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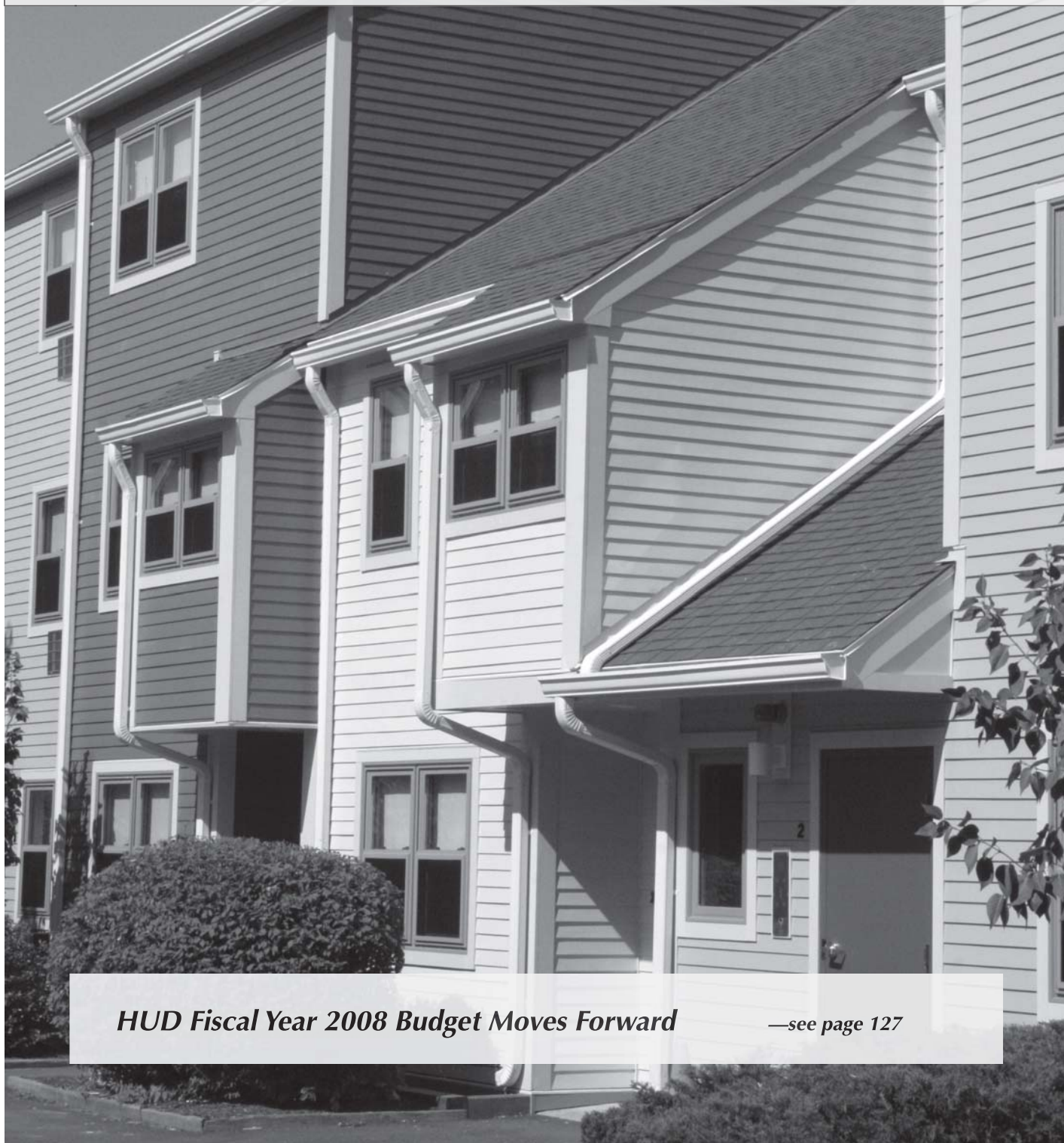


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Housing Law Bulletin

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HUD Fiscal Year 2008 Budget Moves Forward

—see page 127

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Telephone (510) 251-9400 • Fax (510) 451-2300

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

www.nhlp.org • nhlp@nhlp.org

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Cover: River Howard Homes, Cambridge, MA. This 32-unit family public housing development is owned and operated by the Cambridge Housing Authority. It was originally constructed in 1981, and rehabilitated in 2006-07.

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

Fiscal Year 2008 HUD Appropriations Update

By Joe Akman*

The full House and the Senate Appropriations Committee have approved measures containing Department of Housing and Urban Development (HUD) appropriations for the upcoming Fiscal Year (FY) 2008 beginning October 1.¹ On July 12, the Senate Appropriations Committee approved its version of the bill, following the full House Appropriations Committee's passage of its version on July 11.² The full House then passed its version on July 24 on a 268-153 roll call vote, while the full Senate plans a vote in September.

With a Senate total of roughly \$36.2 billion and a House level of \$36.3 billion for HUD, as compared to the Administration's request for only \$33.7 billion, most of the funding levels meet or exceed both the President's request and FY 2007 levels. The House bill includes \$16.33 billion for Section 8 tenant-based rental assistance, almost \$6.5 billion for project-based Section 8, \$4.2 billion for the public housing operating fund, and \$2.44 billion for the public housing capital fund.³ The Senate bill includes \$16.6 billion for tenant-based rental assistance, \$5.8 billion for project-based rental assistance, \$4.2 billion for the operating fund, and \$2.5 billion for the capital fund.⁴ Except for the Senate's proposed level for project-based Section 8, these amounts in both bills were all increased relative to FY 2007 levels.

Overall, these bills represent a substantial improvement over the President's proposed budget cuts and provide for modest funding increases for many programs. In addition, the Administration's proposal to give more flexibility to local public housing authorities to serve more families,⁵ which would have allowed higher rents for tenants and diminished targeting for extremely low-income families, never emerged from committee in either chamber.

*Joe Akman was a summer intern with the National Housing Law Project and a student at University of California Hastings College of Law.

¹Library of Congress, Thomas, at <http://thomas.loc.gov/home/approp/app08.html> (last visited Jul. 23, 2007).

²*Id.*

³H.R. 3074, 110th Cong. Title II (as reported by H. Appropriations Comm. on July 11, 2007).

⁴S. 1789, 110th Cong. Title II (as reported by S. Appropriations Comm. on July 12, 2007). Hereinafter all citations to S. 1789 and H.R. 3074 refer to the version of the bill reported out of Committee.

⁵Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 505 (2007).

Voucher Program

Voucher Funding Level

In each version of the bill, the voucher account covers several different uses: renewals of expiring voucher contracts for about two million units nationwide (Senate \$14.936 billion, House \$14.745 billion); tenant protection vouchers (both Senate and House \$150 million); family self-sufficiency coordinators (Senate \$50 million, House \$48 million); PHA administrative fees (\$1.35 billion in Senate and House); and other miscellaneous funds.⁶ The overall \$16.33 billion in the House and \$16.56 billion in the Senate reflect an increase over the President's \$16 billion request.⁷

Voucher Funding Formula

The House bill would provide individual PHAs with funding distributed as a share of national funding with an inflation adjustment,⁸ whereas the Senate continues the FY 2007 funding policy, which would base funding on leasing and actual costs for the most recent twelve months of available data.⁹ The Center on Budget and Policy Priorities preliminarily estimates that the House bill will result in a cut of about 4% below the full formula amount for all agencies, leaving some PHAs with insufficient funds to support vouchers in use at the end of 2007, while the higher funding level and different allocation policy in the Senate bill will fund all vouchers in use.¹⁰

Other Issues

Some of the other major areas addressed in the measures regarding voucher funding include:

- *Reserves* – The House measure prohibits HUD from recapturing any unspent prior year voucher funds, whereas the Senate bill is silent on the matter, but contains a lower rescission figure than the House, diminishing the likelihood reserves will be recaptured.¹¹
- *New vouchers* – Both bills include funds for more vouchers, permitting some additional unassisted families to receive assistance. The House provides \$30 million for 4,000 incremental vouchers (setting aside 3,000 for persons with disabilities and 1,000 for homeless veterans), while the Senate would provide \$105 million for 14,000 vouchers, with \$75 million for homeless veterans and \$30 million for family unification

vouchers (families separated or at risk of separation due to foster care).¹²

- *Tenant protection vouchers* – The Senate bill and report require replacement vouchers be given for all units lost, reversing HUD's policy to award vouchers only for occupied units that are not rebuilt with federal funds; the House Committee took similar action, but only included one-for-one replacement of all lost units in report language.¹³

Section 8 Project-Based Assistance

Section 8 project-based rental assistance subsidizes rents for approximately 1.3 million families in over 19,000 developments nationwide.¹⁴ The House bill would provide about \$6.48 billion for this account, of which \$6.24 billion covers the renewal or amendment of project-based contracts, and no less than \$239 million and not more than \$286 million for contract administrators.¹⁵ The Senate bill would provide lesser amounts—\$5.813 billion for the account, with \$5.523 billion for renewal or amendment of project-based contracts, and not more than \$286 million for contract administrators.¹⁶

A huge concern is whether either of these levels will be sufficient, and preliminary indications are that they will fall far short, perhaps by as much as \$2 billion. The House Committee expressed frustration with HUD's lack of candor on renewal funding needs for the upcoming fiscal year, admonishing the Administration for withholding essential information, writing:

HUD either does not know, or has been unwilling to share, the actual numbers and necessary funding needs with the Committee. If the Department does not know this information, it is a sad reflection on the agency. HUD should have a better grasp of its contracts and funding needs, particularly in the Project-Based Rental Assistance account... If HUD is simply disinclined to share the information, this unwillingness to be responsive to the Committee in the provision of housing and services for vulnerable populations is reprehensible... The Committee questions the practice of citing executive privilege as a rationale for the withholding of requested budgetary information."¹⁷

⁶H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

⁷Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 506 (2007).

⁸H.R. 3074, 110th Cong. Title II (1st Sess. 2007).

⁹S. 1789, 110th Cong. Title II (1st Sess. 2007).

¹⁰Information provided by Barbara Sard, Center on Budget and Policy Priorities.

¹¹H.R. 3074, 110th Cong. Title II (1st Sess. 2007); S. 1789, 110th Cong. Title II (1st Sess. 2007); information provided by Barbara Sard, Center on Budget and Policy Priorities.

¹²H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

¹³S. Rep. No. 110-131, at 139-40 (2007); S. 1789, 110th Cong. Title II (1st Sess. 2007); H.R. Rep. No. 110-238, at 129 (2007); information provided by Barbara Sard, Center on Budget and Policy Priorities.

¹⁴Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 508 (2007).

¹⁵H.R. 3074, 110th Cong. Title II (1st Sess. 2007).

¹⁶S. 1789, 110th Cong. Title II (1st Sess. 2007).

¹⁷H.R. Rep. No. 110-238, at 126-27 (2007).

The Senate Report also requires HUD to provide more data so the funding level can be adjusted to better reflect the actual need over the coming fiscal year.¹⁸ The House Financial Services Committee will reportedly schedule a hearing in September to further investigate this issue, as well as recent problems with HUD's making timely assistance payments to owners this summer under the FY 2007 appropriation.

Public Housing

Operating Fund

The Operating Fund for PHAs to run public housing would receive \$4.2 billion under both the House and Senate bill, exceeding the President's request by \$200 million.¹⁹

Capital Fund

The Senate Committee would modestly increase the public housing capital fund from its FY 2007 level of \$2.439 billion to \$2.5 billion.²⁰ The House bill, on the other hand, would provide the FY 2007 level, rejecting the Administration's request to reduce last year's funding level by \$415 million.²¹

HOPE VI

Consistent with his proposals in recent years, the President again proposed eliminating the HOPE VI program.²² This year's request also sought rescission of last year's appropriation, ostensibly because "The HOPE VI program in coordination with funding from the Public Housing Capital Fund has completed its goal of contributing to the demolition of 100,000 severely distressed public housing units."²³ Both the House and the Senate Committee did more than reject this suggestion—the House allocated \$120 million for HOPE VI, and the Senate Committee increased HOPE VI funding to \$100 million and reauthorized the program for an additional year.²⁴ Because the HOPE VI authorization will expire at the end of FY 2007, legislation has already been introduced in the Senate by Senator Barbara Mikulski to reauthorize the

program²⁵ and similar legislation in the House is expected to be introduced in September.

Community Development Block Grant Program

Under the Administration's proposed changes to the Community Development Block Grant (CDBG) program, funded under the Community Development Fund account, a new funding formula would better target the

²⁵HOPE VI Improvement and Reauthorization Act of 2007, S. 829, 110th Cong. (1st Sess. 2007).

Welcome New NHLP Staff

NHLP will be welcoming three new attorneys in the fall of 2007. We are very pleased to announce that **David Rammler** has joined NHLP's Washington, DC office as Director of Government Relations/Staff Attorney. David has extensive experience in housing and public interest law. David will assume leadership of NHLP's Resident Empowerment Initiative, which provides training and support to the District of Columbia Housing Authority's Resident Advisory Board. He will also work to advance NHLP's policy positions with HUD and USDA and with Congressional staff and committees. David can be reached at NHLP's DC office or at drammler@nhlp.org.

Navneet Grewal will join NHLP's Oakland office as a staff attorney in September. She will join the staff under NHLP's recent Creative and Effective Institutions Award from the John D. and Catherine T. MacArthur Foundation. Navneet is a recent graduate of New York University School of Law. While in law school, Navneet has worked at the NYU Immigrants Rights Clinic, at Asian Pacific Islander Legal Outreach, and South Brooklyn Legal Services. She can be reached at ngrewal@nhlp.org.

Meliah Schultzman will begin a two-year Equal Justice Works Fellowship at NHLP's Oakland offices in October. After graduation from Boalt Hall School of Law at the University of California, Berkeley, Meliah clerked for the Honorable Napoleon Jones, Jr., U.S. District Court Judge, San Diego, California. Her fellowship will focus on implementation of the recently amended Violence Against Women Act (VAWA), which protects the housing rights of victims of domestic violence. Meliah can be reached at mschultzman@nhlp.org.

¹⁸S. Rep. No. 110-131, at 139-40 (2007).

¹⁹H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007), Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 509 (2007).

²⁰S. 1789, 110th Cong. Title II (1st Sess. 2007).

²¹H.R. 3074, 110th Cong. Title II (1st Sess. 2007), Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 509 (2007).

²²Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 511-2 (2007).

²³*Id.* at 511.

²⁴H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

FY08 Budget Chart for Selected HUD Programs (in millions)*

HUD Program (set asides indented)	FY04 Enacted	FY05 Enacted	FY06 Enacted**	FY07 Enacted	FY08 Request	FY08 Senate Committee S. 1789 7/12/07	FY08 full House H.R. 3074 7/24/07
Tenant Based Rental Assistance	14,186	14,766	15,417	15,920	16,000	16,599	16,330
Tenant Protection Vouchers	205	163	178	149	150	150	150
Administrative Fees	1,235	1,200	1,238	1,281	1,351	1,351	1,351
Family Self Sufficiency Coordinators	48	46	47	47	48	50	48
Contract Renewals	12,893	13,463	13,949	14,436	14,444	14,936	14,745
Project Based Rental Assistance	4,792	5,298	5,037	5,976	5,813	5,813	6,480
Contract Renewals	4,692	5,195	4,890	5,829	5,523	5,523	6,239
Public Housing Capital Fund	2,695	2,579	2,439	2,439	2,024	2,500	2,439
Emergency/Disaster Grants	50	30	17	17	0	20	17
Resident Opportunities and Supportive Services (ROSS)	55	52.5	38	38	0	40	38
Public Housing Operating Fund	3,579	2,438	3,564	3,864	4,000	4,200	4,200
HOPE VI	149	143	99	99	-99	100	120
Native American Housing Block Grants	650	621	624	624	627	630	627
Native Hawaiian Housing Block Grants	9	9	9	9	6	9	9
Housing Opportunities for Persons with AIDS	295	282	286	286	300	300	300
Community Development Fund	4,921	4,671	4,178	3,772	3,037	4,060	4,180
CDBG Formula Grants	4,331	4,110	3,711	3,711	2,975	3,708	3,929
Self-Help Homeownership Opportunity Program	27	25	20	20	40 (not a setaside)	70	28
Economic Development Initiative Grants	276	262	307	0	0	248	160
Brownfields Redevelopment	25	24	10	10	0	10	9
HOME Investment Partnership Program	2,006	1,900	1,733	1,733	1,967	1,970	1,757
HOME Formula Grants	1,859	1,789	1,690	1,690	1,903	1,807	1,701
American Dream Downpayment Initiative	87	50	25	25	50 (not a setaside)	0	0

*This table was created by the National Low Income Housing Coalition. It is reprinted here with permission.

**FY06 numbers reflect an across the board cut of 1%.

Housing Counseling Assistance	40	42	42	42	50 (not a setaside)	150	48
Homeless Assistance Grants	1,260	1,241	1,327	1,442	1,586	1,586	1,561
Samaritan Initiative	—	—	—	0	50	0	0
Rural Housing and Economic Development	25	24	17	17	0	17	17
Housing for the Elderly (Section 202)	774	741	735	735	575	735	735
Housing for Persons with Disabilities (Section 811)	249	238	237	237	125	237	237
Fair Housing and Equal Opportunity	48	46	46	46	45	52	46
Fair Housing Assistance	28	26	26	26	24.8	27	25
Fair Housing Initiatives	20	20	20	20	20.2	25	20
Lead-Based Paint Hazard Reduction Program	174	167	152	152	116	151	93
Salaries and Expenses	1,116	1,030	1,141	1,141	1,222	1,222	1,211

most severely distressed communities, which, combined with asserted greater efficiency, would justify substantial cuts in the program of about 25%.²⁶ The Administration also proposed to eliminate the Community Development Loan Guarantee program (Section 108), the Brownfields Economic Development Initiative, the HUD Rural Housing and Economic Development program, contending that the CDBG program and other federal programs provide funding for these same purposes.²⁷ The House Committee chastised the Administration for proposing targeting reform and cuts without actually proposing any substantive legislation containing the recommended changes to the authorizing committees.²⁸

Both the House and Senate committees did not eliminate any of these programs and increased funding for the Community Development Fund account above the \$3.77 billion FY 2007 level to \$4.18 billion (House) and \$4.06 billion (Senate).²⁹ Of these amounts, CDBG formula allocations would receive \$3.93 billion (House) and \$3.71 billion (Senate).

Native American and Hawaiian Block Grants

The Senate would provide \$630 million for the Native American housing program, while the House proposes \$627 million, equivalent to the President's \$627 million

request.³⁰ Both bills would provide \$9 million for Native Hawaiian housing.³¹

Section 202 Supportive Housing for the Elderly

Both bills provide almost identical amounts for housing for seniors under Section 202, \$735 million, the same as last year.³² These funds would cover capital advances, amendments, project rental assistance contracts and service coordinators. The Administration had sought a reduction to \$575 million.

Section 811 Supportive Housing for People with Disabilities

One of the largest percentage cuts proposed by the President in the HUD budget was a 47% decrease in Section 811 funding for permanent housing for persons with disabilities.³³ Congress again rebuffed the proposed cuts, with both the House and the Senate level-funding Section 811 at \$237 million for FY 2008.³⁴

²⁶Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 517-8 (2007).

²⁷*Id.*

²⁸H.R. Rep. No. 110-238, at 159 (2007).

²⁹See the accompanying NLIHC Budget chart; H.R. 3074, 110th Cong. (1st Sess. 2007), S. 1789, 110th Cong. (1st Sess. 2007).

³⁰H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007), Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 511-2 (2007).

³¹H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

³²*Id.*

³³Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 524-5 (2007).

³⁴H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

Housing Opportunities for Persons with AIDS

The President proposed an increase in the Housing Opportunities for Persons with AIDS (HOPWA) program from FY 2007's \$286 million to \$300 million, which, by the Administration's estimate, would support approximately 67,000 housing units for people with HIV/AIDS.³⁵ The House and Senate funding levels met the President's request.³⁶ The Senate Report also expressed support for continued data collection to demonstrate the program's performance outcomes.³⁷

HOME

The HOME program, HUD's primary program to finance the development of affordable housing and assist first-time buyers, provides funds to states and localities to build or rehabilitate housing for rent or ownership, or for tenant-based rental assistance to low- and moderate-income households.

Both the House (\$1.76 billion) and the Senate (\$1.97 billion) bills would fund HOME at higher levels than FY 2007 (\$1.73 billion), but the House bill includes less than the \$1.967 billion proposed by the President.³⁸ While both bills provide set-asides for homeownership counseling, both bills eschew the Administration's requested \$50 million for the American Dream Downpayment Initiative (ADDI), which aims to increase the homeownership rate among low-income and minority individuals by providing downpayment, closing costs, and rehabilitation assistance.³⁹ The Senate justified the ADDI elimination by asserting that such needs can already be met under the HOME program.⁴⁰

Homeless Assistance Programs

The President's \$1.59 billion request for Homeless Assistance Grants was matched by the Senate, although the House came in lower at \$1.56 billion. These funds cover many homeless assistance programs, including emergency shelter grants, supportive housing, mod rehab SROs, and Shelter Plus Care.

Lead-Based Paint and Fair Housing

The Lead Based Paint Hazard Reduction program would be funded in the House and Senate bills at \$93

million and \$151 million, respectively⁴¹—bracketing the \$116 million requested.⁴² The Fair Housing Activity Fund for fair housing assistance and initiatives would receive \$45 million (House) and \$52 million (Senate), respectively.⁴³

Administrative Provisions and Other Notable Issues

The House narrowly rejected (220-207) an amendment by Reps. Frank and Rangel to suspend the community service requirement for adult residents of public housing.

Both bills would rescind previously appropriated but unobligated Section 8 tenant and project-based funds (\$1.3 billion House, \$1.1 billion Senate) to offset these FY 2008 funding levels, while directing HUD to take any additional funds needed to meet these rescission levels from other HUD programs funded in the bills.

Both bills (House § 219, Senate § 219) would continue the prohibitions revised in FY 2006 to prohibit Section 8 assistance to certain unmarried non-veteran students under 24 who are without dependents.

Both bills (House § 215, Senate § 215) would continue FY 2006's administrative provision to permit transfer of project-based assistance contracts from obsolete properties to different developments under limited conditions.

The Senate bill (§ 220), but not the House, would continue the FY 2006 requirement that HUD maintain project-based assistance contracts on HUD-insured properties undergoing a foreclosure or disposition sale.

Conclusion

Because the Administration has issued a veto threat on the House bill due to its funding levels,⁴⁴ the fate of the FY 2008 HUD Appropriation after Senate floor action looks uncertain. Many believe that the bill will be folded into an omnibus funding measure in the fall. ■

³⁵Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 516-7 (2007).

³⁶H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

³⁷S. Rep. No. 110-131, at 148 (2007).

³⁸H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007), Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 518-9 (2007).

³⁹S. Rep. No. 110-131, at 162 (2007). H.R. Rep. No. 110-238, at 161 (2007).

⁴⁰S. Rep. No. 110-131, at 162 (2007).

⁴¹H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

⁴²Office of Management and Budget, The Budget For FY 2008, Department of Housing and Urban Development, 546-7 (2007).

⁴³H.R. 3074, 110th Cong. Title II (1st Sess. 2007), S. 1789, 110th Cong. Title II (1st Sess. 2007).

⁴⁴Office of Management and Budget, Statement of Administration Policy on H.R. 3074 (July 23, 2007).

California Source of Income Statute Applies to Home Loan Lenders

By Rachel Williams*

The California Court of Appeal, Sixth Appellate District recently ruled that a woman had stated a cause of action with regard to various discrimination claims under the Fair Employment and Housing Act (FEHA), the Unruh Civil Rights Act, and the California Unfair Competition Law (UCL).¹ The trial court had sustained a demurrer, holding that the plaintiff had not properly stated any causes of action.² In overruling the demurrer, the Court of Appeal succinctly stated the current state of housing law and discrimination claims under the FEHA.

In June 2003, Kim Sisemore, a practicing and licensed operator of a family day care home, sought financing to purchase a home, where she would operate her day care business and where she and her three-year-old daughter would live.³ She contacted a loan processor to assist in obtaining a loan. The loan processor called Master Financial and explained Sisemore's financial circumstances, including that Sisemore was renting a home and that Sisemore's primary source of income was the operation of the home as a day care facility.⁴ Master Financial informed the loan officer of a loan for which Sisemore would qualify, and gave the specific information and interest rates regarding this loan.⁵ Based on this information, Sisemore submitted an offer for a home she wished to purchase. Her offer was accepted, but, during the escrow process, Master Financial sent Sisemore a letter denying her the loan. The letter stated that Master Financial "does not lend on day care homes."⁶ Master Financial's policy was further reiterated in an email which stated that Master Financial "will NOT make loans with home day care if the home day care income is required to qualify."⁷ As a result, Sisemore had no choice but to seek other loans with less attractive rates than the one she had anticipated receiving from Master Financial.⁸

In 2004, Sisemore filed a complaint against Master Financial.⁹ Shortly thereafter, Project Sentinel, a nonprofit

fair housing organization, joined Sisemore and both filed a first amended complaint.¹⁰ The complaint stated causes of action under the Health and Safety Code section 1597.40, the FEHA, the Unruh Civil Rights Act, and the UCL (Bus. & Prof. Code, section 17200 et seq.). While the trial court granted a demurrer, the appellate court overruled the demurrer regarding most claims, holding instead that Sisemore had sufficiently alleged causes of action under all of the statutes except for the Health and Safety Code.¹¹ The Court of Appeal upheld the demurrer on the cause of action under the Safety and Health Code because the statute only applied to written instruments, and the letter that Master Financial sent to Sisemore could not be considered a written instrument.¹²

The court rejected Master Financial's argument that source-of-income discrimination applies only in the landlord-tenant context.

On the other claims, however, the Court of Appeal did rule that Sisemore had stated a cause of action. In regard to the FEHA claim, the court held that Sisemore had properly stated a cause of action both for an intentional source-of-income discrimination claim¹³ and for a disparate impact discrimination claim.¹⁴

First, the court held that there was a valid intentional source-of-income discrimination claim for disparate treatment under the FEHA since the statute specifically enumerates this as a protected category.¹⁵ The court rejected Master Financial's argument that source-of-income discrimination applies only in the landlord-tenant context.¹⁶ After a long discussion of the legislative history of the FEHA, the court found that the FEHA was meant to apply in a much broader context.¹⁷ To argue that it was only meant to apply in landlord-tenant relationships, the court reasoned, would make other provisions of the FEHA illogical and would frustrate the purposes behind many of its provisions.¹⁸

Second, Sisemore had a claim for disparate impact discrimination because she properly alleged that Master Financial's policies had a disproportionate effect on women or families with children.¹⁹ Even if Master

*Rachel Williams was a summer intern at the National Housing Law Project and a student at the J. Reuben Clark Law School at Brigham Young University.

¹Sisemore v. Master Fin., Inc., 2007 WL 1682289, at *26 (Cal. Ct. App. 6th Dist.).

²Id. at *2.

³Id.

⁴Id.

⁵Id.

⁶Id.

⁷Id.

⁸Id.

⁹Id.

¹⁰Id.

¹¹Id. at *26.

¹²Id. at *5-7.

¹³Id. at *19.

¹⁴Id. at *23.

¹⁵Id. at *19.

¹⁶Id.

¹⁷Id.

¹⁸Id. at *18.

¹⁹Id. at *23.

Financial's policies were not intentionally discriminatory, Sisemore had alleged facts sufficient to demonstrate that those policies did have a disproportionate affect on two protected categories under the FEHA—gender and family status.²⁰ The plaintiff claimed that these two protected classes (women and families) comprise a much higher percentage of day care operators than the percentage of those groups found generally in the county.²¹ As a result, the facially neutral practice of refusing to make loans to day care homes, regardless of intent, had the effect of unlawfully discriminating against females and families. Thus, the court affirmed the view that a FEHA claim may be founded on the basis of disparate impact.²² In reaching this determination, the Court of Appeals thus rejected the defendant's argument that the discrimination had to be against a protected class to sustain claims that the discrimination had a disparate impact.²³

The court also found that Sisemore had stated a viable cause of action for discrimination based on type of employment under the Unruh Act.

The court also found that Sisemore had stated a viable cause of action for discrimination based on type of employment under the Unruh Act.²⁴ The court reasoned that although employment is not a category specifically mentioned in the Unruh Act, California courts have recognized that the particular categories should be seen as "illustrative rather than restrictive."²⁵ Also, in *Harris*, the court stated that "[b]eginning with Cox in 1970, the Unruh Act has been construed to apply to several classifications not expressed in the statute."²⁶ Further, the court relied on its decision in *Long v. Valentino*, 216 Cal.App.3d 1287 (1989), to demonstrate that occupational status has been judicially recognized as a category protected under the Unruh Act.²⁷

In reaching this conclusion, the court explicitly rejected the defendant's argument that under *Harris*, refusing to lend to a prospective borrower based on her occupation is "entirely economic" and is not discrimination based on a "personal" characteristic.²⁸ First, the court rejected the notion that *Harris* meant that only discrimination based

on personal characteristics is prohibited under the Unruh Act.²⁹ Instead, the court explained that the Act provides protection for those categories explicitly identified in the statute, as well as those categories identified in appellate decisions. Second, the court argued that even if the Unruh Act only protected against discrimination based on personal characteristics and not economic characteristics, one's occupational status could be considered a personal characteristic.³⁰ This is especially true in Sisemore's case, since Master Financial rejected her based on her occupation, not based on any economic consideration, such as earning insufficient income to qualify for the loan.³¹

Because one who has stated a cause of action under the FEHA or the Unruh Act automatically has a cause of action under the UCL, the court naturally found that again Sisemore had alleged sufficient facts to state a cause of action under this California statute.³² Also, the court quickly addressed whether Sentinel had standing to bring a claim, and found that it did based on similar standing cases under the federal Fair Housing Act (which California courts frequently look to when interpreting the FEHA).

In holding that Sisemore had properly alleged these various causes of action, the appellate court followed earlier precedent of a factually similar case, *Vance v. Bakas*.³³ In *Vance*, a district court similarly concluded that the plaintiff had sufficiently alleged causes of action under the FEHA, the Unruh Act, and the UCL when Ms. Vance was allegedly turned down when she inquired about renting a home from Bakas.³⁴ Bakas had allegedly told Vance that she did not rent to home day care owners.³⁵ While the reasoning in *Sisemore* paralleled the court's reasoning in *Vance*, *Sisemore* is a significant contribution to case law in California because, unlike *Vance*, it will be a published opinion. ■

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Id.* at *22.

²⁴*Id.* at *13.

²⁵*Id.* at *9 (citing *In re Cox*, 474 P.2d 992, 999 (Cal. 1970)).

²⁶*Sisemore*, 2007 WL 1682289, at *10 (citing *Harris v. Capital Growth Investors XIV*, 805 P.3d 873, 879 (Cal. 1991)).

²⁷*Sisemore* at *11.

²⁸*Id.*

²⁹*Id.*

³⁰*Id.* at *12.

³¹*Id.*

³²*Id.* at *25-26.

³³*Vance v. Bakas*, No. C 05-3385 PVT, 2006 WL 496053 (N.D.Cal. Mar. 1, 2006) (not published).

³⁴*Id.* at *1-2.

³⁵*Id.*

Motion to Dismiss False Claims Act Case Against Westchester County Denied

By Jason Akman*

A federal court ruled that the Anti-Discrimination Center of Metro New York has alleged sufficient facts to state a claim that Westchester County defrauded the federal government. The Court's opening sentence states that

This Opinion holds that a local government entity that certifies to the federal government that it will affirmatively further fair housing as a condition to its receipt of federal funds must consider the existence and impact of race discrimination on housing opportunities and choice in its jurisdiction.¹

On July 13, 2007, Judge Denise Cote denied the County's motion for failure to state a claim² under the False Claims Act.³ In so doing, the judge recognized that the County's receipt of federal funds and its certification that the County does, in fact, "affirmatively further fair housing" in compliance with the Civil Rights Act of 1964 and the Fair Housing Act require consideration of race.⁴ The court also ruled against motions to dismiss for lack of subject matter jurisdiction,⁵ and failure to plead allegations of fraud with particularity.⁶

False Claims Act (FCA)

The FCA was enacted "in 1863 'with the principal goal of stopping the massive frauds perpetrated by large private contractors during the Civil War.'"⁷ It forbids an individual contracting with the federal government from making false or fraudulent claims in order to receive payment. The FCA, in pertinent part, punishes any person who "(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government ... a false or fraudulent claim for payment or approval; [or] (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent

claim paid or approved by the Government."⁸ A private individual can instigate an action on behalf of the United States when any individual violates the FCA.⁹ The act also provides for civil damages not less than \$5,500 and not more than \$11,000, in addition to treble damages for the amount of fraudulent payments.¹⁰ The United States may choose to participate in prosecuting the case. Although damages are awarded to the United States, an individual plaintiff bringing an action on behalf of the United States is entitled to collect a portion of the award, which varies depending on whether the United States government prosecutes the case.¹¹

Factual Background

The Anti-Discrimination Center of Metro New York brought this action on behalf of the U.S. Government pursuant to the FCA.¹² The federal government declined to intervene in the case and the Anti-Discrimination Center proceeded with the case on its own.¹³ Certification to the Secretary of the Department of Housing and Urban Development (HUD) is required of all jurisdictions receiving monies under the Community Development Block Grant (CDBG) and some other federal programs.¹⁴ Certification requires that "the grant will be conducted and administered in conformity with the Civil Rights Act [CRA] of 1964 [42 U.S.C.A. § 2000a et seq.] and the Fair Housing Act [FHA] [42 U.S.C.A. §3601 et seq.], and the grantee will affirmatively further fair housing,"¹⁵ and that "the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate income families or aid in the prevention or elimination of slums or blight."¹⁶ More specifically, the certification requires that the certifying entity "will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the area, take appropriate actions

⁸31 U.S.C. § 3729(a)(1)-(2) (Lexis, LEXIS through P.L. 110-48 approved 07/18/07).

⁹*Id.* § 3730(b); *United States ex rel. Sutton v. Reynolds*, Denying Motion for Summary Judgment (on file at NHL), citing *United States ex rel. Anderson v. Norther Telecom*, 52 F.3d 810, 812-813 (9th Cir. 1995).

¹⁰31 U.S.C. § 3729(a)(7)) (Lexis, LEXIS through P.L. 110-48 approved 07/18/07). Note: 31 U.S.C. 3729(a)(7)(A)-(C) reduces treble damages to double if certain criteria are met. "In 1998, the Department of Justice raised the amount of civil damages under the False Claims Act pursuant to 28 C.F.R. 85.3(a)(9); 28 U.S.C. 2461 (empowering each federal agency to make inflationary adjustments to civil monetary penalties in the agency's jurisdiction)." *Coleman v. Hernandez*, 2007 WL 1515163, (D.Conn. 2007).

¹¹Depending on whether the United States participates in an action, the proportion of the award given to the plaintiff varies. See U.S.C. § 3730(d) (Lexis, LEXIS through P.L. 110-48 approved 07/18/07).

¹²*Anti-Discrimination Center at 2*.

¹³*Id.* at 6.

¹⁴*Id.*

¹⁵*Id.* at 2-3, citing 42 U.S.C. § 5304(b)(2)-(3) (Lexis, LEXIS through P.L. 110-48 approved 07/18/07).

¹⁶*Id.*

*Joe Akman was a summer intern with the National Housing Law Project and a student at University of California Hastings College of Law.

¹*United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester County*, No. 06 Civ. 2860 (DLC) (E.D.N.Y. July 13, 2007) (hereinafter *Anti-Discrimination Center*) (available at <http://antibiaslaw.com/MotionDenied.pdf>).

²Fed. R. Civ. Pro. 12(b)(6) (2007).

³31 U.S.C. § 3729(a)(1)-(2) (Lexis 2007).

⁴*Anti-Discrimination Center at 1*.

⁵Fed. R. Civ. Pro. 12(b)(1) (2007).

⁶*Id.* 9(b) (2007).

⁷*Anti-Discrimination Center at 7-8*.

to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.”¹⁷

The Center alleged that Westchester County knowingly made a fraudulent statement by certifying compliance with the CRA and FHA, excluding consideration of impediments based upon race, and concealing its failure to comply with the certification, and that it received federal funds, including CDBG money and other funds, as a result of this misrepresentation.¹⁸ The County received approximately \$45 million between 2001 and when the case was filed, during which period the County allegedly made certifications, but failed to consider race when affirmatively furthering fair housing.¹⁹ If the Anti-Discrimination Center ultimately prevails in the case, the County may be required to pay a substantial amount in damages.

FRCP 12(b)(6) Motion for Failure to State a Claim Denied

In her ruling, Judge Cote examined the context of the CRA and FHA. The County argued that complying with both acts did not impose an obligation to identify racial discrimination and segregation as impediments to fair housing when it completes its certification.²⁰ Judge Cote rejected the County’s argument and found that to comply with the regulatory and statutory framework required under certification, a jurisdiction must consider the existence and impact of racial discrimination on housing opportunities and choice, and if impediments exist, it must take appropriate action to overcome the effects of those impediments.²¹ In so doing, Judge Cote relied on the broad purpose of the CRA as stated by President Kennedy when he submitted the legislation for congressional consideration,²² case law describing the purpose of the FHA,²³ an executive order issued by President Kennedy,²⁴ the rules governing the CDBG program,²⁵ and HUD’s Fair Housing Planning Guide.²⁶

Judge Cote also acknowledged a scenario whereby the County might not directly consider race when affirmatively furthering fair housing, but nevertheless may satisfy the requirements in the CRA and FHA if, for example, consideration of another factor, such as income, was intended to address a disparity in treatment based

upon race.²⁷ The court also suggested that the County could raise any number of defenses, including that race was “not among the most challenging impediments” to fair housing.²⁸

Denial of Lack of Subject Matter Jurisdiction and Failure to Plead Complaint with Particularity Under FRCP 9(b)

The motion to dismiss for lack of subject matter jurisdiction concerned the fact that the information relied upon to bring a claim under the FCA was publicly disclosed through New York’s Freedom of Information Law (FOIL).²⁹ In an attempt to bar actions against entities for information available in the public domain, Congress, while encouraging private citizens to expose fraud, created a jurisdictional bar precluding claims under the FCA in situations where publicly disclosed information provided the basis for the claim.³⁰ The court found, despite the fact that the public disclosure, via FOIL, provided the basis for the claim, the enumerated list in the FCA, which excluded certain information from an FCA claim, does not include state administrative reports.³¹ Thus, the plaintiff was not subject to the jurisdictional bar and could proceed with the action.

With respect to pleading facts with particularity for allegations of fraud, the court found that the pleadings were sufficiently specific to meet the threshold under Federal Rule of Civil Procedure 9(b).³²

Conclusion

While the denial of the motion to dismiss does not resolve whether the County is ultimately liable for failure to consider race in its plan to affirmatively further fair housing, the decision places all jurisdictions on notice that certification and inaction with respect to race and fair housing have the potential to create extensive liability for jurisdictions receiving federal funds. In addition, the ruling on lack of subject matter jurisdiction provides support that the jurisdictional bar in the FCA does not prevent claims against states or local governmental entities based upon state or local publicly disclosed information. In terms of providing more resources and attention to racial discrimination in fair housing, this decision should help local jurisdictions and advocates to place a priority

¹⁷*Id.* at 3-4, citing 24 C.F.R. §§ 91.425(a)(1)(i), 570.601(a)(2) (2007).

¹⁸*Id.* at 5 and 31.

¹⁹*Id.* at 6.

²⁰*Id.* at 19-20.

²¹*Id.* at 20 and 29.

²²*Id.* at 22, citing *Daniel v. Paul*, 395 U.S. 298, 306 (1969) (citing H.R. Rep. No. 88-914).

²³*Id.* at 22-25.

²⁴*Id.* at 26-27, citing Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (1962).

²⁵*Id.* at 25, citing 42 U.S.C. § 5304.

²⁶*Id.* at 27, citing U.S. Dept. of HUD, Fair Housing Planning Guide, iii (1996).

²⁷ *Id.* at 33.

²⁸ *Id.*

²⁹ *Id.* at 11.

³⁰ *Id.* at 9, citing 31 U.S.C. § 3730(e)(4) (Lexis, LEXIS through P.L. 110-48 approved 07/18/07).

³¹ *Id.* at 15. The court followed a line of reasoning in *United States ex rel. Dunleavy v. County of Delaware*, 123 F.3d 734, 745 (3d Cir. 1997) and found unpersuasive an opposite outcome in *Hays v. Hoffman*, 325 F.3d 982, 988 (8th Cir. 2003), which found state administrative reports to be included in the list of sources in the FCA’s jurisdictional bar.

³² *Id.* at 35.

on the requirements referenced in certifications submitted with an annual application for funds. Ultimately (or perhaps finally), jurisdictions may be held accountable for their lack of full compliance with their duties to affirmatively further fair housing as a condition to receive federal grants. ■

Management Company Agrees to Change Rent Due Date for Disabled Resident

By Connie Y. Chung*

In perhaps the first affirmative fair housing settlement of its kind, a tenant with disabilities and a fair housing organization sued the tenant's housing providers in federal court after they refused to reasonably accommodate him by changing the tenant's rent due date to the third Wednesday of the month to correspond with the date he receives his Social Security disability check. The management company settled the case by agreeing to change the rent due date to accommodate the resident's disability. Although tenants with disabilities who subsist on government benefits frequently request that their rent due date be moved to match the date they receive their checks, there have been no published decisions on this issue.¹

The lawsuit brought by Ricardo Castro and the Housing Rights Center (HRC) relied on the growing number of cases that recognize "economic accommodations," accommodations that are financial in nature and are necessary to overcome disability-caused economic barriers to tenancy. The case, entitled *Castro, et al. v. 1315 Meadow, L.P., et al.*, CV 07-01208 RGK (MANx) (C.D. Cal. 2007) claimed that Mr. Castro's housing providers discriminated based on disability in violation of the federal Fair Housing Act and associated state laws by failing to grant Mr. Castro's reasonable accommodation request. The case settled after defendants agreed to injunctive relief, including an alternative accommodation to the tenant, and payment of attorneys' fees and costs.

*Connie Y. Chung is a staff attorney at the Housing Rights Center.

¹The only case in which this type of accommodation has been raised is *HUD v. Fairway Trails Limited, LLP*, 5:06-CV-12087 (E.D. Mich. 2006). In *Fairway*, the landlord attempted to evict a tenant who had requested a reasonable accommodation to have his rent due date changed. The unlawful detainer court found in the tenant's favor and ordered the landlord to allow the tenant to pay his rent several days after receiving his Social Security disability check. When the landlord attempted to evict the tenant after that, HUD filed suit based on retaliation, but did not raise the claim of failure to grant a reasonable accommodation.

Mr. Castro is a Whittier tenant who is unable to work due to his disabilities, which include Bell's Palsy, diabetes, leucopenia, cirrhosis, thrombocytopenia, hypertension, arthritis, gallstones, and a hernia. He subsists primarily on a \$1,454 disability check he receives from the Social Security Administration every month. Because that disability check arrives on the second Wednesday of the month while his rent is due on the first of the month, he ends up being late on his rent, leading to his manager charging him late fees and issuing notices. Mr. Castro managed to scrape by every month, but only at the last minute and usually by borrowing money from friends and his children, which he found humiliating. When his family and friends couldn't help him and he was really desperate, he borrowed from "cash advance loan" companies, knowing they would charge him exorbitant fees and interest rates that he couldn't pay back. The stress of not knowing how he would cover his rent until his disability check came in exacerbated his existing medical conditions. At one point, the stress from his inability to meet the rent due date triggered his Bell's Palsy condition, causing him to rush to the emergency room due to partial paralysis in his face, slurring of his speech, headaches, and disorientation.

After reading a newspaper article that explained that a tenant subsisting on a disability check could request an accommodation to change the rent due date to correspond with the date of the disability check, Mr. Castro sent a letter to his manager. He asked that his rent due date be changed to the second Wednesday of the month and provided a letter from his doctor confirming his permanent disability, as well as a letter from the Social Security Administration stating that he receives his disability checks on the second Wednesday of every month. Management refused, stating that granting Mr. Castro's request would be a burden in that it would have to make an extra trip to the bank with his check, would be unable to balance its rent books under its current deadlines, and other persons receiving disability benefits would also demand this accommodation.

When the manager refused to grant the requested accommodation, Mr. Castro contacted HRC, a fair housing organization in Los Angeles, and HRC made the same request on Mr. Castro's behalf. After management refused to grant these requests, the fair housing organization and Mr. Castro filed a housing discrimination complaint in federal court.

Housing providers are required under federal and state fair housing laws to grant reasonable accommodations to persons with disabilities if such accommodations are necessary to afford them equal use and enjoyment of their dwelling as their non-disabled counterparts. An accommodation is a waiver, alteration, or change to a housing provider's existing practice or policy. The only basis for not granting a reasonable accommodation is if it would impose an undue financial or administrative

burden on the provider, or fundamentally alter the nature of the dwelling.

Although there are no published decisions addressing changes in rent due dates as a reasonable accommodation, there are cases regarding other types of “economic accommodations” that are financial in nature and are necessary to overcome disability-caused economic barriers to tenancy.²

Although there are no published decisions addressing changes in rent due dates as a reasonable accommodation, there are cases regarding other types of “economic accommodations” that are financial in nature.

Economic accommodations are “exceptions to neutral policies [that] may be mandated by the FHAA where disabled persons’ disability-linked needs for alterations to the policies are essentially financial in nature.”³ The *McGary* Court found that the plaintiff had stated a cognizable claim under the FHA that the City-Defendant had discriminated against him by imposing nuisance liens for not cleaning up his trash. The plaintiff, who had difficulty cleaning the trash in his yard because of his AIDS, asked the city to accommodate him with extra time to clean, which the city ignored. *McGary* found there was a cognizable claim against the city for failing to accommodate.⁴ “The lien the City put on McGary’s house prevents the full use and enjoyment of his property because it interferes with his use of the property as collateral to borrow money. A sick man whose earning ability is impaired by disability might well need the borrowing power that his real estate gives him, as well as his right of occupancy.”⁵

In *Giebler*, the economic accommodation involved getting a co-signer to meet the building’s financial requirements, which the housing provider would not allow. The Ninth Circuit held that a landlord could not refuse a prospective tenant who required a co-signer to meet the complex’s financial requirements, even if the landlord had a policy against co-signers, so long as the tenant’s financial situation was traceable to his disability.⁶

Giebler’s AIDS-related impairments substantially—indeed, entirely—limited his ability to work...Because of his reduced income, Giebler did not meet the minimum income defendants’

policies require of Branham tenants. If Giebler were still able to work in the position he held before becoming ill, he would have met Branham’s financial requirements. A direct causal link therefore existed between Giebler’s impairment, his inability to work, and his inability to comply with defendants’ minimum income requirement relying solely on his individual income.⁷

In some other circuits, the courts have not looked so favorably on economic accommodations, finding that there is not a sufficient correlation between the economic accommodation and the disability to make it reasonable or necessary.⁸

In *Schanz*, the court found that the defendants were not required to accept a guarantor’s agreement for lease payments by a nonprofit organization where plaintiff’s income and credit alone were insufficient to rent the apartment.

In the instant case, this direct correlation between plaintiff’s handicap and the requested accommodation is missing. Put simply, in the case at bar, plaintiff has no need for the Village to accept the Guarantor Agreement to accommodate his handicap because his handicap is not preventing him from obtaining an apartment at The Village. Instead, it is plaintiff’s financial situation which impedes him from renting an apartment at The Village, and it is plaintiff’s financial situation which he is requesting that defendants accommodate... while plaintiff argues that his financial situation is directly attributable to his handicap, such a contention is nothing more than an attempt by him to transform his “financial status” into a “handicap” in order to secure relief under the FHAA.⁹

Similarly, in *Salute*, the Second Circuit explained that requiring the landlord to accept the disabled plaintiff’s Section 8 voucher despite his no-Section 8 policy was not an “accommodation” within the meaning of the FHA because “[w]e think it is fundamental that the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps.”¹⁰

Relying on the Ninth Circuit’s precedent in *McGary* and *Giebler* for economic accommodations, HRC and Mr. Castro filed their case in the Central District of California. Soon after the lawsuit was filed, Mr. Castro’s housing provider agreed to reasonably accommodate him and settle

²*McGary v. City of Portland*, 386 F.3d 1259 (9th Cir. 2004) and *Giebler v. M&B Associates*, 343 F.3d 1143 (9th Cir. 2003).

³*McGary*, 386 F.3d at 1263 quoting *Giebler*, 343 F.3d at 1152 n. 6.

⁴*Id.* at 1264.

⁵*Id.*

⁶*Giebler*, 343 F.3d at 1147-48.

⁷*Id.*

⁸See e.g., *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2d Cir. 1998) and *Schanz v. Village Apartments*, 998 F. Supp 784, 791-92 (E.D. Mich 1998).

⁹*Schanz*, 998 F.Supp. at 792.

¹⁰136 F.3d at 301.

the case. As an alternate accommodation,¹¹ the company agreed to accept partial payment of Mr. Castro's March rent, which he could afford without relying on his Social Security disability check. Beginning in April, he would pay his full rent according to his lease, but would now have his disability check from the month before to make such payments. Under the terms of the settlement, the housing provider also agreed to post fair housing posters at their building, use fair housing logos and slogans in their advertising, enact nondiscrimination policies for managing the building, and reimburse plaintiffs' for attorney's fees and costs. Chris Brancart of Brancart & Brancart co-counseled this case with HRC. ■

Recent Cases

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

Public Housing Eviction—Misrepresentation of Information in Original Application

Bennington Housing Authority v. Bush, 2007 WL 2068328 (Vt. July 20, 2007). In a split decision, the Vermont Supreme Court reversed a superior court decision upholding housing authority's decision to evict a household for fraudulently misrepresenting information on its original admission application, filed five years earlier. The court held that all the elements of fraudulent misrepresentation were not proven by the housing authority when it claimed

that the household failed to disclose a member's prior felony and drug convictions. It found that the application for admission only requested prior criminal history about the head of household, who did not have a criminal conviction, and not all household members. Moreover, it concluded that the head of household, while knowing that a household member had a criminal history, did not know the details of that history and did not intend to misrepresent information when she and the household member with the criminal history authorized the housing authority to conduct a criminal background check on all household members. The fact that the head of household subsequently affirmed the information submitted on the initial application also did not prove fraudulent misrepresentation because the housing authority did not show that the head of household had any greater knowledge when affirming the original application information, particularly when she knew that the housing authority had conducted a criminal background check that did not disclose any disqualifying information. In addition, the court concluded that the housing authority abused its discretion when it decided that its only option was to evict the household. The court found that the housing authority had discretion to admit the household had it known its criminal history and that its subsequent assertion that it would not have admitted the household was self-serving. It also found that the purposes of the public housing program would not be served by evicting a household that has not engaged in criminal or drug activity during the five years that it had been residents of public housing and that rigid application of rules would cause an unreasonable hardship to the household. Accordingly, the court reversed the decision and held that it would be unreasonable to evict the household.

Public Housing Eviction—Application of Strict Liability Standard

Howell v. Justice of Peace Court No. 16, 2007 WL 2319147 (Del. Super., July 10, 2007). On appeal from a decision of a three magistrate panel of the justice of the peace court, which affirmed the eviction of the petitioner on the ground that she engaged in criminal conduct that justified her eviction from a public housing unit, the superior court found that strict liability standard for evictions does not apply to non-drug related criminal activity. It concluded that housing authority must show, in addition to the commission of a crime by the resident, that there was some causal connection between the crime and threats to the right of peaceful enjoyment of other residents. It remanded the matter to the three magistrate justice of the peace court for further proceedings on the ground that its decision, that the resident violated a lease provision, was insufficient for the court to review whether it applied the appropriate standard in granting the housing authority the right of

¹¹Defendants claimed that Mr. Castro's requested accommodation would cause an undue administrative burden because it would be too difficult for the management company to complete its rent consolidation at the end of the month. Whether the accommodation would actually cause an undue administrative burden is not clear, but in any event, the FHA requires that when a housing provider refuses to grant a requested accommodation because it claims the accommodation is not reasonable, the provider must engage in an interactive process with the requester to determine if an alternative accommodation would effectively meet the requester's disability-related needs. JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, Reasonable Accommodations under the Fair Housing Act at No. 7 (May 14, 2004), available at http://www.usdoj.gov/crt/housing/jointstatement_ra.htm.

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

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

possession. In reaching the decision, the appellate court rejected the resident's additional argument that under Delaware law the housing authority was required to show that it was irreparably harmed by the resident's criminal activity. The court held that Delaware law is preempted by federal law on this issue.

Public Housing Eviction—Failure to Pay Maintenance Charges as Part of Rent

Lorain Metro. Hous. Auth. v. Noel, 2007 WL 1661854 (Ohio App. 9 Dist., June 11, 2007). Appellate court affirmed trial court holding that housing authority's attempt to evict resident for failure to pay rent was not justified when housing authority refused to accept the resident's rent payment without the resident also paying assessed maintenance charges. Court held that lease provision that included failure to pay maintenance charges with rent as a material breach of the lease violated federal law which defines level of rent that public housing residents must pay. The court concluded that the lease provision effectively and illegally expands the definition of rent under federal law. Accordingly, it rejected the housing authority claim that it was justified to evict the resident for failure to pay rent when it included the maintenance charges.

Voucher Program—Landlord Termination of Participation

Rosario v. Diagonal Realty, 8 N.Y.3d 755, 2007 WL 1879349 (N.Y., July 2, 2007). Court of appeals upheld Supreme Court determination that under New York City's Rent Stabilization Code landlord may not opt-out of the Section 8 voucher program. Court held that participation in the program was a term and condition of the lease so that renewal lease had to continue with that term and condition. Moreover, court found that federal Section 8 law, which eliminated landlord's obligation to remain in the program indefinitely, did not conflict with Rent Stabilization tenant's right to renew lease on the same terms and conditions as the expired lease.

Voucher Program—Landlord Termination of Participation

W & L Associates, LLC v. Gurevich, 16 Misc.3d 129(A), 2007 WL 1840103 (N.Y. Sup. App. Term, June 27, 2007) (Unreported). Court upheld lower court decision which denied voucher landlord's suit to collect unpaid rent after the landlord advised the housing authority that he would no longer participate in the voucher program and sent resident renewal lease, which the resident did not execute, that obligated the resident to pay full amount of rent. Court held that landlord's acceptance of Section 8 housing assis-

tance payments was a term and condition of the expired lease which, under the city's Rent Stabilization Code, had to be continued in the renewal lease, and landlord was not within its rights in deeming tenant to have renewed the lease and to have agreed to pay the full lease rent. Since the tenant did not default in paying the tenant's share of the rent, the court dismissed the landlord's nonpayment proceeding.

Voucher Termination—Hearing Officer's Basis for the Decision

Gaston v. CHAC, 2007 WL 1745631 (Ill.App. 1 Dist., June 18, 2007). Appellate court upheld circuit court's reversal of the administrator of Chicago's housing choice voucher program to terminate the vouchers of two program participants for their purported failure to report their employment and earnings. The court found that the decision to terminate the vouchers was discretionary and that the administrative hearing officer decision to terminate did not list any reasons for the terminations, effectively treating them as mandatory terminations. With respect to one of the program participants, the court found that the only evidence submitted to the hearing officer was an earnings statement for one particular year. That evidence confirmed the participant's certification that she did not earn any income during that year. The voucher administrator failed to submit any information with respect to other years until the case was before the circuit court, which refused to consider evidence that was not submitted to the hearing officer. Accordingly, the appellate court affirmed the circuit court decision. With respect to the second program participant, the court found that she was a person with a disability and that the hearing officer failed to make any determination as to whether, in accordance with program regulations, a reasonable accommodation should be extended to the program participant to avoid the termination. It, therefore, also upheld the circuit court's reversal of the hearing officer's decision.

Subsidized Housing Eviction—Failure to Pay Rent on a Timely Basis

Schroeder Co. V. Coates, 2007 WL 1720903 (Ohio App. 6 Dist. June 15, 2007). Court upheld municipal court decision to evict two residents of federally assisted housing for failure to timely pay rent. The court rejected assignments of error on the grounds that the landlord waived the right to collect rent on a timely basis by having collected rent late on several prior occasions, that the residents were not aware that the landlord was willing to accept rent payments beyond the ten-day grace period if they had justifiable reasons for paying the rent late, and that the ten-day notice was not in accordance with Ohio and federal law.

RHS Prepayment—Residents’ Right to Intervene in Landlord Quiet Title Action

Meadowfield Apartments, Ltd. v. U.S., 2007 WL 1752271 (M.D.Fla., June 15, 2007). District Court affirms magistrate’s recommendation that rejects residents of Rural Housing Service (RHS) Section 515 multi-family housing project motion to intervene in owner’s suit against RHS that seeks to quiet title to the property for RHS’s failure to accept the owner’s prepayment offer because it violated the Emergency Low Income Housing Preservation Act of 1987. Court upheld magistrate’s conclusions that the residents did not establish that they have a sufficient interest in the transaction at issue to justify intervention, that they did not establish that this action will impede their ability to protect their interests, and that the residents’ interests in the case are adequately protected by the United States.

RHS Prepayment—RHS Acceptance of Prepayment Violates ELIHPA

Goldammer v. Veneman, 2007 WL 1748665 (D.Or., June 14, 2007). See detailed article on this decision at 37 Housing Law Bulletin 103 (2007).

Fair Housing—Obligation to Disclose Disability

Hirschmann v. Hassapoyannes, 2007 WL 2108462 (N.Y.Sup. June 11, 2007). Court granted summary judgement to plaintiff on claims that coop board violated federal, state, and city fair housing laws when it rescinded its prior approval to purchase a cooperative unit after the purchaser sought permission from the coop board to install a washer and dryer in the unit in order to accommodate a disability. The coop board claimed that it had an independent nondiscriminatory reason to reject the application, namely that the purchaser failed to disclose to the board his intent to seek permission to install the washer and dryer. The court rejected the argument on the basis that the coop board effectively required the purchaser to disclose his disability, which is protected information under all the fair housing laws. Accordingly, the court ordered the coop board to reinstate its approval to sell the coop unit to the plaintiff.

Constitutional Law—City Limiting Rights of Undocumented Immigrants to Lease Apartments

Lozano v. City of Hazleton, 2007 WL 2163093 (M.D.Pa. July 26, 2007). Court struck down city ordinances, which among other requirements, precluded landlords from renting dwellings to persons not legally admitted to the United States and required all renters to register with the city and provide resident status documentation as part

of the registration process. The court held that the ordinances were preempted by federal law and are, therefore, unconstitutional. It also held that the ordinances violated the landlords’ and tenants’ due process rights and that 42 U.S.C. § 1981 forbade city from prohibiting undocumented persons from entering into leases. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA—Rural Housing Service/Rural Development (RD)) and the Veterans Administration issued in June and July of 2007. For the most part, the summaries are taken directly from the summary of the regulation in the Federal Register or each notice’s introductory paragraphs.

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

HUD Proposed Rules

72 Fed. Reg. 33,843 (June 19, 2007)

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs

Summary: This proposed rule would revise HUD’s public and assisted housing program regulations to implement the process of upfront income verification of applicants and participants in assistance programs by public housing agencies, including through use of the Enterprise Income Verification system. HUD believes that this process would help cure deficiencies in public and assisted housing rental subsidy determinations identified through quality control studies and internal audits. The rule is consistent with HUD’s comprehensive strategy under the Rental Housing Integrity Improvement Project initiative to reduce by half the number and dollar amount of errors in HUD’s rental assistance programs. The new verification process would be applicable to all assistance applicants and partici-

¹http://www.access.gpo.gov/su_docs.

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

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

⁴<http://www.rdinit.usda.gov/regs>.

pants in the public housing, tenant-based housing choice voucher, and multifamily housing programs. This proposed rule would also make one conforming change to the HOME program regarding income determinations.

Comment Due Date: August 20, 2007.

72 Fed. Reg. 39,539 (July 18, 2007)

**Design and Construction Requirements;
Compliance With ANSI A117.1 Standards**

Summary: This proposed rule would amend HUD's regulations with respect to the design and construction requirements of the Fair Housing Act and its amendments by updating and clarifying the references to the American National Standards Institute (ANSI) building standard for accessibility and by codifying the current HUD recognized safe harbors under the Act. This proposed rule would update the references to the ANSI A117.1 to adopt the 2003 edition of the standard. This proposed rule would also clarify that compliance with the appropriate requirements of the 1986, 1992, and 1998 editions also remains sufficient to meet the design and construction requirements of the Fair Housing Act and its amendments.

Comment Due Date: September 17, 2007.

72 Fed. Reg. 39,545 (July 18, 2007)

**Use of Public Housing Capital and Operating Funds
for Financing Activities**

Summary: This proposed rule would allow public housing agencies (PHAs) to use proceeds under either the Capital Fund or Operating Fund programs for financing activities, including payments of debt service and customary financing costs for the modernization and development of public housing, including public housing in mixed-finance developments. The pledge of public housing projects and other property generally involves the long-term commitment of public housing funds. This proposed rule would support HUD's objective to enhance PHA capital improvement planning and the public housing program transition to asset management decision-making by establishing program requirements, submission requirements, and the approval process for PHAs to request authorization from HUD to pledge either capital or operating funds for debt service payments.

Comment Due Date: September 17, 2007.

HUD Federal Register Notices

72 Fed. Reg. 33,766 (June 19, 2007)

Notice of Submission of Proposed Information Collection to OMB; Restriction on Assistance to Noncitizens

Summary: HUD has submitted to the Office of Management and Budget (OMB) an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to Section 214 of the Housing and Community Development Act of 1980, as amended, which prohibits

HUD from making financial assistance available for non-citizens, unless they meet one of the categories of eligible immigration status specified in Section 214. Prior to being admitted, all eligible noncitizens younger than age 62 must sign a declaration of their status and a verification consent form and provide their original Immigration and Naturalization Service (INS) documentation.

Comments Due Date: July 19, 2007.

72 Fed. Reg. 33,767 (June 19, 2007)

**Redelegation of Authority to the Director of the HUD
Office of Healthy Homes and Lead Hazard Control
Regarding Lead-Based Paint Enforcement**

Summary: This notice redelegates to the Director of the Office of Healthy Homes and Lead Hazard Control authority presently residing with the Assistant Secretary for Housing—Federal Housing Commissioner or the Assistant Secretary's designee under 24 CFR 30.45 and 30.68 with respect to enforcement of lead-based paint requirements.

Effective Date: June 8, 2007.

72 Fed. Reg. 34,269 (June 21, 2007)

**Notice of Proposed Information Collection for
Public Comment; Requirements for Designating
Housing Projects**

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to Section 10 of the Housing Opportunity and Extension Act of 1996. Under that section, public housing agencies (PHAs) are required to submit to HUD a plan for designation before they designate projects for elderly families only, disabled families only, or elderly and disabled families. In this plan, PHAs must document why the designation is needed and what additional housing resources will be available to the non-designated group.

Comments Due Date: August 20, 2007.

72 Fed. Reg. 34,471 (June 22, 2007)

Notice of Submission of Proposed Information Collection to OMB; Housing Choice Voucher Program

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to public housing authorities (PHAs) application for funding to assist very-low-income families to lease or purchase housing. PHAs maintain records on participant eligibility, unit acceptability, lease and/or housing assistance payments, and budget and payment documentation.

Comments Due Date: July 23, 2007.

72 Fed. Reg. 34,472 (June 22, 2007)

Notice of Submission of Proposed Information Collection to OMB; Multifamily Project Monthly Accounting Reports

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information

collected relates to the assessment of the need for remedial actions to correct project deficiencies or head off potential default of a project mortgage. HUD monitors compliance with contractual agreements and analyzes cash flow trends as well as occupancy and rent collection levels.

Comments Due Date: July 23, 2007.

72 Fed. Reg. 34,474 (June 22, 2007)

**Notice of Proposed Information Collection:
Comment Request; Pet Ownership in Assisted Rental
Housing for the Elderly or Handicapped**

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the fact that owners of subsidized multifamily housing projects for the elderly or disabled are required to adhere to statutory, regulatory, and administrative requirements related to pet ownership. Owners are required to provide notice to tenants when developing or amending pet rules, solicit and review tenant comments, distribute pet rules or amended pet rules to tenants, and refund pet deposits in accordance with HUD requirements. Additionally, pet owners are required to register pets with the project manager annually.

Comments Due Date: August 21, 2007.

72 Fed. Reg. 35,249 (June 27, 2007)

Mortgagee Review Board; Administrative Actions

Summary: This notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

72 Fed. Reg. 35,714 (June 29, 2007)

**Notice of Proposed Information Collection:
Comment Request; Home Equity Conversion Mortgage
(HECM) Insurance Application for the Origination of
Reverse Mortgages and Related Documents OMB Control
Number 2502-0524**

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the documents used to determine the eligibility of a reverse mortgage loan application and property requirements for FHA's mortgage insurance. This collection also contains disclosure requirements that will provide the prospective borrower with statutory and regulatory information needed to explain the financial implications of and alternatives to a HECM; the costs associated with obtaining a reverse mortgage; due and payable conditions and other relevant information necessary to determine if this type of mortgage transaction is for the sole benefit of the borrower. Without these documents, HUD would have difficulty in determining the eligibility of a loan application and property, thus, jeopardize the insurance fund.

Comments Due Date: August 28, 2007.

72 Fed. Reg. 35,849 (June 29, 2007)

HOPE VI Main Street Grants

Summary: This Notice of Fund Availability announces the availability of approximately \$2.5 million to provide grants to small communities to assist in the rejuvenation of an historic or traditional central business district or "Main Street" area by replacing unused commercial space in buildings with affordable housing units.

Application Submission Date: August 29, 2007.

72 Fed. Reg. 36,299 (July 2, 2007)

**Notice of Regulatory Waiver Requests Granted for the
First Quarter of Calendar Year 2007**

Summary: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly Federal Register notices of all regulatory waivers that HUD has approved. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2007 and ending on March 31, 2007.

72 Fed. Reg. 37,257 (July 9, 2007)

**Notice of Proposed Information Collection: Comment
Request; Disaster Recovery Grant Reporting System**

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to HUD's need to collect information with the Disaster Recovery Grant Reporting System to comply with quarterly Congressional reporting requirements with respect to the use of Community Development Block Grant (CDBG) funds awarded under several appropriations for disaster recovery assistance and for other related program management purposes. Use of this system for reporting purposes is mandatory. Once submitted to HUD, information is public.

Comments Due Date: September 7, 2007.

72 Fed. Reg. 38,397 (July 12, 2007)

**Proposed Fair Market Rents (FMRs) for Fiscal Year 2008
for the Housing Choice Voucher Program and Moderate
Rehabilitation Single Room Occupancy Program**

Summary: This notice proposes FMRs for FY 2008. The proposed numbers amend FMR schedules used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program. The proposed FY 2008 FMR areas are based on current OMB metropolitan area definitions, and include HUD modifications that were first used in the determination of FY 2006 FMR areas. For the first time, HUD is using data from the Census Bureau's American Community Survey (ACS). HUD is largely replacing the accumulated from 2001 through 2005 FMR update factors from various sources with data from ACS's first

full implementation year of 2005. HUD uses ACS data in different ways according to how many two-bedroom standard quality and recent mover sample cases are available in the FMR area or in its Core-Based Statistical Area. Random digit dialing surveys performed between 2001 and 2005 may also be used under certain conditions. Proposed FY 2008 FMRs are the first to be able to take advantage of the full-implementation ACS, a major new Census survey that is being conducted annually and that will replace the Decennial Census "long-form" sample survey that is the source of the Decennial Census rent information. The ACS will permit more accurate FMR estimates each year than were possible using the Decennial Census trending techniques of previous FMR estimates.

Comment Due Date: August 13, 2007.

72 Fed. Reg. 39,432 (July 18, 2007)

Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code

Summary: This notice publishes a report of a review by the Department of Housing and Urban Development of certain accessibility provisions of the International Building Code, 2006

72 Fed. Reg. 39,635 (July 19, 2007)

Notice of Submission of Proposed Information Collection to OMB; Public Housing Inventory Removal Application

Summary: The proposed information collection requirement described below has been submitted to OMB for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal. This collection of information centralizes and standardizes HUD's review and approval of non-funded, noncompetitive requests of public housing authorities to remove public housing property from their inventories via disposition, demolition, voluntary conversion, required conversion, homeownership, or eminent domain proceedings.

Comments Due Date: August 20, 2007.

72 Fed. Reg. 40,890 (July 25, 2007)

Notice of Submission of Proposed Information Collection to OMB; Implementation of the Violence Against Women and Department of Justice Reauthorization Act of 2005

Summary: HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the fact that residents residing in the public housing and Section 8 voucher programs will submit a HUD approval certification form that attests that the individual is a victim of abuse and that the incidences of abuse are bona fide. Without the certification, a PHA or owner may terminate assistance. The information provided to the PHA and owner is confidential.

Comments Due Date: August 24, 2007.

72 Fed. Reg. 41,821 (July 31, 2007)

Supplement to the Fiscal Year (FY) 2007 SuperNOFA for HUD's Discretionary Programs: NOFA for the HOPE VI Revitalization Grants Program

Summary: On March 13, 2007, HUD published its FY 2007 SuperNOFA for HUD's Discretionary Programs, which contained 38 funding opportunities. Today's publication supplements the SuperNOFA by adding funding opportunities for the HOPE VI Revitalization program.

HUD Notices

PIH 2007-13 (June 15, 2007)

Certification of Accuracy of Data in the Public Housing Information Center System Used to Calculate the Capital Fund Formula Allocation in Fiscal Year 2007

Summary: The purpose of this notice is to advise executive directors of PHAs that HUD is requiring them to certify to the accuracy of the data PHAs have submitted to HUD in the Public Housing Information Center system that the department will use to calculate the formula for allocating Capital Fund grants in Federal Fiscal Year 2007. In addition, this notice advises executive directors of the opportunity to review and request adjustment of select 1999 data that the department also uses to calculate the Capital Fund formula.

PIH 2007-14 (June 18, 2007)

Implementation of Federal Fiscal Year 2007 Funding Provisions for the Housing Choice Voucher Program

Summary: This notice implements the Housing Choice Voucher program funding provisions resulting from enactment of various appropriations acts, one of which establishes a new allocation methodology for calculating and distributing housing assistance payments (HAP), HAP renewal funds and continues to prohibit the use of renewal funds for over-leasing (re-benchmarking). These requirements supersede any other notice or regulation to the extent that such notice or regulation is inconsistent with the appropriations acts. Additionally, the acts contain special provisions related to the calculation of HAP renewal funding for certain categories of public housing agencies (PHAs). This notice continues to provide that any budget authority provided to PHAs in calendar year 2007 that exceeds actual program expenses for the same period must be maintained in the PHAs' net cumulative HAP and Administrative Fee equity accounts (formerly known as the Undesignated Fund Balance account) in accordance with Generally Accepted Accounting Principles.

PIH Notice 2007-15 (June 20, 2007)

Applicability of Public Housing Development Requirements to Transactions between Public Housing Agencies and their Related Affiliates and Instrumentalities

Summary: HUD has encouraged the formation of new and innovative public and private partnerships to ensure

long-term sustainability of public housing developments and the leveraging of public and private resources to transform communities. Public housing agencies (PHAs) continue to form and expand their relationships with private partners, including partnerships with entities related to the PHA. The Office of Inspector General, in report No. 2004-AT-0001, has alleged violations of the Annual Contributions Contract (ACC) and regulations in agreements regarding development activities and PHA relationships with affiliated housing development entities and nonprofit organizations. This notice intends to reaffirm the requirements of Public and Indian Housing Programs including the United States Housing Act of 1937, the ACC, and regulations (collectively, public housing requirements) that apply to public housing activities, including mixed-finance development activities. This notice will also assist PHAs in avoiding violations of existing requirements in development transactions with their partners. HUD intends to use this notice to focus on existing development related requirements applicable to administrative fees and development cost allocation; prohibition of conflicts of interest; the procurement of related entities; and disposition and encumbrance of public housing property. Moreover, this notice will focus on these requirements as they pertain to Affiliates and Instrumentalities, entities through which PHAs are conducting development activities. Additionally, this notice will provide guidance to HUD headquarters and field office staff on identifying transactions that have not been approved by the department and addressing the issues that arise in the transactions.

PIH Notice 2007-16 (June 18, 2007)

Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 1 and Year 2 Applications

Summary: This notice provides information for public housing agencies (PHAs) that wish to submit documentation of successful conversion to asset management in order to discontinue their reduction in operating subsidy under the Operating Fund Program regulations (24 CFR part 990), commonly referred to as the stop-loss provision. This notice applies only to PHAs that: (1) lose funding under the new formula; and (2) wish to submit documentation in accordance with the requirements for Year 1 and Year 2.

PIH 2007-17 (June 21, 2007)

Disaster Voucher Program (DVP)—Extension of the DVP and Revised Term for the Waiver of Tenant Contribution

Summary: This notice informs DVP administering public housing agencies that the DVP has been extended beyond its previous sunset date of September 30, 2007. In addition, the time period for the waiver of the normally applicable voucher program tenant rent contribution requirements for DVP families has been changed. The waiver of the tenants rent contribution now applies to all

DVP families until December 31, 2007. With the exception of the revised policies covered by this notice, the operating requirements and guidance set forth in HUD Notices PIH 2006-12, PIH 2007-3, and other notices on the DVP remain in effect.

PIH 2007-18 (June 26, 2007)

Extension Housing Choice Voucher Program Enhanced Vouchers Adjustment of Voucher Housing Assistance Payments for Certain Families that Received Preservation Voucher Assistance as the Result of an Owner Prepayment or Voluntary Termination of Mortgage Insurance for a Preservation Eligible Property in Federal Fiscal Year (FY) 1997, FY 1998, and FY 1999

Summary: This notice extends Notice PIH 2006-26, same subject, which will expire on June 30, 2007, for another year until June 30, 2008. Notice PIH-2006-26 extended PIH 2005-24, which revised the procedure for the calculation of voucher housing assistance payments under PIH Notices 97-29, 98-19, 99-16, and 00-09 for families that received enhanced vouchers as the result of an owner decision to prepay the mortgage or voluntarily terminate the FHA mortgage insurance of a preservation eligible property in FY 1997, 1998, and 1999. Notice PIH 2005-24 also provides instructions to PHAs on identifying impacted families and re-calculating HAP for the period in question.

PIH 2007-20 (June 6, 2007)

Impact of Non-Parental Child-Only Welfare Grants on Families Participating in the Family Self-Sufficiency (FSS) Program

Summary: This notice provides guidance pertaining to FSS families that receive Temporary Assistance for Needy Families (TANF) grants that are made to a dependent child or to a caretaker on the child's behalf solely on the basis of the child's need and not on the need of the child's current non-parental caretaker. These grants are commonly referred to as TANF child-only grants or TANF non-needy grants.

PIH 2007-21 (July 23, 2007)

Guidance on Methods and Schedules for Calculating Federal Fiscal Year (FFY) 2008 Operating Subsidy Eligibility

Summary: This notice provides public housing agencies (PHAs) with instructions for the submission of Calendar Year (CY) 2008 operating subsidy calculations, funded from Federal Fiscal Year 2008 appropriations. For CY 2008 and thereafter, HUD will provide operating subsidy at the project level. Separate operating subsidy calculation forms must be submitted for each project identified as such for the purpose of asset management under 24 C.F.R. § 990.265. A PHA that owns and operates fewer than 250 units and treats its entire portfolio as a single project under 24 CFR § 990.260(b) shall only submit one set of forms.

PIH 2007-22 (July 31, 2007)

Submission of Calendar Year 2007 Notices of Intent and Fungibility Plans by PHAs in Hurricane Katrina and Rita Disaster Areas Authorized to Combine Section 8(o) and 9(d)(e)

Summary: This notice informs public housing agencies in Louisiana and Mississippi who are eligible to combine Housing Choice Voucher and public housing operating and capital funds under Section 901 of 2006 emergency supplemental appropriations that this flexibility has been extended to include both calendar years (CY) 2006 and 2007. The 2006 appropriations language only allowed fungibility for CY 2006.

H 2007-05 (July 6, 2007)

Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Program Loans in Transfer of Physical Assets (TPA) and Refinance Transactions

Summary: These guidelines amend and restate HUD's draft Guidance dated June 2006, titled "Draft Policy for Assumption and Subordination of Mark-to-Market (M2M) Notes in Transfer of Physical Assets (TPA) Transactions." The guidelines outlined in this Notice apply to any request to assume, subordinate, and/or assign a loan evidenced by a Note (defined below), and to waive the due-on-sale or refinance clause contained therein. This Guidance also applies to requests to assume and/or subordinate loans originated under M2M's predecessor program, the Portfolio Reengineering Demonstration Program (Demonstration Program). The guidelines contained in this notice are effective immediately for all such transactions. The Guidance outlines a request process and review criteria for owners who wish to refinance or sell a property that has received the benefits of a debt restructuring under M2M or the Demonstration Program, and where the loans evidenced by a Mortgage Restructuring Note (MRN), and/or a Contingent Repayment Note (CRN), or a Demo Note, will be assumed and/or subordinated, or where HUD will approve debt assignment, modification or forgiveness with respect to a MRN and/or CRN to a qualifying nonprofit purchaser. These requests may be approved, rejected or modified by HUD in its sole discretion.

Rural Housing Service Federal Register Notices

72 Fed. Reg. 32,070 (June 11, 2007)

Section 538 Multi-Family Housing Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2007

Summary: Through this Notice of Funds Availability (NOFA), the agency announces the implementation of a demonstration program under the Section 538 Guaranteed Rural Rental Housing Program pursuant to 7 CFR 3565.4 for Fiscal Year 2007 and 7 CFR 3565.17 Demonstration programs. The Demonstration Program's purpose is to test

the viability and efficacy of the concept of a continuous loan note guarantee through the construction and permanent loan financing phases of a project. Those applications that meet the Demonstration Program's qualifying criteria and are selected to participate will be offered one loan note guarantee upon closing of the construction loan that will be in effect throughout both of the project's construction and permanent phases without interruption.

72 Fed. Reg. 33,969 (June 20, 2007)

Initial Notice of Funds Availability (NOFA) Inviting Applications from Qualified Organizations for Fiscal Year 2007 Funding

Summary: The Rural Housing Service announces it is soliciting competitive applications under its Technical and Supervisory Assistance grant program. Grants will be awarded to eligible applicant organizations to conduct programs of technical and supervisory assistance for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

Rural Housing Service Administrative Notices

RD AN No. 4293 (1980-D) (July 9, 2007)

Single Family Housing Guaranteed Loan Program Section 8 Homeownership Vouchers

Summary: The purpose of this Administrative Notice is to clarify how Section 8 Homeownership Vouchers may be used for qualifying applicants under the Single Family Housing Guaranteed Loan Program.

Veterans Administration Federal Register Notice

72 Fed. Reg. 30,505 (June 1, 2007)

Loan Guaranty: Loan Servicing and Claims Procedures Modifications

Summary: This document provides a second supplemental notice regarding a proposal to amend the Department of Veterans Affairs (VA) Loan Guaranty regulations related to several aspects of the servicing and liquidating of guaranteed housing loans in default, and submission of guaranty claims by loan holders. This notice provides specific information regarding VA's proposal to phase-in implementation of the new electronic reporting requirement and other provisions in the proposed rule published February 18, 2005 (70 FR 8472). In addition, VA is taking this opportunity to address certain comments raised by some members of industry in response to VA's publication of the first supplemental notice to this rulemaking (November 27, 2006 (71 FR 68948)), and to provide further explanation of the ongoing development of VA's computer-based tracking system. VA is reopening the comment period for the limited purpose of accepting public comments concerning the supplemental information provided in this notice.

Comments Due Date: June 15, 2007. ■

NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM

PUBLICATION

**Combined Set: HUD Housing Programs:
Tenants' Rights (3d ed. 2004) and new 2006-2007 Supplement**

HUD Housing Programs: Tenants' Rights 2006-2007 Supplement

Housing Law Bulletin (10-issue subscription)

**Welfare and Housing—How Can the Housing Assistance Programs
Help Welfare Recipients? (2000)**

Housing for All: Keeping the Promise (1995)

The Family Self-Sufficiency Program: An Advocate's Guide (1994)

**A Passage from Poverty: Self-Sufficiency Policies and the
Housing Programs (1991)**



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