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advancing housing justice

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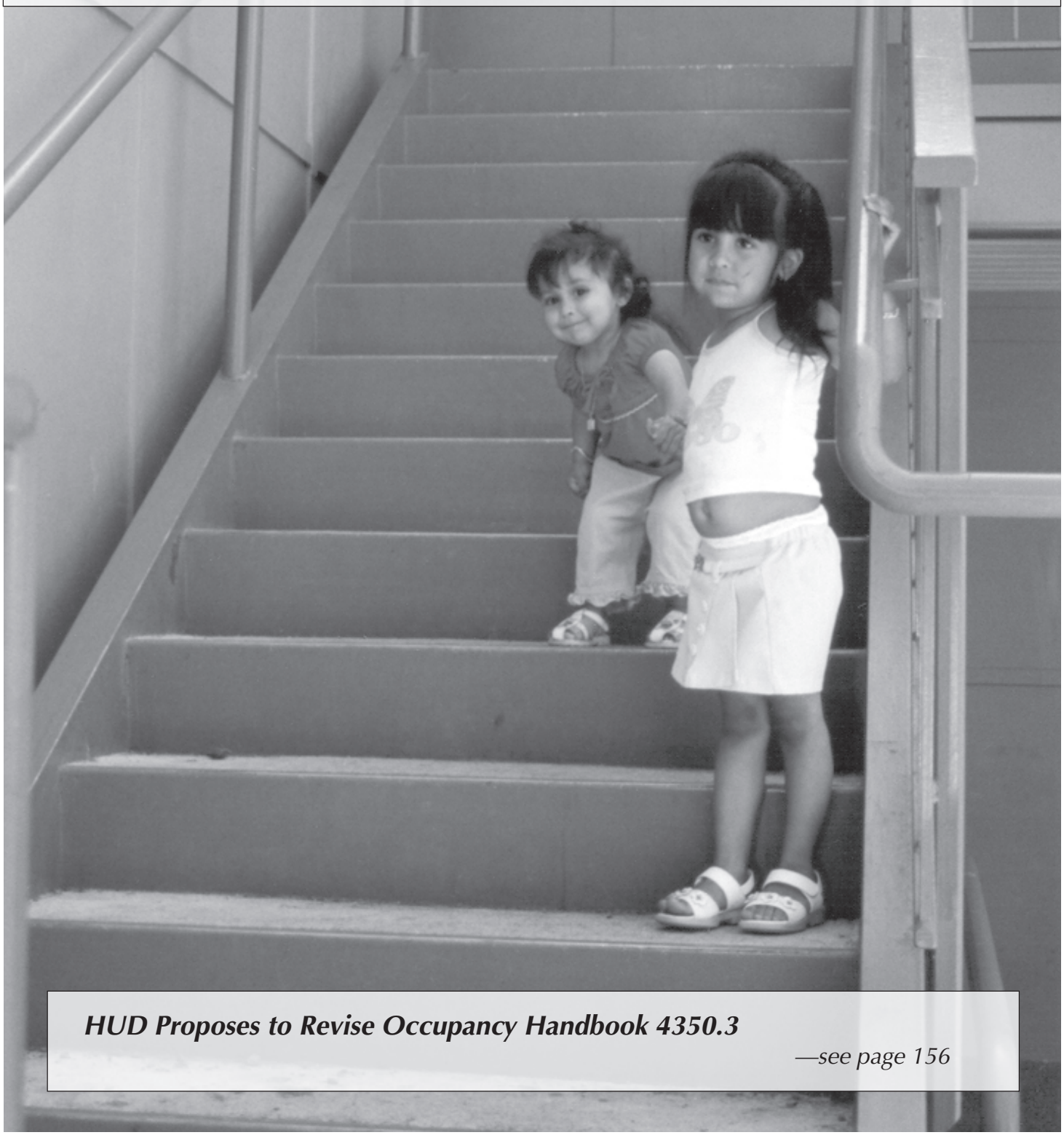

HUD Proposes to Revise Occupancy Handbook 4350.3

—see page 156

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Cover : Residents of Montebello Apartments, a farmworker housing development in Hillsboro Oregon. Photo courtesy Housing Assistance Council, Inc., Washington D.C.

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Millennial Housing Commission Issues Its Report

In December of 2000, Congress established the bipartisan Millennial Housing Commission (MHC)[1]. The 22 MHC members were appointed by the chairs and ranking minority members of the House and Senate Appropriations Committees and Subcommittees for the Veterans Administration, Department of Housing and Urban Development (HUD) and Independent Agencies; the Senate Banking, Housing and Urban Affairs Committee and its Housing and Transportation Subcommittee; and the House Financial Services Committee and its Housing and Community Opportunity Subcommittee. As a result, the MHC was dominated by established housing industry interests from banking, construction, state housing finance agencies, public housing officials and several well-known and politically diverse national policy and research nonprofit organizations. Cushing Dolbeare was the MHC's only progressive commissioner. Interestingly, no MHC members appear to have represented the homeless or populations of color.[2]

The MHC's purpose was to examine, analyze, and explore:

> (1) the importance of housing, particularly affordable housing which includes housing for the elderly, to the infrastructure of the United States;
>
> (2) the various possible methods for increasing the role of the private sector in providing affordable housing in the United States, including the effectiveness and efficiency of such methods; and
>
> (3) whether the existing programs of the Department of Housing and Urban Development work in conjunction with one another to provide better housing opportunities for families, neighborhoods and communities, and how such programs can be improved with respect to such purpose.[3]

While the first of these objectives gave the MHC broad discretion in analyzing the importance of housing in America, the MHC's efforts to address the country's housing needs appear to have been limited by the second and third objectives, which restricted solutions to increasing the role of private enterprise and evaluating the effectiveness of the HUD programs.

On May 30, 2002, the MHC submitted its report, *Meeting Our Nation's Housing Challenges*, to Congress. The report discussed various housing problems faced by the nation and proposed possible solutions to those problems, including several that were not within the MHC's mission. The report

[1]Pub. L. No. 106-174, Title II, § 206(a), 113 Stat. 1047, 1070 (Oct. 20, 1999) (codified at 42 U.S.C. §12701 (2002)).

[2]Although a small number of African Americans representing well-established organizations appear to have been members of the MHC, no other persons of color appear to have been members.

[3]*Id.* at § 206(b).

was divided into four major components entitled "Why Housing Matters," "New Tools," "Major Reforms," and "Streamlining of Existing Programs." The following is a brief summary of those sections of the MHC's report.[4]

Why Housing Matters

In this section, the MHC recognized that access to affordable housing is important for a variety of reasons, including fostering family and community stability and its impact on the national economy. According to MHC findings, in the last 20 years the gap has widened between the demand and supply for affordable housing. Moreover, minorities suffered the most from these housing trends. With this background, the MHC launched into its recommendations to Congress.[5]

New Tools

Given the shortage of affordable housing, the MHC proposed new remedies to increase housing production and preservation efforts. The first new suggestion was the creation of a state-administered homeownership tax credit that could be used to offset a developer's total development costs in areas where the cost to build or rehabilitate a unit would be greater than the appraised value of the completed home.[6]

The MHC's second suggestion outlined a preservation plan that would create organizations called "preservation entities." These entities would acquire and own properties at risk of deterioration and abandonment and would commit to preserving the existing affordability of those properties. Additionally, owners who sold their properties to a preservation entity would be eligible for exit tax relief.[7]

The third recommendation would establish capital subsidies for the production and preservation of units for extremely low-income (ELI) households, those with incomes below 30 percent of area median income. The purpose of these capital subsidies would be to eliminate debt on the units, thereby removing the debt service component from the household's monthly rent payment.[8] The MHC recognized that the elimination of capital debt would not make the housing affordable to the targeted ELI population and unfortunately it recommended that ELI households be allowed to pay more than 30 percent of household income for shelter whenever the state agencies sponsoring the housing could not come up with other subsidies. The MHC reasoned that such a proposal is justified in light of the fact that ELI households typically pay as much as 50 percent of income for rent.[9]

The MHC's fourth proposal would enact a new mixed-income, multifamily rental production program. The federal targeting requirements on these new units would be "modest" in order to attract private capital to produce the units. This program would also take limits off the states' ability to issue tax-exempt debt for specific housing and community development purposes, provided that 20 percent of the units in any assisted development are targeted to persons with incomes below 80 percent of AMI.[10]

The MCH would establish capital subsidies for the production and preservation of units for extremely low-income households, those with incomes below 30 percent of area median income.

The final new recommendation that the MHC made proposes to facilitate community development by empowering state and local governments to blend federal funding streams.[11] This suggestion arises from its perception that state and local governments have difficulty coordinating affordable housing activities with other community development activities such as transportation, economic development, employment, childcare, etc. because funding is governed by separate regulatory agencies whose regulations are not always consistent. Thus, there frequently are administrative difficulties in making these various funding programs coalesce. As a result, private investors are less likely to want to invest in housing. However, when state and local leadership overcome the coordination problems associated with separate funding streams, the results serve to buttress the MHC's approach, as shown by such comprehensive community initiatives around the country like Bethel New Life in Chicago and Dudley Street Neighborhood Initiative in Boston.

To encourage the combined use of funds for comprehensive community redevelopment, new legislation would authorize governors to set aside up to 15 percent of federal block grant funds received.[12] These funds would be used for the same purposes for which they were originally intended, but localities would use them in support of holistic redevelopment efforts that would incorporate public input

[4]Report of the Bipartisan Millennial Housing Commission, *Meeting Our Nation's Housing Challenges* (May 30, 2002)(Downloaded July 22, 2002). A copy of the report is available from the commission's Web site at www.mhc.gov. The summary which follows is not intended to be exhaustive of all the MHC proposals. It is meant to be a brief introduction to some of the most salient aspects of the many changes, reforms and streamlining to current programs that the MHC believes will make assisted housing affordable and readily available to households in need.

[5]*See id.* at 10-13, 21.

[6]*Id.* at 29-31.

[7]*Id.* at 35-36.

[8]*Id.* at 37-38.

[9]*Id.*

[10]*Id.* at 39-40.

[11]*Id.* at 41.

[12]*Id.*

NHLP Job Announcement:

STAFF ATTORNEY/DIRECTOR OF GOVERNMENT RELATIONS

The National Housing Law Project (NHLP) is seeking to hire an experienced attorney to work as Staff Attorney/Director of Government Relations in NHLP's Washington D.C. office.

The Staff Attorney/Director of Government Relations is responsible for: providing substantive technical support to housing attorneys and other housing advocates on federally assisted public and rental housing issues; undertaking research; drafting and editing manuals, reports, articles and other materials on the operation of federal housing programs and residents' rights under those programs; training advocates and resident organizers; analyzing and responding to federal housing legislation and regulations; and assisting or engaging in litigation. The Staff Attorney/Director of Government Relations is also responsible for monitoring federal legislation and administrative developments, representing clients before Congress, federal and local administrative agencies, and assisting in responding to legislators' and administrators' requests for information on federal housing issues.

QUALIFICATIONS The applicant must have:

- at least five years of experience working on housing and related issues;
- prior experience working with legislative and administrative bodies, preferably in Washington, D.C.;
- working knowledge of federal public and multi-family assisted housing programs and/or issues relating to the preservation of federal affordable housing stock (including public housing and project-based Section 8 housing);
- excellent oral and written communication skills, including experience in training and legal writing;
- excellent analytical skills;
- a strong commitment to advancing the housing rights and interests of very low-income persons and households;
- a law degree and be admitted to practice in at least one state;
- a willingness to travel.

SALARY Salary for the position is based on experience; excellent benefits.

SUBMITTING AN APPLICATION Persons interested in the position should send a cover letter, resume, three professional references and writing sample to Gideon Anders, Executive Director, National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610. Cover letter should indicate the position for which you are applying and include job qualifications, relevant work experience and salary history. No phone calls or faxes, please.

DEADLINE There is no application deadline. However, NHLP seeks to hire a qualified individual as soon as possible.

ABOUT NHLP NHLP is a national housing law and advocacy center and a California IOLTA back-up center that promotes housing justice on behalf of very low-income persons. NHLP has offices in Oakland, CA and Washington, D.C. NHLP is an affirmative action equal opportunity employer that does not discriminate on the basis of race, color, national origin, ethnic background, religion, sex, sexual orientation or disability. We encourage applications from people of color, women and others whose background may contribute to more effective representation of poor people.

into decision-making processes. Localities interested in such comprehensive community rehabilitation would apply to the state for funding already allocated at the state level. A consolidated program review and award process for all applicable programs would follow.[13] The MHC recommends that governors be allowed limited authority to waive federal regulations that interfere with the combined use of funds.[14]

Major Reforms

The MHC recommended four major reforms to existing programs. The first involves a transformation of the Public Housing Program. The MHC is concerned with the complexity and cost of the maze of regulations that undermine the effectiveness of many of the best public housing authorities (PHAs). Often the administrative costs of these regulations provide an excuse for operational failures of less efficient PHAs. In order to remove the federal regulations that encumber the PHAs, the MHC recommends a gradual transition to a project-based Section 8 model.[15] Conversion of public housing would follow a "mark to market" process similar to that which, in recent years, project-based Section 8 housing inventory has undergone. Additionally, subsidies would flow to specific properties based on the rents that the units would command after needed renovation.[16]

According to the MHC, such a transition would also enable PHAs to rehabilitate properties using funds borrowed in private markets. Capital improvements would be funded through private tax-exempt loans secured by mortgages and backed by FHA mortgage insurance. Likely lenders would include FHA multifamily lenders and, in some states, housing finance agencies.[17]

For severely distressed properties, the MHC would maintain the HOPE VI program for both preservation and production. In dealing with severely distressed properties, the MHC recommends that HOPE VI money be the first funds allocated, because the private sector does not have the resources to fund the pre-development costs of acquiring a building site.[18]

The second major reform the MHC recommended is the revitalization and restructuring of the FHA within HUD. The FHA would become a wholly owned government corporation within HUD, governed by a board chaired by the HUD secretary. This restructuring of the FHA would enable the FHA to adopt its programs to evolving markets without having to wait on Congress to legislate each change.[19]

The MHC's third, and perhaps most ambitious proposal, would end chronic homelessness over a 10-year period. If the recommendation of the MHC in the New Tools section are implemented, the MHC believes that the mechanisms to eliminate transitional homelessness will be in place. For the chronically homeless, the MHC suggests that supportive housing coupled with other social services is needed. The MHC proposes the creation of additional units of permanent supportive housing and the transfer of renewal for such units to HUD's Housing Certificate Fund to end chronic homelessness.[20]

The final major reform would be to establish a work requirement linked to housing assistance. Proceeding from the assumption that housing programs that set rents as a percentage of household income create a disincentive to increase income, the MHC recommends several measures to move assisted families up and out of assisted housing over time through a combination of work requirements and supportive services. If successful, the MHC concludes that these measures would free up housing for currently unassisted families.[21]

Streamlining of Existing Programs

The MHC's first recommendation in this section is to expand and strengthen the Housing Choice Voucher Program. The MHC acknowledges that in some rental markets, program administration and regulatory complexity create an effective disincentive for private owners to accept voucher-holding tenants. In response to this, the MHC recommends increasing authority of local program administrators to change payment standards in response to market conditions.[22]

Additionally, in order to remedy many problems faced by voucher-holding, extremely low-income households, the MHC favors the creation of a special voucher program designed with the needs of extremely low-income households in mind. This program would give special vouchers to extremely low-income households for units produced under capital subsidy programs such as the Low Income Housing Tax Credit, HOME, Community Development Block Grant and other mixed-income, multifamily rental production programs proposed elsewhere in the report. Payment standards for units served by these "thrifty production vouchers" would equal the operating cost, rather than being based on Fair Market Rent.[23]

Next on the MHC's list is reforming the HOME and Low Income Housing Tax Credit Programs and increasing funding for HOME. The MHC wants Congress to eliminate the many outdated rules and regulations that burden developers and owners and that inhibit these programs' potential for production and preservation activities. The MHC also calls for a change to the tax code to allow states to use Temporary Assistance to Needy Families (TANF) funds for one-time grants to tax credit properties.[24]

[13] *Id.*

[14] *Id.* at 42.

[15] *Id.* at 44-45.

[16] *Id.*

[17] *Id.* at 46-47.

[18] *Id.*

[19] *Id.* at 49-54.

[20] *Id.* at 54-56.

[21] *Id.* at 56-58.

[22] *Id.* at 59.

[23] *Id.* at 59-60.

[24] *Id.* at 64-67.

The third recommendation would improve the Mortgage Revenue Bond Program. The MHC found that the "10 year rule" limits housing finance agencies' (HFAs) use of scheduled repayments and mortgage prepayments and has resulted in substantial loss of mortgage volume to date. The MHC recommends the immediate repeal of this rule and the repeal of purchase price limits to help ensure that HFAs maximize the public benefit associated with bond issuance in the interest of promoting homeownership for low-income families.[25]

The MHC's final suggestion would revise federal budget laws that deter affordable housing production and preservation. Budget laws inhibit HUD from entering into contracts that require more than one year's funding. As a result, HUD cannot offer the owners of multifamily housing multiyear contracts for rental assistance and owners cannot obtain financing on the terms most advantageous for capital investment in the affordable housing stock. Therefore, the MHC proposes that funding for the rental assistance be moved to the "mandatory" category of federal expenditures, so that private lenders will be willing to finance repairs.[26]

Conclusion

Regrettably, the MHC recommendations are not a prescription for addressing the nation's dire housing crisis in a prescribed time frame through the creation of a specified number of housing units and subsidies and the expenditure of a certain sum of money. In all likelihood, this is a reflection of the MHC's limited purpose and its predominantly mainstream industry composition. It focuses almost exclusively on private market and state solutions that address the housing needs of more moderate-income households and only proposes to increase the housing supply of the most needy households by increasing their rent contributions above 30 percent of income, and by recommending work requirements and time limits. Remarkably, the MHC did not rigorously analyze or address the special housing needs of rural residents,[27] Native Americans,[28] farmworkers or senior citizens,[29] and omitted any serious discussion of housing discrimination and its impacts. Thus, while parts of the MHC's report are a welcome addition to the country's housing literature, its recommendations provide no bold roadmap for resolving its housing crisis. It is not surprising, therefore, that the report has not generated substantial publicity or reactions and it is doubtful that its recommendations, other than those that are already under consideration, will be followed. ■

[25] *Id.* at 67-69.

[26] *Id.* at 69-70.

[27] The MHC's rural housing recommendations are included in a section of "Supporting Recommendations" and essentially recommend increased support and funding for the Rural Housing Assistance rural housing programs. *Id.* at 71.

[28] The recommendations with respect to Native American housing are also included in the Supporting Recommendations. *Id.* at 72-73.

[29] The MHC expressly omitted discussion of senior housing issues due to the simultaneous creation of the Commission on Affordable and Health Facility Needs for Seniors in the 21st Century. *Id.* at ii.

SAVE THE DATES

2002 Housing Justice Meeting Set for December 8-9

Housing Training Set for December 7

The next meeting of the Housing Justice Network (formerly LALSHAC) is scheduled to take place on December 8-9 in Arlington, VA (Washington, D.C. area).

The 2002 HJN meeting will give the various HJN working groups an opportunity to meet in person and to continue to work on issues that are of concern to advocates and their clients.

HJN meetings are not training conferences and we encourage attendance by experienced housing advocates and clients who are familiar with the programs and are willing to participate actively in HJN's ongoing activities (exchanging information on local housing strategies, permissible legislative and administrative advocacy on low-income housing issues at the federal, state and local levels).

We are also planning a one-day training session on the recent judicial, legislative and administrative changes that have been made in the Public Housing and Section 8 and other programs. The training session will take place on Saturday, December 7, immediately preceding the HJN meeting. The training will also take place in Arlington and should benefit advocates who are not familiar with the changes in these programs. The training event will be separate from the HJN meeting, although advocates and clients are welcome to attend both.

A more detailed announcement about the 2002 HJN meeting as well as the training event will appear in a future issue of the *Housing Law Bulletin,* and a summary of the planned activities and registration requirements for both events will be sent to the HJN mailing list and to housing specialists at legal services and other programs. In the meantime, **reserve the dates on your calendar.**

If you wish to be added to the HJN mailing list, contact Amy Siemens at the National Housing Law Project:

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(510) 251-9400 Ext. 111
asiemens@nhlp.org

Proposed Revisions to HUD Occupancy Handbook

For the first time in more than a decade, HUD has proposed a thorough revision of its handbook on Occupancy Requirements of Subsidized Multifamily Housing Programs (Handbook 4350.3). This handbook applies to most HUD multifamily rental housing programs, including various forms of project-based Section 8, Section 202/811, and mortgage finance programs such as Section 221(d)(3) and Section 236. HUD published a notice in the Federal Register that it was revising the handbook and posted a draft of its new 636-page handbook on its Web site during a very short 10-day comment period.[1] Advocates from the Housing Justice Network (HJN) and the National Alliance of HUD Tenants (NAHT) submitted detailed comments to the draft by the June 4, 2002 deadline.[2] While HUD has removed the draft handbook from its Web site, it is available for reference at the NHLP Web site. Also available on the NHLP Web site is a copy of the comments submitted by NHLP, NAHT and HJN.[3] Reportedly, HUD plans to issue a final revision of the handbook in the next few months, but currently it is impossible to predict exactly when the amended version will be available.

The draft handbook is a significant improvement in readability and clarity over the exiting version. More significantly, it expands or clarifies a number of tenant protections. Some of the improvements in the draft include:

- a new chapter entitled "Civil Rights and Nondiscrimination Requirements" explains owners' fair housing obligations and, in particular, describes required reasonable accommodations that they must make for tenants and applicants with disabilities;
- a requirement that the owner's tenant selection plan must be made public, and more rigorous requirements for maintenance of tenant waiting lists;
- a requirement that where the model lease conflicts with state or local law, the owner must follow the rule most beneficial to the tenant;
- a new $200 per month threshold for reporting changes in temporary or seasonal monthly income increases (the threshold is currently $40 per month);
- a provision entitling tenants who paid too much rent to retroactive reimbursement for the overpayments; and
- a clarification in the tenant income recertification process that relieves tenants from the responsibility of having to pay increased rent retroactively when the rent increase did not go into effect due to owner inaction or error.

While the draft handbook has numerous improvements, there are, of course, a number of deficiencies. The comments posted on the NHLP Web site include an extensive outline of the shortcomings. Some of the major deficiencies include:

- tenants and applicants still do not have an explicit right to access their file or waiting list information;
- tenant participation is not guaranteed for the development of house rules, pet rules, lease modifications or charges in addition to rent;
- there are no enforcement provisions against owners who violate handbook provisions and no reference to recently adopted HUD regulations for civil money penalties for non-compliant owners;[4]
- insufficient guidance on how to handle changes in family composition, particularly when new family members are added to the household or when a family breaks up;
- no guidance on requirements regarding the provision of materials, such as leases and house rules, in languages other than English to tenants with limited English proficiency, or in accessible format to tenants with disabilities; and
- the failure to provide existing tenants unit transfer priority over new applicants.

The revised model lease was not included in the draft of the handbook that was posted on the HUD Web site. Therefore, it is unknown whether it will raise additional issues when it is published.

The short 10-day period allowed by HUD for reviewing the draft handbook may be impermissible under the *Administrative Procedure Act*.[5] However, perhaps owing to the number of positive changes in the draft handbook, advocates have not mounted a general challenge to the review process.

When HUD issues the revised handbook it will have a significant impact upon the operation and management of multifamily rental housing. Depending on the changes that HUD makes, the revision may significantly improve the management and operation of multifamily housing. ■

[1]Notice of Availability of Revised HUD Occupancy Handbook and Request for Comments, 67 Fed. Reg. 35,700 (May 20, 2002).

[2]Available *at* www.nhlp.org/html/pres/index.htm.

[3]*Id.* Note that each page of the draft handbook states that it is a "Draft HUD Document - Do Not Quote or Cite."

[4]24 C.F.R. Part 30, amended by 66 Fed. Reg. 63,436 (Dec. 6, 2001).

[5]The 10-day review period is insufficient if the draft handbook represents a "legislative rule" rather than "a statement of policy or an interpretive rule." 5 U.S.C. § 553. The D.C. Circuit recently issued an opinion on this issue, finding that an EPA guidance was a legislative rule that required notice and comment. *See General Elec. Co v. Environmental Protection Agency*, 290 F.3d 377, 54 ERC 1385 (D.C. Cir., May 17, 2002) (available *at* www.pacer.cadc.uscourts.gov/common/opinions/200205/00-1394b.txt).

Bush "Superwaives" New Law in Congress' Face

Introduction

On May 16, 2002, the House passed its Temporary Assistance to Needy Families reauthorization bill (H.R. 4737)[1] which contains a provision establishing "superwaivers" for the Executive Branch. These superwaivers would permit the Secretaries of Health and Human Services, Agriculture, Education, Labor, and Housing and Urban Development to grant waivers of federal statutory and regulatory provisions governing a wide number of programs in their respective jurisdictions at the request of a state governor.

If enacted into law, superwaivers would substantially undermine Congressional powers, inappropriately tipping the balance of power to the Executive Branch by granting the secretaries of various departments the power to ignore and evade statutes and regulations relating to their program areas. Superwaivers also could allow a department secretary to make changes in laws that Congress may have explicitly declined to make. Superwaivers could fundamentally change housing programs in ways that would be detrimental to low-income tenants. This article outlines how the proposed superwaivers would work, discusses how they might affect housing programs, provides analysis of the possible effects of such a system, and update advocates on the status of the proposal.[2]

The Proposed Legislation

The adopted House bill's purpose is to coordinate multiple programs.[3] Under the bill, a governor who administers two or more qualifying programs may submit to the secretary of each program an application to conduct a demonstration project that "coordinates" (undefined in the proposed legislation) two or more programs identified in the bill.[4] If a program is not administered directly by the governor, such as public housing, the request must come from the governor and the administering agency. The application must include a statement identifying the programs involved, the population to be served, a description of how the proposed project would improve the programs, and a description of the performance objectives.[5] It must also contain a description of the statutory and regulatory waivers that the governor is requesting in order to carry out the project and a statement to assure that the proposal is cost neutral.[6] In the public housing context, there are provisions in the bill that require governors, as part of the application, to include the resident advisory board's comments about the proposal and to certify that the public housing annual plan includes information about the proposal.[7]

Programs other than public housing may qualify for superwaivers. They are: the *McKinney-Vento Act* homeless assistance programs, the Food Stamp program, the Child Care and Development Fund, the Employment Service program under the *Wagner-Peyser Act*, most employment and job training programs under the *Workforce Investment Act*, the TANF block grant, the Welfare-to-Work program administered by the Department of Labor, the Social Services block grant, adult education programs under the *Adult Education and Family Literacy Act*, and the Job Opportunities for Low-Income Individuals program.[8]

A secretary reviewing a superwaiver application may approve it with very few restrictions. He or she must merely determine that the project has a reasonable likelihood of achieving the objectives it sets out for itself and that it will be cost neutral—*i.e.*, that the total amounts that the federal

[1]The complete bill is available on Thomas at http://thomas.loc.gov/. The sections that contain the Superwaiver provision are in Title VII, Section 701.

[2]For additional in-depth analysis of this provision and discussion of how it relates to programs other than housing, see Robert Greenstein, Shawn Fremstad, and Sharon Parrot, *"Superwaiver" Would Grant Executive Branch and Governors Sweeping Authority to Override Federal Laws* (Revised June 11, 2002), *available at* Center on Budget and Policy Priorities Web site, www.cbpp.org/tanfseries.htm (hereinafter "CPBB article").

[3]H.R. 4737, § 701(a).

[4]*Id.* at § 701(c).

[5]*Id.* at § 701(c)(1), (2), and (3).

[6]*Id.* at § 701(c)(4).

[7]*Id.* at § 701(c)(7).

[8]*Id.* at § 701(b). *See also* CBPP article, p. 5, *supra* note 2.

New to NHLP Web Site

NHLP recently published a new packet of information on the new HUD Earned Income Disregard. It is now available on our Web site.

Other recent additions include:

- Comments on Draft HUD Occupancy Handbook 43530.3 submitted by the National Alliance of HUD Tenants (NAHT) and the Housing Justice Network/National Housing Law Project.
- Letter from Michael M. Liu, Assistant Secretary of HUD, to Public Housing Directors (June 6, 2002) (reminds PHAs that in applying the one-strike rule they are not required to evict for every lease violation and may evict just the wrongdoer).
- First-Time Home Buyer Downpayment Resources —Nationally
- State Employees Federal Credit Union, Section 8 Homeownership Underwriting Guidelines.

Visit our Web site at www.nhlp.org.

government would pay if the project is implemented would not exceed the estimated total amount it would have paid had the project not been conducted.[9]

The bill prohibits the waiver of certain laws, including any laws relating to civil rights, health or safety, the *Fair Labor Standards Act of 1938*, or environmental protection. A proposed project also cannot waive any provisions that are fundamental to the goals and purposes of the program in question.[10] Although there is no elaboration in the bill on this waiver exclusion, presumably a secretary of the Department of Housing and Urban Development (HUD) could not waive provisions that require that public housing be dedicated to providing low-income housing. However, as discussed below, a HUD secretary could approve projects that waive fundamental features of the public housing program such as the Brooke Amendment, which limits household rent to 30 percent of adjusted gross income.[11] Interestingly, though, the bill requires the secretary to deny the application if it includes any waiver relating to the public housing plan or resident advisory boards.[12]

The bill also prohibits all secretaries from permitting the waiver of any funding restriction or limitation included in an appropriations act or that would have the effect of transferring appropriated funds from one federal account to another.[13] Nor could funding restrictions in authorization laws be waived.[14] This is not to say, however, that proposed projects could not affect funding within a program area. As discussed below, if this bill is enacted into law, it is likely that governors would propose waivers that would have the effect of having federal funds replace state funds, freeing up state funds to do things completely unrelated to the program area.

Significantly, the bill contains a provision establishing a presumption of application approval if the administering secretary does not disapprove the application within 90 days of receipt.[15] The duration of each project for which a waiver is granted is limited to five years, but there is no limit to the number of waivers that may be granted or to the number of states that may be granted waivers.[16] Within 90 days of approval or disapproval of an application, the secretaries are required to submit to Congress a report describing the project, the applied-for waiver(s), and the secretary's reasons for approving or disapproving the application.[17] After that, they are required to submit annual progress reports to Congress.[18]

[9]*Id.* at § 701(d)(1)(B) and (d)(4)(a).

[10]*Id.* at § 701(d)(2).

[11]Pub. L. No. 91-152, § 213(a), 83 Stat. 389 (1969).

[12]H.R. 4737, § 701(d)(2)(C). *See, e.g.*, 42 U.S.C. 1437c-1 regarding public housing plans and resident advisory boards.

[13]H.R. 4737, § 701(d)(2)(G).

[14]*Id.*

[15]*Id.* at § 701(d)(5).

[16]*Id.* at § 701(e).

[17]*Id.* at § 701(f)(1).

[18]*Id.* at § 701(f)(2).

The Effect of Superwaivers on Housing and Other Programs

So what does all this mean? This bill would permit governors to work directly—perhaps very discreetly—with an administration to make wholesale changes to the enumerated programs.[19] In the public housing program, superwaivers could be used in a variety of ways that would fundamentally change the way the public housing program operates and serves very low- and extremely low-income households. For example, a superwaiver could be used to nullify federal law that requires public housing tenants to pay only 30 percent of their adjusted gross income for rent. Rents could be raised to 40 or even 50 percent of income in an effort to raise more money from the operation of the housing. The increased income could then be used for a variety of purposes set out in the superwaiver request, provided they were related to the general purposes of the *Housing Act*. Thus, the money could be used for job training programs, building more units, or creating other new housing assistance programs. While newly proposed programs may be very laudable, implementation through superwaivers would override current established law of not charging public housing residents more than 30 percent of income for rent. Moreover, this implementation would be accomplished by a governor acting together with a local housing authority and the Secretary of HUD without any opportunity for Congressional debate.

Superwaivers could also be used to replace state funding of programs with federal funding. This would allow budget-strapped states to free up state money to fund other state priorities, including such potentially popular proposals as tax cuts.[20] Alternatively, superwaivers could be used to implement an administration's proposal that failed to pass Congress. For example, President Bush is currently seeking passage of his American Dream Downpayment Fund, which would assist low-income people with downpayments for their first home. The program has met some opposition in the Senate because, at least in part, it is unlikely to help extremely low-income households or otherwise do much to alleviate the country's broader low-income housing crisis. If the program were not enacted or funded, governors could propose superwaivers to HUD that waived statutes and regulations that prevent the shifting of public housing funds from rental to downpayment assistance. Public housing funds could then be given to higher-income individuals to assist them to buy homes. Such a shift would further the purposes of public housing, in that it would address the housing needs of lower-income families, but would also, in most instances, cater to higher-income households than the public housing program currently serves. Thus, superwaivers could be used to circumvent Congressional action that expressly rejects an administration's proposal.

[19]While public housing authorities have to join in most superwaiver requests, it is not likely that they would act independently when doing so. Governors, together with local officials, could pressure public housing authorities to join in the request by, for example, withholding state funds from the authority.

[20]*See* CBPP article, page 4, *supra* note 2, for a detailed example of how this fund-shifting could be accomplished.

Obviously, superwaivers could be used in the public housing context in a variety of other ways that would be detrimental to the interests of very low- and extremely low-income households. While such uses are clearly speculative at this time, several other examples are useful to show the extent to which superwaivers could be used to change current laws, some of which were passed over strong objections from some members of Congress and industry lobbying groups. For example, they may be used to:

- eliminate the $50 cap on minimum rents as well as the hardship exemptions to the minimum rent;
- eliminate or substantially alter the new earned income disregard;
- impose residency time limits or require tenants to work in order to retain their public housing units;
- waive the requirement that the proceeds from the sale of public housing be reinvested in low-income housing or that residents get a right of first refusal to purchase such housing;
- lift the prohibition against concentrations of poverty in particular developments or change the targeting, which currently requires that 40 percent of public housing units be targeted to extremely low-income applicants;
- eliminate or substantially alter the tenant grievance procedure, the right to organize or form tenant councils and by infringing upon privacy rights protecting health and criminal records;
- redistribute the $25 per unit per year that housing authorities currently receive for resident participation purposes.[21]

Superwaivers could have equally dire effects in the homelessness programs. The *McKinney-Vento Act*[22] requires that persons served by the Section 8 Single Room Occupancy program and Supportive Housing Shelter Plus Care program meet a statutory definition of "homeless" that focuses the aid given under these programs to those who are in shelters, living on the streets, or in a state of constant flux regarding their housing. A governor could ask that this statutory provision be waived, thereby allowing housing funds to be used for those person whom the governor or a local entity deemed to be at risk of homelessness. This could include people who are already in public housing or people who are paying large portions of their income for rent.

Perhaps even more disturbing is the possibility that a superwaiver could be used to sidestep current law that encourages continued supportive housing use of buildings built with *McKinney-Vento Act* funding. Currently, such buildings must provide supportive housing for at least 20 years unless the building is no longer needed for supportive housing and is converted to some other use that directly benefits low-income persons. If the building ceases to be used for supportive housing and is not converted to some other use that benefits low-income persons, the entity that received the federal funds to buy or construct the building must repay all or a portion of the funds. With a superwaiver, this disincentive for owners to cease the low-income use of the buildings could be lifted.[23]

Similar evasions and alterations of federal law could take place across the board in other programs eligible for the superwaiver, especially in the area of TANF.

Conclusion

Aside from changing current laws, superwaivers could undermine the democratic participatory process both at the national and the state level. In most instances, state legislatures or other elected representatives would not be involved in governors' decisions to request waivers. Moreover, poor people who might be adversely affected by sweeping changes in programs meant to benefit them would have little, if anything, to say about their fate, as decisions could be made by governors, public housing authorities and relevant secretaries without any consultation with other elected officials.

While there may be some need for additional state flexibility in the administration of some federal programs, the use of superwaivers is not the appropriate mechanism. Greater flexibility may be achieved in some programs that already have limited, controlled waiver authority, such as the Food Stamps program. Such limited waivers have the advantage of targeting areas where the governor or other local authority has shown that waivers may help the state operate the programs better. Also, because such waivers are more limited in scope and duration, their effects can be more closely monitored.

Superwaivers are simply not necessary. They are an extreme measure that will undermine the rights of the people who receive benefits through affected programs and will undermine the power of Congress to enact laws without being subject to a gubernatorial and/or secretarial veto power. In short, superwaivers weaken the democratic process without any compelling reason to do so.

As of this writing, the superwaiver proposal is not part of the Senate welfare bill, which was adopted by the Senate Committee in June. Because some Senators are supportive of the House superwaiver provision, there is a possibility that a superwaiver amendment will be proposed when the bill reaches the Senate floor in August or September. Regardless of what happens in the Senate, the issue of superwaivers will arise in the House and Senate's efforts to resolve their differences through the conference committee process beause superwaivers are included in the House bill, H.R. 4737. Advocates who are permitted to lobby should make their opposition to this legislation known to their senators and should urge their clients and organizations to do likewise. ■

[21]Much of this list of housing horrors under the superwaiver provision is based on an internal memorandum completed by Barbara Sard of the Center on Budget and Policy Priorities on June 17, 2002 (on file at the National Housing Law Project).

[22]42 U.S.C. § 11301, *et seq.*

[23]Additional homelessness examples are included in Ms. Sard's memorandum. *See* note 21 *supra*.

House Financial Services Subcommittees Hold Joint Hearing on Fair Housing

On June 25, 2002, the subcommittees on Housing and Community Opportunity and Oversight and Investigations of the House of Representatives Committee on Financial Services held a joint hearing on housing discrimination and the Department of Housing and Urban Development's (HUD) enforcement role.[1]

The Hearing Panels

The hearing, entitled "Fighting Discrimination against the Disabled and Minorities through Fair Housing Enforcement," involved three panels of testimony. The first panel consisted of Kenneth Marcus, HUD General Deputy Assistant Secretary for Fair Housing and Equal Opportunity. The second panel, which focused on disability issues, consisted of Sara K. Pratt, who testified on behalf of the National Council on Disability, and Becca Vaughn, who testified on behalf of the Disability Rights Action Coalition for Housing. The third panel addressed racial discrimination and segregation and included Shanna Smith of the National Fair Housing Alliance, Philip Tegeler of the Connecticut Civil Liberties Union, and Barbara Arnwine of the Lawyers' Committee for Civil Rights Under Law. Each of these witnesses on the three panels also submitted written testimony to the subcommittees.[2]

Highlights of Issues Addressed

In the first panel, Marcus emphasized the progress HUD has made in the timely processing of administrative complaints filed under the *Fair Housing Act*[3] with HUD's Office of Fair Housing and Equal Opportunity (FHEO). According to Marcus' oral testimony, at the end of fiscal year 2000, 80 percent of administrative fair housing complaints filed with FHEO remained "open" past the 100-day statutory deadline;[4] today, this "aged case inventory" has been reduced to 37 percent. After questioning from Rep. Barney Frank (D-MA), Marcus acknowledged that the number of complaints received by FHEO has declined recently, which may account for the reduction in the aged case inventory.

Rep. Nydia Velazquez (D-NY) and other members questioned Marcus repeatedly on HUD's definition of "discrimination," emphasizing a passage from Marcus' written testimony:

> A recent HUD-commissioned study, titled *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions* … revealed that while the majority of mortgage lending transactions do not involve discrimination, blacks and Hispanics, in the markets studied, tended to receive less information, less assistance, and worse terms.[5]

Rep. Velazquez wanted to know what HUD considered discrimination, if not the provision of "less information, less assistance, and worse terms" to people of color. Marcus responded that the language in his written statement "needs work." After prompting from Rep. Sue Kelly (R-NY), Marcus agreed to work with the Department of Justice to develop clearer guidelines on illegal discrimination under the *Fair Housing Act*.[6]

In the second panel, Pratt described her experience at FHEO. Pratt resigned from her position at HUD in 1999. In her testimony, she cited large-scale reductions in staffing and resources at FHEO beginning in 1995, the devolution to HUD field offices of significant decision-making authority without adequate oversight, and a lack of top-down leadership on fair housing as reasons for her decision to resign. When asked by Rep. Kelly why she believed that only 96 complaints received by HUD in 2000 had proceeded to the "reasonable cause" stage of investigation,[7] Pratt responded that this was due to the low level of staffing at FHEO.

The oral testimony in the third panel built upon issues raised in the second. Smith raised HUD's failure to issue detailed final regulations regarding the affirmative fair housing duties of Community Development Block Grant (CDBG) recipients. Over the past several years, the National Fair Housing Alliance has reviewed approximately 650 Analyses of Impediments to Fair Housing (AIs), planning documents prepared by CDBG recipients,[8] and found that a majority were deficient in numerous respects. Smith explained that there is a general "culture against being an advocate" on civil rights within HUD, even though HUD is the department charged with primary responsibility for administering the *Fair Housing Act*.[9]

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[1] A live webcast of this hearing was available *at* mms://a1482.l743622916.c7436.g.lm.akamaistream.net/D/1482/7436/v0001/reflector:22916.

[2] The prepared testimony is available on the House Committee on Financial Services Web site *at* www.financialservices.house.gov/hearings.asp?formmode=detail&hearing=147. Opening statements of members Oxley, Roukema, Kelly and Lee are also available.

[3] Title VIII of the *Civil Rights Act of 1968*, 42 U.S.C.A. § 3601 *et seq.* (West 1994). HUD has the "authority and responsibility for administering" the *Fair Housing Act* under an administrative enforcement process. *Id* at §§ 3610-12.

[4] *See id* at § 3610(a)(1)(B)(iv).

[5] *Statement of Kenneth L. Marcus, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, before the U.S. House of Representatives Committee on Financial Services Subcommittee on Housing and Community Opportunity and Subcommittee on Oversight and Investigations* (Jun. 25, 2002), *available online at* www.financialservices.house.gov/media/pdf/062502km.pdf.

[6] Under HUD's current regulations, failing to provide information in mortgage lending transactions because of race, color, religion, handicap, familial status, or national origin is already clearly defined as discrimination. *See* 24 C.F.R. § 100.120 (2001). The same is true of failing to provide assistance or providing less favorable terms. *See id* at §§ 100.120, 100.130.

[7] *See generally* 42 U.S.C.A. § 3610(g) (West 1994) ("Reasonable cause determination and effect").

[8] *See generally* 24 C.F.R. §§ 91.225(a)(1), 91.325(a) (2001).

[9] *See* 42 U.S.C. § 3608(a) (West 1994).

Tegeler emphasized the poor integration of fair housing objectives in HUD's overall program activities, including the HOPE VI program. He also described HUD Secretary Mel Martinez's refusal to meet with members of the Housing Justice Network and civil rights groups on fair housing issues.

Arnwine's testimony raised examples of bureaucratic confusion at FHEO. In particular, Arnwine emphasized FHEO's repeated refusal to process certain discrimination complaints, claiming that the wrong form was used. According to Arnwine, the form FHEO refused to accept was an electronic form included on HUD's own Web site.[10]

Conclusion of Hearing

After the conclusion of the oral testimony, the subcommittees kept the record of the hearing open to allow for the submission of additional materials. No new materials have been posted on the House Financial Services Web site. Relatively little concrete action was contemplated in the course of the hearing. The most specific item discussed was the development of a clearer definition of discrimination under the *Fair Housing Act* by HUD and DOJ.[11] It is not clear, therefore, what, if anything else, will come as a result of this hearing. ■

Supreme Court Lifts Statute of Limitations Bar to RHS Prepayment Damage Suits

Reversing the Federal Circuit, the Supreme Court recently held that the *Emergency Low Income Housing Preservation Act of 1987* (ELIHPA), which imposed permanent restrictions on prepayment of Farmers Home Administration (FmHA) (now Rural Housing Service (RHS)) rural rental and farm labor housing loans financed prior to December 21, 1979, qualified as a repudiation, not a present breach, of FmHA loan agreements with property owners who received the loans in exchange for providing low-income rental housing in rural areas. The Court concluded that the breach would occur, and the six-year limitations period would begin to run, when a borrower tendered prepayment and the government then failed to satisfy its obligation to accept the tender and to release its control over use of the property securing the loan. *Franconia Associates v. United States*, 2002 WL 1270248 (June 10, 2002).

Congress passed ELIHPA in 1988 in response to the dwindling supply of low- and moderate-income rural rental housing following increasing prepayments of mortgages under Section 515 of the *Housing Act of 1949*. ELIHPA amended the *Housing Act of 1949* to place permanent restraints on prepayment of Section 515 rural rental and Section 514 farm labor housing mortgages entered into before December 21, 1979.[1]

On January 4, 2002, the Supreme Court accepted the plaintiffs' Petition for Certiorari in *Franconia Associates* and a companion case, *Grass Valley Terrace v. United States*, two RHS prepayment cases decided by the Federal Circuit. The cases were initiated, respectively, in 1997 and 1998 in the Court of Federal Claims by two groups of RHS Section 515 Rural Rental Housing owners who sought damages from RHS based on their claims that ELIHPA constituted an anticipatory repudiation of their contract with RHS and an uncompensated taking in violation of the Fifth Amendment's due process clause. The Claims Court dismissed these two claims on the ground that ELIHPA terminated their prepayment rights and that their claims were thus barred by the six-year federal statute of limitations, which began to run upon the passage of ELIHPA in 1988. The owners, arguing that the statute of limitations will not begin to run until they attempt to prepay their loans and RHS refuses to accept the prepayment, appealed the decision to the Federal Circuit Court of Appeals, which affirmed the Claims Court's decisions.

The Supreme Court rejected the Federal Circuit's reasoning that RHS' duty under the FmHA loan contracts was to continue to allow borrowers to prepay their loans at any time and that ELIHPA therefore constituted an immediate breach of that duty. Such a duty, the Supreme Court reasoned, would be meaningless absent an obligation to accept prepayment, which is the proper understanding of RHS' promised performance. ELIHPA's renunciation of RHS' obligation to accept prepayment, therefore, was merely a repudiation of the contract. A breach would occur, and the six-year limitations period would begin to run, when a borrower tendered prepayment and RHS then failed to satisfy its obligation to accept the tender. Having found the Federal Circuit's untimeliness ground for dismissing the repudiation and takings claims incorrect, the Supreme Court decided not to address the takings claim, and remanded the *Franconia* and *Grass Valley* cases for further proceedings in the lower courts.

It is important to note that the sole issue before the Court in *Franconia* was the applicability of the statute of limitations to owners' claims that the restrictions imposed by ELIHPA constituted a Fifth Amendment taking of property. The decision did not address questions about the validity of the RHS prepayment restrictions or on the validity of the owner's Fifth Amendment taking claim. Thus, the RHS prepayment restrictions, codified in 7 C.F.R. Part 1965, Subpart E (2002), remain in effect fully and owners and RHS must continue to abide by them. ■

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[10]HUD provides housing discrimination complaint forms *at* www.hud.gov/complaints/housediscrim.cfm.

[11]*See* fn. 6 and accompanying text, *supra*.

[1]42 U.S.C. § 1472(c) (West 1994 and 2002 Supp.). The ELIHPA restrictions were extended by Congress in 1992 to projects financed after 1979 and prior to December 15, 1989. *See*, 42 U.S.C. § 1472 (c)(1)(A)(i) (West Supp. 2002). Projects financed after December 15, 1989, are restricted from prepayment during the term of the mortgage. See *Id.* § 1472(c)(1)(B) (West 1994).

Amici Brief Filed in California Voucher Eviction Case

Background

The California legislature amended the California Civil Code with a provision, which became effective January 2000, that requires landlords that have entered into governmental contracts or recorded agreements that have rent limitations who seek to terminate or not renew the contracts or agreements to give a 90-day written notice to the tenant.[1] During the 90-day period, the tenant's portion of the rent cannot be increased.

The focus of this legislation was Section 8 voucher tenancies. Housing advocates throughout California have taken steps to enforce the statute by requiring that Section 8 voucher landlords provide tenants with a 90-day notice if they are terminating a voucher tenancy for no cause. Landlords have argued that the 90-day notice provision is only applicable in jurisdictions with rent control. Housing advocates have responded and successfully defended voucher lease terminations in non-rent-control jurisdictions for owner's failure to provide the 90-day notice.[2] In addition, many PHAs in both rent control and non-rent-control jurisdictions have advised voucher landlords and voucher participants of the applicability of the 90-day notice provision.[3] Significantly, the City Attorney of Napa also opined that the 90-day notice provision was applicable in Napa County, a non-rent-control jurisdiction.[4]

Landlords throughout the state have complied with the statute not only because the law requires it but also because it is good business practice to provide lease-compliant tenants with sufficient notice to relocate. Providing the 90-day notice does not harm the landlord, as the tenant is required to continue to pay the tenant's share of the contract rent during the notice period. Moreover, failure to pay the tenant rent could result in an eviction for nonpayment of rent.

[1]California Civil Code §1954.535 states that

> Where an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated, for 90 days following receipt of the notice of termination of [sic] nonrenewal of the contract.

For additional background on the legislation, visit our Web site at www.nhlp.org and click on "Section 8" for a packet of information.

[2]*See e.g., Reece v. Colbert*, CA No. 166734 9 (Sup. Crt. Kern Cnty, March 27, 2001); *Clover v. Nava*, CA No. 22511M (Superior Crt. Plumas Cnty, Dec. 27, 2001) and *Anza Management Company v. Annette Osborne*, Case No. 01U00296 (Superior Crt L.A. County of Los Angeles, Minute Order March 28, 2001) *available at* www.nhlp.org.

[3]*See* list of PHAs that inform landlords of the 90-day notice obligation *at* www.nhlp.org and the additional PHAs listed in the Brief of Amici.

[4]City of Napa Inter-office Memorandum from Thomas B. Brown, City Attorney to Don Dehorn, Housing Program Coordinator, August 8, 2000.

Wasatch Property Management v. Degrate

Syriah Degrate, a tenant residing in San Diego with six other family members, was served with a 30-day notice on March 2, 2001. When she did not move out, an eviction action was filed against her. She raised several defenses, including the failure to provide a 90-day notice and alternately the failure of the landlord to send a 30-day notice specifying good cause to terminate her tenancy. The trial court ruled against the tenant on both issues.[5] The appellate division of the Superior Court agreed with the trial court that a 90-day notice provision was not applicable to the defendant's tenancy because it was in a non-rent-control jurisdiction. However, it did hold that the trial court erred on the 30-day notice determination, ruling instead that the owner's notice was defective because it failed to specify good cause.[6] The parties' application for a certification to the California Court of Appeals, 4th Appellate District, was granted to resolve both issues: whether a landlord must give a 30-day good-cause notice and whether the 90-day notice provision applies in non-rent-control jurisdictions.[7]

A brief in support of Ms. Degrate was filed in early June by several friends of the court, which include Housing Rights, Inc., a fair housing agency serving two northern California counties, the Coalition for Economic Survival, a low- and moderate-income membership organization serving the greater Los Angeles area, and Annette Osborne, a voucher recipient.[8] The brief supported the claims that the tenancy could not be terminated without a notice of good cause and that the California Civil Code required a 90-day notice of lease termination in non-rent-control jurisdictions.

90-Day Notice Argument

With respect to the 90-day notice provision, the Brief of Amici argued that the plain language of the statute provides that it is applicable in both rent control and non-rent-control jurisdictions. Alternatively, Amici argued that the legislative intent, as reflected in the legislative history of California Civil Code section 1954.535, supports its application in both rent control and non-rent-control jurisdictions. Finally, Amici argued that public policy favors enforcing the 90-day provision in non-rent-control jurisdictions because it will not decrease the supply of rental housing available to Section 8 tenants in those jurisdictions. In support of this argument, Amici looked at available data and concluded that the utilization rate for the voucher program in jurisdictions for which the PHA was advising landlords to comply with the 90-day notice statute was high. Finally, Amici also argued that a 90-day notice was essential in California because of its tight housing market, which prevents tenants from quickly finding and leasing units.[9] In April 2000, the California vacancy rate was 5.8 percent and vacancy rates in

[5]*Wasatch Property Management v. Degrate*, No. UC091642 (Superior Court, San Diego County, April 11, 2001).

[6]*Id.* Superior Court Case No. CA 775163, (Order, March 6, 2002).

[7]*Id.* (Order March 6, 2002).

[8]*Id. Brief of Amici Curae In Support of Appellant Syriah Degrate*, hereinafter Brief of Amici.

[9]*See Study Released on Voucher Success Rates*, 32 HOUS. L. BULL. 132 (May/

non-rent-control jurisdictions were just as low if not lower than vacancy rates in jurisdictions with rent control.[10]

The 30-Day Good Cause Issue

The Amici brief also supported the position of Ms. Degrate that a 30-day notice for cause was required for a termination of her tenancy, which was a continuing term after the initial term of the lease. Support for this argument is found in the Section 8 voucher statute and regulations, the tenant's lease and California law. The voucher statute and tenant's lease provide that a landlord may terminate a lease only for specified good cause which includes serious or repeated violations of the lease, violation of a law regulating tenant behavior, criminal activity, and alcohol abuse.[11] After the initial lease term, the owner may also terminate the tenancy based on business or economic reasons, for personal or family use of the unit, or for the tenant's failure to accept a new or revised lease.[12] The lease between the landlord and Ms. Degrate has the same requirements.[13] Thus the Section 8 statute, regulations and lease require the owner to provide notice of the grounds of termination.[14]

Ms. Degrate's initial lease was for six months and she held over, which under California law meant that the lease was renewed on the same terms and conditions. In accordance with Ms. Degrate's lease, the renewal was for a month-to-month term and the owner could terminate for economic and other reasons set forth in the Tenancy Addendum. In accordance with these provisions, Ms. Degrate argued that the landlord was bound by the good cause requirement. To get out from under that requirement, the landlord had two options: to offer her a new lease without a good cause provision at the end of the monthly term or to serve her with a 30-day notice changing the terms of the tenancy. The owner failed to do either and as a result he could not terminate Ms. Degrate's tenancy without specifying good cause.

Conclusion

The Degrate case is pending before the California Appellate Court, 4th District, and will most likely be heard some time during the summer of 2002. The 90-day notice issue is unique to California because it is based wholly upon a state statute. In contrast, the 30-day notice for good cause argument may be relevant in other states depending upon how local law and federal law interrelate. ■

June 2002) (study concluded *inter alia* that it is taking voucher holders a longer time to find units).

[10]The April 2000 U.S. Census Bureau Data can be found at http://housingadvocates.org/pdf/q/big-census.pdf.

[11]42 U.S.C. §1437f(o)(7)(C), (D) (West Supp. 2001); 24 C.F.R. §982.310 (2001).

[12]24 C.F.R. §982.310(d) (2001).

[13]Tenancy Addendum, ¶ 8(b), (c), (d) (owner may terminate the lease "during the initial lease term or any extension term" only for specified reasons). This Tenancy Addendum, in pertinent part, is virtually identical to the form Tenancy Addendum published by HUD for use in the voucher program; *see* Form HUD-52641 (3/2000) Part C of HAP Contract: Tenancy Addendum, *available at* www.hudclips.org.

[14]24 C.F.R. § 982.310(e); 42 U.S.C.A. § 1437f(o)(7)(E) (West Sup. 2001)(Tenancy Addendum, ¶ 8(f)).

Residents State a Cause of Action for PHA's Violations of Affirmative Fair Housing Duties Under QHWRA

In the fall of 2001, Florida Legal Services, the Florida Justice Institute, Carlton Fields, LLP, and the National Housing Law Project filed suit against Miami-Dade County and the Department of Housing and Urban Development (HUD). The suit, *Reese v. Miami-Dade County*,[1] was brought on behalf of public housing residents, waiting list families, and a community organization,[2] and challenged plans to redevelop the Scott Homes and Carver Homes public housing under a fiscal year 1999 HOPE VI revitalization award.[3] Plaintiffs raised a number of claims, including a claim against the County for failure to discharge its affirmative fair housing duty under the *Quality Housing and Work Responsibility Act of 1998* (QHWRA).[4]

A recent ruling by the district court in Reese denied the County's FED. R. CIV. P. 12(b)(6) motion to dismiss residents' affirmative furtherance of fair housing claim, rejecting the County's argument that the *Civil Rights Act* (Section 1983)[5]

[1]Case No. 01-3766 CIV-Highsmith/Garber (S.D.Fl. 2001).

[2]The district court has dismissed claims raised by waiting list plaintiffs and the community group on standing grounds. *See Reese v. Miami Dade County*, Case No. 01-3766 CIV-Highsmith/Garber, Order (May 24, 2002) (Highsmith, J.).

[3]*See* Pub. L. No. 105-276, Tit. II (Oct. 21, 1998) (fiscal year 1999 HOPE VI appropriation); 42 U.S.C.A. § 1437v (West Supp. 2001) (Section 24 of the *U.S. Housing Act*). For further information on HOPE VI, *see* NHLP, et al, *False HOPE: A Critical Assessment of the HOPE VI Public Housing Redevelopment Program* (Jun. 2002), *available online at* www.nhlp.org/html/pubhsg/FalseHOPE.pdf.

[4]42 U.S.C.A. § 1437c-1(d)(15) (West Supp. 2001). A similar claim has been raised by Judith Liben and Amy Copperman of the Massachusetts Law Reform Institute in the pending case of *Langlois v. Abington Housing Authority*, 207 F.3d 43 (1st Cir. 2000). Plaintiffs in *Reese* also challenged the County's HOPE VI plans as racially motivated and, regardless of intent, denying housing opportunities to African Americans and families with children on a disparate basis. For further discussion of these legal theories, *see* NHLP, *Fair Housing Litigation to Prevent the Loss of Federally Assisted Housing: The Duties of Public Housing Authorities and Project Owners, Part One: Federal Fair Housing Law*, 31 HOUS. L. BULL. 73, 73-86 (Apr. 2001); NHLP, *Fair Housing Litigation to Prevent the Loss of Federally Assisted Housing: The Duties of Public Housing Authorities and Project Owners, Part Two: Obtaining Data, Formulating Claims, Anticipating Objections*, 31 HOUS. L. BULL. 157, 157-71 (Jul./Aug. 2001). In addition, a claim was made against HUD for its failure to comply with its affirmative obligations to further fair housing under the *Fair Housing Act*, 42 U.S.C.A. § 3608(e)(5) (West Supp. 2001). Other claims were based on violations of the *Uniform Relocation Assistance and Real Property Acquisition Act*, 42 U.S.C.A. §4601 *et seq.* (West Supp. 2001), the *National Environmental Policy Act*, 42 U.S.C.A. § 4321 *et seq.* (West Supp. 2001), and Section 104(d) of the *Housing and Community Development Act*, 42 U.S.C.A. § 5304(d) (West Supp. 2001). For further discussion of issues relating to the Section 104(d) claim, *see* NHLP, *HUD Memo Attempts to Narrow CDBG and HOME Programs' One-for-One Unit Replacement Requirement*, 32 HOUS. L. BULL. 1, 13 (Jan. 2002).

[5]42 U.S.C.A. § 1983 (West Supp. 2001).

cannot serve as a means for residents to enforce relevant provisions of the QHWRA.[6]

The County's HOPE VI Redevelopment Plan for Scott and Carver Homes

The County's HOPE VI plan calls for the demolition of all 850 units of public housing on the Scott-Carver site. In their place, 80 units of rental public housing and 284 homeownership units of various kinds will be constructed.

At the time of application, the site was over 97 percent occupied. Nearly all (99 percent) of the families residing in the developments are African American, with a significant number of large, multigenerational families. Approximately 64,000 families are currently on the County's waiting list for admission to public housing.[7]

Plaintiffs' QHWRA Affirmative Furtherance of Fair Housing Claim

The QHWRA requires each public housing authority (PHA) to include a certification to HUD in its public housing agency plan that the public housing authority "will carry out the public housing agency plan in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, … and will affirmatively further fair housing."[8] Case law interpreting HUD's affirmative duty to further fair housing under the *Fair Housing Act* holds that this duty amounts to more than an obligation merely to refrain from engaging in discrimination.[9] At the very least, an affirmative duty to further fair housing requires an agency to have in place "an institutionalized method" for evaluating the fair housing implications of its actions and to use these procedures to inform the decisions it makes.[10] This involves the collection and consideration of specific "racial and socioeconomic" data.[11] The purpose behind fair housing affirmative duties is to counteract the historical tendency towards "bureaucratic myopia" on civil rights by requiring agencies to take into account the fair housing effects of their decisions with clear and open eyes.[12]

In *Reese*, plaintiffs based their affirmative furtherance of fair housing claims on the County's failure to consider the racial and socioeconomic effects of its HOPE VI plans — in particular, those effects relating to the loss of public housing, the displacement and relocation of current residents, and the exclusion of current residents from the new housing to be constructed with HOPE VI funds.[13]

The District Court's Fed. R. Civ. P. 12(b)(6) Ruling

The County challenged plaintiffs' affirmative furtherance of fair housing claim against it under Fed. R. Civ. P. 12(b)(6), arguing that the public housing agency planning provisions of the QHWRA do not establish a cause of action that may be enforced pursuant to Section 1983.[14] The district court rejected the County's argument and its motion to dismiss, that the relevant provision of the QHWRA creates a "federal right" enforceable under Section 1983.[15]

Although not directly relied upon, the district court's ruling is consistent with the Supreme Court's recent decision in *Gonzaga University v. Doe*.[16] Departing from long-held understandings, the Supreme Court in *Gonzaga* held that a statute may be enforced under Section 1983 only where the statute to be enforced contains clear "'rights-creating' language … showing … congressional intent to create new rights."[17]

The *Reese* plaintiffs' QHWRA claim against the County succeeds even under this new, more rigorous standard. In the QHWRA, Congress has expressly permitted Section 1983 actions under the circumstances in *Reese* — *i.e.*, situations in which private parties challenge a PHA's compliance with a public housing agency plan requirement. The QHWRA states that HUD is permitted to conduct a paper review of public housing agency plans submitted to it, but that such review "shall not preclude ... an action regarding such compliance under ... 42 U.S.C. 1983."[18]

Future Developments in Reese

The *Reese* plaintiffs have sought a preliminary injunction against the County to prevent it from proceeding with relocation and redevelopment activities pending final decision on the plaintiffs' claims. An evidentiary hearing on plaintiffs' motion for preliminary relief was held on May 22, 2002. A decision is expected sometime in the coming weeks or months. ■

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[6] *See Reese v. Miami Dade County*, 2002 WL 1496881, Case No. 01-3766 CIV-Highsmith/Garber, Order (Jul. 2, 2002) (Highsmith, J.). The district court also rejected the County's motion to dismiss the plaintiffs' Section 104(d) claim based on the County's failure to comply with Community Development Block Grant program one-for-one replacement and relocation requirements. *See id.* at 11-3. *See also* n. 4, *supra*.

[7] *See* Andrea Robinson, *Housing Agency Under Scrutiny Over Vacancies*, The Miami Herald, Jun. 2, 2002.

[8] 42 U.S.C.A. § 1437c-1(d)(15) (West Supp. 2001).

[9] *NAACP v. Secretary of Dept. of Hous. and Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987).

[10] *See Shannon v. U.S. Dept. of Hous. and Urban Dev.*, 436 F.2d 809, 821 (3rd Cir. 1970). *See generally* NHLP, HUD's *Fair Housing Duties and the Loss of Public and Assisted Units*, 29 HOUS. L. BULL. 1 (Jan. 1999) (discussing HUD's duties pursuant to 42 U.S.C. § 3608).

[11] *See id. See also Anderson v. City of Alpharetta*, 737 F.2d 1530, 1537 (11th Cir. 1984).

[12] *See id.* at 1535 (citing the legislative history of HUD's affirmative fair housing duties under the *Fair Housing Act*).

[13] A separate affirmative furtherance of fair housing claim was also raised against HUD. *See* n. 4, *supra*.

[14] See Order (Jul. 2, 2002), *supra* n. 6, at 9.

[15] S*ee id.* at 8-11.

[16] 112 S.Ct. 2268 (2002).

[17] *Id.* at 2277. *Gonzaga* essentially collapses the old test for determining whether a statute creates a "federal right" for Section 1983 purposes into the test for determining whether a private right of action may be inferred under a statute: "[I]f Congress wishes to create new rights enforceable under § 1983, it must do so in clear and unambiguous terms — no less and no more than what is required for Congress to create new rights enforceable under an implied private right of action." *Id.* at 2279.

[18] 42 U.S.C.A. §1437c-1(i)(4)(B) (West Supp. 2002).

Recent Housing Cases

The following are brief summaries of recently reported federal housing cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,[1] Lexis,[2] or, in some instances, the court's Web site.[3] Copies of the cases are not available from NHLP.

Edward Gray Apartments/Region Nine Housing Corporation v. Williams, 2002 WL 140626 (N.J. Super. A.D., July 2, 2002). The superior court reversed a lower court ruling denying a private landlord's motion for possession of the apartment of a Section 8 tenant who maintained two residences. The plaintiffs, managers of the Edward Gray (Gray) Apartments, sought to evict Norma Williams after she admitted to leasing one of their apartments with Section 8 voucher assistance while already receiving a Section 8 voucher to maintain another apartment. Ms. Williams acknowledged that her lease provided that she could be evicted in the event that she "knowingly (gave her) landlord false information" or maintained a residence besides the one receiving subsidies. The trial court established that Williams, while receiving a Section 8 voucher at one apartment complex, applied for and received a second apartment and voucher at the Gray Apartments. The court, however, refused to evict her on the grounds that she had relinquished the first apartment by the time the managers moved for possession. The trial court refused to find fraud because the original notice to quit the apartment did not specifically mention fraud, so to evict her on that basis would serve to deny her due process.

The appellate court reversed and granted the eviction. It ruled that Ms. Williams' maintenance of two apartments, which lasted two and a half years, constituted a material breach of her lease with the Gray Apartments. It dismissed her surrender of the first apartment as immaterial, because it only occurred after she was confronted. The court rejected the lower court's assertion that no fraud could be found by looking to provisions of the lease that mirrored a section of the HUD handbook's counter-fraud section. The court found that Williams' maintenance of two apartments was proof that her Edward Gray apartment was fraudulently secured and maintained, and that this constituted material noncompliance. The court therefore overruled the trial court and granted the plaintiffs' motion for possession.

Darst-Webbe Tenant Association Board v. Saint Louis Housing Authority, 202 F.Supp2d 938 (E.D. Mo., Dec. 14, 2001). The federal district court granted declaratory and injunctive relief to the Darst-Webbe Tenant Association Board (the Association) and halted elements of the Saint Louis Housing Authority's (SLHA) HOPE VI project. The Association's suit stemmed from SLHA's plan to use a HOPE IV grant to revitalize a complex of public housing apartments. The resulting renovations would not have provided one-for-one replacement of the low-income units and failed to provide housing for all the displaced low-income families. The Association filed suit against SLHA and HUD claiming the HOPE VI plans racially discriminated against the tenants and violated federal law by not providing each low-income tenant a replacement apartment. In all, it made 19 claims against HUD and SLHA.

Noting that the complaint was not artfully presented, the court dismissed 18 claims, finding that it either could not grant the relief requested or that summary judgment was appropriate for the defendants on the claims the court could discern. In the end, the only claim to which the court devoted significant discussion was the Association's claim that SLHA's attempt to use HOPE VI monies to demolish and reconfigure an apartment building that did not meet the stated criteria of the HOPE VI program was unlawful. The court found that neither SLHA nor HUD could offer any documentation that the apartment qualified as severely distressed and so it could not be modified with HOPE VI monies. The court therefore granted the Association declaratory relief and enjoined SLHA's planned modification of the structure.

Crest A Apartments LTD v. United States, 52 Fed. Cl. 607 (June 6, 2002). The Court of Federal Claims granted a motion for summary judgement filed by the United States, and dismissed a breach of a Section 8 Housing Assistance Payment (HAP) contract suit brought by the former owners of a Section 8 apartment complex. The former owners of the Crest A Apartments (Crest A) claimed that HUD breached the terms of the HAP contract when the department refused to grant the apartment's management permission to raise the rent. Crest A also claimed that HUD violated the terms of a provisional work-out arrangement when HUD failed to recast the mortgage and amortize the then-remaining debt over the remaining term of the original mortgage. HUD filed a motion for summary judgement for dismissal of the mortgage amortization claim, and both parties filed for summary judgement with regard to the HAP contract claim.

The court granted HUD's motion with regard to the mortgage amortization claim, finding that because Crest A signed the agreement in October 1985 and did not file its claim until October 1996, its claim was precluded by the statute of limitations. However, the court denied both parties' motions for summary judgement on the breach of the HAP contract claim. Crest A claimed HUD, despite repeated requests, never granted the contractually required rent increases, and HUD alleged it never received the requests. The court decided the disagreement constituted a genuine issue of material fact to be decided at trial and rejected both summary judgment motions.

[1]www.westlaw.com.

[2]www.lexis.com.

[3]For a list of courts that are accessible through the World Wide Web, see uscourts.gov/links.html (federal courts) and ncsc.dni.us/COURT/SITES/courts.htm#state (for state courts). See also www.courts.net.

Hill v. San Francisco Housing Authority, 2002 WL 1340306 (N.D. Cal. June 12, 2002). The federal district court dismissed the tenants' 42 U.S.C. § 1983 action seeking to hold the public housing authority liable for damages resulting from injuries and a death suffered by the household from a fire that had started in the public housing unit immediately below that of the plaintiffs. The plaintiffs' complaint alleged that the injuries and death were caused by the authority's failure to comply with several local and state health and safety codes and alleged that the authority had not complied with 42 U.S.C. §1437d(f)(2), its implementing regulations and the Fourteenth Amendment. The statute requires that HUD maintain public housing in a safe manner; the regulations state that public housing units must comply with local housing standards. The court held that Congress intended the statute and regulations to ensure that federal public monies are distributed to housing agencies that meet certain quality standards, rather than to ensure the residents' safety. Thus, the court concluded that the statute and regulations do not create a federal private right that can be enforced under Section 1983. The court also held that the statute and regulations are too vague and amorphous to create such a federal right because they involve thousands of jurisdictions' own housing standards, rather than a limited number of state standards or one federal standard which a court would have to deal with. Lastly, the court held that the Fourteenth Amendment claim also could not stand because the plaintiffs did not allege any claims that could be brought under that amendment and at best alleged a negligence claim against the housing authority. The court dismissed, therefore, dismissed all claims with prejudice and without leave to amend.

Velez v. Martinez, 2002 WL 1292921 (E.D. Pa. June 12, 2002). The federal district court maintained the level of compensation it had set for the receiver of the Chester, Pennsylvania Housing Authority. The court had set the receiver's compensation at $40 per unit per month, plus $5,000 per month for expenses. Subsequently, the per unit compensation was increased to $43.20 while the expense account was reduced to $2,500 per month. After an admittedly very successful receivership that was nearing its close, HUD moved to reduce the receiver's monthly compensation to $23.34 per unit per month with a cap of $405,020 per year. The court held that it would be unfair to "reward" the receiver by lowering his salary. It also noted that, although the receiver's responsibilities had shifted, he had taken on new duties such as managing and inspiring community economic development. The court did conclude, however, that the expense payments were no longer necessary, but left the receiver's compensation scheme intact, without an upper limit.

Oakwood Plaza Apartments v. Smith, 2002 WL 1408837 (N.J. Super. A.D. July 2, 2002). A New Jersey appellate court reversed a lower court decision that refused to apply the HUD one-strike eviction provision to a Section 8 tenant, remanding the case for further findings. The tenant, who was the head-of-household, had been convicted of a drug offense and left the unit. Another woman took legal custody of the tenant's children and moved into the unit with the children. The landlord brought an eviction suit against the tenant, and the children's new custodian intervened to stop it on behalf of the children. The lower court, recognizing an "innocent lessee exception" under New Jersey law, dismissed the case against the new occupant. The appellate court noted that the lower court decision had been entered prior to the Supreme Court's recent *Rucker* decision, 122 S.Ct. 1230 (2002) and suggested that it preempts New Jersey law. At the same time, the court noted that the one-strike policy does not mandate evictions but grants housing authorities the right to make the decision and that HUD had encouraged housing authorities to exercise their discretion in deciding when an eviction was necessary when tenants or household members engaged in criminal activity. Citing to the similarity of the Section 8 eviction law to the public housing law, the appellate court concluded that the *Rucker* reasoning was applicable to the Section 8 program and reversed the lower court's conclusion. However, because it also found that no administrative procedure exists under the Section 8 program to review the eviction, it concluded that the determination of whether the landlord had acted reasonably under the circumstances was left to the courts. Finding that the lower court reached no conclusions as to whether the landlord had exercised reasonable discretion in deciding to pursue the eviction, the appellate court remanded the case for further proceedings to determine whether the landlord considered issues such as the length of time the natural mother would be away from the housing and the number of times and circumstances under which she may return to visit her children.

Maryville Properties, L.P., v. Nelson, 2002 WL 1362987 (Mo. App. W.D. June 25, 2002) **(unpublished opinion).** A Missouri Court of Appeals concluded that Low Income Housing Tax Credits (LIHTC) were improperly considered as an added value to property appraisal under Missouri real estate tax law. The State Tax Commission had included the LIHTC in its appraisal of a Rural Housing Service Section 515 property that had been syndicated under the LIHTC program, thereby greatly increasing the appraised value and taxes on the property. The owners challenged that assessment, alleging that the LIHTCs were neither "real property," nor "tangible personal property" under Missouri law. After extensive analysis of the property interest and value created by the LIHTC, the court concluded that the value of the tax credits lies with the owner rather than with the property. Thus, the court reversed the commission's decision and remanded the case for a redetermination of the value of the property without the LIHTC. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD) and the Department of Agriculture's (USDA) Rural Housing Service (RHS) issued through June 30, 2002. 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 Web site 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 Federal Register Rules

67 Fed. Reg. 39,238 (June 6, 2002)
Nonprofit Organization Participation in Certain FHA Single Family Activities; Placement and Removal Procedures

***Summary*:** This final rule establishes regulatory placement and removal procedures for HUD's Nonprofit Organization Roster. The Roster lists nonprofit organizations that HUD has determined are qualified to participate in certain specified Federal Housing Administration (FHA) single family activities. These activities may include acting as a mortgagor; purchasing HUD's Real Estate Owned (REO) Properties (HUD Homes) at a discount; providing secondary financing; and imposing legal restrictions on conveyance as part of affordable housing programs. The establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds. This final rule follows publication of a September 17, 2001, proposed rule and takes into consideration the two public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without change.

Effective Date: July 8, 2002.

67 Fed. Reg. 40,774 (June 13, 2002)
Housing Assistance for Native Hawaiians: Native Hawaiian Housing Block Grant Program and Loan Guarantees for Native Hawaiian Housing

***Summary*:** The purpose of this interim rule is to implement HUD's Office of Public and Indian Housing (PIH) procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The Native Hawaiian Housing Block Grant Program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for the Native Hawaiian Housing Program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands.

Effective Date: July 15, 2002.

Comments Due Date: August 12, 2002.

67 Fed. Reg. 42,185 (June 21, 2002)
Housing Assistance for Native Hawaiians: Native Hawaiian Housing Block Grant Program and Loan Guarantees for Native Hawaiian Housing; Correction

***Summary*:** On June 13, 2002, HUD published an interim rule to implement HUD's Office of Public and Indian Housing (PIH) procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The preamble did not include the Federalism finding that was made for the rule. This notice provides that information.

HUD Federal Register Proposed Rules

67 Fed. Reg. 41,582 (June 18, 2002)
Tenant Participation in State-Financed, HUD-Assisted Housing Developments

Summary: HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover State-financed housing developments that receive assistance under certain HUD programs. However, the statutory right of tenants to organize includes those State-financed housing developments. This proposed rule would extend the protection of tenant organizations to include State-financed developments assisted under certain HUD programs. This rulemaking also proposed to make a minor technical correction to a citation in the existing tenant participation regulation, and to correct a mistaken cross-reference.

Comment Due Date: August 19, 2002.

67 Fed. Reg. 43,208 (June 26, 2002)
Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities

***Summary*:** This proposed rule would update the list of programs and statutory authorities for which other entities may assume HUD's environmental responsibilities, and make other changes to update the regulation on assumption of HUD's environmental responsibilities. Also, the proposed rule would make conforming changes to the affected environmental provisions contained in various program regulations.

Comment Due Date: August 26, 2002.

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

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

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

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

HUD Federal Register Notices

67 Fed. Reg. 41,255 (June 17, 2002)
Notice of Availability of HUD Information Quality Guidelines: Extension of Public Comment Period

***Summary*:** Through this notice, HUD is extending the public comment period on its draft guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public by HUD. These guidelines, referred to as HUD's "Information Quality Guidelines," are available for review and comment on HUD's website at www.hud.gov.

Comments Due Date: July 17, 2002.

67 Fed. Reg. 43,673 (June 28, 2002)
FY 2002 Super Notice of Funding Availability for HUD's Discretionary Grants Programs for Fiscal Year 2002; Technical Corrections

Summary: On March 26, 2002, HUD published its Fiscal Year 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. This document makes certain technical corrections and revisions to the Fair Housing Initiatives Program (FHIP).

Dates: The application due date of May 22, 2002 for applications submitted under the FHIP remains unchanged from the application due date as published in the Federal Register of March 26, 2002.

HUD PIH Notices

Notice PIH 2002-14 (HA) (June 7, 2002)
Housing Choice Voucher Program, Procedures for Voluntary Reduction of Baseline Units

***Summary*:** This Notice provides procedures for voluntary reduction of housing choice voucher baseline units which have not been leased up and utilized in the public housing agency (PHA) jurisdiction.

Expires: June 30, 2003.

Notice PIH 2002-15 (HA) (June 7, 2002)
Reinstatement – Notice PIH 2001-2 (HAs), Prohibition of Discrimination against Families with Housing Choice Vouchers by Owners of Low-Income Housing Tax Credit and HOME Developments

***Summary*:** This Notice reinstates Notice PIH 2001-2 (HA), same subject, indefinitely. Notice PIH 2001-2 (HA) expired January 31, 2002.

***Expiration Date*:** Indefinite.

FHA Mortgagee Letters

Mortgagee Letter 2002-14 (June 28, 2002)
HUD-PA-426 How To Avoid Foreclosure (May 2001) [sic]

Summary: This mortgagee letter is to advise all HUD approved lenders and their servicing managers that the "How To Avoid Foreclosure" brochure (May 1997) has been revised and updated as of May 2001 [sic].

Federal Housing Finance Board Federal Register Proposed Rules

67 Fed. Reg. 41,872 (June 20, 2002)
Affordable Housing Program Amendments

Summary: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the operation of the Affordable Housing Program (AHP) to authorize a Federal Home Loan Bank (Bank) to set aside annually an additional amount, up to the greater of $1.5 million or 10 percent of the Bank's annual required AHP contribution, to assist low- or moderate-income, first-time homebuyers under the Bank's homeownership set-aside program. This increased discretionary funding authority would supplement the Bank's current discretionary authority to fund homeownership set-aside programs subject to the $3 million or 25 percent allocation cap. Under the Bank's AHP contribution requirement for 2002, this increased funding authority would enable the 12 Banks to provide an additional $24 million to assist 2,400 to 4,800 additional low- or moderate-income, first-time homebuyers. This additional set-aside funding authority would complement national housing policy initiatives to broaden first-time homeownership, especially among minority and immigrant households and households living in rural areas and on Native American tribal lands.

Comment Due Date: August 19, 2002. ■

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