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Seniors Raising Children in Subsidized Housing: *—see page 441*

HUD Issues Final Rule on Public Housing Conversion *—see page 449*

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

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Cover: Verna Parkinson, together with her social worker, in front of Longfellow Apartments, a 24-unit family and special needs development managed by Chico Housing Improvement Program (CHIP), in Chico, CA, financed by the California Housing Finance Agency, the City of Chico and the Affordable Housing Assistance Program. *Photo courtesy of CHIP.*

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

Seniors Raising Children in Subsidized Housing

Grandparents as primary caregivers for their grandchildren are a growing sector among the poor in the United States. The consequence of a lack of safe and decent housing can be dire for these families. Stable housing is a key element to maintaining custody of children, and, thus, the loss of housing can result in the return of the grandchildren to an undesirable living arrangement or delivery into the foster-care system. In addition, seniors who might otherwise be a resource in the foster care system for children who are not relatives may choose not to participate because it could cost them their access to affordable housing.

Federal law pertaining specifically to federally subsidized seniors developments appears to be sufficiently flexible to meet the needs of seniors caring for minors or other persons who are not seniors. However, federal fair housing law appears to permit state-subsidized or private developments to adopt a more restrictive set of regulations that deprive seniors of access to such developments if their family unit includes a non-senior. This article discusses the growing need for multi-generational housing, the federal law and California state law as they pertain to this issue.

The Phenomenon of Grandparents as Primary Caregivers

An indicator of the growing significance of seniors caring for family members lies in the sheer number of seniors who care for minors, and the number of minors who rely on them for that care. According to the 2000 census, 2.4 million grandparents serve as primary caregivers for one or more of their grandchildren living with them. This means that 42 percent of all grandparents in the U.S. who live with their grandchildren provide primary care for them. Wyoming, Oklahoma, Arkansas and South Dakota have the highest percentage of grandparents caring for grandchildren who live with them—almost 60 percent.[1]

The number of children living with grandparents as their primary caretaker has been rising—from 2.2 million in 1970 to 3.9 million in 1999, a number which represented almost 5.5 percent of all children under age 18 at the time.[2] Four in 10 two-grandparent households reported in 1998 that at least one grandchild or great-grandchild lived with them.[3] As of the year 2000, 4.5 million children under 18 lived in a grandparent-headed household.[4]

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[1]U.S. Census Bureau, Public Information Office, Grandparents Day 2002: Sept. 8 (2002), *at* http://www.census.gov/Press_Release/www/2002/cb02ff14.html [hereinafter Grandparents Day 2002].

[2]*Id*. at 2.

[3]AARP, Grandparenting Survey: The sharing and Caring Between Mature Grandparents and Their Grandchildren 7 (1999), *at* http://research.aarp.org/general/grandpsurv.pdf.

[4]Grandparents Day 2002, *supra* note 1.

Almost half of the seniors caring for their grandchildren are doing so with very limited resources. Nationwide, 43 percent of such seniors are single grandmothers living in poverty.[5] In 1997, almost 34 percent of children living in a single grandparent-headed household (with no parents present) received some form of housing assistance.[6] There is no breakdown of how many of these families access each particular form of subsidized housing, but we do know that public housing is home to more than 400,000 households either headed by seniors or with senior spouses.[7] One study estimates that the number of seniors age 62 or older in public housing may be as high as 700,000.[8] How many of those households are also home to minors is uncertain.

Although this article focuses on the concerns of seniors caring for minor children, readers should remember that there are other non-seniors living with seniors who are affected by laws regarding seniors housing. These include, for example, spouses and non-seniors with disabilities.

Nationwide, 43 percent of seniors caring for their grandchildren are single grandmothers living in poverty. In 1997, almost 34 percent of children living in a single grandparent-headed household with no parents present received some form of housing assistance.

Federally Subsidized Buildings Accommodate Grandchildren in Seniors Households

Federally subsidized housing developments are one of the most important sources of affordable housing in this country. Approximately 1.3 million households live in public housing units managed by over 3,300 housing authorities. There are a variety of other types of subsidized housing programs nationally, including project-based Section 8, rural housing and low-income housing tax credit developments. The principal federally funded program for housing designed specifically for older persons is the Section 202 Supportive Housing for the Elderly Program. Since the program's inception in 1959, the Section 202 program has supported the creation of approximately 5,000 housing projects containing more than 300,000 units.[9] HUD maintains a list of federally subsidized developments for the elderly and disabled, broken down by state.[10] HUD also maintains a list of all federally subsidized developments, broken down by state and searchable by city, county, zip code or name of development.[11]

The types of federally subsidized developments that restrict or permit restriction of occupancy to seniors are:

- Publicly subsidized housing that HUD has predetermined is specifically designated and operated for "elderly persons."[12]
- Project-based Section 8 developments.
- Other HUD-subsidized developments, such as Section 236, 221(d)(3), 202 and 231 housing.[13]

The good news for seniors caring for children is that, in all of these developments, an eligible elderly family is consistently defined such that minors (and other non-seniors) may live in the development so long as the head of the minor's household is elderly (defined as someone age 62 or older).[14] In Section 202, 221(d)(3) and 231 housing, owners may restrict occupancy to elderly families in all or a portion of such projects in accordance with the rules, standards and agreements governing occupancy that were in effect at the time when the housing was first developed. However, owners of HUD-subsidized developments must also make accessible units on those properties available to non-elderly *disabled* families if they require the accessibility features, and, most importantly for purposes of this discussion, even if the owner maintains the seniors restriction, minors may reside at the development so long as the head of household is elderly.

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[5] Ken Bryson, Lynne M. Casper, U.S. Department of Commerce, Coresident Grandparents and Grandchildren: Current Population Reports, Special Studies (1999), *at* http://www.census.gov/prod/99pubs/p23_198.pdf.

[6] In two-grandparent households raising grandchildren without parents, only 3.6 percent of the children received housing assistance. *Id*. at 6.

[7] HUD, A Picture of Subsidized Households, Summary of the United States (1998), *at* http://www.huduser.org/datasets/assthsg/statedata98/HUD4US3.TXT. In 1998, 374,542 households (32 percent of a total of 1,170,444 occupied public housing units) were headed by a person who was 62 years or older or whose spouse was 62 years or older, while 46,818 households (4 percent) had heads or spouses 85 years or older.

[8] Housing Research Foundation, Public Housing for Seniors, Past, Present and Future, A Report on the Nation's Largest Program for Housing Low-Income Elderly Persons 4 (2002).

[9] AARP, Section 202 Supportive Housing for the Elderly (2001), *at* http://research.aarp.org/il/fs65r_housing.html, *citing to* AARP, Public Policy Institute analysis of data from HUD's Office of Multifamily Housing, as reported in AARP's 1999 National Survey of Section 202 Housing for the Elderly.

[10] HUD, Multifamily Inventory of Units for the Elderly and persons with Disabilities (2003), *at* http://www.hud.gov/offices/hsg/mfh/hto/inventorysurvey.cfm.

[11] HUD, Subsidized Apartment Search (2002), *at* http://www.hud.gov/apps/section8/index.cfm. The California list has significant omissions; as with other HUD lists, advocates should use it as a starting place only and double-check with local municipalities and/or with nonprofit housing providers for current information.

[12] 24 C.F.R. §§ 945 *et seq*. (2003).

[13] These designations refer to mortgage insurance for new construction and substantial rehabilitation of multifamily rental housing for elderly and/or people with disabilities, and below-market interest rate financing for multifamily rental housing.

[14] 24 C.F.R. §§ 5.403, 945.105, 945.201, §880.612a (2003). *See also* 24 C.F.R. § 236.710(a) (2003) (Section 236 incorporating § 236.2); HUD Handbook 4350.3, Ex. 2-1, CHG-24 (Jan. 1993) (the definition of elderly for a Section 202 development is distinct); HUD Handbook 7465.1, REV-2, ¶¶ 3-4 (Aug. 1987).

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Similarly, in project-based Section 8 housing, an owner may at any time elect to give preference in admissions to elderly families, but the definition of "elderly family" remains the same in its inclusion of non-elderly people.[15] In addition, HUD has indicated in the most recent draft of its handbook that pertains to subsidized, multifamily housing programs that "owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by this handbook."[16]

Children are further protected in some developments by special clauses in the regulatory agreement for the property. For example, regulatory agreements for Section 236 housing specifically prohibit discrimination against elderly families with minor children.

The Age Discrimination Act of 1975 offers yet another source of protection to seniors caring for minor children. Unless a program is designed by statute to serve a particular population or sub-population, the act makes it illegal to discriminate on the basis of age in any programs or activities receiving federal financial assistance.[17] HUD is entrusted with enforcement of this little-known and underutilized law with regard to HUD-funded programs.[18]

Thus, between HUD's regulations permitting minor children in senior-headed households and the additional regulatory and statutory authority described above, seniors caring for their grandchildren in federally subsidized units are well-protected and have ample tools for enforcing their rights.

Are California's Caregiving Grandparents Protected in Non-Federally Subsidized Housing?

In California alone, there are hundreds of federally subsidized seniors developments and thousands of seniors living in public housing. However, the number of non-federally subsidized developments designed for seniors is unknown, and the claim that a development is for occupancy by seniors only may be used as a pretext for discrimination against families with children. For example, in Gardena, California, the owner of an apartment complex was sued for allegedly telling an expectant mother over the phone that the building was a seniors only complex and therefore could not accept children. A local fair housing agency was able to show through testing that the building was not, in fact, a seniors building under state law. The owner paid $51,000 for his conduct and entered into a two-year fair housing program. That type of conduct could just as easily have been directed against a senior caring for a child.

Disturbingly, in developments that are genuinely designed and operated for seniors, California's seniors can expect to be excluded legitimately per state law. Similar to federal law, California has broad anti-discrimination laws, which include a prohibition against business establishments discriminating on the basis of age in the sale or rental of housing.[19] However, the law exempts seniors housing developments (while acknowledging the preemptive power of the FHA's prohibitions against familial status discrimination) from those discrimination prohibitions. The result is that seniors caring for non-senior children are generally excluded from seniors housing per California law.

Disturbingly, in developments that are genuinely designed and operated for seniors, California's seniors can expect to be excluded legitimately per state law.

For a development to be considered seniors' housing under California state law, the only occupants allowed are:

- persons 55 years of age or older, or
- persons 62 years of age or older, or
- qualified permanent residents.[20]

A qualified permanent resident is defined generally to mean someone who lived with the senior prior to death, hospitalization, prolonged absence or divorce from the senior, and was age 45 years or older, a spouse, cohabitant, care provider, or person with a disability. Minor children are permitted only if they are qualified permanent residents, and they may only receive that designation if they are disabled children or grandchildren of the senior (or other qualified permanent resident). Furthermore, the minor children must show that they need to live with the senior as a result of their disability.[21]

Having successfully joined or remained in the senior's household, the disabled minor may face exclusion from the development if the disability disappears or the governing body of the development finds that the minor significantly threatens the health and safety of residents and cannot be reasonably accommodated. If the disabling condition ends, the minor is entitled to a minimum of six months' notice and has up to one year to vacate. State law does not permit

[15] 24 C.F.R. § 880.612a (2003).

[16] HUD, HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Programs 5-175 (2003).

[17] 42 U.S.C.A. §§ 6101 *et seq.* (West, WESTLAW, through Pub. L. No. 108-175 (Dec. 12, 2003)).

[18] 24 C.F.R. §§ 146 *et seq.* (2003).

[19] Cal. Civ. Code § 51.2 (2003).

[20] Cal. Civ. Code § 51.3 (2003). Please note that there are other, additional requirements in California besides age for a development to be considered seniors housing. For example, the development must have at least 35 units to be considered seniors housing under state law. This article focuses on age restrictions only.

[21] Cal. Civ. Code § 51.3(b)(3) (2003) refers to California Civil Code, § 54(b) for its definition of "disabled."

management to allow the child to live on the property for a longer period of time.[22]

If the governing board or property management contends that a minor poses a significant threat, it must produce "credible and objective evidence", and the child or grandchild must be given notice and has a right to a hearing.[23] A blanket provision of California law permits non-seniors who lived in seniors housing before January 1, 1990, to continue residency despite subsequent changes to California law that would prohibit their occupancy.[24]

Thus, the only circumstances under which California law requires that a seniors development permit residency by a minor are if that minor is a disabled child or grandchild of a senior or qualified permanent resident, or if the minor lived in the unit before January 1, 1990. Aside from these exceptions, California law prohibits seniors developments from allowing children to reside in the development. Seniors caring for non-disabled grandchildren in California are, therefore, denied access to seniors housing unless it is federally subsidized.

Does the Federal Fair Housing Act Protect Seniors Caring for Minors?

In 1988, the federal Fair Housing Act (FHA) created a special provision to protect against familial status discrimination while simultaneously creating a category of housing exempted from that provision.[25] That category is seniors housing, referred to in the FHA as housing for older persons.[26] The Housing for Older Persons Act of 1995 (HOPA) is a provision of the FHA that states which seniors housing developments are exempt from the FHA's familial status protections.[27] The exempt categories are housing:

- under any federal or state program that the Secretary of HUD finds is specifically designed and operated for the elderly as defined in the state or federal program; or
- intended for, and occupied only by people age 62 or older; or
- intended and operated for people age 55 or older (under limited circumstances).[28]

In other words, only housing that falls within any one of the preceding three definitions may exclude households with minors without being in violation of the FHA. For housing developments to use age 55 as its definition of "senior," at least 80 percent of the units must be occupied by at least one person age 55 or older.[29] The development must publish and abide by policies setting forth the intent to serve those age 55 and older. Children may also reside in the development as long as both the occupancy level and policies requirement are satisfied.[30] Thus, under the FHA, 100 percent of a development may be occupied by households containing minor children and still be considered a seniors development as long as at least one person age 55 or older resides in 80 percent of the units.[31]

Under California law, however, a development may not be deemed "seniors only" unless *all* of the occupants are age 55 or older (with the exception of disabled grandchildren or children). The opening paragraph of the state statute defining seniors housing states that the legislature found a need to "preserve specially designed and accessible housing for senior citizens."[32]

A plain reading of the FHA allows California law the leeway to set a higher standard of seniors occupancy for purposes of defining the seniors exemption for properties not otherwise covered by other laws (such as federally subsidized housing). Furthermore, in HUD's discussion of public comments on the proposed updated federal regulations pertaining to HOPA, its staff noted that ". . . although HOPA would allow . . .minors under the age of 18 . . .to reside in, or visit housing for persons who are 55 years of age or older, *it does not require it*."[33] The discussion states even more explicitly that "[c]ommunities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older . . . as long as 'at least 80%' of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons."[34]

Conclusion

The growing numbers of grandparents caring for grandchildren highlight the need for federal and state laws and policies to adjust to assure that these households have adequate access to decent, affordable housing. The fact that the FHA permits California (and other states) to set a standard

[22]*Id*.

[23]*Id*.

[24]Cal. Civ. Code §§ 51.4 and 51.12 (2003).

[25]"Familial status discrimination" refers, *inter alia*, to discrimination based on the presence of children in the family.

[26]Whereas the law covering federally subsidized housing developments defines elderly family as someone age 62 or older, the FHA defines it generally as someone age 55 or older. 24 C.F.R. § 100.304(c) (2003). *See also* 42 U.S.C.A. §§ 3601 *et seq.* (West 2003).

[27]24 C.F.R. §§ 100.301 *et seq.* (2003).

[28]24 C.F.R. §§ 100.302 through 100.304 (a) and (b) (2003). 42 U.S.C., § 3607(b) contains the same requirements set forth in 24 C.F.R. §§ 100.301-100.307 (2003).

[29]24 C.F.R. § 100.305 (2003). The regulation also makes allowances for and discusses transition for developments with persons age 55 and older where children also reside.

[30]24 C.F.R. § 100.306(d) (2003).

[31]A vacant unit, if occupied periodically by someone age 55 or older, qualifies towards the 80 percent minimum if that person lived in the unit during the past year and intends to return periodically. The regulations also set forth special requirements for new construction as well as transitional rules covering housing from before the enactment of these requirements.

[32]Cal. Civ. Code § 51.3 (2003).

[33]64 Fed. Reg. 16,324, 16,326 (April 2, 1999) (emphasis added).

[34]*Id*. at 16,327.

that has the effect of excluding seniors who have children in their household is problematic. In particular, because the seniors housing category is such a significant exception to the protections of the FHA against familial status discrimination, the FHA should not permit states to institute standards any more restrictive of the presence of minors than that called for under the FHA. ■

Ninth Circuit Requires Landlords to Adjust Economic Admission Requirements for Disabled Tenants

Reversing a lower court's narrower interpretation of the Fair Housing Act, the Ninth Circuit has recently ruled that owners must permit co-signers on leases for otherwise qualified tenants whose disability impedes working to acquire the minimum income ordinarily required. *Giebeler v. M&B Assocs.*, 343 F.3d 1143 (9th Cir. 2003). This unanimous panel ruling is important in rejecting other courts' interpretations that insulate owners from any reasonable accommodation duty to adjust "economically based" rental policies and practices, such as minimum income requirements. Under the Ninth Circuit's analysis, all rental policies and practices discriminating against people with disabilities are subject to evaluation under the Fair Housing Act's reasonable accommodation duty.

In *Giebeler*, a rejected applicant disabled by AIDS sought to rent a smaller apartment that was both substantially less expensive and closer to his mother's home. His disability made him unable to work, and his income consisted of $837 monthly disability benefits under the Social Security Disability Insurance (SSDI) program, $300-$400 in housing assistance under the Housing Opportunities for People with AIDS (HOPWA) program, and sporadic support from his family. Mr. Giebeler also had a good rent paying history for six years at his prior residence and a clean credit report.

Despite his record, when he inquired about moving in, the landlord declared Mr. Giebeler ineligible because he did not meet its minimum income requirements—namely the commonly used private market standard of a minimum gross monthly income of three times the $875 monthly rent, or $2,625. Giebeler then sought his mother's assistance in renting the apartment, and she filled out a separate application, clearly indicating that her son would be the sole tenant and demonstrating sufficient income and no credit problems. The landlord rejected the applications, stating that she was a co-signer, presumably since she did not intend to live there, and that it did not allow co-signers.

Giebeler's counsel then wrote the landlord requesting a reasonable accommodation for Giebeler because of his disability, suggesting use of the co-signer or alternative financial arrangements. The landlord's counsel took the position that no accommodation was required in this situation. Shortly after this exchange, Giebeler filed suit alleging the landlord's violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq*., various state civil rights and unfair trade practices laws, and common law negligence. His Fair Housing Act claim raised three distinct theories of unlawful discrimination: disparate impact, intentional discrimination, and failure to reasonably accommodate his disability by waiving the "no co-signer" policy.

The district court held that Giebeler had made out a prima facie case of intentional discrimination prohibited by the Fair Housing Act, violation of state fair housing law, and the state unfair trade practices law. However, the court granted summary judgment to the landlord on the disparate impact and reasonable accommodation claims under the Fair Housing Act, as well as the negligence claim. With respect to the reasonable accommodation claim, the district court held that "an accommodation which remedies the economic status of a disabled person is not an 'accommodation' as contemplated by the FHA." Giebeler then appealed to the Ninth Circuit on the reasonable accommodation ruling, reaching a settlement on his other outstanding claims.

In reversing and remanding, the Ninth Circuit carefully analyzed several recent cases from other circuits and the Supreme Court bearing on the interpretation of affirmative duties of parties covered by anti-discrimination laws. It began with reference to the reasonable accommodation duty:

> The FHAA's [Fair Housing Amendments Act] definition of prohibited discrimination encompasses "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Thus, the FHAA "imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons," *United States v. California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir.1994) ("*Mobile Home I*"), not only with regard to the physical accommodations, *see* 42 U.S.C. § 3604(f)(3)(A) & (C), but also with regard to the administrative policies governing rentals.

343 F.3d at 1147. Next, it recited the basic elements of proving a reasonable accommodation claim:

> [A] plaintiff must demonstrate that (1) he suffers from a handicap as defined by the FHAA [Fair Housing Amendments Act]; (2) defendants knew or reasonably should have known of the plaintiff's handicap; (3) accommodation of the handicap "may be necessary" to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants refused to make such accommodation.

Id., citing *United States v. California Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir.1997) ("*Mobile Home II*").

Here, there was no dispute about Giebeler's disability or the landlord's knowledge of it. Rather the only question was whether the requested accommodation—relaxation of the "no co-signer" policy—is one required by the FHAA. For the Ninth Circuit, central to answering this question was the relationship between Giebeler's disability and the landlord's challenged practice of refusing to modify the minimum income requirement or co-signer rules. The court found a "direct causal link" between Giebeler's disability, which entirely limited both his ability to work and his income, and his inability to comply with the minimum income requirement that considered only his individual income. Does this relationship require bending the normal minimum income and "no co-signer" policy used by the landlord to evaluate a prospective tenant's ability to pay the rent during the term of the lease?

The Ninth Circuit stated that disability-neutral administrative policies such as a minimum income test do not escape all scrutiny under the reasonable accommodation principles simply because they are based on financial considerations or may involve some financial risk.

The landlord contended that Congress did not intend to require owners to bend these kinds of rules when adopting the FHAA. It argued that the landlord's no co-signer rule adversely affects many prospective tenants who cannot meet the minimum income test without relying on the income of others. Therefore, it contended that relaxing the rule to help a prospective disabled tenant is not an FHAA-required accommodation because it would grant preference to disabled over nondisabled poor individuals, accommodate Giebeler's poverty rather than his disability, and increase the landlord's financial exposure.

The Ninth Circuit disagreed, concluding that the FHAA's accommodation requirement does reach adjustments in the means of proving financial responsibility, and the landlord's contentions were inconsistent with binding case law elucidating the "accommodation" concept in the FHAA and related statutes.

The court embarked on a two-step analysis of the challenged practice, first evaluating whether it was an accommodation that Congress intended the FHAA to cover, before evaluating its "reasonableness." On the accommodation issue, the court noted the sparseness of the legislative history under the FHAA, but cited legislative history indicating the propriety of using standards and case law on the issue developed under the Rehabilitation Act of 1973, 42 U.S.C. § 793, and theAmericans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq*. The Ninth Circuit emphasized the need to interpret the FHAA's accommodation provisions in light of the FHAA's specific statutory goals: "to protect the right of handicapped persons to live in the residence of their choice in the community," and "to end the unnecessary exclusion of persons with handicaps from the American mainstream." 343 F.3d at 1149.

The U.S. Supreme Court's recent discussion of the overall scope of the accommodation concept in the context of the ADA was instructive to the Ninth Circuit. In *U.S. Airways v. Barnett*, 535 U.S. 391 (2002), the Court held that an accommodation may result in a preference for disabled individuals over otherwise similarly situated nondisabled individuals, and that accommodations may adjust for the practical impact of a disability, not only for the immediate manifestations of the physical or mental impairment giving rise to the disability. *Barnett* had involved a disabled cargo handler's request for a modification of the company's seniority system so that he could transfer to a less physically demanding position elsewhere, which the company had resisted because the exception would effectively grant him a preference over non-disabled similarly situated employees. *Barnett* interpreted the ADA to require reasonable accommodations necessary to meet the disability-created needs of a disabled person, so that the disabled person may enjoy equivalent workplace opportunities as enjoyed by nondisabled persons, which may require preferential treatment of the disabled. The Ninth Circuit reasoned:

> Just as Barnett was not disqualified from an adjustment to his seniority rank simply because other, nondisabled employees desired the position he sought but were barred from obtaining it by the seniority policy, so Giebeler was not disqualified from an adjustment in [the landlord's] financial qualification/no cosigner standard simply because there were other prospective tenants similarly unable—albeit for reasons other than disability—to earn enough money to meet the rental company's credit standards.

343 F.3d at 1150. The obligation to "accommodate" a disability can therefore include the obligation to alter otherwise-neutral policies also presenting barriers to nondisabled persons. This result was strengthened by noting that the reason Giebeler could not pay the rent from his own income was that his disability prevented him from earning an employment paycheck, so that his requested accommodation was directly linked remedying his inability to comply with the monthly income requirement created by his disability.

The Ninth Circuit stated that disability-neutral administrative policies like the landlord's minimum income test do not escape all scrutiny under the reasonable accommodation principles simply because they are based on financial considerations or may involve some financial risk. In so doing, the Ninth Circuit took issue with two cases from other circuits holding that, regardless of reasonableness, the FHAA does not require accommodation of needs resulting from the inability of disabled individuals to generate employment

income. *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2nd Cir.1998) and *Hemisphere Building Co. v. Village of Richton Park*, 171 F.3d 437 (7th Cir.1999). Both relied on principles interpreting the accommodation duty that were subsequently rejected by the Supreme Court in *Barnett*. Moreover, the principles cited by those courts were in tension with the courts' holdings. The parade-of-horribles examples cited in *Salute* and *Hemisphere* as justification for holding that all policies involving disability-related economic circumstances are *per se* out-of-bounds were themselves an example of case-specific analysis of the reasonableness of particular accommodations, analysis the courts held was not appropriate in such circumstances.

The Ninth Circuit next addressed the issues of whether the requested accommodation of the waiver was necessary to provide an equal opportunity for Giebeler and whether it was "reasonable." It found that the causation requirement posed little hurdle in this case because the landlord's policy entirely prevents the tenant from residing in the property. With no employment income and no co-signer, Giebeler could not satisfy the minimum income requirement for residence. The additional equal opportunity component of the necessity analysis requires an accommodation to be necessary to afford an equal opportunity. The landlord's refusal to allow his mother as co-signer denied him an opportunity to lease for which he was otherwise qualified, even though its interest in receiving the monthly rent would have been fully protected. Thus, relaxation of the no co-signer policy was necessary to afford an equal opportunity to use and enjoy the dwelling.

The court found it unnecessary to decide the precise formulation of whether the plaintiff or the defendant in an FHAA case bears the burden of showing whether a proposed accommodation is reasonable. Although both the Rehabilitation Act and the ADA provide precedents on the question (allocating to plaintiff the burden of producing evidence of possibility or actually demonstrating reasonableness), under either standard the court found Giebeler's requested accommodation reasonable. Because the requested modification required only that the landlord permit a co-signer with joint financial liability in the event of default—in contrast to any out-of-pocket economic cost—the court found that it would not alter the fundamental attributes of the tenancy. The landlord made no showing of undue financial hardship, and the court could fathom none. Thus, any incidental administrative burdens from tracking down co-signers were insufficient to demonstrate unreasonableness, especially since the landlord had granted other waivers in the past. The court therefore concluded that Giebeler's request for a reasonable accommodation was within the intended scope of the FHAA, and should have been honored. ■

National Report Documents Discrimination Against Asians and Pacific Islanders in Housing Market

The Urban Institute's 2003 report on discrimination against Asians and Pacific Islanders (API) in the United States housing market, commissioned by the Department of Housing and Urban Development (HUD), represents a first for HUD.[1] Never before has the department undertaken or sponsored the study of the discrimination faced by the API community. The report focuses on APIs living in large metropolitan areas in the U.S. and includes data for the state of California. The report also includes state-level estimates of discrimination against African Americans and Latinos in metropolitan areas, but this article focuses only on the findings concerning APIs.

The Urban Institute used an enhanced, paired testing methodology, sampling from a more expansive pool than was used for Phase I of the study (which focused on Latinos and African-Americans). Testers, one white and the other a person of color, took turns visiting sales or rental agents. They systematically recorded the information and assistance they received and did not compare experiences or record conclusions. As noted in the study itself, the information gathered provides only a partial picture of the experience that APIs have in the housing market in this country since it focuses only on sales and rental agents.

Because APIs are concentrated in particular cities, the study could not conduct a random sampling. Instead, 11 metropolitan areas with a significant API population were selected, and, in fact, the selected areas are home to 77 percent of all APIs living in metropolitan areas in the U.S.[2] The Urban Institute tried to develop and analyze only those factors that could affect someone's housing search and still offer a clear measurement of the treatment that the person received.

Agents Discriminate Against Asian and Pacific Islander Renters Consistently in Certain Aspects of the Rental Process

The primary aspect in which APIs experience discrimination in the rental market, per this study, is with regard to follow-up contact by rental agents. Agents are significantly more likely to make follow-up contact with whites who have approached them seeking rental housing than with APIs, and whites are treated more favorably with respect to arrangements for follow-up.

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[1] Margery Austin Turner & Stephen L. Ross, The Urban Institute Metropolitan Housing and Communities Policy Center, Discrimination in Metropolitan Housing Markets: Phase 2 - Asians and Pacific Islanders (2003).

[2] The Metropolitan Statistical Areas selected were Anaheim/Santa Ana, Chicago, Honolulu, Los Angeles, Minneapolis, New York, Oakland (CA), San Diego, San Francisco, San Jose, and Washington D.C./MD/VA.

The study found that white renters were consistently favored over their API counterparts and found that the level of consistent unfavorable treatment experienced by API renters is similar to that experienced by African-American and Latino renters. However, because the study uses a process of averaging across categories to make an overall determination with regard to discrimination, it also found that, overall, whites were not significantly more likely to be favored in the rental market.

For example, the study found that APIs were significantly less likely than other groups to have to go through a credit check and were not discriminated against with regard to housing cost or access to housing to inspect ahead of time.[3] However, in addition to the favoritism whites received, as listed above, in the subcategory of whether rental incentives were offered, the percentages showed that whites were favored (9.1 percent versus 5.8 percent).[4] In California, agents were more likely to require credit checks of whites, but they also consistently offered whites rental incentives more often.[5] What is not examined by the study is whether all of the subcategories are of equal value or have an equal impact on the real-life process of an individual seeking a rental.

Agents Routinely Discriminate Against Asian and Pacific Islander Home Buyers

For API home buyers, though likely to receive comparable information to whites regarding the availability of a specific home for sale, they are less likely to be told about other, comparable units, and far less likely to receive other, helpful information regarding the home-buying process itself. With regard to being able to inspect the advertised home ahead of time, other similar units, and the number of units they were allowed to inspect, this study reveals that APIs are treated far worse than whites.[6]

On the all-important issue of financing, agents offered whites far more favorable treatment than APIs, offering financing assistance, pre-qualifying the prospective home buyer, and/or recommending a lender. Agents were generally more encouraging to whites than APIs, engaging in follow-up contact, not requiring pre-qualification, and telling whites that they were qualified to purchase a home far more often than they did APIs. In all of these tests, the white and API testers had comparable jobs and credit records, and were requesting comparable homes.[7] Testing in California's metropolitan areas yielded the same result: a pattern of consistent, systematic discrimination against APIs. The study finds that Asian and Pacific Islander renters experience consistent discrimination in certain aspects of the rental process, but that it is in the home-buying process where, across all categories examined in this study, APIs suffer a level of discrimination comparable to African Americans. The discrimination is systematic, arising in every stage of the transaction, from the initial inquiry regarding availability of homes through to financing and agent encouragement and assistance. Since most U.S. residents are unfamiliar with the home-buying process, most rely on their agent to assist them with financing, understanding the process, and evaluating their options. The fact that APIs were consistently denied this assistance far more often than whites seems likely to have a significant negative impact on the type of housing and the quality of financing that they are able to access. Notably, the conclusions remain the same for Honolulu, which historically has had an API population of considerable size.

One form of discrimination that APIs do not appear to face that African-Americans and Latinos do is geographic steering. It appears from this study that APIs are not being systematically pushed towards or discouraged from certain neighborhoods.

It has been posited that APIs with darker skin are treated unfavorably more often than lighter-skinned APIs. The study found this hypothesis borne out for renters with regard to whether they were told a unit was available, what units generally were available and follow-up by the agent.[8] It was not borne out in the home sales portion of the testing, where the darker-skinned APIs actually experienced less discrimination than lighter-skinned APIs in all aspects except the level of follow-up by the agent, as agents were less likely to contact darker-skinned APIs than lighter-skinned APIs.

Conclusion

This study and other studies that document incidences and patterns of racial discrimination in the U.S. are critically important for arming community members and advocates with the data necessary to protect individual consumers and improve fair housing laws and their enforcement. It does have its limitations. For example, to the extent that people of color may use resources to find housing other than advertisements in traditional sources, the study is incomplete. In addition, because the study focuses primarily on the initial meeting between the rental or sales agent and the person seeking housing, it does not capture incidents of discrimination at subsequent meetings. Another concern is that testers would make phone contact with agents whenever possible to set an appointment with the agent; the role of accent discrimination in the agent's decision to make or not make an appointment is not accounted for.

Still, with the limitations of the study in mind, it offers valuable, current information on discrimination that APIs are experiencing in metropolitan areas across the country. We are pleased that HUD sponsored this study and hope that HUD, as the federal agency charged with the enforcement of the Fair Housing Act,[9] makes good use of this information. ■

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[3]Turner & Ross, *supra* note 1, at 3-9. With regard to housing inspections, APIs appeared initially to receive more favorable treatment, but only because data from Honolulu skewed the results in that regard.

[4]*Id*. at 3-1 to 3-2.

[5]*Id*. at 3-10.

[6]*Id*. at 3-5.

[7]*Id*. at 3-6 to 3-7.

[8]*Id*. at 4-1.

[9]42 U.S.C.A. §§ 3601 *et seq*. (West 2003).

HUD Issues Final Required and Voluntary Public Housing Conversion Rules

On September 17, 2003, the Department of Housing and Urban Development (HUD) issued its final rule for the required and voluntary conversion of public housing to other assistance.[1] A proposed rule was published on July 23, 1999.[2] The rule implements Sections 22 and 33 of the United States Housing Act,[3] as amended and added by the Quality Housing and Work Responsibility Act (QHWRA) of 1998.[4] The effective date of the final rule is March 15, 2004, by which time HUD expects to publish a final version of an appendix to the rule concerning calculations of conversion-related costs.[5] HUD has published a proposed version of the appendix together with the new rule.[6] The key provisions of the new rule are discussed below.

Overview

Conversion refers to the removal of public housing units from the public housing authority's (PHA) inventory and the provision of residents in those units with other tenant-based or project-based housing assistance. The conversion process involves the formulation of a conversion plan and/or a conversion assessment, related to the annual public housing agency planning process, which must be developed with resident and community involvement. The standards for conversion vary depending on whether required or voluntary conversion is involved—they focus on the size of a development, levels of vacancy, long-term viability, a comparison of the cost of continuing to operate the development as public housing with the cost of providing other assistance, and/or effects on neighborhoods and residents. Unlike the demolition and disposition of public housing under Section 18 of the United States Housing Act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[7] may apply to the conversion of public housing.

Definition of Conversion

The provisions on both required and voluntary conversion include the following definition of conversion:

> For purposes of this subpart, the term "conversion" means the removal of public housing units from the inventory of a PHA, and the provision of tenant-based or project-based assistance for the residents of the public housing units that are being removed. The term "conversion," as used in this subpart, does not necessarily mean the physical removal of the public housing development.[8]

As it is phrased, the definition raises concerns about potential reductions in the supply of affordable housing. While conversion is sometimes referred to informally as "vouchering out," the definition does not contemplate the automatic replacement of all the public housing units in a conversion development with an equal number of vouchers. The definition refers to residents of the units that are to be removed. This leaves out vacant units, even if they might otherwise be habitable. The definition also appears to permit the relocation of residents not with vouchers but to other public housing units, to the extent that such units are considered "project-based assistance."[9]

The required conversion provisions of the new rule state that a PHA

> may apply for tenant-based assistance in accordance with Section 8 program requirements, and HUD will give the PHA a priority for receiving tenant-based assistance to replace the public housing units. It is HUD's policy to provide funds for one-for-one replacement housing with either public housing or tenant-based assistance, if funds are available.[10]

This, of course, is not a guarantee, and it does not specifically address vacant units. The provisions on voluntary conversion include no such policy statement. More troubling are statements in both the required and voluntary conversion provisions of the new rule that HUD may require funding for the initial year of tenant-based assistance provided in connection with conversion to be taken from a PHA's public housing Capital Fund, Operating Fund, or both.[11] This may prompt PHAs to relocate residents to other public housing sites and not seek to replace units removed under conversion with new vouchers.

Required Conversion

Required conversion is governed by Subpart A of the new rule. Under that subpart, PHAs must review their public housing inventories annually and identify developments, or parts thereof, subject to required conversion according to the standards described below.[12] Where a development is so identified,

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[1] 24 C.F.R. pt. 972, 68 Fed. Reg. 54,600-623 (Sept. 17, 2003).

[2] 68 Fed. Reg. at 54,600.

[3] 42 U.S.C.A. §§ 1437t and 1427z-5 (West 2003).

[4] Pub. L. No. 105-276, tit. V, §§ 533 and 537, 112 Stat. 2,576-581, 112 Stat. 2,588-594 (Oct. 21, 1998).

[5] 68 Fed. Reg. at 54,600.

[6] 68 Fed. Reg. at 54,628-642.

[7] 42 U.S.C. § 4601 *et seq*. (West, WESTLAW, current through Pub. L. No. 108-182 (Dec. 15, 2003)).

[8] 24 C.F.R. §§ 972.103 and 972.203. All citations to part 972 hereinafter refer to the provisions published in the *Federal Register* on September 17, 2003.

[9] *See also, e.g.*, 24 C.F.R. § 972.130(b)(2) (referring to public housing vacancies in other developments as potential relocation resources).

[10] *Id*. at § 972.106(d).

[11] *Id*. at §§ 972.106(d) and 972.212(d).

[12] *Id*. at § 972.106(a).

My Name is Not "Those People"

My name is not "Those People".
I am a loving woman, a mother in pain, giving birth to the future,
where my babies have the same chance to thrive as anyone.

My name is not "Inadequate".
I did not make my husband leave us—he chose to,
And chooses not to pay child support.
Truth is though, there isn't a job base for all fathers to
Support their families.
While society turns its head, my children pay the price.

My name is not "Problem and Case to Be Managed".
I am a capable human being and citizen, not a client.
The social service system can never replace the compassion and concern of loving grandparents, aunts, uncles, fathers, cousins, community—all the bonded people who need to be but are not present to bring children forward to their potential.

My name is not "Lazy, Dependent Welfare Mother".
If the unwaged work of parenting, homemaking and community building was factored into the Gross Domestic Product, my work would have untold value. And I wonder why my middle-class sisters, whose husbands support them to raise their children are glorified—and they don't get called lazy and dependent.

My name is not "Ignorant, Dumb or Uneducated".
I live with an income of $621 with $169 in food stamps. Rent is $585. That leaves $36 a month to live on. I am such a genius at surviving that I could balance the state budget in an hour.

Never mind that there is a lack of living-wage jobs.
Never mind that it is impossible to be the sole emotional, social and economic support to a family.
Never mind that parents are losing their children to the gangs, drugs, stealing, prostitution, social workers, kidnapping, the streets, the predators.
Forget about putting money into our schools—just build more prisons.

My name is not "Lay Down and Die Quietly".
My love is powerful and my urge to keep my children alive will never stop.
All children need homes and people who love them.
They need safety and the chance to be the people they were born to be.

The wind will stop before I let my children become a statistic.
Before you give in to the urge to blame me, the blame that lets us go blind and unknowing into the isolation that disconnects us, take another look.
Don't go away.
For I am not the problem, but the solution.
And . . . My name is not "Those People".

From the Author

This poem was born in 1992 from the aching heart of an illiterate welfare mother (me). "My Name Is Not Those People" has been on an amazing journey to many places and people around the world. It has been the subject of bible studies and several masters and doctoral theses. It is used regularly in numerous social studies courses in junior and high schools, colleges and religious studies all over the United States. Our beloved Senator Paul Wellstone read my poem in its entirety on the floor of the United States Senate during the welfare reform debate, it was on C-Span, and I have a gold embossed copy of the Congressional Record with "Those People" in it!

—continued on next page

the PHA must develop a five-year plan for the removal of the development.[13] A PHA may not convert a development under Subpart A until HUD approves its conversion plan.[14]

Standards for Required Conversion

A development, or portion thereof, that is a general occupancy development containing 250 or more units and that meets the following criteria is subject to required conversion under Subpart A:

- "The development is on the same or contiguous sites;"[15]
- "The development has a vacancy rate of at least a specified percent for dwelling units not in funded, on-schedule modernization, for each of the last three years, and the vacancy rate has not significantly decreased in those three years;"[16] and
- "The development *either* is distressed housing for which the PHA cannot assure the long-term viability as public housing, *or* more expensive for the PHA to operate as public housing than providing tenant-based assistance."[17]

The specified percentage of vacancy for conversion analyses performed on or before March 16, 2009, is 15 percent. For analyses performed after that date, the percentage is 12 percent.[18] PHAs must use Public Housing Assessment System (PHAS) data in making vacancy rate determinations.[19] The final rule sets forth several miscellaneous categories of units that are not to be included in calculations of vacancy percentages.[20] Perhaps the most important among these are "[u]nits that HUD determines, in its sole discretion, are intentionally vacant and do not indicate continued distress."[21]

[13]*Id*. at § 972.106(b).

[14]*Id*. at § 972.106(c).

[15]*Id*. at § 972.124(a).

[16]*Id*. at § 972.124(b).

[17]*Id*. at § 972.124(c) (emphasis added).

[18]*Id*. at § 972.124(b)(1).

[19]*Id*. at § 972.124(b)(2).

[20]*Id*. at § 972.124(b)(2)(i)-(v).

[21]*Id*. at § 972.124(b)(2)(v).

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Hundreds of church, community and organizational newsletters have published "Those People" over the years, and many social service and community workshops/conferences have been named after my poem. One college student, who I mentored through university and then law school, translated all the street knowledge I taught him into legalese and wrote an award winning legal defense against the welfare laws which contained my poem.

When a group of Aboriginal Australians, from the World Indigenous Peoples Network were visiting the Fond du Lac Indian Reservation last year, it was my wall hanging they picked to bring home with them from a display of traditional Anishanabeg artwork! A few years ago, my son asked me, "Mom, if your poem is so famous why are we still on food stamps and can't afford to get a decent car?" It was then I decided to design a wall hanging with artwork in the background of the poem. I sell them when I am asked to speak or teach. Last year Stanford University started offering me fifty dollars a piece if I'd autograph and date them since they think "Those People" will become a collector's item! Imagine that! I think that my poem is in the public domain (whatever that means) as I hear stories almost weekly, about how it is being used in one manner or another in the U.S. and abroad! We are still poor enough to qualify for food stamps and still struggle economically, but now I have collected so many stories about my poem, I have decided to dedicate an entire chapter to their telling in the book I am writing about my terrible-beautiful life. You guessed it, the name of my book is "My Name Is Not Those People!"

The place where my poem has traveled that I am most proud of is in the cherished hearts and minds of good people far and wide . . . especially those who have suffered under the vast weight of social and economic unfairness, oppression and degradation.

Thank you for the opportunity for me to tell you these things. God bless you! My wall hangings and CDs of 13 original songs are available upon request by sending a check to Julia Dinsmore at my home address: 5024 Tioga Street, Duluth, Minnesota 55804, KathrynRose58@aol.com, 218-525-4268, 218-940-5820. "Those People" wall hangings are $25.00 including postage and handling and CDs are $17.00. I am available for public speaking, storytelling, singing, humor, and poetry-reading about issues relating to "undoing classism" and creating a more Christian world!

Thank you again,

Julia K. Dinsmore

The third criterion involves two alternate prongs: (1) distress and no assurance of long-term viability or (2) greater expense to operate than tenant-based assistance. In regards to the first prong, developments that meet the contiguity and vacancy criteria are assumed to be "distressed" under the third criterion "unless HUD determines that the reasons that the property meets such standards are temporary in duration and unlikely to recur."[22] Long-term viability is assessed according to several factors: (a) whether the development, after revitalization, could "sustain structural/system soundness and full occupancy" for at least 20 years,[23] (b) whether the needed revitalization costs are reasonable, (c) whether appropriate density may be achieved and (d) whether a greater income mix can be achieved.[24]

Subpart A is fairly vague on appropriate density and mix of incomes. The density of a revitalized development must be "comparable" to the density that "prevails in or is appropriate for assisted rental housing or similar types of housing in the community."

Reasonable revitalization costs may not exceed 90 percent of HUD's total development costs (TDC) limit for the units to be revitalized. The overall projected cost of the revitalized development also must not exceed the "Section 8 cost" as calculated under the provisions of the appendix to Part 972, which HUD has not yet finalized.[25] Revitalization cost estimates contained in a PHA's annual or five-year plan are usually what must be used in assessing costs.[26]

The discussion of appropriate density and mix of incomes in Subpart A is fairly vague. The density of a revitalized development must be "comparable" to the density that "prevails in or is appropriate for assisted rental housing or similar types of housing in the community."[27] The rule states that "[m]easures generally will be required" to include a "significant mix of households with at least one full-time worker."[28]

In regards to the alternate cost prong, as mentioned above, HUD has not finalized the methodology by which public housing costs are to be compared to tenant-based assistance costs. PHAs will not be required to undertake conversions under Subpart A until HUD publishes a final cost comparison methodology.[29]

HOPE VI developments with an approved revitalization plan are not subject to Subpart A. Developments identified for conversion under Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act (OCRA) of 1996[30] prior to October 21, 1998,[31] are also exempt. In addition, Section 18 of the United States Housing Act[32] does not apply to the demolition of developments converted under Subpart A.[33] However, Section 18 does apply to the disposition (*e.g.*, the sale, transfer, or long-term lease) of converted developments.[34]

Conversion Plans

As described above, PHAs must develop five-year conversion plans for developments identified for required conversion.[35] HUD has authority to extend this period in exceptional circumstances, allowing a PHA up to 10 years to remove identified units from its inventory.[36]

Conversion plans must include:

(1) a list of the units to be removed from the PHA's inventory;

(2) identification of modernization, reconstruction or other funds for identified developments and the PHA's recommendations for the use of such funds;

(3) a record of the PHA's consultation with affected residents and local government officials in connection with the development of the plan;

(4) a description of any demolition or disposition plans for the development; and

(5) a relocation plan.[37]

In order to satisfy resident consultation requirements, a PHA must, in addition to the public participation requirements related to its annual PHA plan, hold at least one meeting with affected residents, including the duly affected resident

[22] *Id*. at § 972.124(c).

[23] *Id*. at § 972.124(c)(1)(ii). If the rehabilitation contemplated is equivalent to new construction, the applicable period is 30, rather than 20, years. *Id*. at § 972.124(c)(1)(ii).

[24] *Id*. at § 972.127.

[25] *Id*. at § 972.127(a).

[26] *Id*.

[27] *Id*. at § 972.127(b).

[28] *Id*. at § 972.127(c).

[29] 58 Fed. Reg. at 54,600.

[30] *Codified at* 42 U.S.C.A. § 1437*l* (West 2003) (repealed). The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1996, were part of the Omnibus Consolidated Rescissions and Appropriations Act (OCRA) of 1996, Pub. L. No. 104-134, 110 Stat. 1,321 (Apr. 26, 1996). HUD issued final regulations to implement Section 202 in 1997. *See* 24 C.F.R. pt. 971 (2003).

[31] October 21, 1998, was the effective date of the QHWRA, which repealed authority for new conversions under Section 202 of the OCRA.

[32] 42 U.S.C.A. § 1427p (West 2003).

[33] 24 C.F.R. § 972.112(a).

[34] *Id*. at § 972.112(b).

[35] *Id*. at § 972.130(a).

[36] *Id*. at § 972.130(c).

[37] *Id*. at § 972.130(a)(1)-(5).

council of the identified site, if any.[38] The PHA must provide draft copies of the conversion plan to residents, allow residents a reasonable period in which to submit comments, consider these comments in formulating the conversion plan and include a summary of the comments in the plan.[39]

The relocation plan must include: (1) the number of households to be relocated, by bedroom size and by the number of accessible units; (2) a budget describing the resources necessary for relocation, including "a request for any necessary Section 8 funding" and a description of public and assisted housing vacancies that may be used for relocation; (3) a schedule for relocation of families and the removal of units; and (4) issuance of written relocation notices to families.[40] Notice must be provided at least 90 days before displacement.[41] The contents of the notice depend on whether the URA applies to the conversion. Even if the URA does not apply, the notice must state that families will be offered comparable housing that is decent, safe, sanitary, affordable, and "to the maximum extent possible, housing of their choice."[42] Where a family is provided tenant-based assistance, the PHA's obligations are satisfied only upon actual relocation of the family.[43] Further, notices must state that "[i]f the development is used as housing after conversion, the PHA must ensure that each resident may choose to remain in the housing, using tenant-based assistance towards rent."[44]

Subpart A further describes steps that HUD may take if a PHA fails properly to identify and convert public housing. These include disqualification from funding competitions, identification of developments by HUD, required revision of conversion plans, and other actions.[45]

Voluntary Conversion

Voluntary conversion of public housing is addressed in Subpart B of the new rule. As published in the *Federal Register* on September 17, 2003, Subpart B includes a section on required initial assessments by PHAs of their public housing stock, which was previously published by HUD in June 2001.[46] Per Section 22, PHAs were required to complete their required initial assessments by October 1, 2001.[47] Required initial assessments, which are not binding on a PHA's future voluntary conversion activities, were addressed in a prior issue of the *Housing Law Bulletin*.[48]

[38]*Id*. at § 972.133(c).

[39]*Id*.

[40]*Id*. at § 972.130(b)(1)-(4).

[41]*Id*. at § 972.130(b)(4) and (5).

[42]*Id*. at § 972.130(b)(4)(ii).

[43]*Id*. These notice requirements are analogous to those set forth in the public housing demolition and disposition regulations, 24 C.F.R. pt. 970.

[44]24 C.F.R. § 972.230(g)(4)(ii)(E).

[45]*Id*. at § 972.139.

[46]66 Fed. Reg. 33,616 (June 22, 2001).

[47]42 U.S.C.A. § 1437f(b)(2) (West 2003).

[48]NHLP, *HUD Issues Partial Final Rule on the Voluntary Conversion of Public Housing Developments to Vouchers*, 31 Hous. L. Bull. 157, 171-3 (July-Aug. 2001).

The basis procedure for voluntary conversion is similar to that for required conversion. A PHA seeking to convert a public housing development under Subpart B must first submit a conversion assessment to HUD as part of the PHA's annual plan submission. The PHA must also submit, as part of its annual plan and within one year of submitting its conversion assessment, a conversion plan. A conversion assessment and conversion plan may be submitted as part of the same annual plan.[49] A PHA may not convert units under a conversion plan until HUD issues written approval.[50]

Conversion Assessments

According to Subpart B, a conversion assessment must contain five elements:

(1) an analysis of the cost of continuing to operate the development as public housing versus the cost of providing tenant-based assistance;

(2) an analysis of the market value of the development before and after rehabilitation;

(3) an analysis of the likely success of residents of the development in using tenant-based assistance based on local market conditions;

(4) an "impact analysis" of the conversion on the surrounding neighborhood; and

(5) a description of the actions the PHA plans to take in converting the development.[51]

The cost analysis is to be based on the forthcoming appendix to the new rule.[52] The market value analysis must be conducted as an independent appraisal, a copy of the findings of which must be provided in the assessment.[53] The analysis of market conditions must take into account the use of tenant-based housing assistance in the community overall for the appropriate bedroom sizes, including recent success rates.[54] The impact analysis must take account of the effect of the conversion on the availability of affordable housing and the concentration of poverty in the neighborhood, as well as "[o]ther substantial impacts."[55] Race is not specifically mentioned as a factor. The description of the PHA's planned actions must include a "general description of planned future uses of the development, and the means and timetable for accomplishing such uses."[56]

[49]24 C.F.R. § 972.209(a)-(c). A PHA may update a previously submitted assessment in order to comply with the one-year requirement. 24 C.F.R. § 972.221(b).

[50]*Id*. at § 972.212(a).

[51]*Id*. at § 972.218.

[52]24 C.F.R. § 972.218(a).

[53]*Id*. at § 972.218(b).

[54]*Id*. at § 972.218(c).

[55]*Id*. at § 972.218(d).

[56]*Id*. at § 972.218(e).

The actual procedure is not clear from the rule, but it appears that HUD will conduct some substantive review of conversion assessments. Subpart B states that in order to voluntarily convert a development, a conversion assessment must satisfy three necessary conditions; these are that the conversion: (1) will not be more expensive than continuing to operate the development as public housing; (2) will principally benefit residents of the development, the PHA and the community; and (3) will not adversely affect the availability of affordable housing in the neighborhood.[57] The condition related to relative expense is to be satisfied with the cost and market value analyses in the assessment.[58] The impact on affordable housing condition may be satisfied by the rental market and neighborhood impact analyses in the assessment.[59]

The condition of benefit to residents, the PHA, and the community may be satisfied by the various elements of the assessment, but the PHA "must consider such factors as the availability of landlords providing[60] tenant-based assistance, as well as access to schools, jobs, and transportation."[61] HUD will consider whether the conversion will conflict with any settlement or compliance agreement between the PHA and HUD.[62] In addition, in order to satisfy the benefit to residents condition, the PHA must hold at least one public meeting with the affected residents and the resident council. At this meeting, the PHA must explain the requirements of Section 22, provide draft copies of the assessment, and provide residents a reasonable period of time in which to submit comments. A summary of comments received must be included in the assessment.[63]

Conversion Plans

As discussed above, a voluntary conversion plan must be submitted within one year of the submission of an original or updated conversion assessment. The conversion plan closely tracks the assessment. In its conversion plan, a PHA must

(1) describe the conversion and future use of the development;[64]

(2) provide an analysis of the impact of the conversion on the community, which "may include the description that is required as part of the conversion assessment;"[65]

(3) describe how the plan is consistent with the conversion assessment;[66]

(4) summarize residents' comments on the plan;[67]

(5) explain how the plan satisfies the three necessary conditions for voluntary conversion described above;[68]

(6) include a relocation plan.[69]

Unlike Subpart A, Subpart B states that a PHA need not submit an application for the demolition or disposition of voluntary conversion property where demolition or disposition is disclosed in the future use description.[70] Such applications are ordinarily required under Section 18 of the United States Housing Act.[71] However, Subpart B does require that PHAs "confirm" in their voluntary conversion plans that they will use any proceeds from demolition or disposition in accordance with Section 18 limitations.[72] The relocation plan requirements of Subpart B are equivalent to those included in Subpart A.

In addition to the consultation requirements associated with conversion assessments, voluntary conversion plans must be developed in consultation with affected residents and local government officials. The consultation requirements for voluntary conversion plans are identical to those for required conversion.[73] A summary of any comments received by residents must be included in PHAs' voluntary conversion plans.[74]

While voluntary conversion plans are submitted by PHAs as part of their annual plans, voluntary conversion plans will be subject to a separate approval process and written approval, separate from approval of the annual plan, is required. Subpart A states that HUD anticipates that it will make an approval decision within 90 days of the submission of a completed voluntary conversion plan and will at least provide a "preliminary response" within that timeframe.[75]

HUD will review voluntary conversion plans submitted to it to determine whether the plans are complete and consistent with conversion assessments.[76] HUD will disapprove a conversion plan "only if" HUD determines that: (1) the conversion plan is plainly inconsistent with the assessment; (2) reliable information and data available to HUD contradicts the conversion assessment; or (3) the conversion plan is incomplete or fails to meet component requirements.[77]

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[57]*Id*. at § 972.224(a).

[58]*Id*. at § 972.224(b)(1).

[59]*Id*. at § 972.224(b)(3).

[60]So in original. This should probably be "accepting."

[61]24 C.F.R. § 972.224(b)(2).

[62]*Id*.

[63]*Id*. at § 972.224(b)(2)(iii)-(iv).

[64]*Id*. at § 972.230(a).

[65]*Id*. at § 972.230(b).

[66]*Id*. at § 972.230(c).

[67]*Id*. at § 972.230(d).

[68]*Id*. at § 972.230(f).

[69]*Id*. at § 972.230(g).

[70]*Id*. at § 972.230(a).

[71]42 U.S.C.A. § 1437p (West 2003).

[72]24 C.F.R. § 972.230(3) (citing 42 U.S.C.A. § 1437p(a)(5)).

[73]*Id*. at § 972.27. *See also* notes 35 and 36, *supra*, and accompanying text.

[74]24 C.F.R. § 972.230(d).

[75]*Id*. at § 972.236.

[76]*Id*. at § 972.239(a).

[77]*Id*. at § 972.239(b).

Other Provisions Common to Both Required and Voluntary Conversion

Environmental Review

Subparts A and B both state that PHAs may not demolish or dispose of conversion properties until completion of the appropriate environmental review required under HUD National Environmental Policy Act (NEPA) regulations.[78]

Relocation

Subparts A and B also both include provisions regarding the applicability of the URA. An identical section in each subpart states:

> To the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this subpart, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.[79]

Whether this means that all conversion-related displacement of residents is covered by the URA is unclear. Portions of HUD commentary on the new rule appear to suggest that it is:

> *Comment: Final rule should reference applicability of URA*. One commenter suggested that the final rule should provide that URA applies to families displaced pursuant to a required conversion.
>
> *HUD response*. HUD has adopted the commenter's suggestion.[80]

However, the language and structure of the new rule is somewhat circuitous.[81]

Conclusion: Cost Comparisons, At-Risk Developments, Section 18 and HOPE VI

The practical significance of the new conversion rule is still taking shape. The eventual release of the cost comparison appendix will be very important to the new rule. In recently submitted comments, the Housing Justice Network expressed a number of concerns about the failure of the proposed methodology adequately to account for Housing Choice Voucher costs. Because of the comparison of public housing and voucher costs in both the required and voluntary conversion process, artificially low calculations of voucher costs would improperly skew results in favor of more conversions.

Apart from cost comparison issues, once the rule becomes effective, it appears that voluntary conversions may be more likely than required conversions. A cursory review of 1998 HUD *Picture of Subsidized Households* data indicates that relatively few public housing developments meet the vacancy and unit number requirements of Subpart A.[82] Of those, a number have already been approved for demolition or disposition under Section 18 or been the subject of HOPE VI redevelopment grants.

The new rule has the potential to be a curb on improper HOPE VI grantmaking practices by HUD.

In addition, the requirements for voluntary conversion are quite extensive. It is possible that many PHAs may choose to pursue demolition or disposition under Section 18 without resorting to voluntary conversion under Section 22. Essentially the same result may be achieved under either authority. However, even though the assessment and planning requirements are substantial, HUD's stated policy of making at least a preliminary decision regarding voluntary conversion plans within 90 days after submission may be attractive to some PHAs. The period of review for Section 18 applications is more open-ended.

Finally, even if required conversions do prove to be rare, Subpart A should prove to have special importance to the HOPE VI public housing redevelopment program. HOPE VI was created a decade ago to address the problem of severely distressed public housing through large grants targeted to specific developments. However, as HUD administered the program, "severe distress" has been a very elastic term, with practically any development able to fit within it. HUD has been criticized for making HOPE VI grants for sites based on their real estate value and market-rate use potential.[83] Under the new rule, PHAs will be required individually to identify "distressed" public housing sites.[84] This has the potential to be a meaningful limit on the eligibility of public housing sites for HOPE VI awards and a curb on improper grantmaking practices by HUD. ■

[78] *Id*. at §§ 972.109(b) and 972.212(b) (citing 24 C.F.R. pts. 50 and 58).

[79] *Id*. at §§ 972.118 and 972.215.

[80] 68 Fed. Reg. at 54,604.

[81] Presumably, disposition (*e.g.*, the sale or transfer) of a development would be considered "acquisition . . . of federally-assisted property" under §§ 972.118 and 972.215.

[82] *See* HUD, *A Picture of Subsidized Households-1998*, *at* http://www.huduser.org/datasets/assthsg/statedata98/index.html (content updated Mar. 18, 2003).

[83] NHLP, ET AL., FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM 3-6 (2002), *available at* http://www.nhlp.org/html/pubhsg/FalseHOPE.pdf [hereinafter FALSE HOPE].

[84] HUD was required to develop, based on submissions from PHAs, a comprehensive list of severely distressed public housing sites shortly after the HOPE VI program was launched. It never did so. *Id*. Also note that, as required under Section 22, the definition of "distress" in the new rule is based on the definition used by the National Commission on Severely Distressed Public Housing (NCSDPH) in its final report published in 1992. 42 U.S.C.A. § 1437z-5(a)(2); *see also* 68 Fed. Reg. at 54,602. The HOPE VI program was created to implement the recommendations made in the NCSDPH report. FALSE HOPE, *supra* note 83, at 1-2.

HUD Issues FY 2004 HOPE VI NOFA

On October 21, 2003, HUD published its Notice of Funding Availability for Fiscal Year (FY) 2003 HOPE VI revitalization and demolition grants.[1] The HOPE VI program is a multi-billion dollar competitive grant program that funds the demolition or redevelopment of so-called "severely distressed" public housing sites.[2] The program has been criticized as one that puts image before substance and that has resulted in the net loss of thousands of urgently needed public housing units and the involuntary displacement of thousands of families.[3]

The FY 2003 NOFA announces the availability of $447.8 million for revitalization grants and $40 million for demolition-only grants.[4] Public housing authorities (PHAs) seeking revitalization grant funds must submit their applications to HUD by January 20, 2004; demolition-only grant applications are due by February 18, 2004.[5]

Highly Similar to FY 2002 NOFAs

The FY 2003 NOFA is very similar to the FY 2002 NOFAs.[6] As in 2002, PHAs may apply for revitalization grants of up to $20 million.[7] Demolition grants are capped at $9,000 per unit to be demolished, as also was the case in 2002.[8] As in previous years, HUD has published a revitalization application kit on its Web site, to supplement the NOFA.[9] The 2003 revitalization application form is nearly identical to the form published in 2002.[10] FY 2003 applications are scored according to nine rating factors,[11] each with a maximum point value:

- the capacity of PHA and developer (20 points maximum);[12]
- need for redevelopment (24);[13]
- the proposed extent of the leveraging of grant resources (16);[14]
- resident and community involvement in application process (3);[15]
- the community and supportive services planned (6);[16]
- relocation of current residents (5);[17]
- "disability issues," fair housing, and employment of low-income persons (7);[18]
- "well functioning communities," including the on- and off-site mix of units and homeownership units (8);[19] and
- the overall quality of the redevelopment plan (19).[20]

The maximum possible total is 108 points. With some minor differences in terminology and point values, the FY 2003 revitalization grant rating factors are basically the same as those used in FY 2002.[21]

As has been the case in recent years, HUD is placing particular emphasis on project readiness and the ability of applicants to begin redevelopment efforts as quickly as possible. For example, a PHA will receive maximum points under the relocation rating factor if it certifies that all residents of the targeted public housing site have been relocated and tracked as of the application due date.[22] Applicants that have received HOPE VI awards in prior years are penalized if they have not made timely progress in the redevelopment activities funded under those previous grants.[23]

The NOFA provisions regarding demolition-only grants are also very similar to those of prior NOFAs.[24] Demolition-only application sites are ranked according to priority groups.[25] These include: sites subject to a HUD-approved plan for conversion to vouchers under Section 202 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1996;[26] sites subject to a submitted Section 202 conversion plan; and sites

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[1]68 Fed. Reg. 60,178 (Oct. 21, 2003).

[2]*See generally* 42 U.S.C.A. § 1437v (West 2003).

[3]*See generally* NHLP, ET AL., FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM (2002).

[4]68 Fed. Reg. at 60,178.

[5]HUD, *Fiscal Year 2003 Funding Information* (content updated Dec. 9, 2003), *at* http://www.hud.gov/offices/pih/programs/ph/hope6/grants/fy03/index.cfm.

[6]Separate revitalization and demolition-only NOFAs were published for FY 2002. 67 Fed. Reg. 49,766 (July 31, 2002) (revitalization); 68 Fed. Reg. 16,672 (Apr. 4, 2003) (demolition-only).

[7]68 Fed. Reg. 60,178.

[8]*Id*. at 60,207.

[9]HUD, *2003 HOPE VI Revitalization Application Kit* (content updated Dec. 18, 2003), *at* http://www.hud.gov/offices/pih/programs/ph/hope6/grants/revitalization/03/03revgrantkit.cfm.

[10]*Id*.

[11]Applications must also satisfy a number of threshold criteria under the various rating factors. 68 Fed. Reg. at 60,185-186.

[12]*Id*. at 60,189.

[13]*Id*. at 60,191.

[14]*Id*. at 60,194.

[15]*Id*. at 60,195.

[16]*Id*. at 60,197.

[17]*Id*.

[18]*Id*. at 60,198.

[19]*Id*. at 60,200.

[20]*Id*. at 60,201.

[21]HUD, *FY 2002 HOPE VI Revitalization NOFA Rating Factors* (2002), *at* http://www.hud.gov/offices/pih/programs/ph/hope6/grants/fy02/kit/2002rak_scores.pdf.

[22]68 Fed. Reg. at 60,197. This is a significant improvement over the FY 2002 NOFA, which did not require tracking for maximum points. 67 Fed. Reg. at 48,780.

[23]68 Fed. Reg. at 60,189.

[24]*See, e.g.*, 67 Fed. Reg. at 16,675-676.

[25]*Id*. at 60,208.

[26]*Codified at* 42 U.S.C.A. § 1437*l* (West 2003) (repealed). The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1996, were part of the Omnibus Consolidated

approved by HUD for demolition under Section 18 of the United States Housing Act.[27] However, the FY 2002 NOFA included a fourth priority group for units that are related to a prior-year revitalization award, which does not appear in the FY 2003 NOFA.[28]

The Future of HOPE VI

While the FY 2003 NOFA continues trends from recent years, the future of the HOPE VI program is uncertain. The President's proposed FY 2004 HUD budget included no funds for HOPE VI.[29] It appears that funds will be appropriated for the program despite this, but the level of funding will likely be significantly lower than it is currently.[30] ■

Rescissions and Appropriations Act (OCRA) of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (Apr. 26, 1996). This is not to be confused with required and voluntary conversion authorized under Sections 22 and 33 of the United States Housing Act. 42 U.S.C.A. §§ 1437t and 1437z-5 (West 2003).

[27]42 U.S.C.A. § 1437p (West 2003).

[28]67 Fed. Reg. at 16,676.

[29]HUD, Fiscal Year 2004 Budget Summary 21 (2003), *at* http://www.hud.gov/about/budget/fy04/budgetsummary.pdf.

[30]H.R. Conf. Rep. No. 108-401 (West, WESTLAW, Nov. 25, 2003) (would set FY 2004 HOPE VI appropriation at $150 million, one-third of its FY 2003 level).

Inspector General Faults HUD on Section 3

The Department of Housing and Urban Development (HUD) Inspector General (IG) surveyed HUD's administration of Section 3 of the Housing and Community Development Act of 1968 and issued a report critical of the department's performance.[1] The purpose of the survey was to determine whether HUD is administering Section 3 in a manner that ensures that it meets its intended purpose,[2] which is to provide jobs and economic opportunities to low-income and very low-income persons, particularly public housing residents, to the greatest extent feasible.

The report is short and provides little historical perspective, but it contains important findings and a schedule of future action with respect to Section 3 that HUD has committed to meet. These latter elements should provide a basis for effective implementation of Section 3 after decades of delay.

The key findings of the report include:

(1) HUD has not implemented necessary controls for effective program oversight;[3]

(2) Section 3 has not been an area of priority for HUD in the past;

(3) The Section 3 regulations are vague as to the extent of economic opportunities that are to be afforded to low-income individuals; and

(4) HUD cannot assure that Section 3 is functioning as intended.

The HUD IG found that HUD has not implemented the goals of OMB Circular A-123, which provides for continuous monitoring of the effectiveness of programs, regular evaluations and timely action to correct deficiencies.[4] In particular, HUD did not have in place a system for tracking recipients of federal funding subject to Section 3. The HUD IG simply stated that HUD was unable to identify such recipients. From this fact flow other major deficiencies, such as the lack of a system for recipients subject to Section 3 to report to HUD, an effective system for monitoring recipients and an evaluation of any reports or the reporting process itself.

Substantively, the HUD IG found that HUD had no way of determining whether the required provisions regarding compliance with Section 3 were included in contractual agreements with recipients and subcontractors. In addition, the report stated that HUD had no way of verifying whether recipients were notifying public housing residents and other eligible persons about training and employment opportunities and recruiting and hiring such persons.

HUD responded to the audit report and the HUD IG commended HUD for its recent efforts, which began in fiscal year 2002, to address some of the identified problems. HUD has begun to monitor funding recipients subject to Section 3 and has developed a strategic plan "to enhance the efficiency and effectiveness of the program."[5] The goals of the plan are to evaluate existing policies and procedures, update education and outreach materials[6] and increase collaboration with other major HUD program areas. Unfortunately, it does not appear that a goal of verifying the training, recruitment and hiring of public housing residents is in the strategic plan.[7] This is a significant omission. We hope that the response to the HUD IG report will not be limited to procedural adjustments, but will also encompass substantive objectives and outcomes. ■

[1]Roger E. Niesen, HUD Office of Inspector General, Survey of HUD's Administration of Section 3 of the HUD Act of 1968 (2003) (Audit No. 2003-KC-0001).

[2]12 U.S.C.A. § 1701u(b) (West, WESTLAW, current through Pub. L. No. 108-144 (Dec. 2, 2003)) and 24 C.F.R. § 135.1 (2003).

[3]At the same time, the report appeared to justify the HUD inaction, noting that "recipients that receive HUD funding have the primary responsibility for compliance" and that "HUD does not have direct oversight." Niesen, *supra* note 1, at 2 and 3. With accelerating efforts to deregulate federal programs, such excuses could be used to justify inaction by HUD with respect to any number of programs.

[4]Niesen, *supra* note 1, at 3.

[5]Niesen, *supra* note 1, at 8.

[6]HUD has made available a PowerPoint presentation on the Section 3 program, which is posted on the NHLP Web site, http://www.nhlp.org. HUD staff has also participated in Section 3 trainings in Pennsylvania and Virginia. Presumably, other trainings have been held elsewhere.

[7]Similarly, the report includes no discussion of establishing a baseline for Section 3 training, recruitment and hiring and then increasing those numbers from the baseline in accordance with the amount of funds made available each year.

CSH Presses HUD on Earned Income Disregards for Persons with Disabilities

On October 7, 2003, the Corporation for Supportive Housing (CSH) sent a letter to the United States Department of Housing and Urban Development (HUD) requesting information on HUD's failure to provide training and technical support to its field office personnel and funding recipients on implementation of the earned income disregards for persons with disabilities.

In 2001, HUD extended the benefits of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) to persons with disabilities who participate in certain programs. The purpose of the original disregard, applicable to public housing residents, was to remove the disincentive for residents to seek employment by temporarily exempting portions of new income from their rent calculations. Without the EID credit, residents' rents would rise as they became employed, providing a disincentive for residents to improve their economic well-being. Under the earned income disregard, a previously unemployed individual who becomes employed is entitled have their income disregarded 100 percent for the first year and 50 percent for the second year of their employment for purposes of calculating their rent.[1]

Initially, the legislation was to apply to public housing tenants and all Section 8 recipients, but due to the lack of full funding, HUD was only able to extend the benefit to persons with disabilities in a few selected programs. The earned income disregard for disabled families and individuals is only available to participants in the HOME Investment Partnership Program,[2] the Housing Opportunities for Persons with AIDS (HOPWA) Program,[3] the Supportive Housing Program,[4] and the Housing Choice Voucher Program,[5] and is virtually identical to the public housing disregard. The EID requires that public housing authorities (PHAs) and owners of certain assisted housing[6] discount from a household's rent calculation any increase in income if:

(1) the increased income is due to employment of a family member who has been previously unemployed.[7] (The definition of previously unemployed includes a person who has earned in the past 12 months no more than the equivalent of 500 hours of work at the greater of the federal or state minimum wage.[8])

(2) the family currently receives welfare or has received welfare during the previous six months;[9] or

(3) the family's income increased during a family member's participation in a self-sufficiency or job training program.[10]

Since its inception, the earned income disregard has been a persistent source of confusion for PHAs and other recipients of federal funds.

Since its inception, the EID has been a persistent source of confusion for PHAs and other recipients of federal funds. Due to the targeted nature of the benefit, housing agencies have difficulty adopting a standardized approach applicable in all cases. Without guidance from HUD, many of these agencies and organizations are left to maneuver through the somewhat complicated regulations on their own.

In its letter, CSH requests information on HUD's efforts to provide training to recipients required to implement this regulation, what if any curriculum HUD will provide and whether written guidance that includes worksheets to calculate rent will be provided. According to CSH, without such effort on the part of HUD, the regulations will do little to promote the inclusion of people with disabilities into the workplace.

In response to this letter, NHLP contacted the HUD Office of Disability Policy regarding the issues of EID implementation for persons with disabilities and guidance. The initial response from HUD was receptive and staff seemed agreeable to working with NHLP and CSH in drafting appropriate guidance and instructions to ensure the proper administration of this benefit to persons with disabilities. ■

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[1] 24 C.F.R. §§ 960.255(b) and 5.617(c) (2003).

[2] *Id*. at pt. 92.

[3] *Id*. at pt. 574.

[4] *Id*. at pt. 583.

[5] *Id*. at pt. 982.

[6] The remainder of the article shall refer only to PHAs; the reader should take note that owners or managers would be subject to the same regulations and analysis in the case of HOME, HOPWA, and supportive housing.

[7] 24 C.F.R. §§ 960.255 and 5.617 (2003).

[8] *Id*. at § 960.255(a).

[9] *Id*. at §§ 960.255(a)(i) and 5.617(b)(1).

[10] *Id*. at §§ 960.255(a)(iii) and 5.617(b)(3).

New Voucher Homeownership Study Released by HUD

A two-volume, Section 8 Voucher Homeownership study prepared for the Department of Housing and Urban Development (HUD) was released July 2003. Both volumes focus on just 12 sites that currently administer the program.[1] Six out of the 12 were part of the original voucher homeownership demonstration sites piloted in 1999 and have, thus, been operating under pilot program rules that differ from the final rule in significant ways.[2] PHAs were selected to include both those that are operating their programs without outside resources beyond voucher program funds and PHAs that are operating their programs as part of the Neighborhood Reinvestment Corporation's voucher homeownership demonstration. All PHAs had least one family that has purchased a home through the program as of November 2001. No other selection criteria were used. Volume 1 compares findings across sites, while Volume 2 provides in-depth information by site.[3]

Though the study still leaves many questions unanswered, it is a helpful contribution to the body of research slowly being developed on the voucher homeownership program. This article touches on just a few of the key findings from Volume 1 of the study.

Selected Findings

The homeownership program of five of the sites in the study is affiliated with a NeighborWorks organization. The Neighborhood Reinvestment Corporation (NRC) was created by Congress to implement and expand the demonstration activities of the Urban Reinvestment Task Force.[4] In 1990, NRC's mission was expanded to focus on the national neighborhood housing service network, NeighborWorks. Specific homeownership-related activities include expanding the capacity of NeighborWorks (NW) organizations to purchase home loans and increasing resources available for purchase and rehabilitation of homes for sale to low- and moderate-income families. NW received $5 million in 2001 to partner with PHAs on voucher homeownership programs, and $10 million in 2002 for the same purpose.[5]

With regard to the required homeownership counseling component, the vast majority of PHAs are enlisting outside partners to provide this element. The required number of hours of counseling ranges from a low of four to a high of 16 hours, and, in most cases, voucher participants are folded into the existing first-time homebuyer sessions that partners are already conducting.[6]

Though post-purchase counseling is not required under the regulations, nine out of the 12 sites in the study require or plan to require post-purchase counseling for some or all participants. The Colorado program, which is considered to be outstanding in many ways, does not require post-purchase counseling but uses positive reinforcement instead, via regular mailings to participants of postcards, calendars and other materials with helpful reminders on budgeting and maintenance. The program also holds an annual reunion for homeowners, part of which covers budgeting, maintenance and predatory lending issues.[7]

The number of closings across the 12 programs has ranged from a low of two to a high of 33. The number of closings expected ranges from a low of 10 per year to a high of 40.[8] The financing models utilized most frequently are the Housing Assistance Payment (HAP) as income model, and the HAP as offset. Under the HAP as income model, the HAP is grossed up by 25 percent (to account for the fact that it is not taxed) and added to the participant's income. That higher number is the one used by the lender and the PHA as part of determining how expensive a home the participant can afford to purchase. Under the HAP as offset model, the lender and PHA apply the HAP directly to the mortgage instead of adding it to the participant's income, calculating how much of the mortgage the HAP can support.[9] For sites working with NW organizations, NW makes second mortgage loans available. Most units fail the initial Housing Quality Standards (HQS) inspection, but sellers have easily been able to remedy what were generally minor problems. Most importantly, no sale has fallen through because of a seller refusing to make HQS repairs.[10]

The amount of staff time required to operate a voucher homeownership program has been a critical concern for PHAs as they do not receive any special, additional funds to operate such programs. The amount of staff time expended by the 12 study sites ranges from a one-third full-time employee to 1.5 employees, on the high end. That high-end estimate comes from a program that relies on partners far less than other programs. Notably, the two state-wide programs use only from 1 to 1.1 full-time employees to operate their programs. The program with the highest number of home purchasers in a year (33), utilizes only three-quarters

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[1]Those sites are Bernalillo County, NM; Colorado (state-wide program); Danville, VA; Green Bay, WI; Milwaukee, WI; Missoula, MT; Montgomery County, PA; Nashville, TN; San Bernardino, CA; Syracuse, NY; Toledo, OH; and Vermont (state-wide program). HUD estimates 1,500 closings nationally based on a telephone survey of PHAs conducted in the summer of 2003.

[2]Three of the six switched at some point to using the final rule, which was issued September 12, 2000, and has been amended several times, most recently on October 18, 2002.

[3]HUD, VOUCHER HOMEOWNERSHIP PROGRAM ASSESSMENT, vols. 1 and 2 (2003), *at* http://www.huduser.org/publications/hsgfin/msd_vol1_vol2.html.

[4]Housing and Community Development Amendments of 1978, Pub. L. No. 95-557, tit. VI, 92 Stat. 2080 (Oct. 31, 1978).

[5]HUD, VOUCHER HOMEOWNERSHIP PROGRAM ASSESSMENT, vols. 1 and 2, 1-2 (2003), *at* http://www.huduser.org/publications/hsgfin/msd_vol1_vol2.html (*citing* Ellen Lazar, *Helping Section 8 Families Move to Home Ownership*, Neighborworks *bright ideas*, Spring 2002).

[6]*Id.* at 3-10 to 3-12.

[7]*Id.* at 3-19 to 3-20.

[8]*Id.* at 2-10 to 2-11.

[9]*Id.*

[10]*Id.* at 3-17 to 3-18.

of a staff person's time. Thus, it appears a combination of factors influence how much staff time is needed to operate a voucher homeownership program, but certainly the level of assistance from partners plays a significant role.[11]

Conclusion

The voucher homeownership program is still a work in progress, and much remains to be done to assess the value and costs of the program. Still, there are already viable financial and program models that have proven effective. Advocates, PHAs and community members need not reinvent the wheel if they wish to start a program or modify an existing one. Although limited in the number of programs it examines, this recent two-volume study is a valuable and interesting reference point. ■

[11]*Id*. at 3-28.

Recent Cases

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

Federal Jurisdiction

Brown v. Philadelphia Housing Authority, 350 F.3d 338 (3rd Cir. 2003). Defendant housing authority and others moved to vacate a public housing consent decree issued in 1974, contending that the matter was moot and the court therefore lacked subject matter jurisdiction. The district court denied Defendant's motion. The Third Circuit reversed and remanded. It noted that Plaintiffs were no longer residents of Philadelphia Housing Authority housing at the time the consent decree was issued and that no class had ever been certified. The Third Circuit rejected Plaintiffs' arguments regarding implied class certification and the passage of years. It explained that lack of subject matter jurisdiction is not a waiveable defense.

Low-Income Housing Tax Credit Program

Carter v. Maryland Management Co., 377 Md. 596 (Md. App. 2003). Respondent Low-Income Housing Tax Credit (LIHTC) Program landlord brought an eviction action against Petitioner Housing Choice Voucher Program tenant. The district court issued judgment for Respondent. Petitioner petitioned for writ of certiorari. The Court of Appeals of Maryland granted certiorari. The court of appeals held that the LIHTC program requires good cause for eviction and that recent amendments to the voucher program statute and regulations do not supersede this requirement. However, it further concluded that the district court's finding of good cause was not clearly erroneous based on the factual record.

Multifamily Housing Preservation

Carabetta Enterprises v. United States, 58 Fed. Cl. 563 (2003). Plaintiff owners and managers of Section 221(d)(3) and Section 236 multifamily housing properties filed an action for breach of contract for guaranteed loans against Defendant United States. The parties filed cross-motions for summary judgment. The Court of Claims granted Plaintiffs' motion in part and denied Defendant's motion. Plaintiffs and Defendants entered into an agreement in 1994 which, *inter alia*, required Defendant to provide Section 241(f) guaranteed loans for 26 of Plaintiffs' properties. In 1997, HUD used a portion of a $75 million discretionary fund authorized by Congress that fiscal year to provide loans to seven of Plaintiffs' properties. The legislation appropriating those funds also repealed the Section 241(f) loan program. Applying the sovereign acts doctrine and general principles of contract, the court concluded that the repeal of the Section 241(f) program did not constitute a breach of the parties' agreement. It concluded that the legislation was public and general and that it was not foreseen when the contract was made. (The court did not discuss the closely related unmistakability doctrine.) The court also stated that it inferred a valid modification of the original agreement to provide Section 241(f) loans based on Plaintiffs' acceptance of loans made with discretionary funds. However, the court further held that Defendant's failure to provide loans to the 19 remaining properties with discretionary funds was a breach of the parties' agreement. Partial summary judgment was issued in favor of Plaintiffs on that basis.

Public Housing

In re Blaylock, 301 B.R. 443, (Bankr. E.D. Pa. 2003). Movant Philadelphia Housing Authority filed a motion challenging the application of an automatic stay pursuant to Chapter 7 of the Bankruptcy Code of its eviction action against Respondent public housing squatter. The bankruptcy court granted Movant's motion and dismissed Respondent's complaint. The bankruptcy court relied on a prior federal district court order holding that Respondent had no protected property interest in her continued occupancy of the public housing

[1]www.westlaw.com.

[2]www.lexis.com.

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

unit. Voicing some concerns about future erosion of debtor protections, the bankruptcy court cited *In re St. Clair*, 251 B.R. 660 (D.N.J. 2000), *aff'd*, *St. Clair v. Wood*, 281 F.3d 224 (3d Cir. 2001) and concluded that a debtor must have a good faith colorable claim of possession for a stay to apply.

McPherson v. District of Columbia Housing Authority, 833 A.2d 991 (App. D.C. 2003). Appellant appealed the district court's denial of her motion to intervene in an *in rem* action filed by Appellee housing authority for possession of a public housing unit formerly occupied by Appellant's deceased mother. Appellant and several relatives also resided in the unit. The District of Columbia Court of Appeals concluded that the district court failed to make adequate factual findings in support of its denial of Appellant's motion. The court of appeals conducted its own review of the record and concluded that, pursuant to the applicable rules of court, Appellant was entitled to intervene as a matter of right. ■

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 October and November of 2003. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

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

HUD *Federal Register* Final Rules

68 Fed. Reg. 59,848 (Oct. 17, 2003)
Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

Summary: This final rule provides for codification of the requirements of Executive Order 13202 (the Executive Order), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." The Executive Order provides that, to the extent permitted by law, agencies may not permit inclusion of contract conditions requiring or prohibiting entering into or adhering to agreements with a labor organization, or otherwise discriminating against parties entering into or adhering to such agreements, as a condition for award of any federally funded contract or subcontract for construction. This final rule follows publication of a May 22, 2003, interim rule. HUD did not receive any public comments on the interim rule and, therefore, is adopting the interim rule without change.

Effective Date: November 17, 2003.

68 Fed. Reg. 66,534 (Nov. 26, 2003)
Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

Summary: These rules implement changes to the governmentwide nonprocurement debarment and suspension common rule (NCR) and the associated rule on drug-free workplace requirements. The final and interim final rules reflect changes made to the proposed rules in response to the comments received during the comment period. The NCR sets forth the common policies and procedures that Federal Executive branch agencies must use in taking suspension or debarment actions. It also establishes procedures for participants and federal agencies in entering covered transactions. While these procedures are mandatory for all agencies of the Executive branch under Executive Order 12549, any federal agency with procurement or nonprocurement responsibilities may elect to join the governmentwide system by adopting these procedures through the rulemaking process. Certain small Executive branch agencies that are exempt from having to issue separate regulations, with the approval of the Office of Management and Budget, may initiate suspension and debarment actions in their inherent authority. Following the procedures set forth in the NCR will help ensure that the agencies' actions comply with due process standards and provide the public with uniform procedures. As an alternative, smaller Executive branch agencies may refer matters of contractor and participant responsibility to another Executive branch agency for action.

Dates: The effective date for this rule is November 26, 2003. The comment date for those agencies issuing this rule as an interim rule (*i.e.*, the Department of Agriculture, the Export-Import Bank, the Department of Justice, and the Department of Treasury) is January 26, 2004.

68 Fed. Reg. 66,980 (Nov. 28, 2003)
Housing Assistance for Native Hawaiians: Native Hawaiian Housing Block Grant Program and Loan Guarantees for Native Hawaiian Housing Program; Final Rule

Summary: This rule issues as final, and responds to public comments on, an interim rule published on June 13, 2002, to implement procedures and requirements for two new programs to address the housing needs of Native Hawaiians.

[1] *At* www.access.gpo.gov/su_docs.

[2] *At* 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* www.rdinit.usda.gov/regs.

The Native Hawaiian Housing Block Grant Program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for Native Hawaiian Housing Program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands.

Effective Date: December 29, 2003.

HUD *Federal Register* Proposed Rule

68 Fed. Reg. 58,006 (Oct. 7, 2003)
Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act

Summary: HUD charges an up-front mortgage insurance premium (MIP) for loans that are obligations of its mutual mortgage insurance fund, and of its general insurance fund only for insurance in connection with Section 8 homeownership. However, to date there has been no provision for up-front premiums for loans such as home rehabilitation loans under Section 203(k) of the National Housing Act (NHA) and condominium unit loans under Section 234(c) which are obligations of the general insurance fund. Recent statutory changes now provide for an up-front MIP for those programs. This rule amends HUD's regulations related to mortgage insurance to conform the regulations to the recent statutory changes.

Comment Due Date: December 8, 2003.

HUD *Federal Register* Notices

Fed. Reg. 56,704 (Oct. 1, 2003)
Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2004

Summary: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher Program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payments (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy Program. Other programs may require use of FMRs for other purposes. This notice provides final FY 2004 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2004.

Effective Date: The FMRs published in this notice are effective on October 1, 2003.

68 Fed. Reg. 59,193 (Oct. 14, 2003)
Notice of Proposed Information Collection for Public Comment—HOPE VI Grant Program

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for emergency review and approval. The information collection relates to application forms for the HOPE VI grant program. HUD is apparently developing a number of new forms regarding resident and community participation, project readiness, Neighborhood Networks, and other issues. Current forms may also be revised, but this is uncertain.

Comments Due Date: December 15, 2003.

68 Fed. Reg. 59,450 (Oct. 15, 2003)
Funding Availability for HOME Investment Partnerships Program (HOME)—Competitive Reallocation of Funds to Provide Permanent Housing for the Chronically Homeless

Summary: This NOFA announces the availability of approximately $6.5 million for the competitive reallocation of deobligated Community Housing Development Organization (CHDO) setaside funds.

68 Fed. Reg. 59,802 (Oct. 17, 2003)
Notice of Proposed Information Collection for Public Comment—Statement of Homeowner Obligations, Housing Choice Homeownership Voucher Program

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for emergency review and approval. The information collection relates to statements of homeowner obligations in the Housing Choice Homeownership Voucher Program. A public housing authority and family participating in the homeownership voucher program must execute a statement of homeowner obligations before housing assistance payments begin.

Comments Due Date: December 16, 2003.

68 Fed. Reg. 60,111 (Oct. 21, 2003)
Public Housing Assessment System (PHAS): Physical Condition Scoring Process and Financial Condition Scoring Process

Summary: This notice advises public housing agencies (PHAs) and the public that HUD will extend the use of four elements that were part of the interim scoring processes for the Public Housing Assessment System (PHAS) Physical Condition Indicator. HUD adopted interim scoring processes for two of the four PHAS indicators—Physical Condition and Financial Condition—by notice published in the *Federal Register* on March 15, 2002, and described in notices published in the *Federal Register* on November 26, 2001. Except for the four elements that are being extended, the Physical Condition and Financial Condition Indicators for PHAs with fiscal years ending on and after September 30, 2003, will be scored in accordance with the Physical Condition Scoring Process notice published on June 28, 2000, and the Financial Condition Scoring Process notice published on December 21, 2000. After consideration, the department has determined not to implement the proposed rule for PHAS. The current PHAS is now fully operational and is providing complete and official assessment scores. Beginning with the fiscal year ending September 30, 2001, PHAs were scored under the four PHAS indicators, rather than issued an advisory score. Since that

time, the department has increased its PHAS related quality assurance activities.

68 Fed. Reg. 60,178 (Oct. 21, 2003)
Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003

Summary: This NOFA announces the availability of $574 million for the HOPE VI Program. Of this amount, approximately $447.8 million in FY 2003 funds are available for the HOPE VI Revitalization Program and $40 million for the HOPE VI Demolition Program. The remaining funds will be made available for other purposes including Neighborhood Networks, technical assistance and Housing Choice Voucher Assistance.

68 Fed. Reg. 61,008 (Oct. 24, 2003)
Notice of Proposed Information Collection: Comment Request; Inspection Checklist— Additions/Modifications to Manufactured Homes

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for emergency review and approval. The information collection relates to inspection checklists concerning additions and modifications of manufactured homes.

Comments Due Date: December 23, 2003.

68 Fed. Reg. 62,311 (Nov. 3, 2003)
Announcement of Funding Awards for Fiscal Year 2003 Alaska Native/Native Hawaiian Institutions Assisting Communities Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 Alaska Native/Native Hawaiian Institutions Assisting Communities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to assist Alaska Native/ Native Hawaiian institutions of higher education to expand their role and effectiveness in addressing communities in their localities, consistent with the purpose of Title I of the Housing and Community Development Act of 1974, as amended.

68 Fed. Reg. 62,312 (Nov. 3, 2003)
Announcement of Funding Awards for Fiscal Year 2003; Hispanic-Serving Institutions Assisting Communities Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant Program (CDBG).

68 Fed. Reg. 62,313 (Nov. 3, 2003)
Announcement of Funding Awards for Fiscal Year 2003; Historically Black Colleges and Universities Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant Program (CDBG).

68 Fed. Reg. 62,314 (Nov. 3, 2003)
Announcement of Funding Awards for Fiscal Year 2003; Tribal Colleges and Universities Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 Tribal Colleges and Universities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community.

68 Fed. Reg. 62,615 (Nov. 5, 2003)
Notice of Proposed Information Collection: Comment Request; Uniform Physical Standards & Physical Inspection Requirements for Certain HUD Housing, Administrative Process for Assessment of Insured and Assisted Properties

Summary: HUD will be submitting a proposed information collection to the Office of Management and Budget (OMB) for emergency review and approval. The information collection relates to uniform physical condition standards and inspection requirements, which are intended to ensure that HUD program participants meet their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary, and in good repair.

Comments Due Date: January 5, 2004.

68 Fed. Reg. 63,914 (Nov. 10, 2003)
Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2003

Summary: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly Federal Register notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous Federal Register notice. The purpose of this notice is to comply with the requirements of Section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2003, and ending on June 30, 2003.

68 Fed. Reg. 64,912 (Nov. 17, 2003)
Notice of Funding Availability for HOME Investment Partnerships Program (HOME) Competitive Reallocation of Funds to Provide Permanent Housing for the Chronically Homeless; Correction

Summary: On October 15, 2003, HUD published the Notice of Funding Availability (NOFA) for the Competitive Reallocation of HOME Funds to Provide Permanent Housing for the Chronically Homeless. This notice corrects that funding announcement by notifying applicants of the new government-wide requirement that all applicants for federal grants and cooperative agreements must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their applications. In addition, this document makes a correction to the scoring assigned to certain HOME participating jurisdictions (PJs) found in Appendix 1 to the NOFA and changes the deadline for submission of applications to December 18, 2003.

68 Fed. Reg. 64,914 (Nov. 17, 2003)
OIG Fraud Alert: Bulletin on Detecting and Preventing Counterfeiting of Housing Authority Checks

Summary: This Federal Register notice provides important information recently issued by HUD's Office of the Inspector General on detecting and preventing counterfeiting of local housing authority checks.

68 Fed. Reg. 65,304 (Nov. 19, 2003)
Upcoming Meeting of the Manufactured Housing Consensus Committee

Summary: This notice set forth the schedule and proposed agenda of a meeting of the Manufactured Housing Consensus Committee (the Committee).

Dates: The meetings were held on Tuesday, December 9, 2003, from 8 a.m. to 5 p.m., Wednesday, December 10, 2003, from 8 a.m. to 5 p.m., and Thursday, December 11, 2003, 8 a.m. to 12 noon.

68 Fed. Reg. 66,118 (Nov. 25, 2003)
Announcement of Funding Award—FY 2003 Healthy Homes Grant Program

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

68 Fed. Reg. 66,119 (Nov. 25, 2003)
Announcement of Funding Award—FY 2003 Lead-Based Paint Hazard Control Grant Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the department in a competition for funding under the Lead-Based Paint Hazard Control Grant Program Notice of Funding Availability (NOFA). The purpose of the Lead-Based Paint Hazard Control Grant Program is to assist states, Native American Tribes and local governments in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately owned housing for rental or owner-occupants in partnership with nonprofit organizations including grassroots, faith-based and other community-based organizations. This announcement contains the name and address of the award recipient and the amount of award.

68 Fed. Reg. 66,120 (Nov. 25, 2003)
Announcement of Funding Award—FY 2003 Lead Hazard Reduction Demonstration Grant Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the department in a competition for funding under the Lead Hazard Reduction Demonstration Grant Program Notice of Funding Availability (NOFA). The purpose of the Lead Hazard Reduction Demonstration Grant Program is to assist areas with the highest lead paint abatement needs in undertaking programs for abatement, inspections, risk assessments, temporary relocations, and interim control of leadbased paint hazards in eligible privately owned, single-family housing units, and multi-family buildings that are occupied by low-income families. This announcement contains the name, address of the award recipient and the amount of award.

68 Fed. Reg. 66,121 (Nov. 25, 2003)
Announcement of Funding Award—FY 2003 Operation Lead Elimination Action Program (LEAP)

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the department in a competition for funding under the Operation Lead Elimination Action Program (LEAP) Notice of Funding Availability (NOFA). The purpose of the LEAP program is to leverage private sector resources to eliminate lead poisoning as a major public health threat to young children. This announcement contains the name and address of the award recipient and the amount of award.

68 Fed. Reg. 66,121 (Nov. 25, 2003)
Announcement of Funding Award—FY 2003; Lead Outreach Grant Programs.

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

68 Fed. Reg. 66,288 (Nov. 25, 2003)
America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Proposals for Incentive Criteria on Barrier Removal in HUD's Funding Allocations

Summary: In June 2003, HUD announced America's Affordable Communities Initiative, a new department-wide initiative that will focus on breaking down regulatory barriers that impede the production of affordable housing. As part of this effort, HUD will, among other things, analyze federal, state, and local regulations and procedures that are duplicative, contradictory, or burdensome, and work within the federal government and with HUD's state and local partners to break down these barriers. HUD will undertake activities designed to promote barrier removal by state and local governments and, where feasible, provide incentives to state and local governments to remove regulatory barriers to affordable housing. The purpose of this notice is to solicit comment from prospective applicants on proposals to provide incentives to barrier removal in HUD's funding allocations and on an initial proposal for providing incentive to barrier removal in HUD's Fiscal Year (FY) 2004 competitive funding process. As an initial incentive action, HUD proposes to establish in the majority of its FY 2004 Notices of Funding Availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. This new policy priority will be added to the list of policy priorities that HUD traditionally includes in its NOFAs. As a policy priority (and like the other policy priorities), higher rating points will be available to governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and to nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. This notice describes how HUD proposes to award these policy points in its NOFAs. HUD welcomes comments on this proposal, including the process described to obtain these points. While this notice describes one initial proposal for providing incentives to HUD and welcomes comments from the public on other ideas for ways HUD can provide incentives in its funding processes or other mechanisms to encourage localities to remove barriers and increase the supply of affordable housing.

Comment Due Date: December 29, 2003.

68 Fed. Reg. 66,294 (Nov. 25, 2003)
America's Affordable Communities Initiative HUD's Initiative on Removal of Regulatory Barriers: Identification of HUD Regulations That Present Barriers to Affordable Housing

Summary: In June 2003, HUD announced a new initiative, America's Affordable Communities Initiative. America's Affordable Communities Initiative focuses on breaking down regulatory barriers that impede the production or rehabilitation of affordable housing. As part of this initiative, HUD will, among other things, examine federal, state, and local regulations to identify those regulations that present significant barriers to the production or rehabilitation of affordable housing. The goal of these activities is to determine the feasibility of removing the barriers or reducing the burden imposed by the barriers. The purpose of this notice is to solicit public comment from HUD's program partners and participants, as well as other interested members of the public, on HUD regulations that address the production and rehabilitation of affordable housing and present barriers to the production and rehabilitation of affordable housing throughout America.

Comment Due Date: January 26, 2004.

HUD Housing Notices

Notice H 2003-22 (Nov. 3, 2003)
Guidance to Contract Administrators on Providing Information to Law Enforcement on Fugitive Felons

Summary: This notice provides guidance to contract administrators who are required to disclose certain information they maintain on individuals to law enforcement authorities for the purpose of apprehending fugitive felons who are living in Section 8 project-based assisted properties. The notice also indicates what is required of the contract administrator and of the law enforcement agency.

Expires: November 30, 2004.

Notice H 2003-23 (Nov. 13, 2003)
Office of Management and Budget Mandated Reporting Changes to Race and Ethnicity Categories

Summary: This notice provides instructions and a reporting form for the Office of Management and Budget's (OMBs) mandated changes to Race and Ethnicity categories for data collection requirements. Under this new guidance from OMB, the department must offer individuals the option of selecting one or more racial categories.

Expires: November 30, 2004

Notice H 2003-24 (Nov. 13, 2003)
Extension of Notice H 95-38 Secondary Financing by Public Bodies for Section 202 and Section 811 Projects

Summary: This extends the subject notice, which would otherwise have expired on December 31, 2003.

Expires: November 30, 2004.

Notice H 2003-25 (Nov. 20, 2003)
FHA TOTAL Mortgage Scorecard User Guide

Summary: This notice transmits FHA's Technology Open to Approved Lenders (TOTAL) Mortgage Scorecard User Guide. The User Guide provides FHA-approved mortgagees information on the documentation relief and credit policy revisions that FHA permits on mortgage loan applications that are risk-scored using FHA's TOTAL mortgage scorecard.

Expires: November 30, 2004.

HUD PIH Notices

Notice PIH 2003-25 (HA) (Oct. 3, 2003)
Homeless Initiative in Public Housing and Housing Choice Voucher Programs

Summary: This notice provides suggestions on how public housing agencies (PHAs) that administer Public Housing and/or Housing Choice Voucher programs can help support the President's initiative to end chronic homelessness.

Expires: October 31, 2004.

Notice PIH 2003-26 (TDHEs) (Oct. 24, 2003)
Accessibility Notice for Native American Program: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968; and the Fair Housing Amendments Act of 1988

Summary: The purpose of this notice is to remind tribes and tribally designated housing entities (TDHEs) who are recipients of federal funds of their obligation to comply with pertinent laws and implementing regulations that provide for non-discrimination and accessibility in federally funded housing and non-housing programs for people with disabilities. Additionally, this notice clarifies certain information in Notice PIH 2002-01 (HA), Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968; and the Fair Housing Act of 1988, as it applies to HUD's Native American programs specifically. Both PIH 2002-01(HA) and this notice are equivalent in their instructions; however, this notice outlines the provisions of PIH 2002-01 that apply only to HUD's Native American programs.

Expires: October 31, 2004.

Notice PIH 2003-27 (HA) (Oct. 24, 2003)
Guidance to Public Housing Agencies on Providing Information to Law Enforcement on Possible Fleeing Felons

Summary: This notice provides guidance on the circumstances under which public housing agencies (PHAs) are required to disclose information they maintain on recipients of assistance to law enforcement authorities. The notice also discusses what is required of the PHA and what is required of the law enforcement agency.

Expired: October 31, 2004.

Notice PIH 2003-28 (TDHEs) (Oct. 24, 2003)
Reinstatement - Notice PIH 2002-17 (TDHEs), Financial Audit Requirements

Summary: This notice reinstates Notice PIH 2002-17 (TDHEs), same subject, for another year until October 31, 2004. The notice expired June 30, 2003.

Expires: October 31, 2004.

Notice PIH 2003-29 (HA) (Nov. 4, 2003)
Extension of Notice PIH 2001-13 (HA), Fiscal Year 2001 and 2002 Renewal of Expiring Section 8 Moderate Rehabilitation (Mod Rehab) Housing Assistance Payments (HAP) Contracts

Summary: The Department of Housing and Urban Development has been operating under a Continuing Resolution since October 1, 2003. The procedures outlined in PIH Notice 2001-13 are extended during the period of the current Continuing Resolution and any subsequent Continuing Resolutions that the department may operate under during Federal Fiscal Year 2004. Procedures contained within PIH Notice 2001-13 will continue to apply to HAP contracts expiring during Federal Fiscal Year 2004 until superceded by HUD Directive to implement any statutory or policy changes in renewal procedures.

Expires: September 30, 2004.

Notice PIH 2003-30 (HA) (Nov. 17, 2003)
Budget Line Items for the Resident Opportunities and Self-Sufficiency Program (ROSS) in the Line of Credit Control System/Voice Response System for Fiscal Year (FY) 2003

Summary: This notice establishes new Budget Line Items (BLIs) that have been created for the ROSS program. All grantees will access grant funds through the Line of Credit Control System (LOCCS). The disbursal of grant funds is recorded by the grantee on the Form 50080 Payment Voucher. The BLIs attached herein correspond with major eligible activities as described in the Notice of Funding Availability (NOFA).

Expires: November 30, 2004.

Notice PIH 2003-31 (HA) (Nov. 26, 2003)
Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988

Summary: The purpose of this notice is to remind recipients of federal funds of their obligation to comply with pertinent laws and implementing regulations which provide for non-discrimination and accessibility in federally funded housing and non-housing programs for people with disabilities. Additionally, this notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts; however, specific regulations must be reviewed in their entirety for full compliance.

Expires: November 30, 2004.

RHS Administrative Notices

RD AN No. 3905 (1965-E) (Oct. 20, 2003)
Reporting, Authorization, Acceleration Requirements and Prepayment Tracking and Concurrence System (PRE-TRAC) For Multi-Family Housing Preservation Related Activities

Summary: The Office of Rental Housing Preservation (ORHP) has issued several administrative notices (AN) to standardize decision making during the prepayment process for Multi-Family Housing (MFH) projects. This administrative notice consolidates that guidance. With the issuance of this administrative notice, state and servicing offices will continue to use the Prepayment Tracking and Concurrence System (PRE-TRAC) to process all Rural Rental and Farm Labor Housing prepayment requests to meet the requirements of RD Instruction 1965-E. Attachment A to this administrative notice provides general information about the PRE-TRAC system. Attachment B is a short summary of how paper based processing is now addressed by PRE-TRAC.

Expires: October 31, 2004.

RD AN No. 3907 (1965-B) (Oct. 20, 2003)
Multi-Family Housing Loan Servicing and Portfolio Management Servicing
Goals for Fiscal Year 2004

Summary: This administrative notice establishes ongoing loan servicing and portfolio management goals for Rural Development's Multi-Family Housing (MFH) loan servicing and portfolio management for the period October 1, 2003, through September 30, 2004. Direction on accomplishing these goals is outlined in the Multi-Family Housing Loan Servicing and Portfolio Management Plan for FY 2004.

Expires: September 30, 2004.

RD AN No. 3913 (1980-D) (Oct. 4, 2003)
Eligibility of Non-U.S. Citizens for Single Family Housing Guaranteed Loan Program Assistance

Summary: This administrative notice provides guidance concerning what documentation
non-U.S. citizens must supply in order to be considered for a loan note guarantee under the Single Family Housing Guaranteed Loan Program (SFHGLP).

Expires: October 31, 2004. ■

Publication Order Form

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