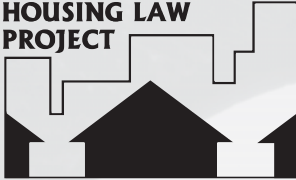


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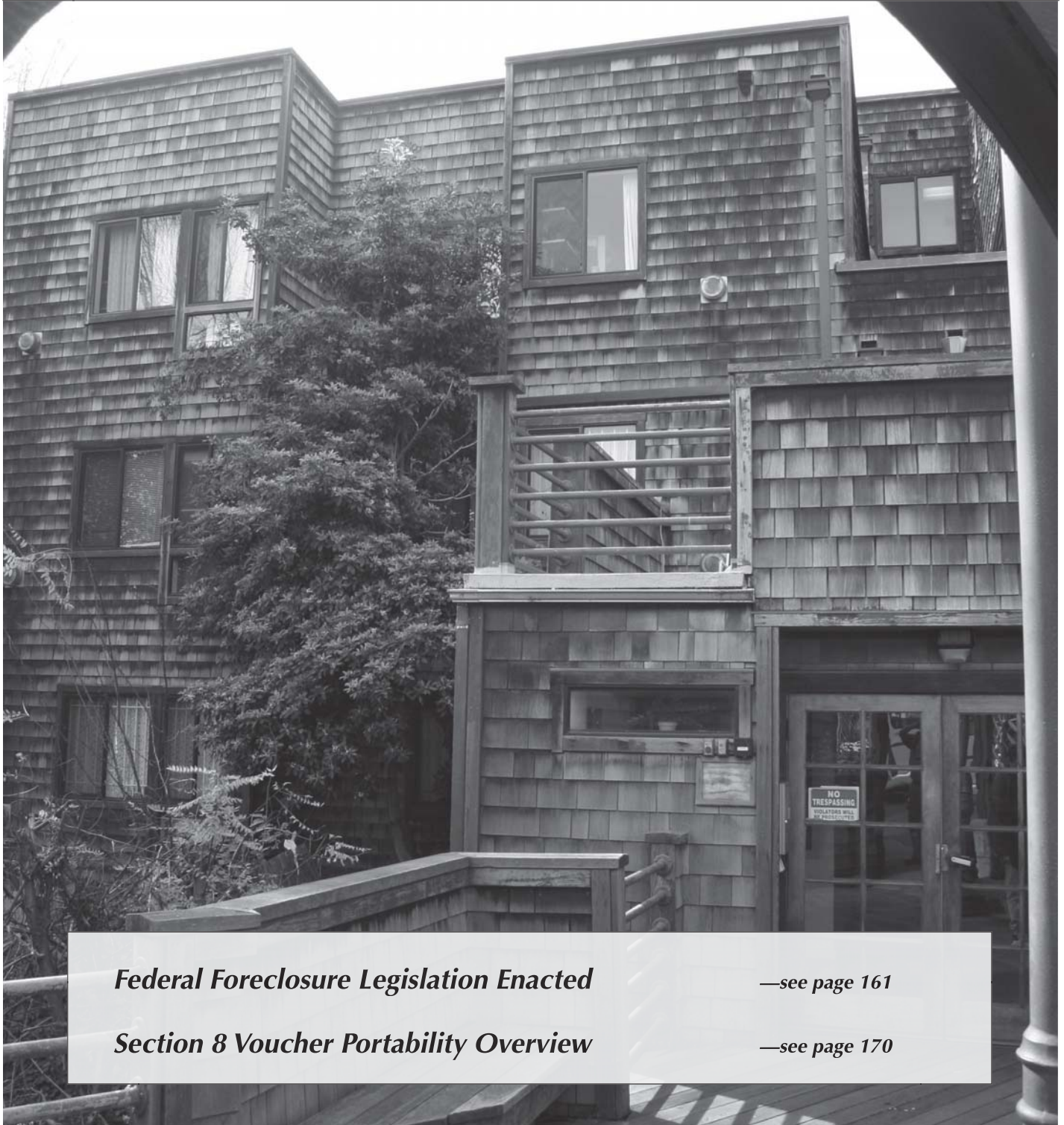


advancing housing justice

# Housing Law Bulletin

Volume 38 • August 2008

Published by the National Housing Law Project



*Federal Foreclosure Legislation Enacted*

—see page 161

*Section 8 Voucher Portability Overview*

—see page 170

# ADVANCING HOUSING JUSTICE

A Decent, Safe, & Affordable Home for All

## Housing Justice Network National Meeting

SUNDAY & MONDAY, DECEMBER 7 & 8 8:30 am – 5:00 pm

The National Meeting of the Housing Justice Network is a dynamic two-day event that brings together low-income housing allies—public interest attorneys, affordable housing advocates, policy analysts, organizers, and residents—from across the nation. Attendees participate in sessions on current developments in the federal housing programs, discuss strategies for representing the interests of low-income residents, and exchange ideas on litigating, advocating, and organizing. HJN members will also begin the process of planning policy advocacy and set priorities for work with the new incoming Administration. The keynoter speaker for the meeting is Cruz Reynoso, a former Associate Justice of the California Supreme Court and former Vice-Chair of the U.S. Commission on Civil Rights.

The HJN Meeting is a tremendous opportunity to meet with colleagues and build our collective capacity to advance housing justice for low-income households across America.



## Federal Housing Programs: One-Day Training for New Practitioners

SATURDAY, DECEMBER 6 9:00 am – 5:00 pm

This substantive training provides a comprehensive overview of the federal housing programs, recent changes, current trends, and issues facing practitioners. The full-day training is designed for advocates with limited housing experience—and will help prepare you for more in-depth discussion at the HJN Meeting sessions. Practitioners are welcome to attend just the meeting or just the training. Note: There is a discounted rate for attending both.

See pages 183-184 for more information and a registration form.

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**Cover:** Adel Court, a 30-unit senior public housing development operated by the Oakland Housing Authority, California.

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## Foreclosure Relief Legislation Includes GSE Regulation and National Housing Trust Fund\*

On July 30, President Bush signed into law the most sweeping housing legislation to be passed in years, the Housing and Economic Recovery Act of 2008 (H.R. 3221).<sup>1</sup> The Act provides mortgage foreclosure relief, enables a possible government rescue of Fannie Mae and Freddie Mac and reforms their regulatory oversight, establishes an affordable housing trust fund, and enacts changes to the HUD housing programs.

In spite of his opposition to some of the bill's provisions, President Bush dropped his veto threat after Treasury Secretary Henry M. Paulson stated that legislation was necessary to bolster confidence in Fannie Mae and Freddie Mac.<sup>2</sup> Recent concerns about the future of Fannie and Freddie, which together hold almost half the nation's \$12 trillion in mortgages, created great instability in the housing and credit markets.<sup>3</sup> To address these concerns, the Act gives the Treasury Department broad authority to maintain the solvency of Fannie Mae and Freddie Mac.<sup>4</sup>

The act's primary foreclosure relief measure creates an FHA-insured mortgage refinancing program, which is expected to help roughly 400,000 people stay in their homes.<sup>5</sup> It also earmarks \$3.92 billion for states and local governments to purchase and rehabilitate vacant homes abandoned after foreclosure. In a major victory for affordable housing advocates, the bill also establishes an Affordable Housing Trust Fund and Capital Magnet Fund, which will provide states with dedicated funding

\*Katherine Lehe is the author of this article. She is a J.D. Candidate at the University of California, Berkeley School of Law (Boalt Hall) and was a summer intern at the National Housing Law Project.

<sup>1</sup>The law is Pub. L. No. 110-289, \_\_\_ Stat. \_\_\_ (July 30, 2008). Because the official Public Law version is not yet available, this article cites to sections of the enrolled version of H.R. 3221, which will be identical to the eventual Public Law. For general overview, see also Memo to Members, National Low Income Housing Coalition, H.R. 3221 Will Address Reform of GSEs, Foreclosure Crisis, More (July 25, 2008), Vol. 13, No. 30, at [http://www.nlihc.org/detail/article.cfm?article\\_id=5394](http://www.nlihc.org/detail/article.cfm?article_id=5394) [hereinafter NLIHC Memo to Members].

<sup>2</sup>Sheryl Gay Stolberg and David M. Herszenhorn, *House Passes Housing Bill After Bush Says He Will Sign It*, N.Y. TIMES, July 24, 2008, <http://www.nytimes.com/2008/07/24/business/24housing.html?scp=1&sq=House%20Passes%20Housing%20Bill%20After%20Bush%20Says%20He%20Will%20Sign%20It&st=cse>.

<sup>3</sup>*Id.*

<sup>4</sup>David M. Herszenhorn, *Bush Signs Sweeping Housing Bill*, N.Y. TIMES, July 31, 2008, [http://www.nytimes.com/2008/07/31/business/31housing.html?\\_r=1&hp=&oref=slogin&pagewanted=print](http://www.nytimes.com/2008/07/31/business/31housing.html?_r=1&hp=&oref=slogin&pagewanted=print).

<sup>5</sup>Cost Estimate, Congressional Budget Office, CBO's Estimate of Cost of the Administration's Proposal to Authorize Federal Financial Assistance for the Government-Sponsored Enterprises for Housing 3 (July 22, 2008), <http://www.cbo.gov/ftpdocs/95xx/doc9574/07-22-GSEs.pdf> [hereinafter CBO Cost Estimate July 22, 2008].

for the development of affordable housing,<sup>6</sup> generated from a percentage of the annual new business conducted by Fannie Mae and Freddie Mac,<sup>7</sup> outside of the annual Congressional appropriations process. Although during the first two years of the program these contributions will be diverted on a stepped-down basis to offset the costs of the bill's mortgage refinance program, the trust fund alone is expected to generate \$300 million annually beginning in 2012.<sup>8</sup> The Act also establishes roughly \$15 billion in housing tax breaks,<sup>9</sup> including a \$7,500 tax credit for first-time homebuyers.<sup>10</sup>

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*The final version of the bill signed into law  
was the result of months of negotiations  
between the House and Senate.*

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The final version of the bill signed into law was the result of months of negotiations between the House and Senate, and is a re-working of the Federal Housing Finance Regulatory Reform Act of 2008, which had been approved by the Senate Committee on Banking, Finance, and Urban Affairs on May 20. A number of titles were added and changes made to the bill since then, which are discussed in more detail below. For a more in-depth discussion of the Act's foreclosure relief program, FHA modernization, Government-Sponsored Enterprise reforms, and the Affordable Housing Trust Fund, readers should refer to the discussion of the bill's earlier version, the "Federal Housing Finance Regulatory Reform Act of 2008," which appeared in NHLP's June 2008 *Bulletin*.<sup>11</sup>

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<sup>6</sup>H.R. 3221, at § 1131.

<sup>7</sup>Fannie Mae and Freddie Mac will contribute to the Funds an amount equal to 4.2 basis points for each dollar (or 4.2 cents per 100 dollars) of the unpaid principal balance of its total new business purchases. *Id.*

<sup>8</sup>Posting of Barbara Sard, Director of Housing Policy, Center on Budget and Policy Priorities, bsard@rcn.com, to members@lists.housingjustice.net (July 30, 2008) (copy on file with author) [hereinafter Posting of Barbara Sard].

<sup>9</sup>Richard Simon, *House Votes to Back Fannie Mae, Freddie Mac, Stem Foreclosures*, L.A. TIMES, July 23, 2008, <http://www.latimes.com/business/la-fi-housing24-2008jul24,0,548381.story>.

<sup>10</sup>H.R. 3221, at § 3011.

<sup>11</sup>NHLP, *Congress Tackles Foreclosure Relief and GSE Reform*, 38 Hous. L. BULL. 109 (June 2008). Although the NHLP June *Bulletin* article includes a section on H.R. 3221, the final version of the Act is actually a modification of the Senate Committee's "Federal Housing Finance Regulatory Reform Act of 2008." Readers should refer to the section of the June *Bulletin* article that is so entitled, rather than to its discussion of what was then the contents of H.R. 3221.

## Boosting Market Confidence in Fannie Mae and Freddie Mac and GSE Reform

In the bill's final week, provisions were added on the recommendation of Treasury Secretary Paulson to help restore market confidence in Fannie Mae and Freddie Mac, the nation's two largest mortgage finance companies.<sup>12</sup> These measures will grant the Federal Treasury temporary authority to increase its lending to the Government Sponsored Enterprises (GSEs), which include Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.<sup>13</sup> The Secretary will have standby authority to invest in Fannie, Freddie, and the Banks "in such amounts as the Secretary may determine."<sup>14</sup> This authority expires on December 31, 2009.

Several provisions were added to ensure that this increased authority does not pose undue risk to taxpayers. The bill requires that taxpayers be paid back before other shareholders; shareholder dividends will be restricted and executive compensation may be modified until taxpayers are paid back; and the Director of the Federal Housing Finance Agency, the new regulator of the GSEs, must consult with the Federal Reserve regarding the use of the Treasury's standby authority.<sup>15</sup> To accommodate the additional risk posed by this authority,<sup>16</sup> the bill will also increase the statutory limit on the national debt by \$800 billion to \$10.6 trillion.<sup>17</sup>

The Congressional Budget Office has estimated that although the GSEs stand a "better than 50 percent" chance of weathering the current housing crisis without this increased governmental assurance, these provisions will likely cost \$25 billion over fiscal years 2009 and 2010.<sup>18</sup> The Treasury Department has stated that it hopes never to exercise its increased authority, noting that Fannie Mae and Freddie Mac remain in sound financial condition.<sup>19</sup>

Aside from the provisions that ensure the solvency of the GSEs, H.R. 3221 includes a number of regulatory reforms to the GSEs themselves, including a new regulatory body<sup>20</sup> and new affordable housing goals, which are discussed at more length in NHLP's June *Bulletin* article.

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<sup>12</sup>Stolberg and Herszenhorn, *supra* note 2, at 1.

<sup>13</sup>This authority is subject to the Treasury Secretary's determination that it is necessary to provide stability to financial markets, prevent disruptions in the availability of mortgage finance, and to protect taxpayers. H.R. 3221, at § 1117. Currently, the Treasury has permanent authority to purchase debt securities issued by Fannie Mae and Freddie Mac in amounts up to \$2.25 billion for each. CBO Cost Estimate, *supra* note 5, at 3.

<sup>14</sup>H.R. 3221, at § 1117. See also NLIHC Memo to Members, *supra* note 1.

<sup>15</sup>*Id.*

<sup>16</sup>Stolberg and Herszenhorn, *supra* note 2, at 1.

<sup>17</sup>H.R. 3221, at § 3083.

<sup>18</sup>CBO Cost Estimate, *supra* note 5, at 3. See also Simon, *supra* note 9, at 1.

<sup>19</sup>Stolberg and Herszenhorn, *supra* note 2, at 1.

<sup>20</sup>A new Federal Housing Finance Agency (FHFA) will regulate the GSEs, and will be headed by a director appointed by the President and confirmed by the Senate for a five-year term. NLIHC Memo to Members, *supra* note 1.

In a new provision, the bill also raises the cost limits for single-family home loans that the GSEs can buy or guarantee to \$417,000, and to \$625,000 in high-cost housing areas.<sup>21</sup> The current high-cost loan limit is \$729,750, a temporary increase effective through 2008.<sup>22</sup>

### Mortgage Foreclosure Relief

The centerpiece of the bill's foreclosure relief provisions is the Hope for Homeowners Program, which gives the Federal Housing Administration (FHA) authority to refinance \$300 billion of mortgages for eligible borrowers at risk of foreclosure.<sup>23</sup> The program is voluntary on the part of lenders and borrowers, and is expected to help roughly 400,000 people stay in their homes.

In addition to the federal refinancing program, the bill enables states to refinance subprime loans with tax-exempt mortgage revenue bonds. For calendar year 2008 only, states have authority to offer an additional \$11 billion in mortgage revenue bonds for refinancing adjustable rate single-family residential mortgage loans made between December 31, 2001, and January 1, 2008, that are "likely to cause financial hardship to the borrower."<sup>24</sup> States may offer such bond refinancing at standard state levels until December 31, 2010.<sup>25</sup>

Significantly, the bill also bans seller-funded downpayments. In most of these controversial transactions, buyers who could not otherwise afford a downpayment contact a third-party intermediary, normally a tax-exempt charitable organization that advertises a downpayment program.<sup>26</sup> Sellers then make a contribution to the organization equal to the amount of the downpayment. The intermediary normally collects a fee, and then pays the balance of the seller's contribution toward the buyer's downpayment.

The FHA has long sought to prohibit such transactions, citing HUD data that shows that such programs result in excessive defaults, foreclosures, and losses at a rate of between two and three times that of loans for which buyers pay their own downpayments.<sup>27</sup> However, several prominent charitable organizations that offer such programs dispute the accuracy of HUD's data, and argue that the vast majority of the working families who have bought homes through these programs have not defaulted

<sup>21</sup>H.R. 3221, at § 1124.

<sup>22</sup>NLIHC Memo to Members, *supra* note 1.

<sup>23</sup>H.R. 3221, at § 1402.

<sup>24</sup>*Id.* at § 3021. See also Alison Vekshin, *U.S. Housing, Bank Regulators to Meet on Housing Bill (Update 1)*, BLOOMBERG NEWS SERVICE, July 27, 2008, at <http://www.bloomberg.com/apps/news?pid=20601087&refer=home&id=ad1iF8nRjzh4>.

<sup>25</sup>*Id.*

<sup>26</sup>Kenneth R. Harney, *FHA Calls For An End To Seller-Funded Down-Payment Charities*, WASHINGTON POST, June 21, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/06/20/AR2008062001242.html>.

<sup>27</sup>*Id.*

## JULIE LEVIN WINS ABA AWARD FOR OUTSTANDING PUBLIC SECTOR WORK

Julie Levin, the managing attorney for Western Missouri Legal Service's central office in Kansas City, was recently given the American Bar Association's Outstanding Public Sector Work Award. Julie, a member of the National Housing Law Project's Housing Justice Network and its Council of Advisors, was honored in New York City on August 8 for her groundbreaking work in challenging the Housing Authority of Kansas City (HAKC) for its failure to maintain the Theron B. Watkins public housing development.

In *Tinsley v. Kemp*, Julie argued that the housing authority's failure to maintain the development constituted *de facto* demolition of the units and violated the Fair Housing Act. After HAKC lost its motion to dismiss, Julie was successful in reaching a settlement agreement that ultimately resulted in \$143 million being devoted to the renovation of all of HAKC's public housing units. When rehabilitation of the units was not progressing and additional housing units were deteriorating, Julie was successful in putting HAKC into private judicial receivership. The receivership lasted for more than thirteen years and has transformed HAKC from a troubled housing authority to a model for other public housing authorities. Significantly, residents' interests have been protected as a result of the litigation: a resident organization was formed to monitor HAKC policies, procedures and operations, and the properties' renovation; demolished or sold units have been replaced on a one-to-one basis; displaced residents were given the right to return to new units; Section 3 job opportunities were created; minimum rents were abolished for most needy residents; and drug and criminal evictions were limited to cases where the resident knew or should have know of the activity. Julie and her husband, Murray S. Levin, have published articles on *Tinsley* in the *Stetson Law Review*, 36 STETSON L. REV. 77 (2006) and the *Housing Law Bulletin*, 37 HOUS. L. BULL. 31 (2007).

NHLP congratulates Julie for winning this prestigious award and recognizes her for thirty-one years of exceptional work in the legal services and housing communities. We also thank her for her generous support of the Housing Justice Network and of the National Housing Law Project.

or been foreclosed.<sup>28</sup> Transactions with seller-funded downpayments have accounted for more than one-third of the total FHA loan volume in recent years.<sup>29</sup>

The bill expressly prohibits seller-funded downpayments for mortgages approved on or after October 1, 2008,<sup>30</sup> and imposes a cash investment requirement on homebuyers with mortgages insured by the FHA.<sup>31</sup> The bill prohibits the cash investment from coming from a “seller or any other person or entity that financially benefits from the transaction,” or “any third party or entity that is reimbursed, directly or indirectly,” by the seller or benefiting entities.<sup>32</sup> Borrowers with FHA-insured mortgages will be required to pay at least 3.5% of the appraised value of the property in cash or its equivalent.<sup>33</sup>

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*To assist communities hardest hit by the foreclosure crisis, the act will provide a one-time \$3.92 billion allocation of Community Development Block Grant (CDBG) funds to states and local governments.*

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The bill also imposes a one-year moratorium on risk-based pricing of mortgage insurance premiums, beginning October 1, 2008.<sup>34</sup> Risk-based premiums are designed for mortgage lenders to offer borrowers an FHA-insured mortgage priced on the risk that the insurance contract represents. HUD Secretary Steve Preston has stated that failure to use risk-based pricing could result in increased premiums for all borrowers or decreased mortgage activity.<sup>35</sup>

The final bill also allocates funds for housing counseling and related services aimed at foreclosure prevention. The bill appropriates \$180 million for the Neighborhood Reinvestment Corporation for counseling services, at least \$27 million of which must be allocated to organizations that serve minority and low-income homeowners and neighborhoods.<sup>36</sup> An additional \$100 million will be “appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year 2008” for certain

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<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>H.R. 3221, at § 2113.

<sup>31</sup>*Id.*

<sup>32</sup>*Id.*

<sup>33</sup>HUD may require a cash investment larger than 3.5% of the property’s appraised value. Amounts borrowed from family members shall be considered cash or its equivalent, subject to certain conditions. H.R. 3221, at § 2113.

<sup>34</sup>*Id.*

<sup>35</sup>Senate Panel Approves \$42.4 Billion in Fiscal 2009 HUD Funding Bill; Senate Moving Ahead on Housing Bill, 36 HOUSING AND DEV. REP. CURRENT DEV. 417, 446 (July 14, 2008).

<sup>36</sup>H.R. 3221, at § 2305.

mortgage foreclosure mitigation activities, to remain available until December 31, 2008.<sup>37</sup> Of the total appropriation, \$30 million must be used for grants to counseling intermediaries or to hire attorneys to assist homeowners who have legal issues directly related to foreclosure, delinquency or short sale.<sup>38</sup>

Although the final bill does not establish minimum notice requirements for renters facing eviction due to foreclosure, several provisions offer protections for certain renters. The bill increases by \$30 million the funding level for McKinney-Vento homeless assistance programs, which provide emergency assistance to homeless youth and their families who become homeless due to foreclosure.<sup>39</sup> Funds may be used to benefit both homeowners and renters who lose their homes due to a foreclosure. In addition, the bill authorizes federal reimbursement of the moving expenses for military service members who lose their rental homes due to a foreclosure.<sup>40</sup>

In an effort to curb the abuse of senior citizens in mortgage sales, the bill establishes new regulations on reverse mortgages.<sup>41</sup> Reverse mortgages allow senior citizens<sup>42</sup> to receive a lump sum or monthly check from their home equity, to be repaid only when they move out or when their heirs sell the home.<sup>43</sup> To prevent the sales tactics that have pressured seniors into loans with high fees and unnecessary financial products, the bill caps origination fees at 2% for loans up to \$200,000, and at 1% for larger loans, up to a maximum of \$6,000. Borrowers cannot be required to purchase an annuity or other financial insurance product in order to qualify for a reverse mortgage.

## Neighborhood Stabilization Funds

To assist communities hardest hit by the foreclosure crisis, the Act will provide a one-time \$3.92 billion allocation of Community Development Block Grant (CDBG) funds<sup>44</sup> to states and local governments to purchase and redevelop abandoned and foreclosed homes and residential properties.<sup>45</sup> This provision, omitted from an earlier

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<sup>37</sup>*Id.* at § 2401.

<sup>38</sup>*Id.* at § 2305.

<sup>39</sup>*Id.* at § 2901.

<sup>40</sup>NLIHC Memo to Members, *supra* note 1. The bill also extends current restrictions on the sale, foreclosure, or seizure of property owned by military service members from ninety days to nine months after completion of service. H.R. 3221, at § 2203.

<sup>41</sup>H.R. 3221, at § 2122.

<sup>42</sup>Reverse mortgages are typically available for persons at least sixty-two years old. Ron Lieber, *Housing Bill Has Something for Nearly Everyone*, N.Y. TIMES, July 25, 2008, <http://www.nytimes.com/2008/07/25/business/25money.html>.

<sup>43</sup>*Id.*

<sup>44</sup>HUD will have the authority to alter the CDBG program requirements placed on these funds to the extent necessary to expedite the use of such funds, except for those requirements related to fair housing, non-discrimination, labor standards, and the environment. H.R. 3221, at § 2301(f).

<sup>45</sup>H.R. 3221, at §§ 2301 and 2305.

version due to opposition from the Bush Administration, was included thanks in large part to the leadership of Rep. Maxine Waters (D-CA). After the President dropped his veto threat to get legislation to boost confidence in the GSEs, Waters insisted on the inclusion of the so-called neighborhood stabilization funds.<sup>46</sup>

The funds will be distributed to states and local governments through a needs-based formula<sup>47</sup> to be determined by HUD within sixty days of enactment. No state will receive less than 0.5% of the total funds,<sup>48</sup> or \$19.6 million, and states and local governments must use their allocation within eighteen months of receipt.<sup>49</sup>

All of these funds must be used to provide affordable housing for low- and moderate-income people whose incomes do not exceed 120% of Area Median Income (AMI), and at least 25% must be used to provide housing for those at or below 50% of AMI.<sup>50</sup> The bill also requires HUD to ensure, to the maximum extent possible, that these properties remain affordable to people in these income ranges for as long as feasible.<sup>51</sup>

Any homes acquired with these funds and sold to individuals as a primary residence shall be sold for no more than the public entity recipient's purchase and rehabilitation costs.<sup>52</sup> Recipients may reinvest profits from sale, rental, rehabilitation or redevelopment for five years, at which point any remaining profits will be deposited in the Treasury.<sup>53</sup>

Critics argue that the funds may prolong the housing crisis by providing banks with an incentive to foreclose.<sup>54</sup> While housing advocates acknowledge that the program will benefit some lenders, they emphasize that these funds will help stabilize neighborhoods in decline due to increasing foreclosure vacancies and the resulting drop in property values.<sup>55</sup> Some advocates have pointed out that help for homeowners and neighborhoods affected by foreclosures is especially warranted given the government's orchestration of the sale of Countrywide, which contributed significantly to the current foreclosure crisis, and federal bailout of Bear Sterns.<sup>56</sup>

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<sup>46</sup>Gene Maddaus, *Waters Hails Housing Bill Passage*, THE DAILY BREEZE, July 26, 2008, [http://www.dailybreeze.com/ci\\_10010059](http://www.dailybreeze.com/ci_10010059).

<sup>47</sup>The formula must take into consideration the states' relative number and percentage of home foreclosures, homes financed by subprime mortgage related loans, homes in default or delinquency, and the likelihood that the area will face a significant rise in foreclosures. H.R. 3221, at § 2301.

<sup>48</sup>H.R. 3221, at § 2302.

<sup>49</sup>*Id.* at § 2301. The bill requires HUD to distribute the funds no more than thirty days after the formula is established. *Id.*

<sup>50</sup>H.R. 3221, at § 2301(f)(3).

<sup>51</sup>*Id.*

<sup>52</sup>*Id.* at § 2301(d)(3).

<sup>53</sup>H.R. 3221, at § 2301(d)(4).

<sup>54</sup>Maddaus, *supra* note 46, at 1.

<sup>55</sup>*Id.*

<sup>56</sup>*See id.* (quoting Kathleen Day, Spokesperson, Center for Responsible Lending).

## Provisions Affecting Other Housing Programs

The act includes numerous provisions affecting the HUD housing programs, as well as the Low-Income Housing Tax Credit program.<sup>57</sup>

### Changes to the Public Housing Program

The act also includes significant changes to the public housing program, including a provision that makes FEMA, rather than HUD, financially responsible for repairing public housing units damaged in disasters.<sup>58</sup> Significantly, the bill also exempts almost all small public housing agencies (PHAs) from the requirement to submit an annual plan to HUD.<sup>59</sup> The exemption applies to PHAs that administer no more than 550 vouchers and public housing units, which includes roughly 3000 PHAs and affects approximately 500,000 families.<sup>60</sup> These PHAs still must certify annually that they are complying with civil rights requirements, hold annual public meetings on proposed policy changes, and establish and consult with a Resident Advisory Board.<sup>61</sup> However, elimination of the annual planning process is likely to limit advocates' abilities to obtain important information on and influence PHA operations.

### Changes to the Low-Income Housing Tax Credit and Voucher Programs

A separate title of the bill enacts several changes to the Low-Income Housing Tax Credit (LIHTC) program, as well as provisions affecting the interaction between LIHTCs and other federal housing programs. Many of these provisions were taken from both the House and Senate versions of the Section 8 Voucher Reform Act (SEVRA).<sup>62</sup>

The bill temporarily increases the total amount of LIHTCs allocated to states for calendar years 2008 and 2009. States that receive LIHTCs on a per capita basis will receive a \$0.20 per capita increase, and the minimum allocation to small states will be increased by 10% in both years.<sup>63</sup> The bill also protects the rental income stream of LIHTC properties. Because LIHTC rents are capped at

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<sup>57</sup>Apart from the changes discussed here, for all HUD housing programs, deferred veterans lump sum disability benefits may not be considered in determining program eligibility or income. H.R. 3221, 110<sup>th</sup> Cong. § 2608 (2008). *See also* Memo to Members, National Low Income Housing Coalition, H.R. 3221 Will Address Reform of GSEs, Foreclosure Crisis, More (July 25, 2008), Vol. 13, No. 30, at [http://www.nlihc.org/detail/article.cfm?article\\_id=5394](http://www.nlihc.org/detail/article.cfm?article_id=5394) [hereinafter NLIHC Memo to Members].

<sup>58</sup>H.R. 3221, at § 2804.

<sup>59</sup>The exemption does not apply to agencies designated as "troubled," or to those with a failing score under the Section 8 Management Assessment Program in the prior twelve months. H.R. 3221, at § 2702.

<sup>60</sup>Posting from Barbara Sard, *supra* note 8.

<sup>61</sup>H.R. 3221, at § 2702. *See also* Posting from Barbara Sard, *supra* note 8.

<sup>62</sup>The Senate Banking Committee may consider the remaining portions of its version of SEVRA (S. 2684) in September. Posting from Barbara Sard, *supra* note 8.

<sup>63</sup>H.R. 3221, at § 3001.

30% of 60% of AMI, rents in LIHTC properties can drop significantly if the HUD calculation of AMI decreases. To address this problem, the bill prohibits decreases in AMI calculations for LIHTC purposes.<sup>64</sup>

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*Although H.R. 3221 was drafted to bypass the normal rulemaking process, it is uncertain when HUD will be able to complete regulations to implement the bill's mortgage refinancing program.*

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Several provisions are designed to enable the LIHTC program to serve lower-income households. Projects can now combine federal rent and operating subsidies with LIHTCs without counting against the total tax credit amount, which could allow more low-income households to reside in LIHTC units.<sup>65</sup> The bill authorizes states to increase the amount of credits for certain projects by 30%,<sup>66</sup> and to further boost project allocations if necessary to keep projects financially feasible.<sup>67</sup> The bill also lifts the ban on using tax credits and tax-exempt housing bonds in projects receiving Section 8 Moderate Rehabilitation assistance,<sup>68</sup> and treats single room occupancy units as residential units for LIHTC purposes.<sup>69</sup>

Another provision repeals, for federally or state-assisted properties, the "10-year rule" prohibiting use of LIHTCs for existing properties that have been transferred during the previous ten years.<sup>70</sup> Also, the bill requires state LIHTC administrators annually to report data on the race, ethnicity, family composition, age, income, use of HUD or similar rental assistance, disability status, and monthly rent payments for all LIHTC households, and authorizes five-year funding for implementation.<sup>71</sup>

In addition to the changes in the LIHTC program itself, H.R. 3221 affects the interaction between LIHTCs and the Project-Based Section 8 Voucher (PBV) and tenant-based Voucher programs, and makes changes to the voucher programs themselves. Many of these changes are intended to make it easier to use project-based vouchers

to provide affordable housing in mixed-income projects.<sup>72</sup> The bill extends the maximum PBV contract term from ten years to fifteen years, and allows PHAs and owners to agree at any time to extend the contract for up to fifteen years, rather than permitting such agreements only in the last year of the contract term.<sup>73</sup> For project-based units with LIHTCs, PHAs may set reasonable rents up to 110% of HUD's Fair Market Rent, even if this amount exceeds maximum LIHTC rents.<sup>74</sup> Further, PHAs may guarantee owners that PBV rents will not be reduced below initial HAP contract rent levels.<sup>75</sup> The Act also allows PBVs in cooperatives and elevator buildings.<sup>76</sup>

In order to make it easier to use tenant-based vouchers in LIHTC and HOME-funded units, the bill makes several changes to rent reasonableness determinations in these units. In LIHTC or HOME-funded units with vouchers, an independent determination of rent reasonableness is not required if the rent does not exceed the rent of comparable project units without vouchers.<sup>77</sup> However, rents will be considered reasonable only if less than the greater of the rent charged to non-voucher holders in the project or the voucher payment standard. The practical effect will be to continue to allow LIHTC and HOME project owners to charge tenant-based voucher holders more than non-voucher holders, but only when any excess rent is covered by the voucher subsidy and does not force the tenant to pay more.

## What's Next

Although H.R. 3221 was drafted to bypass the normal rulemaking process, it is uncertain when HUD will be able to complete regulations to implement the bill's mortgage refinancing program. In a news conference on July 26<sup>th</sup>, Senator Dodd expressed disappointment with statements he attributed to HUD Secretary Preston that the agency would take as long as a year to promulgate the necessary regulations.<sup>78</sup> HUD spokesman Stephen O'Halloran denied that Preston made such comments, and stated that HUD is committed to implementing the program.<sup>79</sup> Senator Dodd has requested a meeting with HUD, the Federal Reserve, the Treasury Department, and the Federal Deposit Insurance Corporation to push for an immediate start to the process. Other provisions affecting other housing programs (e.g., the project-based voucher

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<sup>64</sup>NLIHC Memo to Members, *supra* note 1.

<sup>65</sup>H.R. 3221, at § 2835. *See also* Posting from Barbara Sard, *supra* note 8.

<sup>66</sup>H.R. 3221, at § 3003. This increase in the allowable tax credit amount applies to projects outside those areas where increases are currently allowed, Qualified Census Tracts and Difficult Development Areas, but excludes bond financed projects already receiving 4% credits. *Id.* *See also* Posting from Barbara Sard, *supra* note 8.

<sup>67</sup>H.R. 3221, at § 3003. *See also* NLIHC Memo to Members, *supra* note 1.

<sup>68</sup>H.R. 3221, at § 3004.

<sup>69</sup>*Id.* at § 3008.

<sup>70</sup>*Id.* at § 3003(f). *See also* NLIHC Memo to Members, *supra* note 1.

<sup>71</sup>H.R. 3221, at § 2835(d), adding a new Section 36 to the United States Housing Act.

<sup>72</sup>Posting from Barbara Sard, *supra* note 8.

<sup>73</sup>H.R. 3221, at § 2835(a). *See also* Posting from Barbara Sard, *supra* note 8.

<sup>74</sup>H.R. 3221 at § 2835(a)(1)(D). *See also* Posting from Barbara Sard, *supra* note 8.

<sup>75</sup>*Id.*

<sup>76</sup>*Id.*

<sup>77</sup>H.R. 3221, at § 2835(a)(2).

<sup>78</sup>Alison Vekshin, *U.S. Housing, Bank Regulators to Meet on Housing Bill (Update 1)*, BLOOMBERG NEWS SERVICE, July 27, 2008, at <http://www.bloomberg.com/apps/news?pid=20601087&refer=home&sid=ad1iF8nRjzh4>.

<sup>79</sup>*Id.*

program) might be implemented by HUD's issuance of a notice suspending currently incompatible regulations.

While the Housing and Economic Recovery Act of 2008 includes significant reform and foreclosure relief provisions, it remains to be seen whether it will be sufficient to slow the decline in housing prices and enable an economic recovery.<sup>80</sup> Although the mortgage refinance provisions of the bill are expected to help roughly 400,000 families keep their homes, the Congressional Budget Office has estimated that 35% of the refinanced loans will end up in default again.<sup>81</sup>

Moreover, many affordable housing advocates point out that the most effective solutions to the foreclosure crisis were abandoned by Congress. Provisions that would have curbed predatory lending practices and severed the relationship between banks and appraisers were either omitted or are too weak to provide the scale of relief necessary, advocates say.<sup>82</sup> Making the mortgage refinance program voluntary for lenders was a major disappointment for advocates, some of whom argue that in order to make homeownership viable, lawmakers cannot rely on the same lending industry that triggered the foreclosure crisis in the first place.<sup>83</sup> Also omitted from the bill was a provision favored by advocates that would have empowered judges to rewrite loans during bankruptcy proceedings, as well as certain protections for tenants in occupancy. Although the prospects for further legislation are unclear, Senator Dodd and Representative Frank later hope to take up anti-predatory lending bills that would enact "forward-looking, preventative measures" to address some of the shortcomings of the Act's foreclosure relief programs.<sup>84</sup> ■

## California Expands Tenant Protections in Response to Foreclosure Crisis\*

California Governor Arnold Schwarzenegger recently signed a bill providing protections for tenants and homeowners affected by the foreclosure crisis.<sup>1</sup> The new law increases notice requirements for homeowners and tenants, and it also requires owners of foreclosed residential properties to keep those properties in good repair or risk fines. Additional legislation that would protect tenants living in foreclosed dwellings from having their utilities shut off is awaiting the governor's signature.

### The Foreclosure Crisis

Like many other states, California is in the midst of a foreclosure crisis prompted by the collapse of housing prices and widespread trouble with the subprime mortgage market. Foreclosures on residential mortgages in California increased sevenfold from 2006 to 2007.<sup>2</sup> In 2007, more than 84,000 California properties suffered foreclosures, and over 250,000 loans went into default.<sup>3</sup> This dramatic rise in the number of foreclosures has affected more than just those homeowners. It has negatively impacted neighborhood property values and living conditions, and it has forced many renters to hurriedly relocate after lenders foreclosed on their rental properties.

Unoccupied dwellings with unkempt yards are not only eyesores, they may also be public health hazards and crime magnets, according to supporters of the recent legislation.<sup>4</sup> In a number of reported cases, purchasers have ceased to maintain the foreclosed-upon properties.<sup>5</sup> Untended swimming pools have become breeding grounds for mosquitoes, and uninhabited homes have invited squatters and vandals.<sup>6</sup>

In addition to neighbors, renters have become casualties of foreclosures. In jurisdictions without adequate notice requirements for tenants living in foreclosed-upon properties, renters may find themselves suddenly homeless

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<sup>1</sup>Samantha Sondag, *Governor Signs Law to Help Homeowners Keep Their Properties*, S.F. CHRON., July 9, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/07/09/BA3411LL25.DTL>.

<sup>2</sup>S.B. 1137, 2008 Leg., Reg. Sess. (Cal. 2008).

<sup>3</sup>*Id.*

<sup>4</sup>See Assembly Floor, S.B. 1137 Analysis at 6-7 (June 30, 2008), [http://leginfo.ca.gov/pub/07-08/bill/sen/sb\\_1101-1150/sb\\_1137\\_cfa\\_20080630\\_145451\\_asm\\_floor.html](http://leginfo.ca.gov/pub/07-08/bill/sen/sb_1101-1150/sb_1137_cfa_20080630_145451_asm_floor.html).

<sup>5</sup>David Streitfeld, *Blight Moves in After Foreclosures*, L.A. TIMES, Aug. 28, 2007, <http://articles.latimes.com/2007/aug/28/business/fi-vacant28>.

<sup>6</sup>*Id.*

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<sup>80</sup>See Stolberg and Herszenhorn, *supra* note 2, at 1.

<sup>81</sup>Cost Estimate, Congressional Budget Office, Federal Housing Finance Regulatory Reform Act of 2008 10 (June 9, 2008), [http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate\\_Housing.pdf](http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf).

<sup>82</sup>Mike Lillis, *Moving Right or Dodging Bullets?*, WASHINGTON INDEPENDENT, June 27, 2008, <http://washingtonindependent.com/view/moving-right-or>.

<sup>83</sup>See *id.* (quoting Josh Nassar, Vice President of Federal Affairs, Center for Responsible Lending).

<sup>84</sup>*Id.*

even though they have been paying their rent.<sup>7</sup> Some states and municipalities have responded with legislation that provides tenants with additional notice before they can be evicted from foreclosed properties.<sup>8</sup> Others, including several in California, provide substantive protections for tenants through state or local good cause for eviction protections that do not specify transfer of title at foreclosure as permissible grounds. However, even in jurisdictions that have protections for tenants, foreclosure purchasers are not always abiding by the law, and many tenants are unaware of their rights.<sup>9</sup> Some landlords have been serving illegal eviction notices on renters, and others have encouraged tenants to vacate by shutting off utilities or refusing to provide maintenance to the dwellings.<sup>10</sup>

In response to these concerns, California has enacted legislation that attempts to minimize foreclosures, offers additional protections to tenants in foreclosed dwellings, and seeks to ensure that abandoned properties do not become public nuisances.

### Senate Bill 1137

Senate Bill 1137, sponsored by State Senate President Pro Tempore Don Perata, contains three major changes to existing state law: (1) it requires that lenders warn borrowers at least thirty days prior to filing a notice of default and that they discuss options for borrowers to avoid foreclosure; (2) it mandates that owners of foreclosed residential properties maintain those properties or suffer fines; and (3) it bolsters protections for tenants by (a) requiring that lending companies give them notice of foreclosure sales; and (b) providing them with at least sixty days' written notice prior to eviction.<sup>11</sup> The entire bill is subject to a sunset date of January 1, 2013, unless a later-enacted statute extends that date.<sup>12</sup>

### Encouraging Alternatives to Foreclosure

The law requires lenders to warn borrowers at least thirty days prior to filing a notice of default.<sup>13</sup> If the lender is unable to locate the mortgagor, it must fulfill the due diligence requirements articulated in the statute, including contacting the borrower by first-class mail and placing at least three phone calls to the borrower's primary phone

number at different times on different days.<sup>14</sup> Once the mortgagor has been reached, the lender must personally speak to the mortgagor about ways to avoid foreclosure and must provide the borrower with a toll-free telephone number for locating a housing counseling agency certified by the Department of Housing and Urban Development.<sup>15</sup> These provisions of the bill will go into effect on September 6, 2008, sixty days after the bill was signed.<sup>16</sup>

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*The law requires that tenants be given at least sixty days' notice to quit property that has been foreclosed.*

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### Maintaining Foreclosed Properties

The law requires that owners maintain residential properties that have been subject to foreclosure or suffer fines up to \$1,000 per day for violations.<sup>17</sup> Violations include permitting the yard to become so overgrown that it diminishes the value of surrounding properties, allowing squatters to remain on the property, or permitting standing water that attracts mosquitoes.<sup>18</sup> The law includes a notice requirement of fourteen days for most violations and provides that good faith efforts to remedy the violation shall be considered in the decision to levy any fine.<sup>19</sup> Although local ordinances may already address public nuisances, the new law supplements these ordinances and provides stiff civil penalties to ensure compliance. This provision went into effect immediately.<sup>20</sup>

### Protecting Tenants

Finally, the law requires that tenants be given at least sixty days' notice to quit property that has been foreclosed.<sup>21</sup> Under prior law, most tenants could be evicted after only thirty days' notice.<sup>22</sup> The new law also requires that tenants be alerted that the property is in the foreclosure process and that the property will be subject to foreclosure sale.<sup>23</sup> The sixty-day notice requirement went into effect immediately; the second measure goes into effect on

<sup>7</sup>Dina ElBoghady, *Foreclosure Crisis Catching Renters Off Guard*, WASH. POST, Aug. 8, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/07/AR2008080703574.html>.

<sup>8</sup>See, e.g., MASS. GEN. LAWS ch. 186, §§ 13, 13A (West 2007); BALTIMORE CITY CODE ART. 13, § 8B (2008), <http://cityservices.baltimorecity.gov/charterandcodes/Code/Art%2013%20-%20Housing.pdf>.

<sup>9</sup>James Temple, *Foreclosure's Hidden Victims*, S.F. CHRON., Aug. 15, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/08/14/MNB312671R.DTL&tsp=1>.

<sup>10</sup>*Id.*; John Glionna, *Renters Tell of Harassment in Foreclosure Proceedings*, L.A. TIMES, Mar. 12, 2008, <http://articles.latimes.com/2008/mar/12/local/me-oakland12>.

<sup>11</sup>S.B. 1137, 2008 Leg., Reg. Sess. (Cal. 2008).

<sup>12</sup>*Id.*

<sup>13</sup>CAL. CIV. CODE § 2923.5 (West 2008).

<sup>14</sup>*Id.* § 2923.5.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.* This provision only applies to loans made between January 1, 2003, and December 31, 2007, inclusive.

<sup>17</sup>CAL. CIV. CODE § 2929.3 (West 2008).

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>CAL. CIV. PROC. CODE § 1161b (West 2008).

<sup>22</sup>MOSKOVITZ, CAL. EVICTION DEFENSE MANUAL, § 20.4A (Calif. Continuing Educ. Of Bar, 2003); CAL. CIV. PROC. CODE § 1161a(c) (West 2007); Sondag, *supra* note 1.

<sup>23</sup>CAL. CIV. CODE § 2924.8 (West 2008).

September 6.<sup>24</sup> Both measures give tenants additional time to find alternative housing, reducing some of the burden they face when forced to relocate due to foreclosure.<sup>25</sup>

### Passage of the Bill

The bill was supported by a diverse coalition including labor unions, community activists, and advocates for fair housing and lending practices.<sup>26</sup> It was initially opposed by the banking and real estate industries, but the bill ultimately passed with bipartisan support after long negotiations between the opposing sides.<sup>27</sup> At least one lawmaker voted against the bill because of the sixty-day notice period for tenants, stating that it infringed upon property owners' rights.<sup>28</sup> However, supporters of the bill, including banking industry representatives, believe that it strikes the proper balance between providing some relief for borrowers and renters and yet not discouraging investment in foreclosed properties.<sup>29</sup>

### Assembly Bill 1333

Another piece of California legislation, Assembly Bill 1333, would require property owners to pay utility bills for properties that have been subject to foreclosure sales.<sup>30</sup> According to Assembly member Loni Hancock, who authored the bill, under existing law the new owner has no clear legal obligation to continue to pay utility companies even when such payments are supposed to be included in the tenants' rent payments.<sup>31</sup> In some cases, owners who take over foreclosed properties have tried to force tenants out by refusing to pay utility bills.<sup>32</sup> This new law would make it harder for landlords to succeed at this game by making such actions clearly illegal.<sup>33</sup> To make it easier for utility companies to collect payments from the property owners themselves, the bill would do away with a provision in current law that prohibits a municipal utility district from imposing a lien upon a residential property owner.<sup>34</sup> Under the new law, the utility district could seek a judgment lien against the property for all delinquent fees and associated penalties.<sup>35</sup> The bill is subject to a sunset provision that would repeal the changes on January 1, 2014, unless a later-enacted statute extends that date.<sup>36</sup>

<sup>24</sup>*Id.*

<sup>25</sup>Marc Lifsher, *California Senate Passes Mortgage Default Warning Bill*, L.A. TIMES, July 3, 2008, <http://www.latimes.com/news/nationworld/washingtondc/la-fi-mortgage3-2008jul03,0,1315562.story>.

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>Sondag, *supra* note 1.

<sup>29</sup>Lifsher, *supra* note 25.

<sup>30</sup>A.B. 1333, 2008 Leg., Reg. Sess. (Cal. 2008).

<sup>31</sup>Assembly Floor, A.B. 1333 Analysis at 3 (Aug. 6, 2008), [http://leginfo.ca.gov/pub/07-08/bill/asm/ab\\_1301-1350/ab\\_1333\\_cfa\\_20080806\\_182000\\_asm\\_floor.html](http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1301-1350/ab_1333_cfa_20080806_182000_asm_floor.html).

<sup>32</sup>See Temple, *supra* note 9; Glionna, *supra* note 10.

<sup>33</sup>See CAL. CIV. CODE § 2924.9 (West 2008).

<sup>34</sup>See A.B. 1333, 2008 Leg., Reg. Sess. (Cal. 2008).

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

## Protection for Renters in Other States

Like California, several other states and municipalities have recently taken up the issue of tenants' rights in foreclosure. For example, Massachusetts passed a bill at the end of last year that prohibits buyers of foreclosed properties from immediately evicting tenants.<sup>37</sup> Tenants whose leases were at will must be given at least thirty days' notice before eviction, and tenants whose leases were for a term of years become tenants at will.<sup>38</sup> Under the new law, foreclosure has no effect upon the lease terms of tenants who receive subsidies from the federal or state government.<sup>39</sup> Legislation awaiting the governor's signature in Illinois would give renters a minimum of ninety days' notice before they could be evicted from foreclosed-on properties.<sup>40</sup> Today renters in Illinois may be evicted with as little as five days' warning.<sup>41</sup> A subcommittee in the Nevada legislature is drafting legislation that would address issues similar to those in the California bills.<sup>42</sup>

The District of Columbia, as well as many jurisdictions with state or local rent and eviction protections, already has tenant protections in place. Under these laws, because a foreclosure transfer is not specified as good cause for eviction, tenants who live in foreclosed properties are entitled to remain in their homes unless the new owner has an independent good cause to evict.<sup>43</sup> Because laws in Maryland offer renters little protection, the city of Baltimore recently passed a law requiring new owners to give tenants in foreclosed properties fourteen days' notice before evicting them.<sup>44</sup>

Congress has also considered providing some relief for renters. Last year, the House of Representatives passed a bill that would provide at least ninety days' notice before renters of foreclosed dwellings could be evicted.<sup>45</sup>

## Conclusion

California homeowners and renters affected by foreclosures now have increased legal protections, but it will take some months to evaluate the effectiveness of these

<sup>37</sup>Binyamin Appelbaum, *Legislature Passes Foreclosure-Aid Bill*, BOSTON GLOBE, Nov. 22, 2007, [http://www.boston.com/realestate/news/articles/2007/11/22/legislature\\_passes\\_foreclosure\\_aid\\_bill/](http://www.boston.com/realestate/news/articles/2007/11/22/legislature_passes_foreclosure_aid_bill/).

<sup>38</sup>MASS. GEN. LAWS ch. 186, §§ 13, 13A (West 2007).

<sup>39</sup>MASS. GEN. LAWS ch. 186, § 13A (West 2007).

<sup>40</sup>See 2007 Ill. S.B. 2721, 95th Gen. Assembly, 2d Reg. Sess. (Ill. 2008); Fran Spielman, *New Laws to Protect Renters from Foreclosure*, CHI. SUN-TIMES, Aug. 15, 2008, <http://www.suntimes.com/business/currency/1108898,rent081508.article>.

<sup>41</sup>Spielman, *supra* note 40.

<sup>42</sup>*State Looks at Ways to Quell Crisis*, RENO GAZETTE-JOURNAL, Aug. 3, 2008, <http://www.rgj.com/apps/pbcs.dll/article?AID=/20080803/NEWS/808030364/1321>.

<sup>43</sup>See, e.g., D.C. CODE § 42-3505.01 (2008); SAN FRANCISCO ADMIN. CODE § 37.9 (2008); Gross v. Superior Ct., 171 Cal. App.3d 265 (1985); ElBoghdady, *supra* note 7.

<sup>44</sup>ElBoghdady, *supra* note 7.

<sup>45</sup>*Id.* For an update on federal foreclosure legislation, please see page 161 in this issue.

laws. Supporters of the bill hope that borrowers will benefit from the opportunity to learn of alternatives to foreclosure, leading to an increase in the number of loans being modified to lower monthly payments.<sup>46</sup> Loan modifications have already been rising steadily since the beginning of the year: more than 10,000 home loans were modified in June, up 77% since January,<sup>47</sup> although the number of modifications substantially lags behind the growing need. The number of foreclosures has varied from month to month but remained approximately static during the same period.<sup>48</sup> Now that lenders are required by law to discuss alternatives to foreclosure, the number of modifications should continue to increase with a corresponding decrease in the number of foreclosures.

Renters have additional legal protections, but it is up to tenants and their advocates to fight for these rights. Even in eviction control jurisdictions such as Oakland or San Francisco where tenants already had protections, landlords have been abusing tenants' ignorance of these rules by acting as if they do not exist or by offering tenants "cash for keys" to get them out without a fight.<sup>49</sup> If any new protections are to be effective, tenants and advocates must be educated about these protections and be able and willing to stand their ground. ■

## Portability Rights of Housing Choice Voucher Participants: An Overview\*

The portability feature of Section 8 vouchers allows voucher-holders to move to a rental unit of their choice, including one located outside the jurisdiction of the public housing authority (PHA) that initially issued the voucher, as long as there is a PHA administering a program for the jurisdiction where the unit is located.<sup>1</sup> This article is intended to provide a summary of the relevant Department of Housing and Urban Development (HUD) regulations governing the portability feature of the voucher program, and of voucher holders' rights with respect to moving out of the jurisdiction of the PHA that initially issued their vouchers.

### Duty of Receiving PHA to Issue a Voucher to the Porting Tenant

Portability begins when a voucher tenant expresses a desire to move to the jurisdiction of another PHA. The guiding HUD regulations provide that the receiving PHA, or the PHA in the jurisdiction in which the participant wishes to lease a rental unit, *must* issue a voucher to the participant.<sup>2</sup> In official notices,<sup>3</sup> HUD has clarified that the receiving PHA must do so within two weeks of obtaining all of the porting tenant's documentation.<sup>4</sup> The receiving PHA has the choice of billing the initial PHA for assistance on behalf of the porting family, or of absorbing the family into its own program; in either case, it must promptly inform the initial PHA of its decision.<sup>5</sup> If the

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<sup>1</sup>42 U.S.C.A. § 1437f(r) (West, Westlaw, Current through P.L. 110-260 (excluding P.L. 110-234, 110-246, and 110-252) (approved 7-1-08)); 24 C.F.R. §§ 982.4 (definition of portability) and 982.353(b) (2007); HUD, Housing Choice Voucher Guidebook (7420.10G), Ch. 13, available at <http://www.hud.gov/offices/adm/hudclips/guidebooks/7420.10G/index.cfm>.

<sup>2</sup>24 C.F.R. §§ 982.355(b), 982.355(c)(6), and (10) (2007).

<sup>3</sup>Housing Choice Voucher Portability Procedures and Corrective Actions – Revision of Family Portability Information, Form HUD-52665, Notice PIH 2004-12 (July 19, 2004), available at <http://www.hud.gov/offices/pih/publications/notices/04/pih2004-12.pdf>; renewed by Extension – Housing Choice Voucher Portability Procedures and Corrective Actions – Revision of Family Portability Information, Form HUD-52665, Notice PIH 2005-28 (July 15, 2005), available at <http://www.hud.gov/offices/pih/publications/notices/05/pih2005-28.pdf>; renewed again by Extension – Housing Choice Voucher Portability Procedures and Corrective Actions – Revision of Family Portability Information, Form HUD-52665, Notice PIH 2006-25 (July 3, 2006), available at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-25.pdf>.

<sup>4</sup>*Id.* at p. 4. Note that this requirement is contingent on the fact that "the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures."

<sup>5</sup>24 C.F.R. § 982.355(c)(5) (2007).

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<sup>46</sup>Lifsher, *supra* note 25.

<sup>47</sup>CALIFORNIA DEPARTMENT OF CORPORATIONS, MORTGAGE SERVICERS SURVEY (Aug. 4, 2008), at <http://www.corp.ca.gov/press/news/SPL/LMS0608.pdf>.

<sup>48</sup>*Id.*

<sup>49</sup>Carolyn Said, *Foreclosures Leave Renters in the Lurch*, S.F. CHRON., Feb. 7, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/07/MN4NUOE27.DTL>.

receiving PHA elects to bill the initial PHA, its duty to provide the tenant with continued assistance remains independent of any billing or payment issues that may arise between the two PHAs.

An unreported 2004 case, *Avenesova v. Housing Authority of the City of Los Angeles*, confirmed this principle, holding that where the tenant had complied with all program requirements, the receiving PHA's experience, having ninety-nine billing requests for payment on transferred vouchers rejected by the initial PHA, was not relevant to its duty to assume responsibility for the tenant's voucher.<sup>6</sup> In a notice initially issued in 2004, HUD established a procedure by which a receiving PHA that has complied with guidelines for prompt billing but has not received the payments it is due from the initial PHA may, after two months, ask HUD to intervene and transfer the voucher or vouchers in question from the initial PHA to itself.<sup>7</sup> More information about potential billing issues between initial and receiving PHAs, and the sandtraps these may present for voucher holders, follows below.

### Restrictions on Portability During the First Year and Following Lease Violations

A PHA has the statutory option of restricting portability for up to one year if (and, presumably, only if) the family receiving the voucher for the first time does not have a legal domicile in the PHA's jurisdiction at the time of the application.<sup>8</sup> While the statute uses the term "family,"<sup>9</sup> the HUD regulations provide that for the purposes of determining domicile, the head of household or spouse must have resided in the jurisdiction.<sup>10</sup> There may, however, be situations when the family is multi-generational, where neither the head of household or spouse was a resident but members of the family resided in the jurisdiction and thus have a claim that the portability restrictions should not apply. In such a case, arguments could be made that the definition of family is too narrow and that the PHA should allow the entire family to use the portability features of the program in the first year.

<sup>6</sup>No. CV 04-5588-GAF, slip op. (C.D. Cal. Dec. 20, 2004), available at NHLP website <http://www.nhlp.org/html/pres/casedocs.cfm?id=800075>; see NHLP, *Housing Authority Ordered to Pay Porting Tenant's Voucher Assistance*, 35 HOUS. L. BULL. 171, 179 (2005).

<sup>7</sup>HUD Notice PIH 2004-12, *supra* note 3, at 7.

<sup>8</sup>42 U.S.C.A. § 1437f(r)(1)(B)(i) (West, Westlaw, Current through P.L. 110-260 (excluding P.L. 110-234, 110-246, and 110-252) (approved 7-1-08)); 24 C.F.R. §§ 982.4 (definition of domicile) and 982.353(b)-(c) (2007). Although previous regulations defined "jurisdiction" as the area where a PHA is not legally barred from entering into contracts, concern that some families were seeking vouchers in jurisdictions with short waiting lists, with no intention of residing in that community, led to a revision of the term's definition. Currently, a PHA's jurisdiction is "the area in which the PHA has the authority under state and local law to administer the program." 24 C.F.R. §§ 982.4 (2007) (definition of jurisdiction); added at 60 Fed. Reg. 34,696 (July 3, 1995).

<sup>9</sup>42 U.S.C. § 1437f(r)(1)(B)(i) (West, Westlaw, Current through P.L. 110-260 (excluding P.L. 110-234, 110-246, and 110-252) (approved 7-1-08)).

<sup>10</sup>24 C.F.R. § 982.353 (c) (2007).

Additionally, HUD acknowledges the discretion of PHAs to permit portability during the first year.<sup>11</sup> This discretion should be emphasized when seeking portability as a reasonable accommodation or for reasons such as to further a participant's education, or ability to pursue a job opportunity.

Voucher holders who have left their assisted rental units in violation of their lease do not maintain the right of portability.<sup>12</sup> However, an exception to this rule exists for victims of domestic violence: as part of the Violence Against Women Act, victims of domestic violence have the right to port themselves and their families to a new jurisdiction, even if they have left their prior rental unit in violation of the lease.<sup>13</sup> Although current regulations do not cover the issue, the natural extension of this principle would allow victims of domestic violence who are new to the Section 8 program to similarly avoid any one-year portability restrictions that the initial PHA may generally enforce.

### Portability Regulations

The portability rules provide that the initial PHA must give the voucher holder information regarding portability<sup>14</sup> and, if the voucher holder is eligible and chooses to move to a unit in another PHA's jurisdiction, must provide him or her with contact information for the receiving PHA.<sup>15</sup> It must also contact the receiving PHA on the family's behalf, typically by telephone, fax or email.<sup>16</sup> Because the receiving PHA must provide an eligible transferring tenant with assistance, the receiving PHA's procedures and preferences for selection among eligible applicants are not relevant to the transferring tenant, and the receiving PHA may not place the porting tenant on its waiting list.<sup>17</sup> The term of the voucher that the receiving PHA issues to the porting tenant may not expire prior to the

<sup>11</sup>*Id.* § 982.353(c)(iii) (2007).

<sup>12</sup>42 U.S.C. § 1437f(r)(5) (West, Westlaw, Current through P.L. 110-260 (excluding P.L. 110-234, 110-246, and 110-252) (approved 7-1-08)); Revised Housing Assistance Payments Contract (Form HUD-52641), and Tenancy Addendum (Form HUD-52641A); Housing Choice Voucher Program Administration and the Violence Against Women and Justice Department Reauthorization Act of 2005, Notice PIH 2007-5, available at <http://www.hud.gov/offices/pih/publications/notices/07/pih2007-5.pdf>.

<sup>13</sup>*Id.*

<sup>14</sup>24 C.F.R. §§ 982.301(a)(1)(iii), (a)(2), (a)(3), and (b)(4) (2007).

<sup>15</sup>*Id.* § 982.355C(c)(2); Notice PIH 2004-12, *supra* note 3, at p. 3 (stating that "Simply referring the family to HUD or a website for information on the receiving PHA's address does not fulfill the responsibilities of the initial PHA under the program regulations. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA (e.g., the name and telephone number of the staff person responsible for working with incoming portability families and any procedures related to appointments for voucher assistance the receiving PHA has shared with the initial PHA.)").

<sup>16</sup>HUD, Notice PIH 2004-12, *supra* note 3, at 3.

<sup>17</sup>24 C.F.R. §§ 982.4 (definition of initial PHA) and 982.355(c)(6) and (10) (2007).

expiration date on any initial PHA voucher<sup>18</sup> (although in practice this may create problems because vouchers are often limited to an initial period of sixty days).<sup>19</sup>

If the porting family was already receiving assistance from the initial PHA, the receiving PHA does not re-determine the family's income-eligibility; however, if the family was newly admitted by the initial PHA and wishes to immediately port its voucher, the receiving PHA must determine whether the family is income-eligible for its program.<sup>20</sup> Depending on the applicant's income and the area median income (AMI) for the jurisdiction in which the voucher is awarded, there may be situations in which the portability feature, as well as its restrictions, has particular importance. If the applicant reaches the top of the waitlist for a PHA located within a jurisdiction with a relatively high AMI, and if the applicant decides to port immediately to a jurisdiction with a lower AMI, the applicant may be over-income in the receiving jurisdiction. However, in this instance, the initial PHA must inform the family that they are not eligible to move to that other jurisdiction.<sup>21</sup>

All other rules of the receiving PHA apply. Thus, for example, the unit size, payment standard and decision to extend the voucher are all determined in accordance with the rules of the receiving PHA.<sup>22</sup> The receiving PHA may deny assistance, or terminate the family, in accordance with its applicable rules.<sup>23</sup> Thus, it is important for any voucher participant who wishes to port to become familiar with the rules of the receiving PHA. This is especially true if the participant or a member of the participant's family has a criminal background.<sup>24</sup>

### Potential Billing Issues Between the Initial and Receiving PHAs

Billing issues may arise between the receiving and initial PHA that may impact voucher participants. HUD has created a billing schedule to minimize the billing problems.<sup>25</sup> The receiving PHA must bill the initial PHA within sixty days of the expiration date of the voucher issued by the initial PHA.<sup>26</sup> If the initial PHA is not billed within the stated time frame, it must contact the receiving PHA. If the receiving PHA reports that the family is not

under a Housing Assistance Payments (HAP) contract, the initial PHA may inform the receiving PHA that it will not accept any billing from the receiving PHA and, as a result, the receiving PHA must absorb the family.<sup>27</sup>

If the receiving PHA extends the family's search time, it must inform the initial PHA. If it is not intending to absorb the family, the extension must be limited to a period of time that allows the receiving PHA to bill the initial PHA within sixty days following the expiration date on the voucher. Any extensions of search time provided by the receiving PHA is only applicable in the jurisdiction of the receiving PHA. In other words, the receiving PHA cannot unilaterally extend the period of the voucher and have the voucher holder use that extension time to return to the initial PHA jurisdiction.

These issues of billing, absorption and search time extensions are complicated. A voucher family who does not have knowledge of the rules may easily be caught unawares and be threatened with the loss of its voucher. Voucher holders may find themselves in situations such as the following:

- The family receives a voucher from the initial PHA with sixty day search time (or more as provided by the initial PHA) and finds a unit. A HAP is executed with the receiving PHA within the search time or sixty days thereafter. In this case, at the option of the receiving PHA, the family may be absorbed by the receiving PHA or remain as a participant for billing purposes with the initial PHA that is billed by the receiving PHA.
- The same circumstances as immediately above may occur, but the receiving PHA bills the initial PHA sixty days after the expiration of the family voucher. In this case, it is HUD's position that the receiving PHA must absorb the family.
- The receiving PHA extends the family's search time and the family finds a unit within the extended period. The extension is at the discretion of the receiving PHA. In this case, the receiving PHA must absorb the family. It is possible that if the HAP contract is signed and the initial PHA billed within sixty days after the end date of the initial search time provided by the initial PHA, that the initial PHA may be billed for the family.
- When the family gets an extension of the voucher from the initial PHA, the extension is at the discretion of the initial PHA. In this case, at the option of the receiving PHA, the family may be absorbed by the receiving PHA or the initial PHA may be billed.
- When the family does not find a unit within the time period provided by the initial PHA, and neither the

<sup>27</sup>*Id.* at 4.

<sup>18</sup>*Id.* § 982.355(c)(6).

<sup>19</sup>*Id.* § 982.303(a).

<sup>20</sup>*Id.* §§ 982.4 (definition of receiving PHA); 982.353(d) and 982.355(c)(1).

<sup>21</sup>HUD, Notice PIH 2004-12, *supra* note 3, at 3.

<sup>22</sup>24 C.F.R. § 982.355(c)(6) and (7) (2007).

<sup>23</sup>*Id.* §§ 982.552 and 982.553 (2007).

<sup>24</sup>HUD, Notice PIH 2004-12, *supra* note 3, at 5. See also *Lawrence v. Brookhaven Dept. of Housing, Community Development & Intergovernmental Affairs*, 2007 WL 4591845 (E.D.N.Y. Dec. 26, 2007) (holding that the receiving PHA was acting within its authority to reexamine the voucher holder's eligibility when she moved into its jurisdiction, and that it was also within its authority to terminate her assistance after discovering a prior drug conviction, despite her successful completion of a rehabilitation program).

<sup>25</sup>HUD, Notice PIH 2004-12, *supra* note 3, at 7-8.

<sup>26</sup>*Id.* at 3-4.

initial nor the receiving PHA grants an extension, the family will lose the voucher.

### Limited Exceptions for Budgetary Constraints

The general right to portability held by voucher holders notwithstanding, HUD regulations allow a PHA to deny portability moves at its discretion if it “does not have sufficient funding for continued assistance.”<sup>28</sup> In a 2005 notice,<sup>29</sup> HUD explained that this provision may be applicable in instances where a participant wishes to move to a “higher cost area,” defined as “an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or ‘more generous’ subsidy standards (e.g., the receiving PHA issues a three-bedroom voucher to a family that received a two-bedroom voucher from the initial PHA).”<sup>30</sup> HUD further stated that before denying the tenant’s request to move, the PHA has a duty to communicate with the receiving PHA to see if it is willing to absorb the family. If the receiving PHA is willing to absorb the family, the initial PHA does not have any grounds to deny the portability move.<sup>31</sup>

In 2006, however, even as it renewed the 2005 notice, HUD clarified that in order to adequately demonstrate a lack of “sufficient funding” to pay for a requested portability move, a PHA must show that the move would deprive it of funding to serve other currently assisted families.<sup>32</sup> The 2006 renewal notice stated,

Only if the PHA would be unable to avoid terminations of HCV assistance to remain within its budgetary allocation for housing assistance payments (HAP) would a PHA be justified in denying portability to a higher cost area where the receiving PHA will not absorb the family.<sup>33</sup>

HUD renewed both the 2005 and 2006 notices in August 2007.<sup>34</sup> Under the terms of these notices, a PHA does not need to obtain a regulatory waiver from HUD in order to make a determination that a requested portability move is cost-prohibited.<sup>35</sup>

Additionally, in recent years, Congress has acted to ease the financial strain experienced by PHAs due to the portability moves of their voucher participants: the appropriations bills for both 2007 and 2008 contained special earmarks to adjust the funding baselines for PHAs that have experienced significant increases, as determined by HUD, in renewal costs for portability. The Consolidated Appropriations Act of 2007<sup>36</sup> earmarked \$100 million for this purpose; the appropriations 2008 act<sup>37</sup> contained a parallel \$50 million set-aside. In response to the 2008 act, HUD issued a notice in March 2008<sup>38</sup> stating that it would accept applications for distributions of this funding until April 11, 2008. The notice stated that, when considering PHA eligibility for these funds, HUD would base renewal costs for portability according to a stated formula.<sup>39</sup>

### PHA Accountability

HUD evaluates PHAs on a variety of factors, including how they implement portability. The Section 8 Management Assessment Program (SEMAP) includes indicator (g), expanding housing opportunities, which is applicable to PHAs with jurisdiction in metropolitan Fair Market Rent areas.<sup>40</sup> Under this indicator, a PHA is ranked depending on whether the tenant’s information packet contains information on the portability feature of the program and contact information for neighboring PHAs. To the extent that there are problems with the PHA’s portability feature, this SEMAP provision may provide a pressure point for seeking improvements.

### Who Uses the Portability Feature?

A recent study by HUD’s Office of Policy Development and Research examined the demographic patterns, from 1998 to 2005, among voucher holders who took advantage of the portability feature.<sup>41</sup> The researchers found that of the 3.4 million households utilizing vouchers during the study’s seven-year window, 8.9% made a portability move.<sup>42</sup> A high majority (88.8%) of the households using the portability feature were very low-income households,

<sup>28</sup>24 C.F.R. § 982.314(e)(1) (2007).

<sup>29</sup>Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005, HUD, PIH Notice 2005-9, Section 3.c (Feb. 25, 2005), available at <http://www.hud.gov/offices/pih/publications/notices/05/pih2005-9.pdf>.

<sup>30</sup>*Id.*

<sup>31</sup>*Id.*

<sup>32</sup>Public Housing Agency (PHA) Cost-Savings Initiatives in the Housing Choice Voucher Program, HUD, PIH Notice 2006-32, Section 2 (Aug. 21, 2006), available at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-32.pdf>.

<sup>33</sup>*Id.*

<sup>34</sup>Public Housing Agency (PHA) Cost-Savings Initiatives in the Housing Choice Voucher Program, HUD, PIH Notice 2007-25 (Aug. 14, 2007), available at <http://www.hud.gov/offices/pih/publications/notices/07/pih2007-25.pdf>.

<sup>35</sup>HUD, PIH Notice 2005-9, *supra* note 29; HUD, PIH Notice 2006-32, *supra* note 32, HUD, PIH Notice 2007-25, *supra* note 34.

<sup>36</sup>Revised Continuing Appropriations Resolution 2007, Pub. L. No. 110-5, § 21033, 121 Stat. 8, 51-52 (Feb. 15, 2007).

<sup>37</sup>Consolidated Appropriations Act 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2412-14 (Dec. 26, 2007).

<sup>38</sup>Implementation of Federal Fiscal Year 2008 Funding Provisions for the Housing Choice Voucher Program, HUD, PIH 2008-15 (Mar. 20, 2008), available at <http://www.hud.gov/offices/pih/publications/notices/08/pih2008-15.pdf>.

<sup>39</sup>The notice states, “Renewal costs for portability will be based upon PIC reporting of portable vouchers being billed to each PHA and the average cost of those vouchers as compared to the PHA’s CY 2008 funded rate, which is the FFY 2007 average HAP costs adjusted via the 2008 AAF.” *Id.*, Section 12.

<sup>40</sup>24 C.F.R. § 985.3(g) (2007).

<sup>41</sup>Climaco, Rodger, Feins & Lam, *Portability Moves in the Housing Choice Voucher Program (HCV) 1998-2005*, 10 CITYSCAPE 1, 5 (2008), available at <http://www.huduser.org/periodicals/cityscape/vol10num1/ch1.pdf>.

<sup>42</sup>*Id.* at 5.

with adjusted annual incomes of less than 30% of area median income. As a result of portability moves, the average poverty rate of the voucher holder's neighborhood decreased slightly, from 18.5% in the pre-portability location to 16.3% in the new location.<sup>43</sup> Although the rates varied from year to year, ranging from 4.9% to 12.5% with no apparent pattern, a relatively small portion of portability users were new to the voucher program.<sup>44</sup>

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*A total of 16.6% of participants who ported to another jurisdiction moved to a more segregated metropolitan area, while 21.8% moved to a less segregated area.*

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The study disclosed that there was a correlation between length of stay in the voucher program and portability moves, with moves most likely to occur between the fourth and fifth year of program participation. Additionally, households that entered the voucher program more recently have been less likely to use the portability option than older cohorts.<sup>45</sup>

Most households taking advantage of the portability feature (58.7%) had children but were not an elderly family or a family with disabled members, compared with 51% of similar households in the program overall.<sup>46</sup> Households with preschool-age children were more likely, by a factor of 1.4 times, to use the portability option; the presence of children in older age groups did not have any effect on the use of the portability option.<sup>47</sup> On average, the head of household among portability users was slightly younger (39.5 years) than program participants in general (43 years).<sup>48</sup> Portability participants were also less likely to have wage income (33.3%, compared to 40.5% in the program overall), and slightly more likely to have welfare income (25.8%, compared to 24.2% in the program overall).<sup>49</sup> Households headed by non-Hispanic African Americans were the most likely, by a factor of 1.3, to use the portability feature.<sup>50</sup>

The study also addressed the comparative demographics of the portability users' old and new neighborhoods, examining changes in the levels of both racial and income segregation. The study was indexed to quantify both types of segregation measured on a metropolitan area-wide basis. A slight majority, 52.2%, of porting

households from large metropolitan areas stayed within the same area, and thus did not experience a change in the level of segregation.<sup>51</sup> With respect to racial segregation, 16.6% of participants who ported to another jurisdiction moved to a more segregated metropolitan area, while 21.8% moved to a less segregated area.<sup>52</sup> The rates were similar with respect to measures of segregation by income: 17.9% of porting households moved to a more income-segregated metropolitan area, and 20.6% moved to a less segregated area.<sup>53</sup>

## Conclusion

A significant number of families use the portability feature of the voucher program. Therefore, it is important for advocates to understand how the program works. The process is administratively complicated, but HUD has tried to address many of the most troublesome issues that have arisen regarding billing between PHAs. Congress has also stepped in to make funds available to PHAs so that they do not deny portability to avoid increased costs if a family is seeking to move to a higher-cost area. Ideally, Congress will continue to facilitate portability by providing funding for those PHAs that need it. ■

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<sup>43</sup>*Id.* at 15-16.

<sup>44</sup>*Id.* at 12.

<sup>45</sup>*Id.* at 36.

<sup>46</sup>*Id.* at 16.

<sup>47</sup>*Id.* at 33.

<sup>48</sup>*Id.* at 16.

<sup>49</sup>*Id.*

<sup>50</sup>*Id.* at 33.

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<sup>51</sup>*Id.*

<sup>52</sup>*Id.* at 30.

<sup>53</sup>*Id.*

# Seattle Housing Authority Agrees to Broad Reforms for Voucher Termination Hearings\*

The Seattle Housing Authority (SHA) recently signed a consent decree committing to substantially reform its termination hearings for Section 8 voucher holders.<sup>1</sup> The agreement came on the heels of a lawsuit initiated by a Section 8 participant who alleged due process deficiencies in SHA's practices and procedures in conducting termination hearings, first filed in state court as a writ petition but later removed to federal court by SHA.

In an earlier ruling on SHA's motion to dismiss the case for failure to state a claim,<sup>2</sup> the federal court had agreed with SHA that its hearing procedures met the minimal standards laid out in the governing HUD regulations.<sup>3</sup> However, the court went further, calling into question the constitutionality of the applicable regulations and stating that in the absence of a comprehensive post-termination review, a simple adherence to HUD's minimum standards for pre-termination review "may well prove" inadequate under *Goldberg v. Kelly*.<sup>4</sup>

The court's concern doubtless encouraged the housing authority to commence the settlement negotiations that produced the substantial reforms described below. Since most PHAs employ similar termination hearing procedures simply patterned after the HUD regulations, advocates everywhere should consider whether a due process challenge might bring needed reform to any defective procedures.

The lawsuit underlying the consent decree arose from an alleged pattern of deficiencies in the hearing policies and practices of SHA. Prior to the suit, according to the tenants, SHA had terminated nearly 300 families from the Section 8 program in three years, in hearings before a single hearing officer with no training and no legal background. SHA policy prohibited tenants from raising legal arguments and defenses, including those based on cases and statutes; tenants could only use HUD regulations and SHA policies, as well as facts, in their defense. With SHA's blessing, the hearing officer routinely disregarded valid defenses tenants raised under antidiscrimination laws, disability accommodation statutes, laws protecting survivors of domestic violence, state landlord-tenant law, judicial rulings, and other legal authorities. Termination

was upheld in well over 90% of the cases. Because most Section 8 voucher holders are elderly, disabled or single-parent households with children, as well as extremely low income, the loss of a voucher is devastating and often results in homelessness or the break-up of the family.

## The Court's Earlier Ruling

The plaintiff in the case, Tina Hendrix, had faced termination of her Section 8 voucher due to alleged misrepresentations of family size and income. When notified of SHA's intent to terminate her voucher, she requested an informal hearing, as provided by the rules.<sup>5</sup> After being granted the informal hearing, Ms. Hendrix then filed suit and, after the case was removed to federal court, obtained a preliminary injunction delaying the hearing until resolution of the lawsuit. In ruling on SHA's motion to dismiss, as the federal court construed her allegations, they contained two sets of claims: first, that SHA did not, in practice, conform its termination hearings to the requirements of the HUD regulations, and secondly, that regardless of compliance with the HUD regulations, the SHA "informal hearing" process did not measure up to the constitutional standards for procedural due process for public benefit terminations articulated decades ago in *Goldberg v. Kelly*.<sup>6</sup>

First, the court held that Hendrix's allegation of SHA's practice of using a lower evidentiary standard than required was sufficient to state a claim. The governing HUD regulations mandate that a "preponderance of the evidence" standard be used in termination hearings. If Hendrix could prove at trial her allegation that SHA hearing officers did not, in practice, conform to this standard but used a lower "sufficient evidence" standard instead, the court held that Hendrix could prevail on this claim.

Secondly, the court found that *Goldberg* required a housing authority to provide a full administrative review of any decision to terminate a recipient's benefits. According to the court, *Goldberg* contemplated that

- (1) as long as the broader, 'full administrative review' is offered post-termination, a pre-termination hearing need only contain the elements outlined in the opinion; and (2) it is permissible to roll all of these procedural requirements into a single hearing, as long as that hearing takes place before the termination of benefits.<sup>7</sup>

Although the court agreed with SHA that the minimum standards established in the HUD regulations "do not mandate any qualifications for the hearing officers beyond a status condition that they not be the person who made the termination decision or a person subordinate to

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<sup>1</sup>Consent Order, *Hendrix v. Seattle Housing Authority*, on file with NHLP.

<sup>2</sup>*Hendrix v. Seattle Housing Authority*, 2007 WL 3357715 (W.D. Wash. Nov. 9, 2007). See also NHLP, *Courts Embellish Procedural Protections for Voucher Terminations*, 38 Hous. L. Bull. 39 (Feb. 2008).

<sup>3</sup>24 C.F.R. § 982.555 (2007).

<sup>4</sup>*Hendrix* at \*6, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970).

<sup>5</sup>24 C.F.R. § 982.555 (2007).

<sup>6</sup>397 U.S. 254 (1970).

<sup>7</sup>*Hendrix* at \*5.

that decision-maker,”<sup>8</sup> this did not resolve either the constitutional issue or the lawsuit.

Although SHA procedures for the hearings—specifically, the lack of legal expertise of its hearing officers—might be in compliance with the HUD regulations, the court stated that it was

far from convinced that SHA is excused from meeting the constitutional requirements of *Goldberg* just because HUD regulations may prove underinclusive. Defendant cites no authority suggesting that a local agency charged with administering a federal program is excused from meeting the requirements of the Constitution because its parent agency has failed to do so.<sup>9</sup>

Thus, because *Goldberg* requires that the termination of voucher benefits necessitates a full administrative review, which necessarily includes the presentation of all legal arguments relevant to the recipient’s defense, the court held that Hendrix had properly stated a due process claim under the Fourteenth Amendment, as interpreted by *Goldberg*. It therefore denied SHA’s motion to dismiss the tenant’s claim for declaratory and injunctive relief.

### The Terms of the Consent Decree

Following the rejection of its motion to dismiss, SHA entered into a consent decree with Hendrix in which it agreed, “[w]hether or not required by law,” to afford a full panoply of procedural safeguards to any Section 8 participant facing termination. It agreed to allow participants to present, and require hearing officers to consider, “any relevant legal argument arising from any valid source of law...No legal theories or authorities shall be precluded from consideration at informal hearings or otherwise excluded on a categorical or near-categorical basis.”<sup>10</sup> In order to ensure that its hearing officers are both impartial and qualified to hear the legal arguments, SHA agreed to implement a new process for selecting and training its officers: only persons with “no other affiliation” with SHA can hold the position,<sup>11</sup> and officers are to be selected by a five-person committee, with one member appointed by each of the Seattle Tenant’s Union and the King County Bar Association Housing Justice Project’s Sponsor Group.<sup>12</sup>

To qualify for the position of hearing officer, the consent decree provides that an applicant must have a J.D. from an accredited law school and at least three years relevant experience as an attorney, law clerk, judge, arbitrator, administrative law judge, or other legal professional.<sup>13</sup> SHA agreed to maintain a minimum roster of three hearing officers to serve at the informal hearings,<sup>14</sup> to provide each officer with at least six hours of training, and to conduct an annual performance evaluation for each hearing officer.<sup>15</sup> In order to facilitate these reviews, SHA agreed to distribute evaluation forms to all persons present in attendance at every informal hearing, allowing them to provide anonymous feedback on their impression of the officer’s fairness, impartiality, and the opportunity provided for the participant to present his or her evidence and arguments.<sup>16</sup>

The consent order also articulates evidentiary standards for the hearings, providing that while the parties may present evidence without regard to admissibility under the evidentiary rules for judicial proceedings, the hearing officer retains the discretion to exclude evidence that is irrelevant, immaterial, or unduly repetitious.<sup>17</sup> In deciding to exclude evidence, the hearing officer is to rely on evidentiary principles, including, *inter alia*, that the information offered presents a danger of unfair prejudice or confusion of the issues, that the information lacks competence or is not based on personal knowledge, and/or that the information is offered in violation of some public policy.<sup>18</sup>

SHA further agreed to provide each participant who undergoes an informal termination hearing with a written decision containing, *inter alia*, a summary of any evidence and arguments presented by the parties, a statement of the facts upon which the decision is based, and a clear statement of the conclusions of law.<sup>19</sup> It also agreed to electronically record all informal hearings (unless the voucher participant objects to such recording), to keep and maintain the recording as a public record on file for at least thirty-seven months after the decision, and to provide, upon request and at cost, a copy of the recording to the participant or his or her representative.<sup>20</sup>

Congratulations to Northwest Justice Project and their community allies for achieving this tremendous result, which should embolden Section 8 tenants and advocates nationwide to pursue necessary reforms of local voucher termination hearing policies and practices. ■

<sup>8</sup>*Id.*

<sup>9</sup>*Id.* at \*7

<sup>10</sup>Consent Order at 4-5.

<sup>11</sup>*Id.* at 7. The consent decree qualifies this provision by stating that SHA may establish an in-house hearing officer position, provided that such a position would be subject to the same standards for qualifications and would be subject to the same selection process and performance reviews.

<sup>12</sup>*Id.* This stipulation is subject to the restriction that no person from any organization whose members regularly represent Section 8 participants in the termination hearings may serve on the selection panel.

<sup>13</sup>*Id.* at 8.

<sup>14</sup>*Id.* at 7.

<sup>15</sup>*Id.* at 9-10.

<sup>16</sup>*Id.* at 9.

<sup>17</sup>*Id.* at 5.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 6.

<sup>20</sup>*Id.* at 10-11.

## Recent Cases

The following are brief summaries of recently reported federal and state 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,<sup>1</sup> Lexis,<sup>2</sup> or, in some instances, the court's website.<sup>3</sup> Copies of the cases are *not* available from NHLP.

### Public Housing: Eviction, Failure to Include Ground for Eviction in the Notice

*Rockville Centre Housing Authority v. Boggen*, 2008 WL 2927834 (N.Y. Dist. Ct., July 31, 2008) (unpublished). The housing authority sought to evict the public housing resident on the ground that she had breached her lease by allowing a person to stay in her apartment for two weeks. Upon receiving the notice of lease violation, the person living in the apartment moved out promptly. Nonetheless, the housing authority issued a notice of termination and granted the resident a hearing at which it was disclosed that the resident and her guest may have committed fraud upon the department of social services, which paid their rent. The housing authority terminated the resident's lease and she appealed on the grounds that she complied with the notice of lease violation and that the housing authority could not evict her on the criminal fraud activity since the termination notice did not include fraud as a basis for terminating the lease. The district court agreed, finding that the housing authority could not evict someone for a lease violation when the resident ceased to host the guest immediately upon receiving the notice of violation. It also agreed that the notice of termination did not include fraud as a basis of termination and that the housing authority could not, therefore, rely on the secondary ground as a basis for termination.

### Public Housing: Eviction for Actions of a Person Under a Household Member's Control

*Stevens v. Housing Authority of South Bend*, 2008 WL 2857470 (N.D. Ind., July 22, 2008). A housing authority sought to evict a public housing resident on the grounds that a member of the household, a guest, or someone under her control, committed a crime at the public housing residence. The resident filed a motion to dismiss two claims alleging that the crime perpetrator was not a resident, a

guest, or under the resident's control and that the eviction was in violation of the federal and state constitutions. The court refused to dismiss the claims on the ground that the housing authority's complaint alleged sufficient facts to establish that the perpetrator was a guest or someone under a household member's control.

### Public Housing, Fair Housing: Eviction of Non-Elderly Household from Elderly Development Does not Constitute Familial Status Discrimination

*Reasoner v. Housing Authority of City of Teague*, 2008 WL 2787486 (5<sup>th</sup> Cir., July 18, 2008) (*per curiam*) (unreported). The resident and her son were admitted to a seniors only public housing residence as an accommodation to the resident's disability. When the housing authority sought to evict the resident for various lease violations, the resident asserted that the proposed eviction was discriminatory because it violated her familial status. Two days prior to trial, the district court allowed the housing authority to amend its answer by asserting that familial status discrimination claims could not be brought against it when it was operating a facility restricted to seniors. Thereafter district court dismissed the resident's claim. The court of appeals affirmed, finding that familial status discrimination could not be brought against the housing authority for its operation of a senior facility and that the district court did not abuse its discretion by allowing the housing authority to amend its answer two days prior to trial.

### Foreclosure, Voucher Program: Failure to Name Leaseholder in Foreclosure Action

*Countrywide Home Loans, Inc. v. Williams*, 2008 WL 2582653 (N.Y. Dist. Ct., July 1, 2008) (unpublished). Purchaser of property at a foreclosure sale brought a holdover proceeding against Section 8 voucher holder who was residing in the unit at foreclosure. The resident defended on the ground that she was not named as a party in the foreclosure proceeding. The court held that under New York law, a leaseholder is a necessary party in a foreclosure proceeding and that the foreclosure proceeding does not terminate the leaseholder's interest unless the leaseholder is joined as a party. Since the lease was not terminated as part of the foreclosure, the court held that the Section 8 lease remained in effect and that the new landlord could not evict the voucher holder except for good cause.

<sup>1</sup><http://www.westlaw.com>.

<sup>2</sup><http://www.lexis.com>.

<sup>3</sup>For a list of courts that are accessible online, see <http://www.uscourts.gov/links.html> (federal courts) and <http://www.ncsc.dni.us/COURT/SITES/courts.htm#state> (for state courts). See also <http://www.courts.net>.

## **Voucher Program: Resident's Liability for Holdover Period**

*Douglas v. Nole*, 2008 WL 2736662 (N.Y. Dist.Ct., July 15, 2008)(unreported). A landlord sought to collect a resident's and housing authority's rent from a Section 8 voucher holder for the period after the housing authority terminated the voucher for fraud by the voucher holder. The court denied the landlord the right to collect the housing authority's rent on the ground that it was prohibited by the Section 8 program from collecting that rent from the voucher holder even after termination of the voucher. The court also denied the landlord the right to collect attorneys fees for maintaining the case as there was no attorneys fees provision in the lease. In reaching its conclusion, the court noted that the landlord could have sought to recover from the voucher holder the fair use and occupancy of the subject premise for the holdover period that commenced after termination of the Section 8 subsidy. Because, however, the landlord did not make such a claim, the court did not award relief on that ground.

## **Voucher Program: Resident's Liability for Holdover Period**

*Baldwin Merrick Associates v. Relles*, 2008 WL 2608009 (N.Y. Dist.Ct., July 2, 2008)(unreported). The court awarded the landlord damages for the voucher holder's failure to pay her share of the rent during the term of the Section 8 contract and for use and occupancy of the premises after the termination of the contract. The court, however, reduced the amount owed by 15% to abate the landlord's breach of the implied warranty of habitability for failing to repair leaking ceilings in the apartment.

## **Subsidized Housing: Right of Daughter to Remain**

*Hallkeen Management, Inc. v. Vazquez*, 2008 WL 2938884 (Conn. Super., July 16, 2008)(unreported). The court granted a HUD-subsidized owner the right of possession against the daughter of a tenant, who was not a lessee and who sought to remain in her mother's unit after her mother left the premises.

## **Eviction: Resident's Immigration Status**

*Recalde v. Bae Cleaners*, 2008 WL 2806577 (N.Y. Sup., July 15, 2008). A tenant residing in a rent-stabilized apartment in New York City sought and secured a preliminary injunction against a landlord who refused to renew the tenant's lease and threatened to evict him on the basis of his immi-

gration status. The court found that the tenant is likely to suffer irreparable harm and prevail on his claims because the city's rent stabilization law requires the landlord to offer tenants a renewal lease on the same terms and conditions as the existing lease and does not allow them to require the tenants to complete a new residency application. The court also concluded that the landlord is likely to have also violated New York City's Human Rights law which precludes discrimination based on plaintiff's actual or perceived alienage or citizenship status.

## **Public Housing: Landlord not Liable for Racial Harassment by Other Tenant**

*Ohio Civ. Rights Comm. v. Akron Metro Hous. Auth.*, 2008 WL 2714670 (Ohio, July 8, 2008). The Ohio Supreme Court reversed an Ohio appellate court decision holding the Akron Metropolitan Housing Authority liable for its failure to take action against a resident household that was racially harassing another tenant. The court held that Ohio's civil rights statute did not cover these circumstances and refused to extend employment law practices to the landlord-tenant relationship because the relationship between an employer and employee was different from that between a landlord and tenants.

## **Fair Housing: Town May Be Liable for Redevelopment Action That Has Racial Disparate Impact**

*Rivera v. Incorporated Village of Farmingdale*, 2008 WL 3367585 (E.D.N.Y., July 8, 2008). Latino former residents of a low-rent housing development in the town of Farmingdale brought a Fair Housing Act complaint against the town for implementing a redevelopment plan that included the rehabilitation of a 150-unit development in an area that was occupied by 56% Latino residents, displaced 21% of the town's Latino population and only 1.2% of its White residents, and would create housing that was unaffordable to the displaced residents. The town sought to dismiss the case, arguing that the plaintiffs lacked standing and failed to state a cause of action. The district court, adopting a magistrate's report, denied the town's motion. It found that the plaintiffs had alleged injury stemming from the town's initiation of the redevelopment plan and that their damages are not speculative since they were displaced from low-cost housing and sought, among other remedies, damages and compensation for the violation of their rights. The court also rejected the town's argument that the plaintiffs had failed to state a cause of action, finding that the plaintiffs' complaint, which alleged that the Village had enacted a variety of laws targeted at the removal of Latino day laborers from the Vil-

lage, had specifically targeted the premises where the day laborers resided, had created a plan to redevelop an area disproportionately populated by Latinos, had solicited developers for the site including the ultimate purchaser of the building, and had enforced zoning laws in an unequal manner to foster its goal of eliminating from the Village affordable housing for Latino day laborers, stated a sufficient claim under the Fair Housing Act.

### **Zoning: State Preemption of Local Ordinance, Rights of Convicted Sex Offenders**

*G.H. v. Township of Galloway*, 401 N.J.Super. 392, 951 A.2d 221 (N.J.Super.A.D., July 15, 2008). The court of appeals upheld a lower court opinion that invalidated two town ordinances that restricted the rights of convicted sex offenders to live within certain distances of schools, parks, playgrounds and day-care centers. The court concluded that the ordinances conflicted with state law and were, accordingly, preempted by that state law. ■

## **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), the Department of Agriculture (USDA/Rural Housing Service/Rural Development (RD)), Federal Housing Finance Board, Federal Emergency Management Agency (FEMA) and the Veterans Administration issued in July of 2008. For the most part, the summaries are taken directly from the summary of the regulation in the Federal Register or each notice's introductory paragraphs.

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

### **HUD Federal Register Notices**

#### **73 Fed. Reg. 37,984 (July 2, 2008)**

##### **Notice of Proposed Information Collection: 2009 American Housing Survey—National Sample; 2009 American Housing Survey—Metropolitan Sample**

*Summary:* HUD has submitted to the Office of Management and Budget (OMB) an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the 2009 American Housing Survey National Sample and the 2009 American Housing Survey Metropolitan Sample, which provide a periodic measure of the size and composition of the housing inventory with the former capturing it for the country and the latter for select metropolitan areas.

*Comments Due Date:* September 2, 2008.

#### **73 Fed. Reg. 38,071 (July 2, 2008)**

##### **Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2008**

*Summary:* HUD is required to publish quarterly Federal Register notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous Federal Register notice. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2008, and ending on March 31, 2008.

*Dated:* June 24, 2008.

<sup>1</sup>[http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).

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

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

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

**73 Fed. Reg. 39,330 (July 9, 2008)**  
**Notice of Proposed Information Collection:**  
**Comment Request; Management Reviews of**  
**Multifamily Housing Projects**

*Summary:* HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the need of HUD staff, Mortgagees, and Contract Administrators to complete the form HUD-9834 during on-site reviews. The information gathered from the form is used to evaluate the quality of management, determine causes of problems, and devise corrective actions to safeguard HUD's financial interest and ensure that tenants are provided with decent, safe, and sanitary housing.

*Comments Due Date:* September 8, 2008.

**73 Fed. Reg. 39,330 (July 9, 2008)**  
**Notice of Proposed Information Collection:**  
**Extension of Comment Request; Management**  
**Review for Public Housing Projects**

*Summary:* This notice extends the comment period until August 31, 2008. This notice was previously published on February 8, 2008, and republished on April 1, 2008, to extend the comment period until June 30, 2008. The proposed information collection requirement described below will be submitted to the Office of Management and Budget for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal.

*Comments Due Date:* September 30, 2008 [sic].

**73 Fed. Reg. 39,713 (July 10, 2008)**  
**OIG Fraud Alert: Bulletin on Charging Excess Rent in the**  
**Housing Choice Voucher Program**

*Summary:* This notice provides important information recently issued by HUD's Office of the Inspector General on a recurring problem in the Housing Choice Voucher program. The problem, which this notice addresses, is landlords submitting false claims for periodic payments under housing assistance payment contracts.

*Dated:* July 1, 2008.

**73 Fed. Reg. 39,840 (July 10, 2008)**  
**Notice of Funding Availability (NOFA) for the Continuum**  
**of Care Homeless Assistance Program; Notice**

*Summary:* This NOFA establishes the funding criteria for the Continuum of Care (CoC) Homeless Assistance Program. HUD is making available approximately \$1.42 billion in Fiscal Year 2008 for the program. The purpose of the CoC Homeless Assistance Program is to reduce the incidence of homelessness in CoC communities by assisting homeless individuals and families to move to self-sufficiency and permanent housing.

*Dates:* HUD will announce the application due date

through a separate Federal Register notice. HUD anticipates an approximate application due date of September 15, 2008.

**73 Fed. Reg. 40,359 (July 14, 2008)**  
**Notice of Proposed Information Collection: FHA-Insured**  
**Mortgage Loan Servicing Involving the Claims and**  
**Conveyance Process, Property Inspection/Preservation**

*Summary:* HUD has submitted to the OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the FHA insurance program which is an important source of mortgage credit for low- and moderate-income borrowers and their neighborhoods. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged the borrower by FHA along with federal budget receipts generated from those premiums to support HUD's goals. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. The OMB information requests provide HUD's policy and guidance. This information collection request for OMB review seeks to combine the requirements of three existing OMB collections under this collection.

*Comments Due Date:* September 12, 2008.

**73 Fed. Reg. 41,102 (July 17, 2008)**  
**Multifamily Insurance Benefits Claims Package**

*Summary:* HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to times when the terms of a Multifamily contract are breached or when a mortgagee meets conditions stated within the Multifamily contract for an automatic assignment, the holder of the mortgage may file for insurance benefits. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package. HUD uses the information collection to determine the insurance benefits owed to the mortgagee.

*Comments Due Date:* August 18, 2008.

**73 Fed. Reg. 41,103 (July 17, 2008)**  
**Certification of Multifamily Housing Compliance With**  
**State and Local Housing Codes**

*Summary:* HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the need for HUD to ensure that all properties owned by potential purchasers are in compliance with the state and local housing codes that are in the same locality as the project to be purchased.

*Comments Due Date:* August 18, 2008.

**73 Fed. Reg. 41,103 (July 17, 2008)**  
**Application for Displacement/Relocation/Temporary Relocation Assistance for Person**

*Summary:* HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the application for displacement/relocation assistance for persons (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs, or for out-of-pocket expenses incurred by persons temporarily relocated for a HUD-assisted program or project. Periodically, HUD reviews a random sample of the agency files to assure that persons received the relocation payments to which they are entitled.

*Comments Due Date:* August 18, 2008.

**73 Fed. Reg. 41,105 (July 17, 2008)**  
**Privacy Act; Proposed New Systems of Records, Single Family Mortgage Asset Recovery Technology (SMART/A80H)**

*Summary:* HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Single Family Mortgage Asset Recovery Technology (SMART). The SMART system will be used for accounting level detail on forward and reverse mortgages; case-tracking ability; report-generating capability; query functions; database management, analyzing, processing, and tracking for FHA Insured and Secretary-held first, second and subordinate note and mortgage loan servicing functions.

*Effective Date:* August 18, 2008, unless comments are received that would result in a contrary determination.

*Comments Due Date:* August 18, 2008.

**73 Fed. Reg. 42,591 (July 22, 2008)**  
**Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Applications for Housing Assistance Payments and Special Claims Processing and Owner Certification With Tenant Eligibility and Rent Procedures**

*Summary:* HUD has submitted to the OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to a revised collection for submitting Applications for Housing Assistance Payments and determining Owner Certification of Compliance with Tenant Eligibility and Rent Procedures for Section 8, Rent Supplement, Rental Assistance Payment (RAP), Section 202 Project Assistance Contracts (PACs) and Section 811 and 202 Project Rental Assistance Contracts (PRACS) program units. Special Claims for damages, unpaid rent loss, and vacancy claims are available for the Section 8, Section 202 PACs, and Section 811 and Section 202 PRACS programs.

*Comments Due Date:* August 5, 2008.

**73 Fed. Reg. 43,251 (July 24, 2008)**  
**Notice of Proposed Information Collection: Comment Request; Moving to Work Demonstration: Elements for the Annual MTW Plans and Annual MTW Reports**

*Summary:* HUD has submitted to the OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to a revision to the information collection that was approved by OMB on June 8, 2006. This revision to the information collection makes certain changes to the approved information collection in order to make it consistent with the Standard MTW Agreement that HUD conveyed to MTW agencies on January 4, 2008.

*Comments Due Date:* September 22, 2008.

**73 Fed. Reg. 43,253 (July 24, 2008)**  
**Requirements for Single Family Mortgage Instruments**

*Summary:* HUD has submitted to the OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to information that is used to verify that a mortgage has been properly recorded and is eligible for FHA mortgage insurance.

*Comments Due Date:* August 25, 2008.

## HUD Notices

**PIH 2008-28 (July 2, 2008)**  
**Extension—Housing Choice Voucher Program—Enhanced Vouchers—Adjustment of Voucher Housing Assistance Payments for Certain Families that Received “Preservation” Voucher Assistance as the Result of an Owner Prepayment or Voluntary Termination of Mortgage Insurance for a Preservation Eligible Property in Federal Fiscal Year (FY) 1997, FY 1998, and FY 1999**

*Summary:* This notice extends Notice PIH 2007-18, same subject, which will expire on June 30, 2008, for another year until June 30, 2009.

**PIH 2008-29 (July 28, 2008)**  
**Extension of the Disaster Voucher Program (DVP)**

*Summary:* This notice informs DVP administering public housing agencies that the DVP has been extended beyond the previously projected end date of June 30, 2008, for all pre-disaster public housing, project-based and pre-disaster homeless and special needs housing families currently receiving DVP assistance.

**PIH-2008-30 (July 14, 2008)**  
**Income Exclusion of Kinship Guardian Assistant Payments (Kin-GAP) and Other Guardianship Care Payments**

*Summary:* This notice clarifies the exclusion of guardianship care payments available to children exiting the juvenile court system. The payments made on behalf of the related child to the tenant household is excluded from income certifications pursuant to 24 C.F.R. § 5.609(c)(2).

**PIH 2008-31 (July 17, 2008)**

**Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 3 Applications**

*Summary:* This notice provides information for public housing agencies (PHAs) that wish to submit documentation of successful conversion to asset management in order to discontinue their reduction in operating subsidy under the Operating Fund Program regulations, commonly referred to as the "stop-loss" provision. This notice applies only to PHAs that: (1) lose funding under the new formula; and (2) wish to submit documentation in accordance with the requirements for Year 3.

**H 08-05 (Aug. 18, 2008)**

**Fiscal Year 2008 Economic Stimulus Payments (Tax Rebates) Excluded from Income**

*Summary:* This notice asserts the exclusion of the Economic Stimulus payments (tax rebates) received by applicants for assisted housing and by tenants participating in HUD's rental assistance programs from all purposes of determining eligibility and rent. The Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (2008), requires this exclusion and the payments are an exclusion under 24 C.F.R. § 5.609(c)(17).

**RD/Rural Housing Service Federal Register Notices**

**73 Fed. Reg. 42,314 (July 21, 2008)**

**Notice for Request to Reinstate Previously Approved Information, Collection**

*Summary:* In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intent to reinstate a previously approved information collection in support of the Single, Family Housing Guaranteed Loan Program.

*Comment Due Date:* September 19, 2008.

**73 Fed. Reg. 42,315 (July 21, 2008)**

**Section 538 Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2008**

*Summary:* The Rural Housing Service is amending a notice published

April 21, 2008 (73 Fed. Reg. 21,305-21,307). This action is taken to extend the application obligation date of eligible applications. This amendment is to ensure that all applications that meet program criteria and have responded accordingly will be considered in the Demonstration Program.

*Dated:* July 3, 2008

**Federal Emergency Management Agency Federal Register Notice**

**73 Fed. Reg. 43,250 (July 24, 2008)**

**National Disaster Housing Strategy**

*Summary:* The Federal Emergency Management Agency is accepting comments on the National Disaster Housing Strategy (NDHS). The NDHS is intended to serve two purposes. It describes how we as a nation currently provide housing to those affected by disasters, and charts the new direction that our disaster housing efforts must take if we are to better meet the emergent needs of disaster victims and communities.

*Comments Due Date:* September 22, 2008. ■

## HOUSING JUSTICE NETWORK NATIONAL MEETING

# Advancing Housing Justice: Event Basics

### Fees

Fees include materials, lunch each day, and refreshments.

	BY 10/31	AFTER 10/31	SPONSORED CLIENT*
Training only: Dec 6	\$ 195	\$ 250	\$ 195
Meeting only: Dec 7-8	\$ 430	\$ 535	\$ 330
Meeting + Training	\$ 575	\$ 695	\$ 500

\*This rate applies to clients whose registrations are paid for by a legal services organization.

### CANCELLATION/REFUND POLICY

To qualify for a refund less a \$50 handling fee, a written cancellation must be received by NHLP no later than November 21, 2008. No refunds will be given after that date.

### Registration

Space is limited, so register early! **The deadline for early registration is October 31, 2008.** Mailed forms must be postmarked by that date; faxed forms must be received by that date. Forward registration with payment to:

FAX (CREDIT CARD ONLY)	MAIL
510.451.2300	NHLP
	Attn: Registration
	614 Grand Avenue, Suite 320
	Oakland, CA 94610

### Site Information

Washington Court Hotel  
525 New Jersey Avenue, NW, Washington, D.C. 20001  
800.321.3010 or 202.268.2100

*Washington Court Hotel, located in the Capitol Hill neighborhood, is a five-minute walk to the U.S. Capitol Building and the National Mall and is just two blocks away from an array of shopping, dining and entertainment options. Washington Court Hotel is a union hotel.*

Washington Court Hotel is the site for the training, meeting and guest accommodations. Please call the hotel directly to make reservations (last session will end at 5 p.m. on Monday, December 8, so please plan accordingly). Mention that you are attending the Housing Justice Network conference to receive a conference room rate of \$175. Rate is single/double occupancy plus tax. **Please make your reservations early! Rooms at the conference rate are limited and are available on a first-come, first-served basis through October 31, 2008.**

### Questions

Contact Amy Siemens at 510.251.9400 x3111 or [asiemens@nhlp.org](mailto:asiemens@nhlp.org).

HOUSING JUSTICE NETWORK NATIONAL MEETING

Advancing Housing Justice: Registration

PLEASE PRINT CLEARLY

1

PERSONAL INFORMATION

NAME NAME ON BADGE (IF DIFFERENT)

ORGANIZATION

MAILING ADDRESS

CITY STATE ZIP

PHONE FAX

EMAIL ORGANIZATION'S WEB SITE

Housing Experience: [ ] years. What issues have you worked on? \_\_\_\_\_

I am an HJN member. I would like to become an HJN member. Please send me an application form via email fax

Do you require special arrangements? (Please attach a description) access visual audio vegetarian other dietary

2

FEES

Table with 4 columns: Fee Description, Before 10/31, After 10/31, Client. Rows include Federal Housing Program, Housing Justice Network Meeting, and One Day Training + Meeting.

3

PAYMENT

Payment must be included at the time of registration. Registrations will not be processed or confirmed until full payment has been received.

This payment covers more than one registration. I have attached a registration form for each paid attendee. I've enclosed a check for \$ [ ] made payable to National Housing Law Project. Please bill my Mastercard Visa for \$ [ ]

CARD NUMBER EXP. DATE (MONTH/YEAR)

NAME OF CARDHOLDER AUTHORIZED SIGNATURE

BILLING ADDRESS (REQUIRED FOR CREDIT CARD ORDERS)

CITY STATE ZIP

Mail to National Housing Law Project at 614 Grand Avenue #320, Oakland, CA 94610. Credit card orders only may be faxed to (510) 451-2300.

# NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM

PUBLICATION	UNIT PRICE	QTY.	TOTAL PRICE
<b>Combined Set: HUD Housing Programs: Tenants' Rights (3d ed. 2004) and new 2006-2007 Supplement</b>	\$ 415	<input type="checkbox"/>	<input type="text"/>
<b>HUD Housing Programs: Tenants' Rights 2006-2007 Supplement</b>	\$ 130	<input type="checkbox"/>	<input type="text"/>
<b>Housing Law Bulletin (10-issue subscription)</b>	\$ 175	<input type="checkbox"/>	<input type="text"/>
<b>Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)</b>	\$ 5	<input type="checkbox"/>	<input type="text"/>
<b>Housing for All: Keeping the Promise (1995)</b>	\$ 5	<input type="checkbox"/>	<input type="text"/>
<b>The Family Self-Sufficiency Program: An Advocate's Guide (1994)</b>	\$ 10	<input type="checkbox"/>	<input type="text"/>
<b>A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)</b>	\$ 10	<input type="checkbox"/>	<input type="text"/>
SUBTOTAL (All prices include shipping)			<input type="text"/>
CALIFORNIA SALES TAX (Excludes Bulletin   8.75% in Alameda County   8.25% in rest of CA)			<input type="text"/>
<b>TOTAL</b>			<input type="text"/>



## BILLING INFORMATION

All orders must be prepaid. Please do not send cash.

I've enclosed a check or money order made payable to **National Housing Law Project**

Please bill my  MasterCard  Visa

card number / exp date

name on card

organization

street address

city / state / zip

signature

## SHIPPING INFORMATION

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organization

street address

city / state / zip

telephone / fax

email

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 Publications Clerk  
 614 Grand Avenue, Suite 320  
 Oakland, CA 94610

QUESTIONS  
 For information on  
 first-class mailing  
 and large quantity  
 discounts, call  
 510.251.9400 x3108



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