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Housing Law Bulletin

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*States protect voucher holders with
source of income discrimination laws*

—see page 11

*Housing Legislation in the first session
of the 110th Congress*

—see page 7

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Table of Contents

	Page
HUD Appropriations for FY 2008	1
Rural Housing Service FY 08 Appropriations	5
Wrap Up of Legislation in First Session of 110th Congress.....	7
States Uphold Source of Income Discrimination Laws Protecting Voucher Holders.....	11
RHS Revives Old Single Family Loan Subsidy Program at a Lower Subsidy Level	14
Recent Cases	16
Recent Housing-Related Regulations and Notices...	19
Index	23

Announcements

Publication List/Order Form.....	37
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Cover: Magnolia Towers Coop, a 200-unit senior housing development located in North Hollywood, California. The Section 202 development is owned and managed by Cooperative Services Inc., of Warren, Michigan.

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HUD Appropriations for FY 2008

Weathering a strong assault from the Administration, the Fiscal Year 2008 Appropriations Act signed into law by the President on December 26, 2007, contains modest funding increases above Fiscal Year (FY) 2007 levels for several low-income housing programs, including Section 8 vouchers, project-based Section 8, and public housing operating subsidies.¹ The funding for other programs, including the HOME program and Community Development Block Grant (CDBG) formula grants, is below FY 2007 levels. Total funding for Department of Housing and Urban Development (HUD) programs exceeded the President's proposed budget by \$2.1 billion.² However, final funding for several HUD programs is still below the levels proposed in the conference report on a separate HUD-Department of Transportation bill. Overall, although the strong bi-partisan support for the omnibus bill's funding levels resulted in a marked improvement over the President's requested budget cuts, they still remain less than the amount needed to maintain current services in several programs.

Voucher Program

The final appropriation for 2008 provides \$16.391 billion for total voucher funding, a \$471 million increase over the FY 2007 funding level. This increased funding will enable housing authorities to maintain all vouchers that were in use during FY 2007, according to Center on Budget and Policy Priority estimates.³ Further, the funding likely will be sufficient to renew additional vouchers leased during the final quarter of calendar year 2007.⁴ The omnibus bill funds approximately 15,000 new incremental vouchers, including \$20 million for the Family Unification Program,⁵ \$75 million for new HUD-VASH vouchers,⁶ and \$30 million for new vouchers for non-elderly people with disabilities. These are the first new incremental vouchers since FY 2002.

¹The full title of the bill is the "Consolidated Appropriations Act, 2008," Pub. L. No. 110-161 (Dec. 26, 2007) (formerly H.R. 2764), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf.

²CENTER ON BUDGET AND POLICY PRIORITIES, PRELIMINARY ANALYSIS OF THE HUD PROVISIONS OF THE OMNIBUS APPROPRIATIONS BILL FOR FY 2008, 1 (2007), <http://www.cbpp.org/12-21-07hous.pdf>.

³*Id.* at 2.

⁴*Id.*

⁵The Family Unification Program provides rental assistance for reuniting families with children in foster care or to prevent children from entering foster care.

⁶The HUD-VASH vouchers are for low-income veterans with mental health or substance abuse problems. The program combines rental assistance from HUD with supportive services funded by the Department of Veterans Affairs.

The omnibus bill allocates 2008 renewal funding based on agencies' actual leasing and costs during FY 2007. Additionally, the bill allocates administrative fees based on vouchers in use, instead of being tied to the prior year's fee allocation. Because Congress has continued the policy of setting funding levels based on vouchers in use times actual cost, advocates should encourage housing agencies to fully use their maximum number of authorized vouchers. Failure to fully use authorized vouchers will threaten the amount of funds that a housing agency receives in future years. HUD must inform housing authorities by February 25, 2008, of their 2008 annual budget for the voucher program.⁷

The omnibus bill modifies the voucher renewal formula for housing agencies with large unspent voucher reserves. Calendar year 2008 funding for these agencies will be reduced by the amount of unusable funds in the agency's net restricted assets account which exceeds 7% of the renewal funding allocated to the agency for the calendar year 2007 funding cycle. In other words, if an agency has reserves that it could not use in 2008 to lease all of its authorized vouchers (because the agency's renewal funding plus available reserves exceeded the amount needed to lease 100% of its authorized vouchers), then its 2008 renewal funding will be reduced by an amount equal to the excess reserves over the 7%-of-renewal-funding threshold.⁸ Housing agencies with reserves below the stated threshold or that could use all of their reserves in 2008 to lease additional authorized vouchers likely would receive no reduction in their renewal funding allocation.⁹ The practical impact of this policy is to shift funds from future uses to current needs, such as voucher renewals and new incremental vouchers. The policy is expected to result in budgetary savings of \$723 million in FY 2008.

A modified formula for renewal funding will be used for public housing agencies that went into receivership in the previous twenty-four months, housing agencies affected by the 2005 hurricanes, and agencies that overspent their FY 2007 voucher allocation. The omnibus bill also provides \$50 million in adjustments for agencies that experienced increased renewal costs due to portability or higher leasing rates.

The bill appropriates \$200 million for tenant protection vouchers and requires HUD to issue them "for all units that were occupied within the previous 24 months that cease to be available as assisted housing due to demolition, disposition, or conversion, subject only to the availability of funds."¹⁰ This is a significant departure from

HUD's recent policy of restricting replacement vouchers to units occupied at the time of a PHA's application for such vouchers.¹¹

Vouchers previously allocated to a public housing agency to serve non-elderly disabled families and for the Family Unification program must remain available to these populations, to the extent feasible.¹²

Finally, the bill extends the prior years' rule making certain college students ineligible for Section 8 rental assistance, but adds an exception for students with disabilities.¹³

Project-Based Section 8

The FY 2008 appropriations fund project-based Section 8 contract renewals at \$6.14 billion, \$310 million above the FY 2007 level and \$616 million above the Administration's budget request for FY 2008. However, this amount will still be insufficient to provide a full twelve months of funding for renewal of expiring project-based Section 8 contracts in FY 2008, as HUD has previously stated that \$8.1 billion would be needed to renew all contracts for a full year.¹⁴ To maintain the program's stability, Congress will likely have to provide additional appropriations later in the year.¹⁵

Public Housing

Congress increased funding for the public housing operating fund by \$336 million above the FY 2007 level for a total of \$4.2 billion. The increase notwithstanding, the Committee on Appropriations recognized that the amount appropriated is insufficient, stating that HUD has determined that \$5 billion is needed in 2008.¹⁶ The funding level increase is estimated to provide housing agencies with only 85.4% of the operating subsidy formula need.¹⁷ This continues the trend in recent years of significantly underfunding the public housing operating fund, as 2007 was the fifth straight year that the federal government

⁷Pub. L. No. 110-161 (Tenant-based Rental Assistance) (2007) (the Secretary may extend the notification period with written approval of the House and Senate Committees on Appropriations).

⁸CBPP, *supra* note 2, at 3.

⁹*Id.*

¹⁰Pub. L. No. 110-161, Tenant-Based Rental Assistance (2007).

¹¹For more discussion of HUD's recent policies regarding tenant protection vouchers, see Joe Akman, *New HUD Relocation and Replacement Voucher Policy for Public Housing Demolition and Disposition*, 37 Hous. L. Bull. 77 (2007).

¹²Pub. L. No. 110-161, § 213 (2007).

¹³For more discussion of student eligibility for Section 8 rental assistance, see Georgia Garthwaite, *New Section 8 Restrictions for Students*, 36 Hous. L. Bull. 115 (2006).

¹⁴Joseph P. Poduska, *Bush Signs Omnibus Fiscal 2008 Appropriations Bill; HUD Funding Trimmed from Conference Report*, 36 Hous. Dev. R. 28 (2008).

¹⁵CENTER ON BUDGET AND POLICY PRIORITIES, HUD BILL AVOIDS DEEP CUTS IN 2008, 15 (2007), <http://www.cbpp.org/11-14-07hous.pdf>.

¹⁶Press Release, U.S. Senate Committee on Appropriations, Highlights: 2008 Transportation, Housing and Urban Development Appropriations (Nov. 8, 2007), http://appropriations.senate.gov/Press/2007_11_08_Summary_of_2008_Transportation_HUD_Conference_Report.pdf?CFID=25594695&CFTOKEN=80967604.

¹⁷CBPP, *supra* note 15, at 8.

failed to provide the full amount for which housing agencies were eligible under the operating fund formula.¹⁸

Funding for the public housing capital fund remained at \$2.4 billion, the same as FY 2007 and FY 2006. Congress therefore denied the Administration's proposal to cut funding for the capital fund by \$415 million. However, the 2008 appropriation will not be enough to address the substantial backlog of repairs for public housing, which is funded from the capital fund.

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Congress also limited HUD's discretion with respect to the implementation of asset management. The act provides that housing authorities may use a portion of their capital funds for central office costs as well as costs incurred at the project level.¹⁹ Also, housing authorities with 400 or fewer units are not required to convert to asset management, unless the housing authority is seeking to stop the loss of subsidies precipitated by the implementation of the new operating subsidy rule.²⁰

Three additional housing authorities—Alaska HFC, and the housing authorities of San Bernardino and Santa Clara—are now authorized to be Moving to Work agencies, which means that they have the option to design their public housing and voucher programs, subject to HUD approval, without regard to many statutory constraints, such as rent and eviction protections, but within the MTW guidelines.²¹ In addition, HUD may not rescind the MTW designation for the Housing Authority of Baltimore City based upon allegations of administrative or procedural errors in the designation.²²

The Housing Authority for the County of Los Angeles has been added to the list of housing authorities that are not required to have residents on their board of commissioners,²³ joining those for the states of Alaska, Iowa and

Mississippi. All of these housing authorities are required to have an advisory board, which meets not less than quarterly, of not less than six residents of both public housing and Section 8 residents, to provide advice and comment to the public housing authority.

HOME, CDBG and HOPE VI

The omnibus bill funds HOME formula grants at \$1.63 billion, which is \$62 million less than the FY 2007 level. The omnibus bill provides \$3.59 billion for CDBG formula grants, \$117 million below the FY 2007 level. Still, the omnibus bill rejects the Administration's proposal to slash funding for formula grants by \$1.1 billion. Congress also denied the Administration's proposal to eliminate the HOPE VI program, allocating \$100 million for FY 2008, \$1 million more than the FY 2007 level.

Housing for the Elderly and People with Disabilities

Supportive housing for the elderly (Section 202) and people with disabilities (Section 811) are funded at \$735 million and \$237 million respectively, rejecting the President's request to significantly cut funding for these programs. Both programs were funded at the FY 2007 levels.

Mortgage Foreclosure Assistance

The bill provides \$300 million to the Neighborhood Reinvestment Corporation, with \$180 million of the funding to be distributed as grants to housing counseling agencies. The agencies will assist homeowners with subprime loans in modifying or restructuring their mortgages to avoid foreclosure. The grants are targeted to states with high rates of default and foreclosure.

Other Programs

Homeless assistance is funded at \$1.59 billion, an increase of \$145 million above the FY 2007 level. The bill provides \$630 million for Native American Housing Block Grants, \$6 million more than the program received in FY 2007. Funding for Native Hawaiian Housing Block Grants remains the same at \$9 million. Housing Opportunities for Persons with AIDS (HOPWA) receives \$300 million, an increase of \$14 million as compared to FY 2007. Funding for Lead-Based Paint Hazard Reduction was cut from FY 2007's \$152 million to \$145 million. Fair housing activities receive \$50 million, \$4 million above the FY 2007 level. Further, the bill provides \$380,000 in fair housing funds to translate documents for persons with limited English proficiency.

A chart showing the FY 2008 funding levels for the major HUD programs and comparing them to prior years' funding can be found on page 4. ■

¹⁸*Id.*

¹⁹Pub. L. No. 110-161, § 226 (2007).

²⁰*Id.* § 225. There are approximately 2550 housing authorities out of a total of nearly 3000 housing authorities with some public housing but no more than 400 units. Thus, only approximately 450 housing authorities will be required to convert to asset management.

²¹*Id.* § 230.

²²*Id.* § 231; See HUD Inspector General Finds Serious Flaws in Moving to Work Program, 36 HOUS. L. BULL. 184 (2006) (discussion of OIG report regarding Baltimore housing authority).

²³Pub. L. No. 110-161, § 214 (2007), compare with Pub. L. No. 108-447, 218, 118 Stat 3319, which references only the housing authorities of the states of Alaska, Iowa and Mississippi.

FY 08 Budget Chart for Selected Programs (in millions)

<i>HUD Program (set asides indented)</i>	FY04 Enacted	FY05 Enacted	FY06 Enacted¹	FY07 Enacted	FY08 Request	FY08 full Senate H.R. 3074 (as amended) 9/12/07	FY08 full House H.R. 3074 7/24/07	FY08 Conference Report 11/7/08	FY08 Omnibus Spending Bill 12/16/07
Tenant Based Rental Assistance	14,186	14,766	15,417	15,920	16,000	16,599	16,330	16,443	16,391
Tenant Protection Vouchers	205	163	178	149	150	150	150	200	200
Administrative Fees	1,235	1,200	1,238	1,281	1,351	1,351	1,351	1,351	1,351
Family Self Sufficiency Coordinators	48	46	47	47	48	50	48	49	49
Contract Renewals	12,893	13,463	13,949	14,436	14,444	14,929	14,745	14,695	14,695
Project Based Rental Assistance	4,792	5,298	5,037	5,976	5,813	5,813	6,480	6,382	6,382
Contract Renewals	4,692	5,195	4,890	5,829	5,523	5,523	6,239	6,139	6,139
Public Housing Capital Fund	2,695	2,579	2,439	2,439	2,024	2,500	2,439	2,439	2,439
Emergency/Disaster Grants	50	30	17	17	0	20	17	19	19
Resident Opportunities and Supportive Services (ROSS)	55	52.5	38	38	0	40	38	40	40
Public Housing Operating Fund	3,579	2,438	3,564	3,864	4,000	4,200	4,200	4,200	4,200
HOPE VI	149	143	99	99	-99	100	120	120	100
Native American Housing Block Grants	650	621	624	624	627	630	627	630	630
Native Hawaiian Housing Block Grants	9	9	9	9	6	9	9	9	9
Housing Opportunities for Persons with AIDS	295	282	286	286	300	300	300	300	300
Community Development Fund	4,921	4,671	4,178	3,772	3,037	4,060	4,180	4,000	3,866
CDBG Formula Grants	4,331	4,110	3,711	3,711	2,975	3,708	3,929	3,723	3,593
Self-Help Homeownership Opportunity Program	27	25	20	20	40 (not a setaside)	70	60	60	60
Economic Development Initiative Grants	276	262	307	0	0	248	160	184	180
Brownfields Redevelopment	25	24	10	10	0	10	10	10	
HOME Investment Partnership Program	2,006	1,900	1,733	1,733	1,967	1,970	1,764	1,767	1,704
HOME Formula Grants	1,859	1,789	1,690	1,690	1,903	1,682	1,716	1,702	1,629
American Dream Downpayment Initiative	87	50	25	25	50 (not a setaside)	25	0	15	10
Housing Counseling Assistance	40	42	42	42	50 (not a setaside)	150	48	50	50
Foreclosure Counseling					0	100	0	200	180
Homeless Assistance Grants	1,260	1,241	1,327	1,442	1,586	1,586	1,561	1,586	1,586
Samaritan Initiative	--	--	--	0	50	0	0	0	0
Rural Housing and Economic Development	25	24	17	17	0	17	17	17	17
Housing for the Elderly (Section 202)	774	741	735	735	575	735	735	735	735
Housing for Persons with Disabilities (Section 811)	249	238	237	237	125	237	237	237	237
Fair Housing and Equal Opportunity	48	46	46	46	45	52	46	50	50
Fair Housing Assistance	28	26	26	26	24.8	27	25	26	26
Fair Housing Initiatives	20	20	20	20	20.2	25	20	24	24
Lead-Based Paint Hazard Reduction Program	174	167	152	152	116	151	93	145	145
Salaries and Expenses	1,116	1,030	1,141	1,141	1,222	1,222	1,211	1,222	1,212

¹FY 06 numbers reflect a 1% cut across the board.

Chart courtesy of the National Low-Income Housing Coalition. Reprinted with permission.

Rural Housing Service FY 08 Appropriations

The Fiscal Year 2008 Appropriations Act,¹ signed into law by the President on December 26, 2007, cut funding for most of the major Rural Housing Service (RHS) housing programs that serve low-income residents. Major programs serving moderate-income persons received funding increases while other RHS loan and grant programs, most of which serve specialized communities, were kept relatively stable, receiving minor decreases or increases. In most cases, funding for programs that serve low-income households was substantially above what the Administration had requested in its Fiscal Year (FY) 2008 Budget,² while the funding for programs that serve moderate-income households received less than what the Administration requested in the budget. The balance of this article will review, by program, the appropriations for FY 2008.

Section 515 Rural Rental Housing Program

Since 1994, the Section 515 Rural Rental Housing loan program³ has been struggling to remain alive. In the late 1980s and early 1990s the program was being funded at nearly \$1 billion per year. In 1994, Congress found some problems in the program's administration and severely cut its funding. Although the program's problems have long been resolved, funding has continued to decrease, with the program being funded at the \$100 million level for the last several years.

The Administration, which has proposed to terminate the program before, did the same for FY 2008, urging its replacement with the unsubsidized guaranteed Section 538 Rental Housing loan program.⁴ The Senate proposed to only fund the program at \$70 million,⁵ while the House proposed to fund it at \$99 million.⁶ Unfortunately, the House and Senate Conference Committee compromised at the lower House level and refunded the program for FY 2008 at \$70 million.

¹The full title of the bill is the "Consolidated Appropriations Act, 2008," Pub. L. No. 110-161 (Dec. 26, 2007) (formerly H.R. 2764), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf.

²A copy of the FY 2008 Budget is available at <http://www.gpoaccess.gov/usbudget/fy08/browse.html>. No specific references or cites will be made in this article to where a particular budget number appears in the President's 2008 Budget.

³42 U.S.C. § 1485.

⁴42 U.S.C. § 1472 (h).

⁵The Senate version of the Appropriations bill was S. 1589, 110th Cong. 1st Sess. (2007). No specific references or cites will be made in this article as to where a particular budget number appears in the Senate bill.

⁶The House version of the Appropriations bill was H.R. 3161, 110th Cong. 1st Sess. (2007). No specific references or cites will be made in this article as to where a particular budget number appears in the House bill.

Rental Assistance Subsidy Program

The Section 521 Rental Assistance program⁷ subsidizes the rents of most low-income residents in the Section 515 housing program so that they do not have to pay more than 30% of income for rent and utilities. In most respects, the program operates like the HUD project-based Section 8 program. When first enacted in the middle 1970s, the Rental Assistance contracts that were entered into with owners were for a period of twenty years. To reduce the program's budget impact, the term was cut to five years, then to four and most recently to two years.

The program was funded at \$616 million for FY 2007, and the Administration proposed to cut it to \$567 million in its budget for FY 2008. Underlying the Administration's budget request was the premise that a significant number of borrowers would prepay their loans after the Administration's proposed legislation⁸ repealing the prepayment restrictions imposed on Section 515 owners by the 1987 Emergency Low-Income Housing Preservation Act (ELIHPA)⁹ was passed into law, thus reducing the number of residents that were eligible for rent subsidies.

The Administration's proposed legislation was not enacted into law and neither the House nor the Senate was willing to significantly cut the required subsidy, although they were willing to cut the contract term to one year, thus reducing the funding needed for the program. Surprisingly, while the Senate proposed to refund the program for FY 2008 at \$497 million, and the House at \$533 million, the Conference Committee only funded the program at \$482.1 million, which is the amount in the FY 2008 Appropriations Bill.

Section 515 and Section 514-516 Rural Preservation Demonstration Program

For the past two years Congress has authorized and funded a Rural Rental Housing Demonstration program that authorizes RHS to restructure and revitalize an aging inventory of Section 515 Rural Rental Housing. The demonstration program has been funded at a modest \$9 million level for the past two years and the Administration proposed to terminate it, again under the premise that it would no longer be needed if the rural housing preservation legislation that it had proposed would be enacted into law. As it was not, the House proposed to refund the demonstration program at \$14.8 million and the Senate at \$15 million. The Conference Committee actually made \$20 million available for the program, which is what was enacted into law.

⁷*Id.* at § 1490a(a)(2).

⁸H.R. 5930 (109th Cong.).

⁹The rural provisions of ELIHPA are codified at 42 U.S.C. § 1472(c).

In appropriating funds for the program for FY 2008, Congress also authorized the use of these funds to restructure and revitalize developments financed under the Section 514 and 516 farm labor housing loan and grant programs.¹⁰ This is the first time that RHS has been given authority to use the funds for the farmworker housing program.

The single family guaranteed loan program has become this Administration's favorite rural housing loan program, primarily because it shifts program administration to private lending institutions and, with few exceptions, does not require any subsidies.

Rural Housing Vouchers

Although ELIHPA restricts the rights of Section 515 owners to prepay their loans, it does not prohibit it. For each of the past several years, approximately 2000 units of RHS Section 515 housing have been removed from the program. Prior to FY 2006, when owners prepaid their loans, the residents were effectively displaced by the prepayments at the end of their lease term because all RHS subsidies, both the shallow Interest Credit and the deep Rental Assistance subsidies, were terminated. All that RHS did to assist the former Section 515 residents was to provide them with a Letter of Priority Entitlement that gave them admission priority to other RHS Section 515 housing. While some housing authorities stepped in to provide residents with HUD vouchers, residents were typically forced to move to unsubsidized housing when their landlord prepaid the Section 515 loan. In FY 2006, Congress appropriated funds for RHS to begin issuing vouchers to displaced residents, thereby enabling them to remain in the prepaid development or to move to other housing in the community. In both FY 2006 and FY 2007, \$16 million was made available for the program.

For FY 2008, the Administration proposed to increase the voucher program funding to \$27.8 million, again under the belief that many more residents would be displaced once the ELIHPA prepayment restrictions were lifted by the Administration sponsored legislation. Since the legislation was not enacted and because RHS used far fewer vouchers than it had anticipated, the House voted to fund the program at \$10 million while the Senate approved \$15.5 million. The Conference Committee reduced the amount to \$5 million, which became part of the FY 2008 appropriations.

¹⁰42 U.S.C. §§ 1474 and 1476.

Rental Housing Preservation Loans

For the past two years, Congress appropriated \$3 million per year for a new loan program, which is only authorized in the Appropriations Acts, to preserve Section 515 rental housing. The funding for the program was contracted out to nonprofit organizations that could make long- or short-term loans to owners of Section 515 housing that proposed to use the funds to revitalize the development. For FY 2008, Congress appropriated an additional \$3 million for the program.

Section 502 Single Family Direct Loan Program

In the FY 2008 Budget, the President proposed to terminate the Section 502 Direct Single Family Home Loan program¹¹ suggesting, but not proposing, that it could be replaced by a subsidized guaranteed program. The House and Senate rejected the idea, with both refunding the program at \$1.129 billion, which ultimately was included in the FY 2008 Appropriations Act. This is slightly lower than the funding that the program had during FY 2007, which was \$1.141 billion.

Section 502 Single Family Guaranteed Loan Program

The single family guaranteed loan program has become this Administration's favorite rural housing loan program, primarily because it shifts program administration to private lending institutions and, with few exceptions, does not require any subsidies. In Fiscal Year 2007, the program was funded at \$3.681 billion and the Administration proposed to increase program funding for FY 2008 to \$4.848 billion. Neither the House nor the Senate were prepared to fund the program anywhere near the Administration's request level, although they somehow compromised their differences at a higher level than either the House or Senate had approved for the program. For FY 2008, the program is funded at \$4.220 billion.

Other RHS Programs

The Section 504 home repair loan program¹² was funded at \$34.7 million for FY 2008, a \$300,000 cut from last year's appropriations. The companion Section 504 grant program, which only serves elderly persons, was funded at \$30 million, the same as last year.

The Section 514 farm labor housing loan program, used to construct farm labor housing, received \$27.7 million for FY 2008, a \$10.3 million cut from FY 2007. The companion Section 516 grant program was also cut to \$10 million, having received \$14 million in FY 2007.

¹¹42 U.S.C. § 1472.

¹²42 U.S.C. § 1474.

The Section 523 Self Help Technical Assistance grant program,¹³ used to fund nonprofit organizations that help households build their own homes, received \$39 million for FY 2008, a \$5 million increase over FY 2007.

Restriction on Closing of RD Offices

For the past year the Department of Agriculture has been quietly closing and reducing the staff of many of its field offices, making delivery of programs, such as the RHS housing programs, and services to rural areas more difficult. In an effort to stem this trend, the FY 2008 Appropriations Act prohibits the department from closing RD offices until the impact on cost and program delivery is determined. The Appropriations Act requires reporting the justification for any closure or relocation to Congress at least sixty days in advance.

The FY 2008 Appropriations Act prohibits the Department of Agriculture from closing RD offices until the impact on cost and program delivery is determined.

Conclusion

The FY 2008 appropriation for the RHS housing programs maintains a trend of slowly cutting the housing programs and subsidies that historically have served low-income and very low-income rural households. Though the Administration has proposed to eliminate these programs several times, Congress, both under Republican and Democratic control, has resisted the invitation and has kept the programs functioning, although typically at a reduced level. It will take nearly two additional years to determine whether this will continue or whether a new Congress and a new Administration will reverse the trend. In the meantime, rural residents and communities that have historically benefitted from the RHS programs will have to suffer from reduced funding. ■

Wrap Up of Legislation in First Session of 110th Congress

By the National Low-Income Housing Coalition¹

To kick off the New Year, we have rounded up the major housing policy issues we expect Congress to work on in 2008, the second session of the 110th Congress. While progress was made in 2007, there is much unfinished business for 2008. Senate Committee on Banking, Housing and Urban Affairs Chair Christopher Dodd (D-CT) formally dropped out of the presidential race on January 4. The pace of that committee's work is now expected to increase.

The House and Senate returned for legislative business on January 15 and 22, respectively. The President delivered his State of the Union address on January 28. On February 4, the President delivered his FY 09 budget request to Congress, marking the official start of FY 09 budget and appropriations season.

National Housing Trust Fund

The National Housing Trust Fund made great progress in the first session of the 110th Congress. On October 10, under the leadership of House Committee on Financial Services Chair Barney Frank (D-MA), the National Affordable Housing Trust Fund Act of 2007, H.R. 2895, passed the House with strong bipartisan support.² On December 19, Senators John Kerry (D-MA) and Olympia Snowe (R-ME) were the lead sponsors along with six other senators in introducing bipartisan legislation to establish a housing trust fund in the Senate. The Senate bill, S. 2523, is very similar to the House version and has been referred to the Senate Committee on Banking, Housing and Urban Affairs. In 2008, the National Housing Trust Fund Campaign will work to get additional cosponsors and line up votes to have the trust fund bill passed in the Senate.

Both the House and Senate bills would establish dedicated sources of funds for the production, preservation and rehabilitation of 1.5 million affordable homes over the next ten years. At least 75% of the funds will be for housing for households that are extremely low income, earning less than 30% of the area's median income.

¹This article is reprinted with permission from NLIHC's Memo to Members (vol. 13, issue no. 1, Jan. 4, 2008). Join NLIHC and receive this helpful resource for free at www.nlihc.org. References to Memo throughout this article refer to issues available on NLIHC's website, www.nlihc.org. Bills that are referenced can be obtained from http://thomas.loc.gov/home/bills_res.html.

²See NHLP, *House of Representatives Passes Affordable Housing Trust Fund Bill*, 37 HOUS. L. BULL. 196 (Nov./Dec. 2007), as well as NLIHC Memo to Members dated October 12 and December 21, 2007, available at www.nlihc.org.

¹³42 U.S.C. § 1490(c).

There are two sets of current legislation that have seen action in the first session of the 110th Congress that establish funding sources for the trust fund. First, the House passed H.R. 1427 (see Memo, 5/25/07), a comprehensive reform bill for the government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, that also calls for providing dedicated funds from the GSEs to the trust fund. In the Senate, Senator Jack Reed (R-RI) has introduced S. 2391, the GSE Mission Improvement Act of 2007 (see Memo, 11/30/07) that includes funds from the GSEs to support an affordable housing fund. This measure has been referred to the Senate Committee on Banking, Housing and Urban Affairs. GSE reform legislation (S. 1100) introduced by Senator Chuck Hagel (R-NE) on April 12, 2007, does not contain the affordable housing fund provision. Comprehensive GSE reform is expected to be taken up by the Senate Banking Committee sometime this year.

A second source of revenue for a trust fund is included in House-passed legislation to modernize the Federal Housing Administration (FHA), H.R. 1852 (see Memo, 9/21/07). The bill creates new FHA revenue by expanding the home equity conversion mortgage (HECM) program and dedicating some of this new revenue to a Trust Fund. The Senate has passed a similar modernization measure for the FHA, S. 2338, but it does not include the funding provision (see Memo, 12/14/07). The two measures now must go to a House-Senate conference committee where differences in the bills will be reconciled. The National Housing Trust Fund Campaign will work to see that the FHA provision providing funding for the Trust Fund remains in the final legislation.

Budget and Appropriations

President George W. Bush signed the FY 08 omnibus spending bill, which includes funding for HUD, on December 26.³ The House and Senate had passed three continuing resolutions to keep government spending flowing in FY 08 after the October 1, 2007, start of the fiscal year came and went.

With 2008 an election year, the process for enacting FY 09 spending bills could be even more partisan. On February 4, the President delivered his FY 09 budget request to Congress, marking the official start of FY 09 budget and appropriations work. The House and Senate Budget Committees will work to enact an FY 09 budget resolution by April 15 and then use the spending levels and directives in that document to guide the work of the appropriations committees and subcommittees.

Advocates' work in this area will begin with seeking a higher domestic discretionary spending limit, compared to FY 08, in the FY 09 budget resolution. Such an increase

would enable the House and Senate Appropriations Committees to allot additional funds, compared to FY 08, to their subcommittees, including the Transportation, HUD and Related Agencies Subcommittees. Of course, keeping any gains made by a better budget resolution will be possible only with enough votes to push back against any cuts or requests for level funding proposed by the President's budget, a task that proved impossible for the FY 08 appropriations. Obtaining a more generous budget resolution will be especially important to permit appropriation of additional funds for programs left short by the FY 08 appropriations process, including the funds needed for public housing and to fully fund one-year terms for all expiring project-based Section 8 renewal contracts.

The biggest challenge facing public housing in 2008 will be sufficient funding to operate and maintain existing public housing units.

Public Housing

The biggest challenge facing public housing in 2008 will be sufficient funding to operate and maintain existing public housing units. Funding for both functions in recent years has lagged well behind need. Today's public housing authorities are operating on only 85.4% of what HUD knows they need to operate, according to the November 14 paper by the Center on Budget and Policy Priorities, and their more than \$20 billion backlog of capital needs is widely known.

Legislation to reauthorize the HOPE VI program is likely to receive additional attention in 2008. The House is expected to take up its HOPE VI reauthorization bill, H.R. 3524, the week of January 14. The bill, introduced by House Financial Services Subcommittee on Housing and Community Opportunity Chair Maxine Waters (D-CA), passed out of committee on September 26 (see Memo, 9/14/07 and 9/28/07). The Senate bill, introduced on March 6 by Senator Barbara Mikulski (D-MD) received a hearing in the Senate Banking, Housing and Urban Affairs Committee on June 20, but no further action has been taken on the legislation (see Memo, 3/9/07 and 6/22/07). The bills are very different from one another. The House bill requires one-for-one replacement of units, a right to return by former residents and many other protections and improvements long sought by advocates. The Senate bill does not contain any of these improvements and reverses some of the gains won when the program was last reauthorized in 2003 under legislation sponsored by Representative Mel Watt (D-NC).

³See the accompanying article on FY 08 HUD appropriations on page 1 of this issue.

Section 8 Housing Choice Vouchers

Adequate funding to renew all vouchers and to fund vouchers that are currently authorized but unused will continue to be critical issues for the FY 09 HUD appropriations bill. Advocates will also continue to ask for new vouchers in FY 09. The approximately 20,000 vouchers funded in the FY 08 HUD appropriations bill for homeless veterans, non-elderly disabled people and the family unification program were the first new vouchers funded since FY 02. In FY 09, advocates will continue to seek 100,000 additional new vouchers.

The Section 8 Voucher Reform Act will be a focal point for advocacy in 2008. The House bill, H.R. 1851, includes a long list of important and positive reforms to the voucher program, and advocates will work hard in 2008 to enact this legislation. H.R. 1851 passed the House on July 12 (see Memo, 7/13/07), but the Senate bill has yet to be introduced.⁴ A draft Senate bill was circulating in the fall of 2007 and introduction is expected shortly after the Senate returns to work.

H.R. 1851 addresses the distribution of voucher funds to administering agencies, simplification of rents, voucher portability, replacement vouchers for lost project-based assistance, project-based vouchers, fair market rents, rent burdens, inspections, the moving to work/housing innovation program and the family self-sufficiency program, among other voucher issues. The bill also authorizes 20,000 new, incremental vouchers each year for FY 08 to FY 12.

Project-Based Housing Preservation

While Congress considered some legislation to preserve existing affordable housing in the first session of the 110th Congress, the main thrust of preservation legislation will occur in the second session. On October 31, the House Committee on Financial Services, chaired by Representative Barney Frank (D-MA), passed H.R. 3965, the Mark-to-Market Extension and Enhancement Act of 2007 (see Memo, 11/2/07). This legislation would amend the Mark-to-Market program to include properties with below-market rents and to expand the number of instances of nonprofit debt relief, among other changes. The Congressional Budget Office concluded, in a report dated November 30, 2007, that these expansions of the program would have a direct spending cost, potentially triggering a rule of the House of Representatives that would prohibit consideration of the bill without offsetting revenue increases.

In addition, on October 31, the Committee approved H.R. 3873, the Section 515 Rural Housing Property Transfer Improvement Act of 2007, by voice vote. The bill is intended to expedite the transfer of Section 515 rural multifamily housing projects from one owner to another. The

⁴See NHLP, *Proposed Congressional Reforms to the Section 8 Voucher Program*, 37 HOUS. L. BULL. 169 (Oct. 2007).

Senate did not take up any preservation legislation in the first session.

Chair Frank is expected to introduce a major preservation bill in February, and he has committed to moving this legislation through the Financial Services Committee early in the second session. This legislation is likely to include many of the provisions sought by advocates and the HUD Housing Preservation Working Group. In addition, the non-cost provisions of H.R. 3965 may be included as well as the provisions of the Rural Housing Preservation Act of 2007, H.R. 4002. Senator Chuck Schumer (D-NY), chair of the Senate Banking, Housing and Urban Affairs Subcommittee on Housing, Transportation and Community Development, is also expected to introduce preservation legislation early in the session.

Low Income Housing Tax Credit

While no legislation has been formally introduced as yet, House Committee on Ways and Means Chair Charles Rangel (D-NY) is looking at ways to improve the Low Income Housing Tax Credit program (LIHTC). And, House Committee on Financial Services Chair Barney Frank (D-MA) is working on ways to better coordinate the HUD programs with the LIHTC program. Legislation developed by both members will be part of a larger tax reform measure that Mr. Rangel plans to consider in the second session of this Congress.

NLIHC is working to promote deeper income targeting for the LIHTC program as well as a better distribution of the credits in order to house more extremely low-income families.

In other LIHTC news, the House rejected attempts to include a provision to exclude military service members' basic allowance for housing from their calculation of income for purposes of determining eligibility for the program, in its legislation providing military service members additional tax benefits (see Memo, 11/2/07). The Senate amended its version of this bill on December 19 to include this provision. NLIHC opposes this action because the responsibility for housing for active military people lies with the Department of Defense, and it would take units away from low-income civilians.

McKinney-Vento Reauthorization

Bills have been introduced in both the House and Senate to reauthorize McKinney-Vento homeless programs. The bills would consolidate all HUD McKinney-Vento housing programs, except Emergency Shelter Grants, into one competitive program with a broad set of eligible activities, including homelessness prevention, permanent or transitional housing for any homeless population, and supportive services.⁵

⁵See NHLP, *Congress Considers Reauthorization of Homeless Programs*, 37 HOUS. L. BULL. 174 (Oct. 2007).

On February 6, Representatives Julia Carson (D-IN), Geoff Davis (R-KY), Barbara Lee (D-CA) and Rick Renzi (R-AZ) introduced H.R. 840, the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH) (see Memo, 2/9/07). Ms. Carson passed away on December 15, and Representative Maxine Waters (D-CA) is expected to carry McKinney-Vento legislation through the committee.

The Gulf Coast Housing Recovery Act of 2007 remains stalled in the Senate due to opposition by Senator David Vitter. The bill would, among other things, require that any redevelopment of public housing owned by the Housing Authority of New Orleans (HANO) or any Gulf Coast public housing agency include one-for-one replacement and a right to return for all displaced tenants.

Ms. Waters, chair of the House Financial Services Subcommittee on Housing and Community Development, held two hearings on the bill in October, 2007 (see Memo, 10/12/07 and 10/19/07). S. 1518, the Community Partnership to End Homelessness Act of 2007, was introduced by Senators Jack Reed (D-RI) and Wayne Allard (R-CO) on May 24 (see Memo, 5/18/07 and 5/24/07). The Senate Committee on Banking, Housing, and Urban Affairs voted in favor of S. 1518 on September 19 (see Memo, 9/21/07).

Each bill would expand the definition of homelessness, to different degrees. In S. 1518, households would be considered homeless for the purposes of receiving services if they: are living in somebody else's housing because they do not have the resources to obtain other housing; have been notified that the arrangement is short-term; have moved either three times in the past year or twice in the past three weeks; and are not contributing significantly to the cost of the housing. The definition would also include people who have moved frequently (three times in the past year or twice in the past twenty-one days) and are currently living in a hotel or motel in which they will not be able to stay for more than a brief period. The definition of homelessness in H.R. 840 would be more closely aligned with the definition used by other federal agencies by including people who are living in doubled-up situations or in hotels/motels due to lack of adequate alternatives.

A Senate floor vote on S. 1528 is as yet unscheduled. The House Financial Services Subcommittee on Housing and Community Opportunity is expected to mark up a manager's amendment of H.R. 840 in the spring.

Disaster Recovery

S. 1668, the Gulf Coast Housing Recovery Act of 2007, remains stalled in the Senate due to opposition by Senator David Vitter (R-LA). The bill, introduced by Senators Mary Landrieu (D-LA) and Christopher Dodd (D-CT) on June 20 (see Memo, 6/22/07), would, among other things, require that any redevelopment of public housing owned by the Housing Authority of New Orleans (HANO) or any Gulf Coast public housing agency include one-for-one replacement and a right to return for all displaced tenants. Companion legislation, H.R. 1227, passed the House on March 21 (see Memo, 3/23/07). Advocates continue to push for S. 1668 to be voted on in the Senate Banking Committee. In the meantime, Senator Landrieu may soon introduce new legislation related to New Orleans public housing that would better reflect the negotiations and compromises made thus far on S. 1668.

Another supplemental spending bill for the wars in Iraq and Afghanistan will be taken up by Congress in late winter. As with past supplemental spending bills, this will be an opportunity for additional funds to be allocated to Gulf Coast housing recovery.

Legislation to revise the Stafford Act, particularly the way the Federal Emergency Management Agency responds to temporary and long term housing needs after a disaster, will be introduced by Senator Landrieu in late winter or early spring. ■

You can find more information about the status of these bills and other federal housing legislation on NLIHC's website at www.nlihc.org.

States Uphold Source of Income Discrimination Laws Protecting Voucher Holders

A series of recent state court rulings have enforced state and local laws that prohibit discrimination based on a person's lawful source of income. These three cases, *Montgomery County v. Glenmont Hills Associates*,¹ *Commission on Human Rights and Opportunities v. Sullivan*,² and *DeLiddo v. Oxford Street Realty*,³ have found that federal and state housing subsidy programs are protected under such laws. These successful cases demonstrate that state and local protections can be invaluable in maximizing the utility of vouchers and other forms of housing assistance.

Montgomery County v. Glenmont Hills Associates⁴

Montgomery County, Maryland, like many other jurisdictions, has long had its own local fair housing laws to supplement federal law.⁵ After “[r]eported cases of discrimination in the rental of housing against recipients of Section 8 housing assistance,”⁶ the Montgomery County Council enacted a bill, adding a provision to the county's existing fair housing law prohibiting certain landlords from discriminating against prospective tenants based on source of income.⁷ The county defined source of income as “any lawful source of money, paid directly or indirectly to a renter or buyer of housing, including income from . . . any government or private assistance, grant, or loan program.”⁸ Thus, the county long construed its prohibition on discrimination based on source of income as including discrimination against Section 8 voucher holders because it was in fact enacted for that purpose.

The conflict arose when Glenmont Hills Associates turned away a Section 8 voucher holder who was applying for a rental unit. After the voucher holder complained, the County Human Rights Commission sent a tester to also apply for a unit using a voucher. The tester was also denied. Glenmont acknowledged that it does not participate in the Housing Choice Voucher Program and claimed the administrative burden of participating is too high.

¹*Montgomery County v. Glenmont Hills Assocs. Privacy World*, ___ A.2d ___, 2007 WL 4208631 (Md. 2007).

²*Comm'n. on Human Rights & Opportunities v. Sullivan*, No. SC17594, slip op. (Conn. 2008) (hereinafter “*Sullivan II*”).

³*De Liddo v. Oxford St. Realty, Inc.*, 876 N.E.2d 421 (Mass. 2007).

⁴*Montgomery County v. Glenmont Hills Assocs. Privacy World*, ___ A.2d ___, 2007 WL 4208631 (Md. 2007).

⁵Montgomery County Code Ch. 27, § § 27-1 to -63. (hereinafter “MCC”).

⁶*Montgomery County v. Glenmont Hills*, citing Bill No. 70-90, Montgomery County, Leg. History.

⁷*Id.*

⁸MCC, Ch. 27, § 27-6.

Both the Montgomery County Human Rights Commission and the rejected applicant Elaine Walker filed administrative complaints with the County Office of Human Rights against Glenmont. Both complaints were eventually consolidated and through the administrative process led to a decision by the county's case review board. The review board found that Section 8 vouchers are included in the source of income discrimination statute, that the prohibition is not preempted by federal law or precluded by the Constitution, and also that any administrative burden on the owner was irrelevant.⁹ The board also awarded damages.¹⁰

On appeal, the Maryland Circuit Court reversed the case review board's decision and ruled for Glenmont. It reasoned that though source of income was clearly intended to include Section 8 vouchers and that there was no federal preemption, “the County cannot force a landlord to enter into a contract with the federal government, when the landlord has no desire to enter into such a relationship and the landlord is unable to negotiate the terms of the contract.”¹¹ The Circuit Court added that even if the county could require a landlord to enter into such a contract, Glenmont did not engage in discrimination, but instead rejected the applicant in order to avoid administrative hassle.¹²

Montgomery County then appealed the Circuit Court decision to the Court of Appeals of Maryland (the state's highest court). Reversing the lower court's ruling, the appellate court found in favor of the county and Ms. Walker. It articulated two major holdings: first, the Montgomery County Code's source of income discrimination provision does encompass Section 8 vouchers, and second, the provision is not preempted by federal law.¹³

The first holding concerning the local law's coverage of voucher assistance was based on an analysis of the legislative history, which clearly demonstrated that the provision at issue was enacted specifically in response to instances of discrimination against Section 8 participants.

The court then turned to the more complicated issue of preemption—specifically, whether local law impermissibly conflicts with federal law and is therefore unenforceable under the Supremacy Clause. The owner's argument claimed that because Congress made participation in the voucher program voluntary, the local ordinance requiring participation was in direct conflict with Congress' intended “methodology.”¹⁴ The Court of Appeals, following precedent, began with a presumption against preemption.¹⁵ It further reasoned that in order for a direct

⁹*Montgomery County* at 11.

¹⁰*Id.*

¹¹*Id.* at 13.

¹²*Id.*

¹³*Id.* at 1.

¹⁴*Id.* at 20.

¹⁵*Id.* at 18.

conflict argument to prevail, the central purpose of Section 8 legislation had to be its voluntary nature and not the goal of expanding affordable housing. The court found this suggestion to be unsupported by either the law or sound reasoning, further noting that HUD regulations state that nothing in them pre-empts “[s]tate and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder.”¹⁶ The court also cited additional legislative history, agency interpretation, and case law supporting its conclusion of no conflict preemption. The court’s thorough analysis resoundingly rejects the claim that federal preemption prevents such state or local anti-discrimination protections.

The court’s thorough analysis resoundingly rejects the claim that federal preemption prevents such state or local anti-discrimination protections.

Finally, the Maryland court also addressed another issue often raised by landlords—that participation in the Section 8 program creates an excessive administrative burden. The court quickly dismissed this argument, finding that “unless the landlord can establish a burden so severe as to constitute a taking of its property or the violation of due process, which so far as we can determine, no landlord has yet been able to do, administrative burden is not a viable defense.”¹⁷ Thus, Glenmont was found to have unlawfully discriminated against Ms. Walker on the basis of her status as a Section 8 voucher holder.

***Commission on Human Rights and Opportunities v. Sullivan*¹⁸**

Connecticut state law prohibits landlords from discriminating on the basis of a lawful source of income.¹⁹ This case arose when Denise Colon attempted to rent an apartment unit from Michael and Robert Sullivan. Responding to an ad in the newspaper, she called the property to express her interest and informed the property manager that she was a Section 8 voucher holder. Through a series of phone calls, Ms. Colon was eventually informed by Mr. Sullivan that she did not qualify for the unit because he does not participate in the Section 8 program.

¹⁶24 C.F.R. § 982.53(d).

¹⁷*Id.* at 32.

¹⁸*Comm’n. on Human Rights & Opportunities v. Sullivan*, No. SC17594, slip op. (Conn. 2008) (hereinafter “*Sullivan II*”).

¹⁹CONN. GEN. STAT. § 46a-64c (2008).

Ms. Colon filed a complaint with the Commission on Human Rights and Opportunities, which eventually was heard in civil court. The trial court, relying on precedent from a prior case, *Sullivan I*,²⁰ found in favor of plaintiffs, so defendants appealed.

The Connecticut Supreme Court considered the legal issues anew and agreed with the lower court’s analysis. It first looked to the interplay of Connecticut General Statutes § 46a-64c(a)(1)²¹ and § 46a-64c(b)(5).²² The former subsection prohibits discrimination on the basis of lawful source of income, among other things, and the latter subsection creates an exception to the first, allowing a landlord to refuse to rent to someone with insufficient income. Another subsection of the statute specifically includes housing assistance as lawful source of income.²³ The court looked to the legislative history to interpret the meaning of these provisions and found that, like the Montgomery County law, the lawful source of income section had been added specifically to address discrimination against people receiving rent subsidies.²⁴ As for the subsection allowing a landlord to deny a tenancy based on insufficient income, the court found that the exception only applied to income requirements that relate to a tenant’s ability to pay her out-of-pocket share of rent or other obligations of the tenancy.²⁵ The court further noted that to construe the statute any more broadly “would swallow the statute whole and render it meaningless.”²⁶ Thus, using statutory construction and legislative history, the court confirmed that people receiving rental assistance are protected by the anti-discrimination statute.

The court then affirmed the trial court’s use of a mixed-motive analysis, which requires that the plaintiff establish a *prima facie* case that one of the motivating factors in the denial was discriminatory, thereby shifting the burden to the defendant to show by a preponderance of the evidence that its decision was based solely on a legitimate, non-discriminatory reason. The plaintiff was able to prove the *prima facie* case, especially given the fact that Sullivan Associates had told her on multiple occasions that it would not rent to her because of her Section 8 voucher. Although the landlord had claimed that it was not

²⁰*Comm’n on Human Rights and Opportunities v. Sullivan Assocs.*, 739 A.2d 238 (Conn. 1999).

²¹CONN. GEN. STAT. § 46a-64c(a)(1): It shall be a discriminatory practice in violation of this section:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status.

²²CONN. GEN. STAT. § 46a-64c(b)(5): The provisions of this section with respect to the prohibition of discrimination on the basis of lawful source of income shall not prohibit the denial of full and equal accommodations solely on the basis of insufficient income.

²³CONN. GEN. STAT. § 46a-63(3).

²⁴*Sullivan II* at 5.

²⁵*Id.* at 6.

²⁶*Id.* at 7, quoting *Sullivan I*.

intentionally discriminating, but had based its denial of Ms. Colon's tenancy on insufficient income, bad credit, and bad attitude, the court affirmed the trial court's findings that the facts did not support these defenses.²⁷ Thus, based on that analysis, the court upheld the trial court's ruling that Sullivan had violated Connecticut's lawful source of income law, which protects Section 8 voucher holders from discrimination. However, the court did remand the case for a rehearing on the appropriateness of the amount of attorney's fees.

De Liddo v. Oxford Street Realty, Inc.²⁸

Massachusetts forbids "any person furnishing . . . rental accommodations to discriminate against any . . . tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such . . . rental assistance, or housing subsidy program . . ."²⁹ The plaintiff Lori DiLiddo participated in Massachusetts' alternative housing voucher program (AHVP). The AHVP works similarly to the federal Section 8 program, in that tenants pay between 25 to 30% of their income toward rent and the remainder is paid by the Department of Housing and Community Development. In order to rent a unit, the landlord and tenant must both sign a form AHVP lease.

In this case, the plaintiff, Ms. DiLiddo, was looking for housing with her AHVP voucher. After viewing the unit, she told the property manager that she wished to rent the unit using her voucher and he agreed. The two made arrangements for her to move in. However, when Oxford Realty received the AHVP lease, it objected to some of its provisions and refused to sign it. Specifically, it objected to provisions that allowed a thirty-day notice of termination of the lease if the tenant moved into a different subsidy program. It also objected to allowing the local public housing authority on the premises for audits, providing the owner's Social Security number, and a provision allowing for the tenant's share of rent to change based on income.³⁰ Oxford offered to rent the apartment to Ms. DeLiddo without the AHVP lease, but she could not afford to do so and resumed her search for an apartment.

After securing other housing, Ms. DiLiddo filed a complaint with the Massachusetts Commission Against Discrimination. This led to a lawsuit by the Commonwealth of Massachusetts against Oxford Realty, with DiLiddo as an intervening plaintiff. Neither party contested the validity of the state statute nor that owners must comply with requirements of the program. The case

instead focused on the narrow issue of whether or not the lease provisions found objectionable by Oxford were actually requirements of the AHVP program.³¹ The Superior Court of Massachusetts granted summary judgment for defendants, finding that the lease provisions were not requirements of the program and alternatively, that they were non-discriminatory reasons for refusing to sign the lease.³²

On appeal, the Supreme Judicial Court of Massachusetts reversed and remanded the lower court's decision. As in Maryland and Connecticut, the court both used statutory construction principles and an analysis of legislative history to determine that all provisions of the lease were in fact requirements of the program. Significantly, the court pointed to the legislature's amendment of the statute after its earlier decision in *Attorney Gen. v. Brown*.³³ *Brown* held that because a landlord did not discriminate against a Section 8 voucher holder "solely" on the basis of the tenant's status as a participant in the program, that the landlord's actions were lawful. Later, the legislature removed "solely" and added new language that made it unlawful for a landlord to discriminate either because the person is a housing subsidy recipient or because of any requirements of the program.³⁴ The court noted that while the facts in *DiLiddo* and *Brown* are parallel, the amended legislative language now must yield a different conclusion.³⁵ Thus, the court found that Oxford was in fact prohibited from refusing to rent to Ms. DiLiddo because of requirements in the lease. Further, the court held that there is no longer an exception to the anti-discrimination provisions based on rejecting the tenant for other "legitimate, non-discriminatory reasons."³⁶ In summary, the Massachusetts Supreme Judicial Court held that lease provisions are in fact requirements of a housing subsidy program, and thus a person renting a unit to a subsidy recipient must abide by those requirements, regardless of whether the landlord has non-discriminatory reasons in addition to applicant's Section 8 status for failing to do so.

Conclusion

State and local anti-discrimination laws that protect source of income, specifically vouchers and other similar forms of rental assistance, are invaluable tools for ensuring that low-income tenants can obtain affordable housing. These three cases demonstrate that litigation to enforce these source of income protections can be a successful and important strategy for realizing that promise. ■

²⁷*Id.* at 12.

²⁸*De Liddo v. Oxford St. Realty, Inc.*, 876 N.E.2d 421 (Mass. 2007).

²⁹MASS. GEN. LAWS Ch. 151B, § 4(10) (2008).

³⁰*Id.* at 425.

³¹*Id.*

³²*Id.* at 426.

³³511 N.E. 2d 1103 (Mass. 1987).

³⁴*DiLiddo* at 428.

³⁵*Id.* at 429.

³⁶*Id.*

RHS Revives Old Single Family Loan Subsidy Program at a Lower Subsidy Level

On December 27, 2007, the Rural Housing Service (RHS) published final regulations implementing a new single family direct and leveraged loan subsidy program called Payment Assistance Method 2, replacing, for prospective borrowers, the current Payment Assistance subsidy program, now renamed as Payment Assistance Method 1.¹ The new interest subsidy does not become available until April 1, 2008, and will only be available to borrowers whose loans close after that date, to existing borrowers who have never before received an interest subsidy, or borrowers who have stopped receiving an interest subsidy and again become eligible for one. In other words, current single family borrowers who are receiving an RHS interest subsidy may not switch to the new interest subsidy program even if it is more advantageous to them unless they have stopped receiving altogether whatever current subsidy they are on.

Background

Since 1968, the RHS single family home loan program has had subsidies attached to the direct loan program that reduced low-income borrowers' monthly loan payments when they could not afford to pay the RHS market interest rate that the loan was entered into. The first such subsidy, which was implemented in 1968, was called the Interest Credit Subsidy. Under that program, the borrower agrees to pay RHS the higher of (1) the cost of amortizing the RHS loan at 1% interest or (2) the cost of amortizing the loan in a manner that would not require the borrower to pay more than 20% of adjusted income for principal, interest, property taxes, and insurance.² This Interest Credit Subsidy program was, and, for borrowers who are still receiving the assistance, is, administered uniformly throughout the United States, even when incomes and the cost of housing varies from state to state and community to community.

Over the objections of many housing advocates, in 1995 RHS introduced a new prospective interest subsidy program called Payment Assistance. Under this subsidy program the borrower pays the higher of (1) the cost of amortizing the RHS loan at an interest rate that varies depending on the ratio of the borrower's household income to area median income, or (2) the cost of amortizing the loan in a manner that would require the borrower to pay a percentage of household income for principal, interest, taxes and insurance, at a rate that varies between

22 and 26% depending on the income level of the borrower in comparison to local median income.³

Under the first prong, if the borrower's income is at 50% or below of area median income, the amount the borrower is required to pay is an amount equal to the cost of amortizing the loan at 1%. This percentage rate increases by 1% for each 5% increase in the ratio between the borrower's income and the local median income.⁴ Thus, for example, if the borrower's income was at 55% of adjusted median income, the borrower would be required to pay the equivalent of 2% interest on the loan.

Under the second prong, a borrower whose household income is very low is required to pay 22% of income for principal, interest, taxes and insurance. This increases to 24% of the borrower's income if that income is between 50% of area adjusted median and 65% of area median, and to 26% if the borrower's income is between 65% and 80% of area median.

The payment assistance subsidy was only made available to new borrowers and borrowers who had stopped receiving the Interest Credit subsidy.⁵ This means that borrowers who were on the Interest Credit subsidy were not required to switch to the payment subsidy program unless they stopped receiving Interest Credit and again became eligible for an interest subsidy.

Advocates have been concerned about two aspects of the Payment Assistance program. First, it penalizes borrowers who live in counties where incomes are very low while rewarding those who live in counties with high incomes. This is because in a low median income county, the income of borrowers who qualify for a loan is likely to be relatively high as compared to the county's median income. Thus, borrowers are forced to pay higher interest rates or a greater proportion of income towards the RHS payment. The opposite is true in high-income counties. Effectively, the formula for the interest subsidy would treat identical households with identical loans differently depending on whether they lived in a high or low median income county.

The second issue with the formula is that RHS used the implementation of the Payment Assistance subsidy as an opportunity to increase the portion of income that most borrowers paid for their loans and thereby decrease the overall cost of the subsidy program to the government. This is because all but the lowest-income households, in relation to county median income, typically paid

³*Id.* § 3550.68(c). Borrowers who have leveraged loans have a slightly lower payment level in order to promote participation in the leveraged loan program, which effectively combined an RHS loan with a loan from another source, typically a loan backed by a state housing finance agency.

⁴7 C.F.R. § 3550.68(c)(2007). Once the borrower's income reaches 75% of area median, the increase in interest is only .5%. It then increases 1% for every 10% increase in the borrower's income as it relates to area median income until it reaches 100% of median, at which point the increase is reduced back to .5%.

⁵7 C.F.R. § 3550.68(b)(2007).

¹72 Fed. Reg. 73,252 (Dec. 27, 2007).

²7 C.F.R. § 3550.68(d) (2007).

either a higher effective interest rate on the loan or paid a larger proportion of their income towards shelter. Effectively, this disqualified many low- and very low-income households from participating in the Section 502 program because their income had to be higher in order for them to qualify for a loan.

Payment Assistance Method 2

Under the Payment Assistance Method 2 program that goes into effect as of April 1, 2008, the amount of assistance that a borrower will receive is the lower of (1) the annualized promissory note's installments⁶ plus the cost of taxes and insurance, less 24% of the borrower's adjusted household income, or (2) the annualized promissory note installment for the loan less the amount the borrower would pay if the loan was amortized at 1%.⁷

While it uses a different language to formulate the level of assistance that a borrower will receive, the new Payment Assistance Method 2 program reinstates the old Interest Credit formula except that for borrowers whose payment is based on household income, the percentage of household income that the borrower must pay for principal, interest, taxes, and insurance is increased from the 20% to 24%.

The primary impact of the new payment assistance program is to treat borrowers the same regardless of where they live and the relationship between their income and the median income of the county in which they live. This should make the operation of the subsidy program more equitable. A secondary and more adverse impact of the new program is that it is likely to disqualify certain low-income households from eligibility for Section 502 loans because they are simply required to pay a higher percentage of income for shelter. Very low-income borrowers may not have adequate income to pay that high a percentage of income for shelter payments that do not include the cost of short- or long-term maintenance or utilities. RHS claims that the new percentage will not disqualify a significant percentage of low-income households from the Section 502 program, although in the final regulation it dropped the percentage that borrowers would have been required to pay for shelter under the RHS proposed rules from 25% to 24%.⁸ So, to some extent the agency must have believed that the percentage of income that borrowers would have paid for shelter under the proposed rules was too high.

Conclusion

It is good to see that RHS is abandoning, at least for prospective borrowers, the inequitable Payment Assistance Method 1 program. Housing advocates have had

⁶In the case of a leveraged loan, RHS will look at the rates of both the RHS loan and the outside Leveraged Loan.

⁷7 C.F.R. § 3550.68 (c)(1).

⁸72 Fed. Reg. 73,254-55.

concerns about the program since its inception and it is unfortunate that it took RHS twelve years to recognize those concerns. However, it is unfortunate that RHS is not opening up the Payment Assistance Method 2 program to existing borrowers who could benefit from a deeper subsidy. RHS claims that it could not do so because of some unspecified credit reform considerations.⁹ While it is not clear whether such an argument would prevail, advocates may want to consider raising the failure to extend a deeper subsidy to borrowers who would benefit from the program as a defense to a foreclosure.

It is unfortunate that RHS is not opening up the Payment Assistance Method 2 program to existing borrowers who could benefit from a deeper subsidy.

It is also tragic that RHS has once again taken the implementation of a new subsidy program as an opportunity to reduce the amount of subsidy that borrowers receive and increase the amount that they pay for shelter costs. While most single family home loan borrowers have higher incomes than persons who live in subsidized rental housing, it is hard to believe that they have more income that they can devote to shelter costs. By increasing the percentage of household income that needs to be paid just for principal, interest, taxes and insurance, RHS is ignoring the fact that homeowners typically have to pay more for utilities than their apartment counterparts and that they have to pay for short- and long-term upkeep and maintenance, which renters do not have to pay directly. Undoubtedly, the percentage of income that direct borrowers pay for all these expenses exceeds 30% of adjusted family income, which is what most renters pay under the federally subsidized rental subsidy program. Because they are paying such a high percentage of income for shelter, it is likely that borrowers will not save funds for their long-term maintenance expenses, such as roofing, exterior painting, or replacement of water heaters, and begin to experience problems that they cannot address eight to twelve years after they have purchased their new homes. RHS's approach is myopic and does not adequately take into consideration the long-term needs of low-income homeowners.

RHS can and should address the issue by lowering the percentage that low-income borrowers pay for shelter. In the alternative it should use its authority to extend loans terms to thirty-eight years to reduce borrowers' payments.¹⁰ ■

⁹*Id.* at 73,255.

¹⁰7 C.F.R. § 3550.67(b)(2007).

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,¹ Lexis,² or, in some instances, the court's website.³ Copies of the cases are *not* available from NHLP.

Waiver of Lease Violation— Project Based Section 8 Program

Nyack Plaza v. Parker, 2007 WL 4355300 (N.Y. Sup.App. Term, Dec. 13, 2007)(unpublished). The court reversed a lower court's termination of a Section 8 resident's lease on the ground that the landlord renewed the resident's lease and accepted rent payments after all the nonpayment of rent incidents had occurred and thereby waived his right to terminate the lease.

Waiver of Lease Violation Extends to New Owner—HUD Subsidized Housing

Park Lake Residences, LP v. Lassic, 2007 WL 4294728 (N.Y. Dist. Ct., Dec. 7, 2007) (Unpublished). In a holdover proceeding brought by a new owner of a HUD subsidized housing complex, the court refused to terminate the right of a tenant to continue to reside in a dwelling with two dogs in violation of a lease agreement that precluded animals in the apartment. The court held that the prior owner of the complex waived the right to evict the resident when the owner knowingly allowed the resident to live in the dwelling with the dogs for more than six years and that prior owner's waiver of the lease provision extended to the new owner.

Eviction for Violation of Lease—Public Housing

Mayer v. Hernandez, 2007 WL 4336450 (N.Y. Sup., Dec. 6, 2007)(unpublished). The court upheld New York City Housing Authority's termination of a resident's tenancy on grounds that she violated her lease by allowing her sons to sell drugs from the unit and allowing her husband, who was a sex offender, to live in the premises without the authority's permission. The court found that the hearing officer's decision, in light of the facts presented at the hearing, was not arbitrary and capricious and that the authority was not required to allow her to remain in the

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

³For 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>.

unit even if she excluded the other members of the household because the eviction was based on her conduct and not that of the other occupants.

Eviction Defense: Improper Determination of Household Income; Inclusion of Garnished Child Support Payments in Household Income—Public Housing

Cincinnati Metro. Hous. Auth. v. Edwards, 2007 WL 4464012 (Ohio App. 1 Dist., Dec. 21, 2007). In an appeal from a forcible entry and detainer action, the court of appeals, in a split decision, reversed a lower court holding that the housing authority improperly determined a resident's annual Social Security income and accordingly overcharged the resident for rent. The Social Security Administration garnished a portion of the resident's monthly payment for child support. The resident argued that his rent should be based on the amount of income actually received after garnishment. The court of appeals, after reviewing statutory and regulatory framework, concluded that income received by the resident included income constructively received for child support. Accordingly, it reversed and remanded the decision.

Termination for Failure to Pay Rent— Voucher Program

Gibbs v. Metropolitan Housing and Redevelopment Authority, 2007 WL 4563920 (Minn.App., Dec. 31, 2007)(unpublished). The court upheld the termination of the plaintiff's voucher assistance after she was evicted for failure to pay rent. The court rejected the plaintiff's claims that the evidence at the voucher termination hearing did not support termination of her benefits; that the hearing decision was arbitrary and capricious because the housing authority failed to consider mitigating circumstances; that she was denied procedural due process when given inadequate notice by the housing authority of her alleged violations; and that the hearing officer failed to make adequate findings of fact.

Right of Receiving Housing Authority to Recertify Voucher Holder—Voucher Portability

Lawrence v. Brookhaven Dept. of Housing, Community Development & Intergovernmental Affairs, 2007 WL 4591845 (E.D.N.Y., Dec. 26, 2007). Plaintiff, a Section 8 voucher holder who moved from the jurisdiction of one housing authority to another and whose voucher was terminated by the receiving housing authority for past criminal drug activity, was denied a preliminary injunction seeking reinstatement of her voucher. The court adopted findings and recommendations of the magistrate judge and

rejected the resident's challenge of the findings on the ground that they were conclusory and unsupported. In upholding the magistrate's decision, the court concluded that because the voucher had already been terminated, the voucher holder had to meet a higher standard in order to secure a mandatory preliminary injunction and that the voucher holder did not meet that standard with respect to her ability to show that she would prevail on the merits of her claim. It also concluded that the receiving authority was operating within HUD rules when it reexamined the voucher holder's eligibility when she moved into the jurisdiction. It rejected the voucher holder's claim that a prior informal administrative hearing, conducted before she pleaded guilty to the drug-related criminal hearing, had a *res judicata* effect on the termination hearing held after the voucher holder's guilty plea. Lastly, it rejected the voucher holder's claims that the receiving housing authority's rules were inconsistent with HUD regulations and that the receiving housing authority had to maintain her voucher because she had successfully completed a rehabilitation program. Court agreed with the magistrate that the housing authority had discretion to consider the rehabilitation program when terminating a voucher for past criminal drug activity.

Discrimination Against Persons Who Are Mobility Impaired—Voucher Program

Liberty Resources, Inc. v. Philadelphia Housing Authority, 2007 WL 4441201 (E.D.Pa., Dec. 17, 2007). On cross motions for summary judgment, the court dismissed the plaintiff's complaint against a housing authority, which claimed that its administration of the housing choice voucher program discriminated against mobility disabled program participants in violation of Section 504 of the Rehabilitation Act (RA), Title II of the Americans with Disabilities Act (ADA) and various implementing regulations promulgated by the Department of Justice and Department of Housing and Urban Development. The court concluded that the plaintiff did not establish a *prima facie* case of discrimination because the housing authority did not fail to provide mobility disabled people with meaningful access to the benefits of the voucher program and, therefore, did not violate the ADA or RA. The court based its conclusion on the fact that the voucher program was intended to provide various services and financial assistance that facilitate voucher holders' access to private housing, and the program's purpose was not to provide accessible housing, which was lacking in the private market.

Reasonable Accommodation—Public Housing

State ex rel. Henderson v. Des Moines Mun. Housing Agency, 2007 WL 4553350 (Iowa App., Dec. 28, 2007). In a split decision, the court reversed and remanded the district court

summary judgement ruling that the housing authority did not violate its state statutory obligation to reasonably accommodate a tenant with a disability by failing to allow her to maintain a large dog in her apartment. The district court ruled that the tenant, who claimed that the dog was a service animal, was not an otherwise qualified resident because, at the time that she had sought a waiver of the authority's pet policy, she was in violation of that policy in a number of ways. The court of appeals reversed on the ground that the tenant's lease required the housing authority to consider a request for a reasonable accommodation at any time that the requestor was in residence and that the resident did not need to have prior permission to include the animal in the household. Moreover, it concluded that the district court's summary judgment analysis failed to give adequate consideration as to whether reasonable accommodations will permit the resident to realize the principal benefits of the reasonable accommodation program. Accordingly, it reversed and remanded the case to the district court.

Surviving Household Member's Right to Remain—Voucher Program

Maglies v. Estate of Guy, 936 A.2d 414, 2007 WL 4355389 (N.J., Dec. 12, 2007). The New Jersey Supreme Court, in a split decision, reversed an appellate court decision that denied the surviving daughter of a voucher resident the right to remain in the leased apartment when the daughter was a longstanding member of the household with the landlord's consent and her income was included in the determination of household income for the purposes of establishing the household rent payments. The Supreme Court concluded that federal law does not govern a surviving household member's right to remain in an apartment and that New Jersey's Anti-Eviction Act, which precludes evictions except for good cause, controls the matter. The court concluded that while the statute does not explicitly protect household members from evictions, it does protect functional co-tenants who have lived in a unit with the landlord's consent and have contributed substantially to the household's rent payments. Accordingly, the court remanded the case to the lower court for a determination of whether the daughter was a functional co-tenant protected by the New Jersey Anti-Eviction Act.

Whether a Household Member Is a Surviving Member with a Right to Remain—Voucher Program

Goldman v. New York City Housing Authority, 2007 WL 4380638 (N.Y.Sup., Dec. 6, 2007)(unpublished). The court upheld a housing authority's reversal of a hearing officer's decision that an applicant was a remaining member of the lessee's household and entitled to remain in a public

housing unit. The court concluded that the housing authority's decision was not arbitrary and capricious because there was no showing that the petitioner and the deceased tenant maintained a relationship that qualified the two persons as a household as required by the authority's rules. The court further concluded that, under the authority's rules, the petitioner was entitled to a grievance hearing, but that her status was not modified by virtue of her right to a hearing. Lastly, it concluded that the hearing testimony was in conflict as to whether the petitioner, who was a minor, lived with the deceased tenant on a permanent basis and was therefore not a remaining household member.

HUD's Failure to Maintain Development as Mortgagee in Possession—Section 236 Program

Cheatham v. Jackson, 2007 WL 4572482 (E.D.Mich., Dec. 27, 2007). The plaintiffs, residents of a HUD Section 236 project, the management of which HUD had taken over as mortgagee in possession, sought a preliminary injunction against HUD for its failure to maintain the premises in a decent, safe and sanitary condition and for its failure to provide the residents with adequate notice of its intent to foreclose on the mortgage loan. The court denied the plaintiffs' motion on the grounds that they are not likely to prevail on the merits of their Administrative Procedures Act claim. It concluded that HUD acted within its discretion in managing the project by bringing in a new management firm and making some repairs. The court also rejected the plaintiffs' due process notice claim on the ground that the loan foreclosure was not imminent.

Priority of RHS Right to Recapture Subsidy—RHS Section 502 Single Family Loan Program

In re Ouellette, 2007 WL 4557779 (Bkrcty. D.Conn., Dec. 20, 2007). In deciding whether a private loan company has a secured interest in a home whose purchase was financed by the Farmers Home Administration (FmHA) (now Rural Housing Service), the bankruptcy court found that FmHA prior security interest only extended to the original mortgage loan and did not cover the amount due FmHA under the Recapture of Subsidy Agreement.

Vacating Settlement Agreement; Failure to Replace Public Housing

Newark Coalition For Low Income Housing v. Newark Redevelopment and Housing Authority, 2007 WL 4395531 (D.N.J., Dec. 18, 2007). In a case that challenged the housing authority's failure to replace public housing it had demolished or was planning to demolish, the court concluded that all but two provisions of a 1999 settlement agreement

had effectively been complied with and that the housing authority was under good management and HUD supervision. Accordingly, it vacated the settlement agreement between the parties except for provisions requiring the housing authority to construct 1777 units of replacement housing and protections accorded to persons on the housing authority's waiting list. The court also dismissed an eighteen-year-old action. The opinion is extremely complimentary of New Jersey Legal Services and particularly its director, Harris David, for initiating and prosecuting the litigation and in transforming the Newark Housing Authority.

HUD's and HANO's Discrimination Against African-American Households in Gulf Area—Certification of Interlocutory Appeal

Anderson v. Jackson, 2007 WL 4414479 (E.D.La., Dec. 14, 2007). The plaintiffs are claiming that HUD and the Housing Authority of New Orleans deliberately discriminated against African-American households who had been displaced from New Orleans by the 2005 hurricanes by deliberately impeding their return by, among other actions, demolishing public housing in New Orleans. The court granted, in part, the plaintiffs' motion to certify for interlocutory appeal two questions: (1) whether or not dismissal of plaintiffs' claims under 42 U.S.C. §§ 1437p, 1983, 3604 and 3608 constituted reversible error; and (2) whether or not denial of the plaintiffs' request for the issuance of a preliminary injunction preventing demolition and redevelopment of certain public housing developments constituted a reversible error. The court rejected eight other questions that the plaintiffs sought certification to appeal.

Lead Based Paint Abatement Statute Does Not Violate State Constitution

Mackie v. State, 936 A.2d 588 (R.I., Dec. 11, 2007). The Rhode Island Supreme Court reversed a lower court opinion that the state's Lead Hazard Mitigation Act violated the state constitution's equal protection clause because it exempted owner occupied two- and three-unit dwellings. The court held that the legislation was subject to a "rational basis" standard of review and that under that standard it did not violate Rhode Island's constitution. ■

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)) and the Veterans Administration issued in December of 2007. 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,¹ (2) bound volumes of the Federal Register, (3) HUD Clips,² (4) HUD,³ and (5) USDA's Rural Development website.⁴ Citations are included with each document to help you secure copies.

HUD Regulations

72 Fed. Reg. 71,007 (Dec. 13, 2007)

Empowerment Zones: Performance Standards for Utilization of Grant Funds

Summary: This final rule establishes certain planning and performance standards for utilization of grant funds allocated to Empowerment Zones, including planning and performance standards for benefit levels and economic development activities. The standards are designed to ensure that activities undertaken with HUD Empowerment Zone grant funds are consistent with the strategic plans of the Empowerment Zones.

Effective Date: January 14, 2008.

72 Fed. Reg. 73,483 (Dec. 27, 2007)

Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

Summary: This final rule relocates HUD's regulations governing nonprocurement debarment and suspension to a new part in title 2 of the Code of Federal Regulations. The new part adopts the OMB guidance on nonprocurement debarment and suspension and supplements it with HUD-specific clarifications and additions. The rule also makes conforming changes to HUD regulations referencing the nonprocurement debarment and suspension regulations. This regulatory action is an administrative simplification that makes no substantive change in HUD policy or procedures for nonprocurement debarment and suspension.

Effective Date: January 28, 2008.

¹http://www.access.gpo.gov/su_docs.

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

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

⁴<http://www.rdinit.usda.gov/regs>.

HUD Federal Register Notices

72 Fed. Reg. 70,076 (Dec. 10, 2007)

Semiannual Regulatory Agenda

Summary: HUD is publishing its agenda of regulations already issued or that are expected to be issued during the next several months. The agenda also includes rules currently in effect that are under review and describes those regulations that may affect small entities. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with advance information about pending regulatory activities.

72 Fed. Reg. 69,220 (Dec. 7, 2007)

Prepayment of Direct Loans on Section 202 and 202/8 Projects With Inclusion of FHA Mortgage Insurance Guidelines

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to a request from an owner to prepay a multifamily housing project mortgage financed under Section 202 with inclusion of FHA insurance guidelines.

Comment Due Date: February 5, 2008.

72 Fed. Reg. 69,220 (Dec. 7, 2007)

Use Restriction Agreement Monitoring and Compliance

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to HUD's necessity to ensure that owners of certain multifamily housing projects comply with use restriction requirements once the mortgage agreement is terminated. This information is also used to monitor owner compliance with the Use Restriction Agreement provisions.

Comment Due Date: February 5, 2008.

72 Fed. Reg. 70,471 (Dec. 11, 2007)

Allocations and Requirements for the Supplemental Grant to the State of Louisiana

Summary: This notice advises the public of the allocation of a \$3 billion Community Development Block Grant (CDBG) disaster recovery grant to the State of Louisiana solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home homeowner compensation program administered by the state in accordance with plans approved by the Secretary. HUD has determined that the state shall follow the requirements applicable to the other CDBG disaster recovery grants funding the Road Home homeowner compensation program, unless those requirements conflict with the requirements of Section 159 of Public Law 110-116, in

which case the requirements of that law apply.

Effective Date: December 11, 2007.

**72 Fed. Reg. 70,457 (Dec. 11, 2007)
Notice of Funding Availability for the Public Housing
Neighborhood Networks Program**

Summary: The purpose of the Public Housing Neighborhood Networks (NN) program is to provide grants to public housing authorities (PHAs) to: (a) Update and expand existing NN community technology centers; or (b) establish new NN centers. These centers offer comprehensive services designed to help public housing residents achieve long-term economic self-sufficiency. The department plans to award approximately \$10 million under the Public Housing NN program in Fiscal Year 2007. Eligible applicants are PHAs only.

Application Deadline: February 15, 2008.

**72 Fed. Reg. 70,878 (Dec. 13, 2007)
Notice of Submission of Proposed Information Collection
to OMB; Public Housing 5-Year and Annual PHA Plan;
Correction**

Summary: This notice was previously published on November 20, 2007, and is being republished to extend the comment period. HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the fact that PHA's are required to submit annual and 5-Year Plans to HUD. The purpose of the plan is to provide a framework for local accountability and a means by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

Comments Due Date: December 31, 2007.

**72 Fed. Reg. 70,879 (Dec. 13, 2007)
Notice of Proposed Information Collection:
Comment Request; Monthly Delinquent Loan Reports**

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to Form HUD-92068-A, which is submitted electronically by mortgagees and is used to report information into HUD's Single Family Default Monitoring System. That system provides reports that reflect default and foreclosure information, which is used to identify potential areas of risk to the insurance fund.

Comments Due Date: February 11, 2008.

**72 Fed. Reg. 70,880 (Dec. 13, 2007)
Announcement of Funding Awards for the Emergency
Capital Repair Grants Program Fiscal Year 2007**

Summary: This announcement notifies the public of

Emergency Capital Repair Grant funding decisions made by the department in FY 2007. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

**72 Fed. Reg. 71,423, 71,424, 71,425, 71,426, 71,427,
71,428 (Dec. 17, 2007)**

Revocation and Redelegation of Various Authorities

Summary: HUD has published eight notices under which the Assistant Secretary for Fair Housing Act and Equal Opportunity (FHEO) revokes various prior redelegations of authorities and redelegates new authorities under the Fair Housing Act, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Section 561 of the Housing and Community Development Act of 1987, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, various Civil Rights Related Program Requirements, and the Fair Housing Assistance Program Authority.

All These Delegations Took Effect: May 31, 2007.

72 Fed. Reg. 71,429 (Dec. 17, 2007)

**Revocation and Redelegation of Authority Under Section 3
of the Housing and Urban Development Act of 1968**

Summary: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) has been delegated authority under Section 3 of the Housing and Urban Development Act of 1968 and HUD's implementing regulations at 24 CFR part 135. The Assistant Secretary for FHEO retains those authorities and, with noted exceptions, redelegates them to the General Deputy Assistant Secretary for FHEO, who retains and further redelegates certain authorities to the Deputy Assistant Secretary for Enforcement and Programs. In addition, the Deputy Assistant Secretary for Enforcement and Programs retains these authorities and further redelegates limited authorities to each of the FHEO Region Directors. Pursuant to this notice, the Assistant Secretary for FHEO also revokes the redelegation of authority published in the Federal Register on August 3, 2003 (68 FR 45848), and any other prior redelegations of authority pertaining to Section 3 of the Housing and Urban Development Act of 1968.

Effective Date: November 21, 2007.

72 Fed. Reg. 72,746 (Dec. 21, 2007)

Section 8 Random Digit Dialing Fair Market Rent Surveys

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the Section 8 Random Digit Fair Market Rent Surveys. This survey provides HUD with a fast, inexpensive way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The department has used this random digit dialing

(RDD) survey methodology for fifteen years, as recently improved to offset low response rates. The affected public would be those renters surveyed and Section 8 voucher holders.

Comments Due Date: January 22, 2008.

**72 Fed. Reg. 72,747 (Dec. 21, 2007)
Application for the Resident Opportunities and Self Sufficiency (ROSS) Program**

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the ROSS Grant Program: Service Coordinators Program and Family Self-Sufficiency for Public Housing. Eligible applicants are PHAs, tribes/TDHEs, Non-Profits and Resident Associations. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

Comments Due Date: January 22, 2008.

**72 Fed. Reg. 73,065 (Dec. 26, 2007)
Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2007**

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 July 1, 2007 and ending on September 30, 2007.

**72 Fed. Reg. 73,867 (Dec. 28, 2007)
Owner Certification with HUD Tenant Eligibility and Rent Procedures**

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the collection of tenant data to ensure owners comply with federal statutes and regulation that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

Comments Due Date: January 28, 2008.

**72 Fed. Reg. 73,868 (Dec. 28, 2007)
Notice of Proposed Information Collection: Comment Request; Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities**

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to issues and reasons why a review of the Counsel's deci-

sion denying a request for documents or testimony is appropriate.

Comments Due: February 26, 2008.

**72 Fed. Reg. 73,869 (Dec. 28, 2007)
Notice of Funding Awards; Public Housing Family Self-Sufficiency for Fiscal Year 2006**

Summary: This announcement notifies the public of funding decisions made by the department for funding under the FY 2006 Notice of Funding Availability (NOFA) for the Public Housing (PH) Family Self-Sufficiency Program funding for Fiscal Year 2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding.

**72 Fed. Reg. 73,873 (Dec. 28, 2007)
Notice of Funding Awards; Public Housing Neighborhood Networks for Fiscal Year 2006**

Summary: This announcement notifies the public of funding decisions made by the department for funding under the FY 2006 Notice of Funding Availability (NOFA) for the Public Housing Neighborhood Networks Program funding for Fiscal Year 2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications.

**72 Fed. Reg. 74,320 (Dec. 31, 2007)
Notice of Funding Awards; Resident Opportunities and Self-Sufficiency Family and Homeownership Program for Fiscal Year 2006**

Summary: This announcement notifies the public of funding decisions made by the department for funding under the FY 2006 Notice of Funding Availability (NOFA) for the Resident Opportunities and Self-Sufficiency Family and Homeownership Program funding for Fiscal Year 2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications.

RHS Regulations

**72 Fed. Reg. 73,252 (Dec. 27, 2007)
Single Family Housing Loans, Payment Assistance**

Summary: This final rule implements a change in the regulations for the Rural Housing Service 502 Direct Single Family Housing Loans by amending the formula that calculates payment assistance for which a borrower qualifies. This action is being taken to improve the distribution of program benefits, simplify the application process and improve customer service. This final rule follows the publication of the proposed rule on February 17, 2006, and takes into consideration the public comments received in response to the proposed rule.

Effective Date: April 1, 2008.

72 Fed. Reg. 70,220 (Dec. 11, 2007)

Thermal Standards

Summary: RHS is amending its regulations to be consistent with other federal agencies. The current thermal standards for existing single family housing can impose an unnecessary financial burden on the borrower and are not always cost-effective. Removing the thermal standards for existing single family housing will provide consistency with HUD. This change will not affect the thermal standards for new construction; such requirements are generally prescribed by adopted building and model energy codes. Removing the agency's imposed thermal standards for existing single family housing will give a borrower the opportunity to allocate money towards other improvements which may result in higher cost savings.

Effective Date: January 10, 2008.

RHS Federal Register Notices

72 Fed. Reg. 71,618 (Dec. 18, 2007)

Request for Extension of a Currently Approved Information Collection

Summary: This notice announces USDA Rural Development's intention to request an extension for a currently approved information collection in support of compliance with Civil Rights laws. USDA Rural Development is required to provide federal financial assistance through its housing and community and business programs on an equal opportunity basis. The laws require the recipients of USDA Rural Development Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin.

Comments Due By: February 19, 2008.

72 Fed. Reg. 71,619 (Dec. 18, 2007)

Extension of a Currently Approved Information Collection

Summary: The Rural Housing Service intends to request an extension for a currently approved information collection in support of the program for the Guaranteed Rural Rental Housing Program. The housing must be available for occupancy only to low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115% of the median income of the area. After initial occupancy, the tenant's income may exceed these limits; however, rents, including utilities, are restricted to no more than 30% of the 115% of area median income for the term of the loan.

Comments Due By: February 19, 2008.

RHS/RD Administrative Notices

Single Family Housing Guaranteed Loan Program Loss Mitigation Comprehensive Policy Clarification RD AN No. 4321(1980-D)(Dec. 18, 2007)

Summary: Rural Development encourages approved Single Family Housing Guaranteed Loan Program (SFHGLP) lender/servicers to exercise loss mitigation techniques to the fullest extent possible when servicing defaulted loans under SFHGLP. This Administrative Notice clarifies the policies concerning loss mitigation actions. The attached Loss Mitigation Guide (Exhibit A) describes loss mitigation alternatives, identifies circumstances for use, and discusses situations in which each alternative may be appropriate. Lender/servicers who service Section 502 Guaranteed Loans should use this guide to give guidance to SFHGLP borrowers when considering loss mitigation alternatives. Agency staff that give guidance to lenders should refer to this guide when considering the appropriateness of a lender's loss mitigation alternatives.

Expiration Date: December 31, 2008. ■

INDEX

Housing Law Bulletin

January–December 2007

ARTICLES OF GENERAL INTEREST

Linking Eviction Defense to Education Rights	Jan 07	1
Homelessness Blamed on Federal Housing Cuts	Jan 07	9
Public Housing Receiverships and the Kansas City Experience.....	Feb 07	31
Assessing the Economic Benefits of Public Housing	Mar 07	67
House of Representatives Passes Affordable Housing Fund	Jun/Jul 07	110
Congress Considers Reauthorization of Homeless Programs.....	Oct 07	174
House of Representatives Passes Affordable Housing Trust Fund Bill	Nov/Dec 07	196

CASES

This is an index of the cases reported on in separate *Bulletin* articles in 2007. For cases reported on in summary form, see “Recent Housing Cases” below.

Public Housing Receiverships and the Kansas City Experience (<i>Tinsley v. Kemp</i>)	Feb 07	31
Public Housing Tenants in New Orleans Get Mixed Ruling From Federal Court (<i>Anderson v. Jackson</i>).....	Mar 07	65
Elderly Tenants Successfully Enforce Notice Requirements for Section 8 Opt-Out (<i>Park Village Apts. Tenants Ass’n v. Mortimer Howard Trust</i>).....	Apr/May 07	84
Court Refuses Eviction Based on Children’s Disability-Related Conduct (<i>Essex Management Corp. v. McAlister</i>)	Apr/May 07	86
New York City’s Preservation Law Preempted by Federal and State Law (<i>Real Estate Board of New York v. City of New York</i>) (<i>Mother Zion Tenant Assoc. v. Donovan</i>)	Apr/May 07	88
Prepayment and Sale of RHS Apartment Complex Ruled Illegal (<i>Goldammer v. Veneman</i>)	Jun/Jul 07	103
California Sources of Income Statute Applies to Home Lenders (<i>Sisemore v. Master Fin., Inc.</i>)....	Aug 07	133
Motion to Dismiss False Claims Against Westchester County Denied (<i>United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester County</i>)	Aug 07	135
Management Company Agrees to Change Rent Due Date For Disabled Resident (<i>Castro, et al. v. 1315 Meadow, L.P., et al.</i>).....	Aug 07	137
Challenging Voucher Side Payments Under the False Claims Act (<i>United States ex rel. Sutton v. Reynolds</i>)	Sep 07	156
New York’s Highest Court Rules NYC Voucher Owners Must Offer Assisted Renewal Leases (<i>Rosario v. Diagonal Realty, L.L.C.</i>).....	Sep 07	158
Lender’s Failure to Follow HUD Loss-Mitigation Regulations Is a Defense to Maryland Foreclosure Action (<i>Wells Fargo Home Mortg., v. Neal</i>)	Sep 07	159
Appellate Court Finally Protects Lincoln Place Tenants (<i>Lincoln Place Tenants Ass’n. v. City of Los Angeles</i>).....	Oct 07	178

Local Eviction Controls and Enhanced Voucher Statute Protect Voucher Holders (<i>Barrientos v. 1801-1825 Morton, LLC</i>)	Oct 07	180
Owner Denied Right to Prepay RHS 515 Loan (<i>Schroeder v. United States</i>).....	Oct 07	183
Federal Circuit Issues Yet Another Significant Cienega Gardens Decision (<i>Cienega Gardens v. United States</i>).....	Nov/Dec 07	202
Massachusetts Court Finds State Innocent Tenants Protections Preempted (<i>Boston Housing Authority v. Garcia</i>)	Nov/Dec 07	205

CONSTITUTIONAL ISSUES

(see ARTICLES OF GENERAL INTEREST; CASES; FAIR HOUSING/DESEGREGATION; PUBLIC HOUSING)

DISCRIMINATION

(see FAIR HOUSING/DESEGREGATION)

DISASTERS AND HOUSING

HUD's Proposed Hurricane Reoccupancy Policies Raise Concerns	Jan 07	11
HUD Releases "Final" Reoccupancy Policies for Hurricane-Impacted Areas.....	Feb 07	41
Public Housing Tenants in New Orleans Get Mixed Ruling From Federal Court.....	Mar 07	65
FEMA May Have to Provide Procedural Protections Before Terminating Benefits	Jun/Jul 07	107
Gulf Coast Housing Recovery Bills.....	Sep 07	152

DOMESTIC VIOLENCE

HUD Continues VAWA Implementation.....	Jan 07	7
PHAs and Advocates Begin Early Efforts to Implement VAWA.....	Nov/Dec 07	193

EVICCTIONS

(see also HUD)

Linking Eviction Defense to Education Rights.....	Jan 07	1
Court Refuses Eviction Based on Children's Disability-Related Conduct	Apr/May 07	86
Local Eviction Controls and Enhanced Voucher Statute Protect Voucher Holders	Oct 07	180
Massachusetts Court Finds State Innocent Tenants Protections Preempted.....	Nov/Dec 07	205

FAIR HOUSING/DESEGREGATION

(see also HUD; LEGISLATION; CONSTITUTIONAL ISSUES; PUBLIC HOUSING)

HUD Issues Final Guidance on National Origin Discrimination and Title VI	Mar 08	53
Court Refuses Eviction Based on Children's Disability-Related Conduct	Apr/May 07	86
California Sources of Income Statute Applies to Home Lenders.....	Aug 07	133
Management Company Agrees to Change Rent Due Date For Disabled Resident	Aug 07	137

FARMERS HOME ADMINISTRATION (FmHA)

(see RURAL HOUSING SERVICE (RHS)/RURAL DEVELOPMENT (RD)/USDA)

HOMEOWNERSHIP

(see also HOUSING CHOICE VOUCHER PROGRAM; HUD)

California Sources of Income Statute Applies to Home Lenders	Aug 07	133
Lender's Failure to Follow HUD Loss-Mitigation Regulations Is a Defense to Maryland Foreclosure Action.....	Sep 07	159

HOPE VI PROGRAM

(see HUD; PUBLIC HOUSING)

HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF (HUD)

(see also ARTICLES OF GENERAL INTEREST; FAIR HOUSING/DESEGREGATION; HOUSING CHOICE VOUCHER PROGRAM; LEGISLATION; PUBLIC HOUSING; PRESERVATION OF LOW-INCOME HOUSING STOCK)

HUD's Proposed Hurricane Reoccupancy Policies Raise Concerns	Jan 07	11
Public Housing Receiverships and the Kansas City Experience.....	Feb 07	31
HUD Appropriations for Fiscal Year 2007	Feb 07	38
HUD Releases "Final" Reoccupancy Policies for Hurricane-Impacted Areas.....	Feb 07	41
HUD Issues Final Guidance on National Origin Discrimination and Title VI	Mar 08	53
Bush Proposes Yet Another Inadequate Budget for HUD Programs	Mar 07	59
New HUD Relocation and Replacement Voucher Policy for Public Housing Demolition and Disposition.....	Apr/May 07	77
PHA Plan Template Revisions Proposed.....	Jun/Jul 07	113
HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities.....	Jun/Jul 07	115
FY 2008 HUD Appropriations Update.....	Aug 07	127
Growing Reports of a Project-Based Section 8 Funding Crisis as FY 2007 Closes.....	Sep 07	149
Proposed Congressional Reforms to the Section 8 Voucher Program.....	Oct 07	169

HOUSING CHOICE VOUCHER PROGRAM

New HUD Relocation and Replacement Voucher Policy for Public Housing Demolition and Disposition.....	Apr/May 07	77
Proposed Congressional Reforms to the Section 8 Voucher Program.....	Oct 07	169

HUD-ASSISTED RENTAL HOUSING

(see PRESERVATION OF LOW-INCOME HOUSING STOCK)

LEGISLATION

(see ARTICLES OF GENERAL INTEREST; EVICTIONS; HUD; PRESERVATION OF LOW-INCOME HOUSING STOCK; RURAL HOUSING SERVICE (RHS)/RURAL DEVELOPMENT (RD)/USDA)

PHA PLAN PROCESS

(see HOUSING CHOICE VOUCHER PROGRAM; PUBLIC HOUSING)

PREDATORY LENDING

(see also HOMEOWNERSHIP)

PRESERVATION OF LOW-INCOME HOUSING STOCK

(see also HUD; RURAL HOUSING SERVICE (RHS)/RURAL DEVELOPMENT (RD)/USDA)

Public Housing Receiverships and the Kansas City Experience	Feb 07	31
Public Housing Tenants in New Orleans Get Mixed Ruling From Federal Court.....	Mar 07	65
New HUD Relocation and Replacement Voucher Policy for Public Housing Demolition and Disposition.....	Apr/May 07	77
Elderly Tenants Successfully Enforce Notice Requirements for Section 8 Opt-Out.....	Apr/May 07	84
New York City’s Preservation Law Preempted by Federal and State Law	Apr/May 07	88
Prepayment and Sale of RHS Apartment Complex Ruled Illegal	Jun/Jul 07	103
Appellate Court Finally Protects Lincoln Place Tenants	Oct 07	178
Owner Denied Right to Prepay RHS 515 Loan.....	Oct 07	183
Rural Rental Housing Preservation Legislation Introduced	Nov/Dec 07	199
Federal Circuit Issues Yet Another Significant Cienega Gardens Decision.....	Nov/Dec 07	202

PUBLIC HOUSING

(see also FAIR HOUSING/DESEGREGATION; HUD)

Public Housing Receiverships and the Kansas City Experience.....	Feb 07	31
New HUD Relocation and Replacement Voucher Policy for Public Housing Demolition and Disposition.....	Apr/May 07	77
PHA Plan Template Revisions Proposed.....	Jun/Jul 07	113
HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities.....	Jun/Jul 07	115
Proposed Congressional Reforms to the Section 8 Voucher Program.....	Oct 07	169
PHAs and Advocates Begin Early Efforts to Implement VAWA.....	Nov/Dec 07	193

RECENT HOUSING CASES

This is an index of the cases listed in the Recent Housing Cases section of each issue of the *Bulletin*. For cases reported on in separate articles, see the “Cases” heading above.

Administrative Fee Reductions Illegal

<i>National Leased Housing Ass’n v. U.S. Dept. of Hsng. and Urban Dev.</i> , 2007 WL 148829 (D.D.C., Jan. 16, 2007)	Feb 07	46
--	--------	----

Bankruptcy

Anti-discrimination Provision of Bankruptcy Code

<i>Ayes v. U.S. Dept. of Veterans Affairs</i> , 2006 WL 3788795 (4 th Cir. 2006)	Jan 07	15
---	--------	----

Automatic Stay Provision

Chase Manhattan Mortg. Corp. v. Cordero, 2007 WL 259923 (S.D. Fla., Jan. 19, 2007) Feb 07 46
Biggs v. Housing Auth. of Pittsburgh, 2007 WL 654247 (W.D.Pa., Feb. 28, 2007) Mar 07 69

Curing Pre-petition Defaults

In re Kelly, 2006 WL 3704690 (Bankr. S.D.Fla., Dec. 1, 2006)..... Jan 07 16

Eviction, Public Housing

In re Kelly, 2006 WL 3704690 (Bankr. S.D.Fla., Dec. 1, 2006)..... Jan 07 16

Rural Development (RD/RHS) Single Family Direct Loan

In re Bartlett, 2006 WL 3114469 (Bankr. D.Vt., Nov. 1, 2006)..... Jan 07 16

Single Family Guarantee Program, Veterans Administration

Ayes v. U.S. Dept. of Veterans Affairs, 2006 WL 3788795 (4th Cir. 2006) Jan 07 15

Constitutional Law

City Limiting Rights of Undocumented Immigrants to Lease Apartments

Lozano v. City of Hazleton, 2007 WL 2163093 (M.D.Pa. July 26, 2007)..... Aug 07 141

Race Conscious Legislation—Federal Equal Protection Clause

Coral Construction v. City and County of San Francisco, 2007 WL 10040369 (Cal. App. 1 Dist. Apr. 18, 2007) Apr / May 07 92

Temporary Taking—Prepayment Restrictions

CCA Associates v. United States, 2007 WL 315350 (Fed. Cl., Jan. 31, 2007) Feb 07 45

Damage Actions

Damages for Breach of Right of Quiet Enjoyment—Illegal Termination of Project-Based Section 8 Subsidy

Homesavers Council of Greenfield Gardens, Inc. v. Sanchez, 70 Mass.App.Ct. 453, 874 N.E.2d 497 (Mass.App.Ct., Oct. 10, 2007) Nov / Dec 07 209

Limitations on Subsidized Landlords’ Right to Damages Against U.S. from Prepayment Restrictions Imposed by ELIHPA and LIHPRHA

Cienega Gardens v. U.S., 2007 WL 2778687 (C.A.Fed., Sept. 25, 2007)..... Oct 07 186

Subsidized Landlord’s Right to Maintain Damage Action Against U.S. for Prepayment Restrictions Imposed by ELIHPA and LIHPRHA

City Line Joint Venture v. U.S., 2007 WL 2791704 (C.A. Fed., Sept. 27, 2007)..... Oct 07 186

Eviction

Acceptance of Rent as Waiver of Right to Termination—Project Based Section 8 Program

Macleay Woods Housing v. Franks, 16 Misc.3d 1136(A), 2007 WL 2597918 (N.Y.City Ct., Sept. 7, 2007) Oct 07 185

Accepting Rent After Notice Is Served

Warwick Housing Authority v. McLeod, 913 A.2d 1033 (R.I., Jan. 18, 2007)..... Feb 07 44

Attorneys Fees

Rochelle Hodges v. Sasil Corp., 2007 WL 247812 (N.J. Jan. 31, 2007) Feb 07 44

Bankruptcy, Automatic Stay Provision

Biggs v. Housing Auth. of Pittsburgh, 2007 WL 654247 (W.D.Pa., Feb. 28, 2007) Mar 07 69

Lowell Housing Authority v. Melendez, 449 Mass. 34, 865 N.E.2d 741 (Mass. 2007)..... Jun / Jul 07 121

Conviction of Felony

Cabrini-Green Local Advisory Council v. Chicago Housing Authority, 2007 WL 294253 (N.D. Ill., Jan. 29, 2007) Feb 07 44

Criminal Activity		
<i>Housing and Redevelopment Authority of Tp. of Franklin v. Miller</i> , 2007 WL 4052473 (N.J.Super.A.D., Nov. 19, 2007)	Nov/Dec 07	208
Criminal Activity Prior to Admission		
<i>Ross v. Broadway Towers</i> , 2006 WL 3681148 (Tenn.Ct.App., Dec. 14, 2006)	Jan 07	15
<i>Anacortes Housing Authority v. Assenberg</i> , 2007 WL 3348459 (Wash.App. Div. 1, Nov. 13, 2007)....	Nov/Dec 07	208
Curing Default		
<i>Housing and Redev. Auth of the Township of Franklin v. Mayo</i> , 2007 WL 162187 (N.J. Super. A.D., Jan. 24, 2007)	Feb 07	44
Drug-Related Criminal Activity		
<i>Williams v. Integrated Community Services</i> , 2007 WL 1500263 (Wis.App., May 24, 2007)	Jun/Jul 07	119
Failure to Pay Rent on a Timely Basis		
<i>Schroeder Co. V. Coates</i> , 2007 WL 1720903 (Ohio App. 6 Dist. June 15, 2007)	Aug 07	140
Harm to Agency Employees		
<i>Johnson v. Wichita Falls Housing Authority</i> , 2007 WL 4126475 (Tex. App., Nov. 21, 2007)	Nov/Dec 07	207
Lock Out, Damages		
<i>Hinton v. Sealander Brokerage</i> , 2007 WL 470396 (D.C., Feb. 15, 2007)	Mar 07	69
Notice, Failure to Follow State Law		
<i>Des Moines Mun. Hous. Agency v. Hunter</i> , 2007 WL 2493114 (Iowa App., Sept. 6, 2007)	Oct 07	186
One-Strike Eviction		
<i>Long Branch Housing Authority v. Villano</i> , 933 A.2d 607, 2007 WL 2935405 (N.J.Super.A.D., Oct. 10, 2007)	Nov/Dec 07	207
Refusal to Set Aside Settlement Agreement		
<i>New York City Housing Authority V. Dunn</i> , 17 Misc.3d 137(A), 2007 WL 4244804 (N.Y.Sup.App.Term., Nov. 21, 2007)	Nov/Dec 07	208
Threat to Other Residents		
<i>Howell v. Justice of Peace Court No. 16</i> , 2007 WL 4201125 (Del.Super., Nov. 2, 2007)	Nov/Dec 07	207
Violent Criminal Activity Near Premises		
<i>Lowell Housing Authority v. Melendez</i> , 449 Mass. 34, 865 N.E.2d 741 (Mass. 2007)	Jun/Jul 07	121
Fair Housing		
Damages for Failure to Fix Elevators		
<i>Davis v. Lane Management</i> , 2007 WL 3306959 (S.D.Fla., Nov. 6, 2007)	Nov/Dec 07	211
Discrimination Against Families with Children		
<i>Housing Rights Center v. Snow</i> , 2007 WL 91148 (E.D. Cal., Jan. 3, 2007)	Feb 07	46
Discrimination in the Provision of Water Services		
<i>Kennedy v. City of Zanesville</i> , 2007 WL 2570383 (S.D.Ohio, Sept. 7, 2007)	Oct 07	186
Discriminatory Zoning Ordinance		
<i>Nevada Fair Housing Center v. Clark County</i> , 2007 WL 610640 (D.Nev., Feb. 23, 2007)	Mar 07	70
<i>Jeffrey O. v. City of Boca Raton</i> , 2007 WL 628131 (S.D.Fla., Feb. 26, 2007)	Mar 07	70
Disparate Impact—Home Loan Underwriting Standards		
<i>Beaulialice v. Federal Home Loan Mortgage Corporation</i> , 2007 WL 744646 (M.D. Fla. Mar. 6, 2007)	Apr/May 07	92
Disparate Impact—Land Use Plan and Regulations		
<i>Reinhart v. Lincoln County</i> , 2007 WL 1041428 (10 th Cir., Apr. 9, 2007)	Apr/May 07	92
Disparate Impact—Withdrawal from Section 8 Program		
<i>Graoch Associates #33 v. Louisville/Jefferson County Metro Human Relations Com’n.</i> (6 th Cir., Nov. 21, 2007)	Nov/Dec 07	211

Failure to Affirmatively Further Fair Housing		
<i>Anderson v. Jackson</i> , 2007 WL 458232 (E.D. La., Feb. 6, 2007)	Mar 07	69
Familial Status Discrimination		
<i>White v. U.S. Dept. of Housing and Urban Development</i> , 475 F.3d 898 (7 th Cir. 2007)	Mar 07	70
HUD Complainant Right to Intervene in Civil Action Initiated by the United States		
<i>U.S. v. Henry</i> , 2007 WL 2893633 (E.D.Va, Oct. 1, 2007).....	Oct 07	186
New Jersey Affordable Housing Policies—Mount Laurel Doctrine		
<i>In re Adoption of Third Round Substantive Rules of the New Jersey Council on Affordable Housing</i> , 2007 WL 949607 (390 N.J.Super. 1, 914 A.2d 348, Jan. 25, 2007).....	Apr/May 07	92
Obligation to Disclose Disability		
<i>Hirschmann v. Hassapoyannes</i> , 2007 WL 2108462 (N.Y.Sup. June 11, 2007)	Aug 07	141
Reasonable Accommodation		
<i>McAlister v. Essex Property Trust</i> , 2007 WL 2580845 (C.D.Cal., Aug. 24, 2007).....	Sep 07	162
<i>Gaither v. Housing Authority of City of New Haven</i> , 2007 WL 3378533 (D.Conn., Nov. 2, 2007).....	Nov/Dec 07	210
Reasonable Accommodation—Sufficiency of Request		
<i>Colon-Jimenez v. GR Management Corp.</i> , 2007 WL 642004 (1 st Cir., Mar. 5, 2007)	Apr/May 07	92
Source of Income Discrimination—Voucher Holder		
<i>DiLiddo v. Oxford Street Realty</i> , 450 Mass. 66, 876 N.E.2d 421 (Mass., Nov. 15, 2007)	Nov/Dec 07	211
<i>Montgomery County v. Glenmont Hills Assoc.</i> , 2007 WL 4208631 (Md., Nov. 30, 2007)	Nov/Dec 07	210
FHA Single Family Mortgage Insurance Program		
Bankruptcy		
<i>Chase Manhattan Mortg. Corp. v. Cordero</i> , 2007 WL 259923 (S.D. Fla., Jan. 19, 2007)	Feb 07	46
Failure to Follow Loss Mitigation Regulations		
<i>Wells Fargo Home Mortg. v. Neal</i> , 2007 WL 1310141 (Md. May 7, 2007).....	Jun/Jul 07	121
Foreclosure		
APA Review of HUD Regulations		
<i>National Leased Housing Ass’n v. U.S. Dept. of Hsng. and Urban Dev.</i> , 2007 WL 148829 (D.D.C., Jan. 16, 2007)	Feb 07	46
Cooperative Interest		
<i>Mary Ebanks v. 547 West 147th Street Housing Development Fund</i> , 2007 WL 509232 (N.Y.A.D. Feb. 20, 2007).....	Mar 07	69
Demolition of Subsidized Housing		
<i>Farmer v. City of Cincinnati</i> , 2006 WL 3762131 (S.D. Ohio, Dec. 21, 2006).....	Jan 07	15
Failure to Follow Loss Mitigation Regulations—FHA Insured Home Loan		
<i>Wells Fargo Home Mortg. v. Neal</i> , 2007 WL 1310141 (Md. May 7, 2007).....	Jun/Jul 07	121
New Jersey Affordable Housing Policies—Mount Laurel Doctrine		
<i>In re Adoption of Third Round Substantive Rules of the New Jersey Council on Affordable Housing</i> , 2007 WL 949607 (390 N.J.Super. 1, 914 A.2d 348, Jan. 25, 2007).....	Apr/May 07	92
Right of Redemption—RD/RHS Single Family Home Loan		
<i>In re Bartlett</i> , 2006 WL 3114469 (Bankr. D.Vt., Nov. 1, 2006).....	Jan 07	16
Illegal Charges—Qui Tam Action		
<i>Coleman v. Hernandez</i> , 2007 WL 1515163 (D. Conn. May 24, 2007)	Jun/Jul 07	119

Immigration

Right to Rent by Persons Not Legally Admitted to the United States

<i>Villas at Parkside Partners v. City of Farmers Branch</i> , 2007 WL 1498763 (N.D.Tex., May 21, 2007).....	Jun/Jul 07	121
---	------------	-----

Prepayment

FHA Insured Loan

<i>Kukui Gardens Ass'n. v. Jackson</i> , 2007 WL 128857 (D. Hawaii, Jan 11, 2007)	Feb 07	45
---	--------	----

Damages

<i>CCA Associates v. United States</i> , 2007 WL 315350 (Fed. Cl., Jan. 31, 2007)	Feb 07	45
---	--------	----

State Housing Finance Agency Loan

<i>Renaissance Management Company v. Connecticut Housing Finance Authority</i> , 281 Conn. 227, 2007 WL 328592 (Conn., Feb. 13, 2007)	Mar 07	69
--	--------	----

Procedural Issues

APA Review of HUD Actions

<i>National Leased Housing Ass'n v. U.S. Dept. of Hsng. and Urban Dev.</i> , 2007 WL 148829 (D.D.C., Jan. 16, 2007)	Feb 07	46
--	--------	----

Burden of Proof—Review of State Agency Regulations

<i>In re Adoption of Uniform Housing Affordability Controls by the New Jersey Housing and Mortgage Finance Agency</i> , 914 A.2d 402, 2007 WL 195733 (N.J. Super. A.D., Jan. 25, 2007).....	Feb 07	46
---	--------	----

Class Action Certification—Habitability Damage Action; Public Housing

<i>Thames River Apartment Tenants v. New London Housing Authority</i> , 2007 WL 4305525 (Conn.Super., Nov. 13, 2007).....	Nov/Dec 07	211
--	------------	-----

Collateral Estoppel

<i>McAlister v. Essex Property Trust</i> , 2007 WL 2580845 (C.D.Cal., Aug. 24, 2007).....	Sep 07	162
---	--------	-----

Discovery in Termination Proceeding

<i>Hudson v. Housing Authority of Baltimore City</i> , 2007 WL 3274773 (Md., Nov. 7, 2007)	Nov/Dec 07	209
--	------------	-----

Failure to Meet Discovery Obligations

<i>Housing Rights Center v. Snow</i> , 2007 WL 91148 (E.D. Cal., Jan. 3, 2007)	Feb 07	46
--	--------	----

Jurisdiction—Federal Courts

<i>Farmer v. City of Cincinnati</i> , 2006 WL 3762131 (S.D. Ohio, Dec. 21, 2006).....	Jan 07	15
---	--------	----

Modification of Consent Decree

<i>Henderson v. Morrone</i> , 2007 WL 186764 (3 rd Cir., Jan. 25, 2007).....	Feb 07	44
---	--------	----

Preemption—Section 202 Eviction Good Cause

<i>Ross v. Broadway Towers</i> , 2006 WL 3681148 (Tenn.Ct.App., Dec. 14, 2006)	Jan 07	15
--	--------	----

Removal of State Eviction Proceeding to Federal Court—Lack of Federal Question

<i>Eden Housing Management, v. Muhammad</i> , 2007 WL 4219397 (N.D.Cal., Nov. 27, 2007).....	Nov/Dec 07	211
--	------------	-----

Ripeness

<i>CCA Associates v. United States</i> , 2007 WL 315350 (Fed. Cl., Jan. 31, 2007)	Feb 07	45
---	--------	----

Rooker-Feldman Doctrine;

<i>Farmer v. City of Cincinnati</i> , 2006 WL 3762131 (S.D. Ohio, Dec. 21, 2006).....	Jan 07	15
---	--------	----

Standing—Federal Courts

<i>Gautreaux v. Chicago Housing Authority</i> , 2007 WL 120791 (7 th Cir., Jan. 19, 2007)	Feb 07	45
--	--------	----

Standing and Ripeness—Federal Courts

<i>Kukui Gardens Ass'n. v. Jackson</i> , 2007 WL 128857 (D. Hawaii, Jan 11, 2007)	Feb 07	45
---	--------	----

State Courts—Res Judicata

Mary Ebanks v. 547 West 147th Street Housing Development Fund, 2007 WL 509232 (N.Y.A.D. Feb. 20, 2007)..... Mar 07 69

Statute of Limitations

Tamerline Ltd, v. United States, 2007 WL 1469392 (Fed.Cl., May 18, 2007) Jun/Jul 07 121

Project-Based Section 8 Program

Acceptance of Rent as Waiver of Right to Termination

Macleay Woods Housing v. Franks, 16 Misc.3d 1136(A), 2007 WL 2597918 (N.Y.City Ct., Sept. 7, 2007)..... Oct 07 185

Breach of HAP Contract by Adoption of REAC Regulations

Valentine Properties Associates v. U.S. Dept. of Housing and Urban Development, 2007 WL 3146698 (S.D.N.Y., Oct. 12, 2007)..... Nov/Dec 07 210

Illegal Termination of Subsidy

Homesavers Council of Greenfield Gardens, Inc. v. Sanchez, 70 Mass.App.Ct. 453, 874 N.E.2d 497 (Mass.App.Ct., Oct. 10, 2007) Nov/Dec 07 209

Public Housing

Constructive Eviction

Anderson v. Jackson, 2007 WL 458232 (E.D. La., Feb. 6, 2007) Mar 07 69

De facto Demolition

Givens v. Butler Metropolitan Hous. Auth., 2006 WL 3759702, (S.D.Ohio, Dec. 19, 2006)..... Jan 07 14

Demolition, Failure to Repair

Anderson v. Jackson, 2007 WL 458232 (E.D. La., Feb. 6, 2007) Mar 07 69

Eviction

Accepting Rent after Notice

Warwick Housing Authority v. McLeod, 913 A.2d 1033 (R.I., Jan. 18, 2007) Feb 07 44

Bankruptcy Automatic Stay Provision

Biggs v. Housing Auth. of Pittsburgh, 2007 WL 654247 (W.D.Pa., Feb. 28, 2007)..... Mar 07 69

Application of Strict Liability Standard

Howell v. Justice of Peace Court No. 16, 2007 WL 2319147 (Del. Super., July 10, 2007)..... Aug 07 139

Criminal Activity

Housing and Redevelopment Authority of Tp. of Franklin v. Miller, 2007 WL 4052473 (N.J.Super.A.D., Nov. 19, 2007) Nov/Dec 07 208

Curing Default

Housing and Redev. Auth of the Township of Franklin v. Mayo, 2007 WL 162187 (N.J. Super. A.D., Jan. 24, 2007) Feb 07 44

Drug Related Criminal Activity

Boston Housing Authority v. Garcia, 449 Mass. 727, 871 N.E.2d 1073 (Mass., Aug. 17, 2007).. Sep 07 162

Failure to Pay Maintenance Charges as Part of Rent

Lorain Metro. Hous. Auth. v. Noel, 2007 WL 1661854 (Ohio App. 9 Dist., June 11, 2007)... Aug 07 140

Harm to Agency Employees

Johnson v. Wichita Falls Housing Authority, 2007 WL 4126475 (Tex. App., Nov. 21, 2007) . Nov/Dec 07 207

Misrepresentation of Information in Original Application

Bennington Housing Authority v. Bush, 2007 WL 2068328 (Vt. July 20, 2007)..... Aug 07 139

Notice, Failure to Follow State Law

Des Moines Mun. Hous. Agency v. Hunter, 2007 WL 2493114 (Iowa App., Sept. 6, 2007) .. Oct 07 186

Pet and Drug Policies		
<i>Anacortes Housing Authority v. Assenberg</i> , 2007 WL 3348459 (Wash.App. Div. 1, Nov. 13, 2007)	Nov/Dec 07	208
Reasonable Accommodation		
<i>Boston Housing Authority v. Bridgewater</i> , 69 Mass.App.Ct. 757, 871 N.E.2d 1107 (Mass.App.Ct., Aug. 20, 2007).....	Sep 07	162
Refusal to Set-Aside Settlement Agreement		
<i>New York City Housing Authority V. Dunn</i> , 17 Misc.3d 137(A), 2007 WL 4244804 (N.Y.Sup.App.Term., Nov. 21, 2007).....	Nov/Dec 07	208
Retaliatory Eviction		
<i>Housing Authority of City of Bayonne v. Mims</i> , 933 A.2d 613, 2007 WL 2982258 (N.J.Super.A.D., Oct. 15, 2007)	Nov/Dec 07	207
Right to Discovery in Termination Proceeding		
<i>Hudson v. Housing Authority of Baltimore City</i> , 2007 WL 3274773 (Md., Nov. 7, 2007)	Nov/Dec 07	209
Threat to Other Residents		
<i>Howell v. Justice of Peace Court No. 16</i> , 2007 WL 4201125 (Del.Super., Nov. 2, 2007).....	Nov/Dec 07	207
Exclusion of Family Member		
<i>McLurkin, v. Hernandez</i> , 843 N.Y.S.2d 305 (N.Y.A.D., Oct. 18, 2007).....	Nov/Dec 07	208
Failure to Adjust Utility Allowance for Residents with Disabilities		
<i>Amone v. Aveiro</i> , 2007 WL 2479291 (D.Hawai'i, Aug. 27, 2007).....	Sep 07	162
Reasonable Lease Clauses		
<i>Cabrini-Green Local Advisory Council v. Chicago Housing Authority</i> , 2007 WL 294253 (N.D. Ill., Jan. 29, 2007)	Feb 07	44
Retaliatory Eviction		
<i>Housing Authority of City of Bayonne v. Mims</i> , 933 A.2d 613, 2007 WL 2982258 (N.J.Super.A.D., Oct. 15, 2007)	Nov/Dec 07	207
Right of Household Member to Remain—One-Year Residency Rule		
<i>Torres v. New York City Housing Authority</i> , 2007 WL 1364690 (N.Y.A.D. 1, May 10, 2007).....	Jun/Jul 07	120
Right to Continued Residency		
<i>Santos v. Port Chester Hous. Auth.</i> , 2007 WL 2669529 (N.Y.A.D. 2 Dept., Sept. 11, 2007)	Oct 07	185
Right to Discovery in Termination Proceeding		
<i>Hudson v. Housing Authority of Baltimore City</i> , 2007 WL 3274773 (Md., Nov. 7, 2007)	Nov/Dec 07	209
Right to Exclude Visitors		
<i>Gilmore v. Hernandez</i> , 2007 WL 1438666 (N.Y.A.D. 1 Dept., May 17, 2007)	Jun/Jul 07	120
Prepayment of RD/RHS Section 515 Loan		
Prepayment Restriction Damages		
<i>Tamerline Ltd, v. United States</i> , 2007 WL 1469392 (Fed.Cl., May 18, 2007)	Jun/Jul 07	121
Residents' Right to Intervene in Landlord Quiet Title Action		
<i>Meadowfield Apartments, Ltd. v. U.S.</i> , 2007 WL 1752271 (M.D.Fla., June 15, 2007).....	Aug 07	141
RHS Acceptance of Prepayment Violates ELIHPA		
<i>Goldammer v. Veneman</i> , 2007 WL 1748665 (D.Or., June 14, 2007)	Aug 07	141
Right to Prepay Loan		
<i>Schroeder, v. United States</i> , 2007 WL 3028432 (D.Or., Oct. 17, 2007)	Nov/Dec 07	210

Project Based Section 8 Program

Fair Debt Collection Practices—Attorneys Fees in Eviction Action

Rochelle Hodges v. Sasil Corp., 2007 WL 247812 (N.J. Jan. 31, 2007) Feb 07 44

Opt-Out—Adequate Notice

Park Village Apts. Tenants Assoc. v. Mortimer Howard Trust, 2007 WL 519038 (N.D.Cal., Feb. 14, 2007) Mar 07 69

Opt-Out—Obligation to Accept Enhanced Voucher

Feemster v. BSA Limited Partnership, 2007 WL 106522 (D.D.C., Jan. 12, 2007) Feb 07 45

Right to Continued Residency

Valley Dream Housing v. Schmidt, 16 Misc.3d 1138(A), 2007 WL 2684829 (N.Y.Sup., Sept. 14, 2007) Oct 07 185

RD/RHS Section 502 Single Family Home Loan

In re Bartlett, 2006 WL 3114469 (Bankr. D.Vt., Nov. 1, 2006) Jan 07 16

Recovery of Full Market Rent from Resident when Housing Authority Terminated

HAP Contract

Vincenzi v. Strong, 16 Misc.3d 1121(A), 2007 WL 2296505 (N.Y.City Civ.Ct., Aug. 13, 2007) Sep 07 163

Rent Abatement—Right to Recover Housing Authority's Share of Rent

Anderson v. District of Columbia Housing Authority, 2007 WL 1280576 (D.C., May 3, 2007) Apr/May 07 91

Section 202 Program—Eviction, Good Cause

Ross v. Broadway Towers, 2006 WL 3681148 (Tenn.Ct.App., Dec. 14, 2006) Jan 07 15

Section 236 Program—Rent Increase

HUD Tenants Coalition v. U.S. Dept. of Housing and Urban Development, (D.N.J. Dec. 15, 2006) Jan 07 15

Voucher Program

Eligibility

Arrest Record

Perry v. City of Milwaukee Housing Authority, 2007 WL 1168733 (E.D. Wis. Apr. 18, 2007) Apr/May 07 91

Drug Related Criminal Activity

Williams v. Integrated Community Services, 2007 WL 1500263 (Wis.App., May 24, 2007). Jun/Jul 07 119

Life Time Sex Offender

Cunningham v. Parkersburg Housing Authority, 2007 WL 712392 (S.D.W.Va. Mar. 6, 2007) ... Apr/May 07 91

Perry v. City of Milwaukee Housing Authority, 2007 WL 1168733 (E.D. Wis. Apr. 18, 2007) Apr/May 07 91

Payment Standard—Appropriate Unit Size

Burse V. San Diego Hous. Comm., 2006 WL 3791262 (Cal.App. 4 Dist., Dec. 27, 2006) Jan 07 14

Reasonable Accommodation

Gaither v. Housing Authority of City of New Haven, 2007 WL 3378533 (D.Conn., Nov. 2, 2007) Nov/Dec 210

Refusal to Rent to State Voucher Holder—Source of Income Discrimination

DiLiddo v. Oxford Street Realty, 450 Mass. 66, 876 N.E.2d 421 (Mass., Nov. 15, 2007) Nov/Dec 07 211

Montgomery County v. Glenmont Hills Assoc., 2007 WL 4208631 (Md., Nov. 30, 2007) Nov/Dec 07 210

Rent Controlled Landlord’s Obligation to Continue to Accept Voucher <i>Daley v. M/S Capital N.Y.</i> , 2007 WL 2828927 (N.Y.A.D. 1 Dept., Oct. 2, 2007)	Oct 07	184
Termination of Participation in Program by Landlord		
<i>Henderson v. Morrone</i> , 2007 WL 186764 (3 rd Cir., Jan. 25, 2007).....	Feb 07	44
<i>Rosario v. Diagonal Realty</i> , 8 N.Y.3d 755, 2007 WL 1879349 (N.Y., July 2, 2007)	Aug 07	140
<i>W & L Associates, LLC v. Gurevich</i> , 16 Misc.3d 129(A), 2007 WL 1840103 (N.Y. Sup. App. Term, June 27, 2007)	Aug 07	140
Termination		
Failure to disclose additional resident		
<i>Smith v. Hamilton County</i> , 2007 WL 1095680 (Ohio App. 1 Dist. Apr. 13, 2007)	Apr/May 07	91
<i>Gammons v. Massachusetts Dept. of Housing and Community Development</i> , 2007 WL 1385704 (D.Mass., May 9, 2007)	Jun/Jul 07	120
<i>Smith v. New York City Housing Authority</i> , 2007 WL 1247228 (N.Y.A.D. 1 Dept., May 1, 2007)	Jun/Jul 07	120
<i>Hicks v. Dakota County Community Development Agency</i> , 2007 WL 2416872 (Minn.App., Aug. 28, 2007).....	Sep 07	163
Good Cause at End of Lease Term		
<i>Rosina v. Parra</i> , 2007 WL 4244983 (N.Y.Sup.App.Term., Nov. 29, 2007)	Nov/Dec 07	208
Implied Warranty of Habitability		
<i>Penny Point Park Apartments v. Barnes</i> , 2007 WL 3289133 (N.J.Super.A.D., Nov. 8, 2007).....	Nov/Dec 07	209
Nonpayment Proceeding for Erroneous Certification of Household Income		
<i>Remeeder HDFC, Inc. v. Robertson</i> , 16 Misc.3d 1133(A), 2007 WL 2481915 (N.Y.City Civ.Ct., Aug. 31, 2007)	Sep 07	162
Waiver, Acceptance of Rent after Notice		
<i>Sultanik v. Byrd</i> , 2007 WL 1532274 (N.Y.Just.Ct. 2007).....	Jun/Jul 07	120
Termination—Hearing Process/Decision		
Arbitrary and Capricious Hearing Decision		
<i>Hicks v. Dakota County Community Development Agency</i> , 2007 WL 2416872 (Minn.App., Aug. 28, 2007)	Sep 07	163
Authority’s Right to Overturn Hearing Officer Decision		
<i>Winston v. Minneapolis Public Housing Authority</i> , 2007 WL 2245777 (Minn. App., Aug. 7, 2007)	Sep 07	163
Constitutionality of Pre-termination Administrative Hearing		
<i>Hendrix v. Seattle Housing Authority</i> , 2007 WL 2790783 (W.D.Wash., Sept. 25, 2007).....	Oct 07	184
<i>Hendrix v. Seattle Housing Authority</i> , 2007 WL 3357715 (W.D.Wash., Nov. 9, 2007).....	Nov/Dec 07	208
Due Process in Termination Hearing		
<i>Tomlinson v. Machin</i> , 2007 WL 141192 (M.D. Fl., Jan. 16, 2007)	Feb 07	45
<i>Basco v. Machin</i> , 2007 WL 433404 (M.D. Fla., Feb. 6, 2007)	Mar 07	70
Fair Hearing		
<i>Burse V. San Diego Hous. Comm.</i> , 2006 WL 3791262 (Cal.App. 4 Dist., Dec. 27, 2006)	Jan 07	14
Hearing Decision Not Based on Preponderance of the Evidence		
<i>Gammons, V. Massachusetts Dept. of Housing and Community Development</i> , 2007 WL 4180804 (D.Mass., Nov. 28, 2007)	Nov/Dec 07	209

Hearing Officer's Basis for the Decision <i>Gaston v. CHAC</i> , 2007 WL 1745631 (Ill.App. 1 Dist., June 18, 2007).....	Aug 07	140
Sufficiency of Evidence Submitted at Pretermination Administrative Hearing <i>Meyer v. Dakota County Community Development Agency</i> , 2007 WL 2703005 (Minn. App., Sept. 18, 2007)	Oct 07	185
Time for Grievance Hearing <i>Housing Authority of City of Danville v. Love</i> , 2007 WL 2377367 (Ill.App. 4 Dist., Aug. 13, 2007).....	Sep 07	163

RECENT REGULATIONS AND NOTICES

A summary of recent regulations and notices appears at the end of each issue of the *Bulletin*.

RURAL HOUSING SERVICE (RHS)/RURAL DEVELOPMENT (RD)/USDA

FY 2007 Rural Development Housing Program Funding	Feb 07	43
Administration Proposes to Cut RD Housing Programs Serving Low Income Persons.....	Mar 07	61
Under the Radar Revisions to RD Voucher Program	Apr/May 07	81
Prepayment and Sale of RHS Apartment Complex Ruled Illegal	Jun/Jul 07	103
Owner Denied Right to Prepay RHS 515 Loan.....	Oct 07	183
Rural Rental Housing Preservation Legislation Introduced	Nov/Dec 07	199

SECTION 8 PROGRAMS

(see HOUSING CHOICE VOUCHER PROGRAM; HUD; PRESERVATION OF LOW-INCOME HOUSING STOCK)

UTILITY ALLOWANCE AND COSTS

Challenging Voucher Side Payments Under the False Claims Act.....	Sep 07	156
---	--------	-----

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