



Housing Law Bulletin

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DAVID BRADY BRYSON¹ 1941-1999

Our longtime colleague, guide and friend David Bryson died on December 25, 1999, after a difficult six-month struggle with lung cancer. We have lost a great and wonderful person who did so much for so many for so long. David leaves an unparalleled legacy of knowledge and commitment to housing justice, passed on through teaching and writing and through advocating, in phone calls and workshops, in newsletters and books, and in legislatures, agencies, and courts throughout the nation.

It is extremely difficult to accurately describe the meaning of David's contributions to the National Housing Law Project and its staff, legal services housing lawyers and para-

legals, low-income housing tenants, others in need of affordable housing, and housing advocates all across the country for so many years.

To our work, David always brought extraordinary intelligence, an unflagging commitment to housing justice for all people, unparalleled integrity, perseverance in pushing toward the goal, and seemingly endless patience with everyone involved, allies and opponents alike. No one else could carve up a complex housing problem with David's surgical precision. For that he was always a giant among us. But he was also the gentlest of giants who cast no shadow, remained full of grace and good humor, never harshly disparaged others, and always kept a sparkle in his eye or a smile on his face. He personified the best that humanity has to offer.

David never exalted his own contributions, preferring instead to teach and work closely and calmly with colleagues, advocates, tenant leaders, and policy makers to get the job done—write the pleading, draft the rule or the law, develop and map the theory or the strategy, prepare the article or the book. His work did most of his talking. Because of this collegial and supportive style that has benefitted thousands of advocates and millions of poor people, and the sudden onset and terrible swiftness of his disease, David never received the full recognition his work so richly deserved.

This year, he was recognized in September by the California State Bar with its annual Loren Miller Award for lifetime dedication and commitment to providing legal services to the poor, by the National Legal Aid and Defender Association at its annual fall conference in Long Beach, and by the National Low-Income Housing Coalition. At the NLADA conference, Don Saunders from NLADA and Alan Houseman from the Center on Law and Social Policy each spoke eloquently about what David has meant for them personally and for millions of others whose lives have been improved measurably by David's work, and the standing ovation of hundreds more spoke even louder on behalf of the entire legal services community.

¹This tribute was written by Jim Grow of the National Housing Law Project. It also appears in the special January / February 2000 issue of the *Clearing-house Review*.

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David's extraordinary housing advocacy career began several years after graduation from Princeton and Columbia Law School, after he first served as a law clerk for Chief Justice Roger Traynor of the California Supreme Court and then as a Faculty of Law lecturer at the University of Ghana. Joining NHLP as a staff attorney in 1970, he took a break from 1973 to 1977 to work as a staff attorney for California Rural Legal Assistance. He returned to NHLP in 1977 to serve as a staff attorney, then as acting director on several occasions, and then as deputy director. Through these many years, David always provided the guiding hand for NHLP and its work.

David also provided the guiding hand for the work of so many other advocates, mostly legal services and public interest lawyers and paralegals. His guidance has been especially important, as housing law is one of the largest areas of legal services practice, and also one of the most complex, especially with respect to federal housing programs that serve people at or near the poverty level.

Alan Houseman aptly called David "the consummate support center attorney" because David used his remarkable intellect, skills, and compassion to improve the lives of the poor in so many ways. David litigated or participated in landmark cases that have established housing rights for the poor; he successfully advocated for laws to advance or protect their interests; he served as a teacher, mentor, advisor, and invaluable resource to thousands of legal services advocates over three decades.

Our friend and colleague Florence Roisman captured his impact as follows, "For every legal services advocate in the United States who is facing a housing issue, the first thing to do is to read what David Bryson has written, and the next thing to do is to call David. No responsible housing advocate would undertake to do anything out of the ordinary without first consulting David."

At the same time, people were always central to David's work: people and families with low-incomes, tenant leaders, legal services advocates, and allies seeking housing justice. Working with all of them provided the sustenance he needed to persevere so well for so long.

David's work always focused on establishing and implementing certain core principles that he strongly believed were central to advancing the goal of housing justice for people with extremely low incomes. He was a strong believer in the essential role of the federal government to provide the framework and the resources to implement a shared national commitment for housing justice, with little faith that anything less would prove successful within our lifetimes or that of the next generation. Thus, David's essential principles included:

- providing and preserving deep subsidies and income-based rents and nondiscriminatory tenant selection policies so that poor people would not be priced out of the "affordable" housing resources provided;
- protecting the deeply subsidized affordable housing stock from being diluted, whatever the cause (whether through poor management and maintenance, gentrification, demolition, foreclosure, or other market forces), through "one-for-one replacement" and the principle "once subsidized, always subsidized";
- minimizing the involuntary displacement of very low-income residents from their homes and communities by using good cause eviction protections, strict "last resort" criteria to govern the loss to units, and fair relocation protections;
- ensuring procedural fairness to tenants and applicants when HUD or other public agency administrators propose actions that affect poor tenants' homes, whether the threat came under the guise of stripping away grievance procedures, seeking forfeiture or eviction in a "war on drugs," or a plan to demolish or sell their homes;
- implementing the duties imposed by fair housing and civil rights laws when housing providers or public agencies make programmatic decisions that intentionally discriminate or adversely affect people of color, persons with disabilities, or families with children; and
- keeping all of the doors of justice open to the poor by helping them access both the courts and less formal decision-making procedures to enforce their substantive rights, and by participating in and encouraging tenants to participate in legislative and administrative policy development processes where substantive and procedural rights are created and refined.

David's contributions in the world of housing litigation were many. He was a precise and insightful student of the law and the courts, whose wise counsel was invaluable to many advocates, raw and seasoned alike. Notable among these achievements were his work on successful cases:

- requiring subsidized owners to provide due process protections prior to increasing project rent levels (*Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 357 F.2d 547 (9th Cir. 1974) (Clearinghouse No. 2,971));
- challenging minimum income requirements for admission to federally subsidized housing (*Findrilakis v. HUD*, 357 F. Supp. 547 (N.D. Ca. 1973) (Clearinghouse No. 8,026));
- preserving HUD's lease and grievance procedure against a proposed repeal by the Reagan-Bush Administrations (*National Tenants Organization v. Pierce*, No. 88-3134 (D.D.C. memorandum and order Jan. 25, 1989) (Clearinghouse No. 43,958));
- ensuring that public housing tenants have access to federal court to enforce federal laws and regulations under Section 1983 (*Wright v. City of Roanoke*, 479 U.S. 418 (1987) (Clearinghouse No. 33,657));

- preventing the United States from seizing public housing tenants' homes without any prior notice or hearing (*Richmond Tenants Organization v. Kemp*, 956 F.2d 1300 (4th Cir. 1992) (Clearinghouse No. 45,826)); and
- upholding state anti-discrimination laws providing access for voucher holders against challenges of federal preemption (*Franklin Tower One v. N.M.*, 157 N.J. 602, 725 A.2d 1104 (N.J. Supreme Ct. 1999) (Clearinghouse No. 51,172)).

Of course, this brief list does not include the many cases in which David participated or provided essential support and guidance, and those that were unsuccessful in the short-run but that eventually brought more justice through subsequent changes in governing statutes or rules.

Not surprisingly, David's remarkable litigation record is matched by his highly successful record of legislative and administrative advocacy. David drafted hundreds of proposed legislative changes to the federal public and subsidized housing programs that benefit the poor, many of which became law. And since almost every new law requires regulations, David also provided or organized exhaustive comments to almost all significant proposed HUD regulations over these years. These provisions cover the complete range of procedural protections and substantive rights that benefit federally assisted tenants and applicants, including administrative hearings and grievance procedures, admissions criteria and preferences that preserve access for poor people, good cause for eviction, utility allowances, income-based rents, exclusions from income for rent-setting, housing assistance for immigrants, and demolition and relocation protections.

Many of these important protections, particularly those concerning targeting of scarce resources, income-based rents, good cause for eviction, tenant participation and relocation, have survived largely intact, despite the far-reaching changes contained in Congress' 1998 housing bill, which David challenged every step of the way during the several years of its development.

Another still-vital aspect of David's legacy is his prolific writing and constant teaching, designed to equip other advocates with the knowledge needed for successful advocacy. Invariably comprehensive and precise, his written work included his many contributions to NHLP's books and Manuals and his regular articles for the *Housing Law Bulletin* and the *Clearinghouse Review*. These works ranged from the specific to the global, providing useful descriptions of important laws or regulations or more thoughtful expositions on general national housing policy topics, like the right to housing or the 104th Congress, or more discrete current issues, such as fair housing or housing preservation. Through this work, he has guided thousands of advocates, even those he never met personally.

David was extremely disappointed by his inability to return to his work during his illness. He was grateful for and most comforted by the many expressions of love and support from his colleagues nationwide.

David's memorial service was held on December 30, well-attended by many of David's family, friends, and housing colleagues. We celebrated his caring for others, his humor, his commitment to family, friends, and all people, his invariable integrity, his humility and grace—qualities that clearly distinguished David from many other brilliant people we know. He enriched our lives immeasurably, during a life too brief at 58 years but every moment well-lived. His life was our privilege.

Although we will miss his physical presence, David will always remain close every day in our work. We remain comforted by having enjoyed his life and work for the many years we did share together, and by the lessons of his labors in the pursuit of justice for all.

David's family has requested that contributions in his honor and memory be made to NHLP, at 614 Grand Avenue #320, Oakland, CA 94610. As he would appreciate, his obituary appeared in the *New York Times* on January 7, and was noted in a brief article on January 10. ■

CATHERINE BISHOP AND ELAINE BEALE JOIN NHLP STAFF

The National Housing Law Project is extremely pleased to announce the addition of two staff members to its Oakland Office. Catherine M. Bishop rejoins NHLP as a staff attorney specializing in the public and HUD multi-family housing programs. As many of you know, Catherine worked for NHLP prior to 1995 and is considered an expert in the field of public and subsidized housing. She has extensive litigation experience in the housing field and has authored or co-authored several manuals, articles and guides, including the first and second editions of *HUD Housing Programs: Tenants' Rights*. During the past five years, Catherine was a senior associate at Wartelle & Weaver, West Bay Law, in San Francisco, and, more recently, she served as a staff attorney at Community Legal Aid Society of Alameda County. We are delighted to have Catherine back with NHLP.

Elaine Beale joined NHLP as its Development Director in November of 1999. Elaine brings extensive nonprofit fundraising experience to our organization as well as a familiarity with legal services. Immediately prior to coming to NHLP, she was a fundraising consultant to a number of San Francisco Bay Area organizations. She was also the Institutional Gifts Director for the Volunteer Legal Services Program of the Bar Association of San Francisco. Prior to that, she was Director of Development for San Francisco Women Against Rape. Elaine is an accomplished writer who had a first novel published in 1997. We welcome Elaine and look forward to working with her. ■

TENANT-BASED SECTION 8 RENEWAL RULE

by Barbara Sard¹

HUD published a final regulation governing renewal of expiring Section 8 tenant-based assistance contracts² on October 21, 1999. The new rule will apply to voucher and certificate (including project-based certificate) contracts that expire after December 31, 1999. The rule was fashioned through a negotiated rulemaking process, as required by Congress.³ It is important for advocates as well as public housing agencies (PHAs) to understand the new rule, as the renewal funding formula will significantly affect the impact of PHA decisions concerning the voucher payment standard(s) and local admissions preferences on the number of families a PHA can assist.

This article briefly reviews the significance of the renewal formula, how certificate and voucher funding was previously handled by HUD, and the methodology that will be used under the new rule.

1. Significance of Renewal Formula

The new renewal formula adopted by HUD means that HUD will fund the additional costs that may be incurred if PHAs increase their voucher payment standards, whether to achieve adequate utilization of contracted funds, to promote deconcentration of poverty and expand housing opportunities, to restrain families' payment burdens, or to meet targeting requirements.⁴ The chart on the opposite page illustrates the effect of setting the voucher payment standard at different percentages of the applicable Fair Market Rent (FMR) on the rent burden that families will experience, and on the cost of units that families may be permitted to rent.

In general, a higher voucher payment standard will make more units available to families at a rent burden of 30 percent of income for rent and utilities,⁵ and will make more

units available for which a family's share of the rent will be within the permissible maximum limit of 40 percent of adjusted income.⁶ This is particularly true for housing in areas that are less poverty-concentrated and that have better access to jobs and quality services. Such an increase in the potential availability of affordable units may be necessary if a sufficient number of families are to succeed in leasing units with their vouchers—both overall and in low poverty neighborhoods—for a PHA to score well on the relevant indicators in the Section 8 Management Assessment Program (SEMAP)⁷ and to prevent the future reduction in the size of its voucher program.⁸ It may also be necessary for a PHA to comply with the targeting requirements for the voucher program,⁹ as the lower a family's income, the less ability it will have to rent a unit for which the rent and utility costs exceed the payment standard.

If PHAs choose to admit more poor families than required by the federal targeting floor in order to meet identified housing needs, and as a result incur additional housing assistance costs, the new renewal formula will also cover these increased costs. Subject to adequate Congressional appropriations, PHAs are assured of sufficient funds to serve

⁶24 C.F.R. § 982.508. This limit applies to new program participants and movers who rent units for which the cost of rent and utilities exceeds the payment standard.

⁷PHAs that lease fewer than 95 percent of the units budgeted for the PHA by HUD lose 20 out of a possible 135 to 145 points on SEMAP. 24 C.F.R. § 985.3(n). PHAs in metropolitan areas that take the necessary steps to expand housing opportunities, including analyzing the effect of their payment standard[s] and the possible need for an increased or exception payment standard, and achieve an adequate or increased level of deconcentration of poverty, can earn an additional 10 points. 24 C.F.R. § 985.3(g)(expanding housing opportunities), (h)(deconcentration bonus), as amended by 64 Fed. Reg. 40,496, 40,498 (July 26, 1999). If a PHA earns zero points on the lease-up or expanding housing opportunities indicators, despite designation as a "standard" or "high performing" PHA due to its overall SEMAP score, the PHA must correct the deficiency within 45 days, and may be considered by HUD to be in breach of its contract with HUD, which HUD may then cancel. 24 C.F.R. §§ 985.106, 985.109.

⁸ Short of canceling a PHA's voucher contract altogether, the new Section 8 renewal rule authorizes HUD to permanently reduce the funding level and number of "baseline" units for PHAs that fail to adequately lease units, and reallocate that funding to other PHAs. 24 C.F.R. § 982.102(i). The rule itself does not set a numerical standard for what level of leasing is "adequate" to avoid reallocation of funds. It is likely that the reallocation provision will apply to PHAs that are using less than 90 percent of their budget authority, and do not achieve leasing of 95 percent of budgeted units within approximately 16 months after receiving a warning from HUD. This is the standard set forth in the draft of the notice that will describe in detail the procedures outlined in the rule, on which the Negotiated Rulemaking Committee reached consensus. (Hereafter, this notice will be cited as "draft Notice.") It is available on the web at: http://www.hud.gov/pih/programs/s8/draft_notice_recom.pdf. A final notice should be issued by HUD in January, 2000, and will be available through the Office of Public Housing home page, <http://www.hud.gov/pih/pih.html>, or at <http://www.hudclips.org>.

⁹ Not less than 75 percent of the households admitted each year by PHAs to their voucher programs must be extremely low income (i.e., with incomes at or below 30 percent of area median), subject to very limited exceptions. 24 C.F.R. § 982.201(b)(2).

¹This article was written for NHLP by Barbara Sard, the Director of Housing Policy for the Center on Budget and Policy Priorities. Ms. Sard served as a member of the Negotiated Rulemaking Committee on Tenant-Based Section 8 Renewal.

²64 Fed. Reg. 56,882 (amending 24 C.F.R. § 982.102) (hereinafter all citations to the final rules will be to the section of the Code of Federal Regulations as it will be codified). Most contracts between HUD and PHAs to fund Section 8 certificates and vouchers are now one-year contracts, and must be renewed annually for funding to remain available.

³Pub. L. No. 105-276, § 556(b), 112 Stat. 2461, 2613 (1998).

⁴24 C.F.R. § 982.102(g)(4) (list of "legitimate program goals" that HUD must adhere to if it alters the cost-based formula for allocating renewal Section 8 budget authority to PHAs).

⁵Under the new voucher program, families must pay at least 30 percent of their adjusted income for rent and utilities, even if a unit's rent is below the payment standard. 24 C.F.R. § 982.505(b). Only families that rented less expensive units under the old voucher program prior to October 1, 1999 will continue to benefit from the so-called "shopping incentive" during the conversion period. 24 C.F.R. § 982.502(c). HUD may require PHAs to increase their payment standard up to 110 percent of FMR for a particular unit size if 40 percent or more of participants occupying units of that size pay more than 30 percent of income for rent and utilities. 24 C.F.R. § 982.503(e).

SECTION 8 VOUCHERS: EFFECT OF PAYMENT STANDARD AT 90 PERCENT, 100 PERCENT AND 110 PERCENT OF FAIR MARKET RENT

Assume FY 2000 Fair Market Rent (FMR) in Anytown is \$737 (with utilities) for a two-bedroom unit. Sample Family: Household adjusted income is \$11,000 (\$917 per month); therefore 30 percent of monthly adjusted income of \$917 is \$275.

Scenario 1: Payment Standard = 100 Percent of FMR (\$737)

Gross Rent	\$700	\$800	\$900
Payment Standard	\$737	\$737	\$737
Tenant Share	\$275	\$338 (\$275 + \$63)	\$438 (\$275 + \$163)
Result	Payment Standard is greater than the rent + utilities, so tenant share is 30 percent of income.	Payment Standard is lower than the gross rent, so tenant share is 37 percent of income.	Tenant share is 48 percent of income. PHA may not allow tenant to use voucher for this apartment.

Scenario 2: Payment Standard = 90 Percent of FMR (\$663)

Gross Rent	\$700	\$800	\$900
Payment Standard	\$663	\$663	\$663
Tenant Share	\$312 (\$275 + \$37)	\$412 (\$275 + \$137)	\$512 (\$275 + \$237)
Result	Payment Standard is lower than the rent, so tenant share is 34 percent of income.	Tenant share is 45 percent of income. PHA may not allow tenant to use voucher for this apartment.	Tenant share is 56 percent of income. PHA may not allow tenant to use voucher for this apartment.

Scenario 3: Payment Standard = 110 Percent of FMR (\$810)

Gross Rent	\$700	\$800	\$900
Payment Standard	\$810	\$810	\$810
Tenant Share	\$275	\$275	\$365 (\$275 + 90)
Result	Payment Standard is higher than the rent, so tenant share is 30 percent of income.	Payment Standard is higher than the rent; tenant share is 30 percent of income.	Payment Standard is lower than the rent, so tenant share is 39.8 percent of income.

**This chart was prepared by Judith Liben of Greater Boston Legal Services.*

at least the number of families that HUD considers its baseline—that is, the number of families actually served, or that HUD records indicate the PHA was contracted to serve, on October 1, 1997 (whichever is higher), plus any additional “units” subject to HUD/PHA contract since that date, in a manner that is consistent with these program goals.¹⁰

2. Background¹¹

Some background is necessary to appreciate the need for a new renewal formula and why the funding methodology is confusing to many people involved with the Section 8 program. Until recent years, budget authority for Section 8 certificates and vouchers was appropriated by Congress in multi-year increments, generally of from five to 15 years. HUD’s contracts with PHAs for these subsidies indicated the number of families that HUD expected the PHA to serve with the reserved funding amount. HUD calculated the amount of funding based on the applicable FMR(s) and an assumed national inflation rate for the duration of the contract. Until recently, HUD reserved for PHA use the full FMR amount, without any deduction for families’ assumed contributions toward their rental costs. When the initial multi-year contracts expired, they were renewed by HUD (annually, beginning in the mid-1990’s) based on the number of families HUD had initially assumed would be served by the increment in question, multiplied by the full FMR for the area.

As a result of this funding methodology, many PHAs accumulated huge reserves due to housing assistance payment costs below the FMR. In the certificate program this was the result of two factors: tenants contributing a portion of the costs, and rents for existing participants lagging behind FMR increases. In the voucher program,¹² there was the additional factor that PHAs could set their payment standard as low as 80 percent of the FMR, and assist more families than the number initially specified by HUD with any remaining funds. Some PHAs decided to “grow their own programs” by using the program reserves accumulated in both the certificate and voucher programs to lease units to additional families beyond the number HUD had initially specified that the funding was intended to assist.

In 1996, in response to Congressional criticism that such “self-help” increases in program size were contrary to Congressional prerogatives to control incremental assistance,

¹⁰ 24 C.F.R. § 982.102(g)(4)(iv), (viii). See discussion of § 982.102(g) below.

¹¹ The following description is based on a presentation by HUD staff on Section 8 Funding at the HUD Section 8 Summit held in Nashville, Tenn., on August 30–Sept. 2, 1998, and on the materials distributed and presentations made during the Negotiated Rulemaking meetings, in addition to sources specifically cited. A summary of each of these meetings is available at: http://www.hud.gov/pih/programs/s8/s8neg_rulemaking.html.

¹² About one-quarter of all tenant-based subsidies in 1998 were vouchers. U.S. General Accounting Office, *Section 8 Tenant-Based Housing Assistance: Opportunities to Improve HUD’s Financial Management*, GAO/RCED-98-47, February 1998, Appendix I.

HUD instructed PHAs that they were no longer permitted to use program reserves to increase the number of families served.¹³ However, PHAs could, if they had sufficient budget authority without using reserves, approve leases for more families than HUD had anticipated they would serve within their budget authority.¹⁴ This policy revision left unchanged the ability of PHAs, within their voucher programs, to serve additional families within their current budget authority by using a lower payment standard. Because PHAs’ administrative fees are tied to the number of families participating in the program, PHAs continued to have a financial as well as moral/political incentive to serve the maximum number of families, though their discretion was largely limited to the voucher program by late 1996.

Congress sought to prevent this “problem” of PHAs adding families to the program by requiring HUD, in 1997, to recapture approximately \$7.2 billion in Section 8 program reserves. Trying to prevent large reserves from again accumulating from unspent Section 8 funds, in 1998 HUD began to renew expiring Section 8 contracts at 92 to 94 percent of FMR. While this was an attempt by HUD to bring PHAs’ budgets closer to what appeared to be their actual costs for Section 8 assistance, there were many difficulties in the application of this national percentage reduction to the funding of individual PHAs.

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This was the situation Congress faced in the fall of 1998. To remedy it, Congress included a section in the Quality Housing and Work Responsibility Act of 1998 (QHWRA) that specifies the standard HUD must meet in renewing tenant-based contracts, and directed HUD to implement the new standard through negotiated rulemaking.¹⁵ The statutory standard contains two requirements that are vital to keep in mind in reviewing the new rule: (1) the renewal formula must allocate sufficient funds, “at a minimum . . . to ensure continued assistance for the actual number of families assisted as of October 1, 1997” plus incremental assistance and additional families authorized subsequent to that date (known as the PHA’s “baseline”); and (2) inflation adjustments must be based on local or regional (not national) factors.¹⁶

¹³ PIH 96-68 (August 23, 1996); PIH 97-59 (November 26, 1997).

¹⁴ *Id.*

¹⁵ Pub. L. No. 105-276, 112 Stat. 2461, 2613 (1998).

¹⁶ *Id.*, § 556(a) (emphasis added).

For FY 1999, prior to the negotiated rulemaking, Congress directed HUD to implement the statutory provision by notice. In that notice, HUD made an extremely important addition to the statutory language concerning the "baseline" number of units that the renewal formula must fund. HUD decided that it would fund the *higher* of the number of families actually assisted on October 1, 1997, or the number of units "reserved" for the PHA on HUD's records (i.e., the number of families HUD believed the PHA could assist, whether or not its actual budget authority would support that number in light of costs, and without regard to the then-mandated 3-month delay in reissuance of turnover Section 8 subsidies).¹⁷ For most PHAs, the latter "reserved" number of units provided a higher "baseline" than the statutory language regarding the actual number of families assisted.

3. The Final Renewal Rule

The final rule is a refinement of the actual cost methodology that HUD developed during 1998 and 1999, including an important change in how PHAs can use their program reserves. Basically, the formula is:

[PHA's expiring baseline number of units (adjusted for post-12/31/99 changes)] x [PHA's actual cost per unit] x [inflation adjustment].

Each of these concepts requires explanation.

a. The Renewal Formula

The determination of a PHA's Section 8 renewal budget for the subsequent calendar year starts with a PHA's "baseline" number of units, which will now be the number of Section 8 subsidies reserved by HUD for the PHA program as of December 31, 1999.¹⁸ In the years following 2000, the baseline will be adjusted by any permanent changes made to the units reserved by HUD for the PHA.¹⁹ The preamble explains that this baseline includes the higher of the number of units leased or reserved on October 1, 1997 plus adjustments HUD has made to correct its records and to add new units.²⁰ HUD will issue a notice in February 2000 that will include a more detailed explanation of how the "baseline" is determined and what procedures PHAs should follow if they believe HUD has made an error in determining their baseline.²¹

¹⁷ PIH 98-65 (Dec. 30, 1998), as corrected by PIH 99-1 (Jan. 12, 1999).

¹⁸ 24 C.F.R. § 982.102(d)(1)(i).

¹⁹ 24 C.F.R. § 982.102(d)(1)(ii).

²⁰ 64 Fed. Reg. 56,883.

²¹ See n. 7, *supra*.

The number of units in the adjusted baseline that expire in the upcoming calendar year is then multiplied by the PHA's adjusted annual per unit cost. Each PHA's annual per unit cost is determined by dividing the PHAs' total housing assistance amounts paid by the total number of "unit months" for which housing assistance was paid, and then multiplying by 12 to annualize the monthly actual average cost. The PHA's cost data are derived from the PHA's most recent HUD-approved year-end statement. This could mean that renewal funding for subsidies for which the funding expires in calendar year 2000 is based on either the PHA's FY 1998 or FY 1999 year end statement, depending on the PHA's fiscal year and the speed of HUD's approval process.

HUD's decision to fund the higher of the number of families actually assisted or the number of units "reserved" for the PHA was extremely important.

Because of the one- to two-year time lag between the cost data used to determine actual costs and the subsequent period in which the funding will be used, HUD adjusts the actual annual per unit cost by the Section 8 annual adjustment factor(s) (AAF) that applies to the PHA's jurisdiction for the time period(s) between the last approved year end statement and the end date of the funding under the renewal contract.²² HUD has committed to trying to develop a better measure of actual inflation in costs relevant to the amount of Section 8 assistance payments at the local level rather than the Section 8 annual adjustment factors.²³

Recognizing that the AAFs do not always accurately project future costs that are changing rapidly, HUD agreed to include in the rule flexibility to modify the adjusted annual per unit cost figure used to determine the subsequent year's budget on request of a PHA.²⁴ PHAs that increase their payment standard in light of increasing rental costs of available units, but make the increase too late to be adequately reflected in the actual cost data contained in the most recent approved year end statement, may wish to request upward modification of their budget authority under this provision.

²² 24 C.F.R. § 982.102(e). The regulatory authority for the Section 8 annual adjustment factors is found at 24 C.F.R. Part 888.

²³ Preamble, 64 Fed. Reg. 56,884 (Oct. 21, 1999). See also the Final Report of the HUD Housing Certificate Fund Negotiated Rulemaking Advisory Committee at 18, (hereafter "Final Report"), available on the web at: http://www.hud.gov/pih/programs/s8/final_committee_report.pdf.

²⁴ 24 C.F.R. § 982.102(e)(3)(iii).

b. New Policy on Use of Reserves

This actual cost methodology means that if a PHA's average per-unit cost has increased, the increased cost will, within one to two years, be fully reflected in the Section 8 renewal funding it receives from HUD. But during the year when per unit costs first increase and possibly the following year (depending on the timing of the PHA's fiscal year and HUD approval of the year end statement), the actual cost formula may not yet reflect a cost increase. To avoid a reduction in the number of families served below the "baseline" during this adjustment period, PHAs will be permitted to draw more liberally on the two-month project reserve that HUD provides to each PHA. The details of this new reserve policy are to be issued by HUD shortly in a Federal Register notice, and the draft notice is currently available on the web. PHAs that need to use reserves to be able to serve the "baseline" number of families at current costs are given greater flexibility to do so than was previously the case, and are assured that HUD will restore depleted reserves so long as there are sufficient program appropriations.²⁵ From the data reviewed during the negotiated rulemaking process, in virtually all cases this liberalized authority to draw on reserve funds will be sufficient to prevent a reduction in the number of families served.

The actual cost methodology means that if a PHA's average per-unit cost has increased, the increased cost will be fully reflected in the Section 8 renewal funding it receives from HUD.

c. Limited Authority for HUD to Alter the Actual Cost Methodology

Other than an actual national shortfall in appropriations,²⁶ there are three possible situations in which HUD may in the future depart from the rule's actual cost methodology for renewal funding. HUD may invoke its right to modify the actual cost budgeting only after a subsequent notice published in the Federal Register based on consultation with relevant stakeholders, and under circumstances and proce-

²⁵ See Preamble at 64 Fed. Reg. 56,883 (Oct. 21, 1999, and Part IV(C)(1) and (D) of the draft Notice. See n. 7, *supra*, for the web location of the draft notice.

²⁶ See 24 C.F.R. § 982.102(b) ("If the amount of appropriated funds is not sufficient to provide the full amount of renewal funding for PHAs, as calculated in accordance with this section, HUD may establish a procedure to adjust allocations for the shortfall in funding."). To date, Congress has always fully funded tenant-based Section 8 renewals, with the exception of the three-month mandatory delay on reissuance of turnover subsidies in fiscal years 1996 to 1998.

dures that are consistent with the program goals listed in the regulation.²⁷

- The first situation is when HUD determines that an individual PHA, based on its spending pattern, is likely to exhaust its budget authority *and* its reserves during its fiscal year. HUD reserves the authority to require such a PHA to bring its costs down and the number of families served in line with program resources. Yet the PHA is still assured of adequate funds to serve the baseline number of families, as adjusted since Dec. 31, 1999, in a manner that enables the families served to have a reasonable rent burden and expanded housing opportunities, and that enables the PHA to admit new families to the program consistent with the needs identified in the applicable consolidated plans and with targeting requirements.²⁸
- The second situation is when HUD determines that it is necessary to alter the costs used to determine the budgets of specific individual PHAs or all PHAs, "because of threats to the future availability of funding."²⁹ This provision is directed not at mismanagement by individual PHAs, but at avoiding an increasing cost trajectory that HUD determines will result in future overall program costs that Congress will not fund.³⁰ Reaching consensus on this provision was the most difficult task the Negotiated Rulemaking Committee faced.³¹ It presents some potential uncertainty concerning future funding even for PHAs that keep program costs from increasing beyond the level that would be covered by the rule's formula and program reserves.

It is important to underscore that HUD could not lawfully reduce the actual cost formula in a manner that would be inconsistent with the listed program goals. Therefore, PHAs that increase their payment standards because they determine that such an increase is necessary to deconcentrate poverty, expand housing opportunities, prevent unreasonable rent burdens, or comply with income targeting, and are administering their programs efficiently and complying with rent reasonableness requirements, should not be at any risk of decreased funding under this provision of the rule. Moreover, should future funding be reduced in an unanticipated manner, a PHA remains free at that point to reduce its payment standard within the basic range³² if it prefers to take that step rather than serve fewer families.

²⁷ See 24 C.F.R. § 982.102(g), the preamble at 64 Fed. Reg. 56,884 (Oct. 21, 1999), and the Final Report at 15.

²⁸ 24 C.F.R. § 982.102(g)(1) and (4).

²⁹ 24 C.F.R. § 982.102(g)(2).

³⁰ Preamble at 64 Fed. Reg. 56,884 (Oct. 21, 1999).

³¹ See Final Report at 13-15.

³² 24 C.F.R. § 982.503(b)(i).

- The third situation is where a PHA's actual average per subsidy cost has decreased compared with the prior year (because the PHA has lowered its payment standard, family incomes have increased, rents have fallen, or some other reason) and as a result the PHA would be due to receive reduced funding under the actual cost formula. Many PHAs would have responded to such a cost reduction by expanding the number of families served, or have induced the reduction for this purpose. In order to reward program efficiency and economy, and to enable a PHA to have sufficient funds to continue to serve additional families above its adjusted baseline, HUD may adjust the formula to prevent such PHAs from losing funding.³³

If HUD does not use its authority to adjust the cost formula for PHAs with declining costs—and it will “in all likelihood” not do so³⁴—it will be the responsibility of PHAs that permit additional families above the baseline number to lease units with Section 8 assistance to cut back to the number of families that it can serve within its budget authority. During the attrition period, PHAs may be permitted to draw on reserve funds to prevent the loss of assistance to any family currently participating in the program, but HUD makes no commitment to restore the depleted reserves.³⁵ PHAs that set a lower payment standard (or otherwise reduce program costs) with the goal of increasing the number of families served within budget authority thus run a substantial risk that in the following year, or an even longer period, they will not be able to serve any new families in their Section 8 program while they reduce the number of families served down to the baseline number that can be supported with the reduced budget authority that will result from the rule's formula.

Conclusion

Taken as a whole, the new Section 8 renewal rule means that PHAs, advocates and residents need to discard the old notion that Section 8 funds are a zero-sum “game,” and that if costs are increased to serve some families (because of an increase in the payment standard, admitting poorer families, or any other reason) then the number of families served must necessarily be reduced. PHAs are assured, so long as Congress fully funds renewal needs as indicated by the regulatory formula, of having sufficient funds to support at least the “baseline” number of families at the costs that the PHA actually incurs, so long as those costs reflect reasonable management decisions about how to implement Section 8 program goals. PHAs *can* serve families better, without having to reduce the number of families they serve. ■

³³ 24 C.F.R. § 982.102(g)(3).

³⁴ Draft Notice at Part IV (C)(2)(b).

³⁵ Draft Notice at Part IV (D).

NEW GUIDANCE RE FY 2000 PROJECT-BASED SECTION 8 CONTRACT RENEWALS

Our last *Bulletin* contained a review of the major housing policy provisions of Congress' HUD Appropriations Act for FY 2000, including new laws governing Section 8 contract renewals and tenant protection vouchers where owners remove developments from the HUD program.¹ HUD has quickly moved to implement many of those provisions through Notice H 99-36 issued on December 29, 1999.² HUD provided further detail through a satellite training staged on January 6, 2000.

1. Background on the FY 2000 Law

The FY 2000 appropriations bill contained important provisions governing HUD's multifamily housing programs, especially HUD's authority to renew expiring project-based Section 8 contracts.³ Although the new law does not revise Congress' 1997 policy decision to leave the renewal decision primarily in the hands of the owner, it does contain provisions to encourage owners to stay in the affordable housing program. The law essentially codifies into statute HUD's June 1999 (“Mark Up”) policy to offer higher market rents to owners of some Section 8 properties with contract rents below market levels, and provides the necessary funding.⁴

With respect to other Section 8 properties with expiring contracts (those ineligible for or declining “Mark Up” or restructuring under “Mark to Market”), the new law also

¹See *FY 2000 HUD Appropriations Bill: Section 8 Renewal Provisions (Including “Mark-Up to Market”)*, 29 HOUS. L. BULL. 203 (Nov./Dec. 1999). The new law is Pub. L. No. 106-74, 113 Stat. 1047 (Oct. 20, 1999). The text of Pub. L. No. 106-74 can be found at 113 Stat. 1047 (Oct. 20, 1999), and the preservation provisions are almost all found in Subtitle C of Title V, starting at Section 531, 113 Stat. 1109. The enhanced voucher provisions are established by Section 538 of the new law. The Conference Report is House Report No. 106-379.

²As of January 14, the new Notice H 99-36 was available through the HUD Clips website at <http://www.hudclips.org/cgi/index.cgi>. Click on the shortcut link to “1999 Housing Notices,” then select “H 99-36” from the archive list.

³Section 531 of the bill establishes a revised Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (“MAHRAA”), codified at 42 U.S.C. §1437f note. Because of this codification in an obscure section of the U.S. Code, references herein will usually be to “new §524” with the applicable subsection.

⁴HUD Notice H 99-15 *Emergency Initiative to Preserve Below-Market Project-Based Section 8 Multifamily Housing Stock*, (issued June 16, 1999, expires June 30, 2000). To obtain the full text of the Notice, go to <http://www.hudclips.org>, click on the link to “1999 Housing Notices,” and go to H 99-15. See *HUD Finally Announces “Mark-Up” Policy to Prevent Some Section 8 Opt-Outs*, 29 HOUS. L. BULL. 96 (May 1999); *HUD's Final “Mark-Up” Notice Contains Important Changes*, 29 HOUS. L. BULL. 138 (July/Aug. 1999) (reviewing the final HUD “Mark Up” policy Notice H 99-15).

allows owners to obtain renewal contracts, but at various rent levels. The rents HUD must make available on owner request are determined by the project's current rent level and its relation to comparable market rents, unless the owner or the project is subject to disqualification for program violations.⁵

Most owners of properties with current rents above market levels may generally obtain renewals at rents "equal to comparable market rents."

Under the new law, most owners of properties with current rents above market levels may generally obtain renewals at rents "equal to comparable market rents."⁶ An important exception is those owners that are exempt or ineligible for restructuring who can obtain a renewal contract at rents that are higher than market rents at the lesser of existing rents as adjusted by the operating cost adjustment factor (OCAF) or budget-based rents.⁷ Another important exception to the "market rent" rule is that owners of some other properties, usually those below-market properties that are not eligible for the *mandatory* mark up (e.g., below-market properties ineligible for the mandatory policy because they have rents below 110 percent of the area Fair Market Rent, or FMR), may receive a negotiated renewal rent *up to* comparable market levels, but no less than the existing rent as adjusted by HUD's OCAF.⁸ Since these latter offers are discretionary with HUD, HUD effectively determines which of these properties will get renewed where owners are unwilling to renew at current rents, although HUD must consider factors relevant to preservation in offering higher rents.⁹

The FY 2000 law establishes a new rule concerning renewals of expiring Section 8 contracts for projects subject to Plans of Action under prior preservation programs which could have Section 8 rents either above or below-market. While those with below-market rents are usually under an obligation to renew any expiring contract at existing rents as adjusted by a cost factor, other properties with above-mar-

⁵Section 531(a), establishing a new MAHRAA Section 524(a)(1) and (2), which in turn refers to Section 516 of MAHRAA.

⁶New Section 524(a)(4)(B).

⁷New Section 524(b).

⁸New Section 524(a)(4)(C). By definition, these properties are ineligible for restructuring because they have *below-market* rents.

⁹*Id.*, referring to the criteria established under Section 524(a)(4)(D) on waiving the 150% of FMR cap on mandatory renewal offers for qualified properties, which include the following circumstances: (1) vouchers would be difficult to use in the local area, (2) the housing serves a vulnerable tenant population, such as the elderly, the disabled, or large families, or (3) the property represents a community preservation priority, demonstrated by a contribution of state or local funds.

ket rents must now receive a "comparable benefits" offer from HUD.¹⁰

The new law also specifies how rents will be adjusted in future years after the initial renewal. Most projects renewed under these other authorities, like the mark-up projects, will receive annual rent adjustments pursuant to HUD's operating cost adjustment formula (OCAF) or, if the owner requests, on a budget basis for actual approved cost increases.¹¹ These adjustments will be important if HUD and owners execute longer-term contracts subject to appropriations.¹²

The new law also revised (again) the notice requirements governing Section 8 contract expirations.¹³

Finally, where Section 8 contracts do terminate by HUD or owner action, including expirations without renewal, the new law makes a major change in extending HUD's obligation to offer so-called "enhanced voucher" assistance, subject to appropriations, to any previously assisted tenants.¹⁴ This new authority governs enhanced vouchers not just for Section 8 terminations, but also for prepayments, and for certain other transactions.

These enhanced vouchers permit payment standards for tenants who choose to remain in a converted property to be set at the actual post-conversion rents for the units, even if higher than the ordinary local payment standard, subject only to the PHA's "rent reasonableness" determination. This new authority also clarifies that the enhanced voucher subsidy must cover subsequent rent increases as well, subject only to the PHA's "rent reasonableness" test.¹⁵

¹⁰Section 531, establishing a new §524(e)(1) of MAHRAA.

¹¹New Section 524(c)(1). Non-McKinney mod rehabs are apparently excluded from these rent adjustment provisions, and it is unclear whether others will apply.

¹²This new Notice follows HUD's earlier policy (HUD Notice H 99-32 (Dec. 1, 1999)) to offer all owners such 5-year renewal contracts. Many properties, renewed either under any of the authorities under new Section 524(a), or under new Section 524(e)(2) (mark-to-market demonstration projects), are also eligible another one-time (during any 5-year contract term) discretionary mark-up to market increase. New Section 524(c)(2).

¹³Section 535 of the bill revises Section 8(c)(8) of the United States Housing Act, which had required that owners provide a 1-year notice to tenants and HUD prior to any "termination," which includes any "expiration or a refusal to renew the contract." While these features of the law remain unchanged, Congress revised *some* of the requirements mandating content of the notices, including deleting the requirement that the notice set forth the "reasons" for the termination. The statutory requirement of "reasons" was one of the grounds for the federal court's holding in *215 Alliance v. Cuomo*, 61 F.Supp. 2d 879 (D. Minn. 1999). See *Minnesota Tenants Win Major Preservation Victory*, 29 HOUS. L. BULL. 161 (Sept. 1999).

¹⁴Pub. L. No. 106-74, §531, establishing a new Sec. 524(d) of MAHRAA, and §538, establishing a new Section 8(t) of the United States Housing Act to govern enhanced vouchers.

¹⁵New Section 8 (t)(1)(B) of the USHA (payment standard equals actual unit rent "as such rent may be increased from time to time"). HUD had previously taken the position that prepayment enhanced voucher subsidies could not increase to cover subsequent rent increases, a position recently rejected as illegal by one federal court. *215 Alliance v. Cuomo*, 61 F.Supp. 2d 879 (D.

2. HUD's New Notice H 99-36

HUD's new Notice addresses many of the issues left unclear in the appropriations law, and a few others as well. Among them are issues concerning Section 8 renewal policies and procedures, Section 8 termination notices, and enhanced voucher policies. However, it is important to note that most policies and procedures remain the same from FY '99, as the basic renewal options for owners have not changed, although they are restated in the Notice. HUD intends this new Notice to provide a single comprehensive guide for owners, managers, tenants and HUD field staff.

Nonprofits acquiring properties with expiring below-market rents from for-profit or limited-profit owners can use the Mark Up policy to get higher rents on renewal as part of the sale transaction.

a. Section 8 renewal policies and procedures, including rent adjustments

Most of the news here relates to requirements related to new policies implementing HUD's twin authorities to increase rent subsidies in expiring Section 8 developments that currently carry below-market rents. These two authorities are: (1) HUD's mandatory duty to make market rent offers to owners of certain below-market developments ("Mark Up" policy), and (2) HUD's discretionary authority to permit a mark-up of below-market rents to a new budget-based rent level (including debt service for rehabilitation financing) that does not exceed market rents for developments owned by nonprofit owners, which are ineligible for the normal mark-up policy ("Mark Up to Budget").

Two important new policies affect nonprofit owners, and apparently both of these are legally authorized under the second discretionary authority. First, nonprofits (including nonprofit controlled limited partnerships established for Tax Credit financing) acquiring properties with expiring below-market rents from for-profit or limited-profit owners can use the Mark Up policy to get higher rents on renewal as part of

the sale transaction.¹⁶ They are unaffected by the law's non-profit ineligibility provision, which would apply if they had been owner of the property all along. Nonprofits must, however, execute an additional 20-year use agreement with affordability restrictions, including acceptance of an annual Section 8 contract if offered. These properties need *not* meet the other standard eligibility criteria for Mark-Ups.

In addition, for those nonprofits that are ineligible for ordinary Mark-Ups because they are longer-term owners of below-market properties, HUD will exercise its discretion to permit these owners to "mark up" to new budget-based rent levels that include debt service for capital repairs, so long as the resulting rent level does not exceed market.¹⁷ These properties must submit a capital needs assessment and rehabilitation financing plan, demonstrating at least a 10 percent contribution toward the repairs from other sources, as well as an estimated monthly reserve deposit for 10 years.¹⁸ Properties with some units not assisted under Section 8 will apparently have the burden of the rent increase carried by the Section 8 assisted units.¹⁹ The nonprofit owner must also agree to accept Section 8 renewals if offered for an additional 20 years.²⁰

HUD's Notice also restates the ability of projects that do not qualify for the normal mark-up offer (*e.g.*, due to comparable rent levels, physical conditions, or existing use restrictions) to obtain a waiver of the Notice requirements upon Field Office recommendation to Headquarters.²¹

Owners of properties with above-market rents that seek a renewal must generally certify that rents are above market, and the HUD field office will then refer the property to the Office of Multifamily Housing Assistance Restructuring for processing of the renewal at market rents, determined by a later comparability study, with or without a formal debt restructuring plan.

For all properties renewing expiring contracts, the HUD Notice also clarifies that there will be different renewal rules and procedures for projects renewed for the first time after an initial expiration, from those for projects renewed subsequently. These rules and policies primarily concern rent comparability studies required to support owner renewal requests, and rent adjustments subsequent to initial renewal. Continuing recently established policies, owners renewing under the "Mark Up" policy must accept a 5-year renewal contract (subject to annual federal appropriations), and other

¹⁶Section IX B.

¹⁷Section XXII.

¹⁸*Id.* Properties must also have a Real Estate Assessment Center score exceeding 30 points. Nonprofits can also obtain this increase to yield a 6 percent return in initial equity invested in the project, which is a new HUD policy.

¹⁹*Id.* See also the processing instructions in Attachment 4B.

²⁰Section XII G.

²¹Section IX C.

Minn. 1999). See *Minnesota Section 8 Tenants Win Major Preservation Victory*, 29 HOUS. L. BULL. 161 (Sept. 1999). The House Appropriations Committee Report accompanying H.R. 2684, the FY 2000 HUD Appropriations bill, indicated that HUD's position was wrong: "[t]o clarify any ambiguity, language is included in the Administrative provisions to ensure that subsequent rent increases, if reasonable, are covered by the enhanced voucher." H. R. No. 286, 106th Cong., 1st Sess. (language under Title II appropriating funds for the Section 8 Housing Certificate Fund). It remains unclear whether HUD will take steps to provide retroactive benefits to tenants in prepayment buildings who have been deprived of coverage by HUD's prior illegal interpretation.

renewing owners have the option to do so. Apparently, owners may choose contract terms of between one and five years, and HUD will also consider terms longer than five years, as the statute imposes no absolute limit.²² For all renewals, however, regardless of any contract term longer than one year, appropriations are only committed for one year at a time and subject to annual renewal in the subsequent year's appropriations process. Short-term contracts of less than a year are also possible to protect tenants, to align multiple contracts at a property, or to permit adequate time for processing a mark-up.

Owners that submitted rent comparability studies last year can use them to support longer renewal contracts now, so long as a 5-year maximum lifespan of the study is not exceeded.

Rent comparability studies submitted by owners will have a 5-year lifespan.²³ After submission as part of the initial renewal process, a study need not be redone or renewed annually. Where the owner elects a 5-year renewal contract, or where HUD requires one (for Mark-Up properties), rents will generally be adjusted at least by HUD's operating cost factor during the remaining years on the contract. For those contracts where owners choose the longer term, HUD may provide higher rent adjustments upon owner request if a higher rent is justified by a revised budget. Owners that submitted rent comparability studies last year can use them to support longer renewal contracts now, so long as a 5-year maximum lifespan of the study is not exceeded. Where owners elect only a 1-year contract, they may apply for "Mark Up" at any subsequent expiration, or may request a renewal with a cost adjustment (or possibly a limited budget-based increase).

Where owners have been suspended or debarred, renewal of a contract (but not mark-up) will still be possible if the owner's bad conduct did not involve the units covered by the contract.²⁴ Otherwise, if the violations concern the property with an expiring contract, the owner must transfer the property in order for the contract to be renewed.²⁵ However, bad conduct with respect to other properties will still disqualify the owner from a renewal under the mark-up policy.²⁶

²²Section VI.

²³Section V.

²⁴Section III K.

²⁵These statements were made by HUD officials in the teleconference, but Sections XIX and XX of the Notice do not specifically codify this policy.

²⁶Section IX D.

The Notice also contains HUD's policy about the impact of Real Estate Assessment Center inspection results for contract renewals.²⁷ Depending upon the score received and the existence of any conditions warranting emergency action, the HUD field staff (Program Center Director or Hub Supervisor) must decide whether to renew the contract under the guidance provided. The Notice states a general policy of nonrenewal if serious physical problems at the property affect the health and safety of the residents and the owner is not in compliance with a viable remedial plan.

Many expiring Section 8 contracts affect properties that were processed under either the Preservation program or the earlier FY 1996-1998 Demonstration programs that preceded "Mark to Market." For the preservation projects, HUD's new Notice makes clear that HUD will simply offer to renew these at current rents without restructuring,²⁸ in accordance with the requirements of the preservation plan, since another provision of the new law now makes preservation projects with above-market rents specifically ineligible for the restructuring program.²⁹ In the event that the preservation plan allows the owner to opt-out of the Section 8 contract, HUD will require the owner to continue to comply with the preservation Use Agreement, while providing enhanced vouchers to tenants. Usually, this issue will arise with properties where current Section 8 rents are less than market levels or the levels obtainable under the Use Agreement. For Demonstration projects that already had their mortgages restructured or rents reduced to market, renewals should include an OCAF adjustment. Those Demonstration projects that avoided restructuring at market rents must be evaluated by HUD to determine the propriety of restructuring now.

Where owners intend to opt-out, HUD requests they continue to provide written notice to HUD's local office.

b. Section 8 Termination Notices

The new law makes all Section 8 termination notices one year in length, even those at the end of a 5-year contract, whether that contract is chosen by the owner or required as part of a mark-up. Congress also revised some of the requirements mandating content of the notices, specifically remov-

²⁷Section XIX.

²⁸Section XIII B. Under new MAHRAA Section 524(e)(1), this option requires specific appropriated funding, which was expressly provided this year within the language governing the Housing Certificate Fund.

²⁹Section 531(b), amending Section 512(2) of MAHRAA.

ing the requirement that the notice set forth the reasons for the termination and those that had mandated specific content depending on the owner's intention. HUD's new Notice includes some sample forms as attachments, with different form notices for owners who intend to renew from those who intend to opt-out. Where owners execute a 5-year renewal contract (subject to appropriations), they would not need to serve any notices during the term of that contract, until one year prior to the end of the term, because the contract is not expiring, and thus there is no "termination" giving rise to a duty to notify. HUD field office project managers are supposed to review the notices for legal sufficiency, and return noncompliant notices to owners for correction, with the 1-year clock starting after service of the corrected notice.³⁰ Short-term extensions generally do not trigger additional 1-year notice requirements, unless they occur following completion of the 1-year period.³¹

Where owners intend to opt-out, HUD also requests that owners continue to provide a written notice to HUD's local office, to permit adequate time for processing replacement vouchers. The Notice does not require service of this definitive 120-day intention to opt-out on tenants. At the teleconference briefing, HUD staff stated that owners that file notices stating an intent to renew could change their minds during the 1-year period, without filing a new 1-year notice, by giving HUD the 120-day notice of opt-out, but this position appears legally insupportable.

c. Enhanced voucher policies

HUD's Notice provides little guidance about Congress' new enhanced voucher policy, which makes these special tenant-based subsidies available upon specified conversion actions, including owner opt-outs. Details will apparently be provided in a forthcoming joint Notice issued by the Offices of Housing and Public and Indian Housing. However, clarifying an important ambiguity in the law, the Notice does state that tenants receiving these vouchers may elect to remain in their units, as has been true for tenants receiving them as a result of prepayments since 1996.³² Thus, opt-out owners should have to accept them, protecting tenants against involuntary displacement. ■

³⁰Section XVI.

³¹Section XVII D. However, the Notice even provides exceptions to this general policy, where short-term extensions are to give HUD time to process vouchers, to cover the remaining period of the required 1-year notice where the owner gave notice with less than a year before contract expiration, or is considering mark-up.

³²Section XV A.

MARYLAND HOUSING AUTHORITY'S TRESPASS POLICY ENJOINED

A strict trespass policy adopted by the Fredrick Maryland Housing Authority (FMHA) in order to fight a perceived drug dealing problem was preliminarily enjoined recently by a federal district court as impermissibly excluding many potential guests of residents. *Diggs v. Housing Authority of the City of Fredrick*, 67 F.Supp.2d 252, 1999 WL 988,969 (D. MD. July 15, 1999).

FMHA adopted the policy in 1992. Using the local police department as its agent, the authority cited non-residents who were on any housing authority property "without apparent legitimate reason." Once cited, a person was subject to arrest for trespassing without further warning if seen on the same property again even if visiting a resident. FMHA maintained a log of all persons cited indefinitely and, while having adopted a procedure for residents to remove a visitor's name from the log, written notice of the procedure had not been distributed to residents until 1998 and the decision to actually remove a person from the log was in the unfettered discretion of the authority's director.

Two residents of FMHA and several guests brought an action in 1998 to enjoin the policy on the grounds that it was unconstitutional and in violation of the Housing Act of 1937. Subsequent to the preliminary injunction hearing, but before the court's ruling, the resident plaintiffs were evicted from their apartment. The plaintiffs filed a motion to amend the complaint to add an additional resident plaintiff. The housing authority opposed the motion, contending that the former residents lacked standing to continue to challenge the policy, thus rendering the case moot and precluding the joining of additional plaintiffs. In addition, the authority sought to dismiss the plaintiffs' Housing Act claim altogether on the basis that the plaintiffs could not maintain a cause of action under Section 1983 for the authority's violation of the Housing Act.

Ruling on the plaintiffs' motion to amend, the court found in plaintiffs' favor. While it agreed with the authority that the original resident plaintiffs no longer had standing to challenge the policy, it did not agree that the case was moot. The court found that the guest plaintiffs had a legally cognizable personal interest in the preliminary injunction motion and that the former resident plaintiffs retained an interest in their damage claims against the authority. Thus, the court concluded that the case was not moot and that it was not prohibited from permitting the addition of a new resident plaintiff on jurisdictional grounds.¹ Moreover, the court rejected as insubstantial the authority's claim that joining a new plaintiff after the preliminary injunction hearing would cause it undue prejudice. It reasoned that the salient

¹67 F.Supp.2d 529.

facts with respect to the plaintiff's challenge of the policy, namely that she is a resident and that her guests are subject to the trespass policy, were not challenged by the authority, that the primary issue at the preliminary injunction hearing was the validity of the trespass policy under the Housing Act and Constitution, and that all the evidence presented at the hearing was relevant to the new plaintiff.²

The court also rejected the authority's motion to dismiss the Housing Act claim. Under that claim the plaintiffs alleged a cause of action under 42 U.S.C. §1983, for the authority's alleged violations of the Housing Act and its implementing regulations allowing for guests in their homes. The authority contended that no cause of action existed under the Housing Act for failure to permit guests who have violated a trespass policy to enter upon its property. Analyzing the scope of a Section 1983 cause of action, the court found that it imposes civil liability on anyone who, under color of state law, deprives a person of any rights, privileges, or immunities secured by the Constitution or laws, including federal laws, so long as the federal statute creates enforceable rights, privileges or immunities and Congress has not foreclosed enforcement of the statute. Relying on *Wright v. City of Roanoke Redevel. and Hous. Auth.*,³ the court concluded that Congress has not foreclosed individual suits under Section 1983 for violation of the Housing Act. Thus, the court narrowed the issue to whether the Housing Act and its implementing regulations confer upon the residents a "right" to have guests visit them in the plaintiffs' public housing apartments.

In addressing the question, the court followed the Supreme Court's tripartite analysis, set out in *Blessing v. Freestone*,⁴ to determine whether (1) Congress intended the statutory provision to benefit the plaintiffs; (2) the right assertedly protected by the statute is not so vague and amorphous that its enforcement would stain judicial competence; and (3) the statute unambiguously imposes a binding obligation on the state. It found that Congress intended to benefit residents of public housing when it enacted 42 U.S.C. § 1437d(1)(2), which prohibits the inclusion of unreasonable terms and conditions in public housing leases. It further found that HUD's interpretation of the statute, requiring housing authorities to "reasonably accommodate the resident plaintiffs' guests," 24 C.F.R. § 966.4(d)(1), is a valid interpretation of the statute entitled to deference and that it prohibits public housing authorities from unreasonably interfering with tenants' ability to entertain guests in public housing.⁵

Next, the court concluded that the term "reasonable," while permitting more than one type of guest policy, is not vague and ambiguous and is sufficient for the court to determine whether the trespass policy is unreasonable. Lastly, it found that HUD's inclusion of the word "shall" in the regu-

lations requiring for reasonable accommodation of tenants' guests makes the regulation mandatory rather than precatory. Thus, the court concluded that the plaintiffs stated a private cause of action under Section 1983 for violation of the HUD regulations.⁶

Turning to plaintiffs' motion for a preliminary injunction, the court found that the plaintiffs were substantially harmed by the trespass policy because it is a virtual

permanent bar to a tenant's right to invite a guest into her home, no matter how close a friend or relative that potential guest might be. Under the policy, all persons who have been issued a trespass citation, whether correctly or incorrectly, are indefinitely prohibited from returning to Housing Authority property even if a tenant personally escorts them from the public sidewalk into the tenant's own apartment. Furthermore, tenants have been told that they face eviction if they invite persons known to be on the trespass log into their homes. A tenant's only recourse if she wishes to receive such a guest is a burdensome appeal to the Authority's Executive Director who exercises unfettered discretion in her rulings.⁷

In contrast, it found that the authority would not be substantially harmed by an injunction against the trespass policy. "There is no evidence that the trespass policy in its present incarnation is the only effective drug- and crime-fighting measure available to local authorities or even that it is the most effective."⁸

The court also concluded that the plaintiffs are likely to succeed on the merits of their claim because the current policy impermissibly excludes many potential guest from the Apartments. They have also "effectively argued that the burdensome and subjective nature of the 'delogging' review by the Executive Director of the Housing Authority renders it an inherently unreasonable procedure."⁹ Moreover, the court found that even though the police officers had been retrained with respect to who is cited, the authority had not purged the existing logs which may contain names of persons who were actually on the way to visit a resident. The plaintiffs "should not be burdened with the responsibility for removing such persons' names from the log."¹⁰

Lastly, the court concluded that the public interest would be served by enjoining the trespass policy because the interest in curbing drugs is not likely to be significantly harmed by the injunction while the trespass policy so strongly interferes with the resident plaintiffs' right to reasonable accommodation of their guests that the public interest favors granting an injunction. Accordingly, the court enjoined the FMHA trespass policy.¹¹ ■

⁶*Id.* at 532.

⁷*Id.* at 533 (citations omitted).

⁸*Id.*

⁹*Id.* at 534.

¹⁰*Id.*

¹¹*Id.* at 535.

²*Id.* at 530.

³479 U.S. 418 (1987).

⁴510 U.S. 329 (1997).

⁵67 F.Supp.2d 531-2.

RECENT HOUSING-RELATED REGULATIONS AND NOTICES

The following are significant housing-related regulations and notices that HUD or USDA have recently issued. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each Notice's introductory paragraphs.

Copies of the cited documents may be secured from various sources, including (1) the Government Printing Office's website on the World Wide Web,¹ (2) bound volumes of the Federal Register, (3) HUD Clips,² (4) HUD,³ and (5) USDA's/Rural Development web page.⁴ Citations are included with each document to help you secure copies.

HUD Regulations

Up-Front Grants and Loans in the Disposition of Multifamily Projects; Final Rule

64 Fed. Reg. 72,409-72,412 (Dec. 27, 1999)

Summary: The purpose of this rule is to establish generally applicable requirements to govern the use of up-front grants and loans in the disposition of HUD-owned multifamily properties by defining the projects, sales, and purchasers eligible for up-front grants and loans, and setting both a maximum per-unit and overall cap for up-front grant amounts.

Effective Date: January 26, 2000.

Civil Penalties for Fair Housing Act Violations; Final Rule

64 Fed. Reg. 72,725-72,754 (Dec. 28, 1999)

Summary: This final rule adopts revisions to HUD's regulations governing hearing procedures for civil rights matters made effective by an interim rule published on February 10, 1999. These revisions implement two important changes in the way civil penalties are assessed in fair housing cases. First, they allow an administrative law judge (ALJ) to assess a separate civil penalty against a respondent for each separate and distinct discriminatory housing practice committed by the respondent. Second, they require an ALJ to take into account, in favor of imposing a maximum civil penalty, a finding that a respondent has committed a housing-related hate act. This final rule takes into consideration public comments received on the February 10, 1999 interim rule. After careful consideration of the public comments, HUD has decided to adopt the interim rule without change.

Effective Date: January 27, 2000

¹At <http://www.access.gpo.gov/su-docs>.

²At <http://www.hudclips.org/cgi/index.cgi>.

³To order Notices and Handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.

⁴At <http://www.rdinit.usda.gov/regs/>.

Section 8 Housing Assistance Payments Program-Contract Rent Annual Adjustment Factors, Fiscal Year 2000; Notice of Revised Contract Rent Annual Adjustment Factors; Correction; Final Rule

64 Fed. Reg. 72,730-72,754 (Dec. 27, 1999)

Summary: This document corrects the Schedule C area definitions for metropolitan statistical areas (MSAs) in the following states: Alabama (Auburn-Opelika), Arizona (Flagstaff), Colorado (Grand Junction), Idaho (Pocatello), Maine (Portland), Mississippi (Hattiesburg), New Hampshire (Boston), New York (Buffalo-Niagara Falls), Oregon (Corvallis), Tennessee (Jackson), and Utah. It also clarifies the names of selected places in Connecticut and Florida. All had been incorrectly categorized or named in Schedule C of the document published in the Federal Register on September 24, 1999.

None of the AAFs published in the September 24, 1999 document are being changed by this document; however, for clarity the entire document is being reprinted, and the September 24, 1999 document should be replaced with this one. The Annual Adjustment Factors (AAFs) contained in this document are for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries from October 1, 1999. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

Effective Date: October 1, 1999.

Notice of Final Fiscal Year (FY) 2000 Fair Market Rents (FMRs) for Manufactured Home Spaces; Final Rule

64 Fed. Reg. 72,721-72,723 (Dec. 28, 1999)

Summary: FMRs for the rental of manufactured home spaces in the Section 8 housing choice voucher program are now generally 40 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit, rather than 30 percent. This reflects the change in the statute (Section 545 of the Quality Housing and Work Responsibility Act of 1998) which provides that the rent for the space with respect to which assistance payments are to be made shall include tenant-paid utilities. This change was made effective in the October 21, 1999 Federal Register publication "Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program; Final Rule" which revised 24 C.F.R. 888.113.

Effective Date: November 22, 1999.

HUD Federal Register Notices

Teacher Next Door Initiative

64 Fed. Reg. 68,370-68,371 (Dec. 7, 1999)

Summary: HUD announces the creation of the Teacher Next Door Initiative (TND Initiative). This initiative, modeled after HUD's successful Officer Next Door Sales Program, will help more teachers become homeowners and help re-

vitalize economically distressed neighborhoods by enabling eligible teachers to purchase HUD-acquired homes located in HUD-designated revitalization areas at a 50 percent discount from list prices.

Public Housing Assessment System (PHAS): Transition Assistance on Compliance With Management Indicator #5; PHA Annual Inspection of Units
64 Fed. Reg. 70,274 (Dec. 16, 1999)

Summary: This notice is a follow-up to the PHAS notice published on October 21, 1999, which advised of transition assistance in connection with implementation of the PHAS for public housing agencies (PHAs) with fiscal years ending September 30, 1999, and December 31, 1999. The October 21, 1999, notice advised that these PHAs would not be issued a PHAS score for their 1999 fiscal years, but would be issued a management assessment score based on HUD's assessment of the PHA's management operations in accordance with 24 C.F.R. part 902, subpart D. This notice provides information to PHAs on how to meet the requirements of Management Indicator #5 (PHA annual inspection of units and systems) of this subpart.

Quality Housing and Work Responsibility Act of 1998; Status of Implementation; Guidance
64 Fed. Reg. 71,799-71,813 (Dec. 22, 1999)

Summary: On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998 (the "Public Housing Reform Act"). This statute embodies many of the reforms of the HUD 2020 Management Reform Plan that are directed at revitalizing and improving HUD's public housing and Section 8 assistance programs. This notice updates the public on HUD's overall implementation of the Public Housing Reform Act and identifies where existing implementation guidance may be found, with respect to the provisions regarding public housing and tenant-based assistance. This notice also provides further implementation guidance on those provisions of the Public Housing Reform Act that are effective on October 1, 1999 or on October 21, 1999.

HUD Notices

Additional Instructions for Submitting First PHA Plans under the Final Rule and Extension of Due Date for Submission of PHA Plans for PHAs with Fiscal Years Beginning January 1, 2000 and April 1, 2000; Guidance for PHAs with Fiscal Years Beginning July 1, 2000 and after; Availability of Required Format for Public Housing Drug Elimination Program (PHDEP) Plan
Notice H 99-51 (Dec. 14, 1999)

Summary: This notice transmits additional instructions to PHAs on complying with the requirements of Public Housing Agency (PHA) Plans as provided in the PHA Plans Final Rule (issued October 21, 1999), found at 24 C.F.R. part 903. This notice confirms that all PHAs are subject to the require-

ments of the final rule, and provides information and direction for PHA Plan submissions under the final rule, particularly:

(1) PHAs with fiscal years beginning January 1, 2000 and April 1, 2000 (hereafter referred to as "January PHAs" and "April PHAs," respectively) are instructed to prepare and submit their first plans using the PHA Plan template and accompanying instructions for submission of plans (Notice PIH 99-33, Attachment B) issued in July, 1999, as amended by this notice (PIH 99-51(HA)). PHAs that may have already submitted plans to HUD as of the date of this notice are provided with special instructions where necessary.

(2) For PHAs with fiscal years beginning on or after July 1, 2000, HUD will issue guidance, templates and certifications necessary for completion of plans under the final rule in a subsequent notice.

HUD expects to issue additional information and direction to PHAs on their plan submissions. As a result, January and April PHAs may determine that additional time is needed to prepare their plans. HUD has extended the submission deadline for January PHAs to January 31, 2000 and extended the submission deadline for April PHAs to February 29, 2000. This notice also announces the availability of a template that PHAs must use to prepare and submit Public Housing Drug Elimination Program (PHDEP) plans with the PHA Plan. Use of this template is required for PHAs with fiscal years beginning April 1, 2000 and after. January PHAs have the option to use this template in Federal Fiscal Year (FFY) 2000.

Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988; Notice
PIH 99-52 (Dec. 15, 1999)

Summary: This Notice is to remind recipients of federal funds of their obligation to comply with pertinent laws and implementing regulations which provide for non-discrimination and accessibility in federally funded housing and non-housing programs for people with disabilities. Additionally, this Notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts; however, specific regulations must be reviewed in their entirety for full compliance.

Revisions to Notice H 99-15, Emergency Initiative to Preserve Below-Market Project-Based Section 8 Multifamily Housing Stock, and Clarification of Certain Section 8 Policies in Notices H 98-34 and H 99-08
Notice: H 99-32 (Dec. 1, 1999)

Summary: This Notice revises and/or clarifies certain provisions of 1) HUD Notice H 99-15, Emergency Initiative to Preserve Below-Market Project-Based Section 8 Multifamily Housing Stock; 2) Notice H 98-34, Project-Based Section 8 Contracts Expiring in Fiscal Year 1999; and 3) Notice H 99-08, Revision to Notice H 98-34 (HUD) on Project-Based Sec-

tion 8 Contracts Expiring in Fiscal Year 1999. The Guidance in this Notice is consistent with the provisions of section 524 of the Multifamily Assisted Housing and Reform Act of 1997 (MAHRA), as amended by section 531 of the FY 2000 Appropriations Act. HUD will be issuing comprehensive guidance in the near future with respect to the implementation of Section 8 renewal provisions in the FY 2000 HUD Appropriations Act.

The authority for renewing rents in projects that were subject to Section 524(a)(1) of MAHRA is now addressed in the new Section 524(a). The authority for renewing rents in projects that were subject to section 524(a)(2) of MAHRA are now addressed in section 524(b)(1).

This Notice:

(1) Revises the instructions for conducting a comparability analysis where the owner is requesting a contract renewal without restructuring, to include units "in the expiring Section 8 contract(s)" instead of "all Section 8 units;"

(2) Makes the five-year renewal contract that is required for projects that are participating in the Mark-up-to-Market initiative (formerly Emergency Initiative) available to other owners;

(3) Provides forms of contracts to be used in FY 2000 renewals;

(4) Requires at the time of initial renewal of a Section 8 contract with rents that are below market, but which is not in the Mark-Up-To-Market initiative, that the current rents be adjusted by an OCAF or budget-based method, subject to HUD approval and provided the new rent does not exceed comparable market rent;

(5) Provides instructions for adjusting rents at the time of initial renewals and for subsequent rent adjustments.

Revised Processing Instructions for the Section 223(f) Program

Notice: H 99-33 (Dec. 2, 1999)

Summary: The Section 223(f) Program was the major financing vehicle for existing multifamily properties that did not require substantial rehabilitation. However, market forces combined with dated instructions have caused a reduction in the level of activity within this program. This notice makes changes to the processing instructions that will enhance the program marketability and aid the Field Office's ability to review an application of mortgage insurance. Unless specifically stated, these instructions are effective immediately and apply to only Section 207 pursuant to Section 223(f) rental housing projects that do not have an outstanding firm commitment.

Reinstatement and Extension of Notice H 95-55, Procedures for Implementing Section 214 of the Housing and Community Development Act of 1980, as amended; Restrictions on Assistance to Noncitizens

Notice H 99-34 (Dec. 14, 1999)

Summary: Notice H 95-55 and related Notices (H 95-68, H 96-52, and H 96-88) are being reinstated and extended to December 31, 2000.

Reinstatement and Extension of HUD Notices H 97-02 and H 98-11, Comprehensive Needs Assessments Notice H 99-35 (Dec. 23, 1999)

Summary: Notice H 97-02, issued January 28, 1997, extended by HUD Notice H 98-11, issued February 23, 1998, provides instructions applicable to the Department's policy for projects required by statute to complete a Comprehensive Needs Assessment. The statute required that 100 percent of eligible projects complete a Comprehensive Needs Assessment by September 30, 1997. Until such time as the Department receives 100 percent compliance from eligible project owners, Comprehensive Needs Assessments will continue to be required. This notice requires owners that have not completed and submitted a Comprehensive Needs Assessment to do so in FY 2000.

Project-based Section 8 Contracts Expiring in Fiscal Year 2000

Notice H 99-36 (Dec. 29, 1999)

Summary: This Notice provides instructions for renewing Section 8 project-based assistance contracts (or stages) expiring in FY 2000. It:

- Provides guidance to owners, management agents, contract administrators and HUD staff on: (1) renewing contracts, including the combination of multiple stages and/or multiple contracts; (2) setting initial renewal rents and handling annual rent increases at subsequent renewals; and (3) the requirements and procedures for opting-out of a Section 8 project-based contract.

- Advises owners to submit their option selection (Attachment 4) to HUD 120 days before expiration of the contract, rather than the previous 90 days.

- Defines owners' notification responsibilities regarding: (1) contract expiration/termination; (2) prepayment notification for Emergency Low-Income Housing Preservation Act (ELIPHA) and Low-Income Housing Preservation and Resident Home Ownership Act (LIHPRHA) projects; and (3) intent to Opt out of the Section 8 program.

RHS Regulations

Re-engineering of the Section 502 Guaranteed Rural Housing (GRH); Proposed Rule

64 Fed. Reg. 70,123-70,144 (Dec. 15, 1999)

Summary: The Rural Housing Service proposes to streamline and re-engineer its regulations for the administration of its Guaranteed Rural Housing (GRH) Program. This action is taken to reduce regulations, improve customer service, and improve the Agency's ability to achieve greater efficiency, flexibility, and effectiveness in managing the program. The effect of this action is to provide better service, reduce program vulnerability, and reduce federal regulations.

Comments Due Date: February 14, 2000.

RHS Federal Register Notice

**Notice of Funds Availability (NOFA) for
Section 514 Farm Labor Housing Loans and
Section 516 Farm Labor Housing Grants for
Off-Farm Housing for Fiscal Year 2000
64 Fed. Reg. 71,609-71,611 (Dec. 21, 1999)**

Summary: This NOFA announces the timeframe to submit applications for Section 514 Farm Labor Housing loan funds and Section 516 Farm Labor Housing grant funds for new construction of off-farm units for farmworker households. Applications may also include requests for Section 521 rental assistance (RA). This document describes the method used to distribute funds, the application process, and submission requirements.

Response Deadline: The closing deadline for receipt of all applications in response to this NOFA is 5 p.m., local time for each Rural Development State office on June 19, 2000. ■

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Inquiries or comments should be directed to Eva Guralnick, Editor, Housing Law Bulletin, at the National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610, Tel: (510) 251-9400 or via e-mail to nhlp@nhlp.org

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PUBLICATION ORDER FORM

NATIONAL HOUSING LAW PROJECT
614 Grand Avenue, Suite 320
Oakland, California, 94610
(510) 251-9400; fax: (510) 451-2300

	PRICE	QTY.	TOTAL
HUD Housing Programs: Tenants' Rights (2d ed. 1994)	\$165.00	_____	\$ _____
HUD Housing Programs: Tenants' Rights (1998 Supplement)	\$120.00	_____	\$ _____
Combined HUD Housing Programs: Tenants' Rights and 1998 Supplement (add \$6.00 postage/handling)	\$220.00	_____	\$ _____
RHCDS (FmHA) Housing Programs: Tenants' and Purchasers' Rights (2d ed. 1995)	\$55.00	_____	\$ _____
Combined HUD Housing Programs (2d ed.), 1998 Supplement and RHCDS (FmHA) Housing Programs (add \$9.00 postage/handling)	\$250.00	_____	\$ _____
Housing Law Bulletin (annual subscription, 10-12 issues)	\$150.00*	_____	\$ _____
<i>Congress' New Public Housing and Voucher Programs</i> (1998)	\$10.00**	_____	\$ _____
<i>Housing for All: Keeping the Promise</i> (1995)	\$5.00*	_____	\$ _____
<i>The Family Self-Sufficiency Program: An Advocate's Guide</i> (1994)	\$10.00*	_____	\$ _____
<i>Let's Choose a New Owner! What Residents Need to Know When an Owner Wants to Sell an Expiring-Use Project Under Title VI</i> (1993) (master for duplicating)	\$10.00*	_____	\$ _____
<i>A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs</i> (1991)	\$10.00*	_____	\$ _____

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