

can still terminate the tenancy upon ninety days' notice to the Section 8 tenant.¹⁰

Advocates can begin implementing the new protections by sending copies of the law and summaries of its provisions to owners, managers, public housing authorities, judges and tenants.¹¹ ■

¹⁰§ 703.

¹¹NHLP has developed a variety of sample documents for use by advocates, which are available at <http://nlihc.org/template/page.cfm?id=227>.

NHLP Institutes Neighborhood Stabilization Initiative

The National Housing Law Project (NHLP) is pleased to announce the launch of its *Neighborhood Stabilization Initiative*. Under this initiative, NHLP is expanding its training, technical assistance and policy development services in three areas:

1. *Using Neighborhood Stabilization Funds to Create Affordable Housing Opportunities.* NHLP will collaborate with advocates, community development agencies and local governments to encourage communities to use federal Neighborhood Stabilization Program (NSP) funds for increasing long-term affordable housing options.
2. *Using Neighborhood Stabilization Funds to Maximize Employment Opportunities.* NHLP seeks to work with advocates, community development agencies and local governments to promote the use of NSP funds for the creation of economic opportunities for low-income residents under HUD's Section 3 program.
3. *Protecting Tenants in Foreclosed Properties.* NHLP will partner with advocates, local governments and community-based organizations to identify strategies and model policies for preventing displacement of tenants in foreclosed properties.

NHLP recognizes that many organizations are already engaged in groundbreaking work on these issues, while others are new to these areas. Please let us know how we can best support you, how you have addressed these issues locally, and how we can partner with you to launch this work in your communities. For more information, contact Meliah Schultzman, mschultzman@nhlp.org or (510) 251-9400 x3116.

Administration Releases More Detailed Proposed FY 2010 HUD Budget

Following up on his February budget overview, on May 7, 2009, President Obama released his detailed Fiscal Year (FY) 2010 funding request for federal programs, seeking an overall increase of approximately 7% for Department of Housing and Urban Development (HUD) programs compared to FY 2009 funding levels. HUD Secretary Shaun Donovan provided a walk-through of the HUD highlights in a same-day webcast,¹ emphasizing "a renewed commitment to core [HUD] programs" and funding levels for rental housing programs that demonstrate a "rock-solid commitment to preserving public and assisted housing" and a "new era of housing and community development." Recognizing that "HUD has to be a different kind of partner, a different kind of agency," he stated that the nation would see the beginnings of transformation in this FY 2010 budget.

Notable among the budget details is increased funding for two major rental housing programs—Housing Choice Vouchers and project-based Section 8 assistance as well as \$1 billion for the newly created National Affordable Housing Trust Fund. More funds for formula grants under the Community Development Block Grant program would be provided, as would funding for several major new initiatives intended primarily to revitalize high-poverty communities. Most other programs would receive level funding or modest increases compared to FY 2009. However, despite the deep recession and growing needs for affordable housing among very low-income families, the budget seeks no funding to expand significantly the number of families receiving federally funded rental assistance.

Housing Choice Vouchers

The Budget requests \$17.84 billion for Housing Choice Vouchers, covering both renewals and administrative fees, a \$1 billion increase over the FY 2009 level.² HUD projects that the FY 2010 request seeks enough funding to renew all existing Housing Choice Vouchers, including the new tenant protection and other incremental vouchers funded

¹In addition to the May 7 webcast, other sources for this article include HUDs' Budget documents (summary at <http://www.hud.gov/budgetsummary2010/fy10budget.pdf>, more detailed Appendix at <http://www.whitehouse.gov/omb/budget/fy2010/assets/hud.pdf>, and summaries prepared by the National Low Income Housing Coalition (Budget Chart at <http://www.nlihc.org/doc/FY10-presidents-request33.pdf>) and the Center on Budget and Policy Priorities (www.cbpp.org).

²The net funding increase may be even higher, since FY 2009 also included a rescission of \$750 million in previously appropriated but unexpended funds, usually held in PHA reserves, and such a rescission is not proposed this year.

in FY 2009, covering at least 116,000 more vouchers than were supported in FY 2008. Some of these might simply be renewed tenant protection vouchers issued during FY 2009 and thus may not represent a real increase. However, the flexibility permitted under the proposed revisions to the voucher renewal funding formula that would encourage more efficient use of reserve funds (discussed *infra*) could increase the number of vouchers. In total, this funding should serve more than 2.1 million families nationwide. In addition, the Budget proposes to lift the cap on the number of vouchers each agency can issue. In combination, if the Budget for vouchers is adopted, by the end of 2010 more than 2.1 million families will receive vouchers, more than ever before.

HUD proposes to pursue a number of reforms to improve the operation of the voucher program, including legislative changes to facilitate full utilization of available funding, reduce administrative burdens on PHAs, and establish a predictable funding mechanism capable of serving more eligible families. More families could be served by, among other things, eliminating the cap imposed by recent appropriations bills on the number of families in each PHA's program. Also proposed are regulatory reforms to improve administration of Housing Quality Standard inspections and performance, as well as the overall Section 8 Management Assessment Program, and to develop an improved formula to allocate administrative fees based on efficient management.

HUD proposes three changes to the voucher renewal funding formula that should prove extremely important for program stability. Many of these changes are similar to those contained in the more extensive roster of improvements in the Section 8 Voucher Reform Act, soon to be reintroduced in House for the 111th Congress. First, the formula would switch from the current system of using leasing and cost data during the fiscal year ending September 30 to one using data from the calendar year. The net effect would be to base renewal funding on more recent cost information, permitting renewal funding to be allocated more accurately. Second, the proposed formula would eliminate the prohibition against PHA's "overleasing," the practice of funding more vouchers than authorized. By permitting more flexibility concerning the number of vouchers in use, subject to the overall available funding, PHAs with available funding may use it to maximize the number of assisted families, rather than needlessly contracting leasing to avoid exceeding the cap.

A third major change to the renewal funding formula would cover the offset and reallocation mechanism, which is intended to prevent PHAs from sitting on unused funds in their reserves while needy families go unserved. Under the proposal, HUD could reduce a PHA's renewal funding if its reserve balances exceed two weeks of funding (3.85%). The big change in this proposal is that HUD could then retain the offset funds within the voucher program by reallocating them to other PHAs to meet renewal needs

or to serve more families, rather than returning them to the Treasury, as was required by legislative rescissions over the past two fiscal years.

The Budget also proposes a modest increase in voucher administrative expenses. However, only \$103 million, fully 30% less than prior years, is proposed for new tenant protection vouchers provided to replace lost hard units of public or assisted housing. It is unclear whether this reduced request stems from better data about needs and projected usage, or reflects estimated savings from improved preservation policies. As in the past two years, tenant protection vouchers would replace all units that have been occupied at any time during the twenty-four months prior to the demolition approval or other conversion action.

Project-Based Section 8

Secretary Donovan has established full renewal funding for project-based Section 8 contracts as an agency priority, pushing hard for including \$2 billion of additional funding to cover the prior shortfall in the February stimulus package. HUD's FY 2010 request of \$8.1 billion, \$7.9 billion for renewals and the rest for contract administrators, will apparently provide for a full twelve months of funding for renewal of every expiring contract with a willing owner. Of this amount, \$400 million would be an advance appropriation for FY 2011, only available for contracts expiring after September 30, 2010, which would not count against this year's FY 2010 budget cap.

Of this amount, the Budget also requests a line item for HUD to spend up to \$10 million for tenant resources, information and outreach grants to build the capacity of tenant organizations whose homes face restructuring, renewal or conversion, as authorized by Section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997.³ Until about five years ago, HUD's tenant outreach program had provided funding for assistance to tenant groups to permit informed participation in decisions about their homes, and this budget request would enable that outreach and organizing effort to restart.

National Housing Trust Fund

As promised, the Budget proposes first-time funding to capitalize the National Housing Trust Fund, created by the July 2008 Housing and Economic Recovery Act, to provide more affordable housing for very low- and extremely low-income families. Because this \$1 billion request is subject to PAYGO, an internal procedure adopted by the House to ensure that additional mandatory spending be paid for up front, it must be approved by authorizing legislation and Congress must either raise the revenue or find an offsetting reduction in mandatory spending elsewhere in the federal budget.

³Codified at 42 U.S.C. § 1437f note ("Multifamily Housing Assistance").

Public Housing Operating and Capital Funds

In stark contrast with past Administrations, the President requests a slight increase (3.3%) in public housing operating funds, to a level of \$4.6 billion, allegedly enough for full 100% funding of the operating subsidy system. The Secretary has committed to full funding, and vowed to work with Congress to adjust the funding level if needed to cover an increase in operating subsidy needs due to decreases in tenant incomes and rents in this faltering economy, which are not offset by reductions in other expenses.

The FY 2010 budget would slightly reduce public housing capital funds by \$206 million to the \$2.24 billion level, a cut that HUD believes was mitigated by the \$4 billion capital fund infusion included in the February economic stimulus package.

The public housing request includes nothing for the HOPE VI and Resident Opportunity and Supportive Services programs, the purposes of which would be subsumed by a new "Choice Neighborhoods Initiative," described below.

Choice Neighborhoods Initiative

The Budget requests \$250 million for a new "Choice Neighborhoods Initiative," reaching beyond public housing to fund the preservation, rehabilitation and transformation of both public and other HUD-assisted housing. Proposed funding substantially exceeds that recently provided for the HOPE VI Public Housing Revitalization program (\$120 million in FY 2009). The stated goal of these competitive grants would be to revitalize high-poverty neighborhoods into sustainable mixed-income neighborhoods with appropriate services, schools, public assets, transportation and job opportunities, using preferences for areas engaged in school reform or early childhood intervention activities. Public housing agencies, local governments, nonprofits and for-profit developers could seek funding for resident and community services, community development and affordable housing activities. As a new initiative departing from existing legislative authorizations, the Administration plans to prepare and submit authorizing language with more operational details.

Community Development Block Grants

The FY 2010 Budget would significantly increase funding for Community Development Block Grants while also revising the allocation formula and creating new set-asides within the program. CDBG would receive \$4.45 billion in total, with \$4.19 in formula grants, both figures fully \$550 million over the FY 2009 level. The increase is intended primarily to protect communities from funding reductions that would otherwise occur under the new formula. Although the Budget contains no details on the revised formula, it states that the changes will improve

targeting of funds to communities with the greatest economic need. Three new initiatives are proposed to receive funding set-asides within the overall CDBG total: a Sustainable Communities Initiative (\$150 million), a Rural Innovation Fund (\$25 million) and a University Community Fund (\$25 million).

The largest of these efforts, the Sustainable Communities Initiative, would provide grants to integrate transportation and housing planning decisions in order to foster more sustainable development patterns that provide transit-accessible housing choices and lower transportation costs, while reducing emissions. Of the \$150 million, \$100 million would fund a regional planning effort jointly administered by HUD and the Department of Transportation (DOT), and \$40 million would provide challenge grants to encourage changes to local planning and land use rules and local building codes. The balance would fund research and evaluation jointly administered by HUD and DOT.

Homeless Assistance

The Budget request for HUD's homeless assistance programs would increase by \$117 million to \$1.8 billion. The Secretary stated that HUD will continue to emphasize homelessness prevention and rapid re-housing in its homeless assistance programs.

Other Housing Programs and Initiatives

The Budget requests only level funding (at FY 2009 levels) for formula grants under the HOME program (\$1.825 billion), as well as for Section 202 Supportive Housing for the Elderly (\$765 million), Section 811 Supportive Housing for Persons with Disabilities (\$250 million) and Housing Opportunities for Persons With AIDS (HOPWA) (\$310 million).

Native American and Native Hawaiian Housing block grants would also be level-funded at \$645 and \$10 million, respectively, as would the Healthy Homes and Lead Hazard Control programs (at \$140 million).

Both the Fair Housing Assistance program and the Fair Housing Initiatives program would receive increases, but the latter would be dramatically expanded from \$28 million to \$42 million, fully 50% higher.

Funding for Housing Counseling would also be increased by 50%, from \$65 million to \$100 million, to combat mortgage fraud and predatory lending.

The Budget also proposes a \$100 million Energy Innovation Fund to promote activities that would make both HUD-assisted rental and single-family housing more energy-efficient, including ways to integrate improved energy efficiency with home buying or refinancing.

Finally, the Administration proposes a Transformation Initiative that would utilize up to 1% of the HUD funding requested for each HUD program to modernize HUD's

research, evaluation, technology and technical assistance functions. Funding this Initiative could thus reduce funding below needed levels in the short run, before the benefits of any cost-effective improvements are realized.

Conclusion

When combined with the substantial additional investments of more than \$13 billion in affordable housing programs from the Economic Recovery Act, the President's FY 2010 Budget represents a renewed commitment to affordable housing for low-income families nationwide. Congress will now begin its deliberations concerning these requests in the appropriations process commencing in late May and early June, with enactment of final funding levels scheduled for September, before the new fiscal year begins October 1. ■

State Appellate Court Recognizes Bankruptcy as Public Housing Eviction Defense*

In *Housing Authority of New Orleans v. Eason*, a Louisiana court of appeal recently held that § 525(a) of the federal Bankruptcy Code prohibited a housing authority from evicting a bankrupt tenant solely for failure to pay discharged pre-bankruptcy rent.¹ The court also held that § 525(a) is an affirmative defense in a state court eviction lawsuit. *Eason* is the first published state appellate decision that enforces § 525(a) to protect a public housing tenant from eviction.² At the federal level, the only appellate ruling on this issue has also held that § 525(a) may bar eviction for nonpayment of rent.³

Background

Section 525 of the Bankruptcy Code⁴ entitled "Protection against discriminatory treatment" prohibits certain acts or discrimination by "government units," including public housing authorities. However, the title of § 525 is somewhat of a misnomer, since § 525(a) is also violated if the proximate cause for denial of a "license, permit, charter, franchise, or other similar grant" is the failure to pay a debt dischargeable or discharged in bankruptcy. Thus, a debtor does not have to prove discrimination to prevail on a § 525(a) "discrimination" claim or defense.⁵ Although pre-petition rent owed to a housing authority is generally dischargeable in bankruptcy, absent a recognized exception to discharge such as fraud, the bankruptcy courts have been divided as to whether § 525(a) may bar a public housing eviction.⁶

The housing authority sued to evict Eason for failure to pay nine months of rent. One day before the eviction trial, Eason filed a Chapter 7 bankruptcy, which listed the rent owed to the authority as an unsecured, non-priority

*The author of this article is Mark Moreau of Southeast Louisiana Legal Services."

¹*Housing Authority of New Orleans v. Eason*, ___So.2d ___, 2009 WL 553303, 2008-0525 (La. App., March 4, 2009), rehearing denied (La. App. 4th Cir, April 2, 2009).

²Several other courts have held that state courts have jurisdiction to hear and decide § 525 claims. See e.g., *In re Morrow*, 189 B.R. 793, 804 (Bankr. C.D. Cal. 1995). Lifting the bankruptcy stay frees the parties to litigate their substantive claims in state court. *In re Roberts*, 367 B.R. 677, 686 (Bankr. D. Colo. 2007).

³*In re Stoltz*, 315 F.3d 80 (2d Cir. 2002).

⁴11 U.S.C. § 525.

⁵*Federal Communications Comm'n v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 301-02 (2003).

⁶See *In re Stoltz*, 315 F.3d at 87-88. See also Appellant's Brief in *Housing Authority of New Orleans v. Eason*, 2008 WL 2477931 (May 23, 2008). Many of the prior rationales for denying § 525(a) relief are no longer valid after the Supreme Court's decision in *Federal Communications Comm'n v. Next Wave Personal Communications, Inc.*, 537 U.S. 293 (2003).