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Cover photo: Harborside Housing, East Chicago, IN. A 252-unit development preserved by the National Housing Trust using HUD-insured mortgage financing, low-income housing tax credits and Section 8 assistance. Photo courtesy National Housing Trust, a national organization formed to preserve multi-family affordable housing.

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PHAs Are Slow to Heed Earned Income Disregard Program

Introduction

Congress enacted the *Quality Housing and Work Responsibility Act of 1998*¹ (QHWRA) more than three years ago. It amended 42 U.S.C. § 1437a to include a new earned income disregard (EID) provision that HUD has made applicable to public housing residents since October 1, 1999.² The QHWRA version of the EID generally increases the categories of families that are eligible for the disregard and expands the period of time during which the disregard may be claimed. The statute is applicable to both Section 8 and public housing tenants, but implementing regulations are limited primarily to public housing and voucher recipients. The QHWRA income disregard provision is an update and expansion of similar legislation passed in 1990³ that was intended to assist public housing residents moving from welfare to work by limiting increases in their rent for 18 months when they secured employment or participated in an employment training program. HUD delayed almost four years before issuing the regulations to implement the 1990 requirement, and legal services providers soon ferreted out implementation problems with the public housing agencies (PHAs).⁴

Perhaps learning from its mistakes with the 1990 law, HUD published regulations for the new disregard for public housing residents in March 2000⁵ and published clarifying Frequently Asked Questions (FAQs) in early 2001.⁶ The regulations for disabled tenants of the voucher and a few other housing programs were published January 19, 2001, and became effective as of February 20, 2001.⁷ Once again, however, there is confusion among tenants, their advocates and PHAs

¹Title V of *Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, Fiscal 1999*, Pub. L. No. 105-276, 112 Stat. 2,461 (Oct. 21, 1998).

²The amendments are contained in Section 508(b) of the *Quality Housing and Work Responsibility Act of 1998*, 42 U.S.C. § 1437a(d)(West Supp. 2001), *supra* note 1.

³42 U.S.C. § 1437(a)(1998), as amended by Pub. L. No. 101-625, § 515(b), 104 Stat. 4199 (Nov. 28, 1990).

⁴For a detailed discussion of the prior legislation and the problems in implementation see *Earned Income Disregards for Public Housing Tenants*, 28 HOUS. L. BULL. 1 (January 1998). There is also more discussion of EIDs at our Web site at www.nhlp.org.

⁵Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs, 65 Fed. Reg. 16,692 (Mar. 29, 2000). Hereinafter all citations to the final rule will cite only to the section of the regulations; see 24 C.F.R. § 960.255 (2001).

⁶*HUD Frequently Asked Questions re: 65 Fed. Reg. 16,692* (Mar. 29, 2000), http://www.hud.gov/offices/pih/phr/about/ao_faq2.cfm, (hereinafter Questions or FAQs). For more in-depth discussion of the FAQs, see *Admission and Occupancy FAQs Answered by HUD*, 31 HOUS. L. BULL. 64 (March 2001).

⁷66 Fed. Reg. 6,223 (Jan. 19, 2001) as amended by 67 Fed. Reg. 6,820 (Feb. 13, 2002)(amendment effective Mar. 15, 2002). The EID for disabled families is only applicable to the HOME Investment Partnerships Program (24 C.F.R. part 92 (2001)), the Housing Opportunities for Persons with AIDS

with the program. Under the former income disregard, this confusion led to improper—or a complete lack of—implementation. It also led to litigation.⁸ In Connecticut, advocates also obtained statewide compliance with the prior income disregard, including retroactive benefits. The new disregard statute and regulations are showing signs of generating the same problems. Many tenants are not benefitting from the income disregards and, thus, are paying excess rent. Tenants incapable of maintaining their rent payments have been evicted or are under threat of losing their housing. Tenants who have been able to pay their rent are entitled to credit or a refund for the excess amounts they have paid due to inclusion of income in the rent calculation that should have been disregarded. Within the last few months, at least three jurisdictions have made, or are on the verge of making, significant progress in implementing the public housing EID. This article outlines current EID requirements and reviews the litigation and negotiation in four jurisdictions that have addressed the issue of tenants not receiving proper rent calculations under both the old and the new law.

The Statutory and Regulatory Scheme

Most tenant rents in federally assisted housing are calculated as a percentage of household income. Without an EID, tenants' rents rise as they move into employment and self-sufficiency, providing a disincentive for tenants to improve their own economic well-being. Congress enacted the new EID program to remove this disincentive for eligible families by excluding from rent calculations the increased income earned from employment.⁹ The statute provided for the program to assist both public housing tenants (as the prior EID program had) and Section 8 recipients.¹⁰ The provision for Section 8 recipients, however, was made subject to appropriations, which have yet to be made available.¹¹ The EID provisions have been implemented for public housing tenants and voucher recipients who are disabled.¹²

program (HOPWA)(24 C.F.R. part 574 (2001)), the Supportive Housing Program (24 C.F.R. part 583 (2001)), and the Housing Choice Voucher Program (24 C.F.R. part 982 (2001)). The disregard works virtually identically to the public housing disregard, but applies when a family member who is the actual person with the disability—as opposed to any family member—qualifies for the disregard. Hereinafter all citations to the rule will cite only to the section of the regulations; see 24 C.F.R. §5.615.

⁸See, e.g., *Watts v. Columbus Metropolitan Housing Authority*, No. 02-00145 (S.D. Ohio, filed February 2000; *Phillips v. Philadelphia Housing Authority*, No. 00-4275 (E.D. Pa., filed August 2000). Also, in Charlottesville, Virginia in 1999, the Charlottesville-Albemarle Legal Aid Society in conjunction with resident groups was able to secure the voluntary dismissal of 28 summonses and \$57,883 in refunds for tenants for whom the old EID was not properly applied. See *Enforcement of Income Disregard Provisions Yields \$58,000 in Benefits for Charlottesville Public Housing Residents*, 29 HOUS. L. BULL. 72 (April 1999).

⁹42 U.S.C. § 1437a(d)(West Supp. 2001).

¹⁰*Id.* § 1437a(d)(3)(A).

¹¹*Id.* § 1437a(d)(4)(West Supp. 2001). To date, no funds have been appropriated for non-disabled Section 8 recipients.

¹²24 C.F.R. §§ 960.255 and 5.619 (2001).

The mandatory EID provisions of the statute¹³ and regulations¹⁴ require PHAs and owners of certain other housing¹⁵ to exclude 100 percent of a family's increased income from earnings for a period of 12 months and 50 percent of the increased earned income for an additional 12-month period.¹⁶ A family qualifies for the income disregard if (1) the increased income is due to the employment of a family member who has been previously unemployed,¹⁷ (2) the family received welfare, including such benefits as one-time payments and transportation assistance, during the prior six months,¹⁸ or (3) the family's income increased during a family member's participation in a self-sufficiency or job-training program.¹⁹ Initially, the mandatory EID for the disabled was applicable only for "disabled families;" it was not available to a disabled individual living in a non-disabled family.²⁰ This provision was corrected and the EID is now available to any disabled individual participating in a covered program.²¹

Litigation and negotiation in four jurisdictions have addressed the issue of tenants not receiving proper rent calculations under both the old and the new law.

The EID is applicable only to the increased income due to earnings and is calculated on the basis of each individual family member's earnings. Thus, for a previously unemployed member of a household who did not have another source of income, all of that member's earned income would be excluded for a period of 12 months and 50 percent for an additional 12 months. For a family member who previously received welfare benefits or child support payments, the amount of income that would be excluded would be limited to the increase in income that is attributable to earnings. The

¹³42 U.S.C. § 1437a(d)(West Supp. 2001).

¹⁴24 C.F.R. §§ 960.255 and 5.617 (2001).

¹⁵The remainder of the article shall refer only to PHAs; the reader should take note that owners or managers would be subject to the same regulations and analysis in the case of HOME, HOPWA, and supportive housing. See *supra* note 7.

¹⁶*Id.*, §§ 960.255(b) and 5.617(c).

¹⁷*Id.*, §§ 960.255(a)(i) and 5.617(b)(1).

¹⁸*Id.*, §§ 960.255(a)(iii) and 5.617(b)(3).

¹⁹*Id.*, §§ 960.255(a)(ii) and 5.617(b)(2).

²⁰24 C.F.R. § 5.617(b)(2001). See 24 C.F.R. § 5.403 for definitions of "family," "disabled family," and "person with disabilities."

²¹67 Fed. Reg. 6,820 (Feb. 13, 2002)(amendment effective Mar. 15, 2002).

HUD FAQs document makes clear that any member of a tenant household may qualify for the EID, including minors who turn 18.²²

The new EID also contains a 48-month limit.²³ A tenant can receive only 12 months of 100 percent EID and only 12 months of 50 percent EID during a lifetime 48-month period from the time that the EID first goes into effect. Thus, if a tenant qualifies for the 100 percent EID for 10 months and then loses the job, the tenant is only eligible for another two months of the 100 percent EID, and those two months (as well as the additional 12 months of the 50 percent EID) must fall within the four-year limit.²⁴

Who Qualifies for the EID?

Previously Unemployed Household Members

A tenant qualifies for the EID if family income increases as a result of the employment of a family member who was “previously unemployed” for one or more years.²⁵ There is no other limit on the time that the tenant must have been unemployed prior to gaining work.²⁶ The definition of previously unemployed includes a person who has earned in the past 12 months no more than the equivalent of 500 hours at the greater of the federal or state minimum wage.²⁷ The federal minimum wage is currently \$5.15 per hour.²⁸ Thus, if the federal minimum wage is applicable, the earnings for the 12-month period cannot exceed \$2,575.²⁹

Family Receipt of Welfare Benefits

A household is entitled to the EID if the family’s earned income increases and if any member of the household currently receives or in the past six months has received welfare benefits.³⁰ Thus, to qualify for the EID under the welfare provision, the individual whose income increased does not have to be the one who received welfare benefits.³¹ Also, the tenant may qualify for the EID for increases in earned income while still receiving welfare assistance.³²

Welfare sanctions are a complicating issue with respect to the EID in determining the annual income of a family for rent calculation purposes and HUD has addressed this complication.³³ The fact that a tenant’s welfare income is reduced or

terminated due to work-related sanctions does not disqualify the family from the benefits of the EID if one of its members, including the sanctioned member, subsequently finds work.³⁴ However, if a tenant’s welfare benefits are reduced for fraud or noncompliance with economic self-sufficiency requirements, the “sanctioned” welfare income will continue to be included in family income for rent-setting purposes.³⁵ In other words, the tenant will not experience a reduction in rent due to the reduction in welfare precipitated by sanctions for fraud or noncompliance with the economic self-sufficiency requirements and will also not be penalized for responding to the sanction by obtaining work.³⁶

The fact that a tenant’s welfare income is reduced or terminated due to work-related sanctions does not disqualify the family from the benefits of the EID if one of its members, including the sanctioned member, subsequently finds work.

Covered Participant in Self-Sufficiency Programs

A household may also qualify for the EID if the household income increases due to increased earnings of a household member during that member’s participation in job training or an “economic self-sufficiency program.”³⁷ The definition for such programs includes any program designed to assist tenants in gaining their financial independence.³⁸ This encompasses a large number and a wide variety of programs, including, but not limited to job training, English proficiency, and substance-abuse programs.³⁹ It may also include enrollment in general non-vocational courses at a community college or training or activities at a sheltered workshop.⁴⁰ The increase in earnings to be disregarded may occur after the completion of the primary part of the training program, if the individual continues to receive some amount of training, mentoring, counseling or other assistance from the training program.⁴¹

²²HUD *Frequently Asked Questions*, *supra* note 6, Section II.C.Q2.

²³24 C.F.R. §§ 960.255(b)(3) 5.617(c)(3)(2001).

²⁴HUD *Frequently Asked Questions*, *supra* note 6, Section II.C.Q29.

²⁵24 C.F.R. § 960.255(a)(i)(2001); 42 U.S.C. § 1437a(d)(3)(B)(i)(2001).

²⁶*Id.*; HUD *Frequently Asked Questions*, *supra* note 6, Section II.C.Q6.

²⁷24 C.F.R. § 960.255(a)(2001).

²⁸*See* 29 U.S.C. §206(a)(1)(2001).

²⁹ The minimum wage in California is \$6.75 per hour; thus the 12-month earnings cannot exceed \$3,375. In Washington, D.C. the minimum wage is \$6.15 per hour, so the 12-month earnings cannot exceed \$3,075.

³⁰24 C.F.R. § 960.255(a)(iii)(2001); 42 U.S.C. § 1437a(d)(3)(B)(iii)(2001).

³¹HUD *Frequently Asked Questions*, *supra* note 6, Section II.C. Q20.

³²*Id.*, Section II.C. Q8.

³³24 C.F.R. § 5.615 (2001).

³⁴HUD *Frequently Asked Questions*, *supra* note 6, Section II.C.Q21.

³⁵24 C.F.R. § 5.615(b)(1)(2001).

³⁶*Id.* § 5.615(c)(2) requires that PHAs seek written verification of a welfare benefit reduction. If the welfare agency does provide verification in a “reasonable time,” the PHA must reduce the rent.

³⁷24 C.F.R. § 960.255(a)(ii)(2001); 42 U.S.C. § 1437a(d)(3)(B)(ii)(2001).

³⁸24 C.F.R. § 5.603(b)(2001)

³⁹HUD *Frequently Asked Questions*, *supra* note 6, Section II.C.Q5; *see* 24 C.F.R. § 5.603(b)(2001).

⁴⁰HUD *Frequently Asked Questions*, *supra* note 6, Section II.C. Q24 and Q25.

⁴¹65 Fed. Reg. 16,705 (Mar. 29, 2000).

EIDs and Income-Reporting Requirements

Not surprisingly, the EID intersects with income-reporting requirements. For example, a previously unemployed (for 12 months or longer) family member who becomes employed six months after having been recertified does not report the change in income until the next recertification six months later (because the PHA has no interim reporting requirements). By not reporting the income for six months, the family received the benefit of the disregard for six months prior to the recertification (because the PHA continued to base the family's rent on the income reported at the last recertification). Therefore, HUD concludes that the family would be entitled only to another six months of the 100 percent disregard of the increase in income. After that six-month period, the family would be entitled to a 50 percent disregard of the increase in income for another period of 12 months.⁴² Significantly, the result is the same regardless of the PHA's income reporting policies. Thus, tenants whose earned income increases should not be adversely affected for failing to report.⁴³ In other words, PHAs should not take punitive action against tenants for failing to report increases in income from earnings because the increases would be disregarded whether reported or not.

The date that the first 12-month period begins is when the rent increase would have gone into effect.⁴⁴ Thus, if the PHA implements rent increases on the first of the month following the increase in income or after a 60-day notice period, these policies should be taken into consideration in establishing the date that the first 12-month income disregard period begins. During the second 12-month period, when only 50 percent of the increased income is disregarded, the failure of the tenant to report an increase in income may result in a retroactive rent adjustment if the tenant is required to report the income change and failed to do so. The FAQs state that the "earning disregard is effective when the rent increase would otherwise have gone into effect."⁴⁵ Thus, it seems that in the second 12-month period, if the tenant's earned income increases and the tenant, contrary to the PHA's reporting and rent change policy, does not report that increase for six months, the tenant could be charged retroactively for rent based on 50 percent of the increase in earned income for the period during which the increase would have gone into effect. If, however, the PHA does not require reporting and/or a change in rent when there is an interim income increase, the tenant's rent for the second 12 months will not change until the next annual recertification.

Old vs. New Earned Income Disregard

HUD's FAQs deal with a number of questions regarding the relationship between the former EID and the newer EID.⁴⁶

The most important point is that a tenant's receipt of the benefits under the former EID does not preclude an eligible tenant from also receiving EID benefits under the new program that went into effect on October 1, 1999.⁴⁷ In addition, the eligibility requirements for the two EIDs are different. For example, under the new EID, a tenant may qualify for the disregard if income increases during a training program. For the old EID, the tenant could have qualified if the income increased only after completion of the training program.⁴⁸ If a family's rent was based on the former 18-month EID when the new policy went into effect on October 1, 1999, the former disregard remained in effect until the expiration of the original 18 months.⁴⁹ As noted previously, a tenant is eligible for the new EID during a 48-month period.⁵⁰ Receipt of the old, 18-month EID does not count against the four-year limit.⁵¹

The most important point is that a tenant's receipt of the benefits under the former EID does not preclude an eligible tenant from also receiving EID benefits under the new program that went into effect on October 1, 1999.

The EID and Child-Care Expense Deduction

When determining income for rent-setting purposes, a household may deduct from income certain child care expenses incurred in order to make it possible for the family member to work. A household member receiving the EID cannot use the disregarded income in calculating the limitation for the child care expense deduction. The child care expense deduction is capped at the amount of earned income that the PHA includes in the annual income determination.⁵² Thus, for example, a single head of household sole wage-earner whose only earned income is fully disregarded for the first 12 months of employment may not be able to deduct child care expenses since the amount of income used to determine the amount of allowable child care deduction would be zero.

⁴²*Id.*, Section II.C. Q4; see 24 C.F.R. §§ 960.255(a) 5.617(c)(2001).

⁴³*HUD Frequently Asked Questions, supra* note 6, Section II.C. Q16.

⁴⁴*Id.*, Section II.C. Q17.

⁴⁵*Id.*

⁴⁶Compare the earlier EID at former 24 C.F.R. § 5.609(c)(13)(1997) with the new EID at 24 C.F.R. § 960.255 (2001).

⁴⁷*HUD Frequently Asked Questions, supra* note 6, Section II.C. Q33.

⁴⁸See former 24 C.F.R. § 5.609(c)(13)(1997).

⁴⁹*HUD Frequently Asked Questions, supra* note 6, Section II.C. Q13.

⁵⁰24 C.F.R. § 960.255(b)(3)(2001).

⁵¹*HUD Frequently Asked Questions, supra* note 6, Section II.C. Q33.

⁵²*Id.*, Section II.C. Q32; see 24 C.F.R. §§ 5.603(b), 5.611(a)(4)(2001).

Individual Savings Accounts

PHAs are permitted to offer tenants who qualify for the mandatory EID the alternative of paying the full rent otherwise due and putting the rent overage in an individual savings account (ISA).⁵³ The regulations provide that amounts deposited in ISAs may be withdrawn only for the purpose of purchasing a home,⁵⁴ paying education costs of family members,⁵⁵ moving out of public or assisted housing,⁵⁶ or paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing.⁵⁷ However, in the case of a lease breach or if the family is evicted by the PHA, the housing authority may retain the amount of the savings equal to any amounts owed to the PHA.⁵⁸ Whether a PHA offers an ISA is at its discretion. The PHA must indicate its choice in the PHA Plan.⁵⁹

PHA Discretionary Income Disregards

PHAs may adopt discretionary policies of EIDs for public housing residents.⁶⁰ Such policies must be included in the PHA Annual Plan.⁶¹ PHAs may be reluctant to adopt discretionary EIDs because the Interim Operating Subsidy rule makes it clear that a PHA will not be reimbursed for any reductions in rent due to such discretionary EID policies.⁶² However, there may be other funds available to support a discretionary EID: PHAs may retain 50 percent of any increase in rental income and use such retained rent to fund an optional EID.⁶³ If the discretionary EID works as intended, it is possible that the rental income for the PHA may increase, thus creating more money to continue funding the disregard.

Earned Income Disregard Litigation and Negotiations

As the preceding discussion demonstrates, the mandatory EID regulations and procedures are complex. In order for PHAs to properly apply the statute and regulations, they need to carefully review changes in tenant families' incomes and analyze where new income is coming from. Depending upon a PHA's income reporting requirements, a PHA would be required to account for the disregard from the time the

income increases, rather than at recertification. It would also have to disregard all the increased earned income for 12 months, then only half the income for another 12 months, always bearing in mind that those 24 months could be spread out into many small segments over a 48-month period. Not surprisingly, many PHAs have not succeeded in properly implementing the program. Some have not even tried, forging ahead with evictions of public housing tenants for non-payment of rent that may well have been excessive had the mandatory EID been applied appropriately.

Because of the failure of the PHAs to implement the mandatory EID, residents in at least two jurisdictions have addressed the problem head-on with their public housing authorities: Columbus, Ohio and Philadelphia, Pennsylvania. Tenants filed suit against the local PHA in both cities.⁶⁴

The Columbus case has progressed the farthest. In *Watts v. Columbus Metropolitan Housing Authority*,⁶⁵ Ms. Watts, a public housing tenant, was the named plaintiff in a class action complaint against the Columbus Metropolitan Housing Authority (CMHA). The suit, filed in February 2000, asked for a declaratory judgment that CMHA's rent calculation procedures were in violation of the *National Housing Act*,⁶⁶ *The Family Support Act*,⁶⁷ HUD regulations,⁶⁸ and Section 1983.⁶⁹ It also sought an injunction against CMHA's rent increase policies and an order that CMHA recalculate tenants' rents. Lastly, it sought individual and class-wide damages to compensate for any rent improperly collected by CHMA.

Ms. Watts' particular situation was that she had participated in a job training and supportive services program, successfully completed the program, and gained employment in March 1998. When the PHA calculated Ms. Watts' rent in May 1998, it failed to disregard her increased income pursuant to the former law, and set her rent at \$243 per month. In fact, for the subsequent 18 months, Ms. Watts should have been at zero rent because all of her increased income should have been disregarded for rent determination purposes under the old law. When Ms. Watts failed to keep up her rent payments in September 1999, CMHA commenced eviction proceedings against her. The complaint alleged that Ms. Watts was just one of many tenants who were similarly situated.

In late 2001, the parties entered into a consent decree, and as of publication of this article, the parties were in the process of identifying class members—potentially in the thousands—and calculating refunds. The consent decree pro-

⁵³42 U.S.C. § 1437a (2001); 24 C.F.R. § 960.255(d)(2001).

⁵⁴24 C.F.R. § 960.255(d)(3)(i)(2001).

⁵⁵*Id.*, § 960.255(d)(3)(ii).

⁵⁶*Id.*, § 960.255(d)(3)(iii).

⁵⁷*Id.*, § 960.255(d)(3)(iv).

⁵⁸*Id.*, § 960.255(d)(6).

⁵⁹See HUD Form 50075, PHA Plan Template, ¶ 4A(1)(g).

⁶⁰See 42 U.S.C. § 1437a(b)(5)(B)(West Supp. 2001); see also 24 C.F.R. § 5.611 (2001).

⁶¹See PHA Plans Template (HUD 50075), paragraph 4A(1)d. (03/31/2002), available online at www.hud.gov/pih/pha/plans/phaps_templates.html.

⁶²66 Fed. Reg. 17,276 (Mar. 29, 2000).

⁶³24 C.F.R. §§ 990.109(b)(iii) and 990.116(a)(2001).

⁶⁴See also, *Earned Income Disregards for Public Housing Tenants*, 28 HOUS. L. BULL. 1 (Jan. 1998), *supra* note 4, and our Web site at www.nhlp.org, where there is detailed discussion of the old EID in litigation surrounding that program.

⁶⁵*Supra*, note 8. Ms. Watts is represented by J. Mark Finnegan, who started working on this case through the Equal Justice Foundation in Ohio. Mr. Finnegan welcomes inquiries about this case. He can be reached by contacting Vytas V. Vergeer at NHLP's D.C. office or at vvergeer@nhlp.org.

⁶⁶42 U.S.C. § 1437a (West 2001).

⁶⁷*Id.* § 1437g .

⁶⁸See former 24 C.F.R. § 5.609(c)(13)(1997).

⁶⁹42 U.S.C. § 1983 (West 2001).

vides for the protection of tenants who may have been overcharged for rent, including current tenants and those who may have already left public housing. All pending public housing evictions for non-payment of rent have been suspended. When CMHA chooses to go forward with a non-payment eviction, it notifies the original counsel for plaintiffs, the Equal Justice Foundation of Ohio (EJF). EJF then writes a letter to the tenant, alerting him or her to the potential EID issue. If the tenant consents, EJF reviews his or her file to check whether the rent was properly calculated under the EID provisions. The consent decree covers all tenants' rent calculations back to April 1, 1998, and tenants may receive a credit (if still in public housing) or a refund (if they have moved out of public housing) of up to \$4,000. For those who may have been wrongfully evicted because they failed to pay rent that was set too high, the consent decree sets up a special process. If the amount of damages alleged is less than \$3,000, the case will be addressed by a special master, who will determine the amount of damages, including compensatory damages. If the amount of damages alleged exceeds \$3,000, the tenant could opt out of the consent decree. Plaintiffs' counsel expects the entire process to be completed by early 2004.

Perhaps an even more important result of the litigation is that CMHA started to use computer-prompted questions in the rent calculation process.

This consent decree with CMHA addresses the many different situations that tenants may find themselves in after a PHA has failed to properly implement an EID. The tenants who have overpaid their rent yet remain in public housing get credit for the overpayments, those who left public housing get refunds, and those who were evicted get compensatory damages and refunds. Perhaps an even more important result of the litigation is that CMHA started to use computer-prompted questions in the rent calculation process. Thus, a case worker trying to assess whether or not a tenant qualifies for an EID is led through a series of questions that are aimed at eliciting the information necessary to make that determination. Effective use of this program should prevent the problem from recurring.

The Philadelphia litigation, *Phillips v. Philadelphia Housing Authority*,⁷⁰ was filed in August 2000. Ms. Phillips should have received EIDs under both the old and the new statute. Ms. Phillips received welfare assistance through September 1998. Then she was unemployed from October 1998 through May 1999, with no income. She then enrolled in a job-training

⁷⁰*Supra*, note 8. Ms. Phillips is represented by George Gould, of Community Legal Services, Inc., in Philadelphia, and may be reached through Vytas V. Vergeer at NHLP's D.C. office.

program, which garnered her approximately \$327 per month. The Philadelphia Housing Authority raised her rent from zero to \$98 per month in August 1999. Assuming no change in her income status under the old EID law, Ms. Phillips' rent should have remained at zero for the 18 months following May 1999—or through approximately November 2000. Ms. Phillips then got a job in February 2000, increasing her income, and resulting in the housing authority raising her rent to \$201 per month starting in May 2000. Again, had the housing authority properly applied either the old income disregard or the new one, Ms. Phillips' rent would have been set at zero for a period of time.

Plaintiffs filed a complaint based on substantially similar violations to those raised in *Watts*, and added additional causes of action under a third-party beneficiary claim for breach of the Annual Contributions Contract, a claim for violation of the lease, and a Section 1988⁷¹ claim for attorneys' fees. Plaintiffs asked for declaratory relief, class certification, an injunction, and compensatory and punitive damages. After initial settlement negotiations produced no result, the court certified the class on January 30, 2002, and the case is proceeding to trial.

In Washington, D.C., successful negotiation has eliminated, or at least indefinitely delayed, the need for litigation. In spring 2001 after extensive discussion with and the threat of a lawsuit against the D.C. Housing Authority (DCHA), the Legal Aid Society of the District of Columbia with the help of *pro bono* counsel was able to procure a number of positive resolutions regarding how the District will implement the EID. First, DCHA agreed to halt all non-payment public housing evictions until appropriate measures could be taken to address tenants' possible qualifications for a disregard. After cessation of such evictions for approximately two months, DCHA was able to establish an effective protocol for reviewing each tenant's file for income disregard issues. It also contracted with a private consulting firm to conduct a three-day management course for the relevant employees, further reflecting just how difficult understanding the implementation of these regulations and statute can be and how helpful computer-prompted questions could be. In November 2001, DCHA estimated that only 80 to 100 families had benefitted from the income disregard, with the families receiving credits or cash ranging from hundreds to thousands of dollars.⁷² There are 10,703 public housing units in D.C.⁷³ Thus, given that less than 1 percent of the residents have received any relief, it seems that full implementation of the program is still some ways off.

Cincinnati, Ohio has also gained results from their negotiations and threat of litigation with the Cincinnati Metropolitan Housing Authority (CMHA). The Legal Aid Society of Greater Cincinnati was able to get CMHA to agree to take a number of steps to improve implementation of the mandatory EID program. It engaged in extensive outreach with large, colorful

⁷¹42 U.S.C. § 1988 (West 2001).

⁷²This information was collected through an interview with Eric Angel, Legal Director at the Legal Aid Society of the District of Columbia, who can be reached by contacting Vytas V. Vergeer at NHLP's D.C. office.

⁷³See <http://pic.hud.gov/pic/RCRpublic/rcrstate.asp>.

posters about the EID posted around the developments and in the CMHA rental offices and its main office. It included a reduced version of the poster in each tenant's monthly rental statement. Additionally, CMHA froze the rent for 62 families while proper application of the EID could be determined. CMHA even agreed not to increase rent retroactively for any of those families whose rent should have been increased. The CMHA also agreed to give retroactive disregards for those families entitled to them, to update its computer software to properly track the disregards, and to employ outside trainers for its staff. Legal Aid conducted an agreed-upon survey of 30 randomly selected files after these improvements were implemented and found proper compliance with the EID rules.⁷⁴

Conclusion

The EID legislation—both the old and the new—was designed to eliminate disincentives to work for public housing tenants. It has the potential to help thousands of tenants improve their lives and to actually garner more rent for public housing agencies in the long run as more tenants become employed and increase their earning potential. As of January 31, 2002, 14 percent of more than 1.2 million public housing households were receiving welfare; another 6 percent had no income whatsoever.⁷⁵ These 240,000 tenants all stand to benefit immensely from EID programs as they move from welfare or unemployment to work. These programs encourage welfare recipients who are moving to work, but unfortunately are extremely complex to administer. HUD seems to have recognized at least some of the problem, as EIDs and other rent calculation difficulties may be addressed through the Rental Housing Integrity Improvement Program (RHIP).⁷⁶ RHIP's primary goal is to improve the accuracy of rent calculation, and one mechanism by which it may do this is through simplification of the income determination process, which may well include simplified EID provisions. Ideally, RHIP will assist in making EIDs useful for tenants without the complications the program currently entails, and advocates should continue to work to influence the RHIP process.

At the local level, legal services providers need to assess their public housing authority's compliance with the EID statute and consider what steps to take in response to any improper or lack of implementation. Whether that entails encouraging training for relevant public housing personnel, education programs for tenants, improved technology, negotiated resolution of the issue, or class action litigation is something that the tenants and their advocates will have to decide on a case-by-case basis.⁷⁷ ■

⁷⁴The information in the preceding paragraph was obtained from OSLSA REPORTS, Oct./Nov. 2000, pg. 9.

⁷⁵See <http://pic.hud.gov/pic/RCRPublic/rcrmain.asp>.

⁷⁶For an in-depth discussion of RHIP, see *HUD Proposes Another Initiative to Improve the Income Verification and Rent Determination Process*, 31 HOUS. L. BULL. 202 (Sept. 2001).

⁷⁷Next month's issue of the Housing Law Bulletin will include an article on the steps that advocates can and should take to determine whether their local PHA has implemented the EID and is applying it correctly and steps that can be taken to ensure compliance with the program.

Responding to Congressional Directive to Protect Victims of Domestic Violence

Introduction

Domestic violence is a problem that disproportionately affects low-income women.¹ It is a terrifying reality and the effects of domestic violence are severe.² Victims are battered physically, may be prevented from seeking or maintaining their employment, or may lose their good credit. Further, the abuse often isolates the victims from friends, family and the community at large. Accessing and maintaining housing is a particularly critical problem confronting victims who are seeking to end the cycle of violence.³

Congress has recognized in recent years that families subject to domestic violence have unique needs that should be addressed by those administering the federal housing programs. When Congress eliminated the federal preferences in 1998, it stated that:

It is the sense of Congress that, each public housing agency involved in the selection of eligible families for assistance under the United States Housing Act of 1937 (including residency in public housing and tenant-based assistance under section 8 of such Act) should, consistent with the public housing agency plan of the agency, consider preferences for individuals who are victims of domestic violence.⁴

More recently, the Conference Committee Report accompanying the Department of Housing and Urban Development (HUD) appropriations legislation for Fiscal Year 2002 "direct[ed] HUD to work with PHAs to develop plans to protect victims of domestic violence from being discriminated against in receiving or maintaining public housing because of their victimization."⁵

HUD has recognized, to a limited extent, that victims of domestic violence have unique needs. For example, under the now-repealed federal preference regulations, individuals and

¹Callie Marie Rennison and Sarah Welchans, *Intimate Partner Violence*, (May 2000, U.S. Department of Justice, Bureau of Justice Statistics Special Report) NCJ 178247 (Revised on 7/17/2000), available at www.usdoj.gov.

²*United States Dept. of Hous. Urb. Dev., et al. v. Rucker, et al.*, Nos 00-1770/00-1781, Brief of Amici Curiae of the National Network to End Domestic Violence, et. al., in Support of Respondents (Dec. 20, 2001), pg. 3, 2001 WL 1,663,790.

³Reif, Susan A. and Lisa J. Krisher, *Subsidized Housing and the Unique Needs of Domestic Violence Victims*, 34 CLEARINGHOUSE REV. 20, 21 (May/June 2000).

⁴Pub. L. No. 276-105, 112 Stat. 2,518, 2,548 (1998), § 514(e) codified at 42 U.S.C.A. § 1437f note (West Supp. 2001); 24 C.F.R. §§ 982.207(b)(4)(Voucher) and 960.206(b)(4) Public Housing(2001).

⁵H.R. Conf. Rpt. 272, 107 Cong. 1st Sess. 120 (Nov. 6, 2001).