Housing Law Bulletin

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HUD TENANT INCOME VERIFICATION PROGRAM TEMPORARILY SUSPENDED PENDING IMPROVEMENTS

The Department of Housing and Urban Development (HUD) is continuing to pursue implementation of the computer matching income verification program (CMIV) for tenants in public and subsidized housing.[1] However, in response to tenant and other advocate's complaints, HUD has temporarily suspended the program in order to implement changes that should improve the program's operation and make it more fair to residents.

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Background

In the fall of 1999, HUD compared the 1998 income reported by HUD-assisted tenants to the Internal Revenue Service (IRS) and the Social Security Administration (SSA) with the income reported to HUD on behalf of the tenants for the same period of time. As a result of the income comparison, HUD identified approximately 280,000 assisted housing tenants with in income discrepancies which showed that the tenant income reported to HUD was less than that reported to the IRS and the SSA.[2] In April 2000, HUD began the process of notifying these tenants of the discrepancies. Simultaneously, HUD began notifying public housing authorities (PHAs), owners and agents (collectively POAs) of the names of those tenants who have been identified through the CMIV program (HUD cannot notify the POAs of the amount of any discrepancy, as it is prohibited from revealing that information to anyone other than the affected tenant).[3]

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[1]*See HUD Proposes to Implement Income Verification Program for Tenants in Assisted and Public Housing*, 30 HOUS. L. BULL. 43 (March/April 2000) for additional information on the HUD income match and verification program.

[2]For purposes of the CMIV program, HUD stated that it established a threshold of $4,000 for project-based tenants such that if the discrepancy is less that $4,000, the tenant will not receive a letter and no action will be taken. For public housing tenants the threshold is $8,000. The reason for the difference is that many public housing tenants are not required to report interim changes in income and others may be paying a ceiling rent. In contrast, project-based subsidized housing tenants who are subject to HUD Handbook, 4350.1 are required to report changes in income that exceed $40 per month. *See* HUD, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, 4350.3, App.19a, Model Lease, ¶ 16, (July 1990).

[3]63 Fed. Reg. 68,131 (Dec. 9, 1998); 65 Fed Reg. 16,699 (Mar. 29, 2000).

2000 LALSHAC MEETING AND HOUSING TRAINING DETAILS

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HUD Responds to Advocates

When national advocacy groups and national tenant organizations[4] first learned of HUD's plans, they, along with other stakeholders[5], requested and secured a meeting with HUD officials. At that meeting, HUD expressed a desire to work with the stakeholders, including the tenant organizations and advocacy groups, and agreed to two more meetings to which all the stakeholders were invited. In addition, issues relating to the CMIV program were raised with HUD officials by participants at the Coalition's annual conference and by NAHT board members at a June 2000 meeting.

Initially, tenant organizations and advocacy groups sought to stop the CMIV process altogether. When that was not feasible, these groups emphasized the need to make the process comprehensible, fair and reasonable for tenants. Early on, the stakeholders obtained a commitment from HUD to allow them to review and comment on the letters, including attachments that HUD proposed to send to tenants and POAs and on the *HUD Income Discrepancy Resolution Guide*, Version 1.0[6] (hereafter *Guide*). The tenant organizations and advocate groups submitted comments on the letters and attachments and HUD adopted many of them. Significantly, HUD agreed to advise each tenant that "HUD will not require your manager [PHAs] to make rental adjustment for prior years for underreported income that is identified through this [CMIV] process."[7]

Moreover, through the process, key understandings were reached. For example, HUD agreed that it will not direct the POAs to seek retroactive adjustment of rents based on the computer-match utilizing 1998 IRS data and that it would provide POAs a complete list of income disregards and exclusions in effect during 1998.[8] When the latest release of the *Guide*[9] did not reflect these understandings, the tenant organizations and advocacy groups requested another meeting. At that meeting, HUD reaffirmed that it will not encourage or direct POAs to seek retroactive adjustments of rents. In addition, HUD agreed to stop sending out the remainder of the tenant and POA letters,[10] withdraw and revise portions of the *Guide*, suspend the CMIV program pending revision of the *Guide* and cancel a training that was scheduled on the then proposed but inadequate *Guide*. In accordance with these agreements, HUD posted on the HUD REAC (Real Estate Assessment Center) website the following instruction.

> Pending issuance of the revised Guide, housing agencies, owners and agents should suspend administrative actions relating to this income verification program.[11]

HUD also agreed that tenant organizations and advocacy groups will be given another opportunity to review the *Guide* after revisions have been made and before it is finalized and re-posted on the REAC website. After final review, it is anticipated that HUD will send out the remaining tenant and POA letters and that the training on the CMIV program will commence based on the revised *Guide*.

Throughout the process, national tenant organizations and advocacy groups have been coordinating efforts and tracking HUD's progress. The national tenant organizations have been extremely effective and persistent. They have demonstrated to HUD that there are a considerable number of tenants who are aware of the process and who are interested in a fair and reasonable resolution. The Coalition and NAHT worked effectively to get key HUD officials to focus on the tenants' concerns.

At the most recent meeting, several members of the Loose Association of Legal Services Housing Advocates and Clients (LALSHAC)[12] agreed to file comments with HUD on the *Guide*. The following summarizes the comments submitted on the *Guide* and commitments made by HUD in response. Several unresolved issues, which HUD is still considering, are also discussed.

HUD Will Not Encourage POAs to Collect Subsidy Overpayments

The commitment that HUD will not encourage or direct POAs to collect subsidy overpayments identified through the 1998 CMIV now forms the basis of HUD's overall objective of the first year of the CMIV program. The focus of CMIV is to determine a baseline for income discrepancy resolution, not to seek the repayment of excess rental assistance.[13]

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[4]The tenant advocacy groups included the National Low Income Housing Coalition (the Coalition), the National Alliance of HUD Tenants (NAHT), the Public Housing Residents National Organizing Campaign (the Campaign) and the National Housing Law Project.

[5]The other stakeholders include, the National Association of Housing and Redevelopment Officials (NAHRO), the Council of Large Public Housing Authorities (CLPHA), the Public Housing Authorities Directors Association (PHADA), the National Affordable Housing Management Association (NAHMA), the American Association of Homes and Services for Aging (AAHSA), the National Leased Housing Association (NLHA), and the National Housing Conference (NHC).

[6]*Income Discrepancy Resolution Guide*, Version 1.0, Release 1.7 (June 9, 2000), Appendix A, which is available at hud.gov/reac/products/tass/tass_guide_poa.html.

[7]*Id*. Appendix A.

[8]*Id*. The *Guide* as currently posted on the website provides that "HUD will not require PHAs/owners/agents to make rental adjustments for prior years for income underreported in 1998 that is identified through this process." Moreover the *Guide* provides that HUD is not "focusing....on the recovery of excess rental assistance." *Id*. at page i.

[9]Version 1.0, Release 1.7 (June 9, 2000).

[10]As of early July, HUD reported that approximately154,000 letters had not been sent out to tenants and POAs and approximately 61,000 letters have been sent out. HUD intends to send the letters to the tenant and the relevant POA at approximately the same time.

[11]*See* hud.gov/reac/products/tass/tass_guide_poa.html.

[12]The LALSHAC members were from Greater Boston Legal Services, Greater Upstate Law Project and the National Housing Law Project (Collectively, LALSHAC Advocates).

[13]HUD proposes to rename the *Income Discrepancy Resolution Guide* to the *Fiscal Year 2000 Baseline Income Discrepancy Resolution Guide*. *Id*.

Make all your reservations now!

2000 LALSHAC MEETING, NOVEMBER 19-20
PRE-LALSHAC HOUSING TRAINING, NOVEMBER 18

The 2000 meeting of the Loose Association of Legal Services Housing Advocates and Clients (LALSHAC) is scheduled to take place on Sunday and Monday, November 19 and 20, in Washington, D.C. The LALSHAC meeting will be preceded by a one-day training event, set for Saturday, November 18, on the recent statutory and regulatory changes to the Public Housing, Certificate and Voucher, and project-based Section 8 programs.

The LALSHAC meeting and the pre-meeting training will be held at the Washington Plaza, located at 10 Thomas Circle, N.W. (at Massachusetts Avenue and 14th Street), Washington, D.C., 20005. Special room rates for the training event and the LALSHAC meeting are: $110 for single or double occupancy, $130 for triple occupancy, and $150 for quadruple occupancy per night. Room reservations must be made directly with the hotel. To receive the special rates, **RESERVATIONS MUST BE MADE ON OR BEFORE OCTOBER 15, 2000**. The hotel phone number is 1-800-424-1140 (toll free) or 1-202-842-1300. **When making reservations, make sure to mention the following group number in order to obtain the special conference rates: 9490**.

The purpose of the 2000 LALSHAC meeting is to focus the activities of the various LALSHAC working groups on the recent changes to the federal housing programs, particularly those made to the Public Housing, Certificate and Voucher and Section 8 programs and to discuss how advocates can continue to represent low-income clients' interests in light of those changes and in light of the November elections, which will precede the meeting by less than two weeks.

The LALSHAC meeting is not designed as a training conference. Consequently, we prefer attendance by experienced housing advocates and clients who are willing to actively participate in LALSHAC's ongoing activities. These include exchanging information on effective representation of low-income tenants and community organizations in addressing local housing problems and pursuing permissible legislative and administrative advocacy at the federal, state and local levels.

Because major regulatory changes have recently been made to the Public Housing, Certificate and Voucher, and Section 8 programs, NHLP will be offering a separate one-day training event on these programs immediately preceding the LALSHAC meeting. We expect that the training will facilitate the LALSHAC meeting by providing advocates an opportunity to learn about the program changes in detail prior to the meeting and, as a result, to be better prepared to participate in the LALSHAC discussions.

The LALSHAC meeting registration fee is $295 and includes two lunches, break refreshments, and conference materials. For legal service organizations who are paying for clients to come to the meeting a discount of $100 is available for the client's registration.

The one-day training registration fee is $135 for persons who do not attend the LALSHAC meeting. The registration fee includes a lunch and training materials. Persons who attend both the pre-LALSHAC training event and the LALSHAC meeting may register for both events for $390. (For clients, whose costs are being paid by a legal services program, the combined registration fee is $295.) The registration deadline for the meeting and the training is Friday, **October 13**, **2000**. Registration checks should be made payable to the National Housing Law Project and sent to our Oakland Office at 614 Grand Avenue, Suite 320, Oakland, CA 94610.

A detailed announcement setting out the meeting and training agendas and registration materials will be sent shortly to the LALSHAC mailing list and housing specialists at legal services and other programs. In the meantime, if you need additional information, call NHLP at 1-510-251-9400, Ext. 111 or e-mail us at **nhlp@nhlp.org.** ■

Thus, HUD has agreed that it will not instruct or encourage any POA to recover excess rental assistance identified as a result of the 1998 income match and verification process.

To effectuate this policy, the national tenant and advocacy groups have made further suggestions to HUD. For example, they urged HUD to add the following to the criteria for review of POAs with respect to the CMIV program:

- HUD will not review POAs to determine if they have pursued tenants for collection of excess rental assistance identified as a result of the 1998 income match and verification program.
- HUD will not sanction or take any adverse action against a POA which does not pursue repayment of any excess rental assistance identified through the 1998 income match and verification program.
- A PHA's Public Housing Assessment System (PHAS) and Section 8 Management Assessment Program (SEMAP) scores will not be adversely affected if the PHA does not pursue a repayment (recovery) of the excess rental assistance.

To date, there is no indication whether HUD will adopt these recommendations.

HUD takes the position that although it can discourage POAs from pursuing tenants for whom an income discrepancy has been identified and verified as a result of the information obtained though the CMIV program, it cannot prohibit them from doing so. Inevitably, this may mean that some tenants for whom rental subsidy overpayments have been identified will be pursued by the POA. Depending upon what local procedures allow, POAs may seek to recoup overpayments or other actions such as termination of tenancy.[14] In light of this possibility, the advocates, in their comments to the *Guide*, have urged HUD to advise POAs to exercise flexibility and humane judgement in making any decisions with respect to any income discrepancies that are identified. Again, until the *Guide* is finalized, it is not clear if this suggestion will be adopted. If the POA decides to pursue the tenant, the tenant has procedural rights, discussed below, to contest any POA determination. In addition, POAs are subject to the requirement that there be a prior agreement in place with the resident under which the resident agrees to provide to the POA the information contained in the HUD letter.[15] In public housing, this may mean that PHAs may have to amend their leases to create such an agreement. Amendments to public housing leases require a 30-day notice and comment period.[16] In HUD multifamily housing, the POA may also have to obtain this separate agreement because the form lease does not provide that a HUD letter must be turned over to the owner or manager. In tenant-based Section 8 housing, there will also need to be a separate agreement between the tenant and the PHA, as there is currently no agreement between these parties. Existing recertification forms, to the extent that they take the form of agreements, are not sufficient, because they do not specifically incorporate the statutory obligation or place the applicant/participant on notice that they have an obligation to provide the PHA with the information contained in the *HUD Discrepancy Letter*.

HUD has agreed that it will not instruct or encourage any POA to recover excess rental assistance identified as a result of the 1998 income match and verification process.

Finally, it is HUD's position that if, as a result of the CMIV program, the POA becomes aware that the tenant is currently receiving income that has not been previously reported, the POA may verify that fact and adjust the tenant's current rent prospectively in accordance with the recalculation of the tenant's current income. With respect to this policy, the advocates have urged that any prospective adjustment of rent only include income newly identified as a result of the CMIV program as of the date of the next interim recertification and beyond. It is not known whether HUD has accepted this final recommendation.

Due Process

As a corollary to the policy that HUD will not encourage or require POAs to collect rental assistance overpayments identified as a result of the 1998 CMIV program, HUD also acknowledges that if a POA decides to proceed in recovering excess rental assistance, it must follow specified due process procedures.[17] For public housing tenants, the due process procedure is the grievance procedure;[18] for tenant-

[14]The desire to pursue tenants for retroactive rent adjustments may be substantial in the case of public housing and tenant-based section 8 tenants because these PHAs may retain 100 percent of what is recovered from a public housing tenant and the greater of 50 percent of any funds collected or the cost attributed to the recovery. Under the housing programs, owners and agents may retain up to 20 percent of recovered excess rental assistance to offset the cost of recovering funds. HUD Handbook 4381.5 ¶ 6.40. Despite these incentives, the tenant organizations and advocates have urged HUD to remind POAs that they may decide not to pursue the tenants because practical limitations on the POA's ability to reconstruct the exact cause or amount of the deficiency preclude a definitive resolution of the discrepancy, or the difficulty of reaching a resolution does not justify the expenditure of POA resources in attempting to resolve the discrepancy.

[15]*See* 42 U.S.C.A. § 3544(b)(4) (West Supp. 2000).

[16]*See* 24 C.F.R. §§ 966.3 and 966.5 (1999).

[17]As noted above, the advocates have urged HUD to include in the Guide an instruction to POAs to exercise flexibility and humane judgement in making any decisions with respect to identified income discrepancies.

[18]24 C.F.R. § 966.50-57 (1999).

based Section 8 tenants the procedure is the informal hearing.[19] For all tenants, including tenants receiving project-based assistance, such as project-based Section 8, HUD has further agreed to provide an administrative review of the POA's decision before any final action is taken.[20] HUD is notifying affected tenants of these rights in an attachment to the letter notifying them of the income discrepancies.[21]

Referral of Cases to the Inspector General

The *Guide* contains a provision setting forth the criteria for the referral of cases of fraud to the Inspector General. On this issue, the advocates urged HUD to remind POAs that the existence of discrepancies between incomes calculated for housing program purposes and household incomes reported to the IRS and the SSA do not, in and of themselves, establish that a tenant has failed to comply with HUD program requirements. Discrepancies between data sources will often be accounted for by variations in applicable reporting periods, valid exclusions from income, and changes in income that are not required to be reported on an interim basis. Additionally, discrepancies may occur as a result of situational variables, such as changes in household composition that are not reflected in the data comparison. Moreover, the advocates urged HUD to remind POAs that even verified discrepancies do not, in and of themselves, establish the elements of intentional fraud that would require consideration of further action such as termination of assistance, referral for prosecution, and action to collect underpayments.[22] Only in egregious cases involving verified instances of intentional misrepresentation (fraud), is the POA obligated to refer the matter to the Inspector General. The LALSHAC advocates suggested a definition of an egregious case as one in which independent verification reveals intentional under-reported income which resulted in rental or subsidy overpayments of $10,000 or more for 1998. In such a case, the POA could elect to refer the case to the Inspector General.

Fair Housing Obligations and Review

As a result of the advocacy, HUD also agreed to provide some translation services to tenants who speak Spanish, Mandarin, Russian, Korean, and Vietnamese. They will be notified in the letters to contact a toll free phone number.[23] It is anticipated that the phone number will provide, at a minimum, a taped oral translation of the letters that HUD sends out announcing the income discrepancy. (It should also provide access to an individual who may answer a tenant's questions. The full extent of the language services that are being made available is, however, unknown.)

The existence of discrepancies between incomes calculated for housing program purposes and household incomes reported to the IRS and the SSA do not, in and of themselves, establish that a tenant has failed to comply with HUD program requirements.

The tenant and advocacy organizations further advised HUD that there are, in many jurisdictions, a number of other languages that are the commonly spoken in assisted housing (i.e. Cantonese, Khmer, Portugese, French Creole, Cambodian, Farsi, etc.). The LALSHAC advocates have, therefore, asked HUD to refer this issue to the HUD Office of Fair Housing for its review. In addition, the advocates have suggested that reasonable accommodation language should be included prominently on the form letter, advising a tenant of the right to a reasonable accommodation if he or she has a disability, and of the right to receive the communication in other accessible formats (e.g., a TTY number). Finally, the advocates have urged that HUD, in its fair housing review, consider what would be required from POAs, as opposed to HUD, to ensure that they meet their fair housing obligations. For example, HUD should determine the circumstances in which a POA is obligated to provide letters in other languages or in a format that is accessible to tenants with disabilities.

Income Exclusions and Disregards

Throughout this process, the national tenant organizations and advocacy groups have urged HUD to provide a guide to POAs and tenants which will list in one place all the income deductions and exclusions from income that are applicable to income for 1998. To date, HUD has agreed to part of that request, but there is continuing confusion with respect to: the earned income disregard (EID); whether there are exclusions from unearned income; and how sporadic income is treated when it is unearned. Presumably, these issues will be resolved in the re-draft of the *Guide*.

[19]*Id*. § 982.555.

[20]*See* Attachment to the form letter to tenants regarding *HUD's Income Verification Program*, para. entitled *What if I have a grievance?* Copies of these letters are currently found at App. A of the *Income Discrepancy Resolution Guide*, Version 1.0, Release 1.7 (June 9, 2000). *At* hud.gov/reac/products/tass/tass_doc.html.

[21]*Id*. The attachment to the letters to the tenants clearly sets forth the availability of the grievance hearing for public housing tenants, and the right to a HUD review for all tenants; but is not so clear for the Section 8 tenant-based tenants. Nevertheless, tenant-based Section 8 tenants have informal hearing rights. 24 C.F.R. § 982.555 (1999).

[22]*See, e.g.*, HUD, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, 4350.3, ¶ 5_19(b)_(e), (Sept.1992).

Head of Household and Other Family Members

The majority of tenants receiving discrepancy letters are heads of household. However there are several thousand letters that will be sent to other household members. The advocates urged that no action should be taken against a head of household for failure of a household member to respond to the POA. A head of household should be fully and timely informed by the POA of any problems with another member of the household. Finally, if necessary, a head of household should have the option of removing a member of the household, if that member refuses to cooperate with the POA in the CMIV program.

Action to Take When a Tenant Has Received a Discrepancy Letter

At this time, there are several things that a tenant who has received a Discrepancy letter should do.[24] Most importantly, the tenant should consult a lawyer or tenant advocate. Calling the toll free numbers listed on the HUD letter may also yield some additional advice.[25] The attachment to the letter should be reviewed for additional guidance. Importantly, until the *Guide* is revised and re-posted on the HUD website, advocates should encourage POAs to follow HUD's directive and not pursue the matter. In the interim, the tenant should review the income information provided in the letter to determine if it is correct. If it is not, the tenant should collect any and all information that supports his or her claim of reported income.

The POA will want to meet with the tenant and obtain the original of the discrepancy letter that was received by the tenant. The POA should know who within the program or within the housing complexes it is responsible for received an income discrepancy letter, as HUD will send the POAs letters identifying tenants who have received them. As noted previously, POAs will not receive a copy of the letter sent to the tenant and will have no information regarding the amount of the discrepancy.

The discrepancy letters urge the tenant to contact the POA. Absent contact by the tenant, the POA will try to reach the tenant and request a meeting. The tenant will have to decide whether to go to the meeting and whether to turn over the letter. As mentioned above, there is statutory authority for the position that the POA cannot demand the letter without a prior written agreement with the tenant. The published regulations require public housing and Section 8, Section 202 and Section 811 tenants to "promptly furnish" the POA with the letter that provides the information concerning the amount or verification of family income.[26] But the regulation fails to implement the statutory requirement of a separate agreement.

> *At this time, there are several things that a tenant who has received a Discrepancy letter should do. Most importantly, the tenant should consult a lawyer or tenant advocate.*

The next step is to determine the consequences to the tenant who 1) does not sign the agreement, 2) does not turnover the letter, or 3) is found to have verified income that was not reported for 1998. The answer to the question of what happens at each of these steps is not fully known at this time because the *Guide* has not been finalized. But certain principles can be set forth:

- A tenant may be required to sign an agreement that requires the tenant to turnover the discrepancy letter to the POA.[27]
- All income must be verified.[28]
- If a tenant has a dispute with the POA, the public housing tenant or tenant based Section 8, the participant is entitled to a grievance hearing or an informal hearing.[29]
- For all tenants with income discrepancies, "HUD will review the process and [the housing agency's] manager's decision before any final action is taken."[30]

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[23] *See* footnote 25, *infra*.

[24] These may change as the *Guide* is revised.

[25] The toll free number for tenants who speak English is 1-888-825-3916. The number for tenants who speak Spanish, Mandarin, Russian, Korean, and Vietnamese is 1-800-298-0289.

[26] 65 Fed. Reg. 16,692, 16,715, § 5.240, (Mar. 29, 2000). There is no statutory or regulatory authority for HUD to require rent supplement or Section 236 rental assistance tenants to disclose to an owner income information that they received from HUD pursuant to the income match. Neither the statute nor the regulations that authorize the disclosure make reference to these programs. *See* 42 U.S.C.A § 1437a(f) (West Supp. 2000) , 24 C.F.R. § 5.240 and 65 Fed. Reg. 16,692, 16,715 (March 29, 2000). Thus it would appear that neither HUD nor the POA may require these tenants to disclose the HUD supplied income match information.

[27] 42 U.S.C.A. § 3544(b)(4) (West Supp. 2000)

[28] *Id*. § 3544(c)(2)(B).

[29] 24 C.F.R. § 966.50-57 (1999) (public housing); 24 C.F.R. § 982.555 (1999) (tenant based Section 8).

[30] *Income Discrepancy Resolution Guide*, Version 1.0, Release 1.7 (June 9, 2000), Appendix A. *At* hud.gov/reac/products/tass/tass_doc.html

Job Announcement:

ATTORNEY/PRESERVATION SPECIALIST[1]

(Half- to full-time position[2])

The National Housing Law Project (NHLP), a national housing law and advocacy center that promotes housing justice on behalf of very low-income persons, is seeking an individual to work on a project that helps to preserve project-based federally assisted housing as affordable housing for very low-income persons and households. NHLP prefers that the individual be a licensed attorney. However, we will consider other candidates with relevant experience or education.

The individual will work under the direction of an NHLP staff attorney and be primarily responsible for providing substantive technical support to housing attorneys, other housing advocates, resident organizations and nonprofit and public agencies on the preservation of federally subsidized housing, including Project-Based Section 8 and Rural Rental Housing. The individual will also be responsible for undertaking research, drafting and editing articles, reports, articles and other materials, training advocates, resident organizers and others, and analyzing federal housing legislation and regulations on preservation and related housing issues.

Qualifications

The applicant must have:

- excellent oral and written communication skills;
- excellent analytical skills;
- a demonstrated strong commitment to advancing the housing rights and interests of very low-income persons and households; and
- a willingness to travel.

The applicant should have:

- an understanding of and, preferably, working experience with federally assisted housing programs and especially preservation of federally assisted housing;
- an understanding of rental housing financing; and
- 0-to-3 years of practice as an attorney or in a reated housing or planning field.

Salary

Salary is based on experience; excellent benefits.

Application

Please send cover letter, resume, three professional references and writing sample to Gideon Anders, Executive Director, National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610. The cover letter should indicate the position for which you are applying, your interest in the position, a summary of job qualifications, relevant work experience and salary history. Please, no phone calls or faxes.

Deadline

The position is open until filled. NHLP seeks to hire a qualified individual as soon as possible and would appreciate receiving applications promptly.

NHLP is an affirmative action equal opportunity employer that does not discriminate on the basis of race, color, national origin, ethnic background, religion, sex, sexual orientation or disability. We encourage applications from persons of color.

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[1]Note, this is not the same position that NHLP advertised in the June issue of the *Bulletin*, which has been filled.

[2]NHLP has budgeted this position as a half-time position. Within this budgetary constraint, we will consider increasing the work time of a less experienced person hired for the position.

- A tenant should determine as soon as is practicable what a POA intends to do if an income discrepancy is verified. Will the POA follow HUD's lead and not seek a retroactive adjustment in rent? Will the POA seek to evict or terminate the subsidy? In making any determination regarding retroactivity, the POA should be reminded that HUD's policy is not to encourage or require POAs to seek retroactive rent adjustment.

In any review of tenant income for 1998, care should be taken to be sure that all applicable exclusions and deductions have been taken. For public housing tenants it is particularly important to determine whether the EID in effect for 1998 is applicable to the tenant's income. No discrepancy will be found if the amount of the deductions and exclusions exceed the discrepancy. Also no discrepancy will be found if the tenant was not required to report an increase in income and rental assistance based upon reported income that was correct for all of 1998; if the tenant was not a tenant for all of 1998; and if the tenant reported income but no interim increase was required in accordance with the POA policy.

Plan for the Implementation of the CMIV Program at the Local Level

Although HUD suspended the CMIV program, there will be ramifications at the local level. As noted earlier, HUD has sent letters to some tenants and POAs. As a result, tenants and advocates should begin to work with POAs to determine what action they plan to take and to influence their plans. Will the POA use the information, as HUD urges, solely as a baseline? Alternatively, will the POA seek retroactive rent adjustments and/or eviction and termination of benefits? Under what circumstances will the POA seek retroactive adjustment of rent, eviction and/or termination? Will the POA, define "egregious action"? Will the POA enter into reasonable repayment agreements? What is a reasonable repayment agreement?

The more that advocates can anticipate and plan for these contingencies, the more they can assist the affected tenants. Public housing and tenant-based Section 8 tenants may use the PHA planning process to address these issues.[31] The Section 8 Administrative Plan and the Public Housing Admission and Continued Occupancy Plan (ACOP) may need to be revised. ■

[31]64 Fed. Reg. 56,843 (Oct. 21, 1999), § 903.1-25.

IMPORTANT FEATURES OF THE FINAL ADMISSION AND OCCUPANCY REGULATIONS AFFECTING PROJECT-BASED SECTION 8 UNITS

On March 29, 2000, the Department of Housing and Urban Development (HUD) issued its final regulations concerning admission and occupancy requirements, primarily for the public housing and tenant-based Section 8 programs,[1] thereby implementing provisions of the Quality Housing and Work Responsibility Act of 1998 (QHWRA).[2] A number of these provisions also affect admissions and occupancy requirements for project-based Section 8 programs. This article briefly discusses these provisions.

Tenant Selection by Project-Based Section 8 Owners

The new rule[3] includes the following important provisions governing tenant selection:

- owners must adopt a written tenant selection plan;[4]
- owners cannot skip an applicant on the waiting list in order to select another farther down the waiting list because the latter has a higher income;[5]
- owners may match family characteristics with the type of unit available, and must offer units with special accessibility features for persons with disabilities to families with members whose disabilities require such features.

In place of federal preferences repealed by QHWRA,[6] the final rules authorize most project-based Section 8 owners to establish their own tenant selection preferences. However, owners adopting preferences:

[1]*Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs*, 65 Fed. Reg. 16,692 (Mar. 29, 2000) (hereafter, references are to specific sections of 24 C.F.R. Part 5 adopted by these regulations). For discussion of the final rules (including those with regard to public housing and tenant-based Section 8 assistance), see *Final Admission and Occupancy Regulations Issued*, 30 HOUS. L. BULL. 33 (March/April 2000).

[2]Pub. L. No. 105-276, 110 Stat. 2461 (Oct. 21, 1998).

[3]24 C.F.R. § 5.655. This rule does not apply to the moderate rehabilitation or project-based certificate or voucher programs.

[4]24 C.F.R. § 5.655(b)(2). *See* HUD Handbook 4350.3, ¶ 2-24 (CHG-24, Jan. 1993).

[5]24 C.F.R. § 5.655(b)(3). However, owners can use income as a factor when satisfying the eligibility and targeting requirements.

[6]Section 514 of QHWRA, rewriting 42 U.S.C.A. §1437d(c)(4)(A) and §1437f(d)(1)(A) (West Supp. 2000)

- must inform all applicants about them, and provide an opportunity for applicants to demonstrate qualification;[7]

- must not include residency requirements, but may include only those residency preferences approved by HUD that accord with generally applicable non-discrimination and equal opportunity requirements,[8] and that do not have the "purpose or effect" of delaying or denying admission based on the race, color, ethnic origin, gender, religion, disability or age of any member of an applicant family;[9]

- may include preferences for "working families,"[10] but these preferences cannot be based on the amount of earned income; and

- may include preferences for families that include a person with disabilities (but not a specific disability), for single persons age 62 or older, and for displaced or homeless single persons.[11]

In addition, owners "should consider" whether to adopt a preference for families with victims of domestic violence.[12]

These final rules, like the proposed rule, grant owners greater flexibility concerning preferences. The new rule removes the requirement that Section 8 owners desiring to use preferences other than the old federal preferences use those adopted by the local public housing authority (PHA) for the Section 8 tenant-based assistance programs and obtain HUD field office approval to do so.[13] Of particular concern is the authority established by QHWRA and the rule to adopt a "working family" preference, which, if poorly defined, could operate as a barrier to families receiving public assistance, unemployment benefits, or those with unstable employment. Since most poor families that are not disabled are employed, at least some of the time for part of the year, or are complying with welfare program work requirements, thoughtful definition of what constitutes "employment" under such a preference is needed to fairly protect most applicant families. However, if unaddressed, these changes pose the substantial risk that private owners could develop selection preferences that have little to do with community housing needs, with no community participation or oversight. The only required procedural safeguard—that applicants be provided with the list of adopted preferences and a chance to demonstrate qualification—will obviously be helpful in determining what criteria are being used, but will be wholly inadequate in determining the legality or fairness of the criteria. Where there are indications of unfairness, advocates should request copies of the tenant selection plans from owners and HUD field offices to begin an analysis, and then approach owners and managers to develop necessary revisions.

Income Eligibility and Targeting[14]

HUD requirements concerning eligibility and targeting are additional but less discretionary components of tenant selection. These requirements cover which applicants are eligible for the Section 8 program and how many units must, at a minimum, be reserved for families of particular incomes. The new rules largely restate the applicable statutory requirements for project-based Section 8 programs, as revised by QHWRA:

- that only low-income families (those with incomes at or below 80 percent of area median income (AMI)) are eligible for admission;[15]

- that at least 40 percent of assisted units that become available in any fiscal year must be made available only to extremely low-income families (with incomes at or below 30 percent of AMI at admission);[16]

- that, for project-based Section 8 units made available before October 1, 1981, at least 75 percent of the units must be made available to very low-income families (with incomes at or below 50 percent of AMI), and HUD

[7]24 C.F.R. § 5.655(c).

[8]*Id*. § 5.655(c)(1). The nondiscrimination requirements are set forth at *Id*. § 5.105(a).

[9]HUD approval can occur in one of three ways:(1) If a HUD-approved PHA plan for the area includes the residency preferences; (2) If the project's HUD-approved Affirmative Fair Housing Marketing (AFHM) plan establishes a residency preference for the housing market area; or (3) If HUD approves a modification of the AFHM plan submitted by the owner. 24 C.F.R. § 5.655(c)(1) (iii).

[10]24 C.F.R. § 5.655(c)(2)."Working families" are families where the head, spouse, or sole member is employed. However, the preference must also be given to families whose head, spouse or sole member is at least age 62 or a person with disabilities. Apparently, owners may further determine what "employed" means by setting minimum duration or hours requirements.

[11]24 C.F.R. § 5.655(c)(3) and (5).

[12]*Id.* § 5.655(c)(4)

[13]*See* the former rule at 24 C.F.R. § 5.410 (d)(2) (1999). In addition, the final rule omits explicit mention of the owner's discretion to use the PHA preferences so long as the owner so specifies in its tenant selection plan (set forth in the proposed rule). Presumably, this remains an option for owners.

[14]The rules discussed here derive from new 24 C.F.R. § 5.653, 65 Fed. Reg. 16,719 (Mar. 29, 2000), which deals exclusively with project-based Section 8 programs other than moderate rehabilitation or certificate or voucher programs.

[15]24 C.F.R. § 5.653(b)(2).

[16]24 C.F.R. § 5.653(c).

reserves the right to further limit admission of applicants in the 50-to-80 percent range;[17]

- that, for project-based Section 8 units made available on or after October 1, 1981, 100 percent of the units must ordinarily be made available to very low-income families (with incomes at or below 50 percent of AMI), and HUD must approve an exception for admitting families in the 50-to-80 percent range;[18]

- that owners may request HUD approval for exceptions to these targeting requirements favoring very low-income applicants;[19] and

- that owners must comply with HUD-prescribed reporting requirements so that HUD can monitor compliance.

Taken together, QHWRA and these rules establish new guidelines for preferences, targeting requirements and exceptions to govern admissions, which could result in substantial changes to prior practice under the former laws and rules. Since HUD's monitoring of owners' tenant selection plans and practices is often weak, advocates will have to closely monitor any changes at developments within their jurisdictions, as well as any exception requests, in order to prevent diversion of these housing units to applicants with less urgent housing needs.

Minimum Rents

Finally, the new rule implements QHWRA's changes to the minimum rent requirements for project-based Section 8 tenants in the following ways:

- HUD has set a minimum rent of $25 per month for project-based Section 8 units (other than moderate rehabilitation and certificate or voucher units);[20]

- families are entitled to hardship exemptions from the minimum rents, including threatened evictions due to inability to pay or loss of income;[21] and

- exemption procedures are also specified.[22]

Notably, the rules do not include specific obligations for private owners (or PHAs administering other programs) to notify families of the availability of exemptions, even those facing eviction for nonpayment, nor do they explain in clear terms when a hardship is temporary and when it is long-term. Advocates will have to address these policies, not just in the PHA planning process (for public housing and vouchers), but also through other avenues with private owners, managers, and HUD to ensure that these entities honor Congress' intent that such exemptions be available when needed. ■

[17]24 C.F.R. § 5.653(d)(1).

[18]*See* 24 C.F.R. § 5.653(d)(2). While the rule effectuates the statutory requirement that *at least* 85 percent of units must be made available to very low-income families (with incomes at or below 50 percent of AMI at admission), it also clarifies that an exception is the only way that any of the remaining 15 percent can be leased to applicants in the 50-80 percent range.

[19]To receive an exception, owners must show that either: (1) an exception is necessary for project viability because of insufficient very low-income applicants, (2) the owner has a "commitment" to occupancy by families with a diversity of incomes, (3) that the project is supervised by a State Housing Finance Agency with a policy of income diversity throughout its programs, or (4) low-income families would be otherwise displaced from the development. *Id*. § 5.653(d)(3).

[20]*Id*. § 5.630(a)(3). PHAs may impose a minimum rent of up to $50 per month for their project-based Section 8 moderate rehabilitation and certificate or voucher programs. *Id*. § 5.630(a)(2).

[21]24 C.F.R. § 5.630(b). A family is eligible for an exemption from paying minimum rent where one of the following circumstances exists: (1) the family has lost eligibility for or is awaiting an eligibility determination for assistance (this includes families with a member who is a noncitizen permanent resident who would otherwise be entitled to benefits but for Title IV of the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, 110 Stat. 2105, (1996) (codified in scattered sections of titles 7, 8, 21, 25 and 42 of the United States Code)); (2) the family would be evicted because of inability to pay; (3) family income has decreased because of changed circumstances (including loss of employment); (4) a death in the family; or (5) other circumstances determined by the responsible entity (PHA or project owner, as applicable under the specific program. *See* 24 C.F.R. § 5.100) or HUD.

[22]On request, the PHA or owner must promptly rule on exemption eligibility and whether the hardship is temporary or long-term. Until a conclusion is reached, the minimum rent must be suspended (starting with the month following the request). If the hardship is found to be temporary, the minimum rent must be suspended for 90 days, but the family must enter into a reasonable repayment agreement. If the hardship is long-term, the family is exempt from the minimum rent as long as the hardship continues. If no hardship is found, the family must pay the back rent on terms and conditions set by the entity.

SENATE CONSIDERS NEW PRESERVATION LEGISLATION

As discussed in earlier *Bulletin* articles,[1] the 106th Congress has recently considered several similar legislative proposals to establish "matching grants" for preservation. Matching grants would provide incentives in the form of matching federal funds to state and local governments that use some of their own locally generated or locally controlled funds for preserving federally-assisted affordable housing; thus mitigating the growing threat of conversion of these properties to market-rate use. Restoring a federal funding role is especially crucial because states and localities rarely have sufficient funds to address all of the financial needs for rehabilitation and owner equity that exist across this large affordable housing inventory.

The most recent matching grant measure in the House of Representatives, H.R. 202 (incorporating the provisions of an earlier bill, H.R. 425), had broad bipartisan support in the House and was passed by a wide margin in the fall of 1999. However, its Senate counterpart, S. 1318 (sponsored by Senators Kerry and Jeffords) has stalled. Fortunately, another Senate bill, S. 2733, has been introduced by Senators Santorum, Kerry, and Sarbanes that, among other things, would direct the Department of Housing and Urban Development (HUD) to create a matching grant program for preserving affordable housing.[2] Currently, the bill is in the Senate Committee on Housing, Banking, and Urban Affairs, and a hearing was held on July 18, 2000. Incorporating this bill into this year's appropriations legislation for Fiscal Year 2001 probably represents its best chance for passage before the 106th Congress adjourns.

There are two significant differences between S. 2733 and its precursor S. 1318. First, S. 2733 provides for matching funds, not only to state governments, but also to local governments. Second, S. 2733 includes an additional provision (in Section 402 of the bill) authorizing HUD to make grants to nonprofit purchasers whose missions involve maintaining the affordability of the properties.

Like S. 1318, the new bill, S. 2733:

- permits owners of projects receiving funds to spend the money on acquisition costs, project rehabilitation, operating costs, and other capital expenditures;[3]
- establishes as eligible those properties subsidized under the Sections 221(d)(3) Below-Market Interest Rate and Section 236 programs, project-based Section 8 properties, Rural Housing Service (RHS) Section 515 Rural Rental Housing properties, and certain resident-owned preservation developments;[4]
- requires HUD-insured project owners to agree to waive prepayment rights and to accept low-income affordability restrictions for at least 15 years beyond the date of receiving matching grant funds;
- requires project-based Section 8 owners to accept contract renewals for at least 15 years;
- requires resident-owners to agree to 15-year low-income affordability restrictions;[5]
- authorizes appropriation only of "such sums as may be necessary," rather than a specific amount, requiring even more vigilance from advocates in future appropriations discussions to ensure sufficient funding;
- instructs HUD to distribute available funds based upon the proportion of the applying jurisdiction's need to the total need of grant recipients for that year, but broadly defines the process for HUD's needs assessment, only directing HUD to consider the number of units at risk and the difficulty residents would have in finding replacement housing;[6]
- allows a federal/local matching ratio of up to 2-to-1 and includes federal matching for certain state/local expenditures that derive from sources that are created pursuant to provisions of federal law, such as Low Income Housing Tax Credits (LIHTC), mortgage revenue bonds, or tax-exempt bonds;[7] and
- requires the state or locality, in selecting eligible projects, to consider other factors, including support for nonprofit transfers, longer affordability restrictions, and the extent to which the project meets fair housing goals and unmet local housing needs.

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[1]*See Preservation Issue Heats Up in Congress*, 29 HOUS. L. BULL. 133 (July/Aug., 1999); *New Preservation Proposal Introduced in Congress*, 29 HOUS. L. BULL. 52 (Mar.1999), describing Vento-Ramstad bill, H.R.425 (106th Cong. 1st Sess. 1999).

[2]S. 2733, the *Affordable Housing for Seniors and Families Act*, introduced June 15, 2000.

[3]Although S. 2733 does not expressly include "preservation incentives" (i.e. additional benefits given to current owners) as a permissible use of funds, such incentives could possibly be included within operating costs or loans for capital expenditures.

[4]Eligibility is not further restricted to just below-market properties that could prepay their loans, so troubled properties needing capital renovations and/or operating assistance could also qualify for preservation grants.

[5]In an apparent oversight, the bill fails to impose extended restrictions on RHS Section 515 owners receiving matching grants.

[6]The legislation declines to specify that HUD consider meaningful indicators of conversion risk or need for preservation, such as equity per unit, ratio of rent to true market value, low Real Estate Assessment Center (REAC) inspection scores or other indicators of high rehabilitation needs, or local voucher failure rates in the market area.

[7]While these sources are counted as "nonfederal", only half of such expenditures count toward the "nonfederal" countribution, so they could effectively be matched up to a 1-to-1 basis. Whether HOME and CDBG funds count as nonfederal remains unclear.

S. 2733 would establish a broader matching grant program than its House counterpart, H.R. 202. It would provide only a 1-to-1 matching ratio and project eligibility would be more limited, restricted to those with HUD-insured or held mortgages that serve the elderly or disabled, large families, a rural area with an inadequate housing supply, or a "low vacancy area," or to those properties with expiring project-based Section 8 contracts.

Nonetheless, although S. 2733 would mark an important step in expanding the federal government's role in protecting affordable housing, the revision of several components could provide a more effective program. These revisions should include:

- providing a floor for federal matching levels to encourage state and local governments to make their own preservation investments, since states and localities could find federal contributions too low under the "up to 2-to-1" formula to merit their investments;
- clarifying "nonfederal" sources to include locally administered federal funds such as HOME or Community Development Block Grants (CDBG);
- providing incentives for new funds by permitting a higher federal match for states and localities that invest their own locally created funds;
- clarifying and strengthening extended use restrictions to forestall the need for yet more preservation investments in the future; and
- strengthening preferences for transfers to tenant-endorsed, community-based nonprofit purchasers and requirements for tenant participation so that investments will promote responsive long-term housing preservation.

Additional support for the bill from senators and appropriators will be important for further progress before adjournment in the fall. ■

HOUSE PASSES DISAPPOINTING FISCAL YEAR 2001 HUD BUDGET

The House of Representatives has passed its FY 2001 appropriations bill for the Department of Housing and Urban Development (HUD) by a 256-to-169 margin,[1] and has sent the bill to the Senate. The final House bill, H.R. 4635, was passed June 21, 2000 and makes few changes to the Appropriations Committee measure, which had rejected most of the new items in the Administration's budget request for approximately $32 billlion in budget authority.[2] That request would have represented a $6 billion increase over FY 2000 levels, but the House bill reduces this to approximately $30 billion. Although this House level represents an apparent $4 billion increase, nearly all of the increase is devoted to the renewal of expiring Section 8 contracts. Thus, the House bill provides virtually no real spending increase from FY 2000, which is essential to maintain current services. Indeed, H.R. 4635 reduces funding levels for many programs. HUD Secretary Andrew Cuomo and White House advisers have recommended to President Clinton that he veto the bill if the Senate passes it in its current form.

Section 8 Funding ("Housing Certificate Fund")

The President's budget sought full funding for the renewal of all expiring Section 8 contracts, requesting $13 billion, within a total overall request of $14.1 billion for the Housing Certificate Fund. H.R. 4635 fulfills much but not all of this request, allocating $13.275 billion for the Fund, to cover not just renewals, but also relocation and tenant protections (including "enhanced vouchers"), administration of Section 8 contracts, and Shelter Plus Care renewals.[3] Similar to the FY 2000 budget and the President's budget request, H.R. 4635 alleviates the Section 8 contract renewal budget burden by making a $4.2 billion advance appropriation, as was done last year, which pushes that much of the appropriation's cost into FY 2002 for budget accounting purposes.

In contrast to the Administration's request, H.R. 4635 does not directly allocate funds for some important proposed Administration initiatives. These include the "voucher success fund" (which would promote voucher use in areas of

[1]H.R. 4635 is formally titled the *Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001* and is available through the Library of Congress' THOMAS website, at thomas.loc.gov.

[2]"Budget authority" refers to permission to make outlays (actual expenditures) in the future, but not necessarily just in the year in which the budget authority is made available. For more details on the President's request, see *HUD Submits Promising FY 2001 HUD Budget Request to Congress*, 30 Hous. L. Bull. 19 (Feb. 2000).

[3]This figure assumes a rescission of $275 million.

program weakness, at a cost of $50 million), the cost of contracting out Section 8 contract administration ($192 million) and incentives to make affordable Low Income Tax Credit (LIHTC) or other new units targeted to specific needs ($8 million). For these proposals, H.R. 4635 instead makes funding contingent on the recapture of funds from prior Section 8 appropriations. Even more importantly, in stark contrast to the President's request for direct funding for 120,000 new vouchers (for numerous purposes, including 10,000 vouchers to improve affordability of Tax Credit units), H.R. 4635 allows only $60 million for 10,000 vouchers, which would be distributed on a fair-share basis to public housing authorities (PHAs) with utilization rates above 97 percent. The bill makes distribution of the vouchers contingent on the recapture of funds, and, in the priority ranking for the use of recaptured funds, places the vouchers behind other proposed programs, including vouchers linked with LIHTC and contract administration. As HUD has maintained that recaptures cannot be relied on with any certainty (especially if PHAs become more efficient at using Section 8 vouchers), proposals contingent on recaptures may, in the end, go unfunded. On the whole, therefore, the House bill cuts back significantly from the Administration's commitment to new Section 8 vouchers.

Public and Indian Housing Funding

The main public housing accounts receiving appropriations are the Operating Fund, to cover the difference between operating costs and tenant rent contributions, and the Capital Fund, for project rehabilitation. For FY 2001, the Administration had requested $3.19 billion for the Operating Fund and $2.95 billion for the Capital Fund, only modest (and insufficient) increases over prior funding levels. The House bill, by contrast, allocates only $3.139 billion for the Operating Fund (only a $1 million increase over FY 2000) and actually cuts the Capital Fund to $2.8 billion (from the $2.9 billion FY 2000 level).[4] In contrast to the President's request of $625 million for HOPE VI, the federal grant program for demolishing and revitalizing severely distressed public housing, the House bill provides only $565 million, a $10 million decrease from FY 2000.

Homeless Assistance Programs

While the Administration had requested $1.2 billion for homeless assistance programs (including Emergency Shelter Grants, Supportive Housing, Section 8 Single Room Occupancy units, and Shelter Plus Care), the House bill allocates just $1.02 billion, which is no increase over FY 2000. Similar to the Administration proposal, H.R. 4635 would require that all funding for services be matched at a level of 25 percent by grantees, but, in contrast, the House bill would retain the requirement that at least 30 percent of the funds be used for permanent housing.

The Community Development Block Grant Program (CDBG) and HOME funding

The President's budget had called for $4.9 billion for CDBG, a $119 million increase over FY 2000. H.R. 4635 instead would allocate only $4.5 billion, a reduction from FY 2000 of approximately $300 million.[5] About $4.2 billion would take the form of block grants to state and local governments. The HOME program would receive $1.585 billion under the House bill, a reduction of $65 million below the Administration's request and $15 million below the FY 2000 level. The House also directed HUD to end the community builder fellows program that provides temporary HUD staff serving as liaisons to local communities, as of September 1, 2000.

Other Housing Programs

The Administration's request had sought an increase from last year's $232 million to $260 million for the Housing Opportunities for People with AIDS (HOPWA) program, which would have supported approximately 48,000 units. H.R. 4635 would provide less than the request, but still increases the funding level to $250 million.

Funding for Section 202 elderly housing programs, in contrast, will stagnate. The President's budget had suggested an increase of $69 million, to bring funding to $779 million, but H.R. 4635 continues the FY 2000 level of $710 million. The appropriation will include $50 million for conversion of Section 202 housing to assisted living facilities and $50 million for service coordinators. Similarly, funding for Section 811 disabled housing programs also will stagnate under the House budget. Although the Administration had proposed an increase of $9 million, H.R. 4635 appropriates the same amount from FY 2000, $201 million.

On the whole, H.R. 4635 not only cuts back significantly from the Clinton Administration's proposed HUD budget, but more importantly falls far short of providing needed funds to address the current affordable housing crisis. The Senate has so far delayed action on the FY 2001 appropriation, even in committee, until returning from recess in September. The Senate reportedly is hoping for increased budget allocations to the committee, which would then permit the fashioning of a bill closer to the Administration's request that the President could sign. ■

[4] $55 million of the reduction would result from moving Resident Opportunity and Self-Sufficiency program (ROSS) funds from the Capital Fund to CDBG.

[5] This reduction is in fact larger because the appropriation includes the extra $55 million moved to CDBG and set aside for ROSS by H.R. 4635 from the Public Housing Capital Fund.

HUD FY2001 BUDGET CHART FOR SELECTED PROGRAMS

This chart was created by the National Low Income Housing Coalition and is reprinted with permission.

HUD Program (set-asides indented)	FY00 Enacted	FY01 Request	6/21/2000 Passed House H.R. 4635
Housing Certificate Fund	$11,376	$14,128	13,275
Contract Renewals	10,640	13,010[1]	13,275[2]
New Section 8 Vouchers	346[3]	690[4]	0[5]
Voucher Success Fund	—	50[6]	0[7]
Shelter Plus Care Renewals	—	37	37[8]
Contract Administration	194	209	0[9]
Housing Production Incentives	—	8[10]	0[11]
Public Housing Capital Fund	2,900	2,955	2,800
Resident Opportunity and Self Sufficiency	55[12]	55	55[13]
HOPE VI	575	625[14]	565
Public Housing Operating Fund	3,138	3,192	3,139
Drug Elimination Grants	310	345	300
Indian Housing Block Grants	620	650[15]	620
Elderly Housing (Section 202)	710	779[16]	710[17]
Disabled Housing (Section 811)	201	210	201
HOME Investment Partnership Program	1,600	1,650	1,585
Housing Counseling Assistance	15	24	15
Community Development Block Grants	4,800	4,900	4,505
Self Help Homeownership	20	18	20
Youthbuild	42.5	75	45
Economic Development Initiative	256	100	10
Homeless Assistance Grants	1,020	1,200[18]	1,020[19]
Housing for Persons with AIDS	232	260	250
Rural Hosing and Economic Development	25	27	20
Brownfields Redevelopment	25	50	20
America's Private Investment Prog. (APIC)	20	37	0[20]
Fair Housing Assistance Program	20	21	22
Fair Housing Initiative Program	24	29[21]	22
Lead-Based Paint Hazard Reduction	80	120[22]	80
Emergency Food and Shelter Program (FEMA)	110	140	110

[1] This amount fully funds contract renewals. This amount includes funds for amendments Section 8 subsidy contracts and enhanced vouchers. Like the FY00 budget, the FY01 budget request includes a $4.2 billion advance appropriation.
[2] This amount is to fully fund contract renewals, enhanced vouchers, administration of section 8 contracts, relocation and tenant protection, and shelter plus care renewals. The $4.2 billion advance appropriation is included again. The mark presumes a rescission of $275 million. Further, it presumes some level of recaptures that will provide sufficient funds for other uses.
[3] In FY00, 60,000 vouchers were authorized for "fair share" distribution, not targeted to any specific population.
[4] For FY01, the request seeks a total of 120,000 vouchers to be distributed in this way: 60,000 fair share, 10,000 for the new housing production program, 18,000 for people who are currently homeless, 32,000 for people transitioning from welfare to work. Of the 60,000 fair share vouchers, 5,000 will be for non-elderly disabled housing units and 2,000 will be for the Family Unification Program.
[5] If sufficient funds are generated by recaptures, $60 million is allowed for new incremental vouchers (10,000) distributed on a fair share basis to PHAs with a 97% utilization rate and provided the funds are distributed within 4 months of enactment. However, approved uses of recaptured funds are listed in priority order and new incremental vouchers are fourth in line.
[6] This program shares some attributes of the Regional Opportunity Counseling program, which was funded at $10 million in FY99 but not funded in FY00.
[7] Problems with under utilization are a major concern to the committee. Instead of the voucher success fund, the mark provides for establishment of "difficult utilization areas" and allows funds to be to increase the payment standard of up to 150% of FMR and/or to provide services to improve utilization.
[8] See note 2 above. $3j million is part of the renewal amount.
[9] $192 million for contract administrators is the second allowable use of recaptured funds. See note 5 above.
[10] For one-time incentive payments to developers who build units targeted at special needs (e.g., large families) under the vouchers/ low income housing tax credit/ FHA-insured housing production proposal in the FY01 budget request.
[11] $66 million for vouchers linked with low income housing tax credits is the third allowable use of recaptured funds. See note 5 above.
[12] In FY99, ROSS program was a set-aside within CDBG. ROSS is now a set-aside within the Public Housing Capital Fund.
[13] ROSS funds are again a set aside in CDBG, not the Public Housing Capital Fund.
[14] Includes $180 million to address public housing subject to the mandatory conversion law that requires public housing to convert to tenant-based assistance if it would cost more to operate and modernize the units than to voucher out the subsidy.
[15] The FY01 request changes the name of this program from Native American Housing Block Grants to Indian Housing Block Grants.
[16] Includes $50 million for conversion of Section 202 housing to assisted living facilities and $50 million for service coordinators.
[17] Includes $50 million for conversion of Section 202 housing to assisted living facilities and $50 million for service coordinators
[18] This amount includes $105 million for the 18,000 new rental assistance vouchers.
[19] 30% must be used for permanent housing.
[20] The lack of funding for APIC by the committee conflicts with the announcement of an agreement to fund APIC made by the President and the Speaker of the House.
[21] Of the $29 million requested, $7.5 million will be used to fund the final year of a three-year study. And, $2.5 million will be used to fund the Project for Training and Technical Assistance that will provide training and technical assistance to housing providers on designing and constructing properties to be in compliance with the accessibility requirements of the Fair Housing Act. Finally, $1 million of the $29 million for FHIP will be used to establish an academy to conduct HUD-approved training, primarily in the areas of testing and self-monitoring, to fair housing organizations and industry groups.
[22] $10 million of which will be used to continue the Healthy Homes Initiative.

HARVARD STUDY DOCUMENTS GROWING AFFORDABLE HOUSING CRISIS

A new report issued by Harvard University's Joint Center for Housing Studies, *The State of the Nation's Housing: 2000*[1] provides strong evidence that the economic prosperity of the last decade has done little to alleviate the housing problems of low-income families. According to the report, the central reason for this phenomenon is that housing costs have been rising very quickly, while the incomes of the nation's poorest households have been rising very slowly, if at all. The report therefore underscores the worrisome findings of the Department of Housing and Urban Development's (HUD) recently published report on worst-case housing needs[2] and also suggests how HUD's responses may fall short.

A Dwindling Supply of Both Subsidized and Unsubsidized Affordable Housing

The study indicates that the supply of both subsidized and unsubsidized housing has contracted. In just the three-year period from 1993 to 1995, for example, the report notes that the number of unsubsidized units affordable to very low-income households decreased by 8.6 percent (almost 900,000 units), while the number of unsubsidized units affordable to extremely low-income households fell even more sharply, by 16 percent. Although more recent data were not available because of changes in methodology, the report's authors expect this trend to continue, especially in view of the ongoing growth in housing costs.

The study also emphasizes the loss of HUD-subsidized housing, and other challenges facing the voucher and tax credit programs often contemplated as alternative solutions to growing affordability problems. The report points out that, as of late 1999, over 90,000 affordable units have been lost as a result of owners' prepayment of HUD-insured mortgages or opt-outs from project-based Section 8 contracts. The report also predicts that over 100,000 units may be lost in a similar manner by 2004. Although most residents are eligible for enhanced vouchers if they stay or ordinary portable vouchers if they move, the report notes that these may not cover the difference between a new unit's rent and 30 percent of the recipient's income. In addition, recipients are often unable to find landlords who will accept the vouchers. Regarding HUD's tax credit program, the report observes that the compliance periods (during which rents must be kept affordable) for 23,000 units are set to expire by 2002, with more set to expire in the following years, and notes that the number of units receiving the tax credit has fallen precipitously because the level of credit available each year is not inflation-adjusted. Finally, with regard to public housing, the report indicates that despite strong demand, over 27,000 units had been torn down as of 1999 and another 60,000 have been slated for demolition. Although HUD's replacement goal is 45 percent, only 7,273 units, or 26 percent, have been built or rehabilitated thus far.

Inability to Afford Housing Does Not Derive From Lack of Effort

The housing pressures on families with low incomes cannot be attributed to lack of effort on their part. The report cites data from the American Housing Survey indicating that 3.9 million very low-income households living in unsubsidized housing had wages and earnings at least equal to the income generated by a full-time worker at the federal minimum wage. More than two-thirds of these households paid 30 percent of their income for housing, and one-quarter paid over 50 percent. Among renters not receiving subsidies, 71 percent of working very low-income families had high housing cost burdens.

Lack of Affordability Affects Both Rural and Urban Areas

The report indicates that a disproportionate percentage of families with housing problems live in urban areas, and points out that in urban areas most very low-income households not receiving subsidies pay over 50 percent of their income for housing. Nonetheless, rural households have also experienced a housing crunch. In 1997, approximately 20 percent of rural households spent more than half of their income on housing costs, and this figure was probably higher for rural renters. In this regard, the report highlights the untimeliness of federal decisions to slash new loans and grants to rural households and to shift existing assistance from direct loans providing deep subsidies to guaranteed loans serving rural residents with higher incomes. Overall, the report confirms that federal programs for rural areas have failed to keep pace with growing needs. ■

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[1] *At* gsd.harvard.edu/jcenter/. The report is available in both PDF or HTML format.

[2] The report, entitled *Rental Housing Assistance–the Widening Crisis* is available at huduser.org/publications/affhsg/worstcase00.html. It was also discussed in the June 2000 issue of the *Bulletin*. *See* 30 Hous. L. Bull. 85.

COURT REJECTS ANOTHER CLAIM BY RHS SECTION 515 OWNERS FOR COMPENSATION FOR PREPAYMENT RESTRICTIONS

The United States Court of Federal Claims has rejected the claims for compensation of yet another set of Rural Housing Service (RHS) Section 515 rental housing owners who filed suit against the agency. In that suit, the owners contended that passage of the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA),[1] which restricted their right to prepay their loans at any time, breached their preexisting loan contracts with the agency.[2] This is the third time that the Court of Federal Claims has rejected essentially similar breach of contract claims by owners of Section 515 housing.[3] In this case, as in the previous cases, the court held that the statute of limitations barred the claims of owners who had entered into agreements with RHS prior to December 21, 1979 and that the doctrine of unmistakability precludes the breach of contract claim of owners who entered into contracts with the agency between December 21, 1979 and December 15, 1989.

History of Section 515 Restrictions on Prepayment of Loans

Prior to 1979, the Housing Act of 1949 placed no restrictions on the prepayment of RHS Section 515 rural rental housing loans. Indeed, the promissory note prepared by the agency and executed by owners specifically granted them the right to prepay "at any time at the option of the Borrower." Legislation adopted in 1979 required owners who entered into loans after that year to maintain the low-income affordability of the housing for a 15 or 20-year period depending on whether the project was receiving subsidies on behalf of the residents. In 1988, Congress enacted ELIHPA which retroactively restricted the prepayment rights of pre-1979 owners by offering them incentives to remain in the program and, in the event they rejected the incentives, requiring them to offer to sell the housing to a qualified nonprofit organization at a fair market value as determined by two independent appraisers.[4]

ELIHPA did not affect those owners who obtained loans between 1979 and 1989. However, when Congress enacted the Housing and Community Development Act of 1992[5] it restricted the rights of these owners in the same manner that it restricted owners with pre-1979 loans.[6]

Plaintiffs' Claims

In 1998, 14 owners of both pre- and post-1979 projects filed suit against RHS alleging that the 1988 and 1992 legislation restricting their right to prepay breached their contracts with the agency and constituted a Fifth Amendment taking for which compensation is due. In their complaint, the owners contended that the 1992 legislation constituted an anticipatory repudiation of their contract as of the date that each plaintiff would have prepaid but for RHS's repudiation. Similarly, on the taking claim, the plaintiffs claimed that the taking occurred as of the date that RHS's performance would be required under the contract, namely acceptance of the owner's prepayment.

RHS responded to the complaint by filing a motion to dismiss against six of the plaintiffs whose loans were entered into prior to 1979, contending that their claims were time-barred because they accrued as a result of the 1998 legislation and that the six-year period for bringing claims against the government had lapsed. The owners countered with a motion for partial summary judgment on their breach of contract claim, arguing that the prepayment option was a material contract term that was restricted by the 1992 legislation and constituted an anticipatory repudiation of the contract.

Decision

Statute of Limitations

To avoid the six-year statute of limitations in suits against the United States, the owners advanced two arguments. First, they argued that their 1998 suit was timely because the legislation that finally and permanently repudiated their contract and restricted their property rights was not enacted until 1992. Second, the owners argued that their breach of contract claim was predicated on the doctrine of anticipatory repudiation which allows the plaintiffs to sue at the earlier of the anticipatory repudiation or the breach and that the statute of limitations does not begin to run until the breach has occurred. In this case, the owners argued that the breach will not occur until sometime in the future when, in response to the owners seeking to prepay their loans, the government will act by refusing to allow the prepayment.

In support of their first argument, the owners contended that ELIHPA, enacted in 1988, was an interim measure that did not become permanent until 1992 when Congress enacted further legislation permanently restricting the rights of owners to prepay. The owners based their arguments on the "Findings and Purpose" sections of the legislation, which made clear that ELIHPA was an interim measure intended to avoid displacement of current tenants and the irreplaceable loss of low-income housing. Moreover, the owners contended that because Congress set the HUD provisions of ELIHPA to expire after two years, it was reasonable for them

[1]Pub. L. No. 100-242, 101 Stat. 1815, 1877 (1998).

[2]*Grass Valley Terrace v. U.S.*, 46 Fed. Cl. 629 (Apr.12, 2000).

[3]*Adams v. U.S.*, 42 Fed. Cl 463 (1998); *Franconia Assoc. v. U.S.*, 43 Fed. Cl. 702 (1999).

[4]*See* 42 U.S.C.A. § 1472 (c) (West 1994).

[5]Pub. L. No. 102-550, 106 Stat 3681, (1992).

[6]*See* 42 U.S.C.A. § 1472 (c) (1)(A) (West 1994).

to question whether Congress would change the law regarding the RHS pre-1979 prepayment provisions.

The court rejected the plaintiffs' claim. It found that they placed too much emphasis on the "Findings and Purpose" section of ELIHPA than is appropriate. That section, according to the court, is available for the clarification of ambiguous provisions but may not be used to create ambiguity. In the instant case, the court found the statute to be unambiguous. The HUD restrictions were contained in two sections of ELIHPA that were subject to a two-year sunset provision. The RHS restrictions, on the other hand, were in a separate section of the act not subject to the sunset provisions. Thus,

> [t]his Court cannot do what Plaintiffs ask, that is, to use the 'Findings and Purpose' section to create ambiguity where none exists. If this Court were to adopt Plaintiffs' reasoning it would be saying that all legislation is temporary because Congress can always change it. Instead, the law requires us to treat legislation as fully enforceable until it is later repealed by subsequent legislation. As a result, the 1988 enactment of ELIHPA, rather than any other legislation, immediately restricted the Plaintiffs' right to prepay their loans at any time at their option because it placed certain restrictions on prepayment.[7]

Accordingly, the court held that the event that fixed the alleged liability of RHS occurred upon enactment of ELIHPA and outside the six year statute of limitations.[8]

Anticipatory Repudiation

The court also rejected as misplaced the pre-1979 owners' claim that under the theory of anticipatory repudiation the statute of limitations did not begin to run until the government was required to perform under the contract—namely, when it had to accept an owner's offer to prepay. Contrary to the plaintiffs' claim, the court found that the performance required of the government was not the actual acceptance of the prepayment, but rather the continued promise to allow the borrowers the unfettered right to prepay at any time at their option. Accordingly, the court reasoned,

> [t]he specific contractual nonperformance that occurred was the inability of [RHS], as a result of the 1988 legislation, to allow Plaintiffs to prepay at any time. Thus, Plaintiffs' claim is based on an alleged breach rather than the theory of anticipatory repudiation. The enactment of ELIHPA in 1988 was the event that occurred to fix the alleged liability of Defendant which triggered the statute of limitations. Plaintiffs were on notice that their unqualified right to prepay their loans at any time was breached, if at all, in 1988.[9]

Thus, the court concluded that the breach of contract claims of the pre-1979 owners accrued upon enactment of ELIHPA and that the six year statute of limitations barred the breach of contract claims filed more than 10 years later.[10]

Plaintiff's Motion for Summary Judgment–Unmistakability Doctrine

The owners of post-1979 loans sought summary judgment on their claim that RHS breached its contract with them when it established regulatory measures inconsistent with a material term of the contract, namely their right to prepay. RHS responded by arguing that the prepayment provision of the contract was not material, that the statute did not absolutely prohibit prepayment so that it does not constitute a breach of the contract. RHS further argued that the claim is barred by the unmistakability doctrine, a canon of contract construction that precludes a claimant from contending that the government gave up its sovereign authority to modify contracts unless it is expressed in unmistakable terms in the contract.[11]

In the instant case, the court found no unmistakable promise in the contract between the owners and RHS. Moreover, to the extent that the language in the prepayment provision waived the governments' right to alter the prepayment terms, the court found that it did not bar a modification through future legislation.

Unlike *Winstar,* where the provisions that were subsequently altered were material and reached through extensive negotiations, the court found that prepayment provisions in the instant case were neither the subject of negotiations nor the essence of the agreement between RHS and the owners: Striking the prepayment provision from the promissory note leaves a viable contract. In contrast, striking the favorable accounting treatment from the *Winstar* contracts, the essence of the agreement is destroyed–nothing is left. Thus under this analysis no unmistakeable promise can be found.[12]

Moreover, like the courts in *Adams* and *Franconia*, the court concluded that the prepayment language that waives the government's right to modify the prepayment terms was not an unmistakable promise not to alter the agreement through future legislation. According to the court, the provision which states that the promissory note "shall be subject to the present regulations of the [RHS] and to its future regulations not inconsistent with the express provisions hereof," only refers to future regulations, not statutes. It con-

[7]Slip op. at 4.

[8]*Id.* at 5.

[9]*Id.* at 6.

[10]*Id.* at 7.

[11]In deciding whether the unmistakability doctrine applied, the court looked for guidance in *United States v. Winstar*, 518 U.S. 839 (1996), a plurality opinion involving federally controlled thrift institutions. In that case, the four justices voting in the plurality did not believe that the unmistakability doctrine applied to the case. At the same time, however, a majority of the justices agreed that the unmistakability doctrine applied to all government contracts, although they disagreed as to the results of its application. Understanding that to be the controlling holding of the case with respect to the unmistakability doctrine, the court proceeded to determine whether an unmistakable promise was made by RHS.

[12]Slip op. at 11.

cluded, therefore, that this clause protects the contract from subsequent changes by RHS but that it does not extend to future changes in law by Congress.[13] Having reached that conclusion, the court held that the government has a dispositive defense to the claim that it breached the loan agreements through subsequent legislation and denied the plaintiffs' motion for summary judgment.[14]

It is anticipated that RHS will now file its own summary judgement motion and seek the dismissal of the post-1979 plaintiffs' contract claims. ■

RECENT HOUSING-RELATED REGULATIONS AND NOTICES

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD), and the Department of Agriculture's (USDA) Rural Housing Service (RHS) 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

Public Housing Assessment System (PHAS); Technical Correction
65 Fed. Reg. 36,042 (June 6, 2000)

Summary: Technical and editorial corrections to final PHAS regulations issued on January 11, 2000.

Effective Date: February 10, 2000.

Tenant Participation in Multifamily Housing Projects; Final rule
65 Fed. Reg. 36,272 (June 7, 2000)

Summary: Pursuant to the statutory changes enacted in 1998, this rule expands the assistance programs in which tenants have the right to organize. The rule also defines the general characteristics of a legitimate tenant organization, such as regularity of meeting and democratic organization, while leaving the specific decision-making regarding organizational structures and procedures to local tenants. The rule outlines examples of appropriate tenant organization activities that housing owners and managers must allow, and requires that tenants have input on certain management decisions. The rule sets parameters as well for the conditions under which tenant organizers may operate. Finally, in response to public comments, the rule clarifies that existing administrative enforcement mechanisms apply.

Effective Date: July 7, 2000.

Section 8 Management Assessment Program (SEMAP); Lifting of Stay of Certain Regulatory Sections; Final rule; lifting of stay
65 Fed. Reg. 38,194 (June 20, 2000)

Summary: On September 10, 1998, HUD published its final rule for the Section 8 Management Assessment Program (SEMAP). While the final rule took effect October 13, 1998, the effective date for the following sections were stayed until further notice: § 985.102 (SEMAP profile); § 985.103 (SEMAP score and overall performance rating); §§ 985.105(a), 985.105(b), 985.105(d) and 985.105(e) (HUD SEMAP responsibilities); and § 985.107 (required actions for PHA with troubled performance rating). This rule lifts the stay for these sections.

Effective Date: August 1, 2000.

HUD Federal Register Notices

Notice of a Computer Matching Program Between HUD and VA
65 Fed. Reg. 36,708 (June 9, 2000)

Summary: HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the Department of Veterans Affairs (VA) by utilizing a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with the VA's debtor files. This match will allow pre-screening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or VA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of the participating Federal programs. The CAIVRS database contains delinquent debt information from the Departments of Agriculture,

[13]Indeed, the court noted that two of the plaintiffs' promissory notes did not even contain the same restrictions. These notes stated that "This Note shall be subject to the present regulations of the [RHS] and to its future regulations and provisions hereof." Thus, with respect to these plaintiffs, the court found that they had assumed the risk of future regulatory and legislative changes. *Id.* at 12.

[14]*Id.*

[1]*At* access.gpo.gov / su_docs.

[2]*At* hudclips.org/cgi/index.cgi.

[3]To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.

[4]*At* rdinit.usda.gov /regs/.

Education, Veteran Affairs, the Small Business Administration and judgment lien data from the Department of Justice. Authorized users will initiate a pre-screening of CAIVRS to determine a loan applicant's credit status with the Federal Government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

Effective Date: Computer matching is expected to begin 30 days after publication of this notice unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: July 10, 2000.

Notice of Funding Availability for Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000; Correction to NOFA Regarding Residency Preference and Extension of Application Period
65 Fed. Reg. 37,995 (June 19, 2000)

Summary: On March 10, 2000, HUD published its Fiscal Year 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding ("Fair Share NOFA"). The selection criteria of the NOFA were amended by notice published on May 18, 2000, to better reflect the appropriate weight in points that should have been assigned to the "housing needs" selection criteria so that need is the most important basis for allocating incremental voucher funding. The May 18, 2000 notice also reopened the application period for the Fair Share NOFA and set a new application due date of June 19, 2000. This notice corrects the percentage listed in the residency preference subcategory of Selection Criterion 2. The percentage listed in the May 18, 2000, notice was 15 percent and the percentage should have been 50 percent. This document makes that correction, and also extends the application due date further—30 days from the date of the publication of this notice.

Effective Date: Applications are due on July 19, 2000. Applicants that already have submitted applications need not resubmit a new application, and need not amend their applications. Applicants that already have submitted applications, however, may submit new or amended applications if they so choose.

HUD Notices

Fiscal Year 2000 Policy for Capital Advance Authority Assignments, Instructions and Program Requirements for the Section 202 and Section 811 Capital Advance
Notice: H 00-11 (May 31, 2000)

Summary: This notice makes various changes in the application, selection and allocation process for FY 2000 grants for the Section 202 and 811 programs. It should be used in conjunction with the Final Rule (Part 891), the Super Notice of Funding Availability (SuperNOFA) published in the Federal Register on February 24, 2000, and Handbook 4571.3 REV-1 - Section 202 Supportive Housing for the Elderly or Handbook 4571.2 - Section 811 Supportive Housing for Persons with Disabilities, as appropriate.

Procedures for Preparing, Submitting & Reviewing Rent Comparability Studies
Notice H 00-12 (June 29, 2000)

Summary: Notice 99-36 (renewal procedures for Section 8 2000 renewals) requires some projects to submit Rent Comparability Studies (RCSs) in order to renew their Section 8 contracts. Attachment 6 of that notice provides procedures for preparing those studies. Notice 99-17 (AAF rent procedures) requires that other projects submit market rent analyses to obtain annual adjustment factor (AAF) adjustments that would cause rents to exceed 110 percent of fair market rents (FMRs). While the above notices' requirements as to which projects must submit a market rent analysis remain in force, this notice supercedes all of Attachment 6's and any Notice 99-17 guidance as to content and review of the rent analysis. Henceforth, this notice establishes the Office of Housing's procedures for performing, submitting & reviewing any rent analysis that Notice 99-36 or 99-17 requires owners to submit or housing staff to purchase. This notice revises certain procedures to address:

- concerns raised by industry representatives,
- field staff's request for more detailed guidance, and
- the results of a HUD-industry survey completed in the Fall of 1999.

HUD HAS PROPOSED FOIA REGULATION AMENDMENTS

On July 10, 2000, HUD issued proposed amendments to its Freedom of Information Act (FOIA) regulation to implement the amendments made to the FOIA by the Electronic Freedom of Information Act. 65 Fed Reg. 42,577. Comments on the proposed rules are due on or before September 8, 2000. Since these regulations govern the method by which advocates and others obtain information from HUD under the FOIA, advocates are urged to review them and to submit comments.

The survey showed disagreements among HUD staff and between HUD staff and appraisers as to what the RCS must include, what units may be used as comparables, and what adjustments are appropriate. The survey also indicated that appraisers were not adequately documenting or explaining adjustments and that HUD review and owner appeal procedures varied across HUD offices.

Lead-based paint requirements for units occupied by children with elevated blood lead levels in the housing choice voucher program and the certificate program
Notice PIH 2000-23 (June 29, 2000)

Summary: This notice is intended to remind public housing agencies (PHAs) administering the housing choice voucher program and the certificate program (herein referred to as the tenant-based assistance programs) of current regulatory requirements and inspection protocols in the tenant-based assistance programs regarding the protection of children with known elevated blood lead levels (EBL). Although new regulations will take effect on September 15, 2000, it is important to remind PHAs of the current requirements to ensure that present safeguards and requirements are met.

Instructions for Submitting First Public Housing Agency (PHA) Plans for PHAs with Fiscal Years beginning on October 1, 2000 (including Community Service Requirements)
Notice: PIH 2000-22 (June 29, 2000)

Summary: This notice provides instructions to PHAs with fiscal years beginning on October 1, 2000 (October PHAs) on submission of PHA Plans as provided in the PHA Plans Final Rule (issued October 21, 1999), found at 24 C.F.R part 903. October PHAs must use currently available templates and instructions in completing their plans, with exceptions and clarifications as set out in this notice. The exceptions and clarifications address the new Community Service requirements of section 12(c) of the U.S. Housing Act of 1937 and plans for the Capital Fund and Public Housing Drug Elimination Programs. Background on this notice and PHA Plan guidance to date are also reviewed in this notice. ■

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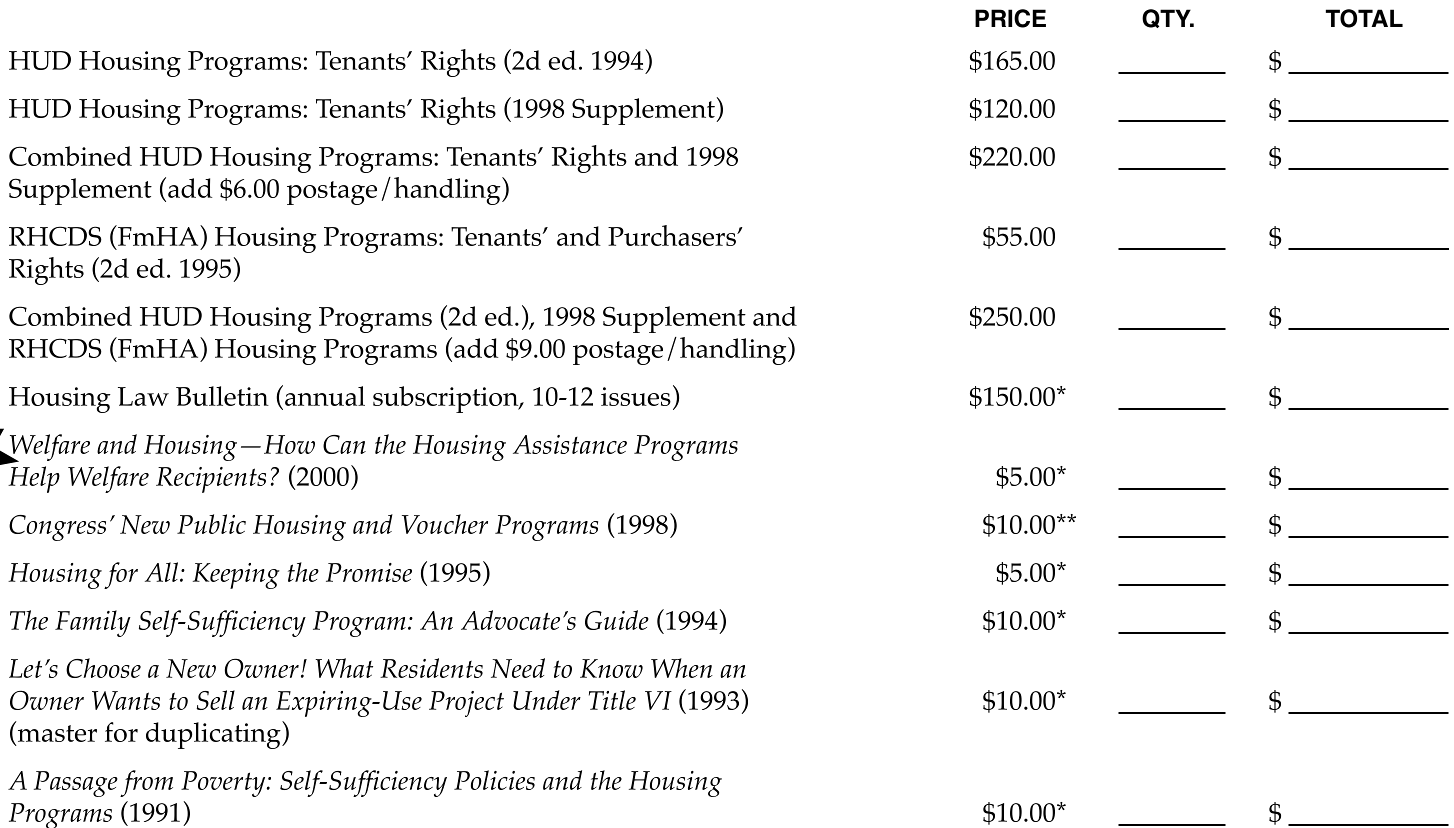

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