
IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 2037

September Term, 2012

GRADY MANAGEMENT, INC.,

Appellant,

v.

JESSE EPPS,

Appellee.

On Appeal from the Circuit Court for Montgomery County
(Richard Jordan, Judge)

**BRIEF OF *AMICI CURIAE* BALTIMORE NEIGHBORHOODS, INC.;
THE HOMELESS PERSONS REPRESENTATION PROJECT;
MARYLAND DISABILITY LAW CENTER; THE NATIONAL
HOUSING LAW PROJECT; THE PUBLIC JUSTICE CENTER; AND
ST. AMBROSE HOUSING AID CENTER**

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SUMMARY OF ARGUMENT

Across the United States and within the state of Maryland, low-income households face an extreme shortage of affordable and adequate housing. Although the federal government operates a number of housing subsidy programs, a large and growing gap remains between the demand for and the supply of affordable residential units. The confluence of rising rents and falling wages has led to a state of crisis for many low-income individuals and families. Without access to rental units within their means, these households must pay for housing at the expense of other necessities (including food, clothing, and healthcare) or risk the all-too-real threat of homelessness.

In the context of the worsening affordable housing deficit, a subsidized tenancy can be the single most important resource possessed by a low-income household. The residents of subsidized housing are among those who are least likely to find affordable homes on the open rental housing market. Subsidized units are disproportionately occupied by elders, persons with disabilities, single-parent households, and others struggling to survive on extremely low incomes.

The residents of units subsidized by project-based housing assistance are particularly dependent on their continued tenancies. Project-based subsidies apply to particular rental properties and do not “travel” with the tenants from unit to unit. Consequently, recipients of project-based housing assistance lose their subsidies if they lose their tenancies. They must retain their rental units in order to have a reasonable likelihood of meeting the basic needs of their households.

Congress has recognized the dependence of project-based housing-assistance recipients on their tenancies by prioritizing those households' security of tenancy. In comparison with the Section 8 tenant-based housing-assistance program, the Section 8 project-based housing-assistance programs have been structured to provide stability to the renters whose tenancies they subsidize. This Court should take into consideration Congress's intent in fashioning these two types of programs when it evaluates Appellant's claim that *Carter v. Maryland Management Co.*, 377 Md. 596 (2003), controls this case, and this Court should enforce the provisions that provide security of tenancy to the recipients of Section 8 project-based housing assistance.

INTERESTS OF AMICI

Baltimore Neighborhoods, Inc. (BNI) was established in 1959 and is one of the oldest non-profit fair housing organizations in the United States. In addition to promoting compliance with federal, state and local fair housing laws through education, outreach and enforcement programs, BNI uniquely serves the entire state of Maryland, providing impartial guidance to both tenants and landlords respecting the rights and obligations of all parties to residential lease transactions. BNI's tenant/landlord hotline receives over 20,000 inquiries annually from across Maryland. Inquiries to BNI come from both tenants struggling to locate affordable housing opportunities and landlords seeking qualified tenants. BNI has an interest in this case because the issues raised affect the stability of families and communities across Maryland.

The **Homeless Persons Representation Project** (HPRP) is a non-profit organization founded in 1990 whose mission is to end homelessness in Maryland by providing free legal services, including advice, counsel, education, representation and advocacy for low-income persons who are homeless or at risk of homelessness. The HPRP's staff and volunteers pursue this mission by offering legal services through outreach in shelters, soup kitchens, welfare offices, community centers and on the street. The HPRP's direct representation informs broader-based systemic advocacy and impact litigation to address the root causes of homelessness. Its housing practice focuses exclusively on tenants and prospective tenants of affordable rental housing subsidized by federal, state and local programs including the programs at issue in this case. In FY 2013 HPRP provided direct legal representation in over 200 subsidized housing matters. The HPRP has also submitted or joined in *amicus curiae* briefs in cases involving affordable rental housing. *See, e.g., Montgomery Cnty., Md. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.*, 402 Md. 250 (2007); *Matthews v. Hous. Auth. of Baltimore City*, Court of Special Appeals, September Term 2012, No. 2366. The HPRP has an interest in this case because the lack of affordable rental housing and loss of such housing is a primary cause of homelessness in Maryland.

Maryland Disability Law Center (MDLC) is a nonprofit public interest law firm that works to improve the lives of people with disabilities. People with disabilities tend to be the most economically disadvantaged, marginalized and disenfranchised in our society. Many are homeless, living in poverty, isolated in facilities or otherwise

vulnerable. MDLC's efforts are aimed at advancing the right to participate fully in all aspects of community life with self-determination, dignity, equality, choice and freedom from harm. During the last several years, MDLC has concentrated its resources and legal advocacy on access to health and mental health care, education, housing, transportation, community-based services and supports; and freedom from abuse, neglect and discrimination. Since 1999, MDLC has expended significant resources to advancing the rights of persons with disabilities to safe, decent, affordable and accessible housing. MDLC has submitted or participated in amicus curiae briefs involving affordable housing and the rights of low-income persons with disabilities. *See, e.g., Montgomery Cnty., Md. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.*, 402 Md. 250 (2007); *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251 (2009); *In re Adoption/Guardianship Nos. J9610436 and J9711031 in the Circuit Court for Carroll Cnty.*, 368 Md. 666 (2002). MDLC has an interest in this case because the issues raised affect the rights of thousands of low-income persons with disabilities living in subsidized housing to remain in their homes and communities.

The **National Housing Law Project** (NHLP) is a charitable nonprofit corporation established in 1968 whose mission is to use the law to advance housing justice for the poor by increasing and preserving the supply of decent, affordable housing; by improving existing housing conditions; and by expanding and enforcing tenants' and homeowners' rights, including tenant protections in federally subsidized housing.

The **Public Justice Center** (PJC) is a non-profit civil-rights and poverty-law organization dedicated to advancing the interests, and enforcing the rights, of the under-represented. Established in 1985, the PJC has used impact litigation, public education, and legislative advocacy to accomplish legal reform for its clients in areas including housing rights, workers' rights, civil rights, disability rights, and children's rights. The PJC's longest-standing housing-rights project addresses the needs of low-income renters. Through that project, the PJC provides direct representation to tenants and seeks to protect them from eviction from habitable and affordable housing. The PJC has also established an Appellate Advocacy Project to expand and improve the representation of indigent and disadvantaged persons and the presentation of civil rights issues before state and federal courts. Its Appellate Advocacy Project has submitted or joined in *amicus curiae* briefs in cases involving affordable housing. *See, e.g., Montgomery Cnty., Md. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.*, 402 Md. 250 (2007); *Johnson v. Hous. Auth. of Jefferson Parish*, 442 F.3d 356 (5th Cir. 2006); *Borger Mgmt., Inc. v. Sindram*, 886 A.2d 52 (D.C. 2005). The PJC has an interest in this case because of the case's potentially devastating impact on the right of low-income residents of subsidized housing to remain in their homes.

St. Ambrose Housing Aid Center is a non-profit organization which since 1968 has served Baltimore City residents by providing a number of housing-related services. The organization offers affordable rental units to low and moderate income individuals, provides first-time homebuyer counseling and workshops, and has a unique homesharing

service which places those in need of affordable housing with those who have affordable living space to offer. St. Ambrose also has housing counselors and attorneys on staff who help homeowners and tenants alike address issues threatening their tenancies.

St. Ambrose's involvement in preserving affordable housing for struggling and vulnerable homeowners and tenants constantly acquaints it first-hand with the lack of affordable housing available to those who need it. Subsidized housing provides critically needed stability and security to those tenants in need fortunate enough to receive benefits. Abrogating the legal protections to which subsidized tenants are entitled undermines the security which housing subsidies are intended to provide. St. Ambrose is interested in this case because the outcome threatens such an abrogation.

STANDARD OF REVIEW

The instant appeal is from the trial court's grant of summary judgment to Jesse Epps, a low-income tenant residing in a unit subsidized by project-based housing assistance. "Whether summary judgment was granted properly is a question of law. The standard of review is *de novo*, and whether the trial court was legally correct." *Livesay v. Baltimore Cnty.*, 384 Md. 1, 9 (2004).

ARGUMENT

I. LOW-INCOME PEOPLE IN THE UNITED STATES AND MARYLAND SUFFER DUE TO A SEVERE SHORTAGE OF AFFORDABLE HOUSING

A. THERE IS INSUFFICIENT AFFORDABLE HOUSING TO MEET THE NEEDS OF LOW-INCOME INDIVIDUALS AND FAMILIES

On both the national and the state level, low-income tenants struggle to find adequate and affordable housing. According to the United States Department of Housing and Urban Development (“HUD”), households whose housing is considered affordable spend no more than 30 percent of their monthly income on housing costs.¹ See HUD, *Affordable Housing*, available at <http://www.hud.gov/offices/cpd/affordablehousing> (last visited Nov. 27, 2013). Under that standard of affordability, a household must earn a full-time hourly wage of \$18.79 in order to afford an adequate two-bedroom apartment² at the average national HUD-estimated Fair Market Rent.³ National Low Income Housing Coalition, *Out of Reach 2013* 3 (2013), available at nlihc.org/oor/2013. But the

¹ For the purposes of determining whether housing is “affordable,” housing costs include both rent and utilities. See HUD, *Glossary of HUD Terms*, available at www.huduser.org/portal/glossary/glossary_a.html (last visited Dec. 6, 2013) (defining “affordable housing” as “housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities”).

² The National Low Income Housing Coalition uses a two-bedroom Fair Market rent for its benchmark because the two-bedroom apartment is the most common rental unit nationwide. National Low Income Housing Coalition, *Out of Reach 2013* 239 (2013), available at nlihc.org/oor/2013.

³ HUD calculates Fair Market Rents on an annual basis by determining the 40th percentile of gross rents (inclusive of shelter and utilities) for typical, non-substandard units. HUD uses Fair Market Rents to set payment standards for a number of housing subsidy programs.

average renter earns only \$14.32 per hour. *Id.* And low-income renters earn far less than that.

In comparison with the “housing wage” of \$18.79, the federal minimum wage is \$7.25 per hour. 29 U.S.C. § 206(a)(1). A household must work 2.59 full-time jobs at the minimum wage in order to afford an adequate two-bedroom apartment at the national average Fair Market Rent. The “housing wage” for a one-bedroom apartment also exceeds the federal minimum wage. *Out of Reach 2013* at 5.

Tenants reliant on Supplemental Security Income (“SSI”) are similarly priced out of the rental housing market. Approximately 8.38 million individuals receive SSI. U.S. Social Security Administration, *SSI Monthly Statistics, October 2013*, available at www.ssa.gov/policy/docs/statcomps/ssi_monthly/2013-10/table01.html (last visited Nov. 27, 2013). They qualify because they are elders, or blind, or have disabilities, and because they have little or no income. U.S. Social Security Administration, *Supplemental Security Income Home Page*, available at www.ssa.gov/ssi (last visited Nov. 27, 2013). In 2013, the maximum federal SSI payment was \$710 per month. U.S. Social Security Administration, *A Guide to Supplemental Security Income (SSI) For Groups And Organizations 7* (2013), available at www.ssa.gov/pubs/EN-05-11015.pdf. Individuals for whom SSI is the sole source of income constitute 57 percent of SSI recipients, and each such recipient could afford to spend only \$213 per month on housing costs in 2013.⁴

⁴ Individuals whose applications for SSI are pending can afford even less. Adults with disabilities may be eligible for Maryland’s Temporary Disability Assistance Program (“TDAP”) while they are pursuing SSI benefits (a process that can take years). TDAP is

Out of Reach 2013 at 4. In not a single county in the United States could these individuals afford even a studio apartment priced according to the Fair Market Rent.⁵ *Id.*

One important reason that low-income wage earners, elders, and people with disabilities struggle to find affordable apartments is the extraordinary rise in the cost of residential rent across the country over the past few decades. Even after taking into consideration the effects of inflation and purchasing power, contract rents increased by more than 15 percent between 1980 and 2011. Joint Center for Housing Studies of Harvard University, *America's Rental Housing* 4 (2011), available at www.jchs.harvard.edu/americas-rental-housing. In 2012, the median asking rent for vacant units was, at \$720, at the highest level in United States history. Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2013* 23 (2013), available at www.jchs.harvard.edu/research/state_nations_housing. And rent

a state-funded program that provides a monthly cash benefit to low-income adults with disabilities. *See* Md. Code Regs. 07.03.05.01 *et seq.* Approximately 19,000 people are currently dependent on TDAP benefits. Maryland Department of Human Resources, *Statistical Reports 2014*, TDAP 2-1, available at <http://www.dhr.state.md.us/documents/Data%20and%20Reports/FIA/Statistical%20Reports/Statistical-Reports-2014.pdf>. The TDAP benefit is \$185 per month. Md. Code. Regs. 07.03.05.07.

⁵ Many individuals with disabilities are “forced to choose between homelessness and placement in a segregated and restrictive institutional setting, such as an Adult Care Home, nursing home, or other congregate setting.” Technical Assistance Collaborative and Consortium for Citizens with Disabilities Housing Task Force, *Priced Out in 2012* 1 (2012), available at <http://www.tacinc.org/media/33353/Introduction%20and%20Key%20Findings.pdf>. The affordable housing shortage has “perpetuated the unnecessary use of high cost facility-based care, and the warehousing of homeless people with disabilities in homeless facilities—all paid for with taxpayer dollars.” *Id.* at 2.

rose 2.7 percent from April 2012 to April 2013, outpacing overall inflation by 1.6 percent. *Id.*

While rents have been rising, income has been falling. Real renter incomes are below their 1980 level. *America's Rental Housing* at 4. Twenty-nine percent of renter households live below the poverty line. *Out of Reach 2013* at 3. Of the 40.6 million renter households in the United States in 2011, 10.11 million had incomes at or below 30 percent of their Area Median Income⁶ and are therefore classified by HUD as extremely low income (“ELI”). National Low Income Housing Coalition, *3 Housing Spotlight*, Feb. 2013, at 1, 4, available at http://nlihc.org/sites/default/files/HS_3-1.pdf. An additional 7.26 million had incomes between 30 percent and 50 percent of their Area Median Income and are therefore classified by HUD as very low income (“VLI”). *Id.*

Finding decent, safe, and affordable housing is difficult for almost all low-income households and is often impossible for ELI households. The difficulty is a result of the basic fact that there are many more low-income renters than there are low-cost rental units. In 2011, there were 10.1 million ELI renters but only 5.6 million rental units affordable to them, leaving a shortage of 4.6 million units. *Id.* at 1. Moreover, taking into consideration the number of higher-income renters inhabiting some of those units, the shortage of units affordable *and available* to ELI renter households in 2011 was 7.1

⁶ An Area Median Income is determined by reference to the local metropolitan or non-metropolitan area. National Low Income Housing Coalition, *3 Housing Spotlight*, Feb. 2013, at 1, 4.

million.⁷ *Id.* This means that only 3 million units were affordable and available to the 10.1 million ELI renter households in 2011—just 30 affordable and available units for every 100 ELI households needing such housing.⁸ *Id.*

In Maryland, the housing market facing low-income renters is no better than in the rest of the country. In fact, Maryland has one of the most expensive housing markets in the United States. In order for a household to afford an adequate two-bedroom apartment at the HUD-estimated Fair Market Rent in Maryland, the household must earn a full-time hourly wage of \$24.47. *Out of Reach 2013* at 10. This is the fifth-highest “housing wage” among all 50 states. *Id.* at 14. A worker earning the minimum wage would need to work a 135-hour week in order to afford such an apartment. *Id.* at 13. This places Maryland behind only Hawaii and New York with respect to the number of hours of minimum-wage work necessary to afford a two-bedroom unit. *Id.*

The HUD-estimated two-bedroom apartment Fair Market Rent in Maryland is \$1,273 per month. *Id.* at 97. That rent is \$490 more than the average tenant in Maryland (making \$15.06 per hour) can afford. *Id.* It is \$582 more than an ELI household in Maryland can afford. *Id.* It is \$896 more than a minimum-wage earner in Maryland can

⁷ This number represents an additional 300,000-unit deficit over the 6.8-million-unit shortage in 2010. *3 Housing Spotlight* at 2.

⁸ Further, it does not appear that the housing market will improve for low-income tenants any time soon. The typical new-construction unit rented for \$1,100 per month in 2012; such expensive housing development is unlikely to provide low-income renters with more options. *The State of the Nation’s Housing 2013* at 5. And 11.9 percent of low-cost rentals were permanently removed from the housing stock between 1999 and 2009, indicating that even the current low-cost housing stock is at risk of deteriorating to the point that it is no longer livable. *America’s Rental Housing* at 25.

afford. *Id.* And it is \$1,060 more than an SSI recipient in Maryland can afford. *Id.* All of these tenants struggle, and many fail, to find affordable housing in our state. Quite simply, the affordable housing shortage has reached crisis proportions both nationally and within the state of Maryland.

B. WITHOUT AFFORDABLE HOUSING, THE BASIC NEEDS OF LOW-INCOME HOUSEHOLDS GO UNMET

Given the insufficient number of affordable residential housing units, low-income households are faced with difficult choices about how to pay for their housing needs. The number of low-income households paying more than they can afford to pay for housing is staggering. In 2009, 63 percent of ELI households and 49 percent of VLI households shouldered severe housing-cost burdens, where a household spends more than 50 percent of its total income on housing costs. *America's Rental Housing* at 4-5. An additional 15 percent of ELI households and 28 percent of VLI households shouldered moderate housing-cost burdens, where a household spends between 30 and 50 percent of its total income on housing costs. *Id.* By 2011, these numbers had worsened: 76 percent of ELI households and 36 percent of VLI households suffered under severe housing cost burdens, while an additional 12 percent of ELI households and 42 percent of VLI households suffered under moderate housing cost burdens. *3 Housing Spotlight* at 4.

With so little income to begin with, these families suffer serious consequences when they spend so much of their incomes on housing costs. They cannot afford other necessities, including healthcare, childcare, food, and transportation. *Id.* at 2. And they

have no resources to tide them over in the case of a temporary reduction in income or an emergency. *Id.*

According to the 2011 Consumer Expenditure Survey, a family with children that is in the bottom expenditure quartile (a proxy for bottom income quartile) spends approximately \$1400 per month. *The State of the Nation's Housing 2013* at 29. The average such family suffering from a severe housing-cost burden has approximately \$565 remaining after paying for housing each month. *Id.* This is only half of the amount that a typical unburdened household of the same expenditure category has. *Id.* With just \$565 to spend on all remaining expenses, the severely housing-cost burdened family spends only two thirds as much on food, half as much on clothes, half as much on pensions and retirement, and one fifth as much on healthcare as the unburdened household in the same expenditure category. *Id.* A family that spends two thirds as much on food and one fifth as much on healthcare when measured against the extremely low benchmark of other families in the bottom expenditure quartile is a family in which the children are going without medical care and the adults are scrimping on food.

Families that avoid paying more than they can afford for housing may make other unfortunate tradeoffs. Some poor families live in housing that is in seriously poor condition, in units that are substandard and unsafe. *3 Housing Spotlight* at 2. Other families stay with family or friends. *Out of Reach 2013* at 4. But that is seldom an acceptable long-term solution because “doubling up” is generally unstable, can be overcrowded, and is often a prelude to homelessness. *Id.* In fact, households that are

“doubled up” are considered to be homeless for the purposes of the McKinney-Vento Homelessness Assistance Act. *See* 42 U.S.C. § 11434a(2) (defining “homeless children and youths” to include “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason”).

Still other individuals and families that cannot access affordable housing end up living in homeless shelters or on the streets. According to HUD’s 2013 Point-in-Time count of homeless persons, 610,042 persons were homeless on a night in January 2013. HUD, *The 2013 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness 1* (2013), available at <https://www.onecpd.info/resources/documents/AHAR-2013-Part1.pdf>. Thirty-six percent of the individuals counted (totaling 222,197) were homeless persons in families. *Id.* 8,205 were homeless persons in Maryland. *Id.* at 8.

Because of the affordable housing deficit, some individuals and families are homeless or “doubled up,” while others sacrifice food and other basic necessities in order to pay for housing. The shortage of affordable housing in Maryland and across the country causes real and abiding suffering among low-income tenants.

II. AFFORDABLE HOUSING IS A HUMAN RIGHT

The lack of housing available to our nation’s neediest families is discordant with our international commitments. In the Universal Declaration of Human Rights, the United Nations General Assembly recognized housing as a basic human right. *See* Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d. Sess., pt. 1,

U.N. Doc. A/810 (1948). The Universal Declaration states that “[a]ll human beings are born free and equal in dignity and rights” and guarantees “the right to a standard of living adequate for the health and wellbeing of [the individual] and of his [or her] family, including food, clothing, housing and medical care and necessary services.” *Id.* at Art. 1 and Art. 25.

The Universal Declaration of Human Rights is elucidated in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), G.A. Res. 2200 (XXII), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, of which the United States is a signatory.⁹ Article 11(1) of the ICESCR “recognize[s] the right of everyone to an adequate standard of living . . . including adequate food, clothing, and housing.” *Id.* at art. 11(1). According to the U.N. Committee on Economic, Social, and Cultural Rights, “[t]he human right to adequate housing . . . is . . . derived from the right to an adequate standard of living” and “is of central importance for the enjoyment of all economic, social, and cultural rights.” U.N. Committee on Economic, Social, and Cultural Rights, General Comment 4: The Right to Adequate Housing, U.N. Doc. E/1992/23 (1990), ¶ 1.¹⁰

⁹ Although the United States has not yet ratified the International Covenant on Economic, Social and Cultural Rights, because it is a signatory it has an obligation to desist from any acts that would defeat the objective of the treaty. 1969 Vienna Convention on the Law of Treaties, Art. 18, May 23, 1969, 1155 U.N.T.S. 331.

¹⁰ General Comments are authoritative interpretations of the rights under a treaty, much as regulations serve to clarify and expound upon statutory law domestically.

The right to adequate housing includes a right to affordable housing. “Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.” *Id.* at ¶ 8(c). Further, “[s]teps should be taken by States . . . to ensure that the percentage of housing-related costs is, in general, commensurate with income levels.” *Id.*

The right to adequate housing also includes a right to security of tenure in that housing. “[A]ll persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” U.N. Committee on Economic, Social, and Cultural Rights, General Comment 7: Forced Evictions, and the Right to Adequate Housing, U.N. Doc. E/1998/22, annex IV, at ¶ 1 (1997). “Forced eviction” is not synonymous with “illegal eviction”; this would imply that “the relevant law provides adequate protection to the right to housing and conforms with the Covenant, which is by no means always the case.” *Id.* at ¶ 3. Instead, “forced eviction” is defined broadly, such that only “justified” evictions may be carried out, and this must occur “in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.” *Id.* at ¶ 15. In particular, “[e]victions should not result in rendering individuals homeless or vulnerable to the violation of other human rights.” *Id.* at ¶ 17.

Because of the affordable housing crisis, low-income renter households are frequently vulnerable to the violation of their human rights to housing, food, clothing, and medical care. Low-income households often shoulder housing costs “at such a level

that the attainment and satisfaction of other basic needs are . . . threatened or compromised.” General Comment 4, at ¶ 8(c). It is only through housing assistance programs that the United States begins to honor its international commitments to satisfy the human right to housing.¹¹

III. FEDERALLY SUBSIDIZED HOUSING PROGRAMS ALLEVIATE, BUT DO NOT ELIMINATE, THE AFFORDABLE HOUSING SHORTAGE

In 1937, Congress passed the United States Housing Act, which provided for the creation of public housing for low-income families and individuals. *See* Pub. L. No. 75-412 (1937). In enacting the Housing Act, Congress stated that one of the purposes of the federal housing law was “to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families.” 42 U.S.C. § 1437(a)(1). Following that mandate, in 1974 Congress enacted “Section 8” as part of the Housing and Community Development Act of 1974, Pub. L. No. 93-383 (1974) (codified at 42 U.S.C. § 1437 *et seq.* (1976)), which amended the Housing Act and “significantly enlarged” HUD’s role in the creation of housing opportunities for low-income families and individuals. *Hill v. Gautreaux*, 425 U.S. 284, 303 (1976). The Housing and Community

¹¹ The American Bar Association (“ABA”) has recently recognized housing as a human right and resolved to “urge[] governments to promote the human right to adequate housing for all through increased funding, development and implementation of affordable housing strategies and to prevent infringement of that right.” ABA, *Resolution and Report 117* (2013), available at http://www.americanbar.org/content/dam/aba/administrative/homelessness_poverty/resolution117.authcheckdam.pdf. The ABA observed that “U.S. policy supports the implementation of the human right to housing domestically.” *Id.* at 3 (capitalization omitted). The ABA called upon federal, state, and local governments to promote the human right to housing, “which, at minimum, includes . . . affordability [and] security of tenure.” *Id.* at 5.

Development Act of 1974 provided for multiple programs, including the Section 8 New Construction Program, which today funds the subsidy of Appellee Mr. Epps's apartment. Among the purposes of this Act was "the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income." 42 U.S.C. § 5301(c)(3).

Through the programs described in these Acts and others, the federal government subsidizes the rents of an estimated 7 million households. HUD, *Picture of Subsidized Households*, available at <http://www.huduser.org/portal/datasets/picture/yearlydata.html#download-tab> (selecting data for "2012 Based on 2010 Census" and "U.S. Total") (last visited Nov. 27, 2013). This number includes almost 2 million households living in units subsidized through the Low Income Housing Tax Credit program, administered by the IRS, as well as over 5 million households living in units subsidized through various programs administered by HUD.¹² *Id.* In Maryland, the federal government subsidizes the rents of an estimated 142,000 households. *Id.* (selecting data for "2012 Based on 2010 Census," and "State"). This number includes approximately 43,000 households living in units subsidized through the Low Income Housing Tax Credit program and approximately 99,000 households living in units subsidized through various programs administered by HUD. *Id.*

Unfortunately, these federal programs have not approached the goal of "provid[ing] a decent home and a suitable living environment for all persons, . . .

¹² This latter figure includes households residing in public housing. *Picture of Subsidized Households* (selecting data for "2012 based on 2010 Census" and "U.S. Total").

principally those of low and moderate income.” 42 U.S.C. § 5301(c)(3). Rental assistance is not an entitlement similar to food stamps, Medicaid, or Medicare; in fact, only one in four eligible tenant households receives rental assistance. Josh Leopold, *The Housing Needs of Rental Assistance Applicants*, 14 Cityscape, Nov. 2, 2012, at 275, 276. Millions of households are on waiting lists for vouchers or subsidized rental units, while additional households cannot even sign up for the waiting lists because many housing authorities have such long lists that they have closed them to new applicants. *Id.*

HUD regularly issues a report to Congress describing what HUD calls “worst case needs”: the most pressing housing needs of individuals who are not receiving housing assistance from the government. In particular, HUD describes renters with (1) incomes of no more than 50 percent of the Area Median Income (that is, ELI and VLI renter households) who (2) do not receive any federal housing assistance and (3) either shoulder a severe rent burden or live in severely inadequate housing. *See HUD, Worst Case Housing Needs 2011: Report to Congress 1* (2013), available at http://www.huduser.org/portal/publications/affhsg/wc_HsgNeeds11.html. The most recent report, *Worst Case Housing Needs 2011: Report to Congress*, was issued in August 2013.

HUD reported that 8.48 million households suffered from worst case needs in 2011. *Id.* at 4. Almost all households included in the worst case needs calculation were counted because of a severe rent burden; severely inadequate housing conditions accounted for only 3 percent of the households. *Id.* In 2011, among the households with worst case needs were 3.24 million families with children and 1.47 elder households. *Id.*

at viii. Over 1.3 million of the households with worst case needs included at least one nonelderly person with disabilities. *Id.* This figure accounted for almost one out of six households with worst case needs. *Id.*

According to HUD, the 2011 statistics show that “[w]orst case needs continue to increase at a record pace.” *Id.* at 4. The 8.48-million-household figure in 2011 represented an increase of 1.38 million households from 2009. *Id.* HUD explained that “[l]ower incomes led directly to increased worst case needs by increasing the number of renters with very low incomes and increasing rent burdens among very low-income renters.” *Id.* In addition, “[i]ncome losses . . . exacerbated worst case needs indirectly by rapidly increasing demand and competition for the most affordable units, thereby raising rents.” *Id.* Consequently, more and more of our nation’s poorest households could not afford a decent place to live. Given these facts, it is clear that the federal government’s housing assistance programs alleviate, but do not eliminate, the affordable housing shortage.¹³

¹³ Further, the prospects for expanded affordable housing due to increased federal assistance in the future look bleak. In 2012, appropriations for the HOME program were down 45 percent, appropriations for the Community Development Block Grant programs were down 26 percent, the budget for the Section 515 Rural Rental Housing Program was significantly reduced, and funding for public housing had been cut 12 percent since 2008. *The State of the Nation’s Housing 2013* at 30. The Section 8 Housing Choice Voucher Program received a 15 percent increase, but rising housing costs increased the per-household cost of vouchers and eliminated the possibility of expanding the number of households served. *Id.*

IV. THE RECIPIENTS OF PROJECT-BASED HOUSING ASSISTANCE ARE DEPENDENT ON THEIR CONTINUED TENANCIES FOR ACCESS TO AFFORDABLE HOUSING

Those renters who are lucky enough to receive housing assistance are dependent on their subsidies for housing stability and are vulnerable to extraordinary hardship if their receipt of housing assistance is threatened. The recipients of rental assistance are especially vulnerable given their demographics. Approximately half of the households in HUD programs have annual incomes under \$10,000. *Picture of Subsidized Households* (selecting data for “2012 Based on 2010 Census” and “U.S. Total”). Eighty-five percent have annual incomes under \$20,000. *Id.* Thirty-six percent of HUD households consist of single mothers with children. *Id.* In nearly a third of HUD households, the head of household or his or her spouse is elder. *Id.* And in over a third of HUD households, the head of household or his or her spouse has a disability.¹⁴ *Id.*

The recipients of project-based housing assistance are particularly vulnerable because their rental subsidies are dependent on their continued tenancies. Project-based rental assistance is appurtenant to rental units, not to renter households. Under the Section 8 project-based assistance programs, the owner of a structure executes a contract

¹⁴ Many studies have found that housing stability is especially necessary for persons with disabilities, particularly for those with mental illness and those needing wheelchair accessibility. See, e.g., National Council on Disability, *Inclusive Livable Communities for People with Psychiatric Disabilities* (2008), available at <http://www.ncd.gov/publications/2008/03172008>; Sally Rogers et. al., *Systematic Review of Supported Housing Literature 1993-2008* (2009), available at <http://www.bu.edu/drrk/research-syntheses/psychiatric-disabilities/supported-housing>; Sam Tsemberis et. al., *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals With a Dual Diagnosis*, 94 *American Journal of Public Health* 651, 655 (2004).

with HUD (or a state or local housing agency) under which (1) the owner agrees to rent units to eligible low-income tenants who pay rent based on their income and (2) HUD (or the state or local housing agency) agrees to provide assistance payments to the owner. *See, e.g.,* Pub. L. No. 93-383, § 201(a) (1974) (establishing the Section 8 New Construction and Substantial Rehabilitation Programs). The contracts between the owner and HUD are long term. For instance, under the regulations in place since 1979, contracts under the Section 8 New Construction Program are for terms of 20, 30, or 40 years. 24 C.F.R. § 880.502. For the length of the contract (and any renewals), the owner makes a commitment regarding the covered rental units. However, the owner does not make a commitment to particular tenants; the subsidy benefits whatever eligible low-income households reside in the covered units. If an owner were to evict a tenant from a unit subsidized by project-based assistance, the tenant would lose access to the subsidy entirely.

In contrast to project-based housing assistance, “‘tenant-based assistance’ means rental assistance . . . that provides for the eligible family to select suitable housing and to move to other suitable housing.” 42 U.S.C. § 1437f(f)(7). In other words, tenant-based assistance is appurtenant to a particular household. The household is provided with a voucher, which is “portable” to any eligible apartment on the private market within the geographic area covered by a given Section 8 Voucher Program administrator. 42 U.S.C. § 1437f(r). A tenant household may use its voucher for any such unit, provided that the

unit’s landlord is willing to accept the voucher.¹⁵ *America’s Rental Housing* at 35.

Initial rental terms are generally a minimum of one year long. 42 U.S.C.

§ 1437f(o)(7)(A). If a household decides to leave its current apartment “to move to other suitable housing,” 42 U.S.C. § 1437f(f)(7), the household retains the subsidy and may use the voucher for its next rental home. 42 U.S.C. § 1437f(o)(13)(E)(i).

In Maryland, approximately 50,000 households receive tenant-based housing assistance from HUD. *Picture of Subsidized Households* (selecting data for “2012 Based on 2010 Census” and “State”). Approximately 48,000 households receive project-based housing assistance from HUD.¹⁶ *Id.* It is this latter group of tenants who are most dependent on the retention of their current rental units. For approximately 48,000 tenant households in HUD-subsidized housing in Maryland, loss of an apartment means loss of a subsidy—and, almost certainly, complete loss of access to affordable housing.

V. CONGRESS HAS PRIORITIZED SECURITY OF TENANCY FOR THE RECIPIENTS OF PROJECT-BASED HOUSING ASSISTANCE

Tenant-based and project-based housing assistance programs feature different requirements and incentives. Through these differently structured programs, Congress has expressed different objectives and priorities. In comparison to the Section 8 tenant-

¹⁵ In some jurisdictions, including Montgomery County (where Mr. Epps resides), housing discrimination based on voucher-recipient status is prohibited. *See, e.g.*, Montgomery County Code § 27-12(a).

¹⁶ An additional approximately 43,000 households in Maryland receive project-based housing assistance from the IRS through the Low Income Housing Tax Credit program. *Picture of Subsidized Households* (selecting data for “2012 Based on 2010 Census” and “State”).

based assistance program, currently known as the Section 8 Housing Choice Voucher Program “HCVP”), the Section 8 project-based assistance programs¹⁷ are structured in order to promote and prioritize the residents’ security of tenancy.

In a tenant-based subsidy program such as the HCVP, it is crucial that landlords operating in the open private housing market be willing to accept voucher recipients as tenants. The HCVP must provide landlords with flexibility in order to encourage such landlord participation. In the Section 8 project-based subsidy programs, by contrast, other elements of the program are sufficient to encourage landlord participation. Security of tenancy for renters (whose housing assistance is dependent on continued residence) thus takes a significantly higher priority in the statutory scheme.

Private-market landlord participation is essential to the HCVP. The 1998 amendments to the legislation governing the HCVP demonstrate that Congress has structured the program to encourage landlords to rent units to voucher holders. The 1998 amendments eliminated both the “indefinite lease” requirement (which mandated that landlords “renew leases for Section 8 tenants and precluded them from terminating a Section 8 tenancy unless they filed court proceedings and were able to show good cause,” *Montgomery Cnty. v. Glenmont Hills Assocs.*, 402 Md. at 276 f.10) and the “take-one, take all” requirement (which compelled a private landlord to rent to all Section 8 voucher holders that otherwise met its “tenant desirability” standards once the landlord had agreed

¹⁷ The Section 8 New Construction Program is one of multiple project-based assistance programs established and governed by Section 8 of the United States Housing Act of 1937.

to rent to just one such voucher holder). Veterans Affairs and HUD Appropriations Act, Pub. L. No. 105-76 (1998). The House Report on the bill characterized these requirements as “rules that unnecessarily discourage housing owners from participating” and “the most egregious conditions that have caused dissatisfaction with choice-based housing.” H. R. Rep. 105-76, 126.

Congress made explicit that the 1998 changes to the HCVP were made in order to encourage landlord participation, out of a recognition that such participation is necessary to the program’s success. The Senate Report on the bill observed that “[o]ne of the key factors to the success of the tenant-based rental assistance program is the ability to attract property owners and managers to participate in the program. Owner participation plays a significant role in providing a broad range of housing choices for assisted families.” S. Rep. 105-21, 36. The House Report stated that the changes were intended to “encourage other apartment owners to participate in the program, thereby expanding the universe of affordable housing for low-income families.” H.R. Rep. 105-76, 126.

The legislative record reflects no such struggle to attract landlords to the Section 8 project-based assistance programs. In fact, the requirement of an indefinite lease absent good cause for eviction still applies to these programs. *See, e.g.*, 42 U.S.C. § 1437f(d)(1)(B)(ii) (regarding all Section 8 project-based housing assistance programs); 24 C.F.R. § 880.607 (regarding the Section 8 New Construction Program in particular). Congress has not found it necessary to prioritize landlord flexibility in the context of the

project-based programs because Congress has already provided landlords with other powerful incentives to contract for project-based subsidies.

For instance, HUD continues to make payments to landlords of Section 8 project-based housing even after a subsidized unit has been vacated. “[P]ayments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit.” 42 U.S.C. § 1437f(c)(4). Further, Congress provides protection to landlords of Section 8 project-based housing to prevent mortgage default in cases of extended vacancies.¹⁸ “[P]ayments may be made [to landlords]. . . after [the] sixty-day period in an amount equal to the debt service attributable to such unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing.”¹⁹ *Id.* These provisions are “intended to induce the owner to

¹⁸ When the Section 8 New Construction Program was still involved in the construction of new rental housing units, owners also had the option of using one of the Federal Housing Administration’s mortgage insurance programs. 24 C.F.R. § 880.101(e) (1995).

¹⁹ The federal government has provided even greater financial incentives to encourage the development and construction of property in the context of other project-based housing assistance programs. For instance, pursuant the Section 221(d)(3) Below-Market-Interest-Rate Program, private developers of rental housing for families were provided with subsidized financing at three percent mortgage rates. *See* 12 U.S.C. § 1715l(d)(3). Pursuant to the Section 236 Subsidized Housing Program, HUD incentivized the construction or rehabilitation of affordable housing by paying the project’s lenders an interest reduction payment that reduced the monthly mortgage payments to the amount that they would have been had the interest rate been one percent. *See* 12 U.S.C. § 1715z-1. And pursuant to the Section 202 program, HUD provided direct loans to construct or rehabilitate multifamily housing for seniors and people with disabilities. *See*

participate in the Section 8 low-income housing program and offer protection to the owner from monetary loss resulting from participation in the program.”²⁰ *Savett v. Davis*, 29 Cal. App. 4th Supp. 13, 19 (Cal. App. Dep’t Super. Ct. 1994).

Indeed, the Section 8 project-based programs prioritize providing security not only for the participating landlords but also for the participating tenants. Security of tenancy is particularly important for such tenants because, as discussed above, they depend on continued residence in their subsidized units in order to retain housing assistance. Various provisions of the legislation governing the Section 8 project-based programs promote heightened security of tenancy for these renters who are most dependent on their tenancies.

The 1987 amendments to the legislation governing the Section 8 project-based housing programs demonstrate Congress’s commitment to security of tenancy for tenants of project-based housing. The amendments added provisions that (1) require landlords

Section 202 of the Housing Act of 1959, Pub. L. No. 86-372, § 202 (1959) (formerly codified at 12 U.S.C. § 1701q (1990)). In exchange for these subsidies, landlords in such programs were required to rent units at below-market rents to low-income tenants. *See* 12 U.S.C. § 1715l(d)(3); 12 U.S.C. § 1715z-1; Pub. L. No. 86-372. Although HUD no longer issues commitments for new financing under these programs, many owners have not yet paid their loans and remain in the programs. Moreover, today the federal government subsidizes the construction, redevelopment, and rehabilitation of affordable housing through tax credits pursuant to the Low Income Housing Tax Credit Program. *See* 26 U.S.C. § 42. In return, developers must commit a specific number of units to income-qualified tenants at below-market rates. *Id.*

²⁰ Under the HCVP, landlords receive no such benefit. “If an assisted family vacates a dwelling unit for which rental assistance is provided under a [HCVP] housing assistance payment contract before the expiration of the term of the lease for the unit, rental assistance pursuant to such contract may not be provided for the unit after the month during which the unit was vacated.” 42 U.S.C. § 1437f(o)(9).

who are terminating their participation in Section 8 project-based assistance programs to provide a full year's written notice to both HUD and affected tenants and (2) require HUD to extend or renew its agreements with landlords participating in Section 8 project-based assistance programs if the landlords agree to continue providing low-income housing. *See* Emergency Low Income Housing Preservation Act of 1987, Pub. L. No. 100-242 (1988). Today, both of these provisions continue to provide additional stability for tenants of Section 8 project-based subsidized units.²¹

Congress expressly recognized that its purpose in passing the 1987 amendments was, in part, to promote security of tenure for renters receiving project-based housing assistance. The legislation stated:

It is the purpose of this title—

- (1) to preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance;
- (2) to minimize the involuntary displacement of tenants currently residing in such housing; and
- (3) to continue the partnership between all levels of government and the private sector in the production and operation of housing that is affordable to low income Americans.

²¹ The current iterations of these requirements are located at 42 U.S.C. § 1437f(c)(8) (“Not less than one year before termination of any contract under which assistance payments are received under this section . . . an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination In the event the owner does not provide the notice required, the owner may not evict the tenants or increase the tenants’ rent payment until such time as the owner has provided the notice and 1 year has elapsed.”) and 42 U.S.C. § 1437f(v) (“The Secretary may extend expiring contracts entered into under this section for project-based loan management assistance to the extent necessary to prevent displacement of low-income families receiving such assistance as of September 30, 1996.”).

Id. It is notable that Congress listed separately its desire to preserve affordable housing in general and its desire to minimize the displacement of residents in particular. This indicates that Congress was concerned not simply with the quantity of affordable housing stock but also with the security of tenancy enjoyed by the recipients of project-based housing assistance.

Congress reiterated, and redoubled its commitment to, that priority when it created the “enhanced voucher” program in 1999. *See* Appropriations, 2000, Pub. L. 106-74 (1999). Under the enhanced voucher program, if the contract between HUD and a landlord of Section 8 project-based housing expires (and the status of the units as project-based housing therefore terminates), the residents of the formerly-subsidized units may nonetheless elect to stay in their homes. 42 U.S.C. § 1437f(t). Although the landlord is no longer bound to charge Fair Market Rents with respect to those units, HUD will pay for an “enhanced voucher” to allow the tenants to remain in their units even as the rent on those units rises. While called a “voucher,” this enhanced subsidy is not portable and is available only for tenants electing to stay. The “enhanced voucher” covers the difference between the amount that is affordable to the tenant and the market-rate rent for the unit.

Id. That is, HUD pays more than it otherwise would for a voucher in order to allow former project-based housing-assistance recipients to remain in their homes.²²

²² If the household chooses to move with the “enhanced voucher,” HUD will not provide the difference between the rent that is affordable to the tenant and the market-rate rent for any new unit. Unlike the original unit to which the “enhanced voucher” would apply,

The legislative history confirms that when Congress created the “enhanced voucher” program, it intended to promote the security of tenancy enjoyed by the recipients of project-based housing assistance. The Conference Report accompanying the bill stated that “the legislation protects existing residents of Federal-assisted housing from being forced to move from their homes in the face of market-rate rent increases.” H. R. Conf. Rep. No. 106-379, at 169. It explained that “[e]nhanced vouchers allow increased assistance for residents in cases where rents increase as a result of the project owner’s decision to opt-out of the Section 8 program, therefore ensuring that the resident may continue to reside in the unit.” *Id.* at 172. Similarly, at a Senate subcommittee hearing on Section 8 housing, the Chairman of the House Subcommittee on Housing and Community Opportunity expressed that the 1999 amendment was intended to redress a crisis caused by large numbers of expiring Section 8 project-based assistance contracts, which “translate[d] to putting the stability of hundreds of thousands of families across America at risk.” Statement of Rep. Rick Lazio, Chairman, H. Subcomm. Hous. and Cmty. Opportunity, before Senate Subcomm. on Hous. and Transp., July 1, 1999, 1999 WL 492694 (F.D.C.H.). Through enhanced vouchers, Congress attempted to alleviate any housing insecurity experienced by those families and to preserve their indefinite tenancies.

The 1987 and 1999 amendments to the Section 8 project-based housing-assistance programs and the 1998 amendments to the Section 8 tenant-based housing-assistance

any new unit would need to comply with HUD’s payment standards under the HCVP. 42 U.S.C. § 1437f(t)(1)(C).

program reflect the difference in Congressional priorities with respect to project-based and tenant-based housing assistance. This Court should recognize Congress's commitment to housing stability for recipients of project-based housing assistance. It should enforce the requirements that Congress put into place to fulfill that commitment.

One way that Congress expressed that commitment was by requiring an indefinite lease for tenancies subsidized by project-based housing-assistance programs.²³ *See, e.g.*, 42 U.S.C. § 1437f(d)(1)(B)(ii) (regarding all Section 8 project-based housing assistance programs); 24 C.F.R. § 880.607 (regarding the Section 8 New Construction Program in particular). The indefinite tenancy term reflects an “expectation of permanency, seemingly shared by the Congress.” *Joy v. Daniels*, 479 F.2d 1263, 1241 (4th Cir. 1973). It effectuates “the congressional policies of providing a decent home (with stability and security) for every American family.” *Id.*

Congress requires that the residents of units subsidized by project-based housing assistance be afforded indefinite tenancies. And in Maryland, tenant-holding-over actions apply only “where [a] tenancy is for [a] definite term or at will.” Md. Code.

²³ The housing stability provided by the “indefinite lease” requirement is particularly important for tenants with disabilities. Landlord discrimination against tenants with disabilities is a serious and widespread problem. *See HUD, Annual Report on Fair Housing, Fiscal Year 2011* 19 (2011) (noting that 4,498 of the 9,354 Fair Housing Complaints received by HUD in 2011 alleged discrimination based on disability, more than on any other basis). Without an “indefinite lease” requirement, landlords more easily may improperly (and illegally) terminate the tenancies of renters with disabilities on the basis of appearance or behavior (sometimes in derogation of those renters' rights to reasonable accommodations). Individuals with disabilities are afforded greater protection by the “indefinite lease” requirement that governs tenancies subsidized by project-based housing assistance because under that requirement a landlord must identify a “good cause” in order to terminate a tenancy. *See* 42 U.S.C. § 1437f(d)(1)(B)(ii).

Ann., Real Prop. § 8-402(b)(2)(1)(i). Consequently, if this Court is to honor Congress's intentions to provide security of tenancy to the recipients of project-based housing assistance, it should refuse to apply the tenant-holding-over statute to tenancies subsidized by project-based housing-assistance programs.

CONCLUSION

For the reasons described above, this Court should affirm the decision below and rule that the tenant-holding-over action in Maryland may not be used against recipients of project-based housing assistance.

December 11, 2013

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STATUTES AND REGULATIONS

Maryland Statutes

Md. Code Ann., Real Prop. § 8-402(b)(2)(1)(i)

Notice to quit tenancy

Where any tenancy is for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of the will to the tenant or to the person actually in possession of the property to remove from the property at the end of the term, and if the tenant or person in actual possession shall refuse to comply, the landlord may make complaint in writing to the District Court of the county where the property is located.

Federal Statutes

29 U.S.C. § 206(a)(1)

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

- (1) except as otherwise provided in this section, not less than--
- (A) \$5.85 an hour, beginning on the 60th day after May 25, 2007;
- (B) \$6.55 an hour, beginning 12 months after that 60th day; and
- (C) \$7.25 an hour, beginning 24 months after that 60th day;

42 U.S.C. § 1437(a)

(a) Declaration of policy

It is the policy of the United States--

(1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this chapter--

(A) to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;

(B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and

(C) consistent with the objectives of this subchapter, to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public;

(2) that the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens, but it is the responsibility of the Government to promote and protect the independent and collective actions of private citizens to develop housing and strengthen their own neighborhoods;

(3) that the Federal Government should act where there is a serious need that private citizens or groups cannot or are not addressing responsibly; and

(4) that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.

42 U.S.C. § 1437f (selected subsections)

(a) Authorization for assistance payments

For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty

days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that--

(B)(i) the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary;

(ii) during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause;

(f) Definitions

As used in this section--

(7) the term "tenant-based assistance" means rental assistance under subsection (o) of this section that is not project-based assistance and that provides for the eligible family to select suitable housing and to move to other suitable housing.

(o) Voucher program

(7) Leases and tenancy

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit--

(A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for

an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that--

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that--

(I) are consistent with State and local law; and

(II) apply generally to tenants in the property who are not assisted under this section;

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.;³

(D) shall provide that during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy;

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable State and local law; and

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection. In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 2602 of Title 12) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease

between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.

(9) Vacated units

If an assisted family vacates a dwelling unit for which rental assistance is provided under a housing assistance payment contract before the expiration of the term of the lease for the unit, rental assistance pursuant to such contract may not be provided for the unit after the month during which the unit was vacated.

(13) PHA project-based assistance

(E) Resident choice requirement

A housing assistance payment contract pursuant to this paragraph shall provide as follows:

(i) Mobility

Each low-income family occupying a dwelling unit assisted under the contract may move from the housing at any time after the family has occupied the dwelling unit for 12 months.

(ii) Continued assistance

Upon such a move, the public housing agency shall provide the low-income family with tenant-based rental assistance under this section or such other tenant-based rental assistance that is subject to comparable income, assistance, rent contribution, affordability, and other requirements, as the Secretary shall provide by regulation. If such rental assistance is not immediately available to fulfill the requirement under the preceding sentence with respect to a low-income family, such requirement may be met by providing the family priority to receive the next voucher or other tenant-based rental assistance amounts that become available under the program used to fulfill such requirement.

(r) Portability

(1) In general.--(A) Any family receiving tenant-based assistance under subsection (o) of this section may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within any area in which a program is being administered under this section.

(B)(i) Notwithstanding subparagraph (A) and subject to any exceptions established under clause (ii) of this subparagraph, a public housing agency may require that any family not living within the jurisdiction of the public housing agency at the time the family applies for assistance from the agency shall, during the 12-month period beginning on the date of initial receipt of housing assistance made available on behalf of the family from such agency, lease and occupy an eligible dwelling unit located within the jurisdiction served by the agency.

(ii) The Secretary may establish such exceptions to the authority of public housing agencies established under clause (i).

(2) The public housing agency having authority with respect to the dwelling unit to which a family moves under this subsection shall have the responsibility of carrying out the provisions of this subsection with respect to the family.

(3) In providing assistance under subsection (o) of this section for any fiscal year, the Secretary shall give consideration to any reduction in the number of resident families incurred by a public housing agency in the preceding fiscal year as a result of the provisions of this subsection. The Secretary shall establish procedures for the compensation of public housing agencies that issue vouchers to families that move into or out of the jurisdiction of the public housing agency under portability procedures. The Secretary may reserve amounts available for assistance under subsection (o) of this section to compensate those public housing agencies.

(4) The provisions of this subsection may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under this section.

(5) Lease violations

A family may not receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 [42 U.S.C.A. 1437f] program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

(s) Prohibition of denial of certificates and vouchers to residents of public housing
In selecting families for the provision of assistance under this section (including subsection (o) of this section), a public housing agency may not exclude or penalize a family solely because the family resides in a public housing project.

(t) Enhanced vouchers

(1) In general

Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (o) of this section, except that under such enhanced voucher assistance--

(A) subject only to subparagraph (D), the assisted family shall pay as rent no less than the amount the family was paying on the date of the eligibility event for the project in which the family was residing on such date;

(B) the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project, and if, during any period the family makes such an election and continues to so reside, the rent for the dwelling unit of the family in such project exceeds the applicable payment standard established pursuant to subsection (o) of this section for the unit, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the rent for the dwelling unit (as such rent may be increased from time-to-time), subject to paragraph (10)(A) of subsection (o) of this section and any other reasonable limit prescribed by the Secretary, except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families;

(C) subparagraph (B) of this paragraph shall not apply and the payment standard for the dwelling unit occupied by the family shall be determined in accordance with subsection (o) of this section if--

(i) the assisted family moves, at any time, from such project; or

(ii) the voucher is made available for use by any family other than the original family on behalf of whom the voucher was provided; and

(D) if the income of the assisted family declines to a significant extent, the percentage of income paid by the family for rent shall not exceed the greater of 30 percent or the percentage of income paid at the time of the eligibility event for the project.

(2) Eligibility event

For purposes of this subsection, the term “eligibility event” means, with respect to a multifamily housing project, the prepayment of the mortgage on such housing project, the voluntary termination of the insurance contract for the mortgage for such housing project (including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter), the termination or expiration of the contract for rental assistance under this section for such housing project (including any such termination or expiration during fiscal years after fiscal year 1994 prior to October 27, 2000), or the transaction under which the project is preserved as affordable housing, that, under paragraphs (3) and (4) of section 515(c), section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), section 4113(f) of Title 12, or section 1715z-1a(p) of Title 12, results in tenants in such housing project being eligible for enhanced voucher assistance under this subsection.

(3) Treatment of enhanced vouchers provided under other authority

(A) In general

Notwithstanding any other provision of law, any enhanced voucher assistance provided under any authority specified in subparagraph (B) shall (regardless of the date that the amounts for providing such assistance were made available) be treated, and subject to the same requirements, as enhanced voucher assistance under this subsection.

(B) Identification of other authority

The authority specified in this subparagraph is the authority under--

(i) the 10th, 11th, and 12th provisos under the “Preserving Existing Housing Investment” account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104-204; 110 Stat. 2884), pursuant to such provisos, the first proviso under the “Housing Certificate Fund” account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Public Law 105-65; 111 Stat. 1351), or the first proviso under the “Housing Certificate Fund” account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105-276; 112 Stat. 2469); and

(ii) paragraphs (3) and (4) of section 515(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), as in effect before October 20, 1999.

(4) Authorization of appropriations

There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

(v) Extension of expiring contracts

The Secretary may extend expiring contracts entered into under this section for project-based loan management assistance to the extent necessary to prevent displacement of low-income families receiving such assistance as of September 30, 1996.

42 U.S.C. § 11434a(2)

For purposes of this part:

(2) The term “homeless children and youths”--

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes--

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of Title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

42 U.S.C. § 5301(c)(3)

(c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of the aggregate of the Federal assistance provided to States and units of general local government under section 5306 of this title and, if applicable, the funds received as a result of a guarantee or a grant under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives--

- (1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;
- (2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;
- (3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;
- (4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;
- (5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;
- (6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base; and

(9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

Federal Regulations

24 C.F.R. § 880.502

(a) Term (except for Manufactured Home Parks). The term of the contract will be as follows:

(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.

(2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) Term for Manufactured Home Parks. For manufactured home units or spaces in newly constructed manufactured home parks, the term of the Contract will be 20 years.

(c) Staged Projects. If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

24 C.F.R. § 880.607

(a) Applicability. The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) Entitlement of Families to occupancy--

(1) Grounds. The owner may not terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any State landlord and tenant act;

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) Notice of good cause. The conduct of a tenant cannot be deemed "other good cause" under paragraph (b)(1)(iv) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.

(3) Material noncompliance.

(i) Material noncompliance with the lease includes:

(A) One or more substantial violations of the lease; or

(B) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5), failure to disclose and verify Social

Security Numbers (as provided by 24 CFR part 5), failure to sign and submit consent forms (as provided by 24 CFR part 5), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) Termination notice.

(1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iv) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice.

(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

(d) Modification of Lease form. The owner, with the prior approval of HUD or, for a 24 CFR part 883 project, the Agency, may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject

the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by § 880.609 and other applicable HUD regulations.

STATEMENT OF TYPE STYLE AND POINT SIZE

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2013, I caused to be mailed first class, postage prepaid, two copies each of the foregoing brief to:

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