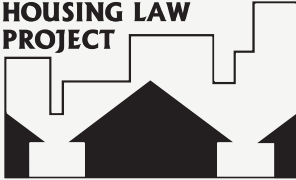


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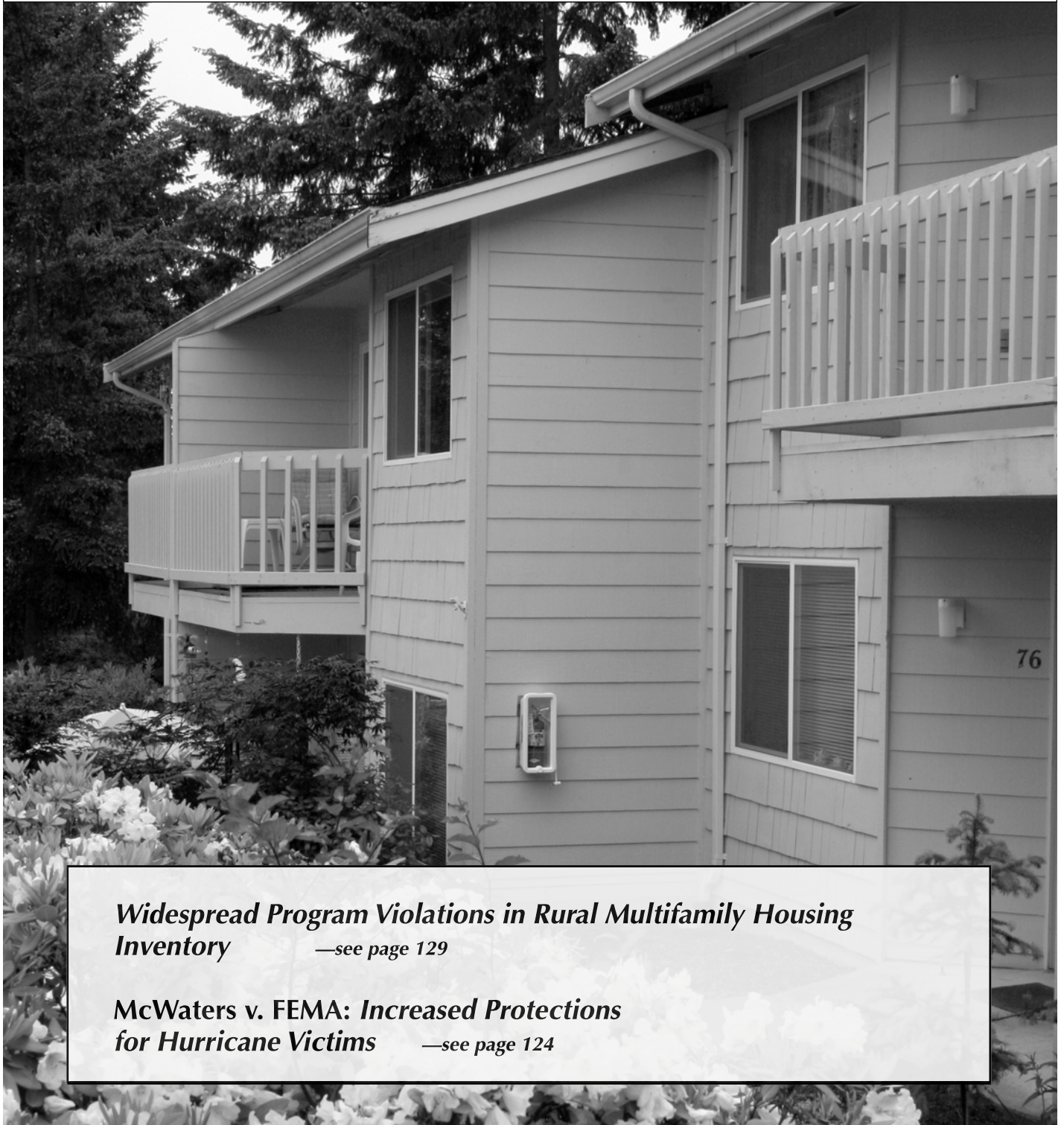


advancing housing justice

Housing Law Bulletin

Volume 36 • June-July 2006

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Widespread Program Violations in Rural Multifamily Housing Inventory —see page 129

McWaters v. FEMA: Increased Protections for Hurricane Victims —see page 124

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Cover: Woodlake Manor III, Snohomish, Washington. A 24-unit RD Section 515 development owned and operated by the Housing Authority of Snohomish County. All units are restricted to elderly residents and assisted under the project-based Section 8 program. The development was preserved by the housing authority through a purchase from a private developer-owner.

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San Diego's Affordable Housing Ordinance Declared Unconstitutional

The California Superior Court recently concluded that the current structure of San Diego's inclusionary zoning ordinance results in an unconstitutional taking and is therefore invalid.¹ In 2003, San Diego enacted a series of inclusionary zoning ordinances to encourage the development of diverse and balanced neighborhoods with housing available for households of all income levels.² Collectively these ordinances require developers to either set aside a share of their projects for low- and moderate-income households, or pay an in-lieu-of fee to the city.³ To date, San Diego's affordable housing laws have generated more than \$9 million in developer fees. As such, unless the court reverses its ruling, the future of San Diego's affordable housing program may very well be in jeopardy.

In response to the affordable housing crisis that plagues countless communities across the country, a number of municipalities have enacted inclusionary zoning ordinances. These ordinances generally specify that a certain percentage of affordable housing units be provided as part of each development project, establish affordability criteria for those units based upon a percentage of median household income, and provide future sales price or rent restrictions in order to preserve the long-term affordability of such units. In addition, inclusionary programs often provide certain incentives and concessions to developers to encourage the provision of affordable units and various alternatives to on-site affordable housing production such as in-lieu-of fees, land dedications, and off-site development. However, inclusionary zoning ordinances must be carefully crafted in order to survive constitutional challenges based on either the denial of due process or taking of private property without just compensation.

Legislatively enacted affordable housing programs (including set asides and developer impact fees) are generally granted broad judicial deference; nevertheless, the underlying ordinances must serve a legitimate public purpose and must employ reasonable means to accomplish that purpose.⁴ Thus, in instances where the impacts of a particular development project bear no reasonable relationship to the municipality's inclusionary zoning ordinance, the project must be granted administrative relief in the form of a waiver because failing to do so would serve

¹Bldg Indus. Assoc. of San Diego County, Inc. v. City of San Diego, No. GIC817064 (Cal. Super. May 19, 2006) (order setting aside San Diego's inclusionary zoning ordinance).

²See generally, SAN DIEGO, CAL., MUNICIPAL CODE § 142.13011312 (2004).

³Id.

⁴Village of Euclid v. Amber Realty Co., 272 U.S. 365, 47 S.Ct. 114 (1926).

no legitimate purpose. Inclusionary zoning ordinances that provide for such administrative relief will generally survive constitutional challenge because courts will presume that the implementing authorities will exercise their authority in conformity with the Constitution.⁵

Despite the court's ruling, City Attorney Michael Aguirre is confident that the overall viability of San Diego's affordable housing program is not in danger.

Following this framework, cities throughout California require developers to set aside a small portion of their development projects for low- and moderate-income households. Impacted developers are typically given the option of paying an in-lieu fee instead of constructing affordable housing. And, where there is an absence of any reasonable relationship or nexus between the impact of the development and the inclusionary requirement, the developer is normally granted a complete waiver of obligations under the inclusionary ordinance. San Diego's inclusionary zoning ordinance failed to include this later provision and was thus concluded to be an unconstitutional taking.

Although San Diego's inclusionary zoning ordinance did offer developers a waiver, unlike the statutory schemes employed by other California jurisdictions, San Diego's waiver was only available based on four separate factors, all of which had to be satisfied.⁶ Consequently, the court concluded that the ordinance was facially unconstitutional because it "does not provide for the granting of a waiver solely because of an absence of any reasonable relationship or nexus between the impact of the development and the inclusionary requirement."⁷ As such, San Diego could "impose the inclusionary requirement on a development not reasonably related to the need for that requirement."⁸

⁵Home Builders Assoc. of Northern California v. City of Napa, 90 Cal. App.4th 188, 199 (2001).

⁶Section 142.1305(d) provides:

No waiver shall be issued to an applicant unless: (1) Special circumstances, unique to that development justify the grant of the waiver; (2) The development would not be feasible without the waiver; (3) A specific and substantial financial hardship would occur if the waiver were not granted; and (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

⁷Bldg. Indus., slip op. at 2.

⁸Id.

Despite the court's ruling, City Attorney Michael Aguirre is confident that the overall viability of San Diego's affordable housing program is not in danger. Specifically, Aguirre recently discussed the city's plan to add the necessary exemption clause to its inclusionary zoning ordinance, thus addressing the court's constitutional concerns while preserving the program's most central objectives.⁹ Nevertheless, this case highlights several important constitutional considerations that must be contemplated when developing an affordable housing program—by failing to fully account for these considerations, the City of San Diego jeopardized its affordable housing program and the accompanying \$9 million of program income. ■

McWaters Increases Protections for Hurricane Victims

by Erin Ching*

Hurricane Katrina evacuees recently sued Federal Emergency Management Agency (FEMA) in the federal court for its inconsistent and inadequate management of the Temporary Housing Assistance program under the Stafford Act. *McWaters v. FEMA*, No. 05-5488 (E.D. La. June 16, 2006). In this class action lawsuit, plaintiffs successfully obtained two permanent injunctions which increase protections for Temporary Housing Assistance applicants. In addition, the court left the door open for possible future claims against FEMA.

FEMA used the Temporary Housing Assistance program to assist people who were displaced from their homes by Hurricanes Katrina and Rita.¹ Temporary Housing Assistance is part of the larger Individuals and Households Program (IHP), which is a disaster-related housing assistance program that existed before the hurricanes.² As of June 19, 2006, over 1.7 million hurricane evacuees had registered for IHP, and nearly \$6 billion had been

⁹Lori Weisberg, *Judge Voids San Diego's Affordable Housing Law*, UNION-TRIBUNE, May 25, 2006, available at <http://www.signonsandiego.com/news/metro/20060525-9999-1n25afford.html>.

*Erin Ching is a summer law clerk at the National Housing Law Project and a student at Duke University School of Law.

¹44 C.F.R. § 206.117(b)(1)(i) (2006).

²42 U.S.C. § 5174(b) (2002).

2006 HOUSING JUSTICE NETWORK NATIONAL MEETING OCTOBER 22-23

PRE-MEETING HOUSING TRAINING OCTOBER 21

Make Your Meeting and Hotel Reservations Now!

The 2006 meeting of the Housing Justice Network (HJN) will take place on Sunday and Monday, October 22 and 23, in the District of Columbia. The HJN meeting will be preceded by a one-day training event, set for Saturday, October 21, on recent developments in federal housing law (public housing, voucher, and the project-based Section 8 programs, preservation and other issues).

The purpose of the 2006 HJN meeting is to focus the activities of the various HJN working groups on the recent and prospective changes to the federal housing programs, particularly those made to the Public Housing, Voucher, Section 8 and Rural Development programs, and to discuss how advocates can continue to represent low-income clients' interests in light of those changes.

The HJN meeting is not designed as a training conference. We encourage attendance by housing advocates and clients who want to actively participate in HJN's ongoing activities. These include exchanging information on effective representation of low-income tenants and community organizations, addressing tenants' and homeowners' housing rights and local housing problems, and pursuing permissible legislative and administrative advocacy at the federal, state and local levels.

NHLP will be offering a separate one-day training event on the federal housing programs immediately preceding the HJN meeting. The training is directed at newer lawyers, but it will also facilitate the HJN meeting for others by providing all advocates an opportunity to learn about recent program changes, thereby becoming better prepared to participate in the HJN discussions.

Meeting and Training Registration

HJN Registration. The standard registration fee for the HJN meeting is \$395 and includes two lunches,

break refreshments, and conference materials. For legal service organizations who are sponsoring and paying for clients to come to the meeting a discount of \$100 is available for the client's early registration. The late registration fee is \$495 for legal services advocates. **Standard registrations must be mailed or faxed by September 20, 2006.**

Pre-Meeting Training Registration. The standard registration fee for the one-day training alone is \$185, including a lunch and training materials. The late registration fee is \$235. **Standard registrations must be mailed or faxed by September 20, 2006.**

Registering for Both Days: The standard combined registration fee for both the pre-meeting training event and the HJN meeting is \$525. (For clients whose costs are being paid by a legal services program the combined registration fee is \$455.)

The final registration deadline for both the meeting and the training is Friday, October 13, 2006. Registration checks should be made payable to the National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, California 94610.

Hotel Reservations

The event will be held at the Washington Court Hotel at 525 New Jersey Avenue, N.W., Washington, DC 20001, (800) 321-3010. The special room rate for the training event and the HJN meeting is \$155 for single or double occupancy per night. Room reservations must be made directly with the hotel. When making reservations, mention that you are making a reservation for the National Housing Law Project/Housing Justice Network Meeting. **To receive the special rates, hotel reservations must be made on or before September 20, 2006. Only a limited number of rooms have been reserved, so make your room reservation early. You are not assured a room at the conference rate if the reserved block is fully booked prior to September 20.**

HJN members and housing specialists at legal services and other programs will receive further details in the next month. For more information, visit www.nhlp.org, call (510) 251-9400, Ext. 111 or e-mail nhlp@nhlp.org.

provided in financial assistance.³ The Temporary Housing Assistance program gave evacuees \$2358 for the first three months of housing costs and allowed qualified households to extend assistance for up to eighteen months.⁴

McWaters, which was originally filed on November 10, 2005, involves thirteen plaintiffs who were displaced from their homes by Hurricane Katrina. All were eligible for Temporary Housing Assistance under the Stafford Act because they are persons who were “displaced from their primary pre-disaster residences or whose pre-disaster primary residences are rendered uninhabitable as a result of damage caused by a major disaster.”⁵ They each applied for financial relief, but as of the filing of the complaint, none of them had received assistance because they faced a variety of procedural obstacles.⁶

The district court in McWaters issued a permanent injunction which prevents FEMA from requiring an SBA loan application from Temporary Housing Assistance applicants.

Court Recommends Clearer Shared Household Rule

One problem faced by many unsuccessful applicants was erroneous application of FEMA’s Shared Household Rule. This rule states that people living at the same address or sharing the same phone number will be considered one applicant for the purpose of receiving federal assistance. Since Hurricane Katrina caused many people that were living together pre-disaster to split apart to separate geographic locations post-disaster, FEMA modified the rule, allowing applicants who can prove that they are now living separately to apply for assistance separately.⁷ Despite the rule change, there was considerable uncertainty regarding FEMA’s new interpretation of the rule. FEMA has failed to apply the modified rule consistently, and FEMA’s policies may have resulted in wrongful denial of claims.⁸

³FEMA, *Hurricane Katrina Information*, at <http://www.fema.gov/hazard/hurricane/2005katrina/index.shtm> (last modified June 19, 2006).

⁴FEMA, *Transitional Housing Assistance Program*, at <http://www.fema.gov/hazard/hurricane/2005katrina/katrinatranshousing.shtm> (last modified March 21, 2006).

⁵42 U.S.C. § 5174(b) (2002).

⁶*McWaters v. FEMA*, No. 05-5488, slip op. at 3 (E.D. La. June 16, 2006), available at http://www.femaanswers.org/images/2/2b/McWaters_v_FEMA_Order_and_Reasons.pdf.

⁷44 C.F.R. § 206.117(b)(1)(i)(A) (2006).

⁸*McWaters v. FEMA*, No. 05-5488, slip op. at 32 (E.D. La. June 16, 2006).

Plaintiffs sought declaratory and injunctive relief, requesting that FEMA be ordered to provide notice to all former and present applicants who may be affected by the rule change.⁹ The court dismissed all statutory and constitutional claims related to the Shared Housing Rule, stating that FEMA’s actions in administering this rule are purely discretionary and therefore are not reviewable by the court.¹⁰ However, the district court recommended that FEMA come up with a clearer and more inclusive policy for dealing with this modification so that people who should receive assistance under the new rule are not erroneously excluded.¹¹

Court Bars SBA Loans Applications as Prerequisite for Housing Assistance

Another problem faced by many Temporary Housing Assistance applicants was confusion about the rule regarding Small Business Administration (SBA) loans. Most people, including applicants applying for Temporary Housing Assistance, were not required to apply for an SBA loan.¹² Application for an SBA loan was required for a different category of people seeking IHP assistance (those applying for “other programmatic assistance”). Many of the evacuees were confused about this rule, particularly because FEMA sent SBA loan applications to all applicants who filled out the “income” section of the THA application incorrectly and required these applicants to complete the SBA loan application before they could receive THA benefits.¹³

Many people were wrongly turned away or discouraged from applying based on this confusion. FEMA did not help matters when it issued a press release on February 13, 2006, entitled, “SBA Loan Application Necessary for Assistance.”¹⁴ This was *after* the court had earlier issued a preliminary injunction ordering FEMA to publicize correct information regarding the SBA loan requirement.¹⁵ Therefore, the district court in *McWaters* issued a permanent injunction which prevents FEMA from requiring an SBA loan application from Temporary Housing Assistance applicants. In addition, the injunction mandates that FEMA must contact applicants who have been turned away or delayed because of confusion regarding the SBA rules and provide them with the correct rules, and it requires that the agency publicize the correct rule.¹⁶

⁹*Id.* at 5.

¹⁰*McWaters v. FEMA*, No. 05-5488, slip op. at 32 (E.D. La. June 16, 2006).

¹¹*Id.*

¹²42 U.S.C. § 5174(a)(2) (2002).

¹³Complaint for Plaintiffs at 34, *McWaters v. FEMA*, 408 F. Supp. 2d 221 (E.D. La. 2005) (No. 05-5488).

¹⁴*McWaters v. FEMA*, No. 05-5488, slip op. at 34 (E.D. La. June 16, 2006).

¹⁵See *McWaters v. FEMA*, 408 F. Supp. 2d 221, 232 (E.D. La. 2005).

¹⁶*McWaters v. FEMA*, No. 05-5488, slip op. at 42-43 (E.D. La. June 16, 2006).

Court Imposes Procedural Requirements for Short-Term Lodging Program

Many Temporary Housing Assistance candidates depended on FEMA's Short-Term Lodging Program to house them in a motel until a determination was made regarding their Temporary Housing Assistance application. Because some Temporary Housing Assistance applicants faced termination from the Short-Term Lodging Program while their Temporary Housing Assistance applications remained pending, the court issued a permanent injunction enjoining FEMA from terminating the applicant's Short-Term Lodging Program voucher until two weeks after a determination is made regarding Temporary Housing Assistance.¹⁷ Specifically, applicants must be given two more weeks after either (1) their application is approved *and* assistance is received, or (2) their application is denied before they can be terminated from the Short-Term Lodging Program.

Door Open for Future Constitutional Claims

The court left the door open for future constitutional claims against FEMA by recognizing a substantive property interest in the Temporary Housing Assistance program. According to testimony from a top FEMA official, FEMA has no discretion in deciding who is eligible for the program.¹⁸ Over 95% of the eligibility determinations are made automatically by a computer. In addition, the Stafford Act mandates that Temporary Housing Assistance program funds must be distributed in an equitable manner.¹⁹ Because FEMA automatically provides mandatory, non-discretionary assistance to all eligible Temporary Housing Assistance applicants, eligible persons have a reasonable expectation of benefits, and this expectation "rises to the level of a property interest protectable under the Due Process Clause."²⁰ Therefore, recipients and eligible applicants had an adequate basis upon which to bring a due process claim.

However, the court further concluded that, although the plaintiffs had a protectable property interest, there was no deprivation of constitutional rights. Although FEMA's response was "excruciatingly slow," delays were somewhat understandable due to the unexpected magnitude of the disaster and the huge volume of displaced people.²¹ Because FEMA's explanation passed the low-threshold

rational basis test, the court held that there was no property deprivation as a result of delayed assistance and accordingly dismissed all constitutional claims.

Court Dismisses Other Claims

The *McWaters* plaintiffs brought several other claims, but they were all dismissed.²² The court dismissed claims for three main reasons: (1) administration of program rules was within FEMA's discretionary power and therefore non-reviewable by the court; (2) constitutional claims did not rise to the level of constitutional deprivation; and (3) FEMA had taken steps to address the problem since the filing of litigation. Although the court dismissed many of these claims, the judge stated in strong language that FEMA was mishandling the administration of its post-disaster relief programs. The court pondered why an administrative agency created for the purpose of helping people in the wake of disaster would make it as difficult as possible to obtain assistance. Calling FEMA's actions "cagey," the court went on to accuse FEMA of "hiding behind bureaucratic double-talk, obscure regulations, outdated computer programs, and politically loaded platitudes."²³ The court urged FEMA to come up with policies that are "simple, clear, and precise," and asked Congress to enforce this suggestion with legislation.²⁴

Conclusion

In the aftermath of Hurricanes Katrina and Rita, FEMA failed to effectively fulfill its mission of providing emergency assistance to storm victims. Howard Godnick, a lawyer for the plaintiffs, summed up the goal of the *McWaters* litigation: "We just want to get the victims the benefits to which they are entitled and for which the money has already been allocated."²⁵ The decision in *McWaters* increased protections for displaced disaster victims and established the viability of future claims against FEMA for poor management of its disaster relief programs. ■

¹⁷*Id.* at 43.

¹⁸Testimony of Donna Dannels, Acting Deputy Director of the Recovery Division and Chief of National Processing Service Center Operations, FEMA. *McWaters v. FEMA*, No. 05-5488, slip op. at 24 (E.D. La. June 16, 2006).

¹⁹42 U.S.C. § 5151(a) (2006).

²⁰*McWaters v. FEMA*, No. 05-5488, slip op. at 26 (E.D. La. June 16, 2006).

²¹*Id.* at 27.

²²The following causes of action were dismissed: (1)-(2) for failure to provide temporary housing assistance, (3)-(9) for failure to provide notice, (10)-(11) for violations of the shared household rule, (14)-(15) for violations of the Stafford Act Nondiscrimination Provisions, and (17) for violation of the Administrative Procedures Act. *McWaters v. FEMA*, No. 05-5488, slip op. at 44 (E.D. La. June 16, 2006).

²³*Id.* at 30.

²⁴*Id.* at 31.

²⁵Lynette Clemetson, *Storm Victims Suing FEMA for More Aid*, N.Y. TIMES, Nov. 10, 2005, at <http://www.nytimes.com/2005/11/10/national/nationalspecial/10housing.html?ex=1151467200&en=ff64837fc0615e5d&ei=5070>.

Federal Appeals Court Enjoins Ordinance Against Homeless in LA Skid Row

By Cristina Shin*

Six homeless individuals sought limited injunctive relief against enforcement of City Ordinance, Los Angeles Municipal Code,¹ which criminalizes sitting, lying, or sleeping on public streets and sidewalks at all times and in all places within the Los Angeles city limits.² In *Jones v. City of Los Angeles*, 444 F.3d 1118 (2006), the Ninth Circuit reversed and remanded an earlier judgment in favor of the city, holding that enforcement of the ordinance criminalizes the status of homeless individuals in violation of the Eighth Amendment's prohibition against cruel and unusual punishment.

Background

Skid Row covers the fifty city blocks immediately east of downtown Los Angeles. With about 12,000 homeless individuals, Skid Row has the highest concentration of homeless individuals in the United States. The area is now largely comprised of single-room-occupancy (SRO) hotels, shelters and other facilities for the homeless. With less than 10,000 spaces available, more than 1,000 people are unable to find shelter on any given night. Based on dated information, the monthly welfare stipend for single adults in Los Angeles County was only about half of the market rents for SRO hotel rooms,³ and this imbalance has likely worsened substantially in recent years.

Recent publicity about the area's blight has coincided with rapid gentrification, which is bringing thousands of upscale residents into nearby areas.⁴ Los Angeles Police

Department Police Chief William J. Bratton developed a plan, challenged in this suit, to clean up Skid Row by removing homeless encampments throughout the fifty-block downtown district. A less aggressive plan, approved by the Los Angeles County Board of Supervisors, proposes establishing suburban homeless centers to reduce the concentration of drug abuse centers and shelters in Skid Row. Los Angeles Mayor Antonio Villaraigosa has promised that making improvements to Skid Row is a top priority, and has set aside \$50 million to build housing for homeless and low-income residents.⁵

The local ordinance in question, Section 41.18(d),⁶ is considered one of the most restrictive municipal laws regulating public spaces in the United States. By comparison, many cities take a different approach that helps avoid criminalizing the status of homelessness. Las Vegas⁷ and Portland⁸ have ordinances that bar standing or lying in a public way, but only when it obstructs pedestrian or vehicular traffic. Seattle⁹ and Tucson¹⁰ have safe harbor provisions that limit the hours when the police can enforce their ordinances.

In February 2003, the American Civil Liberties Union of Southern California and the National Lawyers Guild filed suit against the City of Los Angeles to end the criminalization of people for sleeping on the streets when no shelter is available.

The Court's Decision

The Ninth Circuit held that homeless individuals had standing to bring suit, and that enforcement of the ordinance against them violated the Eighth Amendment's prohibition against cruel and unusual punishment.¹¹

The city had first contended that the appellants were not convicted under the ordinance, and without a conviction, they lacked standing. Second, the city claimed that if the appellants faced conviction, they could theoretically raise a necessity defense to escape liability. The Ninth Circuit

*Cristina Shin is a J.D. candidate at New College of California School of Law in San Francisco and a 2006 summer intern at NHLP.

¹LOS ANGELES MUNICIPAL CODE § 41.18(d): "No person shall sit, lie or sleep in or upon any street, sidewalk or other public way. The provisions of this subsection shall not apply to persons sitting on the curb portion of any sidewalk or street while attending or viewing any parade permitted under the provisions of Section 103.111 of Article 2, Chapter X of this Code; nor shall the provisions of this subsection supply [sic] to persons sitting upon benches or other seating facilities provided for such purpose by municipal authority by this Code."

²Appellants sought limited injunctive relief from enforcement of the ordinance during nighttime hours between 9:00 p.m. and 6:30 a.m., or at any time against the temporarily infirm or permanently disabled.

³L.A. HOUSING CRISIS TASK FORCE, IN SHORT SUPPLY 6 (2000) (fair market rent for SRO hotel room in 1999 was \$379); L.A. HOMELESS SERVICE AUTHORITY, LOS ANGELES CONTINUUM OF CARE, exh. 1 Narrative, at 2-10 (2001) (single stipend was \$221).

⁴Cara Mia DiMassa, *L.A. County OKs "Historic" Homeless Plan*, L.A. TIMES, Apr. 5, 2006.

⁵Henry Weinstein and Cara Mia DiMassa, *Justices Hand L.A.'s Homeless a Victory*, L.A. TIMES, Apr. 15, 2006.

⁶The City of Los Angeles can secure a conviction under the ordinance against anyone who merely sits, lies, or sleeps in a public way at any time of day. LOS ANGELES MUN. CODE § 41.18(d) (2005). A violation of Section 41.18(d) is punishable by a fine of up to \$1000 and/or imprisonment of up to six months. *Id.* § 11.00(m).

⁷LAS VEGAS MUN. CODE § 10.47.020 (2005) ("It is unlawful to intentionally obstruct pedestrian or vehicular traffic...").

⁸PORTLAND, OR., MUN. CODE §§ 14A.50.020, 14A.50.020.030 (2006) (prohibiting obstruction of public sidewalks in a designated area or camping on public property).

⁹SEATTLE MUN. CODE § 15.48.040 (2005) ("No person shall sit or lie down upon a public sidewalk ... during the hours between 7:00 a.m. and 9:00 p.m.").

¹⁰TUCSON MUN. CODE § 11-36.2(a) (2005) (same as Seattle, except prohibition extended to 10:00 p.m.).

¹¹*Jones v. City of Los Angeles*, 444 F.3d 1118 (2006).

found that the appellants did not need to be convicted to have standing, as they had demonstrated past injuries and a real and immediate threat of future injury. The court dismissed the city's argument that appellants could employ the necessity defense as illogical and impractical.

Judge Wardlaw wrote, "Whether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human."

The Ninth Circuit's decision concerning the validity of the ordinance turned on the Eighth Amendment's Cruel and Unusual Punishment Clause, which imposes substantive limits on what can be made criminal and punished, effectively limiting the state's ability to criminalize certain behaviors or conditions. The court looked to the analysis in *Robinson v. California*¹² for guidance on whether the ordinance punishes status as opposed to conduct. In *Robinson*, the United States Supreme Court had considered whether a state could convict an individual for violating a statute that made it a criminal offense to be addicted to the use of narcotics. The Court held that the state may not criminalize pure status, establishing that the state could not criminalize a person for who he is, independent of anything he has done.

Here, the Ninth Circuit found that the appellant's declarations demonstrated that they were not on the streets of Skid Row by informed choice. Due to the shortage of available shelter, the appellants' status was both involuntary and immutable. In the 2-1 majority opinion, Judge Kim McLane Wardlaw wrote, "Whether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human." Just as the Eighth Amendment prohibits the infliction of criminal punishment on an individual for being a drug addict, the Eighth Amendment prohibits the city from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the city.¹³

Conclusion

The Ninth Circuit's decision is an important victory for homeless advocates around the nation. The growing housing affordability gap and gentrification of skid rows have thrust the realities of homelessness back into the

public consciousness. As many cities struggle with how to address growing homelessness and diminishing affordable housing stocks, this ruling has important implications for local ordinances and crackdown police enforcement strategies. While the city and the LAPD have petitioned for panel rehearing and for rehearing en banc, if the decision stands, the political process will be forced to find an alternative policy response beyond criminalization of homeless individuals. Hopefully, the search for new policy solutions will result in more resources to provide supportive housing for those formerly criminalized.¹⁴ ■

New Data on Troubled Section 515 Properties

Information Obtained by NHLP Reveals Widespread Program Violations

Little is known about Rural Development (RD) Section 515 properties that are not maintained or performing in accordance with local laws or federal regulations. The agency has simply not publicized information about the nature or scope of its troubled property inventory and, until very recently, has steadfastly refused to make any information available on these properties. In response to a recent Freedom of Information Act (FOIA) request from the National Housing Law Project (NHLP), RD has for the first time released some information about its troubled Section 515 inventory. It shows that there are 6262 troubled projects in the RD inventory of approximately 15,800 properties, and that these properties have over 171,678 units, which is over 41% of the Section 515 unit inventory. Of these, 249 properties, containing 6871 units, are either in monetary default for more than sixty days or have had another violation of law, including violation of the RD loan agreement, for more than sixty days. This article reviews the classification of the RD Section 515 inventory and discusses the information that has been released by RD with respect to its troubled inventory.

¹²370 U.S. 660 (1962).

¹³*Jones*, 444 F.3d at 1138.

¹⁴See, e.g., Eric Eckholm, *New Campaign Shows Progress for Homeless*, N.Y. TIMES, June 7, 2003 (describing a "housing first" policy, "a radical strategy of putting homeless people into apartments of their own, no strings attached," adopted in cities such as Denver and New York).

Background on the Section 515 Program

The Section 515 program is the oldest rental housing program of the United States Department of Agriculture (USDA). First authorized in 1962, the program authorizes USDA to make direct loans to nonprofit organizations, government entities, and private individuals or partnerships for the purpose of constructing rental housing. Nonprofit organizations, government entities and private individuals or partnerships operating on a limited-profit basis are eligible to also receive subsidies that enable them to serve low- and very low-income households.

When first authorized, the Section 515 program was administered by the Farmers Home Administration (FmHA), a USDA agency. Currently, it is administered by Rural Development, a division of USDA which has taken over the administration of the FmHA housing programs.

Over 500,000 units of Section 515 housing have been constructed since 1962. Approximately 50% of the units are occupied by elderly households, while another 10% of the units are occupied by households that include a person with a disability. The remaining occupants are families. The average annual income of households living in Section 515 units and receiving Rental Assistance is approximately \$8000; those who are not receiving Rental Assistance have average annual incomes of approximately \$10,000.

RD Inventory Classification System

RD staff is required to visit and monitor the Section 515 housing stock regularly and to classify its inventory in order to provide an overview of its status and to flag those projects that need special servicing or monitoring. RD classifies its Section 515 Rural Housing stock into four classes:¹

- Class A: projects with no unresolved findings or violations.
- Class B: projects with findings or violations with an approved work-out plan that is on schedule.
- Class C: projects with an unresolved finding or violation and projects with an unresolved violation for less than sixty days from the date that a servicing letter² was sent to the owner or manager of the development.
- Class D: projects in non-monetary default having an unresolved violation for more than sixty days from the date of the servicing letter and projects in monetary default that are delinquent for more than sixty days.

¹See RD Handbook 3-3560, § 10.6, ex. 10-1 (Feb. 24, 2005).

²Handbook Letter 301 (3560) (Feb. 24, 2005) (a copy of this letter is found in Appendix 4 to RD Handbook 3-3560) (Feb. 24, 2005)).

According to RD's Section 515 servicing handbook, a "finding" is an agency determination that the borrower is not operating in accordance with the loan agreement, agency regulations, or with applicable local, state or federal laws.³ A "violation" is a finding that the servicing official escalates because of its severity or because of the type of servicing effort that will be needed to obtain compliance.⁴ When the agency designates a finding as a violation, it indicates a "willingness to pursue the finding to the point of acceleration to have it corrected."⁵ Compliance violations include, but are not limited to, any unacceptable summary level findings on the physical inspection report, project management and occupancy review, or engagement review. Examples include failing to make required contributions to project reserves, failing to adequately maintain the exterior physical condition of the property, failing to comply with environmental mitigation measures, occupancy of units by ineligible tenants without prior agency approval, charging incorrect rents, and failing to properly report to RD.⁶

Class C and D Properties

Nationwide, RD data shows that it has 6262 properties that have either a "C" or "D" classification. These developments contain 171,678 dwelling units, which is nearly 42% of the agency's inventory of approximately 413,000 units of housing.⁷ Only 249 of these developments, containing 6871 units, have received a "D" classification, the lowest classification under the RD classification system. Table 4 on page 133 shows the total number of developments and units classified as C or D in each state and territory served by RD.

The state with the largest inventory of class C and D developments and units is Texas, which has 419 properties with 12,647 units as of May 2006. The ranking of other states varies depending on whether the ranking is based on the number of developments classified C or D or the number of units that fall into that classification. Charts 1 and 2 show the top ten states ranked first by the number of developments that are classified as C or D properties and then ranked by the number of units that are affected.

The difference between the two charts is readily explainable based on average development size and the history of

³RD Handbook 3-3560, § 10.7 (Feb. 24, 2005).

⁴*Id.* § 10.8.

⁵*Id.*

⁶*Id.*

⁷This figure may be 20,000-30,000 units too low. It comes from a recent RD occupancy report that shows the number of occupied units in the RD Section 515 inventory. RD MULTI-FAMILY ANNUAL FAIR HOUSING OCCUPANCY REPORT 36 (2006) (excerpts available at <http://www.rurdev.usda.gov/regs/ul/ulmarch06.pdf>). The occupancy report does not take into account Section 515 vacancies, which may account for 5% of the total inventory.

Chart 1: States with Greatest Numbers of Troubled Developments

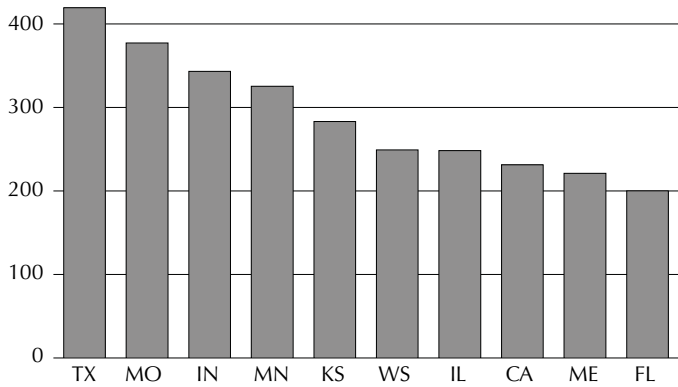


Chart 2: States with Greatest Numbers of Troubled Units

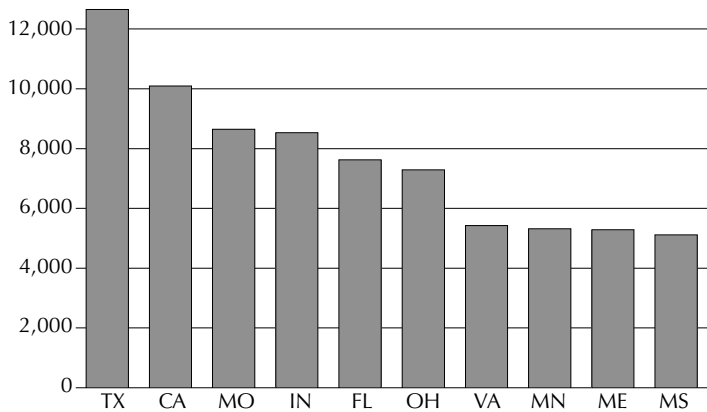


Chart 3: Proportion of Troubled Developments by Region

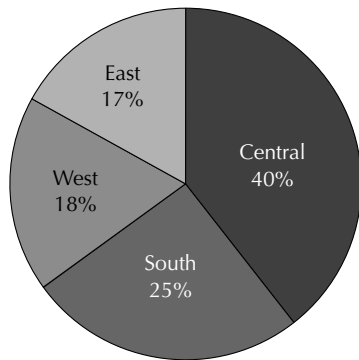
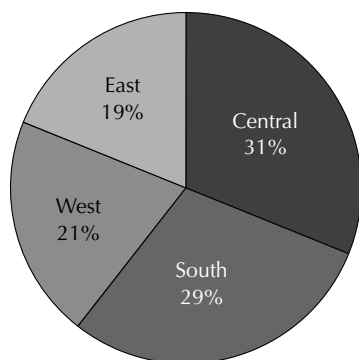


Chart 4: Proportion of Troubled Units by Region



the Section 515 program. When the Section 515 program started, RD limited the size of loans that state offices could approve to \$500,000. As a consequence, earlier loans were small and the number of units in each project was rarely more than thirty. As the program matured, the size of the loan that could be made at any one time was increased and developments in the seventy-five to 100 unit range became more frequent. In addition, when first introduced, the Section 515 program was used most heavily in Midwest states such as Iowa, Missouri and Minnesota. It did not become popular in the East and West until after the loan limits were increased. Moreover, markets served by the 515 program in the East and West were larger than those in the Midwest and Southern regions. Thus, projects developed in Midwest and Southern states tend to be smaller, while those in the East and West tend to be larger.

When grouped by regions for the continental United States,⁸ the Central and South regions have the largest number of developments and units that are classified as C or D, followed by West and East. (See charts 3 and 4.)

NHLP has not made an effort to formally analyze the reasons for this distribution of the C and D developments. However, it is most likely that it is heavily influenced by population migration patterns and economic growth of certain regions.

States with the highest percentage of their units on the C or D lists are Alaska (99%), Arizona (89%) and New Jersey (89%). Table 1 shows the states with the largest percentage of their units on the two lists.

Table 1: States with Greatest Percentages of Troubled Units

| State | Total Units | Troubled Units | Percent Troubled |
|------------|-------------|----------------|------------------|
| Alaska | 825 | 820 | 99% |
| Arizona | 3,482 | 3,087 | 89% |
| New Jersey | 3,132 | 2,791 | 89% |
| Oregon | 5,209 | 4,398 | 84% |
| Kansas | 5,848 | 4,909 | 84% |
| Nevada | 1,986 | 1,655 | 83% |
| Delaware | 1,560 | 1,273 | 82% |
| Colorado | 3,174 | 2,543 | 80% |
| Vermont | 1,450 | 1,064 | 73% |
| Hawaii | 827 | 594 | 72% |

It is not at all clear from the information released by RD why these states have from 72-99% of their developments on the C or D lists. A USDA official has suggested to NHLP that the percentages in these states are disproportionately high because RD staff in these states may be less experienced and may not know exactly what they are supposed to track with respect to owner compliance. As a

⁸The region configuration used in this article are the HUD Community 2020 regions.

consequence, an overly large percentage of developments may be classified as having failed to comply with one or more requirements. While this contention may be supported by the fact that most of the listed states have a relatively small number of Section 515 developments, it cannot be verified from the data that RD has released.

Notwithstanding RD's explanation with respect to the ten high-percentage states, twenty-four states have more than 50% of their units on the C or D lists. This suggests that problems with the inventory are widely distributed and are not isolated to a particular state or region.

The states with the lowest percentage of units on the C or D lists are South Carolina (13%), Arkansas (14%) and Michigan (16%). Table 2 shows the ten states with the lowest percentage of their units on the C or D lists.

Table 2: States with Lowest Percentages of Troubled Units

| State | Total Units | Troubled Units | Percent Troubled |
|----------------|-------------|----------------|------------------|
| South Carolina | 11,599 | 1,471 | 13% |
| Arkansas | 9,242 | 1,332 | 14% |
| Michigan | 16,898 | 2,717 | 16% |
| Louisiana | 11,952 | 1,940 | 16% |
| North Carolina | 21,355 | 3,547 | 17% |
| Tennessee | 12,072 | 2,322 | 19% |
| Georgia | 15,115 | 3,180 | 21% |
| North Dakota | 2,755 | 627 | 23% |
| Nebraska | 3,336 | 794 | 24% |
| Iowa | 9,996 | 2,507 | 25% |

Table 3: States with Greatest Numbers of Class D Developments

| State | Number of Class D Developments | Number of Units In Class D Developments |
|---------------|--------------------------------|---|
| Michigan | 23 | 622 |
| Texas | 20 | 627 |
| New York | 20 | 601 |
| Wisconsin | 20 | 367 |
| Mississippi | 16 | 686 |
| Minnesota | 12 | 252 |
| Illinois | 11 | 169 |
| West Virginia | 11 | 236 |
| New Jersey | 10 | 408 |
| Tennessee | 9 | 301 |

Surprisingly, each of these states are in the Central and South regions of the country, which collectively have the highest number of developments on the C or D lists. With two exceptions, these states have a relatively high number of Section 515 units. From the data released by RD, it is not possible to determine what accounts for the disparity between these states and other states in Central and South regions.

Due to the relatively small number of developments and units that are classified under D designation, there is little that can be said about the distribution and location of developments designated as D projects. Forty states have one or more developments that have a D classification. Of these, only sixteen have more than five developments that have received the D classification. See Table 3 for the ten states with the greatest number of developments classified as D.

Conclusion

RD has refused to release the names and addresses of the developments that are classified C or D. In its response to NHLP's FOIA request, the agency has taken the position that the names of the owners and the developments' addresses are protected by the trade secrets and deliberative process exceptions to the FOIA. NHLP does not agree with either of these claims and intends to appeal the decision not to release the requested information. Until that information is released, little else can be said about the RD troubled inventory.

The lack of information notwithstanding, it is both surprising and disturbing that over 40% of the RD Section 515 inventory is classified as C or D. It suggests that a very significant portion of the inventory is either in default or otherwise not being physically maintained in accordance with RD standards or local laws. The data appears to support the conclusions of the 2004 Comprehensive Property Assessment Study⁹ that concluded that the RD inventory is aging and in need of revitalization. Unfortunately, because the RD information released is scant, little analysis can be undertaken with respect to the reasons that particular developments are on the C or D lists and whether restructuring of the loans and revitalization of the developments will address the issues that face these owners and developments. Thus, for example, NHLP is unable to determine whether these properties are located in depressed markets, whether particular owners have simply failed to maintain their developments, or whether other factors are the cause of the findings and violations.

Given the magnitude of the inventory that is classified as C and D, one would expect RD to be more forthcoming with information about the underlying issues facing its inventory and with recommendations for addressing them. Regrettably, its failure to be more open about the C and D inventory makes it very difficult to assess carefully the seriousness of the problem that appears to plague the agency's inventory. ■

⁹A copy of that report is available at <http://www.rurdev.usda.gov/rhs/mfh/Property%20Assessment/Property%20Assessment.htm>.

Table 4: Summary

| State | Total Occupied Units in State | Troubled Developments | Troubled Units | Developments Classified as D | Units in Developments Classified as D |
|----------------|-------------------------------|-----------------------|----------------|------------------------------|---------------------------------------|
| Alabama | 14,455 | 147 | 4,803 | 4 | 127 |
| Alaska | 825 | 36 | 820 | 1 | 24 |
| Arizona | 3,482 | 101 | 3,087 | 0 | 0 |
| Arkansas | 9,242 | 48 | 1,332 | 0 | 0 |
| California | 17,628 | 231 | 10,088 | 8 | 361 |
| Colorado | 3,174 | 98 | 2,543 | 1 | 55 |
| Connecticut | 2,434 | 21 | 855 | 0 | 0 |
| Delaware | 1,560 | 39 | 1,273 | 0 | 0 |
| Florida | 15,421 | 200 | 7,621 | 0 | 0 |
| Georgia | 15,115 | 95 | 3,180 | 1 | 8 |
| Guam | N/A | 1 | 49 | 0 | 0 |
| Hawaii | 827 | 14 | 594 | 2 | 64 |
| Idaho | 4,074 | 87 | 2,061 | 6 | 136 |
| Illinois | 10,114 | 248 | 4,157 | 11 | 169 |
| Indiana | 12,953 | 343 | 8,527 | 7 | 173 |
| Iowa | 9,996 | 120 | 2,507 | 2 | 36 |
| Kansas | 5,848 | 283 | 4,909 | 7 | 58 |
| Kentucky | 11,574 | 145 | 3,870 | 2 | 61 |
| Louisiana | 11,952 | 58 | 1,940 | 4 | 196 |
| Maine | 7,857 | 221 | 5,278 | 2 | 48 |
| Maryland | 5,128 | 109 | 3,339 | 2 | 81 |
| Massachusetts | 1,952 | 19 | 591 | 0 | 0 |
| Michigan | 16,898 | 90 | 2,717 | 23 | 622 |
| Minnesota | 10,598 | 325 | 5,315 | 12 | 252 |
| Mississippi | 14,074 | 160 | 5,111 | 16 | 686 |
| Missouri | 17,733 | 377 | 8,642 | 6 | 112 |
| Montana | 2,434 | 78 | 1,184 | 3 | 39 |
| Nebraska | 3,336 | 50 | 794 | 2 | 48 |
| Nevada | 1,986 | 60 | 1,655 | 3 | 96 |
| New Hampshire | 2,451 | 38 | 1,112 | 0 | 0 |
| New Jersey | 3,132 | 70 | 2,791 | 10 | 408 |
| New Mexico | 3,731 | 56 | 2,070 | 0 | 0 |
| New York | 12,699 | 153 | 4,248 | 20 | 601 |
| North Carolina | 21,355 | 105 | 3,547 | 5 | 148 |
| North Dakota | 2,755 | 52 | 627 | 7 | 78 |
| Ohio | 13,687 | 186 | 7,283 | 1 | 40 |
| Oklahoma | 7,286 | 72 | 1,650 | 3 | 66 |
| Oregon | 5,209 | 153 | 4,398 | 3 | 70 |
| Pennsylvania | 9,875 | 78 | 2,702 | 3 | 102 |
| Puerto Rico | 6,441 | 60 | 3,618 | 1 | 78 |
| Rhode Island | 409 | 6 | 136 | 0 | 0 |
| South Carolina | 11,599 | 47 | 1,471 | 2 | 64 |
| South Dakota | 5,991 | 128 | 1,708 | 1 | 8 |
| Tennessee | 12,072 | 79 | 2,322 | 9 | 301 |
| Texas | 22,744 | 419 | 12,647 | 20 | 627 |
| Utah | 1,961 | 41 | 911 | 0 | 0 |
| Vermont | 1,450 | 47 | 1,064 | 0 | 0 |
| Virgin Islands | 434 | 5 | 156 | 0 | 0 |
| Virginia | 9,690 | 139 | 5,442 | 1 | 32 |
| Washington | 8,174 | 142 | 4,455 | 1 | 47 |
| West Virginia | 6,722 | 102 | 2,792 | 11 | 236 |
| Wisconsin | 9,518 | 249 | 4,911 | 20 | 367 |
| Wyoming | 1,426 | 31 | 775 | 6 | 146 |
| Total | 413,481 | 6262 | 171,678 | 249 | 6871 |

RD Offers Foreclosure Avoidance Assistance for Hurricane Survivors

Rural Development (RD) has announced that it will make \$500,000 available on a first-come first-served basis for the Mortgage Recovery Advance Program (MRA) to Section 502 guaranteed loan borrowers whose homes were damaged by the 2005 hurricane disasters.¹

MRAs enable guaranteed loan borrowers who have defaulted on their loans for reasons beyond their control to receive a one-time advance, which may not exceed twelve months of past due mortgage payments, including tax and insurance payments, from their loan servicers.

In general, to qualify for an MRA, a borrower must not have the current ability to meet her or his normal mortgage obligations due to a loss of income or increased living expenses attributable to the hurricanes, and must have exhausted other home retention loss mitigation options. In addition, the borrower must have been current on her or his loan prior to the hurricanes, be at least four months but not more than twelve months in arrears and not have been referred for foreclosure, be able to resume making payments once the MRA has been applied to the loan, and either occupy the home or be able to occupy it if it can be made habitable. Advances will be applied to the borrower's delinquent mortgage accounts in order to bring the loan current.

MRAs are secured interest-free loans to the borrowers that are due upon the earlier of the borrowers paying off their loans or upon the voluntary or involuntary transfer of their property. If the MRAs are not repaid, RD intends to pursue collection of the unpaid debt through any available means.²

Interestingly, borrowers appear to have no way to initiate a request for assistance. It is all done by guaranteed loan servicers, who are agents of approved lenders, the holders of the guaranteed loans. At the servicer's behest, the borrowers do, however, have to sign a promissory note and a mortgage or deed of trust, that will be recorded in a subordinate position in favor of RD.

Borrowers who believe that they are eligible for an MRA, or their representatives, are urged to contact their loan servicers for assistance under the program, which in most respects is similar to that instituted by the Federal Housing Administration several months earlier.³ ■

¹Notice of Availability of Hurricane Disaster Assistance—Section 502 Guaranteed Loan Program, 71 Fed. Reg. 29,912 (May 24, 2006).

²*Id.* at 29,914 (Repayment Terms, ¶ (d)).

³See NHLP, *Disaster Area FHA Borrowers Eligible for Mortgage Assistance Payments*, 35 HOUS. L. BULL. 1, 1 (2006).

The House Approves an Appropriations Bill for FY 2007

The House of Representatives approved H.R. 5576, to appropriate funds for the Department of Housing and Urban Development (HUD).¹ Provisions of this bill are summarized below.

Public Housing

The funding for public housing operating subsidies and capital needs continues to be substantially less than what is required. The House approved an appropriation of \$3,564 million, which is what was enacted last year after a 1% across-the-board cut and what the Administration requested for 2007. The Administration admits in its supporting documentation that its request for appropriations for Fiscal Year (FY) 2007 is only 85% of the need.² Moreover, the level of funding is \$15 million less than what was appropriated in 2004, ignoring inflation and the fact that utility rates and employee costs related to medical costs have escalated.³

The capital fund for public housing was approved at \$2,178 million, a significant reduction from last year's level of \$2,439 million and a reduction of \$517 million from what was appropriated in 2004.

Initially, the appropriations committee had agreed in part with the Administration, declining to add new money to fund HOPE VI in FY 2007 but rejecting the Administration's proposal to rescind the \$99 million appropriated for 2006. The committee noted that

this program has had a varied and controversial history. On the one hand, the projects that have been completed have been successful and demonstrate what the program could accomplish. On the other hand, the funding history overwhelmingly

¹H.R. 5576, 109th Cong. (2006), available at <http://thomas.loc.gov/>. For a chart of the appropriations and comparison with prior years and the requests of the administrations see the National Low Income Housing Coalition FY 07 Budget Chart for Selected Programs, <http://www.nlihc.org/news/061606chart.pdf>.

²See PUBLIC AND INDIAN HOUSING PUBLIC HOUSING OPERATING FUND, 2006 SUMMARY STATEMENT AND INITIATIVES, at E-4, on file with the National Housing Law Project. The public housing agency trade groups claim that the funding for 2007 will result in a 78% proration for 2007. See HUD's 2007 budget request really reflects 78 percent operating fund proration, PHADA ADVOCATE, Mar. 29, 2006, at 1. The proration for the first six months of funding for 2006 was slightly less than 92%. See, e.g., Letter from Elizabeth A. Hanson, HUD, to Greg Fortner, Executive Director, San Francisco Housing Authority (Jan. 3, 2006), available at http://www.hud.gov/offices/pih/divisions/ffmd/of/obligation_letters_2006.cfm.

³Recently HUD notified PHAs that the proration for FY 2006 will be 80% primarily due to an increase of 17% in utility costs. See Letter from Timothy Kaiser, PHADA, to Donald Cabrera, HUD (July 3, 2006) (regarding current \$600 million operating fund shortfall), on file with the National Housing Law Project.

demonstrates that far too many projects have not been completed in a timely way. Many projects funded years ago have yet to start. Currently over \$2 billion in undispersed obligations from prior years remain in a backlog and have been unused for years. Furthermore, resistance to the program from tenants remains strong, further delaying many projects. Most importantly, the Committee is convinced that, although 10 years have been an important demonstration period, the per-unit cost of the program is too high, relative to alternatives, to be sustained over the long-run.⁴

However, the House ultimately approved \$30 million for HOPE VI.

Tenant-Based Section 8

For the voucher program, the House approved \$15,846 million, which was more than was appropriated last year but less than what the Administration requested. The Committee included language in its report regarding the need for “real reforms to the [voucher] program to reduce costs and dramatic changes to the program’s implementation guidelines to reduce the administrative burden” of the program. The report also states that “the Committee directs the Department to take whatever regulatory and administrative actions it can to increase flexibility, reduce administrative burden and streamline program implementation.”⁵

In addition, the committee report contains a request for reports from HUD and addressed the issue of portability, stating that portability should have a priority for a “one time” allocation from the exigencies fund. It is not clear what is meant by the language “one time” and how it would be implemented.⁶ The committee report does not appear to address the long-term issues of portability.

Also the House approved \$47.5 million for Family Self Sufficiency, which is the level requested by the Administration but \$20 million less than appropriated for 2006.

Tenant protection vouchers are provided when a federally subsidized project leaves the affordable housing inventory, as in the case of an opt-out by a Project-Based Section 8 owner, or the loss of public housing in the case of HOPE VI, demolition or disposition. For these vouchers, the House approved \$149 million, which is what the Administration requested. Unfortunately, the House bill would provide tenant protection

vouchers only to units “under lease.”⁷ This limitation would mean that communities would overall lose affordable housing because hard units which are removed from the inventory would not be replaced with a voucher if the unit was vacant. In recognition of the inability to accurately anticipate the need for tenant protection vouchers, new language was also included in the bill to allow HUD to use carryover and recaptures of unexpended Section 8 balances to fund additional rental assistance costs in addition to funds appropriated for FY 2007.⁸

The bill contains a number of relevant administrative provisions. Sections 313 and 317, respectively, would continue the prior preference of incremental vouchers for disabled families and would add a preference for family unification. In other words, vouchers issued as mainstream vouchers or other vouchers for the disabled should continue to be used for disabled tenants to the “extent practicable” as the subsidy becomes available due to turnover and family unification vouchers should also continue to be available for families qualifying for unification.⁹ Prior

⁷H.R. 5576, 109th Cong. (2006).

⁸*Id.*

⁹Advocates should be able to determine whether their local PHA receives such vouchers from the PHA’s annual plan—Form HUD 50075, §5B (Operations and Management, HUD Programs Under PHA Management).

RD Prepayment and Sales Data Available Online

Rural Development (RD) has launched its Preservation Information Exchange (PIX) website at <https://pix.sc.egov.usda.gov>. Nonprofit organizations and public bodies interested in preserving affordable housing can access the site to obtain information regarding RD Section 515 Rural Rental Housing and Section 514 and 516 Farm Labor Housing projects whose owners have applied to prepay their RD loans.

The website replaces the ordinary mail process by which RD local and state offices have notified nonprofit and public agencies of RD financed rental housing owners who have applied to the agency to prepay their RD loans or of their intent to offer their projects for sale to a nonprofit or public agency.

Only nonprofit and public agencies have access to the website and they must register with the agency on the site before gaining full access to it. Once registered, eligible recipients can also choose to receive e-mails advising them of owners who have sought to prepay their loans or to sell their developments.

⁴H.R. REP. NO. 109-495 (2006) (Revitalization of Severely Distressed Public Housing HOPE VI), available at http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp109&sid=cp109KAbKU&refer=&r_n=hr495.109&item=&sel=TOC_428336&. The Committee report also contained a request for a report from HUD as to the status of the backlog of the HOPE VI projects and funds.

⁵*Id.*

⁶*Id.*

HUD notices have stressed that if disabled families are not served or provided for, that the agency administering the special purpose vouchers for the disabled may forfeit them.¹⁰

Project-Based Section 8

For project-based Section 8 assistance, the House approved \$5,476 million.

Section 323 of the administrative provisions provides that in the event of a disposition of a property held or owned by HUD, the continued availability of Section 8 contracts should be restricted to properties primarily occupied by elderly and disabled tenants. This provision ignores the provision in the FY 2006 appropriations act, which stated that Section 8 contracts could continue to assist all properties.¹¹

Community Development Block Grants

The bill would allocate \$4,200 for Community Development Block Grant (CDBG) grants, which is substantially more than the Administration requested and slightly more than what was appropriated for 2006. The Committee agreed with the Administration's request to transfer Youthbuild to the Department of Labor. It will be interesting to see if this account is fully funded when transferred to the Department of Labor.

Moving to Work

The bill contains a number of relevant administrative provisions. Two of the provisions address Moving to Work (MTW). Section 321 authorizes HUD to approve MTW demonstration agreements for up to thirty-two public housing agencies "active" at any given time. Currently, HUD is limited to thirty-two sites overall, which means that the program cannot expand without Congressional action as there have been thirty-two sites since the inception

Many PHAs, but not all, include in this section of the PHA plan for one or more years a breakdown of the various types of vouchers administered by the PHA. Approved PHA plans are available at <http://www.hud.gov/offices/pih/pha/index.cfm>. In addition, the announcement of Family Reunification Vouchers and Mainstream Vouchers is set forth annually in the *Federal Register*, in most cases. See, e.g., Announcement of Funding Awards for Fiscal Year 1998 for the Rental Certificate and Rental Voucher Programs, 64 Fed. Reg. 4669 (Jan. 29, 1999) (includes mainstream and family reunification); Announcement of Funding Awards for Fiscal Year 2000 Public and Indian Housing—Section 8 Housing Vouchers Assistance Programs, 66 Fed. Reg. 19,186 (Apr. 13, 2001) (includes Mainstream and Family Reunification).

¹⁰See, e.g., New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program, PIH 2005-5, (Feb. 1, 2005), available at <http://www.hudclips.org>.

¹¹Pub. L. No. 109-115, § 311, 119 Stat. 2396, 2462 (2005) (formerly H.R. 3058), <http://thomas.loc.gov>.

of the program.¹² There are currently only twenty-four active MTW sites and for one of those, Baltimore, the HUD Inspector General recently released a report concluding that HUD in making the designation did not follow applicable procedure and the Inspector General recommended that HUD seek a HUD general counsel opinion as to whether the designation should be nullified.¹³ Administrative Provision No. 320 continues the priority for San Jose/Santa Clara, California and San Bernardino, California to receive MTW status.¹⁴ Thus nationwide, there could be immediately an additional eight or nine MTW sites of which two would be preferred. It is our understanding that New York City, the City of Los Angeles and New Orleans are also interested in becoming MTW sites.

Eligibility of Certain Students

Section 319 of the Administrative provisions repeats the provisions of the FY 2006 appropriations which restricts admission to the Section 8 program to certain students.¹⁵

Conclusion

The Senate is in the process of considering appropriations for the HUD programs. It is anticipated that conference on the appropriations will not happen until September or later. ■

Update: On July 20, 2006, the Senate Appropriations Committee approved the FY 2007 Transportation-Treasury-HUD appropriations bill.

¹²The 32 sites include five (Baltimore, Chattanooga, TN; Dayton, OH; Los Angeles; and St. Paul) that were originally Jobs Plus sites, the original eighteen sites (Cambridge; Delaware State HA; Greene, OH [completed]; High Point, NC [completed]; Keene, NH; Lawrence KS; Lincoln, NB; Louisville Metro, KY; Massachusetts Dept of Housing; Minneapolis, MN; Portage OH; Portland, OR; San Antonio, TX; San Diego, CA [completed]; San Mateo, CA; Seattle, WA; Tulare, CA; Vancouver, WA), Chicago and another six sites (Atlanta, Washington D.C., King County, WA, New Haven, Oakland, CA and Philadelphia) and two cities were added by special legislation (Pittsburgh, PA and Charlotte, NC [never executed a contract]). As noted on the HUD website, the Jobs Plus sites, with the exception of Baltimore, are not listed as active and there are four other sites that have completed their contract or never executed one.

¹³HUD OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IMPROPERLY ADMITTED THE HOUSING AUTHORITY OF BALTIMORE CITY, BALTIMORE MD, INTO THE MOVING TO WORK DEMONSTRATION PROGRAM, 2006-PH-0002 (2006).

¹⁴This section further provides that upon turnover the targeting provisions of Section 8 Voucher Program (75% of new admittees are extremely low income) shall continue to apply.

¹⁵Pub. L. No. 109-115, § 327, 119 Stat. 2396, 2466 (2005). See also NHLP, *New Section 8 Restrictions for Students*, 36 HOUS. L. BULL. 103, 115 (2006).

Recent Cases

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

Administrative Law; Fair Housing — Generally; Federal Courts — *Rooker-Feldman* Doctrine; State Courts — *Res Judicata*

In *Turner v. Sec'y of Hous. & Urban Dev.*, 2006 WL 1503950 (3rd Cir. May 31, 2006), the Third Circuit held that the availability of a private action against a landlord under the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, precluded judicial review of HUD's decision to reject a tenant's administrative housing discrimination complaint. In the related case of *Turner v. Crawford Square Apts. LLC*, 2006 WL 1504106 (3rd Cir. May 31, 2006), the Third Circuit further held that the tenant's Fair Housing Act claims in federal district court were not barred under the *Rooker-Feldman* doctrine where the tenant had not asserted Fair Housing Act counterclaims in response to the landlord's eviction action. However, the Third Circuit concluded that the Fair Housing Act claims were barred under Pennsylvania's doctrine of *res judicata*.

Eviction — Project-Based Section 8

Nealy v. Southlawn Palms Apts., 2006 WL 1550190 (Tex. App. June 8, 2006) (not yet released). Reversing a forcible detainer judgment in favor of a project-based Section 8 landlord, the Court of Appeals of Texas ruled, *inter alia*, that a termination notice that "stated only 'Owner desired possession' and 'Un-desirable tenant behavior'" was not sufficiently specific under project-based Section 8 regulations.

Fair Housing — Generally; Vicarious Liability

Cleveland v. Caplaw Enters., 2006 WL 1314684 (2nd Cir. May 15, 2006). The Second Circuit reversed summary judgment

¹<http://www.westlaw.com>.

²<http://www.lexis.com>.

³For a list of courts that are accessible through the World Wide Web, 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>.

in favor of an apartment owner on a Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, racial discrimination claim. Plaintiff renters had proceeded on a vicarious liability theory. The Second Circuit concluded, *inter alia*, that for purposes of such a claim the party to be held vicariously liable need not have knowledge of the plaintiffs' race. It also concluded that a contractual provision stating that a property management company would be the "sole tenant contact" was not sufficient to defeat the fair housing claim for lack of agency.

Fair Housing — Reasonable Accommodation; Medical Marijuana; Pet Policies

Assenberg v. Anacortes Hous. Auth., 2006 WL 1515603 (W.D. Wash. May 25, 2006). The United States District Court for the Western District of Washington concluded that a public housing authority had not violated its duty under the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, to provide reasonable accommodation of disability where the housing authority terminated the tenancy of a resident based on violation of a policy against pets. The resident kept snakes, which he argued were "therapy pets." The housing authority had agreed to allow the resident to keep the snakes, subject to certain conditions, including, *inter alia*, that the resident agree to keep the snakes in a cage when housing authority staff were present or when the snakes were being transported. The resident refused, instead claiming "an unlimited right to carry the snakes around with him, including when he paid his rent." The court also rejected the resident's reasonable accommodation arguments regarding the cultivation of medical marijuana in his unit. It concluded that the use and cultivation of marijuana in the unit was an adequate basis for termination of the resident's tenancy notwithstanding a Washington State voter initiative that provides a defense to state prosecution for the medical use of marijuana.

Multifamily Housing Preservation; Constitutional Law — Takings

Atwood-Leisman v. United States, 2006 WL 1529206 (Fed. Cl. June 5, 2006). Citing, *inter alia*, in *Franconia Assocs. v. United States*, 536 U.S. 129 (2002), the Court of Federal Claims concluded that the government's refusal to accept prepayment of United States Department of Agriculture Section 515 Program mortgage loans, pursuant to the Emergency Low Income Housing Act, constituted a breach of contract under terms of the loan agreements.

Independence Park Apts. v. United States, 2006 WL 1528990 (Fed. Cir. June 6, 2006). In the latest decision in this long-running case brought by assisted multifamily property

owners seeking takings compensation for Emergency Low Income Housing Act and Low-Income Housing Preservation and Resident Homeownership Act prepayment restrictions, the Federal Circuit concluded, *inter alia*, that the Los Angeles Rent Stabilization Ordinance (LARSO) was not preempted by the National Housing Act, 12 U.S.C.A. §§ 1701 *et seq.* The court further concluded that restrictions on rent increased imposed by LARSO are to be considered in the calculation of takings damages.

Landlord-Tenant — Eviction

Burke v. Oxford House of Oregon Chapter V, 2006 WL 1703750 (Or. June 22, 2006). The Supreme Court of Oregon concluded that a halfway house for recovering addicts was subject to the procedural eviction requirements of the state Residential Landlord Tenant Act, OR. REV. STAT. § 90.110.

Landlord-Tenant — Safety and Security; Negligence

Martin v. Rankin Circle Apts., 2006 WL 1737766 (Miss. App. June 27, 2006) (not yet released). The Court of Appeals of Mississippi rejected negligence and implied warranty of habitability claims against a Section 8-assisted landlord based on a shooting death in the property's parking lot. The decedent's heirs contended that the landlord had allowed an "atmosphere of danger" to form around the property and had failed to warn the decedent. The court noted that the decedent was aware of and "had been participating in that atmosphere for a substantial period of time" prior to the shooting.

Lead Paint; Federal Courts — Private Right of Action

Johnson v. City of Detroit, 446 F.3d 614 (6th Cir. 2006). The Sixth Circuit concluded that neither the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821 *et seq.*, nor various policy declarations contained in the United States Housing Act, 42 U.S.C. §§ 1437 *et seq.*, nor regulations issued pursuant to these two statutes created any federal rights enforceable via 42 U.S.C. § 1983. As such, the Sixth Circuit affirmed the dismissal of claims by a minor child injured by exposure to lead paint while residing in public housing. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD) and the Department of Agriculture's (USDA) Rural Housing Service (RHS) issued in May of 2006. 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 Web site on the World Wide Web,¹ (2) bound volumes of the *Federal Register*,² (3) HUD Clips,³ (4) HUD,³ and (5) USDA's Rural Development Web page.⁴ Citations are included with each document to help you secure copies.

HUD Federal Register Final Rules

71 Fed. Reg. 30,030 (May 24, 2006) Community Development Block Grant Program; Revision of CDBG Eligibility and National Objective Regulations

Summary: This final rule revises the Community Development Block Grant program regulations to clarify the eligibility of brownfields cleanup, development, or redevelopment within existing program eligibility categories. The final rule follows publication of a July 9, 2004, proposed rule. This rule also makes final, with no changes, the provisions of that rule, which have been in effect for states on an interim basis since November 21, 1996.

Effective Date: June 23, 2006.

71 Fed. Reg. 30,026 (May 24, 2006) Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

Summary: On December 23, 2005, HUD published an interim rule implementing certain statutory changes by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Specifically, the interim rule prohibited state and local governments from using CDBG funds for "job-pirating" activities that are likely to result in significant job loss. The rule also applied to Section 108 loan guarantees and the use of Brownfields Economic Development Initiative and Economic Development Initiative funds with Section 108 loan guarantees and

¹http://www.access.gpo.gov/su_docs.

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

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

⁴<http://www.rdinit.usda.gov/regs>.

CDBG funding. This final rule follows publication of the December 23, 2005, interim rule, and makes no changes at this final rule stage.

Effective Date: June 23, 2006.

HUD Federal Register Proposed Rules

71 Fed. Reg. 32,392 (June 5, 2006)

Accelerated Claim and Asset Disposition (ACD) Program; Advance Notice of Proposed Rulemaking

Summary: This notice solicits comments on HUD's Accelerated Claim and Asset Disposition (ACD) program before HUD proceeds to issue a proposed rule that will commence the rulemaking process that will result in codification of the requirements for the ACD program, thus making the ACD program a permanent part of HUD's single family mortgage insurance programs. Under the ACD program, HUD will pay claims upon assignment of certain defaulted mortgage loans ("assets") insured by the Federal Housing Administration (FHA). The purpose of the ACD program is to help FHA maximize the recovery of assets sold by HUD. HUD seeks comments on the ACD Demonstration program, including recommendations of cost-effective, efficient improvements and alternatives that should be made part of the permanent program.

Comment Due Date: August 4, 2006.

71 Fed. Reg. 33,144 (June 7, 2006)

Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Regulatory Amendments to Strengthen Prevention of Predatory Lending Practices

Summary: HUD is proposing changes to its regulations governing Fannie Mae and Freddie Mac (collectively, the government sponsored enterprises or GSEs) to reinforce the efforts of HUD and the GSEs to prevent predatory lending practices. The changes proposed by this rule would allow HUD to keep up-to-date with and combat new predatory lending practices as they are discovered and, therefore, strengthen HUD's oversight role in monitoring GSE practices to ensure that the loans the GSEs purchase are not contrary to responsible lending practices.

Comment Due Date: August 7, 2006.

HUD Federal Register Notices

71 Fed. Reg. 27,350 (May 10, 2006)

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2005

Summary: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly *Federal Register* notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since

the previous *Federal Register* notice. The purpose of this notice is to comply with the requirements of Section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2005, and ending on December 31, 2005.

71 Fed. Reg. 29,538 (May 22, 2006)

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly

Summary: This notice announces the availability of approximately \$30 million in grant funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants.

Dates: HUD will accept applications on a first-come, first-served basis upon publication of this notice and will award emergency capital repair grants until available amounts are expended.

71 Fed. Reg. 32,122 (June 2, 2006)

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2006; Additional Revision

Summary: This notice updates the FMRs for the metropolitan areas of Aquadilla, Arecibo, Barranquitas, Caguas, Fajardo, Guayama, Ponce, and San Juan, Puerto Rico.

Effective Date: June 2, 2006.

71 Fed. Reg. 33,138 (June 7, 2006)

Authority of Agencies in the Fair Housing Assistance Program to Investigate Allegations of Discrimination in Lending Complaints

Summary: This statement of policy advises the public that HUD does not view two recent fair housing federal court decisions as in any way affecting the authority of state and local agencies to enforce their own fair housing laws that HUD has certified as substantially equivalent to the federal Fair Housing Act. State and local fair housing enforcement agencies administering substantially equivalent fair housing laws have the authority to enforce those statutes and ordinances against any respondent, including a national bank, within their jurisdictions. This is not a new policy. This statement of policy clarifies existing regulations at 24 CFR 115.202.

71 Fed. Reg. 34,448 (June 14, 2006)

Waivers Granted to and Alternative Requirements for the State of Alabama's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

Summary: This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Alabama for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences

of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Alabama also notes statutory provisions affecting program design and implementation.

Effective Date: June 14, 2006.

71 Fed. Reg. 34,451 (June 14, 2006)
Waivers Granted to and Alternative Requirements for the State of Louisiana's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

Summary: This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Louisiana to assist in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Rita in 2005. On February 13, 2006, HUD published an allocation and application notice applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon request of the state grantee. This notice also notes statutory provisions affecting program design and implementation.

Effective Date: June 14, 2006.

71 Fed. Reg. 34,457 (June 14, 2006)
Waivers Granted to and Alternative Requirements for the State of Mississippi's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

Summary: This notice describes additional waivers and alternative requirements applicable to the CDBG disaster recovery grant provided to the State of Mississippi for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Mississippi also notes statutory provisions affecting program design and implementation.

Effective Date: June 14, 2006.

71 Fed. Reg. 34,726 (June 15, 2006)
Proposed Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program; Fiscal Year 2007

Summary: This notice proposes FMRs for FY 2007. The proposed numbers would amend FMR schedules used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes. The proposed FY 2007 FMRs continue to use the revised Office of Management and Budget (OMB) area definitions that were issued in 2003 and were used in establishing FY 2006 FMR areas and FMRs. They also continue to use the same calculation methodology. They differ, however, in that a limited number of additional modifications to the county-based statistical areas as defined by OMB have been made in response to public comments received on the December 16, 2005, *Federal Register* notice on the proposed FY 2006 income limit calculation methodology.

Comments Due Date: August 1, 2006.

71 Fed. Reg. 35,443 (June 20, 2006)
Privacy Act; Proposed New Systems of Records

Summary: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Single Family Acquired Asset Management System (SAMS), HUD/HS-52. SAMS contains information about purchasers involved in the sale of HUD/FHA single-family homes, successful bidders of HUD-owned properties, HUD employees and contractors.

Effective Date: This action shall be effective without further notice in thirty calendar days unless comments are received during or before this period that would result in a contrary determination.

Comments Due Date: July 20, 2006.

71 Fed. Reg. 36,351 (June 26, 2006)
Privacy Act of 1974; Proposed System of Records

Summary: HUD proposes to establish two new record systems to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new systems of records are: Debt Collection and Asset Management System (DCAMS) and Title I Insurance System (TIIS). The primary purpose of DCAMS is to collect and maintain data needed to support activities related to the collection and servicing of various HUD/FHA debts. It contains information on individuals who have debts resulting from default on HUD/FHA insured Title I loans and from other HUD/FHA loan programs. The Title I Insurance System is used to collect and main-

tain the data necessary to support activities related to the servicing of loans insured under the Title I program. It contains information on individuals who have made loans insured under HUD's Title I program.

Effective Date: This action shall be effective July 26, 2006 unless comments are received which will result in a contrary determination.

Comments Due Date: July 26, 2006.

71 Fed. Reg. 36,540 (June 27, 2006)

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

Summary: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is announcing a new matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and applicants for FEMA disaster assistance. The matching program will be carried out to detect inappropriate (excessive or insufficient) housing assistance under the National Housing Act, the United States Housing Act of 1937, Section 101 of the Housing and Community Development Act of 1965, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998.

Effective Date: Computer matching is expected to begin July 27, 2006, unless comments are received which will result in a contrary determination, or forty days after a copy of the underlying matching agreement is signed, approved by HUD and FEMA Data Integrity Boards, and sent to both Houses of Congress, whichever is later.

Comments Due Date: July 27, 2006.

71 Fed. Reg. 36,542 (June 27, 2006)

Privacy Act of 1974; Establishment of a New System of Records

Summary: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, HUD is giving notice that it proposes to establish a new system of records entitled HUD Central Accounting and Program System (HUDCAPS, A-75). The information in this system will be used to monitor payments and collections from HUD employees and persons doing business with HUD.

Effective Date: This action will be effective without further notice on July 27, 2006, unless comments are received that would result in a contrary determination.

Comments Due Date: July 27, 2006.

Rural Housing Rules

71 Fed. Reg. 29,912 (May 24, 2006)

Notice of Availability of Hurricane Disaster Assistance—Section 502 Guaranteed Loan Program

Summary: The Rural Housing Service, an agency within the USDA Rural Development mission area, pro-

vides housing loan guarantees to rural residents through its Section 502 Guaranteed Loan Program. The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (Act), Pub. L. 109-148 (12/30/05) provides USDA Rural Development with additional authorities and resources to address the damage caused by hurricanes that occurred during the 2005 calendar year. The intent of this NOFA is to introduce a temporary Mortgage Recovery Advance Program or existing Section 502 Guaranteed Loan Program to borrowers impacted by certain 2005 hurricanes.

Effective Date: May 24, 2006, to April 30, 2007.

71 Fed. Reg. 37,534 (June 30, 2006)

Rural Housing Service Deployment and Implementation of the Preservation Information Exchange (PIX) Application

Summary: The Rural Housing Service announces the deployment and implementation of the PIX System. PIX is a web-based automated system that will allow interested nonprofit organizations and public bodies to register to receive e-mail notification of all relevant prepayment requests and potential sales to nonprofits or public bodies of Section 515 Rural Rental Housing properties.

HUD Housing Notices

Notice H-06-06 (June 8, 2006)

Reinstatement of Policy Permitting Increases of Project Rental Assistance Contract (PRAC) Reservations Prior to Occupancy Under the Section 202 Supportive Housing for the Elderly and the Section 811 Supportive Housing for Persons with Disabilities Programs

Summary: This notice revises the instructions in Notice H 96-102 to the extent necessary to provide for HUD's consideration and approval of PRAC increases prior to execution of the PRAC contract. This notice reinstates the processing instructions pertaining to the procedures for estimating project expenses and income as contained in paragraphs 1-31.B.3, 1-34 through 1-42, 1-72.B.2, and 4-9 of Section 811 Handbook 4571.4 and Section 202 Handbook 4571.5. Accordingly, this notice sets forth processing instructions.

Expires: June 30, 2007.

Notice H-06-07 (June 20, 2006)

Extension of Housing Notice H 2005-14, Lead Disclosure Requirements and Addendum Format

Summary: Housing Notice H 2005-14 was issued July 1, 2005, with an expiration date of July 31, 2006. The program is hereby extended to June 30, 2007.

Expires: June 30, 2007.

HUD PIH Notices

Notice PIH-2006-18 (HA) (May 31, 2006)

Fiscal Year 2006 Capital Fund Grants Processing Notice

Summary: The purpose of the notice is to provide public housing agencies (PHAs) and HUD Public Housing field staff with information and guidance on the Fiscal Year (FY) 2006 Capital Fund Program. This notice informs PHAs that this fiscal year the Department initially will provide PHAs with 95% of their formula grant. The remainder of the Capital Funds will be distributed at a later date. This notice also states that the Department will implement Section 901 of the Emergency Supplemental Appropriations (PL 109-148) through a separate notice.

Expires: May 31, 2007.

Notice PIH-2006-19 (TDHE) (June 5, 2005)

Subject: Reinstatement of PIH Notice 2004-17, Recipient Inspection of Housing Units Assisted Under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and Those Assisted Under the 1937 Housing Act

Summary: This notice serves to clarify the requirements for recipient inspection of housing assisted under NAHASDA (the Act) and those assisted under the 1937 Housing Act. Questions have been received by HUD concerning the applicability of inspection requirements found in Section 403(b) of the Act to the various types or categories of housing assistance provided and the required frequency of such inspections.

Expires: June 30, 2007.

Notice PIH 2006-20 (TDHEs) (June 7, 2006)

Financial Audit Requirement

Summary: This notice reiterates Notice PIH-2002-17 which was reinstated by PIH Notice 2003-28, and provides specific guidance on the financial audit requirements for the participants in the Indian Housing Block Grant (IHBG), Indian Community Development Block Grant (ICDBG) and other HUD programs that are available to Native American recipients, such as the Rural Housing and Economic Development Program, and the Public and Indian Housing Drug Elimination Program.

Expires: June 30, 2007.

Notice PIH 2006-21 (HA) (June 16, 2006)

Reinstatement – Notice PIH 2005-5(HA) New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program

Summary: This notice reinstates Notice PIH 2005-5(HA).

Expires: June 30, 2007.

Notice PIH-2006 22 (HA) (June 21, 2006)

Public Housing Development Cost Limits

Summary: The purpose of this notice is to explain procedures for establishing public housing development cost limits. This notice does not apply to Native American housing.

Expires: June 30, 2007.

Notice PIH 2006-23 (June 23, 2006)

Implementation of the Violence Against Women and Justice Department Reauthorization Act 2005

Summary: This notice informs Public Housing Agencies of the passage of the Violence Against Women Act and Department of Justice Reauthorization Act of 2005.

Expires: June 30, 2007.

Notice PIH 2006-24 (HA) (June 30, 2006)

Revised Reporting Requirements and Sanctions Policy for the Family Report (Form HUD-50058) to the Office of Public and Indian Housing (PIH) Information Center (PIC)

Summary: This notice implements a revised Form HUD-50058 assessment and sanctions process. It also replaces Notice PIH 2005-17, which includes voiding sanctions and Corrective Action Plans (CAPs).

Expires: June 30, 2007

Notice PIH 2006-26 (HA) (June 30, 2006)

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

Summary: This notice extends Notice PIH 2005-24, same subject, which will expire on July 31, 2006, for another year until July 31, 2007. Notice PIH 2005-24 revises the procedure for the calculation of voucher housing assistance payments under PIH Notices 97-29, 98-19, 99-16, and 00-09 for families that received enhanced vouchers as the result of an owner decision to prepay the mortgage or voluntarily terminate the FHA mortgage insurance of a “preservation eligible” property in FY 1997, 1998, and 1999. Notice PIH 2005-24 also provides instructions to PHAs on identifying impacted families and re-calculating HAP for the period in question.

Expires: June 30, 2007. ■

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