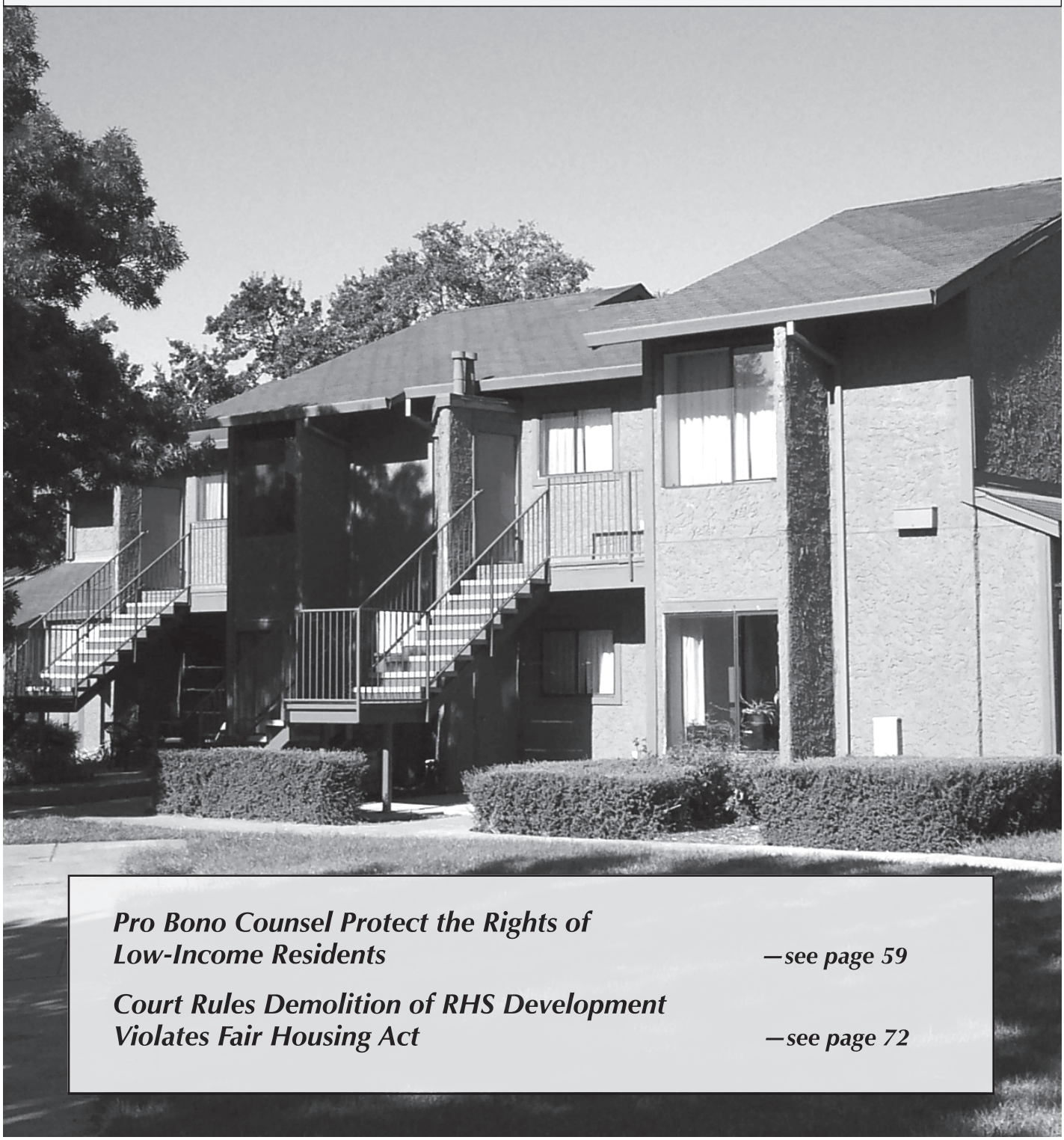
NATIONAL HOUSING LAW PROJECT
advancing housing justice

Housing Law Bulletin

Volume 37 • April 2004
Published by the National Housing Law Project



COMPREHENSIVE CURRENT AUTHORITATIVE

UPDATED

3RD EDITION

NHLP's

HUD Housing Programs: Tenants' Rights

EXPANDED

Originally published in 1981, NHLP's Green Book has proven indispensible to housing law practitioners across the country.

Dubbed the Green Book by users across the country, *HUD Housing Programs: Tenants' Rights* is a comprehensive, issue-oriented guide to the federal housing programs. Last published in 1994, the 3rd Edition has been reworked, updated and expanded to cover recent sweeping changes from Congress, HUD and the courts.

It is the only book that explains and analyzes all applicable laws central to effectively representing tenants assisted under the HUD programs. In a single volume, it provides a practical road map through the complexity of the federal housing programs, including public housing, subsidized rental housing, vouchers, section 8 homeownership, and others. Evictions, resident participation, loss of units and other key issues are covered in depth as well.

Meticulously researched and clearly written by expert NHLP staff attorneys and outside contributors, the Green Book is a unique and and invaluable resource for anyone working within the scope of the federal housing programs:

- attorneys and paralegals
- fair housing and other public interest advocates
- HUD offices
- public housing authorities
- nonprofit housing and community organizations
- private owners and managers
- local and state housing agencies
- housing policy organizations and policymakers
- clinical law programs and law libraries

The 3rd Edition contains the most recent applicable authorities for virtually all common problems encountered in a federal housing landlord-tenant relationship, including state and federal cases, federal statutes and regulations, and HUD Handbooks, Notices and opinion letters.

HUD Housing Programs: Tenants' Rights may be pre-ordered now. See the Publication Order Form for prices.

CD ROM

The 3rd Edition of *HUD Housing Programs: Tenants' Rights* features a complimentary CD-ROM that contains full PDF texts of selected documents referenced within. These documents are not readily available from other sources and not easily located on the internet. They include HUD circulars, Notices, forms, memoranda and correspondence, as well as selected unreported court opinions.

SPECIAL FEATURE

AN ESSENTIAL RESOURCE FROM THE NATIONAL HOUSING LAW PROJECT

Housing Law Bulletin

Volume 34 • April 2004

Published by the National Housing Law Project
614 Grand Avenue, Suite 320, Oakland CA 94610
Telephone (510) 251-9400 • Fax (510) 451-2300
www.nhlp.org • nhlp@nhlp.org

Table of Contents

Cover: Turning Point Commons, a 66-unit limited equity cooperative development for farmworkers in Chico, California. Development financed with California Housing Finance Agency loan and subsidized by Section 8, City of Chico and California Farmworker Grant program. Developed and managed by CHIP, Chico, CA. Owned by residents. Photo courtesy of CHIP.

The *Housing Law Bulletin* is published 10-12 times per year by the National Housing Law project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions of policy of any funding source.

A one-year subscription to the *Bulletin* is $150.

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

For the Good: Private Counsel Help Enforce Federal Housing Laws

The National Housing Law Project (NHLP) and other housing advocates have benefitted enormously from partnerships with private pro bono counsel on efforts that advance the interests of low-income families in need. Amid budgetary constraints and onerous Legal Service Corporation requirements,[1] active relationships with pro bono experts from the private bar are invaluable for legal services organizations. As documented in a recent report of the American Bar Association Center for Pro Bono,[2] these relationships appear to be diminishing, a trend, which, if it continues, would be a significant loss for the affordable housing movement across the country. This article highlights four recent cases in which pro bono counsel, working with legal services organizations and NHLP, have made a significant impact.

Heller Ehrman: Co-Counsel and Co-Advocates

In 2003, NHLP contacted Robert Borton of the firm of Heller Ehrman White & McAuliffe. Borton, Heller Ehrman shareholder and chair of the pro bono committee,[3] put NHLP and Idaho Legal Services in contact with associate Robert Mahnke. Attracted by the intervention challenges presented in *Kimberly v. United States* (D. Idaho),[4] Mahnke agreed to serve as co-counsel and obtained the assistance of associate Michael Zwibelman and other firm attorneys and staff.[5] After legal services attorneys mounted arguments in favor of intervention on the district-court level, Heller became engaged in the case by appealing the district court's rejection of intervention to the Ninth Circuit.

---

[1] LEGAL SERVICE COMMISSION, STATE PLANNING CONFIGURATION STANDARDS: FINAL TASK FORCE REPORT–BOARD APPROVED (2001), *at* http://www.lsc.gov/Websitedocs/PCfgStd2.pdf.

[2] MEREDITH MCBURNEY, ABA CENTER FOR PRO BONO, THE IMPACT OF LEGAL SERVICES PROGRAM RECONFIGURATION ON PRO BONO (2003), *at* http://www.abanet.org/legalservices/probono/impact_reconfiguration.pdf (suggesting that attention to pro bono outreach by legal services organizations has decreased given other service delivery foci).

[3] Heller Ehrman is a San Francisco-based law firm with offices throughout the country and abroad. In addition to lending pro bono assistance, Heller Ehrman also provides first-year litigation training to a number of new legal services and public interest attorneys in the San Francisco Bay Area. New NHLP attorneys have benefitted from this training on a number of occasions.

[4] *Kimberly v. United States*, No. 02-36165 and No. 03-35422 (filed Feb. 25, 1998) (intervention filed May 28, 2002). *See also* NHLP, *RHS Owners Allowed to Quiet Title to Their Property in Derogation of ELIHPA*, 32 HOUS. L. BULL. 249, 258 (Nov.-Dec. 2002) (discussing the *Kimberly* decision).

[5] In addition to NHLP, other counsel of record include Michael McCarthy, Staff Attorney at Idaho Legal Aid Services, and Warrington S. Parker, III, Shareholder at Heller Ehrman.

NHLP and Idaho Legal Services' involvement in *Kimberly* began after elderly residents in an Idaho low-income Rural Rental Housing development, financed under Section 515 of the Housing Act of 1949, discovered that their landlord proposed to prepay its loan, thereby terminating various rights that are extended to residents under the program and potentially terminating their desperately needed rental housing subsidies.[6] After the 515 development owner successfully appealed a district court decision which had dismissed the owner's quiet title action against the government, the residents attempted to intervene in the remanded matter. NHLP and Idaho Legal Services filed a claim on behalf of the residents asserting their rights and privileges under the statutorily mandated Emergency Low Income Housing Preservation Act (ELIHPA)[7] and other laws. The district court ruled that the owner could prepay its Section 515 insured mortgage, withdraw the development from the Section 515 program and quiet title.[8] That same decision denied the residents the right to intervene in the case. In lieu of appealing the negative decision, the government entered into a settlement agreement and agreed to accept prepayment from the owner.

"It has been so gratifying to work with the NHLP on behalf of elderly tenants who are threatened with losing their federal rights and benefits."

With the assistance of Heller, the remaining plaintiff resident currently seeks to reverse the district court's denial of intervention and appeal the decision on the merits by way of an Administrative Procedures Act claim against government officials, among other claims. Should the intervention be permitted, the Ninth Circuit will determine whether the district court misinterpreted its prior decision when it permitted the owner to prepay and quiet title.

Speaking about his experience on the *Kimberly* case, Mahnke reflects:

> It has been so gratifying to work with the NHLP on behalf of elderly tenants who are threatened with losing their federal rights and benefits . . . We were thrilled when the Ninth Circuit granted our emergency motion to preserve the rights of the Kimberly Sunset Manor tenants and we hope to achieve similar success on the underlying merits of the appeal.

Not only is pro bono legal assistance critical for low-income persons across the country, but it has been shown that residents in rural communities face particular challenges in obtaining free legal services. According to the ABA:

> Despite th[e] overwhelming need for pro bono services, however, rural lawyers have unique limitations on providing such services. These limitations include conflicts of interest, multi-district registration requirements, fewer support staff, and greater travel demands. Staff-based rural legal aid programs face similar difficulties because they cover a wider geographic region with fewer personnel than urban legal aid programs. Plus, for their part, rural clients also face greater challenges accessing legal services due to scarce resources, transportation problems, and a general lack of information about legal help.[9]

These rural America realities further highlight the value of Heller Ehrman's assistance. Oral arguments in the *Kimberly* case are currently scheduled for May 3 before the Ninth Circuit.

Plunkett & Cooney and Beveridge & Diamond: Discovery Resources and Litigation Expertise

In 1991, Michigan Migrant Legal Services, the Migrant Legal Action Program and NHLP filed a national class action suit on behalf of farmworkers living in farm labor housing financed by the Department of Agriculture (USDA).[10] Financing for farm labor housing is authorized by Section 514 of the Housing Act of 1949 and is

[6] 42 U.S.C. §§ 1485 *et seq*. (Findlaw.com through 2001) (Section 515 Rural Rental Housing Program). The program is administered by Rural Housing Service (RHS), a sub-division of the U.S. Department of Agriculture's Rural Development division.

[7] 42 U.S.C. §§ 1472(c) *et seq*. (Findlaw.com through 2001) (enacted in 1987 and amending the Housing Act of 1949 while addressing Congress' growing concern about the dwindling supply of low- and moderate-income rural housing in the face of increasing prepayments of mortgages under the Section 515 Rural Rental Housing Program).

[8] The Idaho district court initially dismissed *Kimberly*, holding that the *unmistakability doctrine* precluded the owners from securing relief. *Kimberly*, slip op. (Jan. 25, 1999). The owners appealed that decision to the Ninth Circuit which reversed on that issue and suggested, *in dicta*, that the owners might be entitled to relief under Idaho state quiet title law. 261 F.3d 864 (9th Cir. 2001). *See also*, NHLP, *Ninth Circuit Authorizes Circumvention of RHS Section 515 Preservation Statute Through a Quiet Title Action*, *31* Hous. L. Bull. 193, 216 (Sept. 2001). On remand, the *Kimberly* district court issued an unprecedented decision that provided the owners the relief that they sought, namely the right to quiet title without regard to ELIHPA. *Kimberly*, slip op. (Dec. 12, 2002).

[9] American Bar Association Center for Pro Bono, *Rural Delivery, at* http://www.abanet.org/legalservices/probono/rural_delivery.html (last updated Sept. 25, 2003).

[10] Roman v. Korson, No. 1:91 CV 274 (W.D. Mich. 1991).

administered by the USDA Rural Housing Service (RHS).[11] RHS is a subdivision of the U.S. Department of Agriculture's Rural Development Division. The farmworkers filed suit against RHS and several Michigan farmer-borrowers who operated Section 514 housing. The lawsuit alleged that the farmer-borrowers violated their respective RHS loan agreements. The loan agreements precluded farmer-borrowers from charging on-farm residents for rent or utilities. In return, the farmers would be free from having to certify the residents' eligibility, to establish a rent structure for the housing and to submit periodic reports and rent adjustment requests to RHS. Contrary to the loan agreement, farmer-borrowers charged residents for rent and utilities. The lawsuit alleged that RHS staff knew of the violations that were occurring in more than fourteen states and that RHS failed to enforce mandatory rent rollbacks and refund regulations against the offending farmer-borrowers.[12]

Due to the large number of violating farmer-borrowers and voluminous discovery documents, the lawsuit soon threatened to overtax plaintiffs' counsel. Without proper equipment or resources with which to effectively review and analyze RHS's discovery productions, plaintiffs' counsel would have had difficulty establishing RHS's failure to enforce the regulations. Michigan Migrant Legal Services addressed this issue by recruiting the Michigan law firm of Plunkett & Cooney to assist in prosecuting the case.[13] Elizabeth A. Bennett, at the time an associate at the firm, served as the lead attorney and successfully argued the case and supervised several law clerks, who electronically organized and analyzed thousands of RHS documents.

In 1996, the plaintiff-farmworkers prevailed on their claims against RHS, while the court ordered RHS actively to enforce its rent rollback and refund regulations against violating farmer-borrowers. Plunkett & Cooney withdrew from the case shortly after the district court success and remaining counsel monitored RHS compliance with the court order.

In 1998, it became clear that RHS was not diligently pursuing violating farmer-borrowers and plaintiffs' counsel successfully secured an order from the district court for RHS to produce information about its compliance with the court order. Faced again with the massive task of reviewing and cataloguing information about thousands of RHS farmer-borrowers, the Migrant Legal Action Program, using the now disbanded NLADA pro-bono recruitment project, successfully recruited Beveridge and Diamond, an environmental law firm based in Washington, D.C., to assist with the case.[14] Steve Arner, an associate at the firm, took charge of the case and successfully argued that RHS had failed to comply with the court's 1996 order. In response, the Michigan district court issued an injunction in 2000 that required RHS to actively enforce its regulations and to periodically report to the court and the plaintiffs about its progress.

The 2000 injunction resulted in rebates and credits to farmworkers that totaled several hundred thousand dollars. Unfortunately, the rebates and credits were secured only from farmer-borrowers who responded favorably to RHS notices and servicing efforts. A review of the reports filed by the agency disclosed that RHS took no action against farmer-borrowers who did not cooperate and in fact used various mechanisms, including authorizing prepayments and making exceptions, to relieve non-cooperating farmer-borrowers from having to refund or credit illegally collected rents. As a consequence, Beveridge & Diamond filed a contempt motion in late 2003 against the Secretary of Agriculture.

The contempt motion was successfully argued by April Roach, an associate at Beveridge & Diamond who was assisted by Fred Wagner, a principal at the firm. In its ruling the court extended RHS's obligation to collect improperly charged rents, directed it to stop relieving non-cooperating farmers from refunding rents by authorizing prepayments or exceptions, and ordered the agency to continue its quarterly progress reports to the court and the plaintiffs for at least one year and possibly up to three years.[15]

Fried Frank: Beyond Litigation

Litigation has served as the traditional means by which members of the private bar have lent assistance to legal services organizations and low-income persons. However, private attorneys have also gotten involved in protecting the rights of low-income families by providing transactional services and legal advice.[16] At the request

[11]42 U.S.C. §§ 1484 *et seq*. (enacted in 1961) (Findlaw.com through 2001); 7 C.F.R. § 1944.151 *et seq*. (2003) (policies, procedures and authorizations for farm labor housing); 7 C.F.R. § 1930.101 (2003) (management and supervision regulations for multifamily housing). The purpose of the Section 514 loan program is to provide decent, safe and sanitary housing for domestic farm laborers. These 33-year term loans are available to farm owners, associations of farmers, private or public nonprofit corporations, states and their political subdivisions, indigenous tribes and private or nonprofit organizations of farm workers.

[12]7 C.F.R. pt. 1930, subpt. C., ex. C, VI (2003) (requiring unapproved charges to be rolled back and residents to be given rebates or credits for unauthorized charges).

[13]Plunkett & Cooney is a national firm with offices throughout Michigan, and in Pittsburgh, PA and Columbus, OH.

[14]Beveridge & Diamond is a national firm with offices in Washington, D.C., Baltimore, New York City, New Jersey, Los Angeles and San Francisco.

[15]A more complete discussion of the court's order will appear in the May 2004 issue of the *Bulletin*.

[16]Texas Lawyers Care, the Pro Bono/Legal Services Support Project of the State Bar of Texas, *Texas C-Bar: A New Pro Bono Program for Transactional Attorneys*, Legal Front, Oct.-Dec. 2000, at 1-4 (discussing how community development corporations (CDCs) and affordable housing efforts can benefit from pro bono assistance); Columbus Bar Association, *Pro Bono Opportunities for Central Ohio Attorneys*, *at* http://www.cbalaw.org/resources/probono/probono.asp (last visited March 18, 2004).

of the National Law Center on Homelessness and Poverty (NLCHP),[17] regulatory experts at the Washington, D.C. law firm of Fried, Frank, Harris, Shriver & Jacobson took the lead in reviewing actions and procedures of the Department of Housing and Urban Development (HUD) officials who suspended federal funding to nonprofit organizations that work with tenants in HUD-assisted developments.[18] This suspension of funding followed a series of audits of Outreach and Technical Assistance Grant (OTAG) recipients. Fried Frank's decision to represent the anti-homelessness advocates occurred after meeting with Tulin Ozdeger, staff attorney at NLCHP. The issue came to the fore of NLCHP's concerns when Michael Kane, executive director of the National Alliance of HUD Tenants (NAHT), addressed the audits and de-funding at NAHT's fall 2003 conference.

NHLP has provided training and technical assistance to the network of OTAG recipients since the early 1990s. The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA) authorizes Section 8 contract renewals and mark-to-market restructuring for thousands of properties nationwide with expiring Section 8 contracts.[19] Congress enacted the tenant and community participation provisions of MAHRAA with the intent to provide an opportunity for tenants, neighborhood residents, the local government and other affected parties to participate in the contract renewal and restructuring process established by MAHRAA effectively and on a timely basis.[20]

HUD has frozen technical assistance funding on a number of occasions since the passage of MAHRAA. As a result of accusations by HUD that its own Office of Multifamily Housing Assistance Restructuring (OMHAR)[21] violated the Anti-Deficiency Act (ADA), HUD suspended funding to technical assistance grantees in 2001.[22] The purported violation consisted of the execution of multiple-year contracts that were not fully funded by appropriations at the time of execution—impermissibly obligating un-enacted future years' appropriations.[23] Attempting to address this crisis in January 2002, Congress appropriated additional technical assistance funds and required the HUD Inspector General to "audit each provision of technical assistance obligated under the requirements for section 514 over the last 4 years."[24]

John Boese, partner in Fried Frank's Washington, D.C. office,[25] with the assistance of partner James McCullough and associate Abram Pafford, began an investigation into HUD's auditing and de-funding actions by submitting an extensive FOIA request last fall. The requests sought records related to HUD's administration of technical assistance programs under Section 514 of MAHRAA.[26]

Fried Frank's review of documents and audit records revealed that HUD had applied improper standards, failed to follow grant procedures and their own internal regulations, and failed to provide 514 grantees with minimal procedural due process rights.

Contrary to the purpose of the OTAG program, NAHT has reported that HUD's audits and concurrent funding suspensions amounted to a "witch hunt" motivated by a hostility to residents.[27] Fried Frank's review of documents and audit records revealed that HUD had applied improper standards, failed to follow grant procedures and its own internal regulations, and failed to provide 514 grantees with minimal procedural due process rights. Upon discovering these illegalities, Fried Frank wrote and submitted an opinion letter to NLCHP discussing its analysis and conclusions.

The opinion noted that it was important to understand that the audit provisions of the January 2002 legislation do not override previously existing law and regulations which require funding of Section 514 grantees. It pointed

[17]The National Law Center on Homelessness and Poverty, http://www.nlchp.org/about, was established in 1989 and seeks to prevent and end homelessness by serving as the legal arm of the nationwide movement to end homelessness. The organization is based in Washington, D.C.

[18]The HUD Inspector General completed audits between August and October 2002 and issued an audit report on March 31, 2003. AUDIT REPORT: HUD OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING'S OVERSIGHT OF THE SECTION 514 PROGRAM ACTIVITIES, 2003-DE-0001 (2003) *available at* http://www.hud.gov/oig/ig380001.pdf.

[19]Pub. L. No. 105-65, Title V, 111 Stat. 1343, 1384 (1997) *as amended by* 106-74, § 531, 113 Stat. 1113 (1999) (codified as a note to 42 U.S.C. 1437f).

[20]42 U.S.C. § 1437f notes (f)(1)(A) (Findlaw.com through 2001).

[21]The OMHAR initially administered grant funds.

[22]NHLP, *Congress Resolves HUD Technical Assistance Funding Fiasco*, 32 HOUS. L. BULL. 1, 11 (Jan. 2002).

[23]*Id*.

[24]Pub. L. No. 107-117, § 1303, 115 Stat. 2330, 2340-41 (2002) (authorizing the "recapture" of funds upon violation, as distinct from a suspension of funds). It is significant to note that then-HUD Secretary Mel Martinez testified that HUD's Inspector General later retracted the initial accusation, finding no ADA violations, a disturbing sequence of events to the many victims of the unjustified funding suspensions. NHLP, *HUD Technical Assistance Debacle Continues*, 32 HOUS. L. BULL. 95, 103 (Apr. 2002).

[25]Fried Frank is an international law firm with offices in New York, Washington, D.C., Los Angeles, London and Paris.

[26]Pub. L. No. 105-65, Title V, 111 Stat. 1343, 1384 (1997) (codified as amended at 42 U.S.C. §§ 1437f *et seq*.).

[27]Press Release, NAHT, Tenant Outreach Groups Penalized by HUD "Witchhunt" (Jan. 31, 2003), *at* http://www.saveourhomes.org/tenants/samples/witchpr4.pdf; Memorandum, NAHT, Analysis of HUD Inspector General Audits of Section 514 Technical Assistance Program (Feb. 7, 2003).

out that of the 40 audited grantees, 31 were found to have not used Section 514 funds for lobbying activities as accused by HUD. Of the remaining nine, the amount of lobbying activity found was infinitesimal — with five audits showing no identifiable dollar amount for the alleged lobbying activity and the remaining questioned expenditures comprising "less than 1/10th of 1% of the $13 million in expenditures audited by the [HUD] Inspector General."[28] According to the opinion letter, HUD's funding suspensions of 21 grantees were based upon minor, correctable administrative errors. Significantly, these suspensions occurred without notice or an opportunity to dispute the findings, contrary to HUD regulations,[29] its handbook[30] and the grants' default clauses.

The contents of Fried Frank's opinion were used by NLCHP and housing advocates to educate legislators and their staffs about HUD's illegal actions in the course of the audits and funding suspensions. It is hoped that these efforts will help restore urgently needed technical assistance to resident organizations so they may defend their rights, advocate on their own behalf and participate in the preservation of affordable housing. Because existing contracts expire in 2004, HUD must take action this year to obligate new commitments from appropriated funds.

Although some of these tenant-based grantees have faced bankruptcy and have disbanded due to HUD's unlawful conduct, Fried Frank's work on the technical assistance issue proved invaluable to NLCHP. On behalf of NLCHP, Ozdeger has said:

> The Fried Frank attorneys working on this matter have been an incredibly valuable resource due to their expertise and experience in this area of law. I am impressed by their commitment to helping tenants preserve affordable housing, a crucial resource for preventing and eliminating the growing problem of homelessness in this country.

The dedicated efforts of these law firms and others and the unique talents that private counsel bring to the housing advocacy arena are invaluable and greatly appreciated by housing law advocates. Given today's numerous challenges in affordable housing programs and laws, partnerships between legal services organizations and pro bono counsel can truly make an enormous difference in the lives of low-income families. ■

[28]Grantees continue to contest the definition of "lobbying," and continue to assert that HUD's suspension of their technical assistance grants was unwarranted.

[29]24 C.F.R. § 84.62 (2003) (regarding the administration of grants which defers to procedures set forth under applicable statutes and regulations).

[30]HUD, CHIEF FINANCIAL OFFICER HANDBOOKS, AUDIT MANAGEMENT SYSTEM HANDBOOK, 2000.6, rev. 3 (1999).

Bush Flexible Voucher Proposal Faces Nationwide Resistance

The Bush Administration's Fiscal Year (FY) 2005 budget[1] once again proposes inadequate funding levels for most federal housing programs. Housing and other domestic spending programs face disproportionate cuts to levels below what is required to maintain current services in order to create budget room for spending on other more favored programs and entitlements. To make the numbers work, the budget takes aim at the largest single housing program operated by the Department of Housing and Urban Development (HUD), Housing Choice Vouchers, reducing funding and converting the assistance into a block grant to public housing authorities (PHAs).[2] Through this "block and cut" strategy, the Administration seeks to shed responsibility for any increases in local housing costs, and sets the stage for large-scale future reductions in federal contributions.

Background on the Flexible Voucher Proposal

Last year's FY 2004 proposal to block grant voucher funding to the states gained no traction on the Hill. The Administration's new "Flexible Voucher" proposal seeks greater support from PHAs in the political debate by promising near-total deregulation in exchange for providing less funding now and uncertain funding in the future. Its most essential feature is to forever shatter the link between federal funding levels and actual local housing costs, relieving all pressure to sustain federal voucher funding levels against the projected tidal wave of long-term budget pressures from declining revenues from tax cuts and increasing entitlement costs. These pressures will mount dramatically over the next two decades as demographics change, especially if recent tax cuts are extended.

On its own merits, the Flexible Voucher block grant proposal has so far received no better reception among legislators or communities throughout the land than the FY 2004 proposal did. The big question is whether that skepticism will hold as Congress crafts and implements its larger budget plans, and makes spending decisions.

As a dollar-based block grant program with funds distributed directly to PHAs, the radical Flexible Voucher proposal promises significant harm to very low-income

[1]The complete budget submission with supporting documents is available from the Office of Management and Budget's Web site at www.whitehouse.gov/omb/budget/fy2005/index.html. *See generally* NHLP, *Administration's FY 2005 Budget Once Again Threatens Federal Housing Programs*, 34 HOUS. L. BULL. 33, 33 (Feb.-Mar. 2004).

[2]NHLP, *Administration's FY 2005 Budget Once Again Threatens Federal Housing Programs*, 34 HOUS. L. BULL. 33, 33 (Feb.-Mar. 2004).

families. Because federal funding would no longer be linked to the actual local costs of providing vouchers, the central affordability feature of the current program would disappear for many tenants. Instead, the Administration would encourage "graduation" from assistance, "greater PHA discretion in meeting local housing objectives, steady and predictable funding levels adjusted annually for inflation," and accountability through incentives.[3]

HUD's justification for the proposal has been built around alleged unsustainable spiraling cost increases in recent voucher budgets and greater flexibility for PHAs. Closer analysis by budget analysts and committee staff has demonstrated that recent cost increases are entirely explicable and will not persist,[4] at least in the short run, as local housing markets soften and rent increases abate. The Flexible Voucher proposal would shift this burden of cost increases from the federal government to the tenants. "Flexibility" is a valid justification only when policymakers reach agreement about broader policy objectives—i.e, what should voucher assistance accomplish? If the debate ever emerges from the level of budget constraints to reach this dimension, in the face of persistent and widespread housing unaffordability even for working families, HUD will have a lot of explaining to do.

Concerning the funding level for the program, the Administration's proposed FY 2005 funding level is approximately $1.5 billion below what is needed to fund all currently authorized vouchers. It would reduce the number of currently authorized vouchers by more than 10 percent, or about 250,000 units nationwide. Over time, the picture could worsen dramatically, as funding would be driven not by housing costs, but by the political vagaries of the federal appropriations process.

Impacts of the Proposal

If the proposed FY 2005 funding level were enacted and the shortfall were covered solely by raising rents, the rent burdens of the two million mostly extremely low-income voucher households would have to rise by an average of about $850 per year.[5] Over the longer term, the Flexible Voucher proposal will inexorably reduce the number of families served, raise tenant rent burdens and divert benefits to higher-income households.[6] With insufficient federal funding and increasing rents due to inflation or market forces, PHAs will simply have no choice.[7] The President's budget proposes cutting voucher funding by about 30 percent in 2009, one of the deepest cuts made in any major low-income assistance program in recent decades. If this long-run cut were implemented by reducing the number of families served, according to the Center on Budget and Policy Priorities, PHAs would have to eliminate about 600,000 vouchers, or if by raising rent contributions, the average voucher family would face a rent increase of about $2,000 per year in 2009.[8]

With no restrictions on payment standards, tenant rent contributions and targeting, voucher recipients would shoulder the entire burden of inadequate funding, or vouchers would be eliminated. The Flexible Voucher proposal will allow Congress to set voucher funding at whatever level the political process chooses, unrelated to actual local housing costs or affordability to tenants. PHAs will dole out the crumbs.

Yet another troubling dimension of Flexible Vouchers is the retreat from housing choice and fair housing objectives. As recently pointed out by the Poverty and Race Research Action Council, inadequate subsidies will effectively limit participants' choice of neighborhoods, likely producing further segregation and concentrations of poverty,[9] contrary to the housing choice policy that has provided a foundation for the voucher program since its inception in 1974.

To illustrate the impact of the cuts, the Center on Budget and Policy Priorities prepared summaries of the impact on each state and PHA in both 2005 and 2009,[10] showing the number of units that would have to be cut or the amount of rent increases tenants would have to pay if the cuts were to be covered in those ways. This information has fueled a strategy to inform legislators and the media of the concrete impacts of the proposed cuts. Many

---

[3]Budget of the United States Government, Fiscal Year 2005, Appendix, Department of Housing and Urban Development, 515 (2004), *available at* http://www.gpoaccess.gov/usbudget/fy05/pdf/appendix/HUD.pdf.

[4]*See* Barbara Sard & Will Fischer, Nearly All Recent Section 8 Growth Results from Rising Housing Costs and Congressional Decisions to Serve More Needy Families (2004), *at* http://www.cbpp.org/2-2-04hous.htm (recent cost increases have resulted from unusually rapid growth in rents, depressed incomes of low-income families, improved PHA voucher utilization, and issuance of additional vouchers). *See also* Press Release, House Financial Services Committee Democratic Staff, Setting the Record Straight: Section 8 Voucher Costs Are Not Spiraling Out of Control (Feb. 2004).

[5]Barbara Sard & Will Fischer, Administration Seeks Deep Cuts in Housing Vouchers and Conversion of Program to a Block Grant (2004), *at* http://www.cbpp.org/2_12_04hous.pdf.

[6]*Id*.

[7]*Id*. Under the FY 2004 budget resolution, annual Section 8 spending levels would be very low, especially in later years. Critical information about the long-run projections was not disclosed in the budget documents themselves, but in a supplementary 1000-page computer run released by OMB. In FY 2009, Section 8 expenditures would be $6.1 billion below Congressional Budget Office estimates for current services, and more than $4 billion below OMB's Section 8 estimate for 2004.

[8]*Id*.

[9]*See* Press Release, Poverty and Race Research Action Council, Fair Housing Implications of the Administration's Flexible Voucher Proposal (Apr. 6, 2004).

[10]For estimates of the potential impact of the cuts in 2005 and 2009 on every state and individual PHAs, see Press Release, Center on Budget and Policy Priorities, Local Effects of Proposed Cuts in Federal Housing Assistance (Mar. 17, 2004), *available at* http://www.cbpp.org/3-17-04hous-states.htm.

newspapers throughout the country have written articles detailing the impact of the cuts. Some added editorial pieces opposing the proposal. Those efforts have certainly helped raise the profile of the Bush voucher plan for the ensuing budget and political discourse.

The Political Response

The first response came from the Democrats on the House Financial Services Committee. Ranking Member Barney Frank (D-MA) issued a strongly worded statement:

> The proposal is a callous attempt to implicate desperate cash-starved public housing authorities in its war on the poor. They have been presented with the Sophie's choice of pitting poor people against one another by having to make do with the inadequate resources being provided to them by HUD . . . . Since this administration took office, it has recklessly bestowed billions of dollars in tax breaks to the wealthy and to its corporate cronies. It has relentlessly made war upon poor people, refusing to fund new affordable housing, failing to preserve existing housing, presiding over an increase in homelessness and slashing programs for low-income people, the elderly and the disabled.[11]

Putting legislative force behind these words, Congressman Frank followed by offering an amendment to the Committee's Statement of Views and Estimates on the FY 2005 Budget, which specifically details the impacts of the Flexible Voucher proposal on voucher funding, the families who would be served, and the rents they would pay.[12] The amendment passed on a roll call vote of 34-26, with prominent Republican Doug Bereuter (R-NE) joining the Democrats in substituting this language for that contained in the original Budget Views draft.

About the same time, the HUD-VA Subcommittee of the House Appropriations Committee next held a hearing on the voucher portion of the Administration's budget on March 3, where several Democratic members (Ranking Member Mollohan and Congressman Price) strongly criticized the Flexible Voucher plan. Subcommittee Chair Walsh (R-NY) has offered vague support for the plan, although without specifically endorsing all of the specifics.

On the Senate side, when VA-HUD Appropriations Subcommittee Chair Christopher Bond (R-MO) introduced then-nominee HUD Secretary Alphonso Jackson at his confirmation hearing in mid-March, he stated that Jackson had "inherited a budget request from OMB for '05 which undermines the financial viability and integrity of a number of important housing programs, including both Section 8 and FHA." Later, at the Senate HUD-VA Appropriations Subcommittee hearing on April 1, Senator Bond characterized the Bush proposal as "fatally flawed" and a "meat cleaver," due to its promise of insufficient funding and abandoning targeting vouchers to the most needy, forecasting that the Senate would not have enough time to consider the plan this year.[13]

According to Congressman Barney Frank, "The proposal is a callous attempt to implicate desperate cash-starved public housing authorities in its war on the poor."

In addition, the Senate opposition may be more broadly based. The Senate Budget Committee earlier had approved a budget proposal on a party-line vote that cuts discretionary spending (including housing programs) by $2 billion beyond the Bush request, and this plan later passed the full Senate.[14] While the Senate plan will make it very difficult for appropriators to fully fund both vouchers and other HUD housing programs, the Budget Committee's report did promisingly posit renewal of vouchers, while not endorsing block-granting.[15] The House Budget Resolution, however, was silent on the issue. However, House Appropriations Committee Chair Bill Young (R-FL) had mentioned the $1.7 billion shortfall in Section 8 funding proposed by the Administration's FY

[11]Statement of Congressman Barney Frank, Ranking Member, House Financial Services Committee, on the FY '05 Budget (Feb. 2, 2004).

[12]Amendment to Views and Estimates of the Committee on Financial Services on Matters to Be Set Forth in the Concurrent Resolution on the Budget for Fiscal Year 2005, Offered by Mr. Frank of Massachusetts (Feb. 25, 2004). See also Staff of the House of Representatives Comm. on Financial Services, 108th Cong., VIEWS AND ESTIMATES OF THE COMMITTEE ON FINANCIAL SERVICES ON MATTERS TO BE SET FORTH IN THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2005 19 (Comm. Print 2004) (includes amendment), available at http://financialservices.house.gov/media/pdf/FY2005%20Views_FINAL.pdf, at 19.

[13]*See* Statement of Senator Kit Bond at the Senate HUD-VA Appropriations Subcommittee Hearing (April 1, 2004), available at http://bond.senate.gov/atwork/record.cfm?id=219951.

[14]The Senate Budget Resolution passed March 12 also proposes deep cuts in core low-income programs, such as Medicaid, while imposing restraints on other critical programs, such as the TANF reauthorization. See Press Release, Center on Budget and Policy Priorities, Budget Priorities Under the Senate Budget Plan (rev. Apr. 2, 2004), *available at* http://www.cbpp.org/3-4-04bud.htm (analyzing the Budget resolution as passed by the full Senate, with the exception of the Feingold amendment restoring pay-go rules for tax cuts, which is strongly opposed by the Republican leadership in both chambers).

[15]"Under the Chairman's Mark, sufficient budget authority and outlays are provided to renew all utilized Section 8 housing contracts. The Mark does not reflect the Administration's block grant proposal (consistent with Congressional action in 2004 appropriations on a similar proposal in 2004 budget request)." United States Senate Budget Committee, CHAIRMAN'S MARK 2005 BUDGET 600-44 (2003 [sic]), available at http://www.senate.gov/~budget/republican/pressarchive/ChairmansMark2005.pdf. While budget resolutions and reports are not technically binding on subsequent appropriations decisions, an enacted resolution makes subsequent spending decisions inconsistent with their terms subject to points of order in floor action, and thus they usually serve as a basic framework for appropriations. Therefore, such statements can only be helpful.

2005 budget, while detailing many other significant problems for domestic discretionary programs posed by the budget, in a letter to fellow Republicans concerning the needs to be considered in developing the House version of the Budget resolution.[16]

These actions reflect the seeds of growing bipartisan opposition to the Administration's "block and cut" proposal for Section 8. Ultimately, its fate will be determined by the final shape of the Budget resolution (as of April 15 still in Conference to resolve differences between the House and Senate versions), as well as subsequent actions by the appropriations committees when they develop their bills. An important element of the budget resolution will be whether it will contain the Senate's version of the "pay-go" budget enforcement rule (adopted as an amendment on the Senate floor and so far acceded to by the Senate Republican leadership). This provision would require any additional spending or tax cuts to be offset by tax increases or spending reductions, unless sixty Senators vote to waive the rule, and is strongly resisted by both the Administration and the House leadership.

Advocates have also worked with Congressional supporters, such as Senator Paul Sarbanes (D-MD, Ranking Member of the Senate Banking Committee) and Rep. Nydia Velasquez (D-NY, member of the House Housing Subcommittee) to circulate sign-on letters to mark and strengthen the opposition. Advocacy groups and other program participants (such as PHAs, apartment owners and realtors) have also voiced opposition.

The fate of the Flexible Voucher plan will have a tremendous impact on many other federal housing programs, whose federal funding levels are now driven almost entirely by cost considerations. Look for further reports in the *Housing Law Bulletin* as the appropriations process unfolds later this year. ■

[16]Letter from C.W. Bill Young, House Appropriations Committee, to Republican Committee Members, att. 1 (Mar. 3, 2004).

Recommended Federal Housing Resources and References for Advocates

Developing a grasp of and staying current with the various federal housing programs is one of the constant challenges faced by housing advocates. Provided below is a selection of some of the most important or most useful resources and references.[1]

Manuals and Periodicals

- *HUD Housing Programs: Tenants' Rights (3d Edition)*. This manual, to be released by the National Housing Law Project this spring, contains 16 chapters covering everything from basic program descriptions to admission, rents, security deposits, utilities, maintenance, security, leases, management, tenant participation and the PHA plan process, grievance and hearing procedures, evictions and terminations, loss of units and common legal issues. (Order from NHLP using the order form included at the back of every issue of the *Housing Law Bulletin*, or contact Leonard Claudio at NHLP, lclaudio@nhlp.org, 510-251-9400 x108.)
- *Housing Law Bulletin*. The National Housing Law Project publishes ten issues of the *Bulletin* every year. The *Bulletin* has articles analyzing current housing law, regulations and policies, case summaries and a list of recent regulations and notices from HUD and the Rural Housing Service. (Order from NHLP using the order form included at the back of every issue of the *Housing Law Bulletin*, or contact Leonard Claudio at NHLP, lclaudio@nhlp.org, 510-251-9400 x108.)
- *Clearinghouse Review Journal of Poverty Law and Policy*. This journal has articles on issues relating to poverty law and policy and reports on new cases. Subscribers may obtain pleadings from many cases. It is published six times per year by the Sargent Shriver National Center on Poverty Law. (Call 312-263-3830 or email admin@povertylaw.org for subscription information.)
- *Memo to Members*. A weekly service for members of the National Low Income Housing Coalition (NLIHC). The service covers national legislative developments and some local news. (Join NLIHC at www.nlihc.org to receive a copy. Prior issues are available on the NLIHC Web site.)

[1]Future issues of the *Housing Law Bulletin* will include a selection of civil rights and fair housing resources and a list of important Web sites. Please e-mail any suggestions to lclaudio@nhlp.org.

- *Housing News Highlights*. This service, from Sherwood Research Associates, provides news clips from newspapers throughout the country together with a topical analysis of selected federal housing issues. (To order, e-mail WayneSherwood@compuserve.com.)
- *HAC News: Information on Rural Low-Income Housing Issues*. Published by the Housing Assistance Council (HAC), this is a bi-weekly half-page memo on federal rural legislative developments and other federal rural issues. (Subscriptions are free. The current issue and many back issues are available at http://www.ruralhome.org. To request an electronic copy or a hard copy, e-mail hac@ruralhome.org or call 202-842-8600.)
- *Rural Voices*. This magazine covers rural housing and development topics and is published quarterly by the Housing Assistance Council (HAC). (One subscription per organization is available free. To request a copy, e-mail hac@ruralhome.org or call 202-842-8600.)
- *The Housing Development Reporter*. This bi-weekly loose-leaf publication is published by West Group. The service covers all the federal housing programs, including community development, tax credit issues, and new case developments. (Call 800-723-8077 for subscription information. The service is also available from WestLaw.)

HUD Handbooks and Guidebooks

- *Public Housing Occupancy Guidebook* (June 2003), available at http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm.
- *Voucher Program Guidebook* (Apr. 2001), available at www.hudclips.org.
- *PHA Agency (PHA) Plan Desk Guide* (Sept. 2001), available at http://www.hud.gov/offices/pih/pha.
- *Admission and Occupancy Final Rule FAQ* (Frequently Asked Questions), available at http://www.hud.gov/offices/pih/phr/about/ao_faq.cfm (content updated Oct. 29, 2003). (Questions and answers regarding the final rule, "Changes to the Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs," published on March 29, 2000.)
- *Occupancy Requirements of Subsidized Multifamily Housing Programs, 4350.3 REV–1* (dated May 2003, but issued June 12, 2003), available at http://www.hudclips.org.
- HUD notices and handbooks are available at http://www.hudclips.org.

Other Free Resources

- *Legal Services E-lert*. A summary of news and opinion pieces that praise, attack or simply discuss free and low-cost civil legal aid. It is distributed by the Brennan Center for Public Justice. (To sign up, go to http://www.brennancenter.org.)
- *Housing News Week in Review*. A weekly roundup of housing and community development news and announcements distributed by the Fannie Mae Foundation. (To sign up, go to http://www.knowledgeplex.org.) ■

Advocates Submit Comments on Proposed Relocation Regulations

In February 2004, seven organizations that provide legal services to or advocate on behalf of low-income families and persons with disabilities[1] submitted comments to the Department of Transportation (DOT), the lead federal agency on relocation, on proposed changes to regulations regarding the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (URA).[2] DOT has proposed to change several sections of the regulations that are applicable to all federal agencies.[3] The proposals are significant, as the regulations have not been amended since 1989. The organizations submitted comprehensive comments which covered a wide variety of issues.[4] This article summarizes key aspects of the DOT proposals and the comments submitted by the seven organizations.

---

[1]The commenters included the Western Center on Law and Poverty, the National Housing Law Project, Protection & Advocacy, Inc., the California Affordable Housing Law Project of the Public Interest Law Project, the Technical Assistance Collaborative, the National Association of Protection and Advocacy Associations, and the Legal Aid Foundation of Los Angeles.

[2]42 U.S.C.A. § 4621-4638 (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04).

[3]Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Proposed Rule, 68 Fed. Reg. 70,342 (proposed Dec. 17, 2003) (to be codified at 49 C.F.R. pt. 24).

[4]Letter from S. Lynn Martinez, Attorney, Western Center on Law and Poverty, et al, to U. S. Department of Transportation, Dockets Management Facility (Feb. 13, 2004) (on file with NHLP).

Other Applicable Federal Law

The proposed rule has a section listing other federal law that agencies must comply with when implementing the URA.[5] The commenters urged DOT to expand the list to include compliance with the Americans with Disabilities Act (ADA) and several executive orders pertaining to affirmatively furthering fair housing, individuals with disabilities, limited English proficiency (LEP) and race, color or national origin.

Comparable Replacement Housing

The proposed regulation seeks to consolidate the definition of comparable replacement housing.[6] The commenters responded to the changes by urging that the definition address disability-related concerns regarding the size and location of the replacement housing.

Significantly, the proposal also seeks to allow for a deduction of "unpaid rent" from the amounts that an agency subject to the URA may be liable to pay to a displaced person. The commenters strenuously objected to this provision, reminding DOT that state laws provide the appropriate mechanisms for collecting such alleged underpayment or nonpayment.

Decent, Safe and Sanitary Housing

The proposed regulations define the term "decent, safe and sanitary housing."[7] The commenters found the definition deficient because it is based only on "local" housing and occupancy codes and failed to state that *all* applicable housing and occupancy standards must be considered. The commenters also pointed out that the size of the unit should take into account the needs of a disabled person who is displaced.

The proposed definition also refers to lead-based paint safety issues and provides that a unit is exempt from the lead-based paint requirements except where a child younger than six years old resides or is expected to reside in the unit.[8] The commenters support this change, but also recommend that the provision be expanded to comport with the reality of today's family living arrangements and child care. Thus, they urged that lead requirements should apply to pre-1978 relocation units occupied by elderly persons who provide childcare to children younger than six years of age, as well as to any zero bedroom pre-1978 unit if a child younger than six resides therein.

The commenters also addressed several issues relating to disabled families in the context of decent, sanitary and safe housing. For example, they recommended that for a dwelling to be decent, safe and sanitary it must be accessible to and usable by a disabled tenant per the minimum standards set forth in the federal Americans with Disabilities Act Access Guidelines (ADAAG).[9] In addition, the commenters criticized the proposed restricted definition of a disabled person as a person dependent upon a wheelchair for mobility. The commenters exhorted DOT to expand this definition of disability, pointing out the example of a hearing-impaired person who needs visual fire alarms.

Temporary Relocation

The issue of temporary relocation is addressed in the proposed regulations.[10] The proposed regulations provide that any residential tenant who has been temporarily displaced beyond one year must be contacted and offered permanent relocation assistance. The commenters supported this provision and reminded DOT that in some situations, such as those involving HOPE VI public housing redevelopment activities, displaced families may want to return to a completed development. Thus, in such situations, the commenters urged that a tenant who is temporarily displaced should retain a right to return even if the tenant chooses to accept permanent relocation assistance.

Notice Provisions

The commenters noted that throughout the proposed regulations there are various provisions regarding the distribution of notices and information. They encouraged DOT to amend the proposed rule to provide that all notices, offers and other written information must be provided in the first language of the displaced person and in alternative formats—such as Braille, large print or on audio tape—when requested by a person with a disability.

Determining Eligibility Dates

The commenters commended DOT for focusing on the date for determining eligibility for URA,[11] often a source of contention. In most cases, eligibility is dependent upon the initiation of negotiations. Pinning down the date that such negotiations begin is important. However, the commenters pointed out that the proposed regulation failed to reflect the statute and provide that tenants living

---

[5]68 Fed. Reg. at 70,364 (proposed Dec. 17, 2003) (to be codified at § 24.8).

[6]*Id*. at § 24.2(a)(6).

[7]*Id*. at § 24.2(a)(8).

[8]*Id*. at § 24.2(a)(8)(ii). This exemption is modeled on exemptions to the Residential Lead-Based Paint Hazard Reduction Act of 1992.

[9]28 C.F.R. pt. 36, app. A (West, WESTLAW through March 19, 2004; 69 Fed. Reg. 13.190).

[10]68 Fed. Reg. at 70,363 (proposed Dec. 17, 2003) (to be codified at 49 C.F.R. § 24.2(a)(9)).

[11]*Id*. § 24.203(b).

in dwellings at least ninety days prior to an agency's decision to purchase real property are eligible for relocation assistance.[12]

In addition, the commenters advocated for a provision that prohibits an agency from negotiating for or making an offer that requires that an occupied property be vacated. Such a rule is necessary to discourage situations in which property is vacated prior to a purchase offer to avoid relocation obligations.

Eviction Protections

The proposed regulations remove the existing eviction protections for tenants that provide for a presumption of eligibility if a tenant is in occupancy on the date of initiation of negotiations and further provide that no eviction can take place to avoid the obligation to provide relocation assistance.[13] The proposed language permits the eviction of any tenant for any reason at any time, regardless of the trigger date of the initiation of negotiations.[14] The commenters strongly objected to this change in the regulations.

Waiver of Relocation Rights by Disabled Persons

The commenters complimented DOT for proposing that agencies be prohibited from asking displaced persons to waive their relocation rights and sought further clarification of this proposed provision.[15]

Transportation for Inspections by Displaced Persons

The commenters commended DOT for clarifying that transportation must be offered to all displaced persons to inspect replacement housing.[16] They further urged that the provisions regarding personal interviews with displaced persons require that disabled persons, upon request, be provided reasonable accommodation to participate in the interview process.[17]

Moving Expenses

The commenters made several comments regarding actual reasonable moving and related expenses.[18] Significantly, the proposed regulations seek to include as an ineligible moving expense "refundable security and utility deposits."[19] The commenters objected that this proposal will have a devastating impact on low-income tenants who need up-front funds to move from one unit to the next and urged that it be removed or modified.

Housing Caps

The URA currently sets forth a maximum payment that may be made on behalf of a renter, $5250, and a homeowner, $22,500.[20] The commenters suggested that DOT increase the maximum payment, in recognition of the increasing cost of housing, to $30,825 for homeowners and $7,192 for tenants and clarify that the "housing of last resort" provision is an exception to the "cap." In addition, the commenters suggested changes that recognize that costs may exceed thresholds for families with disabilities who may have more to pay for building modifications.

Conclusion: Possible Statutory Amendments

DOT provided no timetable for when it might issue final regulations. However, DOT has proposed "listening" sessions between March 25 and April 22, 2004, in five locations.[21] The purpose of the listening sessions is to determine if the URA should be amended, and, if it is to be amended, what portions need to be updated or revised. Advocates in these cities should participate in the listening sessions both to determine what information DOT is hearing and to present the views of their clients. If the URA is amended, issuance of final regulations may be delayed. ■

---

[12]42 U.S.C.A. § 4624(a) (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04).

[13]49 C.F.R. § 24.206 (West, WESTLAW through March 19, 2004; 69 Fed. Reg. 13,190).

[14]68 Fed. Reg. at 70,370 (proposed Dec. 17, 2003) (to be codified at § 24.206).

[15]*Id*. § 24.207(f).

[16]*Id*. § 24.205(c)(2)(ii)(E).

[17]*Id*. § 24.205(c)(2).

[18]*Id*. § 24.301.

[19]*Id*.

[20]42 U.S.C.A. §§ 4624 and 4623 (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04). Raising the maximum payment would require a statutory amendment.

[21]Uniform Relocation Assistance and Real Property Acquisition Policies Act; Public Meetings, 69 Fed. Reg. 8,731 (Feb. 25, 2004) (the five cities are Washington, D.C, Chicago, Atlanta, San Francisco and Denver).

Key Issues on Limited English Proficiency and HUD Programs

The Department of Housing and Urban Development (HUD) is in the home stretch in its process of developing guidance on serving low-income community members with limited English proficiency (LEP). The journey began in 2000, with President Clinton's issuance of Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency.[1] Federal agencies that provide federal funds were ordered to draft Title VI guidance consistent with the Department of Justice's (DOJ) general guidance accompanying the President's order.[2] On December 19, 2003, HUD published its proposed LEP guidance.[3] The following is a summary of key concerns regarding HUD's compliance with LEP requirements. It draws from recent comments on the proposed guidance submitted to HUD by the Housing Justice Network.[4]

Insuring Clear Communication

In serving LEP community members, critical issues include:

- the quality of translation;
- the quality of interpretation;
- the appropriateness of the type of communication used given someone's level of English proficiency—whether it should be oral or written;
- the person called upon to translate—whether a staff person, family member or outside service;
- cultural competency.

Translation must be done by skilled individuals. All official notices from a public housing authority (PHA) must be accurate—not just evictions and admissions notices, but also information about programs such as Family Self-Sufficiency, or the Section 3 program, and notices regarding public comment on proposed changes to the administrative plan. High-quality translation protects the PHA from misunderstandings and keeps participants well-informed of their rights and obligations, and of programs that could help them to become financially independent.

Interpretation must also be planned for carefully by PHAs. Having bilingual staff is an excellent beginning place for resolving basic, day-to-day communication needs, but it is not enough. For example, the bilingual staff answering the phones may not understand program rules and regulations well enough to be able to answer questions. These same people may also lack the technical vocabulary to adequately explain requirements. Proper training in the foreign language, even for native speakers, may be necessary. Oral communication may, in fact, be the only means of communication possible when the participant is illiterate or is a member of a group without a written language. These factors highlight the need for accuracy in verbal communication. It may be appropriate and necessary to use an outside translation service, depending on the circumstance, to assure accuracy of communication.

An outside translation service may be appropriate for other reasons. For example, the staff person who has communicated with a participant in that person's language may have to give testimony in an informal hearing. The staff person should not serve the dual role of translator for the participant and witness giving testimony about the participant. The use of an independent translation service would avoid the appearance of impropriety or coercion. Even if the participant brings someone to interpret on his or her behalf, that does not absolve the PHA of the responsibility for making sure communications are accurate and clear. Participants may only have their minor children or other adults who are themselves limited in English proficiency available to translate.

The variety of issues PHA staff may need to understand to assure clear communication may necessitate staff training in cultural competency. For example, staff may not understand that a language may vary tremendously across regions when it comes to accent, vocabulary and idioms. There may be non-verbal communication styles or social taboos that affect what information a participant is comfortable sharing. Without an understanding of these issues, PHA staff may have difficulty obtaining important information or may incorrectly interpret participant behavior as uncooperative.

Who Will Be Served and How

In determining the need to serve a language group, PHAs need to look beyond the demographics of those they are currently serving. PHAs must examine the composition of the community at large and prepare themselves to serve those community members as well, even if they are not currently represented among the PHA's program participants.

From the perspective of a PHA, the expense of providing appropriate service is also a concern. Two or more PHAs could save money by splitting the cost of translation of standard forms and other documents. This could

---

[1] 65 Fed. Reg. 50,119 (Aug. 16, 2000).

[2] On June 12, 2002, DOJ published its final LEP Guidance directing all federal agencies to develop LEP guidance consistent with DOJ's LEP guidance by July 29, 2002. 67 Fed. Reg. 41,455.

[3] 68 Fed. Reg. 70,968 (Dec. 19, 2003).

[4] Letter from Hong Tran, et al., Attorney, Northwest Justice Project, to Office of the General Counsel of HUD (Feb. 5, 2004) (on file with the National Housing Law Project).

help PHAs across entire regions, or nationally, to the extent that PHAs are willing to share information. Until such time as HUD translates key documents, a collegial group, such as the National Association of Housing and Redevelopment Officials (NAHRO), or the Public Housing Authorities Directors Association (PHADA), could collect and post examples of translated forms on their Web sites for download by members. ■

Feds Seek Comment on Proposed Community Reinvestment Act Amendments

The past twenty years have seen significant changes to the nature of the financial services industry. A record number of bank mergers have left consumers with a smaller number of institutions from which to choose. Automation of services, high fees and bank branch closures have excluded a growing number of low-income consumers from accessing services.

One of the most important tools available to consumers and consumer advocates to address the reduction in services to low-income communities is the Community Reinvestment Act (CRA). Strong consumer advocacy in the 1970s led to passage of the CRA, which requires depository institutions to help address the credit needs of low- and moderate-income communities.[1] Services provided by depository institutions to such communities are periodically evaluated and rated by federal regulators.

From a consumer advocate's perspective, the CRA needs to be modified to make more of its requirements mandatory. The scope of institutions subject to the requirements of the Act should also be expanded, as a greater variety of institutions are now permitted to offer financial services. Despite this, the federal regulating agencies charged with enforcing the CRA are proposing amendments that actually would limit the Act's coverage. The Office of the Comptroller of the Currency, Federal Reserve Board, Federal Depository Insurance Corporation, and Office of Thrift Supervision have combined efforts to review the CRA, per a commitment they made to that process in 1995.[2]

Proposed changes to the Act include the limitation of supervision of a considerable number of financial institutions—institutions that represent a significant portion of the consumer finance market. Another significant amendment proposed by the agencies purports to address predatory lending practices by lenders and their affiliates, but defines predatory lending so narrowly that it will inappropriately restrict the number of abusive practices covered and fail to address current problems. Both of these changes are likely to be detrimental to consumers.

The proposed amendments were published in a recent issue of the Federal Register.[3] The California Reinvestment Committee has prepared detailed comments on a variety of consumer and housing issues related to the proposed amendments and has provided assistance to other advocates wishing to do the same.[4] ■

[1]The CRA, 12 U.S.C. § 2901 et seq., was enacted by the Congress in 1977, was later amended in 1995, and is implemented by various federal regulations, 12 C.F.R. pts. 25, 228, 345 and 563e.

[2]60 Fed. Red. 22,156, 22,177 (May 4, 1995).

[3]69 Fed. Reg. 5,729 (Feb. 6, 2004) (deadline for public comment was April 6, 2004).

[4]For further information, contact Rhea L. Serna at CRC, 415-864-3980, rserna@calreinvest.org.

Fact Sheet on Housing Discrimination Against Abused Women

The National Law Center on Homelessness & Poverty has published a two-page fact sheet on housing discrimination against abused women. The fact sheet is brief, straightforward and designed to explain basic issues for clients. The fact sheet provides answers to key questions such as:

- "What should I know about sex discrimination under the Fair Housing Act?"
- "How can I tell if I was evicted, denied a housing benefit, or denied rental housing because of sex discrimination?" and
- "What can I do if I think I have been discriminated against?"

The fact sheet is available online at http://www.nlchp.org/FA_Housing/.

District Court Rules Demolition of RHS Development Violates Fair Housing Act

On March 11, 2004, Judge Catherine D. Perry of the United States District Court for the Eastern District of Missouri issued a decision in *Owens v. Charleston Housing Authority*, No. 1:01CV70 (E.D. Mo. Mar. 11, 2004).[1] The case involves a challenge to a public housing authority's (PHA) decision to vacate and demolish a housing development that is the subject of a Section 515 Rural Housing Service (RHS) insured mortgage and a project-based Section 8 subsidy contract. A bench trial was held in the case in July 2003. The decision is an important partial victory and may be of use to other advocates seeking to use civil rights laws to preserve federally assisted housing.

Facts of the Case

Charleston Apartments is a fifty-unit housing complex of duplexes, triplexes and single-family buildings developed in 1970 in Charleston, Missouri. It was purchased by Charleston Housing Authority (CHA) in 1981 and converted into a Farmer's Home Administration (FmHA)[2] mortgaged project-based Section 8 substantial rehabilitation project. The loan promissory note was for a term of fifty years, with final payment due in 2031.

In February 2000, CHA resolved to prepay the balance of the loan, not to renew the Section 8 housing assistance payments (HAP) contract, and to demolish Charleston Apartments. High density, a history of crime and drug activity, and the limited availability of funding available to improve the development were the purported reasons for this decision. At the time of the resolution, forty-seven of the fifty units of the development were occupied.

According to an analysis of CHA and federal data prepared by expert witness Andrew A. Beveridge, a professor at the City University of New York, the demolition of the development threatened a disparate adverse impact on African American families in the region.[3] Forty-six of the forty-seven households residing in Charleston Apartments were headed by African Americans. While African Americans comprised only 19.2 percent of the total population of Mississippi County, the county in which Charleston is located, 87.3 percent of the families on waiting lists for CHA housing[4] were headed by African Americans. African-American households in the county tended to have lower incomes than households overall and, thus, tended disproportionately to be income-eligible to reside in Charleston Apartments. According to the United States Census 2000 figures, while 40.3 percent of all households in the county were low-income,[5] 63.5 percent of African-American households fell into this category. Some 26.7 percent of all households were very low-income,[6] compared to 47.3 percent of African-American households. In the extremely low-income[7] category, 16.2 percent of all households met this description, compared to 32.4 percent of African-American households. In addition, among low-income households in the county, African-American households experienced higher rates of housing problems related to affordability, overcrowding or substandard conditions (69 percent) than households overall (56 percent).

Owens is the first final judicial decision, of which NHLP is aware, holding the demolition of federally assisted housing as the basis for fair housing disparate impact liability.

The plaintiff residents and the fair housing organization Housing Comes First[8] asserted claims against Charleston Housing Authority (CHA) alleging, *inter alia*, violations of the Fair Housing Act based on disparate racial impact of the demolition scheme,[9] the affirmative fair housing provisions of the Quality Housing and Work Responsibility Act of 1998,[10] the Emergency Low Income Housing Preservation Act (ELIHPA),[11] Section 8 program requirements,[12] and the Uniform Relocation Act (URA).[13] Plaintiffs also asserted claims against the Department of Housing and Urban Development (HUD) for violations of

[1]A copy of the decision will be available to Housing Justice Network members on the NHLP Web site at http://www.nhlp.org/pres/cases/.

[2]FmHA was the predecessor to RHS.

[3]A copy of Beveridge's expert report will be available to Housing Justice Network members on the NHLP Web site at http://www.nhlp.org/pres/cases/.

[4]CHA does not administer a housing choice voucher program.

[5]I.e., at or below 80 percent of area median income (AMI).

[6]I.e., at or below 50 percent of AMI.

[7]I.e., at or below 30 percent of AMI.

[8]Plaintiffs were represented by Legal Services of Eastern Missouri, Legal Services of Southern Missouri and NHLP.

[9]42 U.S.C.A. § 3604(a) (West 1994).

[10]42 U.S.C.A. § 1437c-1(d)(15) (West 2003).

[11]42 U.S.C.A. § 1472(c) (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04).

[12]These included, in particular, resident notice requirements under 42 U.S.C.A. § 1437f(c)(8) (West 2003), enhanced voucher requirements of the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA), 12 U.S.C.A. § 1715z-1b (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04), and terms of the HAP contract requiring vacant units to be "rented up."

[13]42 U.S.C.A. §§ 4601 *et seq.* (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04).

Section 8 program requirements and HUD's affirmative duty to further fair housing under the Fair Housing Act.[14]

The District Court's Decision

In its March 11 decision, the district court ruled against the plaintiffs on their claims based on housing program requirements, but also ruled that CHA's conduct violated the Fair Housing Act and fair housing provisions of the QHWRA. Regarding the program claims, the court concluded that the plaintiffs had no right to enforce ELIHPA or provisions of the HAP contract. It concluded that enhanced voucher protections do not apply in situations like that of Charleston Apartments where a development owner seeks to demolish rather than convert housing. It rejected the plaintiffs' URA claim, based on its conclusion that operating account funds were not "federal financial assistance," the use of which were sufficient to trigger application of the Act. The court further concluded that the plaintiffs' APA claims against HUD failed in particular because HUD did not have the right to require CHA to renew its HAP contract for Charleston Apartments.[15]

However, the court ruled in favor of the plaintiffs on their fair housing claims against CHA. The court concluded, based on the expert witness evidence, that the plaintiffs "easily met the burden of showing a prima facie case of disparate impact" under the Fair Housing Act.[16] The court rejected the justifications put forth by CHA to rebut the plaintiffs' prima facie showing, finding that CHA relied on faulty or nonexistent evidence. Having concluded that the plaintiffs established a violation of the Fair Housing Act, the court concluded that CHA had also violated its affirmative duty to further fair housing under the QHWRA.[17]

Dismayingly, while the court concluded that CHA's plans to vacate and demolish Charleston Apartments violated the Fair Housing Act and fair housing provisions of the QHWRA, it declined to award specific injunctive relief to correct these violations, such as an order directing CHA to continue to operate the development and rent up vacant units. Instead, the court issued a declaration essentially amounting to a general declaration that CHA comply with the Fair Housing Act.[18] The plaintiffs have filed a motion with the district court seeking an amendment of the judgment to provide specific injunctive relief.

Conclusion

While the decision clearly has serious shortcomings, it stands as an important, albeit partial, proof of concept regarding the use of civil rights litigation to preserve federally assisted housing. *Owens* is the first final judicial decision of which NHLP is aware that holds the demolition of affordable housing as the basis for fair housing disparate impact liability.[19] It may be of particular use in the demolition or conversion of public housing. The court's unfavorable conclusions regarding ELIHPA and other housing statutes would not apply in the public housing context.

CHA has attempted to appeal the district court's decision to the Eighth Circuit Court of Appeals. ■

Tenth Circuit Allows Section 236 Prepayment Over HUD Objections

Reversing a district court decision that had upheld HUD's refusal to permit conversion of a federally subsidized development to market-rate use, the United States Court of Appeals for the Tenth Circuit has recently ruled that the applicable laws do not allow HUD to withhold approval of the prepayment. The decision, Aspenwood Investment Co. v. Martinez, 355 F.3d 1256 (10th Cir. 2004), is significant not just because it reflects the prevailing trend in statutory construction to hold legislative and regulatory drafters to an impossibly high standard of exactitude, avoiding any judicial duty to interpret language in a fashion faithful to the underlying program or policy goals. It also reflects a profound ignorance or misunderstanding of key elements of the statutory and regulatory framework that should have been part of the judicial decision-making process and produced precisely the opposite result. The decision demonstrates once again that violating the law can still pay off handsomely.[1]

The owner of a Section 236 property in Glenwood Springs, Colorado, had sought to prepay its HUD-insured mortgage, eliminating the HUD rent and occupancy restrictions. Because the property still had a Rent Supplement contract that could provide deep subsidy assistance to very low-income tenants and applicants, HUD properly refused to grant approval, contending that the

---

[14]These claims were asserted via the Administrative Procedure Act, 5 U.S.C.A. § 702 (West, WESTLAW through P.L. 108-209 (excluding P.L. 108-203) approved 03-19-04). HUD's affirmative fair housing duty is imposed under 42 U.S.C.A. § 3608(e)(5) (West 1994).

[15]Owens v. Charleston Hous. Auth., No. 1:01CV00070, slip op. at 10-12, 18-27 (Mar. 11, 2004).

[16]*Id*. at 14. For a discussion of the legal standards and rules of decision in fair housing disparate impact cases, see NHLP, *Fair Housing Litigation to Prevent the Loss of Federally Assisted Housing: The Duties of Public Housing Authorities and Project Owners*, 31 HOUS. L. BULL. 73, 73 (Apr. 2001) (one of two parts).

[17]*Owens*, slip op. at 13-18.

[18]*See id*. at 27.

[19]Similar litigation, on a much larger scale, is pending throughout the country, in cities such as Baltimore, Chicago, Miami, St. Louis, and elsewhere.

[1]*See, e.g.*, NHLP, *First Circuit Refuses Remedies for Improper Opt-Out Notice*, 33 HOUS. L. BULL. 426 (Oct. 2003).

applicable regulations and the language of the amended Section 236 promissory note required HUD approval for any prepayment.

The 40-year Rent Supplement contract, executed in 1971 when the development was built, provided rental assistance for eight of the forty-two units at the property, permitting tenants to pay rents based on their income. These rents were lower than the basic rents subsidized through the Section 236 interest reduction payment and HUD rent control scheme. As is the case with all such projects, over time the Rent Supplement contract covered fewer than the original eight units. The contract was for a fixed dollar amount and did not keep pace with rent increases over the life of the property. The record in *Aspenwood* showed that the funds provided for in the contract were sufficient only for one or two units. The owner's last Rent Supplement tenant moved out of the development in 1997. Even though the Rent Supplement contract was still executory, the owner did not rent to any new Rent Supplement tenants. The owner claimed an entitlement to prepay its mortgage because it was not renting any units under the Rent Supplement contract.

HUD refused to grant approval to prepay, based upon its interpretation of the applicable regulation and contract language. HUD's position was that so long as the property had a Rent Supplement contract with available funding, it would not grant approval of the requested prepayment. However, both the regulation (24 C.F.R. § 236.30 (1995)) and the amended promissory note, in substantially similar language, stated that HUD approval was required for any prepayment, following expiration of the original twenty-year restricted use period, if the property was "receiving payments under a Rent Supplement contract." The owner contended that it was no longer "receiving" Rent Supplement payments, and thus the restriction no longer applied. HUD's position was that, under the regulation, the owner was still "receiving payments" so long as the contract was executory and there was enough money for at least one tenant to benefit from it.

The owner sued HUD seeking a declaratory judgment of its entitlement to prepay the mortgage. After the parties filed cross-motions for judgment on the pleadings, the district court ruled in HUD's favor. In the trial court's eyes, because HUD was not a party to the promissory note executed by the owner in favor of the lender, the parties' rights were to be determined by the language of the Rent Supplement Agreement between the owner and HUD, which in turn referenced the applicable regulation (former 24 C.F.R. § 236.70). This is essentially the same position that has been taken by numerous other federal courts that have evaluated the legality of federal prepayment restrictions.[2] This ruling was significant because agencies receive greater deference from the courts in interpreting their own regulations than they do when interpreting contracts. The trial court then upheld HUD's interpretation because it was not plainly erroneous. The owner then appealed.

The Tenth Circuit rejected HUD's construction. It first emphasized its disagreement with both the trial court and the majority in *Cienega Gardens v. United States* on the question of whether this dispute was governed by the contract or the regulations. Like the *Cienega Gardens* dissent, the Tenth Circuit viewed the contracts as part of a single transaction, regardless of the specific parties that might have executed any one document, thus parts of a "single, overarching agreement," whereby the owner promised to operate the property in accordance with applicable HUD requirements and restrictions. These promises were for the benefit of HUD and the tenants, but not the lender, and thus narrow notions of contractual privity should not apply.

Since courts owe no deference to an agency's construction of contractual terms, the Tenth Circuit thus had greater freedom to interpret the contractual language involved here. It found that the promissory note's language, "is not receiving payments . . . under a Rent Supplement contract," was plain and unambiguous. The owner had not received such payments since 1997, so that was the end of the story. HUD's contention was "tortured." The court continued to cover all the bases, stating that even if the regulations governed, their plain language required the same result; lacking any ambiguity, there was no role for any agency interpretation.

The Tenth Circuit reversed and remanded the case to the district court for further proceedings, including consideration of HUD's defense that the owner's "unclean hands" barred equitable relief.

Although the court makes no reference to the basis for HUD's assertion of the defense, one source of the dirt on the owner's hands might be the owner's violation of the Rent Supplement program requirements. As do all Rent Supplement owners, this owner had a regulatory duty fully to utilize its Rent Supplement contract.[3] These

---

[2]*See, e.g.*, Cienega Gardens v. United States, 194 F.3d 1231 (Fed. Cir. 1998) (finding no privity of contract in owner's constitutional challenge to federal prepayment restrictions), *vacating and remanding* 38 Fed. Cl. 64 (1997); *on remand*, 46 Fed. Cl. 506 (issuing summary judgment to government on takings claim due to failure to exhaust administrative remedies), *aff'd in part and rev'd in part and remanded*, 265 F.3d 1237 (Fed. Cir. 2001) (taking claims ripe despite failure to seek HUD approval due to futility exception; no *per se* taking under physical occupation theory); *after remand,* 331 F.3d 1319 (Fed. Cir. 2003) (finding that enactment of LIHPRHA constitutes a regulatory taking, and adopting trial court's 1997 ruling on damages).

[3]Former 24 C.F.R. §§ 215.25 and 236.70(a) (1994). For example, these regulations require owners to use good faith efforts to first admit applicants eligible for Rent Supplement, and before admitting anyone else, to obtain HUD approval if less than 90 percent of the approved Rent Supplement units are occupied by tenants receiving Rent Supplement payments. 24 C.F.R. §§ 215.25 (1994). These duties may also be recited in the Rent Supplement contract itself, but that is not clear.

regulations require the owner to rent units first to Rent Supplement-eligible tenants, which should have meant that the owner would always have Rent Supplement tenants in occupancy, and thus always be "receiving payments" while Rent Supplement funding remained available under the contract. If the owner in *Aspenwood* had complied with that duty, then it would not have been entitled to prepay without HUD approval under either the note or the applicable prepayment regulation.

The Tenth Circuit nowhere mentions this critical aspect of the situation. It is thus unclear whether it had been brought to the court's attention in the course of briefing or argument, or whether the court just chose to ignore it.[4] Hopefully it will be part of the equitable considerations evaluated by the district court in fashioning relief on remand. ■

Recent Cases

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

Fair Housing—Remedies

Walker v. U.S. Dept. of Hous. & Urban Dev., 2004 WL 578599 (N.D. Tex. Mar. 18, 2004). Plaintiffs filed motions for injunctions pursuant to a March 2001 settlement and order of this fair housing litigation challenging residential racial segregation in Dallas. Relying on *Hills v. Gautreaux*, 425 U.S. 284 (1976), the district court granted Plaintiffs' motion for an injunction directing Defendant Dallas Housing Authority (DHA) to provide public facility financing in suburban areas outside of the DHA's area of operation.

Habitability, Implied Warranty of; Public Housing—Conditions; Lead Paint

Ford v. Philadelphia Hous. Auth., 2004 WL 603348 (Pa. Commw. Ct. Mar. 29, 2004). Plaintiff-Appellee minor public housing resident filed suit against Defendant-Appellant housing authority for injuries from lead paint exposure. The court of common pleas issued judgment in favor of Plaintiff-Appellee following a bench trial. On appeal, the commonwealth court affirmed the judgment as to the negligence claim against Defendant-Appellee, which resulted in a damages award of $210,000. However, it reversed the judgment and award of $5,832 in damages on Plaintiff-Appellee's implied warranty of habitability claim. Pointing to federal regulations and a lack of opportunity for private bargaining, it concluded that, under Pennsylvania law, the implied warrant of habitability does not apply to public housing.

Lead Paint—Municipal Liability

Pelaez v. Seide, 2004 WL 578422 (N.Y. Mar. 25, 2004) (uncorrected opinion). Plaintiff-Appellants filed suit against Defendant-Appellee local government entities and officers for allegedly negligent building inspection practices that resulted in injuries due to lead paint exposure. On appeal, the Court of Appeals of New York held that Plaintiff-Appellants failed to make a sufficient showing under the state law "special relationship" test to allow for the possibility of municipal negligence liability.

National Environmental Policy Act—Environmental Review; HOPE VI

Coliseum Square Assoc., Inc. v. Martinez, 2004 WL 551217 (E.D. La. Mar. 17, 2004). Plaintiff nonprofit organizations filed suit against Defendants HUD and Housing Authority of New Orleans alleging violations of the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) in connection with the HOPE VI-funded redevelopment of the St. Thomas public housing community. Defendant HUD moved to dismiss for lack of subject matter jurisdiction on mootness grounds. Plaintiffs contended that Defendants failed to comply with the NEPA environmental review process. Granting Defendant HUD's motion, the district court concluded that this environmental review was subsequently performed by Defendants and that the claim was moot. The court further concluded that the possibility of future noncompliance with NEPA review requirements with regard to other aspects of the redevelopment did not meet the "capable of repetition yet evading review" exception to mootness. The court stated that such new conduct would not be "repetition" for purposes of the exception. The court also dismissed Plaintiffs' NHPA claim, citing the "law of the case" doctrine.

---

[4]Part of the problem might be that these rules are no longer set forth in the *Code of Federal Regulations*, pursuant to 1996 HUD "housecleaning." However, they remain binding on program participants pursuant to an obscure "savings clause." 24 C.F.R. § 236.1(c) (2003) (savings clause); 24 C.F.R. § 200.1302 (2003) (similar savings clause for Rent Supplement).

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

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

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

No Trespass Policies

de la O v. Hous. Auth. of the City of El Paso, 2004 WL 595087 (W.D. Tex. Mar. 24, 2004). Plaintiff residents filed suit against Defendant housing authority challenging a no trespass policy on First and Fourteenth Amendment grounds. The district court granted Defendant's motion for summary judgment. In so ruling, the court concluded, inter alia, that public housing is not a public forum, that Plaintiffs had not put forth any evidence that the policy affected their rights of expression and association and that no trespass policies are not subject to any heightened equal protection scrutiny.

Section 221(d)(3) Program—Regulatory Agreement, Breach of

Christopher Village, L.P. v. United States, 360 F.3d 1319 (Fed. Cir. 2004). Plaintiff-Appellant former owners of a Section 221(d)(3) property filed suit against Defendant-Appellee HUD for breach of regulatory agreement through HUD's foreclosure of the property's insured mortgage. The court of claims granted summary judgment in favor of HUD. On appeal, in a lengthy decision addressing, *inter alia*, jurisdiction under the Tucker Act, the Federal Circuit affirmed. In particular, the Federal Circuit held that breach of the regulatory agreement by a prior owner controlled by an entity that also controlled Plaintiff-Appellant barred recovery by Plaintiff-Appellant. The Federal Circuit further held HUD's lack of awareness of Plaintiff-Appellants' breach at the time of the foreclosure to be immaterial.

Section 250—Mortgage Prepayments, Approval of; Project-Based Section 8 Programs—Opt-Outs

Brighton Village Nominee Trust v. Malyshev, 2004 WL 594974 (D. Mass. Mar. 23, 2004). Plaintiff residents brought claims against Defendant HUD, *inter alia*, for HUD's approval of the prepayment of an insured mortgage in 1986 in violation of 12 U.S.C. § 1715z-15(a). This prepayment released the owner of the mortgage insured property from the terms of a regulatory agreement and permitted the owner to elect not to renew the housing assistance payments contract for the property when the initial term of the contract expired in 1995, which led to rent increases. Plaintiffs sought reimbursement of amounts paid in rent in excess of 30 percent of their incomes after 1995. The parties filed motions for summary judgment. The district court granted summary judgment in favor of Plaintiffs on the prepayment approval claim. Undeterred by the passage of time, the court concluded that it had the authority under the Administrative Procedure Act to award reimbursement of excess rent paid by Plaintiffs. The court granted summary judgment in favor of HUD on a disability discrimination claim that was also asserted by Plaintiffs.

Section 515 Program—Mortgage Prepayments; Emergency Low Income Housing Preservation Act (ELIHPA)

Allegre Villa v. United States, 2004 WL 578386 (Fed. Cl. Mar. 22, 2004). Plaintiff owners of Rural Housing Service assisted housing filed suit against Defendant United States for breach of contract due to insured Section 515 mortgage prepayment restrictions imposed by the Emergency Low Income Housing Preservation Act (ELIHPA). Plaintiffs also challenged ELIHPA as an uncompensated regulatory taking in violation of the Fifth Amendment. A principal issue in the parties' cross-motions for summary judgment was the applicability of the sovereign acts and unmistakability doctrines to ELIHPA. Following a recent trend in cases such as *Kimberly Assocs. v. United States*, 261 F.3d 864, 870 (9th Cir.2001), the court of claims concluded that ELIHPA was not sufficiently "public and general" to satisfy the requirements of the sovereign acts doctrine. Having concluded that ELIHPA did not fall within the sovereign acts doctrine, the court further concluded that the unmistakability doctrine did not apply. It granted partial summary judgment in favor of Plaintiffs on the breach of contract claim. The court granted partial summary judgment in favor of Defendant on the takings claim. It ruled that where the property interest that is the subject of a takings claim is created under a contract with the federal government, the property remedy for infringement of that interest lies in a contract action.

Shelter Plus Care

Angelo J. Melillo Ctr. for Mental Health v. Denise B., 2004 WL 615098 (N.Y. Dist. Ct. Mar. 1, 2004). In a consolidated action for possession by Petitioner Shelter Plus Care provider against Respondent residents, the district court ruled that residents may lawfully be required to undergo mental health, substance abuse and other medical treatment as a condition of continued residency. ■

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 March of 2004. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

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

HUD Federal Register Final Rules

69 Fed. Reg. 10,106 (Mar. 3, 2004)
Changes in Maximum Mortgage Limits for Multifamily Housing

Summary: This rule conforms HUD's regulations to a recent statutory increase in the amount by which HUD may increase the dollar amount limitations on insured mortgages for multifamily housing.

Effective Date: April 2, 2004.

69 Fed. Reg. 11,494 (Mar. 10, 2004)
FHA Inspector Roster

Summary: This rule establishes the regulations that will govern the Federal Housing Administration (FHA) Inspector Roster (Roster). The regulations provide for placement of inspectors on the Roster, recertification of Roster inspectors, and removal of inspectors from the Roster. The rule also identifies when a mortgagee must use an inspector listed on the Roster.

Effective Date: April 9, 2004.

HUD Federal Register Interim Rules

69 Fed. Reg. 15,586 (Mar. 25, 2004)
Home Equity Conversion Mortgage (HECM) Program; Insurance for Mortgages to Refinance Existing HECMs

Summary: On June 5, 2001, HUD published a proposed rule to implement certain statutory changes to the Home Equity Conversion Mortgage (HECM) Program made by Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). The HECM Program enables older homeowners to withdraw some of the equity in their home in the form of payments for life, a fixed term, or at intervals through a line of credit. The statutory changes include authorization to offer mortgage insurance for refinancing of existing HECMs and providing consumers with safeguards for such refinancing.

Effective Date: April 26, 2004.

Comment Due Date: May 24, 2004.

69 Fed. Reg. 15,671 (Mar. 26, 2004)
Implementation of Requirement in HUD Programs for Use of Data Universal Numbering System (DUNS) Identifier

Summary: This interim rule implements an Office of Management and Budget (OMB) policy directive that requires grant applicants, other than individuals, to provide a Data Universal Numbering System (DUNS) number when applying for federal grants or other assistance agreements on or after October 1, 2003. HUD is applying this policy widely to its assistance programs in order to have a single identifier for applicants and facilitate the transition to electronic application submission.

Comment Due Date: May 25, 2004.

Effective Date: April 26, 2004.

69 Fed. Reg. 16,758 (Mar. 30, 2004)
HOME Investment Partnerships Program; American Dream Downpayment Initiative

Summary: This interim rule establishes regulations for a new downpayment assistance component under the HOME Investment Partnerships Program, referred to as the American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD will make formula grants to participating jurisdictions under the HOME Investment Partnerships Program for the purpose of assisting low-income families achieve homeownership. This interim rule codifies the statutory formula for allocation of ADDI funds to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements.

Effective Date: April 29, 2004.

Comment Due Date: June 1, 2004.

HUD Federal Register Proposed Rules

69 Fed. Reg. 10,126 (Mar. 3, 2004)
Equal Participation of Faith-Based Organizations

Summary: This proposed rule would implement executive branch policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for federal funding. Executive Order 13279, entitled ''Equal Protection of the Laws for

[1] *At* http://www.access.gpo.gov/su_docs.

[2] *At* http://www.hudclips.org/cgi/index.cgi.

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

[4] *At* http://www.rdinit.usda.gov/regs.

Faith-Based and Community Organizations,'' establishes fundamental principles and policymaking criteria to guide federal agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection of the laws for these organizations in federally assisted social service programs. Consistent with the Executive Order, this proposed rule describes HUD's policy for the participation of faith-based organizations in HUD programs and activities. In addition, this proposed rule would amend the regulations for the State Community Development Block Grant (CDBG) program to clarify that the requirements contained in HUD's September 30, 2003, final rule regarding the equal participation of faith-based organizations in certain HUD programs apply to the State CDBG program. HUD supports the participation of faith-based organizations in its programs.

Comment Due Date: May 3, 2004.

69 Fed. Reg. 11,349 (Mar. 10, 2004)
Operating Fund Program; Establishment of Negotiated Rulemaking Committee and Notice of First Meeting

Summary: HUD announces the establishment of a negotiated rulemaking advisory committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act of 1990. The purpose of the committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's ''Public Housing Operating Cost Study.'' The Consolidated Appropriations Act 2004 requires publication of a final rule developed under the Negotiated Rulemaking Act of 1990, by July 1, 2004. The committee consists of representatives with an interest in the outcome of the changes. This document announces the committee members and the dates, location and agenda for the first committee meeting.

Dates: The first committee meeting was held on March 30–April 1, 2004.

69 Fed. Reg. 12,950 (Mar. 18, 2004)
Project-Based Voucher Program

Summary: HUD proposes comprehensive regulations for the new project-based voucher program. In this program, HUD pays rental assistance for eligible families who live in specific housing developments or units. A public housing agency (PHA) that runs the tenant-based housing choice voucher program may ''project-base'' up to 20 percent of voucher units funded by HUD. The project-based voucher program replaces the project-based certificate program and these regulations would replace the current regulations for the project-based certificate program.

Comments Due Date: May 17, 2004.

HUD Federal Register Notices

69 Fed. Reg. 9,632 (Mar. 1, 2004)
Adjustments to Statutory Mortgage Limits for Sections 207 and 213 of the National Housing Act Multifamily Housing Programs

Summary: The recently enacted FHA Multifamily Loan Limit Adjustment Act of 2003 made adjustments to certain maximum mortgage amount limits. This notice advises of HUD adjustment of these mortgage limits consistent with the new law.

Effective Date: January 1, 2004.

69 Fed. Reg. 9,633 (Mar. 1, 2004)
Mortgagee Review Board; Administrative Actions

Summary: In compliance with Section 202(c) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

69 Fed. Reg. 11,032 (Mar. 9, 2004)
Announcement of Funding Awards for the Assisted Living Conversion Program Fiscal Year 2003

Summary: In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Assisted Living Conversion Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

69 Fed. Reg. 11,033 (Mar. 9, 2004)
Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

Summary: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is updating its notice of a matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and independent sources of income information. The matching program will be carried out to detect inappropriate (excessive or insufficient) housing assistance under the National Housing Act, the United States Housing Act of 1937, Section 101 of the Housing and Community Development Act of 1965, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998. The program provides for the verification of the matching results and the initiation of appropriate administrative or legal actions, primarily through public housing agencies (HAs) and owners and agents (all collectively referred to as POAs). This notice provides an overview of computer matching for

HUD's assisted housing programs. Specifically, the notice describes HUD's program for computer matching of its tenant data to: (a) The SSA's earned income and the IRS's unearned income data, (b) SSA's wage, social security, supplemental security income and special veterans benefits data, (c) State Wage Information Collection Agencies' wage and unemployment benefit claim information, and (d) the Office of Personnel Management's (OPM) personnel data.

Expected Effective Date: April 8, 2004.
Comments Due Date: April 8, 2004.

69 Fed. Reg. 11,452 (Mar. 10, 2004)
Credit Watch Termination Initiative

Summary: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

69 Fed. Reg. 11,454 (Mar. 10, 2004)
Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

Summary: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act.

69 Fed. Reg. 11,714 (Mar. 11, 2004)
Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2003

Summary: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly *Federal Register* notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous *Federal Register* notice. The purpose of this notice is to comply with the requirements of Section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2003, and ending on September 30, 2003.

69 Fed. Reg. 11,879 (Mar. 12, 2004)
Redelegation of Authority to the Departmental Enforcement Center Regarding Authority to Initiate Civil Money Penalty Actions Under Certain Civil Money Penalty Regulations and to Issue Notice of Violation of a Regulatory Agreement and Notice of Default of a Housing Assistance Payments Contract

Summary: On March 12, 2004, HUD published a notice stating that the Assistant Secretary for Housing-Federal Housing Commissioner has redelegated to the General Counsel the authority to (1) issue a notice of violation under the terms of a regulatory agreement, (2) issue a notice of default under the terms of a Section 8 housing assistance payments contract, and (3) take all actions permitted under 24 C.F.R. 30.45, 30.36, and 30.68. This notice advises the public of a redelegation of that authority from the General Counsel to the Director of the HUD Departmental Enforcement Center (DEC) and, with respect to certain functions, concurrent redelegation to the Directors of the DEC Satellite Offices.

Effective Date: March 5, 2004.

69 Fed. Reg. 11,880 (Mar. 12, 2004)
Redelegation of Authority to the General Counsel Regarding Authority to Initiate Civil Money Penalty Actions Under Certain Civil Money Penalty Regulations and to Issue Notice of Violation of a Regulatory Agreement and Notice of Default of a Housing Assistance Payments Contract

Summary: On August 20, 2003, HUD's Assistant Secretary for Housing-Federal Housing Commissioner published a notice that redelegated certain authority to other HUD officials, including HUD's General Counsel. In this notice, the Assistant Secretary for Housing clarifies and supplements the authority redelegated to the General Counsel in the August 20, 2003, notice.

Effective Date: March 5, 2004.

69 Fed. Reg. 12,474 (Mar. 16, 2004)
Public Housing Assessment System (PHAS); Physical Condition Inspection Proposed Changes to the Dictionary of Deficiency Definitions

Summary: This notice provides information to public housing agencies (PHAs), multifamily owners and agents, and members of the public regarding proposed changes to the forty-seven definitions in the physical condition Dictionary of Deficiency Definitions that is an appendix to the PHAS notice on the physical condition scoring process. The forty-seven definitions proposed to be changed are those that have been identified as causing the greatest inconsistency among contract inspections. These proposed changes would affect the physical condition inspection process for both multifamily and public housing properties.

Comment Due Date: April 15, 2004.

69 Fed. Reg. 13,063 (Mar. 19, 2004)
Privacy Act of 1974; Notice of a Computer Matching Program

Summary: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 Fed. Reg. 25,818; June 19, 1989), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Internal Revenue

Service (IRS). This notice supersedes a similar notice published in the *Federal Register* on June 21, 2001 (66 Fed. Reg. 33,265). Under the terms of the agreement, IRS agrees to disclose to HUD taxpayer mailing addresses as authorized by the Commissioner or her delegate pursuant to Section 6103(m)(2) of the Internal Revenue Code (IRC) for use in locating individuals to collect or compromise federal claims in accordance with 31 U.S.C. §§ 3711, 3717 and 3718. This program is called the Taxpayer Address Request Program (TAR). It was established by the IRS to facilitate the retrieval of taxpayer mailing addresses from the individual Master File on a volume basis.

Expected Effective Date: April 19, 2004.

Comments Due Date: April 19, 2004.

69 Fed. Reg. 13,450 (Mar. 22, 2004)
America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Announcement of Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations

Summary: Through this notice, HUD announces its intention to proceed to establish in the majority of its Fiscal Year (FY) 2004 notices of funding availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers to affordable housing as proposed in a notice published on November 25, 2003. In proceeding to implement this proposal, HUD took into consideration the public comments received on the November 25, 2003, notice and changes were made in response to public comment as more fully discussed in this notice.

69 Fed. Reg. 13,580 (Mar. 23, 2004)
Conference Call for the Manufactured Housing Consensus Committee

Summary: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee to be held via telephone conference. This meeting is open to the general public without participation.

Dates: The conference call was held on Monday, April 5, 2004, from 11 a.m. to 3 p.m.

HUD PIH Notices

Notice PIH 2004-01 (HA) (Mar. 9, 2004)
Verification Guidance

Summary: This notice provides instructions on the HUD-established verification policies as provided in the attached Verification Guidance. Administrators of Public Housing and Section 8 programs are required to implement procedures to ensure compliance with these verification policies during mandatory interim and reexaminations of family income under existing regulations. The implementation of these verification policies will assist in the reduction of income and rent errors within Public Housing and Section 8 programs.

Expires: March 31, 2005.

Notice PIH 2004-02 (HA) (Mar. 15, 2004)
Excess Utility Consumption Charges Permissible Under the Flat Rent Option for Checkmetered Units

Summary: This notice establishes the department's position relative to Public Housing Agencies (PHAs) charging for excess utility consumption under the flat rent option for public housing.

Expires: March 31, 2005.

Notice PIH 2004-3 (HA) (Mar. 29, 2004)
Extension-Demolition/Disposition Processing Requirements Under the 1998 Act

Summary: This notice extends Notice PIH 2003-9 (HA), same subject, for another year, until March 31, 2005.

Expires: March 31, 2005.

Notice PIH 2004-4 (HA) (Mar. 29, 2004)

Submission and Processing of Public Housing Agency (PHA) Applications for Housing Choice Vouchers for Relocation or Replacement Housing Related to Demolition or Disposition (Including HOPE VI), and Plans for Removal (Required/Voluntary Conversion Under Section 33 of the U.S. Housing Act of 1937, As Amended, and Mandatory Conversion Under Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996) of Public Housing Units

Summary: The purpose of this notice is to advise PHAs that they may apply for funding for housing choice vouchers to assist with relocation or replacement housing needs resulting from the demolition, disposition or required/voluntary or mandatory conversion of public housing units. In addition, this notice advises PHAs and local HUD Field Offices of the procedures for submitting a request for housing choice vouchers and the processing requirements.

Expires: March 31, 2005.

RHS Federal Register Notices

69 Fed. Reg. 12,637 (Mar. 17, 2004)
Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2004

Summary: This NOFA announces the availability of funds for Section 514 Farm Labor Housing loan funds and Section 516 Farm Labor Housing grant funds for new construction and acquisition and rehabilitation of off-farm units for farmworker households.

Deadline: May 6, 2004.

69 Fed. Reg. 12,638 (Mar. 17, 2004)
Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for Fiscal Year 2004

Summary: This NOFA announces the availability of new construction loan funds for the Section 515 Rural Rental Housing (RRH) program for Fiscal Year (FY) 2004.

Deadline: April 6, 2004.

69 Fed. Reg. 12,639 (Mar. 17, 2004)
Notice of Funds Availability (NOFA) for Section 533 Housing Preservation Grants for Fiscal Year 2004

Summary: This NOFA announces the availability of funds for Section 533 Housing Preservation Grant (HPG) Program.

Deadline: May 6, 2004.

69 Fed. Reg. 12,639 (Mar. 17, 2004)
Notice of Funding Availability (NOFA) for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year (FY) 2004

Summary: This NOFA announces the availability of funds for the Section 538 Guaranteed Rural Rental Housing Program for FY 2004. Congress appropriated $99.41 million to the Section 538 GRRHP for FY 2004. The agency will issue a notice to inform the public when funds have been exhausted for FY 2004.

69 Fed. Reg. 12,738 (Mar. 17, 2004)
Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

Summary: The Rural Housing Service (RHS) announces the availability of housing funds for Fiscal Year 2004 (FY 2004). This action is taken to comply with 42 U.S.C. 1490p, which requires that RHS publish in the *Federal Register* notice of the availability of any housing assistance.

Effective Date: March 17, 2004.

RHS Administrative Notices

Processing Section 515 New Construction Loan Requests Fiscal Year 2004, RD AN No. 3951 (1944-E) (Mar. 3, 2004)

Summary: This Administrative Notice (AN) provides guidance on processing Section 515 loan requests in accordance with RD Instruction 1944-E and the notice that was published in the *Federal Register* on February 6, 2004.

Processing Off-Farm Labor Housing (LH) New Construction Loan and Grant Requests Fiscal Year 2004 RD AN No. 3952 (1944-D) (Mar. 5, 2004)

***Summary*:** The purpose of this Administrative Notice (AN) is to provide guidance on processing Section 514 loan requests and Section 516 grant requests for Off-Farm Labor Housing (LH) units in accordance with the RD Instruction 1944-D and the Notice of Timeframe for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2004 that was published in the *Federal Register* on February 6, 2004 (69 Fed. Reg. 5,818).

Allocation of Rental Assistance for Renewal Needs for Multi-Family Housing Needs, RD AN No. 3956 (1940-L) (Mar. 23, 2004)

Summary: This Administrative Notice (AN) allocates Rental Assistance (RA) for renewals for all types of existing MFH projects, including family, elderly and farm labor housing. Exhibits A, B and C list the number of RA renewal units allocated to each state for Fiscal Year 2004.

Expiration Date: September 30, 2004. ■

Publication Order Form

National Housing Law Project
614 Grand Avenue, Suite 320, Oakland CA 94610
(510) 251-9400; fax: (510) 451-2300

	PRICE	QTY.	TOTAL
HUD Housing Programs: Tenants' Rights (3d ed. 2004) (forthcoming)	$350.00	_____	$ _____
RHCDS (FmHA) Housing Programs: Tenants' and Purchasers' Rights (2d ed. 1995)	$55.00	_____	$ _____
Combined *HUD Housing Programs* (3d ed.) and *RHCDS (FmHA) Housing Programs* (add $10.00 postage/handling)	$380.00	_____	$ _____
Housing Law Bulletin (annual subscription, 10-12 issues)	$150.00*	_____	$ _____
Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)	$5.00*	_____	$ _____
Congress' New Public Housing and Voucher Programs (1998)	$10.00**	_____	$ _____
Housing for All: Keeping the Promise (1995)	$5.00*	_____	$ _____
The Family Self-Sufficiency Program: An Advocate's Guide (1994)	$10.00*	_____	$ _____
Let's Choose a New Owner! What Residents Need to Know When an Owner Wants to Sell an Expiring-Use Project Under Title VI (1993) (master for duplicating)	$10.00*	_____	$ _____
A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)	$10.00*	_____	$ _____

*Includes postage and handling
** $5.00 each additional copy
All materials are mailed book rate. Allow four weeks for delivery.
For more information on first-class mailing and large quantity discounts, call (510) 251-9400 x108.

Subtotal: _____ **$** _____

Tax (California residents only): (Subtotal, excluding Bulletin x 8.25%): **$** _____

Postage and Handling: Number of books _____ x $5.00 per book: **$** _____

TOTAL AMOUNT ENCLOSED: $ _____

PLEASE TYPE OR PRINT

Name _____

Organization _____

Address _____

_____

_____ **Zip** _____

Phone _____

ALL ORDERS MUST BE PREPAID

Please do not send cash. Make check or money order payable to the NATIONAL HOUSING LAW PROJECT, attach to a copy of this form and send to:

NATIONAL HOUSING LAW PROJECT
Attn: Publications Clerk 614 Grand Avenue, Suite 320
Oakland, CA 94510

I want to charge my credit card. ❑ Visa ❑ Mastercard

Card #_____ Exp. date _____
Name on card: _____
Credit card billing address _____
_____
Signature (req'd for credit card) _____

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

First Class Mail