

relevance to future litigation, before proceeding with foreclosure, servicers must certify to their local foreclosure counsel that HAMP has been complied with.⁴⁸ This pre-foreclosure documentation requirement presents an opportunity for discovery requests and, potentially, Fair Debt Collection Practices Act claims against local “foreclosure mills.”

The new directives should also bolster the use of HAMP noncompliance as a defense to foreclosure. Under these directives, foreclosure actions must be frozen completely once a borrower enters a trial period plan. Once the court has halted sale pending proof of the outcome of the trial period, it can use the newly required documentation to measure compliance.

Undoubtedly, advocates will have to educate the judiciary to ensure that compliance with the new directives is meaningful. The trend is clear, however: HAMP noncompliance presents a meaningful defense to foreclosure for homeowners. By working together to build authority for reference and citation,⁴⁹ advocates can build judicial knowledge and create enforcement momentum, aiding homeowners well beyond those they are able to represent. ■

well-documented servicer system notes or in loan files for all HAMP activities addressed in this Supplemental Directive.”

⁴⁸“Servicers must develop and implement written procedures applicable to all loans that are potentially eligible for HAMP . . . that require the servicer to provide to the foreclosure attorney/trustee a written certification that (i) one of the five circumstances under the ‘Prohibition on Referral and Sale’ section of this Supplemental Directive exists, and (ii) all other available loss mitigation alternatives have been exhausted and a non-foreclosure outcome could not be reached. This certification must be provided no sooner than seven business days prior to the scheduled foreclosure sale date (the Deadline) or any extension thereof.” *Id.* at 7.

⁴⁹To help build this momentum, please email authors (see email addresses *supra* note 1) with any new pleadings or decisions.

NHLP Testifies on Public Housing One-for-One Replacement

At the request of the House Subcommittee on Housing and Community Opportunity, the National Housing Law Project (NHLP) presented testimony on a discussion draft of a bill titled “The Public Housing One-for-One Replacement and Tenant Protection Act.”¹ The discussion draft is focused on revising and improving Section 18, the public housing demolition and disposition provisions of the United States Housing Act. The discussion draft contains a number of principles that NHLP supports, including:

- One-for-one replacement of any units that are approved for demolition or disposition will be required.
- The replacement housing must be comparable to public housing and affordable to the lowest-income families.
- A sufficient number of units must be located in the original neighborhood for all who wish to remain in that community.
- Residents who are displaced must be allowed to return without rescreening.
- Any displacement and/or multiple involuntary relocations should be minimized.
- Residents will play an active and effective role in the development of any plan for demolition or disposition and implementation of the plan for the replacement housing.
- Residents will receive counseling and services for relocation and mobility.
- Plans for demolition or disposition must be consistent with a housing authority’s duty to affirmatively further fair housing, and residents have rights to enforce this duty.
- Stricter preconditions for demolition or dispossession will be imposed.

In addition, NHLP suggested that the discussion draft could be improved if the following provisions were added or changed:

1. The one-for-one replacement requirement must state that the replacement units must be *rental* units.

¹The testimony is available at NHLP’s homepage at www.nhlp.org. The testimony will be archived on the Public Housing Demolition and Disposition webpage at NHLP’s Attorney/Advocate Resource Center at <http://nhlp.org/resourcecenter?tid=38>.

2. The location of the on-site replacement units should be expanded to include replacing units in the neighborhood and should anticipate that more than one-third of the residents may want to return to the former site or neighborhood.
3. The requirement that replacement units must be built within the jurisdiction of the public housing agency and in areas having a low concentration of poverty should be changed to provide that units built outside the original site should be provided in a manner that furthers economic and educational opportunities for residents.
4. Temporary relocation and multiple moves should be minimized or indeed prevented by making off-site replacement housing available prior to any relocation of residents.
5. Replacement units should maintain essential rights of applicants, including but not limited to:
 - a. Rents must be set at 30% of a family's adjusted income.
 - b. Public housing agencies (PHAs) must target at least 40% of new admissions to applicants with incomes at or below 30% of Area Median Income (AMI). If the housing is project-based vouchers, PHAs must target at least 75% of new admissions to applicants with incomes at or below 30% of AMI.
 - c. Victims of domestic violence cannot be discriminated against.
 - d. Applicants may designate an alternate contact person or entity who can speak to the PHA on their behalf.
 - e. Applicants who are denied housing must receive a review before a hearing officer who did not make the original determination and is not subordinate to the person who did.
6. The replacement units should have the same number of bedrooms as those slated for disposition and demolition, unless a market analysis shows a need for units with a greater number of bedrooms.
7. Mobility counseling must be available to displaced residents who wish to voluntarily move to low-poverty and non-racially concentrated neighborhoods throughout the metropolitan area. Mobility programs shall include:
 - a. one-on-one housing counseling, search assistance and post-move counseling;
 - b. active landlord recruitment incentives;
 - c. use of exception rents;

- d. community tours and comprehensive community introductions on local schools, shopping, transportation, religious and health resources;
- e. credit repair and other training/education sessions. ■

Improved Section 3 Enforcement by HUD at Work in St. Paul*

In 2009, as part of a plan to increase employment and training opportunities for low-income individuals, the Department of Housing and Urban Development (HUD) began to more aggressively enforce Section 3 reporting requirements under form HUD-60002.¹ The form requires recipients of HUD funds to report annually on their compliance with Section 3, but before this past year, HUD did little to ensure that recipients submitted the form.² HUD's enforcement campaign has led to an increase in the number of state and local agencies that complied with their Section 3 reporting requirements.³ To date, 75% of HUD-funded state and local agencies have submitted form HUD-60002.⁴ This is the highest response rate since HUD first made the reporting mandatory.⁵ Should a state or local agency fail to submit the annual report, HUD may investigate the non-compliance and eventually withhold federal funds.

HUD also illustrated its improved commitment to enforcing Section 3 by investigating claims that the city of Saint Paul had failed to maintain a written or unwritten Section 3 plan and failing to file form HUD-60002.⁶ Specifically, the May 2009 compliance review found that the city lacked defined procedures to notify Section 3 residents about related training and employment opportunities, to notify Section 3 business concerns about related contracting opportunities, and to notify potential contractors about Section 3 requirements. HUD also found that the city lacked procedures to incorporate the Section 3 clause into solicitations and contracts and to document

*The author of this article is Rebekah Barlow, a graduate of the University of California, Davis School of Law and an intern at the National Housing Law Project.

¹Press Release, HUD, HUD Steps up Enforcement of Job Creation Efforts for State and Local Governments (Mar. 8, 2010).

²For an in-depth analysis of this issue and discussion of Section 3 generally, see NHLP, *Recent Developments Show Promise for Enforcing Section 3*, 39 HOUS. L. BULL. 275, 289 (Nov.-Dec. 2009).

³Press Release, *supra* note 1.

⁴*Id.*

⁵*Id.*; see also 24 C.F.R. § 135.90 (2010) (effective June 30, 1994).

⁶Voluntary Compliance Agreement, Section 3 of the Housing and Community Development Act, HUD-St. Paul, MN, at 4, Feb. 2, 2010.