



Housing Law Bulletin

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HUD FY 2002 BUDGET MAY BE WORSE THAN IT LOOKS

It is still too early to know what the final line items will be in the Department of Housing and Urban Development's (HUD) budget for Fiscal Year (FY) 2002, which begins on October 1, 2001, since President Bush has not yet released his proposed budget. This year varies from most in that the President has released *A Blueprint for New Beginnings: A Responsible Budget for American Priorities (Blueprint)* on February 28, 2001,¹ rather than the complete budget that would nor-

mally be available for review and debate by this time.² Although this *Blueprint* contains some specific proposals, it does not include detailed numbers or a complete breakdown of expenditures. Nonetheless, an early analysis does not bode well for federally assisted tenants.

A close look at the *Blueprint* reveals that the budget increases claimed by the Administration are probably illusory. The Administration claims that HUD's overall budget for FY 2002 includes a \$1.9 billion increase in spending (nearly 7 percent) over that of FY 2001, based on a \$28.5 billion actual budget authority for FY 2001, as compared to \$30.4 billion proposed for FY 2002 in the *Blueprint*. Scrutiny by House Democrats, however, shows that the true numbers might actually reflect a \$2.2 billion (8 percent) decrease in real spending.³ They reached this conclusion by considering the actual cost of maintaining current program levels, with an adjustment for inflation, and examining the details—such as they are available—of President Bush's plan. What follows is a brief review of the House Democrats' view of the details of HUD's budget *Blueprint*.

There are at least two major factors to consider in reviewing the *Blueprint*—factors that lead to the conclusion that any nominal budget increases are less than they appear to be. The first is inflation. Maintaining the exact level of funding from year-to-year for programs whose costs increase would result in an actual decrease in available housing assistance. Representative LaFalce (D-NY), the ranking

²In years where there is no transition between presidents, the federal budget is usually released in February. This year, the Bush Administration chose only to release the *Budget Blueprint* in February. It expects to release the full budget in April.

³*New Math—Or Just Simple Subtraction* (The House Banking Committee Democrats News Release, Mar. 7, 2001), available at house.gov/banking_democrats/pr_010307.htm; Statement released by the office of Rep. LaFalce (D-NY) on Thursday, Mar. 8, 2001 (Handout from the House Banking Committee Democrats Press Conference, Mar. 7, 2001) (on file at NHLP).

¹*A Blueprint for New Beginnings: A Responsible Budget for American Priorities* (White House, Feb. 28, 2001), available at access.gpo.gov/usbudget/fy2002/pdf/blueprnt.pdf.

TABLE OF CONTENTS

	Page
HUD FY 2002 Budget May Be Worse Than It Looks	59
HUD Issues New Section 8 Renewal Policy Guide . . .	61
Admission and Occupancy FAQs Answered by HUD . .	64
Second HUD Report on "Vouchered-Out" Assisted Properties	68
Nationwide Settlement Affecting Tenants' Rights at RTC Properties	69
Recent Housing Cases	70
Recent Housing-Related Regulations and Notices . . .	70
Announcements	
NHLP Welcomes Craig Castellanet	61
Section 8 Homeownership Teleconferences	63
Teleconferences Registration Form	72
Publication List/Order Form	73

SECTION 8 HOMEOWNERSHIP PROGRAM TELECONFERENCES SET FOR MAY AND JUNE

— See page 63 for details

Democratic member of the House Committee on Financial Services,⁴ and his colleagues, believe that inflation alone accounts for an additional \$450 million needed for the Section 8 programs and that an additional \$435 million is needed to maintain all other HUD programs at current levels.⁵

A close look at the Blueprint reveals that the budget increases claimed by the Administration are probably illusory.

The second factor is how additional budget authority to renew project-based Section 8 contracts is accounted for in the federal budget. Multi-year contracts for project-based Section 8 housing were funded and budgeted for years ago, hence they have not required additional budget authority each year to maintain the subsidies. Now, however, many more of those long-term contracts are expiring and, in order to maintain the same number of assisted units, they need additional budget authority for renewal. Accordingly, an increase in budget authority is required to simply maintain the same level of Section 8 subsidies even if funding commitments are limited to one year.⁶ The Democrats on the House Financial Services Committee contend that \$3.63 billion of the HUD budget is for “phantom increases”—expenditures that simply extend currently expiring project-based Section 8 contracts.

The *Blueprint* proposes cuts to certain existing HUD programs, including an \$859 million (net) spending cut for the public housing programs. This includes a \$700 million cut from the Capital Fund, used for building maintenance and repair, and \$309 million from the proposed termination of the Drug Elimination Program.⁷ These \$1.059 billion in cuts will be partially offset under the *Blueprint* by a \$150 million increase in the Public Housing Operating Subsidy.⁸ The *Blueprint* also proposes a \$640 million cut in Section 8 by reducing the reserves held by public housing authorities for the Section 8 program from two months to one month, a \$422 million

cut in CDBG (Community Development Block Grant) special purpose grants, and a \$299 million cut in HOME funding.⁹ Lastly, the *Blueprint* propose a \$35 million cut in Empowerment Zone funding and a \$25 million savings achieved by the elimination of the Rural Housing and Economic Development program.¹⁰

The *Blueprint* does call for some increases in specific areas: \$20 million for AIDS housing and \$10 million for lead paint reduction.¹¹ It also proposes three new programs totaling \$300 million in increases—\$200 million for a first-time homebuyer matching downpayment program, \$80 million for community technology centers in low-income neighborhoods, and \$20 million for an initiative to improve access to facilities for disabled persons.¹²

Finally, the *Blueprint* proposes 34,000 incremental (new) Section 8 vouchers, at a cost of \$197 million. While better than no increase, this number is only half the average number of incrementals approved for each of the last three years¹³ and a third of the level that was authorized in the 1998 housing bill.

The Blueprint proposes cuts to certain existing HUD programs, including an \$859 million (net) spending cut for the public housing programs.

As noted earlier, the Administration has not yet released its detailed FY 2002 budget. Regardless of what that budget looks like, people from all sides of the issue are likely to argue over what the numbers actually mean, what practical effect they will have on HUD, and what the real impact will be on thousands of tenants who rely on the agency to help them maintain their homes and on people in need of housing assistance. President Bush’s *Blueprint* and the House Democrats’ response signify only the opening rounds in what will be an interesting and crucial political fight over the next few months. All of this is taking place against the backdrop of the largest surplus in the nation’s history, which the President has proposed to dissipate with a tax cut even before releasing a detailed budget for this year, let alone budget and realistic surplus projections for future years. ■

⁴The committee name was changed earlier this year from the House Banking Committee.

⁵Statement released by the office of Rep. LaFalce (D-NY) on Thursday, Mar. 8, 2001 (Handout from the House Banking Committee Democrats Press Conference, Mar. 7, 2001) (on file at NHLP).

⁶*New Math—Or Just Simple Subtraction*, The House Banking Committee Democrats New Release, March 7, 2001, available at house.gov/banking_democrats/pr_010327.htm. Statement released by the office of Rep. LaFalce (D-NY) on Thursday, Mar. 8, 2001 (Handout from the House Banking Committee Democrats Press Conference, Mar. 7, 2001) (on file at NHLP).

⁷*Id.*; *A Blueprint for New Beginnings: A Responsible Budget for American Priorities* (White House, Feb. 28, 2001), at 117-118, available for downloading from access.gpo.gov/usbudget/fy2002/pdf/blueprint.pdf.

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*New Math—Or Just Simple Subtraction* (The House Banking Committee Democrats New Release, Mar. 7, 2001) available at house.gov/banking_democrats/pr_010327.htm; Statement released by the office of Rep. LaFalce (D-NY) on Thursday, Mar. 8, 2001 (Handout from the House Banking Committee Democrats Press Conference, Mar. 7, 2001)(on file at NHLP).

HUD ISSUES NEW SECTION 8 RENEWAL POLICY GUIDE

In January, the Department of Housing and Urban Development (HUD) issued a new "one source" guidebook setting forth its policies governing the renewal of expiring project-based Section 8 contracts.¹ The *Guide* covers issues with respect to all types of expiring project-based Section 8 contracts, with the exception of those under the Section 8 moderate rehabilitation or project-based certificate or voucher programs. It contains and supercedes most of HUD's previously issued renewal initiatives that had been established by prior HUD notices; such as the general policies governing *Mark Up to Market* and *Mark Up to Budget* and the procedural requirements affecting contract renewals of all types. HUD intends that the *Guide* will be revised on an ongoing basis as policies change, both during the year and as the result of any future changes wrought by annual appropriations laws. The *Guide* was followed by a satellite and webcast training on February 22. This article briefly summarizes the major new changes for FY 2001 that are of interest to tenants and advocates. Further details can be obtained from the lengthy *Guide* itself.

Mark Up to Market

This is the renewal option which allows owners of certain below-market expiring Section 8 properties to obtain higher Section 8 contract rents as an incentive to remain in the program. HUD has divided this program into two options. The first is available as a matter of right to those owners meeting the statutory criteria adopted late in 1999. The second option is subject to HUD's discretion, where HUD can provide the higher rents as an incentive to preserve developments not meeting the statutory criteria for the mandatory option, where the property serves an elderly and disabled population, is located in a low-vacancy area (less than 3 percent), or has received significant preservation funds from the state or local government.

HUD has provided owners utilizing the mark-up option with greater access to the surplus cash flow generated by operations. Owners of properties that are 100 percent project-based Section 8, or that are partially assisted but without budget-based rent restrictions from a HUD or RHS-subsidized mortgage, can now obtain all surplus cash not required for project expenses and reserves, if using the mark-up option. Owners of the partially assisted, subsidized budget-based properties electing a mark-up have more restricted access to surplus cash, in the amount of the mark-up rent increase for their Section 8 units. Eligible owners may elect the mark-up option at any contract expiration, not just that following the original long-term contract.

¹HUD, Office of Multifamily Housing, *Section 8 Renewal Policy: Guidance for the Renewal of Project-Based Section 8 Contracts* (Jan. 19, 2001), available at hudclips.org, click shortcut link on left to *Section 8 Renewal Policy Guide*.

Mandatory Mark Up Offers

For the mandatory mark-up option, HUD has exercised its authority under the statute to reduce the threshold for project eligibility to those with market values exceeding 100 percent of the area's published Fair Market Rents (FMRs), rather than the former 110 percent. HUD has estimated that this reduced threshold may double the number of properties qualifying for this option.

Continuing prior policy, absent a waiver under the criteria governing the discretionary mark-up option, maximum rents are limited to 150 percent of the local FMRs.

Nonprofit purchasers can use this mark-up option to increase project income to assist in paying the additional debt service on any new financing needed to purchase and rehabilitate the property. Without some form of credit enhancement or public debt source, however, such financing may be difficult to secure.

Discretionary Mark Ups for Nonprofit Owners and Purchasers

Although eligible for-profit owners can also seek a discretionary mark-up, many nonprofits have a great need to use certain components of this option tailored for their use.

NHLP WELCOMES CRAIG CASTELLANET

After leaving his position as staff attorney at the Legal Aid Society of Hawaii to sail around the South Pacific for a few months, Craig Castellanet returned to dry land at the end of March to join the staff of the National Housing Law Project as a contract attorney. During his four years at the Legal Aid Society of Hawaii, Craig was extensively involved in litigation and advocacy on a wide range of housing issues. He provided technical assistance to other housing advocates and worked with numerous individual clients as well as the Hawaii statewide public housing resident council. His successes include leading a campaign to require payment of a \$2.13 million affordable housing fee owed by a developer. Prior to working in Hawaii, Craig was staff attorney at Legal Services of Northern California, where he specialized in housing issues.

Craig joins NHLP to work on our Housing Preservation Initiative and will bring his expertise on the crisis facing project-based federally subsidized housing to help strengthen and expand NHLP's efforts in this area. Craig can be reached by e-mail at ccastellanet@nhlp.org or at (510) 251-9400 Ext. 106. NHLP is pleased to welcome Craig to our staff. ■

HUD has restated the guidelines governing the use of discretionary "Mark Ups" by qualified nonprofit owners and purchasers (Chapter 15). The *Guide* divides these into two programs, each permitting increases in Section 8 contract rents to higher levels not exceeding market rents: the Transfer program to enable the purchase and preservation of properties by nonprofits, and the Capital Needs program to support project rehabilitation (also called *Mark Up to Budget*).

Both discretionary programs share certain features, such as:

- the 150 percent of FMR cap on rent levels where that figure is less than market;
- nonprofit and property eligibility requirements;
- a 20-year use agreement obligating the owner to accept Section 8 renewal contracts for a period of 20 years (subject to appropriations);
- a minimum five-year assistance contract (but often 20 years, with annual formula cost adjustments, and periodic market adjustments every five years); and
- the ability to secure waivers for certain distribution limitations to support the property or nonprofit activities.

Two requirements of the ordinary *Mark Up* program do not apply to these nonprofit options: the 100 percent of FMR minimum rent eligibility threshold, and the unrestricted status criterion. Properties under the Capital Needs program must have received a Real Estate Assessment Center score of at least 30 points and participating nonprofit owners must be in good standing with HUD. Transfer program properties and owners need not satisfy these criteria.

Contract Renewal Terms

HUD has substantially increased the maximum term of renewal contracts for most of the renewal options. HUD's *Guide* states that the general term will be one or five years. Now, owners can obtain renewal contract terms of up to 20 years, rather than the former standard of one year. However, all renewal contracts will still include language that makes HUD's duty to maintain the contract during the length of the renewal term "subject to (annual) appropriations." It remains to be seen how many owners exercising renewal options under either the mark-up or current rent renewal options will elect longer terms, since during those terms rent adjustments are generally determined by an operating cost formula that may be less than market levels. During any such longer-term contract, owners would no longer have to serve the required 12-month notice to tenants of impending expiration or opt-out.

Section 8 Opt-Outs

Owners intending to opt-out must provide tenants and HUD with a one-year notice of their intent to do so. HUD staff must review and reject notices which do not clearly state

an intent to opt-out. A subsequent switch from a renewal notice to an opt-out, without providing a new 12 months notice to tenants—a practice formerly permitted by some HUD staff but arguably illegal—is not permitted. The one-year notification clock does not start to run until proper notice is provided. HUD has provided a new form notice (Appendix 11-1) that contains the statutorily required elements, as an attachment to the *Guide*. Owners can use their own notice, but it must contain the language in the *Guide's* sample.

HUD has reiterated that tenants receiving enhanced vouchers affected by conversion actions have the right to remain in their units as long as the property remains available for rental use, meets housing quality standards, and rents for an amount approved as "reasonable" by the local housing authority.

As required by Congress last summer, HUD has reiterated that tenants receiving enhanced vouchers affected by conversion actions have the right to remain in their units as long as the property remains available for rental use, meets housing quality standards, and rents for an amount approved as "reasonable" by the local housing authority. Contrary to past practice, this protection is not time-limited, but lasts until the owner has good cause to terminate the tenancy for noncompliance with the lease. The enhanced voucher statute imposes no rental use qualification, raising a possible conflict for tenants threatened with displacement for non-rental uses. HUD is seeking to implement this requirement by requiring owners to certify on their "opt-out" renewal form that they will comply with the tenants' right to remain, as well as through language containing this commitment in the one-year notice form.

Potentially Troubled "Mark to Market" Properties

New guidelines cover contract renewals on above-market HUD-insured properties that have been referred to the Office of Multifamily Housing Assistance Restructuring because the owner refuses to close on an approved restructuring plan or pursue full restructuring after being disapproved for an ordinary rent reduction without restructuring under the *Mark to Market Lite* option. HUD now permits these expiring Section 8 contracts to be renewed for one year at lower market rents, while requiring the property to be placed on a "potentially troubled" list. Listed properties should receive special monitoring of physical and financial conditions by the local HUD office or contract administrator.

Save the Dates!

SECTION 8 HOMEOWNERSHIP TELECONFERENCES

The HUD Section 8 Homeownership Program is gaining popularity across the country as more and more Section 8 participants convert their tenant-based rental assistance to mortgage payment assistance in order to purchase their own homes. The new homeownership program offers a unique opportunity for low and very low-income families to participate in the American dream of homeownership at an affordable price.

In an effort to expand understanding of the Section 8 Homeownership Program and to ensure that viable and successful homeownership programs are adopted by local housing authorities across the country, the National Housing Law Project will conduct two one-and-one-half hour teleconferences about the program beginning in May and June of 2001.

The first teleconference is set for **Tuesday, May 1, 2001** and will provide an overview of the federal regulations and an explanation of how to put together a Section 8 homeownership program. The teleconference will also include a review of several programs across the country which have already been successfully implemented. The teleconference will be moderated by Lynn Martinez, NHLP's staff attorney responsible for administering our Section 8 Homeownership Initiative. Joining her will be the following panelists:

Jay Smith, **Community Builder, U.S. Dept. of Housing & Urban Development**
Mike Flo, **Executive Director, City of Benicia Housing Authority**
Deborah Collins, **Managing Attorney, Legal Services of Northern California**
Paul Dettman, **Executive Director, Burlington Housing Authority (invited but not confirmed).**

The second teleconference, set for **Tuesday, June 5, 2001**, will provide a detailed discussion of financing options and various types of community participation that can effectively promote homeownership opportunities among low-income families. Panelists for this teleconference will be announced at a later date.

Both teleconferences will begin at 10:00 a.m. Pacific Time (1:00 p.m. Eastern).

Who Should Participate?

Wide participation is encouraged. Housing attorneys, advocates, tenant leaders and organizers, housing sponsors, PHA staff, community lenders, first-time homeowner counseling agencies, community development organizations, government loan program staff, nonprofit developers, real estate professionals and others working in the field of housing and community development are invited to join in these unique teleconferences that will be moderated by NHLP.

Cost

There is a \$30/telephone line charge for each teleconference. However, there are no limits as to the number of people that may listen in on the same line (you may use a speakerphone). In addition, participants will receive, or be able to download, materials for use during and after the teleconferences. **Persons signing up for both teleconferences at the same time may do so for a discounted total charge of \$50.**

Registration

Persons interested in participating in these teleconferences must register with the National Housing Law Project by Monday, April 23, for the first teleconference and Tuesday, May 29, for the second teleconference. All persons who pre-register by these dates will receive teleconference materials and dial-in instructions before the teleconference.

A registration form for the teleconferences is printed in the back of this issue of the Bulletin. The registration form is also available from NHLP's Web site nhlp.org. **Please mail the registration to NHLP together with your payment.**

Renewal Policies for Properties in Questionable Physical Condition

The following guidelines apply when a property's physical condition is substandard or marginal:

- Where inspections yield a notice of exigent health and safety violations, the contract administrator is supposed to abate the subsidy for particular units, and terminate the contract if the violations are not corrected within 72 hours.
- Where inspections find no exigent health and safety violations, but the property has a REAC score of at least 60, the contract should be renewed.
- Where inspections find no exigent health and safety violations, but the property has a REAC score of below 60, the owner must submit a repair plan, as well as an addendum to the renewal contract concerning the repairs.
- Where contracts are terminated with less than 120 days remaining on the term, HUD will notify owners and issue a short-term contract until the vouchers arrive. If an owner appeals HUD's termination decision, HUD will issue an interim contract for one year.

Incredibly, nothing in the *Guide* mentions giving tenants a notice when HUD is abating or terminating the contract.

Advocates working with tenants, tenant organizations, or nonprofits may call the NHLP staff for further assistance with the *Guide* or project-specific preservation work. Contact Jim Grow in the Oakland (CA) office or Vytas Vergeer in the Washington (D.C.) office. ■

ADMISSION AND OCCUPANCY FAQs ANSWERED BY HUD

On March 29, 2000, the Department of Housing and Urban Development (HUD) published the final regulations concerning admission and occupancy requirements in the public housing and Section 8 programs.¹ Since the issuance of those regulations, tenants, legal services providers, and public housing authorities (PHAs) have requested clarification of several issues addressed by the regulations. Therefore, HUD recently published Frequently Asked Questions (FAQs) aimed at giving further guidance on the regulations.²

¹*Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs*, 65 Fed. Reg. 16,692 (Mar. 29, 2000). (Hereinafter all citations to the final rule will cite to the section of the regulations as it appears in the Federal Register.) See 30 HOUS. L. BULL. 33 (Mar./Apr. 2000) for an in-depth discussion of the new regulations.

²*HUD Frequently Asked Questions re:* 65 Fed. Reg. 16,692 (Mar. 29, 2000), at hud.gov/pih/legis/ao_faq.htm, (hereinafter FAQs).

For many issues, the FAQs merely repeat the regulatory information in a question-and-answer format. However, this format is helpful because the regulations are complex and the FAQs format is simpler to understand. What follows is a summary of the new or clarifying information contained in the FAQs.

Admissions and Targeting³

The March 29 regulations made a number of changes to the targeting for admission to public housing, but the FAQs provide little additional information. One of the few clarifications includes the fact that a PHA may not set the income limits for public or Section 8 housing lower than 80 percent of area median income (AMI) (for example, at 60 percent of AMI), but may achieve the same objective by establishing preferences for tenants at income levels below 80 percent of AMI.⁴

Regarding preferences, the FAQs reaffirm that PHAs may create a local preference for people who work and add that the preference may also distinguish between those who work full-time and those who work part-time. The FAQs also include model language for achieving such preferences.⁵

For site-based waiting lists, the only new information that the FAQs provide is to clarify the provision that a PHA that establishes site-based waiting lists must submit occupancy data to HUD in an accurate, complete and timely manner. This is defined by HUD as achieving and maintaining an 85 percent reporting rate for 50058 Forms. Presumably, most PHAs will comply as the national reporting rate for 50058 Forms is now at 95 percent.⁶ If a PHA desired to establish a site-based waiting list after submitting their plan, it would be considered a substantial amendment to the plan and the PHA would have to follow the procedures for modifying a plan found at 24 C.F.R. § 903.21 (2000).⁷

Treatment of Income⁸

Some of the most significant changes in the new regulations have to do with the treatment of a tenant's income as it relates to setting rent levels, with perhaps the greatest clarifications occurring with respect to the public housing mandatory earned income disregard (EID). The FAQs correct an inadvertent omission in 24 C.F.R. § 5.609(d)(2000), which deals with the annualization of income. The C.F.R. section,

³FAQs at Section I; 24 C.F.R. § 960.202 (2000).

⁴FAQs at Section I.A. Q1.

⁵FAQs, Section I.C. Q2; see 24 C.F.R. § 960.206(b)(2)(2000). See also 30 HOUS. L. BULL. 33 (Mar./Apr. 2000) for a more detailed discussion of the working preference, including discussion of the requirement that elderly and disabled persons must be given a working preference, if a working preference is adopted.

⁶*HUD Multifamily Tenant Characteristics System (MTCS) Resident Characteristics Report*, Information as of: Feb. 2001, at hud.gov/mtcs/public/navmenu.cfm.

⁷FAQs, Section I.D. Q2.

⁸*Id.* at Section II; 24 C.F.R. § 5.609 (2000).

which only refers to PHAs, was intended to also apply to all Section 8 owners. Thus, the FAQs clarify that both PHAs and owners may take advantage of the flexibility contained in that provision.⁹ Another income-related provision makes clear that any income from children under the age of 18 is excluded from the calculation of household annual income regardless of the school that the child attends, if any, or whether the child is a full-time employee.¹⁰

During the second 12-month EID period, when only 50 percent of the increased income is disregarded, the failure of the tenant to report an increase in income may result in a retroactive rent adjustment if the tenant is required to report and failed to do so.

The mandatory EID provisions, set out in 24 C.F.R. § 5,609 (2000), have raised a great number of questions, some of which HUD addresses in the FAQs. The mandatory EID requires PHAs to exclude 100 percent of a family's increased income from earnings for a period of 12 months and 50 percent of the increased earned income for an additional 12-month period if a family member has been previously unemployed, the family received welfare or the income increased during a family member's participation in a self-sufficiency or job training program.¹¹ The income disregard is applicable only to the increased income due to earnings. Thus, for a previously unemployed member of household who did not have another source of income, all of that member's earned income would be excluded for a period of 12 months and 50 percent for an additional 12 months. Whereas, for a family member who previously received (for example) welfare benefits or child support, the amount of earned income that would be excluded would be limited to the increase in income that is attributable to earnings. The FAQs make clear that any member of a tenant household may qualify for the EID, including minors who turn 18.¹²

The FAQs explain how the EID time periods operate in relation to tenant reporting requirements and tenant actions. The FAQs include an example of a previously unemployed (for 12 months or longer) family member who becomes em-

ployed six months after having been recertified but does not report the change in income until the next recertification six months later because the PHA had no interim reporting requirements. The FAQs reason that by not reporting the income for six months, the family received the benefit of the disregard for six months prior to the recertification (because the PHA continued to base the family's rent on the income reported at the last recertification). Therefore, the FAQs conclude that the family would be entitled to only another six months of the 100 percent disregard of the increase in income. After that additional six months, the family would be entitled to a 50 percent disregard of the increase in income for another period of 12 months.¹³ The result is the same regardless of the PHA's income reporting policies. If the PHA policy required the tenant to report her income promptly but she did not, the tenant is entitled to benefit from the full 100 percent income disregard during the first 12-month period of employment and should not be adversely affected for failing to report.¹⁴

The actual date that the first 12-month period begins is when the rent increase would have gone into effect.¹⁵ Thus, if the PHA implements rent increases on the first of the month following the increase in income or after a 60-day notice period, these policies should be taken into consideration in establishing the date that the first 12-month income disregard period begins. PHAs in their PHA Plans and Admission and Occupancy Plans may want to separately address the implementation date for EIDs.

During the second 12-month period, when only 50 percent of the increased income is disregarded, the failure of the tenant to report an increase in income may result in a retroactive rent adjustment if the tenant is required to report and failed to do so. The FAQs state that the "earning disregard is effective when the rent increase would otherwise have gone into effect."¹⁶ Thus, it seems that in the second 12-month period, if the tenant's income increases and the tenant, contrary to the PHA's reporting and rent change requirements, does not report that increase for six months, the tenant could be charged retroactively for rent based on 50 percent of the increase in earned income for the period during which the increase would have gone into effect. If, however, the PHA does not require reporting of interim income increases, the tenant's rent for the second 12 months will not change until after the next annual recertification.

The FAQs clarify that a household is entitled to the EID if any member of the household currently receives or in the past six months has received welfare benefits. Thus, to qualify for the EID under the welfare provision, the individual whose income increased does not have to be the one who received welfare benefits.¹⁷ Also, the FAQs state that the tenant may

⁹FAQs, Section II.A. Q1.

¹⁰*Id.* Section II.A. Q2; see 24 C.F.R. § 5.609(c)(1)(2000).

¹¹24 C.F.R. § 960.255(b)(2000). For more discussion of how the *Mandatory Earned Income Disregard* functions see 30 HOUS. L. BULL. 33, at 38-39 (Mar./Apr. 2000).

¹²FAQs, Section II.C. Q2.

¹³*Id.* Section II.C. Q4; see 24 C.F.R. § 960.255(a)(2000).

¹⁴FAQs Section II.C. Q16.

¹⁵*Id.* Section II.C. Q17.

¹⁶*Id.*

¹⁷*Id.* Section II.C. Q20.

qualify for EID for increases in earned income while still receiving welfare assistance.¹⁸ The FAQs also clarify that to qualify for the EID as previously unemployed, there is no limit to the amount of time a tenant may have been unemployed prior to gaining work as long as the family member has been unemployed for the prior 12 months.¹⁹

A household may also qualify for the EID if the household income increases due to the increased earnings of a household member during that member's participation in job training or an "economic self-sufficiency program." The definition for such programs is set out in 24 C.F.R. § 5.603(b) (2000), and includes any program designed to assist tenants in gaining their financial independence. This encompasses a large number and a wide variety of programs, including, but not limited to: job training, English proficiency and substance abuse programs.²⁰ It may also include enrollment in general non-vocational courses at a community college or training or activities at a sheltered workshop.²¹ The fact that a tenant's welfare income is reduced or terminated due to work-related sanctions, does not disqualify the family from the benefits of the EID if one of its members, including the sanctioned member, subsequently finds work.²²

The FAQs deal with a number of questions regarding the relationship between the former EID and the new EID.²³ The most important point is that a tenant's receipt of the benefits under the former EID does not preclude an eligible tenant from also receiving EID benefits under the new program that went into effect on October 1, 1999.²⁴ The eligibility requirements for the two EIDs are not the same. For example, under the new EID, a tenant may qualify for the disregard if income increases during a training program. For the former EID, the tenant could have qualified if the income increased after completion of the training program.²⁵ If a family's rent was based on the former 18-month EID when the new policy went into effect on October 1, 1999, the former disregard remains in effect until the expiration of the original 18 months.²⁶

The FAQs also address the issues regarding the new 48-month limit on the EID.²⁷ They clarify that a family can receive only 12 months of 100 percent EID and only 12 months of 50 percent EID during their lifetime. Moreover, all of those months must fall within a four-year period from the time that the EID first goes into effect. Thus, if a family no longer

qualifies for the 100 percent EID after having received it for 10 months, the family is only eligible for another two months of the 100 percent EID, and those two months (as well as the additional 12 months of the 50 percent EID) must fall within the four-year limit.²⁸ Receipt of the old, 18-month EID does not count against the four-year limit.²⁹

Lastly, the FAQs state that someone receiving the EID cannot use the disregarded income in calculating the limitation for the child care expense deduction. Thus, the child care expense deduction is capped at the amount of earned income that the PHA includes in the annual income determination.³⁰ For example, a sole-earner tenant whose earnings are fully disregarded for the first 12 months of employment because she was previously unemployed may not be able to deduct child care expenses because the tenant's entire income would be excluded from income for purposes of rent calculation.

*Welfare sanctions are a complicating issue
in determining the annual income of a
family for rent calculation purposes.*

Welfare sanctions are a complicating issue in determining the annual income of a family for rent calculation purposes. The public housing regulation provides that if a tenant's welfare benefits are reduced for fraud or noncompliance with economic self-sufficiency, the welfare income will continue to be included in family income for rent-setting purposes.³¹ In other words, the tenant will not receive a reduction in rent due to the reduction in welfare precipitated by sanctions for fraud or noncompliance with the economic self-sufficiency requirements. The regulation requires that PHAs seek written verification of a welfare benefit reduction and the reasons for the reduction.³² The FAQs clarify that the PHA must determine in advance the reason for the sanction and then seek verification. In the event that the welfare agency does not verify the reason for the reduction in a "reasonable time," the PHA must reduce the rent. Not mentioned in the FAQs, but certainly implied, is the fact that, when a PHA is making its advance determination, it concludes that the reason for the sanction is not based upon fraud or noncompliance with the economic self-sufficiency requirements, the PHA must reduce the rent immediately.

The question of what constitutes a reasonable time for a PHA to wait for a response from the welfare agency should be defined in the PHA Plan process. Because of the potential

¹⁸*Id.* Section II.C. Q8.

¹⁹*Id.* Section II.C. Q6.

²⁰*Id.* Section II.C. Q5; see 24 C.F.R. § 5.603(b)(2000).

²¹FAQs Section II.C. Q24 and Q25.

²²*Id.* Section II.C. Q21.

²³Compare the former EID at 24 C.F.R. § 5.609(c)(13)(2000) with the new EID at 24 C.F.R. § 960.255 (2000).

²⁴FAQs, Section II.C. Q33

²⁵See 24 C.F.R. § 5.609(c)(13) (2000).

²⁶FAQs, Section II.C. Q13.

²⁷*Id.* Section II.C. Q29; see 24 C.F.R. § 960.255(b)(3)(2000). See also 30 HOUS. L. BULL. 33, at 38-39 (Mar./Apr. 2000).

²⁸FAQs, Section II.C. Q29.

²⁹*Id.* Section II.C. Q33.

³⁰*Id.* Section II.C. Q32; see 24 C.F.R. §§ 5.603(b), 5.611(a)(4)(2000).

³¹24 C.F.R. § 5.615(2000).

³²24 C.F.R. § 5.615(c)(2)(2000).

hardship for tenants who have experienced a reduction in income, a reasonable time should not exceed 30 days. Moreover, if the welfare agency fails to respond within the 30 days, the rent reduction should be applied retroactively to the date that the tenant made the request for a rent reduction.

Rent³³

The FAQs provide some clarification regarding flat rents while continuing to ignore key legislative language. They emphasize that flat rents must be based on comparable market rents and cannot be based on the imputed debt service figures previously established by HUD.³⁴ The FAQs do not mention or provide guidance to PHAs as to how to achieve the statutory objective that flat rents should be:

designed . . . so that the rent structures do not create a disincentive for continued residency in public housing by families who are attempting to become economically self-sufficient through employment or who have attained a level of self-sufficiency through their own efforts.³⁵

The FAQs note that tenants who pay flat rents are not entitled to the benefits of a utility allowance.³⁶ However, the amount of the flat rent should take into account whether the utilities are the responsibility of the PHA or the tenant. Thus, the flat rent should vary depending upon the utilities that are included in rent.³⁷

Several issues regarding ceiling rents are addressed in the FAQs. They clarify that PHAs must continue to annually verify the income of tenants paying ceiling rents even if the PHA opts to retain, for the permitted three years, ceiling rents set prior to October 1, 1999 in lieu of establishing flat rents.³⁸ If a PHA decides to retain ceiling rents after the three-year grace period, it must absorb the cost of doing so.³⁹ Presumably, this means that the PHA may not request operating subsidies based upon a rent roll that provides for ceiling rents. Instead, the rent roll must be based upon the rent that would have been collected if there were no ceiling rents.

Community Service⁴⁰

The FAQs also provide some insights regarding the community service requirement. The community service regulation provides that a tenant may be exempt from com-

munity service for a number of reasons, one of which is that the tenant is "engaged in work activities." For the purpose of defining the terms "engaged in work activities," the FAQs incorporate the definition of "work activity" set out in the federal welfare statute at 42 U.S.C.A. 607(d) (West Supp. 2000).⁴¹ The FAQs caution that by adopting this definition, HUD does not imply that the PHA should adopt other requirements of the Department of Health and Human Services which specify a number of hours required for each activity. HUD also urges PHAs to "determine what are 'reasonable guidelines' based on local circumstances for meeting" the requirement and to include these requirements in the model agreement with Temporary Assistance to Needy Families (TANF) agencies.⁴²

The FAQs provide some clarification regarding flat rents while continuing to ignore key legislative language.

With respect to stay-at-home parents, the FAQs emphasize that they are not exempt from the community service requirement.⁴³ PHAs are urged to consider how best to assist such individuals.⁴⁴ The FAQs suggest that the community service credit may be allowed for an individual who provides child care to allow others to perform community service or attend resident meetings.⁴⁵ Ultimately, however, tenants are responsible for the community service obligation and must find child care if necessary.⁴⁶

Pets⁴⁷

The FAQs also address several issues relating to pets, all of which are clearly covered in the regulations at 24 C.F.R. § 960.707 (2000).

Conclusion

In sum, the FAQs clarify some of the questions raised by the March 2000 regulations, but focus on many items that are fairly unambiguous in the regulations. As new, more complex questions arise, it will be imperative for legal services providers and tenant organizations to inform HUD of those issues in order to acquire more guidance. ■

³³FAQs, Section III; see 24 C.F.R. § 960.253(2000).

³⁴FAQs, Section III.B. Q4.

³⁵42 U.S.C.A. § 1437a(2)(B)(i)(II)(West Supp. 2000); 24 C.F.R. § 960.253(b)(3)(2000).

³⁶FAQs, Section III.B. Q3; see 24 C.F.R. § 960.253(a)(2000).

³⁷*Id.*

³⁸FAQs, Section III.C. Q1; see 24 C.F.R. § 960.253(d)(2000). In contrast, if a tenant opts for flat rents, the PHA is required to recertify tenant income only every three years.

³⁹FAQs, Section III.B. Q4 and III.C. Q2; see 24 C.F.R. § 960.253(d)(2000).

⁴⁰FAQs at Section IV; see 24 C.F.R. § 960.601 (2000).

⁴¹FAQs at Section IV. Q7.

⁴²*Id.*

⁴³FAQs at Section IV. Q9.

⁴⁴*Id.* at Section IV. Q9.

⁴⁵*Id.* at Section IV. Q9 and Q10; see 24 C.F.R. § 960.601 (2000).

⁴⁶FAQs at Section IV. Q9 and Q10.

⁴⁷FAQs at Section V; 24 C.F.R. § 960.707 (2000).

SECOND HUD REPORT ON “VOUCHERED-OUT” ASSISTED PROPERTIES

In August 2000, the Department of Housing and Urban Development (HUD) published a second report on the withdrawal of multifamily assisted properties from HUD mortgage insurance and Section 8 subsidy programs.¹ This new report follows a May 1998 HUD report purporting to be an “early look” at “vouchering-out,”² but actually serving more as a whitewash of the hardships faced by residents in multifamily property conversions.³ The August 2000 report, prepared by Abt Associates, is more balanced than the one issued in 1998, but it provides an incomplete picture of a national problem and is misleading for this reason. According to HUD staff in the Office of Policy Development Research, the Department has considered, but ultimately decided against, further study of multifamily conversions.

General Features of the 1999 Report

Like the 1998 report,⁴ HUD’s 2000 report is a collection of property-specific case studies. It describes 12 properties in four metropolitan areas⁵ that were subject to opt-outs, prepayments, or both during the period from November 1996 to June 1998.⁶

The 12 properties selected for the study, the report acknowledges, were “not a nationally representative sample,” but were selected “purposively to include a diverse set of properties and communities.”⁷ Researchers collected information from HUD records, site visits, and telephone surveys of a sample of residents receiving vouchers.⁸

¹See HUD, *Case Studies of the Conversion of Project-Based Assistance to Tenant-Based Assistance, Final Report* (Aug. 2000) (available at huduser.org/publications/pdf/project.pdf). Note that, for some reason, another copy of this report with a September 23, 1999 date is available at huduser.org/publications/doc/project.doc.

²See HUD, Office of Policy Development and Research, *Case Studies of Vouchered-Out Assisted Properties* (May 1998) (available at huduser.org/publications/affhsg/voucher.html).

³See HUD Report on “Vouchered-Out” Assisted Projects, 28 HOUS. L. BULL. 129 (Aug. 1998).

⁴The 1998 report included case studies of four developments.

⁵Boston metropolitan area: Huron Towers, Cambridge; Weymouth Commons East, Weymouth; 1550 Beacon, Brookline. Bloomington, Indiana metropolitan area: Oakdale Square Apartments; Orchard Glen. Dallas metropolitan area: El Capitan Apartments; Leigh Ann Apartments; Park Lane Terrace Apartments; St. Francis Square Apartments. Seattle-Tacoma region: 1416 and 1419 Apartments; Swan Creek; Tall Firs.

⁶See *Case Studies of Vouchered-Out Assisted Properties*, Exh. A-1, p. A-2.

⁷See *id.* at pp. 7-8.

⁸See *id.*, App. A. Out of a total of 941 households receiving vouchers, there were 330 survey respondents. See *id.* at 14.

The 1999 Report’s Findings

The report’s executive summary includes a description of key findings.⁹ Each property description also includes a summary of findings. As discussed in the following section, the usefulness of these findings, based as they are on a small and non-representative sample, is questionable. The most significant¹⁰ of the report’s findings may be summarized as follows:

- At least one-third of the conversions studied were “motivated in part by frustration with Congressional actions ... and HUD policies.”¹¹
- The number of vouchers issued for each of the converted properties was always less than the total number of assisted units lost. Among the 12 properties, 1,485 assisted units eligible for vouchers were lost, but only 941 vouchers were issued—a 36.7 percent decrease.¹²
- According to PHA personnel, only 70 households (7 percent) of the 941 total moved immediately after being issued vouchers. Twenty percent of the households included in the resident telephone survey had moved by the time the survey was conducted.
- Of the households issued vouchers included in the survey, 20.4 percent were no longer receiving voucher assistance at the time the survey was conducted.¹³
- Two-thirds of the households that searched for housing in which to use their vouchers found the search “somewhat difficult” or “very difficult.”¹⁴ Forty percent of households said that “landlord reluctance to accept [vouchers] was a ‘major problem.’”¹⁵
- Of the survey respondents who moved, over one-third moved to other cities or towns or moved out of state.¹⁶
- Slightly under half of all voucher recipients surveyed were more satisfied with their housing after conversion.¹⁷ In addition, 43 percent of all voucher recipients surveyed paid more for housing after conversion.¹⁸ Among movers surveyed, 78 percent were more satisfied and 63 percent paid more for housing.¹⁹

⁹See *id.* at 11-17.

¹⁰Because the 12 properties were essentially handpicked by researchers, a number of the “findings” having to do with the characteristics of specific properties—e.g., the number of properties subject to opt-outs versus the number subject to prepayment and opt-out—are not particularly significant.

¹¹See *id.* at 13.

¹²The researchers, while they acknowledged the disparity in the number of vouchers issued versus assisted units lost, did not explain in the text of the executive summary that this occurred in every case. Researchers also did not provide the percentage loss figure even though percentages were calculated for other data.

¹³See *id.*, Exh. ES-3, p. 18. This fact was not specifically discussed in the report.

¹⁴See *id.* at 15.

¹⁵See *id.*

¹⁶See *id.* at 16.

¹⁷See *id.*, Exh. ES-3, p. 18.

¹⁸See *id.*

¹⁹See *id.*

Substantial Shortcomings of the 2000 Report

HUD's most recent report on assisted multifamily conversions is disappointing in its scope and its thoroughness. A collection of case studies, no matter how "purposively" the properties to be studied are selected, does not provide sufficient insight into the national problem of opt-outs and prepayments. The detailed figures provided in the executive summary suggest a broader significance than is actually warranted. There is nothing to indicate that the 12 properties relate in any way to properties elsewhere.

Through the end of 1998, according to the National Housing Trust, "[p]repayments and opt outs have occurred on over 925 properties involving nearly 98,000 [units]."²⁰ Researchers stated that at the time the study was conducted there were only five metropolitan areas with "enough prepayments or opt-outs (at least two) to meet the needs of the study"²¹ This is difficult to understand given the prevalence of conversions through the end of 1998; opt-outs and prepayments occurred in 48 states and the District of Columbia.²²

The report is incomplete to the point of being misleading in that it fails to document the effects of opt-outs and prepayments on residents that do not receive vouchers. Of the 2,019 assisted units in the 12 properties, only 1,485 were eligible for vouchers. Ultimately, only 941 vouchers were actually issued. Households not receiving vouchers were not included in the researchers' resident telephone surveys, even though these households may have outnumbered the households that did receive vouchers.

Finally, the report fails to include any analysis of the fair housing implications of opt-outs and prepayments.²³ This is despite the fact that studies of public housing households who receive vouchers face substantial illegal discrimination on the private housing market.²⁴ Also, because the site selection regulations that governed the development of assisted projects included a fair housing analysis,²⁵ the removal of units from the assisted housing stock can be expected to have fair housing implications as well. ■

²⁰Michael Bodaken, National Housing Trust, *Statement to the House Committee on Banking and Financial Services, Subcommittee on Housing & Community Opportunity* (May 4, 1999) (available at nhtinc.org/testimony99.asp).

²¹See *id.* at 8.

²²See Michael Bodaken, National Housing Trust, *Statement to the House Committee on Banking and Financial Services, Subcommittee on Housing & Community Opportunity* (May 4, 1999). Note that, according to the National Housing Trust, the District of Columbia saw five properties opt-out by the end of 1998. See nhtinc.org/prepayment/optoutsum1.asp. Nonetheless, the researchers did not include the District of Columbia among the five metropolitan areas with "enough" conversion activity. See *id.*, App. A., p. A-1.

²³Oddly, given the racial and ethnic diversity of families residing in assisted housing, researchers were not provided resources to survey households whose members spoke languages other than English, Spanish and east Asian languages, in particular. See *id.* App. A., p. A-10.

²⁴See Susan J. Popkin, Mary K. Cunningham, *CHAC Section 8 Program: Barriers to Successful Leasing Up*, URBAN INST., pg. 20 (Apr. 1999) (available at urban.org/housing/chac.pdf).

²⁵See, e.g., 24 C.F.R. § 882.404(b) (1984) (221(d)(4) Program "Site and Neighborhood-Performance Requirement[s]").

NATIONWIDE SETTLEMENT AFFECTING TENANTS' RIGHTS AT RTC PROPERTIES

The Federal Deposit Insurance Corporation (FDIC) has agreed to adopt new nationwide procedures governing the manner in which owners of former Resolution Trust Corporation (RTC) properties can escape from rent and income restrictions on the alleged ground that the properties are obsolete and not financially feasible to repair. These procedures will ensure that tenants are involved in the decisions to release use restrictions on RTC properties and that more accurate information is developed for making these decisions.¹

In *Patterson*, lawyers with Legal Aid of Central Texas sued the Texas Department of Housing and Communities Affairs after the Department and the FDIC released a Land Use Restriction Agreement (LURA) that was imposed on an Austin property in 1991 restricting rent and income for a 40-year term.² The government agencies released the LURA on the grounds that the project was obsolete and not feasible to repair. Neither the agencies nor the owner provided notice to the residents of the property about the release, or obtained any independent data confirming the condition of the property. Instead, the agencies relied solely on an inspection and data submitted by the owner. The suit, originally filed in state court, challenged these actions as a violation of the residents' due process rights under the Texas Constitution, as substantive violations of the Texas Constitution's Due Course of Law Provisions, and that the release of the land use restrictions were fraudulently obtained.³ The FDIC removed the case to federal court, where the plaintiffs amended the complaint to add a federal statutory claim against the FDIC. Thereafter, the plaintiffs' claims against the owners of the property and the Texas Department of Housing and Community Affairs were remanded to state court.

The FDIC and the plaintiffs recently agreed to settle the remaining federal litigation. Under the Settlement Agreement between the parties, the FDIC will amend its operating manual, which governs all RTC/FDIC properties, to include a number of new safeguards for tenants. Owners subject to use restrictions will be required to provide the state agency with a sworn verification that it has given a written, 60-day notice of a requested release of the use restrictions to all tenants and all known tenant organizations at the property. These notices must be sent by first-class mail or hand delivered. In addition to the requirement, owners are to post notices in the management office and near the tenant mailboxes. These notices must also include the name, address and telephone

¹*Patterson v. Stiner*, No. A:99-CA-830-JN (W.D. Tex., Jan. 31, 2001).

²See 12 U.S.C.A. § 1441a(c)(3)(E)(i) (West Supp. 2000) (requiring rent and income set-asides for low and very low-income tenants).

³*Patterson v. Stiner*, No. 99-10873 (Tx. Dist. Ct., Travis County, filed Nov. 29, 1999) (*Plaintiffs' First Amended Complaint*) (Clearinghouse Review No. 52,726B).

number of the owner, must inform tenants of their right to comment, and inform tenants of their right to review and copy all relevant documentation.

Additionally, the state agency will be required to obtain an independent inspection and independent financial feasibility analysis, both at the expense of the owner. Tenants will have an opportunity to first review the inspection and feasibility analysis and comment on the proposed release, and the state agency is required to consider the comments submitted by tenants in reaching a decision about releasing the use restrictions. The agreement provides that qualifying "lower-income families" and "very low-income families" (as defined in the LURA) are third-party beneficiaries to the settlement agreement, thereby instilling them with rights to sue for specific performance, injunction, damages, attorney's fees, and any other appropriate relief. The FDIC also agreed to pay \$8,000 in attorneys fees to Legal Aid of Central Texas.

This agreement provides low-income tenants with greater protection against owners who seek to circumvent use restrictions on their property, thus further preserving the low-income housing stock.⁴ ■

RECENT HOUSING CASES

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

Arnold Murray Const., L.L.C. v. Hicks, 621 N.W.2d 171 (S.D., 2001): The South Dakota Supreme Court upheld judgment for a landlord against a tenant with a handicap and a HUD subsidy, stating that no reasonable accommodation was possible for him. The tenant refused to park in his designated spot, claiming difficulty in exiting his car. He also blocked open the security door, claiming that his disability made it difficult for him to unlock. The tenant also engaged in harassing behavior in the building, including inappropriate acts toward women and emotional outbursts. The court held that if a handicapped tenant is a direct threat to the health and safety of other tenants, the landlord must either reasonably accommodate the tenant's handicap or show that no reason-

able accommodation would acceptably minimize the risk posed by the handicapped tenant. In the case at bar, the landlord showed that no reasonable accommodation could alleviate the risks posed, especially by the tenant's uncontrolled emotional outbursts.

Memphis Housing Authority v. Tara Thompson, ___ S.W. ___, 2001 WL 166,382 (Tenn., February 20, 2001): In a public housing "one-strike" case, the Tennessee Supreme Court held that the language of 42 U.S.C.A. 1437d(1)(6), and the lease language that mirrored the statute is unambiguous. It held that tenants may be evicted for the drug-related or dangerous criminal activity of the tenants, themselves, or other household members, regardless of the tenants' lack of knowledge of the activities and/or lack of control over the person committing the acts. Thus, the court provided for a strict-liability standard for such persons. However, the court also held that, if the conduct is that of guests or other people under the tenant's control, the tenant must have known or should have known of the drug-related or violent criminal activity before the tenant may be evicted under the statute, thus providing a level of scienter in those cases. This approach is essentially the middle ground between approaches taken by other courts, which have either: 1) imposed a strict liability standard on the tenant for the acts of the tenant, the tenant's household members, guests, and other persons under the tenants' control; or 2) have required some level of knowledge and control over the person committing the acts, whatever the relation to the tenant.

Noble v. Tooley, 125 F.Supp.2d 481 (M.D. Fla., 2000): A summary for this case appeared in last month's *Bulletin*. ■

RECENT HOUSING-RELATED REGULATIONS AND NOTICES

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD), and the Department of Agriculture's (USDA) Rural Housing Service (RHS) issued in February of 2001. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

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

⁴A copy of the Settlement Agreement is posted on the NHLP Web Site at nhlp.org/html/pres/cases.htm. Some earlier pleadings can be obtained at povertylaw.org/cases.asp/cases.asp (click on search for cases and insert *Steiner*). For more information about the case, please contact Heather K. Way, Legal Aid of Central Texas, at hway@lact.org.

¹See westlaw.com

²See lexis.com

³For a list of courts that are accessible through the World Wide Web, see uscourts.gov/links.html (federal courts) and ncsc.dni.us/COURT/SITES/courts.htm#state (for state courts). See also courts.net.

¹At access.gpo.gov/su_docs.

²At hudclips.org/cgi/index.cgi.

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

⁴At rdinit.usda.gov/regs/.

HUD Regulations

Rule To Deconcentrate Poverty and Promote Integration in Public Housing; Change in Applicability Date of Deconcentration Component of PHA Plan; Final Rule 66 Fed. Reg. 8,897 (Feb. 5, 2001)

Summary: This final rule amends HUD's December 22, 2000 final rule revising the deconcentration provisions of its Public Housing Agency (PHA) Plan regulations. Specifically, the final rule provides that the December 22, 2000 amendments concerning the deconcentration component of a PHA's admission policy are applicable to PHAs with fiscal years commencing on and after October 1, 2001.

Effective Date: March 7, 2001.

HUD Federal Register Notices

Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance for Fiscal Year 2001; Notice 66 Fed. Reg. 11,637 (Feb. 26, 2001)

Summary: This Fiscal Year (FY) 2001 Super Notice of Funding Availability (SuperNOFA) announces the availability of approximately \$2.75 billion in HUD program funds covering 45 grant categories within programs operated and administered by HUD offices and Section 8 housing voucher assistance.

Announcement of Funding Awards for Fiscal Year 2000 for the Housing Choice Voucher Program; Notice 66 Fed. Reg. 12,535 (Feb. 27, 2001)

Summary: In accordance with Section 102(a)(4)(C) of the *Department of Housing and Urban Development Reform Act of 1989*, this document notifies the public of funding awards for FY 2000 to housing agencies under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to housing agencies for housing conversion actions and mobility counseling.

HUD Notices

Compliance with Section 504 of the Rehabilitation Act of 1973 and the Disability/Accessibility Provisions of the Fair Housing Act of 1988 HUD Notice H 01-02 (Feb. 6, 2001)

Summary: This notice provides information to participants in most programs and activities under the jurisdiction of the Office of Multifamily Housing Programs concerning applicable requirements for nondiscrimination on the basis of disability in such housing programs. The notice reminds federal financial assistance recipients of their obligation to

comply with Section 504 of the *Rehabilitation Act of 1973* and implements regulations at 24 C.F.R. Part 8 which provide for nondiscrimination on the basis of disability in federally funded housing and non-housing programs. The notice also describes the obligations of all housing providers, whether or not they receive federal financial assistance, to comply with pertinent sections of the *Fair Housing Act's* provisions concerning persons with disabilities. The notice also provides information on additional accessibility requirements imposed by specific program regulations, and discusses the concept of visitability. Finally, it indicates where participants in the programs below may receive technical assistance concerning these requirements.

RHS Federal Register Notices

Request for Proposals (RFP): Demonstration Program for Agriculture, Aquaculture, and Seafood Processor Worker Housing Grants 66 Fed. Reg. 9,820 (Feb. 12, 2001)

Summary: The RHS announces the availability of funds, the time frame to submit proposals, and the guidelines for proposals for agriculture, aquaculture, and seafood processor worker housing grants in the states of Mississippi and Alaska. Public Law 106-387 (Department of Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 2001) authorizes the RHS to establish a demonstration program to provide financial assistance (grants) for agriculture, aquaculture, and seafood processing workers in the states of Mississippi and Alaska. This RFP requests proposals from qualified private and public non-profit agencies, cooperatives, state and local governments, and tribal organizations in Mississippi and Alaska to construct housing for agriculture, aquaculture, and seafood processing workers. Any one project may not receive grant funds of more than \$1.5 million from this program. At least one project in Alaska and one project in Mississippi will be funded under this program. Housing facilities constructed under this RFP are expected to increase the supply of housing for agriculture, aquaculture, and seafood processing workers in markets where adequate housing is not available.

Due Date: The deadline for receipt of all applications in response to this RFP is 5 p.m., Eastern Standard Time, May 14, 2001. ■

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