

**NATIONAL  
HOUSING LAW  
PROJECT**



advancing housing justice

# Housing Law Bulletin

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***NHLP Best Practices Guide for Voucher Program***

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***Eighth Circuit Decision in HOPE VI Fair Housing Case***

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***New Proposed Rural Rental Housing Regulations***

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**Cover:** Green Mountain Seminary, Waterbury Center. Largely vacant building was rehabilitated by Central Vermont Community Land Trust and Housing Vermont. Photo by Robert Eddy.

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## NHLP Best Practices Guide on Voucher Utilization and Success Rates

### Introduction

In light of recent uncertainties in Congressional appropriations, public housing authorities (PHAs) administering the Section 8 Housing Choice Voucher Program (HCVP) need to continue to be diligent and creative in finding efficient ways to administer the program, build and maintain community support for the program and ensure that the vouchers allocated to each PHA are fully utilized. The National Housing Law Project (NHLP) surveyed a number of PHAs nationwide to develop a best practices guide focused on efforts to increase utilization and the rate of successful use of vouchers by all families. This article summarizes key points contained in the guide.

### Program Overview

The current HCVP provides voucher subsidies to low-income families to aid them in paying a portion of their rent such that the family pays only 30 percent of their income to rent.<sup>1</sup> The voucher allows a family to lease a home wherever it chooses provided that the landlord will accept the voucher, the unit passes HUD Housing Quality Standards (HQS) and the rent is reasonable. This design allows families assisted under the program to rent housing on the private market, subject to administrative requirements.

### Voucher Under-Utilization

Over the past several years, Congress, HUD and PHAs have worked to reduce under-utilization within the HCVP. Under-utilization occurs when a PHA fails to use all of the vouchers or all of the budget authority (*i.e.* voucher funds) that it has been allocated. Recent reports demonstrate that the utilization of voucher funds, which was as low as 83 percent in 1999,<sup>2</sup> has risen significantly. Information from a variety of sources reveals that the utilization rate in 2002 was 94, 95 or 96.8 percent.<sup>3</sup> Utilization rates should continue to rise.<sup>4</sup> To ensure that result, it will be necessary to build on

<sup>1</sup>The HCVP tenant pays 30 percent for rent if the rent does not exceed the payment standard. The voucher tenant upon initial occupancy may not pay more than 40 percent of income for rent. See 24 C.F.R. §§ 982.508 and 982.305(a)(5) (2002).

<sup>2</sup>See Barbara Sard and Will Fisher, *House VA-HUD Appropriations Bill Would Jeopardize Access to Housing Vouchers for Low-Income Families*, Center on Budget and Policy Priorities, at 2 (revised November 22, 2002), available at [www.cbpp.org/10-9-02hous.htm#\\_ftnref3](http://www.cbpp.org/10-9-02hous.htm#_ftnref3).

<sup>3</sup>See Barbara Sard and Will Fisher, *President's Budget Requests Insufficient Funding for Housing Vouchers in 2004* (hereinafter "*Insufficient Funding*"), Center on Budget and Policy Priorities, at 5-6 (revised May 1, 2003), available at [www.cbpp.org/3-27-03hous.pdf](http://www.cbpp.org/3-27-03hous.pdf).

<sup>4</sup>*Id.*

past efforts, especially in housing markets where full utilization continues to present challenges.

The rise in utilization rates may be attributed to at least three key factors: policy modifications, PHA response to these policies, and market conditions. Policy changes at the national level have included:

- Improvement of the system for assessing PHAs' management of the voucher program;
- A new requirement that only PHAs with utilization rates above 96.5 percent may qualify for incremental vouchers and apply for certain other vouchers such as mainstream vouchers;
- An increase in the fair market rents (FMRs), on which voucher payment standards are based; and
- The initial implementation of a policy that removes vouchers from PHAs that are not using a sufficient number of vouchers and reallocating these vouchers to PHAs with utilization rates of 96.5 percent and above.

PHAs have a significant amount of discretion in their implementation of the voucher program. This discretion allows PHAs to be more responsive to local market conditions and the needs of voucher families. For example, PHAs have flexibility in setting the payment standard within 90 to 110 percent of the Fair Market Rent (FMR), and may set the search time for voucher holders at any time in excess of 60 days.<sup>5</sup> Some PHAs have adopted many creative and significant program changes, which have resulted in increased utilization and improved the success rate for many tenants with vouchers who are seeking a unit. The third reason for the increased utilization rates is attributable to the softening of the rental market in many jurisdictions, which has led to lower rents and increased vacancies.<sup>6</sup>

Although the utilization rates have increased, it is important that efforts continue to increase the utilization rate for every PHA to as near as 100 percent as possible. If the vouchers are not used, fewer families on a PHA's wait list are served and the community is shortchanged because it will not use the federal dollars it has been allocated.

PHAs should also seek the highest utilization rate because of the new funding formula. Due to changes adopted for Fiscal Year (FY) 2003 in the funding formula, PHAs are currently receiving funding based upon the number of vouchers leased in accordance with the PHA's most recent financial statement. The administration's proposed budget for FY 2004

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<sup>5</sup>HUD, *The Housing Choice Voucher Program Guidebook*. 7420.1, ¶¶ 8.5 and 7.2, available at [www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm](http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm); 24 C.F.R §§ 982.303 and 982.503 (2002).

<sup>6</sup>See Ryan Kim, *Renters with Vouchers Are Finding Homes: Soft Market Gives Section 8 Holders New Chance in S.F.* San Francisco Chronicle, July 13, 2003, at A 21.

also assumes a similar budget formula.<sup>7</sup> The FY 2003 formula further provides that if the PHA was allocated more vouchers than it is currently using, it may increase the number of families served up to the authorized amount using its program reserve and seek reimbursement from a national voucher central reserve.<sup>8</sup> PHAs should take advantage of this provision in FY 2003. If they do not, it is more likely that the political and fiscal pressure will increase over time to reduce the number of units allocated to under-utilizing PHAs. This pressure may also result in a loss of funding for the voucher program nationally.

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*Intricately related to the utilization rate for PHAs is the success rate for voucher holders. Not all families issued vouchers are successful in finding units.*

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Housing advocates can determine the number of vouchers allocated to their local PHA from the numbers provided by HUD in the PHA's online profile.<sup>9</sup> If requested, the PHA should provide to advocates, residents and the public the number of voucher units that are under contract. PHAs should be urged and assisted to use the full number of vouchers allocated.

## Success Rate

Intricately related to the utilization rate for PHAs is the success rate for voucher holders. Not all families issued vouchers are successful in finding units; hence, success rate is defined as the percentage of families issued vouchers who are successful in actually leasing a unit within the allotted amount of search time.<sup>10</sup> Low success rates mean potentially

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<sup>7</sup>Although the administration's budget assumes the same funding formula based upon the number of vouchers in use, it has not requested a sufficient level of appropriations. The administration's request is too low because it underestimates the cost per voucher and underestimates the level of usage. See *Insufficient Funding*, supra n. 3.

<sup>8</sup>H.R. 108-10, 108 Cong. 1st Sess. at 476-77 (Feb. 12, 2003).

<sup>9</sup>[www.hud.gov/offices/pih/systems/pic/haprofiles](http://www.hud.gov/offices/pih/systems/pic/haprofiles).

<sup>10</sup>Success rate and its potential causes are discussed in Larry Buron and Meryl Finkel's 2001 study titled *Study on Section 8 Voucher Success Rates: Volume I Quantitative Study of Success Rates in Metropolitan Areas*. Abt Associates, Inc. for the U.S. Department of Housing and Urban Development. The study is available at [www.huduser.org/Publications/pdf/sec8success.pdf](http://www.huduser.org/Publications/pdf/sec8success.pdf).

low voucher utilization rates. However, a PHA may have a 100 percent utilization rate and a low success rate. This occurs because PHAs may issue more vouchers than they have actual budget authority for knowing that a percentage of voucher recipients will be unsuccessful.

In the 1980s, the first study on Section 8 success rates estimated that the national success rate was approximately 50 percent.<sup>11</sup> By 1985-87 that rate had risen to 68 percent and in 1993, Abt Associates estimated that 81 percent of voucher holders were successfully leasing units.<sup>12</sup> In 2000, Abt Associates found a national 69 percent success rate, with success rates varying widely (37 percent to 100 percent) among various PHAs.<sup>13</sup> During the same period, the Council of Large Public Housing Authorities (CLPHA) surveyed its members and found of those responding that on average the turn back rate for voucher holders was 19 percent, which corresponds to an 81 percent success rate.<sup>14</sup> In contrast, a survey conducted by the National Low Income Housing Coalition in 1999 found that a majority of the respondents could not answer questions about their lease-up rates and 75 percent reported that they did not calculate a turn-back rate.<sup>15</sup> Currently, there is no national data on success rates, but recent rising utilization rates and anecdotal information suggest that voucher holders may be more successful in finding units today.

Speculation on what influences success rates varies. The Abt Report attributed low success rates to a tightening of the housing market and a decline in the FMRs.<sup>16</sup> Other factors that affected success rates included the amount of search time, whether the family could rent in place, and the characteristics of the families, with the poorest families and largest families having the hardest time in successfully leasing.<sup>17</sup> Market conditions were cited as affecting success rate, as were outreach to landlords and the quality of briefings for voucher holders.<sup>18</sup> The CLPHA survey looked at both success rates and utilization rates. The reasons given for the low utilization rates included personal obstacles facing voucher holders, a lack of landlords participating in the program and low FMRs. Other studies have also noted that the following

conditions also affect success rates: discrimination, including racial, familial status and source of income (*i.e.*, vouchers),<sup>19</sup> and problems with the PHA's administration of the program.<sup>20</sup> In all likelihood, low voucher success rates are probably a combination of landlord resistance to or ignorance about the program, tenant characteristics, market conditions, lack of community acceptance, and HUD and PHA administrative policies.

<sup>19</sup>See Ann Verrilli, Citizens' Housing and Planning Association (CHAPA) and the New England Housing Network Survey (2000) at 16; Susan J. Popkin, Mary K. Cunningham, *CHAC Section 8 Program: Barriers to Successful Leasing Up*, at 23-27 (April 1999) (hereinafter, "Urban Institute Study"); *Scarcity and Success*, at 16; See also *Improve Voucher Utilization by Exercising Nondiscrimination Covenants*, 32 HOUS. L. BULL. 134 (May/June 2002).

<sup>20</sup>See Wachter, Susan and R. Leo Penne, *Housing Policy for the New Millennium Conference Proceedings* (2001); Barbara Sard, *Housing Vouchers Should Be a Major Component of Future Housing Policy for the Lowest Income Families*, at 291, available at [www.huduser.org/Publications/pdf/brd/14Sard.pdf](http://www.huduser.org/Publications/pdf/brd/14Sard.pdf).

<sup>11</sup>See Larry Buron Meryl Finkel, *Study on Section 8 Voucher Success Rates, Volume I, Quantitative Study of Success Rates in Metropolitan Areas*, at ii (Nov. 2001) (hereinafter, "Abt Study"), available at [www.huduser.org/Publications/pdf/sec8success.pdf](http://www.huduser.org/Publications/pdf/sec8success.pdf). See also *Study Released on Voucher Success Rates*, 32 HOUS. L. BULL. (May/June 2002).

<sup>12</sup>See Stephen Kennedy and Meryl Finkel, *Section 8 Rental Voucher and Rental Certificate Utilization Study: Final Report*. (Abt Associates, Inc., 1994).

<sup>13</sup>Abt Study, at i.

<sup>14</sup>See CLPHA, NAHRO, PHADA and NLHA, *The Section 8 Housing Choice Voucher Program: Making Housing Markets Work for Low-Income Families* (March 2002).

<sup>15</sup>See Brian Manley and Sheila Crowley, *Scarcity and Success: Perspectives on Assisted Housing*, *Journal of Affordable Housing and Community Development Law*, at 11 (Summer 2000) (hereinafter, *Scarcity and Success*).

<sup>16</sup>See Abt Study, at i.

<sup>17</sup>See *id.*

<sup>18</sup>See *id.*

## Todd Espinosa and Demetria McCain Higgins Join NHLP Staff

We are delighted to announce and welcome two attorneys to the Oakland staff of the National Housing Law Project. Todd Espinosa, who was with NHLP from 2000 to 2002 as a New Voice Fellow, has rejoined our staff. Todd, a graduate of Harvard Law School, recently completed a one-year clerkship with Judge Claudia Wilken of the Federal District Court for the Northern District of California. Todd returned to NHLP in September and will work on a variety of housing issues, including fair housing, HOPE VI, and public housing demolition and conversion. Todd can be reached at (510) 251-9400 x106 or via e-mail at [tespinosa@nhlp.org](mailto:tespinosa@nhlp.org).

Demetria McCain Higgins also joined NHLP in September as an Equal Justice Works Fellow. Demetria, a graduate of Howard University School of Law, will be working on a special project to preserve rental housing financed by the Rural Housing Service and to protect the rights of residents of that housing. Prior to joining NHLP, Demetria was an attorney and a Covington & Burling Westwood Fellow with the Neighborhood Legal Services Program in the District of Columbia. Demetria can be reached at (510) 251-9400 x116 or via e-mail at [dmccain@nhlp.org](mailto:dmccain@nhlp.org).

Please join us in welcoming Todd and Demetria. ■

## Block Granting of Section 8 Housing Choice Voucher Program

To make matters potentially worse for voucher holders and PHAs, the Bush Administration and the House of Representatives have recently proposed to change the HCVP into a block grant program to the states. The Administration's FY 2004 Budget and House bill H.R. 1841, labeled "Housing Assistance to Needy Families" (HANF), a play on TANF (Temporary Assistance to Needy Families), propose giving all voucher funding to the states as lump sum grants rather than to PHAs. Additionally, states would be given control over the HCVP to administer the program as they chose—which could result in 50 different state-run HCV programs. Such a splintering of the program will decrease or eliminate mobility and create havoc for participants in housing markets that straddle state lines.

Moreover, historically, when programs are block granted to the state, funding typically diminishes over time. An analysis done by the Center on Budget and Policy Priorities (CBPP) of 11 block-granted programs that serve the low-income population reflects this trend: funding was either frozen or failed to keep pace with inflation—on average, funding for these programs fell by 11 percent from 1982 to 2003.<sup>21</sup> Even in the first "transition year," FY 2004, the Administration has requested insufficient budget authority for vouchers. The CBPP analysis of the President's FY 2004 budget request,<sup>22</sup> including the FY 2004 request for vouchers, finds that about 137,000 previously authorized vouchers (about 7 percent of the authorized program level) would not be funded, even though a substantial number of these vouchers are likely to be in use in FY 2003 and ought to require renewal funding in FY 2004. Further, Administration officials appear to indicate that, after the first year, the authorized voucher block grant funding for annual renewals would be adjusted at best only for general inflation, based on some unspecified index, and not for local housing costs or actual program costs within a jurisdiction. Such a system will most adversely impact those housing markets where housing costs have outstripped inflation. Insufficient funding could lead to states having to contribute their own funds or reduce benefits by shifting rent burdens to voucher households, reducing the number of families that receive vouchers, and/or subsidizing higher-income households.<sup>23</sup> If the Administration has its way, the

future of the voucher program may be greatly impaired due to reductions in benefit levels and potentially less efficient and more costly state administration.

## Best Practices Survey

NHLP undertook a random survey of PHAs nationally to collect ideas and best practices about programs and policies that can improve voucher utilization. The main objective of collecting this information was to facilitate sharing of resources and ideas regionally and nationally among PHAs, advocates and community groups, and to promote a better understanding of voucher utilization and ways to overcome barriers to full utilization. Relatively little has been written about best practices regarding voucher utilization. In 1996, HUD issued a best practices guide for the Section 8 program and many of those practices highlighted addressed issues of utilization.<sup>24</sup> A recent article in the *Journal of Housing and Community Development* summarizes some best practices.<sup>25</sup> The NHLP survey is a beginning. The hope is that readers will add to the survey report as new ideas emerge or if readers find that a particular idea was not presented.

The areas covered in the NHLP survey are: PHA administrative internal operations, tenant-focused efforts, owner-focused efforts, improvement of housing stock and regional cooperation. The following is a brief summary of each part of the study with an example.

### PHA Administrative Internal Operations

Administratively, PHAs can undertake a variety of policies such as streamlining the tenant application process or requiring Housing Quality Standards (HQS) inspectors to carry materials needed to perform minor repairs to ensure that the unit passes on the first try and thus avoid the cost of reinspection. Additionally, PHAs can implement programs to increase their incomes or resources. For example, the Housing Authority of the County of Santa Clara and the City of San Jose has developed Property Management, Inc., a for-profit company. This property management firm manages private properties for local owners in addition to the housing authority's developments. This is a logical role for PHAs that also manage publicly assisted housing to adopt because of their years of experience in managing their own properties. Other PHAs have sought outside funding to support staff activities or special programs such as security deposit assistance.

### Tenant-Focused Efforts

Many tenants with vouchers do not need assistance in finding rental housing, but a significant number do—especially because for many the HCVP may be difficult to explain to potential landlords. All PHAs must conduct tenant

<sup>21</sup>The block grants included in this analysis are the Child Care and Development Block Grant, Child Care Entitlement to States, Community Development Block Grant, Community Services Block Grant, HOME Investment Partnership, Low-Income Heating and Energy Assistance Program, Maternal and Child Health Block Grant, Preventive Health and Health Services, Social Services Block Grant, State Children's Health Insurance Program, and Temporary Assistance for Needy Families. See [www.cbpp.org/5-14-03hous.pdf](http://www.cbpp.org/5-14-03hous.pdf).

<sup>22</sup>See *Insufficient Funding*, supra n. 3.

<sup>23</sup>See CBPP, *Block Grant Would Undermine Housing Voucher Program*, available at [www.cbpp.org/5-21-03hous.htm](http://www.cbpp.org/5-21-03hous.htm).

<sup>24</sup>Meryl Finkel, *Learning from Each Other: New Ideas for Managing the Section 8 Certificate and Voucher Programs* (Abt Associates, Inc., September 1996) available at [www.huduser.org/publications/alpha/alpha\\_1.html](http://www.huduser.org/publications/alpha/alpha_1.html).

<sup>25</sup>See Adam Stone, *Risks and Rewards* (Sept/Oct 2002).

briefing sessions when the family is first issued a voucher,<sup>26</sup> but because of language barriers and alternative learning styles some families leave these sessions confused. Creating or identifying community-based programs that aid individuals in their housing search could be an important complement to these tenant orientations. Using funds from administrative fees, the Housing Authority of the City of Los Angeles (HACLA) has created a unit of 10 counselors called the Tenant Empowerment Success Strategy Unit (TESS), which conducts tenant counseling for any voucher holder who requests help in his/her housing search. TESS is located in a separate building than the HACLA so as to make it an intimate setting for tenants. Tenants routinely comment on the lack of a waiting room, which allows them to be immediately in contact with a housing counselor. TESS staff goes to great lengths to aid families in their housing search. For example, if a voucher holder comes in and needs to find a unit by the next day, a housing counselor will be assigned to that person to conduct an intensive housing search that could include driving that person to visit available units. A smaller PHA in Alameda County, California, assists tenants and owners by making space available for owners to meet new voucher tenants and possibly enter into a lease agreement immediately after the tenant briefings.

Additionally, HACLA has created an optional tenant housekeeping training for tenants. Voucher holders participate in the one-day training to learn about their responsibilities as good tenants. At the end of the day, they are presented with a certificate of completion and a housewarming gift of household cleaning supplies. Owners and property management companies that are aware of the program favorably consider voucher holders who have completed this training.

### Owner-Focused Efforts

Owner perception and understanding of the program is key to the functioning of the HCVP. PHAs frequently conduct landlord outreach and training for new and existing landlords. The training and outreach provides a service and works to dispel any negative impressions. To provide more individualized help to landlords, the Housing Authority of the Birmingham District in Alabama created a landlord mentor program in which experienced Section 8 landlords aid landlords new to the Section 8 program to familiarize them with the PHA's voucher program. This low-cost, high-return program has proven beneficial and effective in retaining new landlords.

### Improvement of Housing Stock

Where housing is limited, it may be incumbent upon the PHA to create housing—either for rental or homeownership—or improve the quality of the existing housing stock. The Vallejo Housing Authority (VHA) in California has created a rehabilitation loan program, called the Section 8 \$8,000 Loan Program, to serve the dual purpose of enticing owners and

improving the quality of housing. This loan program provides up to \$8,000 in deferred interest loans for improvements and rehabilitation to owners agreeing to participate in the Section 8 program for at least 8 years. The loan is secured by a lien against the owner's property. At the end of the eighth year, the loan is forgiven if the owner has remained in the Section 8 program. The program is funded by a \$160,000 set-aside from the City of Vallejo's HOME funds. PHAs can also maximize the available housing stock for voucher holders by identifying Low-Income Housing Tax Credit (LIHTC) and

## Revised Fair Housing Materials on People With Disabilities from the Bazelon Center

The Bazelon Center for Mental Health Law announces the availability of two revised resources concerning the housing rights of people with disabilities.

The 2003 edition of "What Does 'Fair Housing' Mean for People with Disabilities" (\$4.00) contains updated references to judicial decisions and federal laws supporting the text in a question-and-answer format. The 52-page booklet is addressed directly to people with mental or physical disabilities who want to rent or buy a home, whether privately or publicly owned or operated. The booklet is also useful for landlords, housing developers and administrators, real estate agents and advocates for people with disabilities.

The 94-page "Digest of Cases and Other Resources in Fair Housing for People with Disabilities," updated in August 2003 (\$13.50), includes abstracts and analyses of more than 50 new cases. Decisions are listed by states according to federal judicial circuits. Each case is coded for its relevance in one or more categories under the broad headings of brokerage, lending and insurance; homelessness; landlord-tenant relations; procedural issues; and zoning, land-use and health and safety requirements. An index lists cases within these key codes; another lists them alphabetically.

Authored by Bazelon Center staff attorney Michael Allen, both publications explain how people with disabilities are protected from housing discrimination under three federal statutes: the *Fair Housing Act* as amended in 1988, the *Americans with Disabilities Act* and Section 504 of the *Rehabilitation Act*.

Shipping and handling are extra (\$2 for the booklet alone, \$4 for the digest or for both together). Both can be ordered online through the Bazelon Center's Web site [www.bazelon.org](http://www.bazelon.org) or by contacting the publications desk at (202) 467-5730, x110 to request an order form. Discounts are available for bulk orders. For more information, contact Lee Carty, (202) 467-5730, x121, [leec@bazelon.org](mailto:leec@bazelon.org). ■

<sup>26</sup>See 24 C.F.R. § 982.301 (2002).

HOME funded units. These properties are subject to HCVP non-discrimination requirements, which should be fully disclosed to voucher recipients. In addition, PHAs should track voucher usage at these developments to ensure that the non-discrimination provisions are honored.

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*Cooperation between neighboring PHAs, local community-based organizations, academic institutions and advocacy groups is key to the efficiency of the Voucher program.*

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### Regional Cooperation

Cooperation between neighboring PHAs, local community-based organizations, academic institutions and advocacy groups is key to the efficiency of the HCVP. Each PHA has its own program requirements and manner of conducting business, which can be difficult for landlords and tenants who deal with multiple PHAs. By having an open dialogue with neighboring PHAs to create more regional policies, PHAs can standardize procedures, which may help to demystify the lease-up process.

Information-sharing with local community-based organizations, academic institutions and advocacy groups is also key in clearing up misconceptions about the program. The San Francisco Housing Authority (SFHA) conducts trainings and presentations on the voucher program to the Department of Human Services and other community-based nonprofits including homeless shelters and mental health facilities because, in most cases, these organizations serve the same clients as SFHA. By educating the staff at these agencies, they can in turn knowledgeable aid clients in their housing search.

### Conclusion

The NHLP survey provides a few examples of policies and programs in use in many PHAs. The results of the survey show that a number of PHAs nationwide have been creative in their approach to administering the HCVP and that creativity has yielded success. Local jurisdictions may have their own unique regional concerns, but by sharing ideas and best practices it is NHLP's hope that PHAs can more effectively address those concerns. For a hard copy of the study or to suggest additional best practices in use, please contact Maeve Elise Brown, NHLP, at mebrown@nhlp.org or (510) 251-9400 x 110 or download a copy from the NHLP Web site at [www.nhlp.org](http://www.nhlp.org). ■

## Eighth Circuit Reverses Unfavorable District Court Ruling in HOPE VI Fair Housing Case

On August 8, 2003, the Eighth Circuit effectively reversed an unfavorable decision by the Eastern District of Missouri in a HOPE VI case filed by Legal Services of Eastern Missouri.<sup>1</sup> The suit, *Darst-Webbe Tenant Ass'n Bd. v. St. Louis Housing Authority*,<sup>2</sup> involved the Darst-Webbe public housing development operated by the Saint Louis Housing Authority (SLHA), which was the subject of a fiscal year 1995 HOPE VI redevelopment grant. Plaintiffs Darst-Webbe Tenant Association and Housing Comes First, Inc. asserted claims of discrimination on the basis of race, sex, and familial status; violations of HUD program requirements; and HUD's failure to comply with its affirmative duty to further fair housing. Specifically, the plaintiffs challenged the loss of public housing units threatened by the HOPE VI redevelopment, which poses disproportionate harm to African-American families, families with children, and others.

### The District Court Decision

In a fairly unorthodox decision after a bench trial, the district court considered the relief sought by the plaintiffs, rather than considering the merits of the plaintiffs' claims. The court stated that it would have been "impossible" to address the plaintiffs' claims directly because the claims "overlap."<sup>3</sup> Looking to the relief requested, the court decided that this, too, was "a little confusing"<sup>4</sup> and ruled against the plaintiffs on nearly all of their claims, including the fair housing claims.<sup>5</sup> *Work Responsibility Act of 1998*, Pub. L. No. 105-276, Title V, § 535(a) (Oct. 21, 1998). Further minor amendments were enacted in 2000 and 2003. See Pub. L. No. 106-377, Title II, § 214(b) (Oct. 27, 2000); Pub. L. No. 108-7, Div. K, § 215 (Feb. 20, 2003). The court did not make any specific findings of fact or conclusions of law with regard to the fair housing claims. In fact, the court stated that it "did not analyze" these claims.<sup>6</sup>

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<sup>1</sup>Plaintiff-appellants were represented by Ann B. Lever, Daniel K. Glazier, and John J. Ammann.

<sup>2</sup>202 F. Supp. 2d 938 (E. D. Mo. 2001) (Limbaugh, J.), *rev'd in part* 339 F.3d 702 (2003) (Melloy, J., author).

<sup>3</sup>*Darst-Webbe*, 202 F. Supp. 2d at 944.

<sup>4</sup>*Id.* at 946.

<sup>5</sup>The court ruled in the plaintiffs' favor on claims against the housing authority and HUD related to the inclusion of a new public housing site in the HOPE VI plan. The court concluded that inclusion of the new site was improper because HUD failed to consider whether the site was "severely distressed" under the former Section 24 of the *United States Housing Act*, codified at 42 U.S.C. § 1437v note (West 2003). Section 24 was rewritten by the *Quality Housing and Work Responsibility Act of 1998*, Pub. L. No. 105-276, Title V, § 535(a) (Oct. 21, 1998). Further minor amendments were enacted in 2000 and 2003. See Pub. L. No. 106-377, Title II, § 214(b) (October 27, 2000); Pub. L. No. 108-7, Div. K, § 215 (Feb. 20, 2003).

## The Eighth Circuit Decision

The Eighth Circuit concluded that the district court's decision failed to comply with Rule 52(a), Federal Rules of Civil Procedure. The Eighth Circuit explained: "Federal Rule of Civil Procedure 52(a) requires a district court, following a bench trial, to 'find facts specially and state separately its conclusions of law.'" The Eighth Circuit acknowledged that in some cases fair housing claims may be so insubstantial that a detailed explanation of the court's rejection of them is not necessary. However, it explained, this was not such a case.<sup>8</sup>

In considering the plaintiffs' claims regarding HUD's affirmative duty to further fair housing, the Eighth Circuit relied extensively on *NAACP v. Secretary of Housing and Urban Development*, 817 F.2d 149 (1st Cir. 1987). *NAACP* considered the affirmative fair housing duty imposed on HUD under the *Fair Housing Act*, Title VIII of the *Civil Rights Act of 1968*.<sup>9</sup> As the First Circuit in *NAACP* explained, HUD's affirmative fair housing duty requires it, at a minimum, to consider the racial and socioeconomic effects of the decisions it makes in the administration of its programs. This must involve the collection and analysis of relevant data.<sup>10</sup> The Eighth Circuit's decision makes clear that HUD's affirmative duty extends to the HOPE VI and Section 108 loan guarantee<sup>11</sup> programs, that federal courts have the power under the *Administrative Procedures Act*<sup>12</sup> to review HUD decisions that fail to comply with this duty, and that, where HUD fails to comply, federal courts have the power to enjoin the use of HOPE VI grant funds.<sup>13</sup>

The Eighth Circuit remanded the case to the district court for further proceedings on the plaintiffs' fair housing claims and directed the district court to make more detailed findings.<sup>14</sup>

## Conclusion

While not yet a complete victory, the Eighth Circuit's ruling is an encouraging step. Particularly important is the Eighth Circuit's adoption of the reasoning in *NAACP* and its holding that HUD must affirmatively further fair housing in its administration of the HOPE VI program. ■

<sup>6</sup>*Darst-Webbe*, 202 F. Supp. 2d at 947, n.17.

<sup>7</sup>*Darst-Webbe*, 2003 WL 21836674, at \*8.

<sup>8</sup>*See id.*

<sup>9</sup>42 U.S.C. § 3608(e).

<sup>10</sup>*See NAACP*, 817 F.2d at 156. *See also* NHLP, *HUD's Fair Housing Duties and the Loss of Public and Assisted Housing*, 29 HOUS. L. BULL. 1 (Jan. 1999).

<sup>11</sup>*See* n.12, *infra*.

<sup>12</sup>5 U.S.C. §§ 701 *et seq.*

<sup>13</sup>*Darst-Webbe*, 2003 WL 21836674, at \*9-10.

<sup>14</sup>The plaintiffs decided not to pursue one of their claims based on violations of HOPE VI program requirements. The Eighth Circuit affirmed the district court's rejection of a claim based on language in the Fiscal Year (FY) 1993 *HOPE VI Appropriations Act*, Pub. L. No. 102-389, Title II (Oct. 6, 1992), which was incorporated by reference in the FY 1995 Act. The Eighth Circuit also affirmed the district court's summary judgment ruling on claims related to violation of the *Housing and Community Development Act*, 42 U.S.C. § 5301 *et seq.*, requirements regarding Section 108 loan guarantees. *See Darst-Webbe*, 2003 WL 21836674, at \*5-6.

## Voucher Applicant Denied Due Process When Criterion of Creditworthiness Adopted at Informal Hearing

Ruling to a motion to dismiss, the United States District Court for New Jersey recently held that a Housing Choice Voucher applicant has a property interest in a voucher entitling her to due process.<sup>1</sup> The Court further stated that if the applicant, Baldwin, could prove her allegations, she could be entitled to notice and a hearing—as provided in the PHA annual plan process—before the PHA may adopt creditworthiness as a voucher screening criterion. In addition, the court ruled that the conduct of one of the defendants at Baldwin's informal hearing, if proven, constituted an abuse of discretion which violated her constitutional and statutory due process rights.

The *Baldwin* case involved a single mother whose sole source of income was public assistance payments totaling \$322 per month. Baldwin stood in line overnight to obtain an application for a voucher from the Housing Authority of the City of Camden (HACC). Subsequently, her application was denied because of her creditworthiness. Baldwin challenged the denial arguing that HACC's actions to deny her application were inconsistent with HACC's Annual Plan which did not list creditworthiness as a screening criterion and as a result HACC's actions denying her application violated the housing statutes and the due process clause of the Fourteenth Amendment.

## Applicability of Due Process

Before addressing Baldwin's claims, the court initially noted that the broad language of the *United States Housing Act* permitted HACC to use creditworthiness as a screening criterion.<sup>2</sup> In addressing the claims raised by Baldwin, the court first addressed HACC's argument that a voucher applicant does not have a property interest protected under the Fourteenth Amendment. The court disagreed and acknowledged that in certain circumstances, the Court of Appeals for the Third Circuit and other courts have afforded procedural due process protection to applicants.<sup>3</sup>

<sup>1</sup>*Baldwin v. Housing Authority of the City of Camden*, \_\_\_ F.Supp.2d. \_\_\_, 2003 WL 21991349 (Aug. 21, 2003).

<sup>2</sup>*Id.* at \*6-7.

<sup>3</sup>Citing *Kelly v. Railroad Retirement Board*, 625 F.2d 486 (3d Cir. 1980) (application for disabled child's annuity under *Railroad Retirement Act*); *Raper v. Lucey*, 488 F.2d 748 (1st Cir. 1973) (application for driver's license); *Ressler v. Pierce*, 692 F.2d 1212 (9th Cir. 1982) (application for Section 8 Housing program benefits); *Butland v. Bowen*, 673 F. Supp. 638 (D. Mass. 1987) (application for Social Security disability benefits); *Vandermark v. Housing Authority of City of New York*, 663 F.2d 436 (3d Cir. 1998). In *Vandermark* the plaintiff sought review of a PHA's determination that he was ineligible to receive a Certificate for Section 8 housing benefits. Though silent on the issue of whether the plaintiff possessed a property interest in the Certificate, the

Having found a property interest, the court considered whether the property interest in the voucher was denied for creditworthiness without proper notice or process. To address this issue, the court reviewed the rules governing the Annual Plan process which requires information on screening by the PHA for eligibility for vouchers. It also examined the relationship between the Annual Plan and the Section 8 Administrative Plan. Factually, the court noted that HACC's 2002 Annual Plan, which was in effect when Baldwin's application was denied, did not include creditworthiness as a screening criterion. In addition over the course of three consecutive years (2000–2002), the only voucher screening criterion included in HACC's Annual Plan was for drug-related or other criminal activity. After Baldwin applied and was rejected, HACC amended the Annual Plan. The court did not find sufficient the fact that HACC had changed its Section 8 Administrative Plan to include screening for creditworthiness prior to rejecting Baldwin. The court reasoned that "the Administrative Plan is a supporting document to the Annual Plan and HACC's July 2003 revision to it evidenced the significance of the modification to the 2003 Annual Plan which changed the eligibility standards for participation in the tenant-based assistance Section 8 program."<sup>4</sup> In other words, the Administrative Plan could not change the Annual Plan; more is required to amend the Annual Plan. The court further stated: "If plaintiff can prove her allegations, then she may be able to show that HACC violated the Housing Act and its implementing regulations by failing to comply with [Quality Housing and Work Responsibility Act (QHWRA)] requirements to consult with resident advisory board members about the modification [to the annual plan] and provide for public notice and comment."<sup>5</sup>

### Significant Amendment to the Annual Plan

In reaching its decision, the court considered whether the addition of creditworthiness as a selection criterion was a significant amendment to the Annual Plan, which would trigger the QHWRA notice and comment provisions. The court recognized that 42 U.S.C. § 1437c-1(g)(2) dealing with "consistency and notice of amendment and modification" is silent as to what constitutes a "significant amendment or modification." The federal regulations require that each PHA establish its own definition of significant amendments or modifications and set forth that definition in its Annual Plan.<sup>6</sup> The court noted that HACC's Annual Plan, which was in effect at the time plaintiff application was denied, was silent as to what constituted a significant amendment. As such, the court turned to additional HUD instructions that state that

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court's consideration of the case implied that its determination of such a threshold matter was satisfied. Other courts have interpreted the case in the same fashion. See *Edison v. Peirce*, 745 F.2d 453, 461 n. 6 (7th Cir. 1984).

<sup>4</sup>*Baldwin*, at \*14.

<sup>5</sup>See 42 U.S.C.A. § 1437c-1(g) (West 2003); 24 C.F.R. § 903.21 (2003).

<sup>6</sup>*Baldwin*, at \*15; see also 24 C.F.R. § 903.7(r)(2) (2003).

HUD will consider changes in rent or admission policies to be significant amendments or modifications.<sup>7</sup> The court also noted that formal approval of the Board of Commissioners is required to alter the Administrative Plan, which is evidence of the serious nature of the change.<sup>8</sup> Further, the court found that the addition of creditworthiness as a basis to deny benefits was a significant amendment because it "dramatically alters the application process" and "fundamentally impacts [those] who may qualify for eligibility for benefits . . . ."<sup>9</sup>

### Administrative Hearing to Challenge Denial Violated Due Process

The court also reviewed the hearing process that Baldwin invoked to challenge her denial. It concluded that Baldwin may also have a valid due process claim for abuse of discretion during her informal administrative hearing by Barnett, HACC's Director of the Voucher Program. Barnett was the official who denied Baldwin's application for a voucher.<sup>10</sup> Barnett attended the hearing and instructed the hearing officer not to accept evidence offered by Baldwin, who attempted to submit a letter from her previous landlord of seven years stating that she paid her rent on time. The court concluded that these actions, if proven, violate the published rule which states that the hearing "may be conducted by any person or persons designated by the PHA, *other than a person who made or approved the decision under review or a subordinate of this person*" (emphasis added) and which further provide that the applicant must be given the opportunity to present written or oral objections.<sup>11</sup> Consequently, the court found that Baldwin was not afforded an opportunity to be heard and therefore may have a valid due process claim.<sup>12</sup>

### Conclusion

The district court's decision provides an excellent description of the PHA annual plan process and the process for amending the annual plan, along with a discussion of the interrelationship between the annual plan process and the Section 8 Administrative Plan. It also highlights the importance of the plan in the setting of a PHA's discretionary policies. ■

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<sup>7</sup>*Baldwin*, at \*16; see also HUD Notice PIH 99-51 (HA).

<sup>8</sup>*Baldwin*, at \*16; see also 24 C.F.R. § 982.54 (2003).

<sup>9</sup>*Baldwin*, at \*16.

<sup>10</sup>*Id.* at \*3.

<sup>11</sup>24 C.F.R. § 982.554(b)(1) and (2) (2003); *Baldwin*, at \*17. Barrett alleged that the hearing officer refused to accept the letter from plaintiff and deemed it "irrelevant." *Id.* at \*3.

<sup>12</sup>The court also considered the issue of qualified immunity. For three of the defendants, the court found that plaintiff failed to allege any facts sufficient for personal liability. The court left open the possibility of liability with respect to Barnett for his participation in the informal hearing. As Director of the Voucher Program at HACC, Barnett or any other reasonable officer in the same position should have known that his presence at a plaintiff's informal hearing was not permitted.

# GAO Releases Information on Receiverships at Public Housing Authorities

In February 2003, the General Accounting Office (GAO) released a study that addresses the status of the 15 housing authorities that have been placed into receiverships since 1979.<sup>1</sup> Of the 15, the Department of Housing and Urban Development (HUD) initiated 11, while four were initiated by courts,<sup>2</sup> generally in response to lawsuits from public housing residents concerned about poor living conditions. However, whether HUD-initiated (administrative) or ordered by a court (judicial), receiverships have the same goal: to correct long-standing, severe management problems at the housing authorities and improve the residents' standard of living.<sup>3</sup>

<sup>1</sup>United States General Accounting Office, *Public Housing: Information on Receiverships at Public Housing Authorities* (February 2003) (GAO-03-363) (hereinafter *Information on Receiverships*).

<sup>2</sup>*Perez v. Boston Hous. Auth.*, 379 Mass. 703, 400 N.E.2d 1231 (1980); *Clements v. City of Chester and Chester Hous. Auth.*, No. CIV.A.87-2657, 1990 WL 92523 (E.D.Pa. June 28, 1990); *Tinsley v. Kemp*, 750 F.Supp. 1001 (D. Mo. 1990); *Pearson v. Kelly*, 92-CA-14030 (D.C. Super. Ct. 1992) (unpublished).

<sup>3</sup>*Information on Receiverships* at 1.

The GAO sought to identify the circumstances that led to each of the receiverships, along with any differences between the operation and achievements of administrative and judicial receiverships, plus the factors that influence the termination of receiverships. The study was conducted between February and December 2002. During this time, information from HUD was gathered and reviewed, along with information surrounding the events and conditions at each public housing authority (PHA) prior to the receivership. Throughout the process, the GAO interviewed housing authority officials, officials from industry groups, lawyers that handled the lawsuits, and HUD officials involved in the receiverships.

## Background

Over the last 12 years, HUD has evaluated PHAs' performance through one of two evaluation programs. From 1991 until 2001, HUD used the Public Housing Management Assessment Program (PHMAP)<sup>4</sup> and more recently HUD implemented the Public Housing Assessment System (PHAS).<sup>5</sup> Although both systems measure the same basic three elements—physical condition of the facility, financial condition of the PHA, and management performance indicators—the earlier system was based on self-certified information from the housing authorities and did not include an independent physical inspection or input from the public housing residents, both of which are now integral parts of the new assessment system.<sup>6</sup>

If a housing authority receives an overall score of less than 60 percent on the PHAS, or a score of less than 60 percent of the available points on more than one of the three major indicators, it is designated as a "troubled" PHA.<sup>7</sup> Initially, HUD may offer technical assistance and training to a troubled authority; however, if these corrective measures fail, HUD may place a PHA under an administrative receivership.<sup>8</sup>

Historically, a PHA's failure to successfully maintain the physical condition of its property has been the primary cause for either an administrative or judicial receivership. Since 1985, eight of the 11 HUD-initiated receiverships have involved the physical deterioration of units (see Table 1); additionally, all four of the judicial receiverships imposed since 1979 have involved the physical condition of units (see Table 1). Generally speaking, the GAO study indicates a majority of problems facing PHAs arise from incompetence and a lack of

<sup>4</sup>24 C.F.R. § 901 (2002).

<sup>5</sup>*Id.* at § 902.

<sup>6</sup>*Information on Receiverships* at 4.

<sup>7</sup>*Information on Receiverships* at 5.

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

**Table 1: Receiverships as of December 2002**

Housing Authority	Reason for Receivership	Start of Receivership	Status	Type of Receivership
Beaumont (TX)	Fair Housing	Oct. 2000	In Progress	Admin
Camden (NJ)	Physical/Mngmnt	Aug. 1997	In Progress	Admin
Chicago (IL)	Physical/Mngmnt	May 1995	Termin. May 1999	Admin
East St. Louis (IL)	Physical/Mngmnt	Oct. 1985	In Progress	Admin
Lafayette (LA)	Fair Housing/Mngmt	Feb. 1995	Termin. Sep 2002	Admin
New Orleans (LA)	Physical/Mngmnt	Feb. 1996	In Progress	Admin
Orange County (TX)	Fair Housing	Sep. 1993	In Progress	Admin
St. James Parish (LA)	Physical/Mngmnt	Apr. 2001	In Progress	Admin
San Francisco (CA)	Physical/Mngmnt	Mar. 1996	Termin. Sep 1997	Admin
Springfield (IL)	Physical/Mngmnt	Mar. 1996	Termin. Sep 1997	Admin
Wellston (MO)	Physical	Jul. 1996	In Progress	Admin
Boston (MA)	Physical/Mngmnt	Jul. 1979	Termin. Sep 1990	Judicial
Chester (PA)	Physical	Aug. 1994	In Progress	Judicial
Kansas City (MO)	Physical	Jul. 1993	In Progress	Judicial
District of Columbia	Physical/Mngmnt	May 1995	Termin. Sep 2000	Judicial

Source: GAO and HUD

accountability within the authorities' management structure. As a result, PHAs operate with poor internal controls (both fiscally and operationally), leading to mismanaged funds and a general failure to perform the fundamental structural maintenance that is necessary to sustain each facility.

### Operational and Performance Impacts

At the start of a receivership, both administrative and judicial receiverships operate in a similar fashion. Under both scenarios, the receiver usually elects fully to exercise its authority and replace the top management at the housing authority and institute new policies and procedures that are intended to effectuate reform. This initial step of creating and implementing a new leadership structure is often considered the most critical component of a successful receivership and

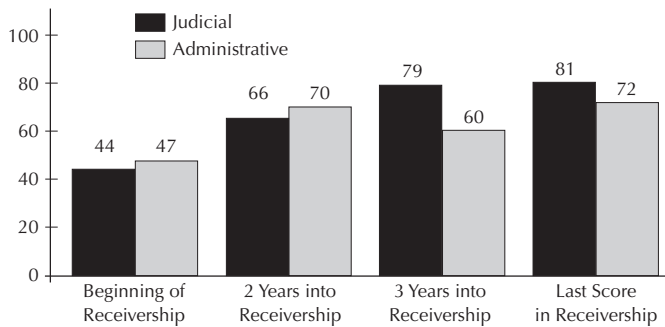
ultimately the housing authority's recovery. During the early phases of the Kansas City receivership, Magistrate Judge Larsen emphasized that "the crucial need for a sophisticated executive director in a contemporary housing authority cannot be overstated."<sup>9</sup>

The primary goal for many of these newly appointed receivers is to develop a rehabilitation plan that will readily address the poor living conditions within their facilities. As a result, the receiver's preliminary actions often include hiring a consultant to develop a sound program that will facilitate the redevelopment of the housing authority, including operating functions such as facilities management, procurement and accounting.

Although the receivers under both administrative and judicial receiverships have operated with the same authority, court-appointed receivers may be better positioned to use their authority, according to officials of several housing authorities and public housing experts.<sup>10</sup> According to these officials, the court-appointed receivers are more insulated from local politics and better able to make necessary changes at the housing authority.<sup>11</sup> Such a conclusion is further supported by the performance scores that housing authorities have received under receivership (see Figure 1). Although quantitatively limited for statistical purposes, the performance scores indicate that while both showed significant improvement, the average improvement from the beginning of the receivership to the last score taken totaled 84 percent for judicial receiverships versus 53 percent for administrative receiverships.

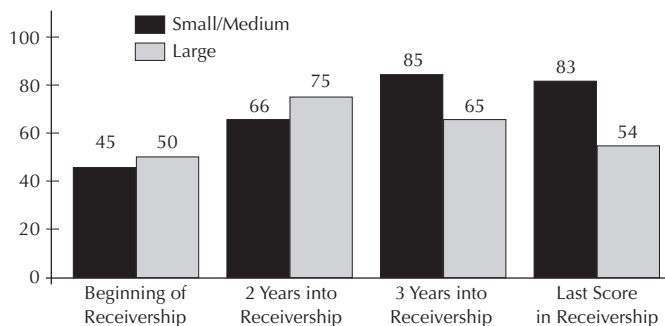
Additionally, there appears to be some correlation, although again limited for statistical purposes, between the relative size of housing authorities and their ability to sustain the improvements that have been implemented under receiverships, with large housing authorities less likely to sustain improvements (see Figure 2). However, the driving factor behind this distinction is likely a function of the original problem that led to the agency being placed into receivership.<sup>12</sup> For example, the three PHAs that HUD placed into receivership for racial segregation can be classified as small or medium-sized, and as a result the focus of the receiver was to institute integration programs.<sup>13</sup> Furthermore, while these facilities had some physical problems, the physical deterioration at the facilities was not severe. In contrast, the large and very large authorities were often faced with significant physical and management problems that required substantial work, and many of these problems may have been difficult to sustain due to high manager turnover rates and weak internal controls.<sup>14</sup>

**Figure 1: Average Change in Performance Scores Judicial vs. Administrative**



Note: The Boston PHA is not included due to the receivership ending before performance score assessment began. The District of Columbia PHA did not receive an overall performance score after 2 years in receivership. The last score category represents the last available score for housing authorities still under receivership and the final score under receivership for terminated receiverships. For all PHAs included above, scoring assessments began under PHMAP and continued under PHAS.

**Figure 2: Average Change in Performance Scores Small/Medium vs. Large Authorities**



Note: The Boston PHA is not included due to the receivership ending before performance score assessment began. The District of Columbia PHA did not receive an overall performance score after 2 years in receivership. The last score category represents the last available score for housing authorities still under receivership and the final score under receivership for terminated receiverships. For all PHAs included above, scoring assessments began under PHMAP and continued under PHAS.

<sup>9</sup>Carolyn Hoecker Luedtke, *Innovation or Illegitimacy: Remedial Receivership in Tinsley v. Kemp Public Housing Litigation*, 65 Mo. L. Rev. 655, 670 (2000) (hereinafter *Innovation or Illegitimacy*).

<sup>10</sup>*Information on Receiverships* at 10.

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

<sup>12</sup>*Id.* at 16.

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

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

## Terminating the Receivership

There are no set guidelines for terminating either an administrative or judicial receivership because both are handled on a case-by-case basis. However, of the 15 receiverships initiated since 1979, six were terminated upon a showing that the conditions at the housing authority had improved and the authority's management could sustain the improvements.

The lack of a clearly defined termination plan often leads to extended receivership periods. The ambiguity surrounding a termination plan is not overly significant for administrative receiverships; however, the issue may be more pressing for judicial receiverships. For example, if the plaintiff residents within a judicial receivership are happy with the receiver they are unlikely to ask the court to end the receivership. Therefore, this uncertainty may result in a lack of an ongoing case or controversy, a constitutional requirement for judicial action under Article III.<sup>15</sup> However, many of the receivership plans are purposely defined loosely to provide the administrative flexibility that may be needed to address unforeseeable issues that may arise during the receivership period.<sup>16</sup> For example, in 1989, the Kansas City Housing Authority (KCHA) was marred with segregation and had approximately 120 vacant and uninhabitable units that constantly exposed residents to rampant drug activity.<sup>17</sup> In 1993, after failing to comply with a 1991 consent decree to correct these problems, the KCHA was placed into a judicial receivership. Under receivership, the KCHA has experienced a dramatic turnaround, including desegregation through the use of improved screening techniques and the remodeling and/or reconstruction of nearly all 120 units.<sup>18</sup> Today, some eight years later, the KCHA remains in receivership; however, there is a termination plan in place that involves gradually replacing KCHA's former board of directors with a group of community-based stakeholders that is expected to be complete within the next year.<sup>19</sup>

It has been suggested that the potential problems associated with extended receiverships can be resolved with a plan based on clearly defined objective measurements. For example, the receivership order for the District of Columbia Housing Authority provided that the receivership would automatically end when the authority achieved a HUD performance rating of 70 or better for two out of three years, and also contained a fixed sunset if the authority failed to achieve the desired ratings after six years.<sup>20</sup>

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<sup>15</sup>*Innovation or Illegitimacy*, *supra* note 9, at 688.

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

<sup>17</sup>Interview with Julie Levin, Attorney with Legal Aid of Western Missouri, in Kansas City, MO. (June 19, 2003). Julie Levin, along with Kelly P. Finn, represented the plaintiffs in the judicial proceedings that eventually led to the Kansas City receivership (*Tinsley v. Kemp*, 750 F.Supp. 1001 (D. Mo. 1990)). Additionally, Levin has continued to play an active role in the receivership by attending monthly progress meetings and protecting residents' rights during KCHA's implementation of three HOPE VI projects.

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

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

<sup>20</sup>*Innovation or Illegitimacy*, *supra* note 9, at 689.

## Conclusion

Based on the performance improvements found within receivership-managed PHAs, it appears that receiverships offer a solid solution for authorities that have slipped into severe mismanagement. However, if severe mismanagement is what initiates most receiverships, it would also appear that a method that recognizes this situation at an earlier point in time would be a beneficial tool (both operationally and financially). Therefore, perhaps the best solution is to develop more effective performance measurement tools and intermediate troubleshooting techniques that can be initiated by local regulatory bodies and/or residents within the community that the housing authority serves. ■

## RHS Proposes Revision of Its Rental Housing Regulations

More than seven years after it started the process, the Rural Housing Service (RHS) has finally published proposed regulations to replace all of its current regulations governing the Rural Rental Housing (Section 515),<sup>1</sup> Farm Labor Housing (Sections 514 and 516)<sup>2</sup> and Rental Assistance (Section 521)<sup>3</sup> programs.<sup>4</sup> The stated purpose of the proposed regulations is to consolidate and streamline the regulations governing these programs and to utilize private sector processes and techniques in administration of the origination, management, servicing and preservation of RHS' multi-family housing programs.<sup>5</sup>

Other than to substantially reduce the volume of regulations that appear in the Code of Federal Regulations, the proposed regulations fail to achieve any other significant purpose. Indeed, in many respects the new regulations may hurt program users and beneficiaries. This is because the agency has abridged or eliminated existing regulations, which have the force and effect of law, and substituted for them three massive explanatory handbooks<sup>6</sup> that may not be enforceable and will be published and updated periodically without benefit of the notice and comment process mandated by the *Administrative Procedure Act*.<sup>7</sup> Moreover, the proposed regulations are frequently vague and fail to include significant advantageous program modifications.

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<sup>1</sup>42 U.S.C. § 1485 (West 2003).

<sup>2</sup>*Id.* §§ 1484 and 1486.

<sup>3</sup>*Id.* § 1490a.

<sup>4</sup>68 Fed. Reg. 32,872 (June 2, 2003).

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

<sup>6</sup>The draft handbooks were posted on the RHS Web site during the regulatory comment period. They have since been removed. They should be posted again when the regulations are finalized.

<sup>7</sup>5 U.S.C. § 701 et. seq. (West, Westlaw, Current through P.L. 108-80, approved 09-17-03).

Members of the Housing Justice Network (HJN), a national consortium of legal services and other housing advocates, reviewed those sections of the proposed regulations that affect the rights of applicants for and residents in RHS-funded rental housing. They submitted more than 50 pages of comments to the agency. This article will briefly review the regulations that the HJN members focused on and will summarize their comments.

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*Reviewers found many instances in which the handbooks were in conflict with the regulations or contained statements of rights and obligations that were not in the regulations.*

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### **Non-Enforceability of Handbooks**

As noted above, the primary means by which RHS streamlined the multi-family housing regulations is by producing three new and lengthy handbooks dealing with Loan Origination, Asset Management, and Project Servicing. Drafts of these handbooks were made available to the public shortly after RHS published the proposed regulations in the Federal Register. When finalized, the handbooks are intended to clarify and supplement the regulations by providing explanations and examples of how the regulations should be followed by RHS staff and owners of RHS rental housing. Unfortunately, the HJN members that reviewed the handbooks found many instances in which the handbooks were in conflict with the regulations or contained statements of rights and obligations that were not in the regulations. This raised significant concerns because the handbooks are not likely to be enforceable against landlords and may be revised at will by RHS without prior notice and comment pursuant to the APA.

Accordingly, the HJN comments recommended that all rights and obligations set out in the handbooks be incorporated into the regulations. They also recommended that the handbooks be made enforceable by requiring landlords to include a provision in all leases that clearly states that the handbooks are incorporated into the leases and that their provisions are enforceable by and between the landlords and tenants. Lastly, the HJN comments recommended that RHS require that the handbooks be made readily available to residents in all developments.

### **Good Cause Requirement**

Current RHS regulations make clear that owners and residents should avoid evictions if possible and require that evictions only be for good cause or material noncompliance

with the lease, both of which are well defined.<sup>8</sup> In addition, whenever an owner seeks to evict a resident for other good cause, the current regulations require that the owner give the resident a notice that the resident's particular conduct, if continued, may be grounds for an eviction and provide the resident with an opportunity to cure prior to the initiation of an eviction action.<sup>9</sup> The proposed regulations either eliminate most of these provisions or shoehorn them into a single short paragraph that is difficult to understand and lacks any details with respect to the owner's obligations and the resident's rights. The HJN comments urged RHS to clarify the proposed regulations by reinserting the current regulatory language. In addition, they urged RHS to retain provisions in the current regulations, which appear to have been deleted, that give residents the right to review their files prior to a meeting with the owner and require owners to send copies of eviction notices to RHS for its review.

### **Citizenship Requirement**

The regulations propose to implement the statutory requirement that residents of RHS housing be citizens of the United States or persons admitted for permanent residency into the United States.<sup>10</sup> Unfortunately, the proposed regulations would do this by requiring that the heads of all resident households be citizens or have been admitted for permanent residence. They do not deal with any of the issues that the Department of Housing and Urban Development (HUD) struggled with for many years before publishing its final citizenship requirements regulations. Thus, the proposed RHS regulations include no provision dealing with how the citizenship requirement affects current residents of RHS housing who may not be eligible, whether mixed households are eligible for residency and what their rent may be. The proposed regulations also provide no mechanisms for appealing eligibility determinations.

The HJN comments pointedly criticized the proposed regulations because they are inconsistent with the authorizing statute, will unnecessarily force the eviction of thousands of residents, needlessly deny housing to eligible households, fail to provide applicants and residents any opportunity to appeal citizenship decisions and, undoubtedly, result in many landlords illegally and unnecessarily reporting persons to the Immigration and Naturalization Service because they believe that they are not legally in this country. The comments went on to suggest that the proposed regulations be revised to:

- eliminate the requirement that heads of household must be citizens or permanent residents and, instead, make the entire household eligible if any member of the household, adult or minor, is a citizen or permanent resident;

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<sup>8</sup>7 C.F.R. Part 1930, Subpart C, Ex. B, ¶ XIV (2002).

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

<sup>10</sup>42 U.S.C.A. 1436a (West 2003).

- expand the definition of legal or qualified aliens to include three classes of immigrants that Congress has more recently determined should be eligible for public benefits. This includes Cuban immigrants; Haitian immigrants; and battered immigrants who can make a *prima facie* showing that they are the spouse or child of a citizen or a Lawful Permanent Resident, that they have been subject to extreme cruelty, evidence of suspension of deportation or cancellation of removal, and a showing of a substantial connection between the battery and the need for the housing benefits;
- follow the HUD implementation provision and, in so doing, ensure that current Section 515 residents are protected from eviction, that owners seeking to verify the status of residents and applicants respect the rights of all persons—particularly persons of color and persons with limited English proficiency—against unlawful discrimination, that verification procedures are used solely for the purpose of determining residents’ and applicants’ eligibility to reside in the housing and not to seek their deportation, that residents and applicants who choose not to declare their eligibility for assistance have their decision honored, that mixed households (those that include both eligible and ineligible members) be provided an opportunity to reside in RHS housing at prorated rents, and that residents and applicants be provided the opportunity to appeal adverse eligibility decisions;
- expand its farmworker citizenship requirements for the Section 514 and 516 programs to conform to the requirements of 42 U.S.C. § 1436a, which expand the categories of persons eligible to reside in federally assisted housing;<sup>11</sup>
- make clear that landlords who reject or evict an eligible applicant or tenant may violate the *Fair Housing Act*, Title VI of the *Civil Rights Act of 1964*, and other civil rights laws.

### Limited English Proficiency

RHS does not have a plan approved by the Department of Justice that sets out the procedures that recipients of its assistance must follow in order to comply with Title VI and Executive Order 1316, Improving Access to Services for Persons with Limited English Proficiency. Moreover, the proposed regulations place no obligations on owners to better serve Limited English Proficiency (LEP) persons and households. Accordingly, the HJN comments recommended that RHS require owners to:

- use recent, current, local data to determine language needs of LEP persons likely to be seeking housing;

- develop a comprehensive written policy on language access to ensure meaningful communication and access to the benefits of the RHS housing program. Such a policy should provide for a range of free oral language assistance options to residents and applicants, periodic training of staff, monitoring of the program, and translation of written materials in certain circumstances. The policy should also identify important documents that will be provided in the appropriate languages;
- conduct regular oversight of the language assistance services provided at RHS housing developments(s) to ensure that LEP persons can have meaningful access to this housing.

HJN also recommended that RHS should also ensure that its own staff accommodates the needs of LEP persons by making sure that notices that it sends to residents are appropriately translated and that translators are available at meetings that it attends.

### Domestic Violence

The proposed regulations also do not address domestic violence even though it continues to be a significant problem in our society. Accessing and retaining affordable housing is one of the most significant problems facing a domestic violence survivor seeking to break out of an abusive relationship. The problem is particularly acute for domestic violence survivors with limited incomes who are attempting to leave their abusers. Consequently, the HJN comments urged RHS to adopt regulations concerning the treatment of domestic violence victims as prospective tenants and as actual tenants in order to ensure that domestic violence does not become a barrier to housing. Specifically, the HJN commentators recommended that the final regulations:

- define domestic violence broadly to include acts or threats of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other adult person, against a victim who is protected from that person’s acts under the domestic violence or family violence laws of the jurisdiction;
- include specific language that recognizes discriminatory housing practices against survivors of domestic violence as discrimination on the basis of sex in violation of the *Fair Housing Act* and applicable state and local laws;
- require owners to include provisions in their tenant selection plans that obligate owners to consider mitigating factors with regard to tenants with adverse rental or credit histories due to a period of hardship beyond their control;

<sup>11</sup>The Section 514 and 516 farm labor housing programs limit eligibility to citizens of the United States and persons legally admitted for permanent residence. 42 U.S.C. § 1484 (f)(3) (West 2003). This is more restrictive than the eligibility definition under 42 U.S.C. 1436a (West 2003).

- make clear that the provisions authorizing evictions not be applied to innocent members of a tenant's household who are not engaged in the lease-violating behavior, or who are not responsible for control of another household member or guest;
- require owners to include provisions in their management plans that establish who is entitled to remain in a unit when a household breaks up;
- include provisions that allow victims of domestic violence who are not citizens or permanent residents reasonable time to remain in the housing until they qualify for permanent residency.

## Prepayment

The HJN comments strongly opposed two new provisions in the prepayment regulations. The first would allow borrowers who have entered into incentive agreements to terminate those agreements if RHS has not funded them within 15 months. The second provision would allow RHS to amortize Section 515 loans over a 50-year period but to make the loan payable at the end of 30 years. Associated use restrictions would only run for the 30-year term of the loan. The HJN comments opposed the first provision because it is contrary to RHS' statutory obligation to preserve Section 515 housing and because it may ultimately cause displacement of the very residents that the *Emergency Low-Income Housing Preservation Act of 1987* was intended to protect. RHS attempted to present this provision as an issue of fairness to owners. It failed to disclose that the only reason that owners' incentive agreements had not been funded is because RHS had not set aside enough money to fund these agreements.

HJN objected to the second provision because it is fiscally unwise. Amortizing loans over a 50-year period increases the cost of housing low- and very low-income residents because the 50-year term decreases the borrowers' payments and increases the subsidy that is required to enable a low-income resident to live in the housing. In return for the additional subsidy, RHS gains no benefit. Consequently, the HJN members saw no reason to implement it.

The HJN comments also objected to the prepayment regulations because they failed to streamline the process by which owners who seek to remain in the program and are willing to extend their use restriction can bring outside financing into the development in order to make necessary improvements. These owners should be able to secure RHS' timely approval to receive Low Income Housing Tax Credits or other financing in order to upgrade the development and continue to operate it for its intended purposes.

HJN further objected to the proposed regulations because they failed to allow the transfer of developments from for-profit developers to nonprofit or public developers without going through the cumbersome prepayment process. The HJN commentators were of the opinion that a significant number of owners are prepared to negotiate the sale of their

developments to nonprofit or public agencies and that a process needs to be developed by which these owners can sell the developments without having to proceed through the procedural prepayment maze.

Lastly, the HJN commentators urged RHS to revise its regulations to recognize more clearly the various financing mechanisms that it has recently implemented through Administrative Notices that allow third parties to bring private and public financing into the Section 515 program. The proposed regulations hardly discuss or authorize such financing mechanisms and should be revised to allow them.

## Conclusion

The HJN comments objected to other inadequacies in the regulations such as owners' civil rights obligations, tenant selection procedure, leases and lease provisions, and the applicability of RHS requirements to developments financed under Section 515 but subsidized under the project-based Section 8 program. The comments and criticisms with respect to those provision are too numerous to detail in this summary.<sup>12</sup>

Discussions with RHS staff suggest that RHS is intent on finalizing the proposed regulations relatively quickly. However, even under ideal circumstances, final regulations are not expected until late 2004. ■

<sup>12</sup>Advocates who wish to obtain an electronic copy of the HJN comments should send a request to [nhlp@nhlp.org](mailto:nhlp@nhlp.org).

## Correction

An article appearing in the July 2003 issue of the *Housing Law Bulletin* contained an error. The article, *HUD Issues New Occupancy Handbook for Subsidized Multifamily Programs*, 33 HOUS. L. BULL. 347-49, 349 (July 2003), incorrectly reported that the new HUD handbook does not allow applicants to review a development owner's tenant selection plan. In fact, the handbook states: "When requested, the owner must make the tenant selection plan available to the public." HUD Handbook 4350.3 REV-1, at ¶ 4-4.F. (June 2003).

# Do Local Anti-Predatory Lending Laws Help or Hurt?

## Study of North Carolina's New Law Answers the Question

Consumers, whether they are aware of it or not, are locked a battle with the subprime home mortgage lending industry, which includes many familiar household names. The industry is fighting to roll back local consumer protections against predatory lending while reducing the efficacy and breadth of federal protections.

Predatory lending refers to a host of abusive lending practices that range from bait and switch tactics, exorbitantly high annual percentage rates, bogus and inflated fees, to forgery, and aggressive, coercive marketing and sales practices. The majority of the abuses occur in the subprime market on refinances. The ability of local laws to offer genuine consumer protection without limiting consumer access to credit or inhibiting the ability of subprime lenders to conduct business and earn profit in a more ethical fashion is one critical component of the debate.

Earlier this year, NHLP reported on a study by the Coalition for Responsible Lending showing that North Carolina's subprime market continued to flourish even after the 1999 enactment of the first state anti-predatory lending law in the nation. Subprime lending was above the national level in *all* of North Carolina's metropolitan statistical areas—a phenomenon unique to North Carolina.<sup>1</sup> In addition, a survey of subprime branch managers and brokers found that the law had not reduced subprime residential lending volume.<sup>2</sup>

The Center for Community Capitalism (the Center) sought to go deeper behind the numbers pertaining to the overall subprime market, to find out whether any particular aspects of subprime lending declined as a result of the North Carolina law, and whether any increased. Through analysis of 3.3 million subprime loans originated from 1998-2002, the Center found a reduction in the number of subprime refinance originations with abusive terms.<sup>3</sup>

Practices prohibited under the North Carolina law include:

- financing of single premium credit insurance;
- refinancing an existing loan when there is no tangible net benefit to the borrower;

- the financing, in high-cost loans, of fees, the inclusion of balloon payments or negative amortization, and lending without regard to a homeowner's ability to repay;<sup>4</sup> and
- inclusion of prepayment penalties on first-lien mortgages of less than \$150,000.

The law also requires that prospective borrowers of high-cost loans receive financial counseling before entering into such an agreement.<sup>5</sup>

Prior to this law, it was estimated that more than one-third of all subprime home loans in the state were predatory in nature, stripping equity or imposing unnecessary costs on the borrowers.<sup>6</sup>

The Center notes that the first comprehensive study of the impact of the North Carolina law reviewed rate sheets of a number of top subprime lenders and found that they continued to offer a full array of products with little to no change in rates. The loss of some companies from the market was not clearly related to enactment of the law.<sup>7</sup>

A subsequent study by the American Financial Services Association found a decline in overall subprime originations and originations to low-income borrowers relative to South Carolina and Tennessee. A different study found that, despite the overall decline, the North Carolina market remained one of the most active in the country.<sup>8</sup> A 2002 Morgan Stanley survey of 280 subprime branch managers found that the new law does not seem to be affecting branches. Still another study, this time of loan application and denial rates, found an overall reduction in subprime mortgage lending in North Carolina relative to Virginia, Tennessee, South Carolina and Georgia. However, the decline appeared attributable to a decrease in demand as subprime loan application rates dropped.<sup>9</sup>

The Center sets forth its own standard of review, hypothesizing that signs of the North Carolina law's efficacy should be:

- a decrease in subprime refinance originations;
- a maintenance or increase in the level of subprime purchase originations; and
- a decrease in refinances with predatory terms.

Loan Performance, Inc. supplied data on the loans the Center analyzed. Formerly known as Mortgage Information Corporation, Loan Performance, Inc. is a 20-year-old, private

<sup>1</sup>*Risk or Race? Racial Disparities and the Subprime Refinance Market*, Center for Community Change (May 2002) (hereinafter "*Risk or Race?*"), p.15.

<sup>2</sup>John Dooley, *Subprime Lending Stays Strong Despite Fed Warnings, Poll Finds*, *The Wall Street Journal*, August 8, 2002, at D2; Paul Muolo, *Predatory Laws Not Crimping B&C*, *National Mortgage News*, August 15, 2002, at 30.

<sup>3</sup>Roberto Quercia, Michael A. Stegman, Walter R. Davis, *The Impact of North Carolina's Anti-Predatory Lending Law: A Descriptive Assessment*, Center for Community Capitalism, The Frank Hawkins Kenan Institute of Private Enterprise, The Kenan Center, University of North Carolina at Chapel Hill (June 25, 2003) (hereinafter "*Impact*"), p. 1.

<sup>4</sup>High-cost is defined as loans with fees in excess of 5 percent, or interest rates more than 10 percent above comparable U.S. Treasury Securities.

<sup>5</sup>See *Risk or Race?*, at 2.

<sup>6</sup>*Id.*, referring to Eric Stein, *Quantifying the Economic Cost of Predatory Lending*, Coalition for Responsible Lending report (rev. Oct. 30, 2001).

<sup>7</sup>*Impact*, at pp. 7-8.

<sup>8</sup>Keith Ernst, John Farris, Eric Stein, *North Carolina's Subprime Home Loan Market After Predatory Lending Reform*, Center for Responsible Lending (Aug. 13, 2002).

<sup>9</sup>*Impact*, at p. 9.

company that caters to the research needs of regional banks. Its subprime loan database has from 41.6 to 51 percent of all subprime loans originated from 1998-2002—a significant percentage. To account for the fact that the North Carolina law was phased in between 1999 and 2000, the study examines origination data from seven quarters before the law was enacted and for the seven quarters after the law was fully implemented.

North Carolina's subprime lending market appears to have tracked the national decline in originations from 1999-2000, followed by a steady increase. The Loan Performance database shows a national increase of 43 percent and an increase in North Carolina of 25 percent, but the study attributes that difference to a change in the total number of loans collected in the database over time.<sup>10</sup>

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*The study found that the number of refinance loans with prepayment penalties of three or more years increased everywhere except in North Carolina, where such loans decreased in number by 72 percent.*

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Subprime originations declined to a slightly greater extent in North Carolina from 1999-2000 than in neighboring states but also experienced a greater growth in originations from 2001-2002. To the extent that this change is attributable to the North Carolina law, it may indicate that subprime lenders turned their focus to marketing purchase loans to replace the refinance loans they normally would have made. The law may have encouraged subprime lenders to shift attention to the purchase market, thereby expanding the offering of such loans to subprime borrowers. However, the change could, of course, simply reflect a change in consumer need and demand. Overall, the study found nothing unique to North Carolina's subprime lending trends during the period of 1998-2002, indicating, at a minimum, that the North Carolina anti-predatory lending law was not having a deleterious effect on lenders, and did not limit consumer access to loans.<sup>11</sup>

Subprime originations declined across the country in the period of time before the North Carolina law was passed, and after full implementation. However, the rate of decline was 17 percent in North Carolina, versus 8.2 percent nationally. Subprime refinance originations specifically declined 20 percent in North Carolina versus 9 percent in neighboring states and 3 percent nationally.

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<sup>10</sup>*Id.* at 11-13.

<sup>11</sup>*Id.* at 14-15.

Contrary to criticisms levied by nay-sayers about the state law to the effect that it would limit access to credit by high-risk borrowers and increase the cost of credit, lending to high-risk borrowers has increased by almost one-third since full implementation of the North Carolina law. Neighboring states experienced the same amount of growth.<sup>12</sup> Meanwhile, borrowers with credit scores at or above 660 received fewer subprime loans, potentially indicating that rather than being steered to higher-cost loans with less advantageous terms, these borrowers received better-quality loans.

The Center also found that changes in interest rates in North Carolina were consistent with interest rates nationally. In other words, the state law did not trigger an increase in the cost of credit to high-risk borrowers. The study examined mean interest rates before and after implementation of the law to arrive at this determination.

Finally, the Center examined whether or not fewer loans with abusive terms were issued after full implementation of the state law, using only three predatory characteristics:

- prepayment penalty terms of three or more years;
- balloon payments; or
- loan-to-value ratios (LTV) of 110 percent or more.

The results of this portion of the study are striking. The authors found that the number of refinance loans with prepayment penalties of three or more years increased everywhere except in North Carolina, where such loans decreased in number by 72 percent. Loans with a balloon payment term fell by 53 percent in North Carolina, compared to smaller decreases nationally and regionally. Loans with LTV equal to or greater than 110 percent decreased by 35 percent compared to smaller declines in other states and increases in a number of other states.

The Center's study adds to the growing body of information on the actual impact of predatory lending laws on lenders and consumers. Such research is invaluable to discussions nationally and locally regarding the utility and efficacy of such laws. ■

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<sup>12</sup>*Id.* at 17-18. A high-risk borrower is defined as someone with a credit score below 580, rather than being tied to income level.

# The Harvard Joint Center for Housing Studies Releases 2003 Report on State of the Nation's Housing

The Joint Center for Housing Studies of Harvard University (JCHS) published its annual *The State of the Nation's Housing* report for 2003.<sup>1</sup> In this study, JCHS reports on various issues in the housing market including housing and the economy, demographic demand drivers, homeownership trends, rental housing trends, and housing challenges. This highly technical report focuses on both strengths of the housing market and alarming affordable housing challenges. While the report offers an overly optimistic view of trends within the homeownership market and the economy generally, over-emphasizing the short-term benefits of the refinancing boom and consumer spending, it also provides a realistic assessment of the grave state of the United States rental housing market for moderate and low-income residents. The conclusion seems clear: residents of this country are facing a dire lack of affordable housing that would seem to lead us down the road to sharply increased rates of homelessness and overcrowding.

## Policymakers Must Address Lack of Affordable Housing and Policies That Institutionalize This Problem

The JCHS report indicates that America's most widespread housing challenge is still affordability. The report states that because of the shortage of affordable housing, millions of households experience a decrease in their quality of life, whether caused by a longer commuting distance, sacrificing other essentials, or suffering overcrowded or unsafe conditions. Affordability problems affect even middle-income families, including those who own homes. The report suggests that a significant increase in interest rates would further place financial burdens on adjustable-rate mortgage holders and price more people out of the home-buying market.

The report cites to a diminishing stock of lower-cost housing and development constraints as key reasons for rising unaffordability. Those who can afford only rental housing are especially affected. The number of people affected is astounding: three in 10 households in this nation have housing affordability problems. Some 14.3 million are severely cost-burdened and 17.3 million are moderately cost-burdened.<sup>2</sup> The poor suffer the most proportionally to other groups. For example, three-quarters of severely cost-burdened households

have incomes in the bottom fifth of the distribution. These severely burdened households in the bottom fifth only have \$417 left over after paying for housing each month.<sup>3</sup>

Although women, the young and the old are also over-represented among those with affordability problems, homeowners and working families are increasingly affected by affordability pressures as well. The report touches briefly on the health danger created by the fact that almost a quarter of households with children live in older housing units with high risks of lead hazards, while 41 percent live in units with potential risk of lead hazards.<sup>4</sup> Many low-income households receiving housing assistance live in buildings with structural defects due to insufficient funding for maintenance and operations.

JCHS suggests that the cost of supplying even modest housing far exceeds the amount that lower-income households can afford, describing the shortage of affordable market-rate rentals as dire. *Households with one full-time minimum wage earner cannot afford to rent adequate housing anywhere in the country.* It appears that subsidies are essential to developing housing that will be affordable to low-income people, and these subsidies must be very deep, as almost one-fourth of subsidized renters still report severe cost burdens. JCHS attributes the lack of affordable housing to economic realities such as profit and revenue-maximizing landlords and under-maintenance of housing, which has reduced the housing stock.

In addition to the economic realities of the private market, the inventory of directly subsidized rental properties is under pressure. Housing is being lost through the destruction of public housing units that are not replaced on a one-for-one basis.<sup>5</sup> Affordable housing is also being lost as owners opt out of their government-subsidized housing contracts. JCHS states that because of rising demand, the remaining federal production programs such as the Low-Income Housing Tax Credit (LIHTC) and Community Development Block Grant Program (CDBG) are vital to at least partially offset net losses of affordable housing stock.<sup>6</sup>

So-called Nimbyism (Not In My Back Yard), a term which encompasses neighborhood and municipal tactics designed to keep low-income people and people of color out of wealthier neighborhoods, must be stopped in order to develop needed housing. JCHS indicates that because of numerous complicated land and zoning regulations, it has become increasingly difficult to add market-rate units to the

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<sup>3</sup>JCHS at 26.

<sup>4</sup>*Id.* at 26.

<sup>5</sup>See NHLP, et al., *False HOPE: A Critical Assessment of the HOPE VI Public Housing Redevelopment Program* (June 2002).

<sup>6</sup>*Id.* at 28. Note that the current administration threatened the existence of the LIHTC program by proposing the restructuring of tax incentives. For a detailed discussion of the proposed restructuring of tax incentives, see Ernst & Young, *The Impact of the Dividend Exclusion Proposal on the Production of Affordable Housing*, February 2003. This study was commissioned by the National Council of State Housing Agencies and estimates conservatively that the dividend tax exemption proposal would reduce the production of new affordable LIHTC units by 35 percent, or 40,000 apartments per year.

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<sup>1</sup>Joint Center for Housing Studies of Harvard University: *The State of the Nation's Housing*, 2003 President and Fellows of Harvard College.

<sup>2</sup>Households that are severely cost-burdened spend more than 50 percent of their incomes on housing. Households that are moderately cost-burdened spend 30-50 percent of their incomes on housing.

affordable supply, especially those that support multi-family living. JCHS posits that local planning efforts can help provide housing for all households, while ensuring high-housing quality to improve the quality of life for all communities. However, JCHS warns that to realize this goal, there must be a shift in public attitudes towards a greater acceptance of mixed-housing communities. The July 2003 NIMBY report published by the National Low Income Housing Coalition indicates that the main concerns of those opposing the construction of new housing for low-income people are about safety and property values,<sup>7</sup> but suggests that residents also wish to keep their communities racially monotone. One long-time resident from Carlsbad, California responded to the potential construction of a farmworker shelter by arguing for its opposition because the shelter would encourage more undocumented workers to come to the city. She stated, "It will put Carlsbad on the map all through Mexico."<sup>8</sup>

### Lack of Affordable Housing Affects People of Color Disproportionately

JCHS report notes the persistent inequalities in income distribution by ethnic group that result in the unequal distribution of housing. JCHS attributes the growing inequality "in part [to] the lower average education level of minorities, who represent a growing segment of the population," while citing to statistics of minority education levels compared to those of whites.<sup>9</sup> Racism, though not cited to in the report, is certainly another, well-documented component of inequalities in income distribution in the United States. Racism also negatively affects people of color in accessing education, as well as during and after the educational process. Other reasons for the persistent inequalities in income include favoritism that occurs in the workplace, anti-union policies and corporate welfare. Policymakers should be aware of the true sources of the persistent inequalities in income distribution when creating policies to counteract the impact of housing challenges on these sectors of the nation's populace.

In addition to reporting on enduring ownership and equity gaps, JCHS cites to sub-prime lending and its relationship to delinquencies and foreclosures. The report notes that, even with 9 out of 10 subprime borrowers repaying their loans, default rates on subprime loans are far higher than those on prime loans. Low-income communities of color have received a disproportionate share of subprime loans.<sup>10</sup> Predatory lending practices are a critical factor in this phenomenon, though not discussed in this report. Lenders engaged in such practices target people of color and the elderly, primarily in refinance lending but on purchase-money mortgages as well. A study conducted by the Department of Housing and Urban Development (HUD) shows that 39 percent of residents

living in upper-income African-American neighborhoods are receiving subprime loans, compared to only 6 percent of homeowners in upper-income white neighborhoods.<sup>11</sup> Both Fannie Mae and Freddie Mac, the two largest government-sponsored enterprises on the secondary market, have found that higher-cost subprime loans are foisted onto people of color who qualified for lower prime rates. In a study called "We Open Doors for America's Families," Freddie Mac estimated that between "10 and 30 percent of borrowers who obtained mortgages from the subprime market could have qualified for a conventional loan through Loan Prospector [Freddie Mac's underwriting system]."<sup>12</sup> Fannie Mae estimates that half of all subprime borrowers could qualify for lower-cost conventional financing.<sup>13</sup> Fifty subprime lenders in a 1996 poll estimated that half of their borrowers could have qualified for prime loans.<sup>14</sup> The elderly are also targeted by predatory lenders. A study done by the AARP on older subprime mortgage borrowers indicates that 61 percent of older refinance subprime borrowers had been contacted by a broker or lender about borrowing—almost two times more than older prime borrowers.<sup>15</sup> Further, older subprime refinance borrowers were less likely to be familiar with the mortgage process and basic mortgage terms than were older prime borrowers.<sup>16</sup> As a result, when asked whether their loans were different than they expected, almost one-half of subprime borrowers said yes, compared to only 20 percent of prime borrowers; 71 percent of subprime borrowers reported that the loan was worse than they expected, as compared to 50 percent of prime borrowers.<sup>17</sup> Another AARP study reports that borrowers 65 years of age or older were three times more likely to hold a subprime mortgage than borrowers less than 35 years of age.<sup>18</sup>

### JCHS Report Soft-Pedals Bleak Long-Term Indicators

Although presenting many of the pertinent challenges in housing today, JCHS offers a perhaps overly optimistic spin on bleak economic indicators. For example, the report

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<sup>11</sup>United States Department of Housing and Urban Development, *Unequal Burden: Income & Racial Disparities in Subprime Lending in America*. April 12, 2000, available online at [www.hud.gov/library/bookshelf18/pressrel/subprime.html](http://www.hud.gov/library/bookshelf18/pressrel/subprime.html).

<sup>12</sup>See Freddie Mac, "We Open Doors for America's Families," Freddie Mac's Annual Housing Report for 1997.

<sup>13</sup>See Fannie Mae, March 2, 2000, press release, available online at [www.fanniemae.com/news/pressreleases/0667.html](http://www.fanniemae.com/news/pressreleases/0667.html), at 4.

<sup>14</sup>*Half of Subprime Loans Categorized as "A" Quality*, Inside B&C Lending, (June 10, 1996).

<sup>15</sup>See N. Walters and S. Hermanson, "Older Subprime Refinance Mortgage Borrowers," for AARP, July 2002, 3.

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

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

<sup>18</sup>See N. Walters and S. Hermanson, "Subprime Mortgage Lending and Older Borrowers," for AARP March 2001, 1 (citing Lax, H., et. al. Subprime Lending: An Investigation of Economic Efficiency. Unpublished paper (February 2000)).

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<sup>7</sup>NIMBY Report "On the continuing struggle for inclusive communities" by the National Low Income Housing Coalition, July 2003, 1. NIMBY stands for "Not In My Back Yard."

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

<sup>9</sup>JCHS at 12.

<sup>10</sup>*Id.* at 18-19.

indicates that there has been a record amount of refinances, pumping \$96.5 billion into the economy. JCHS states that “although all this refinancing activity has helped to push mortgage debt to record levels, it has been a decided plus for the economy.”<sup>19</sup> Here, JCHS is analyzing the short-term benefits of households refinancing their mortgages. While it is true that households free up more cash by refinancing their loans, they are not using this cash for their savings. Rather, households have used as much as one-third of that amount on remodeling.<sup>20</sup> Thus, the long-term impact is not necessarily positive. In fact, given the highest unemployment rate since 1994, at 6.4 percent nationally and far higher in certain regions, it is likely that, of those refinancing, many are also pulling money out of their homes in order to survive while searching for work.<sup>21</sup>

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*Although JCHS indicates that there is concern over the emergence of a housing market bubble, it does not sufficiently address several alarming facts concerning this possibility.*

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Thus, the long-term impact of Americans’ spending spree from refinancing is to contribute to a negative personal savings rate as well as a negative national savings rate. In 1998, the United States experienced a negative savings rate for the first time since 1933. A negative savings rate means that households not only do not have any savings but are spending beyond their means. Though the federal government has recently recalculated national savings figures to put them into the positive numbers by including pension and retirement accounts, savings rates still remain appallingly low.<sup>22</sup> In addition, higher mortgage debt levels may become problematic in the future for those who have adjustable interest rates on their loans, making them more susceptible to default on their loans if they experience even a small increase in interest rates.

Rising foreclosure rates are another disturbing indicator of times to come. Foreclosures are not only an indicator of problems with the income-to-price ratio, but also are a sign of other types of social problems, such as were described above in the subprime lending discussion.<sup>23</sup> JCHS reports

that although at records levels, foreclosure rates on conventional loans are still under 0.2 percent while those on government-backed FHA loans are about 2.5 percent. Approximately 400,000 to 450,000 homeowners were in the foreclosure process at the end of 2002. JCHS cites to the likely reason for these foreclosures as the share of loans given to those with weak credit histories and subsequently discusses the relationship between weak credit histories and the “popularity” of subprime lending.<sup>24</sup>

### **Are Concerns of a Bubble in the Housing Market Justified?**

Although JCHS indicates that there is concern over the emergence of this type of bubble due to the steady escalation of prices in the housing market, it does not sufficiently address several alarming facts concerning the possibility of a housing bubble. In the last seven years, home sale prices have increased nearly 30 percent more than the overall rate of inflation.<sup>25</sup> Approximately one-third of this increase corresponds to an increase in the price of rental housing relative to other goods and services.<sup>26</sup> The other two-thirds is attributable to an increase in home purchase prices relative to rental prices.<sup>27</sup> There are two principal explanations for this sharp increase in home prices: a shift in fundamental economic factors or the widespread expectation that prices will be higher in the future.

JCHS indicates that because home prices have grown only about as fast as incomes in most areas, a housing bubble is not likely. In addition, the study reports that the bursting of a housing bubble is unlikely because large price declines are relatively rare and it would take significant and concentrated job losses to trigger such a decline. However, the report concedes that a few markets have seen home price inflation outstrip income growth and a few have registered steep job losses. For portions of the United States housing market, a housing bubble may be in the works.

In a briefing paper, the Center for Economic and Policy Research (CEPR)<sup>28</sup> reveals that the increase in home prices may not simply be grounded in fundamental economic factors such as a decrease in interest rates. The paper first considers whether there has been a shift in the value that people place on housing, as opposed to other goods, such that the shift in these values would lead to the increase in housing consumption. The CEPR concludes that it is entirely plausible that because the supply of housing is fixed in the short term, a rapid rise in income, coupled with a surge in stock market wealth, may have led to a temporary run-up in housing prices in the late nineties, as demand outstripped

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<sup>19</sup>JCHS at 6.

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

<sup>21</sup>Bureau of Labor Statistics, June 2003.

<sup>22</sup>According to the Organization for Economic Cooperation and Development (OECD) Statistical Report “Main Economic Indicators,” May 2003, the gross national savings rate (gross national disposable income - private and government consumption) for the United States is 4.7 percent, compared to 11.1 percent in Japan and 14.5 percent in Canada for 2003.

<sup>23</sup>See *supra*, p. 3.

<sup>24</sup>See *id.*

<sup>25</sup>Baker, D., *The Run-Up in Home Prices: Is it Real or Is it Another Bubble*. Center for Economic and Policy Research Briefing Paper, August 5, 2002, 17.

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

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

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

supply. Yet, the CEPR points to data showing that this effect is not necessarily long-lasting such that it would make the increase in housing prices permanent. The paper indicates that as new housing comes on the market, the rise in housing prices should be reversed.

The CEPR also advances the possibility that homeownership has become relatively more attractive than renting, thereby pushing up the price of homes. Attractiveness in owning homes may be attributed to social factors, as well as to government tax incentives.<sup>29</sup> However, upon a closer analysis, the CEPR indicates that because tax cuts passed by Congress in recent years lowered the marginal tax rate for most taxpayers, this has reduced the savings from the tax deduction, thereby making home buying relatively less attractive compared to renting.

Both studies comment on the role played by lower interest rates in the increase in housing prices. JCHS indicates that interest rates played a large role in the increase in home prices and kept the United States economic engine chugging along in 2002 because of an increase in single-family starts and overall residential investment. Interest rates also increased the quantity of remodeling and home repairs. The CEPR, however, suggests that it is unlikely that interest rates explain the divergence between the real cost of owning and that of renting. The CEPR explains that while nominal mortgage rates are currently at their lowest level since the sixties, it is the real mortgage rate (the difference between the mortgage rate and the inflation rate) that matters for housing prices and there has not been much, if any, decline in real mortgage rates from the period before the rapid run-up of housing prices. Even if the decline in nominal interest rates were the cause for the increase in home prices, when there is an inevitable increase in nominal interest rates, then the housing market will plunge.<sup>30</sup>

That rise in nominal rates may have already begun. The 30-year, fixed mortgage rate rose by more than 1 percent from June to August of 2003. This is the sharpest increase since 1987. This has already slowed the refinance market.<sup>31</sup> Only time will tell whether the increase is temporary or not.

In addition to analyzing whether there is a housing market bubble, it is important for policymakers to be informed about the consequences of it bursting.<sup>32</sup> The CEPR indicates that because of the housing bubble, people are buying houses, not just to live in, but as investments, expecting them to rise in value. The expectation that prices will continue to rise leads

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<sup>29</sup>See Scott Burns, *Riding the Bubble: A Tale of Two Cities*, *The Seattle Times*, May 4, 2003. The article compares housing price and income divergence in Boston and Dallas and implies that because of higher tax benefits in Boston, federal tax policy may be causing housing bubbles.

<sup>30</sup>Baker at 12.

<sup>31</sup>*Home loan rush slows: Refinancing: A jump in the cost of a mortgage brings a significant drop in new applications*. The Press Enterprise Co., Press Enterprise (Riverside, CA) (Aug. 1, 2003).

<sup>32</sup>The reader should note that both JCHS and CEPR reports strongly emphasize that housing markets vary by region and that severity of possible consequences of any kind of housing bubble would therefore correspond relative to the region.

families to buy larger or multiple homes. Uncertainties in the stock market have also driven a sector of the public to pull out and invest in real estate. If home prices drop, many families will be left with considerably less wealth. Households anticipating being able to use the value of their homes to fund their retirement will suffer tremendously. Such a result would, in turn, slow the economy further.

## Conclusion

*The State of the Nation's Housing* provides tremendously valuable data for advocates and policymakers alike and presents a snapshot of trends in the housing market. The report's highlighting of the national lack of affordable rental housing is one of its most striking features. The report confirms that the homeownership market is a primary economic driver for the United States, suggesting that there is particular cause to be concerned over short-term economic drivers that could cause grievous harm to the economy in the long run. The report also should be lauded for calling attention to such factors as racism and predatory lending which continue to plague the economic and social well-being of the people of the United States. Only policies that address these problems will begin to improve the state of the nation's housing. ■

## Kerry Reintroduces Senate Version of National Housing Trust Fund Legislation

In July, Senator and presidential candidate John Kerry (D-MA), along with Senator Lincoln Chafee (R-RI), introduced S. 1411, a new version of his prior proposal to establish a National Affordable Housing Trust Fund.<sup>1</sup> The legislation mirrors that introduced in March on the House side, the *National Affordable Housing Trust Fund Act of 2003*, H.R. 1102 (Reps. Sanders, I-VT, Lee (D-CA) and Simmons (R-CT)),<sup>2</sup> which now has gained more than 200 co-sponsors. These bills seek to support new federal housing production through the trust fund concept, offering federal funds to any eligible state or local jurisdiction that provides matching funds toward the goal of producing, rehabilitating and preserving at least 1.5 million units of housing in the next decade, most of which would be affordable to very low-income families.

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<sup>1</sup>The text of the bill is available from the Government Printing Office Web site at [www.access.gpo.gov](http://www.access.gpo.gov).

<sup>2</sup>*Id.* For more background on the House bill and its provisions, which are very similar to S. 1411, see *National Housing Trust Fund Reintroduced*, 33 HOUS. L. BULL. 58 (Mar. 2003).

The main changes in the Senate bill from the prior bill (S. 1248, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess.) are that local governments, not just states, are eligible for funding, and that Davis-Bacon prevailing wage language has been added. The bill still not does specifically recognize that preservation would be an eligible use. A similar version was introduced earlier as a provision in the *Leave No Child Behind Act*, S. 448.<sup>3</sup>

Previous House efforts to pass a similar bill were stymied by the Banking Committee at the end of the 107<sup>th</sup> Congress. The 2002 bill had been introduced as an amendment to Rep. Roukema's (R-NJ) omnibus housing bill (H.R. 3995, 107<sup>th</sup> Cong.). After initial passage, the amendment was defeated on reconsideration by a committee vote, and the Roukema omnibus housing bill never received floor consideration.<sup>4</sup>

These Trust Fund bills propose a dramatic step towards alleviating the national low-income housing crisis by committing substantial federal funding. Their future depends on increasing bi-partisan support, which will require stronger advocacy from state and local governments, community organizations, constituents and other interest groups. Advocacy is being coordinated by the National Housing Trust Fund Campaign, now in its third year, through the leadership of the National Low-Income Housing Coalition and its many allies.<sup>5</sup> ■

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<sup>3</sup>The *Act to Leave No Child Behind* was introduced in both the House and the Senate, S. 448/H.R. 936, by Senator Christopher Dodd (D-CT) and Rep. George Miller (D-CA) on February 26. This comprehensive proposal addresses a range of issues important to child well-being, including health care, child care, education, income supports, nutrition, foster care and juvenile justice, and housing. The Act would provide 1 million new Housing Choice Vouchers over the next decade and establishes a voucher success program to address utilization problems. In addition, the Act reiterates the plan proposed in the *Housing Preservation Matching Grant Act of 2003*, H.R. 445, 107<sup>th</sup> Cong. (2003) to promote preservation of affordable housing units by providing matching grants to states that have developed and funded programs for preservation of privately owned housing that is affordable to low-income families. The Act also would establish the National Affordable Housing Trust Fund, funded identically as in H.R. 1102 and incorporating many of the provisions of the Senate's 2002 National Housing Trust Bill, S.1248, 107<sup>th</sup> Cong. (2001).

<sup>4</sup>See H.R. 3995: *National Housing Trust Fund Spoiled*, 32 HOUS. L. BULL. 186 (Aug. 2002). For more on H.R. 3995, see also *Omnibus Housing Bill Introduced in the House*, 32 HOUS. L. BULL. 98 (Apr. 2002).

<sup>5</sup>See [www.nhtf.org](http://www.nhtf.org) for a detailed outline of the Campaign's proposals, a complete list of the bill's endorsers, meeting minutes, and other Campaign activities.

## 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 July 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,<sup>1</sup> (2) bound volumes of the *Federal Register*, (3) HUD Clips,<sup>2</sup> (4) HUD,<sup>3</sup> and (5) USDA's/Rural Development Web page.<sup>4</sup> Citations are included with each document to help you secure copies.

### HUD Federal Register Final Rule

#### 68 Fed. Reg. 45,730 (Aug. 1, 2003) Public Housing Capital Fund Program Obligation and Expenditure of Funds

**Summary:** This final rule promulgates HUD's regulation for Section 9(j) of the *United States Housing Act of 1937*, which deals with the obligation and expenditure of Capital Fund Program funds by public housing agencies, in accordance with congressional direction.

**Effective Date:** September 2, 2003.

### HUD Federal Register Proposed Rules

#### 68 Fed. Reg. 45,734 (Aug. 1, 2003) PHA Discretion in Treatment of Over-Income Families

**Summary:** This proposed rule would give public housing agencies (PHAs) the discretion, in accordance with federal law and regulations, to evict public housing tenants who are over the income limit for eligibility to participate in public housing programs. PHAs may decide that such families should be able to find other housing and that public housing units should be made available for families with greater housing need.

**Comments Due Date:** September 30, 2003.

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

<sup>2</sup>At [www.hudclips.org/cgi/index.cgi](http://www.hudclips.org/cgi/index.cgi).

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

<sup>4</sup>At [www.rdinit.usda.gov/regs](http://www.rdinit.usda.gov/regs).

**68 Fed. Reg. 47,881 (Aug. 12, 2003)**

**Manufactured Housing Consensus Committee—Rejection of Consumer Complaint Handling Proposal; Correction**

*Summary:* This document corrects an error in a denial of proposed recommendation for revisions for regulations, concerning how manufacturers are required to handle reports of problems with manufactured homes, that was published in incomplete form on July 25, 2003.

## HUD Federal Register Notices

**68 Fed. Reg. 45,318 (Aug. 1, 2003)**

**Federal Property Suitable as Facilities to Assist the Homeless**

*Summary:* This notice identifies unutilized, underutilized, excess and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**68 Fed. Reg. 45,841 (Aug. 4, 2003)**

**Notice of Proposed Information Collection for Public Comment on the Quality Control for Rental Assistance Subsidy Determinations**

*Summary:* HUD is proposing to submit an information collection proposal regarding the following study to the Office of Management and Budget for review. HUD is conducting under contract a study to update its estimates of the extent and type of errors associated with income, rent and subsidy determinations for the 4.4 million households covered by Public Housing and Section 8 housing subsidies. The Quality Control process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. This study will provide current information on the quality of tenant interviewing (e.g., whether they are being asked about all sources of income) and the reliability of eligibility determinations and income verification. The researchers will survey approximately 550 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Researchers will also survey approximately 3,000 program participants to obtain information on household composition, expenses, and income.

*Comments Due Date:* October 3, 2003.

**68 Fed. Reg. 45,842 (Aug. 4, 2003)**

**Notice of Proposed Information Collection for Public Comment on the Notice of Funding Availability for Research Studies on Homeownership and Affordable Lending**

*Summary:* HUD is proposing to submit an information collection proposal regarding a study of homeownership and affordable lending to the Office of Management and Budget for review. The study is intended to aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

*Comments Due Date:* October 3, 2003.

**68 Fed. Reg. 45,843 (Aug. 4, 2003)**

**Notice of Proposed Information Collection for Public Comment on the Notice of Funding Availability for Research on the Socio-Economic Change in Cities**

*Summary:* HUD is proposing to submit an information collection proposal regarding another study of homeownership and affordable lending to the Office of Management and Budget for review. The study is intended to aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

*Comments Due Date:* October 3, 2003.

**68 Fed. Reg. 46,214 (Aug. 5, 2003)**

**Mortgage and Loan Insurance Programs Under the National Housing Act Debenture Interest Rates**

*Summary:* This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the *National Housing Act* (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 2003, is 5 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 2003, is 4.5 percent.

**68 Fed. Reg. 47,927 (Aug. 12, 2003)**

**Upcoming Meeting of the Manufactured Housing Consensus Committee**

*Summary:* This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee. The meeting is open to the public and the site is accessible to individuals with disabilities.

*Dates:* The meetings will be held on Wednesday, August 20, 2003, Thursday, August 21, 2003, from 8 a.m. to 5 p.m., and Friday, August 22, 2003, from 8 a.m. to 2 p.m.

**68 Fed. Reg. 48,516 (Aug. 13, 2003)**

**Notice of Funding Availability (NOFA) for the Enhancement of Neighborhood Networks for Fiscal Year 2002 Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants**

*Summary:* This NOFA announces the availability of \$5 million in Fiscal Year (FY) 2002 funds to expand the Neighborhood Networks program for FY 2002 HOPE VI Revitalization Program grant awards.

*Application Deadline:* September 12, 2003.

**68 Fed. Reg. 51,026 (Aug. 25, 2003)**  
**Ginnie Mae Mortgage-Backed Securities Guide 5550.3,**  
**Revision 1 (Forms and Electronic Data Submissions); Notice**  
**of Proposed Information Collection: Comment Request**

*Summary:* HUD is proposing to submit an information collection proposal regarding Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions) to the Office of Management and Budget for review.

*Comment Due Date:* October 24, 2003.

**68 Fed. Reg. 51,584 (Aug. 27, 2003)**  
**Notice of Proposed Information Collection for Public**  
**Comment: 2004 American Housing Survey—**  
**Metropolitan Sample**

*Summary:* HUD is proposing to submit an information collection proposal regarding the 2004 American Housing Survey—Metropolitan Sample (AHS-MS) to the Office of Management and Budget for review. The AHS-MS provides a periodic measure of the size and composition of the housing inventory in selected metropolitan areas. The 2004 survey is similar to previous AHS-MS surveys and collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

*Comments Due Date:* October 27, 2003.

**68 Fed. Reg. 51,585 (Aug. 27, 2003)**  
**Notice of Proposed Information Collection: Comment**  
**Request; Late Request for Endorsement Procedures**

*Summary:* HUD is proposing to submit an information collection proposal to the Office of Management and Budget for review. The information collection will establish the criteria for defining late requests for endorsement for initial submissions and reconsiderations. When submitting a late request for endorsement, a lender must certify that the borrower's mortgage payments are current and made within the month due, all escrows are current, and no payments were made by the lender to affect an acceptable payment history. The lender will also submit a copy of the payment history or ledger as additional documentation.

*Comments Due Date:* October 27, 2003.

**68 Fed. Reg. 51,588 (Aug. 27, 2003)**  
**Notice of Availability of a Draft Environmental Impact**  
**Statement (EIS) for the Salishan Revitalization Project,**  
**City of Tacoma, WA**

*Summary:* The Department of Housing and Urban Development gives notice to the public, agencies, and Indian tribes that the City of Tacoma, WA acting under its authority as the Responsible Entity for compliance with the national *Environmental Policy Act* (NEPA) in accordance with 24 C.F.R. 58.4, and jointly the City of Tacoma and Tacoma Housing Authority (THA) acting under their authority as lead agencies in accordance with the *State Environmental Policy Act* (SEPA) (RCW 43.21) that a Draft Environmental Impact State-

ment (DEIS) for the redevelopment of the Salishan housing project is available for review and comment. This notice is given in accordance with the Council on Environmental Quality regulations at 40 C.F.R. parts 1500-1508. Notice is also given that the City of Tacoma as Responsible Entity has decided to combine the *National Historic Preservation Act*, Section 106 process with the NEPA EIS in accordance with 36 C.F.R. 800.8(c). Comments are also being requested on the Section 106 information presented in the Draft EIS as well as on the Section 106 process itself.

*Comments Due Date:* Comments must be received on or before October 12, 2003.

## HUD Housing Notices

**Notice H 2003-17 (Aug. 20, 2003)**  
**Guidelines for Continuation of Interest Reduction Payments**  
**after Refinancing: "Decoupling," Under Section 236 (e)(2)**  
**and Refinancing of Insured Section 236 Projects into Non-**  
**Insured Section 236 (b) Projects**

*Summary:* Notice H 00-8 (HUD), which was issued July 17, 2002, and was extended to July 31, 2003, under Notice H 02-15, is hereby reinstated and extended to August 31, 2004.

*Expires:* August 20, 2004.

**Notice H 2003-18 (Aug. 20, 2003)**  
**Extension of Notice H 99-7, Subordinate Financing by**  
**Federal Home Loan Banks - Section 202 Supportive**  
**Housing for the Elderly and Section 811 Supportive**  
**Housing for Persons with Disabilities Programs**

*Summary:* Notice H 99-7 (HUD), issued April 30, 1999, which was previously extended by Notice H 2002-19, is being extended to August 31, 2004.

*Expires:* August 31, 2004.

## RHS Federal Register Proposed Rule

**68 Fed. Reg. 50,479 (Aug. 21, 2003)**  
**Revisions to Direct Farm Loan Programs Appraisal**  
**Regulations**

*Summary:* This rule proposes to amend the Farm Service Agency's (FSA) regulations governing real estate and chattel appraisals. In the loan making process, the rule proposes to allow FSA to obtain appraisals after loan funds become available and the applicant is determined eligible. Also, the rule proposes to increase the dollar threshold that determines when a real estate appraisal is required. In loan servicing, the rule proposes to raise the dollar threshold for real estate appraisals in partial release situations, and allow the Agency to release real estate security without appraising the retained real estate in some cases. All these changes will reduce FSA's appraisal costs and enhance the timeliness of program delivery of certain loan making and servicing actions.

*Dates:* Comments on this rule must be received on or before October 20, 2003 to be given full consideration. ■



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