Materials: Subsidized Housing Basics, Part 1: Low-Income Housing Tax Credit and Rural Development Multifamily Housing Programs

NATIONAL HOUSING LAW PROJECT
advancing housing justice

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Low-Income Housing Tax Credit and Rural Housing: A Basic Overview for Advocates

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NOVEMBER 20, 2013

HOUSING JUSTICE
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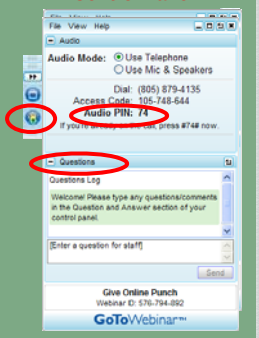
GoToWebinar Interface

1. Viewer Window

2. Control Panel



Housekeeping

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- First of 3 webinars providing basics of housing programs covered by VAWA 2013
- Materials were emailed to registrants this morning and will be emailed again after the webinar, along with evaluations.
- Many submitted questions when you registered and we will do our best to address those questions in the presentation.
- Materials and recording will be posted at www.nhlp.org/OVWgrantees.
- Poll: Which best describes you?

Today We Will Cover

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- An overview of the Low Income Housing Tax Credit (LIHTC) and Rural Development (RD) multifamily housing.
- There are other federal housing programs:
  - Three largest HUD programs that serve the lowest income families—public housing, voucher program and Project-based Section 8. We plan to have a webinar covering those programs in the near future
  - In addition, will soon hold a webinar covering HUD programs for the homeless.

Why Does This Matter?

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- Domestic and sexual violence advocates may encounter LIHTC or Rural Development rental housing because:
  - 40% of LIHTC housing is occupied by extremely low income families
  - RD housing is often the only housing survivors in rural areas can afford on their own.
  - The RD and HUD rental assistance programs are often used with LIHTC
  - Access to this housing may help survivors escape perpetrators.

Why Does This Matter? (cont'd)

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- To improve survivors' chances of securing permanent housing, it is critical for advocates to form relationships with LIHTC and/or RD housing providers.
- Advocates may need to negotiate with owners or managers of this housing to stop evictions or other negative actions against survivors.

Low-Income Housing Tax Credit Program

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Key Features of the LIHTC Program

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- It is tax policy, not a "housing program"
- LIHTC is the largest program funding new multifamily housing and is growing
- Income eligibility generally higher than HUD programs
- Rents NOT directly tied to tenant's income
- Lease with specific provisions may not be required
- No grievance procedure
- Good cause for eviction?
- Not considered federally assisted

<u>If another housing program is used with LIHTC, the more restrictive rules apply regardless of the source.</u>

Comparing the Subsidized Housing Programs

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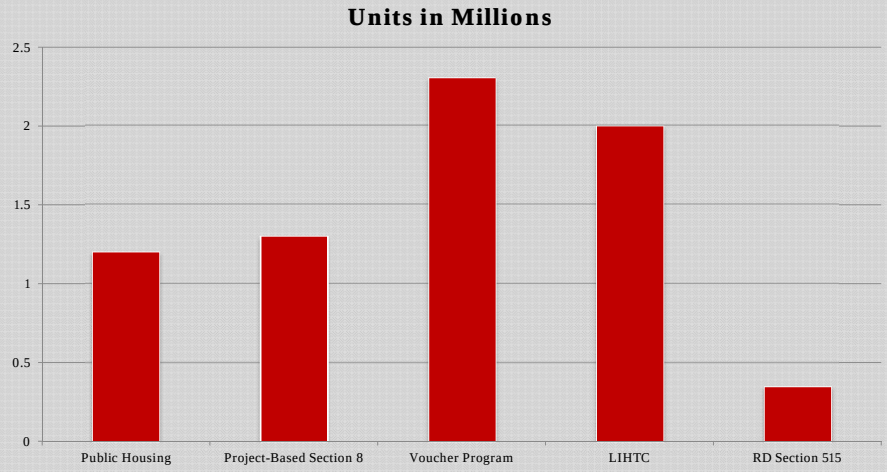

How the Program Works

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- **Number of Units**: about 2,000,000, growing at about 100,000 annually, cost about $8 billion/year; credit allocation indexed Dec. 2000
- **How Program Works: Subsidy Mechanism**:
  - Subsidy through tax system, not annual federal appropriations
  - Fixed amount of tax credits allocated to state Housing Finance Agency
    - Based on a per capita x $2.25, or minimum of $2.6 million/year
  - Investors buy income tax credits in qualified properties that received state allocation, creating cash equity for owner
  - In exchange for agreement to rent specific number of units to qualified tenants at restricted rents, usually below-market
  - Two tax credits available: 9% of depreciable basis, competitively allocated, and 4% of basis, comes with state bond financing, also capped and allocated by state HFA (competition varies)
    - Bonds $95 x per capita or **minimum** of $291.875 million.

Ownership and Use Restrictions

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- **Ownership**: usually limited partnerships; often sold after initial 15-yr. compliance period to general partner or others
- **Minimum Use Restrictions (per IRC § 42)**:
  - ***Occupancy and admissions***: owner choice of two: >20% of Units occupied by tenants @ <50% AMI, or >40% of units occupied by tenants @ <60% AMI
  - ***Rents***: those units must have "affordable" flat rents set at 30% of income of tenants at top of applicable AMI category, with assumed family size of 1.5 persons/bedroom
  - ***Term:*** For properties developed between 1986 and 1989, restrictions last only 15 years; post-1989 developments have at least 30 years, and up to 55 years in some states
  - ***Non-Discrimination***: LIHTC owners may not refuse to rent to Voucher holders because of their status

Qualified Allocation Plan (QAP)

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- State Housing Finance Agency (HFA) develops a QAP and reviews annually; properly noticed public hearing and public comment
  - QAPs from 2000-2013 available at www.novoco.com/low_income_housing/lihtc/qap_2013.php
- *States may impose more restrictive requirements than Internal Revenue Code minimum:*
  - Deeper income targeting and lower rents
  - Longer use restrictions
  - Eviction protections for DV survivors
  - May provide a preference or set aside for special populations, disabled, elderly, homeless, DV survivors

Pennsylvania Qualified Allocation Plan

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- State added language to its QAP addressing DV and evictions after advocacy from local programs.
- "Experience as a victim of domestic violence alone may not constitute good cause for eviction."
- Language can be used as grounds for defending against an eviction based on DV committed against a survivor living in an LIHTC unit.
- May be time to urge this change now to be consistent with VAWA 2013

Key Components

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- **Who's Involved?** IRS, state credit allocation agency, owner, management (either owner or separate company)
- **Key Regulatory Features**: State agency regulatory agreement, Treasury regulations at 26 C.F.R. §1.42, Lease. Owner files annual compliance certification with state agency.
- **Finding Out Where this Housing Is Located in Your Community:** available at: http://www.preservationdatabase.org/datasources.html www.huduser.org/datasets/lihtc.html or www.novoco.com/low_income_housing/resources/maps_data.php

Key Components

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- **Tips for Determining What Kind of Housing Is Involved**: Lease; Rent Level; Owner type; Age of Housing (LIHTC can be used for new or rehab, but all post-1986); Ask manager
- **Getting Information**: 26 U.S.C. § 42 (part of Internal Revenue Code); 26 C.F.R. §1.42; state compliance guidance

Admissions

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- Initial occupancy of rent-restricted units must be by tenants in specific income categories
- No discrimination against § 8 voucher holders
- No immigration restrictions, unless project has another funding source with such restrictions.
- Only other protections come from:
  - Fair housing laws
  - VAWA 2013 imposes obligations on LIHTC properties
  - Any state-imposed requirements per QAP & Regulatory Agreement
  - Possibly due process protections (governmental action & property interest issues)

Gwen

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- Facts:
  - Gwen applied for an LIHTC unit.
  - In her application, she listed her Section 8 voucher as income.
  - Gwen also checked "yes" on a box asking "Have you ever been arrested?", but she made a note that charges weren't filed because she acted in self-defense.
  - Gwen's application is denied without explanation.
  - What might you do to help Gwen?

Enter suggestions in the answer box.

Admissions: Student Eligibility

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- Rules are ambiguous: Unit with only full time unmarried students not eligible for tax credits
- The following students do NOT disqualify the unit:
  - Student receiving assistance under Title IV of SSAct-TANF
  - An individual in a state or local job training program
  - Unit entirely occupied by full time students who are single parents and no one is a dependent of anyone else
  - Unit entirely occupied by full time married students who file joint tax return
  - Students who were formerly under foster care
- Owner concern about recapture of credits—will be cautious in admitting full time unmarried students

Rents

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- **Income-based rents?** NO, LIHTC gross rents are flat rents based on AMI, not individual tenant income. Rent not adjusted if income drops.
- For restricted units, flat rents set @ either 30% of 50% of AMI, or 30% of 60% of AMI, w/an assumed family size of 1.5 persons/BR (one person for 0-BR unit)
  - See sample rent calculation sheet
  - Rents can increase with changes in AMI, not decrease
  - Most ELI tenants have rental subsidies (such as Section 8 Vouchers), with contributions determined under rent subsidy rules.

Rents, Continued Occupancy & Utility Allowance

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- **Recertification:** *Income*: Annually except not required if 100% LIHTC property with restricted rents; *Student Status*: Annually
- In 9% credit units, **tenant right to continued occupancy unaffected** by increases in income until 140% of income limit (i.e., 140% of 50% AMI, or 140% of 60% AMI)
- **Utility Allowance:** LIHTC rents are gross rents, for tenant-paid utilities, tenant must receive utility allowance, usually based on local PHA's utility allowance for comparable Section 8 Voucher units
- **Mandatory and other charges:** include in rent

Grievance Procedures

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- None required by statute or regulation
- State Regulatory Agreement?

Evictions

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- **Good cause required** at end of lease term?
  - Yes, Rev. Rul. 2004-82 and Rev. Proc. 2005-37
  - State court cases under statute or due process (governmental action?)
  - Confusion: IRS guide for Form 8823
  - Terms of state's Regulatory Agreement or required lease addenda? Owner Certificate of Compliance
  - Tenant not on notice therefore not aware of right
- **Notice:**
  - No federal statutory or regulatory requirements re length of notice and/or content
  - Due process or state rules (if cause required)?
- Pre-judicial administrative review?: None

Tania

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- Facts:
  - Tania lives in an LIHTC unit.
  - Tania has a restraining order against her ex-boyfriend, Reuben, who has been stalking her.
  - One day, Reuben kicked in the door at Tania's apartment. She reported the incident to her property manager.
  - The property manager later gave Tania a 30-day eviction notice for damages caused by her "guest."

Poll: The property manager's actions *may* violate which of the following?

Takeaway Points

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- LIHTC housing is unique because it is run as a tax program, not a housing program
  - As a result, there are few program rules that focus on resident concerns and issues
- Important to get to know owner/manager, because most policies are discretionary
- Important to get to know Housing Finance Agency compliance staff
- Advocates can comment on state's Qualified Allocation Plan to improve policies regarding DV
- Poll

Rural Development (RD) Multifamily Housing

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Why is Rural Development (RD) Multifamily Housing Important?

26

- Domestic and sexual violence advocates may encounter RD (Section 515) rental housing because:
  - It is often the only housing survivors in rural areas can afford on their own.
  - There are about 440,000 Section 515 rental units nationwide.
  - A few new units are funded and built each year. May be combined with LIHTC.
  - Housing is built in towns with no more than 20,000 in population or, if within a Standard Metropolitan Area (SMA), no more than 10,000 in population and rural in character.
  - Some RD units are now located in areas outside these limits because of population shifts.

How the Program Works

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- Section 515 direct loan program: almost all with shallow subsidy to reduce rents.
  - Many also have a rental subsidy, such as Rental Assistance, project-based Section 8 and tenant-based vouchers.
  - Program first created to expand affordable senior housing to rural areas (modeled after HUD 202 program).
- Section 521 rental assistance only for RD housing.
  - About 70% of all the 515 units have Rental Assistance.
- Section 538 loan guarantee program for RD rental housing.
- There are other RD housing programs, including farmworker and single family programs.

Ownership, Use Restrictions and Who is Involved

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- **Ownership**: Mostly profit-motivated or limited-partnerships, some nonprofits and public agencies.
- **Use Restrictions**: No use restrictions for pre-1979 developments; post 1979, 20-year use restrictions, post 1989 use restrictions for term of loan. All have prepayment restrictions.
- **Who is involved**: Rural Development (RD) part of U.S. Dept. of Agriculture, owner, management company (may be same as owner or separate).
  - RD has state and local offices, http://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd

Key Components

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- **Key Regulatory Features**: Regulatory Agreement between RD and owner; regulations at 7 C.F.R. Part 3560, RD approved lease, Handbooks, letters, etc.
  - www.rurdev.usda.gov/RegulationsAndGuidance.html.
- **Where is this housing located?**
  - Rural areas.
  - http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=NO.
- **Determining What Kind of Housing is Involved**: signage, lease, rent level, check the website listed above, get list from RD office, ask management.

Admissions and Eligibility

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- **Income**: 7 C.F.R. §§ 3560.152 and 3560.11 (less than 80% of AMI + $5500); RD Asset Mgmt Hbk, HB-2-3560, ¶6.3.
- **Citizenship or qualified alien**:
  - **Not a criterion**: See Note at end of 7 C.F.R. § 3560.152.
- **Preferences**: Admission priorities for very low-, low- and then moderate-income applicants; elderly for restricted developments.
- **Screening**: Owner discretion for criminal history
- **Procedural protections**: Denial notice must have certain form and information and hearing rights.

VAWA 2013

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- VAWA 2013 has extended coverage to the following RD/RHS programs:
  - Section 515 rural rental housing (42 U.S.C. § 1485).
  - Section 514 and 516 Farm Labor housing (42 U.S.C. §§ 1484 and 1486).
  - Section 533 Housing Preservation Grant Program (42 U.S.C. § 1490m)
  - Section 538 guaranteed multi-family rental housing (42 U.S.C. 1490p-2.
- RHS has not yet published any regulations extending VAWA to its program.
- Existing leases have some VAWA protections mentioned.

Jan

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- Facts:
  - 25 years ago, Jan was convicted of felony assault in an incident involving her abusive husband. She was released from prison on a habeas petition asserting battered women's syndrome.
  - Jan applied for a Rural Development unit and included letters of support from her employer, a DV agency, and a letter from the dept. of corrections to explain her conviction.
  - The owner denied Jan's application due to her conviction, and the owner failed to mention anything about the supporting documents Jan provided.
  - What could you do on Jan's behalf?

Rents

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- Market rent (note rent)
- Basic rent
  - Tenant pays the greater of basic rent or 30% of household income.
- Income-based rent if there is a deep rental subsidy
- Annual income and exclusions and deductions.
  - Same as the project-based Section 8.
- Annual rent recertification.
- Utility allowance for tenant-paid utilities impacts income-based rents for those subject to rent in excess of basic rent or receiving a rental subsidy.
  - Utility allowance reviewed annually by owner and RD.

Rents & Tenant Grievance and Appeals

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- **Rents, continued**:
  - Tenant may grieve individual rent calculation.
  - Notice and comment on owner proposal to increase project-wide rents except in developments with 100% RA.
- **Grievance hearing**: For owner action or inaction in accordance with lease, occupancy rules or RD regulations. Two step process:
  - Informal meeting with owner.
  - Grievance hearing.
- **Lease**: Owner must use lease approved by RD, required lease language: DV is a material lease violation & survivor remains.

Lease Language

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- "All leases, including renewals, must include the following language:
  - . . . It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements."
    - HB-2-3560, Attachment 6-E (02-24-2005) (at page 3 of 5).

Evictions & Termination of Rental Assistance

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- Good cause required.
  - Material noncompliance with lease, occupancy rules or other good cause.
- Right to notice and right to cure.
- Notice must set forth good cause.
- No right to grievance hearing in eviction cases.
- No preemption of state law.
- Termination of rental assistance prior to eviction.
  - Not allowed; Tenant entitled to Tenant Grievance and Appeal.

Tiffani

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- Facts:
  - Tiffani and her husband rented a Section 515 RD unit together.
  - Tiffani's husband attacked her in the unit, and she later obtained a restraining order against him.
  - After Tiffani notified the property manager of the restraining order, she received a 24-hour eviction notice stating that the property's "zero-tolerance against violence" policy applied to her situation.
  - Poll: The property manager's actions may violate which of the following?

Takeaway Points

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- Tenants rights' in RD housing are substantial.
- Domestic violence is material lease violation and the perpetrators will be evicted.
- It may be the only affordable housing in rural areas.
- It is important to make connections with owners of such housing and RD staff.
  - Advocacy to verify that leases with language that DV is a material lease violation and that all perpetrators will be evicted is in use at all Section 515 developments.
- VAWA 2013 may apply.
  - Parts may be self executing.
  - Be alert for regulations or other RD notices about applicability.

Contact Information

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For assistance on housing issues related to domestic violence, dating violence, sexual assault and stalking:

Karlo Ng, kng@nhlp.org, (415) 546-7000 x. 3117

For assistance on RD issues:

Gideon Anders, ganders@nhlp.org

(415) 546-7000 x. 3103

http://www.nhlp.org/OVWgrantees

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Overview
Low-Income Housing Tax Credit (LIHTC) Program
November 2013

Key Components

- **Number of Units**: about 2,000,000, growing at about 100,000 annually, at a foregone revenue cost anticipated to be $8 billion per year; credit allocation increased and indexed Dec. 2000. Now $2.25 x state population or minimum of $2.6 million.
- **How Program Works: Subsidy Mechanism**: fixed amount of tax credits given to state Housing Finance Agency (HFA), which competitively allocates credits under Qualified Allocation Plan (QAP); (find the amount allocated to your state at http://www.novoco.com/low_income_housing/lihtc/federal_lihtc.php). Investors buy income tax credits in qualified properties that have received state allocation, creating cash equity for owner that reduces project development debt burden, in exchange for agreement to rent a specific number of units to qualified tenants at specified rents, usually below-market. Unused amounts get reallocated to other states. Two tax credits are available: one at 9% of depreciable basis, competitively allocated; the other, at 4% of depreciable basis, comes with state bond financing, which is capped and allocated by a state agency, which may or may not be very competitive.
- **Ownership**: During recapture period, usually limited partnerships, in which individuals and usually corporations invest as limited partners, with corporate, nonprofit, or individual general partners; after credits used, properties often later sold to general partner or others, often with new credits & re-syndication.
- **Use Restrictions**: *Occupancy restrictions* (federal minimum): owner's choice of two: at least 20% of units occupied by tenants at no more than 50% of AMI, or 40% of units occupied by tenants at no more than 60% of AMI; many projects have 100% LIHTC units. *Rent restrictions*: those units must have "affordable" flat rents set at 30% of income of tenants at the top of the selected AMI category, with an assumed family size of 1.5 persons per bedroom. For properties developed between 1986 and 1989, these restrictions last only 15 years; post-1989 developments have at least 30 years, and up to 55 years in some states. Because tax credits are competitively allocated, *states may impose more restrictive requirements than the Code minimum*, *e.g.*, greater percentages of restricted units, deeper income targeting and rent levels, or longer use restrictions. In any event, LIHTC owners may not refuse to rent to Voucher holders because of their status, presumably at least so long as the rents are determined "reasonable" by the PHA. 26 U.S.C.A. § 42(h)(6)(B)(iv) and 26 C.F.R. § 1.42-5(c)(1)(xi).
- **Who's Involved?** IRS, state credit allocation agency, owner, management either owner or separate company. If there are additional subsidies, such as vouchers or Project-Based Vouchers, PHA may also be involved.

- **Key Regulatory Features**: State agency regulatory agreement, Treasury regulations at 26 C.F.R. §1.42, Lease. Owner files annual compliance certification with state agency. State Qualified Allocation Plan, copies available at http://www.novoco.com/low_income_housing/lihtc/qap_2013.php
- **Finding Out Where this Housing Is Located in Your Community:** available at: http://www.preservationdatabase.org/datasources.html. This site complies all of the federal housing data bases into one document for each jurisdiction. Also http://www.huduser.org/portal/datasets/lihtc.html. This HUD site will also provide general information about the characteristics of the program by state, prior to 2011.. More accurate data may be available from your state agency, often via its website. To see where units are located on a map and by zip code or address, go to http://www.novoco.com/low_income_housing/resources/maps_data.php This site will also provide basic information about the development including who it serves, bedroom size, types of funding, etc.
- **Tips for Determining What Kind of Housing Is Involved**: Lease; Rent Level; Owner type; Age of Housing (LIHTC can be used for new or rehab, but all post-1986); Ask manager
- **Getting Information**: 26 U.S.C. § 42 (part of Internal Revenue Code); 26 C.F.R. §1.42; state agency rules or guidance (if unpublished, ask state agency); IRS Guide, *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (Jan. 2011) (available at: http://www.irs.gov/businesses/small/article/0,,id=235488,00.html)
- **Related Subprograms or Set-Asides for Special Uses**: determined by state agency rules and Qualified Allocation Plan.

Major Applicant and Tenant Issues

- **Admissions**:
  - Code requirements concerning occupancy of certain units by tenants in specific income categories.
  - Requirement of non-discrimination against Voucher holders, *supra*.
  - Students: Special Rules on Student Eligibility. *See* 26 U.S.C.A. § 42 (i)(3)(D) (West 2013); student status verified annually.
  - Protections (on common substantive criteria and procedural protections) from Fair Housing laws (e.g., Title VIII of the 1968 Civil Rights Act), from any state-imposed requirements pursuant to the QAP and regulatory agreement, or possibly from constitutional sources, *e.g.*, due process (note governmental action and property interest issues).
  - State agency may have awarded tax credits based on owner's commitment to serve special populations.
  - Owner tenant selection policies relating to Voucher holders. *See* 42 U.S.C.A. §§ 13661(c), 13664(a)(2),(3) (West 2013) (reasonable time periods on criminal history look-back).
  - Violence Against Women Act (VAWA) 2013 protections regarding admission

- **Rents**
  - Income-based rents? No, gross rents under program are flat rents based on AMI and size of unit, not individual tenant income; for restricted units, unless owner has agreed to even lower rents with state agency, gross rents are set at either 30% of 50% of AMI, or 30% of 60% of AMI, in both cases with an assumed family size of 1.5 persons per

bedroom (one person for 0-BR unit). Rents can increase upward with changes in AMI. 26 U.S.C. § 42(g)(2). (See Attachment) Some tenants may have Vouchers (Project-based or Housing Choice), or other project-based Section 8 with their contributions determined under applicable Section 8 program rules. (For Voucher tenants, total rent may exceed LIHTC limits, if market reasonable, up to local payment standard.) Some tenants may have Rural Development rental assistance.

- Recertification:
  - For mixed-income developments, once annually tenant right to continued occupancy unaffected by increases in income until 140% of income limit (i.e., 140% of 50% AMI, or 140% of 60% AMI). If recertified tenant income this 140% limit is exceeded, the unit can still qualify for credit if owner rents next available unit to an eligible family, and tenant could stay (at LIHTC rent level). However, unclear whether owner could instead claim good cause to evict. Calculator for determining rent http://www.novoco.com/products/rentincome.php
  - If development is 100% LIHTC rent-restricted, IRS does not require recertification after initial occupancy (because next available unit will be rented to eligible family, regardless of any one family's increased income), but state agency may require additional income recertifications (*e.g.*, CA requires one more after initial occupancy).
  - IRS Guide for Form 8823 references HUD Handbook 4350.3, which outlines requirements for verification of income and assets. HFA may add additional requirements.
- Utility Allowance: flat rents are gross rents, and where utilities are tenant-paid, tenant must receive a utility allowance based usually on the local PHA's allowance for comparable units with similar utility mix or utility allowance used by Rural Development housing, if applicable. 26 C.F.R. §1.42-10 and § 1.42-12 (may use engineering study).
- All mandatory charges and any charges for services included in eligibility basis are included in rent.

- **Grievance Procedures:** none required by statute or regulation, although regulatory agreement could do so.

- **Evictions and Terminations**
  - Notice: no federal statutory or regulatory requirements re length and content. Due process (where cause required)? State rules or policies may require certain notice.
  - Good cause required, both during lease and at end of lease term? Good cause required by the statute, *see* IRS Revenue Ruling 2004-82 (July 30, 2004) (statutory interpretation), or by due process, or by the terms of the state's regulatory agreement. *See also, e.g.,* Owner's Annual Certificate of Compliance with state agency; the project's Regulatory Agreement; and various cases, *e.g.*, *Carter v. Maryland Mgmt. Co.*, 835 A.2d 158 (Md. 2003) (good cause required for termination of LIHTC/Voucher tenancy, but good cause found); *Cimarron Village Townhomes, Ltd. v. Washington*, 1999 WL 538110, 1999 Minn. App. LEXIS 890 (Minn. App. 1999) (good cause eviction protection required under LIHTC statute), 659 N.W.2d 811 (Minn. App. 2003) (finding good cause); *Bowling Green Manor v. LaChance*, 1995 Ohio App. LEXIS 2767 (because eviction of Section 8 Voucher tenant from LIHTC unit constituted state action, owner could therefore not refuse to renew lease absent good cause); *Mendoza v. Frenchman Hill Apts.*, No. CS-03-0494-RHW (E.D. Wa. order Jan. 20, 2005) (finding §

1983 claim unavailable to challenge HFA's and owner's failure to include required prohibition on no-cause evictions in regulatory agreement); Jolin, "Good Cause Eviction and the Low Income Housing Tax Credit," 67 U. Chi. L. Rev. 521 (2000); *see also* info on NHLP website <http://nhlp.org/resourcecenter?tid=106>.

- Confusion created because: Tenant may not be aware of good cause requirement, many states do not require provision to be in the lease, some just include in an addendum. Also eviction at end of lease term, confusion created by IRS 8823 Guide, Ch. 26 (rev. Jan. 2011), which apparently contradicts the statutory requirement of good cause for a "termination of tenancy."
- Pre-judicial administrative review?: None.
- Effect of eviction on future application to federally assisted housing: no ban, just impact on prior tenant history.

- **Current Important Issues:**
  - Will LIHTC survive budget pressure to restrict various "tax preferences"? How will any reduction in available Vouchers affect number of ELI tenants in LIHTC properties?
  - Use restrictions (15 years) on pre-1990 units have expired, possibly causing displacement if restricted rents were below-market and property exited program; next wave of expirations should occur after 2020 (30 years); major risks concerning compliance and regulatory oversight during the last 15 years of the extended use period after credits have already been taken and recapture period has closed and owners seeking to exit after 14th birthday under "qualified contract" process.
  - Fair Housing considerations in location of units (*e.g., Inclusive Communities Project v. Texas Dep't of HCA* litigation)
  - Basic tenants' rights often lacking
    - Good cause for eviction in the lease, in eviction notices, or in regulations of state tax credit allocation agency? Problem of end of lease terminations noted above
  - Implementation of VAWA 2013 protections, regarding admissions, transfers and evictions, etc.
  - If data demonstrates low voucher utilization, evidence of violation of LIHTC non-discrimination duty or of Fair Housing laws? PHA could provide information about the use of Vouchers in particular developments.
  - Housing and Economic Recovery Act (HERA) of 2008 required HFAs to begin reporting tenant incomes and rent to HUD and in 2011 to gather race and ethnicity data. The information must be available to the public. 42 U.S.C. § 1437z—8
  - Seek to influence the QAP or state agency rules governing LIHTC developments? (state tax credit agency must submit QAP annually after public hearing)
    - Advocacy in QAP process to ensure:
      - LIHTC subsidy linked with other available subsidies (e.g., vouchers or PBVs) to reach needs of very low-income tenants
      - Fair Housing considerations in unit locations and marketing
      - Preference or set aside for special populations, preservation of units, etc.

Calculation of Maximum Rent a Tax Credit Complex May Charge

I. See 26 U.S.C. § 42(g) (2013) for LIHTC

II. Maximum Rents:

A. **Formula Rents** set based on Adjusted Median Income

1. Set at 30% of 50% of adjusted median income with assumed family size of 1.5 persons per bedroom, or
2. Set at 30% of 60% of adjusted median income with assumed family size of 1.5 persons per bedroom
3. Must adjust for utility allowance
4. Not based on family's actual income, absent other subsidy

B. Calculation of Maximum Rent Example: Assume the following facts:

1. Complex is leasing to individuals whose income is 60% or less of area median family income (AMFI)

2. 60 % of annual AMFI is as follows:
   - 2-person Household -- $34,140
   - 3-person Household -- $38,400

3. Family moves into 2-bedroom unit.

4. Regardless of the size of the family -- whether 1-person or 4-persons -- the maximum gross rent that the landlord may charge is 30% of the AMFI for 3 persons. (The landlord must set the rent on the 2-bedroom unit based on imputed number of persons of 3 @ an assumed 1.5 persons per bedroom.)

5. That calculates to **$960 maximum monthly rent**:
   60 % of annual AMFI = $38,400
   X .30 = $11,520 annual gross rent
   ÷ 12 (months)
   = $960, if the family is paying no utilities.

6. If the family is paying utilities, then the maximum rent that the landlord can charge must be reduced by the amount of the utility allowance. So, if utility allowance is $100, then the maximum rent the tax credit landlord can charge is $860.

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710 FIFTH AVENUE, SUITE 1000
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Memo

To: Interested Parties

From: Mark Schwartz

Date: 10/16/2012

Re: Expanding protections afforded to victims of domestic violence living in Low Income Housing Tax Credit ("LIHTC") housing units

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Pennsylvania has approximately 80,000 affordable housing units developed with LIHTCs. All of these units require that no low-income residents be evicted or otherwise had their lease terminated other than for good cause. Owners must certify annually, under the penalty of perjury, their compliance with this requirement.

Many LIHTC leases have provisions which permit the owner to evict a tenant if the police are called to the unit. This can have the unintended consequences of "double victimizing" domestic violence victims. A victim of domestic violence may obtain a protection order, then still be subject to additional abuse at her LIHTC unit. The police may be called by the tenant or neighbors, thus subjecting the abused tenant to possible eviction.

In response to 3 years of advocacy on this issue, the PA Housing Finance Agency's 2013 Qualified Allocation Plan ("QAP") now includes the following language "experience as a victim of domestic violence alone may not constitute good cause for eviction… " .While this language may not be perfect, it is to my knowledge, the first QAP to include such protections.

The advantage to this approach is that in addition to giving a domestic violence victim grounds for challenging an eviction in court as not meeting the good cause requirements for a LIHTC unit, it places at risk the tax benefits available to such owners. According to the Chapter 26-4 of the IRS Audit Guide for Completing Form 8823 , Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition:

> Owners are out of compliance if they fail to certify annually, or certify incompletely or inaccurately, under the penalty of perjury, that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause……..

Further, according to the above referenced Audit Guide, the credit agency is to use IRS Form 8823 category 11d to report such non-compliance.

I want to thank Judy Berkman (RHLS) and Rachel Garland(CLS) for their assistance and encouragement with this effort.

Please contact me at (215) 572-7300 ext 107, or mark.schwartz@rhls.org, if you have any questions.

EMILY J. MARTIN
DEPUTY DIRECTOR
T/212.549.2615
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emartin@aclu.org

January 17, 2007

BY US MAIL AND FACSIMILE

Jacqueline R. Waters
Management Systems Incorporated
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Dear Ms. Waters:

We are writing on behalf of your former tenant, Ms. Tanica Lewis. Ms. Lewis resided with her two children in Northend Village at 925 Hague Street, Apt. 37, in Detroit from July 30, 2005 until March 31, 2006. She moved out involuntarily, on the basis of a notice to quit received from Management Systems Incorporated.

This notice to quit was based upon an incident of domestic violence by Reuben Thomas (Ms. Lewis's former boyfriend), which occurred on March 1, 2006. On that date, Mr. Thomas appeared at Ms. Lewis's home while she was absent from her residence. When he could not gain entry to her apartment, he broke her windows and kicked in her door. Based on this incident, Management Systems Incorporated issued Ms. Lewis a 30-day notice to quit on March 13, 2006, stating that Ms. Lewis had violated that portion of her lease indicating that she would be liable for any damage resulting from her lack of proper supervision of her guests.

On February 24, 2006, however, Ms. Lewis had obtained a personal protection order against Mr. Thomas based on his threats against her. She informed Northend Village management of the order at the time she obtained it. This court order, enforceable by the police, prohibited Mr. Thomas from entering the 925 Hague Street property. When Ms. Lewis learned that Mr. Thomas had come to her home and vandalized it in violation of the protection order on March 1, 2006, she immediately reported this violation to the police, as well as to the Residential Manager of Northend Village. Indeed, Mr. Thomas was ultimately convicted of breaking and entering and ordered to pay restitution for the damaged property. Accordingly, Ms. Lewis did everything within her power to prevent Mr. Thomas from visiting 925 Hague Street and to enforce available legal remedies against Mr. Thomas when he did so in violation of her personal protection order. As the management of Northend Village was aware at

the time of the incident, far from being Ms. Lewis's guest, Mr. Thomas was in fact an individual whom she had gone so far as to legally bar from her home.

On the basis of the notice to quit issued by Management Systems Incorporated, Ms. Lewis left her apartment in Northend Village and thus shouldered moving costs. The apartment to which she was forced to relocate cost approximately $200 more in rent a month than her previous home. In addition, it was inconveniently located far from her place of employment, in contrast to her home in Northend Village, which was less than ten minutes from her workplace. Because of the move, she was also forced to make new and less desirable childcare arrangements for her youngest daughter; the child's grandmother, who lived within a few blocks of Northend Village, had previously cared for Ms. Lewis's daughter. Most importantly, the notice to quit threatened Ms. Lewis with homelessness at the very moment that she was attempting to protect herself and her children from Mr. Thomas's threatening and dangerous behavior, resulting in significant emotional distress for Ms. Lewis.

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As we assume you are aware, both the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and the Michigan Eliot-Larsen Act, M.C.L. §§ 37.2501 *et seq.*, prohibit discrimination in rental housing on the basis of sex. These statutes forbid both actions based upon gender stereotyping or animus and those that have a discriminatory impact on women. The eviction of Ms. Lewis was apparently based on gender stereotypes about battered women—namely, the stereotype that if a woman is experiencing domestic violence, it is necessarily her fault, because she must be inviting it or allowing it to happen. In addition, because most domestic violence victims are women, those policies and practices that discriminate against victims of domestic violence have an unlawful disparate impact on women. Management Systems Incorporated's interpretation of the word "guest" to mean those individuals who enter a property uninvited and in violation of personal protection orders constitutes just such a practice.

For just these reasons, courts and agencies considering the question have repeatedly found that housing practices that discriminate against victims of domestic violence unlawfully discriminate on the basis of sex. For instance, in *Bouley v. Young-Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005), a case in which the ACLU Women's Rights Project appeared first as amicus and then as plaintiff counsel, the district court denied defendant's summary judgment motion in a sex discrimination Fair Housing Act claim, based on plaintiff's showing that less than 72 hours after her husband assaulted her, her landlord issued her a notice to quit. Shortly after this ruling, the case settled with an award of damages and attorneys' fees. *See also Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995) (finding discrimination against domestic violence victims had a discriminatory effect on women in violation of state fair housing law) (attached).

Similarly, in a federal case in Oregon litigated by the ACLU Women's Rights Project, the U.S. Department of Housing and Urban Development determined that when an apartment management agency takes action against an individual based upon her status as a victim of domestic violence, it discriminates on the basis of sex, because most victims of domestic violence are women. *See HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *see also* 1985 Op.

N.Y. Att'y Gen. 45 (1985) (same) (attached). That case resulted in a consent decree, under which the federal government monitored the apartment management corporation for five years to ensure that its practices and policies in relation to victims of domestic violence complied with the Fair Housing Act. In addition, the apartment management corporation was required to pay compensatory damages and attorneys' fees, to refrain from evicting or otherwise discriminating against tenants because they have been victims of violence, and to train its employees about discrimination and fair housing law.

Moreover, it seems unlikely that evicting an tenant for criminal behavior undertaken by an individual whom the tenant not only had not invited to the property, but whom she had legally excluded from her home, complies with the requirement that all Low-Income Housing Tax Credit properties terminate tenancy only for good cause. 26 U.S.C.A. § 42(h)(6)(E)(ii)(I); I.R.S. Rev. Rul. 2004-82, Q&A 5 (2004). Given that the behavior on which the notice to quit was premised cannot reasonably be construed as a violation of Ms. Lewis's lease, the notice to quit amounts to a termination of tenancy without cause.

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For this reasons, we believe that your eviction of Ms. Lewis violated federal and state law. Moreover, it forced her and her children from her home at a time of significant emotional trauma. We hope that we can resolve this matter amicably. Therefore, we ask that you reimburse Ms. Lewis and her children for the financial damages occasioned by the move as well as for the significant emotional distress they experienced. We further request that you make available an apartment to Ms. Lewis's family comparable in cost, amenities, and location to the Northend Village unit from which they were terminated and suggest that rent abatement for a period of months may be a method of addressing Ms. Lewis's accrued damages. We understand from Ms. Lewis that New Center Commons Condominiums and Palmer Court Townhomes may offer such comparable properties. Finally, we request that Management Systems Incorporated amend the discriminatory policy outlined above, to ensure that tenants who are victims of domestic violence are not subject to the sort of peremptory eviction in the absence of good cause that Ms. Lewis experienced. We ask that you or your attorney contact us no later than January 31, 2007, so that we may pursue resolution of this matter.

Sincerely,

Emily J. Martin
Deputy Director
ACLU Women's Rights Project

Lenora M. Lapidus
Director
ACLU Women's Rights Project

Michael J. Steinberg
Legal Director

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Overview
RD-Subsidized Programs

Key Components

- **Number of Units:**
  - Rural Development/Rural Housing Service (RD/RHS), part of the U.S. Department of Agriculture (RHS, formerly Farmers Home Administration (FmHA)).
  - Subsidized Section 515 (Rental Housing, direct loans made by agency) 42 U.S.C § 1485.
    - Approximately 430,000 Section 515 units remain.
    - Section 515 units are being lost because of prepayment, maturing loans and foreclosures in communities suffering loss of population.
    - Congress continues to fund Section 515 program for additional units ($31 million FY 2013 (funds allocated by Notice of Funding Availability (NOFA)).
    - Congress continues to fund Section 521 Rental Assistance program used in conjunction with Section 515 ($907 million FY 2013) (to support existing rent assistance contracts) 42 USC 1490a(a)(2).
    - RD has a Section 538 guaranteed rental housing program (42 U.S.C. § 1490p-2) with about 30,000 units. Probably being used with LIHTC, no rental subsidies from RD but could have Section 8; Good Cause required for eviction and tenants have right to a Grievance and Appeal Process, *see infra*.
    - Section 514/516 (Farm Labor Housing—also direct loan and grant): Approximately 17,000 units in the program.

- **How Program Works--Subsidy Mechanisms:**
  - RD Section 515: always a *direct* RD loan at market interest rate in exchange for RD-regulated "budget-based" rents and occupancy restrictions; practically all developments have a shallow subsidy through reduction of interest rate to an effective 1% (comparable to old HUD Section 236 program); other subsidies may be available in developments, e.g. RD Rental Assistance, Project-based Section 8, Housing Choice Vouchers or state subsidy.

- **Ownership:** Mostly private, profit-motivated or limited-dividend partnerships; some nonprofits and public agencies.

- **Use Restrictions:**
  - RD Section 515: Regulatory Agreement accompanying mortgage, with varying use and prepayment restrictions; post 1979 developments have 20-year use restrictions; post 1989 developments have term of loan use restriction; all developments have prepayment restrictions imposed by Emergency Low-Income Housing Preservation Act (ELIHPA) (42 U.S.C. §1472(c)).

- **Who's Involved?**
  - RD Section 515: RD is party to Regulatory Agreement with owner and also the lender; private owner; management either owner or separate company. RD state and area offices do direct supervision of owner. Periodic visits and review of all reports. Find an RD office at http://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd.

  - Section 538: RD guarantees loans made by private lenders. Other parties are the same as in 515 program. Residents entitled to grievance hearing to same extent as under Section 515 program.

- **Key Regulatory Features:** (Program Contract(s), Regulations, Handbooks and Notices, Lease)
  - RD Section 515: RD Regulatory Agreement; 7 CFR Part 3560; Asset Management Handbook HB-2-3560 on RD website**,** http://www.rurdev.usda.gov/Handbooks.html see also http://www.rurdev.usda.gov/RegulationsAndGuidance.html (for a listing of many other regulatory guidances, including Spanish language forms).

- **Finding Out Where this Housing Is Located in Your Community (national, state, local info); Knowing Its Characteristics (occupancy and bedroom sizes):**
  - RD Section 515 units are built in towns with no more 20,000 in population or if within a Standard Metropolitan Area (SMA), 10,000 in population and rural in character. Some RD units are now located outside of such areas because of population shifts.
  - Find RD Section 515 in your state, city or county: lists often available from RD state office; also properties by state, county, town or zip code available at: http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp?home=NO and National Housing Trust's web site (Excel or PDF) lists Section 515 properties at http://www.nhtinc.org/housing_data.php. Also listed in National Housing Preservation Database: www.preservationdatabase.org.

- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type; Age of housing; Ask manager. Check the RD/RHS website above; it will tell you size of project, RD subsidy, type of housing (family/senior) and management company.

- **Getting Information:** Statutes, Regulations, Handbooks, Notices, and other resources:
  - RD Section 515: 42 U.S.C. §1485; regulations and Handbooks *supra*; Administrative Notices at http://www.rurdev.usda.gov/rd-an_list.html.

- **Related Subprograms or Set-Asides for Special Uses:**
  - RD Section 515: can be used with Section 8 Project-based and portable vouchers, RD Rental Assistance or other deep subsidies; also may have Low Income Housing Tax Credits (LIHTC).

Major Applicant and Tenant Issues:

- **Admissions:**
  - **Application fee**: RD Asset Management Handbook, HB-2-3560, ¶ 6.18B (discouraged, but not prohibited).
  - **Waiting list:** how compiled and maintained: 7 C.F.R. § 3560.154(f) and RD Asset Management Handbook, HB-2-3560, ¶ 6.18.
  - **Eligibility:**
    - Income: 7 C.F.R. §§ 3560.152 and 3560.11 (less than 80% of AMI + $5500); RD Asset Mgmt Hbk, HB-2-3560, ¶6.3.

- U.S. citizen or qualified alien 7 C.F.R. § 3560.152, *but see* 70 Fed. Reg 8503 (Feb. 22, 2005) in § 3560.152(a)(1), implementation of the words ‘‘Be a United States citizen or qualified alien, and’’ was delayed indefinitely.

- **Preferences:** some properties have elderly preference or designated occupancy; RD Asset Mgmt. Hbk, HB-2-3560, ¶ 6.5 (elderly family may include a person younger than 62 years old); 7 C.F.R. § 3560.154(g) (ranking priorities for very low-, low- and then moderate-income applicants); RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.23; *Id*. ¶ 6.6 (owner may give priority to tenants who agree to participate in services provided). Persons displaced from other 515 developments due to prepayment or foreclosure may get preference through Letters of Priority Entitlement (LOPE).
- **Screening**: 7 C.F.R. § 3560.154 and RD Asset Mgmt Hbk, HB-2-3560, Ch. 6, Section 4 (owner has discretion not to reject for certain criminal history but may consider criminal activity or alcohol abuse, poor tenant history, poor rent paying history or bad credit).
- **Procedural Protections:** RD projects: Applicants are entitled to grievance process; 7 CFR. 3560.160; *see also* 7 C.F.R. §§ 3560.102(b), 3560.154(h) & RD Asset Mgmt Hbk, HB-2-3560, Section 8 (applicant entitled to grievance procedures if denied; *Id*. Attachment 3-A and ¶ 6.19. (If development located in area with a high concentration of non-English speakers, notice of rejection must be in English and the language prevalent in the area.)

- **Rents:**
  - **Flat rents:**
    - RD projects: “Market Rent” (promissory note rent) and “Basic Rent” (1% rent): resident pays the higher of basic rent or 30% of income up to market rent; a few developments only have market rent; a very small number of senior projects have flat rent based on 3% loan; unless RD Rental Assistance or Section 8, where rents set like Section 8. 7 C.F.R. § 3560.203
  - **Income-based rents?**
    - 7 C.F.R. § 3560 Part F (rental assistance rules). Low and very low income tenants’ rent: the greater of 30% of adjusted income, 10% of gross or the applicable welfare rent. 7 C.F.R § 3560.203. Most tenants pay 30% of adjusted income.
    - Higher income tenants with no rental assistance pay the higher of “Basic Rent” or 30% of income, *supra*.
  - **Annual Income and Exclusions:** (for those paying income-based rents), 24 C.F.R. §5.609 (HUD regulations adopted for RD projects by 7 C.F.R. § 3560.153; RD Asset Mgmt Hbk, HB-2-3560, Attachment 6-A), for example:
    - No earned income disregard
    - Exclude foster care payments
    - Exclude lump sums additions from certain sources
    - Exclude earned income of minors
  - **Adjusted Income after Deductions**: 24 C.F.R. §5.611 (HUD project rules adopted for RD projects by 7 C.F.R. § 3560.153; RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.9C) (but note ¶ 6.9B if tenant says that amount not being received for child support, owner must document that request to state for enforcement has been made) *compare Johnson v. U.S .Dept. Agric*, 734 F.2d 774 (11th Cir. 1984) (owner precluded from including support payments that were not being made).
    - Typical Deductions: $480 per dependent; $400 for elderly or disabled family; minors’ earned income; unreimbursed medical expenses for elderly or disabled family; unreimbursed attendant care or apparatus expenses to enable disabled family member to be employed; child care expenses necessary for employment or education; But 1990 deductions for child or spousal support (42 U.S.C.§1437a(a)(5)(A)) never backed by appropriations

- **Recertification:** Annual recertification and for changes in income of $100 or more per month; household must report changes in family size and income. 7 C.F.R. §§ 3560.152 and 3560.158). Households may request recertification for $50 change in monthly income.
- **Utility Allowance:** (If income-based rent i.e., tenant receives rental subsidy) for certain tenant-paid utilities, owner sets "reasonable" amount, credited against tenant's 30% of income share; owner must review and adjust allowance annually when necessary. (If tenant has no rental subsidy but pays more than basic rent) the same rules as with rental subsidy apply—utility allowance is deducted from tenant payment but tenant must pay at least basic rent. 7 U.S.C. §3560.202
- **Ability to challenge rent level for individual:** (request meeting with owner-manager and a grievance hearing, *see infra*.
- **Project wide rent increases**: Notice and comment when owner proposes to institute rent change for all units. 7 C.F.R. § 3560.205(d).

- **Grievance Procedures**: RD Tenant Grievance and Appeals Procedure, 7 C.F.R. § 3560.160 and RD Asset Mgmt. Hbk, HB-2-3560, Ch. 6, Section 8, and ¶¶ 6.33-6.39. (tenant or applicant may file a grievance for owner action or failure to act in accordance with lease, or RD regulations that results in a denial, significant reduction or termination of benefits, etc.); *Id*. ¶ 6.34 (informal meeting required prior to grievance hearing).

- **Lease:** Rules for what must be in lease. 7 C.F.R. § 3560.156; Owner must use lease approved by agency. 7 C.F.R. § 3560.156(a) *see also* RD Asset Mgmt. Hbk. HB-2-3560 Attachment 6-E (Lease states that DV will not be tolerated and that such action is a material violation of the lease, all perpetrators will be evicted while the other eligible household occupants may remain); in areas of concentration of non-English speaking population lease must be available in English and pertinent non-English language.

- **Evictions and Terminations:**
  - Good cause required *anytime, including at end of lease term:* 7 C.F.R. § 3560.159 and 3560.156(c)(18)(xvii) (also incorporates criminal activity provisions of 24 C.F.R. § 5.858, 5.859, 5.860, and 5.861); *Id*. and RD Asset Mgmt. Hbk. HB-2-3560, ¶ 6.32 (terminate lease for material noncompliance with lease or rules or for other good cause);
    - Case law regarding material violation and specific facts, HUD HOUSING PROGRAMS: TENANTS' RIGHTS, Ch. 11 (4th ed. 2012).
    - *Majors v. Green Meadows Apartments, Ltd*., 546 F.Supp. 895 (S.D. Ga 1980) (to evict there must be material non-compliance with lease or other good cause and tenant must be given prior notice of conduct that will be a basis for termination of tenancy).
    - *Alvera v. The C.B.M. Group, Inc.,* Civil No. 01-857-PA (D. Or., October 2001) (property management company agreed, based upon a claim of a violation of the Fair Housing Act, to stop applying its "zero-tolerance" policy and evicting victims of domestic violence in the five western states where it owns or operates housing facilities (Arizona, California, Hawaii, Nevada, and Oregon).
  - **Notice:** 7 C.F.R. § 3560.159 (must set forth good cause, no specific period, therefore state law and lease control); *Id*. and RD Asset Mgmt Hbk, HB-2-3560, ¶ 6.23 (owner must give tenant written notice of violation and an opportunity to cure; limited English proficiency protections).
  - **Required proof by landlord:** Burden of proof is not clear. 7 C.F.R. § 3560.160(h)(3).
  - **Pre-judicial administrative review prior to eviction?** RD Tenant Grievance and Appeals Process not applicable to evictions. 7 C.F.R. § 3560.160 RD Asset Mgmt. Hbk. HB-2-3560, ¶ 6.35 and Exhibit 6-7.

- **Right to Cure**: Absolute right to cure any violation.

- **State law procedural protections not pre-empted**: 7 C.F.R. § 3506.5.
- **RD rental assistance or Section 8 terminations by landlord prior to any eviction:** Tenant entitled Tenant Grievance and Appeal Procedure (tenants requests a meeting with the owner and if that fails a grievance hearing, *see supra*.

- **Other Current Important Issues:**
    - VAWA 2013 extends protections to RD developments. No regulations or notices have yet been published. However, parts of VAWA may be self-executing. Be on the lookout for RD regulations and notices.
    - FY 13 appropriations and sequestration precluded RD from renewing Rental Assistance Contracts for all developments in August and September of 2013. RD entered into agreements with owners to defer mortgage payments and avoid rent increases. Expect same problem in 2014.
    - There are about 40,000 RD units receiving HUD Section 8 project-based assistance. HUD had problems renewing all the expiring Section 8 contracts. HUD entered into short term contracts to ensure subsidy for all assisted residents. Expect same problem in 2014.
    - Section 515 mortgages are beginning to mature. No protections for residents who can experience rent increases or displacement. Not clear whether RD will extend vouchers for residents. RD loans have varying loan terms. Most recent developments have 30 year loan term (with 40 year amortization) with 10 year optional renewal; earlier loans had 40 and 50 year terms).
    - 112th Congress will not develop new policy legislation on RD preservation.
    - There are about 70,000 residents in RD housing that are in need of rental assistance—they are paying more than 30% of income towards shelter.
    - Growing risk of deterioration in some RD properties due to diminishing inadequate reserves, deferred maintenance and limited funding for rehabilitation and preservation.

(10.24.13)

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September 26, 2008

Ms. W Via fax and mail
Equal Housing Opportunity Manager
[]

Dear Ms. W:

Thank you for working with us as we attempt to amicably resolve Ms. F's housing dilemma. We hope you will agree that federal law, combined with Ms. F's unique circumstances and other factors, warrant reconsideration of her application for housing.

To summarize, we believe that Ms. F's housing application should be reconsidered for the following reasons: (1) federal regulations make it unreasonable to permanently bar individuals such as Ms. F from assisted housing; (2) California laws on domestic violence and self-defense have changed since 1985, so it is likely that Ms. F would not be convicted of the same charges today; (3) the Violence Against Women Act (VAWA) demonstrates Congress' intent to prevent housing discrimination against domestic violence victims; and (4) you did not provide specific reasons in writing for denial of Ms. F's application.

1. FEDERAL LAW DOES NOT PERMIT AN APPLICANT TO BE DENIED HOUSING IF A REASONABLE TIME HAS PASSED SINCE THE CRIMINAL ACTIVITY OCCURRED

In our view, the Criteria for Residency applied to Ms. F's application appear to be overly restrictive and in violation of the governing federal regulations. Rural Housing Service (RHS) regulations provide that owners of RDA properties are not required to bar applicants due to their criminal history. The regulations at 7 C.F.R. § 3560.154 provide that borrowers "may" deny admission for criminal activity in accordance with HUD regulations 24 C.F.R. §§ 5.854, 5.855, 5.856, and 5.857. Section 5.855 governs when admission may be prohibited due to Ms. F's type of criminal history.

Admission to federally assisted housing may be denied under 24 C.F.R. § 5.855(a) "under your standards if you determine that any household member is currently engaging in, or has engaged in during a reasonable time before the admission decision ... violent criminal activity ... [or] criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents ... or criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations." Under 24 C.F.R. § 5.855(b), the owner "may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a) of this section (reasonable time)." Also, § 5.855(c) provides:

"If you previously denied admission to an applicant because of a determination concerning a member of the household under paragraph (a) of this section, you may reconsider the applicant if you have sufficient evidence that the members of the household are not currently engaged in and have not engaged in, such criminal activity during a reasonable period, determined by you, before the admission decision."

A "reasonable time" is not defined in the regulations, but the regulations make it clear that "never" and "indefinitely" are not reasonable time periods when considering a tenant with a criminal history like Ms. F's. Guidelines have been established in a number of federal housing programs, but we have found none that provide for indefinite bars. Most applicable appears to be HUD has suggested that a five-year period might be reasonable for "serious offenses" for Public Housing Authorities. (*See* Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule, 66 Fed. Reg. 28, 776 28,779 (May 24, 2001)). Owners may differentiate different time periods for different categories of offenses, but nowhere in the regulations have we found a time period greater than 5 years suggested as "reasonable" for any type of offense. Implicit in the statutory and regulatory term 'reasonable period' of time is the concept that at some point **most applicants with an aging criminal record should be eligible for the housing** and should not be barred by screening criteria. This acknowledgment, that over time most applicants should be given the opportunity to demonstrate eligibility through **good behavior**, **rehabilitation**, or **changed circumstances**, is consistent with litigation challenging policies that rejected all applicants with any record of any past criminal activity"

Ms. F meets and exceeds all criteria for eligibility mentioned above:

(a) Aging criminal record

Ms. F's offense was committed in 1985. She has not had any criminal activity within the past 23 years. Her prison records reflect no criminal activity. Additionally, her prison records reflect that she was a model prisoner with no behavioral issues. Social science research demonstrates that, after about 7 years, there is little or no difference in propensity to re-offend between individuals with a criminal record and those without a criminal record.

(b) Good behavior

Ms. F's prison record and her conduct after release have been exemplary. Ms. F does not merely stay out of trouble; she is actively involved in positive endeavors. Her activities include helping other battered women and educating the public about the effects of domestic violence.

c) Rehabilitation

Ms. F has undergone years of counseling and treatment for the psychological condition known as battered women's syndrome. While in prison, she took optional classes to learn more about many subjects, including spousal abuse and battered women's syndrome. As a result of her increased knowledge and counseling, she is not likely to involve herself in an abusive relationship again.

(d) Changed circumstances

Ms. F's circumstances have changed drastically. She no longer lives in an abusive environment. This should alleviate any concerns you may have about the health and safety of other residents. Moreover, due to extensive counseling and education, it is implausible that Ms. F will get involved in another abusive relationship. Her focus today is on her children, her grandchildren, her volunteer work, her arts and crafts, and her health.

2. CALIFORNIA LAWS REGARDING DOMESTIC VIOLENCE AND SELF-DEFENSE HAVE CHANGED SINCE 1985, AND THE OUTCOME OF MS. F'S CASE WOULD HAVE BEEN DIFFERENT UNDER TODAY'S LAWS

In reassessing Ms. F's application, you may wish to consider how California's law on domestic violence and self-defense has changed since her 1985 conviction. The outcome of her case would have been different had she been allowed to tell the court about the physical, psychological, and emotional impact she suffered due to years of abuse. At the time of Ms. F's trial, California courts did not consider evidence of battering and its effects on victims.

In 1992, the California legislature recognized the reality of the Battered Women's Syndrome and enacted a law stating that evidence of the effects of physical, emotional, or mental abuse upon the beliefs or behavior of victims is admissible to prove that the victim's criminal behavior was a result of that abuse. *See* Evidence Code § 1107. To assist victims like Ms. F who never had the opportunity to present evidence of battering during their trials, the legislature enacted a law permitting these victims to submit petitions for reduced sentences. As you are aware, Ms. F successfully submitted such a petition with the help of community advocates.

The legislature enacted these laws because there is no reason to penalize domestic violence victims who had good defenses for their actions but were unable to raise these defenses at their trials. The laws recognize that many of these women would not have been convicted of their crimes had they been allowed to tell the court about the abuse they suffered at the hands of their partners. In Ms. F's case, the State of California found that the outcome of her case would have been different had she been allowed to fully tell her story. Your denial of Ms. F's application appears inconsistent with the state's action because it continues to penalize her for a crime for which she should not have been convicted. The State of California has recognized that Ms. F is not a threat to others and is entitled to a new start, and we would ask that you do the same by reconsidering your denial of her application.

3. THE VIOLENCE AGAINST WOMEN ACT OF 2005 (VAWA) PROTECTS DOMESTIC VIOLENCE VICTIMS

Under the Violence Against Women Act of 2005 (VAWA), Congress prohibited public housing authorities and Section 8 owners from denying admission to applicants on the basis of their status as victims of domestic violence. *See* 42 U.S.C. § 1437f(o)(6)(B). Congress also recognized that many applicants have been denied housing because they are victims of domestic violence, and that domestic violence is a leading cause of homelessness. *See* 42 U.S.C. §

14043e. As stated in VAWA, Congress and the Secretary of Housing and Urban Development have recognized in recent years that families experiencing domestic violence have unique needs that should be addressed by those administering the federal housing programs. *See* § 14043e.

To receive funds under VAWA, grantees must assist victims of domestic violence "with otherwise disqualifying rental, credit or criminal histories to be eligible to obtain housing ... if such victims would otherwise qualify for housing ... and can provide documented evidence that demonstrates the causal connection between such violence or abuse and the victims' negative histories ..." *See* 42 U.S.C. § 14043e-4(f)(1). While we recognize that VAWA does not currently apply to the rural housing programs, Congress' overall intent was to increase subsidized housing opportunities for domestic violence survivors and to prevent them from becoming homeless. Your reconsideration of Ms. F's application and acknowledgment that her conviction was a direct result of her status of as a domestic violence victim would demonstrate that the corporation seeks to comply with the spirit of the law and is taking affirmative steps to address victims' housing needs.

4. SPECIFIC REASONS WERE NOT GIVEN FOR DENIAL OF MS. F'S APPLICATION

We would also ask that you reconsider Ms. F's application in light of Rural Housing Service (RHS) regulations requiring owners to give specific reasons for denial of housing. *See* 7 C.F.R. § 3560.154(h). In making admissions decisions, you have discretion to examine the age of a criminal conviction and whether there are mitigating circumstances. Because of the presence of mitigating circumstances as well as the age of Ms. F's conviction, a generalized rejection due to criminal history is not specific enough. Rather, you should explicitly describe in writing whether you examined the mitigating circumstances presented in Ms. F's case, such as the age of her conviction, the fact that she does not pose a threat to tenants or staff, and that others have attested to her good character.

If in fact you considered all of this information, you should specifically explain why you rejected her application despite the mitigating factors. You should clearly explain the information you considered in making your decision, including whether you examined Ms. F's supporting documents, and justify the reasons for your determination in light of the mitigating circumstances presented in Ms. F's case.

For the reasons above, we respectfully disagree with your decision to deny Ms. F's application for federally-assisted housing, and request reconsideration of the denial. If there is any other information that we can provide which may assist in obtaining a favorable result for our client, please let us know. Please feel free contact me at []. I will contact you in a couple of days after you have had an opportunity to review this material so that we can discuss how to proceed with Ms. F's application.

Thank you very much for your attention and time.
Best regards,

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of Tiffani Ann Alvera,	)	
Charging Party,	)	
v.	)	HUDALJ 10-99-0538-8
The CBM Group, Inc., Karen Mock, Inez Corenevsky, Creekside Village Apartments, Edward MacKay and Dorian MacKay,	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 22, 1999, Complainant Tiffani Ann Alvera, an aggrieved person, filed a timely, verified complaint with the United States Department of Housing and Urban Development (hereinafter, "HUD"). Complainant alleges that Respondents, CBM Property Management, Karen Mock, Inez Corenevsky, Creekside Village Apartments, Edward MacKay and Dorian MacKay,[1] the managers and owners of the subject property, discriminated against her by making an apartment unavailable to her and applying different terms and conditions of tenancy to her because of her sex, in violation of the Fair Housing Act, as amended, 42

[1] The complaint also named Tina Williams as a respondent. Ms. Williams is hereby dismissed from this action and, therefore, is not named as a respondent herein.

U.S.C. §§ 3601-3619 ("the Act"). The subject property is a 40-unit apartment complex. HUD's efforts to conciliate the complaint were unsuccessful.

The Act authorizes issuance of a charge of discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610 (g)(1)-(2). The Secretary has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination. 59 Fed. Reg. 39,955 (Aug. 9, 1994), as modified by 59 Fed. Reg. 46,759 (Sept. 12, 1994). The Assistant Secretary has redelegated this authority to each of the FHEO HUB Directors. 63 Fed. Reg. 11,904 (Mar. 11, 1998). The General Counsel has delegated to the Field Assistant General Counsel the authority to issue such a charge on his behalf. 59 Fed. Reg. 53,552 (Oct. 24, 1994).

The Director of the FHEO HUB for the Northwest/Alaska area has determined that reasonable cause exists to believe that discriminatory housing practices have occurred and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the complaint and the attached determination of reasonable cause, the Assistant General Counsel for Northwest/Alaska charges Respondents with violations of the Fair Housing Act, specifically 42 U.S.C. §3604(a) and (b). The following allegations support this Charge of Discrimination.

1. It is unlawful to refuse to rent, to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of the person's sex. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(1), (b)(3) and 100.60. Prohibited actions include evicting a tenant because of the tenant's sex. 24 C.F.R. § 100.60(b)(5).

2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of the person's sex. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65.

3. The subject property, which is known as Creekside Village Apartments, is a 40-unit apartment complex located at 1953 Spruce Drive, Seaside, Oregon 97138. The subject property is subsidized by Rural Development funds through the United States Department of Agriculture.

4. At all times relevant herein, Complainant, Tiffani Ann Alvera, a female, was a resident of the subject property.

5. At all times relevant herein, Respondent The CBM Group, Inc. ("CBM"), a California corporation, through its Property Management Division, was the property management company responsible for managing the subject property.

6. At all times relevant herein, Respondent Karen Mock was the resident manager of the subject property and an employee of Respondent CBM.

7. At all times relevant herein, Respondent Inez Corenevsky was the property manager for the subject property and an employee of Respondent CBM.

8. At all times relevant herein, Respondent Creekside Village Apartments, a California Limited Partnership, was the owner of the subject property.

9. At all times relevant herein, Respondents Edward MacKay and Dorian MacKay were the General Partners of Creekside Village Apartments, a California Limited Partnership.

10. In November 1998, Complainant and her husband, Humberto Mota, moved into Apartment 21, a two-bedroom unit at the subject property.

11. On or about August 2, 1999, at approximately 5:30 a.m., Complainant was physically assaulted by her husband in their apartment. Complainant escaped to her mother's apartment in the same complex. Her mother called emergency services, and Complainant was taken by ambulance to the hospital.

12. About 6:00 a.m., Complainant's mother went to Respondent-manager Karen Mock's apartment to inform her of the incident

and obtain a key to Complainant's apartment so the police could enter.

13. Later, Respondent Mock completed an incident report form, stating that Complainant had been assaulted by her husband and taken to the hospital, and the police had been called. She faxed the report to Respondent-Property Manager Inez Corenevsky.

14. Respondent Corenevsky advised Respondent Mock to serve Complainant with a 24-hour notice of termination of tenancy.

15. The same morning, after Complainant was released from the hospital, she sought and obtained a restraining order against her husband. The order prohibited Mr. Mota from contacting Complainant or coming within 100 feet of her. The order also required that Mr. Mota move from and not return to their residence, Apartment 21 at the subject property.

16. Later on August 2, 1999, Complainant gave the resident manager, Respondent Mock, a copy of the restraining order and requested that Mr. Mota be taken off the lease.

17. Respondent Mock informed Complainant that her supervisor had told her to serve Complainant with a 24-hour notice to vacate because of the domestic violence incident.

18. On August 4, 1999, Complainant was personally served with a 24-Hour Notice terminating her tenancy effective midnight August 5, 1999. The notice stated, "Pursuant to Oregon Landlord/Tenant law, this notice is to inform you that your occupancy will terminate because: You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants." The notice further stated, "Specific details: On August 2, 1999, at approximately 6:00 a.m., Humberto Mota reportedly physically attacked Tiffani Alvera in their apartment. Subsequently, Police were called in." The Notice was signed by Respondent Mock as agent for Respondent Creekside Village Apartments.

19. On August 4, 1999, Complainant submitted an application to rent a one-bedroom apartment at the subject property, as she, living alone, no longer qualified for a two-bedroom subsidized unit. Respondent Mock reluctantly accepted Complainant's application, but did not put her name on the waiting list for a one-bedroom unit.

20. Respondent Mock then informed Respondent Corenevsky that Complainant had applied for a one-bedroom unit. Ms. Corenevsky said she did not want Complainant as a tenant.

21. On or about August 6, 1999, Complainant attempted to pay her August rent, but Respondent Mock refused to accept her rent payment.

22. On or about August 11, 1999, Respondent Mock returned Complainant's rental application to her without a written or verbal explanation for the denial of her application.

23. Respondents also refused to accept Complainant's September rent payment and repeatedly told her that they intended to file an eviction action against her.

24. On or about October 9, 1999, Complainant submitted a second application for a one-bedroom unit. Complainant signed a lease agreement for Apartment 18, a one-bedroom unit, on October 26, effective November 1, 1999. Apartment 18 had been vacant since August 1, 1999.

25. On October 26, 1999, Respondent's attorney wrote a letter to Complainant stating, in part, "As you know, there was a recent incident of violence that took place between you and another member of your household. . . . Your conduct and the conduct of the other tenant would probably have been grounds for termination of your tenancy. . . . This letter is to advise you that if there is any type of reoccurrence of the past events described above, that Creekside would have no other alternative but to cause an eviction to take place."

26. Respondents did not receive complaints from any residents about the August 2, 1999, domestic violence incident nor had they received any complaints about Complainant or Mr. Mota. Respondents had not issued any warnings or notices to

Complainant or Mr. Mota for rules violations or any other reasons.

27. Complainant's husband, Humberto Mota, was arrested and jailed on August 2, 1999, and purportedly left the country after his release. Complainant has had no contact with Mr. Mota since the domestic violence incident.

28. National and Oregon state statistics show that women are approximately eight (8) times more likely than men to be victims of domestic violence—violence by an intimate partner. Nationally, 90 to 95 percent of victims of domestic violence are women.

29. Respondents' policy of evicting the victim as well as the perpetrator of an incident of violence between household members has an adverse impact based on sex, due to the disproportionate number of female victims of domestic violence.

30. Respondents' policy of evicting the victim of domestic violence because of a violent incident is not justified by business necessity.

31. By terminating Complainant's tenancy at Apartment 21 and denying her application to rent a one-bedroom unit because she was a victim of domestic violence in her apartment at the subject property, Respondents refused to rent or otherwise made a dwelling unavailable to Complainant because of her sex, in violation of 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(1), (b)(3) and 100.60(a)-(b)(2), (b)(5).

32. By adopting and enforcing a facially neutral policy of terminating the tenancy of the victim of domestic violence after an incident of violence between household members, which has a disparate impact on women who are disproportionately the victims of domestic violence, Respondents discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling, because of her sex, in violation of 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a).

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33. Complainant Alvera has suffered damages, including economic loss, inconvenience, emotional distress and loss of an important housing opportunity as a result of Respondents' discriminatory conduct.

III. CONCLUSION

WHEREFORE, The Secretary, through the Assistant General Counsel for Northwest/Alaska and pursuant to 42 U.S.C. § 3610(g), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 and prays that an order be issued, pursuant to § 3612(g)(3), that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

2. Enjoins Respondents, their agents, employees, successors and assigns, and all other persons in active concert or participation with them, from discriminating on the basis of sex in any aspect of the rental of a dwelling;

3. Awards such damages as will fully compensate Complainant Alvera for her economic loss, inconvenience, emotional distress and lost housing opportunity caused by Respondents' discriminatory conduct;

4. Awards a civil penalty against each respondent for each discriminatory housing practice; and

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5. Awards such additional relief as appropriate.

Respectfully submitted,

DAVID F. MORADO
Assistant General Counsel
for Northwest/Alaska

JO ANN RIGGS
Associate Field Counsel
U.S. Department of Housing and
Urban Development
Seattle Federal Office Building
909 First Avenue, Suite 260
Seattle, Washington 98104-1000
(206) 220-5190

DATE: April 16, 2001

ATTACHMENT 6-E
LEASE REQUIREMENTS

A. Lease Structure

- All leases must be in writing.
- Initial leases must cover a one-year period.
- If the tenant is not subject to occupancy termination according to 7 CFR 3560.158 and 7 CFR 3560.159, a renewal lease or lease extension addendum must cover a one-year period.
- In areas with a concentration of non-English speaking tenants, leases must be available to tenants in both English and the appropriate additional language.
- Leases must give address (es) to which to direct complaints.
- Leases must include statement terms and conditions for modifying the lease.

B. Required Lease Clauses

Leases for all multi-family housing must include a number of specific clauses as listed below:

- The requirement to move or pay an increased rent if household income increases above moderate income. (This clause does not apply to leases for persons who are elderly, disabled, or handicapped and living in a full-profit plan development.)
- The requirement that tenants move out of the project within 30 days of being notified by the borrower that they are no longer eligible for occupancy unless the conditions cited in 7 CFR 3560.158(c) exist.
- The requirement that tenants notify borrowers regarding changes in income, citizenship, or number of persons living in the unit.
- The requirement for tenants to notify borrowers in a situation of extended tenant absences.
- The requirements for making restitution when a household receives benefits to which it is not entitled and a statement advising tenants that the submission of false information could result in the initiation of legal action by the Agency.
- The requirement that tenants agree to income certification.
- The requirement that the household's tenancy is subject to compliance with the terms of all applicable assistance programs covering the unit and/or project.
- The requirement that during acceleration and foreclosure proceedings:
  - ◊ The tenant contribution must remain as if interest credit and/or rental subsidy were still in place and available had acceleration not occurred; and
  - ◊ The terms of the lease will remain in effect until the date acceleration and/or foreclosure is resolved.

Leases for tenants who have a *Handbook Letter 201, Letter of Priority Entitlement (LOPE)* and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available.

Leases must contain an escalation clause permitting changes in basic/note rate rents before the lease expires. Changes must be approved by the Agency.

Leases must specify no escalation in tenant contribution due to loan prepayment or when rental assistance or interest credit is terminated due to the fault of management or the owner, or due to liquidation and acceleration of the note.

Leases must include statement that tenant's payment will not change if Federal subsidies paid to borrower on behalf of tenants are suspended or canceled, for the term of the lease.

Leases must include statement that the project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

Leases must say that project is subject to:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Fair Housing Act
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- The Americans with Disabilities Act

Leases must specify requirements (and exceptions) to move to the next available appropriately sized unit, if the unit becomes overcrowded, underused, or should the tenant no longer meet eligibility requirements.

Leases must include a provision that establishes when a guest will be considered a member of the household and be required to be added to the tenant certification.

Leases must include a provision that tenancy remains in place as long as the tenant's possessions remain in the apartment, even after tenant has left. This is the case until possessions are removed voluntarily or by legal means, subject to state and local law.

Leases for rental assistance units must include specific clauses. These clauses must be signed by the lessor and lessee, and specify:

- The tenant's gross monthly contribution, and under what circumstances it may change; and that
- The tenant contribution will not increase if rental assistance is terminated due to actions by borrowers.

For tenants living in Plan II interest credit units, leases must include a provision on gross monthly contribution.

All leases, including renewals, must include the following language:

> "It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, state, or Federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further

understood that such action is a material lease violation. Such violations (hereinafter called 'drug violation[s]') may be evidenced upon the admission to or conviction of a drug violation. It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation or domestic violence to vacate the leased unit permanently, within time frames set by the landlord, and not thereafter enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by members of the tenant household. The landlord may deny consent for entry unless the person agrees not to commit a drug violation or domestic violence in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation or domestic violence, agrees to not commit a drug violation or domestic violence in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, completed a counseling or recovery program within time frames specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation or domestic violence be committed by any non-adult person occupying the unit, the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land, the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law."

For handicapped-accessible units occupied by those not needing its special features, a lease must discuss situations where management has made a temporary unit assignment, and specify who bears the cost of moving the tenant to another unit. Additionally, the lease clause must require the management to provide the tenant written notification when they must move within 30 days of notification from management that an eligible applicant with disabilities requires the unit.

The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the tenant

may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

Prepayment is subject to restrictive-use covenants. If prepayment occurs, leases and renewals must be amended to include a clause specifying tenant protections.

C. Required Information

All leases must contain the following information and provisions:

- The name of the tenant, any co-tenants, and all members of the household residing in the unit.
- The identification of the unit.
- The amount and due date of monthly tenant contributions and late payment penalties.
- The utilities, services, and equipment to be provided for tenants.
- The tenant's utility payment responsibility.
- The certification process for determining tenant occupancy eligibility and contribution.
- The limitations of the tenant's right to use or occupancy of the dwelling.
- The tenant's responsibilities regarding maintenance and obligations if tenant fails to fulfill these responsibilities.
- The agreement of management to accept tenant payment regardless of other charges that the tenant owes, and management's agreement to seek legal remedy for collecting other charges accrued by the tenant.
- The maintenance responsibilities of management in buildings and common areas, according to state and local codes, Agency rules, and fair housing requirements.
- The responsibility of management at move-in and move-out to provide tenants with a written statement of the unit's condition, and provisions for tenant participation in inspection.
- The provision for periodic inspections by the borrower or management, and other circumstances under which management may enter the premises while a tenant is renting.
- The tenant's responsibility to notify management of an extended absence, as defined in the lease.
- The agreement that tenants may not sublet the property without management or Agency consent.
- The provision regarding transfer of the lease if the project is sold to an Agency-approved buyer.
- The procedures that must be followed by management and the tenant in giving notice required under terms of the lease.

- The good-cause circumstances under which management may terminate the lease and length of notice required.
- The disposition of the lease if the housing becomes uninhabitable due to fire or other disaster, including the borrower's rights to repair the building or terminate the lease.
- The procedures for resolution of tenant grievances consistent with the requirements of 7 CFR 3560.160.
- The terms under which a tenant may, for good cause, terminate a lease with 30 days' notice prior to lease expiration.
- The signature clause indicating that the lease has been executed by the borrower and the tenant.

D. Projects and Units Receiving HUD Assistance

In multi-family projects receiving project-based assistance under Section 8 of the Housing Act of 1937, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

A clause must be inserted into the lease requiring that tenants ineligible at recertification must leave the property unless allowed to stay under their HUD lease.

For HUD Section 8 certificate and voucher holders, borrowers may use:

- A standard HUD-approved lease;
- A HUD-approved lease that includes a number of modifications; or
- An Agency-approved lease if acceptable to HUD or the local housing authority.

E. State and Local Requirements

Borrowers must use a lease that is consistent with state and local requirements.

- If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent, to the greatest extent possible, with the required provisions established in 7 CFR 3560.156(c).
- Leases must include procedure for handling tenant's abandoned property, as provided by state law.