



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

June 19, 1980

OFFICE OF GENERAL COUNSEL

1980 JUN 20 AM 9 11 IN REPLY REFER TO:

William G. Hunter, Esq.
United States Attorney
Northern District of California
Federal Building - 16th Floor
450 Golden Gate Avenue
San Francisco, California 94102

Dear Mr. Hunter:

Subject: Doris Brown, et al. v. Harris, et al., C.A. No. 79-0595-WAI
(N.D. Calif., filed March 21, 1979)
Irene Simmons, et al. v. Harris, et al., C.A. No. 79-0691, LHB
(N.D. Calif., filed March 21, 1979)

Enclosed are copies of letters to the Monterey and Santa Clara Housing Authorities containing instructions which they must follow in response to the court order issued on February 28, 1980, enjoining HUD regulation 24 C.F.R. §882.215. Please note that in accordance with your request for immediate copies, the enclosed letters are unsigned. We expect signed copies, without modifications, to be available tomorrow. As soon as we receive them, copies will be sent to your office via express mail.

Briefly, the attached letters instruct the defendant PHAs that they are required to issue the statutory notice to vacate when owners seek to evict tenants from existing units. They provide that the PHA notice shall constitute the legally operative document which is required under applicable State and local law to commence evictions proceedings in local courts.

The new procedures are applicable to all owners participating in the Section 8 Existing programs operated by the Santa Clara and Monterey Housing Authorities, including those who have already executed HAP contracts and Section 8 leases. However, an option is allowed owners under existing contracts to adopt alternative eviction procedures if such owners independently conclude that their procedures satisfy the statutory notice requirements at 42 U.S.C. §1437f(d)(1)(B).

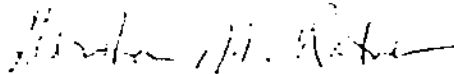
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The draft proposed regulation revising Section 882.215 which was provided your office in April is currently being revised to conform to the content of the enclosed letters. We will provide you with a copy of the final proposed regulation as soon as it is available.

We would appreciate it if you would inform us of the status of the remainder of this litigation, particularly whether the court intends to rule on the class action and good cause issues. We are available to assist you in providing the court with whatever is necessary to dispose of this litigation at the trial level.

Ms. Jacqueline Grant can be contacted on FTS 755-7207 if there is a need for additional information or assistance.

Sincerely,



Gershon M. Ratner
Associate General Counsel
for Litigation

Enclosures

P.S. Please recognize that this letter is not yet official Department policy and will not be unless signed by the Assistant Secretary.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING - FEDERAL HOUSING COMMISSIONER

IN REPLY REFER TO:

Mr. John C. Burns
Executive Director
Santa Clara Housing Authority
999 West Taylor
San Jose, California 95126

Dear Mr. Burns:

As you know, the U. S. District Court has held that Section 882.215 of the Section 8 Existing Housing Regulations is in conflict with Section 8(d)(1)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(B)). Section 8(d)(1)(B) states, with respect to Section 8 Existing Housing, that the PHA:

"... shall have the sole right to give notice to vacate, with the owner having the right to make representation to the (PHA) for termination of tenancy."

The District Court has enjoined HUD from the enforcement of Section 882.215 for the Section 8 Existing Housing Program administered by the the Monterey and Santa Clara Housing Authorities.

This letter states the actions taken by HUD for compliance with the injunction. The letter also provides guidance to your PHA for operation of the Section 8 Existing Housing Program in accordance with the injunction. The letter covers the following points:

- I. Waiver of Eviction Regulations.
- II. Eviction Procedures.
- III. Modified Language on Evictions for Insertion in HAP Contracts Executed After PHA's Receipt of this Letter.
- IV. Lease Addendum.
- V. Effect of New Regulations or Requirements.

T/ Doris Brown v. Patricia Harris, et al., C.A. No. C-79-0595-WAI(SJ)
(N.D. Cal., Feb. 28, 1980) (Memorandum).

I. Waiver of Eviction Regulations

a. Section 882.215 - Eviction

In view of the decision and injunction of the U. S. District Court for the Northern District of California, enjoining the enforcement of the current Section 882.215 of the Section 8 Existing Housing regulations as to the Monterey and Santa Clara Housing Authorities, I have determined that there is good cause for waiving, and I hereby waive, Section 882.215 for the Section 8 Existing Housing Program of the Monterey and Santa Clara Housing Authorities. ^{2/}

b. Part 882, Appendix I, Paragraph e - Lease Provisions on Eviction

Appendix I to the Section 8 Existing Housing Regulations (Part 882) sets forth required lease provisions that must be included in the lease between a Section 8 Existing Housing Owner and a Family (Form HUD-52517B, the form of required lease addendum, is essentially the same as Appendix I). Paragraph f of the Addendum (corresponding to paragraph e of Appendix I) provides for the inclusion of lease provisions that follow the language of Section 882.215.

Since the provisions of Section 882.215 are being waived for compliance with the injunction of the District Court, I have also determined that there is good cause for waiving, and I hereby waive, the requirement for including lease provisions in accordance with Appendix I, paragraph e. (For new required lease provisions, see Section IV of this letter.)

c. No Enforcement of Section 882.215

The HUD Regional and Area Offices with jurisdiction over the Section 8 Existing Housing Program of your housing authority have been directed that no action shall be taken to enforce the current Section 882.215 with respect to your Section 8 Existing Housing Program.

^{2/} Section 882.215 is included in Chapter VIII of Title 24 of the Code of Federal Regulations. Section 899.101(a) provides that the Secretary of HUD may waive any provision of Chapter VIII upon a written determination of good cause for the waiver. This authority has been delegated to me as Assistant Secretary for Housing.

II. Eviction Procedures

a. General

Eviction of a Family must comply with the eviction procedures under Section II of this letter. The Owner may make representation to the PHA for termination of tenancy in accordance with paragraph b of this Section. The PHA shall, however, have the sole right to give Notice to Vacate in accordance with Section 8(d)(1)(B) of the United States Housing Act of 1937, and the Notice to Vacate shall be given in accordance with paragraph c of this Section.

Owners of units already under HAP Contract and of units placed under HAP Contract in the future shall be advised of the applicable eviction procedures.

b. Owner's Representation for Termination of Tenancy

- (1) If the Owner desires to evict a Family, the Owner shall provide the PHA:
 - (a) A written statement of the grounds for eviction. The statement shall cite the relevant provisions of the lease. The statement must be signed by or for the Owner.
 - (b)
 - (i) A written authorization designating the PHA as the Owner's agent for the purpose of issuing, before commencement of proceedings for eviction, any Notice to Vacate required under State or local law.
 - (ii)
 - (A) A Notice to Vacate, as prepared by the Owner in the form required under State or local law, for execution by the PHA on behalf of the Owner. If any information or dates needed for the Notice to Vacate are not yet known or determined, the Owner may leave the items blank, to be filled out by the PHA prior to service on the Family.
 - (B) The Notice to Vacate shall be signed by the Owner to indicate the Owner's concurrence.
- (2) Immediately after receiving the Owner's statement of the grounds for eviction, the Owner's statement shall be attached behind the following form of Notification of the Owner's Request to PHA for Termination of Tenancy, and the PHA shall send the statement and notification to the Family:

Notification of Owner's Request to PHA for Termination
of Tenancy

THIS IS NOT A NOTICE TO VACATE.

The Owner desires to terminate your tenancy. The Owner is asking the PHA to give you a Notice to Vacate. Only the PHA can give you Notice to Vacate. You may not be evicted from the unit unless the PHA first approves the eviction and gives you the Notice to Vacate. A copy of the Owner's request to the PHA for termination of your tenancy is attached.

You have the right to present to the PHA your objections to the Owner's request to the PHA to give a Notice to Vacate. You may present your objections to the PHA in writing or in person by _____ (PHA shall insert date in the blank. The date shall be 10 days after the PHA sends the Owner's statement of the grounds for eviction to the family.)

If the PHA decides to approve the eviction, you may be entitled to another Certificate of Family Participation to use at a new location. If the PHA finds that you are ineligible for continued assistance, the PHA will notify you of the reasons for this decision and you will have the right to an informal hearing on the decision.

_____ Housing Authority

By _____

(Position of person signing Notification for PHA)

c. Proceedings for Issuance of Notice to Vacate by PHA

- (1) (a) The Family may present any objections to the Owner's representation for termination of tenancy within ten days after the PHA sends the Owner's statement of the grounds for eviction to the Family.
- (b) The PHA's determination on the Owner's representation shall be made within twenty days after the PHA sends the Owner's statement of the grounds for eviction to the Family.
- (2) In making the determination, the PHA shall examine the grounds for eviction as contained in the Owner's statement, and shall consider any objections submitted by the Family.
- (3) The PHA shall not issue the Notice to Vacate if the PHA finds that the stated grounds for eviction are not sufficient under the lease. The PHA shall give separate written notifications to the Family and the Owner of the determination not to issue a Notice to Vacate.
- (4) The PHA shall issue the Notice to Vacate as requested by the Owner if the PHA finds that the stated grounds for eviction are sufficient under the lease.
- (5) (a) If the PHA decides to issue the Notice to Vacate, the Notice to Vacate shall be served by the PHA within twenty days after the PHA sends the Owner's statement of the grounds for eviction to the Family.
- (b) The Notice to Vacate shall be in writing. A copy of the Notice to Vacate shall be sent to the Owner at the same time that the Notice is served by the PHA on the Family.
- (c) The Notice to Vacate shall comply with any requirements of form and procedure for issuance of a Notice to Vacate under State and local law. The Notice to Vacate shall be served by the PHA in accordance with State and local law.
- (d) At the same time as the PHA serves the Notice to Vacate, the PHA shall again advise the Family in writing of the Family's rights with respect to issuance of another Certificate. In particular, the Family shall be advised of the right to an informal hearing in accordance with Section 882.209(f) before a final determination by the PHA not to issue a new Certificate.

d. Procedures for HAP Contracts Executed Before PHA's Receipt of This Letter

Owners under HAP Contracts executed before the PHA's receipt of this letter may elect not to follow paragraph II (b)(1)(b) and paragraph II (c)(5)(c) where the election does not derogate from the PHA's sole right to give Notice to Vacate under Section 8(d)(1)(B) of the USH Act.

III. Modified Language on Evictions for Insertion in HAP Contracts Executed After PHA's Receipt of this Letter

For HAP Contracts executed after you receive this letter, the PHA shall not use the language of Section 9 of the HAP-Contract form (HUD-52535 dated January 1980), but shall substitute the HAP Contract language in Exhibit A to this letter.

IV. Lease Addendum

The following language shall be included in the required Addendum to the Lease instead of the current language on eviction procedure (paragraph f of 52517B, October 1978):

The Owner may not evict the Family unless the Owner complies with the provisions of the Housing Assistance Payments Contract between the Owner and the PHA, as affected by HUD requirements. A copy of the applicable eviction procedures is attached to and made a part of this Lease.

V. Effect of New Regulations or Requirements

The procedures stated in this letter are subject to future issuance by HUD of revised regulations or other requirements. If you have any questions or concerns, please contact Steven Balis (202) (755-7227) or Stephanie Giddings (202) (755-6596).

Sincerely,

Lawrence B. Simons
Assistant Secretary.

Attachment

EXHIBIT A

Modified Language for Insertion in the Housing Assistance
Payments Contract

9. Evictions

During the term of this Contract, the PHA shall have the sole right to give notice to vacate, with the Owner having the right to make representation to the PHA for termination of tenancy. Termination of tenancy under this Section shall be in accordance with HUD requirements for the Section 8 Existing Housing Program.