



Housing Law Bulletin

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FINAL MARK TO MARKET REGULATIONS

More than a year after the statutory deadline, HUD has issued final regulations to implement the “Mark to Market” renewal and restructuring program¹ passed by Congress back in October of 1997.² The program has been operating under interim rules adopted in September of 1998.³ The final rules

contain many changes due to comments received and subsequent statutory revisions, and this article reviews a few of those of most interest to tenants and housing advocates.

The 1998 interim rule had numerous major shortcomings, including:

- a weak framework for tenant and community participation in developing the program of Participating Administrative Entities (“PAEs”), in making project-specific restructuring decisions, and in monitoring owner and PAE performance;
- no solutions for properties where owners are disqualified;
- unclear standards to govern PAEs’ voucher conversion assessments; and
- unworkable or unspecified tests to impede necessary rehabilitation or to use exception rents to preserve properties.

¹The final rule appeared in the Federal Register on March 22, 2000. 65 Fed. Reg. 15,452 (hereinafter Final Rule).

²Multifamily Assisted Housing Reform and Affordability Act of 1997 (“MAHRA”), Pub. L. No. 105-65, Title V, 111 Stat. 1344, 1384, 105th Cong. 1st Sess. (Oct. 27, 1997). For background on the law and related issues, see *The New Section 8 Renewal and Restructuring Program: An In-Depth Review*, 27 HOUS. L. BULL. 175 (Nov. 1997) (available at NHLP’s website: www.nhlp.org).

³63 Fed. Reg. 48,925 (Sept. 11, 1998). For details on those rules, see *HUD Issues Regulations for Section 8 “Mark to Market” Program*, 28 HOUS. L. BULL. 143 (Sept. 1998) (available at NHLP’s website: www.nhlp.org). Hereafter, the interim rules will be cited to the 1999 Code of Federal Regulations.

While HUD has made some positive changes on a couple of these issues, many of these deficiencies remain after the final rule.

With respect to two other inadequacies of the interim rule, tenant protections when owners “opt-out” and any preservation policy to “mark up” rents of below-market properties, Congress has since enacted additional statutory policies to authorize enhanced vouchers and require “mark up” offers in certain situations.⁴

Tenant Participation in General

Of the deficiencies, tenant participation is perhaps the most glaring. When Congress passed MAHRA, there was clear recognition of the importance of ensuring tenant and community input throughout the restructuring and renewal process, both in the text of the statute itself and in its legislative history. HUD’s final rule falls far short of the intent of many congressional supporters and of a sound policy.

⁴See *FY 2000 HUD Appropriations Bill: Section 8 Renewal Provisions (Including “Mark Up to Market”)*, 29 HOUS. L. BULL. 211 (Nov./Dec. 1999).

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The statute requires HUD to establish procedures to provide opportunities for “timely” and “effective” participation in the restructuring to tenants and other affected parties, including neighborhood residents and the local government.⁵ HUD’s procedures must account for timely notice and appropriate access to relevant information concerning restructuring activities. Generally, HUD’s procedures must also include an opportunity for interested and affected parties to provide written comments to the PAE or at meetings, which the PAE must consider. In addition, HUD’s procedures must permit those parties’ participation in at least the following events: the project’s restructuring plan, any proposed transfer of the property, and the rental assistance assessment plan.⁶ In addition to these statutory mandates, the bipartisan legislative history strongly supports tenant participation.⁷

HUD’s interim rule required very little in the way of tenant participation—only two notices and one meeting.⁸ The first notice would announce an early stage meeting,⁹ while the second notice would come at the end of the restructuring process, informing the residents and the local government that the deal was done.

HUD’s final rule improves the process somewhat, requiring three notices and two meetings. PAEs must hold a second consultation meeting closer to the end of the process, after development of more specific information in the proposed Restructuring Plan for the property itself, and to give notice of the availability of the Plan and the time and location of the meeting.¹⁰ Unfortunately, the final rule fails to specify how long this notice must be provided prior to the meeting, only stating that the meeting must be held at least 10 days before submission of the Plan to HUD, and that the Plan must be available at least 20 days before submission to HUD. Thus, tenants could still have as few as 10 days to review a complex and detailed Restructuring Plan prior to the meeting, which is the deadline for written comments.

The third notice required of the PAE (or perhaps the owner) comes within 10 days after the Restructuring Plan is completed and approved and the Commitment is executed (or the project falls out of the process). This notice describes the Plan and Commitment, or reasons the Plan has been

aborted. The rule requires the full Plan and Commitment to be made available at the project’s management office during normal business hours, subject to “laws restricting access to any information” contained therein.

The final rule also improves service of these notices. Pursuant to final Section 401.501, these notices must be served on (1) each tenant and any tenant organization; (2) the CEO of the local government; (3) the director of the local PHA; (4) any Outreach and Training Grant recipient or Intermediary for technical assistance funding; and (5) other appropriate neighborhood representatives.

Yet, the process remains challenging for most tenants, who will have to assertively seek earlier and more detailed involvement in order to be fully informed about the specifics of the plan, sufficient to permit informed comments.

Additional gaps in the tenant participation process under the final rules include: (1) the tenants’ role in ongoing project monitoring (*e.g.*, periodic annual physical inspections and management assessments) with the PAE or HUD administrator, and (2) the tenants’ rights to participate in development of PAEs’ rules and policies, or in monitoring PAE activities.

Access to Information

Another substantial barrier to participation is HUD’s rule governing access to relevant information used to prepare the Plan, required pursuant to MAHRA Section 514(f). HUD’s interim rule failed to specify which information must be made available to tenants as part of the restructuring planning process, and HUD’s subsequent “Operating Procedures Guide”¹¹ barred tenants from reviewing vital financial project details, including the Owner’s Statement of Profit and Loss (HUD Form 2410), which includes the operating budget and key project management information, including management contracts. HUD’s final rule, although requiring access to physical needs information and owner-prepared project rent analysis, even makes matters worse, barring release of any information related to project expenses without owner consent.¹² Since many tenant issues relate to the owner’s operating performance, tenants may encounter difficulty in making useful comments without information about the owner’s historical line-item expenditures. For example, if an owner had been allocating substantial funds to line items like repairs or tenant services, access to that budget itself may alert tenants to focus on that part of the owner’s performance, when otherwise they may not have prioritized the issue, just acceding to the typical “there’s not enough money” response from management.

⁵MAHRA § 514(f).

⁶MAHRA § 514(f)(2).

⁷In particular, *see* the Senate floor statements supporting maximum participation, *e.g.*, the statement of Senator D’Amato, 143 CONG. REC. S10737 (Oct. 9, 1997), the floor colloquy between Senators Kerry, Mack and Bond at 143 CONG. REC. S10739, and the statements of Senator Kerry at 143 CONG. REC. S10744 and Senator Sarbanes at S10745.

⁸24 C.F.R. § 401.500 (1999).

⁹The notice must contain some basic project and contact information, and must also state how comments may be provided to the PAE on the project’s physical condition, the form of subsidy, any proposed transfer, and “other matters concerning the property and its management.”

¹⁰Final rule, 24 C.F.R. § 401.500.

¹¹OPG, at Sec. 3-6 I, pp. 16-17, available at HUD’s Office of Multifamily Housing Assistance Restructuring website at www.hud.gov/omhar/readingrm.

¹²Final Rule §401.503.

Voucher Conversion Assessments

Another important issue unaddressed under the final rule is ensuring that tenants have timely and informed input on the rental assistance assessment plan, as required by MAHRA Section 514(f)(2)(C). HUD states that tenants can provide input on this issue in the first meeting, but at that time few tenants will know about that issue, or the criteria that bear upon a proposed conversion of the assistance to vouchers. The meeting at the end of the process may come too late to affect this decision. Hence, the rules leave it up to the residents to elicit information from the PAE about this assessment outside of the new two-meeting framework.

Solutions for Properties Facing Disqualification

Some properties may be disqualified from restructuring or renewal because of an owner's previous program violations or project conditions. The final rule¹³ leaves great case-by-case discretion to HUD and PAEs, and requires little tenant and community participation.¹⁴ The rule also fails to address the need for HUD and PAEs to develop comprehensive solutions for these properties.

Regarding the PAE's discretion to disqualify a project for substandard conditions,¹⁵ HUD's final rule creates a risk that HUD and PAEs will flush these properties from the inventory, rather than solve their problems. In final Section 401.451(c), HUD still requires the PAE to determine (under forthcoming HUD "guidance") whether a restructuring plan with rehabilitation pursuant to a physical condition analysis is "more cost-effective in terms of federal resources" than rejection of the plan and provision of tenant-based assistance. The content of HUD's "guidance" will have a dramatic impact on whether substandard properties will be rehabilitated, and whether solutions will come from plans with the existing owner or a new purchaser.

Another risk posed by HUD's interim rule has apparently dissipated. In the preamble accompanying the interim rule, HUD discussed when, under Section 401.411, to provide above-market "exception rents" for certain properties (with negative net operating income at market rents). HUD had sought to require the satisfaction of additional "social

asset" criteria in order for PAEs to approve exception rents that may be needed to preserve properties with high rehabilitation costs in low market areas.¹⁶ The discussion accompanying the final rule reluctantly retreats from that position, but continues to emphasize that "cost-effective" solutions to physical problems remain a prerequisite for eligibility.¹⁷

Another major problem is the timing of the process and the lack of responsibility for either HUD or the PAE to develop real solutions for these properties. As neither the interim or the final rule contain the necessary elements of a program to assure solutions from HUD and the PAE, disas-

¹⁶HUD had stated that "...negative NOI projects must be determined by the PAE to be positive social assets in the community whose operating expense levels and lack of debt service capacity are not a function of bad management. They should be unique, appropriately situated, and affordable housing, with no other comparable housing available in the submarket. If they were not restructured at exception rents, the outcome would be displacement of those who would experience difficulty in finding comparable housing, such as the elderly, persons with disabilities, and large families." 63 Fed. Reg. 48,932 (Sept. 11, 1998).

¹⁷65 Fed. Reg. 15,462, col. 2 (Mar. 22, 2000).

NEW SECTION 8 MOBILITY REPORT

The Urban Institute has recently released a new report on the Section 8 voucher program entitled *Section 8 Mobility and Neighborhood Health: Emerging Issues and Policy Challenges*. The report, which is drawn from existing research literature and a symposium discussion held at the Urban Institute, documents key challenges facing the program and identifies potential programmatic improvements to overcome them. The report finds that while the federal Section 8 housing voucher program works well overall, fears about negative effects on urban neighborhoods may be weakening the program. Copies of the report are available from the Urban Institute in print or electronic format. A printed version is available from the Urban Institute Publication Sales Office at (202) 261-5687 or toll free at 1-877-UIPRESS. Electronic copies are available from www.urban.org/community/sec8_mobility.pdf and www.urban.org/community/sec8_mobility.html. NHLP plans to publish a brief review of the report in the next issue of the Bulletin.

¹³Final §§401.101 and 401.403.

¹⁴HUD states at 65 Fed. Reg. 15,457, col. 2 (Mar. 22, 2000) that tenants will have participation rights on denying restructuring or disqualification under final §§401.500 and 401.501, but, beyond the general kick-off meeting, those sections do not provide any notice or comment rights on these kinds of decisions, other than a final notice that restructuring will not move forward. See final §§401.500(f)(2) (notice of restructuring failure), 401.451(c) (HUD makes final decision after considering PAE recommendation), and Part 401, Subpart F (tenants foreclosed from appeal rights for owners).

¹⁵Section 516(a)(4) of MAHRA and final rule §401.403(b)(2)(iii) permits disqualification if "the poor condition is not likely to be remedied in a cost-effective manner." Final §401.451(c) adds the benchmark comparison of the cost of tenant-based assistance, and further states that HUD will issue additional guidelines.

ters will continue, especially if owners fail to move toward the transfer option,¹⁸ which in turn permits a contract renewal.

The main problem here is the reliance upon owners who have been on the losing end of a discretionary disqualification decision to simultaneously pursue the steps necessary to transfer the property within 30 days after the disqualification is final. Although—not surprisingly—HUD declined to be more prescriptive of its duties in the final rule, the preamble does state that HUD will make “all efforts” to prevent foreclosure and facilitate a transfer to an eligible owner.¹⁹ Where owners are unresponsive, HUD will determine whether to terminate the contract or renew at market rents, apparently on a temporary basis. In the case of substandard properties, it will be absolutely essential for tenants and community housing advocates seeking solutions for these properties to push PAEs and HUD early on in the planning process for affirmative enforcement action by HUD that will deprive noncompliant owners of possession and control, encourage a transfer, or will proceed toward foreclosure as part of a plan to transfer the property to responsible ownership. In any case, HUD will have to be pressured to permit transfer of the Section 8 contract and restructuring, if necessary.

Finally, the rule (Section 402.7, unamended) still fails to address the transfer and renewal of disqualified properties that are not Mark-to-Market-eligible, despite MAHRA’s legislative history that the same procedures should apply.²⁰

Renewals without Restructuring (“Mark to Market Lites”)

The interim rule had not provided tenants with any participation rights when owners of properties eligible for Mark-to-Market restructuring elected instead to seek a contract renewal at reduced rents, but without restructuring the mortgage. The final rule (new Section 410.452) permits tenants the right to submit written comments only within 30 days following a notice from HUD, the PAE or the owner’s request. Tenants are not entitled to any operating expense information, which will be a critical component of any such deal.

Inquiries concerning the Mark to Market program or Section 8 expirations in general can be directed to Jim Grow in the National Housing Law Project’s Oakland office. ■

¹⁸Where properties are disqualified, the rule (§ 401.480) attempts to implement the statutory language (MAHRA § 516(e)) permitting sales to HUD-approved new owners that would execute a restructuring plan and renew the Section 8 contract, with preference to tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers for a HUD-determined period of time.

¹⁹65 Fed. Reg. 15,474, col. 2. (Mar. 22, 2000).

²⁰See 143 CONG. REC. S10738 (Oct. 9, 1997) (Senate floor colloquys).

HUD ISSUES GUIDANCE FOR FY 2000 ENHANCED VOUCHERS

HUD has issued a Notice covering the issuance of vouchers for HUD subsidized and assisted multifamily properties that convert to market-rate use. HUD Notice PIH 2000-9 (HA) (March 7, 2000, expires March 31, 2001). This article summarizes the important policies of this Notice for affected tenants, advocates, and PHA administrators.

Background on the New Enhanced Voucher Policy and Law

Congress authorized this new broader “enhanced voucher” policy for tenants in converted properties last fall in the HUD Appropriations Act for FY 2000, while adopting new laws governing Section 8 contract renewals.¹ This new policy is now a permanent part of the United States Housing Act, rather than simply a few lines of temporary authority in the annual appropriations Acts.

When Section 8 contracts terminate by HUD or owner action, including expirations without renewal, the new law extends HUD’s obligation to offer enhanced voucher assistance, subject to appropriations, to any previously assisted tenants.² This new authority governs enhanced vouchers for the following “housing conversion” events, including:

- Section 8 opt-outs, where owners decline to renew an expiring Section 8 contract;
- expiration or termination of a Rent Supplement contract;
- prepayment or voluntary termination of mortgage insurance on “eligible low-income housing” facing mortgage prepayment (usually most HUD-subsidized Section 236 and 221(d)(3) projects);
- unusual HUD-approved “preservation transactions” where prepayments of properties that are not technically qualified as “eligible low-income housing” result in continued use restrictions;
- Section 8 terminations (“disqualifications”), either during the term of an outstanding contract or upon renewal,

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

²Pub. L. No. 106-74, §531 (Oct. 20, 1999), establishing a new Section 524(d) of MAHRA, and Section 538, establishing a new Section 8(t) of the United States Housing Act to govern enhanced vouchers.

pursuant to HUD enforcement action where owners have committed certain program violations; and

- HUD actions in managing or disposing of multifamily properties during the foreclosure and disposition process.

In the case of a disqualification, where conditions are likely to be substandard and rents rarely in excess of local voucher payment standards, HUD notes that assistance will usually be in the form of a regular Housing Choice voucher, since tenants cannot remain at the property and receive voucher assistance due to the conditions. In the case of disposition activities, HUD states that only regular vouchers will be provided, apparently again because conditions will not permit continued assistance for tenants at that property.

Prior to this law, HUD had a duty to offer enhanced vouchers only to tenants of the eligible HUD-subsidized prepayment properties. Tenants in buildings facing conversion for any other reason—for example, Section 8 opt-outs—received only regular vouchers, lacking protection against rent increases above the local voucher payment standard.

These new enhanced vouchers protect tenants against displacement by unaffordable rents by requiring that payment standards for tenants who choose to remain in a converted property be set at the actual post-conversion rents for the units, even if higher than the ordinary local payment standard. The new rent must, however, pass the PHA's "rent reasonableness" test. Thus, for example, if the prior HUD-established rent for the property under the applicable program was \$600, and the new reasonable post-conversion "market rent" is \$800, the enhanced voucher can subsidize the new rent level, even if the PHA's normal voucher payment standard would be only \$700 for that family size. This new authority also clarifies that the enhanced voucher subsidy must cover *subsequent* rent increases as well, subject only to the PHA's "rent reasonableness" test.³

The New "Enhanced Voucher" Notice: Significant Provisions and Problems

HUD's new Notice PIH 2000-9 contains policies that both restate the terms of the statute and fill in some of the remaining gray areas. HUD plans to issue formal regulations at some future indefinite date.

One positive provision of HUD's Notice clarifies that, when a tenant receiving a conversion voucher later leaves the program, the voucher returns to the PHA's program, thus preserving the number of subsidies in the community. Also consistent with this principle is HUD's clarification that enhanced vouchers will be made available for all Section 8 assisted units in the property, not just those actually occupied on the date of the conversion action. Since some tenants

may leave in the wake of an owner's opt-out notice and not be promptly replaced by management with other Section 8 tenants, this clarification may prove especially important in some situations to preserve the same level of housing assistance in the community.

Normal Voucher Program Rules Applicable

Generally, unless provided otherwise by the statute or the Notice, these new enhanced or "housing conversion" vouchers are covered by the rules and policies governing the regular "Housing Choice" Voucher program established by the 1998 Quality Housing and Work Responsibility Act.⁴ Thus applicable are ordinary program rules, such as:

- *Tenant-based character of the voucher.* Tenants can move, subject to the terms of their new lease, and the voucher is generally portable outside their PHA's jurisdiction.
- *Housing quality and tenant rent limitations.* Tenants that move can only rent units that pass inspections using the PHA's normal Housing Quality Standards, and cannot rent units that, after applying the PHA's payment standard, require a tenant contribution of more than 40 percent of their adjusted income for rent.
- *Reasonable rent limitation.* PHAs must approve the new rent for the unit as reasonable, based upon the market rent paid for similar units elsewhere in the building or in the neighborhood.
- *No temporary tenancies.* Tenants cannot rent a unit for just a few months, but must execute a lease for a minimum one-year term, *unless* the PHA has determined that a shorter lease increases housing opportunities for the tenant and is consistent with prevailing market practice;
- *Voucher value set by the PHA's subsidy standards.* The applicable payment standard will be determined by the tenant's family size under the PHA's formula, *not* by the size of tenant's current unit. This will often require tenants in units larger than those subsidized by their PHA's policy to use a lower payment standard to search for housing if they move. Tenants that remain in place may in some circumstances retain their existing unit for a temporary period if no smaller units are available in the property.
- *Search time determined by PHA policy.* Although the regular voucher rules have eliminated the former 120-day maximum lifespan for a certificate, many PHAs have not changed their policies accordingly. The Notice encourages PHAs to provide the maximum search time "reasonably necessary" for locating alternative housing to relocating tenants facing conversion.

³New Section 8 (t)(1)(B) of the United States Housing Act. 42 U.S.C. § 1437f(t)(1)(B) (2000) (payment standard equals actual unit rent "as such rent may be increased from time to time").

⁴Pub. L. No. 105-276, Title V, Subtitle C, 112 Stat. 2461, 2596 (Oct. 21, 1998), codified at various parts of 42 U.S.C. §§ 1437-13664.

Other Normal Voucher Rules May Cause Problems

Application of these and other ordinary voucher rules may cause problems for tenants facing conversion, such as:

- *Unit size requirements.* Some tenants, especially the elderly whose family sizes have decreased, may reside in units that are larger than HUD or the PHA is willing to subsidize. HUD's Notice requires tenants to relocate within the property if units of appropriate size are available; if not, tenants may remain at the property in the current unit, but only for one year, after which time they must relocate with a voucher subsidy based on their current family size under the PHA's payment standards. These relocations are certain to cause hardship for many tenants who are elderly or who have a disability.
- *New PHA screening of tenants.* PHAs have the authority to screen these existing tenants using their own tenant selection policies and procedures. Despite their good standing under the current provisions of their leases, some tenants may encounter eligibility problems under the PHA's criteria, such as alleged prior debts owing to the PHA from a former participation in the PHA's programs or alleged involvement of household members in drug-related or criminal activity under the "one strike" policy. Tenants should advocate that PHAs provide continued assistance to all families facing conversion, without applying these ordinary voucher screening policies.
- *PHA and owner disputes about "reasonable rent."* In some cases, owners and PHAs will disagree about the post-conversion market value of the unit. HUD states that future upgrades are irrelevant. If an agreement cannot be reached, HUD's Notice requires tenants seeking to use the voucher to move from their homes.
- *Security of tenure.* Since 1995, tenants with vouchers have generally lost their former rights to good cause for eviction at the end of a lease term, as a result of HUD's revised rules. Thus, voucher tenants, unlike tenants in Section 8 project-based or HUD-subsidized properties, can be evicted with no cause at the end of the term of their lease. See "right to remain," *infra*.
- *Assistance "subject to appropriations."* Like all vouchers, Congress only provides the assistance for these conversion vouchers for one year at a time, through annual appropriations. Ever-increasing amounts of annual budget authority will have to be secured in order to maintain assistance for these tenant protections.

New Enhanced Voucher Policies May Cause Problems

Finally, the new enhanced voucher policies or practices themselves may cause additional problems for tenants facing conversion, such as:

- *Timing of new assistance.* The Notice establishes a goal of providing the new vouchers to tenants at least 60 days prior to any rent increase that could occur as a result of a conversion,⁵ but adds that this is not possible in some cases. It points out that PHA administrators can use their flexibility to execute HAP contracts within 60 days after the lease commencement date to prevent hardship. For tenants who are moving, PHAs can execute HAP contracts prior to the rent increase conversion date.
- *Eligibility requirement of residence on conversion date.* In order to receive a voucher, tenants must reside in the property on the date the property converts to market rate (or, as a practical matter, when the PHA certifies them). Tenants must therefore not move until well after the owner serves both the 12-month (to tenants and HUD) and four-month (to HUD) opt-out notices.
- *Right to remain.* Although the law itself is silent about the tenant's right to remain in the property, a previous HUD Notice states that tenants receiving these vouchers may elect to remain in their units, as has been true for tenants receiving them as a result of prepayments since 1996.⁶ HUD has not as yet taken aggressive action to enforce this policy, and even so it remains unclear whether HUD will protect tenants against arbitrary evictions after expiration of the first enhanced voucher lease term.⁷
- *Reimbursements for existing holders of enhanced vouchers previously issued to cover prepayments.* HUD has not yet taken any action to provide restitution of excess rental payments made by enhanced voucher tenants who faced rent increases that HUD refused to cover, despite the law.⁸

⁵For Section 8 opt-outs or terminations, this date should usually correspond to the contract expiration or other termination date. For eligible mortgage prepayments, HUD states that this date is often the mortgage prepayment date, but in many cases the law requires a 60-day delay before rent increases can take effect. See Pub. L. No. 105-276, §219, 112 Stat. 2487 (1998).

⁶HUD Notice H 99-36 (Dec. 29, 1999), at Section XV A.

⁷Congress is considering a bill that would clarify this right. H.R. 3908, the FY 2000 Emergency Supplemental Appropriations Act, passed the House and is pending in the Senate. It is also important to note on this issue that other variables, including the proposed post-conversion use of the property (rental or condo), the physical condition of the property, and other post-conversion restrictions affecting the property (e.g., Tax Credit rent and occupancy limits) may affect the tenant's right to remain.

⁸HUD had previously stated that subsidies could not increase to cover subsequent rent increases, a position rejected as illegal by one federal court. *215 Alliance v. Cuomo*, 61 F. Supp. 2d 879 (D. Minn. 1999). See *Minnesota Section 8 Tenants Win Major Preservation Victory*, 29 HOUS. L. BULL. 161 (Sept. 1999). The House Appropriations Committee Report accompanying H.R. 2684, the FY 2000 HUD Appropriations bill, indicated that HUD's position was wrong: "[t]o clarify any ambiguity, language is included in the Administrative provisions to ensure that subsequent rent increases, if reasonable, are covered by the enhanced voucher." H. R. No. 286, 106th Cong., 1st Sess. (1999) (language under Title II appropriating funds for the Section 8 Housing Certificate Fund).

- *Effective date of prospective HUD coverage of prior rent increases for existing holders of enhanced prepayment vouchers.* Adding insult to injury, HUD's Notice takes the position that tenants who have already been harmed by HUD's illegal failure to cover past rent increases must wait until their first recertification on or after October 20, 1999 to receive a subsidy adjustment. HUD also denies any coverage at all to those tenants that received prepayment certificates rather than vouchers.
- *Special minimum rents for enhanced voucher recipients.* The law now establishes minimum rent requirements for project-based Section 8 tenants, as well as prepayment tenants, that receive enhanced vouchers.⁹ Now, with the expansion of enhanced voucher eligibility to Section 8 opt-outs and terminations, more families will be affected. HUD's Notice, reading the law literally, states that all enhanced voucher tenants must show income reductions of more than 15 percent to get their rent set back to 30 percent of income. Beyond confusion and administrative complexity, this new policy is obviously inconsistent with that governing all other Section 8 tenants.¹⁰ On the positive side, it appears that HUD is taking the position that the enhanced voucher minimum rent applies only to tenants who stay in their units, not to movers.¹¹
- *Choosing the best PHA to administer the new vouchers.* In some situations, more than one PHA could potentially administer the new vouchers. Since the choice of the new PHA has important consequences for program participants, HUD's apparent position of awarding the contract to the local PHA may prove controversial, especially where issues of administrative capacity or fair housing arise. ■

⁹See new 42 U.S.C. §1437f(t)(1)(A) and (D) (2000). The new minimum rent requirement results from importing into the new law those prior annual policies intended to cover prepayment tenants, who often receive Section 8 for the first time to protect them from the loss of HUD-regulated rents. In that case, Congress established minimum rents to prevent tenant rent burdens from decreasing as a result of the conversion. When some prepayment project residents that were Section 8 tenant-based recipients encountered HUD's policy that required them to continue to pay rents frozen at their dollar contribution on the date of prepayment, Congress correctly acted in 1998 to clarify that the tenant's rent burden as a percentage of income should not change, but added a requirement that the protection applies only for "significant" losses of income. HUD interpreted "significant" as covering income losses of more than 15 percent, but this affected few tenants.

¹⁰Note also that enhanced voucher tenants are subject to additional minimum rent requirements (the PHA-set level of \$0 to \$50 for its voucher program).

¹¹HUD Notice PIH 2000-9, Part II B(5).

RECENT ONE-STRIKE CASES CONTINUE TO SPLIT THE COURTS

Federal and state courts have struggled for a long time with the issue of innocent tenants whose landlords have sought to evict them for acts committed by household members or third parties. As the following summary of several recent cases make clear, the struggle continues under HUD's so-called "one-strike rule," which authorizes public housing authorities and project-based Section 8 landlords to evict households for drug-related criminal activity on or off the premises or any criminal activity that threatens the health, safety and right of peaceful enjoyment of the premise by other tenants when the activity is carried out by a tenant, any member of the tenant's household, or any guest or other person under the tenants' control.

In *Willock v. Schenectady Municipal Hous. Auth.*, ___ N.Y.S. 2d ___, 2000 WL 424590 (N.Y. App. Div. 3rd Dept. April 20, 2000), the court affirmed the trial court's decision to evict a public housing resident in whose apartment housing authority inspectors found marijuana and an electronic digital scale commonly associated with the sale of drugs. Taking a strict view of the one-strike law, the court rejected the tenant's argument that she should not be evicted because the marijuana was that of a household guest and that she had no knowledge of its presence. Relying on lease provisions that placed responsibility on the tenant to prevent any guests from conducting illegal activities in her apartment, the court refused to consider the tenant's lack of knowledge of the activity and upheld the eviction decision. According to the court, the tenant must be held strictly liable for the acts of others because neither the one-strike statute nor HUD regulations required the authority to show that the tenant had knowledge of the activity.

In *Featherstone v. Franco*, 703 N.Y.S. 2d 11 (N.Y. App. Div., 1st Dept. Feb. 1, 2000), a split panel upheld a decision to evict a resident whose teenaged son engaged in a pattern of violent conduct that endangered the safety of others. The majority did not consider the eviction penalty to shock its sense of fairness particularly in light of the fact that the tenant appears to have rejected an offer to remain in the apartment on condition that she exclude her son. The dissent, however, would have remanded the case for a hearing to determine whether the son still actually resided with the tenant and, if he did, whether he constituted a continuing threat to the community since it had been six years since the authority held its eviction hearing in the case. According to the dissent, because "public housing is a last resort for many of its residents, petitioner should not be deprived of a roof over her head for anything less than compelling reasons." *Id.* at 13.

On the same day as the *Franco* decision was rendered, another panel of the same appellate department came to a

different conclusion on a strikingly similar case. In *Sanders v. Franco*, 702 N.Y.S. 2d 58 (N.Y. App. Div., 1st Dept., Feb. 1, 2000), the court vacated an eviction order and remanded for the imposition of a lesser penalty the case of a 70-year-old Social Security recipient who had violated a stipulation that conditioned her eligibility to remain in the housing on the continued absence of an emancipated son from the apartment. According to the panel, the termination penalty was “unduly harsh and shockingly disproportionate.” *Id.* at 59.

A trilogy of cases from Pennsylvania’s Commonwealth Court suggests that it is moving away from its initial position of placing strict liability on public housing tenants for the acts of third parties. In the first of these cases, *Allegheny County Hous. Auth. v. Liddel*, 722 A.2d 750 (Pa. Commw. Ct. Dec. 23, 1998), the court reversed a trial court’s decision in favor of a tenant whom the authority sought to evict because of drug-related activities of a third person residing in her apartment. The trial court instead ordered that the offending household member be removed from the unit and precluded from visiting or staying there but allowed the tenant and her son to remain in the unit.

The eviction of a 70-year-old Social Security recipient for failing to exclude her emancipated son was held unduly harsh and shockingly disproportionate by the court.

The authority appealed, arguing that the trial court erred in (1) substituting its discretion for that of the authority; (2) finding that the authority failed to exercise its discretion by not considering mitigating factors; and (3) holding that the authority improperly applied HUD’s one-strike policy to the case. On the first issue, the authority contended that HUD regulations vest discretion to consider mitigating circumstances with the authority and that the court’s review of the agency’s actions is thus limited. The appellate court agreed and concluded that the trial court exceeded its authority when it inquired into the wisdom of the authority’s decision to evict the entire household instead of just the offending member and thereby substituted its judgment for that of the authority. *Id.* at 753. On the second issue, the court found that HUD, in considering regulations that it adopted in 1995, specifically rejected a suggestion that would have required housing authorities to consider all mitigating factors before seeking to evict a resident. The court thus agreed with the authority and rejected the trial court’s conclusion that the authority was bound to exercise its discretion and consider mitigating factors. According to the court, “[c]onsideration of ‘all the circumstances of each case’ is discretionary and not mandatory under the language of the applicable regulations.” *Id.* at 755.

Lastly, the court found that the authority did not rely on HUD’s one-strike policy in deciding to evict the resident. However, even if it did, the court concluded that it would not constitute a manifest abuse of discretions because the policy did not differ substantially from that of the authority. Thus, it reversed the trial court’s order.

Nearly a year later, in *Allegheny County Hous. Auth. v. Hibbler*, 748 A.2d 786 (Pa. Commw. Ct. Jan 13, 2000), a split panel of the same court in a nearly identical case upheld the trial court’s decision denying the authority the right to evict an entire household for the drug-related crimes of a minor household member. The court instead ordered the eviction of the offender, allowing the tenant and her other four children to remain in the housing.

On appeal, the authority made the same arguments that it had made in *Liddel*, namely that the court substituted its judgment for that of the authority and that it was not required to exercise its discretion and consider mitigating factors before evicting the tenant household. Moreover, it argued that it need only exercise its judgment in cases involving non-drug criminal activity and not in drug-related criminal activity. The court rejected the first argument on the ground that the authority had failed to timely preserve the question for appeal and that as a result the issue was waived. *Id.* at 788-9. On the second issue, the court found that because of a change in regulations for the Section 8 program in 1995, the housing authority was no longer obligated to consider mitigating factors with respect to that program. However, it also found that the regulations for the public housing program had not been changed and that they remained analogous to the pre-1995 Section 8 regulation, which required the authority to consider mitigating factors. Consequently, it held that the authority was required to consider all mitigating circumstances before evicting a public housing household. *Id.* at 790. The court distinguished its earlier decision in *Liddel* by suggesting, without actually stating, that it wrongly analyzed the case under the Section 8 regulations rather than the public housing regulations. *Id.* Lastly, after examining the HUD regulations, the court rejected the authority’s argument that it was required to consider mitigating factors in non-drug-related criminal activity but not in drug-related criminal activity, finding that the housing authority must exercise its discretion in either instance. *Id.* at 791.

Several weeks later, in *Delaware County Hous. Auth. v. Bishop*, ___ A.2d ___, 2000 WL 220304 (Pa. Commw. Ct. Feb. 28, 2000) the court completed its apparent transition by affirming a trial court’s decision not to evict a 20-year public housing resident for the criminal acts of her two emancipated sons because she had no knowledge of their activities and neither were under her control. The younger of the sons robbed and raped a 68-year-old resident of the development while temporarily residing with his mother. The older was found to have marijuana in his exclusive possession in the apartment. The younger son was sentenced to a 13-year prison term while the older was placed in a rehabilitation program.

On appeal, the housing authority made the same essential arguments that were made in *Hibbler* and *Liddel*,

contending that it was not obligated to consider mitigating circumstances when deciding to terminate a tenant's lease. In so doing, the authority relied on two earlier decisions by the commonwealth court, including *Liddel*, which upheld that view and maintained that the trial court improperly relied on a third and earlier case which interpreted HUD rules in effect prior to October 1995 as requiring that mitigating factors be considered. While acknowledging the distinction between the cases, the court, without an explicit statement and without relying on the difference between the public housing and Section 8 regulations, limited its earlier rulings by concluding that the authority did not have complete discretion to evict a tenant under the circumstances presented in this case, where the tenant had no knowledge of the criminal activity and no control over those who committed the offenses. *Slip op.* at 4. The court reached its conclusion after reviewing the lease and determining, based on *Charlotte Housing Auth. v. Patterson*, 120 N.C. App. 552 (1995) and that case's extensive review of the legislative history of the one-strike law, that the phrase "under the tenant's control" extends to guests and any family members. *Id.* at 3-5. Accordingly, the court refused "to hold a tenant strictly liable for unforeseeable criminal acts committed, without the tenant's knowledge, by family members who are not under the tenant's control." *Id.* at 5.

In *Ann Arbor Housing Commission v. Wells*, ___ N.W.2d ___, 2000 WL 461559 (Mich. Ct. App. April 21, 2000) the court adopted the holding in *Rucker v. Davis*, 203 F3d 627 (9th Cir. 2000)¹ when it upheld the eviction of an entire household because a brother of the tenant, who had been living in the unit on a temporary basis, had been accused by police of selling drugs from the apartment. It did so even though the tenant asked her brother to move from the unit after police raided her apartment and she claimed to have no knowledge of or control over his activities. Following *Rucker*, the court held that under the federal statute a public housing tenancy may be terminated regardless of whether the tenant had knowledge of the drug-related activity conducted on or off the premises by the tenant, a member of the tenant's household, or a guest or another person under the tenant's control. Like the court in *Rucker*, it specifically rejected the claims that the tenant must have knowledge of the criminal activity or actual control over the offender, and while acknowledging that the remedy of eviction may be harsh in a case such as this when the tenant takes prompt action to remove the offender, the decision to evict rests with the public housing authority.

Interestingly, on the same day the same panel of the court, in *Ypsilanti Housing Commission v. O'Day*, ___ N.W.2d ___, (Mich. App. April 21, 2000), reversed and remanded a decision to evict a resident whose daughter was involved in

a drug-related activity away from the premises on the grounds that the seven-day notice used by the commission was inappropriate under Michigan law. Specifically, the court found that Michigan law allows for a seven-day notice when the drug-related activity occurs on but not off the premises and that a 30-day notice is required under the circumstances. In so holding, it rejected the commission's argument that its lease permitted a seven-day notice on the ground that the provision violated the Michigan Truth in Renting Act in that it illegally waived or altered a party's rights with respect to summary proceedings to recover possession. It also rejected its argument that federal statutory provisions, specifying that public housing authorities use a lease that requires a reasonable notice not to exceed 30 days when health or safety of other tenants or agency employees is threatened, authorized the authorities incorporate a seven-day notice provision into its lease. The court found that the Michigan statutes are not in conflict with the federal requirement and therefore refused to allow the Commission to enforce its lease provision.

In *Housing Authority and Urban Redevelopment Agency of Atlantic City v. Spratley*, 743 A.2d 309 (N.J. Sup. Ct. App. Div. Decl. 30, 1999), the Court reversed a trial court decision denying the housing authority the right to evict residents who refused to sign a one-strike lease addendum because it found the addendum unreasonable under New Jersey's Anti-Eviction Act. Under New Jersey law, a landlord has good cause to evict if a tenant refuses to accept a reasonable term in a lease. The authority contended that the tenants' failure to accept the addendum constituted good cause, while the tenants maintained that the lease addendum was unreasonable and would force them to waive their right to challenge evictions under the addendum and in particular would preclude them from contesting efforts to evict innocent tenants, which they claim was not mandated by federal law. The court decided that it need not reach the question of the scope of the federal one-strike law because signing the addendum does not, under New Jersey law, waive the residents' right to raise the issue in defense to an eviction. Turning to the issue before it, the court found that the addendum was consistent with federal law and that the New Jersey Anti-Eviction Act gives primacy to federal law in defining the rights of tenants in federally funded housing projects. It concluded, therefore, that it must construe New Jersey's Anti-Eviction Act consistently with federal requirements. It thus held that the trial court erred by finding the lease addendum unreasonable under New Jersey law. The court further determined that it would reach the same conclusion under a federal preemption analysis and that therefore the trial court's decision cannot stand. While reversing the decision, the court remanded the case in order to provide the defendants an opportunity to sign the new leases. ■

¹For a discussion of *Rucker*, see *Ninth Circuit Panel Upholds "One-Strike" Evictions*, 30 HOUS. L. BULL. 24 (Feb. 1999). The plaintiffs in *Rucker* have filed a motion for reconsideration of the decision by the panel or the court *en banc*. The briefs in support of the motion are available from NHLP's website at nhlp.org.

CALIFORNIA'S ATTEMPT TO DENY HOUSING BENEFITS TO UNQUALIFIED IMMIGRANTS HALTED

When Congress revised the welfare program in 1996,¹ it required that the federal government as well as state governments deny certain public benefits to unqualified immigrants, generally non-citizens who were not admitted to the United States on a permanent or indefinite basis. While the federal government has issued an initial guidance for verifying eligibility status for both federal and state programs and has proposed regulations for verifying eligibility status for federal programs, it has not issued proposed regulations for verifying eligibility status for state benefit programs. Moreover, while some federal agencies have begun to identify programs that they considered to fall within the definition of federal public benefits, no state other than California is known to have made any effort to deny them state benefits.² In part, this is due to the fact that the federal government has not clarified the types of benefit programs, both federal and state, that are covered by the legislation, nor explained how states are to apply the legislation to programs that are funded in whole or in part by the federal government or when federal and state funding support a single activity or project.

California's former Governor, Pete Wilson, decided that the legislation could be implemented by the state independent of any federal guidance and in 1997 directed all state agencies to draft and adopt regulations to that effect. The California Department of Housing and Community Development (HCD) was one of the state agencies that began the process in 1998. That same year, the Governor requested that the legislature provide funding to HCD to implement the regulations, and the legislature, acting on the recommendation of the legislative analyst who thought that federal guidance was necessary, declined to do so. HCD nonetheless proceeded to finalize the regulations, which it then published in final form in September 1998,³ three months before Governor Wilson left office. Further requests for funding to implement the regulations were never made.

Notwithstanding, HCD began to implement the regulations in early 1999 when the current Governor, Gray Davis, declined a request to halt their enforcement.⁴

The HCD regulations affected 12 housing programs, many of which simply provided predevelopment loans or grants to projects funded or subsidized with federal assistance rather than providing direct benefits to individuals. The regulations disqualified entire households from residency in state-assisted projects if a single individual in the household was unqualified. They also required that non-profit general partners in projects sponsored by limited partnership undertake verification of status even though the PRA excluded nonprofits from having to undertake such verification. After adopting the regulations, HCD began to train housing sponsors on the regulations and began to audit tenant files to ensure compliance. HCD used its generally appropriated funds for these purposes, having not made any further requests for special funding.

In August 1999, eight prominent California nonprofit housing sponsors and agencies as well as several individuals initiated a lawsuit to halt implementation of the regulations. *Mercy Charities Housing California v. Department of Housing and Community Development*, No. 305541 (Ca. Sup. Ct., San Francisco, filed Aug. 9, 1999). The complaint stated 10 causes of action, alleging *inter alia* that the HCD regulations violated the California Administrative Procedure Act because they lack authority, necessity and consistency as required by that act and that they were promulgated in violation of the act; that the issuance and enforcement of the regulations violated the government code provision that prohibits the use of an appropriation to achieve any purpose that has been denied by any formal action of the legislature; and that they violate the California Constitution's provision prohibiting an agency from refusing to enforce state law or declaring it unenforceable based on federal law before an appellate court determines that such enforcement violates federal law. Other causes of action sought declaratory and injunctive relief on behalf of the plaintiffs and the issuance of a peremptory writ of mandate directing HCD to refrain from implementing the challenged regulations.

After filing briefs seeking the issuance of the writ on the basis of several of plaintiffs' claims and oral argument, the Court, on May 5, 2000, ruled in favor of the plaintiffs on their ninth cause of action, namely the violation of California law prohibiting the expenditure of funds for purposes that the legislature has denied a request for appropriations by formal action. The court ordered the issuance of the peremptory writ and commanded HCD to refrain from enforcing its regulations. The Court also ordered relief in favor of the individual plaintiffs in accordance with an agreement that the parties reached after oral argument and before issuance of the order. Specifically, it ordered the immediate process-

¹The changes were made as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1601 *et seq.* ("PRA").

²The authority to withhold public benefits under the Personal Responsibility Act of 1996 is separate and apart from the provisions of Section 214 of the Housing and Community Development Act of 1980, 42 U.S.C.A. § 1436a (West 1994) which regulates housing assistance to certain non-citizen immigrants. For a discussion about the most recent changes to those regulations, see *HUD Finalizes Rules Restricting Housing Assistance to Non-Citizens*, 29 HOUS. L. BULL. 122 (Jun. 1999).

³25 CCR. §§ 6935-6939.4.

⁴Several months later, Governor Davis directed agencies that had not adopted final regulations to cease further action on implementing them pending federal guidance. However, he refused to rescind or halt implementation of already adopted regulations.

ing of the individuals' applications and, if determined otherwise eligible, that they be granted priority admission to a state-supported Migrant Services (housing) Center for any opening at the Center after households who resided there in 1999 are re-accepted for admission.⁵

Significantly, during the pendency of the litigation, the California Housing Finance Agency announced that it would not enforce regulations that it had promulgated denying benefits to unqualified immigrants and that it would not extend the denial of benefits to a new program that it was implementing. Thus, currently, no California residents should be denied access to state-supported housing programs by virtue of their immigration status.■

RECENT HOUSING-RELATED REGULATIONS AND NOTICES

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

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

HUD Regulations

Section 8 Moderate Rehabilitation Program; Executing or Terminating Leases on Moderate Rehabilitation Units When the Remaining Term of the Housing Assistance Payments (HAP) Contract Is for Less Than One Year; Final Rule

65 Fed. Reg. 24,372 (Apr. 25, 2000)

Summary: This final rule adopts an interim rule published on October 4, 1999, that implemented in the Section 8 Moderate Rehabilitation Program statutory language that requires that any initial lease term between an owner and a

family not extend beyond the term of the HAP contract. Before issuance of the October 4, 1999 interim rule, the program regulations for the Section 8 Moderate Rehabilitation Program provided that the initial lease term between an owner and a family must be for at least one year. The regulations were silent on the requisite lease term when the Housing Assistance Payments (HAP) contract term expires in less than one year. This October 4, 1999 interim rule also revised the program regulation to allow an owner and a public housing agency (PHA) to mutually agree to terminate a unit from the HAP contract if a unit becomes vacant and the term of the HAP contract is for less than one year. The October 1999 interim rule provided a 60-day public comment period. No public comments were received and therefore the interim rule is adopted without change.

Effective Date: May 25, 2000.

Rule To Deconcentrate Poverty and Promote Integration in Public Housing; Proposed Rule

65 Fed. Reg. 20,686 (Apr. 17, 2000).

Summary: This proposed rule would revise the regulatory text of the final rule on Public Housing Agency Plans, published October 21, 1999, to fully reflect the importance of deconcentration by income and affirmatively furthering fair housing in a PHA's admission policy, consistent with the directive to achieve "One America," and to provide further direction to PHAs on the implementation of deconcentration and affirmatively furthering fair housing. HUD also proposes to make several clarifying language changes throughout the rule to make the PHA Plan regulation clearer for PHAs, their residents and members of the public. In addition, one change would permit the Secretary to further simplify the PHA Plan submission for PHAs permitted to submit a streamlined Plan.

Comment Due Date: June 1, 2000.

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program—Fiscal Year 2001; Proposed Rule

65 Fed. Reg. 25,171 (Apr. 28, 2000)

Summary: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents annually to be effective on October 1 of each year. FMRs are used for the Housing Choice Voucher program, the Moderate Rehabilitation Single Room Occupancy program, the project-based voucher program, and any other programs requiring their use. This Notice proposes revised FMRs that reflect estimated 40th percentile rent levels trended to April 1, 2001.

Comment Due Date: June 27, 2000.

⁵*Mercy Charities Housing California v. Department of Housing and Community Development*, No. 305541 (Ca. Sup. Ct., San Francisco, May 4, 2000) (Order Granting Peremptory Writ of Mandate (Ninth Cause of Action)).

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

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

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

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

HUD Federal Register Notices

Announcement of Funding Awards for Fiscal Year 1999 for the Rental Voucher and Rental Certificate Programs 65 Fed. Reg. 17,661 (Apr. 4, 2000)

Summary: This document notifies the public of funding awards for Fiscal Year (FY) 1999 to housing agencies (HAs) under the Section 8 rental voucher and rental certificate programs. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families.

Notice of Public Forums and Establishment of HUD Task Force on Predatory Lending Practices 65 Fed. Reg. 19,917 (Apr. 13, 2000)

Summary: HUD announces that its Assistant Secretary for Housing-FHA Commissioner and its General Counsel will co-chair public fact-finding forums on the subject of predatory lending practices during the months of April and May 2000, in the cities of Chicago, Los Angeles, New York and Baltimore. HUD is conducting these forums to gather as much information as possible to propose substantive protections to address abusive lending practices. Toward this objective, HUD also announces the establishment of a Task Force on predatory lending practices. HUD's Task Force includes representatives of consumer, civil rights, community and industry organizations as well as local officials. HUD will solicit the individual views of these members to draw upon their experience, efforts and successes at addressing abusive lending practices at the state and local level throughout the nation. The specific dates and times of HUD's forums as well the issues to be addressed will be announced on HUD's web site at <http://www.hud.gov> and through HUD's Office of Public Affairs.

Tenant-Based Section 8 Program: Procedures for Determining Baseline Unit Allocations, Verifying Unit Allocations, Accessing, Using, Restoration of and Recapture of Program Reserves and Transfers of Baseline Unit Allocations 65 Fed. Reg. 21,088 (Apr. 19, 2000)

Summary: On October 21, 1999, HUD published its final rule specifying the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, the final rule was developed using negotiated rulemaking procedures. This Notice, which was also developed during the negotiated rulemaking process, provides guidance on several topics relating to the final rule, including the procedures for verifying unit allocations; accessing, using, restoration of and recapture of program reserves in the Annual Contributions Contract (ACC) Reserve Account; and the transfer of baseline unit allocations. HUD will make the necessary revisions to its standard ACC to incorporate the policies and procedures announced in this Notice.

FY 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance; Notice of Extension of OTAG Application Due Date; and Clarification of Location for OTAG Application Delivery After 5:00 PM on OTAG Application 65 Fed. Reg. 21,783 (Apr. 24, 2000)

Summary: On February 24, 2000, HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. This document extends the due date to apply for funding under the Outreach and Assistance Training Grants (OTAG) to May 31, 2000. This document also clarifies the location at HUD for delivery of OTAG applications after 5:00 p.m. on the OTAG application due date.

HUD Notices

Instructions for Submitting First Public Housing Agency (PHA) Plans for PHAs with Fiscal Years beginning July 1, 2000 and October 1, 2000

Notice: PIH 00-12 (HA) (Apr. 7, 2000)

Summary: This Notice provides instructions to Public Housing Agencies (PHAs) with fiscal years beginning on July 1, 2000 (July PHAs) and October 1, 2000 (October PHAs) on submission of PHA Plans as provided in the PHA Plans Final Rule (issued October 21, 1999), found at 24 C.F.R. part 903. July PHAs must use currently available templates and instructions in completing their plans; October PHAs will receive additional, subsequent guidance from HUD on their Plan submissions. Background on this Notice and PHA Plan guidance to date is also provided below.

PIH Notices Extended

PIH 99-17 by PIH 00-15 (April 18, 2000)

PIH 99-18 by PIH 00-19 (April 18, 2000)

PIH 99-19 by PIH 00-16 (April 18, 2000)

Review of Budget-based Rent Increase Requests from Project Owners H 00-5 (HUD) (Apr. 6, 2000)

Summary: This Notice provides additional guidance on processing and implementing budget-based rent increase requests from owners who receive subsidy payments under budget-based Section 8 programs, including loan management set-aside, property disposition and Section 8/202. In general, subject to any required Section 8 market rent comparability, budget-based rent increases are to be granted "to reflect increases in the actual and necessary expenses of owning and maintaining the contract units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs." See 24 C.F.R. Sections 886.112 and 886.312. Guidance in interpreting these regulations is set out in HUD Handbook 4350.1, REV-1, Chapter 7. See also Handbook 4350.5, Chapter 5.

Discounts to Nonprofit Organizations Notice H 00-6 (Apr. 4, 2000)

Summary: The purpose of this Notice is to restate existing policy regarding the availability of discounts to nonprofit organizations when purchasing properties from general listings as well as those on restricted listings. This is intended to eliminate any inconsistencies in the implementation of this policy. The Department offers properties to nonprofit organizations at discounts of 30 percent off the listing price if the property is uninsurable and located in a revitalization area. Other properties are offered to nonprofits at 10 percent off the listing price (or 15 percent if five or more properties are purchased and closed in a single transaction). These discounts for nonprofits apply while the property is being offered through restricted listings, AND while the property is offered through a general listing.

HOME Program—Instructions for Designating New Participating Jurisdictions; Reserving, Obligating and Deobligating Funds; Reallocating Funds; and Numbering CPD 00-4 (Mar. 3, 2000).

Summary: The purpose of this Notice is to describe the process for designating new participating jurisdictions; reserving, obligating, and deobligating HOME Program funds; reallocating funds; and to provide instructions for numbering HOME Investment Partnership Agreements (form HUD-40093). This Notice supersedes Notice CPD 93-22 and any other policy guidance or directive relating to the reservation and obligation of HOME Program funds and numbering HOME Investment Partnership Agreements.

Rural Housing Service Notices

Clarification of Servicing Issues Within the Housing Preservation Grant Program RD AN No. 3533 (1944-N) (Apr. 19, 2000)

Summary: This Administrative Notice (AN) is to provide clarification of servicing issues within the Housing Preservation Grant (HPG) program. The AN provides clarification on the following issues: Bringing the units up to applicable code; Inspection of rehabilitation and repair work; Civil Rights Compliance Reviews; Debarment and Suspension; Waiting Lists; Recipient Files; Environmental Review; Flood Insurance Requirements; and Notification Regarding Lead Based Paint.

Memorandum of Understanding with Department of Housing and Urban Development Regarding Section 8 Contract Renewals RD AN No. 3531 (1930-C) (Apr. 19, 2000)

Summary: The AN announces a Memorandum of Understanding (MOU) with the Department of Housing and Urban Development (HUD) reiterating the ongoing partnership between HUD and RHS in the renewal of Section 8 contracts. It refers to HUD's Notice H 99-36 (HUD) dated

December 29, 1999 describing the process for renewing project-based Section 8 on Section 515 properties.

Revised Reporting, Authorization and Acceleration Requirements Related to MFH Preservation Related Activities RD AN No. 3527 (1965-E) (Mar. 24, 2000)

Summary: To help standardize decision-making during the prepayment process for Multi-Family Housing (MFH) projects, the Office of Rental Housing Preservation (ORHP) has updated the process for reporting information and receiving authorization for incentives. This Administrative Notice (AN) clarifies RD Instruction 1965-E and revises Guide Letter 1965-E-1. In addition, this AN discusses the Agency's responsibility to consider the impact of acceleration actions on preservation, introduces the concept of third-party equity loans, and provides guidance on making general incentive offers.

Servicing On-Farm Labor Housing Borrowers RD AN No. 3526 (1930-C) (Apr. 10, 2000)

Summary: This AN republishes and updates an earlier AN outlining RHS servicing obligations with respect to on-farm type Labor Housing (LH) borrowers that are charging rent, utilities, security deposits, or cleaning fees to tenants in violation of the borrowers' agreement with the Rural Housing Service (RHS). The purpose of this AN is to ensure that the RHS regulations regarding rent charges for on-farm type labor housing are fully understood and enforced by Rural Development field staff and followed by all borrowers. The guidance set out herein is issued, in part, to comply with a court order which mandated the Federal Government cease its failure to enforce the rollback and rebate or credit provisions set out in paragraph VI of Exhibit C of RD Instruction 1930-C. The court also ordered the Federal Government to cease its failure to enforce the Notice and comment provision set out in Exhibit C of RD Instruction 1930-C (see paragraphs IV and V) to tenants for proposed changes to shelter costs (*i.e.*, rent and utilities). The court also recently ordered the Government to enforce the provisions of its Administrative Notices. ■

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