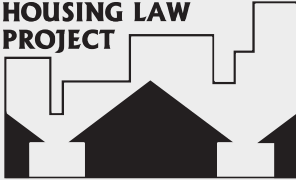


NATIONAL  
HOUSING LAW  
PROJECT



advancing housing justice

# Housing Law Bulletin

Volume 36 • September 2006

Published by the National Housing Law Project



***Trying to Make It Home: New Orleans One Year After Katrina***

*by Bill Quigley*

—see page 171

***HUD Begins VAWA Implementation***

*by Naomi Stern*

—see page 181

# ADVANCING HOUSING JUSTICE

A Decent, Safe, & Affordable Home for All

## Housing Justice Network National Meeting

SUNDAY & MONDAY, OCTOBER 22 & 23 8:30 am – 5:00 pm

The National Meeting of the Housing Justice Network is a dynamic two-day event that brings together low-income housing allies—public interest attorneys, affordable housing advocates, policy analysts, organizers, and residents—from across the nation. Attendees participate in sessions on current developments in the federal housing programs, discuss strategies for representing the interests of low-income residents, and exchange ideas on litigating, advocating, and organizing. HJN members also have the opportunity to meet with their Working Groups to review accomplishments, set goals, and formulate work plans for the coming year.

The HJN Meeting is a tremendous opportunity to meet with colleagues and build our collective capacity to advance housing justice for low-income households across America.



## Federal Housing Programs: One-Day Training for New Practitioners

SATURDAY, OCTOBER 21 9:00 am – 5:00 pm

This substantive training provides a comprehensive overview of the federal housing programs, recent changes, current trends, and issues facing practitioners. The full-day training is designed for advocates with limited housing experience—and will help prepare you for more in-depth discussion at the HJN Meeting sessions. Practitioners are welcome to attend just the meeting or just the training. Note: There is a discounted rate for attending both.

**See pages 192-193 for more information and a registration form.**

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## Table of Contents

	Page
Trying to Make It Home:	
New Orleans One Year After Katrina .....	171
New Orleans: Housing and Recovery .....	178
HUD Begins VAWA Implementation.....	181
HUD Inspector General Finds Serious Flaws in Moving to Work Program .....	184
Recent Cases .....	189
Recent Housing-Related Regulations and Notices.	189
<b>Announcements</b>	
Housing Justice Network: Event Basics .....	192
Housing Justice Network: Registration.....	193
Publication List/Order Form.....	195



**Cover:** Heritage Row, part of a 70-unit family rental housing development in Savannah, Georgia. The development was revitalized and is owned by Mercy Housing Southeast, an affiliate of Mercy Housing. Inset photo shows Heritage Row prior to rehabilitation.

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## Trying to Make It Home: New Orleans One Year After Katrina

by Bill Quigley\*

Bernice Mosely is 82 years old and lives alone in New Orleans in a shotgun double. On August 29, 2005, as Katrina hit the Gulf Coast, the levees constructed by the United States Army Corps of Engineers failed in five places and New Orleans filled with water.

One year ago Ms. Mosely was on the second floor of her neighborhood church. Days later, she was helicoptered out. She was so dehydrated that she spent eight days in a hospital. Her next door neighbor, 89 years old, stayed behind to care for his dog. He drowned in the eight feet of floodwaters that covered their neighborhood.

Ms. Mosely now lives in her half-gutted house. She has no stove, no refrigerator, and no air-conditioning. The bottom half of her walls have been stripped of sheetrock and are bare wooden slats from the floor halfway up the wall. Her food is stored in a styrofoam cooler. Two small fans push the hot air around.

Two plaster Madonnas are in her tiny well-kept front yard. On a blazing hot summer day, Ms. Mosely used her crutches to gingerly come down off her porch to open the padlock on her fence. She has had hip and knee replacement surgery. Ms. Mosely worked in a New Orleans factory for over thirty years sewing uniforms.

When she retired she was making less than \$4 an hour. "Retirement benefits?" she laughs. She lives on her Social Security payments. Her house had never flooded before. Because of her tight budget, Ms. Mosely did not have flood insurance.

Thousands of people like Ms. Mosely are back in their houses on the Gulf Coast. They are living in houses that most people would consider, at best, still under construction, or, at worst, uninhabitable. Like Ms. Mosely, they are trying to make their damaged houses into homes.

New Orleans is still in intensive care. If you have seen recent television footage of New Orleans, you probably have a picture of how bad our housing situation is. What you cannot see is that the rest of our institutions—our water, our electricity, our healthcare, our jobs, our educational system, our criminal justice systems—are all just as broken as our housing. We remain in serious trouble. Like us, you probably wonder where has the promised money gone?

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Ms. Mosely, who lives in the Upper Ninth Ward, does not feel sorry for herself at all. "Lots of people have it worse," she says. "You should see those people in the Lower Ninth and in St. Bernard and in the East. I am one of the lucky ones."

## Housing

Hard as it is to believe, Ms. Mosely is right. Lots of people do have it worse. Hundreds of thousands of people from the Gulf Coast remain displaced. In New Orleans alone over 200,000 people have not been able to make it home.

Homeowners in Louisiana, like Ms. Mosely, have not yet received a single dollar of federal housing rebuilding assistance to rebuild their severely damaged houses back into homes. Over 100,000 homeowners in Louisiana are on a waiting list for billions of dollars in federal rebuilding assistance through the Community Development Block Grant (CDBG) program.

So far, no money has been distributed.

Renters, who comprised most of the people of New Orleans before Katrina, are much worse off than homeowners. New Orleans lost more than 43,000 rental units to the storm. Rents have skyrocketed in the undamaged parts of the area, pricing regular working people out of the market. The official rate of increase in rents is 39%. In lower-income neighborhoods, working people and the elderly report that rents are up much higher than that. Amy Liu of the Brookings Institute says, "Even people who are working temporarily for the rebuilding effort are having trouble finding housing."

Renters in Louisiana are not even scheduled to receive assistance through the Louisiana CDBG program. Some developers will receive assistance at some point, and when they do, some apartments will be made available, but that is years away.

In the face of the worst affordable housing shortage since the end of the Civil War, the federal government announced that it refused to allow thousands of families to return to their public housing units and was going to bulldoze 5000 apartments. Before Katrina, over 5000 families lived in public housing—88% women-headed households, nearly all African American.

These policies result in hundreds of thousands of people still displaced from their homes. Though all ages, incomes and races are displaced, some groups are impacted much more than others. The working poor, renters, mothers with children, African Americans, the elderly, and the disabled are all suffering disproportionately from displacement. Race, poverty, age and physical ability are great indicators of who has and who has not made it home.

The statistics tell some of the story. The City of New Orleans says it is half its pre-Katrina size—around 225,000 people. But the United States Postal Service estimates that

only about 170,000 people have returned to the city and 400,000 people have not returned to the metropolitan area. The local electricity company reports only about 80,000 of its previous 190,000 customers have returned.

Texas also tells part of the story. It is difficult to understand the impact of Katrina without understanding the role of Texas—home to many of our displaced. Houston officials say their city is still home to about 150,000 storm evacuees—90,000 in FEMA-assisted housing. Texas recently surveyed the displaced and reported that over 250,000 displaced people live in the state and 41% of these households report income of less than \$500 per month. Of these, 81% are black, 59% are still jobless, most have at least one child at home, and many have serious health issues.

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*In the face of the worst affordable housing shortage since the end of the Civil War, the federal government announced that it refused to allow thousands of families to return to their public housing units and was going to bulldoze 5000 apartments.*

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Another 100,000 people displaced by Katrina are in Georgia, and more than 80,000 are in metropolitan Atlanta, most of whom also need long-term housing and mental health services.

In Louisiana, there are 73,000 families in FEMA trailers. Most of these trailers are 240 square feet of living space. More than 1600 families are still waiting for trailers in St. Bernard Parish. FEMA trailers did not arrive in the Lower Ninth Ward until June, while the displaced waited for water and electricity to resume. Aloyd Edinburg, 75 years old, lives in the Lower Ninth Ward and just moved into a FEMA trailer. His home flooded as did the homes of all five of his children. "Everybody lost their homes," he told the *Times-Picayune*. "They just got trailers. All are rebuilding. They all have mortgages. What else are they going to do?"

Until challenged, FEMA barred reporters from talking with people in FEMA trailer parks without prior permission—forcing a reporter out of a trailer in one park and residents back into their trailer in another in order to stop interviews.

One person displaced into a FEMA village in Baton Rouge has been organizing with her new neighbors. Air conditioners in two trailers for the elderly have been out for over two weeks, yet no one will fix them. The contractor who ran the village has been terminated and another one is coming—no one knows who. She tells me, "My neighbors are dismayed that no one in the city has stepped forward to speak for us. We are 'gone.' Who will speak for us? Does anyone care?"

Trailers are visible signs of the displaced. Tens of thousands of other displaced families are living in apartments across the country month to month under continuous threats of FEMA cutoffs.

Numbers say something. But please remember behind every number, there is a Ms. Mosely. Tens of thousands—hundreds of thousands—of people each with a personal story like Ms. Mosely are struggling to return, trying to make it home.

## Water and Electricity

New Orleans continues to lose more water than it uses. The *Times-Picayune* discovered that the local water system has to pump over 130 million gallons a day so that 50 million gallons will come out. The rest runs away in thousands of leaks in broken water lines, costing the water system \$200,000 a day. The lack of water pressure, half that of other cities, creates significant problems in consumption, sanitation, air-conditioning, and fire prevention.

In the Lower Ninth Ward, the water has still not been certified as safe to drink—one year after Katrina.

Only half the homes in New Orleans have electricity. Power outages are common as hundreds of millions of dollars in repairs have not been made because Entergy New Orleans is in bankruptcy. Entergy is asking for a 25% increase in rates to help it become solvent.

Yet Entergy New Orleans' parent company, Entergy Corporation, reported earnings of \$282 million last year on revenue of \$2.6 billion.

## Health and Healthcare

Early this month, on August 1, 2006, another Katrina victim was found in her home in New Orleans, buried under debris. The woman was the twenty-eighth person found dead since March 2006. A total of 1577 died in Louisiana as a result of Katrina.

A friend of mine, a lawyer with health insurance and a family physician, went for an appointment recently at 11 a.m. The office was so crowded that he had to sit out in the hall on the floor to wait his turn for a seat in the waiting room. Three hours later he met his doctor. The doctor thought he might have a gallstone and tried to schedule an ultrasound. None were available. He ordered my friend to the emergency room for an ultrasound. At 4 p.m. my friend went to the hospital emergency room, which was jammed with people: stroke victims, young children with injuries, people brought in by the police. At 5 a.m. the next morning, my friend finished his ultrasound and went home. If it takes a lawyer with health insurance that long to get medical attention, consider what poor people without health insurance are up against.

Half of the hospitals which were open before Katrina are still closed. The state's biggest public healthcare provider,

Charity Hospital, remains closed and there are no current plans to reopen it anytime soon. Healthcare could actually get worse. Dr. Mark Peters, board chair of the Metropolitan Hospital Council of New Orleans, says that within the next two to three months "all the hospitals" will be looking seriously at cutbacks. Why? Doctors and healthcare workers have left and there is surging demand from the uninsured who before Katrina had now non-existent public healthcare. There is a shortage of nurses. Blue Cross Blue Shield officials reported that "About three-quarters of the physicians who had been practicing in New Orleans are no longer submitting claims."

There is now no hospital at all in New Orleans for psychiatric patients. While the metropolitan area had about 450 psychiatric beds before the storm, eighty are now available. The police are the first to encounter those with mental illness. One recent Friday afternoon, police dealt with two mental patients: one was throwing bricks through a bar window, the other was found wandering naked on the interstate.

The elderly are particularly vulnerable. Over 70% of the deaths from Katrina were people over 60 years old. No one knows how many seniors have not made it back home. Esther Bass, 69 years old, told the *New York Times*, after months of searching for a place to come home to in New Orleans, "If there are apartments, I can't afford them. And they say there will be senior centers, but they're still being built. They can't even tell you what year they'll be finished." As of late July 2006, most nursing homes in the twelve-parish Gulf Coast area of Louisiana are still not fully prepared to evacuate residents in the face of a hurricane.

The healthcare community has been rocked by the arrest of a doctor and two nurses after the Louisiana Attorney General accused them of intentionally ending the lives of four patients trapped in a now-closed local hospital. The accusations now go before a local grand jury which is not expected to make a decision on charges for several more months. The case is complicated for several reasons. Most important is that the doctor and nurses are regarded as some of the most patient-oriented and caring people of the entire hospital staff. It is undisputed that they worked day and night to save hundreds of patients from the hospital during the days it was without water, electricity or food. Others say that entire hospital and many others were abandoned by the government and that is what the attorney general should be investigating. The gravity of the charges, though, is giving everyone in the community pause. This, like so much else, will go on for years before there is any resolution.

## Jobs

Before Katrina, there were over 630,000 workers in the metropolitan New Orleans area—now there are slightly over 400,000. Over 18,000 businesses suffered

“catastrophic” damage in Louisiana. Nearly one in four of the displaced workers is still unemployed. Education and healthcare have lost the most employees. Most cannot return because there is little affordable housing, child-care, public transportation or public healthcare.

Women workers, especially African-American women workers, continue to bear the heaviest burden of harm from the storm. The Institute for Women’s Policy Research reports that the percentage of women in the New Orleans workforce has dropped. The number of single-mother families in New Orleans has dropped from 51,000 to 17,000. Low-income women remain displaced because of the lack of affordable housing and traditional discrimination against women in the construction industry.

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*Before Katrina, 56,000 students were enrolled in over 100 public schools in New Orleans. At the end of the school year there were only 12,500.*

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Tens of thousands of migrant workers, roughly half undocumented, have come to the Gulf Coast to work in the recovery. Many were recruited. Most workers tell of being promised good wages and working conditions and plenty of work. Some paid money up front for the chance to come to the area to work. Most of these promises were broken. A tour of the area reveals many Latino workers live in houses without electricity, while others live out of cars.

At various places in the city whole families are living in tents. Two recently released human rights reports document the problems of these workers. Immigrant workers are doing the dirtiest, most dangerous work, in the worst working conditions. Toxic mold, lead paint, fiberglass, and who knows what other chemicals are part of their daily work. Safety equipment is not always provided. Day laborers, a new category of workers in New Orleans, are harassed by the police and periodic immigration raids. Wage theft is widespread as employers often do not pay living wages, and sometimes do not pay at all. Some try to pit local workers against new arrivals—despite the fact that our broken Gulf Coast clearly needs all the workers we can get.

Public transportation to and from low-wage jobs is more difficult. Over 200 more public transit employees have been terminated, cutting employment from over 1300 people pre-Katrina to about 700 now.

Single working parents seeking childcare are in trouble. Before Katrina, New Orleans had 266 licensed day care centers. Mississippi State University surveyed the city in July 2006 and found 80% of the day care centers

and over 75% of the 1912 day care slots are gone. Only one-third of the Head Start centers that were open pre-Katrina survived.

## Public Education

Before Katrina, 56,000 students were enrolled in over 100 public schools in New Orleans. At the end of the school year there were only 12,500. Right after the storm, the local school board gave many of the best public schools to charter groups. The state took over almost all the rest. By the end of the school year, four schools were operated by the pre-Katrina school board, three by the State, and eighteen were new charter schools.

After thirty-two years of collective bargaining, the union contract with the New Orleans public school teachers elapsed and was not renewed; 7500 employees were terminated.

For this academic year, no one knows for certain how many students will enroll in New Orleans public schools. Official estimates vary between a low of 22,000 and a high of 34,000. There will be five traditional locally supervised public schools, eighteen schools operated by the state, and thirty-four charter schools. As of July 1, not a single teacher had been hired for fifteen of the state-run schools. As of August 9, 2006, the *Times-Picayune* reported there are no staff at all identified to educate students with discipline problems or other educational issues that require special attention.

Whatever the enrollment in the new public school system is in the fall, it will not give an accurate indication of how many children have returned. Why? Many students in the public charter schools were in private schools before the hurricane.

## Criminal Legal System

Consider also our criminal legal system. Chaka Davis was arrested on misdemeanor charges in October 2005 and jailed at the Greyhound station in New Orleans in October of 2005. Under Louisiana law, he was required to be formally charged within thirty days of arrest or released from custody. Because of a filing error, he was lost in the system. He was never charged, never went to court, and never saw a lawyer in more than eight months—even though the maximum penalty for conviction for one of his misdemeanors was only six months. His mother found him in an out-of-town jail and brought his situation to the attention of the public defenders. He was released the next day.

Crime is increasingly a problem. In July, New Orleans lost almost as many people to murder as in July of 2005, with only 40% of the population back. There are many young people back in town while their parents have not returned. State and local officials called in the National Guard to patrol lightly populated areas so local police

could concentrate on high-crime, low-income neighborhoods. Arrests have soared, but the number of murders remains high. Unfortunately, several of the National Guard have been arrested for criminal behavior as well—two for looting liquor from a home, two others for armed robbery at a traffic stop.

Criminal Court District Judge Arthur Hunter has declared the current criminal justice system shameful and unconstitutional and promises to start releasing inmates awaiting trial on recognizance bonds on the one-year anniversary of Katrina. The system is nearly paralyzed by a backlog of over 6000 cases. There are serious evidence problems because of resigned police officers, displaced victims, displaced witnesses, and flooded evidence rooms. The public defender system, which was down to four trial attorneys for months, is starting to rebuild.

"After 11 months of waiting, 11 months of meetings, 11 months of idle talk, 11 months without a sensible recovery plan and 11 months tolerating those who have the authority to solve, correct and fix the problem but either refuse, fail or are just inept, then necessary action must be taken to protect the constitutional rights of people," says Hunter.

In the suburbs across the lake, Sheriff Jack Strain told the media on television that he was going to protect his jurisdiction from "thugs" and "trash" migrating from closed public housing projects in New Orleans. He went on to promise that every person who wore "dreadlocks or che-wee hairstyles" could expect to be stopped by law enforcement. The NAACP and the ACLU called in the United States Department of Justice and held a revival-like rally at a small church just down the road from the jail. Though the area is over 80% white, the small group promised to continue to challenge injustice no matter how powerful the person committing the injustice. Recently, the same law enforcement representatives set up a roadblock and were stopping only Latino people to check IDs and insurance, perhaps to demonstrate that they were not harassing exclusively African Americans.

Finally, a grand jury has started looking into actions by other suburban police officers who blocked a group of people, mostly African Americans, from escaping the floodwaters of New Orleans by walking across the Mississippi River bridge. The suburban police forced the crowd to flee back across the two-mile bridge by firing weapons into the air.

This is the criminal legal system in the New Orleans area in 2006. None dare call it criminal justice.

## International Human Rights

The Gulf Coast has gained new respect for international human rights, which provide a standard to measure what should be happening in the region. The fact that there is an international human right of internally displaced people to return to their homes and a respon-

sibility on government to help is heartening even though yet unfulfilled.

The United Nations has blasted the poor United States response to Katrina. The United Nations Human Rights Committee in Geneva accepted a report from Special Reporter Arjun Sengupta who visited New Orleans in fall of 2005 and concluded: "The Committee remains concerned about information that poor people, and in particular African-Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States of America, and continue to be disadvantaged under the reconstruction plans."

Asian tsunami relief workers who visited New Orleans over the summer were shocked at the lack of recovery. Somsook Boonyabancha, director of the Community Organisations Development Institute in Thailand, told Reuters she was shocked at the lack of progress in New Orleans. "I'm surprised to see why the reconstruction work is so slow, because this is supposed to be one of the most rich and efficient countries in the world. It is starting at such a slow speed, incredibly slow speed."

## Warnings to the Displaced

Local United Way officials see the lack of housing, healthcare and jobs and conclude that low-income people should seriously consider not returning to New Orleans anytime soon.

United Way wrote:

Most of these people want to come home, but if they do not have a recovery plan they need to stay where they are. Some of these evacuees think that they can come back and stay with families and in a few weeks have a place of their own. But the reality is that they may end up living with those relatives for years. Sending people back without a realistic plan may have serious consequences: the crowding of families into small apartments/homes/FEMA trailers is causing mental health problems—stress, abuse, violence, and even death—and this problem is going to get worse, not better. Also, when the elderly (and others) are those returning and living in these conditions, their health is impacted and then the lack of medical facilities and hospital beds is a problem. Again the result may be death.

Basically if an evacuee says they have a place to stay—like with relatives—those communities will give them bus fare back or pay for U-hauls. If an evacuee was a renter here and they want to return they should be told to plan on returning in 3-7 years, and in the meantime stay there, get a job, and be much better off.

FEMA officials in Austin are also warning people about returning to New Orleans. They wrote:

Before you return . . . New Orleans is a changing place. You should consider the conditions you may be returning to. Many neighborhood schools will not be open by August. Your children may have to travel some distance to get to school. Grocery and supermarkets have been slow to return to many neighborhoods. Sometimes there aren't enough residents back in your neighborhood for a store to open and be profitable. You may have to travel a large distance to groceries. Walking to the store might not be an option.

If you or your family members require regular medical attention, or if you are pregnant or nursing, the services you received before the storm may be scattered and in very different and distant locations. Depending on your medical needs, you may have to drive across the river or even as far away as Baton Rouge. If you or your family members have allergies, remember that there is lots of dust and mold still in the city. While you may have suffered from allergies before the storm, please consider that being in the city will only worsen your allergies. If you have asthma, other respiratory or cardiac conditions, or immune system problems, you would be safer staying out of flooded areas due to the mold, particles and dust in the air. If you must return to the city, wear an approved respirator when working in moldy or dusty areas.

Additionally, police, fire and emergency personnel are stretched to their limits. If you own a car, gas and service stations are limited in many areas. You may need to purchase a gas can in the event you cannot get gas near your home. Public transportation (busses) are also limited and do not operate in all areas.

Available and affordable housing is extremely rare. Waiting lists for apartments are as large as 300 on the list, depending on how many bedrooms you need. Living inside your home could be dangerous if mold has set in or if your utilities are not in top working condition. Living in New Orleans may be easier said than done until we have fully recovered from the storm.

This is New Orleans, one year after Katrina.

## Where Did the Money Go?

Everyone who visits New Orleans asks the same question that locals ask—where is the money? Congress reportedly appropriated over \$100 billion to rebuild the Gulf Coast. Over \$50 billion was allocated to temporary and long-term housing. Just under \$30 billion was allocated for emergency response and Department of Defense spending; over \$18 billion was for state and local response and the rebuilding of infrastructure; \$3.6 billion was for health, social services and job training; \$3.2 was for non-housing cash assistance; \$1.9 billion was for education; and \$1.2 billion was for agriculture.

One hour in New Orleans shows the check must still be in the mail.

Not a single dollar in federal housing rehab money has made it into a hand in Louisiana. Though Congress has allocated nearly \$10 billion in Community Development Block Grants, the State of Louisiana is still testing the program and has not yet distributed dollar number one.

A lot of media attention has gone to the prosecution of people who wrongfully claimed benefits of \$2000 or more after the storm. Their fraud is despicable. It harms those who are still waiting for assistance from FEMA.

But, be clear—these little \$2000 thieves are minnows swimming on the surface. There are many big savage sharks below. Congress and the national media have so far been frustrated in their quest to get real answers to where the millions and billions went. How much was actually spent on FEMA trailers? How much did the big contractors take off the top and then subcontract out the work? Who were the subcontractors for the multi-million dollar debris removal and reconstruction contracts?

As Corpwatch says in their recent report, "Many of the same 'disaster profiteers' and government agencies that mishandled the reconstruction of Afghanistan and Iraq are responsible for the failure of 'reconstruction' of the Gulf Coast region. The Army Corps, Bechtel and Halliburton are using the very same 'contract vehicles' in the Gulf Coast as they did in Afghanistan and Iraq. These are 'indefinite delivery, indefinite quantity' open-ended 'contingency' contracts that are being abused by the contractors on the Gulf Coast to squeeze out local companies. These are also 'cost-plus' contracts that allow them to collect a profit on everything they spend, which is an incentive to overspend."

We do know billions of dollars in no-bid FEMA contracts went to Bechtel Corporation, the Shaw Group, CH2M Hill, and Fluor immediately after Katrina hit. Riley Bechtel, CEO of Bechtel Corporation, served on President Bush's Export Council during 2003-2004. A lobbyist for the Shaw Group, Joe Allbaugh, is a former FEMA Director and friend of President Bush. The President and Group Chief Executive of the International Group at CH2M-Hill is Robert Card, appointed by President Bush as

undersecretary to the U.S. Department of Energy until 2004. Card also worked at CH2M Hill before signing up with President Bush. Fluor, whose work in Iraq was slowing down, is one of the big winners of FEMA work and its stock is up 65% since it started Katrina work.

Senator Byron Dorgan of North Dakota has raised many protests and questions over inflated prices. "It is hard to overstate the incompetence involved in all of these contracts," he says. "We have repeatedly asked them for information and you get nothing." Representative Charles Bustany, a Republican who represents an area heavily damaged by Hurricane Rita, asked FEMA for reasons why the decision was made to stop funding 100% of the cost of debris removal in his district. FEMA refused to tell him. He then filed a Freedom of Information request to get the information, and was again refused. When he asked to appeal their denial, he was told that there were many appeals ahead of his and he would have to wait.

If a United States Senator and a local United States Republican Representative cannot get answers from FEMA, how much accountability can the people of the Gulf Coast expect? There are many other examples of fraud, waste and patronage.

How did a company that did not own a truck get a contract for debris removal worth hundreds of millions of dollars? The *Miami Herald* reported that the single biggest receiver of early Katrina federal contracts was Ashbritt, Inc. of Pompano Beach, Florida, which received over \$579 million in contracts for debris removal in Mississippi from the Army Corps of Engineers. The paper reported that the company does not own a single dumptruck! All they do is subcontract out the work. Ashbritt, however, had recently dumped \$40,000 into the lobbying firm of Barbour, Griffith & Rogers, which had been run by Mississippi Governor and former National GOP Chair Haley Barbour.

The owners of Ashbritt also trucked \$50,000 over to the Republican National Committee in 2004.

How did a company that filed for bankruptcy the year before and was not licensed to build trailers get a \$200 million contract for trailers? Circle B Enterprises of Georgia was awarded \$287 million in contracts by FEMA for temporary housing. At the time, that was the seventh-highest award of Katrina money in the country. According to the *Washington Post*, Circle B was not even licensed to build homes in its own state of Georgia and filed for bankruptcy in 2003.

The company does not even have a website.

FEMA spent \$7 million to build a park for 198 trailers in Morgan City Louisiana—almost two hours away from New Orleans. Construction was completed in April. Three months later only twenty of the trailers were occupied. One displaced New Orleans resident who lives there has to walk three miles to the nearest grocery store.

Hurricanes are now a booming billion-dollar business. No wonder there is a National Hurricane Conference

for private companies to show off their wares—from RVs to portable cell phone towers to port-a-potties. One long-time provider was quoted by the *Miami Herald* at the conference as saying that there are all kinds of new people in the field: "Some folks here said, 'Man, this is huge business; this is my new business. I'm not in the landscaping business anymore, I'm going to be a hurricane debris contractor.'"

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*Despite the tragedies that continue to plague our Gulf Coast, there is hope. Between the rocks of hardship, green life continues to sprout defiantly.*

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On the local level, we are not any better. One year after Katrina the City of New Orleans still does not have a comprehensive rebuilding plan. The first plan by advisors to the Mayor was shelved before the election. A city council plan was then started and the state and federal governments mandated yet another process that may or may not include some of the recommendations of the prior two processes. One of the early advisors from the Urban Land Institute, John McIlwain, blasted the delays in late July: "It's virtually a city with a city administration and it's worse than ever. You need a politician, a leader that is willing to make tough decisions and articulate to people why these decisions are made, which means everyone is not going to be happy." Without major changes at City Hall the City will have miles of neglected neighborhoods for decades. "We're talking Dresden after World War II."

### Signs of Hope

Despite the tragedies that continue to plague our Gulf Coast, there is hope. Between the rocks of hardship, green life continues to sprout defiantly.

Fifteen feet of water washed through Dr. Martin Luther King, Jr. Elementary School for Science and Technology in the Lower Ninth Ward. When people were finally able to get into the building, the bodies of fish were found on the second floor. Parents and over 90% of the teachers organized a grass-roots effort to put their school back together. Their first attempts to gut and repair the school by locals and volunteers from Common Ground were temporarily stopped by local school officials and the police. Even after the gutting was allowed to resume, the community was told that the school could not reopen due to insufficient water pressure in the neighborhood. But the teachers and parents are pressing ahead anyway in a temporary location until they can get back in their school. Assistant Principal Joseph Recasner told the *Times-Picayune*:

"Rebuilding our school says this is a very special community, tied together by more than location, but by spirituality, by bloodlines, and by a desire to come back."

New Orleans is fortunate to have a working newspaper again. The *Times-Picayune* won a well-deserved Pulitzer for its Katrina coverage. Its staff continues to provide quality documentation of the Gulf Coast region's efforts to repair and rebuild.

The New Orleans Vietnamese people continue to inspire us. They were among the very first group back and they have joined forces to care for their elders, rebuild their community church, and work together in a most cooperative manner to resurrect their community. Recently they took legal and direct action to successfully stop the placement of a gigantic landfill right next to their community. Their determination and sense of community-building is a good model for us all.

The only Republican running for Congress in New Orleans is blasting President Bush over failed Katrina promises. Joe Lavigne is running radio ads saying, "Sadly, George Bush has forgotten us. He's spending too much time and money on Iraq and not enough living up to his promise to rebuild New Orleans. His priorities are wrong. I'm running for Congress to hold President Bush accountable." Maybe other Republicans will join in.

Tens of thousands of volunteers from every walk of life have joined with the people of the Gulf Coast to help repair and rebuild. Lawyers are giving free assistance to Katrina victims who need legal help to rebuild their homes. Medical personnel staff free clinics. Thousands of college, high school and even some grade school students have traveled to the area to help families gut their devastated homes. Churches, temples and mosques from across the world have joined with sisters and brothers in New Orleans to repair and rebuild.

Despite open attempts to divide them, black and brown and white and yellow workers have started to talk to each other. Small groups have started to work together to fight for living wages and safe jobs for all workers. Thousands came together for a rally for respectful treatment for Latino and immigrant workers. Seasoned civil rights activists welcomed the new movement and pledged to work together.

Ultimately, the people of the Gulf Coast are the greatest sign of hope. Despite setbacks that people in the United States rarely suffer, people continue to help each other and fight for their right to return home and the right to live in the city they love.

One Sunday morning, a 70-year-old woman told a friend where her children are. "They are all scattered," she sighed. "One is in Connecticut, one in Rhode Island, one in Austin." When he asked about her, she said, "Me? I am in Texas right now. I am back here to visit my 93-year-old mother and go to the second line of Black Men of Labor on Labor Day. But I'm coming back. Yes indeed. I will return. I'm coming back." ■

## New Orleans: Housing and Recovery

It has been over a year since Hurricane Katrina swept through the Gulf coast leaving behind a trail of unprecedented death and destruction. Unfortunately, the government's overall response to this disaster has been anemic at best. And despite repeated assurances from President Bush, his administration, and a host of local and state officials, the rebuilding process has been despicably slow, and at times as stagnant as the New Orleans floodwaters.

### Pre-Katrina New Orleans

Prior to Katrina, New Orleans had a population of approximately 463,000, of which 67% were African American, 28% were white, and the remaining 5% jointly represented by Latinos, Asians, and others.<sup>1</sup> Despite this largely dichromatic population, New Orleans was known for its multicultural heritage as well as its music and flavorful cuisine. New Orleans represented a world-renowned tourist destination point that offered visitors a chance to participate in the city's annual Mardi Gras and other celebrations set against a backdrop of historic architecture.

New Orleans was also a major transportation hub and a leader in production of crude oil and natural gas processing facilities; in fact, New Orleans was home to the busiest seaport in the world by gross tonnage. Nevertheless, the New Orleans labor market was no longer overly dependent on the production and distribution of oil and natural gas because of the pass-through nature of the processing facilities. As a result, tourism had long been the driving force behind the city's economy, supplying more than 66,000 jobs to the service sector such as accommodations and restaurants.

Unfortunately, New Orleans' reliance on the service sector was having a devastating effect on the city's economy. On the very day the levees broke, the Census Bureau released a report on poverty in the nation, finding that Orleans Parish had a poverty rate of 23.2%, seventh highest among 290 large U.S. counties.<sup>2</sup> What was particularly disturbing about these findings was the city's concentration of poverty. For example, although African-American residents made up 67% of the city's total population, they made up 84% of its population below the poverty line. And those poor African-American households were highly concentrated in forty-seven neighborhoods of extreme poverty—that is, neighborhoods where the poverty rate topped 40%.<sup>3</sup>

<sup>1</sup>United States Census Bureau, *State & County QuickFacts*, at <http://quickfacts.census.gov/qfd/states/22/2255000.html> (last visited Sep. 1, 2006) [hereinafter *State & County QuickFacts*].

<sup>2</sup>BRUCE KATZ, THE BROOKINGS INSTITUTION, *CONCENTRATED POVERTY IN NEW ORLEANS AND OTHER AMERICAN CITIES* (2006).

<sup>3</sup>*Id.*

Under the circumstances, it is not surprising that New Orleans' overall homeownership rate of 46.5% was considerably lower than the national average of 66.5%.<sup>4</sup> Several other economic indicators further highlight the high level of poverty among New Orleans families. One in five had no car, twice the national average.<sup>5</sup> A total of 8% had no phone service, double the national average of 4%.<sup>6</sup>

Coupled with this bleak economic landscape was the New Orleans Housing Authority (HANO), a historically troubled agency that had slipped into receivership by the Department of Housing and Urban Development (HUD) after years of perpetual mismanagement. Prior to the hurricanes, HANO managed a portfolio of over 7000 public housing rental units. These units included a combination of ten large public housing communities and over 700 scattered sites throughout the New Orleans community. However, only 5000 units were occupied, overwhelmingly by women, children, the disabled and the elderly, while 2000 units were boarded up and slated for demolition. In addition to the public housing program, HANO had an allocation of 9400 Housing Choice Vouchers, with 8981 vouchers utilized and another 700 issued to individuals searching for units. Collectively, these programs provided assistance to approximately 49,000 individuals, assistance that often represented the only chance of survival for many of the city's poorest families.

Sadly, on the morning of August 29, 2005, many of these same families were forced to confront a deadly new challenge, a challenge they would have to largely face on their own because their local, state, and federal governments had once again failed to adequately consider or respond to their needs.

### Post-Katrina New Orleans

Throughout the region, Katrina was responsible for at least 1836 deaths and \$81.2 billion in damage, making it one of the deadliest and costliest natural disasters in United States history. Katrina's storm surge was particularly devastating to New Orleans. The force of the surge breached the levees that separated Lake Pontchartrain from New Orleans, ultimately flooding 80% of the city and many areas of neighboring parishes for weeks.

Across the city, nearly 228,000 homes and apartments were either destroyed or suffered severe damage, including 39% of all owner-occupied units and 56% of all rental units. This catastrophic destruction created an unprecedented need for housing assistance, including emergency shelter and temporary housing for people who were months, if not years, away from returning to their homes. Consequently, the current population of New Orleans has

<sup>4</sup>State & County QuickFacts, *supra* note 1.

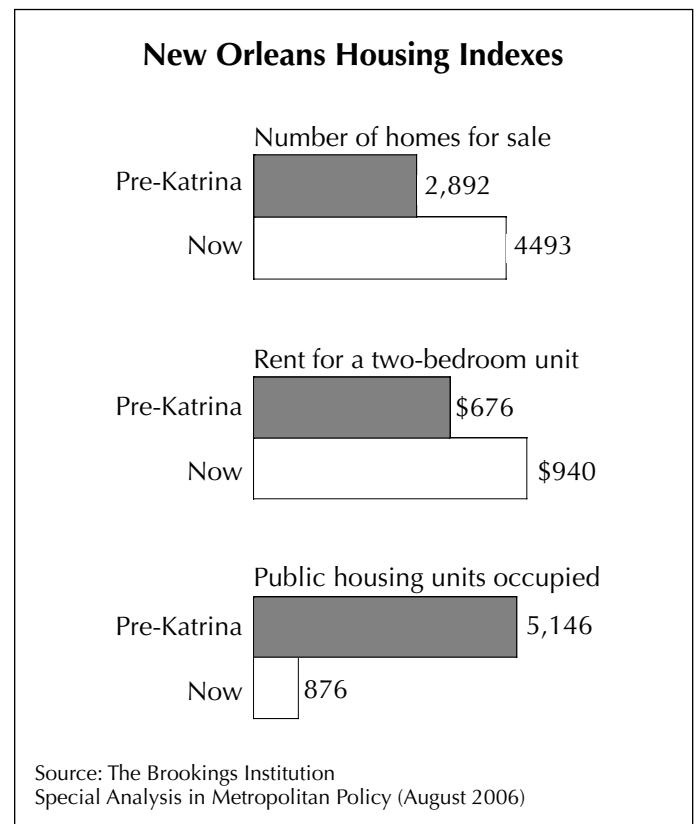
<sup>5</sup>SUSAN J. POPKIN ET AL., THE URBAN INSTITUTE, REBUILDING AFFORDABLE HOUSING IN NEW ORLEANS: THE CHALLENGE OF CREATING INCLUSIVE COMMUNITIES (2006).

<sup>6</sup>*Id.*

shrunk to 200,000, significantly less than the pre-Katrina population of 463,000.

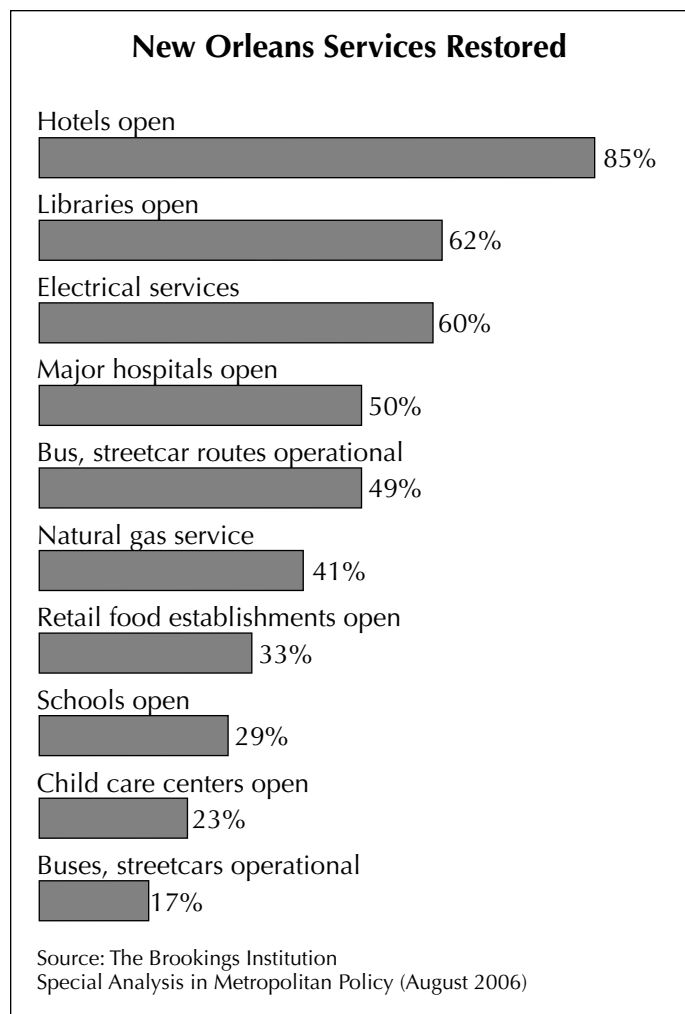
Alongside the devastation caused by Katrina was the government's general failure to execute an effective evacuation, both before and after the hurricane. Inexplicably, the government literally abandoned thousands of its poor, elderly and disabled citizens. To make matters worse, it appears that many among these same groups may be abandoned again because they are now dispersed in temporary housing across the nation and lack the insurance and other assets needed to return home and begin rebuilding. Nevertheless, no matter where the city's past or present citizens currently reside, all are anxiously waiting for their elected officials and city planners to set aside their respective political agendas and start confronting the myriad social, economic and environmental challenges that face all evacuees.

In the meantime, rents in the undamaged parts of the city continue to skyrocket because returning families and reconstruction workers are competing for the very limited supply of available housing. As of this spring, the official rate of increase in rents was 39%; however, in lower-income neighborhoods, working people and the elderly report rents are up much higher than that. Yet, despite the apparent need to quickly rehabilitate and make available all habitable affordable housing, HUD has refused to allow thousands of families to return to their public housing units and plans to demolish 5000 apartments rather than consider rehabilitation efforts.



Along with these supply-side issues is the simple fact that a large number of the pre-Katrina residents were low-income renters, yet none of these renters are scheduled to receive any direct financial assistance from Louisiana's Road Home Housing Program. Rather, the Road Home plan proposes to provide financial assistance to a limited number of developers, who will in turn reserve a *limited* number of affordable housing units for low-income renters in their newly constructed/refurbished mixed-income developments.<sup>7</sup> For everyone else, Road Home assumes that low-income renters will be able to effectively secure federal housing assistance (i.e. Housing Choice Vouchers or Disaster Voucher Program assistance). However, this assumption ignores the fact that even with a voucher, renters may still struggle to find adequate housing because of a lack of rental housing supply or a landlord's unwillingness

<sup>7</sup>Road Home only proposes to spend \$1.5 billion (15% of its full \$10.4 billion) on affordable housing/rental-related programs. However, this would only generate 35,000 new or restored rental units, of which only 15,000 would be below market rents—despite the fact that it is widely acknowledged that a vast majority of the now uninhabitable rental units were previously occupied by low-income households.



to accept their vouchers or FEMA payments. In some instances, it has been reported that a handful of housing authorities have refused to recognize the portability features that are associated with the voucher program, thus forcing residents to bear the full cost of their contract rent with no subsidy.<sup>8</sup>

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*Even pre-Katrina homeowners are likely experiencing considerable hardships because none of the \$7 billion earmarked for homeowner rebuilding has been distributed.*

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Nevertheless, even pre-Katrina homeowners are likely experiencing considerable hardships because as of this writing none of the \$7 billion earmarked for homeowner rebuilding has been distributed, even though the funds were appropriated to Louisiana months ago. Consequently, tens of thousands of families still live in trailers and mobile homes with no real timetable for moving to more permanent housing. And, to make matters worse, insurance settlements are mired in red tape that threaten to deny claims due to contractual technicalities.<sup>9</sup>

Exacerbating the city's affordable housing crisis, Entergy New Orleans, the exclusive provider of electricity and gas service to New Orleans, has recently proposed a rate hike that would average out to approximately \$45 per month per customer.<sup>10</sup> Entergy New Orleans, a wholly owned subsidiary of Entergy Corp., claims that the proposed rate increases are necessary to rebuild the electricity and gas systems that were damaged during the storms. Although there is no dispute that these systems were damaged during the storm, many are questioning the proposition because it would force ratepayers to shoulder the entire cost burden of rebuilding the systems without placing a reciprocal burden on Entergy Corp., even though they have consistently reported millions in profits since Hurricane Katrina. And, while there is no legal requirement that Entergy Corp. agree to shoulder its fair share of the burden, under the circumstance it would appear to be unconscionable not to do otherwise.

<sup>8</sup>The portability feature allows voucher holders to select a unit anywhere within the jurisdiction of the issuing PHA, or anywhere outside the jurisdiction of the issuing PHA, so long as there is a PHA administering a program for the jurisdiction where the unit is located. 42 U.S.C.A. § 1437f(r); 24 C.F.R. §§ 982.4 (definition of portability) and 982.353(b). Consequently, voucher holders may theoretically use their vouchers nationwide.

<sup>9</sup>See generally *Leonard v. Nationwide Mut. Ins. Co.*, 438 F. Supp. 2d 684 (S.D. Miss. 2006).

<sup>10</sup>Pam Radtke Russell, *Entergy Corp. is raking in millions supplying power to New Orleans' suburbs and three other states, so why can't it use that money to help out its customers in Katrina-devastated N.O.?*, THE TIMES PICAYUNE (Aug. 9, 2006), <http://nola.live.advance.net/news/t-p/frontpage/index.ssf?base/news-6/1155102953153800.xml&coll=1>.

The overall lack of affordable housing has also affected a number of the basic city services that generally benefit all residents but are particularly important to the city's working-class residents who frequently depend upon these services for employment, basic transportation and healthcare. For example, only about a third of the retail food establishments are open; only 17% of the city's streetcars and buses are operational; and only 23% of the childcare centers are open. Without these services, a large portion of the city's job market is either removed or otherwise inaccessible to the working class, thus placing further strain on an economy that was already floundering before the hurricane.

### Conclusion

Rebuilding New Orleans' devastated affordable housing stock is essential for the city's ultimate recovery. The failure to provide adequate affordable housing will make it impossible for thousands of former residents to return to their coveted Crescent City; and without places to live, people cannot return to work, pay taxes, frequent local businesses, or send their children to school. Nevertheless, the challenge going forward is even greater if New Orleans wants to avoid its previous pattern of concentrating assisted housing and poor families in a handful of isolated communities. If assisted housing—whether temporary or permanent—is systematically excluded from the city's better-off neighborhoods, New Orleans will simply reproduce the severe neighborhood distress and economic hardships that historically prevailed before the storm. ■

## HUD Begins VAWA Implementation

by Naomi Stern\*

New statutory eviction, termination, and denial protections for survivors of domestic violence, dating violence, and stalking in public housing and the Section 8 programs are in the process of being implemented by the Department of Housing and Urban Development (HUD). Enacted in early January 2006, the Violence Against Women Act of 2005 (VAWA) included these protections and related provisions to assist homeless and low-income survivors with their housing needs.<sup>1</sup> According to a notice that HUD issued in late June 2006, public housing authorities (PHAs) and Section 8 landlords are bound by the new amendments in the law even though HUD has not yet released proposed or final implementing regulations.<sup>2</sup> In addition, under the statute and as reiterated in the notice, a broad range of documentation for an individual to claim protection under the law remains in effect while HUD continues to develop an approved form for agencies and landlords to use.<sup>3</sup> HUD has stated that it expects to issue proposed regulations for VAWA in the fall of this year.<sup>4</sup> In the meantime, HUD recently sought emergency comments on a draft certification form.<sup>5</sup> National associations of housing authorities and assisted housing providers also have issued alerts to their audiences on the steps that local agencies and landlords can take to ensure compliance.<sup>6</sup>

Congress passed the VAWA housing provisions in response to the connection between domestic violence and homelessness, the overbroad implementation of "one-strike" drug-related criminal activity eviction and termination policies, and housing discrimination against domestic violence survivors around the country. The new law amended the federal public housing and Section 8

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<sup>1</sup>Pub. L. No. 109-162, 119 Stat. 2960 (2006); NHLP, *Congress Reauthorizes Violence Against Women Act with Housing Protections*, 36 HOUS. L. BULL. 1, 7 (2006).

<sup>2</sup>See Implementation of the Violence Against Women and Justice Department Reauthorization Act 2005, PIH 2006-23 (June 23, 2006).

<sup>3</sup>See *id.*; 42 U.S.C.A. §§ 1437d(u)(1)(A), (B), (C), (D) and 1437f(ee)(1)(A), (B), (C), (D) (West, WESTLAW through P.L. 109-279 (excluding P.L. 109-248, 109-270, 109-271) approved 08-17-06).

<sup>4</sup>See Semiannual Regulatory Agenda, 71 Fed. Reg. 22,757 (Apr. 24, 2006).

<sup>5</sup>See Notice of Submission of Proposed Information Collection to OMB, Emergency Comment Request, Implementation of the Violence Against Women (VAWA) and Justice Department Reauthorization Act of 2005, 71 Fed. Reg. 41,039 (July 19, 2006).

<sup>6</sup>See, e.g., NAHRO, OVERVIEW OF HOUSING PROVISIONS VIOLENCE AGAINST WOMEN ACT (VAWA) REAUTHORIZATION (2006); *Violence Against Women Act Calls Foul on "One-Strike" Policies and Local and National Agencies Are Eager to Augment Your VAWA Compliance*, ASSISTED HOUSING ALERT (June 2006).

program statutes to prohibit denying, evicting, or terminating housing assistance to a victim of domestic violence, dating violence, or stalking because of the violence against the victim. The law also includes new local planning requirements for housing agencies and authorizes new pilot grant programs to promote housing agency best practices related to violence against women and to develop local affordable housing collaborations targeted at survivors of violence.

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*The new law clarifies that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance.*

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## Protection from Denial, Eviction or Termination

The new law clarifies that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance.<sup>7</sup> The statute also establishes an exception to the federal "one-strike" criminal activity eviction rule for tenants who are victims. VAWA explicitly provides that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a serious or repeated violation of the lease or good cause for terminating the assistance, tenancy, or occupancy rights of a victim.<sup>8</sup> VAWA also provides that criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for terminating a victim's tenancy.<sup>9</sup> In addition, VAWA seeks to ensure that PHAs and Section 8 landlords honor civil protection orders and other court orders from domestic violence and family court judges that address rights of access to or control of the property.<sup>10</sup> The statute clarifies that a PHA or landlord may bifurcate the lease in order to evict, remove, or terminate the assistance of the abuser while allowing the victim, who is a tenant or lawful occupant, to remain.<sup>11</sup>

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<sup>7</sup>See 42 U.S.C.A. §§ 1437d(c)(3), 1437f(c)(9)(A), 1437f(d)(1)(A), 1437f(o)(B) (West WESTLAW through P.L. 109-279 (excluding P.L. 109-248, 109-270, 109-271) approved 08-17-06).

<sup>8</sup>See *id.* §§ 1437d(l)(5), 1437f(c)(9)(B), 1437f(d)(1)(B), 1437f(o)(7)(C), 1437f(o)(20)(A).

<sup>9</sup>See *id.* §§ 1437d(l)(6), 1437f(c)(9)(C), 1437f(d)(1)(C), 1437f(o)(7)(D), 1437f(o)(20)(B).

<sup>10</sup>See *id.* §§ 1437d(l)(6)(C), 1437f(o)(7)(D)(iii), 1437f(o)(20)(D)(ii), 1437f(c)(9)(C)(iii), 1437f(d)(1)(B)(iii)(III).

<sup>11</sup>See *id.* §§ 1437d(l)(6)(B) (Public Housing), 1437f(o)(7)(D)(ii) (Housing Choice Voucher Program), 1437f(c)(9)(C)(ii), 1437f(d)(1)(B)(iii)(II) (Project-Based Section 8).

The amendments also include language that addresses more specific situations. For example, VAWA protects tenants who are victims of criminal activity that directly relates to domestic violence, dating violence, or stalking from eviction on those grounds. However, a PHA or Section 8 landlord still retains authority to evict a victim for unrelated drug or criminal activity as long as in doing so, the PHA or Section 8 landlord does not hold the victim to a more demanding standard than it holds other tenants.<sup>12</sup> There also is a narrow exception to the main VAWA exception, where, if a PHA or Section 8 landlord can demonstrate "an actual and imminent threat to other tenants or those employed at or providing service to the property" if the tenant's tenancy is not terminated, then the PHA or Section 8 landlord may proceed with an eviction or termination action against the victim.<sup>13</sup>

In the case of both the lease bifurcation language and the "actual and imminent threat" exception, HUD guidance and regulations will be especially critical in clarifying the operation of the new statute. Over time, these interpretive issues also may present themselves through litigation. Despite these lingering interpretive issues, HUD has emphasized to local agencies that the law became fully effective as of the date of its signing (January 5, 2006) and has urged local agencies not to wait for federal guidance or regulations before reviewing the new statute and taking immediate steps to comply.

## Documentation Requirements

Documentation requirements for an individual to claim protection under the statute are outlined clearly in the new law. Before complying with the statute, a PHA or Section 8 landlord may ask an individual for documentation that he or she is or has been a victim of domestic violence, dating violence, or stalking, subject to certain requirements related to confidentiality and the types of documentation that may be used. The new law follows the federal definitions of domestic violence, dating violence, and stalking as the terms have been defined elsewhere in VAWA.<sup>14</sup> HUD addressed the documentation requirements in its June 2006 notice and also is in the process of developing an approved certification form that would comply with the documentation specifications of the statute. Under the statute, a PHA or owner is not required to demand that an individual complete a HUD-approved form, nor produce any specific documentation, to be protected.

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<sup>12</sup>See *id.* §§ 1437d(l)(6)(D), § 1437f(o)(7)(D)(iv), 1437f(o)(20)(D)(iii), 1437f(c)(9)(C)(iv), 1437f(d)(1)(B)(iii)(IV).

<sup>13</sup>See *id.* §§ 1437d(l)(6)(E), 1437f(o)(7)(D)(v), 1437f(o)(20)(D)(iv), 1437f(c)(9)(C)(v), 1437f(d)(1)(B)(iii)(V).

<sup>14</sup>See *id.* §§ 1437d(u)(3)(A), 1437f(f)(8), 13925(a)(6) (domestic violence), 1437d(u)(3)(B), 1437f(f)(9), 13925(a)(8) (dating violence), 1437d(u)(3)(C), 1437f(f)(10) (stalking). State law definitions vary, and the broader of the two definitions may prevail. The amendments do not explicitly extend to victims of sexual assault, which is defined in federal law at 42 U.S.C. § 13925(a)(23).

At its discretion, a PHA or landlord may provide protection under the law based solely on an individual's statement or other corroborating evidence.<sup>15</sup>

As outlined in the statute, a tenant who is a victim may fully satisfy a PHA's or Section 8 landlord's request for documentation by producing a federal, state, tribal, territorial, or local police or court record that documents the incident or incidents of violence. Alternatively, a victim may provide a statement in which "an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse" attests under penalty of perjury that the professional believes that "the incident or incidents in question are bona fide incidents of abuse."<sup>16</sup> The victim also must sign or attest to the documentation. In addition, the documentation must name the abuser. Finally, the statute also allows PHAs and Section 8 landlords to request documentation through the certification form approved by HUD.<sup>17</sup>

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*A tenant who is a victim may satisfy a request for documentation by producing a federal, state, tribal, territorial, or local police or court record that documents the violence.*

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After a PHA or landlord has requested the documentation in writing, an individual has fourteen business days to respond to the request. If an individual does not provide the documentation within fourteen business days, the PHA or landlord may bring eviction or termination proceedings against the tenant. However, the PHA or landlord also may extend this timeframe at its discretion.<sup>18</sup>

If an individual provides certification, the PHA or Section 8 landlord must keep the information confidential, including the individual's status as a victim of domestic violence, dating violence, or stalking. A PHA or Section 8 landlord may not enter the information into any shared database, nor provide it to any related entity. However, a PHA or Section 8 landlord may disclose the information if: the victim requests or consents to the disclosure in writing; the information is required for use in eviction proceedings related to whether the incident or incidents in question qualify as a serious or repeated violation of the lease or criminal activity directly relating to domestic violence, dating violence, or stalking; or disclosure is otherwise required by law.<sup>19</sup>

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<sup>15</sup>See *id.* §§ 1437d(u)(1)(D) and 1437f(ee)(D).

<sup>16</sup>*Id.* §§ 1437d(u)(1)(A), 1437d(u)(1)(C), 1437f(ee)(1)(A), 1437f(ee)(1)(C).

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

<sup>18</sup>See *id.* §§ 1437d(u)(1)(A), 1437d(u)(1)(B), 1437f(ee)(1)(A), 1437f(ee)(1)(B).

<sup>19</sup>See *id.* §§ 1437d(u)(2)(A) and 1437f(ee)(2)(A).

## Voucher Portability

The new law also amended the Section 8 Housing Choice Voucher program to clarify that a family with a voucher may move to another jurisdiction at any time if the family otherwise has complied with all other obligations of the program and is moving "to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believe[s] he or she was imminently threatened by harm from further violence if he or she remained" in the unit.<sup>20</sup> In complying with the new law, a PHA may ask for documentation from the family regarding the family's reasons for moving to a new jurisdiction.<sup>21</sup>

## Local Planning

VAWA amended the PHA planning statute to require that PHAs describe how they are addressing the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking when they are developing their annual and five-year PHA plans.<sup>22</sup> VAWA also added the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the "consolidated planning" process that local communities undertake every five years to receive HUD assistance.<sup>23</sup> These planning requirements are an important focus for local advocacy on additional domestic violence issues in public and Section 8 housing, as well as for VAWA implementation. ■

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<sup>20</sup>See *id.* §§ 1437f(r)(5) and 1437f(ee).

<sup>21</sup>See *id.*

<sup>22</sup>See *id.* §§ 1437c-1(d)(13) and 1437c-1(a)(2). See also NHLP, HUD HOUSING PROGRAMS: TENANTS' RIGHTS, § 12.2.6 (3d. ed. 2004 and 2006-2007 Supp.).

<sup>23</sup>See 42 U.S.C. § 12705(b)(1) (2006).

# HUD Inspector General Finds Serious Flaws in Moving to Work Program

Between 2004 and 2006, Office of Inspector General (OIG) of the Department of Housing and Urban Development (HUD) audited several public housing authorities (PHAs) participating in the Moving to Work Demonstration (MTW). The OIG also audited HUD's oversight of the Philadelphia Housing Authority's MTW performance, HUD's design and implementation of MTW, and HUD's decision to admit the City of Baltimore Housing Authority into MTW. The audits, discussed in more detail below, found serious flaws in both HUD's performance and the performance of the selected PHAs. The audits revealed problems with HUD's selection process for MTW participation, HUD's oversight of the MTW participants, and HUD's ability to measure the effectiveness of the overall MTW program.<sup>1</sup>

## HUD's Design and Implementation of MTW

The OIG audited HUD's design and implementation of MTW in order to determine whether the program was able to provide housing assistance that reduced costs, promoted self-sufficiency, and increased housing choices, as originally envisioned.<sup>2</sup> Unfortunately, auditors quickly discovered that HUD did not have any reliable measurable data in order to accurately evaluate the impact of the various MTW programs costs, self-sufficiency, and housing choices.

The OIG discovered that HUD initially relied on its existing system, then called the "Multifamily Tenant Characteristic System" (MTCS), to collect tenant demographics needed to evaluate the effectiveness of the MTW programs.<sup>3</sup> However, the existing system would not accept the tenant demographic data from the MTW programs, because the MTW income and rent calculations were different from standard HUD programs. HUD therefore instructed MTW PHAs to continue collecting, but not to transmit the data to MTCS. HUD was only able to design a program that reviewed MTW activities and the experiences of the MTW PHAs, but was not able to obtain any

outcome information. HUD therefore could not provide any measurable data on whether any MTW activities were effective in reducing costs, improving efficiency and self-sufficiency, and increasing housing choices for low-income households, or an analysis of the overall impact of the MTW activities.

Unfortunately, HUD may not have had the authority to collect such data, even if it had developed the means to do so. Federal regulations require HUD to obtain OMB approval before conducting or sponsoring the collection of information from PHAs. HUD believed that this requirement only applied to programs involving ten or more PHAs, and it therefore did not seek initial OMB approval during the first round of MTW applications, because only seven PHAs originally were required to submit annual MTW plans and reports. HUD failed to consider that in the second round of MTW applications an additional fourteen PHAs were required to submit program plans. At that point it should have obtained OMB approval before requiring the submission of the MTW plans and reports that were designed to replace traditional PHA reporting requirements. However, the audit found that HUD had not obtained OMB approval to collect MTW program plans and reports from any of the fourteen PHAs selected for MTW in the second round of applications.

HUD also did not consistently perform comprehensive onsite monitoring of the MTW PHAs, and had no assurance for the OIG that any of the MTW PHAs were in compliance with their MTW agreements. Consequently, the OIG discovered compliance issues in a number of the MTW PHAs. For example, the OIG discovered that at least four other PHAs, in addition to Seattle, had started project-based assistance contracts without performing the required environmental reviews.

HUD's response was that it "told" the field offices to conduct onsite monitoring. However, HUD did not make this an official requirement, and did not develop instructions on site monitoring according to its own directives system. Therefore, there was confusion among the field offices as to their responsibilities, and some field offices either did not know, or did not believe, that they were responsible for monitoring the MTW program.

## Philadelphia

The OIG audited HUD's oversight of the Philadelphia Housing Authority's MTW program between September 2003 and February 2004.<sup>4</sup> Philadelphia was among the second round of PHAs selected to participate in the MTW demonstration. Philadelphia submitted an MTW proposal in 2000. In 2001, HUD concluded that the application was highly responsive to HUD's invitation to submit an

<sup>1</sup>For an additional discussion of the OIG audits, see Will Fischer & Barbara Sard, *Inspector General Reports on HUD's Moving to Work Demonstration Raise Serious Questions*, Center on Budget Policy and Priorities, available at <http://www.cbpp.org/7-13-06hous.htm> (July 13, 2006).

<sup>2</sup>HUD, OIG, DESIGN AND IMPLEMENTATION OF THE PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION PROGRAM, 2005-SE-0001 (2005), available at <http://www.hud.gov/oig/ig500001.pdf>.

<sup>3</sup>MTCS collects tenant demographic data, including family composition, income and addresses. The audit focused primarily on HUD's inability to use this data to measure the effectiveness of MTW programs. It did not address the impact of MTW on other data that HUD compiles on PHAs.

<sup>4</sup>HUD OIG, HUD'S OVERSIGHT OF THE PHILADELPHIA HOUSING AUTHORITY'S MOVING TO WORK PROGRAM, 2004-PH-0003 (2004), available at <http://www.hud.gov/oig/ig430003.pdf>.

expression of interest. However, the audit discovered that HUD only considered how well Philadelphia complied with the formal application requirements. HUD did not consider the merits of the proposal set forth in the application, including Philadelphia's proposed alternative uses of housing choice voucher funds. In other words, HUD evaluated Philadelphia's application based on the form, and not the substance, of the contents.

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*HUD's failure to evaluate Philadelphia's uses for housing choice vouchers was particularly troubling in view of the authority's history of performance problems.*

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HUD's failure to evaluate Philadelphia's proposed alternative uses for housing choice vouchers was particularly troubling in view of the PHA's history of performance problems prior to MTW. A 2003 audit of Philadelphia's use of voucher funds revealed that between 1999 and 2002, Philadelphia's utilization rate continuously fell, from 87.2% in 1999 to 76.8% in 2002.<sup>5</sup> Due to underutilization, HUD recaptured \$479 million in unused voucher funds from Philadelphia in 2001, although 18,000 families remained on its Section 8 waiting list. The 2003 audit estimated that 3200 additional families could have been housed had Philadelphia fully utilized its voucher funding.

The 2003 audit concluded that internal managerial and administrative problems made it difficult for Philadelphia to fully utilize its voucher funding. However, HUD did not investigate these problems any further before accepting Philadelphia into the MTW program, notwithstanding that Philadelphia was also on HUD's list of the fifty housing authorities with the largest voucher utilization problems. Those problems continued under Philadelphia's MTW program. The audit of HUD's oversight estimated that there were at least 18,000 habitable and available rental units in Philadelphia, and that Philadelphia should have been able to achieve full utilization of its vouchers.<sup>6</sup>

The audit also revealed that underutilization of vouchers may have been built into Philadelphia's Annual Plan. An outside consultant hired by HUD to review and comment on Philadelphia's MTW Annual Plan noted that Philadelphia only planned to lease up to 74% of its vouchers by March 2002. The consultant questioned why Philadelphia

was able to set a goal significantly lower than HUD's accepted lease up-rate, and also why the plan did not address how Philadelphia planned to use the unused voucher funding. HUD described most of the consultant's concerns as exceptions or technical corrections to its approval of Philadelphia's MTW application. HUD did not respond at all to the concern about voucher underutilization.

HUD further did not consult the local field office about Philadelphia's performance history until after Philadelphia was accepted into the MTW program. The field office staff had concerns about Philadelphia's ability to administer a successful MTW program, and advised HUD that Philadelphia's historic Section 8 utilization problems were due to internal administration problems and not regulatory requirements. The field office advised HUD that effective monitoring of the MTW program was essential in view of Philadelphia's historic performance problems.

Despite these concerns, HUD failed to seriously monitor Philadelphia once it was accepted into the MTW program. HUD relied on remote monitoring and yearly on-site reviews to monitor Philadelphia's performance under MTW. However, under MTW, a PHA is not required to comply with the reporting requirements of a traditional HUD program. Therefore, HUD's remote monitoring of Philadelphia consisted of reviewing Philadelphia's self-certified reports, which the audit found were not required to be timely submitted. HUD's on-site review was no more effective. The review was not performed until two years after the MTW agreement became effective, lasted only two days, and did not verify any of the data contained in Philadelphia's Annual Plans.

The audit estimated that, under the MTW program, Philadelphia would have more than \$134 million in HUD funding to spend in nontraditional ways, including funds that traditionally would have gone to provide Section 8 vouchers on the waiting list. However, due to Philadelphia's performance problems and HUD's failure to effectively monitor the MTW agreement, the audit concluded that a large number of needy families continued waiting for housing assistance, although full voucher utilization was possible.

## Seattle

The Seattle Housing Authority (SHA) was accepted into the MTW program in 1998 for a five-year term. In January 2001, that term was extended to 2006. In August 2003, the OIG audited SHA's MTW performance to determine whether its activities were carried out in compliance with its agreement and MTW program requirements.<sup>7</sup>

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<sup>5</sup>HUD OIG, PHILADELPHIA HOUSING AUTHORITY, UTILIZATION OF TENANT-BASED SECTION 8 FUNDS (2003), available at <http://www.hud.gov/oig/ig331803.pdf>.

<sup>6</sup>PHAs under MTW must develop criteria to ensure that they are assisting substantially the same number of eligible families as would have been served under traditional HUD guidelines. See Public Housing Moving to Work Demonstration, Pub. L. No. 104-134, as amended by Pub. L. 105-276, § 522(b)(3), 112 Stat. 2564 (1998).

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<sup>7</sup>HUD OIG, SEATTLE HOUSING AUTHORITY, MOVING TO WORK DEMONSTRATION PROGRAM, 2004-SE-1004 (2004), available at <http://www.hud.gov/oig/ig401004.pdf>.

SHA's initial MTW proposal contained seventeen activities designed to further the purpose of the MTW program, eight of which it finally implemented. While the audit did not identify the significant performance problems that plagued Philadelphia, it did find that two of the eight activities were not implemented in accordance with the MTW agreement.

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*SHA did not include provisions for compliance with relocation requirements in its project-based Section 8 contracts, although at least two of the eleven projects would involve potential displacement of residents.*

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One of SHA's planned activities was to simplify the process to provide project-based Section 8. SHA's MTW agreement required it to obtain HUD environmental approval before committing HUD funds to otherwise ineligible property. The MTW agreement subjected SHA to federal prevailing wage rate requirements and HUD contracting regulations, which include regulations on relocation assistance, real property acquisition requirements and subsidy-layering requirements. Despite such provisions, SHA entered into HAP contracts with private developers with no assurances that regulations on these matters would be followed.

The audit reviewed records for eleven projects for which SHA agreed to provide Section 8 project-based assistance, out of a total of sixty. The audit revealed that SHA did not seek or receive environmental approval from HUD for any of the eleven projects. The audit also revealed that SHA did not include provisions for compliance with prevailing wage requirements in the agreements it entered into with the owners of the projects, although five of the eleven projects reviewed were subject to the prevailing wage requirements. The lack of a prevailing wage provision in the contracts was especially troublesome in view of the amount of HAP funds to be expended. Two of the projects had already received \$324,000 in HAP funds, and SHA had commitment letters for the remaining three projects that would ultimately result in an expenditure of \$1.1 million in HAP funds.

SHA also did not include provisions for compliance with relocation requirements in its project-based Section 8 contracts, although at least two of the eleven projects would involve potential displacement of residents. While the MTW agreement did not explicitly require SHA to follow federal relocation assistance requirements, the audit noted that the agreement did subject SHA to the contracting requirements of the United States Housing Act and other HUD contracting requirements, which include

regulations on relocation assistance, property acquisition and subsidy layering. None of SHA's agreements for project-based Section 8 assistance contained relocation compliance provisions, and SHA was not able to monitor compliance with federal regulations. Similarly, none of the project-based Section 8 agreements complied with real-property acquisition regulations, even though SHA entered into agreements with at least two projects prior to property acquisition.

SHA additionally did not comply with the HUD subsidy-layering requirements that were part of its MTW agreement. HUD regulations require HUD to certify that the combination of HUD and other government assistance provided in connection with a property is not any greater than necessary to provide affordable housing. The OIG did not find any subsidy layer reviews for the properties that it audited, and SHA claimed that it did not request such reviews for any of the projects that were provided project-based Section 8 assistance under the MTW agreements. Consequently, the initial rents for the projects were not determined by a certified State-appraiser, as required by regulation. SHA used its own standard rent reasonableness test to determine whether the rents were reasonable.

Finally, the audit found that SHA failed to properly address the issue of racial concentrations in its buildings. SHA developed a policy under its MTW agreement to conduct affirmative fair marketing in order to promote diversity under buildings with disproportionate concentrations of one racial or ethnic group. Although the policy met fair housing requirements, SHA did not fully implement the policy, did not attempt to reach under-represented groups, and did not establish standards to determine whether a building was "racially identifiable." The OIG audit discovered that at least four buildings were racially identifiable, meaning that the racial percentage of a particular racial group was 20% higher in the building than the average percentage for all high-rise buildings, or more than 50% for ethnic minority groups. For example, in one building, the OIG noted that Asian residents made up almost 90% of the resident population, although Asian-Americans only accounted for 13% of the tenant population as a whole.

While SHA's overall audit did not identify problems such as underutilized voucher funds or internal management problems, its findings are still worthy of concern. SHA entered into a number of contracts to expend HUD funding without assuring that federal and HUD protections for residents and employees would be followed.

## **Pittsburgh**

The Housing Authority of the City of Pittsburgh (HACP) was authorized to join MTW by Congress in 1998, and signed a five-year MTW Agreement with HUD in November 2000. Between 2001 and 2004, HUD provided

HACP \$293 million under the MTW Agreement. In October 2004, HACP submitted a request for a five-year extension of the MTW Agreement.<sup>8</sup>

Between May 2004 and February 2005, the OIG completed its audit of HACP's MTW program.<sup>9</sup> The audit found that HACP continued to operate traditional housing assistance programs that neither used nor required the flexibility of MTW, and that HACP was having trouble administering those programs. HACP also accumulated significant funding in its reserves which was not being used to provide housing for low-income families, and existing public housing stock was not being maintained.

The audit determined that while HACP focused on utilizing its replacement housing funds, it failed to maintain and repair existing housing stock, and accumulated \$56.8 million in unused capital funds. Additionally, the audit showed that as of September 30, 2004, HACP had only utilized half of the replacement housing funds that it received in 2003, and had not utilized any of the replacement housing funds that it received for 2004. Meanwhile, a HUD REAC inspection in 2003 assigned scores of seventy or below to 36% of HACP's public housing developments. The OIG, as part of the audit, conducted random inspections in twenty-three units located in four of the developments with REAC scores below seventy, and noted serious deficiencies in ten of the units.

The audit also discovered that HACP had not fully utilized its vouchers, and failed to lease up nearly 1300 vouchers. While traditional HUD regulations limit a PHA's Section 8 voucher reserves to one-twelfth of the annual subsidy, under MTW, HACP was allowed to maintain a much higher level of reserves. Thus, at the time of the audit, HACP had accumulated nearly \$24.6 million in reserves, despite a waiting list of more than 1700 families.<sup>10</sup>

The audit attributed part of this problem to the inability of HACP to execute its programs. After developing the MTW plan, HACP lost staff which it failed to replace, and staffing levels continued to decline during the period covered by the audit. HACP had to hire outside consultants to help implement significant portions of the plan due to a lack of expertise on the part of HACP staff. However,

the consultants were not hired until three and a half years after HACP entered the MTW program.

The audit concluded that HACP would accumulate a total of \$102.6 million in HUD funds by the end of its MTW agreement in 2005. Approximately four-fifths of those funds, or \$81.4 million, were funds that HACP had available to it and which had not been used at the time of the audit. The OIG recommended that HACP's MTW agreement not be extended beyond 2005, that it be converted back to a traditional HUD program as soon as possible, and that HACP immediately begin to lease up its unused vouchers. However, it appears that HUD has taken no action to terminate HACP's MTW status.

## Baltimore

Most recently, the OIG conducted a review of HUD's decision to admit the Housing Authority of Baltimore City (HABC) into MTW.<sup>11</sup> The audit found numerous instances in which HUD did not follow statutory requirements when it admitted HABC. These included failing to solicit public opinion through a public hearing or other means, failing to require HABC to take public comment before developing a MTW plan, not requiring HABC to demonstrate that it could properly administer funds, and accepting HABC into the program thirty-one months after the deadline for admission.

The first concern discovered in the OIG audit was HABC's failure to obtain input from citizens and residents before submitting its application and proposed MTW plan. The MTW application process required HABC to solicit public input through a public hearing before submitting the MTW application. HABC was also required to take into account comments from current and prospective residents who would be affected if it was accepted into the MTW program.

Although HUD initially declined HABC's application, the audit determined that its subsequent reversal and acceptance of HABC was a clear violation of the MTW statute. Additionally, HUD reversed its decision without consulting its Office of General Counsel. The audit noted that HUD had received no express authority from Congress to waive the MTW statutory requirements, and at a minimum, it should have consulted with its Office of General Counsel before reversing its initial rejection, and waiving the statutory and regulatory requirements for HABC's application.

HABC also did not submit a proposed MTW program plan with its application. The audit noted that HABC prepared only a "short" "vague" expression of interest, which was not submitted until July 2003, over two years

<sup>8</sup>HACP's current MTW agreement has a scheduled termination date of December 31, 2006, indicating that HUD has either declined the extension request, or has not taken any action. See HUD, *Moving to Work (MTW) Participating Site MTW Agreements Summary Chart*, available at <http://www.hud.gov/offices/pih/programs/ph/mtw/agreementssummarychart.cfm> (updated May 16, 2006).

<sup>9</sup>HUD OIG, *THE HOUSING AUTHORITY OF THE CITY OF PITTSBURGH, PA DID NOT EFFECTIVELY IMPLEMENT ITS MOVING TO WORK DEMONSTRATION PROGRAM, 2005-PH-1008 (2005)*, available at <http://www.hud.gov/oig/ig531008.pdf>

<sup>10</sup>Data from CBPP and HUD suggest that while HACP's utilization rate has improved, it continues to have significant problems with voucher underutilization. See Fischer and Sard, *supra* note 1, at n.4. See also Center on Budget and Policy Priorities, *2006 Voucher Funding Estimates*, available at [http://www.cbpp.org/5\\_23\\_06housingwebchat.htm](http://www.cbpp.org/5_23_06housingwebchat.htm) (May 23, 2006); HUD, *Resident Characteristics Report*, available at <https://pic.hud.gov/pic/RCRPublic/rcrha.asp> (All Voucher Funded Assistance, Housing Authority of the City of Pittsburgh).

<sup>11</sup>HUD OIG, *THE U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT IMPROPERLY ADMITTED THE HOUSING AUTHORITY OF BALTIMORE CITY, BALTIMORE, MD INTO THE MOVING TO WORK DEMONSTRATION PROGRAM (2006)*, available at <http://www.hud.gov/oig/ig630002.pdf>.

past the original deadline for the second round of MTW applications. Although PHAs are supposed to describe their plans for transforming their housing stock and management systems in the MTW application, and explain why their participation would benefit the MTW program, HABC's proposal contained none of these elements. HUD not only waived the statutory requirements and its normal award-making process when it considered HABC's proposal, it never required HABC to follow up with an application that did meet the statutory requirements.

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*While these audits only reflect a handful of MTW PHAs, they present serious concerns about how HUD and individual PHAs are interpreting the regulatory requirements of the MTW program.*

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Similarly, HUD also chose to overlook HABC's history of significant performance problems. Indeed, HABC was designated as a troubled housing authority from 2001 to 2003, and again in 2004, and two OIG reviews in this same period noted significant problems in its overall performance and management.<sup>12</sup> Many of the significant problems identified in the OIG audits, especially under HABC's Section 8 program, had not been corrected when it was accepted into MTW. HUD defended its decision to admit HABC into the MTW program by arguing that the program should work with poor performing PHAs, and allow them to use available funds without any of the regulatory restrictions of traditional HUD programs. While the MTW statute does not prohibit HUD from admitting poor-performing PHAs, the audit noted that this philosophy was contrary to the statutory intent, which was to reward high-performing PHAs that had demonstrated that they could successfully perform within HUD's regulations.

Unfortunately, the problems noted in earlier audits had not been corrected when HABC was accepted into the program. In 2004, the OIG audited the corrective actions taken by HABC in response to the earlier audits and found that HABC still had not implemented all of the major OIG recommendations. However, these recommendations were made under traditional HUD regulations, and were essentially nullified by HUD's decision to accept HABC into the MTW program.

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<sup>12</sup>HUD OIG, REVIEW OF THE HOPE VI RELOCATION PROCESS AT THE HOUSING AUTHORITY OF BALTIMORE CITY, 2003-PH-1004 (2003), available at <http://www.hud.gov/oig/ig331004.pdf>; HUD OIG, HOUSING AUTHORITY OF BALTIMORE CITY, SECTION 8 CERTIFICATE & VOUCHER PROGRAMS, 2001-PH-1003 (2001), available at <http://www.hud.gov/oig/ig131003.pdf>.

The OIG audit recommended that HUD obtain an advisory opinion from the Office of General Counsel to determine whether legal grounds exist to terminate HABC's MTW agreement, and to terminate the agreement if sufficient grounds exist. The audit also recommends that HUD establish policies that require it to seek Office of General Counsel opinion whenever it deviates from the normal award-making process.

## Conclusion

While these audits only reflect a handful of MTW PHAs, they present serious concerns about how HUD and individual PHAs are interpreting the regulatory requirements of the MTW program, and HUD's ability to conduct meaningful oversight and evaluation of the various MTW programs. They are especially troublesome in view of the several proposals currently in the House and Senate to expand the MTW program.<sup>13</sup> These audits demonstrate that any expansion or extension of MTW should include specific requirements for HUD to follow when determining which PHAs may be admitted to the program, and should plainly restrict participation to high-performing PHAs. Also the language regarding resident input into the plan and any changes to the plan should be made more specific or sanctions provided for failure to comply to help ensure that HUD does not repeat what it did in Baltimore. MTW also should not be extended, or expanded, without ensuring that effective monitoring and oversight procedures are developed to determine the overall success of the various MTW programs, by first establishing a base line and requiring reporting regarding changes in that baseline. Finally, the audits reveal a critical need to provide clear instructions to HUD, HUD Field Offices and PHAs on compliance, monitoring and reporting requirements under MTW. Because MTW frees individual PHAs from the rules and regulations of traditional HUD programs, MTW regulations must ensure that the housing options available to applicants and residents of public housing are fully available and are not diminished under MTW. ■

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<sup>13</sup>See Fischer & Sard, *supra* note 1; see also *Bill to Expand Moving to Work Program Introduced in Senate, NLIHC Objects*, MEMO TO MEMBERS (National Low Income Housing Coalition), June 16, 2006, available at [http://www.nlihc.org/mtm/mtm11\\_24.html#3](http://www.nlihc.org/mtm/mtm11_24.html#3).

## 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,<sup>1</sup> Lexis,<sup>2</sup> or, in some instances, the court's Web site.<sup>3</sup> Copies of the cases are *not* available from NHLP.

### Attorney Fees; Fair Housing — Generally; Insurance

*Fair Hous. Advocates Ass'n, Inc. v. Terrace Plaza Apts.*, 2006 WL 2334851 (S.D. Ohio Aug. 10, 2006). Applying Ohio law, the District Court for the Southern District of Ohio ruled, *inter alia*, that an insured was entitled to coverage for attorney fees that the insured was required to pay a Fair Housing Act plaintiff pursuant to 42 U.S.C. § 3604. The relevant provision of the insurance policy provided that the insurer "will pay those sums that the insured becomes legally obligated to pay as damages because of 'personal injury' . . . ."

### Fair Housing — Generally; Federal Jurisdiction — Standing

*Taliaferro v. Darby Tp. Zoning Bd.*, 2006 WL 2294839 (3rd Cir. Aug. 10, 2006). In a case challenging alleged racially discriminatory zoning decisions, the Third Circuit ruled, *inter alia*, that neighboring African-American property owners did not have standing to challenge decisions based on impairment of African-American voting rights but did have standing to challenge the decisions based on impairment of property values.

### Fair Housing — Steering

*Drenik v. Ohanesian*, 2006 WL 2354708 (E.D. Cal., Aug. 15, 2006). Deciding a motion for summary judgment, the District Court for the Eastern District of California ruled, *inter alia*, that statements by a landlord that he had to check with his wife if a family with a minor child was interested in a second floor apartment and that a ground floor apartment would be more suitable for the family could constitute unlawful steering for the purposes of the Fair Housing Act, 42 U.S.C. § 3604. ■

<sup>1</sup><http://www.westlaw.com>.

<sup>2</sup><http://www.lexis.com>.

<sup>3</sup>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>.

## 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 August of 2006. For the most part, the summaries are taken directly from the summary of the regulation in the Federal Register or each notice's introductory paragraphs.

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

### HUD Federal Register Proposed Rules

#### 71 Fed. Reg. 44,860 (August 7, 2006) Proposed Timeliness Expenditure Standards for the Insular Areas Program

**Summary:** This proposed rule would implement a regulatory timeliness standard for the Insular Areas Program, as established by the Housing and Community Development Act of 1974 (HCD Act). This proposed rule follows publication of a February 22, 2005, final rule implementing a 2003 amendment to the HCD Act. This amendment moved the Community Development Block Grant (CDBG) program assistance for Insular Areas from Section 107 to Section 106 of the HCD Act. The expenditure standards proposed ensure that grantees carry out their programs in a timely manner. These standards take into consideration and reflect the unique circumstances faced by Insular Areas in their ability to expend CDBG allocations. This proposed rule would also establish provisions for the distribution of assistance made available either as a result of reductions or if an Insular Area fails to submit a final statement for CDBG funds. This proposed rule also makes technical and conforming changes to the Insular Areas Program.

**Comment Due Date:** October 6, 2006.

#### 71 Fed. Reg. 46,986 (August 15, 2006) Public Access to HUD Records Under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees

**Summary:** This proposed rule is intended to clarify

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

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

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

<sup>4</sup><http://www.rdinit.usda.gov/regs>.

and explain the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by the Department's document production and testimony approval regulations. This proposed rule describes the procedures to be followed by a party in making a demand for HUD documents and HUD testimony. The proposed rule also explains the standards that are to be followed by HUD in determining whether production of documents or testimony should be permitted and, if so, any conditions or restrictions imposed.

*Comment Due Date:* October 16, 2006.

## HUD Federal Register Notices

**71 Fed. Reg. 43,622 (August 1, 2006)**

### **Waivers Granted to and Alternative Requirements for the State of Texas' CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006**

*Summary:* This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Texas for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Rita in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Texas also notes statutory provisions affecting program design and implementation.

*Effective Date:* August 1, 2006.

**71 Fed. Reg. 44,038 (August 3, 2006)**

### **Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction**

*Summary:* On March 8, 2006, HUD published its FY 2006 SuperNOFA for HUD's Discretionary Grant Programs. This document makes corrections to the notices of funding availability for the Section 202 Supportive Housing for the Elderly Program and the Section 811 Supportive Housing for Persons with Disabilities Program.

*Dates:* The application submission dates for the Section 202 and Section 811 programs of the FY 2006 SuperNOFA remain as published in the *Federal Register* on March 8, 2006.

**71 Fed. Reg. 45,063 (August 8, 2006)**

### **Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Additional Information Regarding Applicant Registration**

*Summary:* On January 20, 2006, HUD published its Fiscal Year (FY) 2006 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Programs. On March 8, 2006, HUD published its FY 2006 SuperNOFA for HUD's Discretionary Grant Programs. This notice announces a change made to how the Central Contractor Registry will capture and use applicant identification data and extends the due date for the Resident Opportunity and Self-Sufficiency (ROSS) Family-Homeownership NOFA.

*Dates:* The application submission dates for the ROSS Family-Homeownership have been extended from August 8, 2006, to September 8, 2006.

**71 Fed. Reg. 45,064 (August 8, 2006)**

### **Privacy Act of 1974; Notice of Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Department of Health and Human Services (HHS)—Matching Tenant Data in Assisted Housing Programs**

*Summary:* Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of a matching program involving comparisons of information provided by applicants or participants in any HUD rental housing assistance program authorized under the statutes cited in the Authority section and independent sources of income information available through the National Directory of New Hires maintained by HHS.

*Effective Date:* Computer matching is expected to begin September 7, 2006, unless comments are received which result in a contrary determination, or forty days from the date a computer matching agreement is signed, whichever is later.

*Comments Due Date:* September 7, 2006.

**71 Fed. Reg. 48,934 (August 22, 2006)**

### **Notice of Proposed Information Collection for Public Comment: Public Housing Agency Plans**

*Summary:* The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. PHAs are required to submit annual and Five-Year PHA Plans to HUD for tenant-based assistance and operating subsidies. These Plans advise HUD, residents, and members of the public of the PHA's mission for serving low-income and very low-income families, and the PHA's operations, programs, services, and strategies for addressing those needs.

This notice collection proposes to significantly streamline the Five-Year PHA Plan and Annual Plan process by limiting annual plan submissions to only four elements,

as required by statute, and any element that is challenged. This revision further streamlines the PHA Annual Plan process by allowing PHAs to certify when no changes have occurred to these documents since their last submission. These changes are proposed to take effect for all PHAs with fiscal years beginning April 1, 2007.

The new streamlined Plan template (HUD-50075) will be used by all PHAs, including small PHAs, high performance PHAs, standard performance PHAs, poor performance PHAs, and Section 8 only PHAs. The new streamlined Plan template eliminates the use of the HUD-50075-SF and HUD-50075-SA since all PHAs will use the revised HUD-50075. The new Five-Year and Annual Plan template is reduced from 42 pages to 10 pages.

*Comments Due Date:* October 23, 2006.

**71 Fed. Reg. 51,678 (August 30, 2006)  
Waivers Granted to and Alternative Requirements for the State of Florida's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006**

*Summary:* This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Florida for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Wilma in 2005. HUD previously published an allocation and application notice, 71 Fed. Reg. 7666 (Feb. 13, 2006), applicable to this grant and four others under the same appropriation. HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Florida also notes statutory provisions affecting program design and implementation.

*Effective Date:* August 30, 2006.

## **Rural Housing Federal Register Notices**

**71 Fed. Reg. 47,164 (August 16, 2006) Notice of Availability of Hurricane Disaster Assistance**

*Summary:* The Rural Housing Service programs are administered through USDA Rural Development. This notice is intended to announce the availability of supplemental hurricane disaster assistance to be administered through the Community Facilities (CF) Direct Loan and Grant program. USDA Rural Development will provide CF Grant funds in the amount of \$20 million and CF Direct Loan funds in the amount of \$149,253,000 for essential community facilities in rural areas affected by Hurricane Katrina and other hurricanes of the 2005 season.

*Effective Date:* August 16, 2006.

## **HUD Housing Notices**

**Notice H 2006-11 (August 14, 2006)  
Prepayments Subject to Section 250(a) of the National Housing Act**

*Summary:* This notice is intended to provide background and up-to-date guidance on HUD's policy and procedure regarding the prepayment of HUD-insured/held mortgages pursuant to the National Housing Act. This notice does not apply to projects insured under Section 223(f) of the National Housing Act because that section of the Act contains its own provisions governing prepayment approval. This notice supersedes all prior directives on the subject.

*Expires:* August 31, 2007.

## **HUD PIH Notices**

**Notice PIH 2006-30 (HA) (August 17, 2006)  
Guidance on Methods and Schedules for Calculating Federal Fiscal Year (FFY) 2007 Operating Subsidy Eligibility**

*Summary:* This notice provides public housing agencies with instructions for submitting their FFY 2007 operating subsidy forms under the new operating fund formula pursuant to the Revisions to the Public Housing Operating Fund Program, Final Rule published in the *Federal Register* on September 19, 2005. The final rule replaces the interim rule that was published on March 29, 2001.

*Expires:* August 31, 2007.

**Notice PIH 2006-31 (August 21, 2006)  
Extension—Notice PIH 2005-32 (HA) HUD PIH Notice for Demolition/Disposition Processing Requirements Under the 1998 Act**

*Summary:* This notice extends Notice PIH 2005-32 (HA), same subject, which will expire on August 31, 2006, for another year until August 31, 2007.

*Changes:* Minor changes were made to the notice.

*Expires:* August 31, 2007.

**Notice PIH 2006-32 (HA) (August 22, 2006)  
Public Housing Agency (PHA) Cost-Savings Initiatives in the Housing Choice Voucher (HCV) Program**

*Summary:* This notice reinstates PIH Notice 2005-9 in regard to cost-savings measures and provides additional guidance on prudent financial management in the HCV program.

*Expires:* August 31, 2007. ■

## HOUSING JUSTICE NETWORK NATIONAL MEETING

# Advancing Housing Justice: Event Basics

### Fees

Fees include materials, lunch each day, and refreshments.

	GENERAL REGISTRATION	SPONSORED CLIENT* REGISTRATION
Training only: Oct 21	\$ 235	\$ 185
Meeting only: Oct 22-23	\$ 495	\$ 295
Meeting + Training	\$ 670	\$ 455

\*This rate applies to clients whose registrations are paid for by a legal services organization.

### CANCELLATION/REFUND POLICY

To qualify for a refund less a \$50 handling fee, a written cancellation must be received by NHLP no later than October 6, 2006. No refunds will be given after that date.

### Registration

Space is limited, so register early! Final registration deadline is October 15, 2006. Forward registration with payment to:

FAX (CREDIT CARD ONLY)	MAIL
510.451.2300	NHLP
	Attn: Registration
	614 Grand Avenue, Suite 320
	Oakland, CA 94610

### Site Information

Washington Court Hotel  
525 New Jersey Avenue, NW, Washington, D.C. 20001  
800.321.3010 or 202.628.2100

*Washington Court Hotel, located in the Capitol Hill neighborhood, is a five-minute walk to the U.S. Capitol Building and the National Mall and is just two blocks away from an array of shopping, dining and entertainment options. Washington Court Hotel is a union hotel.*

Washington Court Hotel is the site for the training, meeting and guest accommodations. **HJN guest accommodations have been filled at the Washington Court Hotel. Attendees will need to arrange lodging at neighboring facilities.**

### Questions

Contact Amy Siemens at 510.251.9400 x111 or [asiemens@nhlp.org](mailto:asiemens@nhlp.org).

HOUSING JUSTICE NETWORK NATIONAL MEETING

# Advancing Housing Justice: Registration

PLEASE PRINT CLEARLY

1

PERSONAL INFORMATION

NAME \_\_\_\_\_ NAME ON BADGE (IF DIFFERENT) \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

EMAIL \_\_\_\_\_ ORGANIZATION'S WEB SITE \_\_\_\_\_

Housing Experience:  years. What issues have you worked on? \_\_\_\_\_

I am an HJN member.  I would like to become an HJN member.  
Please send me an application form via  email  fax

Do you require special arrangements? (Please attach a description)

access  visual  audio  vegetarian  other dietary

2

FEES

GENERAL CLIENT

Federal Housing Program: One Day Training \$ 235 \$ 185

Housing Justice Network Meeting only \$ 495 \$ 295

One Day Training + Meeting \$ 670 \$ 455

3

PAYMENT

**Payment must be included at the time of registration. Registrations will not be processed or confirmed until full payment has been received.**

This payment covers more than one registration. I have attached a registration form for each paid attendee.

I've enclosed a check for \$  made payable to National Housing Law Project

Please bill my  Mastercard  Visa for \$

CARD NUMBER \_\_\_\_\_ EXP. DATE (MONTH/YEAR) \_\_\_\_\_

NAME OF CARDHOLDER \_\_\_\_\_ AUTHORIZED SIGNATURE \_\_\_\_\_

BILLING ADDRESS (REQUIRED FOR CREDIT CARD ORDERS) \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_



# NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM



PUBLICATION	UNIT PRICE	QTY.	TOTAL PRICE
Combined Set: HUD Housing Programs: Tenants' Rights (3d ed. 2004) and new 2006-2007 Supplement	\$ 410	<input type="checkbox"/>	<input type="text"/>
HUD Housing Programs: Tenants' Rights 2006-2007 Supplement	\$ 130	<input type="checkbox"/>	<input type="text"/>
Housing Law Bulletin (annual subscription, 10 issues)	\$ 175	<input type="checkbox"/>	<input type="text"/>
Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)	\$ 5	<input type="checkbox"/>	<input type="text"/>
Housing for All: Keeping the Promise (1995)	\$ 5	<input type="checkbox"/>	<input type="text"/>
The Family Self-Sufficiency Program: An Advocate's Guide (1994)	\$ 10	<input type="checkbox"/>	<input type="text"/>
A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)	\$ 10	<input type="checkbox"/>	<input type="text"/>

SUBTOTAL (All prices include shipping)	<input type="text"/>
CALIFORNIA SALES TAX (Excludes Bulletin   8.75% in Alameda County   8.25% in rest of CA)	<input type="text"/>
<b>TOTAL</b>	<input type="text"/>

## BILLING INFORMATION

All orders must be prepaid. Please do not send cash.

I've enclosed a check or money order made payable to **National Housing Law Project**

Please bill my  MasterCard  Visa

card number / exp date

name on card

organization

street address

city / state / zip

signature

## SHIPPING INFORMATION

name

organization

street address

city / state / zip

telephone / fax

email

MAIL TO  
National Housing Law Project  
Publications Clerk  
614 Grand Avenue, Suite 320  
Oakland, CA 94510

QUESTIONS  
For information on first-class mailing and large quantity discounts, call 510.251.9400 x108



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

FIRST CLASS MAIL