent-controlled unit rents for an amount that is below the SMHA payment standard.

[3]918 F. Supp. 660 (E.D. N.Y. 1996).

[4]Cal. Gov. Code § 12955(a), (b), (c) and (p) and CAL. CIV. CODE § 51 (West, WESTLAW through Ch. 33 & Res. Ch. 1 of 2004 Reg. Sess., Ch. 1 (end) of 3rd Ex. Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58) of 5th Ex. Sess., & Props. 55 & 56).

[5]Cal. Gov. Code § 12,927(c)(1) and 12,955(a)(c) and (m) (West, WESTLAW through Ch. 33 & Res. Ch. 1 of 2004 Reg. Sess., Ch. 1 (end) of 3rd Ex. Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58) of 5th Ex. Sess., & Props. 55 & 56).

for negligence and a cause of action under the California Unfair Business Practices Act.[6]

Mrs. Sabi is represented by Legal Aid Society of Los Angeles, Gary Rhoades, the firm of Brancart & Brancart and National Housing Law Project. A copy of the complaint is posted on the NHLP Web site at http://www.nhlp.org/html/sec8/index.htm#CASES. ■

[6]Cal. Bus. & Prof. Code § 17,204 (West, WESTLAW through Ch. 33 & Res. Ch. 1 of 2004 Reg.Sess., Ch. 1 (end) of 3rd Ex.Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58).

Recent Housing 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.

Administrative Procedure Act — Non-Federal Defendants; Federal Courts — Private Right of Action

Hunter v. Underwood, 362 F.3d 468 (8th Cir. 2004). Appellant assisted housing resident[4] challenged Appellee public housing authority's decision to terminate her lease. The district court rejected Appellant's claims. Appellant filed a number of appeals. In affirming the district court's decision, the Eighth Circuit concluded, inter alia, that Appellant could not properly assert claims against a public housing authority via the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq. Citing Gonzaga Univ. v. Doe, 536 U.S. 273 (2002), the Eighth Circuit further concluded that Appellant also could not properly assert a 42 U.S.C. § 1983 claim against Appellee for violation of Iowa lease termination notice requirements, despite HUD regulations mandating compliance with such requirements, 24 C.F.R. § 247.6.

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

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

[3]For 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.

[4]The exact program under which tenant was assisted is not clear from the Eighth Circuit opinion.

Low-Income Housing Tax Credit Program; Fair Housing — Generally

In re Adoption of the 2003 Low Income Housing Tax Credit Qualified Allocation Plan, 2004 WL 902145 (N.J. Super. App. Div. Apr. 28, 2004). Appellants challenged the 2003 New Jersey Low Income Housing Tax Credit (LIHTC) program Qualified Allocation Plan (QAP), arguing that the funding of the development of housing in urban areas with high concentrations of minority persons violates the federal Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and state law. Appellants were denied a "trial-type" hearing from the New Jersey Housing Mortgage Finance Agency (HMFA) and appealed to the New Jersey Superior Court Appellate Division for their challenge of the QAP. The appellate division affirmed. The appellate division concluded, inter alia, that while the HMFA was subject to an affirmative duty to further fair housing, "HMFA's 'affirmatively to further' duty must be measured by consideration of its far-reaching housing agenda." On such an analysis, the appellate division concluded that the duty had not been violated. The appellate division further rejected Appellants' arguments regarding the disparate impact of the QAP, its segregative effect and the state law Mount Laurel doctrine.

Section 236 Program — Foreclosure by HUD; Administrative Procedure Act — Commission to Agency Discretion by Law

Pleasant East Assocs. v. Martinez, 2004 WL 840290 (S.D.N.Y. Apr. 19, 2004). Plaintiff owner of a multifamily housing development assisted under the Section 8 and Section 236 programs brought suit against HUD Defendants challenging, inter alia, Defendants' decision to foreclose on the Section 236 insured mortgage via the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq. Defendants moved for summary judgment. The district court rejected Defendants' argument that decisions to foreclose HUD-insured mortgages are committed to agency discretion by law and were therefore unreviewable under the APA. Nevertheless, the court concluded that Defendants had not abused their discretion in deciding to foreclose and granted Defendants' motion. ■

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 April of 2004. 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 Notices

69 Fed. Reg. 17,440 (Apr. 2, 2004)
Multifamily Inventory of Units for the Elderly and Persons With Disabilities

Summary: This notice announces HUD's "Multifamily Inventory of Units for the Elderly and Persons with Disabilities" (Inventory). The Inventory is designed to assist prospective applicants with locating units in certain projects with FHA insured financing and HUD subsidized multifamily properties that serve the elderly or persons with disabilities. HUD will update the Inventory on an annual basis to reflect changes in property status and to reflect new projects available for occupancy.

69 Fed. Reg. 19,208 (Apr. 12, 2004)
Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Survey of Faith Based and Community Organizations

Summary: HUD has submitted an information collection proposal to the Office of Management and Budget (OMB) for emergency review and approval. It requested comments on an "emergency" basis. The information collection consists of a survey of a sample of faith based and community organizations that have received training from HUD on how to apply for a variety of programs funded by HUD. The survey would be used to obtain information on their likelihood of success in applying for various funding programs. The information collection is intended to help HUD to determine how well its efforts to educate faith based and community organizations on its programs has translated into interest in applying, actual application, and successful funding for grantees. It will also indicate what further work the Department needs to do to assist faith based and community organizations access federal, state, and local funding.

Comments Due Date: April 26, 2004.

69 Fed. Reg. 19,210 (Apr. 12, 2004)
Notice of Proposed Information Collection for Public Comment on the Continued Participant Tracking in the Moving to Opportunity Demonstration Program

Summary: HUD will be submitting a proposal for an information collection proposal to the Office of Management and Budget (OMB) for review. It is soliciting public comments on the proposal. The proposal relates to several survey instruments designed to collect information on the current locations of participants in the Moving to Opportunity (MTO) demonstration program. The instruments also have a small number of outcome measures, such as employment.

Comments Due Date: June 11, 2004.

69 Fed. Reg. 22,320 (Apr. 23, 2004)
Notice of Funding Availability for Fiscal Year (FY) 2004 Rural Housing and Economic Development Program

Summary: The purpose of the Rural Housing and Economic Development program is to build capacity at the state and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. The funds made available under this program will be awarded competitively through a selection process conducted by HUD in accordance with the HUD Reform Act.

Application Due Date: May 24, 2004

69 Fed. Reg. 22,864 (Apr. 27, 2004)
Notice of Proposed Information Collection for Public Comment on Updating the Low Income Housing Tax Credit Database

Summary: HUD will be submitting a proposal for an information collection proposal to the Office of Management and Budget (OMB) for review. It is soliciting public comments on the proposal. The proposal relates to updates to the Low Income Housing Tax Credit (LIHTC) property database. According to HUD, the updates will provide HUD with current, comprehensive LIHTC data to allow it to determine the types of areas in which units are located, the concentration of such units geographically and with respect to other subsidized housing types, or whether incentives to develop LIHTC units in a set of HUD designed Difficult Development Areas has been effective.

Comments Due Date: June 28, 2004.

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

[2]At http://www.hudclips.org/cgi/index.cgi.

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

[4]At http://www.rdinit.usda.gov/regs.

HUD Housing Notices

Notice H 2004-06 (Apr. 13, 2004)
Housing Notice 2002-20, Clarification Regarding Title Approval Issues, Property Condition at Conveyance, Administrative Offsets and a New Process for Lender Appeal of Conveyance Issues

Summary: The purpose of this notice is to reinstate and extend Housing Notice H-2002-20. The new expiration date is March 31, 2005.

Expires: March 31, 2005.

HUD PIH Notices

Notice PIH 2004-05 (HA) (Apr. 9, 2004)
HUD PIH Notice for Mixed-Finance Development of Operating Subsidy-Only Projects

Summary: HUD is issuing this notice to provide new guidance regarding the statutory, regulatory and program policy issues involved in developing a mixed-finance Operating Subsidy-Only public housing project. The term "Operating Subsidy-Only Project" refers to the development of public housing replacement units financed without the use of HUD public housing capital assistance or HOPE VI funds, but for which HUD agrees to provide operating subsidies under Section 9(e) of the U.S. Housing Act of 1937.

Expires: April 30, 2005.

Notice PIH 2004-06 (HA) (Apr. 1, 2004)
Extension-Public Housing Development Cost Limits

Summary: This notice extends Notice PIH 2003-8 (HA), same subject, for another year, until March 31, 2005.

Expires: March 31, 2005.

Notice PIH 2004-07 (HA) (Apr. 22, 2004)
Implementation of FFY 2004 Consolidated Appropriations Act Provisions for the Housing Choice Voucher Program

Summary: This notice implements changes to the funding of the Housing Choice Voucher Program resulting from the Federal Fiscal Year (FFY) 2004 Consolidated Appropriations Act (Public

Law 108-199), which was signed into law on January 30, 2004. In this law, Congress modifies the method of calculating renewal funds, appropriates funds for Housing Assistance Payments (HAP), public housing agency (PHA) administrative expenses, and a central fund, and prohibits the use of FFY 2004 funds for over-leasing.

Expires: April 30, 2005.

RHS Federal Register Notices

69 Fed. Reg. 18,040 (Apr. 6, 2004)
Request for Proposals (RFP): Demonstration Program for Agriculture, Aquaculture, and Seafood Processing and/or Fishery Worker Housing Grants

Summary: The Rural Housing Service (RHS) announces the availability of funds, the timeframe to submit proposals, and the guidelines for proposals for agriculture, aquaculture, and seafood processing and/or fishery worker housing grants in the states of Alaska, Mississippi, Utah and Wisconsin. Division A of Public Law 108–199 (Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004) authorizes RHS to establish a demonstration program to provide financial assistance (grants) for processing and/or fishery worker housing in the states of Alaska, Mississippi, Utah and Wisconsin.

Dates: The deadline for receipt of all applications in response to this RFP is 5 p.m., eastern standard time, on July 6, 2004.

69 Fed. Reg. 18,046 (Apr. 6, 2004)
Housing Demonstration Program

Summary: The Rural Housing Service (RHS) announces the availability of housing loan funds for Fiscal Year (FY) 2004 for the Rural Housing Demonstration Program. For FY 2004, RHS has set aside $2 million for the Innovative Demonstration Initiatives. The agency is soliciting and accepting proposals from individuals for the Housing Demonstration program under Section 506(b) of Title V of the Housing Act of 1949, which provides loans to low-income borrowers to purchase innovative housing units and systems that do not meet existing published standards, rules, regulations or policies.

Effective date: April 6, 2004.

RHS Administrative Notice

RD AN No. 3966 (1965-B) (Apr. 9, 2004)
Preservation Proposals for Equity Funding

Summary: This administrative notice provides guidance on how to access $4.3 million of the Section 515 reserve that is made available to fund innovative approaches to preserve rental housing. It announces that proposals to use funds should be submitted to the Office of Rental Housing Preservation by May 3, 2004.

Expiration Date: September 30, 2004. ■

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