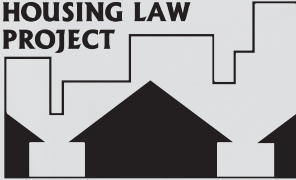


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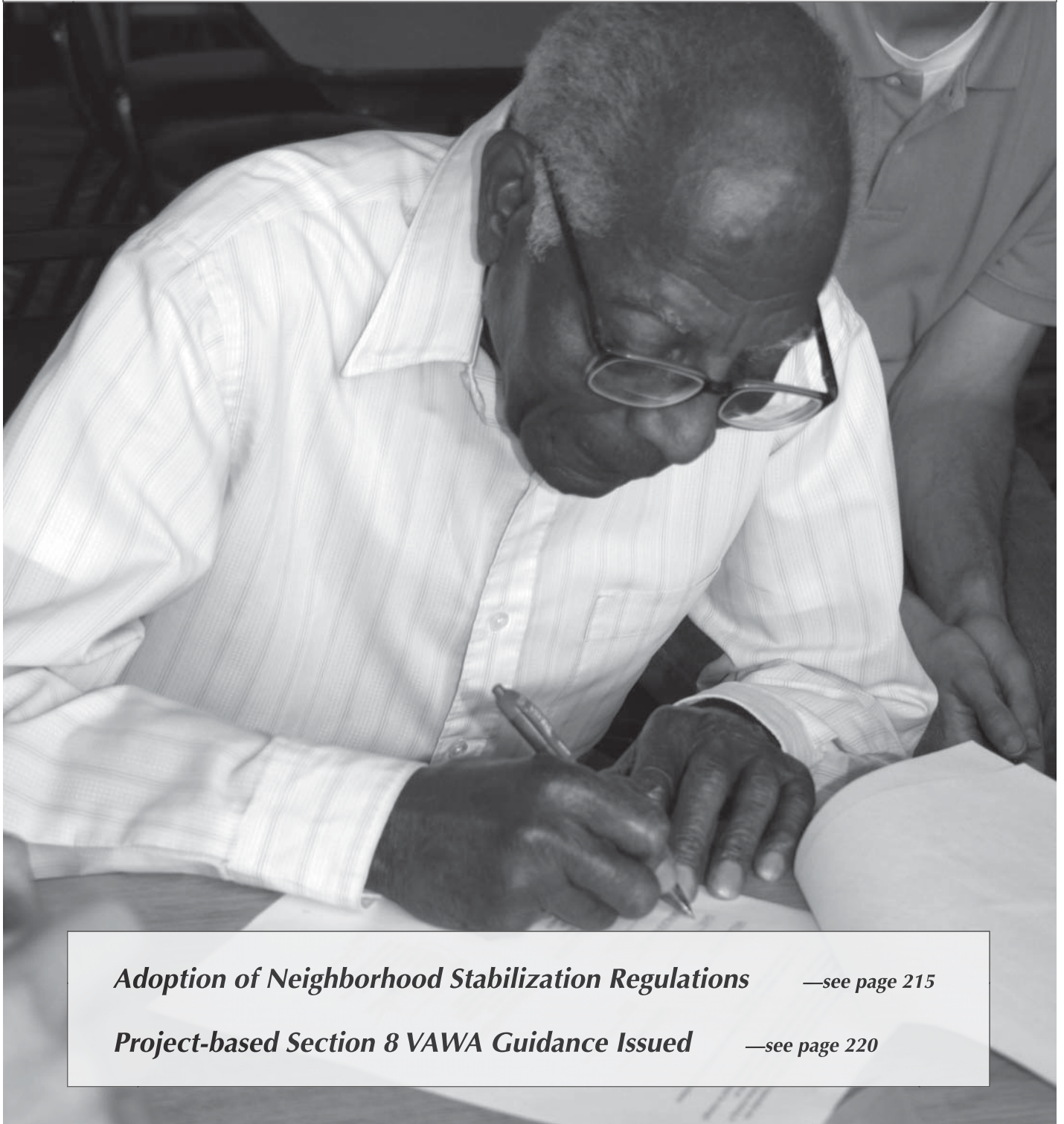


advancing housing justice

# Housing Law Bulletin

Volume 38 • October 2008

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*Adoption of Neighborhood Stabilization Regulations* —see page 215

*Project-based Section 8 VAWA Guidance Issued* —see page 220

# ADVANCING HOUSING JUSTICE

A Decent, Safe, & Affordable Home for All

## Housing Justice Network National Meeting

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

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

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



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

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

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

See pages 231-232 for more information and a registration form.

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**Cover:** Cornelius Weekley, a resident of the Park Village Apartments, an 84-unit project-based Section 8 senior development in Oakland, California. Mr. Weekley, one of several plaintiffs in a suit against the private owner who failed to give the federal and state required notices prior to opting-out of the Section 8 program, signs a settlement agreement that provides for the sale of Park Village Apartments to a nonprofit organization that will maintain the housing as subsidized affordable housing.

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## Congress Acts to Address Project-Based Section 8 Funding Crisis

Prior *Bulletins* have described the inability of the Department of Housing and Urban Development (HUD) to make timely payments to project-based Section 8 owners, and HUD's strategy to cope with Fiscal Year (FY) 2008's funding shortfall—providing only “funding increments,” good for several months at a time.<sup>1</sup> The shortfall—the additional funds required to fully back one-year renewal contracts—has been acknowledged by HUD<sup>2</sup> and is now estimated to be at least \$2.5 billion for FY 2009, a huge chunk of the program's \$6.14 billion FY 2008 appropriation. The insufficiency results directly from the Administration's inadequate budget requests; never did the Administration clarify to Congress that it was changing its policy to request funding only to take all contracts through the end of the fiscal year, rather than the one-year contract term previously funded.

In addition to regular channels, advocates and owners had also sought the necessary funds to redress the shortfall through a supplemental appropriation for FY 2008, either in the emergency supplemental vehicle to fund the Iraq war, or through another supplemental spending bill. In April, twenty-two Senators, including five Republicans, sent a letter requesting such funding to the Appropriations Committee (following earlier successful efforts to provide increased funding in the Budget Resolution), and fifteen House members followed suit. Although the House Appropriations Subcommittee held a hearing exclusively focused on the project-based Section 8 funding shortfall on April 23, obtaining additional funding through the supplemental appropriations process proved unsuccessful. However, by demonstrating an increasing awareness of the problem, these efforts provided a solid foundation for other legislative treatment in additional funding vehicles, including any Continuing Resolution or subsequent FY 2009 appropriations bill.<sup>3</sup>

<sup>1</sup>NHLP, *Congress Considers Solutions for the Project-Based Section 8 Funding Crisis*, 38 HOUS. L. BULL. 87 (Apr.-May 2008); NHLP, *Growing Reports of a Project-Based Section 8 Funding Crisis as FY 2007 Closes*, 37 HOUS. L. BULL. 149 (Sept. 2007).

<sup>2</sup>Letter from John W. Cox, HUD Chief Financial Officer, to Honorable Maxine Waters, Chairwoman, Subcommittee on Housing and Community, House Committee on Financial Services (Nov. 16, 2007) (estimating a shortfall of \$1.5 billion in FY 2008 to provide one-year funding for all contracts).

<sup>3</sup>Part of the eventual solution for FY 2009 will likely include an “advance appropriation” of FY 2010 funds, which could provide future funding on October 1, 2010, to cover the shortfall represented by contracts with tails hanging over into subsequent fiscal years. This technique, approved by the Senate's version of the FY 2009 Budget Resolution and the Senate's FY 2009 appropriations bill, would effectively provide assured funding when it is needed, without requiring additional scarce budget authority during FY 2009. Used for many years to fund part of the voucher

Recognizing this desperate need for additional funds, the Senate FY 2009 appropriations bill<sup>4</sup> had sought to provide a total of \$8.45 billion (\$6.7 billion from FY 2009 funds and an advance appropriation of \$1.75 billion from FY 2010)—more funds, to be sure, but still not enough to renew all expiring contracts and funding increments for full one-year periods. The Senate Committee Report also vociferously criticized HUD's actions over the past few years that have jeopardized the stability of the program.<sup>5</sup> However, because of substantial differences between Congress and the Administration on domestic spending priorities, an FY 2009 appropriations bill never reached the House or Senate floors.

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*The Continuing Resolution authorized HUD to expend funds at whatever rate is necessary to renew all contracts expiring during its term.*

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When it became clear that no separate appropriations legislation would be passed, Section 8 owners and tenants once again faced the prospect that, late this fall, HUD would be unable to make timely payments on all expiring contracts and funding increments, even just to renew contracts or increments temporarily. This risk reappeared because FY 2008 funds for most properties would run out around November 30,<sup>6</sup> and because ordinary stop-gap funding legislation would not address the special circumstances presented by HUD's recent fiscal management practices.

Under the ordinary stop-gap funding policy of a Continuing Resolution (CR), funding is based upon the prior year's level. In FY 2008, this level was already demonstrably insufficient for the project-based Section 8 program. Ordinary pro-rata funding would therefore be woefully inadequate to provide sufficient funding increments to all projects requiring new funds, for several reasons: an influx of new contracts expiring for the first time; a dramatic increase in the number of properties with simultaneously expiring funding increments during the period covered by the CR (as compared with the same period during FY 2008); as well as the time required to actually provide new paperwork and funds to virtually all properties (14,000 expiring contracts or funding increments) simultaneously. Moreover, if the funds provided under

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program, this technique requires annual repetition to avoid a huge disruption downstream.

<sup>4</sup>S. 3261, 110<sup>th</sup> Cong., 2d Sess. (as reported from the Committee on Appropriations, July 14, 2008), at p. 94 ("Project-Based Rental Assistance").

<sup>5</sup>S. REP. 418, 110<sup>th</sup> Cong., 2d Sess. (July 14, 2008), at pp. 161-162.

<sup>6</sup>See, e.g., Cox Letter, *supra* note 2.

a CR were to run out this fall after adjournment for the election, Congress would not be in session to provide emergency funding and HUD would lack access to any other quick fixes. Mortgage defaults, service reductions, threatened evictions, litigation—all could appear suddenly, with little warning.

Tenants, owners and advocates, with tacit support of HUD staff, alerted Congress to the tremendous risk presented by the usual CR policy; late in September, Congress responded. At the end of September, in the Continuing Resolution, Congress inserted a provision authorizing the HUD Secretary to expend funds provided under the CR at whatever rate is necessary to renew all contracts expiring during the term of the CR, which runs for a little over five months, until March 6, 2009.<sup>7</sup>

Since there was enormous pressure to keep additional provisions out of the CR process, obtaining this flexibility language represents a significant victory, avoiding the most immediate aspect of the funding crisis. Without this language, the risk of late assistance payments would have been much greater, and the CR's longer term and special flexibility further reduces the risk presented by HUD's inability to quickly obligate payments from subsequent appropriations bills.

Even with this gratifying victory, immediate problems will resurface after the CR expires. Additional appropriations of approximately \$2.5 billion are needed during FY 2009 to restore full one-year funding to all expiring or recently renewed contracts. Although Congress can always defer meeting this need to restore full-year funding, continuing the policy of funding only increments ending during the first quarter of each fiscal year promises further erosion of owner and lender confidence, and further chaos should appropriations not occur in a timely fashion or with sufficient flexibility. In addition, HUD has reportedly identified a shortfall of approximately \$6 billion in funding accounts covering longer-term contracts that have not yet reached their initial expiration. Over the next decade, these funds will have to be replenished as those contracts age, in order to avoid nonpayments. In an environment of scarce resources, these are formidable challenges indeed.

Should the shortfall continue, owners' eroding confidence in the subsidy guarantee may foster more opt-outs at contract expiration. Similarly, lenders and investors asked to provide capital for refinancings or transfers necessary to preserve and improve properties that are aging or at risk of market-rate conversion may be increasingly

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<sup>7</sup>Section 168 of the CR reads: "Notwithstanding any other provision of this joint resolution, other than section 106, the Secretary of Housing and Urban Development shall obligate funds provided by section 101 at a rate the Secretary determines is necessary to renew, in a timely manner, all section 8 project-based rental assistance contracts. In renewing such contracts, the Secretary may provide for payments to be made beyond the period covered by this joint resolution." Pub. L. No. 110-329, \_\_\_ Stat. \_\_\_ (Sept. 30, 2008).

## HUD Issues Regulations Implementing the Neighborhood Stabilization Program

reluctant to participate. More than half of the properties with project-based Section 8 contracts have HUD mortgage insurance; any funding interruptions could result in mortgage defaults and more costly claims on the mortgage insurance fund. Tenants, who have no clear protection against the consequences of a HUD breach of contract, face growing uncertainty.

Inadequate HUD estimates about total subsidy costs<sup>8</sup> could also trigger nonpayment problems, similar to those in the summer of 2007, if the program lacks the financial cushion provided by one-year funding.

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*Advocates have been seeking various legislative reforms to require HUD to provide advance notice of imminent nonpayments to Congress, owners and tenants.*

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Advocates have also been seeking various legislative reforms to require HUD to provide advance notice of imminent nonpayments to Congress, owners and tenants. Advocates support requiring HUD to use available funds for tenant protections or even the mortgage insurance fund to provide stopgap funding to properties with expiring funding increments. Affected owners should be authorized to draw on reserves to make mortgage payments or pay operating expenses. Tenants should also receive temporary protection from any threatened rent increases. The House Market to Market Reform bill, H.R. 3965, as reported by the House Financial Services Committee, contains a provision requiring notice to owners, authorization for use of reserves, and interest for late payments,<sup>9</sup> although this legislation requires reintroduction in the 111<sup>th</sup> Congress.

As Congress takes up appropriations issues after the election, likely in January, NHLP and its allies will continue to seek adequate funding to restore a solid foundation for these invaluable 1.4 million units. ■

The Housing and Economic Recovery Act (HERA) was signed into law on July 30, 2008. The act is an effort to address the country's foreclosure crisis and thus contains numerous foreclosure assistance provisions, including the restructuring of Government Sponsored Enterprises such as Fannie Mae and Freddie Mac, providing refinancing schemes for homeowners, establishing a National Housing Trust Fund, and creating the Neighborhood Stabilization Program (NSP).<sup>1</sup> NHLP has previously published articles on other provisions of HERA.<sup>2</sup> This article focuses on Title III of the act, which creates the NSP and grants \$3.92 billion for emergency assistance to states and localities to redevelop abandoned and foreclosed homes and residential properties.<sup>3</sup>

These NSP funds are not for foreclosure-prevention activities or for redevelopment of non-blighted areas.<sup>4</sup> Instead, they are meant to stabilize neighborhoods that have deteriorated as a result of high foreclosure rates. Congress identified five uses for which grantees may use NSP funds:

- establish financing mechanisms for purchase and redevelopment of foreclosed-upon homes and residential properties;
- purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;
- establish land banks for homes that have been foreclosed upon;
- demolish blighted structures; and
- redevelop demolished or vacant properties.<sup>5</sup>

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<sup>8</sup>This could happen if HUD underestimates the number of units involved that require renewal funding, or underestimates per-unit subsidy renewal costs due to inflation in operating costs, to rising market rents for certain properties, or decreases in tenant incomes.

<sup>9</sup>H.R. 3965, § 13, as reported April 10, 2008, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h3965rh.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h3965rh.txt.pdf).

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<sup>1</sup>Housing and Economic Recovery Act, Pub. L. No. 110-289, 122 Stat. 2654, 2850-4 (2008); HUD Notice Implementing Neighborhood Stabilization Program Under the Housing and Economic Recovery Act, 73 Fed. Reg. 58,330 (October 6, 2008)(hereinafter HUD NSP Notice).

<sup>2</sup>See Katherine Lehe, *Foreclosure Relief Legislation Includes GSE Regulation and National Housing Trust Fund*, 38 HOUS. L. BULL. 161, 161-7 (Aug. 2008).

<sup>3</sup>Housing and Economic Recovery Act (hereinafter HERA), Pub. L. No. 110-289, § 2301-5, 122 Stat. 2654, 2850-4 (2008).

<sup>4</sup>HUD NSP Notice at 58,338.

<sup>5</sup>HERA § 2301(c)(3); HUD NSP Notice at 58,337-8.

## Allocations/Funds

The Department of Housing and Urban Development (HUD) previously announced the allocations for NSP grants.<sup>6</sup> As required by HERA, it more recently released rules implementing the NSP.<sup>7</sup>

HERA established three criteria for determining where to allocate the funds:

- the number and percentage of home foreclosures in each state or unit of general local government;
- the number and percentage of homes financed by subprime mortgage related loans in each state or unit of general local government; and
- the number and percentage of homes in default or delinquent in each state or unit of general local government.”<sup>8</sup>

Following these guidelines, HUD created an allocation formula to determine need: 70% based on the number and percent of foreclosures, 15% on the number of subprime loans, 10% on the number and percent of loans in default, and 5% for the number and percent of loans delinquent for sixty to ninety days.<sup>9</sup>

The appropriation is treated as a special allocation of Fiscal Year 2008 funding<sup>10</sup> of Community Development Block Grant (CDBG) money except as otherwise noted in HERA.<sup>11</sup> Ten percent of the funds can be used for grant administration.<sup>12</sup>

The NSP funds must be obligated or expended in an amount equal to the grant allocation within eighteen months of the allocation.<sup>13</sup> Grantees must expend all or more than their initial grant allocation within four years or HUD will recapture those funds and redistribute them.<sup>14,15</sup>

A significant portion of the allocations go to states rather than localities.<sup>16</sup> This is significant because, unlike the regular CDBG program, states may choose to directly

use these funds rather than simply distribute them to local entities and nonprofits.<sup>17</sup>

During the course of NSP implementation, grantees are expected to receive “program income.” Profit made through NSP program activities will be treated differently depending on the activity and the year. Before July 30, 2013, grantees receiving income from “purchas[ing] and rehabilitat[ing] homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties,”<sup>18</sup> or from “redevelop[ing] vacant or demolished properties,”<sup>19</sup> may keep the income to use in accordance with NSP rules and regulations.<sup>20</sup> After July 30, 2013, such program income will return to the U.S. Treasury, unless HUD approves a request to use the income for NSP purposes.<sup>21</sup> For the other NSP approved activities, grantees may retain program income for related activities both before and after 2013.<sup>22</sup>

## Affordability

HERA dictates that all NSP funds must be used to benefit low- to middle-income families.<sup>23</sup> For the purposes of the NSP, HUD will use the CDBG income definitions, but will adjust the middle-income category. A low-income family is defined as having an income of no more than 50% of Area Median Income (AMI) as determined by HUD; a moderate-income family is defined as having an income of no more than 80% of AMI.<sup>24</sup> For the NSP, middle-income families include those that make 80-120% of AMI. If a foreclosed property is sold, rented or redeveloped, grantees must ensure that it remains affordable to low- to middle-income families. However, this requirement is only “to the extent practicable” which may provide a loophole for some NSP grantees.<sup>25</sup> Because NSP grantees must develop an action plan for the expenditure of NSP funds, this issue could be addressed by advocates locally. For example, advocates could call for an action plan to define “extent practicable” and state that the grantee will make maximum efforts to ensure affordability. Further, the plan could include regular public reporting requirements on the extent to which such requirements are being met.

<sup>6</sup>HUD NSP Notice at 58,345.

<sup>7</sup>*Id.* at 58,343 (Attachment listing all allocations), available at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>.

<sup>8</sup>HERA § 2301 (b)(3).

<sup>9</sup>HUD NSP Notice at 58,344.

<sup>10</sup>*Id.* at 58,332.

<sup>11</sup>*Id.* at 58,330. (NSP funds, with exceptions stated in HERA, will be subject to 24 C.F.R. part 570 subparts I, A, C, D, J, K, O (2008)).

<sup>12</sup>*Id.* at 58,337-8.

<sup>13</sup>*Id.* at 58,340.

<sup>14</sup>*Id.* at 58,340-1.

<sup>15</sup>While an NSP-assisted property may be held in a land bank, it may not be held in one for more than ten years “without obligating the property for a specific, eligible redevelopment of that property in accordance with NSP requirements.” *Id.* at 58,335-6.

<sup>16</sup>HUD NSP Notice, *supra* note 5.

<sup>17</sup>HUD NSP Notice at 58,336; see also 24 C.F.R. § 91.320(d)(requiring state CDBG action plan to include method of distributing funds to local governments and nonprofits in accordance with Consolidated Plan). Additionally, states will have to review and audit any subrecipients, designated public agencies, and units of general local government as necessary to meet legal requirements. The state is responsible for enforcement of these requirements among its subrecipients, designated public agencies, and units of general local government. Records must be kept of all of the state’s activities.

<sup>18</sup>HERA § 2301(c)(3)(B); HUD NSP Notice at 58,340-1.

<sup>19</sup>HERA § 2301(c)(3)(E); HUD NSP Notice at 58,340-1.

<sup>20</sup>HERA § 2301(d)(4); HUD NSP Notice at 58,340-1.

<sup>21</sup>HERA § 2301(d)(4); HUD NSP Notice at 58,340-1.

<sup>22</sup>HERA § 2301(d)(4).

<sup>23</sup>*Id.* § 2301(f)(3).

<sup>24</sup>24 C.F.R. § 91.5 (2008).

<sup>25</sup>HUD NSP Notice at 58,334.

While the CDBG program allows grantees to use up to 30% of their grants for activities other than the low- and moderate-income objective, the NSP does not. Unlike the regular CDBG program, NSP grantees cannot use NSP funds to prevent or eliminate slums and blight or address urgent community development needs.<sup>26</sup> Instead, grantees have four options for activities that may meet the low- and moderate-income requirements:

- The grantee may provide or improve residential structures to be occupied by a household whose income is at or below 120% of AMI.
- The grantee's activity may serve an area in which at least 51% of the residents have incomes at or below 120% of AMI.
- The activity may create or retain jobs for families of qualifying income.
- The activity may serve only those families whose incomes are at or below 120% of AMI.<sup>27</sup>

In addition to generally serving families at 120% of AMI or below, HERA requires that grantees use at least 25% of their allocated funds to house families whose income does not exceed 50% of AMI.<sup>28</sup> Grantees will have to document how they intend to comply with this requirement. Given the limited amount of funds available under the act, it will be difficult to achieve this requirement without other sources of funding, such as project-based vouchers and Low-Income Housing Tax Credits. HUD will review compliance at the beginning and end of the grant period.<sup>29</sup>

While outright affordability requirements are useful tools, they do not do as much as is necessary to aid low-income families. Other NSP program requirements may help advocates push for greater affordability. For example, grantees will be required to continue to certify that they are complying with their duty to affirmatively further fair housing. HUD's rules encourage grantees to reassess their Analysis of Impediments to determine if the current realities of the housing market necessitate any changes.<sup>30</sup> In neighborhoods where the resident composition includes members of protected groups, fair housing requirements intersect with affordability goals and can serve as an additional tool to obtain greater housing affordability. Other required certifications include consistency with the Consolidated Plan, compliance with Section 3 requirements,<sup>31</sup>

and compliance with relocation requirements.<sup>32</sup> Although it is not mentioned in the regulations, advocates should urge grantees to coordinate the action plan with the local public housing agency plan in order to coordinate the use of NSP funds with other programs such as project-based vouchers and Section 8 Homeownership. Advocates have the potential to dramatically affect the use of the money, as well as the quality and affordability of the resulting housing and communities, by critically evaluating these certifications, incorporating local nonprofit oversight or management into the Section 3 program, and helping create and implement realistic supportive services and assistance for relocation plans.

### Substantial Amendment: Action Plan

All CDBG grantees that have received an NSP allocation must submit a substantial amendment to their Consolidated Plan action plans by December 1, 2008.<sup>33</sup> HUD will use the Disaster Recovery Grant Reporting System to accept and track NSP program action plans. Because the regulations went into effect September 29, 2008, grantees should already be in the process of drafting the amendments.

### Submission Process

Grantees may either act alone or pool their resources in one of three ways. They may submit a joint request with contiguous entitlement communities in a metropolitan area or with their state agency.<sup>34</sup> Each grantee may also apply for the entire grant and enter into a sub-recipient agreement with either another jurisdiction or a nonprofit that will administer all or part of the grant.<sup>35</sup> Existing cooperation agreements will apply for the purposes of NSP funding.<sup>36</sup> Local nonprofits with the capacity to perform such administration, or with expertise or missions in one or more aspects of the performance areas, should carefully consider the possible benefits of such an arrangement.

Grantees are also responsible for ensuring that all members of the public have equal access to the action plans, including, in a state-wide plan, people from the entire geographic area affected. Local advocates can play critical roles in convening and facilitating such involvement through structures such as state-wide resident associations and community empowerment networks. The proposed action plan must be accessible on the Internet and in more traditional ways, such as on paper. Grantees

<sup>26</sup>*Id.* at 58,335.

<sup>27</sup>*Id.*; Documentation requirements are the same as those as required by 24 C.F.R. §§ 570.208 and 570.483.

<sup>28</sup>HERA § 2301(f)(3)(A); HUD NSP Notice at 58,335-6.

<sup>29</sup>HUD NSP Notice at 58,335-6.

<sup>30</sup>*Id.* at 58,342.

<sup>31</sup>See NHLP, *Increasing Employment and Job Training for Low-Income Residents Through Section 3*, 35 HOUS. L. BULL. 152, 152-7 (July 2008).

<sup>32</sup>HUD NSP Notice at 58,342-3.

<sup>33</sup>Note that grantees may apply for less than the allocated amount, and "HUD encourages each local jurisdiction receiving an allocation to carefully consider its administrative capacity to use the funds within the statutory deadline versus the capacity of the state administrator." HUD NSP Notice at 58,332.

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

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

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

are responsible for ensuring that the proposed NSP program information is available in languages necessary for limited English proficiency individuals in the area to understand.<sup>37</sup>

The public will only have fifteen days to comment on the plans—shortened from the usual thirty days for Consolidated Plans.<sup>38</sup> The final action plan must include a summary of public comments.

The public comment period provides a short but critical opportunity for advocates to push for NSP activities that will address the needs of low-income families. Advocates in each grantee jurisdiction should make it their responsibility to track the publication of the action plan and then alert others within the affected community. The loss of even a few days will be costly if mobilizing a grassroots response, mass media attention and/or political action is required.

If a grantee submits an incomplete or inconsistent action plan, it will have the opportunity to resubmit an updated plan within forty-five days of the first disapproval or February 13, 2009, whichever is earlier.<sup>39</sup> The regulations are silent on whether the grantee must again submit the plan for public comment, but advocates should attempt to insert this understanding into the initial action plan in case the need arises.

## Contents

The action plan substantial amendments should include four general parts:

- information about needs, distribution, use of funds, and definitions;
- information by activity describing how the grantee will use the funds;
- the general terms under which assistance will be provided; and
- contact information for grantee program administrators.

The first section should include data on the needs of the jurisdiction, a narrative regarding how the grantee's use of funds will meet HERA's requirements on helping areas with the most need, and definitions of certain terms such as "blighted structure" and "affordable rents."<sup>40</sup> Moreover, the first section must include a description of how the grantee will ensure continued affordability for NSP-assisted housing.<sup>41</sup> It is especially important for advocates to participate in crafting this section, as the definitions and descriptions will control the income targeting, location, subsidy depth and affordable lifespan of the

<sup>37</sup>HUD NSP Notice at 58,333.

<sup>38</sup>*Id.*

<sup>39</sup>*Id.*

<sup>40</sup>*Id.* at 58,333.

<sup>41</sup>*Id.*

sold, rented or rehabilitated residences. These definitions will also help predict whether the agency is focused upon meeting the goal that 25% of funds must assist families at or below 50% of AMI.

The second section of the substantial amendment should describe how the grantee will use its funds. This section is also vital for advocate participation. The grantee will identify which NSP and CDBG eligible uses of funds and activities it will engage in.<sup>42</sup> The plan must identify which areas with the highest need are addressed by the intended activities and the expected benefit for low- to middle-income families.<sup>43</sup> Additionally, the grantee must include details about performance measures, budget, start and end dates, and who will carry out each activity.<sup>44</sup> The grantee may identify other areas of need.

Third, the substantial amendment must include the terms of assistance.<sup>45</sup> These terms include, if applicable, the discount required to buy foreclosed properties and the range of interest rates.<sup>46</sup> This section must state whether the beneficiaries will be homeowners or renters and how long the assistance will last.<sup>47</sup> If housing is built, the grantee must explain how it will ensure continued affordability.<sup>48</sup> Finally, this section must identify which proposed activities benefit low-income people.<sup>49</sup>

The fourth and final section of the plan must include contact information for the program administrators.<sup>50</sup> Once these sections are filled out, the plan is submitted to HUD and must be posted prominently on the grantee's website.

## Acquisition, Rehabilitation Standards, Relocation, and Sale

A key component of the NSP is the grantee's authorization to acquire foreclosed properties. This component includes a number of restrictions. An NSP grantee can only buy a foreclosed-upon home or residential property at a discount from the current market value of the property.<sup>51</sup> The Uniform Relocation Act (URA) requires fair market value, but HERA trumps.<sup>52</sup>

Grantees must be careful to ensure that such property acquisitions are voluntary, because taking the property by eminent domain would require paying market value under the Fifth Amendment Takings Clause. Grantees must comply with the provisions of the URA whenever there are residents in an acquired property.<sup>53</sup>

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

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

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

<sup>45</sup>*Id.* at 58,334.

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

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

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

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

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

<sup>51</sup>HERA § 2301(d)(1); HUD NSP Notice at 58,330.

<sup>52</sup>49 C.F.R. § 24.102(d)(2008); HUD NSP Notice at 58,334.

<sup>53</sup>42 U.S.C. § 5304(d); HUD NSP Notice at 58,343.

When a grantee acquires foreclosed properties, it is not required to engage in one-for-one replacement of low- and moderate-income housing. Instead it will have to follow the tepid requirements of the action plan which must state the number of low- and moderate-income units that are expected to be demolished or converted, the number of affordable housing units that will be made available (defined as up to 120% of AMI), and how many units will be available to families with an income less than 50% of AMI.<sup>54</sup> Clearly, this has the potential for eliminating housing currently affordable to low-income families. Here again, local advocacy in the creation of the action plan could prove critical in minimizing unit loss.

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*Advocates should encourage action plans that allow current low-income residents to remain in place, to return to their former homes after redevelopment or, at the very least, return to other homes in the redeveloped community.*

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HERA charges NSP grantees with rehabilitating foreclosed-upon homes and residential properties. In doing so, grantees must comply with all laws, codes, and regulations “relating to housing safety, quality, and habitability.”<sup>55</sup> HERA also defines rehabilitation as requiring the grantee to increase energy efficiency or provide renewable energy resources for foreclosed-upon homes and residential properties.<sup>56</sup> HUD encourages grantees to incorporate in their plans green building for increased sustainability.<sup>57</sup> Grantees must describe their rehabilitation plans in their action plan.<sup>58</sup>

The rules and regulations of the NSP aim to ensure that if residential property is resold as a homeownership unit, the cost will be less than the cost of buying and rehabilitating the property.<sup>59</sup> Therefore, a grantee can purchase a foreclosed property only at a discount of at least 5% from the current market-appraised value.<sup>60</sup> When a grantee aggregates its purchases, the overall discounted price should be at least 15% for the initial eighteen-month grant period.<sup>61</sup>

Local advocates may wish to encourage action plans that allow current low-income residents to remain in

place, to return to their former homes after redevelopment or, at the very least, return to other homes in the redeveloped community. Advocates should also consider pursuing plans that require grantees to contract with capable local nonprofit developers or encourage competition for contracts among trusted local nonprofit developers or owners. Such developers and owners will likely be experienced in merging combinations of subsidies to increase the depth and length of the affordability.

## Reporting

Reporting requirements are vital for transparency and provide advocates an opportunity to maintain pressure on grantees to create affordable housing as part of their NSP activities. HUD will require that NSP grantees submit quarterly reports for fifteen months and that they post them prominently on their websites.<sup>62</sup> The quarterly reports must contain information on the use of the funds, such as stating the benefits to low- and moderate-income families, and the sources of non-NSP funds.<sup>63</sup> Housing advocates should ensure that these reports include information on whether the grantee is meeting its goals for serving families at or below 50% of AMI. Additionally, grantees will have to submit monthly reports on their expenditures and obligated funds until at least the entire amount of the grant has been obligated.<sup>64</sup> Again, advocates should urge that these reports be made publicly available.

## Conclusion

While the Neighborhood Stabilization Program is primarily focused on returning foreclosed-upon or abandoned residential property to active use—as opposed to preventing foreclosure or eviction—it nevertheless provides fertile ground for immediate and active engagement of organized local residents and advocates. ■

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<sup>54</sup>HERA § 2301(d)(2); HUD NSP Notice at 58,339.

<sup>55</sup>HUD NSP Notice at 58,338.

<sup>56</sup>HERA § 2301(d)(2).

<sup>57</sup>HUD NSP Notice at 58,338.

<sup>58</sup>*Id.*

<sup>59</sup>*Id.*

<sup>60</sup>*Id.* at 58,482.

<sup>61</sup>*Id.*

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<sup>62</sup>*Id.* at 58,341.

<sup>63</sup>*Id.*

<sup>64</sup>*Id.*

# HUD Issues VAWA Guidance for Project-Based Section 8 Owners

Nearly three years after the Violence Against Women Act of 2005 (VAWA)<sup>1</sup> became effective, the Department of Housing and Urban Development's Office of Housing has issued guidance on the statute to project-based Section 8 owners and managers. On September 30, 2008, the Office of Housing published a notice, certification form, and lease addendum implementing VAWA's housing provisions.<sup>2</sup> This is the first notice that HUD has issued that is specifically tailored to the project-based Section 8 program. The notice is particularly significant given that HUD field offices had previously misinformed project-based owners that they were not obligated to implement VAWA,<sup>3</sup> several advocates have reported that project-based owners are unaware of their obligations under the statute, and at least one case has been brought against a project-based owner alleging violations of VAWA.<sup>4</sup>

## Applicability

The notice applies to all project-based Section 8 owners participating in the New Construction, State Agency Financed, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition Set-Aside programs.<sup>5</sup> The notice also applies to Section 202 projects receiving Section 8 assistance as well as Rural Housing Service Section 515 projects with Section 8 assistance.<sup>6</sup> HUD's Office of Public and Indian Housing has previously issued notices implementing VAWA in the public housing and Housing Choice Voucher programs.<sup>7</sup> Additionally, on March 2007, HUD published a Federal Register notice providing a general overview of VAWA's protections.<sup>8</sup>

<sup>1</sup>Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006). For more information on VAWA and HUD's implementation, see NHLP, *Reauthorized Violence Against Women Act Protects Housing Rights of Domestic Violence Survivors*, 36 HOUS. L. BULL. 53 (Mar. 2006); Naomi Stern, *HUD Begins VAWA Implementation*, 36 HOUS. L. BULL. 181 (Sept. 2006); NHLP, *HUD Continues VAWA Implementation*, 37 HOUS. L. BULL. 7 (Jan. 2007); NHLP, *PHAs and Advocates Begin Early Efforts to Implement VAWA*, 37 HOUS. L. BULL. 193 (Dec. 2007).

<sup>2</sup>Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program, H 08-07 (Sept. 30, 2008) [hereinafter Notice H 08-07].

<sup>3</sup>See HUD San Francisco Multifamily Hub, *Violence Against Women's Act*, 9 PACIFIC CURRENTS 12 (Oct. 2007).

<sup>4</sup>Legal Momentum, *Brooklyn Landlord v. R.F.* (2007), available at [http://legalmomentum.org/legalmomentum/inthecourts/2007/06/brooklyn\\_landlord\\_v\\_rf\\_2007.php](http://legalmomentum.org/legalmomentum/inthecourts/2007/06/brooklyn_landlord_v_rf_2007.php).

<sup>5</sup>Notice H 08-07 at 2.

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

<sup>7</sup>Revised Voucher Housing Assistance Payments Contract (Form HUD 52641) and Tenancy Addendum (form HUD 52641A), PIH 2007-5 (Feb. 16, 2007); Violence Against Women and Justice Department Reauthorization Act 2005 Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking, PIH 2006-42 (Dec. 27, 2006).

<sup>8</sup>72 Fed. Reg. 12,696 (Mar. 16, 2007) (The Violence Against Women and

## Protections for Victims

In describing VAWA's protections, the notice closely tracks the statute's language, stating that an applicant's or participant's status as a victim of domestic violence, dating violence, or stalking is not a basis for denial of rental assistance or for denial of admission.<sup>9</sup> Similarly, the notice provides that incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other "good cause" for terminating the victim's assistance or tenancy.<sup>10</sup> Additionally, the notice states that criminal activity directly related to domestic violence, dating violence, or stalking shall not be cause for termination of the assistance or tenancy of the victim of those criminal acts.<sup>11</sup> Furthermore, the notice prohibits owners from subjecting victims to a more demanding standard than other tenants.<sup>12</sup>

The notice incorporates VAWA's language regarding bifurcation of leases and rental assistance, stating that if an individual commits a criminal act of violence against family members, owners may terminate the perpetrator's assistance or bifurcate the lease to remove the perpetrator from the home.<sup>13</sup> The notice directs owners to take this action while allowing the victim to remain in the assisted unit.<sup>14</sup> Additionally, owners should process an interim recertification reflecting the change in household composition.<sup>15</sup>

The notice acknowledges that VAWA does not limit an owner's authority to evict or terminate assistance to victims who commit criminal activity that is unrelated to their status as victims of domestic violence, dating violence, or stalking.<sup>16</sup> The notice also states that if an owner can show an actual or imminent threat to other tenants or employees at the property if a tenant's residency is not terminated, "then evicting a victim is an option, the VAWA notwithstanding."<sup>17</sup>

## Rights and Responsibilities of Owners

One of the most significant features of the notice is its guidance to owners regarding actions they should take to be in compliance with VAWA. This guidance extends beyond VAWA's statutory language and includes practical steps for implementing the statute. The notice directs owners to update their tenant selection plans and house

Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs).

<sup>9</sup>Notice H 08-07 at 3.

<sup>10</sup>*Id.* at 3-4.

<sup>11</sup>*Id.* at 4.

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

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

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

<sup>15</sup>*Id.* at 7.

<sup>16</sup>*Id.* at 4.

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

rules to incorporate VAWA.<sup>18</sup> It also encourages owners to establish policies that will protect victims from losing their subsidized housing as a consequence of domestic violence, dating violence, or stalking.<sup>19</sup> Advocates should consider using this language to press project-based owners to revise their admissions and terminations policies so that they better serve survivors' housing needs.

### Certification and Confidentiality

The notice transmits form HUD-91066, which can be used to certify that an individual is a victim of domestic violence, dating violence, or stalking. Although HUD had previously transmitted certification form HUD-50066 for use in the public housing and Housing Choice Voucher programs, no certification form previously existed for the project-based Section 8 program. Form HUD-91066 is substantially similar to form HUD-50066. Both forms require that victims provide the name and their relationship to the abuser, as well as the date, time, and location of the incident of domestic violence, dating violence, or stalking.<sup>20</sup> Victims must describe the incident and sign the forms under penalty of perjury.<sup>21</sup> The forms also notify victims of VAWA's confidentiality requirements, which are discussed below. The notice suggests making the certification form available to all eligible families at the time of admission, or enclosing the form with termination notices.<sup>22</sup>

The notice states that owners responding to an incident of domestic violence, dating violence, or stalking that could impact a tenant's housing assistance may request in writing that the tenant complete form HUD-91066.<sup>23</sup> Owners are not required to request official documentation and may provide VAWA's protections based solely on the victim's statement or other corroborating evidence.<sup>24</sup> If an owner chooses to request documentation, the victim must respond to the written request within 14 business days.<sup>25</sup> Owners are free to extend this time period at their discretion.<sup>26</sup> Both the notice and certification form state that in lieu of form HUD-91066, victims may provide a police or court record, or documentation signed by a victim service provider, attorney, or medical professional.<sup>27</sup> This is notable because advocates have reported several instances in the public housing and Housing Choice Voucher context

where housing authorities and owners have requested that victims provide both the certification form and additional documentation. The notice reminds owners that mailing the certification form to victims may place them at risk if the abuser is monitoring the mailing.<sup>28</sup> The notice therefore recommends that owners consult with victims in making delivery arrangements, such as having them pick up the notice at the management office.<sup>29</sup>

The notice encourages owners "to carefully evaluate abuse claims as to avoid conducting an eviction based on false or unsubstantiated accusations."<sup>30</sup> This statement is somewhat troubling in that it does not explain what factors an owner would consider in determining whether an accusation of abuse is false. Further, given that many property managers are not trained in the dynamics of domestic violence, it is unclear what knowledge they would rely on in assessing the veracity of an accusation. This illustrates the need for advocates to train Section 8 property managers on the fundamentals of domestic violence and to establish relationships between these managers and domestic violence service providers so that they can appropriately respond to abuse at their properties.

The notice closely tracks VAWA's confidentiality language, reminding owners that information regarding domestic violence must be retained in confidence and must not be entered into any shared database or provided to a related entity.<sup>31</sup> The information may be disclosed only if: (1) the victim requests or consents to disclosure in writing; (2) the information is required for use in an eviction proceeding or termination of assistance; (3) disclosure is otherwise required by applicable law.<sup>32</sup> The notice directs owners to keep documentation regarding incidents of domestic violence, dating violence, and stalking in a secure location that is separate from other tenant files.<sup>33</sup>

### Lease Addendum

The notice transmits a lease addendum, form HUD-91067, which must be distributed to all new and existing tenants and signed by the owner and the tenant. The addendum explains that incidents of domestic violence, dating violence, or stalking may not be considered serious or repeated lease violations or other good cause for terminating the victim's assistance or tenancy.<sup>34</sup> The addendum also informs tenants that landlords may request in writing that tenants certify that they are victims of abuse, and that failure to provide the certification form or other

<sup>18</sup>*Id.* at 4-5.

<sup>19</sup>*Id.* at 5.

<sup>20</sup>Form HUD-91066 Certification of Domestic Violence, Dating Violence, or Stalking (9/2008) [hereinafter Form HUD-91066]; Form HUD-50066 Certification of Domestic Violence, Dating Violence, or Stalking (11/2006) hereinafter Form HUD-50066].

<sup>21</sup>Form HUD-91066; Form HUD-50066.

<sup>22</sup>Notice H 08-07 at 5.

<sup>23</sup>*Id.*

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

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

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

<sup>27</sup>*Id.*; Form HUD-91066.

<sup>28</sup>Notice H 08-07 at 6.

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

<sup>30</sup>*Id.* at 5-6.

<sup>31</sup>*Id.* at 6.

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

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

<sup>34</sup>Form HUD-91067, Lease Addendum: Violence Against Women and Justice Department Reauthorization Act of 2005 (9/2008).

supporting documentation within fourteen business days may result in eviction.<sup>35</sup> Owners “must expeditiously begin to notify existing tenants” of the lease addendum.<sup>36</sup> The notice instructs owners to forward the addendum to tenants with a letter stating that tenants can either accept the modification or move, and that a response is due within thirty days.<sup>37</sup>

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*Although the notice is an important development in implementing VAWA in the project-based Section 8 program, many owners will remain unaware of their obligations under the statute unless advocates step in.*

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### Conclusion

Although the notice is an important development in implementing VAWA in the project-based Section 8 program, many owners will remain unaware of their obligations under the statute unless advocates step in. To improve project-based owners’ and tenants’ awareness of VAWA, advocates should consider: (1) providing domestic violence and VAWA training to property managers; (2) working with owners to revise admissions and occupancy policies as well as termination notices; (3) reminding owners of their duty to distribute the lease addendum to new and existing tenants; (4) urging owners to include information about VAWA in briefing packets and termination notices; and (5) encouraging owners to post notices of tenants’ VAWA rights in the lobbies, hallways, and lounges of their buildings.

*For additional information regarding VAWA implementation, please contact Meliah Schultzman, NHLP Equal Justice Works Fellow, at 510-251-9400 x3116 or mschultzman@nhlp.org. ■*

## Court Finds Voucher Tenant Properly Asserted Section 1983 Action

In *Stevenson v. Willis*<sup>1</sup>, a federal district court held that a tenant’s claims under the United States Housing Act challenging a housing authority’s termination of her voucher were enforceable via 42 U.S.C. § 1983. The court also found that the tenant had stated a cause of action under § 1983 for violation of her constitutional right to procedural due process.

### Factual Background

The tenant, a disabled single mother of four children, rented an apartment in 2002 under a lease approved by the housing authority.<sup>2</sup> When the tenant sought to move, the housing authority required her to obtain written approval from the landlord stating that she owed no money for back rent or damage to the property.<sup>3</sup> The landlord claimed that the tenant caused damage to the property and refused to provide written approval unless she agreed to be responsible for repairs.<sup>4</sup> The tenant denied that she had caused any damage, but signed an agreement to pay for the repairs.<sup>5</sup> When she failed to pay, the landlord served her with a notice to vacate.<sup>6</sup> The tenant moved out of the apartment to stay with her mother and subsequently received a notice that the housing authority planned to terminate her voucher on two grounds: (1) “moving in lieu of eviction” and (2) “damages to the unit.”<sup>7</sup>

During the informal hearing, the hearing officer both presented the housing authority’s case and adjudicated the issues.<sup>8</sup> The hearing officer presented no witnesses and instead relied on an internal record of a telephone conversation between the landlord and a housing authority case manager, in which the landlord stated that the tenant owed \$3,500 in damages.<sup>9</sup> The hearing officer also presented the repair agreement between the tenant and the landlord.<sup>10</sup> However, no proof of the alleged damages was presented, and the landlord did not attend the hearing. The hearing officer issued a written decision requiring the tenant to enter into a repayment agreement with

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<sup>1</sup>2008 WL 4346512 (N.D. Ohio Sept. 18, 2008).

<sup>2</sup>*Id.* at \*1.

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

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

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

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

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

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

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

<sup>10</sup>*Id.*

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

<sup>36</sup>Notice H 08-07 at 6.

<sup>37</sup>*Id.*

the landlord for the damages by January 30, 2007.<sup>11</sup> The decision did not state the evidence the hearing officer relied on in making her decision.<sup>12</sup>

The January 30 deadline passed without the tenant setting up a repayment plan, and the housing authority refused to allow the tenant back into the voucher program.<sup>13</sup> The tenant filed suit against the housing authority, its executive director, and the hearing officer,<sup>14</sup> alleging causes of action under 42 U.S.C. § 1983 for violations of the due process clause of the Fourteenth Amendment and the United States Housing Act. The housing authority then filed a motion to dismiss for failure to state a claim.

### Due Process Violations

The tenant alleged that the housing authority violated her Fourteenth Amendment right to due process because she had no opportunity to confront the witnesses whose testimony was used as the basis of her voucher termination. Specifically, the tenant challenged the hearing officer's reliance on the report of a phone conversation in which the landlord reportedly told a housing authority case manager that the tenant owed \$3,500 in damages. The court immediately acknowledged that a Section 8 voucher is a property interest protected by the requirement of procedural due process.<sup>15</sup> Accordingly, the process for terminating a voucher must comply with the criteria of *Goldberg v. Kelly*,<sup>16</sup> including the requirement that the party facing property deprivation have an opportunity to confront and cross-examine adverse witnesses. While noting that hearsay is admissible at Section 8 termination hearings, the court found that "it is improper for a hearing officer to rely solely on hearsay evidence."<sup>17</sup>

The court declined to decide whether the allegations regarding the hearing officer's use of hearsay evidence, standing alone, sufficed to state a due process cause of action. However, the court found that these allegations, combined with the tenant's allegations that the hearing officer both presented and adjudicated the housing authority's case, "amplified the danger" to her right to procedural due process. The court stated that at a minimum, due process requires a hearing before an impartial decision maker. Accordingly, the court found that the housing authority's procedure of having "a single individual in the agency's employ performing the dual functions of

advocate and adjudicator . . . raises very serious constitutional concerns."<sup>18</sup> The court therefore concluded that the tenant stated a cause of action under § 1983 for violation of her right to procedural due process.

### Violations of the United States Housing Act

In addition to her due process claims, the tenant alleged claims under 42 U.S.C. § 1983 for violations of 42 U.S.C. §§ 1437d and 1437f and 24 C.F.R. § 982.555.<sup>19</sup> In opposition, the housing authority argued that these laws do not provide a private cause of action that is enforceable via § 1983. The court noted that pursuant to *Blessing v. Freestone*<sup>20</sup> and *Gonzaga University v. Doe*,<sup>21</sup> it was obligated to consider whether Congress intended the provisions in question to benefit the tenant, whether the rights asserted were so vague or amorphous that their enforcement would strain judicial competence, and whether the statutes unambiguously imposed a binding obligation on the housing authority. The court also noted that prior to *Gonzaga*, the Supreme Court held in *Wright v. Roanoke Redevelopment & Housing Authority*<sup>22</sup> that the United States Housing Act created a private right of action to challenge a housing authority's utility charges.

The court primarily relied on the language of 42 U.S.C. § 1437d(k), which "require[s] each housing agency receiving assistance under this Act to establish and implement a grievance procedure" under which tenants will receive specific procedural protections, including an opportunity for a hearing before an impartial party and an opportunity to ask questions of witnesses.<sup>23</sup> Although the court acknowledged that the Supreme Court's approach to § 1983 enforcement of federal statutes "has generally been restrictive," it found that Congress intended § 1437d(k) to benefit Section 8 participants.<sup>24</sup> It determined that the law imposed an unambiguous duty on housing authorities to implement procedures that provide voucher holders with the right to a hearing before termination of assistance.<sup>25</sup> The court further found that the statute imposed a binding

<sup>11</sup>*Id.* at \*2.

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

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

<sup>14</sup>The tenant later voluntarily dismissed the housing authority from the case. The hearing officer and executive director, in their official capacities, remained named defendants.

<sup>15</sup>*Id.* at \*4 (citing *Davis v. Mansfield Metro. Hous. Auth.*, 751 F.2d 180, 184 (6th Cir. 1984).

<sup>16</sup>397 U.S. 254, 266-71 (1970).

<sup>17</sup>*Stevenson*, 2008 WL 4346512 at \*5 (citing *Edgecomb v. Hous. Auth. of the Town of Vernon*, 824 F. Supp. 312, 316 (D. Conn. 1993).

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

<sup>19</sup>*Id.* at \*6. Specifically, the tenant alleged that the housing authority violated 24 C.F.R. § 982.555(c)(2) (requiring that the housing authority give the family prompt written notice that they may request a hearing), 24 C.F.R. § 982.555(e)(5) (requiring that the family be given the opportunity to present evidence and question any witnesses), 24 C.F.R. § 982.555(e)(6) (requiring that the hearing officer issue a written decision stating the reasons for the decision, and that factual determinations shall be based on a preponderance of the evidence presented at the hearing).

<sup>20</sup>520 U.S. 329 (1997).

<sup>21</sup>536 U.S. 273 (2002).

<sup>22</sup>479 U.S. 418 (1987).

<sup>23</sup>*Stevenson*, 2008 WL 4346512 at \*7. Although many of the provisions of 42 U.S.C. § 1437d deal specifically with public housing, § 1437d(k) generally refers to "each public housing agency receiving assistance under this Act" and does not distinguish between public housing and Section 8.

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

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

obligation on housing authorities to implement an administrative grievance procedure with specific requirements.<sup>26</sup> Finally, the court stated that the statute was not so vague that its enforcement would strain judicial competence because HUD's regulations at 24 C.F.R. § 982.555 clarify voucher holders' procedural rights.<sup>27</sup>

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*In concluding that the tenant's federal statutory claims were enforceable via § 1983, the court noted a "recent trend" by several courts finding that certain provisions of the Housing Act provide private causes of action.*

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In concluding that the tenant's federal statutory claims were enforceable via § 1983, the court noted a "recent trend" by several courts finding that certain provisions of the Housing Act provide private causes of action.<sup>28</sup> Like the *Stevenson* court, the district court in *Gammons v. Massachusetts Department of Housing and Community Development*<sup>29</sup> held that the language of § 1437d(k) "unambiguously confers rights for the benefit of Section 8 subsidy recipients." Similarly, the district court in *Fields v. Omaha Housing Authority*<sup>30</sup> held that a tenant could maintain a § 1983 action based on violations of § 1437d(k) where the tenant alleged that she was not afforded an impartial hearing. The *Stevenson* court also cited *Johnson v. Housing Authority of Jefferson Parish*,<sup>31</sup> in which the Fifth Circuit held that tenants could bring a private action to challenge utility allowance calculations because "in adopting § 1437f(o)(2), Congress intended to grant to voucher program participants . . . federal rights enforceable under § 1983." The *Stevenson* court therefore reasoned that "[j]ust as tenants can challenge a rent calculation, they should also be able to challenge procedures for termination of the subsidy altogether."<sup>32</sup>

## Conclusion

The *Stevenson* decision, along with several other recent cases,<sup>33</sup> should be useful to advocates seeking to establish

the procedural protections that are due in Section 8 voucher termination hearings. Additionally, the case illustrates that § 1983 is still a viable option for enforcing certain provisions of the United States Housing Act. However, it is important to note that some courts have narrowly construed the circumstances under which voucher holders may enforce the Housing Act using § 1983.<sup>34</sup> Advocates should therefore consider whether there are alternatives to § 1983 claims, such as preemption causes of action under the Constitution's supremacy clause.<sup>35</sup> ■

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

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

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

<sup>29</sup>523 F. Supp. 2d 76, 85 (D. Mass. 2007).

<sup>30</sup>2006 WL 176629, at \*3 (D. Neb. Jan. 23, 2006).

<sup>31</sup>442 F.3d 356, 360-67 (5th Cir. 2006).

<sup>32</sup>*Stevenson*, 2008 WL 4346512 at \*8.

<sup>33</sup>*See, e.g.*, *Basco v. Machin*, 514 F.3d 1177 (11th Cir. 2008); *Hendrix v. Seattle Hous. Auth.*, 2007 WL 3357715 (W.D. Wash. Nov. 9, 2007); *Carter v. Lynn Hous. Auth.*, 880 N.E. 2d 778 (Mass. 2008); *see also* NHLP, *Courts Embellish Procedural Protections for Voucher Terminations*, 38 HOUS. L. BULL. 39 (Feb. 2008).

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<sup>34</sup>*See, e.g.*, *Caswell v. City of Detroit Hous. Comm'n*, 418 F.3d 615, 620 (6th Cir. 2005) (finding that 42 U.S.C. § 1437f(o)(2) does not confer a private right of action upon a tenant seeking to challenge termination of Section 8 assistance resulting from initiation of eviction proceedings); *Thomas v. Butzen*, 2005 WL 2387676, at \*11 (N.D. Ill. Sept. 26, 2005) (holding that 42 U.S.C. § 1437f(o) "does not create a private right of action or contain any indication that Congress intended it to confer enforceable rights on plaintiffs").

<sup>35</sup>Several circuit courts have recently held that a federal statutory right or right of action is not required where a party seeks to enjoin the enforcement of a local regulation or agency order on the grounds that it is preempted by federal law. *See, e.g.*, *Independent Living Center of S. Cal. v. Shewry*, \_\_\_ F.3d \_\_\_, 2008 WL 4244917 (9th Cir. Sept. 17, 2008); *Planned Parenthood of Houston v. Sanchez*, 403 F.3d 324 (5th Cir. 2005); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1266 (10th Cir. 2004); *Local Union No. 12004 v. Massachusetts*, 377 F.3d 64, 75 (1st Cir. 2004); *see also* Lauren K. Saunders, *Preemption as an Alternative to Section 1983*, 38 CLEARINGHOUSE REV. 705 (Mar. 2005).

## Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,<sup>1</sup> Lexis,<sup>2</sup> or, in some instances, the court's website.<sup>3</sup> Copies of the cases are *not* available from NHLP.

### Public Housing Program: Eviction Due to an Unauthorized Guest

*Freeport Housing Authority v. Stewart*, 20 Misc.3d 1139(A), 2008 WL 4065888 (N.Y. Dist. Ct., Sept. 3, 2008) (Unreported). The court affirmed the housing authority's decision to evict the defendant for allowing her husband to reside in her public housing unit without informing the housing authority. The court found that the housing authority's evidence supported its claim that the husband was an authorized resident and rejected the tenant's claims that the evidence submitted was inadmissible because it had not been relied on before. The court found that the evidence was available to the defendant because it was in her file and because it simply corroborated otherwise sufficient evidence of the husband's illegal residency. It also rejected the defendant's claim that the penalty was harsh in light of the fact that the defendant was a thirty-year public housing resident.

### Section 8 Voucher Program: Voucher Termination, Failing to Register as a Lifetime Sex Offender

*Miller v. McCormick*, 2008 WL 4326529 (D. Me., Sept. 22, 2008) (Magistrate's recommendation). A Section 8 voucher holder who was participating in the Section 8 homeownership program brought an action against the program administrator seeking to overturn its decision to terminate his participation in the program, notwithstanding two favorable administrative rulings in his favor, for failure to register as a lifetime sex offender in Maine. The magistrate found that under Maine law the voucher holder was required to register as a lifetime sex offender, that he failed to register, that the failure to register violated Department of Housing and Urban Development (HUD) regulations and that, accordingly, the voucher administrator was within its discretionary authority to override the hearing officer's decision and terminate the voucher. The

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

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

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

magistrate concluded that the hearing officer's assumptions with respect to the status of the voucher holder were erroneous and could, therefore, be overridden by the voucher administrator. The magistrate refused to take jurisdiction over a state counter claim for recovery of the assistance provided the voucher holder.

### Voucher Program: Termination Hearing Violated Due Process; Private Right of Action

*Stevenson v. Willis*, 2008 WL 4346512 (N.D. Ohio, Sept. 18, 2008). In a suit brought by a voucher holder challenging her termination from the voucher program, the defendants, the executive director of the housing authority and the administrative hearing officer, both of whom were sued in their official capacities, sought to be dismissed from the case after the plaintiff amended her complaint and dismissed her case against the housing authority. The defendants also sought to dismiss the plaintiff's suit on the grounds that the housing authority had not violated the voucher holder's due process rights because she had been given notice of the termination, a hearing at which she was represented by counsel, and a decision explaining the authority's position. Lastly, the authority sought to dismiss the voucher holder's statutory and regulatory claims on the ground that the plaintiff did not have a private cause of action to enforce the regulations and statute. The court rejected all but one of the defendants' arguments. It held that a suit against the executive director in his official capacity was tantamount to a suit against the housing authority and that dismissal would therefore not be warranted. However, it did dismiss the case against the hearing officer, finding that her joinder in her official capacity was not necessary. The court refused to dismiss the plaintiff's due process claim finding that the allegation that the hearing officer's behavior as both an advocate and adjudicator was sufficient to state a cause of action against the housing authority. In addition, it found that the hearing officer's reliance on evidence gathered outside the hearing process may have violated the voucher holder's right to cross-examine witnesses. Lastly, the court held that the voucher holder had a private right of action to enforce, under Section 1983, the statutory and regulatory provisions granting voucher holders the right to a due process hearing.

### Voucher Program: Rejection of Voucher Holder Is Source of Income Discrimination Under New York City Law

*Kosoglyadov v. 3130 Brighton Seventh, LLC*, 863 N.Y.S.2d 777, 2008 N.Y. Slip Op. 06965 (NY Sup. Ct., App. Div., Sept. 16, 2008). The appellate court upheld a lower court decision that the landlord was obligated under New York City's tax

abatement law, Administrative Code of the City of New York § 11\_243[k], to accept the plaintiffs' Section 8 vouchers and that its failure to do so constituted discrimination on the basis of source of income under New York City law. The court did, however, remand the matter to the trial court to determine the refund that is due to the plaintiffs for the period that the landlord was required to accept the Section 8 vouchers.

### **Voucher Program: Jurisdiction Over Out-of-State Voucher Administrator**

*Doe v. Johnston*, 2008 WL 4359537 (Cal.App. 1 Dist., Sept. 25, 2008) (unreported). A Section 8 voucher holder, who received his voucher from the Cambridge (MA) Housing Authority and ported to San Francisco, CA, had his voucher terminated by the San Francisco Housing Authority. The voucher holder brought an action for wrongful termination, in a California court, against the San Francisco Housing Authority and several of its staff as well as the Cambridge Housing Authority and its director. The Cambridge Housing Authority filed a motion to quash the summons and complaint on the ground that the California court did not have personal jurisdiction over the out-of-state defendants. The trial court ruled in favor of the defendants and the Court of Appeals affirmed on the basis that the defendants had not sufficient contacts with California to confer jurisdiction over them in the state. The fact that they administered the Section 8 voucher was insufficient because the contact with California was established solely by virtue of the fact that the plaintiff chose to move to California.

### **Public Housing Demolition: Violation of Fair Housing Act Claim Is not Ripe**

*Anderson v. Fall River Housing Authority*, 2008 WL 4372820 (D.Mass., Sept. 22, 2008). The residents of a 100-unit public housing development brought an action against the owner housing authority and the city in which the development is located seeking to enjoin the demolition of the development. The residents claimed that the demolition will violate federal fair housing and civil rights laws, as well as the Equal Protection Clause of the Fourteenth Amendment, because it will replace less expensive units of affordable rental housing with a more expensive type of affordable housing and thereby have a discriminatory impact on the existing tenants. They also alleged that the development had not been maintained in accordance with applicable standards established under state law. The district court dismissed the claims against the city on the ground that the action was not ripe because the demolition had not been approved. It also dismissed the plaintiffs' maintenance claims against the city on the ground that they failed to state a federal habitability claim against the city.

### **Project-Based Section 8 Program: Termination of HAP Contract; HUD Obligations to Maintain Affordable Housing; Residents' Due Process and Right to Relocation Benefits**

*Massie v. HUD*, 2008 WL 4443830 (D.Penn., Sept. 26, 2008). A HUD-financed cooperative was foreclosed upon and sold without subsidies after HUD claimed that the cooperative board was dysfunctional, the development failed three HUD inspections and the cooperative failed to make the required repairs. The cooperative members, acting as a class, initiated a suit against HUD, making several claims, all but three of which were dismissed by the court at an earlier time. The parties filed cross motions for summary judgment on the remaining three issues whether HUD: violated 109 P.L. 115, § 311; failed to provide plaintiffs with the opportunity at the foreclosure hearing to provide factual objections to the foreclosure and if so, whether this constitutes a violation of plaintiffs' procedural due process rights; and failed to comply with its own regulations involving the management and disposition of the HUD-held mortgages on the property. The court decided all three issues in favor of HUD and dismissed the case. It held that § 311, which plaintiffs contended required HUD to maintain the Section 8 contract on the units after it terminated the Housing Assistance Payment (HAP) contract, did not apply because it was not clear that that was the intent of the legislation. Moreover, it concluded that the subsidies for the units were terminated before § 311 was enacted and it did not apply to the cooperative because subsidies were no longer attached to the units when the HAP contract was formally terminated. The court also rejected the plaintiffs' claim that HUD violated its maintenance and preservation obligations. It concluded that the units were owned by the cooperative and not HUD and that the cooperative, in violation of its agreement with HUD, failed to maintain the property. It also rejected the plaintiffs' claim that they were entitled to relocation benefits at the level set out in the Uniform Relocation Act (URA). The court reasoned that the plaintiff residents were not displaced and that when they are displaced due to the rehabilitation of the development, they are entitled to assistance, although not at the URA level because the displacement is not for a federal project. Lastly, the court rejected the plaintiffs' due process claim based on the fact that they had entered into an agreement with the new property owner that would allow them to move into the redeveloped property. As part of that agreement, the residents waived their right to continue to challenge the proper ownership of the property. Accordingly, the court held that the residents' due process claim had been waived.

## Fair Housing Act: Pattern and Practice of Designing and Building Unaccessible Apartments

*National Fair Housing Alliance v. A.G. Spanos Const.*, 2008 WL 4369325 (N.D. Ca., Sept. 23, 2008). The National Fair Housing Alliance brought an action against builders and owners of several apartment buildings claiming that they have engaged in a pattern and practice of building apartment complexes that were not accessible to persons with disabilities and thus violated the Fair Housing Act. The owners and builders sought to dismiss the claims with respect to buildings that were constructed more than two years before the suit was brought, maintaining that the statute of limitations limited the defendants' liability. Upon a motion for reconsideration in light of a recent 9<sup>th</sup> Circuit *en banc* opinion dealing with the statute of limitations issue in a case not involving continuing violations, the court denied the defendants' motion to dismiss, concluding that the Ninth Circuit had not done away with the continuing violations doctrine in all design and construction cases under the Fair Housing Act.

## Low Income Housing Tax Credit Program: Plaintiffs' Standing to Challenge Receipt of Tax Credits

*Fair Housing Center v. Cornerstone Residential Management*, 2008 WL 4346793 (S.D.Fla., Sept. 17, 2008). The district court dismissed several of the plaintiffs' claims against the owner of a number of Low-Income Tax Credit Housing (LIHTC) developments. The claims sought to require the owner to return the LIHTC benefits based on its violations of the Fair Housing Act. The court concluded that as a taxpayer, the plaintiff did not have standing to bring these claims. ■

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

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

### HUD Final Regulations

**73 Fed. Reg. 51,596 (Sept. 4, 2008)**

**Home Equity Conversion Mortgages (HECMs): Determination of Maximum Claim Amount; and Eligibility for Discounted Mortgage Insurance Premium for Certain Refinanced HECM Loans**

*Summary:* This final rule adopts, without change, an interim rule that made two technical changes to HUD's Home Equity Conversion Mortgage program.

*Effective Date:* October 6, 2008.

**73 Fed. Reg. 53,356 (Sept. 16, 2008)**

**Golden Parachute Payments and Indemnification Payments**

*Summary:* The Federal Housing Finance Agency (FHFA) is issuing an interim final regulation, with a request for comments, setting forth factors to be considered by the Director of FHFA in acting upon the Director's authority to limit golden parachute payments to entity-affiliated parties in connection with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks.

*Effective Date:* September 16, 2008.

*Comment Due Date:* October 31, 2008.

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

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

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

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

**73 Fed. Reg. 54,309 (Sept. 19, 2008)**  
**Golden Parachute Payments and Indemnification Payments**

*Summary:* This document contains a correction to Sections 1231.3 and 1231.4 of the interim final regulation concerning Golden Parachute Payments and Indemnification Payments published in the Federal Register on Tuesday, September 16, 2008. These sections should read "Reserved."

*Effective Date:* September 19, 2008.

**73 Fed. Reg. 54,673 (Sept. 23, 2008)**  
**Golden Parachute Payments**

*Summary:* The Federal Housing Finance Agency has determined, insofar as it relates to indemnification payments, to rescind that portion of the Interim Final Rule, published in the Federal Register on September 16, 2008 (73 FR 53356). That portion of the rule will be subject to a separate rulemaking, which will be published for public comment in the near term. Insofar as the Interim Final Rule addresses factors related to golden parachute payments, that portion of the rule remains effective and available for comment. This document corrects specific provisions in the rule referring to indemnification payments.

*Effective Date:* September 23, 2008.

## **HUD Proposed Rules**

**73 Fed. Reg. 52,165 (Sept. 8, 2008)**  
**Prohibition on Use of Indian Community Development Block Grant Assistance for Employment Relocation Activities**

*Summary:* This proposed rule would amend HUD's regulations for the Indian Community Development Block Grant (ICDBG) program by prohibiting Indian tribes and Alaska Native villages from using ICDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another, if the relocation is likely to result in significant job loss.

*Comment Due Date:* November 7, 2008.

**73 Fed. Reg. 52,111 (Sept. 8, 2008)**  
**Revision of Hearing Procedures**

*Summary:* This proposed rule would amend the hearing procedures before hearing officers who have the responsibility for adjudicating those matters that do not raise issues under the Administrative Procedure Act (APA). This proposed rule would also amend the hearing procedures before Administrative Law Judges (ALJs) who have the responsibility for adjudicating those matters that are subject to the requirements of the APA. Specifically, the proposed rule would modify pleading and motion requirements of the hearing procedures. It would also amend the discovery and deposition requirements to clarify the hearing officers' discovery procedures and to specifically allow for written interrogatories, in

addition to depositions, requests for production of documents, and requests for admissions. A new provision allowing for written interrogatories would be added to the hearing procedures, and the proposed rule would also modify the procedures for the review of hearing officers' determinations. Additionally, the proposed rule would amend the discovery, appeal, and judicial review procedures related to hearings that are conducted pursuant to the APA. The proposed changes to the regulations would better reflect current practice and would conform the regulations more closely to statutory requirements.

*Comment Due Date:* November 7, 2008.

**73 Fed. Reg. 52,129 (Sept. 8, 2008)**  
**Revisions to the Regulations Implementing the Program Fraud Civil Remedies Act of 1986**

*Summary:* This proposed rule would amend HUD's regulations implementing the Program Fraud Civil Remedies Act of 1986 (PFCRA). The purpose of this proposed rule is to more closely conform the PFCRA regulations with the PFCRA statutory language, to incorporate additional definitions into the PFCRA regulations, and to add an additional item to the list of factors the HUD Secretary shall consider in determining the amount of penalties and assessments to be imposed.

*Comment Due Date:* November 7, 2008.

**73 Fed. Reg. 53,345 (Sept. 15, 2008)**  
**Federal Housing Administration: Insurance for Manufactured Housing**

*Summary:* This proposed rule would amend HUD's regulations governing manufactured homes that are to be the security for Federal Housing Administration (FHA) Title I loans and Title II insured mortgages. The proposed rule would permit, as eligible for FHA insurance, mortgages on manufactured homes to be installed in accordance with the Model Installation Standards published on October 19, 2007. Acceptance of mortgages on these manufactured homes for FHA insurance will provide for greater flexibility of design, thereby permitting additional options for affordable housing. This proposed rule would apply to all newly installed manufactured homes that are to be security for Title I and Title II loans and any manufactured home that has been previously set up and erected at another location and that is to be security for a Title I loan. An existing manufactured home that secures a Title I loan and that has been installed or erected on a home site in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance would be exempt from compliance with this proposed rule, unless it is relocated from the site of its original installation after the effective date of this proposed rule.

*Comment Due Date:* November 14, 2008.

## HUD Federal Register Notices

**73 Fed. Reg. 51,505 (Sept. 3, 2008)**

### **Federal Housing Administration (FHA) Single Family Mortgage Insurance: Announcement of Moratorium on Risk-Based Premiums**

*Summary:* Consistent with the Housing and Economic Recovery Act of 2008 this notice announces a one-year moratorium, commencing October 1, 2008, on premium pricing in accordance with FHA's risk-based premium structure. This structure was set for most Title II single family mortgage insurance programs by a May 13, 2008, notice, which provided for implementation commencing on July 14, 2008. This notice provides directions for FHA-approved mortgagees to ensure their compliance with the moratorium that commences October 1, 2008.

*Dated:* August 26, 2008.

**73 Fed. Reg. 51,559 (Sept. 3, 2008)**

### **Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2009**

*Summary:* This document designates "Difficult Development Areas" (DDAs) for purposes of the Low-Income Housing Tax Credit Program under Section 42 of the Internal Revenue Code of 1986. The United States Department of Housing and Urban Development makes new DDA designations annually. The designations of "Qualified Census Tracts" published September 28, 2006, remain in effect.

*Dated:* August 12, 2008.

**73 Fed. Reg. 51,644 (Sept. 4, 2008)**

### **Notice of Proposed Information Collection for Public Comment; Capital Fund**

*Summary:* HUD will submit 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 request that previously approved information collection with respect to the public housing Capital Fund be extended.

*Comments Due Date:* November 3, 2008.

**73 Fed. Reg. 52,356 (Sept. 9, 2008)**

### **Establishment of a New Independent Agency**

*Summary:* This notice announces the establishment of a new independent agency. The Housing and Economic Recovery Act of 2008 created the Federal Housing Finance Agency (FHFA) as an independent agency of the federal government. FHFA was established on the date of enactment, July 30, 2008, and the Act provides for the abolishment of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board one year after the date of enactment. These agencies, together with the Housing and Urban Development Government-Sponsored Enterprise Mission Teams, are combined to

establish FHFA. Regulations of FHFA will be found in 12 CFR chapter XII, parts 1200-1299.

*Dated:* August 30, 2008.

**73 Fed. Reg. 52,666 (Sept. 10, 2008)**

### **Notice of Proposed Information Collection: Comment Request; Study of Capital Needs in the Public Housing Program**

*Summary:* HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to a congressional request that HUD conduct a study of the existing and accrual capital needs of the public housing stock. Through a combination of on-site inspections and public housing authority interviews, capital needs will be estimated at the national level for subcategories such as housing authority size (measured by number of ACC units) and region. The findings will be compared to those from an earlier study to illustrate how existing and accrual needs have changed over time. The study is also required to investigate the feasibility of using Real Estate Assessment Center inspections to facilitate ongoing estimates of public housing capital needs. The collected information will support budgeting, planning, and evaluation efforts by Congress and HUD.

*Comments Due Date:* November 10, 2008.

**73 Fed. Reg. 52,667 (Sept. 10, 2008)**

### **Management Review of Multifamily Housing Projects**

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

*Comments Due Date:* October 10, 2008.

**73 Fed. Reg. 52,870 (Sept. 11, 2008)**

### **Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for Midwest Flood Community Development Block Grant (CDBG) Disaster Recovery Grantees Under the Supplemental Appropriations Act, 2008**

*Summary:* This notice advises the public of the initial allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act as a result of recent natural disasters. This notice also describes the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants.

*Effective Date:* September 16, 2008.

**73 Fed. Reg. 54,846 (Sept. 23, 2008)**

**Notice of Proposed Information Collection for Public Comment for Housing Choice Voucher (HCV) Family Unification Program (FUP)**

*Summary:* HUD has submitted to OMB an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the Family Unification Program (FUP) which provides housing choice vouchers to PHAs to assist families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care.

*Comments Due Date:* November 24, 2008.

**73 Fed. Reg. 54,847 (Sept. 23, 2008)**

**Privacy Act; Notification of New Privacy Act System of Records, Housing Counseling Research Data Files**

*Summary:* HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974. The proposed new system of record is the Housing Counseling Research Data Files. The records system will be used by HUD's Office of Policy Development and Research to conduct research and evaluation study of certain participants of HUD-funded Housing Counseling Agencies.

*Effective Date:* October 23, 2008, unless comments are received that would result in a contrary determination.

*Comments Due Date:* October 23, 2008.

**73 Fed. Reg. 54,901 (Sept. 23, 2008)**

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

*Summary:* This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2008, and ending on June 30, 2008.

*Dated:* September 15, 2008.

**73 Fed. Reg. 56,637 (Sept. 29, 2008)**

**Final Fair Market Rents for Fiscal Year 2009 for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program**

*Summary:* This notice provides final FY 2009 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2009.

*Effective Date:* October 1, 2008.

## HUD Notices

**H 08-07 (Sept. 30, 2008)**

**Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project-Based Section 8 Housing Assistance Payments Program**

*Summary:* This notice provides guidance to owners and management agents administering one of multifamily housing's project-based Section 8 programs on the implementation of the Violence Against Women Act (VAWA) and Department of Justice Reauthorization Act of 2005. VAWA provides legal protections to victims of domestic violence, dating violence or stalking. These protections prohibit the eviction or termination of assistance to individuals being assisted under a project-based Section 8 program if the asserted grounds for such action is an instance of domestic violence, dating violence or stalking. This notice transmits the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066 and the HUD-approved Lease Addendum (Form HUD-91067) for use with the applicable HUD model lease for the covered project-based Section 8 program. This addendum revises the lease to reflect the statutory requirements of the VAWA that are related to the project-based Section 8 assistance programs.

## Federal Housing Finance Agency Interim Final Regulation

**73 Fed. Reg. 55,710 (Sept. 26, 2008)**

**Federal Home Loan Bank Boards of Directors: Eligibility and Elections**

*Summary:* The Federal Housing Finance Agency is issuing and seeking comment on an interim final regulation to implement Section 1202 of the Housing and Economic Recovery Act of 2008, which revises Section 7 of the Federal Home Loan Bank Act. Section 7 governs the eligibility and election of individuals to serve on the boards of directors of the twelve Federal Home Loan Banks.

*Dates:* This rule is effective on September 26, 2008. Comments will be accepted up to November 25, 2008.

## Rural Housing Service/Rural Development Administrative Notices

**AN No. 4389 (1980-D) (Sept. 15, 2008)**

**Single Family Housing Guaranteed Loan Program Section 8 Homeownership Vouchers**

*Summary:* This notice clarifies how Section 8 Homeownership Vouchers may be used for qualifying applicants under the Single Family Housing Guaranteed Loan Program. This notice replaces AN 4293 (1980-D), which expired on July 31, 2008. There are no changes from the prior document. ■

## HOUSING JUSTICE NETWORK NATIONAL MEETING

# Advancing Housing Justice: Event Basics

### Fees

Fees include materials, lunch each day, and refreshments.

	BY 11/7	AFTER 11/7	SPONSORED CLIENT*
Training only: Dec 6	\$ 195	\$ 250	\$ 195
Meeting only: Dec 7-8	\$ 430	\$ 535	\$ 330
Meeting + Training	\$ 575	\$ 695	\$ 500

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

### CANCELLATION/REFUND POLICY

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

### Registration

Space is limited, so register early! **The deadline for early registration now has been extended to November 7, 2008.** Mailed forms must be postmarked by that date; faxed forms must be received by that date. Forward registration with payment to:

FAX (CREDIT CARD ONLY)  
510.451.2300

MAIL  
NHLP  
Attn: Registration  
614 Grand Avenue, Suite 320  
Oakland, CA 94610

### Site Information

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

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

Washington Court Hotel is the site for the training, meeting and guest accommodations. Please call the hotel directly to make reservations (last session will end at 5 p.m. on Monday, December 8, so please plan accordingly). Mention that you are attending the Housing Justice Network conference to receive a conference room rate of \$175. Rate is single/double occupancy plus tax. **Please make your reservations early! Rooms at the conference rate are limited and are available on a first-come, first-served basis through November 7, 2008.**

### Questions

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

HOUSING JUSTICE NETWORK NATIONAL MEETING

Advancing Housing Justice: Registration

PLEASE PRINT CLEARLY

1

PERSONAL INFORMATION

NAME NAME ON BADGE (IF DIFFERENT)

ORGANIZATION

MAILING ADDRESS

CITY STATE ZIP

PHONE FAX

EMAIL ORGANIZATION'S WEB SITE

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

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

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

2

FEES

Table with 3 columns: BEFORE 11/7, AFTER 11/7, CLIENT. Rows include Federal Housing Program, Housing Justice Network Meeting, and One Day Training + Meeting.

3

PAYMENT

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

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

CARD NUMBER EXP. DATE (MONTH/YEAR)

NAME OF CARDHOLDER AUTHORIZED SIGNATURE

BILLING ADDRESS (REQUIRED FOR CREDIT CARD ORDERS)

CITY STATE ZIP

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

# NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM



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

SUBTOTAL (All prices include shipping)	<input type="checkbox"/>
CALIFORNIA SALES TAX (Excludes Bulletin   8.75% in Alameda County   8.25% in rest of CA)	<input type="checkbox"/>
<b>TOTAL</b>	<input type="checkbox"/>

## BILLING INFORMATION

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

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

Please bill my  **MasterCard**  **Visa**

card number / exp date

name on card

organization

street address

city / state / zip

signature

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organization

street address

city / state / zip

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