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Table of Contents

	Page
HUD-VASH: Long-Neglected Program Brought Back To Life.....	135
HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities.....	139
Acceptance of Voucher May Be Required as a Reasonable Accommodation.....	144
Texas Group Files Suit Alleging LIHTC Program Perpetuates Segregation.....	146
Federal Court Invalidates Immigration Based Local Rental Restrictions.....	150
Recent Cases	154
Recent Housing-Related Regulations and Notices.....	156
Announcements	
Publication List/Order Form.....	159



Cover: *Rosa Parks Apartments, a 198 unit senior public housing development owned and operated by the San Francisco Housing Authority.*

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HUD-VASH: Long-Neglected Program Brought Back To Life

Congress has dramatically invigorated the Department of Housing and Urban Development-Veterans Affairs Supportive Housing (HUD-VASH) program through which the Department of Veterans Affairs (VA) provides case management and clinical services to homeless veterans and HUD provides housing choice vouchers for veteran families. Using \$75 million appropriated in the 2008 Consolidated Appropriations Act,¹ HUD-VASH is expected to serve approximately 10,000 of the estimated 154,000 homeless veteran families in the United States during Fiscal Year (FY) 2008.²

HUD-VASH has a shadowy history. In an April 2008 speech announcing the program, acting HUD Secretary Bernardi stated that the program provided over 1700 vouchers to homeless veterans when it began in 1990, and that, while some are still in use, no additional vouchers have ever been provided.³ In fact, in March of 1992, HUD announced the availability of \$17.9 million to support both VA services and public housing authorities' (PHAs) costs for 750 VA/HUD supportive services vouchers. The announcement stated that the original program grew out of three demonstration programs that "reinforced the understanding of the need for comprehensive, individually tailored service packages to assist the homeless in achieving self-sufficiency."⁴ Section 8(o)(19) of the United States Housing Act of 1937 directs HUD to set aside voucher funds necessary to provide 500 veteran-dedicated vouchers for FY 2003, 1000 for FY 2004, 1500 for FY 2005 and 2000 for FY 2006, with the proviso that any needed amount that exceeded the previous year's set-aside must be provided for in that fiscal year's appropriation act.⁵ There is no evidence that such appropriations were ever enacted.

¹Public Law 110-161, tit. II., 121 Stat. 1844, 2414, (2007). The program itself is authorized under §8(o)(19) of the United States Housing Act of 1937, 42 U.S.C. § 1437f(o)(19) (2007).

²Joint HUD/Veterans Affairs webcast (May 8, 2008), at: <http://www.hud.gov/webcasts/archives/index.cfm>. While both Public Law 110-161 and 42 U.S.C. § 1437f(o)(19) use the word "veterans," the HUD Notice (Section 8 Housing Choice Vouchers: Implementing the HUD-VA Supportive Housing Program, Notice, 73 Fed. Reg. 25,026 (May 6, 2008)) repeatedly uses the word "families."

³Prepared Remarks of Roy A. Bernardi, Deputy Secretary of Housing and Urban Development, at the HUD-VASH Grant Announcement, Wednesday, April 16, 2008, at <http://www.hud.gov/news/speeches/2008-04-16.cfm>.

⁴57 Fed. Reg. 9956-01 (March 20, 1992), 1992 WL 52345 (F.R.) (Announcement of Funding—Invitation for FY 1992 Section 8 Rental Voucher Set-Aside for Homeless Veterans With Severe Psychiatric or Substance Abuse Disorders).

⁵42 U.S.C. § 1437f(o)(19) (West 2003 & Supp. 2006).

The invigorated program became effective on May 6, 2008.⁶ In a webcast, the VA said that 330 outreach workers from 132 VA Medical Centers (VAMCs) located in every state, Puerto Rico and the District of Columbia,⁷ were visiting homeless shelters, clinics, welfare offices, continuum of care providers and other homeless advocacy agencies in order to identify prospective applicants.⁸ In consultation with the VA, HUD invited housing choice voucher program administrators (primarily PHAs) located in the jurisdiction of the chosen VAMCs to apply for project participation.⁹ A list of participating VAMCs and PHAs is available on HUD's website.¹⁰ The workers were expected to start developing relationships with PHA staff by the end of May. Interested housing advocates could take steps to be included in the outreach effort by contacting VAMCs directly and/or by reaching out to the homeless shelters, continuum of care providers, and other homeless advocacy agencies. For example, Southeast Louisiana Legal Services planned to convene a meeting with VA staff, homeless providers, and the responsible PHA, for the purpose of jump starting the program, identifying potential problems and working on eliminating any barriers to full program implementation in its service area.

Waiver of Voucher Statutory and Regulatory Provisions

The Act grants HUD (in consultation with the VA) authority to waive statutory and regulatory provisions otherwise applicable to the voucher program¹¹ but forbids HUD from waiving "requirements related to fair housing, nondiscrimination, labor standards, and the environment."¹² All provisions of 24 C.F.R. Parts 982 and 983 that have not been waived apply, respectively, to the VASH housing choice voucher holders and project-based vouchers.¹³ While not addressed in the Act, the HUD Notice implementing the program states that "a PHA may request additional statutory or regulatory waivers" as the PHA deems necessary.¹⁴

In announcing the program, HUD has seized the waiver opportunity and waived provisions relating to

eligibility, waiting lists, search time, lease terms and portability, and established, for some of these subject areas, new standards. The new and waived rules are discussed below.

Eligibility

Any homeless veteran family that is low-income (i.e. families with income at or below 80% of area median income (AMI))¹⁵ may qualify for VASH.¹⁶ To remove a possible adverse consequence for PHAs, which are under an obligation¹⁷ to ensure that 75% of voucher admissions every year go to extremely low income (ELI) families,¹⁸ a PHA may count VASH families who qualify as ELI toward the PHA's 75% requirement, but need not count VASH families in the total number of assisted families for this calculation.¹⁹ HUD has also waived the statutory requirement that eligible veterans have a chronic mental illness or a chronic substance abuse disorder.²⁰

HUD has seized the waiver opportunity and waived provisions relating to eligibility, waiting lists, search time, lease terms and portability, and established, for some of these subject areas, new standards.

Admission into VASH Program

The VAMC case managers have responsibility for screening applicants, providing for treatment and services if needed, and if and when appropriate, admitting the veterans into the program. VAMCs will refer approved families to their partnering PHAs,²¹ which will provide referred families with a VASH dedicated housing choice voucher.²² For the VASH program, participating PHAs have relinquished any authority to maintain waiting lists, to apply local preferences,²³ or to reject families for violation of any voucher program requirements²⁴ including

¹⁵24 C.F.R. § 5.603 (2007).

¹⁶HUD Implementing Notice at 25,027.

¹⁷24 C.F.R. § 982.201(b)(2) (2007).

¹⁸*Id.* § 5.603 (2007)(Income below 30% of Area Medium Income).

¹⁹HUD Implementing Notice (This provision may have been added because veterans' disability pay, for certain jurisdictions, is greater than the income limits for extremely low or very low-income in the same jurisdiction).

²⁰42 U.S.C. § 1437f(o)(19) (2007); *See* HUD Implementing Notice (At the May 8 webcast, HUD and VA staff stated that the program does not require, as in its earlier incarnation, that the veteran be literally living on the street to qualify. This, however, is not disclosed in the statute or the notice).

²¹HUD Implementing Notice at 25,027.

²²*Id.*

²³42 U.S.C. § 1437f(o)(6)(A) (2007) and 24 C.F.R. §§ 982.202, 982.204 & 982.207 (2007); *See*, HUD Implementing Notice at 25,027.

²⁴24 C.F.R. § 982.552 (2007); *See*, HUD Implementing Notice at 25,027.

⁶73 Fed. Reg. 25,026 (May 6, 2008)(Section 8 Housing Choice Vouchers: Implementing the HUD-VA Supportive Housing Program, Notice)(hereinafter HUD Implementing Notice).

⁷*See* joint HUD/Veterans Affairs webcast (May 8, 2008) at <http://www.hud.gov/webcasts/archives/index.cfm>.

⁸The VA has a formal, nationwide case manager training scheduled for August 11. As of the writing of this article, the only reference to HUD-VASH on the VA website is a paragraph describing the original program.

⁹HUD Implementing Notice.

¹⁰<http://www.hud.gov/offices/pih/programs/hcv/vash/docs/vamc.pdf> (in alphabetical order by state). The HUD VASH website can be reached at <http://www.hud.gov/offices/pih/programs/hcv/vash/>.

¹¹Public Law 110-161, tit. II, 121 Stat. 1844, 2415 (2007).

¹²*Id.*; *see*, HUD Implementing Notice at 25,027.

¹³*Id.*

¹⁴*Id.*

substance abuse or criminal activity.²⁵ The sole exception is that PHAs are *obligated* to reject veterans if any member of the household is subject to lifetime state sex offender registration.²⁶

Case Management

Upon acceptance into the program by the VA, the families will be assigned to one of 290 case managers and receive case management and clinical services from the VA.²⁷ The case managers will address goals, treatment plans, and therapeutic plans, help the families meet daily needs such as health care, child care, access to legal representation, identifying and visiting potential residences, furnishing new homes and building ties with the community. They will assist applicants in completing voucher registration forms, provide transportation to PHAs and to service providers²⁸ and interface with PHA staff to help the families acquire and maintain stable long-term housing.²⁹ Finally, they will maintain and provide to HUD and the VA records and information necessary to evaluate the program.³⁰ At this time, the only reporting form mentioned in the HUD Notice is the 2004 version of the Family Report, HUD-50058.³¹

Applicant Ability to Use the Voucher

Three HUD waivers increase the chances of placing hard-to-house families. HUD has mandated an initial minimum voucher search term of 120 days rather than the regulatory sixty-day minimum.³² Both the statutory³³

and the regulatory³⁴ initial one-year lease term have been waived, giving PHAs discretion to approve a lesser term.³⁵ Finally, the prohibition of living on the grounds of a public or private institution³⁶ has also been waived, permitting families to live on VAMC grounds in VA-owned units.³⁷

Portability

Because the VAMC determines eligibility, HUD has decided that PHAs may not restrict where a family resides, even during the first twelve months after admission to the program,³⁸ so long as the VAMC deems the participant's residence close enough so that services may be provided. For families wishing to port to other jurisdictions, if the receiving PHA is close enough for the original VAMC to continue to provide case management, the sending PHA must retain the voucher and will be billed by the receiving PHA.³⁹ A family may port beyond the initial VAMC service area only if a receiving VAMC is available to serve the veteran and the receiving PHA has both a HUD-VASH program and an available HUD-VASH voucher.⁴⁰ The receiving PHA will absorb the family and count it against its HUD-VASH cap.⁴¹ The receiving VAMC will then service the veteran.⁴² The sending PHA will return its voucher to its HUD-VASH inventory for use by a new VAMC-referred family.⁴³

Termination of the Voucher and Eviction

While the VA controls admission to the program and issuance of the voucher, the vouchers are administered "in accordance with the HCV [(Housing Choice Voucher)] tenant-based...regulations...at 24 C.F.R. part 982."⁴⁴ Unless

²⁵42 U.S.C. §§ 1437d(s) and 13661(a), (b) and (c)(West 2003 & Supp. 2007), 24 C.F.R. § 982.553 (2007). See, HUD Implementing Notice at 25,027.

²⁶24 C.F.R. § 982.553(a)(2)(i) (2007) (the regulations require the PHA to conduct searches to determine sex-offender status in every state in which any household member is known to have resided. This provision is not mentioned in Public Law 110-161, tit. II, 121 Stat. 1844, 2415 (2007) and HUD has chosen not to waive it. 73 Fed. Reg. 25,026, 25,027 (May 6, 2008)(Section 8 Housing Choice Vouchers: Implementing the HUD-VA Supportive Housing Program, Notice).

²⁷Joint HUD/Veterans Affairs webcast (May 8, 2008), available at: <http://www.hud.gov/webcasts/archives/index.cfm>. The HUD Notice specifically says "a HUD-VASH eligible family must receive the case management services noted above from the VAMC." HUD Implementing Notice at 25,028. This provides a basis for family members, in addition to the individual veteran, to have needed services provided.

²⁸Including training in, and resources for, the use of public transportation if appropriate.

²⁹Joint HUD/Veterans Affairs webcast (May 8, 2008), available at <http://www.hud.gov/webcasts/archives/index.cfm>.

³⁰HUD Implementing Notice; See also joint HUD/Veterans Affairs webcast (May 8, 2008), available at <http://www.hud.gov/webcasts/archives/index.cfm>.

³¹HUD Implementing Notice at 25,028 available at <http://www.hud.gov/offices/pih/systems/pic/50058/pubs/form50058.pdf>. The HUD form is available on the HUD website.

³²24 C.F.R. § 982.303(a) (2007) is waived. See, HUD Implementing Notice at 25,027 (Note that under this waiver, PHAs may only apply the extension, suspension and progress report provisions of their administrative plans after the 120 days).

³³42 U.S.C. § 1437f(o)(7)(A) (West 2003 & Supp 2006).

³⁴24 C.F.R. § 982.309(a)(1) (2007).

³⁵HUD Implementing Notice at 25,027; 42 U.S.C. § 1437f(o)(7)(A) is waived. Note, the HUD Implementing Notice waives the Housing Choice Voucher program requirement, codified at 24 C.F.R. § 982.309(a)(2)(ii) (2007), which requires leases to have a one-year term unless a shorter term improves housing opportunities for the Voucher holder and the shorter term is the prevailing market practice. The waiver is granted in order to improve housing opportunities for HUD-VASH Voucher holders. Ironically, § 982.309(a)(1) (2007) which establishes the one-year term, is not specifically mentioned.

³⁶24 C.F.R. § 982.352(a)(5) (2007).

³⁷HUD Implementing Notice at 25,027.

³⁸24 C.F.R. §§ 982.353(a), (b) and (c) (2007) and 42 U.S.C. § 1437f(r)(1)(B)(i) (2007) have both been deemed by HUD not to apply. HUD Implementing Notice.

³⁹HUD Implementing Notice at 25,028.

⁴⁰73 Fed. Reg. 28,863 (May 19, 2008)(Section 8 Housing Choice Vouchers: Implementation of the HUD-VA Supportive Housing Program, *Correction*)(note that this Correction specifically adds guidance for ports in which a new VAMC provides case management).

⁴¹*Id.* The receiving PHA does not have the option of absorbing the family into its regular HCV program under 24 C.F.R. § 982.355(d) (2007).

⁴²73 Fed. Reg. 28,863 (May 19, 2008)(Section 8 Housing Choice Vouchers: Implementation of the HUD-VA Supportive housing Program, *Correction*).

⁴³*Id.*

⁴⁴HUD Implementing Notice.

expressly waived, or a local PHA plan provision conflicts with HUD-VASH requirements, VASH vouchers are administered as any other HCV.⁴⁵ PHAs, therefore, have the authority to terminate VASH participants⁴⁶ and landlords have the authority to evict the family.⁴⁷

The VA was clear that its case managers would not consider events such as failure to maintain sobriety as grounds for termination of services.

The primary inter-departmental friction discussed in the May 8 HUD-VA webcast related to circumstances that would trigger eviction actions. Evictions asserting causes such as the tenant's failure to maintain sobriety, drug violations, or threatening the property or other tenants or staff while suffering a mental illness relapse, could be common in the supported veteran population. If a tenant is evicted for a serious lease violation, the PHA is required to terminate the voucher.⁴⁸ The VA was clear that its case managers would not consider events such as failure to maintain sobriety as grounds for termination of services. The VA hopes that PHAs will consider termination only as a last resort and only after good faith cooperation with the case manager and the family. To avoid problems, PHAs should seek a waiver of 24 C.F.R. § 982.552(b)(2), which requires PHAs to terminate assistance under the program after a resident has been evicted for serious violation of the lease. Alternatively, PHAs could determine that no eviction of a VASH recipient constitutes a serious lease violation. To defend against termination or eviction, advocates could well find case managers to be sympathetic allies and sources of helpful, otherwise hard to come by, information.

The VA will only terminate a veteran from services if she no longer needs services, requires more intensive case management (such as inpatient care), refuses to accept further services without good cause, or has her voucher terminated by the PHA. Loss of housing unrelated to voucher termination will not cause termination of case management. If the VA verifies to the PHA that the family has failed to participate in services without good cause, then the PHA must terminate the voucher.⁴⁹ Graduation from services, however, is not grounds for termination of the voucher.⁵⁰

⁴⁵*Id.* at 25,027.

⁴⁶24 C.F.R. § 982.552 (2007).

⁴⁷*Id.* § 982.310 (2007).

⁴⁸*Id.* § 982.552(b)(2) (2007).

⁴⁹HUD Implementing Notice at 25,028.

⁵⁰*Id.* Note that the PHA *may* offer the family a voucher from its regular pool and return the HUD-VASH voucher to the HUD-VASH inventory.

In any event, if voucher assistance is terminated, the HUD-VASH voucher must be returned to the VASH dedicated voucher inventory for issuance to another veteran family referred by the VAMC.⁵¹

Other Obligations of the PHA

Unless the obligation is waived, PHAs are required to conduct all of the other Housing Choice Voucher functions including such things as setting the payment standard, verifying income, determining tenant share of the rent, inspecting the unit, and determining whether the rent is reasonable.

The VA and HUD will track the families to evaluate results. HUD's May 6, 2008, Notice implies that participants must provide requested information to HUD for this purpose.⁵²

For PHAs that are in the Moving to Work program, the PHAs must maintain separate bookkeeping for the VASH vouchers and may not merge the funds into other programs.⁵³

PHAs may use VASH vouchers as project based vouchers, but only after requesting and obtaining all necessary statutory and regulatory waivers.⁵⁴ Such waivers would include relief from the maximum percentage (20%) of voucher budget authority that may be used by a PHA for project based vouchers.⁵⁵

Conclusion

To date, HUD's sole statement concerning administration of the program vis-à-vis PHAs is that it will operate the program pursuant to 24 C.F.R. Part 982, with the PHAs making monthly rental payments for participants and HUD providing housing assistance and administrative costs to the PHAs.⁵⁶

Advocates who have PHAs that are administering the VASH program in their service area⁵⁷ may find ways to help PHAs formulate a family-friendly system by:

- Contacting the VA and the local VAMC to determine what kind of outreach they are performing;
- Setting up a meeting with VAMC, veterans groups, homeless providers and advocates for the purpose of explaining the program and identifying barriers to a prompt implementation;

⁵¹Public Law 110-161, tit. II., 121 Stat. 1844, 2414, (2007); HUD Implementing Notice.

⁵²73 Fed. Reg. 25,027, 25,028.

⁵³*Id.*

⁵⁴*Id.*

⁵⁵24 C.F.R. § 983.6 (2007).

⁵⁶HUD Implementing Notice.

⁵⁷The HUD list of PHAs may be found at <http://www.hud.gov/offices/pih/programs/hcv/vash/docs/vamc.pdf>.

- Reviewing the PHA's Administrative Plan to determine what local rules ought to be changed;
- Drafting or commenting upon an initial draft of the PHA's chapter of the Administrative Plan dealing with the VASH program;
- Offering trainings to PHA staff on the differences between the VASH and the Housing Choice Voucher programs.

On April 16, 2008, acting Secretary Bernardi announced that "the President has requested another \$75 million in his new budget for Fiscal Year 2009. If approved, this would allow us to reach up to 20,000 homeless veterans."⁵⁸ Mr. Bernardi did not accurately state the situation. The President's FY 2009 budget does request "another \$75 million,"⁵⁹ but this will, if approved, simply continue the funding at the FY 2008 level and will not support any increase in the number of available VASH vouchers. ■

HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*

The Department of Housing and Urban Development (HUD) is required to publish quarterly in the Federal Register a description of waivers of federal regulations that it has issued.¹ As of July 2, 2008, HUD had published descriptions of all the waiver requests granted during the last three quarters of 2007 and the first quarter of 2008.² Summaries of key waivers are set out in this article.³

Most of the waivers granted in the last year have related to the voucher or project-based voucher (PBV) programs, or to situations related to disaster recovery. The majority of the waivers granted affecting the voucher program can be divided into two broad categories: waivers made for disabled individuals who needed a reasonable accommodation in the form of a payment standard increase, and waivers regarding the project-based voucher program. The waivers granted in connection with the HOME program from 1996 through part of 2007 are also available on the HUD website.⁴

This summary is intended to assist advocates in determining whether to urge a public housing authority (PHA)

*This article was written by Antonia Konkoly, a student at the University of California, Berkeley, Law School and a summer intern at the National Housing Law Project.

¹In 1989, Section 106 of Public Law 101-235 added the provisions regarding the reporting of waivers granted and the delegation of the authority to grant a waiver. The law provides that each notification must cover the period beginning on the day after the last date covered by the prior notification, and shall (A) identify the project, activity, or undertaking involved; (B) describe the nature of the requirement that has been waived and specify the provision involved; (C) specify the name and title of the official who granted the waiver request; (D) include a brief description of the grounds for approval of the waiver; and (E) state how more information about the waiver and a copy of the request and the approval may be obtained. 42 U.S.C.A § 3535(q) (West, Westlaw, Current through P.L.110-260 (excluding P.L. 110-234, 110-246, and 110-252) (approved 7-1-08)).

²72 Fed. Reg. 53,294 (Sept. 18, 2007) (second quarter 2007); 72 Fed. Reg. 73,066 (Dec. 26, 2007) (third quarter 2007); 73 Fed. Reg. 15,169 (Mar. 21, 2008) (fourth quarter 2007); 72 Fed. Reg. 38,072 (first quarter 2008).

³NHLP previously summarized relevant HUD waivers for 2002 to the first quarter of 2007 in three articles. NHLP, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 37 HOUS. L. BULL. 103, 115 (2007); NHLP, *HUD Regulatory Waivers: Summary of Recent Waivers Regarding Voucher and Other Program*, 35 HOUS. L. BULL. 223, 238 (2005); NHLP, *HUD Waivers Benefit Individual Program Participants and Facilitate the Use of Project-Based Vouchers*, 33 HOUS. L. BULL. 309, 320 (2003).

⁴See <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm> (HOME resources and Waiver). HUD has not updated the waiver list since September 2007. It would be helpful to advocates, PHAs and other recipients of HUD programs if HUD resumed posting waivers online, and if other offices within HUD, especially Public and Indian Housing, Fair Housing and Housing, provided on the web a list of waivers granted by program (e.g., Project-Based Vouchers), year, and subject matter (e.g., reasonable accommodation).

⁵⁸Prepared Remarks of Roy A. Bernardi, Deputy Secretary of Housing and Urban Development at the HUD-VASH Grant Announcement, Wednesday, April 16, 2008, available at <http://www.hud.gov/news/speeches/2008-04-16.cfm>; This was repeated in the May 8 HUD/VA webcast, available at <http://www.hud.gov/webcasts/archives/index.cfm>.

⁵⁹BUDGET OF THE UNITED STATES GOVERNMENT, *Fiscal Year 2009*, APPENDIX, Pg. 541.