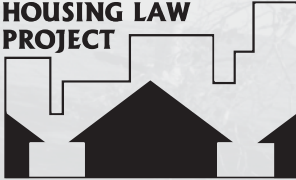


**NATIONAL  
HOUSING LAW  
PROJECT**



advancing housing justice

# Housing Law Bulletin

Volume 38 • February 2008

Published by the National Housing Law Project



*President's Fiscal Year 2009 Housing Budget*

—see pages 43 and 46

*Public Housing One-for-One Replacement Settlement*

—see page 53

# Job Announcement: NHLP EXECUTIVE DIRECTOR

The National Housing Law Project, renowned for its landmark legal advocacy on behalf of low-income tenants and homeowners, especially those under the federally assisted housing programs, seeks an Executive Director to lead our organization and sustain our national leadership in employing the power of the law to address critical housing problems of low-income persons.

**National Housing Law Project**—Established in 1968, NHLP's mission is to advance housing justice for low-income individuals. Primarily focusing upon the federally assisted housing programs, its core activities include legal and technical assistance, policy advocacy and education, litigation, and research. NHLP authors an array of publications, including the authoritative legal manual *HUD Housing Programs: Tenants' Rights*. NHLP is headquartered in Oakland, California, with a branch office in the District of Columbia. NHLP's nine-person staff includes six attorneys. In 2007, NHLP was recognized for its distinguished accomplishments by the John D. and Catherine T. MacArthur Foundation when it was selected as one of eight organizations worldwide for the MacArthur Foundation's "Creative and Effective Institutions Award."

**The Position**—NHLP seeks an experienced leader who has demonstrated management and fundraising experience and a commitment to promoting access to justice for low-income people. The Executive Director will work closely with NHLP's Board of Directors, a highly skilled and committed staff, as well as a broader community of advocates, funders, and individual donors. The Executive Director is the primary spokesperson for the organization, oversees its staff, and is responsible for strategic planning, fundraising, and daily operations. The Executive Director also has a limited opportunity to engage in substantive advocacy.

The ideal candidate will have:

- an established track record with foundation and private donor fundraising;
- financial and personnel management experience;
- experience working collaboratively with a board, staff, and allied organizations;
- strategic planning abilities;
- a demonstrated commitment to social justice and the mission of NHLP;
- excellent oral and written communications skills;
- a willingness and capacity to travel;
- been admitted to the bar in at least one state.

**Salary**—Salary will be competitive and commensurate with experience. Generous benefits package.

**Application Process**—Applications will be accepted and considered until the position is filled. Applicants are urged to submit their applications promptly. Candidates should submit:

- a cover letter expressing in detail why they are interested in the position, what they can contribute to the future of the organization, and salary requirements;
- a current resume that includes salary history;
- two writing samples: preferably a legal memorandum and either a fundraising proposal or a memo addressing an important management challenge;
- the names and contact information for three references.

Applications may be submitted electronically to [edsearch@nhlp.org](mailto:edsearch@nhlp.org) or by mail to NHLP Search Committee at 614 Grand Ave., Suite 320, Oakland, CA 94610. Receipt of applications will be acknowledged. We would appreciate no phone calls.

NHLP is an equal opportunity and affirmative action employer that does not discriminate on the basis of race, color, national origin, ethnic background, religion, gender, sexual orientation or disability. Applications are particularly encouraged from people of color, women and others whose backgrounds may contribute to more effective representation of low-income persons.

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**Cover:** Esperanza, a 120-unit public housing complex that is owned and operated by the Housing Authority of the City of Alameda, California.

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## Courts Embellish Procedural Protections for Voucher Terminations

Participants in the Section 8 voucher program, the largest HUD housing subsidy program, often face terminations based on shaky evidence, with hearings before housing authority-designated hearing officers. While previous cases have established that voucher terminations must comport with due process protections,<sup>1</sup> several recent decisions have further detailed the meaning of those protections. Four recent cases on this topic are *Basco v. Machin*,<sup>2</sup> *Kundiger v. Lichterman*,<sup>3</sup> *Hendrix v. Seattle Housing Authority*,<sup>4</sup> and *Carter v. Lynn Housing Authority*.<sup>5</sup> These cases provide useful tools to help prevent unfair or improper voucher terminations.

### Sufficiency of Evidence

Two of these recent cases have examined the sufficiency of evidence required for a voucher termination. In *Basco v. Machin*, the Eleventh Circuit provides a promising opinion on the rights of voucher holders in termination proceedings. The case arose when Teresa Basco faced a termination of her Section 8 voucher subsidy when the housing authority alleged an unauthorized tenant was residing in her unit.

As is required for Section 8 voucher tenancies, the housing authority had entered into a Housing Assistance Payments Contract with Ms. Basco's landlord, which ensured the housing authority would pay its housing subsidy on behalf of Ms. Basco. The contract restricted residency in the unit to those persons listed on the lease—Ms. Basco, her husband, and her five children. HUD regulations also prohibit unauthorized residents,<sup>6</sup> which the housing authority interpreted as anyone staying at the unit for more than fifteen consecutive days or more than thirty days total through the year.<sup>7</sup>

The conflict in this case arose when an anonymous person, claiming to be a neighbor of Ms. Basco, informed the housing authority that there were disturbances at her unit, which included arrests. The housing authority employee assigned to investigate the complaint then obtained two police reports: the first one had an attached statement from husband Joseph Basco saying that an Emanuel Jones was "staying at the house," and the second

<sup>1</sup>For more information on prior cases, see NHLP, 36 HOUS. LAW BULL. 103, 107-08 (May 2006).

<sup>2</sup>\_\_\_ F.3d \_\_\_, 2008 WL 182249 (11th Cir. 2008).

<sup>3</sup>No. 37-2007-00050190-CU-PU-NC (Cal. Super. Ct. Jan. 25, 2008).

<sup>4</sup>2007 WL 3357715 (W.D. Wash. 2007).

<sup>5</sup>880 N.E.2d 778 (Mass. 2008).

<sup>6</sup>24 C.F.R. § 982.551(h)(2).

<sup>7</sup>*Basco* at \*1.

one, issued almost five months later, included “Elonzel Jones” as an eyewitness to a battery, with his address given as Basco’s. Based on those two reports, the housing authority decided to terminate Ms. Basco’s assistance. The Housing Authority’s Notice of Intent to Terminate implied that the housing authority believed Emanuel Jones and Elonzel Jones were the same person and that that person had been living in Ms. Basco’s unit from at least February to July 2005 and was therefore an unauthorized resident.<sup>8</sup>

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*The appellate court found that the housing authority must carry the burden of persuasion; it had to demonstrate, with sufficient evidence, an actual violation of the unauthorized resident policy.*

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After receiving the notice, Ms. Basco requested an informal hearing. The housing authority presented the two police reports as evidence. Ms. Basco in turn provided her and her landlord’s testimony, submitted notarized letters stating that Jones had lived at another address, and asked that her husband be allowed to testify by telephone. After denying that request, the hearing officer upheld the termination decision.<sup>9</sup> Ms. Basco appealed to the Section 8 administrator, who refused to overturn the hearing officer’s decision. Pointing to the housing authority’s policy that “The burden of proof that the individual is a visitor rests on the family,”<sup>10</sup> the administrator determined that Ms. Basco had not met this burden.

The Bascos then sued in federal court, claiming a violation of their procedural due process rights pursuant to Section 1983. They asserted that the housing authority improperly placed the burden of proof on them and denied them the opportunity to confront and cross-examine witnesses. The trial court rejected their claims, entering judgment for the housing authority.

On appeal, the appellate court separated the burden of proof question into two categories: who has the burden of persuasion and who carries the burden of production. It found that the housing authority must carry the burden of persuasion; it had to demonstrate, with sufficient evidence, an actual violation of the unauthorized resident policy. Once the housing authority met that burden, the tenant would have the burden of production to show that the person was actually only a visitor.<sup>11</sup>

The second aspect of the Bascos’ due process claim, that they did not have an opportunity to cross-examine adverse witnesses, folded into the court’s analysis of

whether or not the two police reports met the burden of persuasion. On this point, the court cited an earlier ruling, which cited four factors to use in determining the admissibility of hearsay evidence in an administrative hearing.<sup>12</sup> One of those factors states that hearsay should be considered if “the opposing party could have obtained the information contained in the hearsay before the hearing and could have subpoenaed the declarant...”<sup>13</sup> The court noted the applicability of that factor to this situation, stating that it supported denying admission of the evidence. However, the court found that it need not answer that question to decide the case.<sup>14</sup> It held that even if the reports were admissible hearsay, they did not meet the housing authority’s burden of persuasion, as they were “legally insufficient to establish a *prima facie* case that either Emanuel or Elonzel had resided at the Bascos’ residence for fifteen consecutive days or for thirty days in a twelve-month period.”<sup>15</sup> Under this logic, the housing authority should never have initiated this termination proceeding without more evidence.

Another recent case dealing with the sufficiency of evidence in a voucher termination is *Kundinger v. Lichterman*, a California state court case. In that case, James Kundinger, a man with schizophrenic disorder, got into a fight with his parents at their home, more than a mile away from his unit.<sup>16</sup> Because of the fight, the police were called to the parents’ unit. Mr. Kundinger was then arrested and eventually pled guilty to misdemeanor disturbance of the peace, an offense that does not involve violence.<sup>17</sup> However, the police report stated that Mr. Kundinger had pushed and grabbed his father. Based on that police report, the San Diego Housing Authority (SDHA) filed a notice to terminate his Section 8 voucher for “violent criminal activity.”<sup>18</sup> Mr. Kundinger requested an informal hearing, where the SDHA presented only the police report, minutes of the criminal proceeding, and a housing authority employee’s testimony of a conversation with his parents. He had no opportunity to confront or cross-examine witnesses and was not allowed the opportunity to present his own witnesses.<sup>19</sup> After losing at the informal hearing, Mr. Kundinger sought a writ of mandamus in state court.

The court granted the writ. Like other decisions regarding due process and voucher terminations, the court’s order compared the termination of a voucher to the termination of welfare subsidies and acknowledged that basic due process is required. However, in this case,

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<sup>8</sup>*Id.* at \*5.

<sup>9</sup>*Id.* at \*2.

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

<sup>11</sup>*Id.* at \*5.

<sup>12</sup>*J.A.M. Builders, Inc. v. Herman*, 233 F.3d 1350, 1354 (11th Cir. 2000).

<sup>13</sup>*Basco* at \*4, (citing *J.A.M. Builders*).

<sup>14</sup>*Id.* at \*5.

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

<sup>16</sup>Brief for Petitioner at 1, *Kundinger v. Lichterman*, No. 37-2007-00050190-CU-PU-NC (Cal. Super. Ct. Jan. 25, 2008) (order granting writ of administrative mandamus).

<sup>17</sup>*Id.* at 2.

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

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

the court based its decision on state law, which says that “hearsay alone is generally insufficient to support an administrative finding.”<sup>20</sup> Rejecting the SDHA’s argument that the hearing and the evidence admitted followed HUD regulations,<sup>21</sup> the court reasoned that because those regulations require a preponderance of the evidence standard, unsupported hearsay is still not sufficient to uphold a voucher termination. Thus, the court saw no reason to veer from the traditional rule that unsupported hearsay alone is insufficient to uphold a decision, even in an informal administrative hearing. By using state law in conjunction with traditional due process doctrine, Mr. Kundinger and his counsel were able to prevent a housing termination based on insufficient evidence.

### Adequacy of Informal Hearing Procedures

Yet another recent decision, *Hendrix v. Seattle Housing Authority*, challenges the adequacy of the administrative remedy available by alleging a violation of the right to due process.<sup>22</sup> In this case, Tina Hendrix faced a voucher termination because of alleged misrepresentations of family size and income. When notified of the intent to terminate, she requested an informal hearing, as provided by the rules.<sup>23</sup>

After being granted an informal hearing, Ms. Hendrix filed suit in federal court and requested and received a preliminary injunction against the holding of the informal hearing until resolution of the lawsuit. She pursued this avenue because of an alleged pattern of deficiencies in the hearing policies and practices of the Seattle Housing Authority (SHA). The authority conducts numerous informal hearings under a sole hearing officer, who rarely decides in favor of the tenants. Part of this unfavorable record arises from the fact that SHA policy prohibits legal arguments and defenses from being raised at the informal hearing, including those based on cases and statutes. Thus, tenants may only use HUD regulations and SHA policies, as well as facts, in their defense.

The tenant brought two causes of action in her federal complaint. She sought a writ of prohibition against SHA for exceeding its authority, while also seeking declaratory and injunctive relief. These claims were based on the hearing officer’s failure to consider material facts, using the wrong evidentiary standard, refusing to hear all relevant legal arguments, and the officer’s lack of proper skills and training for adjudicating such matters.<sup>24</sup> SHA filed a motion to dismiss these causes of action, which the court partially granted and partially denied.

<sup>20</sup>*Kundinger v. Lichterman*, No. 37-2007-00050190-CU-PU-NC (Cal. Super. Ct. Jan. 25, 2008) (order granting writ of administrative mandamus) (*citing* California Continuing Education of the Bar, California Administrative Mandamus, at § 3.65).

<sup>21</sup>24 C.F.R. § 982.553.

<sup>22</sup>*Hendrix* at \*4.

<sup>23</sup>24 C.F.R. § 982.555.

<sup>24</sup>*Hendrix*, at \*2.

The court first dismissed the cause of action for a writ of prohibition, which stops proceedings of an entity that exceed its jurisdiction,<sup>25</sup> finding that SHA was acting within its authority to conduct pre-termination hearings, even if they were going to proceed incorrectly.<sup>26</sup>

The court did, however, refuse to dismiss the cause of action for a declaratory judgment and permanent injunction. Ms. Hendrix’s request for declaratory and injunctive relief rested on two claims. First, she argued that the SHA failed to follow the administrative hearing requirements, using a “sufficient evidence” standard rather than a “preponderance of the evidence” standard. Second, she alleged that the SHA policies and practices constituted a violation of procedural due process under *Goldberg v. Kelly*.<sup>27</sup> In denying the SHA’s motion to dismiss, the court stated that a housing authority must provide a full administrative review, and simply adhering to the minimum standards of a pre-termination review when there is no comprehensive post-termination review is inadequate under *Goldberg v. Kelly*. According to the court, *Goldberg*

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

<sup>26</sup>*Id.* at \*3.

<sup>27</sup>397 U.S. 254 (1970).

#### SAVE THE DATES

#### Housing Justice Network National Meeting December 7 - 8, 2008

#### National Housing Training December 6, 2008

The next meeting of the Housing Justice Network (HJN) is scheduled for Sunday and Monday, December 7 and 8, 2008, in Washington, D.C. A full-day basic training on the federal housing programs will be offered on Saturday, December 6. Both events will be held at the Washington Court Hotel. Low-income housing advocates are invited to both events.

Scheduled for one month after the national elections, the HJN national meeting will be an excellent opportunity to begin planning for a new Administration. It will also serve as a forum for sharing the latest housing news and legal strategies with colleagues from all over the country. Prominent experts on affordable housing, the federally assisted housing programs, and related issues will be featured speakers and panelists. Do not miss two days of high-quality information sharing and discussions for low-income housing advocates and clients!

Detailed meeting information and conference registration forms will follow in the next several months. In the meantime, mark your calendar!

contemplated that “(1) as long as the broader, ‘full administrative review’ is offered post-termination, a pre-termination hearing need only contain the elements outlined in the opinion; and (2) it is permissible to roll all of these procedural requirements into a single hearing, as long as that hearing takes place before the termination of benefits.”<sup>28</sup> The SHA procedures, insofar as they follow HUD regulations, only provide the pre-termination hearing requirements. Therefore, the court denied the defendant’s motion for summary judgment because it found that the plaintiff had colorable claims on both issues.<sup>29</sup>

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*These cases once again demonstrate the continued need for advocates to diligently ensure that the basic due process rights of voucher participants are protected.*

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This initial success is very promising, but the case has yet to move to a trial on the merits. If the plaintiff succeeds, this would cement the housing authority’s duty to provide more than a superficial review of voucher terminations, and may suggest that even HUD regulations are inadequate, as they only provide the pre-termination protections as required by *Goldberg*.

Finally, *Carter v. Lynn Housing Authority*, from the Massachusetts Supreme Judicial Court, enforced the regulatory requirement that a hearing officer must consider “all relevant circumstances” regarding a voucher termination.<sup>30</sup> In 2002, the landlord sought to evict Ms. Carter, but the parties reached a resolution including a stipulation waiving any “then-existing claims against each other.”<sup>31</sup> However, three months later, the landlord filed a small claims action stating that Ms. Carter had caused excessive damage to the unit, and the court awarded damages.<sup>32</sup> Based on that judgment, the Lynn Housing Authority (LHA) notified Ms. Carter that it was terminating her Section 8 for violations of the family’s duty to avoid damaging the apartment beyond normal wear and tear.

Ms. Carter requested an informal hearing to review the termination decision. She presented evidence including documentation and witnesses that attested to the cleanliness and maintenance of her apartment. However, the hearing officer ignored that evidence and found that because there was a court judgment against her, her voucher was terminated.

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<sup>28</sup>*Hendrix* at \*5.

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

<sup>30</sup>*Carter v. Lynn Hous. Auth.*, 450 Mass. 626, 880 N.E.2d 778 (Mass. 2008); 24 C.F.R. § 982.552(c)(2)(i)(2007).

<sup>31</sup>*Carter* at 629.

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

The appellate court<sup>33</sup> noted immediately that the termination of a housing benefit “is a ‘protected interest,’” the deprivation of which requires due process.<sup>34</sup> This, at a minimum, includes following the regulations that require a hearing officer to consider all relevant circumstances,<sup>35</sup> which must include mitigating circumstances.<sup>36</sup> For Ms. Carter, this meant that the hearing officer should not only have considered that she might not have been the one responsible for the damage to the apartment, but also the fact that she had a disability and that she would not be able to afford housing without a Section 8 voucher. Ms. Carter never presented evidence on the latter two issues, but the court believed that LHA should have considered those factors in any case, as they were readily apparent.<sup>37</sup> The court also carefully distinguished a hearing officer considering all the arguments and ruling a certain way, as required by the rules, from what occurred here—a hearing officer not considering the arguments and making a ruling. Based on HUD regulations and Massachusetts jurisprudence finding a tenant’s interest in public housing as a protected one,<sup>38</sup> the court found that a hearing officer must consider the arguments in making the final decision,<sup>39</sup> which necessarily requires some sort of findings of fact in the written decision.<sup>40</sup> Because the hearing officer’s decision did not consider any of the facts Ms. Carter presented, the court remanded for a rehearing that allows all relevant evidence to be presented and mitigating circumstances to be considered.

## Conclusion

While courts have long held that Section 8 voucher participants are entitled to due process prior to termination, these recent cases have helped more precisely define those vital procedural requirements. Housing authorities use varying methods for informal hearings and frequently disagree with advocates on the degree of procedural formality required. These cases once again demonstrate the continued need for advocates to diligently ensure that the basic due process rights of voucher participants are protected, so that affordable housing is not unjustly denied. ■

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<sup>33</sup>The termination decision was originally overturned by the Housing Court, which ordered that assistance be reinstated. The intermediate Appeals Court, however, reversed the Housing Court. Carter then appealed to the Supreme Judicial Court, which granted review, but six justices were equally divided after argument, which effectively denied further review. However, Carter then petitioned for rehearing, which the Supreme Judicial Court granted, leading to the current opinion.

<sup>34</sup>*Id.* at 633.

<sup>35</sup>*Id.* at 634. See 24 C.F.R. § 982.552(c)(2)(i)(2007).

<sup>36</sup>*Carter* at 635.

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

<sup>38</sup>See *Spence v. Gormley*, 387 Mass. 258 (1982); *Lowell Hous. Auth. v. Melendez*, 448 Mass. 34 (2007).

<sup>39</sup>*Carter* at 636-7.

<sup>40</sup>*Id.* at 638.

# President's Budget Continues to Propose Deep Cuts in HUD Programs

As in previous years, the Administration's Fiscal Year (FY) 2009 HUD budget<sup>1</sup> proposes significant cuts to low-income housing programs.<sup>2</sup> The funding proposed for tenant-based voucher renewals is well below the amount required to renew all vouchers in use, and at least 100,000 vouchers would have to be cut under the Administration's budget. The President once again proposes to implement a budget-based renewal funding formula for vouchers, instead of basing funding upon the number of authorized vouchers recently in use. This proposal, along with the budget's proposal to reduce the funding of public housing agencies (PHAs) based on the amount in their reserves, could further harm high-performing PHAs that increase the number of vouchers utilized in 2008.

The President did propose to fund incremental vouchers for supportive housing for veterans as well as new vouchers for elderly and disabled households displaced by Hurricane Katrina. However, the budget proposes to eliminate Family Unification vouchers and vouchers for non-elderly individuals with disabilities.

The President's budget again proposes deep cuts to the Community Development Block Grant, the public housing capital fund, and supportive housing programs for the elderly and individuals with disabilities.

On a positive note, the budget proposes to significantly increase funding for renewal of project-based Section 8 contracts above the inadequate level provided in the FY 2008 HUD appropriations bill.<sup>3</sup> Unfortunately, given the recent practice of short-funding contract renewals, this amount would still be insufficient to restore funding to renew all contracts expiring during FY 2009 for their full one-year terms.

## Tenant-Based Rental Assistance

The budget requests a total of \$15.88 billion for tenant-based rental assistance in FY 2009. Of this, \$14.16 billion would be used for voucher renewals, \$500 million less than Congress provided in 2008. According to Center on Budget and Policy Priorities (CBPP) estimates, the President's proposal is about \$1.3 billion below the amount

needed to renew all vouchers in use.<sup>4</sup> As a result, at least 100,000 vouchers currently in use nationwide would be cut under the President's budget.<sup>5</sup>

The budget proposes to base 2009 voucher renewal funding on the amount that PHAs received in 2008, with adjustments for inflation, new tenant protection and incremental vouchers, and project-basing of vouchers. The funding formula also incorporates an offset mechanism, which reduces each PHA's renewal funding by an amount equal to the "unusable" portion of funds in its reserves at the end of FY 2008. The budget proposes to supplement the renewal funding provided under the budget with \$600 million in "unusable" reserves. The term "unusable" is not defined in the budget. According to the CBPP, it essentially refers to the amount of renewal funds that would remain if 100% of a PHA's authorized vouchers were in use for the entire year. The offset would likely have the effect of punishing high-performing agencies that have kept costs low in order to utilize all of their authorized vouchers. Specifically, an agency that utilizes 100% of its authorized vouchers in FY 2008 would be required to deplete its reserves to have its vouchers fully renewed in FY 2009.

According to CBPP estimates, if Congress rejects the proposed offset and accepts the President's proposed level of renewal funding, nearly 200,000 vouchers in use would be cut.<sup>6</sup> Additionally, the budget proposes a block-grant-style formula that would base renewal funding on vouchers in use in FY 2007, instead of the recent-cost formula used by Congress in 2007 and 2008. This could further harm PHAs that increase the number of vouchers they utilize this year, because they would not receive funding for the additional vouchers put to use in 2008. However, the impact on PHAs would be reduced if Congress rejects the block-granting of the voucher program and fully funds vouchers in use, as it has for the past two years.

The budget states that the Administration will resubmit voucher reform legislation early this year. In addition to codifying a budget-based renewal funding formula, the proposed legislation would eliminate the cap on the number of vouchers a PHA is authorized to issue and revise rent-determination formulas.

Tenant protection vouchers for relocation and replacement of converted housing units would be funded at \$150 million, a 25% cut from FY 2008. The Family Self Sufficiency Program would be funded at \$48 million, which is \$1 million less than FY 2008. Administrative fees would receive \$1.4 billion and would continue to be distributed based on the number of families served.

The budget proposes to fund \$75 million for incremental vouchers for supportive housing for approximately

<sup>1</sup>The HUD portion of the budget is available at <http://www.gpoaccess.gov/usbudget/fy09/pdf/appendix/hud.pdf>.

<sup>2</sup>This article is based in part on information from the National Low-Income Housing Coalition's weekly "Memo to Members." You may obtain the memo and join NLIHC at [www.nlihc.org](http://www.nlihc.org).

<sup>3</sup>Consolidated Appropriations Act, 2008, Pub. L. No. 110-161 (Dec. 26, 2007) (formerly H.R. 2764), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h2764enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf); see also *HUD Appropriations for FY 2008*, 38 Hous. L. Bull. 1 (Jan. 2008).

<sup>4</sup>Douglas Rice & Barbara Sard, *Preliminary Analysis of HUD Provisions of President's Budget for FY 2009* (Feb. 5, 2008).

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

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

10,000 veterans. There is also a proposal to fund \$39 million in new vouchers for elderly and disabled households displaced by Hurricane Katrina who are currently receiving Disaster Housing Assistance Program (DHAP) funds. The new vouchers would allow approximately 3,800 elderly or disabled households to continue to receive assistance once DHAP expires in March 2009.

The budget proposes to eliminate Family Unification vouchers, which were funded at \$20 million in FY 2008, as well as vouchers for non-elderly disabled participants, a \$30 million cut.

### **Project-Based Rental Assistance**

The budget requests \$7.16 billion for renewal of project-based Section 8 contracts. This includes a \$400 million "advance appropriation" to be available on October 1, 2009, for FY 2010. Although the funding requested is a significant increase (\$1 billion) over FY 2008, it still will not be enough for HUD to renew all contracts in FY 2009 with a full twelve months of funding. This shortfall is in part the result of HUD's recent policy, starting last summer, of requiring project-based Section 8 owners to accept short-funded contracts, which are twelve-month contract renewals that are not funded for the entire contract term. Funding expiring renewal contracts only through the remainder of the fiscal year, rather than for their full terms, permitted HUD to reduce its budget requests for the program. However, this tactic only pushed a portion of the funding need into subsequent fiscal years, creating greater uncertainty for owners and tenants. According to CBPP estimates, the budget request is \$1.9 million short of the amount needed to restore full funding for contract renewals.<sup>7</sup> Solving this problem will require more funding from an emergency supplemental appropriation, or from the FY 2009 appropriations bill. Part of that solution may involve a larger advance appropriation for FY 2010.

### **Public Housing**

The FY 2009 budget request calls for \$4.3 billion for public housing operating funds. Although \$100 million higher than the FY 2008 funding resolution, this amount would fund only 83% of actual need.

The budget request would continue to underfund the public housing capital fund, notwithstanding the more than \$20 billion backlog in unmet capital needs. For FY 2009, the President requests \$2.02 billion, a 17% reduction from the \$2.44 billion FY 2008 level.

The Administration continues to request no funding for the HOPE VI public housing revitalization program. The FY 2009 request reports the following cumulative results of the HOPE VI program as of June 30, 2007: 68,657 households have been relocated, 87,445 units have been

demolished, 61,222 units (new and rehabilitated) have been completed, of which 58,719 have been occupied.

The budget proposes to eliminate funding to repair public housing that is damaged by natural disasters, and cut the Resident Opportunities and Supportive Services (ROSS) program by more than \$2 million.

### **Native American and Native Hawaiian Housing Block Grants**

The budget request seeks \$627 million for the Native American Housing Block Grant program, \$3 million less than the FY 2008 level. The budget request seeks \$6 million for the Native Hawaiian Block Grant program, a 33% cut.

### **Housing Opportunities for Persons With AIDS**

The FY 2009 request for HOPWA would level-fund the program at \$300 million, to support about 70,500 housing units. The budget again includes a proposal to amend HOPWA's authorizing legislation to permit HUD to change the current program formula to incorporate both the local AIDS caseload and area housing needs.

### **Community Development Block Grants**

Again, the President's budget request seeks deep cuts in the Community Development Fund and in the Community Development Block Grant program (CDBG). The request would fund the overall Community Development Fund at \$3 billion, approximately \$866 million less than FY 2008. The budget proposes \$2.93 billion for CDBG formula grants, a \$659 million cut. The budget states that it will re-propose legislation to revise the CDBG allocation formula to better target funds to communities with the greatest need and to improve accountability. The budget also calls for rescinding \$206 million in FY 2008 economic development initiatives and other earmarks.

### **HOME**

The Home Investment Partnership Program (HOME) would receive \$1.92 billion, \$213 million over the FY 2008 level, while HOME grants themselves would be funded at \$1.85 billion. An additional \$50 million would go toward the Administration's American Dream Downpayment Initiative, and another \$65 million to Housing Counseling Assistance.

### **Homeless Assistance Grants**

Homeless assistance grants would receive a \$50 million increase over the final FY 2008 level. The budget again proposes to consolidate the three competitive homeless assistance programs (Shelter Plus Care, Supportive Housing, and Section 8 Moderate Rehab Single Room Occupancy)

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

## FY 09 Budget Chart for Selected Programs (in millions)

<i>HUD Program (set asides indented)</i>	FY04 Enacted	FY05 Enacted	FY06 Enacted <sup>1</sup>	FY07 Enacted	FY08 Enacted	FY09 Request
<b>Tenant Based Rental Assistance</b>	14,186	14,766	15,417	15,920	16,391	16,031
<b>Tenant Protection Vouchers</b>	205	163	178	149	200	150
<b>Administrative Fees</b>	1,235	1,200	1,238	1,281	1,351	1,400
<b>Family Self Sufficiency Coordinators</b>	48	46	47	47	49	48
<b>Contract Renewals</b>	12,893	13,463	13,949	14,436	14,695	14,319
<b>Project Based Rental Assistance</b>	4,792	5,298	5,037	5,976	6,382	7,000
<b>Contract Renewals</b>	4,692	5,195	4,890	5,829	6,139	6,763
<b>Advanced</b>						400
<b>Appropriation for contract Renewals</b>						
<b>Public Housing Capital Fund</b>	2,695	2,579	2,439	2,439	2,439	2,024
<b>Emergency/Disaster Grants</b>	50	30	17	17	19	0
<b>Resident Opportunities and Supportive Services (ROSS)</b>	55	52.5	38	38	40	37.6
<b>Public Housing Operating Fund</b>	3,579	2,438	3,564	3,864	4,200	4,300
<b>HOPE VI</b>	149	143	99	99	100	0
<b>Native American Housing Block Grants</b>	650	621	624	624	630	627
<b>Native Hawaiian Housing Block Grants</b>	9	9	9	9	9	6
<b>Housing Opportunities for Persons with AIDS</b>	295	282	286	286	300	300
<b>Community Development Fund</b>	4,921	4,671	4,178	3,772	3,866	3,000
<b>CDBG Formula Grants</b>	4,331	4,110	3,711	3,711	3,593	2,934
<b>Self-Help Homeownership Opportunity Program</b>	27	25	20	20	60	40
<b>Economic Development Initiative Grants</b>	276	262	307	0	180	0
<b>Brownfields Redevelopment</b>	25	24	10	10	10	0
<b>HOME Investment Partnership Program</b>	2,006	1,900	1,733	1,733	1,704	1,917
<b>HOME Formula Grants</b>	1,859	1,789	1,690	1,690	1,629	1,853
<b>American Dream Downpayment Initiative</b>	87	50	25	25	10	50
<b>Housing Counseling Assistance</b>	40	42	42	42	50	65
<b>Foreclosure Counseling</b>					180	
<b>Homeless Assistance Grants</b>	1,260	1,241	1,327	1,442	1,586	1,680
<b>Samaritan Initiative</b>	--	--	--	0	0	50
<b>Rural Housing and Economic Development</b>	25	24	17	17	17	0
<b>Housing for the Elderly (Section 202)</b>	774	741	735	735	735	540
<b>Housing for Persons with Disabilities (Section 811)</b>	249	238	237	237	237	160
<b>Fair Housing and Equal Opportunity</b>	48	46	46	46	50	51
<b>Fair Housing Assistance</b>	28	26	26	26	26	25
<b>Fair Housing Initiatives</b>	20	20	20	20	24	26
<b>Lead-Based Paint Hazard Reduction Program</b>	174	167	152	152	145	116
<b>Salaries and Expenses</b>	1,116	1,030	1,141	1,141	1,212	1,206

<sup>1</sup>FY 06 numbers reflect a 1% cut across the board.

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

into a single program. This new consolidated program would incorporate up to \$50 million for the Samaritan Housing Initiative, which would address the supportive housing needs of chronically homeless individuals. Congress has declined to fund this set-aside each time it has been proposed by the Administration.

### **Housing for the Elderly and Persons with Disabilities**

The request again seeks substantial cuts for the Section 202 Housing for the Elderly program and the Section 811 Housing for Persons with Disabilities program. The budget proposes to fund Section 202 capital advances, project-based rental assistance contracts, and service coordinators at \$540 million, which is \$195 million, or 27%, less than FY 2008. Section 811 would be funded at \$160 million, slashing the FY 2008 funding level by 33%. Of this amount, \$87.1 million would be for tenant-based assistance contracts, including contract renewals and amendments.

### **Fair Housing and Equal Opportunity**

The budget would almost level-fund fair housing programs at \$51 million, with the Fair Housing Assistance Program (FHAP) funded at \$25 million and the Fair Housing Initiatives Program (FHIP) at \$26 million. However, this actually represents a significant cut for the FHIP because the \$26 million request includes \$6 million for a separate HUD housing discrimination study.

### **Lead-Based Paint Hazard Reduction**

The budget proposes only \$116 million for the lead-based paint reduction program, a 20%, or \$29 million, cut from FY 2008 funding levels.

### **Moving to Work**

The budget again seeks authorization for HUD to increase the number of Moving to Work PHAs.

The President's budget proposal is only the first step toward funding HUD programs in the coming year. In recent years, Congress has restored funding to programs that would have been slashed under the Administration's budget, but that task becomes more difficult with growing deficits and competing priorities. This year's appropriations likely will not be finalized until late in the year because of the divergent positions of the Administration and the Congress in an election year, likely necessitating more continuing resolutions. However, the shape of this year's challenge should emerge later this spring, with the issuance of Congress' Budget Resolution and initial appropriations bills. ■

## **President's Budget Terminates All But One Affordable Rural Housing Program**

In a drastic and unprecedented move, the President's Fiscal Year 2009 (FY 09) Budget<sup>1</sup> proposes to eliminate all but one of the major Rural Housing Service (RHS) programs that serve low- and very low-income households. It proposes to continue funding only for the Rental Assistance program<sup>2</sup>, which subsidizes the rents of low- and very low-income households that reside in RHS Section 515 Rural Rental Housing<sup>3</sup> and Section 514/516 Farm Labor Housing.<sup>4</sup> However, to reduce the cost of the program, the Administration is again proposing to implement a minimum rent requirement for all households receiving Rental Assistance. At the same time as it is terminating housing programs that serve low- and very low-income households, the FY 09 Budget proposes, once again, to increase funding for the less costly guaranteed single and multifamily loan programs that serve moderate-income households.

### **Rental Assistance**

The FY 09 Budget proposes to increase funding for the Rental Assistance Program from its current \$482.1 million level to \$997 million.<sup>5</sup> The increase is not motivated by the Administration's desire to serve more households but is forced by the expiration of a large number of Rental Assistance contracts, whose terms have been shortened over the past several years.

In an effort to reduce appropriations for the Rental Assistance program, the Administration and Congress have, in the past, shortened the term of Rental Assistance contracts, first from twenty years to five years, next to four years, then to two years, and most recently to one year. While this process reduced the appropriations needed for the program because each appropriation was for a shorter period and renewal appropriations were not needed when longer term contracts were not expiring, it has now dramatically increased the need for appropriations because a larger number of contracts are all coming to an end in FY 09. In the next fiscal year, four-year contracts that were entered into in FY 05, two-year contracts that were entered into in FY 07, and one-year contracts that were entered into in FY 08 will all have to be renewed. RHS estimates that

<sup>1</sup>The RHS portion of the Budget is part of the United States Department of Agriculture (USDA) Budget that is available at <http://origin.www.gpoaccess.gov/usbudget/fy09/appendix.html>. (Hereinafter, cites to the FY 09 Budget will be Budget followed by a page number).

<sup>2</sup>Section 521 of the Housing Act of 1949, 42 U.S.C. § 1490a.

<sup>3</sup>42 U.S.C. § 1485.

<sup>4</sup>*Id.* §§ 1484 and 1486.

<sup>5</sup>Budget Pg. 138.

of the 280,000 rental housing units receiving Rental Assistance, approximately 230,000 will require new contracts in FY 09.<sup>6</sup> Obviously, this dramatically increases the need for appropriations in FY 09 and, because all new contracts will be for one year, every year from there on out.

### Rural Vouchers

The Budget proposes to use \$100 million of the \$997 million Rental Assistance request to institute a new demonstration voucher program for residents of Section 515 housing that are eligible for Rental Assistance.<sup>7</sup> No information is included in the Budget that discloses how these vouchers will be used except that it appears that they will be made available to current residents of Section 515 housing in lieu of Rental Assistance. It is not clear whether these vouchers will be portable and, if they are, what will replace them if residents move from Section 515 developments using the vouchers. RHS has not disclosed any further information on this demonstration program, which is unlike the voucher demonstration program that has been in place for the past two years to protect residents of Section 515 housing against loss of subsidies when the owner of the housing prepays the Section 515 loan.

### Minimum Rents

To reduce the cost impact of the Rental Assistance program, the Administration is proposing to implement a \$50 per month minimum rent for all residents receiving Rental Assistance or the new vouchers.<sup>8</sup> The Administration first proposed minimum rents in 2005 but Congress has, so far, not authorized legislation to implement the change, which would adversely affect persons with the lowest incomes by requiring them to pay more than 30% of their income for rent when 30% of their monthly income is less than \$50. It would also have a dramatic adverse impact on elderly persons and persons with disabilities, who comprise nearly 60% of all Section 515 residents. It is doubtful that Congress will approve such a program change in the near future.

## Elimination of Single and Multi-family Direct Loan and Grant Programs

The FY 09 Budget proposes to eliminate the direct Single Family Homeownership loan program,<sup>9</sup> the direct Rural Rental Housing loan program,<sup>10</sup> the Farm Labor Housing loan program,<sup>11</sup> the Farm Labor Housing grant program,<sup>12</sup> the Self Help Technical Assistance Grant

program,<sup>13</sup> the Rural Housing Voucher Program,<sup>14</sup> the Rental Preservation Demonstration Program,<sup>15</sup> and the Rental Preservation Revolving Loan Program.<sup>16</sup> All of these programs have subsidies attached to them, or, in the case of the grant programs, are themselves direct grant subsidies that allow RHS to serve low- and very-low income households. The Administration's proposal to eliminate all of these programs effectively terminates the Department of Agriculture's sixty-year commitment to improve the housing conditions of low-income rural households.

By far the most significant proposed cut is the Section 502 direct loan program, which is currently funded at \$1.129 billion.<sup>17</sup> The Administration proposed to cut the program in its FY 08 Budget and Congress rejected that proposal. In all likelihood, Congress will again reject termination of the program this year.

All the other programs proposed for termination are cumulatively funded at about \$175 million. While the Administration has proposed to cut some of these programs before, e.g. the Section 515 Rural Rental Housing loan program, the cuts to the Farm Labor housing loan and grant programs, which serve some of America's neediest households, and the Self Help Technical Assistance Grant program, which allows nonprofit organizations to assist groups of households to construct homes using their own labor, are new and surprising.

## Continuation of Section 504 Home Repair Loans and Grants

The FY 09 Budget proposes to continue funding of the Section 504 home repair loan and grant programs<sup>18</sup> that enable rural homeowners to secure loans to make emergency and limited health and safety repairs to their homes. The FY 09 Budget, however, proposes to cut the 504 loan program from its current \$34.7 million funding level to \$17.7 million.<sup>19</sup> It proposes to keep the home repair grant program, which is only available to persons 62 years of age or older, at its \$30 million funding level.<sup>20</sup>

<sup>6</sup>USDA, FY 2009 Budget Summary and Annual Performance Plan, 41 (no date).

<sup>7</sup>Budget 138.

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

<sup>9</sup>Section 502 of the Housing Act of 1949, 42 U.S.C. § 1472.

<sup>10</sup>Section 515 of the Housing Act of 1949, 42 U.S.C. § 1485.

<sup>11</sup>Section 514 of the Housing Act of 1949, 42 U.S.C. § 1484.

<sup>12</sup>Section 516 of the Housing Act of 1949, 42 U.S.C. § 1486.

<sup>13</sup>Section 523 of the Housing Act of 1949, 42 U.S.C. § 1490c.

<sup>14</sup>Section 542 of the Housing Act of 1949, 42 U.S.C. § 1490r.

<sup>15</sup>See, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161 (Dec. 26, 2007) (formerly H.R. 2764), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h2764enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf).

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

<sup>17</sup>Budget at 144.

<sup>18</sup>Section 504 of the Housing Act of 1949, 42 U.S.C. § 1474.

<sup>19</sup>Budget at 143.

<sup>20</sup>*Id.* at 136.

## Housing Preservation Grants

The only other program that the FY 09 Budget proposes to maintain is the Section 533 Housing Preservation Grant program,<sup>21</sup> which provides funds to public and nonprofit organizations to assist very low- and low-income homeowners in repairing and rehabilitating their homes and to assist rental property owners in repairing and rehabilitating their units if they agree to make such units available to low- and very low-income persons. The program is currently funded at \$9 million and the Administration has proposed to increase it to \$12 million for FY 09.<sup>22</sup>

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*The Administration likes the guaranteed loan programs and heralds them as substitutes for the direct loan programs because they are not administered by agency staff and do not require subsidies that increase their costs.*

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## Guaranteed Loan Programs

The FY 09 Budget again proposes to substantially increase the funding for the Section 502 Single Family Homeownership Guaranteed Loan program,<sup>23</sup> and the Section 538 Rental Housing Guarantee program.<sup>24</sup> The single family guarantee loan program insures loans made by private lenders to rural borrowers while the rental housing guarantee program guarantees private loans to developers who want to construct or rehabilitate rural rental housing. The FY 09 Budget proposes to increase funding for the single family guarantee loan program from \$4.22 billion to \$4.849 billion,<sup>25</sup> while increasing the rental housing guarantee program from \$130 million to \$300 million.<sup>26</sup>

Because neither of these programs are subsidized, they serve predominantly moderate-income households. The Administration likes the programs and heralds them as substitutes for the direct loan programs because they are not administered by agency staff and do not require subsidies that increase their costs. It does not address the fact that they serve a different clientele. In the FY 08 Budget the Administration supported its substitution of the single family guaranteed loan program for the direct Section 502 loan program by stating that it would propose a

subsidy program to accompany the guaranteed program and thereby enable it to serve lower-income households. The Administration never proposed such a program and has not renewed its promise for FY 09. It has, however, once again proposed to increase the fee charged to Section 502 guaranteed borrowers from 2% to 3%.<sup>27</sup> The simple justification for the increase is that it will reduce the cost of the program to the government.

## Rural Rental Housing Preservation

Since late 2004, the Administration has been championing the need to preserve the rural rental housing program, which has an inventory of more than 450,000 units. The stock is aging and in need of repair and rehabilitation, most of which cannot be carried out through the use of project reserves. During FY 06, the Administration proposed a bill, H.R. 5039 (109<sup>th</sup> Cong.), which would have authorized a revitalization and restructuring program for the RHS stock. The bill, which included several provisions adverse to the interests of low-income residents, passed the House Financial Services committee, but was never brought to the floor of the House and was not considered in the Senate. Notwithstanding, Congress, in both FY 07 and FY 08, appropriated funds for a demonstration revitalization program that authorizes RHS to undertake a modest revitalization program in anticipation of new authorizations and appropriations for a more substantial program.<sup>28</sup>

Surprisingly, the FY 09 Budget proposes to discontinue funding for the revitalization and restructuring of the Section 515 housing stock and to rescind \$20 million in previously appropriated funds because H.R. 5039 (109<sup>th</sup> Cong.), which the Administration had proposed, was not enacted into law.<sup>29</sup> This proposal ignores the fact that a new revitalization and restructuring bill has been introduced in the House, H.R. 4002 (110<sup>th</sup> Cong.), and that Congressman Barney Frank (D-MA) has stated that he intends to make revitalization and preservation a priority in 2008.

## Conclusion

In private conversations, RHS staff has indicated that the cuts to its direct loan and grant programs are necessitated by the large funding demands imposed by the Rental Assistance program. Unfortunately, this is simply an excuse. RHS has proposed and supported the cuts in the term of the Rental Assistance contract and should have known that the confluence of renewal dates would

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<sup>21</sup>Section 533 of the Housing Act of 1949, 42 U.S.C. § 1490m.

<sup>22</sup>Budget at 136.

<sup>23</sup>42 U.S.C. § 1472(h).

<sup>24</sup>*Id.* § 1490p-2.

<sup>25</sup>Budget at 143.

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

<sup>27</sup>*Id.* at 145.

<sup>28</sup>See, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161 (Dec. 26, 2007) (formerly H.R. 2764), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h2764enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf).

<sup>29</sup>USDA, FY 2009 Budget Summary and Annual Performance Plan, 41 (no date).

substantially increase the funding level needed for the program. Indeed, the Housing Assistance Council predicted that the Rental Assistance program would require over a billion dollars in funding even before the Administration cut the contract dates to two years and more recently to one. The Administration and Congress have absorbed increased renewal costs to the HUD Section 8 program, partially brought about by the shortening of the term of the Section 8 contracts. There is no reason why similar cost increases cannot be absorbed in the Rental Assistance Program without eliminating all the other rural housing programs that serve low-income households. The Rental Assistance program cost increases are simply a way for the Administration to justify the elimination of programs that it views as expensive and which it has never fully supported. Ironically, the termination of the single family direct homeownership loan program contradicts the Administration's oft-repeated exhortation of homeownership for all American families. Apparently, neither rental nor homeownership housing assistance is appropriate for rural low- and very low-income households.

Based on past actions, it is doubtful that Congress will go along with the Administration's FY 09 Budget proposal for the RHS housing programs. However, at a time of increased pressure on expenditures, it is possible that Congress will trim funding for some of the programs as it has done over the last several years. Advocates should oppose any efforts to terminate the RHS housing programs or to trim their funding. ■

### Notice to Readers

You may have noticed that this issue of the *Housing Law Bulletin* was sent by Bulk Mail. We are doing so in an effort to reduce mailings costs, which have increased substantially and are scheduled to rise again soon. This issue was sent out on or about March 14. Typically, it should not take more than ten-days for you to get the *Bulletin*. Please let us know if you are experiencing excessive delays in receiving your *Bulletin* as a result of this change. You can call 510.251.9400 Ext. (3)500 and leave us a message. Please tell us the name and address of the subscriber and the date that you received the *Bulletin*.

Thank you,

*National Housing Law Project*

## Congress Grapples with HOPE VI Reauthorization

Both the House and the Senate are considering legislation to reauthorize and revise the controversial HOPE VI program, which provides funding for the revitalization of selected "severely distressed" public housing developments. First created in 1992, HOPE VI has been reauthorized several times but once again faces expiration, this time with both a mixed track record and a high price tag in a challenging budget environment. After some brief background, this article reviews the major issues presented by the pending HOPE VI reauthorization bills, S. 829 and H.R. 3524.

### Background

In 1993, Congress created the HOPE VI program,<sup>1</sup> a federal grant program that funds the demolition or redevelopment of "severely distressed" public housing. In response to findings from the National Commission on Severely Distressed Public Housing in 1992, that 86,000 units (6%) of the then-total 1.4 million units in the national public housing stock were "severely distressed,"<sup>2</sup> HOPE VI was designed to remove these units and replace them with mixed-income housing. HOPE VI was modified and reauthorized twice in 1998 and 2003.<sup>3</sup>

Funding for the program has fluctuated dramatically. The largest single year appropriation was \$778 million for Fiscal Year (FY) 1994. In FY 1993 through FY 2006, appropriations totaled about \$6.5 billion, but have declined dramatically from \$625 million in FY 1999 to a low of \$100 million in FYs 2006 to 2008.<sup>4</sup>

According to an Urban Institute study, between 47,000 and 82,000 severely distressed public housing units still remain.<sup>5</sup> Based on an average redevelopment cost of \$156,000 per unit,<sup>6</sup> it would cost between \$7.3 billion and \$12.8 billion to replace these units under HOPE VI.

<sup>1</sup>Pub. L. No. 102-389, Tit. II (1992), *codified* at 42 U.S.C.A. § 1437l note (West 2003) ("Urban Revitalization Demonstration Program").

<sup>2</sup>NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING, THE FINAL REPORT OF THE NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING: A REPORT TO CONGRESS AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, 15 (1992).

<sup>3</sup>Pub. L. No. 105-276, Tit. V(B)(3), § 535(a), 112 Stat. 2581 (1998). Pub. L. No. 108-186, Tit. IV, §§ 402(a), (b), (d), (e), 403, 117 Stat. 2693, 2694 (2003).

<sup>4</sup>HUD, HOPE VI PROGRAM AUTHORITY AND FUNDING HISTORY (updated March 2007) at <http://www.hud.gov/offices/pih/programs/ph/hope6/about/fundinghistory.pdf>.

<sup>5</sup>MARGERY AUSTIN TURNER ET AL., URBAN INSTITUTE, SEVERELY DISTRESSED PUBLIC HOUSING: THE COSTS OF INACTION, 2 (2007) at [http://www.urban.org/UploadedPDF/411444\\_Severely\\_Distressed.pdf](http://www.urban.org/UploadedPDF/411444_Severely_Distressed.pdf).

<sup>6</sup>HUD Assistant Secretary for Public and Indian Housing, Orlando J. Cabrera, Written Testimony, Hearing Before the Senate Banking, Housing, and Urban Affairs, Subcommittee on Housing and Transportation, 2 (June 20, 2007) at [http://banking.senate.gov/\\_files/ACFE2.pdf](http://banking.senate.gov/_files/ACFE2.pdf) ("Cabrera Senate Testimony").

HOPE VI permits public housing authorities (PHAs) to apply to the Department of Housing and Urban Development (HUD) for grants to demolish or revitalize distressed developments. HUD considers eleven factors<sup>7</sup> and makes competitive awards to individual PHAs to either demolish or redevelop the public housing.<sup>8</sup> In addition, a PHA may use the grant to provide community and supportive services to displaced residents.<sup>9</sup> HOPE VI grantees usually use the grant to leverage other HUD funds, municipal and state contributions, public and private loans, and Low-Income Housing Tax Credit equity to create mixed-income developments.<sup>10</sup> PHAs are required to involve public housing residents throughout the planning process.<sup>11</sup> HOPE VI also provides assistance for smaller communities through the Main Street Revitalization program.<sup>12</sup>

Since HOPE VI's inception, in conjunction with the Public Housing Capital Fund, HOPE VI-funded projects have demolished over 100,000 public housing units.<sup>13</sup> The revitalization grants awarded a total of \$5.8 billion, and HUD has made \$395 million in demolition-only grants.<sup>14</sup> The HOPE VI program has reportedly leveraged an additional \$5 billion from other sources, mostly Low-Income Housing Tax Credits.<sup>15</sup>

In his June 20, 2007, testimony before the Senate Banking, Housing, and Urban Affairs Subcommittee, Assistant Secretary Orlando Cabrera asserted that 63,885 families have been relocated, 87,235 residents have received community and supportive services, 62,000 have received employment preparation and placement, 11,600 have participated in homeownership counseling programs, and 2,559 have purchased a home.<sup>16</sup>

*False HOPE*, a 2002 report prepared by NHLP, notes that the loose definition of "severely distressed" has resulted in non-severely distressed public housing being demolished, that not all demolished public housing units are replaced with affordable housing, that the program lacks requirements for resident participation and that many public housing families are excluded from HOPE VI opportunities and redeveloped sites.<sup>17</sup> Many of these criticisms remain valid.

A recently released Urban Institute series of seven reports found in part that the overwhelming majority of former residents are living in better housing, in safer, less-troubled neighborhoods, but that a substantial minority continue to live in public housing that is only marginally better than their previous homes.<sup>18</sup> The reports also undercut a criticism that relocation increases the probability that residents will become homeless,<sup>19</sup> although anecdotal information indicates that some tenants may well be lost in the process.<sup>20</sup>

## Senate Legislation (S. 829)

In March of 2007, Senator Barbara Mikulski (D-MD) introduced the HOPE VI Improvement and Reauthorization Act of 2007 (S. 829).<sup>21</sup> The bill would authorize \$600 million annually through FY 2013.<sup>22</sup>

The Senate bill's main modifications to the HOPE VI program include authorizing HUD to conduct site visits before application approval,<sup>23</sup> requiring grant recipients to develop a strategy in conjunction with local schools to improve academic achievement near the HOPE VI site and transform schools into high performing schools,<sup>24</sup> and requiring mandatory sanctions for PHAs that do not meet redevelopment benchmarks.<sup>25</sup>

On June 20, 2007, the Housing, Transportation, and Community Development Subcommittee held a hearing on S. 829. HUD leveled a number of criticisms,<sup>26</sup> most notably that requiring a PHA to develop plans to revitalize schools along with housing developments adds responsibility in an area where HUD and PHAs have no expertise.<sup>27</sup> Although not in the Senate bill, HUD also objected to any proposals guaranteeing displaced residents a right-to-return and one-for-one replacement of all demolished public housing units.<sup>28</sup> Testifying on behalf of many residents and advocates, the National Low Income Housing Coalition (NLIHC) detailed criticisms of S. 829 in its current

<sup>7</sup>42 U.S.C. § 1437v(e)(2) (Lexis, LEXIS through P.L. 110-46 approved 07-05-07).

<sup>8</sup>*Id.* at § 1437v(a)(1).

<sup>9</sup>*Id.* at § 1437v(e)(2)(I).

<sup>10</sup>*Id.* at § 1437v(e)(2)(G).

<sup>11</sup>*Id.* at § 1437v(e)(2)(D).

<sup>12</sup>*Id.* at §§ 1437v(a), 1437v(n).

<sup>13</sup>OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT, FY 2008, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Budget Appendix, at <http://www.whitehouse.gov/omb/budget/fy2008/pdf/appendix/hud.pdf>, p.7.

<sup>14</sup>Cabrera Senate Testimony, *supra* note 6, at 2.

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

<sup>16</sup>*Id.* HUD also claims that 50,482 units have been redeveloped (HUD FY 2008 Budget Appendix, <http://www.whitehouse.gov/omb/budget/fy2008/pdf/appendix/hud.pdf>, at p.7), but it is unclear how many of these are public housing units or other units affordable to those served by the public housing that was lost.

<sup>17</sup>NHLP, FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM (2002), ii-iv, available at <http://www.nhlp.org/html/pubhsg/FalseHOPE.pdf>.

<sup>18</sup>JENNIFER COMEY, URBAN INSTITUTE, HOPE VI'D AND ON THE MOVE, BRIEF NO. 1, 1 (2007) at [http://www.urban.org/UploadedPDF/311485\\_HOPEVI\\_Mobility.pdf](http://www.urban.org/UploadedPDF/311485_HOPEVI_Mobility.pdf); SUSAN J. POPKIN AND ELIZABETH COVE, URBAN INSTITUTE, SAFETY IS THE MOST IMPORTANT THING: HOW HOPE VI HELPED FAMILIES, BRIEF NO. 2, 2 (2007) at [http://www.urban.org/UploadedPDF/311486\\_HOPEVI\\_Safety.pdf](http://www.urban.org/UploadedPDF/311486_HOPEVI_Safety.pdf).

<sup>19</sup>DEBI MCINNIS ET AL., URBAN INSTITUTE, ARE HOPE VI FAMILIES AT GREATER RISK FOR HOMELESSNESS?, BRIEF NO. 7, 1 (2007) at [http://www.urban.org/UploadedPDF/311490\\_HOPEVI\\_Homeless.pdf](http://www.urban.org/UploadedPDF/311490_HOPEVI_Homeless.pdf).

<sup>20</sup>H. REP. NO. 507, 110<sup>th</sup> CONG. 1<sup>st</sup> SESS., at 14 (Jan. 3, 2008).

<sup>21</sup>HOPE VI Improvement and Reauthorization Act of 2007, S. 829, 110<sup>th</sup> CONG. (1<sup>st</sup> SESS. 2007) at <http://loc.thomas.gov>.

<sup>22</sup>S. 829, 110<sup>th</sup> CONG., § 2(i) (1<sup>st</sup> SESS. 2007).

<sup>23</sup>*Id.* at § 2(g).

<sup>24</sup>*Id.* at § 2(d)(3).

<sup>25</sup>*Id.* at § 2(h).

<sup>26</sup>HUD Assistant Secretary for Public and Indian Housing, Orlando J. Cabrera, Written Testimony, Hearing Before the Senate Banking, Housing, and Urban Affairs Subcommittee on Housing and Transportation, 2 (June 20, 2007) at [http://banking.senate.gov/\\_files/ACFE2.pdf](http://banking.senate.gov/_files/ACFE2.pdf).

<sup>27</sup>*Id.* at 3.

<sup>28</sup>Cabrera Senate Testimony, *supra* note 6, at 5, 7.

form.<sup>29</sup> Most notably, the bill does not require one-for-one replacement of lost housing units, fails to create a universal right to return for existing legal tenants, and does not focus attention on the hard to house.<sup>30</sup> In addition, the definition of “severely distressed” should be clarified,<sup>31</sup> and resident participation should be required for all stages of the process, not just the pre-application phase.<sup>32</sup> NLIHC also recommended explicit enforceability provisions to ensure that residents can hold HUD and PHAs accountable for violations of HOPE VI requirements.<sup>33</sup>

Now with twenty co-sponsors, the measure awaits further action in the Senate Banking, Housing, and Urban Affairs Committee.

### House Legislation (H.R. 3524)

Prior to introducing the bill, in June the Subcommittee on Housing and Community Opportunity of the House Financial Services Committee held a hearing on the HOPE VI program,<sup>34</sup> with testimony from HUD, PHAs, housing researchers and advocates. In light of the skepticism about the benefits of HOPE VI for public housing residents, support for one-to-one replacement and right to return came from Subcommittee Chair Maxine Waters (D-CA) and full Committee Chair Barney Frank (D-MA).<sup>35</sup> Especially compelling was the testimony of Yvonne Stratford, a former resident of Scott/Carver Homes in Miami, and leader of Low-Income Families Fighting Together (LIFFT), who dramatically recounted her HOPE VI experience, which only replaced 80 out of 850 public housing units and “lost” over 600 displaced families from housing assistance rolls.<sup>36</sup>

On September 11, Representatives Maxine Waters (D-CA), Mel Watt (D-NC), Barney Frank (D-MA), Christopher Shays (R-CT) and Steve Cohen (D-TN) introduced H.R. 3524, the HOPE VI Improvement and Reauthorization Act of 2007.<sup>37</sup> Acting quickly, the full House Financial Services

Committee reported the bill to the floor on September 26.<sup>38</sup> Subcommittee Chair Waters, a strong supporter of making HOPE VI work for residents, voiced strong concerns about displacement of residents and the loss of units for those most in need. Seeking to advance HUD’s position, Representative Shays proposed that the one-for-one replacement language be eliminated or at least qualified, asserting that it would harm rather than help HOPE VI projects, but this amendment was defeated.

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More recently, on January 17, 2008, H.R. 3524 passed the House floor on a vote of 271-130. The bill, as passed, would reauthorize \$800 million in annual funding for the HOPE VI program through FY 2015,<sup>39</sup> while making major changes in the way HUD administers HOPE VI grants, how PHAs implement their HOPE VI plans, how residents are included in the decision-making processes, and what temporary and permanent housing must be provided for displacees.

In contrast to the current HOPE VI program’s non-binding selection criteria that HUD may consider in allocating funds, H.R. 3524 would instead establish “mandatory core components,”<sup>40</sup> which would be required for any application. These seven mandatory core components would be evidence of severe distress, resident involvement and services, an adequate relocation plan, residents’ right to expanded housing opportunities, one-for-one replacement, fair housing and green developments.

Under the House bill, a PHA’s proposed HOPE VI plan would have to contain evidence sufficient to demonstrate that the project is severely distressed, with an engineer’s or architect’s certification of the statutory criteria. Other evidence that the project meets criteria for nonphysical distress, such as census data, crime statistics and PHA surveys of neighborhood conditions, must also be included.<sup>41</sup>

The plan would have to provide opportunities for the involvement of residents and the provision of services.<sup>42</sup> All segments of the affected resident population would have opportunities for involvement and consultation prior to submission of the application and during all phases

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<sup>29</sup>Charles Elsesser, Jr., National Low Income Housing Coalition, Written Testimony, Hearing Before the Senate Banking, Housing, and Urban Affairs, Subcommittee on Housing and Transportation, 2, 6 (June 20, 2007) at [http://banking.senate.gov/\\_files/elsesser.pdf](http://banking.senate.gov/_files/elsesser.pdf).

<sup>30</sup>*Id.* at 7-10.

<sup>31</sup>*Id.* at 11.

<sup>32</sup>*Id.* at 11.

<sup>33</sup>*Id.* at 12.

<sup>34</sup>House Financial Services Committee, Subcommittee on Housing and Community Opportunity, Reauthorization of the HOPE VI Program Hearing (June 21, 2007) at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/ht0621072.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/ht0621072.shtml) (last visited July 5, 2007).

<sup>35</sup>National Low Income Housing Coalition, *Memo to Members: Senate, House Hold HOPE VI Hearings* (June 22, 2007) at [http://www.nlihc.org/detail/article.cfm?article\\_id=4288](http://www.nlihc.org/detail/article.cfm?article_id=4288).

<sup>36</sup>Yvonne Stratford, Low-Income Families Fighting Together, Written Testimony, Reauthorization of the HOPE VI Program Hearing Before the House Financial Services Committee, Subcommittee on Housing and Community Opportunity, 1 (June 21, 2007) at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htstratford062107.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htstratford062107.pdf).

<sup>37</sup>H.R. 3524 makes changes to, and supersedes, H.R. 3126, introduced in July by Representatives Waters, Watt and Frank.

<sup>38</sup>H. REP. NO. 507, 110<sup>th</sup> Cong. 1st Sess. (Jan. 3, 2008).

<sup>39</sup>H.R. 3524 § 13.

<sup>40</sup>*Id.* § 7(a).

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

<sup>42</sup>*Id.*, § 8, creating a new § 24(g)(1) of the U.S. Housing Act.

of the planning and implementation. To enable resident involvement, the bill would require numerous notices from the PHA to the residents. Most importantly, PHAs would be required to provide written notice of intent to apply and several other items not later than thirty days after HUD's publication of a notice of funding availability.<sup>43</sup> The bill would require PHAs to give a notice of intent at least twelve months prior to submission of a HOPE VI application and also to hold a public hearing prior to submission. In addition, PHAs would be required to provide notices of grant award and relocation options (not later than thirty days after grant award), including the temporary relocation plan;<sup>44</sup> grant agreement and relocation options (not later than thirty days after execution of a grant agreement), specifically identifying the housing available for temporary relocation and the schedule;<sup>45</sup> and replacement housing availability and how to obtain it.<sup>46</sup> Each of these required notices would also have to inform residents of their opportunities to participate in the HOPE VI process.

The bill would require strong and specific relocation protections, requiring HOPE VI PHAs to provide comprehensive relocation assistance to each resident household until the later of two years after the HOPE VI development period or until all services funding has been expended.<sup>47</sup> Each displaced household must receive comparable replacement housing and relocation expenses and payments as required by the Uniform Relocation Act (42 U.S.C. 4601),<sup>48</sup> and information on all relocation options, including relocation to communities with lower concentrations of poverty. PHAs would also have to develop plans and strategies to assist displacees in utilizing vouchers to select opportunities, including those in lower poverty communities, which will not result in a financial burden and will promote long-term housing stability. The bill would require that relocation vouchers be usable for at least 150 days,<sup>49</sup> with additional extensions or housing protections for families unable to lease within that time.

Revitalization plans would have to make a replacement unit available to each displaced family, subject to a request made in response to the required notice.<sup>50</sup> Displacees seeking the replacement units, whether on or off-site, could only be subjected to the continued occupancy standards used by the PHA for regular public housing, although new tenants for replacement units could be subjected to the PHA's policies for new admissions (including credit checks).<sup>51</sup>

PHAs would have to maintain current contact information for affected families and provide updated information to HUD quarterly, and HUD would have to report to Congress at least every six months on compliance with these requirements, and with residents' rights to expanded housing opportunities, including housing in replacement units.<sup>52</sup>

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*Absent a waiver, H.R. 3524 would require replacement of 100% of the units demolished or disposed of, whether occupied or not, that were in existence as of January 1, 2005, although replacement would not necessarily be on-site, and not necessarily with public housing.*

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Absent a waiver, H.R. 3524 would require replacement of 100% of the units demolished or disposed of, whether occupied or not, that were in existence as of January 1, 2005,<sup>53</sup> although replacement would not necessarily be on-site, and not necessarily with public housing. Some of the replacement units must be provided on-site, and at least one-third of these must be public housing units, unless HUD makes an infeasibility determination due to an existing consent decree or environmental conditions.<sup>54</sup> In that case, the off-site replacement units must be located within the jurisdiction of the PHA in areas with low concentrations of poverty. On-site replacement must result in a decreased concentration of poverty. Generally, other off-site replacement units must also be located in areas of low poverty concentration within the PHA's jurisdiction, developed under the public housing program or other comparable programs, including project-based vouchers.<sup>55</sup> PHAs with limited low-poverty areas in their jurisdiction may provide these off-site replacement units within twenty-five miles of the original site. The bill encourages providing replacement units in phases, and making them available before unassisted units; in any event, the replacement units must be provided within fifty-four months of the execution of the grant agreement.<sup>56</sup>

In addition to the mandatory core components, the House bill would require proposed plans to contain certain other components ("mandatory graded" components), which HUD must consider. These include compliance with HOPE VI's purposes, the capability and record

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<sup>43</sup>*Id.*, § 8, creating a new § 24(g)(2)(A).

<sup>44</sup>*Id.*, § 8, creating a new § 24(g)(2)(B).

<sup>45</sup>*Id.*, § 8, creating a new § 24(g)(2)(C).

<sup>46</sup>*Id.*, § 8, creating a new § 24(g)(2)(D).

<sup>47</sup>*Id.*, § 8, creating a new § 24(g)(4).

<sup>48</sup>*Id.*, § 8, creating new §§ 24(h) and 24(p).

<sup>49</sup>*Id.*, § 8, creating a new § 24(h)(6).

<sup>50</sup>*Id.*, § 8, creating a new § 24(i).

<sup>51</sup>*Id.*, § 8, creating a new § 24(m).

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<sup>52</sup>*Id.*, § 8, creating a new § 24(k).

<sup>53</sup>*Id.*, § 8, creating a new § 24(j). HUD could grant a limited waiver to reduce the replacement percentage to not less than 90%, but only if tailored to extenuating circumstances, including consent decrees or land availability.

<sup>54</sup>*Id.*, § 8, creating a new § 24(j)(2)(A).

<sup>55</sup>*Id.*, § 8, creating a new § 24(j)(2)(B).

<sup>56</sup>*Id.*, § 8, creating a new § 24(j)(3).

of the applicant, diversity outreach, effectiveness of temporary relocation and one-for-one replacement plans, achievability of revitalization, performance benchmarks, leveraging, need for additional funding, public and private involvement, need for affordable housing, affordable housing supply, additional on-site mixed income housing, sustaining or creating project-based housing, green developments compliance, the extent the replacement housing plan provides for "hard-to-house" families, and providing sufficient bedrooms to prevent overcrowding.<sup>57</sup>

The bill would also increase from 15% to 25% the amount of any HOPE VI grant that may be used for community or supportive services.<sup>58</sup> It would give HUD the authority to waive the match requirement for grantees in cases of extreme distress or emergency,<sup>59</sup> and prohibit demolition-only grants.<sup>60</sup> The bill would also establish HUD administrative enforcement of certain provisions and create performance benchmarks for the HOPE VI program.<sup>61</sup> Finally, the bill would add significant transparency to the process by requiring HUD to make available, via the HUD website, a wide range of documents submitted by PHAs and other parties throughout the HOPE VI revitalization process.<sup>62</sup>

### Next Steps

After fifteen years of experience, it is high time for Congress to address the serious issues presented by HOPE VI's reauthorization, including the loss of non-severely distressed affordable housing, the lack of one-for-one replacement for lost units, and ensuring basic resident protections such as participation, adequate relocation assistance, and a universal right to return to the revitalized site.

Thanks to persistent advocacy by many affordable housing advocates nationwide, H.R. 3524 now addresses many of the substantial deficiencies of the HOPE VI program, while its Senate counterpart ignores almost all of these problems. While significant issues remain with the House bill,<sup>63</sup> hopefully the Senate bill can be amended as it moves forward to resemble its House counterpart and address those shortcomings. A looming risk is continuation of business as usual through the appropriations process, without a new comprehensive reauthorization. Since Congress must reauthorize the program in some way before September 30, the *Bulletin* will cover further developments. ■

<sup>57</sup>*Id.*, § 7(a), creating a new § 24(e)(2)(C).

<sup>58</sup>*Id.*, § 6.

<sup>59</sup>*Id.*, § 3.

<sup>60</sup>*Id.*, § 4.

<sup>61</sup>*Id.*, § 8, creating a new § 24 (n) and (o).

<sup>62</sup>*Id.*, § 10.

<sup>63</sup>These deficiencies include: the amount of potential displacement (up to two-thirds of the tenants) under the ordinary provisions of the House bill, encouraging temporary relocation into segregated areas, and the lack of assurances that HOPE VI requirements will be enforceable.

## Public Housing Residents Gain One-For-One Replacement

Residents contesting the demolition of Jane Addams Village, a Rockford, Illinois public housing development, agreed to withdraw their opposition in return for nearly one-for-one replacement and an admissions priority for displaced residents for the redeveloped units. In addition, the settlement includes the institution of a housing mobility program designed to affirmatively further fair housing opportunities for relocated residents, resident participation in the redevelopment process, and supervision by the court. *Jones v. HUD*<sup>1</sup> is noteworthy both for its positive results for the plaintiffs and for the defendants' brazen disregard for the law.<sup>2</sup>

### The Litigation

Two tenants, Ms. Jones and Ms. Brown, represented by Prairie State Legal Services and the Sargent Shriver National Center on Poverty Law, objected to a plan to demolish eighty-four low-rise public housing units of Jane Addams Village which the Rockford Housing Authority (RHA) sought to replace with a "green space."<sup>3</sup> While the neighborhood around Jane Addams was gentrifying,<sup>4</sup> Ms. Jones and Ms. Brown faced the prospect of forced relocation either into significantly less desirable public housing or, via housing choice vouchers,<sup>5</sup> into units chosen from an RHA list, located in predominantly poor, minority areas of Rockford.<sup>6</sup>

In June of 2006, RHA submitted its initial partial demolition application to HUD.<sup>7</sup> The application asserted that Jane Addams was obsolete because it was old, in disrepair, an eyesore and a magnet for crime.<sup>8</sup> RHA further asserted that the cost of rehabilitation exceeded 90% of the total development cost.<sup>9</sup> Finally, RHA certified that its relocation activities would comply with the Fair Housing

<sup>1</sup>*Jones v. U.S. Department of Housing and Urban Development*, No. 07 C 50142 (N.D. Ill. 2008) (Complaint filed July 2007 and Consent Decree filed January 24, 2008), hereinafter referred to respectively as "*Jones Complaint*" or "*Jones Consent Decree*."

<sup>2</sup>HUD has responded by instructing staff to follow the law ("New Processing of Partial Demolition Applications" in the "What's New" section of its Special Applications Center (SAC) website [www.hud.gov/offices/pih/centers/sac](http://www.hud.gov/offices/pih/centers/sac) (content updated January 23, 2008).

<sup>3</sup>*Jones Complaint*, ¶ 32 & 33.

<sup>4</sup>*Id.* at ¶ 40.

<sup>5</sup>*Id.* at ¶ 8 & 9.

<sup>6</sup>*Id.* at ¶ 38.

<sup>7</sup>*Id.* at ¶ 32.

<sup>8</sup>42 U.S.C. § 1437p(a)(1)(A)(i) (West 2003) requires that the project be obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes.

<sup>9</sup>*Jones Complaint* ¶ 35, formerly required by 24 C.F.R. § 970.6 (2006), now withdrawn.

Act<sup>10</sup> and would affirmatively further fair housing.<sup>11</sup> RHA did *not* also assert, as statutorily required for all allegedly obsolete properties, that “no reasonable program of modifications is cost-effective to return the development or portion thereof to useful life.”<sup>12</sup>

HUD approved RHA’s application on October 13, 2006, finding that Jane Addams was obsolete, that the partial demolition plan would help ensure the viability of the remaining portion of the project,<sup>13</sup> that the relocation plan was satisfactory, and that the application otherwise complied with statutory and regulatory requirements.<sup>14</sup>

On May 16, 2007, the tenant plaintiffs contested HUD’s action through letters from counsel to HUD. They asserted, through an expert, that Jane Addams was a typical townhouse development that had recent improvements and was integrated into the community. The tenants’ expert maintained that RHA’s rehabilitation cost estimate was inflated. Additionally, in contrast to RHA, the tenants’ expert addressed the statute’s “reasonable modifications” requirement, identifying numerous alternatives that would extend the useful life of the project. The tenants further contended that the RHA relocation plan discouraged Jane Addams residents from moving into communities of less minority and low-income concentration and that the relocation counseling consisted primarily of providing a list of potential rental units located in racially and poverty concentrated areas.

In June of 2007, HUD conducted an on-site investigation of Jane Addams’ obsolescence and RHA’s relocation plan. HUD thereafter agreed that RHA had not met the two-part test for obsolescence. HUD’s counsel also acknowledged that HUD had misapplied Section 18 of the United States Housing Act and that it would have no choice but to rescind its approval of the partial demolition application.

After the on-site investigation, but before HUD formally acknowledged that the RHA application was legally defective, RHA had submitted to HUD a revised application. This time the application focused only on the partial demolition provisions of the statute, relying only upon the requirement that the demolition of low-rise Jane Addams Village would help to ensure the viability of the high-rise Brewington Oaks.<sup>15</sup> RHA ignored the statute’s requirements that the application should have also certified again that the property was obsolete and that no cost-effective program would return the property to useful

life. RHA did not consult with the residents or obtain authorization from the RHA Commission before submitting this revised application.

Despite HUD’s finding that RHA had not shown that Jane Addams was obsolete,<sup>16</sup> HUD promptly approved the revised application based only on the provisions relating to viability. HUD’s response to the tenants’ objection to the inadequacy of the relocation plan was to agree to study it.<sup>17</sup> The tenants immediately pointed out to HUD that the RHA application was still fatally defective: even if the viability test had been met, the obsolescence test had not, and both are required by law. HUD responded that its approval was final.<sup>18</sup>

Ms. Jones and Ms. Brown then filed a complaint in federal court, raising three types of claims. First were the claims arising factually from admitted deficiencies in the RHA application: (a) that the application failed to demonstrate that Jane Addams was obsolete, a fatal defect acknowledged by HUD,<sup>19</sup> and (b) that RHA had failed to consult with the residents or obtain the RHA Board’s authorization for the revised application.<sup>20</sup> Second were claims based upon the inadequate relocation plan—that the application failed to ensure comparable replacement dwellings for displaced residents, a claim HUD tacitly admitted by having proffered an “ongoing investigation” of RHA’s relocation process.<sup>21</sup> Third were the civil rights claims: (a) that RHA’s and HUD’s actions would have a harmful disparate impact on African Americans, women and families with children,<sup>22</sup> and (b) that the flawed relocation would fail to affirmatively further fair housing.<sup>23</sup> Additionally, the tenants alleged that HUD’s approval of the revised demolition application, in the face of the clear and recognized failure of RHA to comply with the law, was arbitrary and capricious in violation of the Administrative Procedures Act.<sup>24</sup>

<sup>16</sup>This finding was based upon RHA’s failure to address the question of a cost-effective return to useful life under 42 U.S.C. § 1437p(a)(1)(A)(ii) (West 2003).

<sup>17</sup>Jones Complaint, ¶ 57.

<sup>18</sup>*Id.* at ¶ 59.

<sup>19</sup>Jones Complaint, Count I against HUD and Count V against RHA.

<sup>20</sup>*Id.*, Count II against HUD and Count VII against RHA.

<sup>21</sup>*Id.*, Count III against HUD and Count VIII against RHA.

<sup>22</sup>*Id.*, Count IX against both HUD and RHA; Fair Housing Act, 42 U.S.C. §§ 3604, 3613 (West WESTLAW Current through P.L. 110-185 (excluding P.L. 110-181) approved 2-13-08), as further elaborated by 24 C.F.R. §§ 100.50, 100.65, 100.70, 100.75, 100.80 (2007) and the Quality Housing and Work Responsibility Act of 1998, 42 U.S.C. § 1437c-1(d)(15) (West 2003 & Supp. 2007).

<sup>23</sup>Jones Complaint, Count X against both HUD and RHA; 42 U.S.C.A. § 3608(e)(5) (West WESTLAW Current through P.L. 110-185 (excluding P.L. 110-181) approved 2-13-08); 24 C.F.R. §§ 960.10(b), 107.20(a), 903.7(o), 982.53(b), (c) (2007); Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (Nov. 20, 1962); Exec. Order No. 12,892, 59 Fed. Reg. 2,939 (Jan. 17, 1994); and the Quality Housing and Work Responsibility Act of 1998 (QHWRA), 42 U.S.C. § 1437c-1(d)(16) (West 2003 & Supp. 2007) (QHWRA was alleged against RHA and not HUD).

<sup>24</sup>Jones Complaint, Count IV v. HUD, 5 U.S.C. § 701(b)(1) (West WESTLAW Current through P.L. 110-185 (excluding P.L. 110-181) approved 2-13-08).

<sup>10</sup>*Id.* ¶ 37.

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

<sup>12</sup>42 U.S.C.A. § 1437p(a)(1)(A)(ii) (West 2003) and 24 C.F.R. § 970.15(a)(1) (2007).

<sup>13</sup>The high-rise portion, known as Brewington Oaks, was to be left standing.

<sup>14</sup>Jones Complaint, ¶ 39.

<sup>15</sup>The submission of the revised application was apparently the result of a meeting between RHA and HUD at which the original application’s defects were discussed.

## The Consent Decree

In the wake of the complaint, the parties commenced settlement negotiations, and in January 2008, the parties submitted a consent decree to the court, which the court entered on January 24. In exchange for the tenants' agreement to the demolition of Jane Addams' eighty-four units, RHA and HUD agreed to numerous substantial obligations and conditions. RHA agreed to construct, acquire, redevelop or otherwise provide seventy-seven replacement low-income homes. The replacement units must be in areas not generally less desirable than that surrounding Jane Addams Village,<sup>25</sup> may be a combination of public housing and project-based Section 8,<sup>26</sup> may be scattered-site or located in mixed-income developments,<sup>27</sup> and must be affordable to families at or below 80% of area median income.<sup>28</sup> Ms. Jones, Ms. Brown and the sixty-nine other families eligible for relocation due to the demolition of Jane Addams will receive first priority to occupy the replacement housing, with Ms. Jones and Ms. Brown having first priority among this group.<sup>29</sup>

RHA also agreed to implement a first-rate mobility program for these relocatees<sup>30</sup> within 180 days of entry of the consent decree,<sup>31</sup> and to make that program a part of its housing voucher program.<sup>32</sup> Part of the program's mission is to allow the relocatees the opportunity to move to low-poverty, integrated neighborhoods.<sup>33</sup> The program will include pre-move, post-move and second-move counseling, assistance in accessing services and housing voucher counseling.<sup>34</sup> Under the program, RHA will pay for both initial relocation and second move expenses for the Jane Addams relocatees.<sup>35</sup>

Finally, the Decree contains provisions designed to support its implementation. First, tenants are guaranteed participation in the process of developing the replacement housing. A plaintiff representative will sit on RHA's panel selecting entities to develop the replacement housing. The plaintiffs will be consulted concerning, among other things, bedroom size of the replacement units and the content of the letter to be sent to the relocatees. RHA will provide to plaintiffs all of the plans, surveys, financing and other documents related to the redevelopment project.<sup>36</sup> Second, RHA must file detailed reports with the court every six months on its progress in developing the

replacement units.<sup>37</sup> Third, the court retains jurisdiction of the matter pending the construction, acquisition or redevelopment of the seventy-seven units and the initial and second moves of the relocatees.<sup>38</sup>

## HUD's "New" Policy Regarding Partial Demolitions

In addition to agreeing to this settlement, HUD has recently posted a notice on its website effectively acknowledging that it had previously misinterpreted Section 18 when PHAs were applying for partial demolition.<sup>39</sup> Referencing the litigation (i.e., the *Jones* case) the "new" guidance states that, in the case of a partial demolition, Section 18(a)(1)(B) requires the PHA to demonstrate both of the following elements: (1) the units identified for demolition are obsolete as to physical condition, location or other factors, making them unsuitable for housing purposes; and (2) that demolition will help ensure the viability of the remaining portion of the development.<sup>40</sup> The guidance says, in effect, that HUD will henceforth follow the statute when considering applications for partial demolition.

## Conclusion

The results in the Jane Addams case point to the fact that every demolition and disposition application should be reviewed carefully. Sometimes, the zeal of HUD and PHAs to demolish or dispose of public housing overcomes careful adherence to statutory requirements. Tenants and advocates can turn these mistakes to their advantage. Even in the absence of a statutory one-for-one replacement requirement, the Jane Addams settlement demonstrates that real benefits may nevertheless be achieved for the residents (relocation benefits and priority for redeveloped housing) and for the future residents of the community (replacing affordable units and mobility programs).

We'll leave to the reader's speculation what lessons must be drawn from a federal agency's need to issue guidance that affirms the plain language of a decade-old amendment to a federal statute regulating the removal of desperately needed affordable housing units. ■

<sup>25</sup>*Jones* Consent Decree ¶ 3. A.(6), in compliance with 24 C.F.R. § 970.21(a) (2007).

<sup>26</sup>*Id.* ¶ 1. D.

<sup>27</sup>*Id.* ¶ 3. A. (1).

<sup>28</sup>*Id.* ¶ 1. D. and F.

<sup>29</sup>*Id.* ¶ 3. A. (5).

<sup>30</sup>*Id.* ¶ 3. B.

<sup>31</sup>*Id.* ¶ 3. B. (3).

<sup>32</sup>*Id.* ¶ 3. B. (3).

<sup>33</sup>Either in Rockford or elsewhere in the country.

<sup>34</sup>*Jones* Consent Decree, ¶ 3. B. (1).

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

<sup>36</sup>*Id.* ¶ 4.

<sup>37</sup>*Id.* ¶ 8.

<sup>38</sup>*Id.* ¶ 10.

<sup>39</sup>[http://www.hud.gov/offices/pih/centers/sac/demo\\_dispo/partdem.cfm](http://www.hud.gov/offices/pih/centers/sac/demo_dispo/partdem.cfm) (content updated October 10, 2007).

<sup>40</sup>HUD in its prior interpretation had ignored the fact that § 18 was amended in 1998 replacing the term "or" with an "and" between what became paragraphs (A) (ii) and (B). Compare Pub. L. 105-276 § 531 (codified at 42 U.S.C.A. § 1437p(a)(1) and (2) with Pub. L. 98-181, § 214(a) (Nov. 30, 1983), which added § 18. This statement effectively confirmed that HUD had approved the Jane Addams application by ignoring § 18(a)(1)(A) and basing its approval solely on § 18(a)(1)(B).

## Recent Cases

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

### Public Housing: Bankruptcy Automatic Stay Provisions's Effect on Magistrate Court Eviction Judgment

*In re Alberts*, 2008 WL 199700 (Bkrcty. W.D.Pa., Jan. 24, 2008). The bankruptcy court rejected a housing authority's claim that it had secured a final judgment of eviction in the magistrate court before the petitioner filed the bankruptcy action and that the judgement is therefore not subject to the Bankruptcy Code's automatic stay provision. The court held that under Pennsylvania law magistrate eviction decisions are subject to appeal and give rise to a *de novo* review in the Court of Common Pleas, effectively making the judgement a nullity. As the petitioner had filed a timely appeal of the magistrate's decision while the bankruptcy petition was pending, the magistrate's decision is not final and is not subject to the exception to the automatic stay provision of the bankruptcy code. The court also rejected the housing authority's petition for relief from stay and the petitioner's contempt action for housing authority's failure to adhere to automatic stay.

### Public Housing: Right to Post Materials on Front Door

*Resident Action Council v. Seattle Housing Authority*, 174 P.3d 84 (Wash., Jan. 3, 2008). The Washington Supreme Court affirmed a lower court ruling that a housing authority's rule prohibiting residents from posting signs on the outside of their front doors violated the residents' constitutional free speech rights. The court held that the doors were appurtenant to the leased premises, that the residents did not cede control of the outside doors to the housing authority, and, consequently, that the ban on posters violated the residents' free speech.

### Voucher Program: Admission, Source of Income Discrimination

*Commission on Human Rights and Opportunities v. Sullivan*, 208, 2008 WL 123996 (Conn., Jan. 22, 2008). A Section 8 voucher holder and the city fair housing commission brought action against a landlord to recover for discrimination on the basis of a lawful source of income, namely Section 8 of the National Housing Act. The state district court ruled in favor of the plaintiffs and awarded compensatory and punitive damages and attorneys' fees. The defendant appealed, arguing that the practice of requiring residents to have a minimum income that did not include the Section 8 voucher subsidy income was not discriminatory particularly if the formula was applied consistently; that the Section 8 program was voluntary and that the landlord did not have animus against Section 8 voucher holders but simply did not rent to them; and, that applicant's bad attitude, after she was rejected for admission, and her past bad credit history were legitimate non-discriminatory reasons to deny admission. The Connecticut Supreme Court rejected all three arguments. It held that state statute precluded landlords from discriminating on the basis of source of income, which included housing assistance, and that the failure to consider the applicant's income in relation to her share of the rent was discriminatory. It also rejected the landlord's argument that it did not "hate" Section 8 voucher recipients but simply did not rent to them. The court held that discrimination was not predicated on the landlord's lack of animus against voucher holders but its discriminatory treatment of them as a class. Lastly, it rejected the landlord's refusal to rent on the basis of the applicant's bad attitude and credit history as legitimate reasons for the denial. It found that Section 8 applicant did not display a bad attitude until after she was rejected for admission and that the credit history was old and had not been verified. The court did, however, reject the award of attorneys fees to the plaintiff on a procedural error and remanded the case for a redetermination of the motion for attorneys fees.

### Voucher Program: Sufficiency of Evidence at Termination Hearing; Unauthorized Resident

*Basco v. Machin*, 2008 WL 182249 (11<sup>th</sup> Cir., Jan. 23, 2008). A Section 8 voucher lessee brought a Section 1983 due process action against a county housing authority for termination of voucher on the ground that the resident had an unauthorized resident in the household. The resident argued that the housing authority's regulations improperly placed the burden of persuasion on the resident and that the evidence relied on by the hearing officer—two police reports—was hearsay and did not establish that an unauthorized resident lived in the unit. The federal district court granted summary judgement to the housing

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

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

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

authority, finding no due process violation. The resident appealed and the 11<sup>th</sup> Circuit reversed. It held, as the housing authority apparently conceded at the oral argument, that the housing authority had the burden of establishing a *prima facie* case and that the resident had the right to introduce evidence that the person was a guest. It further held that the police reports that were introduced at the hearing were hearsay, that they did not establish that a person stayed in the voucher holder's residence for a sufficient period of time to become an unauthorized resident, and that, therefore, the hearing officer's decision was not supported. Accordingly, it reversed the district court opinion.

### **Voucher Program: Landlord's Ability to Sue Resident for Full Rent After Termination of HAP Contract**

*New Hempstead Terrace v. Reeves*, 18 Misc.3d 1113(A), 2008 WL 95779 (N.Y. Dist. Ct., Jan. 9, 2008) (Unpublished). Court reaffirms its earlier decision that a landlord, whose housing assistance payment contract with the local housing authority has been terminated due to violation of housing quality standards, is not entitled to bring a nonpayment action against the resident voucher holder that seeks to recover both the resident's and housing authority's share of the rent absent a new agreement between the landlord and the voucher holder that obligates the voucher holder to pay the full rent. The landlord argued that it is entitled to bring the action and that the voucher holder may bring an affirmative defense relieving her of the obligation to pay the housing authority's share. The court disagreed and dismissed the case.

### **Project-Based Section 8 Program: Eviction Hearing Failure to Consider Applicable Federal Rules**

*Lakeside Gardens v. Lashay*, 2008 WL 141134 (Wis. App., Jan. 16, 2008). The court overturned a small claims court decision to evict a resident of a project-based Section 8 development for violating house pet rules. Without calling or swearing in of any witnesses, the small claims court found a violation of the lease but did not consider, despite resident's objections, application of federal rules to the eviction action. The court of appeals concluded that this was an error as both lease and federal rules had to be considered in an eviction action from a federally subsidized development. Accordingly it reversed and remanded the case with instructions to swear in witnesses and to allow the resident an opportunity to show violations of federal rules.

### **Section 236 Program; Preservation: Right of Owner to Prepay Loan**

*Brook Village North Associates v. Jackson*, 2008 WL 64669 (D.N.H., Jan. 4, 2008) (unpublished). The owner of a HUD Section 236 development who sought to prepay the HUD insured loan brought suit against HUD claiming that it improperly refused to allow the prepayment. HUD maintained that the owner was not eligible to prepay the loan under its regulations and under its contract because the owner, while not currently receiving rental subsidies, was eligible to submit claims for the subsidies in the future. The court rejected HUD's argument and held that the owner was entitled to prepay the loan under Section 219 of the HUD appropriations act of 1998 because it was not currently receiving rental assistance subsidies.

### **RHS Section 515 Rental Housing; Preservation: Residents' Right to Intervene in Landlord's Quiet Title Action**

*Meadowfield Apartments v. U.S.*, 2008 WL 63413 (11<sup>th</sup> Cir., Jan. 7, 2008) (unpublished). Residents of a Rural Housing Service (RHS) Section 515 rental housing development sought to intervene in a case initiated by the development's owner against RHS in which the owner claimed that it is entitled to quiet the title to the property when RHS, consistent with the Emergency Low Income Housing Preservation Act of 1987, refused to accept the owner's tender to prepay the loan. The district court denied the residents' motion to intervene and the residents' appealed the decision. The 11<sup>th</sup> Circuit affirmed the district court decision, holding that the intervenor residents were not real parties in interest in the transaction such that they have a direct, substantial, legally protectable interest in the proceedings. As leaseholders, the court concluded, no judgment entered will defeat their leaseholder rights.

### **HUD Single Family (Section 203) Inventory Property: Right to Evict Without Good Cause or Due Process**

*Linares v. Jackson*, 2008 WL 63291 (E.D.N.Y., Jan. 3, 2008). Residents in foreclosed properties that had been insured by HUD under its Section 203 single family loan program and were now owned by HUD, challenged HUD efforts to evict them without cause and without any opportunity for a hearing because HUD wanted to sell the properties to developers who would rehabilitate them. HUD argued that its regulations, 24 C.F.R. 247.10 (2007), gave it authority to evict without cause and without a due process appeal procedure whenever it sold properties that were going to be rehabilitated. The court declared the HUD regulation unconstitutional because it deprived the residents of due

process and granted partial summary judgement to the residents. It reserved to a later date the scope of the due process procedure that HUD must follow before evicting the residents.

### **FEMA Housing Assistance Payments: Due Process Termination Protections**

*Ridgely v. Federal Emergency Management Agency* (5<sup>th</sup> Cir., Jan. 4, 2008). In a class action filed against FEMA by individuals displaced by hurricanes Rita and Katrina, individuals who received rental assistance payments from the agency claimed that the agency's processes of awarding assistance violated constitutional due process protections and other statutory provisions. The district court issued a preliminary injunction requiring FEMA to make continuing payments to class member until notice, hearing and appeal procedures were put in place. On an interlocutory appeal by FEMA, the 5<sup>th</sup> Circuit reversed, finding that the assistance recipients did not have a sufficient property interest in the assistance payments to trigger due process protections. ■

## **Recent Housing-Related Regulations and Notices**

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA—Rural Housing Service/Rural Development (RD)) and the Veterans Administration issued in January of 2008. For the most part, the summaries are taken directly from the summary of the regulation in the Federal Register or each notice's introductory paragraphs.

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

### **HUD Regulations**

#### **73 Fed. Reg. 3867 (Jan. 23, 2008) Demolition or Disposition of Public Housing Projects; Correction**

*Summary:* On October 24, 2006, HUD published a final rule revising the agency's regulations on demolition or disposition of public housing projects. This publication corrects certain typographical and other non-substantive errors that occurred in the final rule.

### **HUD Interim Rules**

#### **73 Fed. Reg. 1433 (Jan. 8, 2008) Home Equity Conversion Mortgages (HECMs): Determination of Maximum Claim Amount; and Eligibility for Discounted Mortgage Insurance Premium for Certain Refinanced HECM Loans**

*Summary:* This rule makes two technical changes to HUD's Home Equity Conversion Mortgage (HECM) program. First, the rule extends the date for calculating the maximum claim amount in the HECM program from the date of the underwriter's receipt of the appraisal report to the date of closing. Second, this rule corrects an unintended consequence that results in a situation where HECM loans that are not in default but have been assigned pursuant to regulatory provisions, and remain in effect, are not eligible to be refinanced with a discounted initial mortgage insurance premium (MIP). This rule would permit such

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

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

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

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

HECM loans to be eligible for the discounted initial MIP upon refinancing, in accordance with the purpose of the HECM program, which is to improve the financial situation of elderly homeowners.

*Effective Date:* February 7, 2008.

*Comment Due Date:* March 10, 2008.

## HUD Federal Register Notices

73 Fed. Reg. 2932 (Jan. 16, 2008)

### Notice of Proposed Information Collection: Comment Request on the Alternative Housing Pilot Program Evaluation Baseline Survey

*Summary:* HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the collection of baseline data from families before they received housing under FEMA's Alternative Housing Pilot Program. HUD is conducting an evaluation of that program.

*Comments Due Date:* March 17, 2008.

73 Fed. Reg. 2933 (Jan. 16, 2008)

### Announcement of Funding Awards for the Housing Opportunities for Persons With AIDS (HOPWA) Program Fiscal Year 2006

*Summary:* This notice announces twenty-six grant awards totaling \$27,484,189 from the Department's FY 2006 Housing Opportunities for Persons With AIDS (HOPWA) program. This notice makes available the names of the award recipients and grant amounts.

73 Fed. Reg. 2934 (Jan. 16, 2008)

### Privacy Act; Proposed Amendment to a Privacy Act System of Records, Single Family Mortgage Notes System (SFMNS)

*Summary:* HUD is amending the Single Family Mortgage Notes System notice published in the Federal Register at 72 Fed. Reg. 42,102-03 to include a new routine. The routine use will permit the disclosure of data that is manually transmitted from SFMNS to HUD's Credit Alert Interactive Verification Response System (CAIVRS). CAIVRS makes federal debtors' delinquency and claim information available to program agencies and approved lenders to verify the creditworthiness of loan applicants.

*Dates:* This action will be effective on February 15, 2008, unless comments are received before that date that would result in a contrary determination.

73 Fed. Reg. 3739 (Jan. 22, 2008)

### Section 8 Housing Assistance Payments Program— Contract Rent Annual Adjustment Factors, Fiscal Year 2008

*Summary:* This notice announces revised Annual Adjustment Factors (AAFs) that are applied to Section 8 contract rents for specific programs. These factors are

applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice. The AAFs are based on residential rent and utilities time-series cost indices from the Bureau of Labor Statistics Consumer Price Index surveys.

*Effective Date:* January 22, 2008.

### Notice of Submission of Proposed Information Collection: Comment Request Disaster Housing Assistance Program (DHAP) 73 Fed. Reg. 4891 (Jan. 28, 2008)

*Summary:* HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the fact that HUD and the Federal Emergency Management Agency have executed an Interagency Agreement establishing a pilot grant program called the Disaster Housing Assistance Program (DHAP), and that the operating requirements for the DHAP have been issued through HUD Notice.

*Due Date:* March 28, 2008.

73 Fed. Reg. 4902 (Jan. 28, 2008)

### Notice of Funding Awards; Resident Opportunity and Self-Sufficiency and Neighborhood Networks Programs for Fiscal Year 2004

*Summary:* This announcement notifies the public of funding decisions made by HUD under the FY 2004 Notice of Funding Availability for the Resident Opportunity and Self Sufficiency Programs for FY 2004. This announcement contains the consolidated names and addresses of those award recipients selected for each state.

73 Fed. Reg. 4891 (Jan. 28, 2008)

### Notice of Funding Awards Resident Opportunity and Self-Sufficiency and Neighborhood Networks Programs for Fiscal Year 2005

*Summary:* This announcement notifies the public of funding decisions made by HUD under the FY 2005 Notice of Funding Availability for the Resident Opportunity and Self Sufficiency Programs for FY 2005. This announcement contains the consolidated names and addresses of those award recipients selected for each state.

73 Fed. Reg. 5864 (Jan. 31, 2008)

### Consolidated Plan and Annual Performance Report for Grantees

*Summary:* HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to information collected from all localities and states participating in any one of CPD's four formula grant programs to determine each jurisdiction's compliance with statutory and regulatory requirements.

*Comments Due Date:* March 3, 2008.

## HUD Notices

### **Relocation and Real Property Acquisition Requirements—Suspensions and Waivers, CPD-08-02 (Feb. 26, 2008)**

*Summary:* The purpose of this notice is to provide preliminary guidance on relocation issues that may arise in presidentially declared disasters. This notice also lists statutory and regulatory requirements governing the HOME Investment Partnerships and Community Development Block Grant programs that program participants may request HUD to waive or suspend in order to eliminate or reduce impediments to recovery efforts in presidentially declared disaster areas.

### **Disaster Housing Assistance Program (DHAP) Case Management Guidelines, PIH 2008-01 (Jan. 7, 2008)**

*Summary:* These guidelines set forth the policies and recommended practices for Disaster Housing Assistance Program (DHAP) case management services. DHAP is a HUD-FEMA pilot grant program to provide rent subsidies for non-HUD assisted families displaced by Hurricane Katrina or Rita. During the time that families are assisted under DHAP, each family is required to participate in case management services. The objectives of these services are greater self-sufficiency and permanent housing for participating families. Public housing agencies (PHA) that agree to administer DHAP must provide case management services in accordance with the mandatory elements explained in these guidelines, and any other requirements issued in subsequent HUD directives and guidance for the program. In addition to these mandatory elements, a number of recommendations are provided by HUD in these guidelines to assist PHAs in developing successful case management programs. PHAs are encouraged to consider these additional elements in providing case management services. Please note that case management and IDP requirements that apply to families are not created by this notice, but rather must be determined, after discussion with the family, on an individualized basis, and agreed upon in writing and executed by the family.

### **Guidance for Obtaining HUD Consent for Takings of Public Housing Property by Eminent Domain, PIH 2008-02 (Jan. 4, 2008)**

*Summary:* This notice provides guidance on the factors that HUD will consider in determining whether to consent to a taking of public housing property that was developed/acquired by, or is maintained with funds from the United States Housing Act of 1937 by a governmental or quasi-governmental body using eminent domain authority. For purposes of this notice, public housing property does not include the property of an Indian Housing/Tribally Designated Housing Entity. Most public housing property is owned by PHAs, but units owned

by private entities in a mixed-finance arrangement may also be operated as public housing pursuant to 24 CFR 941 (Subpart F).

### **Extension of Notice PIH 2007-1 (HA)—Requirement for Designation of Public Housing Projects, PIH-2008-10 (Jan. 31, 2008)**

*Summary:* This notice extends Notice PIH 2007-1 (HA) that reiterates the streamlined requirements for designating public housing projects for occupancy by elderly families only, disabled families only, or elderly and disabled families only. This notice also includes the requirements and procedures for renewal of, or changes to, previously HUD approved designation plans. ■

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