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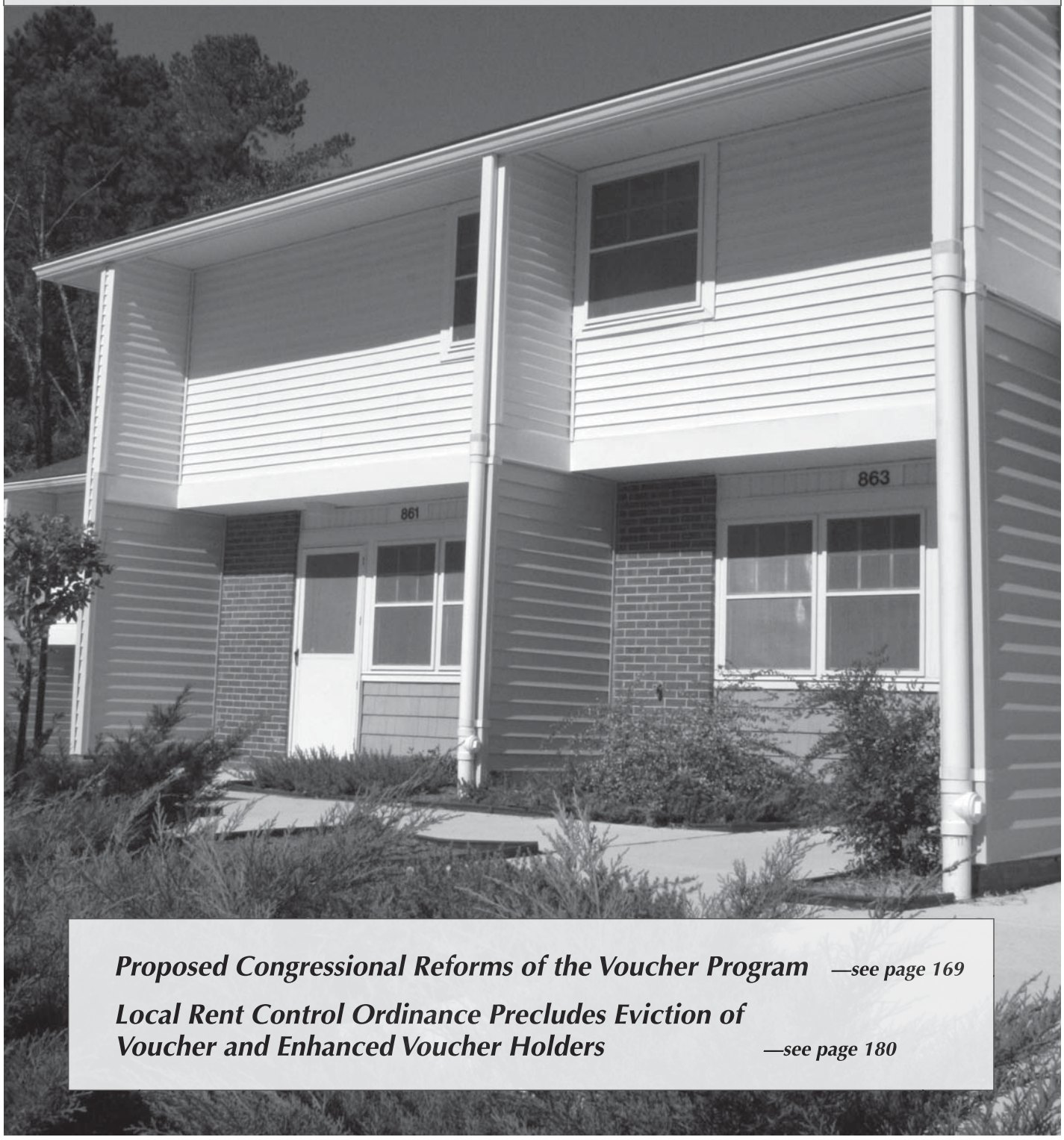

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Table of Contents

Cover: Airport Gardens, a 26-unit 2- and 3-bedroom public housing development owned and managed by the Chapel Hill Department of Housing, North Carolina. The development was built in 1972 and recently renovated.

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Proposed Congressional Reforms to the Section 8 Voucher Program

The Section 8 Voucher Reform Act (H.R. 1851, or "SEVRA") is winding through Congress. After House passage of the bill in July, the Senate is currently discussing a version for introduction. This legislation would make the first comprehensive revisions to the Housing Choice Voucher program since the Quality Housing and Work Responsibility Act of 1998[1]—providing much-needed updating of the Section 8 voucher program. The legislation also proposes to change the definition of income for not just the voucher program, but also the public housing and project-based Section 8 programs. Any proposed expansion of the Moving to Work program (to be renamed Housing Innovation Program, or "HIP" under SEVRA) would also affect both voucher and public housing residents for participating public housing authorities (PHAs).

Background

The Section 8 voucher program has grown to be the largest housing assistance program in the country, serving about two million households,[2] primarily extremely low-income and very low-income families.[3] Yet, as markets and needs have changed, the program has not been revised to ensure it can continue to fulfill its intended purpose.

Problems with Current System

A number of problems currently plague the Section 8 voucher program. One of the most prominent and pressing problems is the inadequate funding formula which has resulted in underfunding of some PHAs and unusable surpluses for others. For the past few years, each PHA's renewal funding has been based on costs and the number of authorized vouchers in use from May-July 2004. Each year, the funding is modified by HUD-created annual adjustment factors, as well as by the number of tenant protection vouchers in use. The current funding structures have led to the loss of approximately 150,000 vouchers in the last three years.[4] Moreover, the program includes numerous complicated and inefficient provisions that impair effective operations. Finally, a number of policy changes are needed to make the program more tenant-friendly.

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[1]Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276 (1998), codified throughout 42 U.S.C. § 1437.
[2]CBPP data, *available at* http://www.centeronbudget.org/5-15-03hous.htm#_edn2.
[3]HUD resident characteristics report, national data, *available at* https://pic.hud.gov/pic/RCRPublic/rcrmain.asp.
[4]http://www.cbpp.org/pubs/housing.htm.

Administration Position

A bipartisan group of House members introduced SEVRA in May 2007, as a reform package intended to improve voucher program administration. Previous to that time, the only bill on the table had been the Administration's 2005 proposal, called the State and Local Housing Flexibility Act.[5] That proposal would have substantially changed the public housing and voucher programs. First, it would have created a block grant for vouchers, making it easier to cut funds from the program and remove most tenant protections.[6] Second, the proposal would have eliminated the general 30% cap on tenant contribution to rent, allowing local PHAs to set their own contribution levels.[7] The third major change would have been to vastly expand the Moving to Work program and almost completely deregulate PHAs.[8] Fortunately, no action was taken in either chamber on this bill, but it revealed the Administration's stance on voucher reform.

The White House has signaled its continuing commitment to those egregious proposals in a more recent Statement of Administration Policy (SAP), released on July 11, 2007. The SAP begins by stating the Administration's opposition to H.R. 1851 "in its current form," opposing SEVRA's changes to the PHA funding formula, while complaining about rising costs. It reaffirms its opposition to the general 30% cap on tenant rent contributions, claiming that PHAs need flexibility in setting rents. Additionally, the SAP also opposes increasing the number of units assisted with project-based vouchers. The Administration does, however, support expanding the Moving to Work program and reducing the number of inspections required for voucher units, among other things.[9] Overall, the SAP opposes the majority of positive reforms in SEVRA and is viewed by advocates as a threat by the Administration to veto any legislation emerging from Congress.[10]

House Version of SEVRA (H.R. 1851)

The House passed its version of SEVRA on July 12 by a 333-83 vote, signaling strong bipartisan support for responsive voucher reform, despite the Administration's threats. The bill includes a number of significant changes to the current system, aiming generally to provide better funding mechanisms, to streamline the system, and to make the program more flexible for PHAs.

SEVRA addresses the flawed formula for PHA funding. Instead of basing funding on an arbitrary snapshot in time, SEVRA would renew funding "based on leasing and cost data from the preceding calendar year, as adjusted by an annual adjustment factor to be established by the Secretary, which shall be established using the smallest geographical areas for which data on changes in rental costs are annually available."[11] This provision is essential to ensure that PHA funding is based upon realistic figures and thereby permits sufficient funding. The actual amount allocated based upon the formula will be determined by Congressional appropriations.

In addition to fixing the broken voucher funding system, the House bill authorizes the appropriation of 20,000 additional vouchers for five years, a much-needed increase.[12]

Another important issue is how rent and income are determined for tenants—not just voucher tenants but public and HUD-assisted housing tenants as well. SEVRA increases flexibility on the definition of income, while maintaining the general 30% cap on tenant contributions.[13] Keeping this rent cap is essential to keeping rents affordable for the extremely and very low-income population that the programs serve.

A key change in income calculation for all of the major HUD programs would be some revised deductions. Currently, for elderly and disabled families, income is adjusted to deduct $400 and certain medical expenses above 3% of income. H.R. 1851 would instead create a $750 deduction for these families, but only permit deduction of their medical expenses above 10% of income. SEVRA would also increase the dependent deduction to $500 per member. Current law also deducts all reasonable childcare expenses,[14] but H.R. 1851 would eliminate that. On earnings disregards, current law also provides, for voucher tenants with disabilities and public housing residents who were recently unemployed or on welfare, an exclusion of the full amount of increased earnings in the first year and half in the second year. While repealing this earned income disregard, H.R. 1851 would instead exclude 10% of earnings from all employed tenants from income calculations. H.R. 1851 also adds a limitation on assets, prohibiting tenants from owning a house or more

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[5]State and Local Housing Flexibility Act, S. 771, 109th Cong. (2005) and H.R. 1999, 109th Cong. (2005) (hereafter, SLHFA cites will be to the Senate bill, which was identical to the House bill). For more detailed information, *see* National Housing Law Project, *Administration Issues Radical Proposal to Deregulate Public Housing and Voucher Programs*, 35 HOUS. L. BULL. 125 (May 2005).

[6]S. 771, 109th Cong., § 107 (2005).

[7]*Id*. at § 109. Under the voucher program, tenants must also pay any rent above the PHA payment standard, in addition to the ordinary 30% of income contribution.

[8]*Id*. at § 302. PHAs that currently participate in Moving to Work are permitted to seek waivers of most of the statutory provisions that protect tenants. Some Moving to Work PHAs have abandoned the 30% of income cap for rent standard and have introduced time limits for a family's receipt of voucher assistance and/or public housing.

[9]Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy*: *H.R. 1851 – Section 8 Voucher Reform Act of 2007* (July 11, 2007).

[10]*See* National Low Income Housing Coalition, *Memo to Members*, Vol. 12, No. 28, *available at* http://www.nlihc.org/detail/article.cfm?article_id=4392 (July 13, 2007).

[11]H.R. 1851, 110th Cong., § 6 (2007).

[12]*Id*. at § 20.

[13]*Id*. at § 3.

[14]24 C.F.R. § 5.611

than $100,000 in assets, both at the time of application and at each recertification.[15] Under H.R. 1851, rents would be based upon the prior year's income rather than projections for the next year's income, which should be easier to calculate.[16]

The House bill would also change the threshold for obtaining rent adjustments due to changes in family income, for public housing and all Section 8 tenants. In contrast to current law, which permits changes at any time, SEVRA would limit reviews of family income to situations where income changes by at least $1500 annually. A PHA or owner would also only be required to review income every three years for families on fixed incomes, with assumed inflation adjustments in the intervening years. Many advocates and residents feel strongly that a $1500 threshold is too high before mandating a rent reduction, resulting in more unnecessary nonpayment evictions. However, for administrative simplicity and to encourage work, advocates agree with the $1500 limitation with respect to increases in income.

H.R. 1851 also addresses several important details of the voucher program. For example, it reduces the number of required housing quality standard (HQS) inspections, from annually to every two years and assumes that a unit will pass inspection, thereby permitting pre-inspection payments for one month for new units.[17] Also, if a landlord has failed to make repairs to non-life-threatening conditions that violate HQS within thirty days after notice (or such reasonable PHA-set period), then the PHA must withhold assistance amounts for that unit and may use that withheld assistance to pay for repairs.[18] These new abatement and repair rules would improve enforcement of HQS and better ensure that tenants receive quality housing.

To reduce the practical hurdles to portability, H.R. 1851 would mandate absorption of vouchers from one PHA to another and gives the receiving PHA priority for additional funding, if available from unused funds.[19] Also, the bill proposes to increase access to HUD programs for people with limited English proficiency by authorizing funds to ensure development of materials and help for those with limited English proficiency in print, Internet and telephone formats.[20] This provision would create a task force and a housing information resource center to carry out its objectives.[21]

Other SEVRA changes include encouraging homeownership by allowing down payment assistance in one lump sum rather than monthly payments, without affecting the tenant's ability to go to outside sources for down payment help.[22] However, this provision could prove problematic if it deprives a homeowner of ongoing subsidy payments when income drops. Also, PHAs would be able to project-base a larger percentage of vouchers (25%, up from 20%), which benefits residents by permitting vouchers to be tied to an actual unit, especially in markets where tenant-based vouchers are hard to use.[23]

For much of the last decade, there has been a push to expand deregulation of PHAs. One of the more troublesome provisions in H.R. 1851 is the expansion of the Moving to Work program (renamed Housing Innovation Program, HIP).[24] The program allows selected PHAs to

[15]H.R. 1851 at § 4(e).
[16]*Id*. at § 3.
[17]*Id*. at § 2(a)(2).
[18]*Id*. at § 2(a)(4)(bb)(iii).
[19]*Id*. at § 6(b).
[20]*Id*. at § 18.
[21]*Id*.
[22]*Id*. at § 8.
[23]*Id*. at § 11.
[24]*Id*. at § 16.

Implementing the Housing Provisions of VAWA

Meliah Schultzman joined the National Housing Law Project recently as an Equal Justice Works fellow and attorney. The focus of her work is the implementation of the housing provisions of the Violence Against Women Act (VAWA) both in California and on the national level. She will also be working on enforcement of the sex discrimination provisions of the Fair Housing Act (FHA) for domestic violence survivors who live in unsubsidized housing.

Meliah will provide technical assistance and training to advocates working with domestic violence survivors to secure housing. She is also available to help those who want to encourage their local housing agencies to adopt policies addressing the needs of domestic violence survivors.

Meliah is also gathering sample pleadings, public housing agency plans, leases, and training materials that address the rights of domestic violence survivors. These documents will eventually be posted on NHLP's website so that they are readily accessible to advocates. If you have drafted a housing policy, training program, or demand letter that has been particularly successful, Meliah would like to hear about it. She would also like to organize a working group and periodic conference calls so that advocates can share problems and strategies.

Please feel free to contact Meliah by email at mschultzman@nhlp.org or phone at (510) 251-9400 ext. 116 to let her know how she can be of service. Your input will be essential to raising awareness of survivors' housing rights under VAWA and the FHA.

waive most statutory requirements. While twenty-four PHAs participate in the current Moving to Work program, HIP would expand that number to sixty. Additionally, H.R. 1851 would create a "HIP-Lite" program for up to twenty PHAs, to allow fungibility of funds and waiver of only limited statutory provisions, while maintaining the current rent structure and income targeting. Because deregulation of more PHAs threatens basic tenant rights, advocates object to the expansion of this program and simultaneously seek to incorporate more standards and accountability into the program.

The Senate would have income from assets included in the income and rent calculation, but would exclude automobiles and necessary items, and the assets of survivors of domestic violence.

Finally, a late amendment to the bill would require each adult member of the household to have a REAL-ID compliant driver's license or ID, a Social Security card accompanied by state-issued photo ID, or a U.S. passport. If even one adult household member could not produce such ID, the entire family would lose voucher assistance. While undocumented persons are already ineligible for voucher assistance under current law (which requires prorated reduction of benefits for others eligible), this section of the bill would potentially make ineligible a large number of families that could not come up with such identification for a number of reasons, or exclude a number of U.S. citizens or others eligible who had one or more household members without documentation.

Current Senate Bill

Senate housing staff is currently developing their own version of SEVRA, which has not yet been formally introduced. Many of the provisions in the Senate discussion draft[25] are similar to those in the House bill, but many key differences exist. Additionally, advocates are still pushing for the Senate bill to include affirmative changes that have not been included in either bill.

The draft of the Senate bill would change the voucher funding framework as well, proposing the same changes as the House bill by authorizing 20,000 incremental vouchers annually for five years. It would prioritize the incremental vouchers for preserving affordable housing and for entities that provide vouchers for use by participants on a regional basis. The Senate draft would also increase the amount of vouchers that can be project-based to 25%, with an additional 5% allowed for homeless assistance housing, and would allow owners of converted multifamily units to request project-based vouchers instead of enhanced vouchers if there is sufficient demand or community need.

With regard to income and rent calculations, the Senate bill simplifies the formula as H.R. 1851 does, but adds some changes. The Senate would have income from assets included in the income and rent calculation, but would exclude automobiles and necessary items, and the assets of survivors of domestic violence. The bill also attempts to address the problem of childcare for those working by adding an income deduction for "unreimbursed childcare costs exceeding 10% of family income for children of preschool age, for before- or after-care for children in school, or for other childcare necessary to enable a parent to work."[26]

The Senate version of SEVRA does not allow for extended rent abatements when an owner is not complying with housing quality standards,[27] nor is there any right for a PHA to use those withheld funds to pay for repairs.[28] However, the Senate draft would give tenants more time to find a new residence if a lease is terminated due to an owner's failure to repair.[29] Many residents have identified a strong need to give a PHA discretion to use withheld funds to make repairs, to ensure repairs, and avoid termination of the lease for violation of HQS standards.

The Senate bill also includes many exceptions to voucher portability that do not exist in the House bill. A PHA could not absorb above its authorized level of vouchers without HUD approval, HUD would have to suspend the obligation to absorb in any year where there are not sufficient funds to cover extra portability costs, and HUD must provide an estimated accounting to Congress of the costs of mandatory absorption, with cost projections for the second year of implementation.[30] These provisions could create a path for HUD to severely limit portability and, in turn, resident mobility, a key component of the voucher program.

The Senate draft proposes to add a significant new portion to the bill with regard to rent burdens, placing greater responsibility on PHAs to track rent burdens. This means that HUD must monitor how many families using voucher assistance pay more than the 30% and 40% of their adjusted income toward rent. If the PHA finds that a large number of families are rent-burdened, it must conduct outreach to landlords, provide search assistance, and review accuracy of the utility allowance. Only if the PHA has taken these steps would it qualify for an increase in

[25] S. _____, 110th Cong., 1st Sess. Discussion Draft (Sept. 27, 2007).

[26] *Id.*
[27] *Id.* at § 2(3)(G).
[28] *Id.*
[29] *Id.*
[30] *Id.* at § 6(b).

the payment standard to 120% of the fair market rent.[31] This section also ensures that rent burdens for voucher holders in LIHTC buildings are not excessive by limiting their rents to the greater of those for similar LIHTC units or the voucher payment standard.

The draft bill ensures that PHA performance will be assessed at least biannually, rather than "periodically."[32] Importantly, the Senate also includes the accuracy of utility allowances for tenant-paid utilities as part of assessing PHA performance.[33] Additionally, PHAs can withhold some of a rental subsidy to pay utilities if an owner fails to do so in violation of a HAP contract.[34]

Advocatethe Senate bill does not contain two of the House bill's harmful provisions—the expansion of the Moving to Work program and the requirement that adult household members provide specific types of identification.

Numerous other small changes to the program would have a significant effect on large groups of people. For example, the Senate adds a subsection allowing PHAs to screen and deny assistance based on criminal background or any other permissible grounds for denial under QWHRA, where H.R. 1851 is more limiting for owners and states, stating that, "A public housing agency's elective screening shall be limited to criteria that are directly related to an applicant's ability to fulfill the obligations of an assisted lease and shall consider mitigating circumstances related to such applicant."[35] The Senate draft bill also does not include a section on Limited English Proficiency (LEP) requirements, meaning that access to HUD resources and housing would remain more difficult for the country's growing number of non-English speaking immigrants.

As of right now, the Senate bill does not contain two of the House bill's harmful provisions—the expansion of the Moving to Work program and the requirement that adult household members provide specific types of identification. However, the expansion of Moving to Work (renamed HIP) is reportedly almost certain to be added, though the extent of the expansion is still unknown.

Advocates would like to see a number of other positive provisions added to SEVRA, whether in the Senate or in a later conference. For example, SEVRA should clarify that federal tenant protection laws do not preempt stronger local protection laws. It should also include enhanced voucher reforms, such as clarifying the owner's duty to accept enhanced vouchers, prohibiting "rescreening" of tenants in good standing by PHAs when subsidies are converted, and addressing mismatches of family and unit size so that tenants do not lose their homes, while ensuring that enhanced voucher tenants pay only 30% of their income toward rent.

What's Next

The strong bipartisan support for SEVRA should eventually foster Senate passage. Both the Senate process and any subsequent conference with the House will provide important opportunities for further refinements. Stay tuned for further developments regarding the SEVRA legislation. ■

[31] *Id*. at § 12.
[32] *Id*. at § 10.
[33] *Id*.
[34] *Id*.
[35] *Id*. at § 14.

New Utility Allowance Advocacy Guide Available

In most federally subsidized housing programs, tenants who pay their own utilities are supposed to be provided with a utility allowance to cover reasonable utility costs. In recent years, as utility rates have skyrocketed, many subsidized owners have failed to make corresponding increases in their utility allowances, leaving public housing tenants to unfairly shoulder the costs.

Advocating for Higher Utility Allowances in Federally Subsidized Housing: A Practical Guide, a combined effort of HJN member Gavin Thornton of the Legal Aid Society of Hawaii and the National Housing Law Project, helps advocates identify, develop and litigate basic cases where allowances have not been updated to account for recent significant rate increases. Conveniently organized to permit efficient extraction of necessary basic information, the *Guide*'s Appendices also include spreadsheets to ease the pain of required calculations, several practical documents (e.g., information requests and demand letters), and pleadings.

Until the *Guide* is formally posted with restricted access on NHLP's website, legal services and tenant representatives can obtain a link to a downloadable zipped folder containing a PDF of the *Guide* with all Appendices, or a copy of the PDF *Guide* only, by sending an e-mail request to asiemens@nhlp.org.

Congress Considers Reauthorization of Homeless Programs

Both the House and the Senate are developing legislation to reauthorize the landmark McKinney-Vento Homeless Assistance Act of 1987,[1] the first and only coordinated federal response to the homeless crisis. Recognizing that the law is in urgent need of modification due to the persistence and evolution of the homeless crisis over the past two decades, both the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2007 ("HEARTH", H.R. 840), and the Community Partnership to End Homelessness Act of 2007 ("CPEHA", S. 1518) are now moving forward.

Millions of Americans experience homelessness annually, and the Department of Housing and Urban Development (HUD) estimates that 45% of the population considered homeless is totally unsheltered.[2] Coupled with the disconcerting persistence of the crisis is the changing face of homelessness, which has expanded from single individuals to now include entire families. Nor is the crisis solely confined to urban centers, as suburban and rural locales are now also affected.

To address this situation, both bills would expand, to varying degrees, the codified definition of homelessness, consolidate HUD's various Continuum of Care programs into one single program to reduce competition and administrative costs, increase the authorized funding level for these programs, and expand the scope of prevention activities for at-risk families.

The House version of the bill, HEARTH, was introduced on February 6, 2007, by Rep. Julia Carson (D-IN), and was subsequently referred to the Committee on Financial Services. Its Senate companion, CPEHA, was introduced on May 24, 2007, by Senators Jack Reed (D-RI) and Wayne Allard (R-CO), and was referred to the Committee on Banking, Housing, and Urban Affairs. Senators Reed and Allard testified in support of their bill, as did State Senator John McKinney and a handful of representatives from prominent homeless advocacy groups. The Senate bill was marked up in committee and reported out on September 19. The House Financial Services Subcommittee on Housing and Community Opportunity, chaired by Rep. Maxine Waters (D-CA), held a hearing on both bills on October 4. HEARTH has yet to move out of committee.

Basics of the Reauthorization Bills

Definition of Homelessness

Each bill would expand the definition of homelessness currently utilized by HUD. Under that definition, to qualify for assistance, persons must be homeless and reside in one of three locations: places not meant for human habitation, an emergency shelter, or transitional housing for the homeless.[3] People living in doubled-up housing or in motels are not specifically included in the statutory definition, and HUD has consistently interpreted the statute as excluding this population.

Both HEARTH and CPEHA would expand the definition to include persons living in both these housing situations.[4] The Senate version, seeking to focus limited funds, would impose an additional limitation, however, that individuals and families in these situations would only qualify if they had changed primary residencies three or more times in the last year or at least twice in the past twenty-one days.[5] Individuals released from prison on probation who otherwise meet the criteria of homelessness are also excluded by the current definition. CPEHA does not alter this exclusion, but HEARTH does.[6]

Both bills would codify and update the definition of a "homeless person with a disability" who would qualify for a special level of assistance. For the first time, this definition would include an "impairment caused by drug or alcohol abuse" among the physical, mental or emotional impairments recognized by HUD.[7]

CPEHA would also codify HUD's current definition of "chronic homelessness," defined since 2003 as an individual meeting both the disability requirement and a duration requirement of one continuous year of homelessness or four episodes of homelessness in three years.[8] It would also expand the definition to add families where the head of household has a disability, and persons who reside in an institutional care facility, including a jail, substance abuse or mental health facility, or a hospital, for

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[1]Rep. Julia Carson (D-IN) introduced the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2007, H.R. 840 on February 5, 2007. For full text of the bill, *see* http://thomas.loc.gov/cgi-bin/query/D?c110:1:./temp/~c110bBiiEY. Sen. Jack Reed (D-RI) and Wayne Allard (R-CO) introduced its Senate companion bill, the Community Partnership to End Homelessness Act of 2007, S. 1518 on May 24, 2007. The Committee on Banking, Housing, and Urban Affairs ordered it be reported favorably with an amendment in the nature of a substitute. For the full text of the bill, *see* http://thomas.loc.gov/cgi-bin/thomas. A helpful side-by-side of the bills has been prepared by the National Low Income Housing Coalition, *available at*: http://www.nlihc.org/doc/McKinney_Reauthorization_side-by-side.pdf.

[2]HUD, THE ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS, 1, 23 (Feb. 2007).

[3]42 U.S.C. § 11302

[4]Homeless Emergency Assistance and Rapid Transition to Housing Act of 2007, H.R. 840, 110th Cong., 1st Sess., § 3(a); Community Partnership to End Homelessness Act of 2007, S. 1518, 110th Cong., 1st Sess., § 3.

[5]S. 1518, § 401, at p. 13 (hereafter all section numbers of the bills will be cited to the page number of the Government Printing Office (GPO) PDF file version to facilitate locating them).

[6]H.R. 840, § 3, at p. 3.

[7]*Id*. at p. 7; S. 1518, § 401, at p. 13.

[8]E.g., HUD Notice of Funding Availability, 72 Fed. Reg. 11,744, 11,754 (2007).

fewer than ninety days.[9] HEARTH does not codify a definition of chronic homelessness.

Continuum of Care Program Consolidation

HUD currently administers three separate Continuum of Care homeless assistance programs—the Supportive Housing Program (SHP), the Shelter Plus Care Program, and the Moderate Rehabilitation and Single Room Occupancy (SRO) Program. SHP provides transitional housing with supportive services, permanent housing for homeless persons with disabilities, and supportive Safe Havens serving homeless persons with severe mental illnesses.[10] The Shelter Plus Care Program provides rental assistance for persons with disabilities.[11] The Moderate Rehabilitation and SRO Program provides multiple single-room dwelling units to homeless persons through Annual Contributions Contracts for Section 8 assistance between HUD and public housing agencies.[12]

Each bill would consolidate the three programs into a single program to reduce competition and administrative costs. Shelter Plus Care and SRO would be repealed, and their eligible activities consolidated with those of SHP under the remaining single program.[13] HEARTH would name the single program the "Continuum of Care Program," whereas CPEHA would name it the "Community Homeless Assistance Program."[14]

Permanent Housing

SHP has historically restricted permanent housing to persons with a disability and required that 30% of its funds be set aside for permanent housing. HEARTH does not mention a disability as a requirement for permanent housing, nor does it provide incentives for communities to prioritize permanent housing units for homeless persons with disabilities. CPEHA specifically states that a disability is not a prerequisite for permanent housing assistance.[15]

CPEHA would, however, establish a minimum funding allocation for permanent housing for homeless individuals and families with a disability at 30% of the funds made available.[16] This 30% set-aside would terminate when HUD determines that 150,000 new permanent housing units for the homeless or families with disabilities have been funded since 2001. It also requires that 10% of funds go to permanent housing for families with children.[17] HEARTH specifically stipulates that there is no minimum or maximum set-aside for any kind of permanent housing.

Renewals of permanent housing would continue to be funded through HUD McKinney-Vento funds in HEARTH.[18] Under CPEHA, renewals of permanent housing, including leasing, rental assistance and operating costs, would be funded through the Section 8 account.[19]

Chronically Homeless

HUD currently targets the "chronically homeless," as defined above, via disability and duration requirements, by setting aside at least 10% of McKinney-Vento funds for transitional and permanent housing for this population.

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[9]S. 1518, § 401, at p. 11.
[10]HUD Supportive Housing Program Materials (June 17, 2003), *available at* http://www.hud.gov/offices/cpd/homeless/library/shp/index.cfm.
[11]HUD Shelter Plus Care Program Materials (May 23, 2002), *available at* http://www.hud.gov/offices/cpd/homeless/library/spc/index.cfm.
[12]HUD Single Room Occupancy Program Materials (May 25, 2001), *available at* http://www.hud.gov/offices/cpd/homeless/library/sro/index.cfm.
[13]H.R. 840, § 301, at p. 40.
[14]S. 1518, § 6, at p. 29.
[15]*Id*. § 422, at p. 30.
[16]These funds would be those for the new Emergency Solutions Grants Program and the Community Homeless Assistance Program.
[17]S. 1518, § 428, at p. 62.
[18]H.R. 840, § 422, at p. 41.
[19]S. 1518, § 429, at p. 66.

As HEARTH does not codify a definition of "chronic homelessness," it does not target funding for this purpose. While CPEHA does codify a definition, it does not create minimum set-asides to target the population, but instead provides incentives to communities to use funding for activities proven to be effective in reducing this population. HUD would be required to provide bonuses to communities funding these proven strategies, which include permanent supportive housing for the "chronically homeless." The bonus money from the CPEHA high-performing community plan could be used at the community's discretion to fund homeless or prevention activities for any segment of the population.[20]

HEARTH would establish "Community Homeless Assistance Planning Boards," which would collaborate "to design, execute, and evaluate programs, policies, and practices to prevent and end homelessness."

Program Administration

The Continuum of Care planning process, in use by HUD since 1995 but absent from the federal statute, would be codified by each bill's creation of an entity to expedite the planning process. HEARTH would establish "Community Homeless Assistance Planning Boards," which would collaborate "to design, execute, and evaluate programs, policies, and practices to prevent and end homelessness."[21] CPEHA would require a "Collaborative Applicant" for a geographic area to fill a similar role, along with coordinating and submitting the application.[22]

Currently, administrative fees for coordinating the Continuum of Care process cannot be funded through McKinney-Vento. Each bill would allow communities to use a percentage of these funds for such administrative costs. Both HEARTH and CPEHA would permit 3% of funds for this purpose.[23]

Currently, HUD is under no legal time constraints for notifying potential applicants of funding availability or distributing awards. Each bill would establish an identical time frame for completing various steps in the administrative process.[24]

Prevention

Under current law, prevention activities for those at risk are not eligible activities for funding under the three HUD Continuum of Care programs. Prevention activities are permitted only under the Emergency Shelter Block Grant Program (ESG), but only 30% of those funds can be used for prevention. HEARTH would continue ESG and remove the limit on the amount of funds eligible for prevention.[25] It would also allow up to 3% of Continuum of Care program funds to be used for prevention activities such as financial assistance to avoid eviction, utilities assistance, relocation assistance, and relocation and supportive services for victims of domestic violence and abuse.[26]

CPEHA would rename ESG the "Emergency Solutions Grant Program" and funnel 20% of all homeless assistance funding into it. These funds would be available for both prevention measures and the creation and maintenance of emergency shelters. Two years after the enactment of CPEHA, no more than 60% of the emergency funds could be used for emergency shelter services.[27]

Rural Homelessness

Current law permits the Secretary of HUD to create a "Rural Housing Homeless Assistance Program" to provide for emergency assistance, prevention activities, and permanent housing and supportive services in rural areas. However, funds have never been appropriated for this program. HEARTH would repeal the Rural Housing Homeless Assistance Program, while including those that would have qualified for its specific assistance in the general definition of homelessness that would be covered by the Continuum of Care program.[28] CPEHA would continue the program under the new "Rural Housing Stability Assistance Program" and maintain the narrower definition of homelessness.[29]

Interagency Council on Homelessness

The Interagency Council on Homelessness (ICH) was created under the McKinney-Vento Act to monitor, evaluate and recommend improvements to the various federal, state and local governments, and private voluntary organizations that carry out homelessness assistance programs. Long inactive, it was reactivated by President Bush in 2001. HEARTH would not reauthorize the ICH. CPEHA would reauthorize the ICH, and give it the mission of developing and coordinating a national strategy to end homelessness.[30]

[20] *Id*. § 428, at p. 64.
[21] H.R. 840, § 102, at p. 22.
[22] S. 1518, § 402, at p. 19.
[23] *Id*. § 429, at p. 67; S. 1518, § 423, at p. 37.
[24] H.R. 840, § 422, at p. 50; S. 1518, § 422, at p. 31.
[25] H.R. 840, § 414, at p. 39.
[26] *Id*. § 427, at p. 65.
[27] S. 1518, § 412A, at p. 27.
[28] H.R. 480, § 401, at p. 68.
[29] S. 1518, § 7, at p. 68.
[30] *Id*. § 3, at p. 7.

Strengths and Weaknesses of the Bills

CPEHA

The expanded definition of homelessness put forth by the Senate is a step forward, as it is the first time that persons living in doubled-up living situations or in motels are included. The authorization of $2.2 billion for homeless assistance represents a substantial increase in funding over current levels, while the requirement that renewal of HUD McKinney-Vento permanent housing projects come from the Section 8 account could focus McKinney-Vento funds on assisting homeless people in need. While this renewal requirement correctly recognizes that persons living in permanent housing are no longer homeless and therefore should be assisted through mainstream housing assistance programs, it directly moves the challenge to the appropriations process.

The expanded definition of homelessness put forth by the Senate is a step forward, as it is the first time that persons living in doubled-up living situations or in motels are included.

Many believe that CPEHA falls short in the scope of its definition of homelessness. By failing to expand HUD's definition of homelessness to match that of the Department of Education and other federal agencies, CPEHA fails to rectify HUD's current definition, which prevents many youths, women and families from access to its programs.[31] Also, the requirement that persons must have shifted residencies frequently to qualify may well encourage housing instability among those at risk.

Many also believe that the planning process envisioned in the Senate bill is overly prescriptive in its set-asides and priorities, and allows insufficient room for local advocates, service providers and government agencies to make decisions. It also does not guarantee homeless liaisons, domestic violence staff, youth service providers and the like a "seat at the table" for decisions about funding and grant applications.

HEARTH

The strengths of the House bill are in its comprehensive definition of homelessness and in its codified community-based planning process. HEARTH goes a step further than CPEHA by aligning HUD's definition of homelessness with that of the Department of Education, providing coverage for unaccompanied youths and for rural areas currently left out of HUD's definition. The inclusion of rural areas would supplant the repeal of the never-used Rural Housing Homeless Assistance Program and provide comprehensive assistance to those living in roadside motels not located in urban centers.

The House version ensures community input and flexibility in the planning process by empowering its Community Homeless Assistance Planning Boards, which must give homeless persons, advocates and service providers a "seat at the table."

Funding authorization is both a strength and a weakness of the House bill. On the one hand, its increased authorization level of $2.5 billion trumps that of the Senate version. On the other hand, because it would not require funding of the renewal of McKinney-Vento permanent housing units to come from the Section 8 account, the House approach will tie up a substantial amount of the limited McKinney-Vento homeless assistance funds in the operation of permanent housing for persons no longer technically "homeless."

Next Steps

The Senate bill was reported out of the Committee for Banking, Housing, and Urban Affairs on September 19, 2007, and will next need to move to the floor for a vote, although it is currently unclear whether and when that will be scheduled. The House Subcommittee on Housing and Community Opportunity held its second hearing on the reauthorization bills on October 16, 2007, but H.R. 840 has not yet been reported from the Financial Services Committee and moved onto the floor for a vote. Additional changes to key provisions may still be made as the bills move forward on the floors of each chamber and in any subsequent conference committee that is convened to iron out any differences. ■

[31]NLIHC, *House Held First of Two Hearings on McKinney-Vento Reauthorization*, 12 MEMO TO MEMBERS, 2, (Oct. 2007) (Pittre Walker, a Homeless Liaison in the Caddo Parish School board, testified that under the current HUD definition, 67% of unaccompanied youth in need of homes in her parish were not covered).

Appellate Court Finally Protects Lincoln Place Tenants

After a long battle with both AIMCO, the largest owner of apartment buildings in the country, and the City of Los Angeles, Lincoln Place residents in Venice, California, have won a resounding victory in their fight to keep their homes. In Lincoln Place Tenants Ass'n. v. City of Los Angeles, a California appellate court ruled that their mass evictions violated state law.[1]

Background

The Lincoln Place Apartment complex was an approximately 800-unit low-rise development originally designed to provide affordable housing to GIs returning home from World War II. It has long provided affordable housing to hundreds of families that would not otherwise be able to live in the Venice beachfront community. Many families had been living there for decades.

In 1991, AIMCO's predecessor applied to demolish and redevelop Lincoln Place to create 654 market-rate condominiums, fifty-two moderate-income townhomes, and 144 low-income apartments.[2] The City of Los Angeles then completed an Environmental Impact Report and eventually recommended approval of the project. In response, the Lincoln Place Tenants Association (LPTA) and the Committee to Save Lincoln Place appealed the recommendation and worked to ensure that no tenants would be involuntarily displaced. After public hearings, the City's Planning Commission added provisions, documented in the Vested Tentative Tract Map (VTT), that no tenant would be forced to move.

AIMCO obtained final approval of the project in 2002.[3] Prior to demolition, AIMCO was required to ensure that all tenants had an opportunity to move to comparable or better rental units on site, or to receive relocation assistance. However, that never happened, and AIMCO applied for demolition permits in 2003. Some of the buildings were demolished, until, in another case, the court issued a writ of mandate preventing further demolition until the City complied with mitigation measures.[4] Despite the demolition restrictions, in 2005, over 300 residents were served with eviction notices premised on California's Ellis Act, which permits evictions in order for an owner to exit the rental business. On December 6, 2005, eighty-six people were forcibly evicted from their homes.[5]

In June of 2006, LPTA sought a writ of mandate to compel the City of Los Angeles to comply with the mitigation measures agreed to under the California Environmental Quality Act and to enjoin AIMCO from evicting any more tenants.[6]

The Litigation Seeking to Enjoin the Evictions

LPTA argued, in its petition for writ of mandate, that the court should enforce the mitigation provisions of the VTT adopted under CEQA and that AIMCO should be enjoined from evicting any more tenants from Lincoln Place. The tenants advanced two main legal bases for these requests. First, LPTA claimed that the City erred in failing to review the Ellis Act eviction notices pursuant to its CEQA duties to enforce the mitigation measures. Second, LPTA argued that AIMCO's actions constituted an unlawful business act because they violated the VTT.[7] For its part, the City argued that it neither approved nor authorized the evictions, but simply could not condition the right to evict on compliance with the mitigation conditions. AIMCO argued a number of points, mainly that CEQA does not apply to Ellis Act evictions and that the company had complied with the mitigation conditions required by local rent stabilization law and therefore, had to do no more.[8]

The Ellis Act

The Ellis Act is a California state law designed to allow owners of rental buildings to evict all tenants without cause in order to completely get out of the rental business.[9] Owners may evict tenants if they intend to entirely withdraw from the market. Because of this purpose, the act places several restrictions on re-renting the units—an owner cannot re-rent except at the same rate as the previous tenant, and for only five years maximum after the tenants have been evicted. However, these restrictions only prevent an owner from re-renting, but do not prevent converting a property to "for sale" units.[10]

The California Environmental Quality Act (CEQA)

CEQA was created with the understanding that "the maintenance of a quality environment for the people of [California] now and in the future is a matter of statewide

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[1] *Lincoln Place Tenants Assn. v. City of Los Angeles*, 2007 WL 2729362 (Cal. App. 2 Dist., Sept. 19, 2007).
[2] *Id.*, at *1.
[3] *Id.*
[4] *Lincoln Place Tenants Assn. v. City of Los Angeles* 130 Cal.App.4th 1491 (2005) ("*Lincoln Place II*"). This was the first case related to Lincoln Place, where a writ was issued to prevent further demolition of the premises until the City complied with CEQA procedures.
[5] Press Release, Lincoln Place Tenants Association (Sept. 20, 2007), *available at* http://www.lincolnplace.net/pr/pr070920.htm (noting also that it was the largest single day of evictions in Los Angeles history); *See also* http://www.youtube.com/watch?v=UngEHGXlHb (video of Dec. 2005 evictions at Lincoln Place).
[6] *Lincoln Place Tenants Assn.*, 2007 WL 2729362, at *5.
[7] *Id.*
[8] *Id.*
[9] Cal. Gov. Code, §§ 7060, et. seq.
[10] *Id.*

concern."[11] Whenever a proposed development project in California might impact the environment substantially, CEQA requires the promulgation of an Environmental Impact Report (EIR).[12] The EIR must "identify the significant effects on the environment of a project . . . identify alternatives to the project, and. . . indicate the manner in which those significant effects can be mitigated or avoided."[13]

For the Lincoln Place tenants, CEQA helped ensure that no person would be involuntarily displaced. After hearings regarding the EIR, the owners of Lincoln Place agreed to a number of mitigation measures in the VTT. The VTT requires that AIMCO offer the tenants a number of options, including the opportunity to relocate within the site to a comparable or better unit, to obtain the maximum relocation payment required under rent stabilization, to purchase one of the new townhomes, and the right of first refusal for one of the new units in the development.[14]

For California advocates, this decision demonstrates that tenants and local governments can positively influence and enforce the terms of redevelopment.

The Trial Court Decision

The trial court refused to issue a writ of mandate because it believed that its injunction in Lincoln Place II had been sufficient and that issuing the requested writ in this case would be contrary to rulings in the other litigation related to Lincoln Place, including many unlawful detainer actions. It failed to recognize the distinct legal issues involved in this proceeding—the relationship of the Ellis Act and CEQA—and never fully addressed them. The trial court thus denied any relief to LPTA.

The Appellate Court Opinion

On September 19, 2007, the Court of Appeal found the arguments of both the City of Los Angeles and AIMCO unconvincing and ruled for the Lincoln Place Tenants Association.

The court construed the Ellis Act and CEQA under the basic statutory principle that two apparently conflicting statutes should be read to ensure that effect is given to both.[15] It found that the Ellis Act's provision stating that the law does not "preempt local or municipal environmental or land use regulations, procedures, or controls that govern the demolition and redevelopment of residential property" applied to the mitigation conditions developed under CEQA.[16] Furthermore, the court found that the mitigation requirement in the Lincoln Place VTT did not burden AIMCO's right to go out of the rental business.[17] The court stressed that AIMCO had agreed to the provisions in the VTT long before attempting to use the Ellis Act to evict tenants and therefore its duties were much higher than simply complying with rent stabilization ordinance standards. Additionally, nothing about AIMCO's plans had changed, so it had no reason to modify any of the mitigation conditions.[18]

With regard to the City's arguments that it could not approve the Ellis Act notices, the court stated that that was not at issue. Instead, the issue was whether or not the City must enforce the mitigation conditions. With that in mind, the court held that the City had a duty to enforce AIMCO's obligations and failed to do so. Thus, the Court of Appeal directed the lower court to grant LPTA's petition for writ of mandate and compel the City of Los Angeles to enforce the mitigation provisions of the EIR, and enjoin AIMCO from evicting any more tenants.

Conclusion

On October 3, the Los Angeles City Council voted 11-1 not to appeal the Court of Appeal decision, rejecting the advice of the City Attorney.[19] This was a distinct reversal of their original stance against protecting the tenants. After their long fight to preserve Lincoln Place, only thirteen tenants currently remain in the complex, as others have been either relocated or evicted. The future of those former tenants is uncertain, but the area's City Council member Bill Rosendahl says that he will work to negotiate a right to return for former residents.[20] For the Lincoln Place Tenants Association, this is still a big victory. The president of the Association, Sheila Bernard, stated that the decision "points the way for [Los Angeles City] council members to assist long-time renters being pushed out of gentrifying neighborhoods by condo conversions where the developer wants to evict them rather than include them in redevelopment plans. Council members can negotiate win-win situations and the city can enforce these agreements."[21] For California advocates, this decision demonstrates that tenants and local governments can positively influence and enforce the terms of redevelopment. ■

[11]Cal. Pub. Resources Code, §21000(a).
[12]*Id*. at § 21002.1.
[13]*Id*.
[14]*Lincoln Place Tenants Ass'n*, 2007 WL 2729362, at *2 n. 6.
[15]*Id*. at *14.
[16]*Id*.
[17]*Id*.
[18]*Id*.
[19]Press Release, Bill Rosendahl, LA City Council (October 3, 2007), *available at* http://www.lacity.org/council/cd11/press/cd11press12848109_10032007.pdf.
[20]*Id*.
[21]Press Release, Lincoln Place Tenants Association (September 20, 2007), *available at* http://www.lincolnplace.net/pr/pr070920.htm.

Local Eviction Controls and Enhanced Voucher Statute Protect Voucher Holders

A federal district court has granted a permanent injunction that allows twenty-two assisted tenants to remain in Los Angeles' Morton Gardens apartments and orders the owners to comply with the city's eviction protection ordinance. In *Barrientos v. 1801-1825 Morton, LLC*, the court held that sixteen enhanced-voucher holders had a right to remain in their assisted units when the owners sought to evict them in order to raise rents.[1] The court also held that Department of Housing and Urban Development (HUD) regulations permitting owners to evict voucher tenants based on business or economic reasons did not preempt the eviction protections of the Los Angeles Rent Stabilization Ordinance (LARSO)[2].

Background

Morton Gardens is a sixty-six-unit apartment complex that was developed in 1971 as low-income rental housing.[3] The complex was funded by a federal mortgage-secured loan under Section 236 of the National Housing Act.[4] The complex was subject to a use agreement requiring the units to be rented to low-income households and limiting the amount of rent that could be charged.[5]

In 1998, Morton Gardens' prior owner prepaid the Section 236 loan, extinguishing the use agreement.[6] When private owners leave HUD's multifamily housing programs by prepaying their subsidized loans, many tenants are eligible to receive enhanced vouchers, pursuant to annual appropriations acts passed during the late 1990s and permanent legislation passed in 1999.[7] As a result, enhanced vouchers were issued to the tenants who lived at Morton Gardens at the time of prepayment.[8] Enhanced vouchers are largely equivalent to tenant-based Housing Choice Vouchers (HCV), except that the payment standards for these vouchers can be higher to cover the new higher market rent.[9] Further, enhanced-voucher tenants have a federal statutory right to remain in their homes.[10] Subsequently, other tenants with regular HCVs also moved into the property.

All of the tenants' apartments were subject to LARSO.[11] The federal regulations governing housing choice vouchers permit evictions based on "[a] business or economic reason for termination of the tenancy (such as…desire to lease the unit at a higher rental)."[12] In contrast, LARSO lists as a permissible ground for eviction certain business or economic reasons but not an owner's desire to raise the rent. As a result, when a tenant's unit is covered by LARSO's eviction protections, but that tenant also receives housing choice voucher assistance, a question arises as to whether the owner can evict the tenant for the purpose of raising the rent, or for other business or economic reasons unrecognized by local law.

On June 30, 2006, Defendant 1801-1825 Morton LLC served on each voucher tenant a "Ninety Day Notice to Terminate Tenancy."[13] The notice stated that Morton LLC was terminating the rental agreement "for a business or economic reason, including but not limited to, the desire to opt-out of the Tenant Based Section 8 Program and or the desire to lease the unit at a higher rental rate."[14]

On October 9, 2006, all twenty-two voucher tenants filed a complaint in federal court alleging that Morton LLC had violated the enhanced voucher statute and LARSO. The parties stipulated that no unlawful detainer actions would be filed against the tenants for the pendency of the litigation and agreed on a set of stipulated facts.[15]

On May 7, 2007, the tenants filed a motion for summary judgment advancing two arguments. First, the sixteen enhanced voucher tenants argued that the enhanced-voucher provisions of Section 8 afforded them a right to remain, even if Morton LLC had complied with the Section 8 regulation authorizing evictions for certain grounds.[16] Second, the tenants argued that the LARSO grounds for eviction limited Morton LLC's ability to evict both the sixteen tenants with enhanced vouchers and the six tenants with housing choice vouchers.[17]

Residents' Enhanced Voucher Protections

The court first examined whether the enhanced-voucher tenants had a right to remain in their homes despite what it characterized as the owner's desire to terminate their rental agreements in order to charge higher rents.[18] Pursuant to 42 U.S.C. § 1437f(o), during the lease term, an owner participating in the housing choice voucher program "shall not terminate the tenancy except

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[1]Barrientos v. 1801-1825 Morton, LLC, No. 06-6437, slip op. (C.D. Cal. Sept. 10, 2007) (hereafter, "Sept. 10 slip op.").
[2]Los Angeles Municipal Code § 151.01 *et seq*.
[3]Sept. 10 slip op. at 3.
[4]12 U.S.C. § 1715z-1.
[5]Sept. 10 slip op. at 3.
[6]*Id*.
[7]Pub. L. No. 106-74, § 538, 113 Stat. 1047, 1122 (1999) (establishing Section 8(t) of the United States Housing Act and codified at 42 U.S.C. § 1437f(t)).
[8]Sept 10 slip op. at 3.
[9]*See generally* NHLP, HUD Housing Programs: Tenants' Rights § 15.4.2.4 (3d ed. 2004).
[10]*See* 42 U.S.C.A. § 1437f(t)(1)(B) (West 2003).
[11]Sept 10 slip op. at 3.
[12]24 C.F.R. § 982.310(d)(iv) (2007).
[13]Sept 10 slip op. at 5.
[14]*Id*.
[15]*Id*. at 5-6.
[16]*Id*. at 9.
[17]*Id*. at 20.
[18]*Id*. at 9.

for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause."[19] HUD has defined "other good cause" as including "[a] business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental)."[20]

A separate provision, 42 U.S.C. § 1437f(t), governs enhanced vouchers and provides that an "assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project…"[21] The enhanced-voucher tenants at Morton Gardens argued that this provision gave them a right to remain in their homes for as long as they remained voucher-eligible and lease-compliant.[22] Accordingly, the tenants argued that § 1437f(o), which permits eviction for "other good cause," does not apply to enhanced voucher holders, at least insofar as it would permit evictions based on grounds unrelated to tenant misconduct.[23]

In addressing this argument, the court first ruled that enhanced-voucher tenants have a right to remain in occupancy even when an owner exits a HUD-assisted program. Citing a case from another district court, the court noted that that "[t]he enhanced voucher program was created to ensure that tenants would not be displaced upon the termination of project-based subsidies," and that the Housing Act "expressly provides that tenants 'may remain' and that they may use enhanced vouchers to do so."[24]

The court next ruled that even though the enhanced-voucher tenants had a right to remain, they were not protected from being evicted under the "other good cause" provision of § 1437f(o).[25] The court found that the statutory language and legislative history of the enhanced-voucher provision indicated that Congress intended to encourage owner participation in the program, and that barring owners from evicting based on other good cause would undermine this intent.[26]

The court next ruled that even though the enhanced-voucher tenants could be evicted for other good cause, the desire to lease units at a higher rent cannot constitute other good cause for evicting them.[27] The court found that the language and history of § 1437f(t), which require additional assistance to cover higher rents, "unambiguously provide enhanced-voucher tenants a right to remain in tenancy when the rent is raised."[28] The court reasoned that "[g]iven the clear right to remain established by [§ 1437f(t)], Congress could not have intended that a recognized justification for enhanced vouchers—rent increases—would also constitute 'other good cause' to evict those same tenants."[29] The court therefore granted summary judgment, concluding that HUD regulations permitting evictions based on the "desire to lease the unit at a higher rental" cannot be applied to enhanced-voucher tenants.[30]

Does Federal Law Preempt LARSO?

Six of the Morton Gardens plaintiffs held standard housing choice vouchers, and they, therefore, did not fall within the enhanced voucher statute analyzed by the court.[31] These tenants argued that regardless of the protections afforded to the enhanced-voucher tenants, all of the Morton Gardens tenants were protected from eviction by LARSO where the asserted grounds were not recognized by the local law. In opposition, Morton LLC argued that HUD's regulations regarding evictions based on other good cause preempt LARSO. This issue affects thousands of voucher tenants both in Los Angeles and nationwide who are covered by local eviction protections.

The court first found that an actual conflict exists between LARSO and federal law.[32] The court found that HUD's regulations permitting owners to evict based on the desire to raise rents directly conflicted with LARSO, which does not list the owner's desire to raise rents as a permissible ground for eviction.[33]

The court next refused to enforce, as contrary to Congressional intent, HUD's regulation defining "other good cause" as including the desire to raise rents.[34] The court found that the regulation was unreasonable because "[b]y defining 'other good cause' to include raising rents, HUD has favored the policy of owner participation to the complete exclusion of protecting tenants from arbitrary evictions."[35] The court also noted that in enacting the housing choice voucher provisions, Congress acknowledged that some assisted units would be subject to local rent control.[36] The court found that HUD's regulation defining "other good cause" as including raising rents would allow owners to circumvent this congressional understanding by permitting owners to evict rent-controlled

[19]42 U.S.C.A. § 1437f(o)(7)(C) (West 2003) (emphasis added).
[20]24 C.F.R. § 982.310(d)(1)(iv) (2007). HUD has limited an owner's use of "business or economic reasons" to terminations after the initial lease term. § 982.310(d)(2).
[21]42 U.S.C.A. § 1437f(t)(1)(B) (West 2003).
[22]Sept 10 slip op. at 9. The court slightly misapprehended the tenants' claim, which was not that the tenants were immune from eviction for breaches of the lease.
[23]*Id*.
[24]*Id*. at 13 (citing Estevez v. Cosmopolitan Assocs., 2005 WL 3164146, at * 6 (E.D.N.Y. Nov. 28, 2005)).
[25]*Id*. This reasoning ignores the fact that encouraging owner participation is irrelevant to enhanced vouchers, which converting owners are obligated to accept.
[26]*Id*. at 15.
[27]*Id*. at 19.
[28]*Id*. at 17.
[29]*Id*. at 19.
[30]*Id*. (citing 24 C.F.R. § 982.310(d)(iv) (2007)).
[31]*Id*. at 20.
[32]*Id*. at 22.
[33]*Id*. at 34.
[34]*Id*. at 37.
[35]*Id*. at 36.
[36]*Id*. at 40.

tenants for the sole purpose of raising rents.[37] The court therefore granted summary judgment to the housing choice voucher tenants, finding that HUD had exceeded its authority by defining "other good cause" to include the desire to raise rents.[38]

California Law Does Not Preempt LARSO

Morton LLC also argued that California Civil Code § 1954.535 preempted LARSO.[39] This provision requires that a tenant be given at least ninety days' notice before an owner terminates or fails to renew a contract with a governmental agency that provides for rent limitations to the tenant.[40] The provision also mandates that the tenant "shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated, for ninety days following receipt of the notice of termination o[r] nonrenewal of the contract."[41] Morton LLC contended that this provision regulates the right to terminate Section 8 contracts in California and preempts LARSO. However, the court noted that the section preceding § 1954.535 explicitly preserves local eviction controls, and provides that "[n]othing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction."[42] Accordingly, the court found that the statutory language and its legislative history indicated that Section 1954.535 was not intended to preempt LARSO eviction controls.[43]

The Court's Clarification of Its Opinion

On September 24, 2007, defendant Morton LLC filed a motion for reconsideration.[44] Morton LLC asserted that the court overlooked its argument that it sought to evict the voucher holders, not just to raise rents, but also to avoid the costs of complying with the Section 8 program.[45] Morton LLC also argued that pursuant to 24 C.F.R. § 982.310(d)(1)(iv), it was permitted to evict the tenants based on unspecified "business or economic reasons."[46]

In ruling on the motion to reconsider, the court reaffirmed its prior ruling that to the extent the tenants' evictions were based on a desire to raise rents, they were invalid.[47] The court further found that an owner's desire to avoid the costs of Section 8 program requirements cannot constitute good cause for eviction.[48] The court reasoned that good cause "demands more than a bare desire to opt out of the program—whether for excessive costs or some other programmatic reason."[49]

Most significantly, the court clarified that when owners evict voucher holders based on "business or economic reasons," they are limited to the grounds for eviction enumerated in LARSO.[50] The court found that HUD intended for the courts to interpret the term "business or economic reasons" during eviction proceedings,[51] and that Congress intended Section 8 tenancies to mirror the unassisted rental market.[52] The court reasoned that "[l]imiting evictions to those defined in LARSO places assisted and unassisted tenants on equal footing," and that "Congress could not have intended for assisted tenants to be less well-off than unassisted tenants in [eviction control] areas such as Los Angeles."[53] Because the cost of program compliance is not a ground for eviction in LARSO, the court found that it was also impermissible to evict the tenants on that basis.[54]

Conclusion

Numerous cases raising the issue adjudicated in *Barrientos* remain pending in California state courts in the Los Angeles area. *Barrientos* provides valuable protections for voucher tenants in Los Angeles who are at risk of being evicted for business or economic reasons that are not enumerated in LARSO. It may also provide valuable guidance to other courts in jurisdictions where voucher tenants are covered by local eviction protection ordinances. On November 13, the owner filed an appeal with the United States Court of Appeals for the Ninth Circuit, so a final disposition of these issues may now take another year or more. ■

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[37] *Id.*
[38] *Id.* at 41.
[39] *Id.* at 42.
[40] CAL. CIV. CODE § 1954.535 (West 2007).
[41] *Id.* § 1954.535.
[42] CAL. CIV. CODE § 1954.53(e) (West 2007).
[43] Sept 10 slip op. at 43.
[44] Barrientos v. 1801-1825 Morton, LLC, No. 06-6437, slip op. (C.D. Cal. Oct. 24, 2007) (order granting motion to reconsider and clarifying prior order) (hereafter "Oct. 24 slip op.").
[45] *Id.* at 2.
[46] *Id.*
[47] *Id.* at 3.
[48] *Id.* at 18.
[49] *Id.*
[50] *Cf.* Rosario v. Diagonal Realty, L.L.C., 2007 WL 1879349 (N.Y. Jul. 2, 2007) (upholding the application of New York's City's rent stabilization laws to Section 8 voucher tenants); *see also* Jason Lee, *New York's Highest Court Rules NYC Voucher Owners Must Offer Assisted Renewal Leases*, 37 HOUS. L. BULL. 158, 158 (2007). *Rosario*, however, involved an owner's refusal to offer a renewal lease as required by local law, not an eviction based on alleged other good cause.
[51] Oct. 24 slip op at 3, 13.
[52] *Id.* at 14.
[53] *Id.*
[54] *Id.* at 10.

Owner Denied Right to Prepay RHS 515 Loan

An Oregon federal district court has denied an owner of a Rural Housing Service (RHS) rural rental housing loan the right to prepay her Section 515 loans through a quiet title action that would circumvent the prepayment restrictions imposed on RHS by the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA)[1]. *Schroeder v. United States*.[2] The decision reverses a magistrate judge's recommendation that Ms. Schroeder be allowed to prepay the loan and be granted a quiet title judgment that would clear the RHS mortgage lien from her property.[3]

Ms. Alberta Schroeder is the owner of a six-unit RHS Section 515 project located in Heppner, Oregon. Ms. Schroeder purchased the property in 1984 from a previous owner who constructed the property with an RHS loan in 1975. At the time of the purchase, Ms. Schroeder executed two deeds of trust that required her to operate the property as affordable housing for a term of twenty years. In 2004, at the end of the twenty-year use restricted period imposed by the 1984 deeds of trust, Ms. Schroeder wrote to RHS seeking its permission to prepay her loans. In 2006, RHS, acting pursuant to the ELIHPA prepayment restrictions, denied her request and made her an incentive offer to keep the development in the Section 515 program as affordable housing. Ms. Schroeder rejected the offer and tendered the balance of her loans to the agency, which, relying on ELIHPA, rejected the prepayments. Shortly thereafter, Ms. Schroeder commenced a quiet title action against the United States, contending that RHS improperly refused to accept the prepayment of her loan and that she was entitled to a quiet title judgment under Oregon law.[4]

The matter was referred to a magistrate judge who, in response to cross motions for summary judgement, issued Findings and Recommendations that Ms. Schroeder be allowed to prepay her loan and issued a quiet title judgment.[5] In making the recommendation, the magistrate judge relied on *Kimberly v. United States*,[6] a 9th Circuit decision, and on the subsequent district court decision that granted the plaintiffs in that case, Idaho owners of a Section 515 development, a quiet title judgement.[7] In *Kimberly*, the court of appeals held that the government had waived sovereign immunity in quiet title actions[8] and that ELIHPA was not a sovereign act that immunized the government from liability under the unmistakability doctrine.[9] Misinterpreting the court of appeals finding that, for purposes of determining the applicability of the unmistakability doctrine, ELIHPA is not a sovereign act, the Idaho district court held that ELIHPA was not enforceable against the plaintiffs and granted the owners the quiet title judgment.[10]

The magistrate judge in *Schroeder* found *Kimberly* controlling and recommended that Ms. Schroeder be granted the same relief. In so doing, she rejected the government's argument that the 9th Circuit's subsequent opinion in *Goldammer v. Veneman*, explained and limited the *Kimberly* decision to its narrow holding.[11] The magistrate judge rejected the government's argument, believing that *Goldammer* simply distinguished *Kimberly* and that it remained good law.[12]

The government filed objections to the magistrate's Findings and Recommendations and the Oregon Law Center and the National Housing Law Project, who represented the residents in *Goldammer*, filed an *amicus* brief in support of the government's position. As a result, the case was transferred to the Oregon District Court for a *de novo* review of the magistrate's Findings and Recommendations. The case was assigned to Judge Brown, who issued the initial opinion in *Goldammer*—denying the residents the right to seek review of the prepayment—and who, subsequent to the court of appeals decision, issued an opinion stating that the 2003 loan prepayment violated ELIHPA.[13]

In reversing the magistrate, Judge Brown concluded that a quiet title action is an equitable proceeding and that when balancing the equities a court must act within the bounds of the statute and not use its equitable power to excuse or negate the illegal actions of agencies.[14] In light of the Ninth Circuit's decision in *Goldammer*, her subsequent decision in the same case, further briefing by the parties and the *amicus* brief, Judge Brown held that equity did not favor granting Ms. Schroeder's quiet title claim. Accordingly, she denied her motion for summary judgement and granted the government's cross motion for summary

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[1]Codified at 42 U.S.C. § 1472(c) (West 2003).
[2]No. 06-CV-818-SU (October 16, 2007).
[3]No. 06-818-SU (July 2, 2007).
[4]*Id.* at *2-4.
[5]*Id.* at *10-11.
[6]261 F.3rd 864 (9th Cir. 2001).
[7]Civ. No. 98-003-S-LMB (D. Id. Dec. 12, 2002).
[8]261 F.3rd at 868.
[9]*Id.* at 870.
[10]Civ. No. 98-003-S-LMB (D. Id. Dec. 12, 2002) at *9-11.
[11]In *Goldammer*, the 9th Circuit explained that *Kimberly* was a limited decision that only addressed the issue of sovereign immunity in quiet title actions and the government's immunity from liability under the unmistakabilty doctrine. It did not hold that ELIHPA was an unenforceable act of Congress or that the owner plaintiff was entitled to a quiet title judgment. Accordingly, the *Goldammer* court held that the residents of an Oregon RHS development were entitled to seek review of whether the prepayment of another Section 515 loan violated ELIHPA and remanded the case for further proceedings to the Oregon District Court. *See*, NHLP, *Victory: Ninth Circuit Allows Residents to Challenge RD Prepayment*, 36 Hous. Law Bull. 206 (2006).
[12]No. 06-818-SU (July 2, 2007) at *6.
[13]2007 WL 1748665 (D.Or., June 14, 2007). *See*, NHLP, *Prepayment and Sale of RHS Apartment Complex Ruled Illegal*, 37 Hous. Law Bull. 103 (2007) for a more complete description of the *Goldammer* decision.
[14]No. 06-CV-818-SU (October 16, 2007) at *3.

judgment.[15] In conclusion, she found that Ms. Schroeder will have to comply with the ELIHPA prepayment restrictions before she is eligible to prepay her loan. As she did in *Goldammer*, Judge Brown reminded the plaintiff, Ms. Schroeder, that she is not without remedy and that if she cannot, or does not, prepay the loan she can bring a damage action against the government in the Court of Claims.[16]

The *Schroeder* decision is important in that it preserves another RHS Section 515 development. It is more significant, however, in that it is one of only two known cases remaining nationally where owners of Section 515 housing have continued to argue that they are entitled to quiet title judgments when the government refuses to accept the prepayment of a Section 515 loan that is subject to the ELIHPA prepayment restriction. The other case is *Meadowfield Apartments v. United States*,[17] pending in the middle district of Florida. It is expected that the *Schroeder* decision will help bring to an end the owners' nearly ten-year effort to circumvent ELIHPA with state quiet title actions. ■

[15]*Id*. at *4.
[16]*Id*. at *5.
[17]No. 5:05-cv-412-Oc-10-GRJ (M.D. Fla., filed Sept. 26, 2005). Several residents of the Meadowfield Apartments have filed a motion to intervene in the action and have filed a separate action seeking review of the proposed prepayment. Massinello v. Johanns, No. 5:07-cv-33-Oc-10-GRJ (M.D. Fla., filed Jan. 23, 2007). The residents' motion to intervene has been denied, 2007 WL 1752271 (M.D.Fla., June 15, 2007), and is currently on appeal before the 11th Circuit Court of Appeals. The residents' separate case is pending in the Florida district court.

Recent Cases

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

Termination of Voucher Program Participation—Rent Controlled Landlord's Obligation to Continue to Accept Voucher

Daley v. M/S Capital N.Y., 2007 WL 2828927 (N.Y.A.D. 1 Dept., Oct. 2, 2007). Appellate court reversed lower court decision that New York City landlord, who operates under New York City's rent stabilization law, is not required to renew resident's Section 8 Housing Assistance Payment contract. The court, following the New York Appellate Court's recent decision in *Rosario v. Diagonal Realty*, 8 NY3d 755 (2007), held that it is now settled that, under New York City's rent stabilization law, a Section 8 subsidy is a term and condition of the lease that must be incorporated into any lease renewal on the ground that a renewal lease must be on the same terms and conditions as the expiring lease. Accordingly, the court granted the voucher holder's motion for summary judgment.

Termination of Voucher—Constitutionality of Pre-termination Administrative Hearing

Hendrix v. Seattle Housing Authority, 2007 WL 2790783 (W.D.Wash., Sept. 25, 2007). Court preliminarily enjoined the Seattle Housing Authority (SHA) from conducting an informal hearing on whether to terminate the plaintiff's Section 8 voucher on the ground that the HUD regulations and the SHA informal hearing process, which conform to the HUD regulations, may violate the plaintiff's due process rights as articulated in *Goldberg v. Kelley*, 397 U.S. 254 (1970). The court concluded that the plaintiff raised a very significant issue, namely, whether the informal hearing procedure, set out in the HUD regulations and the SHA planning guide, meet the *Goldberg* constitutional due process requirements when the informal hearing is not followed by a post-termination hearing that meets constitutional due process requirements. The court, however, refused to enjoin SHA from conducting all informal

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

hearings on the ground that the plaintiff did not file a class action and the balance of hardships, with respect to the housing authority having to stop all informal hearings, fall in favor of SHA.

Termination of Voucher—Sufficiency of Evidence Submitted at Pretermination Administrative Hearing

Meyer v. Dakota County Community Development Agency, 2007 WL 2703005 (Minn. App., Sept. 18, 2007) (unpublished). Court of appeals overturned hearing officer's decision to terminate plaintiff's Section 8 voucher on the ground that the evidence submitted at the hearing by the voucher administrator did not, as a matter of law, support a finding that the voucher holder engaged in violent criminal activity. The voucher administrator relied on two police reports that did not clearly establish that the voucher holder made a threat that constituted a violent criminal activity. To constitute a violent criminal activity, the court concluded, it must appear reasonably likely that the threatened action will be consummated, or at least that it was reasonably capable of being carried out. To effectively judge whether a reasonable person would have believed that the purported criminal act would be carried out, it is necessary to view the alleged threat in the context it was presented. As the administrator did not introduce the documents in which the threats were made, the hearing officer could not conclude that the voucher holder engaged in violent criminal activity that justified the termination of the voucher.

Right to Continued Residency—Project-Based Section 8 Program

Valley Dream Housing v. Schmidt, 16 Misc.3d 1138(A), 2007 WL 2684829 (N.Y.Sup., Sept. 14, 2007)(Unpublished). Court denied project-based Section 8 owner's petition to evict the resident defendant on the ground that the defendant, who had lived with her mother for three years, had the right to succeed on her mother's lease after her mother vacated the dwelling. The court found that the resident was a remaining member of the mother's family and that she had the right to succession by virtue of her status. It rejected the owner's argument that the daughter was a live-in aid and refused to recognize the right to succession waiver that the daughter signed on the ground that it was entered by mutual mistake as the owner erroneously believed that he was operating a HUD Section 202 project when, in fact, he was operating a project-based Section 8 project.

Right to Continued Residency—Public Housing Program

Santos v. Port Chester Hous. Auth., 2007 WL 2669529 (N.Y.A.D. 2 Dept., Sept. 11, 2007). Court reviewed and reversed a determination of the Port Chester Housing Authority, which, after a hearing, denied the petitioner's application to succeed her mother as the tenant of record of an apartment as an adult member of the resident tenant's family and, accordingly, issued a thirty-day notice to terminate the petitioner's tenancy. The court held that the hearing record did not support the hearing officer's finding that the rent for the unit had not been timely paid during the past twelve months. The court also held that the finding, that petitioner failed to demonstrate that she was capable of handling the responsibility of becoming the tenant of record by securing and maintaining regular employment and by complying with certain reporting requirements, was not supported by the hearing evidence. The petitioner was laid off from work for no fault of her own and the HUD Occupancy Handbook prohibits a public housing authority from requiring that an applicant be employed or have a minimum income. Accordingly, the court reversed the thirty-day notice and remanded the case to the housing authority with direction to approve the petitioner's application.

Eviction—Acceptance of Rent as Waiver of Right to Termination; Project-based Section 8 Program

Macleay Woods Housing v. Franks, 16 Misc.3d 1136(A), 2007 WL 2597918 (N.Y.City Ct., Sept. 7, 2007)(Unpublished). Court reversed its earlier decision that landlord's acceptance of rent payments after the delivery of a notice of termination waives the notice of termination. It held that acceptance of payments after notice for termination for rent that accrued before the notice of termination did not nullify the notice of termination. It also held that mere cashing of tenant rent payment and Section 8 subsidy for period after notice of termination also does not vitiate the notice of termination when the payments were returned within fourteen days and reasons given for cashing the rent and Section 8 payment checks were reasonable. In this case, the nonprofit landlord received a bulk check for all the Section 8 subsidized tenants and would have had to return the entire check to refuse the particular resident's subsidy. In addition, the resident's rent payment was relatively small and was returned promptly once the landlord identified it as having been received from the tenant who had been sent a notice of termination.

Eviction—Public Housing Eviction Notice Failure to Follow State Law

Des Moines Mun. Hous. Agency v. Hunter, 2007 WL 2493114 (Iowa App., Sept. 6, 2007) (Final Publication Decision Pending). Appeals court upheld district court decision denying housing authority right to evict public housing resident because the housing authority failed to give resident notice of prior Iowa law that required landlords to notify residents of their right to cure lease violations. Court rejected housing authority's argument that new Iowa law, which no longer required such a notice in public housing eviction cases, operated retroactively. It held that under Iowa law, statute only operates prospectively unless it is merely procedural in nature or is explicitly made retroactively applicable.

Damage Action—Subsidized Landlord's Right to Maintain Damage Action Against US for Prepayment Restrictions Imposed by ELIHPA and LIHPRHA

City Line Joint Venture v. U.S., 2007 WL 2791704 (C.A. Fed., Sept. 27, 2007). Court of appeals reversed Court of Claims dismissal of damage action brought by owner of HUD Section 221(d)(3) rental project for breach of contract and regulatory taking when HUD refused to accept owner's prepayment offer during the time that the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) and the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) were in effect and precluded the owner from prepaying the HUD insured loan. The Court of Claims concluded that ELIHPA and LIHPRHA were sovereign acts and that HUD was immune from suit for its failure to accept the prepayments under the doctrine of impossibility of performance. The Court of Appeals concluded that the owners had privity of contract with HUD since the mortgage had been assigned to HUD. It also held that ELIHPA and LIHPRHA were not sovereign acts and that the owner's claims were, therefore, not barred. It remanded the case to the Court of Claims for further proceedings.

Damage Action—Limitations on Subsidized Landlords' Right to Damages Against US from Prepayment Restrictions Imposed by ELIHPA and LIHPRHA

Cienega Gardens v. U.S., 2007 WL 2778687 (C.A.Fed., Sept. 25, 2007). In a split decision, the Federal Court of Appeals reversed and remanded a Court of Claims decision that awarded the plaintiff-owners of HUD insured and subsidized housing damages for the partial regulatory taking that occurred when Congress enacted ELIHPA and LIHPRHA, which restricted the rights of the owners to prepay their loans after the original twenty-year use restricted period expired. The Court of Claims assessed damages against the government by comparing the annual return that the owners received while the prepayment restrictions were in place with the annual return that the owners could have received if the restrictions were not in place. The Court of Appeals reversed and remanded because it concluded that the Court of Claims damage calculations failed to take into consideration certain factors that should have affected the award of damages. The Court of Appeals concluded that (1) because ELIHPA was only in effect for a relatively short period of time, it did not effect the regulatory taking; (2) in calculating the regulatory effect of the LIHPRHA prepayment restrictions on the property, the Court of Claims was required to take into consideration the effect of the restrictions on the property as a whole and not just on the owner's return during the period that the restrictions were in place; (3) the Court of Claims was also required to consider the value of the offsetting benefits that were offered to the owners under LIHPRHA in calculating their damages; and (4) with respect to those owners who did not enter into a use agreement with HUD prior to the lifting of the LIHPRHA restrictions, consideration must be given to the period during which the restrictions were in effect. Lastly, in assessing the owner's damage claims, the Court of Appeals directed the Court of Claims to assess whether the owners had a reasonable expectation to secure a financial gain from the initial right to prepay the loans, not merely whether they had an actual expectation of the right to prepay. Because these issues were not included in the Court of Claims calculation of the owners' damages, the Court of Appeals reversed and remanded the case to the Court of Claims.

Fair Housing—HUD Complainant Right to Intervene in Civil Action Initiated by the United States

U.S. v. Henry, 2007 WL 2893633 (E.D.Va, Oct. 1, 2007). Complainant in HUD fair housing case against landlord and its agent was granted motion to intervene in civil action initiated by the United States against the defendants after HUD determined that the defendants had violated the Fair Housing Act. The court held that the complainants are granted the right to intervene in the civil action by the Fair Housing Act.

Fair Housing—Discrimination in the Provision of Water Services

Kennedy v. City of Zanesville, 2007 WL 2570383 (S.D.Ohio, Sept. 7, 2007). In a case brought by residents of predominantly African-American neighborhood, fair housing

association, and Ohio Civil Rights Commission against county, township, neighboring city and individual elected officials from county and township, alleging that defendants had a fifty-year policy, pattern, and practice of denying public water service to residents based on race in violation of Fair Housing Act and other statutes, court granted plaintiffs summary judgment motion that county was a successor in interest to independent water authority that it had established and with which it merged. It denied several of the defendants' motions with respect to standing, the plaintiffs' right to maintain the action and whether a dispute existed with respect to material facts. ■

Recent Housing-Related Regulations and Notices

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

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

HUD Final Regulations

72 Fed. Reg. 54,515 (Sept. 25, 2007)
Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Revision to Response Time for Requesting a Technical Review of a Physical Inspection Report

Summary: HUD's regulations provide for the assessment of the physical condition of HUD-assisted multifamily properties and notification to owners of such assessment. The owners are provided an opportunity to seek a technical review of the physical condition assessment, and HUD may take action in certain cases where the housing is found not to be in compliance with the physical condition standards. Because the current regulations establish different time frames for owners to request a technical review, HUD published a proposed rule on April 24, 2007, that would improve uniformity in the technical review request process by implementing a standard time frame of thirty calendar days for the submission of a request for a technical review. This final rule takes into consideration the public comment received on the proposed rule and adopts the rule without change.

Effective Date: October 25, 2007.

72 Fed. Reg. 53,875 (Sept. 20, 2007)
HUD Office of Hearings and Appeals Conforming Amendments; and Technical Correction to Part 15 Regulations

Summary: This final rule revises HUD's regulations to reflect the statutorily mandated termination of the HUD Board of Contract Appeals. The contract-related functions of the HUD Board of Contract Appeals have been transferred to the new Civilian Board of Contract Appeals. This final rule also describes the organization, address, and officer qualifications of the new Office of Hearings and Appeals (OHA) and its two divisions, which will carry out the non-procurement functions performed by the former HUD Board of Contract Appeals. This rule also makes conforming changes to other HUD regulations to reflect this organizational change. Additionally, this rule makes a technical correction to HUD's Freedom of Information Act (FOIA) regulations to include reference to Regional Counsel, which was inadvertently omitted from a previously published rule.

Effective Date: October 22, 2007.

72 Fed. Reg. 55,637 (Sept. 28, 2007)
Housing Counseling Program

Summary: This rule establishes regulations for HUD's Housing Counseling program for which, for the past several years, notices of funding availability have been issued on an annual basis. This final rule follows publication of a December 23, 2004, proposed rule that adopted and augmented the Housing Counseling program requirements with which grantees and housing counseling agencies are already familiar. This final rule takes into consideration the public comments that were received in response to the proposed rule and makes several changes to the proposed regulatory text at this final rule stage.

Effective Date: October 29, 2007.

HUD Proposed Rules

72 Fed. Reg. 52,263 (Sept. 12, 2007)
Amendments to HUD's Environmental Regulations

Summary: This proposed rule would update HUD's environmental regulations to implement statutory changes and make environmental compliance easier. The rule would consider the use of electronic communication

[1]http://www.access.gpo.gov/su_docs.
[2]http://www.hudclips.org/cgi/index.cgi.
[3]To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.
[4]http://www.rdinit.usda.gov/regs.

for certain records and submissions. The rule would also make other changes to clarify HUD's environmental regulations and provide conforming amendments.

Comment Due Date: November 13, 2007.

HUD Federal Register Notices

72 Fed. Reg. 50,973 (Sept. 5, 2007)
Notice of Proposed Information Collection: Comment Request; Continuation of Interest Reduction Payments After Refinancing Section 236 Projects

***Summary*:** HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to preservation of low-income housing units. HUD uses the information to ensure that owners and mortgagees/public entities enter into binding agreements for continuation of Interest Reduction Payments after refinancing certain Section 236 projects.

Comments Due Date: November 5, 2007.

72 Fed. Reg. 51,239 (Sept. 6, 2007)
Privacy Act of 1974; Supplemental Information and Technical Correction to Notice of Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Department of Health and Human Services (HHS)—Matching Tenant Data in Assisted Housing Programs

Summary: This notice provides Supplementary Information and Technical Corrections to the Computer Matching Notice published in the Federal Register on August 8, 2006. This information changes the anticipated effective date of the computer matching program; removes the term "applicants" cited in the prior notice since disclosure of applicant information is not authorized; provides date and pertinent information about HUD's statutorily required evaluation document and its Enterprise Income Verification system; provides citations for HUD requirements described in the prior notice; and clarifies the system of records in the program description and records to be matched. The authority, objectives, and the period of the match under the existing HUD and HHS computer matching program remain unchanged.

Effective Date: October 9, 2007, provided no comments are received which would result in a contrary determination or forty days after notice of the matching program is provided to the Office of Management and Budget and Congress, whichever is later.

Comments Due Date: October 9, 2007.

72 Fed. Reg. 52,161 (Sept. 12, 2007)
Notice of Submission of Proposed Information Collection to OMB; Minimum Property Standards for Multifamily and Care-Type Facilities

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to Minimum Property Standards for Multifamily and Care-Type Facilities. These standards establish the acceptability of properties for mortgage insurance and will forward the goal of a decent and suitable living environment for every American family. This information is collected from state and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These standards will protect the department's interest by requiring certain features of design and construction.

Comments Due Date: October 12, 2007.

72 Fed. Reg. 52,163 (Sept. 12, 2007)
Notice of Submission of Proposed Information Collection to OMB; Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to pet ownership in Assisted Rental Housing for the Elderly or Handicapped. Information is distributed to tenants of assisted rental housing units detailing guidelines for pet ownership. The information is necessary for owner compliance with nondiscrimination in federally assisted rental housing for the elderly or handicapped for pet ownership.

Comments Due Date: October 12, 2007.

72 Fed. Reg. 53,253 (Sept. 18, 2007)
Notice of Submission of Proposed Information Collection to OMB; Exigent Health and Safety Deficiency Correction Certification

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to public housing agencies (PHAs) having to correct/mitigate exigent health and safety deficiencies cited in property inspections conducted pursuant to HUD's Uniform Physical Condition Standards inspection protocol. Through the web-based template, PHAs electronically certify that they have corrected/mitigated the EHS deficiencies.

Comments Due Date: October 18, 2007.

72 Fed. Reg. 53,254 (Sept. 18, 2007)
Notice of Submission of Proposed Information Collection to OMB; Low Income Housing Tax Credit Database

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the Low Income Housing Tax Credit (LIHTC) housing database. There continues to be great interest in the LIHTC program at HUD, the Department of Treasury, and from many other sources. Unfortunately, since the program is independently administered by more than fifty different state housing agencies, there would be no centralized sources of data about the units that have been developed with this federal subsidy without this data collection effort.

Comments Due Date: October 18, 2007.

72 Fed. Reg. 53,381 (Sept. 18, 2007)
Statutorily Mandated Designation of Difficult Development Areas for 2008

Summary: This document designates "Difficult Development Areas" (DDAs) for purposes of the LIHTC program. HUD makes new DDA designations annually. The designations of "Qualified Census Tracts" under Section 42 of the Internal Revenue Code published September 28, 2007, remain in effect.

72 Fed. Reg. 53,293 (Sept. 18, 2007)
Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2007

Summary: HUD is required to publish quarterly Federal Register notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous Federal Register notice. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2007, and ending on June 30, 2007.

72 Fed. Reg. 53,794 (Sept. 20, 2007)
Notice of Submission of Proposed Information Collection to OMB; Survey of Market Absorption of New Apartment Buildings

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to a survey conducted by HUD to determine if the supply of rental housing is keeping pace with current and future needs. Additional information such as asking rent (or price for condominium units), number of bedrooms, and availability of services in "assisted living" buildings is also collected.

Comments Due Date: October 22, 2007.

72 Fed. Reg. 53,871 (Sept. 20, 2007)
Federal Housing Administration (FHA) Single Family Mortgage Insurance: Announcement of Planned Implementation of Risk-Based Premiums

Summary: This notice applies to FHA single family mortgage insurance programs. This notice announces FHA's planned implementation of risk-based premiums, which are designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk the insurance contract represents.

Comment Due Date: October 22, 2007.

72 Fed. Reg. 54,449 (Sept. 25, 2007)
Notice of Submission of Proposed Information Collection to OMB; Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents

Summary: HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the Residential Loan Application for Reverse Mortgages and related documents that are used to determine borrower eligibility, property analysis, underwriting analysis, and collection of mortgage insurance premiums for loans that meet statutory, regulatory, state and FHA requirements. The HECM Program employs the use of HUD-approved housing counseling agencies that provide the required consumer education sessions, and FHA-approved lenders that are responsible for the origination, underwriting, and servicing responsibilities of FHA-insured loans.

Comments Due Date: October 25, 2007.

HUD Notices

Mortgagee Letter 2007-11 (Sept. 5, 2007)
The FHASecure Initiative and Guidance on Appraisal Practices in Declining Markets

Summary: The Federal Housing Administration is pleased to announce an initiative that will enable homeowners to refinance various types of adjustable rate mortgages that have recently reset. This mortgagee letter describes how lenders and homeowners may refinance mortgages that, due to the increased mortgage payment following the reset, have become delinquent. The mortgagee letter also reiterates guidance to lenders about making objective decisions regarding the underlying collateral in declining markets. The FHASecure initiative, which is a temporary program designed to provide refinancing opportunities to homeowners and to increase liquidity in the mortgage market, requires that the loan application be signed no later than December 31, 2008.

RHS Administrative Notices

RD AN No. 4307 (1980-D) (Sept. 10, 2007)
Single Family Housing Guaranteed Loan Program, RD Instruction 1980-D, Section 1980.324, Lender Charges and Fees

Summary: The purpose of this Administrative Notice is to clarify agency requirements under RD Instruction 1980-D, Section 1980.324(a) for routine charges and fees that lenders may charge borrowers. The agency wishes to prevent lenders from charging excessive fees for guaranteed loans and to protect low- and moderate-income borrowers from paying excessive loan fees, or borrowing funds for fees that are not reasonable and customary. This notice does not apply to maximum interest rate requirements, which should be handled according to RD Instruction 1980-D, Section 1980.320.

RHS Unnumbered Letters

September 24, 2007
Use of Protective Advances for Repairs [of Section 502, Direct Single Family Homes]

Summary: The use of a protective advance may become necessary when there are no other alternatives to complete repairs that are vital to protect the government's security interests in a structure. However, these advances are too often used when other options are available. Unnecessary use of advances may create unforeseen consequences and be costly to the borrower and the government. This letter clarifies when protective advances should be used for repairs and alternatives to consider in lieu of a protective advance. ■

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