

Reid (D-NV) issued a statement that he was “extremely disappointed” that southern Nevada was denied funding given the severity of the region’s foreclosure crisis.¹⁰ However, Reid acknowledged that HUD indicated that applicants in southern Nevada did not meet eligibility requirements, and that several agencies receiving NSP1 funds were not spending them in a timely fashion.

According to HUD, unsuccessful applicants may make a written request for a debriefing on their applications.¹¹ Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor; final evaluator comments for each rating factor; and a final assessment indicating the basis on which assistance was denied.¹²

Conclusion

The NSP2 funds offer unprecedented opportunities for communities to create long-term affordable housing for low-income families. Advocates in jurisdictions receiving NSP2 funds should ask grant recipients for copies of their NSP2 applications in order to familiarize themselves with the recipient’s plans for using the NSP2 funds. Advocates should also consider meeting with grantees to discuss issues affecting low-income communities,¹³ such as how the grantee plans to meet its obligation to use 25% of the funds to house families at or below 50% of AMI; how the grantee intends to maintain long-term affordability of NSP-2 assisted units; how the grantee will affirmatively further fair housing choice in NSP2-funded programs; and how the recipient intends to prevent unnecessary displacement of tenants in foreclosed properties that are being purchased or rehabilitated with NSP2 funds. Advocates should also monitor the quarterly performance reports that NSP2 grantees are required to prominently post on their websites.¹⁴

Additionally, all advocates, regardless of whether their jurisdictions received a second round of NSP funds, should monitor local expenditure of NSP1 funds to ensure that jurisdictions are spending their funds in a timely fashion and are meeting their obligation to serve families at or below 50% of AMI. NSP1 recipients submitted quar-

terly reports to HUD in July 2009, October 2009 and January 2010 and were required to post these reports on their websites. The National Housing Law Project has compiled a list of jurisdictions that have posted their quarterly reports¹⁵ and has created an advocates’ guide for reviewing the reports.¹⁶ ■

¹⁵NHLP, NSP1 Quarterly Reports, <http://nhlp.org/node/1198>.

¹⁶NHLP, Advocates’ Checklist: NSP1 Quarterly Reports, <http://nhlp.org/node/1214>.

HUD Issues Final Rule on Disclosure of Social Security Numbers

In recent months, the *Bulletin* has reported on a pending final rule by the Department of Housing and Urban Development (HUD) regarding disclosure of Social Security numbers (SSNs) by applicants and participants in certain federally subsidized housing programs.¹ The rule would require each member of every applicant or participant household to produce both a valid SSN card issued by the Social Security Administration (SSA) and independent documentation containing corroborative data. The stated purpose of the rule is to reduce overpayments by requiring public and assisted housing operators to use HUD’s Enterprise Income Verification (EIV) system to verify employment and income of program participants.²

HUD published a final rule regarding SSN disclosure on January 27, 2009,³ but delayed the effective date of the rule in response to concerns raised by resident, advocacy, policy and civil rights organizations.⁴ After months of review, HUD issued a proposed rule on October 15, 2009.⁵ The final rule was published on December 29, 2009.⁶ This

¹NHLP, *HUD Reissues Social Security Number Rules*, 39 HOUS. L. BULL. 275 (Nov-Dec. 2009); NHLP, *HUD Delays Effective Date of Social Security Number Rule*, 39 HOUS. L. BULL. 223, 226 (Sept. 2009); NHLP, *Delayed HUD Rule Would Alter Social Security Number Requirements*, 39 HOUS. L. BULL. 71, 80 (Mar. 2009).

²Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System—Amendments; Final Rule, 74 Fed. Reg. 68,924 (Dec. 29, 2009) [hereinafter December 29 Final Rule].

³Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of Enterprise Income Verification, Proposed Rule, 74 Fed. Reg. 4,832 (Jan. 27, 2009) [hereinafter January 27 Final Rule].

⁴Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Delay of Effective Date, 74 Fed. Reg. 44,285 (Aug. 28, 2009).

⁵Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of Enterprise Income Verification, 74 Fed. Reg. 52,931 (Oct. 15, 2009) [hereinafter October 15 Proposed Rule].

⁶December 29 Final Rule, 74 Fed. Reg. 68,924 (to be codified at 24 C.F.R.

word=&siteid=&ccat=&ccatm=&restate=&restatus=&reoption=&retype=&repmin=&repmax=&rebed=&rebath=&subname=&pform=&sc=1711&hn=business-journal&he=.com.

¹⁰Reid Statement on the Denial of Southern Nevada’s Request for Foreclosure Assistance (Jan. 14, 2010), http://www.reid.senate.gov/newsroom/pr_011410_snvhuddeny.cfm.

¹¹HUD, Neighborhood Stabilization Program Grants, FAQs on NSP2, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp2_quest_answers.pdf.

¹²*Id.*

¹³For an overview of NSP2 issues that are of particular interest to low-income housing advocates, see NHLP, Resource Center, Neighborhood Stabilization Program (NSP2) Under the Recovery Act, <http://nhlp.org/files/1.%20NSP2%20under%20the%20Recovery%20Act.pdf>.

¹⁴NOFA for NSP2 under the American Recovery and Reinvestment Act 71 (May 4, 2009), <http://www.hud.gov/recovery/nsp2-nofa.pdf>.

article addresses the differences between the October 15, 2009 proposed rule and the December 29, 2009 final rule, as well as the rule's impact on provisions regarding family income and households with mixed immigration status.

Final Changes to Rule

The December 29 final rule made very few changes to the SSN disclosure requirements set forth in the October 15 proposed rule, which were described in detail in the November/December *Bulletin*.⁷ The final rule requires that all applicants for and participants in the specified assisted housing produce the complete and accurate SSN assigned to the applicant and to each member of the applicant's household, together with corroborating documentation. Participants and their household members need not disclose their SSNs if they have previously done so and neither HUD nor SSA has determined the SSN to be invalid.

The final rule slightly modifies the proposed rule's language regarding participants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before that date. Such participants need not disclose a SSN even if they have not previously disclosed a valid SSN. The final rule deleted the phrase "under the program involved" to clarify that such a participant may move to a new HUD-assisted property without having to produce a SSN for any future eligibility or income examination.

The final rule also clarifies disclosure of SSNs for new household members under age 6. Household members under 6 years of age who have been assigned SSNs must immediately disclose them. Members under age 6 who do not have assigned SSNs have 90 days to comply.⁸

In three situations, a 90-day extension of the compliance deadline may be available. For new household members under 6 years of age⁹ and participants admitted to a Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals,¹⁰ the processing entity "shall" grant an extension of 90 days in addition to the original 90-day compliance window available for each of these categories of participants if, in its discretion, it determines that the "failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant."¹¹ A processing entity "may" grant a 90-day extension in cases of impending termination of assistance or tenancy if it reaches a similar determination.¹²

pt. 5). For in-depth discussions of the changes and related advocacy issues, see the *Bulletin* articles cited in note 1.

⁷See NHLP, *HUD Reissues Social Security Number Rules*, 39 HOUS. L. BULL. 275 (Nov-Dec. 2009).

⁸December 29 Final Rule, 74 Fed. Reg. 68,933 (to be codified at 24 C.F.R. § 5.216(e)(2)(ii)(A)).

⁹*Id.* (to be codified at 24 C.F.R. § 5.216(e)(2)(ii)(B)).

¹⁰*Id.* (to be codified at 24 C.F.R. § 5.216(h)(2)).

¹¹*Id.* (to be codified at 24 C.F.R. §§ 5.216(e)(2)(ii)(B), 5.216(h)(2)).

¹²*Id.* (to be codified at 24 C.F.R. § 5.218(c)(2)). PHAs are instructed to terminate participants who do not comply within the prescribed time

Unfortunately, HUD did not make changes in response to some advocates' comments. To obtain the discretionary 90-day extension, the participant must demonstrate both that the circumstance was not reasonably foreseeable *and* that it was outside of the participant's control. Housing Justice Network members and others suggested that HUD require proof of one or the other of these circumstances, but not both. Many circumstances, after all, are beyond an individual's control and for that very reason are not reasonably foreseeable. Conversely, circumstances may be reasonably foreseeable but outside of the participant's control, such as where the processing occurs within a governmental bureaucracy. Advocates should certainly consider arguing this point if a participant is denied an extension.¹³

Finally, while not a change from the proposed rule, it should be noted that any participant who is issued a new SSN must disclose and document that number.¹⁴

On January 20, 2010, HUD issued a notice regarding implementation of the final rule. Among other issues, the notice addresses the following:

- Requirements of and processes for disclosure of applicant and participant SSNs.
- Allowable corroborating documentation.
- Verification of SSNs through computer data matching with SSA databases.
- The inapplicability of SSN requirements for persons not claiming lawful immigrant status.
- The generation of alternate identification for persons without SSNs.
- How applicants and participants who do not have SSNs but are eligible for them can obtain them.
- How PHAs should protect the confidentiality of SSNs.

Additionally, the notice identifies specific categories of persons who are and are not eligible for SSNs, some of whom are lawfully in the country.¹⁵

periods. According to the regulations, an applicant "may retain its place on the waiting list for the program but cannot become a participant until it can comply." *Id.* (to be codified at 24 C.F.R. § 5.216(h)(2)). HUD issued a notice contradicting this provision, stating that "[t]he PHA should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information." Guidance - Verification of Social Security Numbers (SSNs), Social Security (SS) and Supplemental Security Income (SSI) Benefits, PIH 2010-3 (Jan. 20, 2010).

¹³HUD provides the following examples of circumstances warranting the 90-day extension: "delayed processing of SSN application by SSA, natural disaster, fire, death in family, etc." PIH 2010-3 (emphasis added).

¹⁴December 29 Final Rule, 74 Fed. Reg. 68,933 (to be codified at 24 C.F.R. § 5.216(e)(1)(i)(C)). Persons qualifying under the age 62 exemption are also exempt from this provision. *Id.*

¹⁵Beyond the scope of this article, the notice also addresses third-party verification by PHAs of income and benefits through the Enterprise

Continuation of Benefits to Mixed Households

The pre-January 27, 2009 rules allowed for proration of assistance in direct proportion to the number of household members with eligible and ineligible immigration status.¹⁶ To enable households with mixed immigration status to continue to receive prorated assistance, the October 15 proposed rule and the December 29 final rule state that the new 24 C.F.R. § 5.216 “is inapplicable to individuals who do not contend eligible immigration status under subpart E of [part 5] (see § 5.508).”¹⁷ HUD takes the position that under this provision, “[i]ndividuals who do not contend legal immigration status for HUD subsidized housing may reside in HUD subsidized housing... as members of a family who contend and are confirmed to be U.S. citizens or have the legal immigration status required by the Housing and Community Development Act of 1980.”¹⁸ It would seem, therefore, that household members who do not contend eligible immigration status would not need to disclose a SSN and could continue to be part of the household.¹⁹

Notwithstanding HUD’s explanation²⁰ and the insertion of a clause exempting persons not contending eligible immigrant status from § 5.216,²¹ HUD did not alter the rules’ blanket requirement for SSN disclosure. Both the pre-January 27, 2009 language and the December 29 final rule state that SSNs and documentation are required from the applicant and “each member of the assistance applicant’s household.”²² Further, the December 29 final rule adds language to the penalty section stating that if a participant fails to meet the SSN disclosure, documentation and verification requirements, the processing entity must terminate the assistance or tenancy (or both) of a participant “and the participant’s household.”²³ No statement is made in either of these sections indicating that non-claimants are not, for this purpose, members of the assisted household. If it arises, advocates should argue that this apparent ambiguity does not exist and HUD should be taken at its word that mixed eligibility families are protected by the rule.

Income Verification (EIV) system and SSA computer database matching.

¹⁶24 C.F.R. §§ 5.508, 5.516, 5.518, 5.520 (2009).

¹⁷December 29 Final Rule, 74 Fed. Reg. 68,932 (to be codified at 24 C.F.R. § 5.216(a)). This language was not included in the January 27 final rule.

¹⁸*Id.* at 68,929.

¹⁹Thereby engaging the proration rules of § 5.508 et seq.

²⁰*Id.*

²¹*Id.* at 68,932.

²²24 C.F.R. § 5.216(a)(1)(i); December 29 Final Rule, 74 Fed. Reg. 68,932 (to be codified at 24 C.F.R. § 5.216(b)(1)).

²³December 29 Final Rule, 74 Fed. Reg. 68,933 (to be codified at 24 C.F.R. § 5.218(c)(1) and (3)).

Non-Citizen and Family Income Rules Rescinded

HUD’s January 27, 2009 final rule²⁴ revised not only part 5, subpart B of title 24 of the Code of Federal Regulations related to SSN disclosure and verification, but also subparts E and F,²⁵ which govern restrictions on assistance to non-citizens and family income, respectively. The supplementary information accompanying the October 15 proposed rule and December 29 final rule stated repeatedly that HUD intends to allow the pre-January 27 regulations to continue to be in effect for the non-citizen and family income provisions. There was, however, no reference to these sections in the text of the December 29 final rule. Several interim rules delayed the effective date of the January 27, 2009 final rule, but did not rescind it.²⁶ Happily, on January 27, 2010, HUD issued a final rule confirming that it has rescinded the revisions to the rules governing assistance to non-citizens and family income.²⁷ However, advocates should note that HUD has stated that it will revisit the rules on family income and has suggested that it may revisit the non-citizen eligibility question.²⁸

Conclusion

With a few exceptions, all applicants for assisted housing and participants therein will soon be required to provide their SSNs to the operating entity. Whether or when HUD revisits the noncitizen and income rules remains to be seen. ■

²⁴January 27 Final Rule, 74 Fed. Reg. 4,832.

²⁵24 C.F.R. §§ 5.508, 5.516, 5.518, 5.609.

²⁶Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Delay of Effective Date, 74 Fed. Reg. 13,339, 13,340 (Mar. 27, 2009) (“Through this final rule, HUD delays the effective date of the January 27, 2009, final rule until September 30, 2009.”); Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Delay of Effective Date, 74 Fed. Reg. 44,285, 44,286 (Aug. 28, 2009) (“HUD further delays the effective date of the January 27, 2009, final rule until January 31, 2010.”).

²⁷Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System; Withdrawal of Rescinded Regulatory Amendments, 75 Fed. Reg. 4,271 (Jan. 27, 2010). As stated in the January 27, 2010 final rule, “[t]he amendments to 24 CFR 5.508, 5.516, 5.518, 5.609 and 92.203 published at 74 FR 4832, January 27, 2009, which were delayed at 74 FR 13339, March 27, 2009, and further delayed at 74 FR 44285, August 28, 2009, are withdrawn effective January 31, 2010.”

²⁸As stated in the December 29 final rule, “HUD is aware of the need to address the issue of annual income and intends to address this issue.” December 29 Final Rule, 74 Fed. Reg. 68,925. “Given the sensitivity and significance of the issues involved, HUD has withdrawn these amendments Any changes to HUD’s noncitizen regulations are more appropriately undertaken by separate rulemaking that focuses exclusively on these policies and providing the public with additional opportunity to comment.” *Id.* at 68,929.