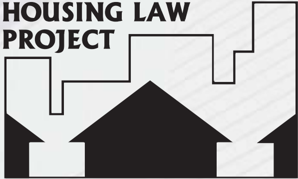

Housing Law Bulletin

Volume 37 • September 2007

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Project-Based Section 8 Funding Crisis *—see page 149*

Challenging Voucher Side Payments *—see page 156*

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Cover: Percy Abram Jr. Senior Apartments, a 45-unit Section 202 project in Oakland, California. Managed by Christian Church Homes. Developed by Christian Church Homes of Northern California and St. Columbia Development Corporation.

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Growing Reports of a Project-Based Section 8 Funding Crisis as FY 2007 Closes*

Reports have been surfacing over the summer of the Department of Urban Housing and Development (HUD) failing to make timely Housing Assistance Payments (HAP) to Section 8 project-based housing owners. Apparently, HUD does not have enough funding authorized to honor its contractual commitments.

Seventeen senators, led by Banking, Housing, and Urban Affairs Committee Chairman Christopher Dodd (D-CT), sent a letter to HUD Secretary Alphonso Jackson on September 6 urging him to "take immediate action to fund all property owners under their HAP contracts, and to let Congress know as soon as possible if HUD does not have sufficient funds to make these payments."[1] The House Financial Services Subcommittee on Housing and Community Opportunity is considering hearings on the funding shortage some time this month.

The origins of the problem stem from the Office of Management and Budget's (OMB) perennial objective to keep the HUD budget from increasing, even while the cost of HAP contracts has been growing. This has forced HUD to fund contracts at less than a full year of funding and to make up the deficit in the next fiscal year. In late 2006, the HUD Chief Financial Officer (CFO) decided this practice was illegal, requiring HUD to stop funding renewals for less than twelve months, leading to the current crisis.

For Fiscal Year (FY) 2007, Congress added $939 million to the $5.5 billion requested by the Administration. However, this amount will be about $1 billion short of what was actually needed in FY 2007.

Multifamily industry associations, which represent multifamily owners and managers, reported that more than 10,000 contracts were unpaid in July.[2] On July 13, HUD's Office of Multifamily Programs sent a memorandum explaining that owners could ask HUD's field offices to approve the use of residual receipts and/or reserves for replacement in order to meet mortgage payments or other operating expenses.

In early August, HUD finally obtained a release of $1.7 billion from OMB to begin paying past due HAP payments. Those July HAP payments were to reach

*This article is an edited version of several items in the National Low-Income Housing Coalition's weekly Memo to Members (September 7, 14 and 21, 2007), reprinted here with permission. Please join NLIHC by visiting www.nlihc.org.

[1]The letter to Secretary Jackson from Senator Dodd and the other Senators can be found at www.nlihc.org/doc/senateletteronHAP shortfall.pdf.

[2]The National Leased Housing Association's summary of the issue can be found at www.hudnlha.com/housing_news/70_FALL_SEMINAR.asp.

properties by mid-August. At about the same time, an additional $600 million was released by OMB to meet HAP contract renewals coming up in August and September. But this will not be enough to renew for a full twelve months those HAP contracts that had a renewal date during the last quarter of the fiscal year. The Office of Multifamily Housing was able to negotiate a short-term fix with the CFO that will allow partial payments, but the problem will continue unresolved into the new fiscal year if no further action is taken.

Apparently, and astoundingly, HUD does not know its actual project-based Section 8 renewal costs. HUD has engaged an independent auditor to get an accurate accounting of what the total costs will be for FY 2008. The audit report was expected in mid-September, but likely will be delayed further into the fall. Industry officials estimate that HUD will need $2 billion more than it requested for FY 2008, in order to cover not only FY 2008, but also the renewal costs of the last quarter of FY 2007 and the reimbursement of long-term contract amounts “borrowed” to make the short-term fixes of FY 2007.

The full consequences of the funding shortage are yet to be realized. Small property owners with shallow reserves have struggled this summer to make mortgage payments and have had to put off repairs. Some owners, frustrated with HUD’s failure to meet its contractual obligations, may not renew their Section 8 contracts and opt out of the program, resulting in a loss of housing that is affordable to low-income people. And other HUD programs could suffer further cutbacks in order to plug the $2 billion gap in project-based Section 8 renewal needs.

Although the FY 2008 HUD Appropriations bill (H.R. 3074), as passed by the Senate, provides needed increases for many housing programs, it does not provide any more funding for Section 8 project-based contract renewals beyond the HUD-requested committee level of $5.5 million. Because HUD still has not provided Congress with an accurate estimate of the needed amount, the current level may be as much as $2 billion short, and Congress may need to revisit project-based funding levels in conference or later this year.

As the Senate began its consideration of the HUD bill in mid-September, Senator Kit Bond (R-MO), the ranking member of the Senate Appropriations Subcommittee on Transportation, HUD, and Related Agencies, expressed concern about its project-based Section 8 funding levels: “I raise one issue we have not been able to address; namely, HUD and OMB’s failure to provide adequate funding for HUD’s Section 8 project-based housing program for fiscal year 2008. To my colleagues and to OMB and to HUD, I say: Let’s get serious. This is a critical and important program which serves many of our most vulnerable citizens—low income families, extremely low income families, seniors and persons with disabilities. If we don’t fund it, they are out on the street. None of us wants to see that result.”

“HUD has been unable to fund in a full and timely fashion many of these contracts during fiscal year 2007,” Senator Bond continued, “and this problem is only going to get worse in 2008 to the extent that HUD could have a shortfall in its budget of as much as $2 billion or more which is needed to meet its obligations to these contracts in the next fiscal year. If we don’t act in this bill, we are going to see a $2 billion shortfall. Think of the number of people who would be put out on the street if we don’t solve that problem. It is unacceptable.”

An amendment by Senator Russ Feingold (D-WI) was adopted that directs HUD to provide Congress with specific information regarding the amounts necessary to fully renew Section 8 project-based assistance contracts in FY 2007 and FY 2008 and requires HUD to provide such information for FY 2009.

Later, on September 14, Senator Bond sent a letter to OMB Director Jim Nussle stating, “I have been advised that OMB has requested inadequate funds to meet these Section 8 contract obligations by some $2.2 billion in the FY 2008 HUD budget [request]. The failure to fund these Section 8 project-based contracts adequately would be a catastrophe…”

Senator Bond wrote, “I fully hope and expect OMB to provide the necessary funding for this program through a budget amendment or as part of a continuing resolution or through emergency supplemental.” Despite the shortfall, the President has already promised to veto the HUD bill. Senator Bond asked Mr. Nussle to provide him with a summary of the funding status of all the Section 8 project-based contracts, including all contracts that are currently underfunded in FY 2007, the estimated shortfall for FY 2008 at the $5.5 billion funding level, as well as OMB’s justification for requesting insufficient funds for FY 2008.

On September 17, Senator Charles Schumer (D-NY), chair of the Senate Banking, Housing, and Urban Affairs Subcommittee on Housing and Transportation, issued a press release on the topic, saying HUD “has been financially starving New York State housing providers of reimbursement checks for weeks and will be unable to fully fund them through the rest of 2007.” Senator Schumer calls the non-payment of subsidies “a disincentive for property owners to continue to participate in the Section 8 program.” According to Senator Schumer’s press release, only 613 out of 1271 housing assistance payments were made on time to New York project-based Section 8 owners in August.

Advocates are urged to contact their members of Congress to inform them about the apparent funding shortfall for project-based Section 8 renewals in the FY 2008 HUD appropriations bill, and request their support for a true solution: adequate funding for renewal of all expiring contracts, without further harm to other HUD affordable housing programs, as well as provisions to ensure that the Administration provides accurate information about renewal needs for future appropriations. ■

New Utility Allowance Advocacy Guide Available from NHLP

For most federally subsidized housing programs, tenants that pay their own utilities are supposed to be provided with a utility allowance to cover reasonable utility costs. In recent years, as utility rates have skyrocketed across the nation, many owners and administrators of subsidized housing have failed to make corresponding increases in their utility allowances, leaving public housing tenants to unfairly shoulder the costs. In light of this problem, advocating for higher utility allowances is one of the most effective ways to improve housing affordability for subsidized housing tenants, either as an individual case or as a class action. Recent efforts have resulted in multi-million dollar rent reductions or damage recoveies.

Advocating for Higher Utility Allowances in Federally Subsidized Housing: A Practical Guide is a useful tool for all tenant advocates, regardless of their experience with housing issues. A combined effort of Housing Justice Network member Gavin Thornton of the Legal Aid Society of Hawaii and the National Housing Law Project, the *Guide* provides sufficient instruction so any advocate will be able to successfully find, develop and litigate a utility allowance case. The guide focuses on the "rate increase" utility allowance case, which challenges a subsidized landlord or public housing agency's failure to update utility allowances to account for recent significant increases in utility rates. The guide identifies the key steps in determining whether a utility allowance problem exists and provides useful strategies for resolving that problem. Conveniently organized to permit efficient extraction of necessary basic information, the *Guide*'s appendices also includes spreadsheets to ease the pain of required calculations, several practical documents (e.g., information requests and demand letters), and pleadings.

The utility allowance guide provides step-by-step instructions on how to…

Determine Whether There Is a Violation

Locate subsidized housing in the area

Identify and obtain the information needed

Analyze the gathered information

- Determine utility rates and recent increases
- Determine whether utility allowances have been properly updated

Fix the Problem

Issues to consider

- Whether increasing the voucher allowances will help or hurt
- Tolling the statute of limitations
- Administrative advocacy

Litigation techniques

- Causes of action
- Sample filings

Until it is posted with restricted access on NHLP's website, free copies are available to legal services and tenant representatives by sending an e-mail request to asiemens@nhlp.org.

Gulf Coast Housing Recovery Bills

By Andrew Whalen*

A full two years after the devastating 2005 hurricane season, hundreds of thousands of former Gulf Coast residents are still unable to return home. The slow pace of reconstruction, gaps in the current recovery blueprint, and government mismanagement have kept families indefinitely displaced in FEMA trailers or dispersed throughout the country.

The Gulf Coast Housing Recovery bills of 2007 (H.R. 1227 and S. 1668) address the recovery shortcomings by assisting in the provision of affordable housing to affected families. [1] Currently, most families have no home to which they can return, given shortfalls in the Louisiana Recovery Agency's Road Home program and net losses in the affordable housing stock. The lack of available basic public services, many of which have yet to return to half their pre-Katrina levels, further impedes a significant rebound. Low-income renters have been particularly affected, as they are currently excluded from the Road Home financial assistance package, despite skyrocketing rents and a decimated rental and public housing stock.

To address these impediments to a full recovery and the return of displaced residents, the Senate and House bills would transfer $1.17 billion, or any outstanding amounts provided for Hurricanes Katrina and Rita under the Hazard Mitigation Grant program of FEMA, respectively, from FEMA to the Road Home program.[2] Financial assistance would be extended to renters and homeowners alike.[3] The bills would further create the New Orleans Redevelopment Authority Pilot Program to purchase, rebundle, and sell properties for redevelopment in order to replace lost housing. The funds for the pilot program would come from amounts made available to the state of Louisiana under the Community Development Block Grant program.[4]

The current net loss of affordable housing would be addressed by requiring that all public housing in the region be replaced or rehabilitated to levels comparable to those prior to the hurricanes.[5] Under the bills, former public housing residents would also be guaranteed the right to return.[6] Provisions to bolster housing assistance include: a significant extension in the duration of the disaster voucher program, appropriations for tenant-based assistance to those transitioning off those vouchers, a transfer of households receiving FEMA rental assistance to HUD administration, and the creation of 4500 vouchers for project-based rental assistance aimed at seniors, people with disabilities, and the homeless.[7]

The Gulf Coast Hurricane Housing Act of 2007 (H.R. 1227), introduced in February by Representative Waters (D-CA), passed the House on March 21, 2007.[8] Senator Christopher Dodd introduced his and co-sponsor Senator Landrieu's version of the recovery legislation (S. 1668) in the Senate on June 20, 2007.[9] A Committee hearing on the bill was scheduled for July but not held until September.

Background

Prior to Katrina, New Orleans possessed several demographic characteristics that made the city especially vulnerable to a prolonged recovery process and an affordable housing crisis. The poverty rate of Orleans Parish, at 23.2%, ranked seventh highest of 290 large counties in the nation.[10] The population below the poverty line was disproportionately concentrated in African-American households located primarily in forty-seven neighborhoods of extreme poverty.[11] The homeownership rate of 46.5% was significantly lower than the national average of 66.5%, underscoring a substantial population of renters.[12] Further, the New Orleans Housing Authority (HANO) was consistently mismanaged for years and fell under receivership to the Department of Housing and Urban Development (HUD) in the 1990s. At the time of the hurricanes, it provided assistance to approximately 49,000 individuals through a variety of programs. This included 7000 public housing rental units, 5000 of which were occupied, with the other 2000 closed and slated for demolition.

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*Andrew Whalen is a 2007 graduate of the University of Pennsylvania and an intern with NHLP.

[1]Rep. Barney Frank (D-MA), Chair of the House Financial Services Committee, and Rep. Maxine Waters (D-CA), Chair of the Subcommittee on Housing and Community Opportunity, introduced the Gulf Coast Hurricane Housing Recovery Act of 2007, H.R. 1227 on February 28, 2007. The House passed the bill 301-125 on March 21, 2007, on Roll Call 127 *at* http://clerk.house.gov/evs/2007/roll127.xml. For the full text of the bill, *see* http://thomas.loc.gov/cgi-bin/query/D?c110:4:./temp/~c1105ExsHF::. Sen. Dodd (D-CT), Chair of the Senate Committee on Banking, Housing, and Urban Affairs, and Sen. Landrieu (D-LA) introduced the Gulf Coast Housing Recovery Act of 2007, S. 1668, on June 20, 2007, which was referred to the Committee. For the full text of the bill, *see* http://thomas.loc.gov/cgi-bin/query/z?c110:s1668:.

[2]Gulf Coast Hurricane Housing Recovery Act of 2007, H.R. 1227, 110th Cong. 1st Sess., § 101(a), at p. 3 (2007), and Gulf Coast Housing Recovery Act of 2007, S. 1668, 110th Cong. 1st Sess., § 101(a)(5), at p. 7 (2007).

[3]H.R. 1227, § 104, at p. 16; S. 1668, § 106, at p. 21 (hereafter, all section numbers of the bills will be cited to the page number of the GPO PDF file version to facilitate locating them).

[4]H.R. 1227, § 101(c), at 6; S. 1668, § 103, at 13.

[5]H.R. 1227, § 203, at 24, § 204, at 27, and § 206, at 31; S. 1668, § 203, at 29, § 205, at 34, and § 207, at 40.

[6]H.R. 1227, § 202, at 19; S. 1668, § 202, at 25.

[7]H.R. 1227, § 301, at 33, § 306, at 39, § 902, at 50, and § 305, at 39; S. 1668, § 301(a), at 42, § 301(b), at 43, § 303, at 48, and § 304, at 52.

[8]*See* Cong. Record, 110th Cong., H.R. 1227, 1st Sess. (2007) *at* http://thomas.loc.gov/cgi-bin/query.

[9]*See* Cong. Record, 110th Cong., S. 1668, 1st Sess. (2007) *at* http://thomas.loc.gov/cgi-bin/query.

[10]NHLP, *New Orleans: Housing and Recovery*, 36 Hous. L. Bull. 178, 178 (Sept. 2006).

[11]*Id*.

[12]*Id*. at 179.

The hurricane hit the lower-income segment of New Orleans society the hardest. More than 200,000 homes and apartments were destroyed, including 39% of all owner-occupied units and 56% of all rental units. In total, the city lost 82,000 rental units to the storm, yet only 33,000 units are currently scheduled to receive rebuilding funds under state-administered programs.[13] In the undamaged areas, rents have skyrocketed, pricing out lower-wage working people. The official rate of rent increase is 39%,[14] but there is no aid scheduled to go towards individual renters trying to return home. Of the 5000 public housing units occupied before Katrina, only about 1500 are now occupied. HUD has refused to let thousands of former public housing residents return home, choosing to slate 3000 units for demolition and partial reconstruction rather than pursue rehabilitation.[15] By August 2007, the Times-Picayune estimated the population had returned to 274,000, or about 60% of its pre-Katrina levels, based on utility usage throughout the city. Not surprisingly, the neighborhoods with the least flooding have the highest rates of return.[16] Yet 60,000 hurricane-affected households are still waiting indefinitely in FEMA trailers.[17]

Those that do manage to make it home are facing a 7.5% utility rate hike this year alone from Entergy New Orleans, approved through April 2009. Entergy sustained $635 million in damages from Katrina but only obtained $200 million in recovery funds from the federal government. Emerging from bankruptcy in May of 2007, the company has now filed suit against the U.S. Army Corps for damages to insulate their ratepayers from further inheriting storm damage costs.[18] As of August 2007, only 50% of public bus routes had returned to operation, and only 57% of hospitals, 36% of child care centers, and 65% of public schools had reopened in Orleans Parish.[19] These deficiencies in basic services obviously inhibit the return of low-income former residents that use such services.

The slow rate of recovery of such basic services underscores mismanagement of the recovery efforts and a general lack of accountability. According to Gulf Coast Reconstruction Watch figures, only 30% of the $116 billion spent by the federal government on recovery since 2005 has been for long-term projects. About 22% of FEMA's 2005 relief budget was spent on administrative costs. Only 30% of the $16.7 billion slated for the Community Development Block Grants (CDBG) had been spent by August 2007. "No-bid" contracts and subcontracting by major engineering companies have further created an environment of disaster-profiteering in the region. The value of controversial "cost-plus" contracts, guaranteeing profits to companies able to charge taxpayers for cost overruns, is $2.4 billion.[20]

The hurricane hit the lower-income segment of New Orleans society the hardest. More than 200,000 homes and apartments were destroyed, including 39% of all owner-occupied units and 56% of all rental units.

The proposed recovery legislation is designed to specifically address the current shortcomings of the Gulf reconstruction effort. This reassessment acknowledges that the previous recovery plan did not take into account the socioeconomic and demographic dynamics of pre-Katrina New Orleans. The new legislation intends to do just that by focusing assistance on renters, guaranteeing public housing for displaced former residents, and expanding the voucher program. To address the current lack of accountability, the bills require stringent reporting on the use of funds by state agencies and HUD.[21]

Voucher Assistance

Both bills extend Disaster Voucher assistance, now administered by FEMA, to January 1, 2008,[22] and require that HUD identify eligible families.[23] The bills also require transfer of the administration of disaster vouchers from FEMA to HUD at the end of 2007.[24] Both bills provide funding for vouchers equivalent to the number of assisted units, either public housing or privately owned multifamily,

[13]GULF COAST RECONSTRUCTION WATCH, INSTITUTE FOR SOUTHERN STUDIES, BLUEPRINT FOR GULF RENEWAL 1, 8-9 (2007).

[14]Bill Quigley, *Trying to Make It Home: New Orleans One Year After Katrina*, 36 Hous. L. Bull. 171, 172 (Sept. 2006).

[15]GULF COAST RECONSTRUCTION WATCH, INSTITUTE FOR SOUTHERN STUDIES, BLUEPRINT FOR GULF RENEWAL 1, 8-9 (2007).

[16]Coleman Warner, N.O. head count gains steam, The Times-Picayune, Aug. 9, 2007, *available at* http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-8/1186642536113410.xml&coll=1.

[17]GULF COAST RECONSTRUCTION WATCH, INSTITUTE FOR SOUTHERN STUDIES, BLUEPRINT FOR GULF RENEWAL 1, 8-9 (2007).

[18]Alan Sayre, Pile of Katrina Legal Actions Get Higher, The Associated Press, Aug. 30, 2007, *available at* http://www.nola.com/newsflash/louisiana/index.ssf?/base/news-34/1188510896273340.xml&storylist=louisiana&thispage=1.

[19]THE BROOKINGS INSTITUTION, THE NEW ORLEANS INDEX 2, APPENDIX B, 29-35 (2007).

[20]GULF COAST RECONSTRUCTION WATCH, INSTITUTE FOR SOUTHERN STUDIES, BLUEPRINT FOR GULF RENEWAL 1, 8-9 (2007).

[21]Gulf Coast Hurricane Housing Recovery Act of 2007, H.R. 1227, 110th Cong. 1st Sess., § 101(b), at 3 and § 208, at 32, and Gulf Coast Housing Recovery Act of 2007, S. 1668, 110th Cong. 1st Sess., § 101(b), at 9 and § 209, at 41.

[22]H.R. 1227, § 301, at 33, and S. 1668, § 303, at 48.

[23]H.R. 1227, § 307, at 40-41, and S. 1668, § 301, at 45 (directing HUD to work with FEMA).

[24]H.R. 1227, § 306, at 39-40, and S. 1668, § 303, at 48.

occupied before the storm which will not be reopened,[25] while the Senate also requires that HUD issue replacement vouchers for any units unavailable for reoccupancy by January 1, 2010.[26] The Senate bill also authorizes funds for HUD-administered vouchers for all families currently living in FEMA trailers.[27] The Senate bill more explicitly limits the tenant's share of rent under Disaster Vouchers to 30% of income, though it permits a $100 minimum rent with specified hardship exemptions.[28]

Both bills direct HUD to take certain steps to maintain or transfer project-based assistance contracts for damaged or destroyed properties[29] and authorize funding for 4500 units of project-based vouchers for supportive housing for the elderly, people with disabilities, or the homeless, of which 3000 units are earmarked for Louisiana.[30]

CDBG Money for Redevelopment

Both bills require Louisiana to make available CDBG money to a pilot program to purchase and bundle properties for resale for redevelopment,[31] with differing provisions for monitoring for waste and fraud.[32] The House bill, however, sets the available amount at $15 million, while the Senate level is $55 million.[33] The Senate version also requires that, if the redevelopment includes housing, such housing include 25% low and very-low income units and possibly even public housing.[34]

Highlights of the Bills' Public Housing Sections

Right of Return

Under each bill, HUD must provide for a survey to be conducted of all former New Orleans public housing residents to ascertain whether these residents desire to return to repaired or comparable units, or continue receiving rental assistance from the federal government. HUD must consult residents in the design of the survey. The House and Senate versions differ on a time frame for the survey, sixty and ninety days respectively, and the Senate bill would have HUD contract with an independent research entity to conduct the survey.[35] The bills also require that HANO make available in a timely fashion the greater of either 3000 units or the number of households surveyed who desire to return, by a date certain (House was August 31; Senate within ninety days of enactment). The right of return is guaranteed to all residents who so desire, except those that have been convicted of certain crimes or who constitute a threat to public safety.[36]

Replacement of Units

Section 203 of each bill requires HUD to replace any public housing unit disposed of or destroyed. The House bill would require replacement with another public housing unit, a comparable affordable housing unit with similar long-term affordability restrictions, or by project-based vouchers. The Senate version stipulates the same requirements for replacement of units occupied as of August 28, 2005, but provides that vouchers could replace unoccupied HANO units, so long as HANO establishes a modified project-based voucher scheme for those vouchers within sixty days of enactment, subject to relaxed statutory standards. Any demolition approved by HUD must give residents and the community opportunity to comment, including a public hearing, and must further fair housing in the area. The Senate version adds that comprehensive resident services must be provided under the demolition plan. The House bill would further require that in any phased development, a pro-rata percentage of units must be made available consistent with these requirements. Both versions stipulate that public housing agencies try to locate displaced tenants with best efforts.[37]

In other hurricane-affected locales declared federal disaster areas, other than those administered by HANO, the Senate bill would restrict demolitions and dispositions of public housing for a two-year period.[38] The House bill would restrict transfers of all public housing (including HANO) for that period, while restricting demolitions and dispositions permanently, except in accordance with criteria similar to those applicable to HANO.[39] The House bill would require all previously existing agreements to redevelop public housing to comply with its terms, and be reissued if necessary in order to do so;[40] the Senate version would require compliance with just the replacement housing provisions.[41] The bills also authorize the funds necessary to repair, redevelop, or replace public housing, and for relocation and supportive services to the community.[42]

Accountability

To improve accountability, each bill would require HUD to submit to the housing committees the planned survey document and a report on the results of the

[25]H.R. 1227, § 304, at 37-38, and S. 1668, § 302, at 46.
[26]S. 1668, § 302, at 46.
[27]*Id*. § 303, at 49.
[28]*Id*. § 303, at 48-49.
[29]H.R. 1227, § 303, at 34, and S. 1668, § 306, at 54.
[30]H.R. 1227, § 305, at 39, and S. 1668, § 304, at 52.
[31]H.R. 1227, § 101, at 6, and S. 1668, § 103, at 13.
[32]H.R. 1227, § 101, at 11-12, and S. 1668, § 103, at 9-13.
[33]H.R. 1227, § 101, at 6, and S. 1668, § 103, at 14.
[34]S. 1668, § 103, at 17-18.
[35]H.R. 1227, § 201, at 17, and S. 1668, § 201, at 23.
[36]H.R. 1227, § 202, at 19, and S. 1668, § 202, at 25.
[37]H.R. 1227, § 203, at 24, and S. 1668, § 203, at 29.
[38]S. 1668, § 205, at 34.
[39]H.R. 1227, § 204, at 27.
[40]*Id*. § 207, at 31.
[41]S. 1668, § 208, at 40.
[42]H.R. 1227, § 206, at 31 (HANO only); S. 1668, § 207, at 40 (all public housing in region).

survey.[43] Both bills would also require HUD reports to the committees on any planned transfers of public housing projects in the hurricane-affected areas, including information on the new owner and affordability restrictions.[44] HUD would also be required to submit quarterly reports on compliance with the public housing requirements to the committees.[45]

If enacted, both bills would make significant strides toward addressing the shortcomings of the current Gulf reconstruction effort and the affordable housing crisis.

Public Housing Provisions Requiring Reconciliation

Minor differences exist between the two bills' public housing provisions that will need to be reconciled after Senate passage. These include the stipulation by the House, nonexistent in the Senate bill, that any entity receiving funds for public housing under the Act must ensure all employees have an immigration status that allows them to be legally employed and have valid documentation.[46] While both bills mandate that all returning tenants receive Uniform Relocation Act assistance, the Senate also would require HANO to provide mobility counseling to residents receiving either vouchers or non-public housing units as replacement units. The Senate bill would also require HANO to work with developers to locate project-based assistance in low-poverty neighborhoods. The House bill lacks both these components.[47] Lastly, the Senate requires that HUD must petition a court to release its administrative receivership of HANO to the judicial system within thirty days of enactment.[48] As long as HUD operates HANO as a receivership, the HUD demolition approval requirements imposed by the bill cannot provide the intended impartiality to protect affordable housing.

On September 21, responding to information that HUD would imminently approve plans to demolish four public housing developments in New Orleans, Chairman Christopher J. Dodd of the Senate Banking Committee sent a letter to HUD Secretary Alphonso Jackson asking him to refrain from demolition until and unless HUD had in place redevelopment plans that incorporated certain basic protections embodied in S. 1668, including a resident right to return, one-for-one replacement of subsidized units in mixed-income communities and resident participation in the planning and development of those new communities. Turning a deaf ear, Assistant HUD Secretary for Housing Cabrera told the Senate Banking Committee on September 25 that the department had no intention of halting the demolition process. Cabrera also stated that he was not prepared to respond to Senator Landrieu's request that he identify HUD's position on various sections of S. 1668.

Conclusion

If enacted, both bills would make significant strides toward addressing the shortcomings of the current Gulf reconstruction effort and the affordable housing crisis. The proposed legislation more thoughtfully reflects the demographic dynamics of New Orleans, works to ensure low-income renters have the means to return and a dwelling to return to, and sets up stricter regulations to ensure accountability in the reconstruction effort.

Both bills should add a few key safeguards to the language of the public housing section in order to ensure accountability and enforcement of residents' rights. With regards to the survey, the bills currently fail to require informing the surveyed households that they will receive relocation assistance to return when they are contacted about returning. Because displacees cite a lack of sufficient assistance to return home to New Orleans as the number one reason they have yet to return, they must be notified of this critical relocation assistance when contacted in order for the survey to function fairly. Congress must also acknowledge that some former households may have fractured or reconfigured while displaced and that all members of such a household must be surveyed regarding their desire to return.

Rights of return should be reinforced by altering the broad language regarding the screening process so that former residents with a criminal record who did nothing wrong during their tenancy are not denied their right. Tenants must also be able to enforce key provisions, such as the right of return, one-for-one replacement, and no screening in order to return. Allowing tenant advocacy groups to receive notice and participate at every step where residents are given the opportunity to participate in administrative decisions would help strengthen enforcement and responsiveness to tenants' needs. Including basic additional safeguards in the legislation will better ensure execution of the Act's purposes. The first order of business, however, is to halt HUD's wrecking ball, which is heedless of both the bill's protections and these modest revisions. ■

[43] H.R. 1227, § 201(c) & (d), at 18; S. 1668, § 201(c) & (d), at 24.
[44] H.R. 1227, § 205, at 30; S. 1668, § 206, at 39.
[45] H.R. 1227, § 208, at 32, S. 1668, § 209, at 41.
[46] H.R. 1227, § 209, at 32.
[47] S. 1668, § 204, at 33.
[48] *Id*. § 210, at 41.

Challenging Voucher Side Payments Under the False Claims Act

Background

Because of the shortage of available units in many markets, illegal side payments have been a persistent problem in the Section 8 voucher program. Under the program, the parties agree on a reasonable rent for the unit, the PHA enters into a Housing Assistance Payment (HAP) contract with the owner to pay the difference between the tenant's share of rent and the payment standard,[1] and the tenant contributes 30% of monthly income, plus any excess in the agreed rent over the payment standard.[2] HAP contracts prohibit landlords from seeking side payments—additional payments that illegally raise a tenant's contribution above the statutory scheme and the rent listed in the tenant lease and HAP contract.[3]

Despite such contract provisions, some landlords seek side payments and low-income voucher participants often pay the price. However, housing advocates recently have begun to find success enforcing the prohibition on side payments and thereby dissuading overreaching landlords by litigating under the federal False Claims Act (FCA).[4]

The Federal False Claims Act

The FCA[5] forbids an individual contracting with the federal government from making false or fraudulent claims in order to receive payment. A private individual can instigate an action on behalf of the United States against an individual violating the FCA.[6] The Act also provides for civil damages not less than $5500 and not more than $11,000, in addition to treble damages for the amount of fraudulent payments.[7] The United States may choose to participate in the case or not. 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, depending on whether the United States intervenes.[8]

United States ex rel. Sutton v. Reynolds[9]

In June 2007, current federal litigation in Oregon met initial success. Back in early February 2002, Jack and Dee Sutton rented a house from Thomas Reynolds in Portland, Oregon. Mr. Reynolds had originally sought $625 monthly rent, but the Housing Authority of Portland approved a monthly rent of only $595. The tenants, Jack and Dee Sutton, in conjunction with the assistance payment from the Housing Authority of Portland, paid Mr. Reynolds the $595 monthly rent.[10]

The HAP contract that Mr. Reynolds entered into with the Housing Authority of Portlandresembled all voucher assistance contracts, expressly forbidding the collection of side payments: "The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances with the lease."[11] Nevertheless, Mr. Reynolds sought and received $30 per month in side payments for thirty-nine months from the tenants, allegedly to cover increased property taxes and utility payments.[12] Mr. Reynolds never reported the additional "side payments" to the Housing Authority of Portland and this misrepresentation provides the basis for the FCA claim.

The tenants sued to recoup the side payments under the FCA, in addition to state law claims, and the United States declined to intervene. Denying the owner's motion

[1]24 C.F.R. §§ 982.451, 982.503 (2007).

[2]42 U.S.C. § 1437f(o)(2)(A)(i) (Lexis 2007). When the rent exceeds the payment standard (a PHA-determined amount generally within 90% to 110% of the HUD-published Fair Market Rent for the area), in addition to 30% of their monthly income, a tenant must also pay the difference between the payment standard and the rent.

[3]42 U.S.C.A. § 1437a(a)(1) (West 2003) (Brooke Amendment); 24 C.F.R. §§ 982.309(d)(4)-(5), 982.507(a), 982.508 and 982.510(c) (2003). In the Voucher program, the tenant's contribution should be limited to 30% of adjusted income, plus the amount by which the PHA-approved reasonable rent exceeds the applicable local payment standard. *See also* Medley v. City of Milwaukee, 969 F.2d 312 (7th Cir. 1992) (landlords who demanded unauthorized payments for garage space were properly debarred from city's Section 8 program).

[4]*See* Coleman v. Hernandez, 2007 WL 1515163 (D.Conn. May 24, 2007); U.S. ex rel. Smith v. Gilbert Realty Co., Inc., 840 F.Supp. 71 (E.D.Mich. 1993).

[5]31 U.S.C. § 3729(a)(1)-(2) (Lexis 2007). The FCA 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."

[6]31 U.S.C. § 3730(b) (Lexis 2007); United States ex rel. Sutton v. Reynolds, Denying Motion for Summary Judgment (on file at NHLP), citing United States ex rel. Anderson v. Northern Telecom, 52 F.3d 810, 812-813 (9th Cir. 1995).

[7]31 U.S.C. § 3729(a)(7) (Lexis 2007). Note that 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) and 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. May 24, 2007).

[8]Depending on whether the United States participates in an action, the proportion of the award given to the individual plaintiff varies. *See* 31 U.S.C. § 3730(d) (Lexis 2007).

[9]No. CV 05-1782-AS, Order Denying Motion for Summary Judgment (D. Ore. June 7, 2007) (on file at NHLP).

[10]*Id*. at 9.

[11]*Id*. at 3.

[12]Although the rationale for the landlord's request for "side payments" was disputed, for purposes of ruling on summary judgment, the court adopted the facts most favorable to the non-moving party, the tenants.

for summary judgment, the court found that the tenants adequately supported their FCA claim under the Ninth Circuit's four-part test: (1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, (4) causing the government to pay out money or forfeit moneys due.[13]

The denial of summary judgment in Sutton *is confirmation of a successful strategy to enforce the prohibition against side payments in the voucher program via claims under the FCA.*

With respect to the first element, the court found the side payment violated the terms of the contract and "qualif[ies] as fraud and/or abuse" if used to pay for any housing maintenance or services.[14] For the second element, the court recognized that the terms of the contract prohibited Mr. Reynolds from collecting any additional sums and required sixty days' notice to the housing authority for any changes to the rent. Given these provisions, the court determined his omission to report the additional payments could constitute a knowing and intentional fraud on the government.[15] On the third element, the court found support for the materiality of the side payments in an affidavit from the Housing Authority of Portland's Section 8 Director that the assistance payments would have ceased if the housing authority knew about the side payments.[16] Lastly, for the fourth element, the court determined that because the owner violated the terms of the contract, the Housing Authority of Portland continued to make payments that it was no longer obligated to pay.[17] Thus, the court found that plaintiffs adequately supported a claim under the False Claims Act and denied summary judgment to the owner.

In denying the owner's motion for summary judgment, the *Sutton* court highlighted two other federal rulings finding side payments actionable under the FCA. First, in *U.S. ex rel. Smith v. Gilbert Realty Co., Inc.*,[18] a Section 8 landlord charged a tenant $25-50 per month extra, for a sum total of $1630; the District Court granted summary judgment for the United States and assessed a $39,890 penalty on the landlord.[19] Similarly, in *Coleman v. Hernandez*,[20] a tenant made six $60 side payments to the defendant landlord for water utilities already covered by the contract. After the United States chose not to participate, the court entered a default judgment in favor of the plaintiff, awarding $10,584 to the tenant.[21]

Conclusion

The denial of summary judgment in *Sutton* is not an isolated ruling, but rather confirmation of a successful strategy to enforce the prohibition against side payments in the voucher program via claims under the FCA. While courts have been reluctant to award exorbitant damages, the monetary awards for the United States government and individual plaintiffs bringing actions on behalf of the United States under the FCA have not been insignificant. Existence of the FCA claims should often provide strong leverage for return of the money prior to litigation, or as an offset to resolve any threatened nonpayment of rent action. Careful representation must also ensure that the housing authority will not seek to terminate the tenant's voucher for alleged violation of program obligations. Certainly, as more cases are brought successfully, other landlords will have more incentive to comply with the rent limitations in their contracts with local housing authorities. ■

[13] *Sutton*, at 6; *U.S. ex rel Hendow v. University of Phoenix*, 461 F.3D 1166, 1174 (9th Cir. 2006).
[14] *Sutton*, at 7.
[15] *Id*. at 9.
[16] *Id*.
[17] *Id*. at 10.
[18] 840 F.Supp. 71 (E.D.Mich. 1993).

[19] Endorsing fifty-one checks from the Housing Authority that contained a provision in the Contract stating an endorsement of the payment was a certification that no additional payments were being collected from the tenant. The landlord also certified seven times that no additional payments were being collected. The court exercised its discretion in calculating damages under the False Claims Act, awarding $5000 for each of the seven certifications but not assessing civil penalties for each of the fifty-one endorsements. In addition, the trebled damages of the collections totaled $4890.
[20] 2007 WL 1515163 (D.Conn. 2007).
[21] The court may award between $5500 and $11000 per violation of the False Claims Act, and treble damages on each false claim. Accordingly, the court determined six false claims, totaling $360, and six violations with a civil penalty of $5500 each. Therefore, the total sum of $34,080 was awarded to the United States and the plaintiff was entitled to 30% of the total award, $10,584.

New York's Highest Court Rules NYC Voucher Owners Must Offer Assisted Renewal Leases

By Jason Lee*

The New York Court of Appeals has issued a decision upholding the application of New York's City's rent stabilization laws to Section 8 voucher tenants, effectively prohibiting owners receiving voucher subsidies from withdrawing from the program by refusing voucher assistance at the end of the tenant's lease term.[1] In a tremendous victory for tenants and affordable housing advocates, the court affirmed the rulings of the lower courts,[2] finding that the local rent and eviction protections were not preempted by federal law. This decision will help voucher tenants in other jurisdictions with state or local protections, as well as other federal housing tenants seeking to enforce other protections in the face of federal preemption claims.

Background

Sonia Rosario has been living in the same rent-stabilized apartment for over thirty years. For most of that time, she has received Section 8 voucher assistance from the New York City Housing Authority (NYCHA). In February 2003, the owner of the apartment decided it would no longer accept her voucher, and refused to renew the Housing Assistance Payments (HAP) contract with NYCHA. The owner then sought to collect the full contract rental amount directly from Rosario, undoubtedly knowing she would be unable to pay it without the Section 8 assistance. When Rosario couldn't pay, the owner moved to evict her for nonpayment of rent. In response, Rosario, along with several other similarly situated plaintiffs, filed suit against their landlords, seeking a declaration that defendants could not refuse to renew their HAP contracts.[3]

The trial court granted summary judgment in favor of Rosario and the other tenants, ruling that the owners were not permitted to opt out of the Section 8 program and refuse voucher payments.[4] The tenants had argued that, because they were residing in rent-stabilized apartments, the owners were obligated to provide them a renewal lease on the same terms and conditions as the expired lease, including acceptance of the voucher assistance as a material term and condition, pursuant to New York's Rent Stabilization Code.[5] The owners contended that this requirement was preempted by the Section 8 program, which had been amended to eliminate the type of "endless leases" the rent stabilization law would lock them into.[6]

The court found that the 1998 amendment did not preempt local law because there was neither any explicit preemption language in the federal statute, nor any requirement that the owner's voucher participation be voluntary.[7] Because the rent stabilization law was not preempted, the court had to consider whether the acceptance of Section 8 vouchers was a material term and condition of the lease. Finding that the owner's acceptance of the voucher was a material term, the court ruled that the owner must accept the tenants' vouchers and granted summary judgment in favor of the tenants.

In the trial court, the tenants had also argued that New York City's tax abatement law prohibited owners benefiting from that law from discriminating against Section 8 participants, including refusing to accept the vouchers. The owners responded that this protection only applied at the inception of the tenancy, and did not bar owners from withdrawing from the program. The trial court, however, also rejected this position, holding that owners must continue accepting Section 8 subsidies as long as they receive tax abatement benefits.[8]

Unsatisfied with this outcome, the owners appealed the case to the New York Appellate Division.[9] However, the Appellate Division rejected the arguments of the owners, affirming the trial court ruling. Undeterred, the owners appealed once again, taking the case to the Court of Appeals, New York's highest court.[10]

The Court of Appeals Decision

The Court of Appeals decision began by considering whether an owner's prior acceptance of a Section 8 subsidy was a material term of a lease that must be continued on a renewal lease. The Department of Housing and Urban Development (HUD) requires that owners who accept Section 8 voucher payments include a tenancy addendum in the leases, which contains references to the tenants' participation in the Section 8 program and their

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[1] *Rosario v. Diagonal Realty, L.L.C.*, 2007 WL 1879349 (N.Y. Jul. 2, 2007).

[2] See NHLP, *Local Law Requires Owners to Continue to Rent to Voucher Holders*, 36 HOUS. L. BULL. 145, 149-151 (2006) for more background on the trial court decision.

[3] *Rosario v. Diagonal Realty, L.L.C.*, 803 N.Y.S.2d 343 (N.Y. Sup. Ct. 2005).

[4] *Id.* at 360-1.

[5] See 9 NYCRR 2522.5 (current through Apr. 15, 2007) for New York's Rent Stabilization Code.

[6] 803 N.Y.S.2d 343, 349. The tenant-based Section 8 programs were amended in 1998 to require cause for eviction only during the term of the lease. 42 U.S.C. § 1437f(d)(1)(B)(ii) (certificates) and § 1437f(o)(7)(C) (vouchers). Pub. L. No. 105-276 § 545(a) and § 549(a), 112 Stat. 2599 and 2607 (1998).

[7] 803 N.Y.S.2d 343, 349.

[8] *Id.* at 352.

[9] Rosario v. Diagonal Realty, L.L.C., 821 N.Y.S.2d 71 (N.Y. App. Div. 2006).

[10] Rosario, 2007 WL 1879349.

reduced rent contribution. The court found that because the tenancy addendum was required when the owner accepted the subsidy, it was a material term of the lease and required in every renewal lease the owner signs with a Section 8 tenant, as required by New York's Rent Stabilization Code.[11] Although the owner attempted to argue that the Rent Stabilization Code was inapplicable because Rosario was not a Section 8 tenant when she first signed a lease, the court rejected this argument. The Rent Stabilization Code makes no mention of a tenant's initial lease, simply requiring that a renewal lease be on the same terms and conditions as the expired lease, no matter whether it is identical to the original.

The owner then argued that the Rent Stabilization Code was preempted by federal law, under the same theory as argued previously—that the 1998 amendment to the Section 8 program enabled all owners to terminate a tenancy without cause at the end of the lease term, regardless of local law. Because Congress had eliminated the endless lease requirement, local law could not establish essentially the same result by requiring renewal of assistance contracts. However, the court pointed to legislative history which showed that Congress did not intend to adversely affect assisted tenants by enacting the 1998 amendment; to the contrary, they expected tenants to continue to be protected by state and local laws.[12] Further, in response to the 1998 amendment, HUD adopted regulatory language stating that "nothing in part 982 [the governing federal regulations] is intended to preempt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder."[13] These provisions made it clear to the court that neither Congress nor HUD had any intent to preempt state law.

Also, local law did not conflict with federal law because an owner could conceivably comply with both sets of requirements. For instance, under federal law, an owner may not evict a tenant without good cause during the lease term. Under local law, a rent-stabilized tenant's lease must be renewed on the same terms and conditions. According to the court, compliance with both sets of requirements is possible. Therefore, affirming the lower court's decision, the court required the owner to accept Section 8 subsidies as a term of a renewal lease.[14]

Conclusion

Because federal law protections for voucher holders are so weak, any protection tenants derive from state and local laws is of great importance. In the face of federal preemption claims, Rosario's guidance may prove invaluable. Especially where voucher tenants are covered by additional eviction protections provided under local law, Rosario will help low-income tenants continue to receive the protection their local or state governments intended to provide all tenants, assisted or not. ■

[11] *Id*.
[12] *See* S. Rep. No. 104-195 at 32 (1995) and S. Rep. No. 105-21 at 36 (1997).
[13] *Rosario*, 2007 WL 1879349 at *3, quoting 24 C.F.R. § 982.53(d) (1999).
[14] The court did not address the arguments surrounding NYC's tax abatement law in any detail. It only referred to it in a footnote at *8, stating the tax abatement law was "not preempted by federal Section 8 law for the same reasons that Rent Stabilization Code is not pre-empted."

Lender's Failure to Follow HUD Loss-Mitigation Regulations Is a Defense to Maryland Foreclosure Action

The Maryland Court of Appeals[1] has recognized the right of a homeowner whose home loan is insured by the Federal Housing Administration (FHA)[2] to raise as a defense to a foreclosure action allegations that the lender violated the National Housing Act of 1934 (NHA)[3] and Department of Housing and Urban Development (HUD) loss-mitigation regulations[4] promulgated pursuant to that act. Under those regulations, the lender, or its loan servicer, is required to make efforts to resolve alleged mortgage defaults before proceeding to foreclosure.[5] In a unanimous decision, the court invoked the equitable doctrine of "clean hands" to require the foreclosing mortgage servicing agency to respond to allegations by the homeowner that the lender acted inequitably in seeking foreclosure on the mortgage. While the court concluded that the NHA and HUD regulations were not, by their language or intent, contractually enforceable, it held that under Maryland law, where a foreclosure action is equitable in nature, the NHA and HUD's loss-mitigation regulations impose an equitable constraint on the mortgagee that precludes the mortgagee from securing a foreclosure order without showing compliance with the HUD regulations.[6]

Background

Wells Fargo Home Mortgage Inc. brought what seemed to be a run-of-the-mill summary foreclosure proceeding against the FHA insured mortgage on Mr. Neal's Maryland home when Mr. Neal fell behind on his mortgage

[1] The Maryland Court of Appeals is the state's highest court.
[2] The FHA is an agency within the Department of Housing and Urban Development.
[3] 12 U.S.C. §§ 1701 et seq. (2000).
[4] 24 C.F.R. § 203.500 et. seq. (2007).
[5] *Id*. § 203.605.
[6] *Wells Fargo Home Mortg., v. Neal*, 398 Md. 705, 922 A.2d 538, (Md., 2007) (hereinafter Wells Fargo).

payments. Believing that he was precluded by Maryland court rules from raising Wells Fargo's failure to fully comply with the HUD loss-mitigation regulations as a direct defense to the foreclosure, Neal succeeded in staying the foreclosure by filing a separate complaint in Circuit Court. In that action Neal claimed the FHA regulations, designed to resolve such issues short of foreclosure, were referenced in the FHA form deed of trust and that Wells Fargo had breached its contract with him by failing to abide by them and, as a consequence, Wells Fargo was contractually liable to him for damages. For the same reasons, he claimed that he was also entitled to a declaratory judgment to prevent Wells Fargo from pursuing foreclosure.

The Circuit Court granted Wells Fargo summary judgment on the Neal action, finding that the cited NHA provisions and FHA regulations were actionable by HUD against the mortgagee but did not create a private cause of action that could be enforced by the borrower. Neal appealed.

The Maryland Court of Special Appeals agreed with the Circuit Court that the HUD regulations did not create an enforceable cause of action. The court, however, remanded the matter to the Circuit Court, directing it to consider the proposition that, under Maryland contract law, state and federal regulations and statutes could be enforced through contract actions if they had been specifically incorporated into the contract documents. There was no question that the deed of trust incorporated reference to the HUD regulations, or that Wells Fargo has accepted assignment of the mortgage.

Wells Fargo sought *certiorari* to the Maryland Court of Appeals claiming that, whatever the language of the referenced loss-mitigation regulations, Wells Fargo was forced to adopt the FHA deed of trust, which referenced those regulations, and that the provisions on which Neal predicated his cause of action were not voluntarily incorporated into the deed of trust by the mortgagee. It thus contended that the deed of trust did not give Neal a basis upon which to raise a breach of contract claim founded on Wells Fargo's alleged failure to comply with the regulations. The Maryland Court of Appeals granted Wells Fargo's petition for *certiorari*.

Court of Appeals Decision

To begin with, the Court identified "a distinction between Neal's contractual theory of this case and the more ubiquitous argument that violation of the [loss mitigation regulations] may support a private cause of action" stating that "[t]he parties agree that the weight of authority around the country roundly rejects the notion that either the NHA or associated HUD regulations support either direct or implied private causes of action for their violation."[7]

[7]*Id.* at 715-716.

The Court accepted in principle, but found inapplicable to the case at bar, the Court of Special Appeals ruling that Maryland law provides for the enforcement of state or federal regulations or statutes as state contract claims if the parties incorporated such provisions in their contracts. After analyzing and distinguishing the two cases principally relied on by Neal,[8] the Court found that the deed of trust language relied on by Neal was part of an obligatory form and that Wells Fargo "could not have bargained, in any sense that we are prepared to accept, for paragraph 9(d)[9] with the Neals at the time the deed was executed."[10]

The Court concluded that Neal could "assert an allegation of regulatory noncompliance as a shield" *to the foreclosure action.*

The Court found support for its position that a mortgagor was not entitled to enforce the HUD regulations by reviewing the regulations, which specifically grant HUD enforcement powers whenever the lender has failed to comply with the regulations. Indeed, the Court said, HUD has a structured system for ranking lenders on their compliance with the loss-mitigation regulations and using its remedial authority as a tactical weapon to encourage compliance. Accordingly, it denied Neal's contract claims.

Having pared away Neal's attempt to wield the NHA and the HUD regulations as a *sword*, the Court found itself "invited" by the *amici* in the case,[11] "to examine alternative means of enforcement of the HUD regulations in light of one of the NHA's prime objectives: to preserve home ownership and avoid the devastating financial consequences of foreclosure."[12] The Court concluded that Neal could "assert an allegation of regulatory noncompliance as a *shield*."[13]

First the Court pointed out that the NHA,[14] and the supporting regulations,[15] invoke the imperative "shall" and "must," not the invitational "may" or even the imploratory "should" in their directives to lenders to utilize loss-mitigation measures. The Court cited letters from

[8]The Court did not contest the stated principle but distinguishes the two cases it characterizes as Neal's principal support on the ground that the contractual provisions relied on in those cases were voluntarily incorporated into the contracts by the lenders.

[9]Paragraph 9(d) of the deed of trust obligates the lender to comply with the loss-mitigation regulations.

[10]*Wells Fargo* at 718-19.

[11]Civil Justice, Inc., the Public Justice Center, and the National Consumer Law Center.

[12]*Wells Fargo* at 721.

[13]*Id*. at 721 (emphasis added).

[14]12 U.S.C. § 1715u(a) (2000).

[15]24 C.F.R. § 203.501 (2007).

HUD to participating FHA mortgagees, one of which states in part that: "it is critical to understand that **PARTICIPATION IN THE LOSS MITIGATION PROGRAM IS NOT OPTIONAL**"[16]

The Court next analyzed a "Notice of Policy" published by HUD in the Federal Register and concluded that HUD is well aware, and in fact intends, that, while the regulatory structure does not incorporate the loss-mitigation regulations into insured mortgages, the structure allows mortgagors to invoke allegations of mortgagee non-compliance with loss-mitigation procedures as a defense in state court proceedings.[17]

Finally, the Court said Neal was incorrect in his position that Maryland law precludes the raising of such defensive claims by the very nature of its summary *in rem* proceeding designed to expedite mortgage foreclosures. Quite to the contrary, the Court identified three challenges to foreclosure created by state rules, including that of pre-sale injunction.[18]

Neal may assert that Wells Fargo's failure to comply with the loss-mitigation regulations has, under equitable principles, invalidated its declaration of default.

This, the Court said, is the clear path open to Neal. Neal may raise his declaratory relief claim not as an affirmative, separate action, but instead, as a request for a "pre-sale injunction." He may assert that Wells Fargo's failure to comply with the loss-mitigation regulations has, under equitable principles, invalidated its declaration of default. Since in Maryland foreclosure is, at its heart, an equitable proceeding (notwithstanding its summary process) and an injunction is, at its heart, a request that the court impose equitable restraints on litigants, the trial court would then be able to consider both Wells Fargo's claim that Neal was delinquent and Neal's claim that Wells Fargo had violated federal statute and regulation.[19]

> "[T]he venerated equity doctrine of clean hands which requires that 'he who comes into equity must come with clean hands,' is applicable in foreclosure proceedings such as the one implicated in the present case."[20] If Wells Fargo has dirtied its hands acquiring the right which it now asserts, the court may deny the enforcement of such asserted rights.[21]

Satisfied that it has responded to the *amici's* invitation, the Court quoted HUD to state that:

> Because HUD requires participating lenders to employ loss mitigation techniques, over 59 percent of families who defaulted on FHA-insured mortgages in FY 2005 were able to work out their delinquencies and remain in their homes.[22]

Accordingly, the Court remanded the case to the Court of Special Appeals with instructions to remand to the Circuit Court for consolidation of actions and decision on the merits.

Conclusion

Other states have recognized that mortgagors are entitled to raise lenders' failure to follow the HUD loss-mitigation regulations as an equitable defense to a foreclosure action.[23] Advocates are urged to review these cases and to assert the same defenses when representing FHA insured borrowers in states that have not yet recognized this equitable defense. ■

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[16] *Wells Fargo* at 722 (emphasis in original) (referencing HUD Mortgagee Letters 00-05 at 6, and HUD Mortgagee Letter 00-05 at 12).

[17] *Id.* at 723 (referencing 54 Fed. Reg. 27,599 (June 29, 1989)) (supporting case citations then follow).

[18] *Wells Fargo* at 727-28 (citing Maryland Rules 14-209(b)(1), Maryland Rule 14-305(d), and Maryland Rule 2-543(g), (h)).

[19] *Id.* at 729.

[20] *Id.* (case citation omitted).

[21] *Id.* at 730.

[22] *Id.* at 730-31 (citing U.S. DEP'T OF HOUS. & URBAN DEV., HUD STRATEGIC PLAN FY 2006-FY 2011, at 9 (2006)).

[23] *See, e.g., Williams v. Nat'l Sch. of Health Tech., Inc.*, 836 F.Supp. 273, 283 (E.D.Pa.1993) *aff'd*, 37 F.3d 1491 (3d Cir.1994) (Pennsylvania); *Fed. Land Bank of St. Paul v. Overboe*, 404 N.W.2d 445, 449 (N.D.1987) (this case catalogues cases that have held that the failure of a lender to follow HUD regulations governing mortgage servicing constitutes a valid defense sufficient to deny the lender the relief it seeks). *Fed. Nat'l Mortgage Ass'n v. Moore,* 609 F.Supp. 194, 196 (N.D.Ill.1985) (Illinois).

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—Failure to Adjust Utility Allowance for Residents with Disabilities

Amone v. Aveiro, 2007 WL 2479291 (D.Hawai'i, Aug. 27, 2007). Court approved final settlement agreement in class action lawsuit brought by public housing tenants with disabilities for the failure of the housing authority's directors to comply with the utility allowance requirements of the United States Housing Act and supporting regulations. The act and regulations obligate the housing authority to provide a notice to residents stating that they are entitled to increases in their utilities allowance for increased usage as a result of their disability. The housing authority failed to provide the residents the required notice and failed to establish and implement rules and procedures to determine the utility allowance level.

Public Housing Eviction—Drug Related Criminal Activity

Boston Housing Authority v. Garcia, 449 Mass. 727, 871 N.E.2d 1073 (Mass., Aug. 17, 2007). Court upheld eviction of public housing resident based on her adult sons, who were household members, having engaged in drug-related criminal activity. Court rejected resident's argument, that Massachusetts law allows special circumstances defense if tenant could not have foreseen the misconduct of a household member or was unable to prevent it by any available means, on the grounds that the Massachusetts law is preempted by federal law.

Public Housing Eviction—Reasonable Accommodation

Boston Housing Authority v. Bridgewaters, 69 Mass.App.Ct. 757, 871 N.E.2d 1107 (Mass.App.Ct., Aug. 20, 2007). Appeals court upheld lower court decision to evict a resident with a disability who violently assaulted his brother who lived in another public housing apartment. It found that resident was not a "qualified handicapped person" and that the authority was not required, under federal and state fair housing and anti-discrimination statutes, to provide reasonable accommodation of tenant's disabilities. The court reasoned that fair housing laws were designed to put individuals with disabilities on equal footing with non-disabled people. Those laws were not designed to insulate them from disciplinary actions that would be taken against any person regardless of his status. The court bolstered its decision by finding that the primary concern of public housing authorities is the safety of their tenants. It follows that a public housing authority must have the discretion to seek to terminate a lease based on criminal activity that constitutes a threat to public safety. According to the court, tenants of public housing developments represent some of the most needy and vulnerable segments of our population, including low-income families, children, the elderly, and the handicapped. It should not be their fate, to the extent manifestly possible, to live in fear of their neighbors.

Fair Housing—Reasonable Accommodation, Collateral Estoppel

McAlister v. Essex Property Trust, 2007 WL 2580845 (C.D.Cal., Aug. 24, 2007). On a motion for summary judgment in an action against landlord for failure to provide reasonable accommodation under state and federal law to resident and resident's son, both of whom have a disability, court held that landlord is collaterally estopped from relitigating reasonable accommodation issue that was decided against the landlord in a state unlawful detainer proceeding brought against the resident household.

Voucher Program—Nonpayment Proceeding for Erroneous Certification of Household Income

Remeeder HDFC, Inc. v. Robertson, 16 Misc.3d 1133(A), 2007 WL 2481915 (N.Y.City Civ.Ct., Aug. 31, 2007) (unpublished). Court dismissed landlord's nonpayment proceeding that was based on tenant's erroneous recertification of household income. It held that HUD regulations control the recovery of rent and that they do not authorize a possessory nonpayment proceeding. The landlord may commence a holdover proceeding on the ground of noncompliance with a repayment agreement in the event that the resident refuses to enter into a repayment agreement, or defaults on such agreement. In the alternative, the landlord may seek to terminate the lease agreement if it can establish that the resident's failure to properly recertify was fraudulent as opposed to tenant error.

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[1]http://www.westlaw.com.
[2]http://www.lexis.com.
[3]For 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.

Voucher Program—Recovery of Full Market Rent from Resident

Vincenzi v. Strong, 16 Misc.3d 1121(A), 2007 WL 2296505 (N.Y.City Civ.Ct., Aug. 13, 2007) (unpublished). Court held that voucher landlord is not entitled to recover housing authority's share of the rent from the voucher holder after housing authority terminated the Housing Assistance Payment contract for the owner's violation of the Housing Quality Standards.

Voucher Program—Failure to Report Additional Household Member

Hicks v. Dakota County Community Development Agency, 2007 WL 2416872 (Minn.App., Aug. 28, 2007) (unpublished). Court reversed hearing officer's decision to uphold Dakota County Community Development Agency's (DCCDA) decision to terminate plaintiff's Section 8 Housing Choice Voucher on grounds that she failed to report an additional person who was residing in her household. Court held that hearing officer's decision, while reciting facts presented at the hearing, made no findings of fact to support the decision to terminate the voucher. Court also held that hearing officer's decision was arbitrary and capricious because it failed to consider mitigating factors, which showed that voucher holder had disabilities and that person who was added to the household assisted the voucher holder in caring for herself and her children. Court rejected DCCDA's efforts to uphold the hearing officer's decision on the ground that the voucher holder failed to secure prior approval for the addition to the household. It found that the issue was not before the hearing officer and not decided by the hearing. It refused to affirm the termination on the basis of an issue that was not presented or decided by the hearing officer.

Voucher Program—Time for Grievance Hearing

Housing Authority of City of Danville v. Love, 2007 WL 2377367 (Ill.App. 4 Dist., Aug. 13, 2007). Court reverses trial court decision, which, in an unlawful detainer proceeding, held that tenant's claim that housing authority improperly denied her the right to a grievance hearing was invalid. Resident's lease required that a grievance hearing request be filed within ten days of an adverse notice. Resident requested grievance hearing fourteen days after the eviction notice and housing authority ignored the request. Appellate court held that ten-day lease provision was inconsistent with federal law, which provides residents thirty days in which to file a grievance hearing request. Accordingly, it found the lease provision unenforceable and reversed the eviction order on the ground that the housing authority failed to grant the resident a grievance hearing.

Voucher Program—Authority's Right to Overturn Hearing Officer Decision

Winston v. Minneapolis Public Housing Authority, 2007 WL 2245777 (Minn. App., Aug. 7, 2007) (unpublished). Court reversed housing authority's decision to overrule grievance hearing officer's decision not to terminate a voucher holder's assistance for purported criminal activity on the ground that the housing authority did not prove the commission of a crime by evidence that was beyond a reasonable doubt. Housing authority reversed the decision on the basis that it believed that it only needed to prove criminal activity by a preponderance of the evidence. Court reversed housing authority's decision because preponderance of the evidence standard only applied in cases where the criminal activity was violent or was related to the housing. The court concluded that there was no evidence in this case that criminal activity was violent or that it involved the assisted housing. Accordingly, it reversed. ■

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 August 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 Final Rules

72 Fed. Reg. 45,871 (August 15, 2007)
Public Housing Operating Fund Program;
Revised Transition Funding Schedule for Calendar Years 2007 Through 2012

Summary: This final rule modifies HUD's regulations for transition funding under the Operating Fund Program. The Operating Fund Program, as revised by a

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[1]http://www.access.gpo.gov/su_docs.
[2]http://www.hudclips.org/cgi/index.cgi.
[3]To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.
[4]http://www.rdinit.usda.gov/regs.

September 19, 2005, final rule, adopted a new formula for determining the payment of operating subsidy to public housing agencies (PHAs). Transition funding is based on the difference in subsidy levels between the new formula and the formula in effect prior to the implementation of the September 19, 2005, final rule. As a result of the new formula, PHAs may experience either an increase or decrease in the amount of funding that they receive. This final rule revises the schedule for those PHAs that will experience a decline in funding, by extending the transition phase-in period an additional year. This final rule follows publication of the two proposed rules published on November 24, 2006, and takes into consideration the public comments received on the proposed rules. With the exception of a technical change, this final rule adopts the proposed regulatory changes without change.

Effective Date: September 14, 2007.

HUD Proposed Rules

72 Fed. Reg. 45,867 (August 15, 2007)
Project Design and Cost Standards for the Section 202 and Section 811 Programs

Summary: This proposed rule would revise HUD's regulations that govern the project design and cost standards for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Persons with Disabilities programs. Under these programs, project sponsors are prohibited from using HUD funds for certain project amenities, including swimming pools, private balconies, dishwashers, and washers and dryers. This rule proposes to remove an item from the list of restricted amenities. Specifically, this rule would allow project sponsors to use HUD funds for dishwashers in individual supportive housing units for the elderly and independent living projects for persons with disabilities. In addition, the proposed rule would clarify the applicability of the project design and cost standards to Section 811 group homes.

Comment Due Date: October 15, 2007.

HUD Federal Register Notices

72 Fed. Reg. 42,102 (August 1, 2007)
Privacy Act; Proposed New Systems of Records, Single Family Mortgage Notes System

Summary: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974. The proposed new system of record is the Single Family Mortgage Notes System, which is used to track the mortgagors' remittances and the system's disbursements for protecting HUD's interest in the mortgaged properties. The system contains information about billing, applications, monthly payments to tax escrows, and interest and principal data.

Effective Date: This action shall be effective without further notice on August 31, 2007, unless comments are received during the comment period that would result in a contrary determination.

Comment Due Date: August 31, 2007.

72 Fed. Reg. 42,422 (August 2, 2007)
Notice of Submission of Proposed Information Collection to OMB; Survey of Participating Jurisdictions in ADDI/HOME Programs

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 the fact that the U.S. Senate Committee Report of the FY 2006 Transportation, Treasury and HUD Appropriations Act directed HUD to report on the default and delinquency rate of households who receive down payment assistance through the American Dream Down payment Initiative (ADDI) and HOME Investment Partnerships Program (HOME). A sample of Participating Jurisdictions who met the eligibility requirements for the ADDI/HOME Program will provide the information for this study.

Comments Due Date: September 4, 2007.

72 Fed. Reg. 43,657 (August 6, 2007)
Extension of HUD's Implementation Guidance Address Hurricanes in the Gulf of Mexico Include Calendar 2007 Program Funds

Summary: This notice supplements two earlier notices published in the Federal Register that provided guidance to public housing agencies (PHAs) on implementing the authority provided to HUD by Section 901 of the "Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006" to allow PHAs to combine operating and capital funds and use them flexibly and efficiently to facilitate disaster recovery in the states of Louisiana and Mississippi. Such authority was provided for calendar year 2006. This notice advises of the extension of such authority through calendar year 2007.

72 Fed. Reg. 45,442 (August 14, 2007)
Privacy Act; Proposed New Systems of Records, Real Estate Management System/Integrated Real Estate Management System (REMS/iREMS)

Summary: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974. The proposed new system of records is the Real Estate Management System (REMS/iREMS). The new record system is sponsored by HUD's Office of Multifamily Housing and will be used to provide regulatory control over HUD's multifamily housing portfolio, and to ensure compliance with HUD program requirements. REMS/iREMS will also serve as the department's repository for HUD's property portfolios of insured, subsidized, HUD-held, HUD-owned, co-insured, elderly

and disabled properties, and provides portfolio management for Section 8 contracts, physical property inspection follow-up, and financial assessment reviews.

Effective Date: September 13, 2007, unless comments are received during or before this period that would result in a contrary determination.

Comment Due Date: September 13, 2007.

72 Fed. Reg. 45,823 (August 15, 2007)
Notice of Proposed Information Collection for Public Comment: PHA Plans Standard Template

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 public housing agencies' (PHAs) annual plans. PHAs submit an annual plan for each fiscal year for which they receive tenant-based assistance and public housing operating subsidy. This plan provides a framework for local accountability and, to the extent possible, an easily identifiable source by which public housing residents, participants in the housing choice voucher program, and other members of the public may locate housing and services. The PHA plan is a web-based application (allowing PHAs to retrieve the applicable templates) that allows PHAs to provide their plans to HUD via the Internet. The system allows HUD to track plans every year with limited reporting and any changes from the previous submission.

Comments Due Date: October 15, 2007.

72 Fed. Reg. 46,235 (August 17, 2007)
Notice of Submission of Proposed Information Collection to OMB; Economic Opportunities for Low and Very Low Income Persons

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 will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the economic opportunities for low-income persons and the use of businesses that employ low-income persons.

Comments Due Date: September 17, 2007.

72 Fed. Reg. 46,235 (August 17, 2007)
Disaster Housing Assistance Program (DHAP)

Summary: This document provides notice that HUD and the Federal Emergency Management Agency (FEMA) have executed an Interagency Agreement establishing a pilot grant program called the Disaster Housing Assistance Program (DHAP), and that the operating requirements for the DHAP have been issued through HUD Notice. DHAP is a joint initiative undertaken by HUD and FEMA to provide monthly rent subsidies and case management services for individuals and families displaced by Hurricane Katrina or Hurricane Rita who were not receiving housing assistance from HUD prior to the disasters. The operating requirements for the DHAP are found in HUD Notice PIH 2007, issued August 16, 2007. This notice and related program information on the DHAP are available from HUD's website at http://www.hud.gov.

72 Fed. Reg. 46,654 (August 21, 2007)
Notice of Proposed Information Collection for Public Comment; Memorandum of Agreement (MOA) and Improvement Plan (IP) in Connection with the Public Housing Assessment System (PHAS)

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 the PHAS. A public housing agency (PHA) that is designated troubled or substandard under the PHAS must enter into an MOA with HUD to outline its planned improvements. Similarly, a PHA that is a standard performer, but receives a total PHAS score of less than 70% but not less than 60%, is required to submit an IP. These plans are designed to address deficiencies in a PHA's operations found through the PHAS assessment process (management, financial, physical, or resident related) and any other deficiencies identified by HUD through independent assessments or other methods.

Comments Due Date: October 22, 2007

72 Fed. Reg. 48,803 (August 24, 2007)
Additional Common Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under Public Laws 109-148 and 109-234

Summary: HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for disaster recovery grants, upon the request of the state grantee(s). This notice describes the additional waivers for the disaster recovery grants made to the states of Alabama, Florida, Louisiana, Mississippi, and Texas, which are the Community Development Block Grant Program disaster recovery grantees under the subject appropriations acts.

Effective Date: August 29, 2007.

72 Fed. Reg. 48,807 (August 24, 2007)
Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Law 109-148

Summary: HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this grant, upon the request of the state grantee. This notice describes the additional waivers approved by HUD for a $600 million infrastructure program to be funded from the disaster recovery grant made to the State of Mississippi under the subject appropriations act.

Effective Date: August 29, 2007.

72 Fed. Reg. 49,298 (August 28, 2007)
Notice of Submission of Proposed Information Collection to OMB; Requirements for Designating Housing Projects

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 information collection that is required by the Housing and Community Development Act of 1992. Public housing agencies (PHAs) will submit an application which is composed of an Allocation Plan and a Supportive Services Plan to designate a project for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

Comments Due Date: September 27, 2007.

72 Fed. Reg. 49,300 (August 28, 2007)
Notice of Submission of Proposed Information Collection to OMB; The Final Impact Evaluation for the Moving to Opportunity Demonstration

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 the Moving To Opportunity Demonstration Program (MTO). The MTO for Fair Housing Demonstration provides a unique opportunity to definitively measure the impacts of an important change in neighborhood opportunity on the employment, income, education achievement, and social well-being of low-income public housing families. Between 1994 and 1998, families living in high poverty public housing in Boston, New York, Baltimore, Chicago, and Los Angeles were given an opportunity to move to lower poverty neighborhoods with a Housing Choice Voucher. This program was designed with a long-range research goal to measure how this move affected these families over time. This data collection request is for the final evaluation, measuring impacts after ten years.

Comments Due Date: September 27, 2007.

HUD Notices

PIH 2007-23 (HA)(August 1, 2007)
$100 Million Set-Aside Provision to Adjust Public Housing Agencies Baseline Funding, Housing Choice Voucher Program CY 2007

Summary: On June 18, 2007, the department advised public housing agencies (PHAs), through the issuance of Notice PIH 2007-14, Implementation of the Federal Fiscal Year 2007 Funding Provisions for the Housing Choice Voucher Program, of the availability of funds from the $100 million set-aside provided under the Revised Continuing Appropriations Resolution, 2007 (Revised CR 2007). The purpose of this notice is to advise all PHAs of the department's decision to re-open the application period for requests for funds from the $100 million set-aside provided under the Revised CR 2007 and to extend the period of eligibility for portability and unforeseen circumstances into CY 2007. This notice revises specifically Paragraph 9 - $100 million Set-Aside to Adjust PHA Baseline of PIH Notice 2007-14.

PIH 2007-25 (August 14, 2007)
Extension - Notice 2006-32, Public Housing Agency (PHA) Cost-Saving Initiatives in the Housing Choice Voucher (HCV) Program

Summary: This notice reinstates Notice PIH 2006-32 (HA), which reinstated Notice PIH 2005-9 and provided additional guidance on prudent financial management in the HCV program.

PIH-2007-26 (August 16, 2007)
Disaster Housing Assistance Program (DHAP) Operating Requirements

Summary: These operating requirements set forth the policies and procedures for the Disaster Housing Assistance Program (DHAP). DHAP is a HUD-FEMA pilot grant program to provide rent subsidies for non-HUD assisted individuals and families displaced by Hurricane Katrina or Hurricane Rita. Public housing agencies (PHAs) that agree to administer DHAP must do so in accordance with these requirements and any subsequent HUD directives and guidance for the program.

PIH 2007 -27 (HA) (August 24, 2007)
Disallowed Costs and Sanctions Resulting from On-Site Monitoring Reviews

Summary: This notice replaces Notice PIH 2005-7 and highlights the importance of timely and accurate income and rent determinations by public housing agencies (PHAs), and the consequences for failure to identify and correct income and rent determination deficiencies. Also, PHAs will now be required to reimburse HUD 100% of disallowed costs for PHA errors identified in the Housing Choice Voucher (HCV) program. The department has worked closely with PHAs nationwide in identifying the root causes of such deficiencies and developing corrective action plans to reduce the level of errors in subsidy calculations through the use of on-site monitoring reviews, reviews conducted by the newly established Quality Assurance teams and other related reviews. This notice addresses: (1) PHA reimbursement of 100% of disallowed costs to HUD for PHA errors identified in the HCV program that exceed $2,500; (2) Incentives and disallowed costs; (3) Sanctions for failure to timely respond to monitoring review reports and failure to implement a Corrective Action Plan when required; (4) Adjustment of Section 8 Management Assessment Program (SEMAP) scores when inconsistent with the findings of an on-site monitoring review; and (5) Self-Assessment Reviews.

Rural Housing Service Federal Register Notice

72 Fed. Reg. 50,323 (August 31, 2007)
Section 538 Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2007

Summary: The Rural Housing Service is correcting a notice published June 11, 2007 (72 FR 32070-32071). This action is taken to extend the application obligation date from August 31, 2007, to September 28, 2007.

Dated: August 24, 2007.

Rural Housing Service—Administrative Notices

RD AN No. 4302 (1980-D) (July 31, 2007)
Eligibility of Non-U.S. Citizens for Single Family Housing Guaranteed Loan Program Assistance and the Systematic Alien Verification for Entitlements Program

Summary: This Administrative Notice (AN) is intended to furnish guidance concerning access to the Systematic Alien Verification for Entitlements (SAVE) Program database maintained by the Department of Homeland Security Citizenship and Immigration Services. SAVE may assist in determining whether non-U.S. citizens are qualified to receive federal assistance. This AN also describes what documentation non-U.S. citizens must supply when SAVE does not achieve a determination, in order to be considered for a loan note guarantee under the Single Family Housing Guaranteed Loan Program. ■

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