

**NATIONAL
HOUSING LAW
PROJECT**

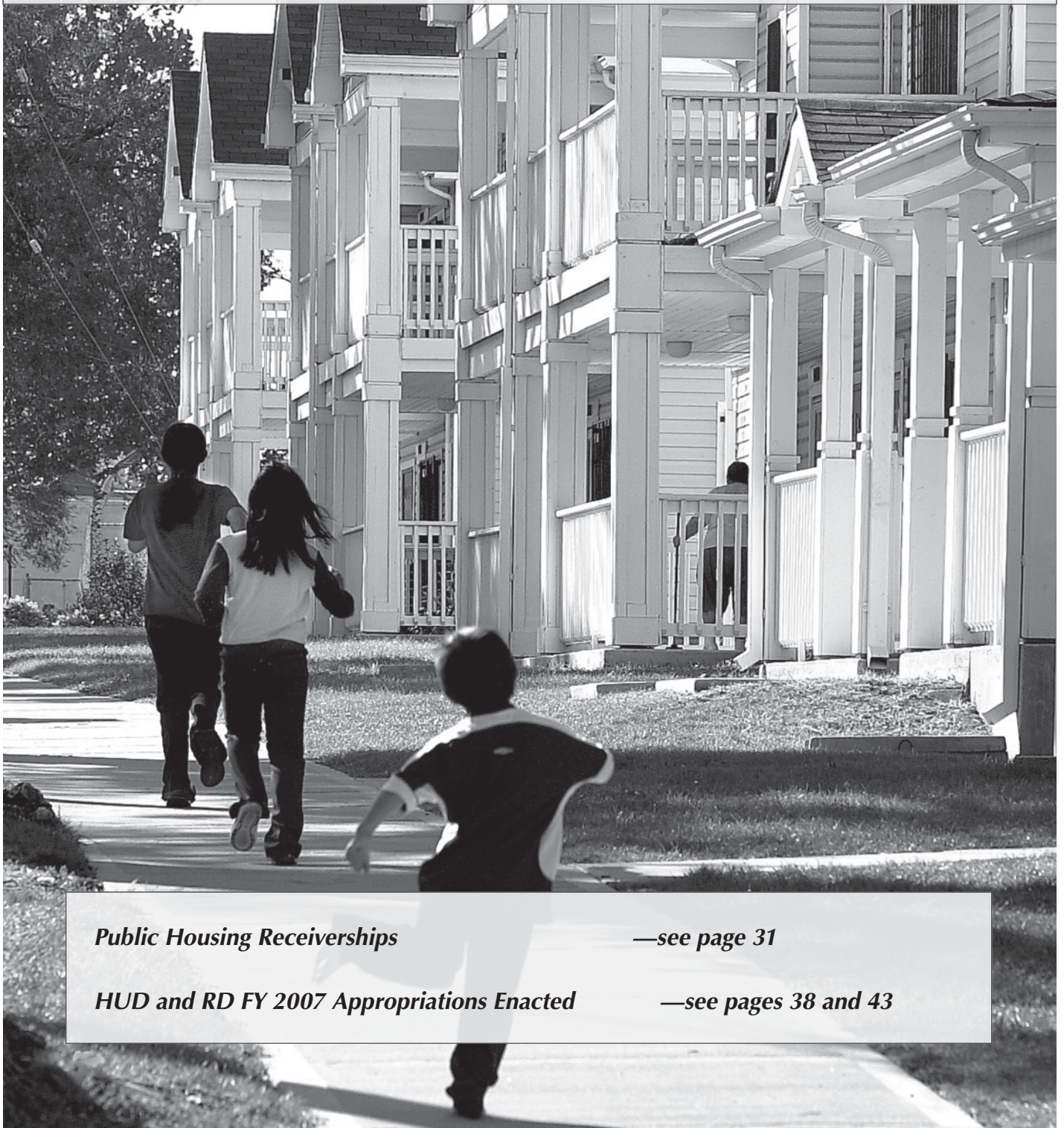


advancing housing justice

Housing Law Bulletin

Volume 37 • February 2007

Published by the National Housing Law Project



Public Housing Receiverships

—see page 31

HUD and RD FY 2007 Appropriations Enacted


—see pages 38 and 43


 UPDATED


 3RD
EDITION


 NHLP's
**HUD
 Housing Programs:
 Tenants' Rights**

 EXPANDED


 Originally published in 1981, NHLP's Green Book has proven indispensable to housing law practitioners across the country.

Dubbed the Green Book by users across the country, *HUD Housing Programs: Tenants' Rights* is a comprehensive, issue-oriented guide to the federal housing programs. Last published in 1994, the 3rd Edition has been reworked, updated and expanded to cover recent sweeping changes from Congress, HUD and the courts.

It is the only book that explains and analyzes all applicable laws central to effectively representing tenants assisted under the HUD programs. In a single volume, it provides a practical road map through the complexity of the federal housing programs, including public housing, subsidized rental housing, vouchers, section 8 homeownership, and others. Evictions, resident participation, loss of units and other key issues are covered in depth as well.

Meticulously researched and clearly written by expert NHLP staff attorneys and outside contributors, the Green Book is a unique and invaluable resource for anyone working within the scope of the federal housing programs:

- attorneys and paralegals
- fair housing and other public interest advocates
- HUD offices
- public housing authorities
- nonprofit housing and community organizations
- private owners and managers
- local and state housing agencies
- housing policy organizations and policymakers
- clinical law programs and law libraries

The 3rd Edition contains the most recent applicable authorities for virtually all common problems encountered in a federal housing landlord-tenant relationship, including state and federal cases, federal statutes and regulations, and HUD Handbooks, Notices and opinion letters.

HUD Housing Programs: Tenants' Rights is available now. See the **Publication Order Form** for prices.

CD ROM

The 3rd Edition of the Green Book features a complimentary CD-ROM that contains a searchable table of more than 2,000 cases. It also contains full PDF texts of selected hard-to-find documents referenced in the manual, including HUD circulars, notices, forms, memoranda and unreported court opinions.


 SPECIAL
 FEATURE

AN ESSENTIAL RESOURCE FROM THE NATIONAL HOUSING LAW PROJECT

Housing Law Bulletin

Volume 37 • February 2007

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

727 Fifteenth Street, N.W., 6th Fl. • Washington, D.C. 20005

www.nhlp.org • nhlp@nhlp.org

Table of Contents

	Page
Public Housing Receiverships and the Kansas City Experience.....	31
HUD Appropriations for Fiscal Year 2007.....	38
HUD Releases "Final" Reoccupancy Policies for Hurricane-Impacted Areas.....	41
FY 2007 Rural Development Housing Program Funding.....	43
Recent Cases	44
Recent Housing-Related Regulations and Notices...	47
Announcements	
Publication List/Order Form.....	51

Cover: Guinotte Manor, a 219-unit family public housing development owned and operated by the Housing Authority of Kansas City, Missouri. The development, constructed with a HOPE VI grant, replaced a 419-unit development on the same site. An additional 200 public housing replacement units, consisting of single-family units and duplexes, were constructed in non-racially and economically impacted areas of Kansas City. Photo courtesy of the Housing Authority of Kansas City.

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

A one-year subscription to the *Bulletin* is \$175.

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

Public Housing Receiverships and the Kansas City Experience

By Julie E. Levin* and Murray S. Levin**

When a public housing authority (PHA) has continuing severe problems, the appointment of a receiver can be an effective remedial action. A receivership is an extraordinary remedy by which a court appoints a third party to manage the property and affairs of a person, business, or organization. There are two approaches to establishing a public housing receivership—a receivership initiated by the Department of Housing and Urban Development (HUD), which is known as an administrative receivership, and a privately initiated judicial receivership. This article will discuss the process and prospects for a receivership remedy in the context of public housing, and will recount the public housing receivership experience in Kansas City, Missouri.

Administrative Receiverships

A "troubled status" rating (i.e. less than sixty out of 100) under the Public Housing Assessment System¹ (PHAS) can result in the initiation by HUD of a receivership.² This can involve HUD petitioning a federal district court or state court to appoint a receiver. Additionally, HUD is statutorily authorized to undertake a variety of interventions that are tantamount to a receivership and are sometimes referred to as administrative receiverships.³ HUD may directly arrange for another PHA or a private housing management agent to manage all or part of the properties and programs of a troubled PHA.⁴ Or HUD, itself, can simply take possession and control of a

*Managing Attorney, Kansas City Central Office of Legal Aid of Western Missouri. B.A., University of Wisconsin, 1972; J.D., University of Kansas, 1977. Ms. Levin was and is counsel for the plaintiffs in the cases against the Housing Authority of Kansas City mentioned in this article.

**Professor, University of Kansas School of Business. B.A., University of Wisconsin, 1972; M.B.A., University of Wisconsin, 1974; J.D., University of Kansas, 1977.

¹See 24 C.F.R. § 902.1 et seq. (2006). For a summary explanation of the PHAS system and the associated PHAS performance designations, and a comparison and list of PHAS scores for the largest public housing authorities, see Julie E. Levin and Murray S. Levin, *Tinsley vs. Kemp—A Case History: How The Housing Authority of Kansas City, Missouri Evolved From A "Troubled" Housing Authority To A "High Performer,"* 36 STETSON L. REV. 77, 99-105, 115-118 (2006).

²42 U.S.C.S. § 1437d(j)(3)(A)(ii) (2006).

³For a description of the experiences of eleven housing authorities placed under administrative receiverships see United States General Accounting Office, PUBLIC HOUSING: INFORMATION ON RECEIVERSHIPS AT PUBLIC HOUSING AUTHORITIES (February 2003) at 23-28, available at www.gao.gov/cgi-bin/getrpt?GAO-03-363. For a summary of that report see NHLP, *GAO Releases Information on Receiverships at Public Housing Authorities*, 33 HOUS. L. BULL. 399 (Sept. 2003).

⁴42 U.S.C.S. § 1437d(j)(3)(A)(i) (2006). See also 24 C.F.R. § 902.83 (2006).

PHA's property and programs.⁵ There is also authority for instigation of these HUD interventions by public housing residents, who may petition the HUD Secretary to take such actions with respect to any troubled PHA.⁶ Such a petition must be made by at least 20% of the PHA's residents or by an organization or organizations of residents whose membership must equal at least 20% of the PHA's residents.⁷

Typically, HUD will first allow a troubled PHA an opportunity to remedy its deficiencies. This involves creation of a remedial plan established in a Memorandum of Agreement (MOA) between HUD and the PHA, which sets forth strategies and performance targets.⁸ The PHA is expected to improve its PHAS score by at least 50% of the difference between its score and a score of sixty, within one year's time.⁹ The PHA is expected to raise its score above the troubled status threshold of sixty by the end of the second year.¹⁰ If a PHA fails to execute the MOA in a timely manner, fails to achieve the required substantial improvement, or is otherwise in "substantial default,"¹¹ HUD would then proceed with a receivership or other similar takeover of a PHA's properties or programs.¹²

Private Judicial Receiverships

The privately sought remedy of receivership has its origins in courts of equity. The judicial power to appoint a receiver is ancillary to the exercise of jurisdiction in a pending case. A receiver is appointed to aid and facilitate the work of the court. The purpose of the appointment is

⁵42 U.S.C.S. § 1437d(j)(3)(A)(iv) (2006). See also 24 C.F.R. § 902.83 (2006).

⁶42 U.S.C.S. § 1437d(j)(3)(A) (2006).

⁷24 C.F.R. § 902.85 (2006).

⁸*Id.* § 902.75(b).

⁹42 U.S.C.S. § 1437d(j)(3)(B)(ii)(I) (2006). See also 24 C.F.R. § 902.75(d)(1) (2006).

¹⁰42 U.S.C.S. § 1437d(j)(3)(B)(ii)(III) (2006). See also 24 C.F.R. § 902.75(d)(2) (2006).

¹¹See 24 C.F.R. § 902.79 (2006).

¹²*Id.* §§ 902.75(g) and 902.77(a)(2). 42 U.S.C. § 1437d(j)(3)(B)(ii)(III) (2000) states if a troubled PHA fails to achieve the required substantial improvement

the Secretary shall—(aa) in the case of a troubled public housing agency with 1,250 or more units, petition for the appointment of a receiver . . . ; or (bb) in the case of a troubled public housing agency with fewer than 1,250 units, either petition for the appointment of a receiver . . . , or take possession of the public housing agency (including all or part of any project or program of the agency) . . . and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).

(emphasis added). The next sentence of this statutory provision, however, states: "This subparagraph shall not be construed to limit the courses of action available to the Secretary under subparagraph (A)." Thus, despite the use of the word "shall," the other HUD directed interventions (see *supra* notes 4 and 5 and accompanying text) remain as available actions.

to take charge of and preserve property that is the subject of pending litigation. Receivership has generally been viewed as a harsh remedy. Yet, it can be used within the discretion of the court to preserve property and insure justice.¹³

Federal Rules of Civil Procedure Rule 66 allows the appointment of receivers "in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district courts." State civil procedure rules are often patterned after this federal rule, though some provide more detail regarding matters such as circumstances under which a receivership is appropriate and receiver responsibilities and powers.¹⁴

Courts have used receiverships in the context of reforming public institutions, such as schools,¹⁵ prisons,¹⁶ and PHAs.¹⁷ Receiverships are typically the culmination of many other failed remedial efforts, often including contempt citations, and thus have been characterized as a mechanism of last resort.¹⁸ In determining whether other remedies are inadequate and a receivership is appropriate, judges may consider a number of factors. These include: (1) "whether there were repeated failures to comply with the Court's orders;" (2) whether further efforts to secure compliance "would lead only to 'confrontation and delay;'" (3) whether leadership is available which can "turn the tide within a reasonable time period;" (4) "whether there was bad faith;" (5) "whether resources are being wasted;" and (6) "whether a receiver can provide a quick and efficient remedy."¹⁹ Since receivership is a discretionary equitable remedy, the success in seeking to have a court place a PHA in receivership will depend not only on the degree of mismanagement and the severity of a potential loss of property, but also, as a practical matter, on things such as the extent to which PHA officials offend the judge and the patience of the judge.

¹³See 13 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 66.03 [3] at 66-69 (3d ed. 2006).

¹⁴See e.g., Rule 68.02, Missouri Rules of Civil Procedure; Rule 66, Utah Rules of Civil Procedure.

¹⁵E.g., *Turner v. Goolsby*, 255 F. Supp. 724 (S.D. Ga. 1966).

¹⁶E.g., *Newman v. State of Ala.*, 466 F. Supp. 628 (M. D. Ala. 1979).

¹⁷E.g. *Velez v. Cisneros*, 850 F.Supp. 1257, 1278 (E.D.Pa. 1994); *Gautreaux v. Pierce*, 1987 U.S. Dist. LEXIS 6269 (N.D. Ill. July 9, 1987); *Pearson v. Kelly*, No. 94-CA-14030, 122 Daily Wash. L. Rptr. 1837 & 1849 (D.C. Super. Ct. Aug 18, 1994); *Perez v. Boston Hous. Auth.*, 400 N.E.2d 1231 (Mass. 1980).

¹⁸See e.g., *Dixon v. Barry*, 967 F. Supp. 535 (D.D.C. 1997); *Shaw v. Allen*, 771 F.Supp. 760 (S.D. W. Va. 1990); *District of Columbia v. Jerry M.*, 738 A.2d 1206, 1214 (D.C. 1999)(reversing a receivership order and explaining it was essential for the trial court to consider not just past performance but also other factors such as the potential for a newly appointed administrator to "turn the tide").

¹⁹*Dixon*, at 967 F. Supp. at 550 (citing *Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of Dep't of Mental Retardation*, 424 Mass. 430, 677 N.E.2d 127, 148-49 (1997), and *Morgan v. McDonough*, 540 F.2d 527, 533 (1st Cir. 1976).

The very few examples of judicial receiverships of PHAs suggest it may take a considerable time before a judge will be willing to impose this remedy. After approximately twenty years of litigation, the Illinois federal court ordered a partial receivership over development of the Chicago Housing Authority's scattered-site housing.²⁰ During this protracted litigation, the court twice previously had denied motions for appointment of a receiver.²¹ The District of Columbia Housing Authority was placed in receivership two years after tenants filed a lawsuit. This, however, followed approximately thirty years of efforts by tenant protesters and housing advocates to effectuate meaningful change for that distressed PHA.²² The Boston Housing Authority was placed in receivership four years after the filing of the operative lawsuit. This process involved repeated earlier denials of motions for appointment of a receiver.²³ Four years of litigation also transpired prior to the judicial appointment of a receiver for the Chester Pennsylvania Housing Authority. In the meantime there was a HUD takeover of the Chester properties, which failed to achieve targeted improvements. Ultimately, HUD, with the plaintiffs' consent, successfully petitioned the court for the appointment of a receiver.²⁴ The Kansas City Missouri Housing Authority receivership, which is described in the remainder of this article, was imposed four and one-half years after the commencement of litigation.

Critics of the appointment of a receiver for purposes of institutional reform often decry judicial activism. One might therefore anticipate that conservative judges would be less inclined to appoint a receiver in such contexts. Yet, conservative judges may be more inclined to seek a private enterprise fix for a quasi-governmental institution that has proven to be totally ineffective. In contrast to other public institution receiverships, many of which have involved reallocations of power within state or local governments,²⁵ the PHA judicial receiverships have involved the appointment of private, for-profit individuals or entities as receivers.

²⁰Gautreaux v. Pierce, Order of Aug. 14, 1987 (described in Gautreaux v. Chicago Hous. Auth., 178 F.3d 951, 953 (7th Cir. 1999)).

²¹See Gautreaux v. Landrieu, 498 F. Supp. 1072, 1074 (N.D. Ill. 1980); Gautreaux v. Chicago Hous. Auth., No. 66-C1459 (N.D. Ill. filed Jan. 13, 1984).

²²See Lynn Cunningham & Dennis Foley, *Receivership as a Remedy for Poor Agency Performance*, 29 NAT'L CLEARINGHOUSE REV. 1034 (1996)(providing a case study of the protracted efforts to reform and ultimately have a receiver take control of the District of Columbia Housing Authority).

²³See *Perez*, 400 N.E.2d at 1236-1251.

²⁴See *Velez v. Martinez*, Memorandum and Order, No. 90-6449 (E.D. Pa. June 12, 2002) (available at <http://www.paed.uscourts.gov/documents/opinions/02D0446P.pdf>).

²⁵E.g., *Newman*, 466 F. Supp. at 635 (appointing the state governor as receiver for a prison system); *Turner*, 255 F. Supp. at 730 (appointing the state superintendent of schools as the receiver for a county school district).

The *Tinsley v. Kemp* Kansas City, Missouri PHA Receivership

The Housing Authority of Kansas City, Missouri (HAKC) is now operating in its thirteenth year of a judicial receivership. It is anticipated that this receivership will end in the near future. The remainder of this article will chronicle noteworthy features of this experience.

Intolerable Housing Conditions

There was a dramatic decline in the condition of public housing in Kansas City, Missouri during the 1980s. This prompted several public housing residents of one of HAKC's larger developments to seek assistance from Legal Aid of Western Missouri. These residents described, and follow-up inspections revealed, horrible conditions of rat, mice, and cockroach infestation; other unsanitary conditions; dangerous deterioration of plumbing and electrical systems; and serious physical deterioration of buildings. There was also a pervasive environment of threatening criminal activity. Many residents would not allow their children to play outside during the daytime, and adults were fearful when leaving their units at night. There were numerous complaints that HAKC routinely ignored requests for repairs. Inspections revealed that nearly half of the units were officially vacant. Many of these units were neither locked nor otherwise secured and had been stripped of window frames, appliances, cabinets and countertops, and therefore, could not be leased to tenants. Yet, these out-of-commission units were not truly unoccupied, as there was substantial evidence of unauthorized use. Tenants complained of vagrant occupants, and Legal Aid inspection revealed considerable evidence of ongoing use—clothing, mattresses, Sterno cans, and drug paraphernalia. The common areas of the development were littered with trash, human waste, and broken glass. This degradation set the stage for a lawsuit claiming that HAKC had failed its contractual duty with HUD to provide safe, decent and sanitary housing in compliance with housing quality standards.²⁶

The Class Action Lawsuit

The *Tinsley v. Kemp*²⁷ class action lawsuit was filed in January 1989.²⁸ *Tinsley* was an action for both declaratory and injunctive relief on behalf of all of the residents of one of HAKC's larger housing developments and all applicants for public housing operated by HAKC who had been placed on a waiting list. The defendants were

²⁶See 42 U.S.C.S. §§ 1437a(b)(1) and 1437d(f)(1) & (l)(3)(2006).

²⁷750 F.Supp. 1001 (W.D. 1990).

²⁸Although initially filed as a class action, in 1996 Congress prohibited LSC funded attorneys from participating in any class actions. Pub. L. No. 104-134, 110 Stat. 1321 (1996); 45 C.F.R. § 1617.3 (2006). Plaintiffs' counsel subsequently filed a motion to decertify the class and to add the Public Housing Resident Council as a party. This motion was granted and the case proceeded with the same legal representation.

HAKC and HUD. The complaint raised multiple claims based on 42 U.S.C. §§ 1983 and 1437p, Title VIII of the Civil Rights Act of 1968,²⁹ contract law, and the Administrative Procedure Act.³⁰ The plaintiffs sought an order requiring HAKC to immediately repair and make all the units at the subject development suitable for occupation, and to enjoin HAKC from allowing further deterioration and de facto demolition.

The de facto demolition claim was based on the premise that HAKC violated 42 U.S.C. § 1437p, which provides that housing authorities may not demolish or dispose of a public housing project or unit without prior approval from HUD.

The de facto demolition claim was based on the premise that HAKC violated 42 U.S.C. § 1437p, which provides that housing authorities may not demolish or dispose of a public housing project or unit without prior approval from HUD. Approval for demolition is appropriate only if a development is obsolete and unsuitable for housing, and no reasonable program of modifications is feasible to rehabilitate the development.³¹ Such an application for demolition also is supposed to be developed with the consultation of tenants.³² The *Tinsley* argument was that HAKC was circumventing statutory requirements for demolition by allowing the development to become obsolete and, in effect, demolishing the subject housing development.

Both HAKC and HUD filed motions to dismiss the lawsuit. United States Federal District Judge Dean Whipple denied these motions, and despite the fact that the de facto demolition claim was a novel theory, recognized in § 1437p an implied private cause of action for de facto demolition.³³

The Consent Decree and Compliance Problems

Following the denial of the motions to dismiss, the defendants had more incentive to negotiate a settlement, and in 1991 the court approved a consent decree. The decree provided for the complete renovation of the subject development and the desegregation of the city's public housing. HUD agreed to provide an estimated \$11 million of funding to facilitate the renovation. The architectural

design was to make the subject development viable for at least another twenty years, and HAKC was forbidden from taking any action to demolish the development until after 2011. The decree also provided that HAKC would take steps to improve its image in the community and work toward erasing the stigma associated with living in public housing.

The consent decree provided a number of actions to facilitate desegregation. HAKC was to provide all applicants with notice of other affordable housing opportunities in the metropolitan area. To prevent HAKC from steering non-minorities into the Section 8 program and minorities into public housing, all applicants for public housing automatically were to be placed on the Section 8 waiting list. HAKC was required to adopt an affirmative marketing plan that included outreach to non-racially and non-economically impacted areas, and to develop and distribute brochures and posters advertising the availability of public housing and its advantages. All Section 8 participants were to be explicitly advised that their certificates and vouchers were portable.

To facilitate compliance monitoring, the consent decree imposed extensive reporting requirements on HAKC. Also, *Tinsley* plaintiffs' counsel was provided the right to inspect the units and developments upon reasonable notice to HAKC.

Unfortunately, in the months that followed, conditions failed to improve—repair needs remained unfulfilled, the tenant application procedures specified in the consent decree were not being followed, and the number of vacancies actually increased. In the meantime, HUD officially declared HAKC a “troubled” agency, and refused to provide the agreed-upon renovation money. In May of 1992, HUD proceeded with a takeover of HAKC. Although HUD did then agree to release funds for the planned renovations, there were no real signs of progress toward achieving the obligations of the consent decree. Consequently, plaintiffs filed a contempt motion. At a hearing in June of 1992, the court found HUD and HAKC in contempt of court for their violations of the *Tinsley* consent decree. The Court gave HAKC and HUD six months to comply with certain specified requirements of the consent decree.

Meanwhile, conditions in another of HAKC's large developments worsened significantly, exhibiting essentially the same problems that were complained of in *Tinsley* (e.g. 55% vacancy, vacant units unsecured). Counsel for the *Tinsley* plaintiffs then filed a second, similar class action lawsuit. This case was settled in February of 1993, with HUD and HAKC agreeing to fully modernize this development, including a HUD promise of an additional \$10.5 million.

In May of 1993, HUD removed itself from direct oversight of HAKC's properties and authorized the city of Kansas City to take control. Yet, enormous problems remained, and the prospects for improvement were not

²⁹42 U.S.C.S. § 3604(b)(2006). Ninety-nine percent of the residents of the subject property were African-American. Hence, plaintiffs claimed there was a disparate effect on a minority population.

³⁰5 U.S.C.A. § 702 (2006).

³¹42 U.S.C.A. § 1437p(a)(1)(2006).

³²*Id.* § 1437p(b)(2).

³³*Tinsley*, 750 F.Supp. at 1009.

good. HAKC seemed ill-equipped to administer a complex redevelopment, vacancies were rising at all of the HAKC properties, and conditions continued to deteriorate. This led to the filing of a second contempt motion. At the hearing on this motion in July of 1993, plaintiffs argued that HAKC had failed to comply with most aspects of the consent decree and was not able to manage its properties, which were rapidly deteriorating, and therefore, the court should appoint a receiver. The court granted this request, and HAKC has been in receivership since that time.

The Receivership and Unprecedented Tenant Involvement

During the initial stage of the receivership, the court appointed a special master and a temporary executive director. In 1994 the court launched a national search for a permanent receiver who would bring management and housing expertise to HAKC. The court appointed an advisory committee, consisting of the special master, community leaders, public housing resident leaders, legal counsel for HUD, and the *Tinsley* plaintiffs' attorney. The advisory committee recommended TAG Associates, a Massachusetts firm specializing in services for public and subsidized housing, and in September of 1994, the court appointed TAG as the receiver.

The court gave the receiver broad powers to manage and operate all aspects of HAKC's properties. The receiver also was directed to fulfill all of the obligations required of HAKC under the consent decrees that were in effect at that time. The receiver was to submit a twelve-month plan and budget detailing the manner by which the duties would be fulfilled. The receiver was to submit monthly reports to the parties and the court listing significant actions taken by the receiver. The court granted the receiver immunity similar to that of officers and agents of the court. HAKC and HUD were to indemnify the receiver for all liabilities, damages, and losses incurred in defending any lawsuit or administrative proceeding in which the receiver and/or one or more of its employees were named as a party. The receivership order³⁴ was broad, directing the preservation of HAKC resources, and interpreted by the parties as essentially calling for the renovation of all of HAKC's properties. The *Tinsley* plaintiffs' lawyer took the position that because the receivership order mandated the preservation of HAKC's assets, whenever a unit was demolished or sold, it should be replaced on a one-for-one basis. The court was receptive to this position. Federal law did not require such replacement, as a prior one-for-one replacement requirement was temporarily repealed in 1995³⁵ and permanently repealed in 1998.³⁶

Shortly after HAKC was placed in receivership, an umbrella tenant organization, consisting of resident leaders

from all of the HAKC developments, was formed. This organization, named the Public Housing Resident Council (PHRC), worked with plaintiffs' counsel to monitor HAKC policies, procedures, and operations, and all of the renovation of the properties. During the first several years of the receivership, the PHRC met with the receiver and/or the HAKC executive director (who had been hired by the receiver) on a weekly basis. After there were noticeable improvements in the properties and HAKC operations, these meetings were held every two weeks and, later, once a month.

Resident involvement has encouraged valuable input from those who were in the best position to identify security, safety and habitability issues.

The receiver has worked very cooperatively with PHRC to rehabilitate HAKC. This resident involvement has encouraged valuable input from those who were in the best position to identify security, safety and habitability issues. It has also served to dissipate the adversarial and hostile atmosphere that existed between HAKC and many of its tenants. Under receivership, the PHRC was able to negotiate numerous policies and procedures with HAKC that were far more resident-friendly than those of most PHAs. For example, while many PHAs adopted a \$50 minimum rent for public housing residents whether they had the resources or not, HAKC agreed to have a zero minimum rent for the most needy residents. While most PHAs evicted residents for criminal or drug activity of a household member or a guest regardless of the resident's knowledge, the PHRC negotiated standard lease terms with HAKC that would permit eviction of a resident *only if* the resident knew or should have known of the drug or criminal activity of the household member or guest. Thus, the HAKC lease extends protection to tenants that is not afforded by the decision of *HUD v. Rucker*.³⁷ Also, HAKC entered into a Resident Participation Plan to ensure resident involvement throughout all HAKC planning, programming, and evaluation. The Resident Participation Plan guaranteed resident input into resident screening, relocation, security, youth programming, health programs, economic development programs, resident organizational development, and contracts between HAKC and private parties and social services. It also guaranteed the right for residents to interview prospective HAKC employees who would be working directly with residents.³⁸

³⁴September 6, 1994, *Tinsley* Order.

³⁵See Pub. L. No. 104-19 § 1002(a), 109 Stat. 194, 235 (July 27, 1995).

³⁶See 42 U.S.C. § 1437p (West 2003), Pub. L. No. 105-276, Tit. V, § 531, 112 Stat. 2461, 2570 (Oct. 21, 1998).

³⁷535 U.S. 125 (2002) (holding that a tenant can be evicted due to the drug or criminal activity of a guest or household member even if the tenant is innocent of any wrongdoing).

³⁸HAKC Resident Participation Plan, September 9, 1998.

The Result

Kansas City public housing has prospered under receivership. During this period, HAKC received over \$120 million of new funding, and every unit of HAKC housing has been either renovated or newly constructed. An additional achievement includes a much-improved Resident Services Department, which has, among other things, developed computer labs, money management classes, recreational activities, and programs to promote family self-sufficiency.

Some of the financial support came through successful applications by the receiver for HOPE VI grants. The cooperative relationship that had been created by the residents and HAKC under the receivership facilitated the productive negotiation of relocation plans and re-housing agreements for each development that received HOPE VI funding. The re-housing agreements guaranteed the right for residents to return to the newly renovated or constructed public housing units as long as they had remained residents in good standing.³⁹ Additionally, residents played an active role in every aspect of developing the new units. At each HOPE VI development, committees of residents were established to provide input into relocation, re-housing, neighborhood revitalization, architectural design, interior design, resident and social service programs, capacity building of the tenant association and Section 3 job opportunities for residents to gain employment in the construction of the housing. Unlike the experience in many other cities, HOPE VI undertakings in Kansas City did not result in a diminished number of low-income public housing units.

In 2001, a Post-Receivership Governance Advisory Committee was created to formulate a plan to transition HAKC out of receivership. This advisory committee included representatives from HAKC, HUD, the PHRC, *Tinsley* plaintiffs' counsel, and the City. This committee established qualifications and standards for members of the HAKC Board of Commissioners. It also effectively recommended legislation to solidify prospects for success. For example, Missouri law now requires the future use of a similar independent nominating committee to provide names of prospective commissioners to the mayor.⁴⁰ Also, Missouri law now authorizes payment of a stipend to support the training of commissioners and to defray the cost of active participation on the board.⁴¹

The advisory committee interviewed numerous candidates for the board and made recommendations to the mayor. In 2002, the mayor appointed six commissioners from among the recommended candidates, and the public housing resident population elected one tenant representative commissioner.

This new HAKC board represents a marked contrast with the past. Previously, appointment to the HAKC board had been viewed by many as a political favor, and commissioners were notorious for their efforts to help friends get contracts and to secure jobs for friends and family. The new board, through the oversight of the court, has been insulated from political influence. The new statute provisions⁴² will hopefully serve to curb reversion to a system of abusive patronage. While this new HAKC board of commissioners has acted independently, the receiver has retained the power to overturn decisions of the board during this transition period. Thus far, this has not happened.

While receivership was not a quick remedy, it has been effective. HAKC has flourished, progressing from a housing authority with a HUD rating of less than eighteen (on a 100-point scale) at its low point in 1993, to ratings in the low nineties during four of the last five years. At the start of the receivership, HAKC had an inventory of 1,836 dwelling units, of which approximately only half were habitable and occupied. Today HAKC has 1,899 units, with an average vacancy rate of less than 2%. HAKC increased its inventory of scattered site units located in non-racially and non-economically impacted areas by over 350. Plus HAKC, working in collaboration with private owners, has developed an additional 460 low-income housing tax credit units. HAKC is on schedule to put an additional twenty-one public housing units into service by early 2007. Similar success is reflected in other readily measurable ways, such as the average number of days to complete work orders (improved reduction from twenty to 2.27 days), average number of days to turn a unit from vacant to occupied (improvement from 263 to thirty days), and percentage of resident children in non-racially and non-economically impacted schools (improvement from 4% to 22%).

Conclusion

Receivership is an extreme remedy that can be utilized in an effort to revive a failed PHA. The Kansas City, Missouri experience is illustrative of this process. In the decade preceding the Kansas City receivership, HAKC had twenty-one executive directors.⁴³ Nine of these served during the three-year period following the initial *Tinsley* Consent Decree.⁴⁴ Such chaos demands radical change. Receivership enables the replacement of a disorganized and incompetent administration with experienced and skilled management and judicial oversight. ■

³⁹An excerpt from the Guinotte Manor Rehousing Agreement is found on page 37.

⁴⁰§ 99.134(2) R.S.Mo. (2006).

⁴¹*Id.* § 99.134(7).

⁴²*See id.* § 99.134.

⁴³*See* Ruth E. Igoe, *The Case for Change*, Kan. City Star Mag., May 21, 2000, at 15.

⁴⁴*See* *Around Kansas City*, Kan. City Star, June 30, 1994, at C2.

Kansas City Rehousing Agreement

The following is an excerpt of the Kansas City, Missouri, Rehousing Agreement negotiated between the residents of Guinotte Manor and the Kansas City Housing Authority. It includes strict guidelines enforcing tenants' rights to return to public housing and limiting the housing authority's ability to screen tenants.

Guarantee of Housing for all Tenants of Guinotte Manor

- A. The Housing Authority of Kansas City (HAKC) guarantees, agrees and promises that in accordance with the terms of this Agreement, each Tenant will be guaranteed Permanent Transfer to a Suitable Unit in the rehabilitated Guinotte Manor upon completion of its rehabilitation, except if any of the following circumstances exist.
1. In the event there has been a final court adjudication that a Tenant has breached a condition of the HAKC lease, the Tenant will forfeit the guarantee of Permanent Transfer. When an eviction action has been initiated against a Tenant, a Unit at the rehabilitated Guinotte Manor will be kept open until such times as a final judgement is entered. If the Tenant prevails, the Tenant will retain the guarantee of Permanent Transfer. If the HAKC prevails, a Unit at the rehabilitated Guinotte Manor will not be kept open. If appealed, and the Tenant prevails, the Tenant will receive a Permanent Transfer to the next available Suitable Unit.
- Where a Tenant and the HAKC have reached an Agreement for Judgement in court which provides that a Tenant may continue to occupy the premises for an indefinite period after a probationary period, under a repayment plan or other conditional arrangement, the Tenant will retain the guarantee of Permanent Transfer, unless court action is initiated for a breach of the Agreement prior to Permanent Transfer. A Unit at the rehabilitated Guinotte Manor will be kept open until a court determines that the Agreement has been violated. If a court determines that execution should issue, the Tenant's guarantee of Permanent Transfer will be forfeited, otherwise, the Tenant will retain the guarantee.
2. If a Tenant who has been Temporarily Transferred becomes over income for residency at Guinotte Manor but not for another program, the HAKC will transfer the Tenant to the program for which she/he is eligible.
- B. The HAKC will Permanently Transfer the Tenant to the area where the Tenant previously resided or the nearest adjacent area, except where the physical constraints of the newly designed Guinotte Manor make it impossible to do so. If more than one tenant wishes to relocate to the same Unit, the selection of the tenant will be based on seniority (length of tenancy). In that event that both Tenants have the same seniority, the tenant with the best rent payment history will be selected for the desired Unit.
- C. All disputes arising under this Agreement shall be subject to the Grievance Procedure.
- D. All Tenants who are entitled to a guarantee of Permanent Transfer under this Agreement will be offered a Suitable Unit ahead of and in advance of any other person who may be eligible.
- E. No tenant shall be denied any Transfer because of an increase or decrease in household income provided that the Tenant's income remains within the allowable guidelines for residency in Guinotte Manor and agrees to pay the appropriate rent as determined by federal public housing regulations applicable to Guinotte Manor.
- F. A tenant whose family composition is too large for a Unit in Guinotte Manor will be relocated by HAKC to an appropriately sized public housing or section 8 unit. However, the tenant will be given priority to be relocated to a public housing scattered site unit that was constructed with funds from HOPE VI. If the Tenant household increases beyond [the] number of members reported to HAKC prior to June 30, 1996 then the Tenant shall not be guaranteed a Permanent Transfer unless such increase is the result of birth, adoption, marriage, marital reconciliation, the legal custody or guardianship of a child(ren) or return of the Tenant's child(ren) to the household. A tenant whose household has increased for other reasons may reduce the total number of household members during the forty-five (45) day notice period and retain the guarantee of Permanent Transfer.

HUD Appropriations for Fiscal Year 2007

On February 15, 2007, nearly five months into the current federal fiscal year, the President signed into law an appropriations act for Fiscal Year (FY) 2007 that included funding for the Department of Housing and Urban Development (HUD).¹ The Republican-controlled 109th Congress, which adjourned in December of 2006, was unable to pass appropriations bills for all federal government departments, except the departments of Defense and Homeland Security. The 110th Congress, which convened in January under the Democrats' control, had to wrap up the unfinished work of the 109th Congress by passing an appropriations bill for the remaining federal departments. It began with the premise that agencies should be funded at the FY 2006 level, unless doing so would have a "cataclysmic" impact on existing programs. Significantly, several low-income housing programs—Section 8, public housing operating subsidies and homeless assistance grants—were among the few federal programs that were funded at levels above those of FY 2006. In addition, the formula for funding the voucher program was changed in a significant manner by the FY 2007 appropriations.

Voucher Program

The final appropriation for 2007 provides a total of \$14.436 billion for voucher renewals, which is a \$487 million increase over the FY 2006 funding level. This increased funding will enable housing authorities to maintain all vouchers that were in use in 2006. In order to accommodate the fact that the voucher program funding is based on a calendar rather than fiscal year, the increase in voucher funding is retroactive to January 1, 2007. Since HUD had already announced and distributed some funds for this calendar year based on 2006 funding levels, housing authorities will actually receive a retroactive increase in voucher funding.

A total of \$100 million of this renewal funding amount is set aside for adjustments in funding for housing authorities that have increased renewal costs because of unforeseen circumstances, for voucher portability, or a loss in total number of units because of the funding formula change.

The new voucher funding formula allocates funds based upon voucher leasing costs "in the most recent 12 months" and allows for adjustments based upon the housing authority's project-based voucher commitments. The formula retains the bar against using federal dollars to support more vouchers than a housing agency's authorized

number of vouchers, i.e., the cap.² The new twelve-month base is far more equitable than the old base, which was based on a three-month snapshot period from May through July 2004, adjusted for inflation.³ According to the Center on Budget and Policy Priorities (CBPP) and the Public Housing Authorities Directors Association, the funding provided by the FY 2007 appropriations and new funding formula will result in housing agencies receiving an approximate 3-4% increase in funding over that which they actually received in 2006, adjusted for inflation.

Advocates are urged take immediate steps to ensure that housing agencies fully use their maximum number of authorized vouchers. Following the 2004 implementation of the voucher funding formula, some housing agencies were not aggressive in using the maximum number of vouchers because they feared future funding cuts and suffered no consequences for under-utilization. It is now substantially more likely that future voucher funding will be based upon the number of vouchers in use. Thus, failure to use the maximum allowable number of vouchers will have an impact on the amount of funds that a housing agency receives in future years.

As the new voucher formula is also based upon the cost of vouchers, housing agencies should review their policies affecting the cost of vouchers. In particular, they should review policies that have restricted housing choice, have interfered with the ability of special needs families or others to lease a particular unit, or increased the percentages of income families paid for rent. The purpose of the review should be to determine if the objectives of the program are being fulfilled with the least harm to participants.

For example, the payment standard should be reviewed to determine if it is adequate to allow participants to lease units at 30% of their adjusted income. Because the voucher program allows tenants to pay more than 30% of income for rent, housing authorities should review available data to determine the number and percentage of families paying more than 30% of income for rent and make adjustments in their payment standard when appropriate. In addition, housing agencies should review their files, or other available data, to determine if families are able to lease units of appropriate bedroom

²Housing authorities should be willing to share with advocates the number of authorized units and the average cost per unit. If that is not possible, advocates should make a formal request for those numbers and work with public officials locally to get the information. There is information on the CBPP website at www.cbpp.org on the authorized level and the average cost of a voucher for each housing authority. It is important for the community to know these numbers in order to assist in determining if the agency is using the maximum number of available vouchers.

³Because the funding formula is included in an appropriations act, it only applies to the funds appropriated by that appropriations act. If, however, the voucher authorization bill for this year includes the new funding formula, the new formula will become permanent and the base will become a rolling twelve-month base, which is recalculated each year. The likelihood of that occurring is significant because the President's FY 2008 budget states that the formula should be changed.

¹Pub. L. No. 110-5 (Feb. 15, 2007).

Fiscal Year 2008 Budget for Selected HUD Programs

<i>HUD Program (set asides indented)</i>	FY04 Enacted	FY05 Enacted	FY06 Enacted*	FY07 Request	FY07 House Passed	FY07 Senate Appropriations	FY07 Enacted
Tenant Based Rental Assistance	14,186	14,766	15,417	15,920	15,846	15,920	15,920
Tenant Protection Vouchers	205	163	178	149	149	149	178
Administrative Fees	1,235	1,200	1,238	1,281	1,138	1,271	1,238
Family Self Sufficiency Coordinators	48	46	47	47.5	47.5	47.5	47
Contract Renewals	12,893	13,463	13,949	14,436	14,506	14,436	14,436
Project Based Rental Assistance	4,792	5,298	5,037	5,676	5,476	5,675	5,976
Contract Renewals	4,692	5,195	4,890	5,526	5,326	5,526	5,829
Public Housing Capital Fund	2,695	2,579	2,439	2,178	2,178	2,460	2,439
Emergency/Disaster Grants	50	30	17	20	20	20	17
Resident Opportunities and Supportive Services (ROSS)	55	52.5	38	24	24	30	38
Public Housing Operating Fund	3,579	2,438	3,564	3,564	3,564	3,660	3,864
HOPE VI	149	143	99	-99	30	100	99
Native American Housing Block Grants	650	621	624	626	626	626	624
Native Hawaiian Housing Block Grants	9	9	9	6	9	9	9
Housing Opportunities for Persons with AIDS	295	282	286	300	300	295	286
Community Development Fund	4,921	4,671	4,178	3,032	4,200	4,215	3,772
CDBG Formula Grants	4,331	4,110	3,711	2,975	3,873	3,877	3,711
Self-Help Homeownership Opportunity Program	27	25	20	40	22	23	20
Economic Development Initiative Grants	276	262	307	0	250	250	0
Youthbuild	65	62	49	0	0	0	0
Brownfields Redevelopment	25	24	10	0	15	0	10
HOME Investment Partnership Program	2,006	1,900	1,733	1,917	1,917	1,941	1,733
HOME Formula Grants	1,859	1,789	1,690	1,816	1,828	1,916	1,690
American Dream Downpayment Initiative	87	50	25	100	0	25	25
Housing Assistance Counseling	40	42	42	--	42	40	42
Homeless Assistance Grants	1,260	1,241	1,327	1,536	1,536	1,511	1,442
Shelter Plus Care (renewals)	194	214	255	285	285	285	255
Samaritan Initiative	--	--	--	200	0	0	0
Rural Housing and Economic Development	25	24	17	0	0	20	17
Housing for the Elderly (Section 202)	774	741	735	545	747	750	735
Housing for Persons with Disabilities (Section 811)	249	238	237	119	240	240	237
Housing Counseling Assistance	--	--	--	45	--	--	--

*FY 06 numbers reflect an across-the-board cut of 1% imposed on all discretionary federal programs.

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

sizes in neighborhoods that are not economically and racially impacted. If not, the payment standard should be increased for those bedroom sized units or areas in the jurisdiction where the payment standards are too low. Other measures that were adopted in the past to achieve cost saving, such as elimination of the provision allowing separate bedrooms for children of opposite sex, and limitations on when a family can move, such as only allowing moves at the beginning of the month, should be reviewed to determine whether the policies were, and continue to be, effective, and to assess their impact on voucher participants and applicants. In addition, housing agencies should be advised that funds are available for portability and that there are no longer any reasons to reject families' portability requests.

To the extent that increasing voucher utilization will cost money, housing agencies should be encouraged to spend the money now to increase utilization. Many housing agencies have substantial reserves that could be used to increase utilization. As CBPP has stated, the best way to ensure increased funding in 2008 is to use the maximum possible number of vouchers in 2007.

Project-Based Section 8

The FY 2007 appropriations fund project-based Section 8 at \$5.98 billion, \$939 million above the FY 2006 level and \$455 million above the Administration's budget request for FY 2007. The increase was needed to allow HUD to renew expiring project-based Section 8 contracts. HUD originally provided inadequate information to Congress on the need to renew project-based funding. Additional information established the need for an increase in the funding levels.

Public Housing Operating Fund

Congress also increased funding for the public housing operating fund by \$300 million for a total of \$3.864 billion. This increase is based upon the fact that, in FY 2006, housing agencies incurred \$287 million of additional utility expenses that the Administration had failed to account for when making its FY 2007 budget request.⁴ This increase is critical, because HUD, at the end of December 2006, informed housing agencies that they would be funded for operating subsidies at 76% of the formula need for 2007.⁵ The increase is effective retroactively as of January 1, 2007, which should be good news to housing authorities that received their first funding allocation based upon an assumption that the 2007 funding level would remain at the 2006 level.

⁴NHLP, *San Francisco Advocates Respond to Operating Subsidy Funding Crisis*, 36 HOUS. L. BULL. 197, 197 (2006).

⁵Operating Fund Program Explanation of Proration Percentage for Calendar Year 2007, 12/28/06, available at <http://www.hud.gov/offices/pih/programs/ph/am/of/prorationexplanation07.pdf>.

The increase notwithstanding, the Committee on Appropriations recognized that the amount appropriated is insufficient. It stated that "[t]his increase will help to restore staff levels, maintenance activities, elderly service coordinators, security officers and equipment. . . . This increase is still \$672 million short of the total estimated need of \$4.5 billion."⁶

The funding level increase is estimated to provide housing agencies 82.9% of the operating subsidy formula need. Unfortunately, this continues the trend of significantly underfunding the operating fund. Indeed, even with the increase, the FY 2007 funding is the lowest that housing agencies have ever received.⁷

Because of the low funding level, advocates should meet with their housing authorities to determine how they will address the reduced funding in 2007 and to work on strategies for how to increase funding levels for both 2007⁸ and 2008. Many housing agencies have already taken steps, or have announced that they anticipate taking steps, to reduce staff, cut back on security, reduce tenant services, and dispose of public housing units. In light of the 7% increase in funding, these actions need greater public and resident input to determine where cuts must be made, where to look for additional funding, and how to readjust prior actions that may have been too severe.

Miscellaneous

The Homeless Assistance Grants program is funded at \$1.44 billion, which is an increase of \$115 million above the FY 2006 level. Most of the other HUD accounts are funded at the FY 2006 levels.⁹ The FY 2007 appropriations act extends the Section 8 Mark-to-Market program for five years, until 2011. HOPE VI is also extended through 2007. It is anticipated that the congressional authorizing committee will consider extending HOPE VI for a longer period of time during 2007.

A chart showing the FY 2007 funding levels for the major HUD programs and comparing them to prior years' funding can be found on page 39. ■

⁶Summary of the Joint Resolution, Committee on Appropriations, Dave Obey, Chair (no date)(available at NHLP).

⁷The operating fund was funded at 94.7% for 2003; 98.1% for 2004; 88.8% for 2005; and 85.5% for 2006. HUD's website shows the historical level of operating subsidy funding for 1981 through 2005. <http://www.hud.gov/offices/pih/programs/ph/am/of/>.

⁸Congress is likely to consider supplemental funding requests during this fiscal year, which could include additional funding for HUD programs.

⁹See chart on page 39 from National Low Income Housing Coalition; see also NHLP, *Congress Finalizes Fiscal Year 2006 HUD Appropriations*, 36 HOUS. L. BULL. 1, 3 (2006).

HUD Releases “Final” Reoccupancy Policies for Hurricane-Impacted Areas

In response to Hurricanes Katrina and Rita, the U.S. Department of Housing and Urban Development (HUD) released two sets of reoccupancy policies in the last several months that address public housing units, tenant-based vouchers, project-based vouchers, Section 8 moderate rehabilitation units, Section 8 project-based certificates, housing units for Special Needs Families, and HUD-insured and HUD-assisted multifamily properties.¹ These final reoccupancy policies are the product of preliminary policies that were reviewed and commented on by a diverse group of local and national housing advocates. While HUD did not adopt all of the recommendations put forth by these advocates, a substantial number of the group’s comments were adopted into HUD’s final policies.² Most significantly, the reoccupancy policies generally provide all displaced families with a right to return to their pre-disaster HUD-assisted unit if it is safe and otherwise available for reoccupancy. The following article will highlight and further discuss several other aspects of the reoccupancy policies.³

Public Housing Units and Project-Based Vouchers

The reoccupancy policies for public housing units and project-based vouchers are very similar. These policies state that families who were displaced by Hurricanes Katrina or Rita and who are receiving Disaster Voucher Program (DVP) assistance will be offered the opportunity to reoccupy their pre-disaster units when they are

¹OFFICE OF PUBLIC AND INDIAN HOUSING, U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT (HUD), NOTICE PIH 2007-3, REOCCUPANCY POLICIES FOR PRE-DISASTER HUD ASSISTED AND SPECIAL NEEDS FAMILIES DISPLACED BY HURRICANES KATRINA AND RITA (2007), available at http://www.hudclips.org/sub_nonhud/cgi/nph_brs.cgi?d=PIHN&s1=07_&op1=AND&SECT1=TXTHLB&SECT5=PIHN&u=/hudclips.cgi&p=1&r=0&f=5; and, Letter from Charles H. Williams, HUD Deputy Assistant Secretary for Multifamily Housing Programs, to All Multifamily Hub Directors, All Multifamily Program Center Directors, and All Multifamily Operations Officers (December 20, 2006) (http://www.justiceforneworleans.org/jfnodocs/HUD_right.pdf?2a32d6440c26610ad1090dfa081224ba=3d263838dc5929261bede41589d50a01).

²The list of collaborating organizations include: New Orleans Legal Assistance Corporation; Greater New Orleans Fair Housing Action Center; Loyola Law Clinic; Everywhere and Now Public Housing Residents Organizing Nationally Together (ENPHRONT); Lawyers’ Committee for Civil Rights Under Law; National Housing Trust; National Low Income Housing Coalition; Technical Assistance Collaborative; The Partnership for Working Families; and National Housing Law Project.

³This article is a follow up to an article that was published last month at 37 HOUS. L. BULL. 11 (Jan. 2007). That article was based on reoccupancy policies briefly posted on the HUD website.

repaired and otherwise made available for reoccupancy.⁴ If a family’s pre-disaster unit does not become available, the family will be placed on the public housing authority’s (PHA) Disaster Reoccupancy Priority List. If the family’s unit does become available for reoccupancy, the PHA must notify the family at least sixty days prior to the anticipated date of availability to assess whether the family wants to return to its pre-disaster public housing or project-based unit. If the family certifies that it does not want to return, or fails to respond within thirty days, the family will surrender its right to reoccupy the unit and will no longer receive housing assistance upon the expiration of DVP.⁵ If the family certifies its intent to return, the DVP PHA, where possible, will help the family negotiate a DVP lease termination agreement and the family will be given thirty days to return to its unit after it becomes available for reoccupancy.⁶ In the event a family cannot successfully negotiate a DVP lease termination agreement, the family’s unit will be rented to another family and the displaced family will be placed on the PHA’s Disaster Reoccupancy Priority List.

Tenant-Based Vouchers

The reoccupancy policies for pre-disaster tenant-based voucher families state that if the family is currently receiving DVP assistance the family may not “port” its DVP voucher back into the pre-disaster PHA’s jurisdiction. Rather, the reoccupancy policies provide tenant-based voucher families with three options. First, return to the pre-disaster PHA’s jurisdiction and receive regular voucher assistance, in which case the family will be advised of any community infrastructure problems (e.g. lack of hospitals, schools, and dependable utilities) and the overall availability of rental units. In this case, the pre-disaster PHAs will receive a one-time special administrative fee of \$250 for providing housing search services to returning pre-disaster voucher families. Second, remain in the jurisdiction of the DVP PHA and receive DVP assistance until the expiration of the DVP program and then revert back to regular voucher assistance through

⁴Pre-disaster public housing families who are not receiving DVP assistance possess substantially the same rights as families receiving DVP assistance; however, because there is no corresponding DVP lease, families not receiving DVP assistance will not be eligible for lease termination assistance from the DVP PHA.

⁵Note, however, if the unit was assisted through the Project Based Voucher (PBV) program, and the PBV family occupied the PBV unit for twelve months or more before Hurricanes Katrina or Rita, the family may choose between returning to the PBV project and receiving a tenant-based voucher or comparable tenant-based assistance from the pre-disaster PHA in accordance with 24 C.F.R. § 983.260.

⁶DVP PHAs will likely help displaced families negotiate an early termination of their DVP leases because the reoccupancy policies provide for a one-time special administrative fee of \$1500 for each family that the DVP PHA helps negotiate an early release from the DVP lease.

portability.⁷ Third, move to another jurisdiction (outside the pre-disaster and DVP PHA jurisdictions) and receive regular voucher assistance through portability.

Special Needs Housing

The reoccupancy policies for pre-disaster special needs families are only applicable to families currently receiving DVP assistance and who were previously assisted through a Special Needs housing program (e.g. Supporting Housing Program (SHP), Shelter Plus Care (S+C), or Housing Opportunities for Persons with AIDS (HOPWA)) under a lease or comparable written occupancy agreement.⁸ Special needs families meeting these requirements will be offered the opportunity to reoccupy their pre-disaster unit when it is repaired and otherwise made available for reoccupancy. If the family's pre-disaster unit will not become available, the family will be placed on the Special Needs housing provider's Disaster Reoccupancy Priority List. If the family's unit becomes available for reoccupancy, the Special Needs housing provider must notify the family at least sixty days prior to the anticipated date of availability to assess whether the family wants to return to its pre-disaster unit. If the family certifies that it does not want to return, or fails to respond within thirty days, the family will surrender its right to reoccupy the unit and will no longer receive housing assistance upon the expiration of DVP. If the family certifies its intent to return, the DVP PHA, where possible, will help the family negotiate a DVP lease termination agreement and the family will be given thirty days to return to its unit after it becomes available for reoccupancy.⁹ In the event a family cannot successfully negotiate a DVP lease termination agreement, the family's unit will be rented to another family and the displaced family will be placed on a Disaster Reoccupancy Priority List.

HUD-Insured and HUD-Assisted Multifamily Properties

The reoccupancy policies for HUD-insured and HUD-assisted multifamily properties state that displaced families will be offered the opportunity to reoccupy their

pre-disaster units when they are repaired and otherwise made available for reoccupancy. In addition, if a particular family's unit was destroyed, condemned, or substantially damaged and the corresponding Housing Assistance Payment (HAP) contract is transferred to a new property, that family will have the right to move to the new property. If the family's unit becomes available for reoccupancy, the owner must notify the family at least sixty days prior to the anticipated date of availability to assess whether the family wants to return to its pre-disaster unit. If the family responds that it does not want to return, or fails to affirmatively respond within thirty days of notice, the family will surrender its right to reoccupy the unit. If the family conveys its intent to return, the family will be given at least sixty days to return to its unit after it becomes available for reoccupancy.

Displaced families will be offered the opportunity to reoccupy their pre-disaster units when they are repaired and otherwise made available for reoccupancy.

Lingering Concerns

Despite having a number of their suggestions incorporated into HUD's final reoccupancy policies, housing advocates are still concerned about a number of unresolved issues. A few of those issues include:

- Although the reoccupancy policies provide PHAs with a financial incentive (\$1500) to help Project-Based and Public Housing families negotiate an early release from DVP leases, the reoccupancy policies make no mention of funding to directly assist families with their relocation expenses.
- The reoccupancy policies state that public housing families cannot return to their pre-disaster public housing unit until the PHA has determined that there is an adequate community infrastructure in place. This implies that even if a public housing development is presently safe and in good repair, families will not be allowed to return if there are deficiencies in the community's infrastructure. However, in many hurricane-impacted communities, it is quite foreseeable that it could be years before the requisite infrastructure is fully restored. As such, HUD was urged to amend the reoccupancy policies to state that in the event that a public housing unit is available and otherwise decent, safe, sanitary, and in good repair the family should be given the opportunity to determine whether it wants to return.

⁷If a displaced tenant-based voucher family is not currently receiving DVP assistance it will not be able to fully exercise this option. Nevertheless, the family may continue to receive regular voucher assistance if it certifies, within sixty days of notice, its intent to return to the pre-disaster PHA's jurisdiction or elsewhere through portability. If the family fails to submit its certification by the deadline, the pre-disaster PHA will issue the family's voucher to another family, and the family will need to reapply if it wants to receive voucher assistance in the future.

⁸The reoccupancy policies are inapplicable to other special needs families (e.g. families that: (1) slept on the streets or in other places not meant for human habitation; (2) resided in an emergency shelter; or (3) received temporary assistance in transitional housing programs) because they were not residing in units with a lease or other written occupancy agreement.

⁹See footnote 6 *supra*.

- The thirty-day resident response time provided for in the reoccupancy policies is inadequate because it does not take into account the simple fact that many families who previously resided in HUD-assisted housing have been scattered throughout the country and thirty days is not enough time to allow families to receive notification and thoughtfully consider their reoccupancy options. As such, families displaced by Hurricanes Katrina or Rita should be given a minimum of forty-five days to respond. Moreover, the response time should not be triggered until receipt of the notice. However, the response time could have an overall limitation of sixty days after the notice is sent, assuming that the owner has diligently tried to locate the displaced family.

Conclusion

Rents in the undamaged parts of New Orleans continue to skyrocket because returning families and reconstruction workers are competing for a very limited supply of affordable rental units. As a result, regular working people are often priced out of the rental market. As of January 2007, the official rate of increase in rents was 44%;¹⁰ however, in lower-income neighborhoods, working people and the elderly have reported that rents have increased at a substantially higher rate. In light of these dire circumstances, HUD's recently released reoccupancy policies represent a small, although encouraging, step towards recovery. ■

¹⁰*Katrina Index: Tracking Recovery of New Orleans and the Metro Area*, The Brookings Institution, Jan. 17, 2007, at 20.

FY 2007 Rural Development Housing Program Funding

The Fiscal Year 2007 Appropriations Act that was signed by the President on February 15, 2007,¹ continues funding for all but one of the Rural Development (RD) housing programs at the Fiscal Year (FY) 2006 funding levels. The sole exception is the Rental Assistance program that provides deep rental subsidies to many residents of RD Section 515 Rural Rental Housing. That program received a funding increase and authorization for RD to extend the contracts for a term of two years. The table below shows the funding levels for the major RD housing programs authorized for FY 2007 and compares them to the FY 2006 funding levels.

USDA Rural Development Housing Program	FY 2006 ² Appropriation	FY 2007 Appropriation
Section 502 Single Family Direct Home Loans	\$ 1.141 billion	\$1.141 billion
Section 502 Single Family Guaranteed Home Loans	3.681 billion	3.681 billion
Section 504 Very Low Income Home Repair Loans	35 million	35 million
Section 504 Very Low Income Home Repair Grants for the Elderly	30 million	30 million
Section 514 Farm Labor Housing Loans	38 million	38 million
Section 516 Farm Labor Housing Grants	14 million	14 million
Section 515 Rural Rental Housing Loans	100 million	100 million
Section 521 Rental Assistance	653 million ³	616 million ⁴
Section 538 Guaranteed Rental Housing Loans	100 million	100 million
Section 542 Rural Voucher Program	16 million	16 million
Rental Preservation Revolving Loans	3 million	3 million
Rental Preservation Demonstration Program	9 million	9 million

¹Pub. L. 110-5 (Feb. 15, 2007).

²All the FY 2006 funding levels are before the 1% across-the-board funding cut imposed on all discretionary federal programs.

³This funding was for four-year Rental Assistance contracts.

⁴This funding is for two-year Rental Assistance contracts.

Recent Cases

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

Eviction—Curing Default; Public Housing

Housing and Redev. Auth of the Township of Franklin v. Mayo, 2007 WL 162187 (N.J. Super. A.D., Jan. 24, 2007). Appellate division reversed trial court ruling that held that resident who had allowed unauthorized residents to remain in her public housing apartment until two days prior to unlawful detainer trial had cured the lease violation and was therefore not subject to eviction. Appellate court held that violation was of the nature that could not be cured simply by the unauthorized residents leaving the dwelling after proper notice to cease had been served on the resident. Nonetheless, the court remanded with directions that the resident could cure the breach if she showed that the unauthorized residents were eligible to reside in public housing and that the household's rent would not have increased by their residency. In the alternative, it directed that the trial court may consider dismissing the eviction action under the condition that the resident make payment of losses, fees, costs, and expenses that may have resulted from the unauthorized tenancy and the subsequent legal procedure.

Eviction—Accepting Rent After Notice Is Served; Public Housing

Warwick Housing Authority v. McLeod, 913 A.2d 1033 (R.I., Jan. 18, 2007). Rhode Island Supreme Court reversed Superior Court judgment evicting the resident from public housing for violation of the lease. Court held that under Rhode Island law a landlord who is aware that a tenant is in breach of a rental agreement is estopped from pursuing an eviction action against a tenant if he accepts rent without a written reservation of the right to continue the eviction. The court held that the estoppel operates notwithstanding the fact that the tenant had actual notice of the pending eviction action.

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

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

Eviction—Attorneys Fees; Section 8; Fair Debt Collection Practices

Rochelle Hodges v. Sasil Corp., 2007 WL 247812 (N.J. Jan. 31, 2007). Residents of Section 8 assisted housing brought action against their landlord's law firm and attorney to recover for violation of the Fair Debt Collection Practices Act (FDCPA) and other laws by filing summary dispossession complaints that included in the rent charges extraneous charges such as attorneys fees. Under New Jersey law, a landlord may not recover late charges, attorneys' fees, and miscellaneous fees in a summary dispossession action against Section 8 tenants and the failure to pay those charges and fees cannot serve as a basis for eviction. The trial court ruled in favor of the landlord, the superior court reversed and the Supreme Court affirmed the superior court decision. The court held that a law firm and attorneys that regularly filed summary dispossession actions for nonpayment of rent were considered debt collectors subject to the FDCPA, and that the FDCPA did not conflict with New Jersey landlord-tenant law.

Eviction—Conviction of Felony; Reasonable Lease Clauses; Public Housing

Cabrini-Green Local Advisory Council v. Chicago Housing Authority, 2007 WL 294253 (N.D. Ill., Jan. 29, 2007). The plaintiffs successfully challenged a lease provision adopted by the Chicago Housing Authority (CHA) for the Old Town Parkside mixed-income community that allows the managers of the development to evict any resident who was found to have been convicted of a felony. The plaintiffs claimed that the lease provision violated a previously entered consent decree that required CHA to run the development in accordance with all applicable public housing requirements. The court agreed that the lease provision was overly broad and thus violated the statutory requirement that leases not contain unreasonable terms and conditions and that it is contrary to federal law and public policy.

Modification of Consent Decree; Termination of Participation in Voucher Program

Henderson v. Morrone, 2007 WL 186764 (3rd Cir., Jan. 25, 2007)(unreported). The Third Circuit reversed a district court holding that vacated a 1982 consent decree entered into by and between the plaintiff, a representative of a class of Section 8 voucher holders, and the Philadelphia Housing Authority (PHA). Under the consent decree, which was entered at a time that proposed HUD regulations governing the termination of voucher holders'

participation in the program were in effect, the plaintiff class was granted a series of due process protections that were in conformance with those proposed regulations. The consent decree authorized either party to seek modification of the agreement if the final HUD regulations required the PHA to perform acts that were inconsistent with the consent decree or prohibited the PHA from performing acts consistent with it. Although HUD published final regulations with respect to voucher terminations in 1984, PHA did not seek modification of the consent decree until 2004, when it argued that the consent decree was no longer valid because of significant changes in the law. The district court agreed, concluding that the purposes of the 1982 consent decree had been satisfied. The court of appeals disagreed and reversed. It found that while the final HUD regulations differed from the proposed regulations they did not require or prohibit PHA from terminating voucher recipients in accordance with the consent decree. The court concluded that the parties foresaw the possibility of a change in the HUD regulations in the consent decree and negotiated specific provisions to govern in the event that there was an explicit conflict between the consent decree and the final regulations. Finding no such conflict, the court concluded that the parties were required to abide by the terms of the consent decrees.

Termination of Voucher—Due Process in Termination Hearing

Tomlinson v. Machin, 2007 WL 141192 (M.D. Fl., Jan. 16, 2007). Court upheld termination of Section 8 Voucher holder for allowing unauthorized person to reside in her apartment and for violent criminal activity by the guest. The court rejected the resident's argument that the informal hearing violated her due process rights in that it relied on hearsay evidence and denied her the right to cross examine certain persons that were not at the hearing. It also rejected the resident's argument that she did not have the burden of proving that the unauthorized guest was not residing in the apartment.

Prepayment Restrictions—Damages; Temporary Taking; Ripeness

CCA Associates v. United States, 2007 WL 315350 (Fed. Cl., Jan. 31, 2007). In a suit seeking to recover damages for prepayment restrictions imposed on an owner of federally subsidized housing by the Emergency Low Income Housing Preservation Act (ELIHPA) of 1987 and the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) of 1990, the Court of Claims held that the owner's claim was ripe for adjudication and that ELIHPA and LIHPRHA effected a temporary taking of the proper-

ties at issue. The court rejected the government's argument that the case was not ripe because the owner never sought HUD permission to prepay its mortgage, failed to seek incentives from HUD to remain in low-income housing program, and failed to offer the development for sale to a HUD-approved buyer. Accordingly, the court awarded the owner over \$840,000 in compensation for the taking plus interest on that amount for the period in which the payment was delayed.

Section 8 Opt-Out—Obligation to Accept Enhanced Voucher

Feemster v. BSA Limited Partnership, 2007 WL 106522 (D.D.C., Jan. 12, 2007). The court held that landlord that opted-out of the Section 8 program was obligated by Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) and the National Housing Act to accept tenants' enhanced vouchers until such time as landlord removed units from rental housing market in accordance with District of Columbia law. Court also held that landlord's failure to accept enhanced vouchers did not violate District of Columbia Human Rights Act because it was not clear that the landlord refused to rent to the tenants on the basis of their participation in the voucher program. It also did not violate the District of Columbia Consumer Protection Procedures Act because the act does not apply to landlord-tenant relations.

Federal Courts—Standing and Ripeness; Prepayment of FHA Insured Loan

Kukui Gardens Ass'n. v. Jackson, 2007 WL 128857 (D. Hawaii, Jan 11, 2007). In a case seeking to halt the prepayment and sale of an 857-unit HUD-insured and subsidized low-income housing project, court ruled that one of two organizational plaintiffs had organizational but not representational standing. It also ruled that plaintiffs' fair housing discrimination claim was not ripe for review.

Federal Courts—Standing

Gautreaux v. Chicago Housing Authority, 2007 WL 120791 (7th Cir., Jan. 19, 2007). Court of Appeals held that an organization that was not a party to the original lawsuit did not have standing on appeal to seek modification of a 1996 revitalization order previously entered in this long-standing class action suit against the Chicago Housing Authority for *de jure* segregation in its public housing program.

Fair Housing—Discrimination Against Families with Children; Failure to Meet Discovery Obligations

Housing Rights Center v. Snow, 2007 WL 91148 (E.D. Cal., Jan. 3, 2007). In a case alleging violation of federal fair housing laws for discriminating against families with children, court issued default judgment to plaintiffs for defendants' failure to meet discovery obligations and failure to obey court orders.

APA Review of HUD Actions; Voucher Program—Administrative Fee Reductions

National Leased Housing Ass'n v. U.S. Dept. of Hsng. and Urban Dev., 2007 WL 148829 (D.D.C., Jan. 16, 2007). In a suit brought by housing authorities against HUD, court found that HUD violated the Administrative Procedure Act (APA) when it implemented the administrative fee provisions of the HUD Fiscal Year (FY) 2003 Appropriations Act as it applies to the Housing Choice Voucher Program. The court concluded that HUD's application of the statute to calendar year 2003 was inconsistent with the statutory use of the term Fiscal Year. It also concluded that HUD application of the statute to all Voucher program reserve funds, regardless of the year in which they were appropriated, also violated the APA because the statutory authorization was limited to funds appropriated in the FY 2003 Appropriations Act. The court, however, rejected the housing authorities' claim that HUD's efforts to apply the statute to funds held in their Voucher Administrative Reserve Funds constituted a taking because the housing authorities did not have a property interest in the reserve funds.

Review of State Agency Regulations— Burden of Proof

In re Adoption of Uniform Housing Affordability Controls by the New Jersey Housing and Mortgage Finance Agency, 914 A.2d 402, 2007 WL 195733 (N.J. Super. A.D., Jan. 25, 2007). The court of appeals rejected a challenge to regulations adopted by the New Jersey Housing and Mortgage Finance Agency establishing affordability ranges for the provision of housing pursuant to the *Mount Laurel* doctrine. The court held that the plaintiff did not meet its heavy burden of showing that sufficient facts did not exist to justify the validity of the regulations.

Bankruptcy—Automatic Stay Provision; FHA Mortgage Insurance

Chase Manhattan Mortg. Corp. v. Cordero, 2007 WL 259923 (S.D. Fla., Jan. 19, 2007). Court reversed bankruptcy court's \$145,908 damage award against Chase Manhattan Mortgage for violating the automatic stay provision of the Bankruptcy Code by submitting a mortgage insurance claim to the Federal Housing Administration (FHA) after the mortgagor-debtors filed the bankruptcy action, by collecting on the FHA insurance, and by assigning the mortgage to the FHA. All of these actions damaged the mortgagor-debtor who had secured an advantageous refinancing package that was cancelled after the FHA claim was filed. The court held that none of these actions violated the automatic stay provisions of the Bankruptcy Code, particularly since the mortgagor-debtors did not allege, in the bankruptcy filing, that they had a property interest in the FHA insurance covering their mortgage. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD) and the Department of Agriculture (USDA—Rural Housing Service/Rural Development (RD)) issued in January of 2007. For the most part, the summaries are taken directly from the summary of the regulation in the Federal Register or each notice's introductory paragraphs.

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

HUD Federal Register Proposed Regulations

72 Fed. Reg. 869 (Jan. 8, 2007)

Home Equity Conversion Mortgage Insurance; Counseling Standardization and Roster

Summary: This proposed rule would amend HUD's Home Equity Conversion Mortgage (HECM) regulations to establish testing standards to qualify individuals as HECM counselors eligible to provide HECM counseling to prospective HECM borrowers. The rule also would establish a roster of eligible HECM counselors and provide for their removal for cause. HUD believes that this proposed rule would contribute to improving the quality of HECM counseling. HECM counseling helps to enable elderly homeowners to make more informed decisions when considering whether to pursue a HECM loan.

Comment Due Date: March 9, 2007.

HUD Federal Register Notices

72 Fed. Reg. 1759 (Jan 16, 2007)

Notice of Submission of Proposed Information Collection to OMB; Rent Schedule-Low Rent Housing

Summary: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review. The department is soliciting public comments on the subject proposal. HUD requires project owners to submit information when requesting adjustments to established rents and utility allowances. HUD uses the information

to ensure that rent charges are in accordance with HUD regulatory and administrative policy.

Comments Due Date: February 15, 2007.

72 Fed. Reg. 2001 (Jan. 17, 2007)

Notice of Submission of Proposed Information Collection to OMB; Owner of Record and Re-Sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. For all loans for purchase money mortgages, lenders must obtain and submit to HUD documentation that the seller is the owner of record and that the transaction does not involve any sale or assignment of the sales contract. For properties resold with one year of acquisition by the seller (with limited exceptions), or if the sale price exceeds HUD's threshold for an area, additional appraisal requirements may apply. HUD uses the information to ensure that purchasers are not victims of predatory sales or lending practices.

Comments Due Date: February 16, 2007.

72 Fed. Reg. 2001 (Jan. 17, 2007)

Grant and Cooperative Agreement Awards: Fair Housing Initiatives Program

Summary: This announcement notifies the public of funding decisions made by HUD for funding under the Super Notice of Funding Availability for the Fair Housing Initiatives Program for Fiscal Year 2006. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

72 Fed. Reg. 2299 (Jan. 18, 2007)

Notice of Submission of Proposed Information Collection to OMB; 2007 American Housing Survey (AHS) Covering Both the National (AHS-N) and Metropolitan (AHS-MS) Samples

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. The 2007 AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for both the nation (AHS-N) and seven select metropolitan areas (AHS-MS). The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

Comments Due Date: February 20, 2007.

¹http://www.access.gpo.gov/su_docs.

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

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

⁴<http://www.rdinit.usda.gov/regs>.

72 Fed. Reg. 2299 (Jan. 18, 2007)
Notice of Submission of Proposed Information Collection to OMB; Public Housing, Contracting with Resident-Owned Businesses

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. Eligible resident-owned businesses must submit application information to housing agencies to be approved for noncompetitive contracting for work to be performed on public housing sites as an alternative to HUD's otherwise-required competitive procurement procedures.

Comments Due Date: February 20, 2007.

72 Fed. Reg. 2300 (Jan. 18, 2007)
Notice of Submission of Proposed Information Collection to OMB; Section 32 and Section 5(h) Public Housing Homeownership Program Evaluation

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. The study of the Section 5(H) and Section 32 programs will provide the answer to a number of important questions about the homeownership programs. Information will provide a detailed assessment of the homeownership programs, to identify their strengths and weaknesses.

Comments Due Date: February 20, 2007.

72 Fed. Reg. 2301 (Jan. 18, 2007)
Notice of Submission of Proposed Information Collection to OMB; Family Report, MTW Family Report

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. Tenant data is collected to understand demographic, family profile, income, and housing information for participants in the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificate, Section 8 Moderate Rehabilitation, and Moving to Work Demonstration Programs. This data also allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs.

Comments Due Date: February 20, 2007.

72 Fed. Reg. 2395 (Jan. 18, 2007)
Notice of HUD's Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the FY 2007 SuperNOFA for HUD's Discretionary Programs

Summary: This notice provides prospective applicants for HUD competitive funding with the opportunity to become familiar with the General Section of HUD's FY 2007 SuperNOFA, in advance of publication of the FY2007

SuperNOFA. HUD plans to publish its annual SuperNOFA early in 2007. Early publication of the General Section is one of several steps instituted to improve the funding process for the grantee community. Early publication of the General Section gives prospective applicants additional time to become familiar with and address provisions in the General Section, which constitute part of almost every individual program application. HUD will publish with the SuperNOFA any changes to this General Section made after today's publication. HUD will continue to require that applicants submit their applications electronically via Grants.gov. To submit an application via Grants.gov, new users will be required to complete a five-step registration process, which can take two to four weeks to complete. HUD recommends that all prospective applicants take the time to carefully read the Federal Register notice published on October 31, 2006, entitled "Notice of Opportunity to Register Early and other Important Information for Electronic Application Submission via Grants.gov" and register prior to the publication of the Program Sections of the FY 2007 SuperNOFA. The early registration notice can be found on HUD's website at [http://www.hud.gov/offices/\[fxsp0\]adm/grants/fundsavail.cfm](http://www.hud.gov/offices/[fxsp0]adm/grants/fundsavail.cfm).

72 Fed. Reg. 2731 (Jan. 22, 2007)
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

Summary: HUD is publishing the final "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons" (Guidance) as required by Executive Order (EO) 13166. EO 13166 directs federal agencies that extend assistance, subject to the requirements of Title VI, to publish guidance to clarify recipients' obligations to LEP persons. This final guidance follows publication of the proposed guidance on December 19, 2003.

Effective Date: February 21, 2007.

72 Fed. Reg. 3403 (Jan. 25, 2007)
Notice of Submission of Proposed Information Collection to OMB; Fair Housing Initiatives Program

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. This information is required by the grant application to assist the department in selecting the highest-ranked applicants to receive funds under the Fair Housing Initiatives Program and carry out fair housing enforcement and/or education and outreach activities under the following initiatives: Private Enforcement, Education and Outreach, and Fair Housing Organizations. The information collected from quarterly and final progress reports and enforcement log will enable the department to

evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

Comments Due Date: February 26, 2007.

72 Fed. Reg. 4016 (Jan. 29, 2007)

Notice of Submission of Proposed Information Collection to OMB; Capital Advance Program Submission Requirements for the Section 202 Supportive Housing for the Elderly and the Section 811 Supportive Housing for Persons with Disabilities Capital Advance Program

Summary: The proposed information collection requirement described below has been submitted to OMB. HUD is soliciting public comments on the subject proposal. This collection facilitates the processing of all Sections 202 and 811 capital advance projects from firm commitment through final closing. Second, it allows for the collection of information under the mixed-finance section of this program so that those owners who wish to partner with for-profit limited partners can participate in the development and management of supportive housing. And lastly, it allows for the collection of information to satisfy the reporting requirements for owners who receive predevelopment grant funds.

Comments Due Date: February 28, 2007.

72 Fed. Reg. 4288 (Jan. 30, 2007)

Notice of Submission of Proposed Information Collection to OMB; Energy Conservation for PHA-Owned or Leased Projects-Audits, Utility Allowances

Summary: The proposed information collection requirement described below has been submitted to OMB for review. HUD is soliciting public comments on the subject proposal. Public housing authorities establish allowances for PHA-furnished utilities and for resident-purchased utilities. PHAs document, and provide for resident inspection, the basis upon which allowances and scheduled surcharges (and revisions thereof) are established. PHAs complete energy audits, benefit/cost analyses for individual meters vs. master-metering. Additionally, PHAs review annual and updated tenant utility allowances, as necessary.

Comments Due Date: March 1, 2007.

72 Fed. Reg. 4288 (Jan. 30, 2007)

Notice of Proposed Information Collection for Public Comment: Restrictions on Assistance to Noncitizens

Summary: The proposed information collection requirement described below will be submitted to OMB for review. HUD is soliciting public comments on the subject proposal. HUD is requesting extension of OMB approval for the applications for the Document Package for Applicant/Tenant's Consent to the Release of Information and the Authorization for the Release of Information/Privacy Act Notice.

Comments Due Date: April 2, 2007.

72 Fed. Reg. 4289 (Jan. 30, 2007)

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly; Revised Eligibility Requirements

Summary: On May 22, 2006, HUD published a notice entitled, "Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly," which announced the availability of approximately \$30 million in grant funds to make emergency capital repairs to eligible multifamily projects designated for occupancy by elderly tenants. The notice published in today's Federal Register revises the May 22, 2006, notice to expand the eligibility requirements to include those eligible projects located in presidentially declared disaster areas regardless of when final closing occurred. Those projects not located in presidentially declared disaster areas must have had final closing on or before January 1, 1999. HUD will accept applications on a first-come, first-serve basis upon publication of this notice and will award emergency capital repair grants until available amounts are expended.

Dates: Interested persons may submit comments on or before March 27, 2007.

HUD Notices

PIH Notice 07-3 (Jan. 23, 2007)

Reoccupancy Policies for Pre-Disaster HUD Assisted and Special Needs Families

Summary: HUD has aggressively worked to provide displaced families housing stability during the period of displacement through the payment of Katrina Disaster Housing Assistance Program (KDHP) and Disaster Voucher Program (DVP) rental subsidies. As pre-disaster HUD-assisted housing units damaged by Hurricanes Katrina and Rita come back on-line, the department remains fully committed to providing displaced families the opportunity to reoccupy their pre-disaster HUD-assisted housing. In November 2006, HUD posted draft reoccupancy policies on the HUD website for public comment, and convened several meetings in New Orleans, Gulfport and Houston with representatives of the major stakeholders, including public housing residents, pre-disaster and DVP PHAs, tenant advocacy groups, and owners of Section 8 voucher units. The purpose of these meetings and posting of the draft notice for a public comment period was to solicit feedback on the best strategy for relocating families back to their homes prior to issuing the final HUD reoccupancy policies for families displaced by Hurricanes Katrina and Rita.

Until rescinded or amended, this notice states HUD's reoccupancy policies for pre-disaster public housing, tenant-based voucher, project-based voucher, Section 8 moderate rehabilitation, Section 8 project-based certificate, and Special Needs Families displaced by Hurricanes Katrina and Rita. In addition to the policies outlined in the notice,

all parties must comply with applicable statutory, regulatory and other program requirements. This notice is only applicable to families that received HUD assistance under the programs mentioned in the prior paragraph of this notice. This notice is not applicable to families that received HUD assistance under a program administered by the Office of Housing.

Rural Housing Service/Rural Development Administrative Notice

RD AN No. 4237 (1980-D) (Jan. 25, 2007) Utilizing Credit Scores for Underwriting Single Family Housing Guaranteed Loans

Summary: This administrative notice revises the minimum credit score required for applicant eligibility to utilize streamlined documentation of guaranteed loans from the current 660 down to 620. The recently introduced VantageScore is still ineligible for Single Family Housing Guaranteed Loan Program underwriting.

Rural Housing Service/Rural Development Unnumbered Letter

Jan. 11, 2007 Student Income Eligibility Determination for Rural Development Multi-Family Properties

Summary: This unnumbered letter clarifies how to determine student income eligibility for applicants and tenants at Rural Development Multi-Family Housing (MFH) properties, including those with Rental Assistance (RA). This guidance does not affect the eligibility of a student's parents when the student is receiving financial assistance and the student is residing with his or her parents, or is residing with parents who are applying to receive RA. This only affects the eligibility of students applying for occupancy in a Rural Development MFH property separate from their parents.

Expiration Date: January 31, 2008. ■

NATIONAL HOUSING LAW PROJECT | PUBLICATION ORDER FORM



PUBLICATION	UNIT PRICE	QTY.	TOTAL PRICE
Combined Set: HUD Housing Programs: Tenants' Rights (3d ed. 2004) and new 2006-2007 Supplement	\$ 410	<input type="checkbox"/>	<input type="text"/>
HUD Housing Programs: Tenants' Rights 2006-2007 Supplement	\$ 130	<input type="checkbox"/>	<input type="text"/>
Housing Law Bulletin (annual subscription, 10 issues)	\$ 175	<input type="checkbox"/>	<input type="text"/>
Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)	\$ 5	<input type="checkbox"/>	<input type="text"/>
Housing for All: Keeping the Promise (1995)	\$ 5	<input type="checkbox"/>	<input type="text"/>
The Family Self-Sufficiency Program: An Advocate's Guide (1994)	\$ 10	<input type="checkbox"/>	<input type="text"/>
A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)	\$ 10	<input type="checkbox"/>	<input type="text"/>

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

BILLING INFORMATION

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

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

Please bill my MasterCard Visa

card number / exp date

name on card

organization

street address

city / state / zip

signature

SHIPPING INFORMATION

name

organization

street address

city / state / zip

telephone / fax

email

MAIL TO
 National Housing Law Project
 Publications Clerk
 614 Grand Avenue, Suite 320
 Oakland, CA 94510

QUESTIONS
 For information on first-class mailing and large quantity discounts, call 510.251.9400 x108



National Housing Law Project
614 Grand Avenue, Suite 320
Oakland, California, 94610

FIRST CLASS MAIL