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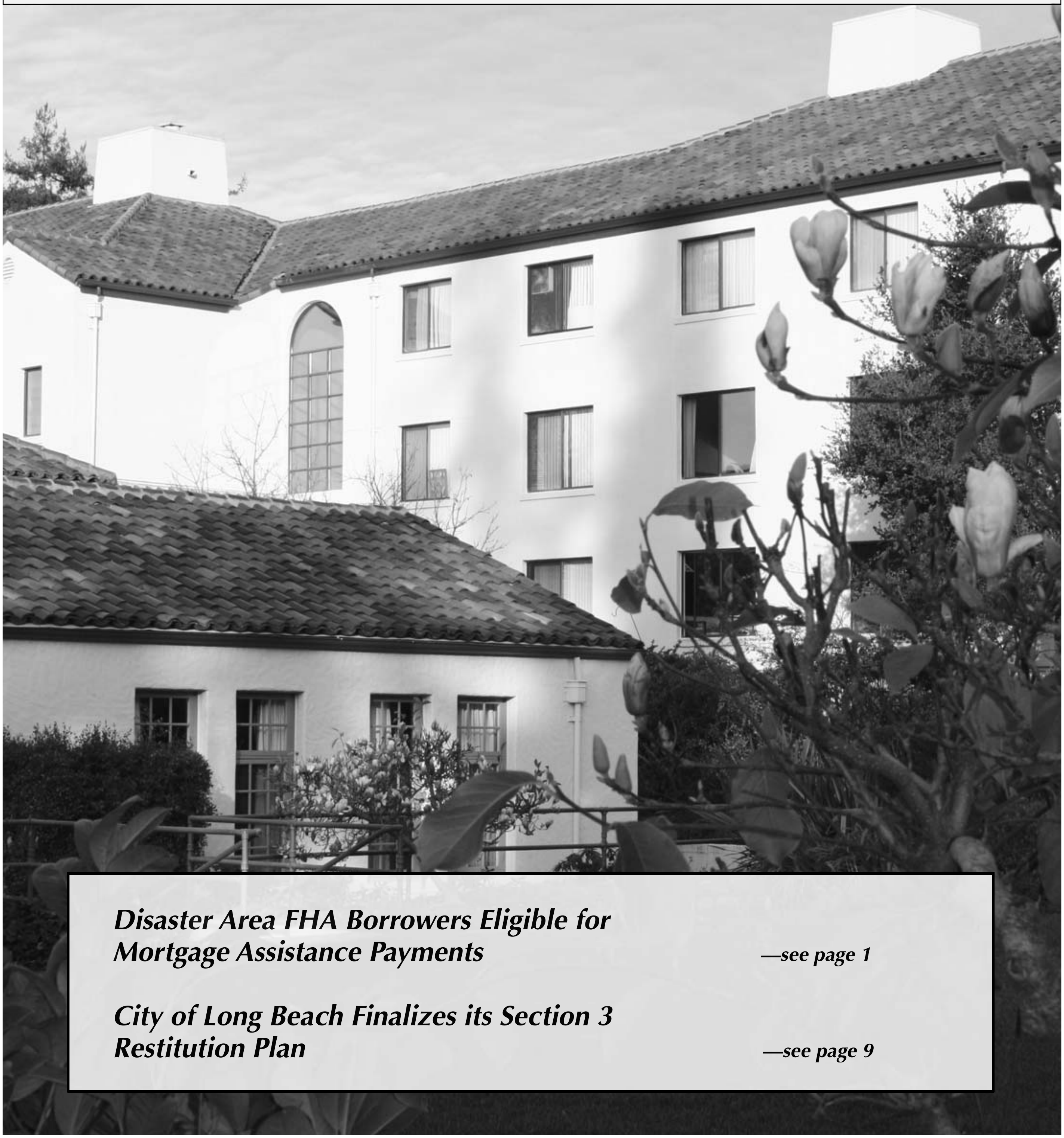

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COMPREHENSIVE CURRENT AUTHORITATIVE

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SPECIAL FEATURE

AN ESSENTIAL RESOURCE FROM THE NATIONAL HOUSING LAW PROJECT

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Disaster Area FHA Borrowers Eligible for Mortgage Assistance Payments

The Department of Housing and Urban Development (HUD) announced a new Mortgage Assistance Initiative in December 2005 that can assist homeowner-victims of hurricanes Katrina, Rita and Wilma in the Presidentially Declared Major Disaster Areas in Alabama, Florida, Louisiana, Mississippi and Texas whose home loans are insured by the Federal Housing Administration (FHA). The initiative enables FHA lenders to collect up to twelve months of principal, interest, taxes and insurance (PITI) payments from HUD instead of victim-borrowers, thereby helping the borrowers avoid foreclosure when they are temporarily unable to meet their mortgage obligations.[1]

To qualify for the Mortgage Assistance Initiative, homeowners must:

- live or have full-time employment in a county that has been declared by FEMA as eligible for individual assistance;
- not have the ability to make their monthly mortgage payments due to a verifiable loss of income, an increase in living expenses, or property damage to their principal residence that is attributable to the hurricanes;
- own a principal residence that is habitable or can be made habitable;[2]
- be committed to continuing to live in that residence as the primary residence;
- have missed at least four but not more than twelve mortgage payments on the FHA insured loan;
- not have been referred to foreclosure;[3] and

[1]HUD Mortgage Letter 2005-46 (Dec. 2005). A copy of this letter is available online at http://www.hudclips.org/sub_nonhud/cgi/nph_brs.cgi?d=MLET&s1=05_$[no]&op1=AND&SECT1=TXTHLB&SECT5=MLET&u=./hudclips.cgi&p=1&r=0&f=S. Unless cited differently, all statements in this article are based on this HUD mortgage letter and separate citations to the letter will not be repeated throughout this article.

[2]If the property has been damaged to the point that it cannot be reconstructed or the borrower does not intend to begin reconstruction within twelve months, the Mortgage Assistance Initiative is not available to the borrower.

[3]Loans that were in foreclosure proceedings prior to the hurricanes may also be eligible for assistance if the cause of the default was substantially worsened by the hurricanes. Also, loans that have either been referred to foreclosure or on which foreclosure has actually commenced since the hurricanes are eligible for assistance provided the foreclosure is terminated.

- have the capacity to resume making full mortgage payments before twelve mortgage payments are due and unpaid.

Eligibility decisions with respect to the Mortgage Assistance Initiative are made by the lender servicing the borrower's loan. Lenders must make their eligibility determinations in accordance with HUD Mortgage Letters 2000-05 and 2003-19. Lenders are required to consider borrowers' eligibility for mortgage assistance.[4] According to HUD, lenders must:

- Consider all reasonable means to address delinquency at the earliest possible moment.
- Inform borrowers of available loss mitigation options and the availability of housing counseling within the second month of delinquency.
- Evaluate each delinquent loan no later than the ninetieth day of delinquency to determine which loss mitigation option is appropriate.
- Utilize loss mitigation whenever feasible to avoid foreclosure.[5]

Borrowers who qualify for assistance must execute a promissory note and mortgage in favor of HUD for the amount of assistance that is advanced to the lender on behalf of the borrower. The note is not due and does not accrue interest until the original balance of the first mortgage (the FHA insured loan) is paid in full.

Lenders are not allowed to charge borrowers for extending assistance under the Mortgage Assistance Initiative. However, they may charge for legal costs incurred in cases where a foreclosure has been initiated and then cancelled in order to qualify the borrower for this assistance. Such payments may be collected directly from the borrower or capitalized as part of any loan modification that the lender undertakes, provided that the payments under the loan modification do not exceed the principal and interest payment that were due under the original mortgage terms.

Ironically, the Mortgage Assistance Initiative does not bring a defaulting borrower current at the time that the assistance is granted. HUD only authorizes lenders to draw an equivalent of two monthly mortgage payments at the time that assistance is approved and one month's payment every month thereafter. Because borrowers must be at least four months delinquent at the time that they qualify for assistance, they continue to be two months in arrears throughout the twelve months for which assistance is authorized. Only when the borrower resumes making mortgage payments at the end of the twelve months is the lender authorized to draw funds to cover the prior two months' delinquency. If the borrower fails to make the mortgage payment at the end of twelve months, the borrower will be three months delinquent at the time that he or she fails to make the payment. While the HUD mortgage letter does not make any reference to this, the fact that borrowers who are unable to resume making payments are three months delinquent at the end of the assistance period will allow lenders to begin foreclosure very quickly.

The HUD Mortgage Assistance Initiative is not significantly different from prior forms of assistance that HUD has extended to FHA borrowers since 1996.

The HUD Mortgage letter announcing the Mortgage Assistance Initiative recognizes that some borrowers who are assisted under the initiative may not be able to resume full mortgage payments at the end of the twelve-month period because they may have suffered a permanent reduction in income. For this reason, it also authorizes lenders to consider a loan modification that will reduce the borrower's monthly payments after the assistance payments have been extended. Lenders who choose to extend a mortgage modification to borrowers may only do so after all funds extended under the Mortgage Assistance Initiative have been applied to the borrower's account and if both the FHA mortgage remains in first lien position and the modification is extended within eighteen months of the issuance of the HUD mortgage letter.

The HUD Mortgage Assistance Initiative is not significantly different from prior forms of assistance that HUD has extended to FHA borrowers since 1996. The only significant difference from prior authorizations lies in the fact that the lenders can approve payments for up to eight months of "anticipated" defaults, something that they could not previously do.

Clearly, this new authority is a welcome relief for FHA borrowers in the hurricane disaster areas who qualify for it. Unfortunately, it may not be enough. Employment and other economic conditions in the disaster areas are so bad that it is quite likely that many FHA borrowers will not be able to repair their homes and resume payments within the twelve months of relief that are provided by this new

[4]A lender's failure to comply with the loss mitigation procedure subjects the lender to various HUD penalties and sanctions. HUD Mortgage Letter 2000-05 (Jan. 2000). It does not give rise to a foreclosure defense because the lenders' obligations are not set forth in HUD regulations that have the force and effect of law. *See* Brown v. Lynn, 385 F. Supp. 986, 998 (N.D. Ill. 1974).

[5]HUD Mortgage Letter 2000-5 (Jan. 2000).

initiative. Moreover, it is not yet clear what lenders and FHA will do with respect to borrowers who do not qualify for relief. Will they be simply foreclosed upon?

It is also unfortunate that the government is not acting consistently with respect to all of the hurricane victims. The Veterans Administration and the Department of Agriculture have insurance programs similar to the FHA. While they have instituted some short-term relief measures to avoid a large number of foreclosures, they have not instituted programs similar to the FHA. It remains to be seen whether they will. It also remains to be seen what if anything lenders and the government will do with respect to thousands of homeowner victims whose loans were not insured by a federal agency. They have no place to turn. ■

Congress Finalizes Fiscal Year 2006 HUD Appropriations

In mid-November, House and Senate conferees reached final agreement on appropriations for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2006, which began October 1, 2005. The bill then quickly passed both chambers and was signed by the President on November 30.[1]

Unsurprisingly, for most programs, final funding levels generally fell between the House and Senate levels. However, the final agreement sets the stage for inadequate voucher renewal funding for many local public housing authorities (PHAs), cuts funding for many key housing programs, while establishing two new housing preservation tools and attempting to close a loophole for athletic scholarship students in HUD-assisted housing. Making matters worse is Congress' adoption of an across-the-board 1% cut for discretionary spending programs via the Defense spending bill passed in late December, reducing HUD funds by approximately another $350 million (including an estimated 17,000 vouchers).[2]

Remaining in the trash bin were the Bush Administration's transfer, block and cut plans for community and economic development programs,[3] as well as the President's proposal to cap long-term spending on housing and other programs.[4] In addition, the Administration's proposed "State and Local Housing Flexibility Act of 2005," authorizing higher rents and diminished targeting for the public housing and voucher programs, remained dead—at least for FY 2006.[5]

The final agreement includes $15.57 billion for overall tenant-based rental assistance, about $60 million less than either the House or Senate levels, and about $200 million less than the Administration's request; $5.088 billion for overall project-based rental assistance, roughly a split between the Senate and House figures; $3.6 billion for the public housing operating fund, the higher House level; and $2.464 billion for the public housing capital fund, again roughly a split between the Senate and higher House level. Compared to last year's final FY 2005 levels, these amounts represent a slight increase in tenant-based rental assistance, approximately level funding for the Public Housing operating fund, and modest cuts for the capital fund and project-based assistance. Overall, the final levels are much improved over the President's proposed budget cuts, but still less than needed to continue current services.

Voucher Program Comes Up Short

The final bill provides $14.09 billion for renewing housing choice vouchers, a substantial improvement over last year, but unfortunately maintains the practice of

[1]The full title of the bill is "The Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006," Pub. L. No. 109-115 (2005) (formerly H.R. 3058), *available at* http://thomas.loc.gov. For background, see NHLP, *Fiscal Year 2006 HUD Appropriations Update*, 36 Hous. L. Bull. 197, 202 (2005).

[2]See Arloc Sherman & Richard Kogan, *What Do Across-the-Board Cuts Mean for Domestic Appropriations?*, Center on Budget and Policy Priorities, at http:www.cbpp.org/12-8-05bud2.htm (Dec. 19, 2005). The Defense appropriation containing the 1% cut is Pub. L. No. 109-148 (Dec. 30, 2005).

[3]*See* OMB, Budget of the United States Government, Fiscal Year 2006 (2005), *at* http://www.whitehouse.gov/omb/budget/fy2006.

[4]*Id.*

[5]Both the Senate (S. 771 I.S.) and House (H.R. 1999 I.H.) versions of the proposal are available at http://thomas.loc.gov. *See* NHLP, *Administration Issues Radical Proposal to Deregulate Public Housing and Voucher Programs*, 35 Hous. L. Bull. 125, 125 (2005).

basing each PHA's annual voucher renewal funding on outdated data unadjusted for actual costs. For FY 2006, each PHA will receive an amount based on its 2005 annual level (which in turn was based on 2004 levels), the 2006 annual adjustment factor, and special adjustments for first-time renewal of tenant protection or HOPE VI vouchers, less any further HUD proration necessitated by a shortfall in the overall funding level. Last year's inadequate funding level required an across-the-board cut of 4% for PHA voucher programs, resulting in fewer vouchers and reduced benefits. This system, similar to a block grant, breaks the important link between the cost of the program and the amount of funding received. This will leave many PHAs without the funds needed to lease up all their authorized vouchers, forcing them to take vouchers out of circulation as families leave the program or to take other steps to shift costs to poor households and owners.

Congress has rejected the Administration's proposed changes to many of HUD's community development programs.

Fortunately, the final bill did not include the Senate proposed shift of an estimated $80 million cost of Section 811 tenant-based renewals to the voucher renewal pot with no additional funding. It also provides $45 million to adjust PHAs' allocations due to temporarily low leasing levels in the base data collection period of May through July of 2004 or to increased renewal costs for unforeseen circumstances.

In addition to renewals, the voucher account covers several other uses: tenant protection vouchers, funded at $180 million; family self-sufficiency coordinators, funded at the Senate's higher $48 million level; and PHA administrative fees, funded at $1.25 billion.

The Center on Budget and Policy Priorities projects that the overall funding level and the dollar budget-based approach, which originated in prior years and was adopted again in the FY 2006 House bill, will force the loss of 27,889 housing choice vouchers in FY 2006.

Section 8 Project-Based Funding Relatively Stable

Section 8 project-based rental assistance subsidizes rents for approximately 1.3 million families in over 19,000 projects.[6] The final agreement, similar to the House bill, provides almost $5.1 billion for this account, of which $4.94 billion covers the renewal or amendment of project-based contracts, and $147 million for contract administrators. This level could also be augmented by recaptures from prior appropriations.

Residents of Section 8 project-based developments and preservation advocates celebrated the final bill's inclusion of an earlier Senate floor amendment by Senator Charles Schumer (D-NY), requiring HUD, for FY 2006, to maintain any project-based Section 8 assistance at foreclosure or disposition sales, unless infeasible.[7] The final agreement also includes two-year authority for HUD to transfer project-based assistance, debt and restrictions from physically obsolete or economically unviable properties to other developments, subject to several specific and complex conditions.[8]

Public Housing Would Again Suffer Shortfalls

The public housing operating fund, covering day-to-day operations, will receive the higher House level of $3.6 billion, almost $200 million more than the budget request.[9] However, this level fails to keep up with inflation or other cost increases, so that PHAs must once again reduce necessary expenditures.

The final agreement split the difference between the higher House figure and the Senate level for the public housing capital fund, providing $2.464 billion, again forcing PHAs to further postpone long-needed rehabilitation.

HOPE VI Refunded

HOPE VI will receive $100 million, about halfway between the higher Senate figure and the proposed House level, rejecting the Administration's proposal to eliminate the program and rescind last year's appropriations. However, report language indicates a desire to consider alternative approaches.[10]

Plan to Transfer CDBG Rejected, But Funds Cut

Congress has rejected the Administration's proposed changes to many of HUD's community development programs, providing $4.22 billion for the Community Development Block Grant (CDBG) program overall, close to the lower House level, with $3.75 billion for formula grants, both levels representing a 10% cut from FY 2005. Within the overall funding level, the final agreement provides

[6]*See* OMB, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 2006, at 527 (2005) (HUD appendix).

[7]Pub. L. No. 109-115, Administrative Provisions § 311 (2005).

[8]*Id.* at Administrative Provisions § 318 (2005).

[9]The reason why this level appears to be a tremendous increase over the FY 2005 level is that last year's shift of funding to a calendar year basis enabled an approximately 25% reduction in appropriations.

[10]H. Rep. No. 307, 109th Cong., at 216 (1st Sess. 2005).

approximately $310 million for nearly 1200 specifically earmarked projects ("economic development initiatives," often called "pork").

Native American and Native Hawaiian Block Grants

The final agreement provides $630 million for the Native American housing program, slightly higher than the higher Senate level, and almost 10% higher than the President's request. The Native Hawaiian housing block grant will receive $8.8 million.

Congress also rejected the President's proposed 50% decrease in Section 811, which provides permanent housing for persons with disabilities.

Elderly Housing Level Funded

The Section 202 program will receive $742 million, approximately the same as last year and in both bills, for capital advances, amendments, project rental assistance contracts and service coordinators.

Section 811 Funding Restored

Congress also rejected the President's proposed 50% decrease in Section 811, which provides permanent housing for persons with disabilities. It funded the program at $239 million, the FY 2005 level. The renewal of tenant-based rental assistance previously provided under Section 811 remains part of this account, estimated at $78 million.

HOPWA Gets Small Increase

Housing for People with AIDS (HOPWA) receives $289 million, approximately 3% more than the FY 2005 level.

HOME Takes a Hit

The final agreement cuts the overall HOME program, supporting development and rehabilitation of affordable housing and assisting first-time buyers through states and localities, to $1.775 billion, considerably below the House, Senate and last year's levels of $1.9 billion. HOME formula grants, net of specified set-asides, will be only about $1.7 billion.

Homeless Assistance Programs

Homeless assistance grants, covering emergency shelter grants, supportive housing, mod rehab single room occupancy projects, and Shelter Plus Care, were funded at only the lower House level of $1.34 billion, $100 million more than last year.

Lead Based Paint and Fair Housing

Funding for Lead Based Paint Hazard Reduction was cut from FY 2005's $167 million to $152 million. The Fair Housing Activity Fund for fair housing assistance and initiatives receives $46 million, the same level as FY 2005.

Student Eligibility for HUD Programs

The final agreement seeks to close a loophole that has enabled some students receiving athletic scholarships to reside in HUD-subsidized properties while excluding as income even that portion of their scholarship designated for housing costs. Now, Section 8 assistance may not be provided to any student under twenty-four years old, unless he or she is a veteran, married, has a dependent child, or is otherwise individually eligible or has parents who, individually or jointly, are eligible.[11] In determining Section 8 eligibility, any financial assistance in excess of tuition must be counted toward income, unless the recipient is over twenty-three and has dependent children.[12] The statute required HUD to issue final rules within thirty days of enactment, and HUD has just done so.[13]

For additional budget information, refer to the accompanying chart prepared by the National Low Income Housing Coalition, reprinted here with permission. ■

[11] Pub. L. No. 109-115, Administrative Provisions §327(a) (2005).

[12] *Id.* at Administrative Provisions § 327(b) (2005).

[13] 70 Fed. Reg. 77,742 (Dec. 30, 2005) (effective Jan. 30, 2006).

FY 2006 HUD Appropriations

HUD Program (set-asides indented)	FY04 Enacted (in millions)	FY05* Enacted (in millions)	FY06 Request (in millions)	FY06 House bill (in millions)	FY06 Senate passed bill (in millions)	FY06 Final bill, with 1% across the board cut
Tenant-based rental assistance	14,186	14,766	15,845	15,631	15,636	15,417
Project-based rental assistance	4,792	5,298	5,072	5,100	5,072	5,037
Public Housing Capital Fund	2,695	2,579	2,327	2,600	2,327	2,439
Resident Opportunity & Self Sufficiency	55	52.5	24	24	45	38
Public Housing Operating Fund	3,579	2,438	3,407	3,600	3,557	3,564
HOPE VI	149	143	-143	60	150	99
Native American Housing Block Grants	650	621	583	600	622	624
Elderly Housing (Section 202)	774	741	741	741	742	735
Disabled Housing (Section 811)	249	238	120	238	240	237
HOME Investment Partnership Program	2,006	1,900	1,981	1,900	1,900	1,758
HOME formula grants	1,859	1,789	1,730	1,790	1,751	1,690
American Dream Downpayment Assistance	87	50	200	50	50	25
Housing Counseling Assistance	40	42	40	41	42	42
Community Development Block Grants	4,921	4,671	0	4,217	4,324	4,178
Self-Help Homeownership Opportunity	27	25	30	23	15	20
Youthbuild	65	62	0	50	55	49
Economic Development Initiative	276	262	0	290	290	307
Native Hawaiian Housing Block Grant	9	9	9	9	9	8.7
Homeless Assistance Grants	1,260	1,240	1,440	1,340	1,415	1,326
Housing for Persons with AIDS	295	281	268	290	287	286
Rural Housing and Economic Development	25	24	0	10	24	17
Empowerment Zones/Enterprise Communities	15	10	0	0	0	0
Brownfields Redevelopment	25	24	0	26	15	10
Fair Housing Assistance Program	28	26	16	26	26	26
Fair Housing Initiatives Program	20	20	16	20	20	20
Lead-Based Paint Hazard Reduction	174	167	119	167	167	150
Salaries and Expenses	1,116	1,030	1,153	1,152	1,145	1,141
Homeland Security – Emergency Food and Shelter Grants	153	151	153	153	153	151
USDA – Section 515	116.5	99	27	100	90	99
USDA – Rural Rental Assistance	584	587	650	650	653	646
USDA – Housing Preservation Grants	10	9	10	0	10	10
Treasury – CDFI	61	54	8	55	55	54

**FY2005 numbers reflect an across the board cut of 0.8%.*

December 23, 2005 — Source: National Low Income Housing Coalition

Congress Reauthorizes Violence Against Women Act With Housing Protections

By Anthony Ha*

In mid-December, both the House and the Senate approved legislation reauthorizing the Violence Against Women Act (VAWA), forwarding it to the President for enactment.[1] This bill reauthorizes VAWA, which expired at the end of September 2005. Among the bill's many provisions, of particular interest to housing advocates are those first advanced in the Senate's version. Those protections would effectively carve out an exception to existing "one strike" rules to prohibit denial of assistance or termination of tenancy based on an individual's status as a victim of domestic violence.

The House version, passed on September 29, had not contained a housing subtitle, but the Senate protections emerged largely intact.

VAWA was originally passed in 1994 to address domestic and sexual violence against women.

Background on VAWA[2]

VAWA was originally passed in 1994 to address domestic and sexual violence against women.[3] Included in its provisions were grants and other financial assistance for crime prevention programs targeted at violence against women, enforcement of domestic violence and child abuse laws in rural areas, battered women's shelters, community education programs, services to sexual assault victims, and research on violence against women. Also included were the establishment of a national hotline, stronger federal penalties for sex offenders, and changes in evidentiary rules governing sexual history testimony.

VAWA was reauthorized in 2000[4] and amended in 2003.[5] The Senate's 2005 reauthorization was introduced by Senator Joseph Biden (D-DE) and coauthored by Senators Arlen Specter (R-PA) and Orrin Hatch (R-UT), and for the first time established a separate subtitle addressing housing issues.

Housing Provisions of the 2005 VAWA

The VAWA reauthorization adds many innovations, including a new section that addresses both the near- and long-term housing issues faced by victims of violence. Congressional findings include a strong link between domestic violence and homelessness; housing discrimination against survivors of domestic violence; a severe lack of emergency, transitional and long-term housing options for domestic violence victims and their children; barriers to housing access as a direct result of domestic abuse; and challenges faced especially by victims of domestic violence in rural areas.

As passed, Title VI of the VAWA reauthorization, Housing Opportunities and Safety for Battered Women and Children, seeks to address both the needs of victims for housing alternatives and an incredible injustice: that violence against victims often jeopardizes their housing security. For fiscal years 2007 through 2011, this title:

- authorizes $10 million annually for grants to support collaborative activities providing safe, affordable, non-time-limited housing for victims, including direct assistance to families, with priority given to linguistically and culturally specific services (but not construction or renovation);
- authorizes $10 million annually for grants to owners and managers of public and assisted housing to prevent victims from losing benefits or being denied residency in public and assisted housing, as well as to protect their confidentiality and to enable the housing provider to remove the perpetrator of violence;
- expands an existing VAWA grant program to help survivors transition from unsafe and unstable situations to secure, permanent housing;
- requires public and Indian housing authorities to incorporate victims' housing needs in their five-year plans and to report on programs that prevent violence against women and provide services to victims;

*Anthony Ha is an urban studies student at Stanford University and an intern at NHLP.

[1]The final legislation, denoted H.R. 3402, reflected the agreement between House and Senate negotiators reconciling the earlier Senate and House versions of the bill (S. 1197 and H.R. 3402, 109th Cong., 1st Sess. (2005), respectively). The legislation is available online at http://thomas.loc.gov.

[2]The background of the Violence Against Women Act and the original provisions of the Senate bill are discussed in more detail in NHLP, *Violence Against Women Act Reauthorization Introduced*, 35 Hous. L. Bull. 171, 185 (2005).

[3]Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994).

[4]Pub. L. No. 106-386, 114 Stat. 1464 (2000). Also, in 2000, the Supreme Court found unconstitutional VAWA's federal civil remedy for victims of gender-motivated violence, as beyond Commerce Clause and 14th Amendment. United States v. Morrison, 529 U.S. 598 (2000).

[5]Pub. L. No. 108-21, 117 Stat. 650 (2003).

- requires localities to incorporate the needs of victims into their five-year affordable housing strategic planning; and
- protects the confidentiality of survivors within the homeless services system.

Especially controversial within this title are several provisions amending the public housing and Section 8 programs to prevent victims of domestic violence from being evicted or denied access to public and assisted housing on the basis of their victim status or their abusers' criminal activity. Landlords may still evict or terminate occupancy rights of domestic violence victims for unrelated lease violations, or if they can demonstrate that eviction is necessary to address an "actual and imminent threat" to other tenants or property management staff. These basic protections for victims survived opposition from many housing industry organizations.

Earlier attempts to provide similar protections for all domestic violence victims, whether or not residing in public or subsidized housing, were unsuccessful.

Update: President Bush has signed the VAWA reauthorization bill into law. Pub. L. No. 109-164 (Jan. 10, 2006). ■

Highway Legislation Paves the Way for Over $200 Billion in Workforce Development Programs

Congress recently enacted the Safe Accountable Flexible and Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU).[1] SAFETEA-LU appears to encourage the use of local hiring on federally aided transportation projects as an anti-poverty program. Specifically, SAFETEA-LU states, in relevant part:

> Congress finds the following: (1) Federal-aid highway programs provide State and local governments and other recipients substantial funds for projects that produce significant employment and job-training opportunities....(3) Jobs in transportation

[1]Safe Accountable Flexible and Efficient Transformation Equity Act – A Legacy for Users, Pub. L. No. 109-59, § 1920, 119 Stat. 1144, 1480 (2005).

Teleconference on 2006 Voucher Funding Rules, Funding Levels and Local Choices

When: Thursday, February 2, 2006 • 2 p.m. ET

What: Congress and HUD revise the funding levels and rules for the voucher program annually. Public housing authorities are forced to respond. Depending on funding levels, they may cut the number of vouchers issued, increase residents' rent levels, or limit residents' capacity to use vouchers in other localities. Many PHAs have successfully limited the adverse impacts of these changes by inviting public participation in the policy-setting process and by carefully analyzing locally available data.

To address the issues that PHAs face in 2006, KnowledgePlex and the National Housing Law Project will present an online discussion about the 2006 voucher funding rules. The discussion will review and discuss the new rules, the policy choices that PHAs confront, the data and information that may assist them in making policy choices, the advantage of public participation in making policy choices, and the importance of maintaining and promoting the voucher program's portability feature.

Presenters: Barbara Sard, Center on Budget and Policy Priorities, Stephen Norman, King County (Washington) Housing Authority, James (Mac) McCreight, Greater Boston Legal Services, and Catherine Bishop, National Housing Law Project will be the online discussion presenters.

Who should participate: The online discussion is directed at PHA staff and decision makers, and local housing advocates who work with the voucher program. Because participation in the teleconference is limited, persons not directly working on 2006 voucher funding issues are encouraged to listen to the presentation at a later time. Also, to allow others to participate, if you are in the same office, please share phone lines and online computer access. If you cannot access the online component, you may download the materials and listen to the audio component. The online discussion, including all materials, will be available at no cost through KnowledgePlex after the live presentation.

For more information on how to participate in the online discussion, go to www.knowledgeplex.org. On the left side under tools, click on Expert Chats and scroll down under future chats for the voucher teleconference information. If you are a first-time user, you should review the information regarding participation prior to the time of the call to download the application. There is no charge to participate in the call.

If you have any questions about how to participate, contact KnowledgePlex at (202) 274-1866.

> construction, including apprenticeship positions, typically pay more than twice the minimum wage, and include health and other benefits. (4) Transportation projects provide the impetus for job training and employment opportunities for low income individuals residing in the area in which a transportation project is planned . . . . (6) The Alameda Corridor, a $2,400,000,000 transportation project, is an example of a transportation project that included a local hiring provision resulting in a full 30 percent of the project jobs being filled by locally hired and trained men and women.
>
> It is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including Federal, State, and local governments, community colleges, apprentice programs, local high schools, and other community-based organizations that have an interest in improving the job skills and low-income individuals, to help leverage scarce training and community resources and to help ensure local participation in the building of transportation projects.[2]

These two paragraphs have the potential of opening up more than $200 billion in highway funding for job creation programs for low-income residents.[3]

Congress has historically endorsed a number of workforce development hiring requirements or preferences on federally funded projects. These include HUD's Section 3 program;[4] contractual set-asides under the Public Works Employment Act;[5] and the DOT's preference for Appalachian residents.[6] These workforce development programs, through the use of targeted hiring policies and apprenticeship programs, advance what is often the main function of government-assisted construction projects: to help a depressed area by increasing economic opportunities there.[7]

Consequently, workforce development programs represent an important part of the overall effort to rebuild economically depressed areas and thus suggest small but real steps the government can take towards the revitalization of some of our nation's poorest communities. Nevertheless, while these, and other similar programs, represent the promise of employment opportunities for many low-income individuals, local governments, developers, and advocates must now take the next step and identify concrete plans that will make this promise a reality.[8] ■

[2]*Id*.

[3]The President's Office of Management and Budget has identified the issue of highway and road congestion as a national problem and has proposed that the Department of Transportation (DOT) be allocated $283.9 billion to address this problem. These funds would be expended over a six-year period and would be earmarked for the development of highway and transit infrastructure projects. Office of Management and Budget, Budget of the United States Government – Fiscal Year 2006 (2005), *at* http://www.whitehouse.gov/omb/budget/fy2006/transportation.html.

[4]Housing and Urban Development (HUD) Act of 1968, Pub. L. No. 90-448, § 3 (1968) (codified at 12 U.S.C. § 1701u).

[5]Public Works Employment Act of 1977, Pub. L. No. 95-28, 91 Stat. 116 (1977) (codified at 42 U.S.C. §§ 6701-10).

[6]23 C.F.R. pt. 633, subpt. B, app. B (2005).

[7]For a more thorough discussion of targeted hiring programs and community benefit agreements, see Julian Gross et al, Community Benefit Agreements: Making Development Projects Accountable ch. 5 (2005), *at* http://www.californiapartnership.org/downloads/CBA%20Handbook%202005%20final.pdf.

[8]Already, community organizations in New York, Louisiana, Missouri, Illinois and elsewhere have begun to strategize how to create more apprenticeship opportunities on transportation projects for residents of low-income communities. To learn more about this opportunity, contact Laura Barrett at the Gamaliel Foundation at laurabarrett@gamaliel.com.

City of Long Beach Finalizes its Section 3 Restitution Plan

After an extended six-year investigation by the Department of Housing and Urban Development (HUD), and upon the persistent urging of local advocates, the City of Long Beach (the City) has finally announced a restitution plan that complies with the directives prescribed in HUD's Section 3 Determination of Non-Compliance dated April 26, 2004.[1] The Long Beach restitution plan was deemed necessary to restore the lost Section 3 employment and business opportunities that could have been generated by the City's HUD-funded construction project.

[1]Letter from Craig Beck, Long Beach, CA, Acting Director of Community Development, to Floyd O. May, HUD General Deputy Assistant Secretary for Fair Housing (August 19, 2005); see also Letter from Melanie S. Fallon, Long Beach, CA, Director of Community Development, to Dennis Rockway, LAFLA Director of Advocacy, and Carolyn Peoples, HUD Assistant Secretary for Fair Housing (Nov. 16, 2004) [hereinafter "Restitution Plan"].

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.[2] HUD's Section 3 regulations state that recipients of housing and community development funds may establish that they have met the "greatest extent feasible" requirement by committing to employ Section 3 residents as at least 30% of all new hires.[3]

The Rainbow Harbor Project

During the summer of 1995 the City applied for and received a Section 108 loan guarantee from HUD in the amount of $40 million.[4] These funds were specifically earmarked to construct the public infrastructure, including, but not limited to, the dredging of the downtown harbor, and the construction of piers, docks, and landscaping, for the proposed "Rainbow Harbor." The terms of the loan guarantee, not unlike many other forms of HUD financial assistance, required the City to comply with Section 3 of the Housing and Urban Development Act of 1968.[5]

The Rainbow Harbor project expenditures totaled $40 million ($32 million in construction related costs and $8 million in non-construction related costs) and was completed in two phases. Phase I, which commenced on November 25, 1996, consisted generally of the dredging and other activities associated with the creation of a circular harbor located adjacent to downtown Long Beach. Phase II, which commenced on September 8, 1997, consisted generally of the construction of piers, docks, an esplanade and other improvements associated with the harbor, including an anglers building, a fountain, a boardwalk and a lighthouse. During the course of the project, 124 new employment opportunities were created, of which thirty-nine were awarded to Section 3 residents.

HUD initiated an investigation into the City's Rainbow Harbor project on July 10, 1998, and ultimately determined that the City had not fulfilled its Section 3 obligations.

HUD's Ruling

Pursuant to an administrative complaint filed by the Legal Aid Foundation of Los Angeles (LAFLA), HUD initiated an investigation into the City's Rainbow Harbor project on July 10, 1998, and HUD ultimately determined that the City had not fulfilled its Section 3 obligations. Specifically, HUD determined that when the complaint was filed on June 9, 1998, the percentage of Section 3 new hires was 5.2% for Phase I and 7.5% for Phase II of the project.

Significantly, however, HUD also found that while the City's contractors did attempt to hire more Section 3 residents during the later stages of the project, and were able to cumulatively attain a Section 3 new hire rate of 31.4%, the overall delay in Section 3 hiring resulted in Section 3 residents working only 19% of the "total hours" expended on the project to be allocated to Section 3 residents. This was not enough to comply with Section 3 regulations.[6] Consequently, through its Determination of Non-Compliance letter, HUD ordered the City to submit a plan which in "clear and convincing" detail specified how it would restore all Section 3 employment and business opportunities within the next three years.

The City's Plan

After a series of exchanges between the interested parties, the City, HUD, and the complainants were able to agree on a restitution plan. Under the proposed restitution plan, the City intends to restore the lost employment and business opportunities through the following strategies: (1) provide no less than 3000 hours of work to low-income Long Beach residents on City-funded construction projects; (2) provide pre-apprenticeship construction training to low-income individuals in the Long Beach area, including Carmelitos public housing residents; (3) provide placement assistance for graduates of the construction

[2] 12 U.S.C.A. § 1701u(b) (West 2005).

[3] 24 C.F.R. § 135.30(b)(3)(iii) (2005). For recipients of community development assistance, Section 3 is applicable to work (including administrative and management) arising from housing rehabilitation, construction and other public works. A Section 3 resident is a very low-income person residing in the metropolitan area in which the financial assistance was expended. 24 C.F.R. § 135.5 (2005).

[4] 42 U.S.C.A. § 5308 (2005). Section 108 authorizes HUD to guarantee the issuance of local taxable bonds to help finance community development activities.

[5] Agencies that receive federal housing and community development funds are required to provide "to the greatest extent feasible" employment, contracting, and training opportunities for low-income people. Thus, housing and community development funding carries the Section 3 obligation. HUD funding streams that often trigger a corresponding Section 3 obligation include: Community Development Block Grant, HOME, Emergency Shelter Grants, Housing Opportunities for Persons with AIDS, and HOPE VI.

[6] See generally, Letter from Carolyn Peoples, HUD Assistant Secretary for Fair Housing and Equal Opportunity, to Heather A. Mahood, Long Beach, CA, Deputy City Attorney, at 11-13 (Apr. 26, 2004).

training program into the Union Building Trade apprenticeship program and provide up $1,500 to each participant for purchase of tools, uniforms, and other program necessities; and (4) implement a $3.2 million small business incentive program to encourage contractors to use Section 3 businesses in the construction of future projects.[7] In an effort to secure compliance with the Section 3 restitution plan, the City, over the next three years, will report to HUD on a quarterly basis, in writing, on the specific progress it has made towards the plan. In addition, while the City has indicated a general willingness to comply with the terms of the restitution plan, LAFLA will also continue to monitor compliance on behalf of its clients, the Carmelitos Tenants' Association.

Conclusion

While the City's restitution plan represents a landmark victory for housing and community economic development advocates, unfortunately this plan also represents only one of a few victories that advocates have seen in this area. As a result, numerous similarly situated projects have failed to generate the employment opportunities that were originally intended by Congress. Over the coming months look for additional articles in the *Housing Law Bulletin* or for materials posted on the NHLP website addressing this issue in greater detail. ■

[7]Restitution Plan, *supra* note 1.

HUD Publishes the Final Public Housing Operating Fund Rule

In September 2005, the Department of Housing and Urban Development (HUD) published the final rule revising the formula for determining the operating subsidy for public housing.[1] In general, the formula relies upon a 2003 Harvard University Graduate School of Design study on the costs incurred in operating well-run public housing;[2] disappointingly, the authors studied data from the Federal Housing Administration multifamily database rather than public housing data.

The purpose of the new final rule is to create a new formula for distributing operating subsidies. The formula set forth in the new rule is comprised of a Project Expense Level (PEL) plus a Utility Expense Level (UEL) and certain add-ons. In addition, the final rule also establishes the requirements for public housing agencies (PHAs) to convert to asset management, which includes concepts of project-based management and long-term and strategic planning. Although the rule is final, there are many gaps and issues to be resolved that will substantially affect the funding levels of individual PHAs and their administration of public housing. The details of how individual PHAs will transition to an asset management have not yet been determined.

Background

The final rule was preceded by a negotiated rulemaking process that was marked by significant flaws and unfairness. In 2004, during the final phase of the negotiated rulemaking process, HUD diminished substantially the participation and representation of tenants, tenant organizations and advocacy groups representing interests of residents and applicants for public housing. The committee was reconstituted in early 2004 and the result was to diminish the role of residents. The reconstituted committee had twenty PHAs and their trade groups, two resident representatives, two HUD representatives and four other interested parties. The balance of interests was 20-2-2-4.

[1]79 Fed. Reg. 54,984 (Sept. 19, 2005) (effective Nov. 1, 2005) amended 79 Fed. Reg. 61,366 (Oct. 24, 2005) (changed some dates to reflect a grace period); see also *Information Regarding Implementation of the Final Rule to the Public Housing Operating Fund Program*, 24 CFR Part 990, PIH 2005-34, Nov. 2, 2005, available at www.hudclips.org.

[2]H. Rep. No. 106-379 (1999), 91, *see also* Pub. L. No 106-71 (Oct. 20, 1999) (HUD Appropriations Act for FY 2000); Harvard University Graduate School of Design, Public Housing Operating Cost Study, Final Report (2003), available at http://www.gsd.harvard.edu/research/research_centers/phocs/ (click on closing message and then on final report).

The committee developed a negotiated rule that reflected compromises among those parties who participated in the negotiated rulemaking process.[3] The committee apparently agreed that the adoption of any policy required the concurrence of HUD, plus two-thirds of the committee members present, which substantially diminished any role that residents could play in the process.[4] In April 2005, HUD issued a proposed operating fund rule.[5] However, that proposed rule varied substantially from the negotiated rule.

HJN members and many other commenters objected strenuously to the dramatic changes between the proposed rule and the negotiated rule.

Housing Justice Network (HJN) members submitted comments on the proposed rule, which are available at http://www.nhlp.org/html/pubhsg/index.htm. HJN members and many other commenters objected strenuously to the dramatic changes between the proposed rule and the negotiated rule. The HJN comments also criticized other aspects of the rule and urged that the rule as proposed by the negotiated rule process be published as negotiated for notice and comment. In total, HUD received 573 comments on the proposed rule.

The final HUD rule reverts to most of the agreements reached during the negotiated rulemaking process.[6] HUD did not accept the HJN recommendation and publish the negotiated rule in its entirety for notice and comment.

Final and Proposed Rules Compared

In the final rule, HUD adopted five of the seven negotiated rulemaking committee recommendations regarding the operating fund formula that had been omitted from the proposed rule. These five are:

1. A 10% nonprofit coefficient, which adds 10% to the cost estimate for operating nonprofit housing versus for-profit housing when calculating public housing operating costs. The 10% coefficient had also been recommended by the Harvard Graduate School of Design Cost Study.[7]
2. A 3% vacancy allowance for public housing units (or up to five units, when a PHA has 100 or fewer units).[8]
3. A two-year phase-in of operating subsidy gains (when a PHA's subsidy increases as a result of the new formula), instead of the four-year phase-in recommended in the proposed rule.[9]
4. A significant "stop-loss" provision, under which a PHA can stop its subsidy reductions by converting to asset management of its units or by reaching a regulatory limit on the reductions.[10]
5. An advisory committee, convened in accordance with the Federal Advisory Committee Act, to review PELs and utility benchmarkings.

The final rule dropped a $2 per unit monthly public entity fee agreed to by the negotiated rulemaking committee. HUD stated that the "expenses associated with the public entity fee are reflected in the PEL's . . . . ten percent nonprofit coefficient, which HUD believes adequately covers the additional services unique to PHAs."[11] HJN commenters argued that there was ample support for the $2 per unit fee because PHAs, unlike nonprofit organizations that operate assisted housing, are subject to additional regulations and tend to serve a tenant population with a profile that is substantially more disadvantaged than the population served by assisted housing, both of which add costs.

The final rule also did not include a provision contained in the negotiated rule regarding the inflation factor used to adjust the PEL. HUD stuck to the inflation factors in the proposed rule, stating that those agreed to by

[3] 79 Fed. Reg. 54,984, *supra* note 1, at 54,986.

[4] HUD, *Operating Fund Negotiated Rulemaking Advisory Committee, Minutes of First Session–First Day, March 30, 2004, at* http://www.hud.gov/offices/pih/divisions/ffmd/index.cfm.

[5] 79 Fed. Reg. 19,858 (April 14, 2005) (proposed rule); 79 Fed. Reg. 54,984, *supra* note 1 at 54,984-54,985. *See also* NHLP, *Negotiated Rulemaking on New Public Housing Cost Formula*, 34 Hous. L. Bull. 105, 114 (2004); NHLP, *Negotiated Rulemaking Concludes for New Public Housing Cost Formula,* 34 Hous. L. Bull. 157, 166 (2004).

[6] There was also congressional pressure to issue the regulations as negotiated.

[7] During the negotiated rule making for the operating fund formula, Congress directed HUD to contract with the Harvard University Graduate School of Design to conduct a study on the costs incurred in operating well-run public housing. H.R. Rep. No. 106-379 at 91 (1999). The HJN comments criticized some of the underlying assumptions of the Harvard Cost Study because it failed to look at the cost of operating public housing and instead looked at the cost of operating federally assisted housing. In addition, when making the comparison it underestimated the cost differences between the two types of housing and failed to account for the social service function of public housing and the cost to the community and residents if the housing is abandoned because it is not cost-effective to run as determined by the formula and the asset management model.

[8] 79 Fed. Reg. 54,984, *supra* note 1, at 55,999 (to be codified at 24 C.F.R. § 990.150).

[9] *Id.* at 55,005 (to be codified at 24 C.F.R. § 990.235).

[10] *Id.* at 55,004, to be codified at 24 C.F.R. § 990.230.

[11] *Id.* at 54,986.

the negotiated rulemaking committee "are less accurate and no more transparent than the current methodology."[12] The HJN comments put forth a substantial argument based upon HUD data that the inflation factor relating to employee benefits was not accurate and that HUD ought to address the issue by increasing the PHA expense levels for employee benefits. HUD did not respond to this argument other than to say that it was not changing its position.[13] The final rule also declined to adopt a newly suggested provision regarding sanctions against PHAs that fail to comply with the asset management requirements or that do not submit timely and accurate data.

HJN and other commenters urged HUD to allow for funds for transitional costs associated with implementing the new accounting, budgeting and management changes.

Funding for Resident Participation

The proposed regulations provided that in addition to calculating the operating formula based upon the PEL and the UEL, a PHA's formula may be increased by add-ons. One of these was a $25 per unit per year add-on for resident participation.[14] The proposed rule language was similar to what is in the current operating subsidy rules and the HJN comments supported this provision.[15] HUD retained the resident participation add-on in the final rule.

Another commenter sought an explanation of the term "resident participation." In response, HUD stated that resident participation activities include but are not limited to those described in 24 C.F.R. part 964. HUD then explained that the intent of the provision is "to allow resident participation funds to be used for a broader range of activities than outlined in 24 CFR part 964, *including resident services*."[16] It is not clear whether this statement by HUD reflects a change in HUD policy. However, HUD Notice 2001-03, which implements the $25 per unit per year provisions, limits the use of resident participation funds and does not appear to allow resident participation funds to be used for resident services that are not related to participation.[17]

Other HJN Comments on the Proposed Rule

HJN and many other commenters urged HUD to allow for funds for transitional costs associated with implementing the new accounting, budgeting and management changes. HUD declined to incorporate such a proposal into the final rule.[18]

In addition, at various points in the proposed regulations HUD indicated that changes might be made to the formula at HUD's sole discretion. The HJN comments urged that the changes only be made pursuant to rules published for notice and comment. For the most part, HUD rejected those arguments. However, with respect to the issue of changes to the formula on how PHA income (which presumably includes tenant rent) will be determined after Fiscal Year (FY) 2008, HUD did agree that "residents, organizations representing residents, and other interested parties should have an opportunity to submit comments" before HUD makes the post-2008 policy determination on the income component of the formula.[19]

"Stop Loss" and Delayed Implementation of Operating Fund Formula

Significantly, as a result of substantial criticism by the PHA trade groups, HUD delayed applying the funding formula set forth in the final operating fund rule until January 2007 and gave agencies that lose funding under the new formula more time to comply with the requirements of project-based budgeting and accounting (PBA) and project based management (PBM) before the first set of losses take effect. Those PHAs that will lose funding under the new rule can stop the losses by complying with PBA and PBM. In accordance with the regulations, the losses are planned to be phased in over a five-year period plus a one-year transition period. For each year there is a limitation that is set at a percentage of the difference between the new operating formula levels and the old formula funding levels. The percentages are 5% if compliance is not achieved by the first phase-in date of October 1, 2006; 24% for the first year; 43% for the second; 62% for the third; 81% for the fourth; and 100% for the fifth year (October 2011).

The final rule provides that PHAs must comply with PBA by FY 2007 and with all other aspects of PBM by FY 2011.[20] PBA is a system that allows for the analysis of actual revenues and expenses associated with each property.[21] Revenues include the operating subsidy, rents and

[12]*Id.* at 54,987.

[13]*Id.*

[14]*Id.* at 55,002 (to be codified at 24 C.F.R. § 990.190(e)).

[15]24 C.F.R. § 990.108(e) (2005).

[16]79 Fed. Reg. 54,984, *supra* note 1, at 54,992 (emphasis added).

[17]*Interim Instructions on Distribution and Use of Operating Subsidy Funds Received for Resident Participation Activities*, HUD PIH 2001-03 (HA), Jan. 18, 2001.

[18]79 Fed. Reg. 54,984, *supra* note 1, at 54,995.

[19]*Id.* at 54,993.

[20]*Id.* at 55,007 (to be codified at 24 C.F.R. § 990.290(d)).

[21]*Id.* at 55,006 (§ 990.280).

excess utility income. Expenses include costs for utilities, maintenance, tenant services, capital expenses, administrative costs and management fees. PBM is defined as "the provision of property management services that is tailored to the unique needs of each property, given the resources available to that property."[22] The services include marketing, leasing and lease enforcement, resident services, and maintenance. HUD has stated that it will provide guidance on PBA in 2005, but that guidance is not currently available and the PHA trade groups are doubtful that the guidance will be issued before the end of 2005. If the guidance is delayed, those PHAs who are seeking to comply with the stop-loss protections will have less than a year of guidance so as to comply and avoid substantial cuts in their funding.

The big picture is clear: some PHAs will get more funds under the new rule and others will lose funding.

Practical Effect of the New Rule for Residents

There continue to be a number of substantial unanswered questions about how the new formula will be implemented. However, the big picture is clear: some PHAs will get more funds under the new rule and others will lose funding. For those that lose funding, there is the stop-loss provision which allows PHAs which have obtained PBA and PBM to stop the loss of funds. HUD published a list of the ten biggest winners and losers as anticipated under the proposed rule (not the final rule).[23] The list of PHAs that would lose funding included New York City, Cleveland, Baltimore and Newark, whereas the biggest winners included Puerto Rico, Atlanta, Dallas and El Paso.

HUD has not yet published any data to show which PHAs are winners and losers under the final rule. But advocates can get an idea as to whether their PHA may be a winner or loser under the final rule by reviewing HUD's online list of all PHAs nationwide showing they are projected as a winner or loser by comparing the per unit per month (PUPM) maximum subsidy for the FY 2003 annual expense level to the PUPM project expense level under the proposed rule and the negotiated rule.[24] This approach will yield a rough estimate at best. The posted materials are based on proposed and negotiated rule provisions, which are different from the final rule as explained above.[25] Also, the numbers produced by HUD do not take into account transition costs for PHAs. Nevertheless, projections based on the negotiated rule offer some guidance and may provide the basis for discussions with a local PHA. The materials show the following approximate PUPM reductions: $50 for San Francisco; $28 for the City of Los Angeles; $20 for Sacramento; $74 for Syracuse; $122 for Rochester; and $110 for Buffalo and Albany, NY. The materials also show the following approximate increases: $68 for Austin, TX; $117 for Fort Worth; $107 for El Paso; $37 for Richmond, CA; $30 for Contra Costa, CA; $21 for Oakland; and $104 for the City of Alameda, CA.

Another key factor to consider along with the new rule is that the level of funding for PHAs is dependent upon congressional appropriations. In the last several years the administration has not requested nor has Congress appropriated a sufficient level of funding.

Finally and significantly, it is important for advocates to remember that underlying the operating subsidy formula changes is a commitment by the administration to continue with efforts to deregulate public housing.[26] The stated purpose is to lessen the burden on PHAs. In the introductory comments to the final rule, HUD also cited the Harvard Cost Study to support the conclusion that if statutory and regulatory changes were made, public housing would be aligned more closely with the Federal Housing Administration programs. This conclusion is not surprising as the Harvard Cost Study used the data from these programs to justify the new funding formula and the proposal to convert to asset management.[27] However, as one commenter cautioned, "HUD should take care not to abandon the segment of the population public housing serves."[28] ■

[22] *Id.* at 54,998, 55,006 (§§ 990.115 and 990.275).

[23] *See* HUD, *Regulatory Impact Analysis of "Revisions to the Public Housing Operating Fund Program" (Economic Analysis), at* http://www.hud.gov/offices/pih/publications/4874_op_fund_prop_ea.pdf (Oct. 18, 2005).

[24] HUD, *PHA's Operating Subsidy Amount under Current, Negotiated, and Proposed Rules (FY 2003 dollars), at* http://www.hud.gov/offices/pih/publications/opsubamnts.cfm (Jun. 13, 2005); HUD, *HUD's Methodology for Calculating the Project Expense Level (PEL) under the Proposed Operating Fund Rule*, *at* http://www.hud.gov/offices/pih/publications/opsubamnts.cfm (Jun. 13, 2005). The information about the PUPM under the proposed rule is no longer important as the proposed rule was not adopted. Information about the AEL for 2006 is also now available, *see* http://www.hud.gov/offices/pih/divisions/ffmd/of/index.cfm.

[25] The negotiated rule included the $2 PUPM for a public entity fee and a different inflation factor so the figures for the negotiated rule are not exactly the same as they would be under the final rule.

[26] 79 Fed. Reg. 54,984, *supra* note 1, 54,995.

[27] *Id.*

[28] *Id.*

Bill Would Exempt Small PHAs from Most Annual and Five-Year Plan Requirements

Bill H.R. 3422,[1] passed by the House of Representatives on December 13, 2005, would exempt small public housing authorities (PHAs) from the PHA annual and five-year plan requirements. The bill defines a small PHA as one with a combined number of 250 or fewer public housing units and vouchers.

Using 2003 data, it is estimated that approximately 2225 of the 3914 total PHAs nationwide (57%) fall within the H.R. 3422 definition. These PHAs administer approximately 131,000 public housing units and 77,000 vouchers, or approximately 6.5% of the combined stock of public housing and vouchers. Small PHAs are not evenly divided amongst the states; the states with the greatest number of small PHAs include Texas with 312, Georgia with 145 and New York with 111.[2]

If the PHA plan process is modified as H.R. 3422 proposes, it will reduce the transparency of the PHA plan process.

Under the bill, small PHAs would still be required to submit a civil rights certification and establish a resident advisory board (RAB). They would also be required to consult with and consider the comments of the RAB regarding the establishment of PHA goals, objectives and policies. In addition, small PHAs would be required annually to conduct public hearings and invite public comment on the goals, objectives and policies of the PHA. Forty-five days prior to such hearings, small PHAs would be required to make available to the public all information which is relevant to the hearing.

H.R. 3422 Is Unnecessary

There is little justification for the proposed legislation. The Secretary of the Department of Housing and Urban Development (HUD) already has ample authority to streamline the PHA plan process for small PHAs. Currently, the statute governing the PHA annual plan process provides that the Secretary may establish a streamlined public housing agency plan for PHAs with less than 250 units of public housing.[3] Pursuant to that authority, HUD issued rules to streamline the PHA plan process for PHAs with less than 250 units of public housing. These streamlined rules provide that a PHA with less than 250 units of public housing is required to submit a five-year plan, which is modified and is not the full plan required of all other standard-performing PHAs. Annual plan requirements are also substantially reduced under the existing streamlined rules. The only universally mandatory provisions are that a PHA with less than 250 public housing units must submit annually a statement of needed capital improvements and a civil rights certification.[4]

H.R. 3422 Is Bad Policy

If the PHA plan process is modified as H.R. 3422 proposes, it will reduce the transparency of the PHA plan process. For example, it is not clear whether the proposed legislation requires that the adoption or amendment of PHA goals, objectives and policies be approved by the board of the PHA.[5] Unlike the parallel provisions regarding the PHA plan for other PHAs, there is no mention of PHA board approval in H.R. 3422. Moreover, the current implementing regulations and guidelines set forth a consistent and predictable process that is tied to a PHA's fiscal year calendar. There is no indication that the process outlined in the current bill would follow such a clear, well-defined annual process.[6]

[1]H.R. 3422 (2005), Small Public Housing Authority Act, available from http://thomas.loc.gov/cgi_bin/thomas.

[2]A few states, including Alaska, Delaware and Hawaii, have no small PHAs; and other states have very few, such as Oregon with one and Pennsylvania with only six. Looking at the numbers as provided by the 2003 data in a different manner, approximately 270 PHAs administer a program with twenty-five or fewer units; 483 PHAs administer between twenty-six and fifty combined public housing and voucher units; and over half of 2225 PHAs that meet the definition of a small PHA administer seventy-six units or less. An advocate can determine the number of combined public housing and voucher units administered by a particular local PHA by reviewing the PHA's online profile on the HUD website at http://www.hud.gov/offices/pih/systems/pic/haprofiles/.

[3]42 U.S.C.A. § 1437c–1(k) (West 2003). The implementing regulations to the PHA plans further acknowledge that the Secretary may waive any provision of the regulations. 24 C.F.R. § 903.4(d) (2005). In addition, the rules provide that any provision of the PHA plan rules may be waived on a program-wide basis, where the Secretary determines that such waiver is necessary for the effective implementation of the PHA plan process. *Id*. Moreover, a PHA could petition HUD for rulemaking, if it is dissatisfied with the current rule. 24 C.F.R. § 10 pt. B (2005).

[4]24 C.F.R. § 903.12(c) (2005). A PHA may be required to report on other items but only so far as those provisions are applicable. For example, if the PHA has a homeownership program or project based vouchers, then additional information is required.

[5]Under the existing statute, board approval of the PHA plan and amendments is required. 42 U.S.C.A. § 1437c-1(f) and (g) (West 2003).

[6]The *PHA Plan Desk Guide* (available at http://www.hud.gov/offices/pih/pha/ [click on PHA Plan Desk Guide]) sets out timelines depending upon a PHA's fiscal year and provides that preparations for the PHA annual plan begin approximately eight months prior to the beginning of the PHA's fiscal year.

Importantly, the proposed bill also ignores key substantive issues. For example, in the event of a PHA proposal to demolish public housing, the current statute regarding demolition and disposition of public housing units provides that the PHA must certify that it has authorized the demolition in its PHA plan.[7]

There is a shortage of affordable housing and demolition or disposition should be a strategy that is pursued with caution and only after all affected parties are notified and provided an opportunity to submit comments to the PHA. A small PHA should be required to announce annually to its board, the tenants, the RAB and the public through its PHA plan if it proposes to demolish or dispose of public housing units. This is not too great a burden.

Also, as noted above, under current streamlined PHA plan regulations, PHAs with less than 250 units of public housing are still required to submit information annually regarding two elements of the PHA plan related to capital improvement needs and civil rights. The proposed legislation correctly continues to require the civil rights certification, but does not require the capital improvement needs statement. There is little justification for eliminating a PHA's responsibility to determine how it will use its capital funds and to discuss these plans with the public housing tenants, the RAB and the public.

The Future of H.R. 3422

Although H.R. 3422 has been referred to the Senate, no similar bill has been introduced in the Senate. ■

[7]42 U.S.C.A. § 1437p(a)(3) (West 2003).

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 Web site.[3] Copies of the cases are *not* available from NHLP.

Code Enforcement; Fair Housing — Disparate Impact

Valdez v. Town of Brookhaven, 2005 WL 3454708 (E.D.N.Y. Dec. 15, 2005). Plaintiff Latino tenants filed suit against Defendant town and officials challenging a no-notice eviction housing code enforcement policy. Plaintiffs alleged that the policy violated the Fourteenth Amendment due process requirements and violated the Fair Housing Act, 42 U.S.C. § 3604. Plaintiffs moved for various preliminary relief to restrict Defendants' further implementation of the challenged policy. First rejecting *Rooker-Feldman* and *Younger* abstention arguments raised by Defendants, the court concluded that Plaintiffs were not likely to succeed on their due process claim, reasoning that Plaintiffs had no protectable property interest where their tenancies violated local zoning laws. However, the court further ruled that Plaintiffs did have a likelihood of success on their Fair Housing Act claim based on the apparent disparate impact of the policy on Latinos. While it granted Plaintiffs' motion, the court declined to award the relief sought by Plaintiffs. The limited relief awarded by the court enjoined Defendants only from failing to provide tenants notice prior to eviction.

Constitutional Law — First Amendment; Eviction — House Rules

Kabbani v. Council House, Inc., 2005 WL 3242137 (W.D. Wash. No. 29, 2005). Plaintiff resident filed suit against Defendant landlord challenging house rules prohibiting rude or abusive behavior. Defendant apparently operated a project-based Section 8 development. Plaintiff asserted First Amendment claim via 42 U.S.C. § 1983 and requested a declaratory judgment that the house rules violated 42 U.S.C. § 1437d(1)(2). Defendant warned Plaintiff against violating the house rules after Plaintiff compared the Section 8

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

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

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

development to "Nazi Germany" and said that Defendant should "[s]ell the G-d Damn building." Plaintiff moved for a preliminary injunction to bar Defendant from enforcing the house rule. The federal district court denied Plaintiff's motion because Plaintiff had not shown a likelihood of success on her claims. The court concluded that Defendant was not a state actor for First Amendment or § 1983 purposes. It further held that 42 U.S.C. § 1437d(1)(2), which prohibits unreasonable lease terms by public housing agencies, did not apply as Defendant was not a public housing agency.

Emergency Low Income Housing Preservation Act; Multifamily Housing Preservation

Grass Valley Terrace v. United States, 2005 WL 3497799 (Fed. Cl. Dec. 21, 2005). Citing *Franconia Assocs. v. United States*, 536 U.S. 129 (2002), the Court of Federal Claims denied Defendant United States' motion to dismiss as time-barred breach of contract claims related to Emergency Low Income Housing Preservation Act prepayment restrictions by Plaintiff Section 515 project owners.

Enhanced Vouchers; Federal Courts — Private Right of Action

Estevez v. Cosmopolitan Assocs. LLC, 2005 WL 3164146 (E.D.N.Y. Nov. 28, 2005). Plaintiff residents filed suit against Defendant former project-based Section 8 landlord for refusal to accept enhanced vouchers in violation of 42 U.S.C. § 1437f(t)(1)(B). Plaintiffs moved for a preliminary injunction to bar Defendant from refusing to renew their leases and from refusing to accept the enhanced vouchers. The federal district court granted the motion. In so doing, the court, applying *Cort v. Ash*, 422 U.S. 66 (1975), concluded that § 1437f(t)(1)(B) was privately enforceable against Defendant.

Environmental Justice; Fair Housing — Generally

Cox v. City of Dallas, 430 F.3d 734 (5th Cir. 2005). Plaintiff-Appellant African-American residents of a neighborhood that had long been the site of an illegal dump filed suit against Defendant-Appellee city and officials under various federal civil rights statutes. On appeal, the Fifth Circuit ruled, *inter alia*, that Plaintiff-Appellants had no cognizable claim under the Fair Housing Act, 42 U.S.C. § 3604, because of an insufficient connection between the dump and housing. The Fifth Circuit also ruled that Plaintiff-Appellants had no cognizable claim under 42 U.S.C. §§ 1981 and 1983 because the record contained evidence of negligence by Defendant-Appellees, but not intentional discrimination.

Fair Housing — Discriminatory Statements; Fair Housing — Exemptions

United States v. Space Hunters, Inc., 429 F.3d 416 (2d Cir. 2005). In this suit by the United States for violations of the Fair Housing Act, the Second Circuit held that the provision of the Fair Housing Act prohibiting discriminatory statements was not limited to housing providers and also applied to housing information vendors, such as a room rental listing service. The Second Circuit also held, *inter alia*, that the "Mrs. Murphy" exemption to the Fair Housing Act for owner-occupied housing, 42 U.S.C. § 3603(b)(2), was an affirmative defense and a jurisdictional limitation.

Fair Housing — Reasonable Accommodation; Housing Choice Voucher Program

Hinnenberg v. Big Stone County Hous. & Redev. Auth., 706 N.W.2d 220 (Minn. 2005). In this case involving an appeal of a denial of request by a Housing Choice Voucher holder for reasonable accommodation of her disability, the Supreme Court of Minnesota held that the Fair Housing Amendments Act, 42 U.S.C. §§ 3601 *et seq*., applies to public housing authorities. However, the court further concluded, citing 42 U.S.C. § 1437f(r)(1)(B)(i), that the public housing authority in this case was not required to waive its residency requirement for voucher portability to accommodate a voucher holder's disability. The court ruled that such an accommodation would pose an undue hardship on the housing authority.

Freedom of Information Act — Fee Waivers

Cmty. Legal Servs. v. HUD, 2005 WL 3481317 (E.D. Pa. Dec. 19, 2005). On cross-motions for summary judgment, the federal district court concluded that a legal services organization was entitled to a waiver of fees for its Freedom of Information Act request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Plaintiff Community Legal Services requested information from the Department of Housing and Urban Development regarding the Philadelphia Housing Authority Moving to Work Program. The court ordered HUD to provide the requested information free of charge. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD) and the Department of Agriculture's (USDA) Rural Housing Service (RHS) issued in November and December of 2005. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

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

HUD Federal Register Final Rules

70 Fed. Reg. 69,022 (Nov. 10, 2005)
Release in the Public Use Database of Certain Mortgage Data and Annual Housing Activities Report (AHAR) Information of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

Summary: This final rule amends HUD's regulations to permit the release to the public of certain data and information that have been, and will be, submitted to HUD by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). This final rule follows publication of a January 10, 2005, proposed rule and takes into consideration the public comments received in response to the proposed rule.

Effective Date: December 12, 2005.

70 Fed. Reg. 77,742 (Dec. 30, 2005)
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

Summary: This rule implements a new law, enacted as part of HUD's Fiscal Year (FY) 2006 appropriations, that restricts individuals enrolled in an institution of higher education and who meet certain other requirements from receiving assistance under Section 8 of the U.S. Housing Act of 1937. The new law directed HUD to issue a final rule within thirty days of enactment of the new law. This rule fulfills the statutory requirement.

Effective Date: January 30, 2006.

[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.

HUD Federal Register Interim Rule

70 Fed. Reg. 76,362 (Dec. 23, 2005)
Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

Summary: The interim rule implements certain statutory changes by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Specifically, this interim rule prohibits state and local governments from using CDBG funds for "job pirating" activities that are likely to result in significant job loss. The rule also applies to Section 108 loan guarantees, and the use of Brownfields Economic Development Initiative and Economic Development Initiative funds with Section 108 loan guarantees and CDBG funding. This rule follows publication of an October 24, 2000, proposed rule and takes into consideration the public comments received on the proposed rule. The interim rule also provides the public with an additional opportunity to comment on the regulatory job pirating provisions.

Effective Date: February 21, 2006.

Comment Due Date: February 21, 2006.

HUD Federal Register Notices

70 Fed. Reg. 66,222 (Nov. 1, 2005)
Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Rita Disaster Areas; and Additional Administrative Relief for Hurricane Katrina

Summary: Similar to HUD's notice published on October 3, 2005, regarding administrative actions to bring relief to areas affected by Hurricane Katrina, this notice advises the public of HUD regulations and other administrative requirements governing HUD's Office of Public and Indian Housing (PIH) programs that have been waived in order to facilitate the delivery of safe and decent housing under these programs to families and individuals who have been displaced from their housing by Hurricane Rita. Entities that administer PIH programs and are located in an area declared by the President to be a federal disaster area as a result of Hurricane Rita may defer compliance with the regulations and other requirements listed in this notice for an initial period of twelve months or such other period as may be specified in this notice. PIH program administrators that are not located in a disaster area but are assisting with Hurricane Rita recovery and relief may request waiver of the regulations and administrative requirements listed in this notice, and HUD review and response is available through an expedited waiver request and response process. PIH program administrators located in an area declared a federal disaster area as a result of Hurricane Rita, or PIH program administrators not located in such an area but assisting with Hurricane Rita relief and recovery efforts, may request a waiver of a regulation or other administrative requirement through the expedited waiver process provided in this notice. This notice applies only to PIH programs or to cross-cutting regulatory or administrative requirements that are applicable to PIH program administrators.

Effective Date: October 25, 2005.

70 Fed. Reg. 67,540 (Nov. 7, 2005)
Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2005

Summary: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly *Federal Register* notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous *Federal Register* notice. The purpose of this notice is to comply with the requirements of Section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2005, and ending on June 30, 2005.

70 Fed. Reg. 71,547 (Nov. 29, 2005)
Announcement of Funding Awards for Fiscal Year 2005 for the Housing Choice Voucher Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for FY 2005 to housing agencies (HAs) under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to HAs for non-competitive funding awards for housing conversion actions, public housing relocations and replacements, moderate rehabilitation replacements, and HOPE VI voucher awards.

70 Fed. Reg. 72,168 (Dec. 1, 2005)
Section 8 Housing Assistance Payments Program–Contract Rent Annual Adjustment Factors, Fiscal Year 2006

Summary: This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents for specified programs. These factors apply to housing assistance payment contract anniversaries for calendar months commencing after the date of publication of this notice. The AAFs are based on residential rent and utilities time-series cost indices from the Bureau of Labor Statistics Consumer Price Index (CPI) surveys.

Effective Date: December 1, 2005.

70 Fed. Reg. 73,785 (Dec. 13, 2005)
Announcement of Funding Awards for Fiscal Year 2005 Fair Housing Initiatives Program

Summary: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2005 Fair Housing Initiatives Program (FHIP). The purpose of FHIP is also to increase compliance with the Fair Housing Act and with substantially equivalent state and local fair housing laws.

70 Fed. Reg. 74,988 (Dec. 16, 2005)
Proposed Metropolitan Area Definitions for FY 2006 Income Limits and Estimates of Median Family Income

Summary: This notice proposes changes in the metropolitan area definitions used to calculate HUD median family income estimates and income limits. In this notice, HUD is proposing to issue FY 2006 income limits that are based on current Office of Management and Budget (OMB) metropolitan statistical area definitions based on 2000 Census data rather than to continue to use old OMB metropolitan area definitions based on 1990 Census data. OMB issued its definitions based on the 2000 Census in 2003, which contained substantial changes to several metropolitan area definitions. These changes were made to better reflect metropolitan area commuting and economic patterns. Given the number of changes associated with OMB's new metropolitan area definitions, HUD wishes to solicit public comments on this matter prior to implementation. To provide detailed information on the impacts of the new metropolitan area definitions, HUD prepared a table that compares FY 2005 actual income limits with the equivalent FY 2005 income limits calculated using the new metropolitan area definitions. The table may be obtained at www.huduser.org/datasets/il.html.

Comments Due Date: February 14, 2006.

70 Fed. Reg. 76,964 (Dec. 28, 2005)
Public Housing Operating Fund; Variable Coefficients for Public Housing Operating Fund Project Expense Levels

Summary: This notice provides supplemental information to public housing agencies and members of the public regarding HUD's method of calculating public housing operating subsidies in accordance with the Public Housing Operating Fund Program regulation at 24 C.F.R. part 990. Subpart C of the final rule describes how formula expenses will be calculated under the new Operating Fund Formula. This notice explains the computation of the project expense level, which is one factor in the formula expenses component of the Operating Fund Formula.

Effective Date: January 27, 2006.

HUD Housing Notices

Notice H 2005-19 (Nov. 9, 2005)
Guidelines for Continuation of Interest Reduction Payments after Refinancing: "Decoupling," Under Section 236(e)(2) and Refinancing of Insured Section 236 Projects into Non-Insured Section 236(b) Projects

Summary: Notice H 00-8, which was issued on May 16, 2000, and expired on May 16, 2001, is being extended to November 30, 2006. This notice was previously reinstated by Notice H 2004-20, which was issued on November 4, 2004, and expires on November 30, 2005.

Expires: November 30, 2006.

Notice H 2005-20 (Dec. 1, 2005)
Disaster Recovery Guidance by Multifamily Housing After a Presidentially-Declared Disaster

Summary: Notice H 2004-22, which was issued on November 10, 2004, and expires on November 30, 2005, is being reinstated and extended to December 31, 2006.

Expires: December 31, 2006.

HUD PIH Notices

Notice PIH 2005-34 (HA) (Nov. 2, 2005)
Information Regarding Implementation of the Final Rule to the Public Housing Operating Fund Program, 24 CFR Part 990

Summary: This notice provides public housing agencies and field offices with initial implementation guidance regarding the Public Housing Operating Fund Program final rule, published in the *Federal Register* on September 19, 2005 (79 FR 54983) and the Revisions to the Public Housing Operating Fund Program; Correction to Formula Implementation Date notice (Correction Notice) published in the *Federal Register* on October 24, 2005 (70 FR 61366).

Expires: November 30, 2006.

Notice PIH 2005-35 (HA) (Nov. 15, 2005)
Guidance on Methods and Schedules for Calculating Federal Fiscal Year (FFY) 2006 Operating Subsidy Eligibility and Issuance of Local Inflation Factors, Formula Expense Level Equation Multipliers, and Related Tables

Summary: This notice provides public housing agencies with information needed to complete their FFY 2006 operating subsidy forms. It includes a schedule for the submission of certain items to HUD, local inflation factors, data needed for the recalculation of the formula expense level, and other special notes related to the operating subsidy forms and processing.

Expires: November 30, 2006.

Notice PIH 2005-36 (HA) (Dec. 1, 2005)
Katrina Disaster Housing Assistance Program (KDHAP) Operating Requirements

Summary: These operating requirements set forth the policies and procedures for KDHAP), a HUD-FEMA initiative to aid pre-disaster HUD-assisted and homeless families in finding temporary housing. FEMA has provided to HUD a mission assignment to assist certain families who were displaced by Hurricane Katrina to obtain temporary housing through local public housing agencies that administer the housing choice voucher program for a period not to exceed eighteen months.

Expires: December 31, 2006

Notice PIH-2005-37 (HA) (Dec. 9, 2005)
Income Calculation and Verification Guidance Regarding the Medicare Prescription Drug Plan - Part D Program

Summary: This notice provides guidance on the Medicare Prescription Drug Plan - Part D program (permanent program) that becomes effective on January 1, 2006. Public housing agencies (PHAs), owners and management agents must use the guidance in Section D of this notice when determining annual and adjusted income for Medicare beneficiaries enrolled in a Medicare prescription drug plan. The Medicare Approved Prescription Drug Discount Card and Transitional Assistance in Section E is the same guidance issued in Notices H 04-24 and PIH 2004-24. The Medicare approved prescription drug-discount card and transitional assistance program is a temporary program; benefits will stop for recipients on May 15, 2006, or when they enroll in a Medicare prescription drug plan, whichever date is first. After May 15, 2006, the guidance in Section E will no longer apply and must not be used for rent calculation and verification purposes.

Expires: December 31, 2006.

RHS Administrative Notices

RD AN No. 4124 (1924-A) (Nov. 21, 2005)
Rural Development Compliance with and Implementation of the Department of Housing and Urban Development Lead-Based Paint (LBP) Rule

Summary: This notice provides guidance on Agency compliance in all programs with HUD's final rule entitled "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance" found in 24 C.F.R. part 35 (LBP Regulations). Rural Development has adopted six subparts of the LBP Regulation. These subparts replace RD Instruction 1924-A, Exhibit H, and take precedence over Rural Development instructions and handbooks concerning lead-based paint. These subparts are applicable to all housing or child-occupied facilities constructed prior to 1978, receiving financial assistance from or being sold by Rural Development.

Expiration Date: November 30, 2006.

RD AN No. 4122 (1980-D) (Nov. 9, 2005)
Single Family Guaranteed Rural Housing Occupied Real Estate Owned Inspection, Valuation and Loss Claims

Summary: This notice clarifies inspection, valuation and loss claim requirements for security property or real estate owned property (REO) when the property is occupied, subject to redemption rights, or when there are lengthy eviction proceedings. These circumstances usually have a negative effect on the accurate valuation and expeditious disposition of the property, as well as on the loss claim process itself, when it becomes necessary to process a claim based on estimated net recovery. This notice also provides guidelines for inspections, redemption periods, eviction, valuation, and the claim process for occupied REO property in other situations.

Expiration Date: November 30, 2006. ■

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RECENT REGULATIONS AND NOTICES

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This is an index of the cases listed in the Recent Housing Cases section of each issue of the *Bulletin*. For cases reported on in separate articles, see the "Cases" heading above.

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Housing for All: Keeping the Promise (1995)	$ 5		
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A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)	$ 10		

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