

Additionally, S. 2684 allows a PHA to use rent subsidies to pay utilities that the landlord has failed to pay.<sup>40</sup> The PHA would have to attempt to notify the landlord before paying the utilities, except in emergency situations.<sup>41</sup> Allowing a housing authority to use abated assistance to make repairs is an especially significant issue for many residents, since the repairs may allow them to remain in the unit and avoid the often difficult process of relocating with a voucher.

### Tenant Protections

S. 2684 provides some important protections for tenants in properties facing conversion, provisions largely overlooked by the House Bill. It provides that public housing tenants forced to relocate because of demolition or disposition of their building will not be considered new applicants and thus will not be subject to elective screening criteria when they apply for replacement voucher assistance.<sup>42</sup> Currently, in some demolitions or dispositions, many tenants are refused the right to return or other assistance based on elective screening criteria. Second, for privately owned multifamily units facing conversion actions, the Senate bill clarifies that an owner of a unit must accept a tenant's enhanced voucher and only terminate for good cause, and that these tenants should also not be re-screened by the PHA.<sup>43</sup>

### Conclusion

Like its House counterpart, the Senate SEVRA bill would be a big step in moving toward restoring proper funding and creating a more efficient program that serves both tenants and communities. A hearing on S. 2684 was held in the Subcommittee on Housing and Urban Affairs of the Senate Banking Committee on April 16, 2008. In this election year, the chances of future action to amend the bill and report it to the floor remain uncertain, since floor time becomes increasingly scarce as the session proceeds. The *Bulletin* will report on future developments. ■

## HUD's New Guidance on Voucher Payment Standards for People with Disabilities

The Housing Choice Voucher Program has been essential in allowing people with disabilities to access affordable housing.<sup>1</sup> Vouchers give tenants with disabilities flexibility to move near services or find accessible units. However, Congress and HUD have recognized that in order for people with disabilities to fully access the voucher program, it must, beyond the general reasonable accommodation requirement,<sup>2</sup> specifically provide for certain reasonable accommodations. One such accommodation has been to allow participants to request an increase in the housing authority's payment standard, on a case-by-case basis, in order to find a suitable unit.<sup>3</sup> On March 10, 2008, HUD released Notice PIH 2008-13, providing further guidance on exceptions to payment standards for persons with disabilities as a reasonable accommodation.<sup>4</sup>

The Section 8 voucher payment standard is generally set by a housing authority at anywhere within the statutorily provided zone of 90% and 110% of the HUD-published Fair Market Rents (FMR) for the area.<sup>5</sup> However, the regulations also provide that a person with a disability may request an increase in the payment standard as a reasonable accommodation.<sup>6</sup> Prior to this new notice, if the requested amount was below 110% of FMR, the housing authority could simply provide the accommodation. If it was above 110%, the housing authority had to request a regulatory waiver from HUD.

HUD's new guidance clarifies and slightly changes the process of requesting an exception payment standard. A PHA may still approve any payment standard up to 110% of FMR without requesting a waiver from HUD. However, the tenant can only request a waiver to the payment standard after the family has located a unit, which could make families less likely to look within the higher range to begin with.<sup>7</sup> Also, once the exception payment standard is in effect, it does not have to be re-verified

---

<sup>1</sup>For a more detailed discussion on how persons with disabilities can use the Housing Choice Voucher program to access affordable housing, see Allen, Michael, *Increasing Usability of Housing Choice Vouchers for People with Disabilities*, 36 HOUS. L. BULL. 111 (May 2006).

<sup>2</sup>See Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; Fair Housing Amendments Act, 42 U.S.C. § 3604 *et seq.*; Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.*, for federal statutes requiring reasonable accommodations.

<sup>3</sup>24 C.F.R. § 982.505(d) (2007).

<sup>4</sup>Notice PIH 2008-13 is available at <http://www.hud.gov/offices/adm/hudclips/notices/pih/>.

<sup>5</sup>24 C.F.R. § 982.503 (2007).

<sup>6</sup>*Id.* § 982.505(d).

<sup>7</sup>Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation, HUD PIH Notice 2008-13 (HA) (March 13, 2008).

---

<sup>40</sup>*Id.* at § 19.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.* at § 13.

<sup>43</sup>*Id.* at § 14.

unless a still-higher exception payment standard is necessary. In the past, HUD has sometimes only allowed the waiver to last for a year, or in other cases, families have had to re-verify the need each year.

If the applicant requests a payment standard from 110-120%, the PHA will have to apply to the HUD Field Office Public Housing Director.<sup>8</sup> The PHA will only have to apply to HUD headquarters for a waiver when requesting an exception payment standard above 120%.

Often, housing authorities either ask for too much or inappropriate documentation for reasonable accommodations. The new PIH notice lists the documentation a PHA must submit to HUD when requesting a waiver of the payment standard. First, the PHA should obtain a statement from a health care provider regarding the need for the reasonable accommodation and the features of the unit that meet the person's needs. These features may include the location and nearby services. Second, the PHA should provide the contract rent and utility allowance for the unit. Third, it should submit a statement that it has determined the rent for the unit is reasonable and meets the requirements noted in the health care provider's letter. Fourth, the PHA must provide the household's monthly adjusted income and the FMR for the unit size for which the family is eligible. Finally, the PHA must include the proposed effective date of the lease or lease renewal.

The notice also describes the calculation process for determining the family's total adjusted gross rent, which in turn determines what payment standard is necessary. This calculation requires subtracting 10% of monthly adjusted income from the gross rent, which is the contract rent plus the utility allowance. The adjusted gross rent is then used as the number that HUD will use to determine the exception payment standard. This calculation caps the family's rent share at 40%, not just for initial occupancy, but also for continued occupancy, a divergence from prior policy, which sometimes required a participant to move to a less expensive unit after the first year, pay the full difference of the unit, or submit a new request. Under this language, it appears that the waiver of the payment standard would remain in effect for continued occupancy, so that a tenant could remain in place without an increased rent burden, so long as the other notice criteria are met.

By clarifying existing rules and policies, HUD's new notice on requesting exception payment standards provides some concrete guidance for PHAs, which hopefully will lead to greater use and faster turnarounds on the approvals required in order to provide this oft-needed accommodation. ■

<sup>8</sup>24 C.F.R. § 982.503(c)(2)(ii) (2007).

## RHS Makes Dramatic Changes to Rural Voucher Program

In the Agricultural Appropriations Act of 2006,<sup>1</sup> Congress enacted a Rural Development Demonstration Voucher Program, modeled in part on the rural voucher program authorized in Section 542 of the Housing Act of 1949,<sup>2</sup> that was designed to protect residents of Section 515 Rural Rental Housing from displacement when owners of the housing prepay their loans. The program has been reauthorized in the Agricultural Appropriations Acts of 2007<sup>3</sup> and 2008.<sup>4</sup> In March of 2006, the Rural Housing Service (RHS) and the Department of Housing and Urban Development (HUD) published in the Federal Register a somewhat surprising Memorandum of Understanding (MOU) that announced the implementation of the program and how RHS was going to turn over primary program administration to HUD.<sup>5</sup> Under the MOU, HUD agreed to subcontract day-to-day administration to local public housing authorities located in the areas where the RHS prepaid developments were located.

For reasons that have never been made public, the interagency plan proved to be unworkable and in April of 2007, RHS published an internal agency memorandum, claiming to merely clarify the program then in effect.<sup>6</sup> In fact, the announcement made significant changes to the RHS voucher program including the fact that HUD and local public housing authorities were no longer involved in the program's administration. On March 24 of this year, RHS published a new notice in the Federal Register that puts program administration in the hands of RHS and its subcontractors. At the same time the agency published and distributed, only to USDA Rural Development Offices, the *Rural Development Voucher Program Guide* (April 2008). Both the Federal Register Notice and the Guide announce and disclose major restrictive changes to the program as it will be administered under the 2008 Agricultural Appropriations Act.<sup>7</sup> This article will summarize and analyze the critical provisions of the Notice and Guide as they relate to the right of tenants who reside in Section 515 housing that is subject to prepayment or foreclosure.

<sup>1</sup>Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2006, Pub. L. 109-97, Title III (Nov. 10, 2005).

<sup>2</sup>42 U.S.C.A. § 1490r (West 2003).

<sup>3</sup>Revised Continuing Appropriations Resolution, 2007, Pub. L. 110-5, § 101 (Feb. 15, 2007).

<sup>4</sup>Consolidated Appropriations Act, 2008, Public Law 110-161, Tit. III (Dec. 26, 2007).

<sup>5</sup>71 Fed. Reg. 14,084 (March 20, 2006).

<sup>6</sup>Clarification of Issues for Rural Development Voucher Demonstration Program, RD Unnumbered Letter (April 27, 2007).

<sup>7</sup>73 Fed. Reg. 17,473 (March 24, 2008).