

Advocates also urged HUD to set forth, for subsidized tenants in particular,⁷ a process whereby tenants could contest a determination by the POA that there was an income discrepancy. In the letters that were sent to each subsidized tenant who had an identified income discrepancy, HUD included a statement that “[i]f you believe that you have been treated unfairly, you may call your local HUD Office of Housing for further clarification of your rights and responsibilities, and, if you desire, HUD will review the process and your manager’s decision before any final action is taken.”⁸ To date HUD has declined to go beyond that wording but did agree to conform the *Guide* to the above statement.⁹ HUD also made available a list of HUD staff who are the designated individuals at the local HUD field offices to deal with issues as they arise in the CMIV program and who will answer tenant questions.¹⁰

HUD agreed that the earned income disregard which was in effect for public housing tenants for the 1998 Calendar Year would be referenced in Appendix H of the *Guide*. In the interim, the HUD Web page for the CMIV provides a link to the two key HUD notices on the earned income deduction which was in effect for 1998.¹¹

HUD appears to be waffling on the critical issue of retroactive adjustments for income discrepancies identified for Calendar Year 1999. Initially, HUD officials stated that retroactive adjustments would not be required or encouraged for Calendar Year 1999. But now the same officials are stating that the decision on the collection of retroactive rent for discrepancies identified for Calendar Year 1999 will be made in the first quarter of 2001.¹²

With respect to implementing a program to identify and notify tenants for whom a discrepancy appears to indicate that the tenant may have paid excessive rents, HUD is reportedly conducting a pilot program to evaluate two methods of identifying such tenants.¹³ In the interim, HUD postponed the implementation date and now appears to be advocating that the match begin with income reported in 1999 and forward, not 1998 and forward as previously discussed. Finally, with respect to the letter to all tenants explaining the exclusions and deductions from income, HUD is moving slowly on this issue. HUD has not committed to a timetable for the release of such a letter. ■

⁷Public housing and tenant-based Section 8 tenants may contest any rent determination through the public housing grievance procedure (24 C.F.R. § 966.50-.57 (2000) or the Section 8 informal hearing (24 C.F.R. § 982.555 (2000)).

⁸The language is slightly different for public housing residents.

⁹Enclosure to letter from Saul N. Ramirez, Jr., HUD Deputy Secretary, to Catherine Bishop, NHLP (Nov. 13, 2000) (as of December 15, 2000, the *Guide* has not yet been amended).

¹⁰The list of HUD personnel is available from NHLP.

¹¹See HUD Notice PIH 98-2 (HA) -Treatment of Income Received from Training Programs (Jan. 12, 1998); HUD Notice PIH 98-56 (HA)—*Treatment of Income Received from Training Programs—Housing Authority Responsibilities* (Nov. 20, 1998). To date, however, Appendix H of the *Guide* has not been amended.

¹²HUD Response to the National Alliance of HUD Tenants October 10th Letter.

¹³*Id.*

UNIVERSITY OF CALIFORNIA PUBLISHES CASE STUDY REPORT ON RESIDENT PARTICIPATION IN MULTIFAMILY PRESERVATION

In September of this year, the University of California Center for Cooperatives published a case study of resident participation in nonprofit buy-outs of Section 8 multifamily projects. The report, *Resident Participation In HUD Affordable Housing Preservation Projects: What Works?*¹ by Deb Goldberg Grey, examined six California projects² that each went through the buy-out process between 1992 and 1996 through HUD’s Title 2 or Title 6 programs.

The Benefits of and Challenges to Resident Participation

The report emphasizes the important benefits afforded by resident control and participation: more effective project management, the protection of residents’ interests, the strengthening of community and social ties within project sites, and the personal development and empowerment of residents. Along with these benefits, the report explains that an analysis of the six buy-outs identified three principal challenges to resident participation. These challenges include: “[c]omplying with HUD regulations; o]perating in a multi-lingual, multi-cultural environment[; and t]he need for capacity-building for low-skilled groups.”³

Recommendations

To address these challenges and to realize the benefits of resident participation more fully, the report makes three general recommendations: maintenance of a system of checks and balances; the institutionalization of resident training and outreach; and greater recognition by HUD of resident organizations as legitimate partners in the preservation process.⁴

¹Available at cooperatives.ucdavis.edu/publications/housing.html. Funding of the research for the report was provided by the California Department of Housing and Community Development.

²The six projects are: Foothill Plaza, Sacramento; Glen Ridge Apartments, San Francisco; Astoria Gardens, Sylmar; Su Casa Por Cortez, Encinitas; Turnagain Arms, Fallbrook; Cedar Gardens, Fresno. See *Id.* at 1.

³*Id.* at 2.

⁴See *Id.* at 2. The three recommendations made in the report do not precisely correspond to the three challenges the report identifies. While recommendations for checks and balances and training and outreach address concerns about regulatory compliance and the need for resident capacity building, issues relating to linguistic and cultural diversity are not as squarely addressed. In addition, it is not immediately obvious how the report’s call for greater recognition of resident organizations by HUD, while valuable, will allow the challenges to be met.

Checks and Balances

Because of the regulatory and logistical complexity of managing a project, the report recommends the institution of a system of checks and balances. While the exact features of this system are not specified, the report recommends an "annual social audit," ideally to be performed by an outside tenant education group.⁵

Institutionalization of Resident Training and Outreach

The report notes that the assistance and support provided to residents tends to diminish after the conversion of a project to resident control. It recommends on-going organizing and education of residents through structured resident orientation programs, mandatory trainings for board members, and greater opportunities for residents to learn from and with their peers in other properties.⁶ The report also calls for the development of sustainable funding for assistance to resident-controlled properties.

Recognition by HUD of Residents as Legitimate Partners

In a plainly worded discussion, the report states that "HUD's LIHPRHA and ELIHPA programs allowed and encouraged resident groups to take control of their own housing. However, in practice, residents were not only discouraged, but also opposed by [HUD] field office personnel. Ongoing relationships with resident-controlled properties are inconsistent, depending on the asset manager involved."⁷ It recommends greater oversight of asset managers in local field offices and suggests that *HUD Community Builders* could serve this role.

Best Practices and Future Needs

The report concludes with a survey of best practices and a description of future needs in supporting resident participation. Four California-based initiatives and one Massachusetts effort are identified as best practices that promote both resident participation and long-term sustainability of projects.⁸ In its discussion of future needs, the report acknowledges the difficulties of resident control in LIHTC properties, calls for greater recognition of the value of resident participation in HUD policy, and recommends HUD funding to support resident participation.⁹ ■

⁵*Id.* at 28-9.

⁶*Id.* at 30.

⁷*Id.* at 30-1. This situation of asset manager opposition to resident control, described as "untenable," is not listed among the principal challenges identified in the opening pages of the report. *Id.* at 31.

⁸*See Id.* at 32-7. (Sacramento Mutual Housing Association; Anti-Displacement Project, Springfield, MA; Los Angeles Countywide Alliance of HUD Tenants; San Diego Countywide Alliance of Tenants; and San Francisco Redevelopment Agency, Housing Preservation Program).

⁹*See Id.* at 38-40.

NEW FAIR HOUSING LEGISLATION IN CALIFORNIA PROMOTES NEEDS OF SENIORS AND ERADICATION OF EXISTING DISCRIMINATORY RESTRICTIVE COVENANTS

Two recent changes to fair housing statutes in California further reasonable accommodations for senior residents and strengthen anti-discrimination homeownership laws. Senate Bill (SB) 2011 (Escutia) provides increased occupancy rights for health providers and disabled children and grandchildren of residents in senior housing. The second legislative action, Assembly Bill (AB) 1493 (Nakano), implements new procedural requirements that should eradicate discriminatory restrictive covenants in documents governing real property ownership. Low-income housing advocates may want to consider these new laws when promoting similar fair housing legislation in their communities.

Protecting Family and Caregiver Needs in Senior Housing

Many residents of senior housing are threatened with eviction because of the residency of unqualified non-senior family members or caregivers in their units. Currently, residency in California senior developments is limited to seniors only; all other residents of the units must be "qualified permanent residents." Under the current definition, "qualified permanent resident" includes an adult dependent child with a permanent physical or mental impairment. In addition, under current law, a non-senior cohabitant must be married to the senior resident to become a qualified permanent resident. Health care providers are allowed only if the provider is hired to provide live-in, long-term, or terminal health care to a senior resident.

SB 2011, which was signed into law on September 29, 2000, provides broader definitions to permit non-senior occupants in senior units. Effective January 1, 2001, the definition of "qualified permanent resident" will be expanded to include "a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or qualified permanent resident . . . who needs to live with the senior citizen or qualified permanent resident because of a disabling condition, illness, or injury."¹ The non-senior resident may remain in the unit for up to one year after such time as the disabling condition ends. In addition, the definition of "cohabitant" was also expanded to include domestic partners as well as married couples.

¹Cal. Civil Code § 51.3(b)(3) [emphasis added].