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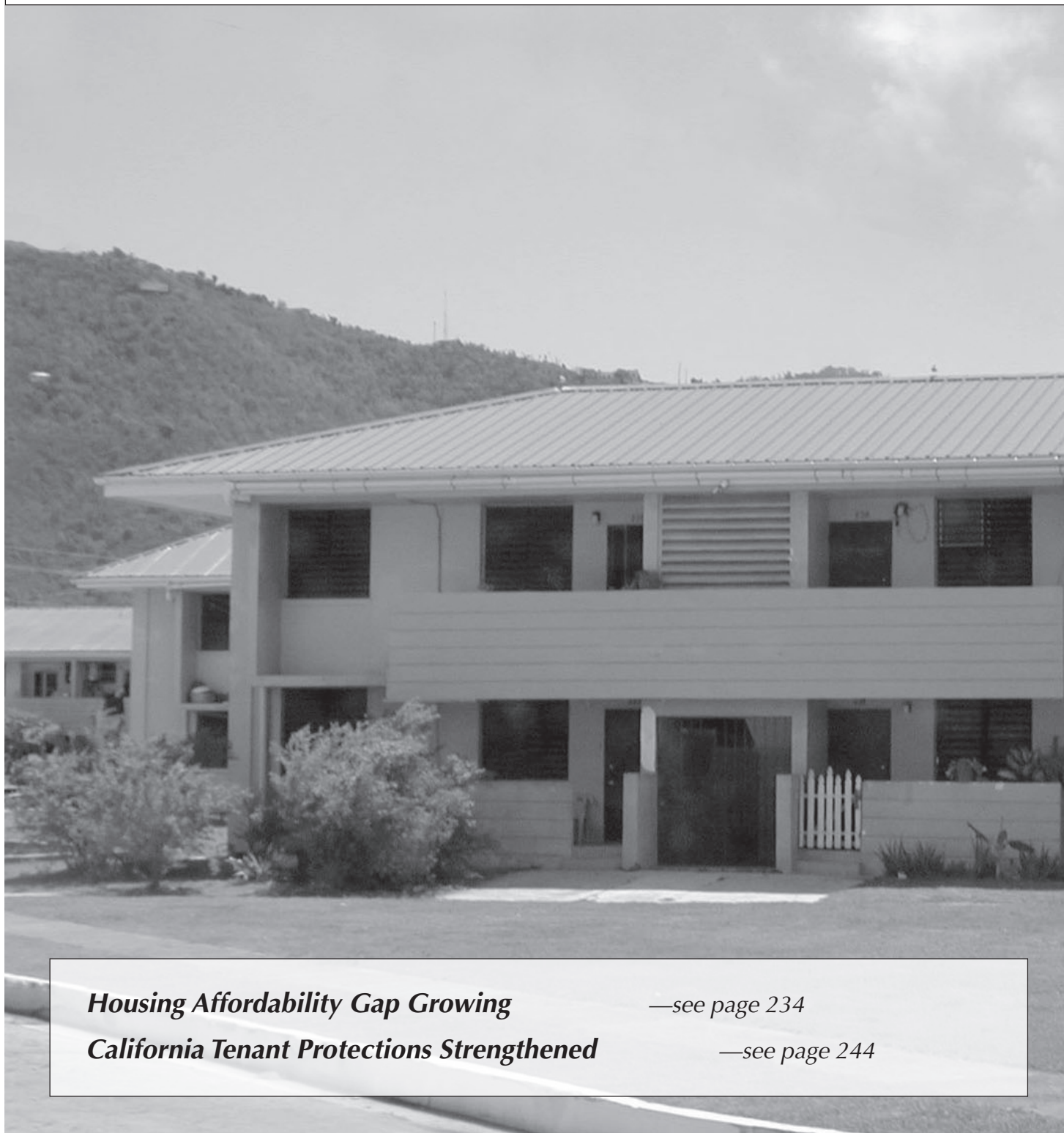


advancing housing justice

Housing Law Bulletin

Volume 32 • October 2002

Published by the National Housing Law Project



Housing Affordability Gap Growing

—see page 234

California Tenant Protections Strengthened

—see page 244

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Published by the National Housing Law Project
614 Grand Avenue, Suite 320, Oakland CA 94610
Telephone (510) 251-9400 • Fax (510) 451-2300
www.nhlp.org • nhlp@nhlp.org

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Cover photo:
Paul M. Pearson Gardens,
St. Thomas, Virgin Islands.

Photo courtesy Amy Siemens.

The *Housing Law Bulletin* is published 10-12 times per year by the National Housing Law Project, a California nonprofit corporation. Opinions expressed in the *Bulletin* are those of the authors and should not be construed as representing the opinions or policy of any funding source.

A one-year subscription to the *Bulletin* is \$150.

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

Housing Choice Voucher Homeownership Rules Revised

The current Department of Housing and Urban Development (HUD) voucher homeownership program allows eligible families to use federal Section 8 voucher assistance to make mortgage payments on their own homes.¹ On June 13, 2001, HUD published a proposed rule for a new downpayment assistance grant (DAG) program that would allow voucher holders to trade their monthly voucher payments for a one-time lump sum payment for use as a home purchase downpayment. At the same time, HUD also proposed several clarifications and changes to “streamline” the voucher homeownership program.² On October 18, 2002, HUD published final rules authorizing the DAG option and implementing the changes to the voucher homeownership program.³ The final rules, which become effective on November 18, 2002, vary from the proposed rule in several significant ways that will benefit voucher holders wishing to participate in either program. This article will summarize the final rules and discuss their ramifications on participating voucher holders.

Downpayment Assistance Grants

Implementation

Though the final regulations authorize PHAs to adopt local plans for a DAG program, they may not actually make grants under the program until HUD publishes a notice in the Federal Register. The delay in implementation is caused by the fact that HUD does not actually have appropriations for the DAG program. It anticipates to receive that authority when Congress enacts an appropriations bill for the current fiscal year, which started on October 1, 2002. Because of Congress’ inability to come to terms on all but two appropriations bills before it adjourned for the elections, such a bill is not anticipated until December at the earliest.

Grant Size

The maximum DAG is 12 times the difference between the payment standard and the total tenant payment, *i.e.*, 12 months’ worth of housing assistance payments.⁴

¹Public Law 105-276, Title V, § 501 *et seq.*, 112 Stat. 2518 (Oct. 21, 1998). The QHWRRA amended the *United States Housing Act of 1937* (42 U.S.C.A. 1437 *et seq.*). The homeownership option is authorized under § 8(y) of the *United States Housing Act of 1937*, 42 U.S.C.A. 1437f(y)(1)(B), as amended by § 555 of the QHWRRA. The Section 8 Homeownership Program became effective on October 12, 2000 and is codified in 24 C.F.R. §982.625 *et seq.* (2001). See 65 Fed. Reg. 55,134 (Sept. 12, 2000).

²66 Fed. Reg. 32,198 (June 13, 2001).

³See 67 Fed. Reg. 64,484 (Oct. 18, 2002). Public Law 106-569, Title III, § 301 *et seq.*, 114 Stat. 2944 (Dec. 27, 2000). The *American Homeownership and Economic Opportunity Act of 2000* amended §8(y) of the *United State Housing Act of 1937*, 42 U.S.C.A. 1437f(y)(7)(West Supp. 2000). The proposed rule was published on June 13, 2001, for public comment. See 66 Fed. Reg. 32,198 (June 13, 2001).

⁴67 Fed. Reg. 64,494 (Oct. 18, 2002). See also 24 C.F.R. §982.643(b) (2002).

Eligible Uses

Under the final rule, PHAs that choose to implement the DAG program may make a one-time grant that can be used, at the PHA's discretion, for *either or both closing and downpayment costs*. Use of the DAG for closing costs is a significant change from the proposed rule. The preamble to the proposed regulations made clear that use of the DAG for any fees or charges related to purchasing a home, including closing costs, would be prohibited.⁵ Now, if the PHA permits use of the DAG for closing costs, it must simply define in its administrative plan the types of reasonable and customary closing costs that may be paid under the program. In the event that a home is purchased with a Federal Housing Administration (FHA) insured loan, the closing costs must be consistent with the FHA program requirements.

Eligible Recipients

DAG assistance may only be extended to current voucher holders. Unlike the proposed rule, the final rule does not require that the applicant have been a voucher holder for a minimum period of time before becoming eligible for such assistance.⁶ HUD notes that eliminating that requirement could facilitate families' capacity to move "up and out" and become homeowners.⁷

A family that receives a DAG may not also receive monthly homeownership payments. In addition, a family that includes someone who ever received a DAG or mortgage assistance as an adult may not receive the other form of assistance.⁸

Ability to Return to Voucher Program

In the proposed rule, DAG recipients would have been permanently barred from the Section 8 voucher program. Under the final rule, however, a family may receive tenant-based assistance after receiving a DAG, but only as long as none of the family members own any interest in the home purchased with the homeownership assistance. In addition, 18 months must elapse between receipt of the DAG and receipt of tenant-based assistance.⁹

The final rule, thus, is far less harsh than the proposed rule when it comes to participants' utilizing the DAG option. However, if a DAG recipient decides that homeownership is not the right option, that participant would be barred from applying to the tenant-based voucher program again until 18 months after the DAG was provided. This outcome could, on occasion, yield harsh results.

⁵*Id.* at 32,199.

⁶67 Fed. Reg. 64,484 (Oct. 18, 2002). *See also* 24 C.F.R. §982.4(b) (2002). Note that PHAs may not offer DAGs until HUD publishes a notice in the Federal Register announcing that funds are available for this purpose.

⁷67 Fed. Reg. 64,486 (Oct. 18, 2002).

⁸*Id.* at 64,494. *See also* 24 C.F.R. §982.643(d) (2002).

⁹67 Fed. Reg. 64,484 (Oct. 18, 2002). *See also* 24 C.F.R. §982.643(e) (2002).

PHA Administrative Fees

Under the DAG program, PHAs will receive a special administrative fee equivalent to six months of their regular Section 8 administrative fee. This is a slight modification of the proposed rule, which would have given PHAs \$250 for each DAG. HUD rejected commentators' suggestion that a similar special fee be given to PHAs administering the homeownership option because administration of the DAG is less cumbersome. The commentators feared that PHAs will favor the DAG program over the homeownership program because of the fee and thus limit program participation to higher-income households who, unlike low-income participants, do not need monthly mortgage assistance payments.

A family may receive tenant-based assistance after receiving a DAG, but only if the family no longer has any interest in the home and 18 months have elapsed since receipt of the DAG.

HUD justified the special DAG fee on the ground that the program entails more than simply making a payment for a downpayment or closing costs. Homeownership counseling is mandatory for DAG recipients and the PHA may establish financing requirements as it would for the monthly mortgage option. Of great importance is the fact that HUD expects PHAs to make the same effort to ensure that DAG recipients receive appropriate financing as they would for other homeownership participants. PHAs should disapprove proposed financing when the terms are unaffordable or contrary to other financing requirements and safeguards established by the PHA.¹⁰

Although HUD does not explain it in the preamble to the regulations, PHAs administering the DAG program will not receive ongoing administrative fees under the voucher once the grant is extended. Under the monthly homeownership program, the PHA's administrative fee continues as long as the participant receives monthly payments. Some PHAs, however, believe that the added burden of the homeownership program, including the need to bring together a variety of community and other organizations to assist with counseling and financing, justifies additional administrative funding for that program and that the lack of that funding discourages their participation in the program. Hence, there is a strong belief that PHAs will favor the DAG program over the homeownership option.

¹⁰67 Fed. Reg. 64,488 (Oct. 18, 2002).

2002 Housing Justice Network Meeting December 8-9

Pre-HJN Meeting Housing Training December 7

Make all your reservations now!

The 2002 meeting of the Housing Justice Network (HJN) is scheduled to take place on Sunday and Monday, December 8 and 9, in Arlington, Virginia (Washington, D.C. area). The HJN meeting will be preceded by a one-day training event, set for Saturday, December 7, on recent developments in federal housing law (Public Housing, Voucher, and the project-based Section 8 programs).

The HJN meeting and the pre-meeting training will be held at the Hilton Hotel, located at 2399 Jefferson Davis Highway (near the D.C. National Airport), Arlington, VA 22202. Special room rates for the training event and the HJN meeting are \$99 for single or double occupancy per night. Room reservations must be made directly with the hotel. To receive the special rates, **RESERVATIONS MUST BE MADE ON OR BEFORE NOVEMBER 13, 2002**. The hotel phone number is (703) 418-6800. **When making reservations, make sure to mention that you are making a reservation for the National Housing Law Project/Housing Justice Network Meeting.**

The purpose of the 2002 HJN meeting is to focus the activities of the various HJN working groups on the recent changes to the federal housing programs, particularly those made to the Public Housing, Certificate and Voucher, and Section 8 programs, and to discuss how advocates can continue to represent low-income clients' interests in light of those changes and in light of the November elections, which will precede the meeting by a month.

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

NHLP will be offering a separate one-day training event on the federal housing programs immediately preceding the HJN meeting. We expect that the training will facilitate the HJN meeting by providing advocates an opportunity to learn about the program changes in detail prior to the meeting and, as a result, to be better prepared to participate in the HJN discussions.

The HJN meeting registration fee is \$325 and includes two lunches, break refreshments and conference materials. For legal service organizations who are paying for clients to come to the meeting a discount of \$100 is available for the client's registration.

The one-day training registration fee is \$150 for persons who do not attend the HJN meeting. The registration fee includes a lunch and training materials. Persons who attend both the pre-HJN training event and the HJN meeting may register for both events for \$425. (For clients whose costs are being paid by a legal services program the combined registration fee is \$325.) The registration deadline for the meeting and the training is Wednesday, **November 6, 2002**. **Registrations received by NHLP after November 6 will be charged a \$150 late fee for the meeting and a \$50 late fee for the training.** Registration checks should be made payable to the National Housing Law Project and sent to our Oakland office at 614 Grand Avenue, Suite 320, Oakland, CA 94610.

A detailed announcement setting out the meeting, training agendas and registration forms are available from our Web site, www.nhlp.org. If you need additional information, call NHLP at (510) 251-9400, ext. 111 or e-mail us at nhlp@nhlp.org.

Homeownership Options as Reasonable Accommodation

As under the prior rules, PHAs continue to have the discretion as to whether or not they will offer homeownership assistance but must offer either form of homeownership assistance as a reasonable accommodation for a person with a disability. HUD has added language to its rules explaining that it is the sole responsibility of the PHA to determine whether implementing a homeownership option as a reasonable accommodation is reasonable. That determination must be based on the specific circumstances and needs of the person with a disability. The regulations state that a PHA that is not otherwise offering homeownership may determine that it is not reasonable to do so as a reasonable accommodation.¹¹ The converse of that language is that not operating a homeownership program does not automatically make it reasonable to deny the homeownership option to a person with disabilities. Thus, the final rule does not alter the PHA's duties or the parameters around its determinations. Moreover, housing and disability advocates should not interpret the regulatory provision granting discretion to PHAs to determine whether extending a homeownership option to a household with a member who has a disability as precluding judicial review of the issue.

Modifications to Existing Homeownership Program

Recapture

In accordance with the proposed rule, the final rule removes the recapture of subsidy upon sale provision that was attached to the homeownership program. Moreover, it does so retroactively. Thus, any homes that were previously purchased and made subject to subsidy recapture are now freed from the requirement and any documents imposing the requirement are now unenforceable.¹²

Welfare Assistance and the Elderly and Disabled

The discussion of the final rule clarifies that in determining whether elderly or disabled families meet minimum income requirements for the homeownership program, the welfare assistance of the adult members of the family *who will own the home* is counted. Welfare assistance to other household members will not be included in the determination. No change was made to the regulatory language on this topic.¹³

Revised Minimum Income Standard for Disabled Families

In the proposed regulations, HUD offered to allow PHAs to set minimum income eligibility standards higher than the federally prescribed standard, which is \$10,300 (2,000 hours times the federal minimum wage of \$5.25/hour). In so doing, HUD had reacted to complaints from PHAs that the

income limit was unrealistically low. Some commentators to the regulations felt that it was unnecessarily high, particularly for disabled families who often could not meet that standard if their only source of income was federal disability payments. The final rule addresses the latter concern by establishing a separate minimum income standard for disabled families, which is the monthly Federal Supplemental Security Income (SSI) for an individual living alone (or paying his/her share of food and housing costs) times 12 (months).¹⁴ As of January, 2003, the SSI amount for a single person will be \$552 per month.¹⁵

The voucher program provides low-income people with a disability a real opportunity to own a home. Home sale prices are still relatively reasonable compared to residents' monthly income in various parts of the country. The homeownership voucher subsidy is for life for disabled and/or elderly participants, which strengthens their buying power considerably. In addition, the secondary mortgage market supports loan products for people with disabilities and the elderly. With this combination of factors, it is particularly important that voucher holders with disabilities not be excluded from the homeownership option, and the change to the final rule is a significant step towards inclusion.

Minimum Income Requirements for Non-Disabled Families

For non-disabled families, the final rule attempts to take into account opposing comments and concerns by allowing PHAs to establish a minimum income that is higher than the \$10,300 limit which was established under the prior rules. However, even if a PHA adopts a higher income limit, a family that meets the federal minimum income requirement may still participate in the homeownership program if it demonstrates that it has been pre-qualified or pre-approved for financing.¹⁶ This may be particularly easy for rural residents who could qualify for Rural Housing Service homeownership loans under that agency's subsidized single family loan program.¹⁷

In point of practice, the voucher holder may need to go through a homeownership counseling and credit clean-up program before a lender will offer pre-qualification or pre-approval. PHAs should still refer voucher holders meeting the federal minimum income requirements to homeownership counseling services approved under the homeownership program, just as they would have under the prior regulations.

New Construction as Eligible Housing Type

Under the prior regulations, the homeownership option could be used to purchase a home only if it was "under construction" (*i.e.* the footings or foundation of the home have been poured) at the time the purchaser qualified for the

¹⁴*Id.* See also 24 C.F.R. §982.627(c)(1)(i) (2002).

¹⁵See *SSI Payment Amounts*, Social Security Administration, (October 18, 2002) at www.ssa.gov/OACT/COLA/SSI.html.

¹⁶67 Fed. Reg. 64,485 (Oct. 18, 2002). See also 24 C.F.R. §982.627(c)(1)(ii) and §982.627(c)(3) (2002).

¹⁷See 42 U.S.C.A. § 1472 (West Supp. 1994).

¹¹*Id.* at 64,484. See also 24 C.F.R. §982.625(d) (2002).

¹²67 Fed. Reg. 64,485 (Oct. 18, 2002). See also 24 C.F.R. §982.625(h) (2002).

¹³67 Fed. Reg. 64,485 (Oct. 18, 2002).

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.

voucher program.¹⁸ Concerns were raised about this requirement because it could limit homeownership opportunities for some families, particularly those participating in “sweat equity” programs like the Rural Housing Service’s Self Help Housing Program.¹⁹ The final rule does not change the construction requirement but does postpone the time that the unit must be under construction. Specifically, it now requires that the unit be under construction when the voucher holder enters into a purchase contract.²⁰ Thus, a person can now qualify for the voucher program and thereafter enter into a contract to purchase a unit whose footers or foundation have been poured. This substantially lessens the risk for contractors who may want to participate in the homeownership program since the “potential purchaser” will have already been approved for the homeownership program at the time that they construct or pour the footers.

Homes on Leased Land

The final rule permits the purchase of homes on leased land. In alignment with that change, land lease payments are now included in the list of authorized homeownership expenses in the regulations. The only qualifications are that the lease must allow the purchasing family to remain on-site for a minimum period of 40 years, and the home must have a permanent foundation. This increase in term to 40 years is intended to conform the homeownership rule to FHA mortgage insurance program lease requirements and to the practice of the manufactured home lending industry.²¹

This revision expands the homeownership option to include land trusts, which could be of tremendous significance, in particular, for Native Americans wishing to use the voucher homeownership option on a reservation where the land is held in trust.

Disapproval of Seller

The final rule clarifies the ability of PHAs to disapprove sellers under the voucher homeownership program for all the reasons that a PHA may disapprove an owner under the voucher rental program. There may have been uncertainty under prior regulatory language as to its authority to do so under the homeownership option.²²

Conclusion

The final rules adopted for the DAG and the homeownership option are a significant improvement over the proposed regulations. Advocates may still question the overall desirability of the DAG program, particularly for low-income households who need the monthly mortgage assistance to a

¹⁸24 C.F.R. §982.628(a)(2) (2001).

¹⁹Referred to by HUD as “Rural Housing Service Mutual Self-Help Housing Loan Program.” 66 Fed. Reg. at 32,200 (June 13, 2001).

²⁰67 Fed. Reg. 64,485 (Oct. 18, 2002).

²¹*Id.* See also 24 C.F.R. §982.628(b) (2002).

²²67 Fed. Reg. 64,485 (Oct. 18, 2002).

greater extent than a downpayment, which may frequently be secured from other sources, because of its potential displacement of the homeownership option. However, the fact that the DAG no longer permanently disqualifies a family from participation in the voucher program is a welcome change. Similarly, several of the changes in the homeownership option, such as the elimination of the recapture provision, substantially improve the homeownership option and should be welcomed by most participants. Hopefully, PHAs will not restrict access to the program by substantially increasing the program’s income eligibility guidelines. ■

Housing Affordability Gap Growing Broader and Deeper

For the fourth year in a row, the National Low Income Housing Coalition (NLIHC) has found in its report on income and rental housing¹ that in no United States jurisdiction can minimum-wage workers afford the Department of Housing and Urban Development (HUD) established Fair Market Rent (FMR) for homes in their communities. To afford the U.S. median FMR for a two-bedroom rental house or apartment, a worker would have to earn a housing wage² of \$14.66 per hour, nearly three times the federal minimum wage. In 75 percent of states, the housing wage is more than twice the prevailing minimum wage,³ according to the NLIHC report, which is titled *Rental Housing for America’s Poor Families: Farther Out of Reach Than Ever*.

Out of Reach is a side-by-side comparison of wages and rents in every county, Metropolitan Statistical Area (MSA), combined non-metropolitan area and state in the country. Based on data from the U.S. Census Bureau and HUD, the report is a useful tool for those documenting housing need. NLIHC has supplemented the report with a Web page that will generate rent, income and affordability statistics for any area in the country, and allows selection of multiple areas for comparison.⁴

¹*Rental Housing for America’s Poor Families: Farther Out of Reach Than Ever* (2002) is available from NLIHC on the organization’s Web site at www.nlihc.org. A printed version can be secured by calling (202) 662-1530 x245.

²The housing wage refers to the hourly wage needed to afford a two-bedroom apartment with rent set at the local HUD-approved Fair Market Rent within 30 percent of household income. Generally, HUD Fair Market Rents are established by a survey of local rents which excludes newly constructed housing and is set at 40 or 50 percent of the average rent determined by the survey. Because the survey is reviewed and approved by HUD prior to its annual publication of local Fair Market Rents, the rents typically lag local conditions by as much as six months.

³The report notes that some states have adopted their own minimum wage, and it accounts for those differences.

⁴<http://nlihc.org/oor2002/index.htm>.

The federal minimum wage has remained at \$5.15 per hour since 1997, which, in constant dollars, is 70 percent less than the minimum wage of 1968 was worth at the time. Today, a worker earning minimum wage would have to work nearly 120 hours per week to afford the median FMR for a two-bedroom rental unit. Alternatively, a household must have the equivalent of three minimum-wage workers to afford the rent.

For 45 million elderly and disabled people who depend on SSI as their main source of income, monthly SSI payments are set at \$545, which does not come close to making rental housing affordable anywhere in the country.

In more expensive areas of the country, housing is even less affordable to low-wage workers. Four California counties have a housing wage that is more than five times the minimum wage, even after the California minimum wage is taken into account. The housing wage needed to afford a two-bedroom unit in San Francisco is \$37.31 per hour. A San Francisco family with two minimum-wage workers would be unable to afford a two-bedroom apartment even if each worked two-and-a-half full-time jobs. In Boston, the housing wage is \$25.83 per hour and a minimum-wage worker would have to work over 153 hours per week to afford a two-bedroom apartment. These daunting numbers result despite the higher minimum-wage laws enacted in Massachusetts and California, setting the rate at \$6.75 per hour, or \$1.50 more than the federal minimum wage.

With few exceptions, the affordability gap is growing. Of the more than 3,700 local jurisdictions examined, which included every county in each state plus the District of Columbia and Puerto Rico, the housing wage increased in all but three. On average, the increase was 5 percent from 2001 to 2002, and 18 percent since 2000.

Far worse is the gap between income and housing costs for 45 million elderly and disabled people who depend on Supplemental Security Income (SSI) as their main source of income. Monthly SSI payments are set at \$545 by the federal government (some states supplement the program), which does not come close to making rental housing affordable anywhere in the country. West Virginia has the smallest gap of affordability, where SSI recipients can afford just one-third of the FMR. In Massachusetts and New Jersey, SSI benefits cover only 18 percent of the FMR.

"We look forward to the day when we can report that the housing wage is decreasing and the gap between rents and incomes is narrowing," said Sheila Crowley, president of NLIHC. "Unfortunately for millions of low-wage people in America, 2002 is not that year." ■

Usual Waiting Game for HUD Appropriations Brings New Twists

With a higher dose of paralysis than customary, Congress adjourned on October 18, 2002 without completing action on almost all of its appropriations bills, including those funding HUD housing programs and related activities for the Fiscal Year (FY) 2003 beginning October 1. Instead, Congress has passed a half-dozen Continuing Resolutions to keep the government running. The most recent of these passed both chambers on October 16, was signed by the President two days later, and keeps most federal activities operating at FY 2002 levels until November 22, 2002, one week after Congress is scheduled to reconvene following the mid-term elections.¹

During the period that they are in effect, these continuing resolutions provide funding for FY 2003 at a pro-rata share of the FY 2002 funding level for almost all HUD programs on the same "authority and conditions" and "in the [same] manner" as provided in the FY 2002 Act.² Effectively, this language extends various administrative provisions from the FY 2002 law, such as the general suspension of the public housing community service requirement, and the requirement that HUD maintain project-based contracts when disposing of properties for the elderly or people with disabilities, until a new FY 2003 appropriations bill or continuing resolution is enacted.

While the House Appropriations Committee recently reported out its version of the HUD-VA-IA appropriations bill for FY 2003, the Senate's bill (S. 2797),³ marked up in committee months ago, has awaited floor action since July. The Senate has not yet adopted any budget resolution, with substantial differences between the Democrats, who want more funds for domestic social programs, and the Administration. With the proximity of a mid-term election determining control of both the Senate and the House, neither side appears interested in a compromise, so action on both the overall budget and the individual spending bills will not occur at least until after the election.

The House bill, H.R. 5605, was marked up in the subcommittee on October 7 and in full committee on October 9.⁴ It would appropriate \$31.35 billion in budget authority for HUD in FY 2003, a slight increase over the \$31.15 billion level for FY 2002. This total is slightly less than the President's request for FY 2003 of \$31.4 billion, and the Senate Appropriations Committee's proposed level of around \$32.1 billion. Yet the House bill would provide more funds than the

¹Pub. L. No. 107-244 (Oct. 18, 2002) (HJ Res. 123, the Sixth Continuing Resolution, amending Pub. L. No. 107-229 to insert a new expiration date of Nov. 22, 2002).

²Pub. L. No. 107-229 (Sept. 30, 2002) (HJ Res. 111, the First Continuing Resolution), §§ 101, 103, referring to Pub. L. No. 107-73 (Nov. 26, 2001) (the FY '02 HUD-VA-IA Appropriations Act).

³S. Rep. No. 222, 107th Cong. 2d Sess. (July 25, 2002).

⁴H. Rep. No. 740, 107th Cong. 2d Sess. (Oct. 10, 2002).

Administration's budget request for several major housing programs, including both public housing capital and operating funds, Section 202 elderly housing, Section 811 housing for the disabled, HOME, and homeless assistance. However, these modest House increases are made possible by some new budgetary wizardry causing potential problems for the Section 8 voucher program operated by public housing authorities (PHA) nationwide.

But first a look at the proposed funding levels for major programs:

- The Public Housing Capital Fund: \$2.84 billion, the same as FY 2002, contrasted with the President's requested 15 percent cut to \$2.43 billion.
- The Public Housing Operating Fund, \$3.6 billion, more than \$100 million over FY 2002.
- HOPE VI, \$574 billion, the same as last year, but these funds would remain available for an extra fiscal year, through September 30, 2004.
- The Section 8 Housing Certificate Fund for renewals of both project-based and vouchers, \$16.6 billion.⁵
- The Community Development Fund, \$5 billion, with \$4.58 billion for Community Development Block Grants (CDBG).
- Rural Housing and Economic Development program, \$25 million, over the Administration's request for no funding.
- The HOME program, \$2.22 billion, including \$200 million for the President's homeownership downpayment initiative.
- Homeless Assistance Grants, \$1.25 billion, \$127 million more than FY 2002 and \$120 million over the Administration's budget request, allegedly enough to cover expiring Shelter Plus Care contracts.
- Section 202 program for Supportive Housing for the Elderly, \$791 million.
- Section 811 program for Supportive Housing for People with Disabilities, \$259 million.
- Emergency Food and Shelter program, \$153 million, retained under the Federal Emergency Management Agency.

⁵The House would fund 7,110 incremental vouchers at a cost of \$36 million, reserved for disabled non-elderly tenants affected by designation of public and assisted housing for elderly occupancy. It would also create a new central reserve fund of \$280 million within the Housing Certificate Fund intended to provide PHAs with additional vouchers, including new incremental vouchers, if funds are available. However, because the new method for determining voucher renewal funding probably ignores most recent new incremental vouchers, this new reserve fund may well already be spoken for.

Enabling these modest House improvements in funding levels is a major change to the funding of voucher renewals that would apparently produce an eventual contraction of the program and impede further progress on recent voucher utilization initiatives. The new renewal funding method for each PHA proposed by the bill would be based on voucher units leased based on end-of-year financial statements available, adjusted by an inflation factor. Because there is a substantial lag in the availability of financial statements and since cost inflation factors in rapidly changing housing markets are hard to establish, PHAs may well receive less than they need to run their voucher programs at current levels. In addition, this uncertainty concerning reimbursement for current costs would naturally diminish any PHA incentives to increase voucher utilization if they would cost additional funding.

PHAs may well receive less than they need to run their voucher programs at current levels, which would naturally diminish any PHA incentives to increase voucher utilization.

While the House appropriators believe that this change would finally end the annual exercise of identifying, recapturing and possibly rescinding Section 8 voucher funds, the result may be that PHAs will reduce voucher payment standards and require tenants to pay more, or otherwise reduce their programs. Over time, if this is how PHAs respond, a downward spiral could occur, as Congress would provide reduced funding for renewals under the new method, and the behavior could then be repeated, contracting the program significantly.⁶ Some estimates are that this change would produce a near-term contraction of approximately 150,000 fewer vouchers, nearly 10 percent of the program.

Possibly the House could consider the bill in a lame duck session after the November elections. Another plausible scenario is that the appropriators from the House and Senate could negotiate a compromise of their current bills and fold the result into an omnibus appropriations bill considered late in the year. Or, equally possible, there may be yet another Continuing Resolution to keep things running at prior levels until the new Congress can act, sometime after the new year. ■

⁶The Center on Budget and Policy Priorities' full analysis of these proposed changes to the Section 8 voucher program is available at www.cbpp.org.

Senator Bond Introduces Long-Awaited Housing Production Bill

On September 19, Senator Christopher Bond (R-MO), ranking member of the Senate HUD-VA-IA Appropriations Subcommittee, introduced S. 2967, a bill seeking to spur new production of affordable housing. Co-sponsored by Senator Collins of Maine, the bill would provide federal matching block grants to state housing agencies primarily for the production of new units affordable to families with very low and extremely low incomes within mixed-income developments. When viewed in tandem with other proposals pending in the 107th Congress, such as prior Senate bills¹ or the proposals pending in the House of Representatives to establish a federal housing trust fund or at least a matching block grant fund for new investments by state and local housing trust funds,² it is clear that Congressional leaders are finally hearing the call from communities and public officials throughout the land that the federal government must return as an active partner in addressing the growing affordable housing crisis for the lowest-income Americans.

Senator Bond's bill is especially noteworthy in that its sponsor is a moderate Republican with extensive experience in funding and overseeing HUD's affordable housing programs. Senator Bond has repeatedly expressed concern about the need for a multifaceted approach to meeting local housing needs—one that includes not just more funds for new vouchers but also actual affordable housing units. He presented the bill in testimony at a hearing on housing production held on September 25 by the Senate Subcommittee on Housing and Transportation of the Senate Committee on Banking, Housing and Urban Affairs, chaired by Senator Jack Reed (D-RI).

The following is a brief review of the major provisions of Senator Bond's proposed *Affordable Housing Expansion Act of 2002*.

The bill's stated purposes are to expand the production of affordable housing for extremely low, very low, and low-income families in several ways. First, the bill would create a housing production block grant program administered through state housing finance agencies. Second, like the House's bill (HR 3995, Roukema R-NJ), this bill would establish new authority for so-called Section 8 "thrifty" vouchers, intended to cover operating costs and thus be used in conjunction with other capital resources for affordable housing production, such as HOME funds, Low-Income Housing Tax Credits, or these new block grants. Finally, the bill would create new loan guarantee authority for public

housing agencies to enable leveraging of federal income streams to finance rehabilitation.

The new housing production block grant program would distribute funds from HUD to state housing finance agencies, which could be used for the development of affordable units within mixed-income properties. The authorized funding level would be \$1 billion for FY 2003, but funds would still need to be appropriated annually in federal appropriations acts. Apparently, although the source of funds is not prescribed by the bill, Senator Bond urges that the source of the federal funds would be recaptured Section 8 assistance, unused because of underutilization of tenant-based vouchers by local PHAs or other reasons.

Each state would receive a formula allocation based upon population, with a minimum funding level of \$6 million per state, and 1 percent to Native American tribes. Up to 20 percent of the funds could be used for preservation and rehabilitation, rather than producing new units. In funding specific properties, state housing agencies must give priority to those projects that maximize the availability and affordability of housing for extremely low-income families (below 30 percent of AMI).

In order to receive the proposed federal housing block grant, states would have to contribute a match in the amount of 25 percent of the federal funds made available annually, exclusive of Community Development Block Grants and Low-Income Housing Tax Credits. States would also have to submit an "affordable housing expansion plan," with annual updates, approved by HUD and designed to meet the overall very low- and low-income housing needs of both rural and urban areas. This plan must be developed with public participation in conjunction with the housing strategies developed for states and localities under the consolidated planning requirements of the 1990 *National Affordable Housing Act*.

Only certain affordable housing properties could receive assistance. In the case of new construction, the bill would require the housing to have at least 30 percent of the assisted units occupied by extremely low-income families who pay as a contribution towards rent (not including any rental subsidies) not more than 25 percent of 30 percent of area median income, with adjustments for the number of bedrooms in the unit. HUD may establish other income ceilings if necessary due to prevailing levels of construction costs, fair market rents or unusually high or low family incomes.

In addition, the rest of a property's assisted units must be occupied by very low-income families paying as their contribution towards rent (not including any rental subsidies) no more than 25 percent of 50 percent of the area median income.

It is important to note that, because they are essentially flat rents based on area median incomes, these rent levels, although likely below-market, will not be affordable to families except those near the top of the eligibility band without additional subsidies such as vouchers.

In addition, the bill would require that these rent and occupancy restrictions be memorialized in HUD-approved legally binding commitments for not less than 40 years, with-

¹See S. 1248, 107th Cong., 1st Sess. (2001) and *Support Builds for New Production Bills*, 31 HOUS. L. BULL. 210 (Sept. 2001); *Housing Production Campaign Gains Ground*, 32 HOUS. L. BULL. 47 (Feb. 2002).

²See H.R. 2349, 107th Cong., 1st Sess. (2001) and H.R. 3995, 107th Cong., 2d Sess. (2002). See also H.R. 3995: *National Housing Trust Fund Spoiled*, 32 HOUS. L. BULL. 186 (Aug. 2002).

out regard to the term of the mortgage or to any transfer of ownership. HUD could establish another period upon determining that it is “the longest feasible period of time consistent with sound economics and the purposes of this Act.” Restrictions would also have to survive foreclosure, where state agencies will assume responsibility for maintaining the low-income character of the property.

Concerning tenant selection, the bill only requires owners of assisted properties to establish procedures consistent with the state agency’s affordable housing expansion plan. This will probably yield little protection against unfair selection policies.

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S. 2967 would also:

- authorize HUD to carry out a multifamily risk-sharing mortgage insurance program for state agencies developing housing under this program;
- authorize so-called “thrifty production vouchers,” which, like S. 2721,³ would authorize the use of Section 8 project-based vouchers for construction and rehabilitation of units affordable to families with extremely low incomes, workable where the vouchers must cover only operating costs because of the presence of other capital subsidies;
- authorize reallocation of certain underused Section 8 vouchers to other metropolitan agencies;
- require HUD to maintain existing Section 8 project-based assistance for any HUD-owned or -held multifamily project upon disposition, unless determined “infeasible;” and
- authorize a public housing loan guarantee program.

As the 107th Congress nears adjournment, the hope must be that this bill, in conjunction with the others, will spur bipartisan action on housing production in the 108th Congress that will convene in January. ■

³See *Proposed Housing Voucher Improvement Act of 2002*, 32 HOUS. L. BULL. 182 (Aug. 2002).

HUD Proposed Public Housing Occupancy Guidebook

In September of 2002, the Department of Housing and Urban Development (HUD) made a draft of its Revised Public Housing Occupancy Guidebook available for public comment.¹ The National Housing Law Project (NHLP) submitted comments to the proposed document on behalf of the Housing Justice Network (HJN). Fifteen HJN advocates from across the country, including NHLP staff, worked together to comment on the 400-page draft Guidebook within an 18-day time period.

A revised Public Housing Occupancy Guidebook is long overdue. In order to serve their public housing constituents effectively, HUD and public housing authority (PHA) staff need up-to-date guidance on the operations of public housing properties—and no up-to-date guide currently exists. HUD has not published a public housing occupancy handbook since 1991, and the scope of that document was limited to admissions. Now superceded, the last comprehensive handbook that discussed rents and other continued occupancy issues was produced and revised in the 1970s and 1980s.

The HJN advocates submitted 96 pages of comments that provided a section-by-section and page-by-page analysis of issues that need to be corrected, clarified or added to the Guidebook.² This article provides a broad overview of the comments submitted on the revised Guidebook, highlighting key omissions and revisions that should be made in order to ensure an effective and accurate public housing occupancy guide.

Resident Participation

Resident participation is a key element in effective public housing management. Not only do residents have the most significant personal stake in the policies set forth by PHAs, but they also have a legal stake in the decision-making process that sets those policies. Federal law mandates that PHAs incorporate meaningful resident involvement—via Resident Advisory Boards (RABs)—into the annual and five-year PHA Plan Processes that shape admissions, rent, leases and grievance policies.

The proposed Guidebook omits resident participation altogether. The document fails to acknowledge PHAs’ obligation to work with their resident groups in developing policies and establishing practices. The Guidebook does not discuss RABs, which are duly elected bodies and mandated by law, nor does it mention that PHAs must provide funding and other re-

¹Draft, Public Housing Occupancy Guidebook, (hereinafter “Guidebook”) (See reference to Guidebook at 67 Fed. Reg. 55,861 (Aug. 30, 2002) (Notice of Availability of Revised Public Housing Occupancy Guidebook and Request for Comments) and at 67 Fed. Reg. 62,073 (Oct. 3, 2002) (Notice to Further Extend Availability of Revised Public Housing Occupancy Guidebook and Period for Comments). The Guidebook is available from the National Housing Law Project at www.nhlp.org.

²A copy of the comments is available from the National Housing Law Project at www.nhlp.org

sources to support resident organization and participation.³

Although these responsibilities may be addressed in another guidebook or a revised set of regulations, the Public Housing Occupancy Guidebook should, at the very minimum, provide a brief overview of resident participation and the responsibility of PHAs to promote and sustain meaningful resident involvement in the development and evolution of the discretionary policies, many of which are discussed in the Guidebook.

The PHA Plan Process

Since 1998, the PHA Plan Process has been an essential component of the public housing program. By law, the plan must be devised and submitted annually and must address a minimum of 18 policy elements that affect the day-to-day operations of all housing programs within a PHA's jurisdiction. These include policies on eligibility, selection and admissions; rent determination; operations and management; the grievance procedure; capital improvements; designation of units for elderly and disabled families; community service and self-sufficiency; safety and crime prevention; and pets.⁴

Although the draft Guidebook covers the above-mentioned topics in varying degrees of thoroughness, the PHA Plan Process itself is not highlighted or explained. References to the Plan are intermittent and brief, limited to discussions of site-based waiting lists, preferences, rents and pet policy; however, the Plans cover far more ground than these four areas.

The PHA Plan is an integral part of public housing management, and warrants a dedicated section within the Public Housing Occupancy Guidebook. The section should discuss how the Plan is structured, the procedure for including a PHA's discretionary policies into the Plan, and the process by which the annual Plan is developed and adopted. The Guidebook should also make clear that each PHA must consult with its RAB, the PHA Board, and the public regarding the policy issues covered under the Plan's components. HUD has published a PHA Desk Guide that discusses the PHA Plan process.⁵ However, the Desk Guide does not, in general, deal with the substantive issues such as admissions and rent policies. It would be important to link the Guidebook and the Desk Guide and explain how they are related.

Limited English Proficiency

It is imperative that PHAs ensure equal access for residents and applicants who have limited English skills. The draft Guidebook does not address the needs or rights of speakers of languages other than English, and HUD guidance in this arena is overdue. HJN's comments to HUD included a proposed Limited English Proficiency framework that will assist PHAs in understanding and meeting this obligation.

³24 C.F.R. §§ 903.13(a)(2) and (b) (2002).

⁴See *Successful Advocacy in the PHA Plan Process*, 30 HOUS. L. BULL. 149 (Oct. 2000) and *Resident Advisory Board and Public Participation in the PHA Plan Adoption Process*, 30 HOUS. L. BULL. 173 (Nov/Dec. 2000).

⁵PIH 00-36, Public Housing Agency Desk Guide (Aug. 21, 2000).

Domestic Violence

The Domestic Violence section of the Guidebook is marked as "reserved," meaning that HUD plans to postpone discussion of this issue until later editions of the Guidebook—but the need for clarification on this issue is immediate. HUD should engage in a process promptly with domestic violence advocates in order to develop an overall domestic violence policy for its assisted housing programs, and it should then provide guidance on this issue to PHAs as well as private owners of subsidized housing.

It is troubling that this section may remain "reserved" for a prolonged period, which means that residents and applicants who are struggling with, trying to escape from, or recovering from family violence may not receive appropriate assistance in the interim. HJN's comments to HUD included a proposed domestic violence framework identifying many of the key areas that should be covered in a PHA's domestic violence policy.

The PHA plan process is not highlighted or explained in the revised Public Occupancy Housing Guidebook.

Section 8 Voucher Program

Though the draft Guidebook refers to the Voucher program in several instances—such as with respect to designation of public housing, targeting, flat rent (rent reasonableness determinations) and threat assessment verification—there are numerous other instances where it should also be mentioned. The Voucher program frequently intersects with the public housing program, and should be mentioned in that context.

One primary intersection occurs in the area of admissions. For example, a PHA may have a merged waiting list for both public housing units and vouchers. Or, any applicant for public housing must also be offered a place on the voucher waiting list if that list is open.⁶ Another intersection occurs in the area of transfers. For victims of domestic violence or as a reasonable accommodation for a disabled individual or family, a transfer from public housing to a voucher may be essential.

⁶24 C.F.R. § 982.205 (2002).

Failure to Distinguish Between Examples and Recommendations/Requirements

The introduction to the proposed Guidebook states that the authors “have distinguished between elements that are mandatory and those that are simply suggestions.”⁷ The goal is laudable and necessary—but efforts have fallen short to achieve it in a number of instances where that distinction has not been made clear.

Moreover, the published public housing regulations provide examples of resident behavior that illustrate a point or provide guidance. In contrast, the Guidebook lists these behaviors without stating that they are merely examples, misleading readers to believe that a behavior listed is the only one that may be considered.⁸ These examples might also be inferred as recommendations made by HUD, and in a number of cases, they are not fit to be classified as “best practice” recommendations. Throughout the Guidebook, HUD should indicate that examples drawn from PHA policies are just that—examples.

Enforcement

The draft Guidebook does not address the consequences should a PHA violate mandatory provisions set forth in the Guidebook. This omission is exacerbated by the fact that there is no discussion of the Public Housing Assessment System (PHAS) and no mention that a passing score on PHAS is correlated with good management practices and tenant satisfaction. The Guidebook should include a section explaining PHAS and the relationship between PHAS and the management policies and practices discussed in the Guidebook.

Economic Self-Sufficiency

Economic self-sufficiency is a concept of the utmost importance, and should be an integral and permanent part of the discussion on public housing management and operations. The proposed Guidebook does not address economic self-sufficiency in a comprehensive manner.

The section on “Community Service and Economic Self-sufficiency”⁹ is limited to discussion of a community service requirement by which adults who meet certain specifications must fulfill a work obligation of either eight hours per month or 96 hours per year. But this does not scratch the surface of “economic self-sufficiency,” which is a much larger concept and longer-term, more complex goal. Nor does it begin to address a PHA’s obligation to promote economic self-sufficiency among its residents.

⁷Guidebook, *supra* note 1, p. 1.

⁸The published regulations provide examples of when an applicant may be exempt from a three-year ban on admissions for an eviction for drug-related criminal activity. See 24 C.F.R. § 960.204(a)(1)(ii) (2002). In contrast, the Guidebook lists these reasons without indicating that they are examples, thus limiting the rule’s flexibility should a reader of the Guidebook interpret them as exclusive parameters or conditions. See Guidebook at 2.2.4.

⁹Guidebook, *supra* note 1, § 15.

At a minimum, this discussion should encompass Section 3 employment requirements;¹⁰ the Family Self-Sufficiency Program;¹¹ the Earned Income Disregard provision;¹² and Community and Supportive Services for those PHAs whose districts are engaging in HOPE VI projects.¹³ Some of these programs are mandatory and others are optional, but all are designed to increase economic independence among families living in assisted housing and, ultimately, help lift them out of poverty. These elements should be integrated and emphasized in this section and throughout the Guidebook.

Tenant Access to Files

The proposed Guidebook’s sole reference to a resident’s right to review his or her file occurs in the contexts of lease termination and grievance hearing.¹⁴ The Guidebook should clarify that residents are permitted to review their files at any time upon their request.

Changes in Household Composition

When residents request adding household members, they may face arbitrary or illegal PHA action in response. The proposed Guidebook does not address this issue; instead, it merely recites the applicable regulation and states that PHA approval must be obtained except in the cases of birth, adoption or custody of a child.¹⁵ HUD should provide guidance to limit PHA discretion, and it should be linked to the Guidebook’s non-discrimination discussion. The Guidebook should also clearly outline a resident’s right to utilize the grievance procedure if the PHA denies his or her request for a household addition.

For cases of divorce, separation or domestic violence, the Guidebook should also direct PHAs to establish “family break-up” policies, as does the Section 8 voucher program.

Rent Adjustments for Hardship

Public housing residents with extremely low incomes are routinely required to pay minimum rents without being informed of the hardship exemption. The Guidebook should explain the hardship exemption, and explicitly direct PHAs to advise families who pay the minimum rent that they have a right to request this exemption.¹⁶ Moreover, the Guidebook should clarify that the effective date of an interim rent decrease is the first day of the month following the reported change of circumstances.

¹⁰12 U.S.C.A. § 1701u (West 2001).

¹¹42 U.S.C.A. § 1437u (West 1994 and Supp. 2002).

¹²42 U.S.C.A. § 1437a(d) (West Supp. 2002).

¹³See *Public Housing Community Service Requirement Suspended*, 32 HOUS. L. BULL 12 (Jan. 2002).

¹⁴See *e.g.*, Guidebook, *supra* note 1, § 17.6.1.13.

¹⁵*Id.* at § 17.6.1.1.

¹⁶42 U.S.C.A. § 1437a(a)(3) (West Supp. 2002).

State Law Protections in Public Housing Leases

There may be inconsistencies between the public housing lease regulations and state law, or a public housing lease may lack protections required by state law. The Guidebook should follow the same principle established in the HUD Occupancy Handbook, which clarifies the conflict as follows: in the case of any conflict between the public housing lease regulations and the existing state law, the lease adopted “must follow the rule that is of most benefit to the tenant.”¹⁷ The Guidebook should direct PHA staff to evaluate any discrepancy between state law and the public housing lease regulations, and the Guidebook should facilitate the evaluation by emphasizing that PHAs should follow the rule most beneficial to the resident.

Conclusion

Overall, it is encouraging that HUD identified the need for more detailed guidance on public housing occupancy. There is an urgent need for an up-to-date Guidebook for HUD and PHA staff that elucidates a range of issues related to admissions, rent calculations, ongoing occupancy, lease termination and others.

HJN members and NHLP staff were pleased to submit comments, but were disappointed that HUD only allowed for an 18-day window in which to review and analyze the document and submit detailed and accurate comments.¹⁸ The submitted comments requested that, for future drafts, HUD expand this window and reach out to housing and resident advocates sooner in order to provide ample time for advocates to submit comments. As a result, the finished product will more likely be a balanced and accurate document that will be truly beneficial to both public agency staff and their public housing constituents.

There is still quite a way to go in creating a Guidebook that will best serve the more than 2 million families across the country who reside in public housing developments. NHLP will keep you updated on the evolution of the Public Housing Occupancy Guidebook and any subsequent drafts released by HUD for public comment. ■

¹⁷*Proposed Revisions to HUD Occupancy Handbook*, 32 HOUS. L. BULL. 156 (July 2002).

¹⁸As the initial comment period expired, HUD extended it for a few days and ultimately added an additional 30 days. The HJN advocates, however, submitted their comments as of the first announced due date. See 67 Fed. Reg. 55,861 (Aug. 30, 2002)(Notice of Availability of Revised Public Housing Occupancy Guidebook and Request for Comments (comments due September 16, 2002)) and 67 Fed. Reg. 62,073 (Oct. 3, 2002)(Notice to Further Extend Availability of Revised Public Housing Occupancy Guidebook and Period for Comments, which extended the comment period to October 15, 2002).

GAO Releases Report on PHA Plan Process

The General Accounting Office (GAO) released a report to Congressional committees this summer examining the impact of the new Public Housing Authority (PHA) plan process on the Department of Housing and Urban Development (HUD) and PHAs.¹ These new plan requirements were among the many significant revisions to the public housing and tenant-based voucher programs introduced by the *Quality Housing and Work Responsibility Act of 1998* (QHWRA)².

Beginning in Fiscal Year (FY) 2000, PHAs managing federally assisted public housing or tenant-based voucher units have had to prepare and submit to HUD five-year and annual plans. The five-year plan must set forth the PHA's mission and long-range goals. The annual plan must identify ways to achieve these goals and describe PHA policies and procedures. For PHAs with low-rent units, the annual plan is used to request certain funding from HUD. If HUD disapproves a plan, it is returned to the PHA for revision. Resident participation in developing these plans is required as is the public's right to comment on the proposed plans.

In its study of the PHA plan process, the GAO examined (1) the status of PHAs' FY 2000 plans, (2) HUD's experiences with the process and opinions concerning the plans, and (3) selected PHAs' experiences with and opinions of the process. This article summarizes the GAO's findings.

Plan Submissions and Consequences— HUD Field Office Perspective

The vast majority of PHA FY 2000 plans were submitted to and ultimately approved by HUD as of January 24, 2002. However, almost half of the plans reviewed had to be resubmitted by the PHAs because of deficiencies, often occurring in the sections documenting capital improvement needs, community housing needs, and the fulfillment of resident participation requirements.³ Only 2 percent of the 4,144 plans that were to be submitted were either disapproved or had not been submitted at all.⁴ It should be noted that if HUD does not disapprove the plan within 75 days of receipt, it is considered approved.⁵

PHAs managing low-rent housing that failed to submit an annual plan risked losing their capital fund and public

¹*HUD and Public Housing Agencies' Experiences with Fiscal Year 2000 Plan Requirements*, GAO (May 2002)(hereinafter, *GAO Study*). The GAO was required to undertake this analysis under the *Quality Housing and Work Responsibility Act of 1998* (See footnote 2, *infra*).

²Public Law 105-276, Title V, § 501 *et seq.*, 112 Stat. 2518 (approved Oct. 21, 1998). The QHWRA amended the *United States Housing Act of 1937* (42 U.S.C.A.1437 *et seq.*). Section 511 of QHWRA contains the new plan requirements.

³*GAO Study* at 8.

⁴*Id.* at 3.

⁵*Id.* at 5.

Papers On Public and Subsidized Housing

The Center on Budget and Policy Priorities (CBPP) recently released three papers on public and subsidized housing. The following are brief summaries of the papers which are all available from the CBPP Web site.

Rationale Provided by the Administration Does Not Justify Proposed Cut to the Public Housing Capital Fund

This paper analyzes the Bush Administration's proposal to reduce funding for modernization of public housing. It concludes that funding should be maintained at or close to its 2002 level. Available on the Web at www.cbpp.org/9-18-02hous.htm and www.cbpp.org/9-18-02hous.pdf.

Superwaiver Would Allow Fundamental Changes to Public Housing and Homelessness Programs

This paper examines the implications for housing and homelessness programs of the superwaiver proposal in the House Temporary Assistance to Needy Families (TANF) reauthorization bill. Under the proposal, the executive branch would have extensive authority to grant waivers to a number of major federal low-income programs. These waivers could result in fundamental changes to public housing and the Department of Housing and Urban Development's (HUD) homelessness programs without approval from Congress or substantial public input. Waivers could potentially be used to impose time limits on public housing residents; ease restrictions on sale, conversion or demolition of housing projects and homeless facilities; alter rent rules; and weaken requirements that assistance be targeted toward the poor. The fact that many housing and homeless programs are administered by local governments or nonprofits who receive funds through competitive or formula grants would not necessarily prevent waivers affecting these programs. Available on the Web at www.cbpp.org/9-16-02hous.htm (summary) and www.cbpp.org/9-16-02hous.pdf (full paper).

Funding New Welfare-to-Work Housing Vouchers Should Be a Priority for Fiscal Year 2003

The Senate VA-HUD appropriations bill would fund about 3,300 new welfare-to-work vouchers (out of an overall total of 15,000 incremental vouchers), and add permanent authorization for the program to the voucher statute that would make several improvements to the program. (S. 2721 would add a similar but more extensive provision to the statute.) The paper includes a review of available evidence on how the 50,000 welfare-to-work vouchers funded in Fiscal Year (FY) 1999 have worked so far. It notes that HUD's recent study on voucher success found that families with welfare-to-work vouchers have been significantly more successful at leasing housing than families with regular Section 8 vouchers. Some 77 percent of the families issued welfare-to-work vouchers in 2000 succeeded in using them to rent housing, compared with a 65 percent success rate for households issued regular vouchers. In addition, the welfare-to-work voucher program has encouraged cooperation between welfare and housing agencies. The paper argues that the program improvements are a step forward. However, the number of new vouchers falls well short of the need, particularly given the difficulty low-income families encounter finding affordable housing, the low proportion of current and former welfare recipients receiving federal housing assistance, and the demonstrated links between housing assistance and successful transitions from welfare to work. The paper concludes that Congress should fund at least the 34,000 incremental vouchers requested by the Bush Administration, and that one-third of these should be set aside for families moving from welfare to work. Available on the Web at www.cbpp.org/8-28-02hous.htm (introduction) and www.cbpp.org/8-28-02hous.pdf (full paper). ■

housing drug elimination grants for fiscal year 2000.⁶ Even PHAs already approved to receive those funds may not receive the funds if they do not submit their plans. The study identified 14 PHAs that could lose approximately \$2.6 million in FY 2000 capital fund grants. PHAs managing Section 8 voucher programs may lose only a portion of their administrative fees. The majority of PHAs without approved plans manage only Section 8 voucher programs.⁷

Though the majority of HUD field offices experienced problems of some sort with the plan review process, they indicated, nevertheless, that the FY 2000 plan process was particularly useful with regard to PHAs administering low-rent units. Through the plan process, HUD offices were better able to identify PHA needs relative to operational priorities, resident participation and strategic planning. This improved the HUD offices' ability to provide appropriate technical assistance.⁸

Field offices also reported that, although PHAs are following their FY 2000 plans, they are having difficulty implementing some portions of the plans.⁹ Specifically, about 54 percent of HUD staff indicated that PHAs are having difficulty getting residents interested in forming or participating in resident advisory boards (RABs). For small and tenant-based Section 8 only PHAs, fulfilling the resident participation requirement is particularly challenging. Some field offices reported that PHAs were having difficulty in getting residents appointed to the PHAs' board of directors, as is required by law.

It is noteworthy that the information for the GAO report came exclusively from PHAs and HUD staff and did not reflect the problems residents may have had with regard to participation in the PHA plan and board appointment process. They may not have been well informed of the process or may have heard adverse stories or have had experiences with the PHA that discouraged them from participating. To overcome this problem, HUD should identify PHAs that have addressed and resolved these issues and publish a list of practices that may be used to resolve them. This may include training of PHA staff by representatives of resident organizations and PHAs that have successfully organized their RABs. It could also include sending a letter to all residents as part of the rent recertification process, inviting them to take part in the RAB.

HUD tried to address the issue of resident participation in the PHA Plan Desk Guide.¹⁰ Paragraphs 4.1 and 4.2 discuss methods for appointing the RAB and encouraging

participation. Strategies listed include providing adequate information on the RAB members' role, describing the time commitment required, and providing a stipend to RAB members. In addition, HUD guidance provides that a PHA may designate the entire tenant body as the RAB. Because resident participation is an essential element of the PHA plan process, it is vitally important to take additional steps to facilitate it.

Aside from resident participation issues, a large number of field offices reported difficulties in simply accessing the PHA information electronically in order to review it. Of the 74 percent of HUD field offices that responded to the GAO's survey, over 50 percent indicated that the mechanical process of getting the plans from the PHAs and converting them to a readable format created tremendous hassles. In addition, HUD guidance on the plan process was inadequate, making it difficult for the field offices to know what the PHAs should have been doing or what to look for in the plans. The FY 2001 process was changed in response to these observations, but it is too soon to know the outcome of those changes.¹¹

PHA Perspective on the FY 2000 Plan Process

Four of the eight PHAs that the GAO visited to compile this report indicated that the FY 2000 plan process was positive. The other four offered no comment or a mixed response. Seven of the eight used additional staff or an outside consultant to complete the plan.¹² All eight PHAs felt the quantity and quality of HUD guidance available for the FY 2000 plan process was inadequate. They particularly identified the HUD PHA plan template that was provided them electronically as a guide for developing and formatting the agency plans. One large PHA said that the template provided to it for FY 2001 had been improved. In contrast, a small PHA remarked that the template does not allow PHAs to describe the unusual aspects of their local needs.

With regard to the resident participation requirement, two extra-large PHAs had positive feedback, finding that it brought a cross-section of residents together and generally encouraged their participation. On the other hand, a small PHA indicated that its residents were not interested in participating. The GAO notes that this sampling of PHAs is too small to necessarily be representative of PHAs' experiences nationally.¹³

Perhaps the most remarkable aspect of the GAO's report is the prevalence of problems with basic planning and supervision. Simple management problems, such as electronic information not being transmitted in a readable form to the HUD field offices, or HUD field offices not being able to read electronic documents due to their own technical problems, seem to have played a large part in the perception that meeting the FY 2000 plan requirements was challenging. Perhaps a study of the FY 2001 PHA plan process will disclose more positive outcomes as a result of various "fixes" that have been made in response to the problems identified in the FY 2000 report. ■

⁶As of the FY 2002 HUD/VA Appropriations Act, the Public Housing Drug Elimination Program (PHDEP) was effectively abolished as it was not funded as a separate set-aside but has been merged into the Public Housing Operating fund. This change came at HUD's request. See *HUD Budget Cuts Public Housing, Modestly Increases Vouchers and Leaves Most Other Programs at Current Funding Levels*, 31 HOUS L. BULL 92 (Apr. 2001). See also *policy and guidance - pha plan frequently asked questions (faqs)* at www.hud.gov/offices/pih/pha/faqs/policy.cfm#30.

⁷GAO Study at 6.

⁸*Id.* at 8.

⁹*Id.* at 7.

¹⁰See *Public Housing Agency (PHA) Plan Desk Guide*, U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Policy, Program and Legislative Initiatives (Sept. 20, 2001).

¹¹GAO Study at 7.

¹²*Id.* at 9-10.

¹³*Id.* at 10.

Owners Appeal Adverse Prepayment Notice Decision

The owners of a HUD rental development who recently lost a federal district court effort to nullify a Minnesota statute, which required them to provide a one-year advance notice of intent to prepay their HUD subsidized mortgage, have appealed the decision to the United States Court of Appeals for the Eighth Circuit.

In the district court, the owners sought declaratory relief against the State and residents of the development based on their argument that Minnesota law was preempted by an express provision of the *Low Income Housing Preservation and Resident Homeownership Act of 1990* (LIHPRHA).¹ The residents of the development, represented by the Minnesota Housing Preservation Project, successfully argued that the Minnesota law was not preempted by LIHPRHA. *Forest Park II v. Hadley*, Civil No. 02-480 (MJD/SRN) (D. Minn. 2002).²

The owners' appeal raises the federal preemption issue to a circuit court for the first time. The issue is of significant importance to many other states and localities that have passed similar laws to protect residents of properties that are at risk of losing their federal subsidies.³

The National Housing Law Project (NHLP) filed an *amicus curiae* brief in the Eighth Circuit on behalf of the California Coalition for Rural Housing. The brief supports the tenants' position and seeks to uphold the district court decision. It reviews state and local laws adopted to provide protections based on local conditions, and refutes the owners' claims that recent federal policy favors tenant-based vouchers as opposed to project-based assistance. The NHLP brief is available to Housing Justice Network members on NHLP's Web site at www.nhlp.org/html/pres/cases.cfm. ■

¹Pub. L. No.101-625, Title VI, Subtitle A, codified at 12 U.S.C. §§ 4101-4125 (2002) (preemption provision is Section 232 of LIHPRHA and codified at 12 U.S.C. § 4122).

²For a more detailed discussion of the district court opinion, see *Federal Preemption of State and Local Preservation Acts Rejected by Two Courts*, 32 HOUS. L. BULL. 140 (May/June 2002).

³See www.nhlp.org/html/pres/state/index.htm.

Stemming the Tide: A Handbook on Preserving Subsidized Multifamily Housing, by Emily P. Achtenberg, was released this month. This LISC publication provides non-profit developers, lenders, public officials and others key information about HUD-assisted multifamily properties, the programs that support them, and what can be done to protect these units to preserve their affordability for low-income households.

To obtain a copy of the handbook, contact Katie Higgins at (212) 455-9821 or khiggins@liscnet.org, or download it from the LISC Online Resource Library, at http://liscnet.org/resources/2002/09/multifamily_838.shtml.

California Tenant Protections Strengthened

California recently enacted two bills that significantly enhance residential tenant protections. The first bill, introduced by Senator Sheila Kuehl and signed into law on August 28, 2002, makes several changes in California landlord-tenant law, the most significant of which is the expansion from 30 to 60 days of the notice period that landlords must give to terminate a tenancy. Given the shortage of affordable housing, this additional time can make the difference between a tenant's finding a new home to move into or becoming homeless. The second bill, introduced by Assemblywoman Carol Migden and signed into law on September 29, 2002, redefines several California provisions dealing with security deposits and associated rights of inspection. The bill substantially bolsters tenants' ability to recover their security deposits at the end of their tenancy. Both bills become effective as of January 1, 2003; however, some of the provisions only apply to tenancies commenced after that date. This article will briefly review changes made by both bills.

Assemblywoman Kuhl's Bill—SB 1403

Notice of Termination

The bill requires an owner of a residential dwelling who wishes to terminate a tenancy in that building to give 60 days written notice prior to termination. The notice may be 30 days when a bona fide sale of a single-family dwelling or condominium is taking place under six additional circumstances,¹ or if the tenant has resided in the building for less than one year. This bill expands and modifies existing state law that already required such notice in the cities of Santa Monica, West Hollywood and Los Angeles.² The 60 days' notice requirement will remain applicable statewide until January 1, 2006.³

Reasonable Rent Determination in Rent-Controlled Jurisdictions

The new law also inactivates an existing law that requires rent-controlled jurisdictions without vacancy decontrol to allow a landlord in a dispute over specified rights to include reasonable expenses, such as fees and other costs of professional services, in a calculation of operating expenses that is used to determine a fair return to the owner of the property. This provision is disabled until the *Costa-Hawkins Rental Housing Act* is repealed.⁴

¹One of the requirements is that the purchaser intends in good faith to live in the unit for at least one full year after the termination of the tenancy.

²S.B. 1403, CALIFORNIA 2001-02 REGULAR SESSION, CA (2002).

³*Id.* The act amends Sections 1946.1, 1947.15, and 1954 of the Civil Code, Section 1179 of the Code of Civil Procedure, and Section 7060.2 of the Government Code, relating to landlord-tenant law.

⁴S.B. 1403, CALIFORNIA 2001-02 REGULAR SESSION, CA (2002).

Notice of Intent to Enter a Unit

The new law also requires landlords wishing to enter a tenant's unit to give written notice of that intent. If mailed at least six days before the entry, the notice will be presumed reasonable. This rule does not apply in emergencies, when the tenant has abandoned or surrendered the property, or when the landlord wishes to enter for purposes of showing the property to prospective or actual buyers.⁵

Extended Relief from Forfeiture

In addition to a court's existing ability to relieve a tenant from forfeiture upon the filing of a petition within 30 days after forfeiture has been granted, the legislation clarifies that a court shall now have that relief power on its own motion or pursuant to application made at any time prior to restoration of the property to the landlord. Oral applications by tenants unrepresented by counsel will also be permitted if the landlord is also present or has been given *ex parte* notice.⁶

Rent in Units Previously Withdrawn from the Rental Market

Finally, the bill provides that if an accommodation is withdrawn from the rental market pursuant to a notice filed with a public agency, any tenancy that starts at that accommodation during the next five years must be at the rent in effect at the time the notice to withdraw was filed. Existing law to the same effect only applies to the first two years after an accommodation has been withdrawn from the market. This amendment applies to all new tenancies created after December 31, 2002, unless the tenancy was created prior to January 1, 2003, after a lawful withdrawal of the unit, as specified.⁷

Assemblywoman's Migden's Bill—AB 2330

Redefinition of Security Deposits

This bill redefines security deposits more broadly to include any charges imposed at the beginning of tenancy, except for application screening fees. Costs associated with processing a new tenant and associated with cleaning the property would also be included.⁸

Condition of Unit at the Time It Is Vacated

Another key change proposed by this bill is clarification of what a vacating tenant's duties are with regard to the condition in which a unit must be left. It requires tenants to return the unit to *the same level of cleanliness it was in at the inception of the tenancy*. Although language in the existing statute prohibits a landlord from making a claim against a tenant for defects that pre-existed the tenancy, such claims are commonplace.⁹ Thus, the language added by this bill may help

tenants who are fighting wrongful security deposit claims for substandard conditions that existed when they first moved in. The proposed language would apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.¹⁰

This bill may help tenants who are fighting wrongful security deposit claims for substandard conditions that existed when they first moved in.

Inspection Prior to Termination of Tenancy

The bill requires the landlord to notify a tenant in writing of the tenant's option to request an initial inspection of the unit and the tenant's right to be present at that inspection within a reasonable time after notification, by either the landlord or the tenant, of intent to terminate a tenancy, or a reasonable time before the end of the lease term. If the tenant requests an initial inspection, the landlord is required to make that inspection prior to a final inspection, which takes place after the tenant vacates, and would have to provide the tenant with an itemized list of potential specified deductions from the security deposit. The tenant has the opportunity to remedy identified deficiencies during the period following the initial inspection until the end of the tenancy.

Bad Faith Claims or Retention of Security Deposit

In cases of bad faith claims or retention by a landlord or the landlord's successors in interest of all or part of the security deposit, or the bad faith demand of replacement security, the landlord or the landlord's successors in interest are subject to statutory damages of up to twice the amount of the security deposit in addition to actual damages. This is a significant increase from the current \$600 damage limitation and may deter future bad faith claims or retention of deposits. Unfortunately, most advocates believe that the real challenge in enforcing the law is getting judges to utilize the bad faith provision in the first place.¹¹ ■

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸See A.B. 2330, CALIFORNIA 2001-02 REGULAR SESSION, CA (2002), which proposes to amend Sections 1950.5 and 1954 of the Civil Code.

⁹See Civil Code §1950.5(e) (2001)

¹⁰*Id.*

¹¹*Id.*

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.

Moraski v. City of New Haven Housing Authority, 2002 WL 31095309 (D. Conn, July 29, 2002). The court denied the City of New Haven Housing Authority's (NHHA) motion for summary judgment in a civil rights action filed by a Housing Choice Voucher landlord. The landlord owned four multiple-family dwellings and had been qualified and approved as a Section 8 landlord. He alleged that he was subject to harassment by the NHHA. He also alleged that an NHHA employee made comments to the effect that NHHA intended to make participation in Section 8 programs so onerous in the particular area in which the plaintiff owned property that minority participants would be discouraged from applying. Eventually, the plaintiff received notice that NHHA would not approve any Section 8 lease requests on his property until further notice. NHHA alleged that the comments were misconstrued and that it was merely trying to comply with a settlement agreement wherein NHHA agreed to deconcentrate its Section 8 tenants. The landlord filed a Section 1983 action against NHHA seeking money damages and a permanent injunction. The court denied NHHA's motion for summary judgment because it found that there was a genuine issue of material fact as to whether NHHA's action, in essentially suspending the plaintiff from additional participation in the Section 8 program, was based on animus against racial minorities.

Bloomer Housing Limited Partnership v. City of Bloomer, 2002 WL 2016430 (Wis. App., Sept. 4, 2002) (final publication decision pending). The Wisconsin Court of Appeals held that the City of Bloomer had over-assessed the property taxes on a Section 515 property because the assessment did not take into account the restrictions that accompany participation in the Section 515 program. The plaintiffs owned property that had been financed through the Section 515 program, which, in effect, reduced the interest rate on owner's note on the building to 1 percent (from over 8 percent), through a HUD subsidy. In return for this benefit, the owners were limited to renting to tenants whose income was at 80 percent or less of the area median income and were limited to a maximum 8 percent annual return on their initial investment. The owners were also prohibited from prepaying the note and could only

sell to a nonprofit organization or public agency with government approval. When the city assessed the building at approximately double the value the plaintiffs contended it was worth, without considering the restrictions on the property, the plaintiffs filed a complaint against the city. The trial judge, taking into account the restrictions on the property, agreed with the lower assessment amount, and refunded \$12,992.10 in excessive taxes to the plaintiffs. The City appealed.

The Court of Appeals upheld the lower court's decision, finding that the assessors are required to consider the "full value" of the property, which includes taking into consideration the effects the property's restrictions have on its value. It agreed with the trial court's conclusions that the 1 percent interest rate should be used in assessing the value of the building, that the subsidy flows to the tenants in the form of reduced rents (rather than to the owner), and that the rent and resale restrictions lowered the overall value of the property.

Daily v. New York City Housing Authority, 2002 WL 31028006 (E.D.N.Y., Sept. 11, 2002). The court granted plaintiff a preliminary injunction against the New York City Housing Authority (NYCHA), permitting her to hold bible studies in the common rooms of the NYCHA. The plaintiff, a pastor and NYCHA resident, requested to use a community center on NYCHA property to conduct bible studies with the aim of comforting people in the wake of the September 11, 2001 tragedies. Citing NYCHA regulations that prohibit the use of any NYCHA property for religious or political activities, NYCHA denied plaintiff's request. Noting that the regulations give tenant groups the right to use the common areas without a fee, that the regulations provided an exception to the religious activities exclusion if the activity was part of a wedding, and that the common areas were also used as an informal place for residents to socialize, the court issued a preliminary injunction against the NYCHA. The court concluded that, under a First Amendment analysis, the common areas were a nonpublic forum at times and a limited public forum at other times. The court also concluded that NYCHA discriminated against the plaintiff based upon her viewpoint because it excluded her from using the facilities based on the fact that she was bringing a religious point of view to the forum. Finally, the court concluded that excluding bible studies from the common areas was an unreasonable restriction in light of the forum's stated purpose of permitting the residents to have a variety of cultural activities and programs.

Robinson v. Finkel, 2002 WL 31119919 (N.Y. Sup., Sept. 17, 2002). A New York court overturned the termination of the petitioner's New York City Housing Authority (NYCHA) tenancy, in spite of the fact that the tenant had violated a stipulation to keep her son out of the unit because of his alleged drug use. The tenant's 16-year-old son was arrested on public housing grounds for unlawful possession of a controlled substance. The charges were dropped and the teen's record sealed. Several months later, NYCHA commenced termination proceedings against the tenant based on her son's criminal activity. When the tenant appeared, unrepresented, for the administrative hearing on the matter, she signed an

¹www.westlaw.com.

²www.lexis.com.

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

agreement with a NYCHA attorney, wherein she agreed to permanently bar her son from her apartment and agreed to put herself on "probation for a one year period." The agreement was not signed or approved by a hearing officer, nor was any calendar number written on the agreement or other record made of the proceedings. Later tenant's son was found in the building. He had no drugs, nor were any complaints made by others about his presence. His mother had let him spend the night because he had an appointment with a medical specialist early in the morning, and the doctor's office was virtually across the street from her unit. When NYCHA sought termination under their hearing process, the hearing officer granted its request. The tenant appealed.

The court concluded that NYCHA had violated its own termination procedures. For one, it did not consider the "extent of the impact of the behavior of the tenant's family upon the project." More importantly, the court found NYCHA's stipulation practice to be unlawful, because prior consent decrees had committed NYCHA to terminate only upon written opinions from hearing officers. The court found the practice of circumventing the hearing, without any sign-off by a hearing officer, and with an unrepresented tenant, to be fundamentally flawed, leading the tenant to lose her tenancy without NYCHA ever having to show that her son committed a crime, and without having violated the initial terms of the tenancy in any way. The court thus held that, "as a matter of law, the stipulation could not effect an informed, knowing and voluntary waiver of [the tenant's] constitutionally protected federal rights." Finally, the court concluded that terminating a 21-year tenancy for letting a son spend one night in the unit was too great a penalty, and was arbitrary, capricious and contrary to law. Accordingly, it annulled the termination of the tenancy. Interestingly, *United States v. Rucker* was not discussed or cited in this case, as the court decided the issues purely on state law grounds. ■

Today, a worker earning minimum wage would have to work nearly 120 hours per week to afford the median FMR for a two-bedroom rental unit. Alternatively, a household must have the equivalent of three minimum-wage workers to afford the rent.

*Rental Housing for America's Poor Families:
Farther Out of Reach Than Ever,*
National Low Income Housing Coalition

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 August 31, 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. 56,688 (Sept. 4, 2002) Exception Payment Standard to Offset Increase in Utility Costs in the Housing Choice Voucher Program

Summary: This final rule withdraws the interim rule that temporarily increased Fair Market Rents (FMRs) in areas affected by increased utility prices, and restores the regulatory language to that which was in effect before the issuance of the interim rule.

Effective Date: October 4, 2002.

67 Fed. Reg. 59,428 (Sept. 20, 2002) Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

Summary: This proposed rule would amend the regulations of the Office of Inspector General (OIG) to implement the statutory requirements concerning the issuance of OIG subpoenas, and responses to subpoenas issued to OIG employees in proceedings where OIG is not a party.

Comment Due Date: November 19, 2002.

HUD Federal Register Notices

67 Fed. Reg. 56,472 (Sept. 3, 2002) Utility Allowances for Use by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

Summary: This notice announces that HUD has established monthly utility allowances in accordance with the Secretary's authority to regulate the Federal National Mort-

¹At www.access.gpo.gov/su_docs.

²At www.hudclips.org/cgi/index.cgi.

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

⁴At www.rdinit.usda.gov/regs.

gage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Each enterprise is also referred to as a Government-Sponsored Enterprise (GSE). These allowances are used to determine whether rental units financed by GSE mortgage purchases are affordable and may count toward the achievement of the income-based housing goals established by the Secretary. For these purposes, the allowances in this notice shall be added to the contract rent for rental units in which: (1) tenant income is not available; (2) contract rent does not include the cost of utilities; and (3) the GSE does not use the HUD Section 8 utility allowances.

67 Fed. Reg. 56,576 (Sept. 4, 2002)

Privacy Act of 1974; Notice of a Computer Matching Program

Summary: HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the USDA to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with USDA's debtor files. In addition to HUD's data, the CAIVRS database includes delinquent debt information from the Departments of Education, Veterans Affairs, Justice and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the federal government for HUD or USDA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers of HUD's delinquent debtors and defaulters and defaulted debtor records of the USDA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

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

Comments Due Date: October 4, 2002.

67 Fed. Reg. 60,516 (Sept. 25, 2002)

HUD's Loss Mitigation Default Counseling Demonstration Program

Summary: This notice announces HUD's intent to conduct a limited demonstration program to gauge the demand for and the usefulness of including in the loss mitigation actions the reimbursement to mortgagees for default counseling provided to borrowers by HUD-approved Housing Counseling Agencies (HCAs). Such counseling may be of particular assistance to borrowers in certain targeted areas where default rates exceed national averages and/or predatory lending practices have been identified by HUD. This demonstration will also further

the concept of mitigating insurance claim losses to HUD by increasing mortgagors' access to counseling.

Comment Due Date: November 25, 2002.

67 Fed. Reg. 61,150 (Sept. 27, 2002)

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization Grants, Fiscal Year 2002; Notice of Extension of Application Deadline

Summary: This notice extends, for one week, the application due date for HUD's Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants.

Application Due Date. Revitalization grant applications are due to HUD Headquarters on or before 5:15 p.m., Eastern Time, on December 6, 2002.

67 Fed. Reg. 61,382 (Sept. 30, 2002)

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2003

Summary: Section 8(c)(1) of the *United States Housing Act of 1937* requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payments (HAP) contracts in the Moderate Rehabilitation (Mod Rehab) Single Room Occupancy (SRO) program. Other programs may require use of FMRs for other purposes. This notice provides final FY 2003 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2003.

Effective Date: The FMRs published in this notice are effective on October 1, 2002.

HUD Housing Notices

Notice H 2002-19 (HUD) (Sept. 20, 2002)

Extension of Notice H 99-7, Subordinate Financing by Federal Home Loan Banks Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs

Summary: Notice H 99-7 (HUD), which was reinstated and extended by Notice H 01-9 (HUD) is being extended to September 30, 2003.

Expires: September 30, 2003.

Rural Housing Service Administrative Notices

AN 3784(1980-D)(Sept. 10, 2002)

Single Family Guaranteed Rural Housing Loan Program Acceptable Foreclosure Time Frames

Summary: This administrative notice clarifies and standardizes the foreclosure due diligence time frame by state for single family housing loans guaranteed by the Rural Housing Service. ■

Publication Order Form

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