Housing Law Bulletin

Volume 36 • May 2006

Published by the National Housing Law Project

Procedural Protections for Voucher Terminations —*see page 103*

Increasing the Usability of Housing Choice Vouchers for People with Disabilities

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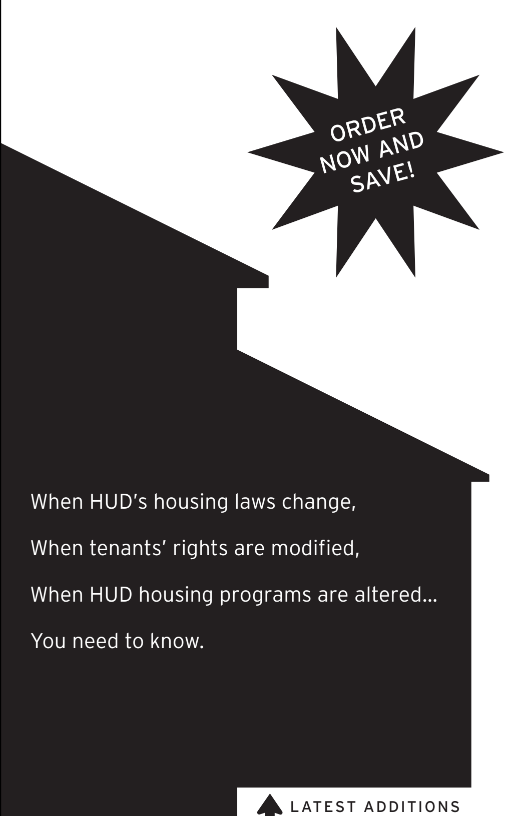

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Cover: Spring Lake Apartment Community. This 13-unit RHS Section 514-516 Farm Labor Housing Development located in Payson, Utah was developed by Rural Housing Community Development Corporation in 2004. Owned and managed by the Housing Authority of Utah County.

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

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

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Courts Revisit Procedural Protections for Voucher Terminations

Recent federal and state decisions have reiterated the importance of certain due process protections afforded through the informal hearing process available to Section 8 Housing Choice Voucher Program participants facing termination from the program. As these decisions demonstrate, public housing authorities (PHAs) and hearing officers often ignore basic procedural rights, including adequate written notice of reasons for the proposed termination, the opportunity for an expeditious hearing, and a written decision setting forth the legal and factual basis for the hearing decision. These cases should remind advocates of the need for diligence in ensuring that tenants' basic rights are protected in the hearing process to ensure fair results.

Adequate Notice

In *Driver v. Housing Authority of Racine*,[1] a consolidation of two similar cases, the Wisconsin Court of Appeals considered whether form termination notices and form hearing decision letters satisfied the procedural due process requirements for voucher terminations, and also whether any notice deficiencies could be cured by showing "actual knowledge" by the participant.

In the first case, the Housing Authority of Racine County (HARC) received information concerning an unauthorized resident in the unit of Ms. Driver. HARC then issued a notice to Driver advising her that she was being terminated from the Section 8 program because she "violated [her] family obligation under the Section 8 Rental Assistance Program."[2] No other reasons were listed. When Driver contacted HARC to determine exactly why she was being terminated, she was orally advised that she had another individual living with her. Driver then requested an informal hearing.

At the hearing, HARC stated that the reason for its termination decision was that the unauthorized resident (a Ms. Stilo) was living at Driver's address, and introduced evidence that included police reports from a robbery, which listed Stilo's address as Driver's residence. Driver produced additional police reports showing a different address for Stilo, along with testimony from a family member that Stilo did not reside with Driver.

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[1]Driver v. Hous, Auth. of Racine County, 2006 WL 288152 (Wis. App. Ct. Feb. 8, 2006). This was a consolidation of two separate cases: *Driver v. Housing Authority of Racine County* and *Bizzle v. Housing Authority of Racine County*.

[2]*Id.* at *1.

Following the hearing, Driver received a letter notifying her of the results of the hearing. The decision letter simply informed Driver that HARC found that she in fact had violated her responsibilities as a tenant, and that HARC found no extenuating circumstances. Driver asked for reconsideration on the basis that she had additional proof that Stilo did not live with her, but this request was denied.

On appeal, all parties agreed that the procedural due process requirements articulated in Goldberg v. Kelly *applied to termination of voucher benefits.*

In a second case involving a Ms. Bizzle, one of her adult sons cut another with a knife during an argument outside of her unit, and the police were called. Two of the sons, Richard and Corey, were arrested. Bizzle then received a form letter from HARC, which, like the letter issued to Driver, advised her that her assistance was being terminated due to violation of her family obligation. When Bizzle called her caseworker, she was orally advised that "she had violated the family obligation by allowing her son Corey to live with her, and/or use her address."[3] This information was based on reports received by HARC from the police and from the Department of Corrections. Bizzle requested a hearing on the proposed termination.

At the hearing, Bizzle admitted that her sons had used her address when they were arrested, but denied that they were living with her. HARC's evidence was almost entirely hearsay, and included the police and Department of Corrections reports. After the hearing, Bizzle received the same form decision letter that HARC had issued to Driver, which simply advised her that she had violated her tenant responsibilities, with no extenuating circumstances found.

Both tenants filed § 1983 claims against HARC in state court.[4] Both cases resulted in cross-motions for summary judgment, and, at the hearings in both cases, the tenants acknowledged that they knew the reasons why HARC was terminating them from the program, or that they had "actual notice," if not written notice. The trial court granted summary judgment for HARC in both cases, and the tenants appealed.

On appeal, all parties agreed that the procedural due process requirements articulated in *Goldberg v. Kelly* applied to termination of voucher benefits.[5] These requirements include: timely and adequate notice detailing the reasons for the termination; the opportunity to appear personally at a termination hearing and to present evidence, to make oral arguments, and to cross-examine adverse witnesses; the right to representation by counsel; the right to a decision based solely on rules of law and the evidence presented at the hearing; and the right to a statement by the hearing officer that states the reasons for the decision and the evidence upon which it was based.[6] The court additionally noted that current federal regulations also require that pre-hearing notices to tenants contain a brief statement of the reasons for the termination,[7] and require the hearing officer to issue a written decision briefly stating the reasons for the decision.[8]

As for the level of specificity required in such notices, the appellate court turned to *Edgecomb v. Housing Authority*,[9] termed by the court as the most thorough discussion of the required contents of the "brief statement." The *Edgecomb* court had ruled that the purpose of the written notice is to inform the tenants of the allegations against them so they can prepare a defense.[10] Thus the notice should include dates, names and titles of any parties contacted, the source of any information obtained by the PHA, and a "resume of the information received,"[11] so that the tenant can prepare rebuttal evidence. In reviewing HARC's termination notices, which merely stated that the tenants had violated their program obligations, the court found that they did not "come within a country mile" of the specificity requirements set forth in *Edgecomb*.[12]

The court also found that the form decision letters issued by HARC were equally deficient. The *Goldberg* due process standard requires not only a sufficiently detailed pre-termination hearing notice, but also that any post-hearing decision must state its underlying reasons,

[3] *Driver,* 2006 WL 288152, at *2.

[4] Every person who, under color of any statute, ordinance, regulation . . . of any State . . . subjects, or causes to be subjected...any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983 (West 2003).

[5] Goldberg v. Kelly, 397 U.S. 254, 267-268(1970). Pursuant to *Goldberg*, before the government may terminate assistance benefits, it must provide timely and adequate notice detailing the reasons for the proposed termination, and afford the recipient an effective opportunity to defend her case.

[6] *Driver,* 2006 WL 288152, at *4 (citing G*oldberg,* 397 U.S. at 267-271).

[7] "[T]he PHA must give the family prompt written notice that the family may request a hearing. The notice must . . . [c]ontain a brief statement of the reasons for the decision . . . ." 24 C.F.R. § 982.555(c)(2) (2005).

[8] "The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing." 24 C.F.R. § 982.555(e)(6)(2005).

[9] *Driver* 2006 WL 288152, at *4, (citing Edgecomb v. Hous. Auth., 824 F. Supp. 312 (D. Conn. 1993)).

[10] *Id.*

[11] *Id.*

[12] *Driver,* 2006 WL 288152, at *5.

and the supporting evidence.[13] Further, federal regulations plainly require that the written decision include a brief statement of the reasons for the decision.[14] The decision must therefore contain at least a "rudimentary explanation of the elements of fact or law on which the decision is based."[15]

The form decision letters that HARC issued contained no facts relating to the incidents that gave rise to the termination decision, nor any specific evidence relied on by the hearing officer. Moreover, the decision letters were also devoid of any legal rationale for the hearing officer's decision. While the letters advised the tenants that the hearing officer found a violation of their tenant responsibilities, they failed to identify what tenant "responsibility" had been violated, or how the tenant had actually failed this duty. The court found that both decisions fell "appallingly short" of the applicable legal requirements.[16]

The court found that both decisions fell "appallingly short" of the applicable legal requirements.

As is commonly asserted in cases involving bad notices, HARC asserted that, notwithstanding any defects, both tenants had actual notice of the reasons for both the termination and the subsequent decision, and such actual notice should suffice. For several reasons, the court flatly rejected HARC's claim. The court first noted that the plain language of the regulations requires that PHAs provide written notice of the reasons for termination,[17] and that hearing officials must issue a written decision which states the basis for the termination.[18] Additionally, due process places the burden on the government to provide adequate notice, not on the tenant to obtain it. Permitting an "actual notice" exception to the regulatory scheme would essentially permit PHAs to disregard federal regulations whenever they decided that the tenant had actual notice, and would shift the burden to the tenant to determine the basis for the termination decision. The court found this contrary to both law and public policy. Moreover, the regulatory scheme expressly required written notice, and therefore the court had only to look at the written notices and decisions, which it had already determined did not comport with legal requirements.

Reversing the trial court, the court remanded both cases, specifying that the remedy must include an injunction directing the PHA to comply with due process and regulatory requirements for terminations.

Expeditious Hearing

In *Lowery v. District of Columbia Housing Authority*,[19] a voucher participant's attempts to obtain an expeditious hearing on the PHA's decision to terminate her were rebuffed by the District of Columbia Housing Authority (DCHA) until she filed suit in federal court. Lowery had been a voucher participant since 2001, but was incarcerated for sixteen months beginning in the summer of 2002. At the time of her incarceration, she was using her voucher to rent a unit.[20] She left her home and teenage daughter in the care of her adult son, and provided DCHA with a Power of Attorney that authorized her son to perform all program responsibilities on her behalf. Unfortunately, neither Lowery nor her son recertified her eligibility in 2003, and DCHA suspended assistance to the landlord in August 2003. Lowery's son and daughter were then forced to vacate the unit.

In November 2003, Lowery was released from prison to a halfway house. In January 2004, DCHA issued her a new voucher, but that voucher, with a term of only thirty days, expired before Lowery was able to obtain a new unit. Lowery did not initially request a voucher extension, and moved into transitional housing. In May 2004, she requested an extension of her expired voucher. DCHA declined this request, instead issuing a notice that it was terminating her from the program because more than 180 days had passed since a housing assistance payment had been made on her behalf.

Although federal regulations provide that a family may not be absent from a rental unit for more than 180 "consecutive calendar days in any circumstance, or for any reason,"[21] they also require the PHA to provide a participant "an opportunity for an informal hearing."[22] Accordingly, Lowery requested a hearing, and also requested that she be issued a voucher pending the termination decision. DCHA informed Lowery that she had to wait until the hearing before she could receive another voucher, and scheduled a hearing. However, when the hearing date arrived, DCHA canceled the hearing, and despite Lowery's efforts, a new hearing was never rescheduled.

[13]*Id.* (citing *Goldberg*, 397 U.S. at 271).

[14]24 C.F.R. § 982.555(e)(6)(2005).

[15]*Driver*, 2006 WL 288152, at *5.

[16]*Id.*

[17]24 C.F.R. § 982.555(c)(2)(2005).

[18]24 C.F.R. § 982.555(e)(6)(2005).

[19]Lowery v. Dist. of Columbia Hous. Auth., 2006 WL 666840 (D.D.C. Mar. 14, 2006).

[20]Lowery's criminal conviction and her incarceration were not the basis for DCHA's decision to terminate her from the voucher program.

[21]24 C.F.R. § 982.312(a) (2005).

[22]*Id*. § 982.555(a)(1)(vi).

Lowery then filed a § 1983 complaint in federal court, along with a motion for preliminary injunction seeking issuance of the voucher. Also seeking damages, her complaint alleged that DCHA violated the United States Housing Act[23] and her due process rights. The court granted Lowery's motion for a preliminary injunction and ordered DCHA to provide her with a voucher until the PHA followed all of the requisite termination procedures. DCHA moved to dismiss, arguing that the claims were moot and non-justiciable.[24]

The court therefore found that Lowery had a property interest in her status as a voucher participant that was subject to the protections of constitutional due process, and that she had stated a valid claim.

In considering the PHA's motion, the court first found that as a factual matter, DCHA denied Lowery a housing voucher and terminated her from the program without giving her an opportunity to challenge the termination for many months. The court also found that Lowery had participated in the voucher program since 2001, and neither party disputed that voucher participants hold a property interest protected by procedural due process under *Goldberg*.[25]

In support of dismissal, the PHA made two main arguments. The first derived from Lowery's somewhat unique status in the program based on the factual circumstances. DCHA argued that while Lowery may have been a participant in the voucher program, it had no obligation to offer Lowery a hearing, or any due process at all, because at the time of her termination she did not possess an unexpired voucher, she was not living in an assisted unit, and she was not the beneficiary of any outstanding Housing Assistance Payments (HAP) contract. Thus, DCHA argued that Lowery had no *Goldberg* property interest when it moved to terminate her, and that her § 1983 due process claim therefore failed.

Since there was no serious dispute concerning the lack of due process actually provided, the court's inquiry focused on whether Lowery had a property interest as a voucher participant that was sufficient to require the minimum *Goldberg* due process protections. The court found that she did, drawing on an old federal case and the regulations. In 1980, in *Nichols v. Landrieu*,[26] a federal district court held that voucher participants have a property interest in their vouchers that "constitutes a statutory entitlement."[27] Federal regulations also clearly mandate a hearing before termination in cases such as Lowery's.[28] These regulations were promulgated precisely to ensure that voucher participants receive minimum constitutional due process protections, and "were designed to provide enforceable rights" to voucher program participants.[29] Additional support for this result came from the precious nature of the voucher benefit. DCHA did not dispute that available assistance was limited and that there was an extensive waiting list. Consequently, the court recognized the serious consequences of termination, also noting that Lowery was left homeless and separated from her daughter due to DCHA's failure to abide by the regulations, and with no opportunity to challenge the termination in a timely way. The court therefore found that Lowery had a property interest in her status as a voucher participant that was subject to the protections of constitutional due process, and that she had stated a valid claim. To DCHA's protest that there was no case holding that due process requires a pre-termination hearing for participants who are not "in possession of a voucher, leased up, or occupying a dwelling and receiving a HAP subsidy," the court simply responded, "Let this be the first."[30]

DCHA also sought dismissal by arguing that Lowery did not have a viable cause of action under § 1983, asserting that she lacked the requisite statutory rights required by Supreme Court precedents. The court disagreed, relying on a prior D.C. Circuit case enforcing related statutory requirements for PHA grievance procedures,[31] as well as the fact that the voucher hearing regulations were rooted in constitutional procedural due process, as recognized decades ago by *Nichols*. Although not deciding whether Lowery would ultimately be entitled to a voucher, the court found her entitled to a reasonably expeditious hearing, a result also support by local regulations.[32]

[23]42 U.S.C.A. § 1437f (West 2003).

[24]Soon after receipt of the complaint, and two days prior to the scheduled preliminary injunction hearing, DCHA finally held a hearing on the termination. A few weeks later, the hearing officer ruled in favor of Lowery, based upon defects in the termination notice.

[25]*Goldberg*, 397 U.S. at 267-271.

[26]No. 79-3094, 1980 U.S. Dist. LEXIS 17630 (D.D.C. Dec. 23, 1980) (ordering HUD to publish basic procedural protections set forth in its Handbook as regulations in the Federal Register).

[27]*Lowery*, 2006 WL 666840, at *7 (quoting *Nichols*).

[28]24 C.F.R. § 982.555(a)(1)(vi)(2005).

[29]*Lowery*, 2006 WL 666840, at *2, 11 (citing 49 Fed. Reg. 12,215 (Mar. 29, 1984)).

[30]*Lowery*, 2006 WL 666840 at *11.

[31]*See* Samuels v. District of Columbia, 770 F.2d 184 (D.C. Cir. 1985) (enforcing tenants' rights to grievance procedures mandated by 42 U.S.C. § 1437d(k)).

[32]*Lowery* at *9 (citing 89 D.C.M.R. § 8903.2(a) and (c)). Indeed, the District's municipal regulations mandated a specific timetable for DCHA to respond to Lowery's claim, which DCHA did not follow.

Consideration of Mitigating Circumstances

A common issue raised in termination cases is the nature of a PHA's duty to consider mitigating or extenuating circumstances. The Massachusetts Court of Appeals recently addressed this issue in two cases involving the Lynn Housing Authority (LHA). In the first case, *Wojcik v. Lynn Housing Authority*,[33] LHA argued that a hearing officer had no discretion to consider mitigating circumstances to set aside a termination decision, while in a second case, *Carter v. Lynn Housing Authority*,[34] the tenant argued that the PHA was in fact required to consider all relevant circumstances, including mitigating circumstances, whether or not the participant offered such evidence at the hearing.

In *Wojcik*, LHA terminated a participant's voucher because she had engaged in threatening or abusive behavior toward its staff. Wojcik had called LHA about a dispute that she had with her landlord. During the call, she allegedly informed the LHA case worker that she had a gun and was going to shoot her. Wojcik soon made another call apologizing for her remarks and also issued a letter of apology to LHA. Nevertheless, LHA elected to terminate Wojcik and she requested a hearing.

At the hearing, Wojcik did not deny making the phone call, but also offered evidence of her immediate verbal and written apologies. In addition, she presented evidence about her emotional state when making the threatening call. Wojcik had been the victim of a domestic violence incident shortly before the call and had been in a dispute with her landlord about the lease and rent. All of Wojcik's children have disabilities, and Wojcik had been under allegedly misprescribed medication. She requested a reasonable accommodation, based upon her mental state, status as a victim of domestic violence, and the disabilities of her children.

At the hearing, the PHA stated that it was not inclined to change its position regarding the termination. However, the hearing officer noted that LHA did have discretion to consider all relevant circumstances, and also that Wojcik had apologized, she had taken steps to ensure that she did not make threatening statements to LHA staff in the future, and that she was aware of the consequences if she did. The hearing officer therefore decided that Wojcik could remain in the program, provided that she refrain from any further threatening behavior toward LHA staff, and that she consult with appropriate medical and other service providers. However, LHA decided that it did not have to follow the hearing officer's decision, proceeding with the termination. Wojcik then filed a complaint in state court, challenging the legality of LHA's refusal to follow the decision. The court entered summary judgment on Wojcik's behalf and LHA appealed.

On appeal, LHA claimed that it did not have to follow the hearing decision, because the hearing officer did not have authority to consider the mitigating factors that Wojcik offered in her defense. According to LHA, under federal regulations, the hearing officer was only authorized to review whether LHA's decision to terminate was in accordance with law or regulations, and lacked discretion to consider other factors in reviewing the termination. Federal regulations provide that the opportunity for an informal hearing is to consider whether the decision to terminate assistance "is in accordance with the law, HUD regulations and PHA policies."[35]

The court concluded that, while a PHA has discretion to offer a hearing in certain types of cases, federal regulations mandated an informal hearing in cases like Wojcik's.

The court first concluded that, while a PHA has discretion to offer a hearing in certain types of cases, federal regulations mandated an informal hearing in cases like Wojcik's.[36] Wojcik's informal hearing was therefore not simply a "courtesy," and due process principles must be applied.

The court then reviewed the regulatory requirements for an informal due process hearing, and the requirements for the hearing officer's decision. Regulations provide that the hearing officer must issue a written decision, stating briefly the reasons for the decision, and "[f]actual determinations relating to individual circumstances ... shall be based on a preponderance of the evidence."[37] In the court's view, this language clearly authorized the hearing officer to do more than engage in "mere fact finding." The court noted that the very role of the hearing officer was to make factual determinations concerning the PHA's decision to terminate assistance. The court found that it would be natural to consider first whether any facts supported the termination decision, and part of that process would be to give the participant an opportunity to contest the "factual predicate" upon which the termination is based. The court noted that it was virtually conceded at the hearing that Wojcik's conduct satisfied the "factual predicate."[38]

The court then found that the regulations make it clear that the PHA must at least provide the participant an opportunity to present evidence about the circumstances

[33]Wojcik v. Lynn Hous. Auth., 2006 WL 948091 (Mass. App. Ct. April 14, 2006).

[34]Carter v. Lynn Hous. Auth., 2006 WL 948077 (Mass. App. Ct. April 14, 2006).

[35]24 C.F.R. § 982.555(a)(1)(2005).

[36]*Id.* §§ 982.555(a)(1)(v) and 982.552(c)(1)(ix).

[37]*Id.* § 982.555(e)(6).

[38]*Wojcik*, 2006 WL 948091, at *4.

that may persuade the hearing officer to impose a less severe penalty than termination, even if there is a factual basis to support termination. For example, in deciding whether to terminate assistance based upon actions of a family member, the PHA "may consider all relevant circumstances, such as the seriousness of the case, the extent of participation . . . of individual family members, mitigating circumstances relating to the disability of a family member."[39] The court found that the regulations clearly state that the decision not to terminate may be based on a variety of circumstances, which are all balanced together.

Because in making its initial termination decision, LHA clearly did not take into account any mitigating factors, the court found that Wojcik's informal hearing was her first opportunity to present such evidence and information. Indeed, this was her only opportunity. Once the hearing officer has rendered a decision, the regulations provide no avenue for reconsideration based on such arguments. In view of the limited opportunities for a participant to present mitigating evidence, the court found that accepting LHA's claim that hearing officers have no authority to consider mitigating factors would make the hearing process an empty gesture.

The court found that the regulations, taken as a whole, establish that a hearing officer has the authority to exercise discretion, consider all relevant circumstances, and even to overturn the decision to terminate benefits. As long as the decision is based upon the hearing officer's factual findings and supported by the evidence, it is not an abuse of discretion for the officer to decline to uphold a PHA's decision to terminate benefits. In the wake of a hearing decision, a PHA is authorized by regulation only to review whether the decision is contrary to HUD regulations, or federal, state or local law.[40] That the PHA disagrees with the hearing officer's conclusions, especially regarding matters such as witness credibility or sincerity, is not a basis to disregard the decision. The court noted that the very function of due process at the informal hearing is "to interpose objectivity and impartiality in reviewing the ...decision of the PHA, especially where factual circumstances and issues are disputed...."[41]

While the court found that the tenant must be provided an opportunity to present evidence of mitigating circumstances, and the PHA lacks the authority to refuse to follow a proper hearing decision based on such circumstances, the weight given to such evidence by the hearing officer is entirely discretionary. As the court subsequently made clear in *Carter*, the PHA or hearing officer is not required to consider mitigating factors for which the tenant has not provided evidence.

In *Carter*, the tenant was terminated from the voucher program after LHA learned that her landlord had obtained a judgment against her for $1,440 in damages to the unit. At Carter's informal hearing, she presented witnesses to testify that she maintained her unit and kept it clean, and she testified that she did not leave the apartment with any damage beyond reasonable wear and tear. After the hearing officer upheld the termination decision, Carter appealed to the Housing Court. The court reversed the termination decision, concluding that the decision did not show that the hearing officer had "properly considered all relevant circumstances..."and that there was no indication that LHA considered any other remedies aside from termination,[42] thus determining that LHA had abused its discretion in terminating Carter's benefits.

The appellate court disagreed, noting that while the result was harsh, there was no PHA abuse of discretion. Although applying the same legal principles as in *Wojcik* regarding the applicable standards for informal termination hearings, the court found that the weight given to specific circumstances was within the PHA's discretion.

Central to the appellate court's decision was that Carter, unlike Wojcik, had not offered any evidence of mitigating or extenuating circumstances at her informal hearing, thus there were no mitigating factors to consider. The court declined to read into the regulation's requirement that a PHA consider all relevant circumstances a requirement that the PHA or hearing officer consider even circumstances for which a tenant offers no evidence. It is the tenant's burden to offer evidence of such factors, and a PHA's failure to identify and consider evidence that was never introduced does not violate procedural due process.

Also influential was the fact that an adverse judicial judgment had been obtained against Carter on the issue of waste, and been introduced at the informal hearing.[43] Consequently, the court found no abuse of discretion in the hearing officer's discrediting of Carter's denial at the hearing that she caused any damage beyond reasonable wear and tear.

Conclusion

It is well-settled that voucher participants are entitled to procedural due process protections before a PHA may terminate their voucher benefits. Despite long-standing federal regulations and established case law, there remains substantial variation in the procedures used by PHAs and hearing officers around the country, and obviously considerable disagreement among PHAs, advocates and trial courts as to what constitutes adequate procedural due process. These cases once again demonstrate the continued need for advocates to be diligent in ensuring that the basic due process rights of voucher participants are protected. ■

[39]24 C.F.R. § 982.552(c)(2)(i)(2005).

[40]*Id.* § 982 555(f)(2).

[41]*Wojcik*, 2006 WL 948091, at *5.

[42]*Carter*, 2006 WL 948077, at *2.

[43]*Carter*, 2006 WL 948077, at *5, n 5.

Proposed Legislation Signals New Hope for HUD's Section 3 Program

At a press conference in New York, Congresswoman Nydia Velázquez (D-NY) recently announced the introduction of a bill that would offer new hope for the Section 3 program of the Department of Housing and Urban Development (HUD).[1] HUD's Section 3 program is intended to provide economic and employment opportunities to low-income individuals.[2] Specifically, Section 3 requires recipients of certain forms of HUD funding to provide job training, employment, and contracting opportunities to very low- and low-income residents and eligible businesses.[3] Unfortunately, Section 3 has generally failed to meet these worthwhile goals. In an effort to address this deficiency, Congresswoman Velázquez, with the help of housing rights advocates, has prepared a bill that would provide public housing authorities (PHAs) and community development agencies with the additional tools they will need to implement the Section 3 program the way Congress intended.

The bill, entitled the Earning and Living Opportunities Act, proposes to make a number of key modifications to the current Section 3 program,[4] as detailed in this article.

Scope of the Program

The proposed bill would make the Section 3 program more expansive in terms of the total amount, the variety, and the duration of employment and contracting opportunities that are created through HUD funded projects.

- Currently, HUD requires certain recipients of HUD financial assistance, to the greatest extent feasible, to provide very low- and low-income residents with *30% of the aggregate new hire positions* that arise from a particular Section 3 eligible project.[5] However, this seemingly straightforward numerical goal has historically been quite problematic. Specifically, in the context of the construction industry, the "new hire" designation has proven to be difficult to monitor and enforce because of issues involving contractors' ability to manipulate their headcounts and thus circumvent the regulation. The bill addresses this problem by changing the scope of Section 3 to cover *20% of all hours worked* on Section 3 eligible projects. While the proposed multiplying percentage is lower, it is believed that the corresponding change to an hours multiplier will result in more training and employment opportunities because the absolute number of opportunities will be derived from a much larger base. Moreover, because it is significantly easier to monitor a project's total labor hours versus only those of new hires it is further believed that this change will also improve HUD's monitoring and enforcement efforts.
- A previously unaddressed issue that threatened the long-term employment opportunities of Section 3 residents involved whether the income earned from an existing Section 3 employment opportunity would disqualify the resident from future Section 3 employment opportunities because of the prescribed income-based qualifications. The bill addresses this dilemma by allowing residents to retain their Section 3 designation for five years irrespective of any increases to their income.
- There has been some confusion regarding the type and duration of the employment opportunities that Section 3 creates. For example, does Section 3 only relate to the temporary construction jobs that are associated with a particular project or does the scope of the program also include permanent employment opportunities that flow from the receipt of housing and community development funds (i.e. restaurant, hotel, business park, or other related positions that may be associated with a particular community development block grant). The bill clarifies the scope of the Section 3 program by stating that the program is also applicable to permanent jobs generated as a result of the funding.

Monitoring and Compliance

While the Section 3 program has been in existence for more than thirty-five years, the program has historically been marked by minimal monitoring and compliance procedures. As such, contractors are often unaware of their Section 3 obligations and are seldom reprimanded if they fail to meet their obligations. In response to these inadequate procedures the bill proposes the following requirements.

- In an attempt to promote greater monitoring and compliance on the local level, the bill would require that Section 3 committees be established within each PHA. These committees would be composed of a small group of interested parties including the contractor,

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[1]Press Release, Congresswoman Nydia M. Velázquez, Velázquez Legislation Helps Low-Income Residents Secure Job Training and Employment (Feb. 23, 2006), *available at* http://www.house.gov/velazquez/PressReleases/2006/pr022306.htm. Congresswoman Velázquez represents the 12th District of New York, which includes parts of Brooklyn, Queens and Manhattan.

[2]12 U.S.C.A. § 1701u(b) (West 2001).

[3]*Id.* § 1701u(c)-(d).

[4]Earning and Living Opportunities Act, H.R. 5164, 109th Cong. (2006) [hereinafter Earning and Living Opportunities Act].

[5]24 C.F.R. § 135.30(b) (2006).

PHA officials, and members of the Resident Advisory Board (RAB) and/or other community-based organizations. Each committee would maintain a registry of eligible low- and very low-income persons who have expressed an interest in Section 3 employment and/or contracting opportunities. This registry would then be made available to each respective PHA and/or recipient of other federal housing and community development assistance to facilitate job referrals and to determine the need for job training and other support services.

- Additionally, contractors must submit a plan to the contracting agency and the Section 3 committee that explains how they propose to comply with Section 3 hiring requirements. Moreover, upon completion of the project, contractors must submit evidence attesting to their compliance with the Section 3 requirements.
- If contractors cannot meet their respective Section 3 obligations, they must demonstrate that they exercised all feasible means to reach their Section 3 obligation. If contractors fail to demonstrate that they exercised all feasible means to satisfy their Section 3 obligations they will be fined an amount no less than 1% of the contract value. The funds associated with these fines will be deposited into a local account that provides job training opportunities for low- or very low-income persons in the community in which the project was located.

Reporting

HUD currently requires recipients of Section 3 eligible financial assistance to submit annual reports to HUD explaining the effectiveness of their particular Section 3 program.[6] Unfortunately, only a relatively few recipients compile and submit this information. Moreover, HUD has historically done little to compel recipients to provide this information. The bill proposes to improve the reporting standards surrounding the Section 3 program by enacting the following requirements:

- All PHAs and other recipients of housing and community development funds will be required to make quarterly reports to HUD regarding the number of hours worked by Section 3 residents under their respective programs. The reports will also include information pertaining to the number and dollar amount of contracts awarded to Section 3 businesses. Moreover, in an attempt to make this information readily available to the general public, PHAs must include information regarding Section 3 compliance in their five-year plan, annual plan, or any alternative plan which calls for similar reporting.
- In addition, the information HUD receives from the above-noted quarterly field reports must be summarized and reported to Congress on an annual basis. At a minimum, these reports to Congress must include the number of jobs and training opportunities generated, the number of hours worked by low- and very low-income persons, and the number and amount of contracts awarded to Section 3 businesses.

Collectively the proposed amendments represent a positive first step toward the revitalization of HUD's Section 3 program. However, the proposed legislation fails to address how an aggrieved individual can seek relief and the myriad of related issues involving an individual's private right of action.[7] Nevertheless, given the dynamics of the current administration, this bill will surely face an uphill battle as it attempts to make its way out of the House committee. ■

[6]24 C.F.R. § 135.90 (2006). This information could presumably be captured through HUD's standardized report HUD-60002.

[7]For an interesting discussion regarding the use of Section 1983 of the Civil Rights Act as a tool to enforce federal laws, see Jane Perkins, *Using Section 1983 to Enforce Federal Laws*, Clearinghouse Rev., Mar.-Apr. 2005, at 720.

Save the Dates

Housing Justice Network Meeting October 22-23, 2006

National Housing Training October 21, 2006

Please join us for the next meeting of the Housing Justice Network (HJN) in Washington, D.C. The meeting will bring housing advocates together to discuss and review issues on which HJN working groups have been concentrating, learn about critical housing issues, and formulate new plans.

The HJN meeting will be preceded by a one-day basic federal housing training sponsored by the National Housing Law Project. Low-income housing advocates are invited to both events. Details will made available over the next several months.

Interested in helping plan the HJN meeting? Contact Gideon Anders at ganders@nhlp.org.

Increasing the Usability of Housing Choice Vouchers for People with Disabilities

By Michael Allen*

Among all people in the country with "worst case housing needs," people with disabilities are recognized as having the greatest needs.[1] That is because disability is highly correlated with poverty, leaving people with disabilities facing insurmountable affordability problems.[2] As a result, they disproportionately depend on subsidized housing programs to afford rental housing and to avoid institutionalization in hospitals, nursing homes, and board and care homes.

People with disabilities experience project-based housing in a manner much different than people without disabilities. Even though public housing authorities (PHAs) and private owners of federally assisted housing have an obligation to make 5% of units fully accessible to people with mobility impairments,[3] and to make other physical and program changes to ensure accessibility,[4] project-based housing is also associated with a concentration of people with disabilities, thus undermining the objective of their full integration into "the American mainstream."[5] In fact, the proliferation of "special needs" programs for people with disabilities has seemed to ignore the integration mandate that has been at the heart of the Fair Housing Act (FHA) since its passage in 1968, and that is the essence of the Americans with Disabilities Act (ADA), which requires that public services be offered in the "most integrated setting appropriate to the needs of qualified individuals with disabilities."[6]

People with disabilities want decent, safe and affordable housing that is both physically accessible and accessible to community services and community activities, including employment, transportation, education, health care and civic life. In short, most people with disabilities say they do not want "special needs" housing but rather housing that looks like where you and I live, and they don't want their use of health care or personal care services to define the location or appearance of their housing.[7]

That is why the Housing Choice Voucher Program (HCVP) is so attractive for people with disabilities: it promotes community integration by allowing them to choose housing virtually anywhere in the community. In addition to its general features that would be attractive to all poor people looking for the obvious opportunities that come with living in "better" neighborhoods, HCVP offers a number of unique opportunities for people with disabilities, some explicit in federal regulations, and some through the "reasonable accommodations" mandate of the FHA, ADA and Section 504 of the Rehabilitation Act (Section 504), all of which apply to the HCVP, whether the vouchers are administered by a PHA or another freestanding public agency.[8] These statutory mandates can allow people with disabilities to use the HCVP in unique ways that are unavailable to people without disabilities. The balance of this article will focus on those unique features.

Disability Access Issues in the HCVP

In 1988, the Department of Housing and Urban Development (HUD) first promulgated accessibility rules to govern what was then called the "Section 8 Voucher Program," under the authority granted by the Rehabilitation Act of 1973. Promulgated as 24 C.F.R. § 8.28, those rules require HCVPs to be accessible to people with disabilities.

Consistent with the ADA's "most integrated setting" mandate, HCVP administrators must ensure that local programs are run in a fashion that is accessible to people with disabilities in every phase of the program, including marketing, housing search, leasing, rent levels, occupancy and maintenance of the voucher.

Marketing

Because of their receipt of federal funds, HCVP administrators are required to "affirmatively further fair housing."[9] In addition, administrators are required, "in providing notice of the availability and nature of housing

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[1]HUD, Rental Housing Assistance—The Worsening Crisis (2000), *available at* http://www.huduser.org/Publications/AFFHSG/WORSTCASE00/worstcase00.pdf.

[2]*See* Technical Assistance Collaborative, Priced Out in 2004: The Housing Crisis for People with Disabilities (2005), *available at* http://www.tacinc.org/Docs/HH/Priced_Out_in_2004.pdf.

[3]24 C.F.R. §§ 8.22, 8.25 (2005).

[4]*Id.* § 8.33.

[5]H.R. Rep. No. 100-711, *reprinted at* 1988 U.S.C.C.A.N. 2173, 2179 (1988).

[6]28 C.F.R. § 130(d) (2005).

[7]S. Yeich et al., *The Case for a "Supported Housing" Approach: A Study of Consumer Housing and Support Preferences*, Psychol. Rehab. J., vol. 18, no. 2 (1994). *See also* St. Louis Five Year Strategy Consolidated Plan, 2000-2004 (housing preference for a great many people with disabilities is non-congregate housing in the community), *available at* http://stlouis.missouri.org/5yearstrategy/index.html.

[8]For more detail on these concepts, see Bazelon Center for Mental Health Law, What Fair Housing Means to People with Disabilities (2003), *available at* http://www.bazelon.org/issues/housing/publications/wfhm.pdf.

[9]42 U.S.C.A. § 3608(e) (West 2003). *See also* Exec. Order No. 12,892 (Jan. 17, 1994), available at http://www.hud.gov/offices/fheo/FHLaws/EXO12892.cfm.

assistance for low-income families under program requirements, [to] adopt suitable means to assure that the notice reaches eligible individuals with handicaps."[10] This affirmative marketing requirement is made explicit because of HUD's concern that programs would not otherwise take active steps to advise people with disabilities of the availability of rental subsidies. In concrete terms, the regulation potentially encompasses the following steps: (1) partnering with centers for independent living; (2) providing applications in accessible formats; (3) visiting the home of a person with a disability to deliver an application or provide assistance in completing it; or (4) allowing more time to fill out the application.[11]

This affirmative marketing requirement is made explicit because of HUD's concern that programs would not otherwise take active steps to advise people with disabilities of the availability of rental subsidies.

HCVP administrators are also required to "encourage participation by owners, include encouragement of participation by owners having accessible units…."[12] That means that voucher agencies have to take *affirmative* steps to reach out to private owners, and cannot simply wait for landlords to sign up. This is particularly important for people with mobility impairments who need units that are accessible. Finally, programs must, when extending assistance to a household that includes a person with a disability, "include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit."[13] At least one PHA has been sanctioned by HUD for failing to take such affirmative steps, and ordered to develop a list of accessible units in the jurisdiction and to make it widely available as part of its Section 504 obligation.[14]

Beyond these regulatory requirements, voucher agencies are subject to the general obligation under the FHA, ADA and Section 504 to provide reasonable accommodations to people with disabilities, when requested, in order to ensure equal opportunity to participate in the HCVP. By their very nature, accommodations involve changes in rules, policies, practices or services where such may be necessary to afford equal opportunity to participate in the program. Because these are exceptions to generally applicable rules, they may not specifically be mentioned in the administrative plan of an agency. Rather, people with disabilities who need exceptions must affirmatively ask for them.[15] Of course, voucher agencies should communicate their willingness to accept accommodation requests and to consider them expeditiously. Not all requests for additional flexibility or outreach in marketing have been held to be reasonable. For instance, a PHA has been found to meets its civil rights obligations by working closely with disability advocacy groups in reopening its waiting list, but was not required to take additional steps to ensure that an application is available to a specific applicant at a specific time.[16]

Housing Search

People with disabilities often face obstacles to finding appropriate housing, either because of the difficulty of getting out to see available units, or because there are fewer units on the market that are accessible, meet housing quality standards and are within the HCVP payment standard. Recognizing these facts, the Section 504 regulations require HCVP administrators to "[t]ake into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers."[17] In other words, voucher agencies should be prepared to routinely offer extensions on the life of vouchers when people with disabilities have difficulty in finding appropriate units or obtaining a lease. In fact, some PHAs provide as much time as necessary to find a unit. Such policies may or may not appear in the PHA's administrative plan.

Another issue that arises for people with disabilities is the question of portability of a voucher in order to ensure access to disability supports and services. While portability limitations in the first year are theoretically subject to the reasonable accommodation requirement, the single reported FHA decision in this area held that waiving the one-year waiting period prior to portability to another jurisdiction amounted to an undue burden on the PHA, and a fundamental alteration of its HCVP.[18]

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[10] 24 C.F.R. § 8.28(a)(1) (2005).

[11] Technical Assistance Collaborative, Section 8 Made Simple (2d ed. 2003), *available at* http://melvilletrust.org/pdfs/TAC_Sect8_2ndEd.pdf.

[12] 24 C.F.R. § 8.28(a)(2) (2005).

[13] *Id.* § 8.28(a)(3).

[14] *See* Pierce v. Dep't of Hous. Servs. of Washington County, HUD Section 504 Case No. 10-96-04-019-370 (Mar. 9, 2001) (letter decision from Deputy Assistant Secretary Floyd O. May) (copy on file with NHLP).

[15] *See, e.g.*, Bazelon Center for Mental Health Law, What Fair Housing Means for People with Disabilities (2003), *available at* http://www.bazelon.org/issues/housing/publications/wfhm.pdf.

[16] *See, e.g.*, Louie v. Davis, 1998 WL 798890 (N.D. Cal. Nov. 5, 1998) (holding that voucher agency had not violated the reasonable accommodation mandate, where it had worked closely with disability organizations to distribute voucher applications when the waiting list reopened).

[17] 24 C.F.R. § 8.28(a)(4) (2005).

[18] *See* Hinneberg v. Big Stone Gap Redev. & Hous. Auth., 2005 WL 3117287 (Minn. Nov. 23, 2005).

Leasing

Because of the difficulty of finding accessible housing in many markets, people with disabilities may find it difficult to get vouchers under lease. In general, the HCVP rules prohibit a voucher holder from renting from a relative.[19] To ensure greater usability of vouchers, HCVP regulations allow a person to rent from a relative who is a resident owner as a reasonable accommodation for her disabilities.[20] However, recent problems with abuse in programs have led HUD to be more vigilant. As a result, PHAs in many jurisdictions are scrutinizing such requests more closely.

Rent Levels

The Section 504 regulations explicitly provide that a voucher agency must, "[if] necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under Sec. 982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities."[21] Under current HUD regulations and guidance, voucher agencies have unfettered discretion to approve an exception rent that is 110% of the payment standard. Exception rents up to 120% (or higher) must be approved by HUD.[22] However, because every grant of an exception rent reduces funds available, many PHAs will grant them (or request HUD approval) very grudgingly. That means advocates have to be aggressive in seeking them where they are necessary for their clients to benefit from the HCVP.

Occupancy

Another way that obstacles to living in community can be overcome is through the use of live-in aides. HUD has adopted rules specifically permitting live-in aides in HCVP.[23] Under HUD's definitions, a live-in aide is one whose primary residence is in the subsidized unit of a tenant whose disability requires the presence of the aide. While the tenant may be entitled to live in a larger unit so that the aide can have a separate bedroom,[24] the aide's income is not counted in the calculation of the tenant's eligibility or rent obligation.[25] Despite the apparent rigidity of the HUD regulations, relatives are not automatically disqualified from serving as live-in aides.[26] It is clear that a PHA "*must* approve a live-in aide if needed as a reasonable accommodation in accordance with 24 C.F.R Part 8 to make the program usable by the family member with a disability."[27] When a live-in aide is present as a reasonable accommodation, the PHA must then provide the voucher holder with an appropriate unit size certificate.

Structural modifications for accessibility can be expensive, and owners of private units may, therefore, be unwilling to undertake them. Recently, though, HUD explicitly recognized that a PHA's HCVP administrative fees can be used to modify housing units to make them accessible.[28] The applicable HUD notice provides that the "administrative fees . . . shall only be used for activities related to the provision of section 8 tenant-based rental assistance, including related development activities. Examples of related development activities include, but are not limited to, unit modification for accessibility purposes . . . ." [29]

Finally, although Section 504 regulations explicitly provide that a private landlord does not acquire a Section 504 obligation merely by accepting a voucher,[30] those same regulations also require, "[i]n order to ensure that participating owners do not discriminate in the recipient's federally assisted program, [an HCVP administrator] shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of nondiscrimination."[31] The practical effect of these provisions is that private owners will not be required to make and pay for structural changes to promote accessibility, but remain liable—by contract and by operation of the FHA—for discrimination against people with disabilities.

Maintaining a Voucher

Sometimes a disability can make it more difficult to comply with voucher program requirements, such as those related to recertification or housing quality standards inspections. Voucher agencies may be required, as a reasonable accommodation, to reschedule appointments, provide home visits or even reinstate a voucher that has lapsed because of noncompliance.[32]

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[19]*See, e.g.*, 24 C.F.R. § 982.615(b)(3) (2005).

[20]*Id.* § 982.306(d). *See also* Filshtein v. West Hartford Hous. Auth., Conn. Comm'n on Human Rights & Opportunities, No. 0050061 (Oct. 4, 2001), *available at* http://www.state.ct.us/chro/metapages/HearingOffice/HODecisions/DMW50061.htm.

[21]24 C.F.R. § 8.28(a)(4) (2005).

[22]Accessibility Notice: Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988, PIH 2002-01 (Jan. 22, 2002), *available at* http://www.hud.gov/offices/fheo/library/LVpihnotice.pdf.

[23]24 C.F.R. § 982.316 (2005).

[24]*Id.* § 982.402(a)(6).

[25]*Id.* § 5.609(c)(5).

[26]*But see* HUD's *Live-In Aides and the Housing Choice Voucher Program Fact Sheet*, at 5-6, n.7 (2003), *available at* http://www.tacinc.org/cms/admin/cms/_uploads/docs/Final_Live-in_Aide.pdf (describing this issue as "one of the most complicated for PHAs to address.").

[27]24 C.F.R. § 982.316 (2005).

[28]Implementation of the 2006 HUD Appropriations Act (Public Law 109-115), PIH 2006-05 (Jan. 13, 2006).

[29]For more information, see Steve Gold, Modifications for Accessibility in Units in the Voucher Program, *at* http://www.stevegoldada.com/stevegoldada/archive.php?mode=N&id=151 (last visited May 1, 2006).

[30]24 C.F.R. § 8.3 (2005) (definition of "Recipient").

[31]*Id.* § 8.28(b).

[32]*See* Technical Assistance Collaborative, Section 8 Made Simple 57-60 (2d ed. 2003), *available at* http://melvilletrust.org/pdfs/TAC_Sect8_2ndEd.pdf.

Can Private Landlord Participation in the HCVP Be Required?

Because HCVP is described as a "voluntary" program, conventional wisdom suggests that a private landlord cannot be required to participate by accepting voucher holders as tenants. Two civil rights arguments have been made in an attempt to overcome this view. First, people with disabilities have requested a reluctant landlord to take a voucher as a reasonable accommodation under the FHA, ADA or Section 504. Second, a number of states and localities, and the federal Low Income Housing Tax Credit (LIHTC) program, have requirements that may forbid a landlord to turn away voucher holders because of their status as voucher holders.

The reasonable accommodation argument got off to a decidedly bumpy start. The few courts that *have* been faced with such a request have met it with resistance. In *Salute v. Stratford Greens Garden Apartments*,[33] for instance, the Second Circuit held that a policy forbidding voucher participants from tenancy did not need to be changed to reasonably accommodate individuals with disabilities. The court found that such a change was neither reasonable nor necessary. Similarly, in *Schanz v. Village Apartments*,[34] the court held that the landlord need not change a "no co-signer" policy to accommodate an individual with a disability whose rent the Hope Network would guarantee.

Despite the refusal of the *Salute* and *Schanz* courts to grant reasonable accommodations in such a situation, individuals in other jurisdictions may still have success on the merits of similar claims. Therefore, persons with disabilities who seek housing should request an accommodation to economic requirements for application if they are unable to meet those requirements because of their disability, but are otherwise capable of complying with apartment rules and regulations. More recently, in *Giebeler v. M & B Associates*,[35] the Ninth Circuit held that an unwilling landlord may be required to accept a co-signer where an applicant with a disability could demonstrate that his inability to meet a minimum income requirement was caused by his disability. The court held that the *Salute* and *Schanz* decisions had been implicitly rejected by the U.S. Supreme Court in *U.S. Airways v. Barnett*,[36] a case construing the ADA's reasonable accommodation requirement in employment. In *Barnett*, the Court held the accommodation mandate may require an employer to treat people with disabilities more favorably in order to afford them equal housing opportunities. *Giebeler* makes it more likely—in the Ninth Circuit and in other courts finding its analysis convincing—that participation in HCVP can be required over a landlord's objection.[37]

Finally, a number of states and localities, and the federal LIHTC program, have provisions requiring landlords to accept vouchers.[38] While intended to protect all poor people, these provisions are particularly useful to people with disabilities who have acquired vouchers and may face barriers in getting them under lease.

Conclusion

Legal services housing advocates have a number of tools to expand the usability of the HCVP for people with disabilities that are not available outside the disability context. Better deployment of those tools can help people with disabilities to avoid expensive and dehumanizing institutional settings, and help to achieve the community integration required by the FHA, ADA and Section 504. ■

[33] 136 F.3d 293, 302 (2d Cir. 1998).

[34] 998 F. Supp. 784, 786 (E.D. Mich. 1998).

[35] 343 F.3d 1143 (9th Cir. 2003).

[36] 535 U.S. 391 (2002).

[37] *See also* Sabi v. Donald T. Sterling Corp., No. BC 313345, slip op. (Cal. Super. Ct. Apr. 12, 2006) (denying defendant's motion for summary judgment in a case involving a landlord's refusal to accept a housing choice voucher as a reasonable accommodation for a person with a disability) (copy on file with NHLP).

[38] NHLP, Source of Income Protections in the U.S. (2005), *available at* http://www.nhlp.org/html/sec8/source_of_income/2005%20Source%20of%20Income%20Statutes%20%5B3.28.05%5D.pdf; 26 U.S.C. § 42(h)(6)(b)(iv) (West, WESTLAW through P.L. 109-220 approved 05-05-06); 26 C.F.R. § 1.42-5(c)(1)(xi) (West, WESTLAW through May 4, 2006; 71 FR 26266) (Low Income Housing Tax Credit provisions prohibiting a landlord from turning away an applicant because of status as a voucher holder).

New Section 8 Restrictions for Students

by Georgia Garthwaite*

Last year, Congress responded to concerns about privileged college students receiving federal housing assistance in addition to housing stipends and other educational aid by imposing new Section 8 program eligibility and income calculation requirements in the Department of Housing and Urban Development (HUD) FY 2006 appropriations law.[1] Aiming to reserve Section 8 assistance for the truly needy, HUD implemented these changes in a final rule effective January 30, 2006.[2] HUD provided guidance in a follow-up notice on April 10, 2006.[3]

HUD's rule imposes new eligibility requirements on students living away from their parents and expands the definition of annual income for the purposes of determining eligibility and setting rent for student applicants. It applies only to students seeking Section 8 assistance separately from their parents, and not to students living in their parents' households. HUD requires public housing authorities (PHAs) to terminate or deny Section 8 assistance for households that fail to meet the new eligibility requirements.[4]

Programs Affected

These changes only affect HUD's tenant-based and project-based Section 8 programs.[5] The new restrictions do *not* apply to HUD's public housing program, other HUD-subsidized low-income housing programs, the Rural Housing Service rental programs, or Low Income Housing Tax Credit (LIHTC) programs,[6] if no Section 8 assistance is provided.

New Rules

Under the previous rule, student status did not affect eligibility for Section 8, and all student financial assistance (including scholarships and loans paid to the student or to the educational institution) was excluded from annual income for both eligibility and rent-setting purposes.[7] The new rules mean potentially dramatic changes for many students.

The new rule addresses two related aspects of the Section 8 program: program eligibility and income calculation. First, the eligibility of students seeking Section 8 assistance separate from their parents will depend not only on their own income, but on their parents' as well, unless the students are independent under the rule. Second, the calculation of students' income may now include educational financial assistance.

New Eligibility Restrictions

Under the new rule, many college students seeking Section 8 separate from their parents' households face new income eligibility restrictions. Any person who:

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[1]Department of Housing and Urban Development Appropriations Act, 2006, Pub. L. No. 109-115, § 327, 119 Stat. 2936 (to be codified at 42 U.S.C. § 1437f). Student eligibility for other low-income housing has been a controversial issue. *See, e.g.*, the discussion of tax credit eligibility in note 6, *infra*.

[2]Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937, 70 Fed. Reg. 77,742 (Dec. 30, 2005) (to be codified at 24 C.F.R. pt. 5). Because Congress instructed HUD to issue a new rule within thirty days of enactment (November 30, 2005), HUD issued the final rule on December 30, 2005, without the usual public notice and comment period.

[3]Notice, Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937, 71 Fed. Reg. 18,147 (Apr. 10, 2006). HUD is developing additional guidance on the new rule, including separate guidance for the administration of the Moderate Rehabilitation, Project-Based Certificate and Project-Based Voucher Programs.

[4]24 C.F.R. § 982.552(b)(5); *see* 70 Fed. Reg. 77,745 (Dec. 30, 3005). While the new rule requires PHAs to terminate assistance for ineligible students in the Section 8 programs they administer, it does not specifically require private owners of project-based Section 8 properties to terminate assistance. However, the rule establishes a general prohibition on assistance for ineligible students. 24 C.F.R. § 5.612; *see* 70 Fed. Reg. 77,743-44 (Dec. 30, 2005). Moreover, HUD strongly encourages Section 8 program administrators to recertify households who may be affected by the new rule. 70 Fed. Reg. 77,742 (Dec. 30, 2005).

[5]Those programs include the Section 8 New Construction, Substantial Rehabilitation, State Agency, Rural Housing Services Section 515, Loan Management Set-Aside and Property Disposition Set-Aside Programs; the Section 202/8 Direct Loan Program for the Elderly and Persons with Disabilities; the Housing Choice Voucher Program; the Project-Based Certificate Program; the Project-Based Voucher Program; and the Section 8 Moderate Rehabilitation Program. 71 Fed. Reg. 18,146 (Apr. 10, 2006).

[6]While the LIHTC statute does not expressly prohibit full-time students' occupancy of tax credit units, units occupied entirely by full-time students no longer qualify as low-income units for tax credit purposes unless the students fall under specific exceptions. 26 U.S.C. § 42(i)(3)(D) (2000). Nothing in § 42 requires that full-time students be evicted from the unit, however. I.R.S. Info. Ltr. 2000-0088 (June 2, 2000) (explaining that student occupancy may cause a unit or building to lose credit, but no rule requires eviction). In addition, under the statute, full-time students may occupy tax credit units if they are individuals who receive assistance under Title IV of the Social Security Act, or are enrolled in certain federal, state or local job training programs; or are in a household comprised entirely of full-time students who are single parents and their children who are not dependents of another individual, or who are married and file a joint tax return. In a private letter ruling, however, the I.R.S. has also permitted a unit occupied by a full-time student to retain its low income tax credit, even though the student did not fall under any of the exceptions above. I.R.S. Priv. Ltr. Rul. 111456-03 (Sept. 9, 2003).

[7]24 C.F.R. § 5.609(c)(6) (2003).

- is enrolled in an institution of higher education,[8]
- is under 24 years of age,
- is not a U.S. military veteran,
- is unmarried, and
- has no dependent children,[9]

must satisfy new income eligibility criteria. To receive Section 8 assistance separate from his or her parents' household, such a student must not only be income-eligible under the new calculation (described below), but the student's parents must be eligible as well,[10] unless the student is independent (defined below). Unless both the student and the parents are eligible, the student cannot receive Section 8. For example, a 19-year-old single student without dependents might be income-eligible herself, but if her parents' income exceeds program limits she cannot receive Section 8 assistance on her own, unless she is independent of her parents. On the other hand, the eligibility of a 20-year-old student with two dependent children will be decided solely on his household income, even if his parents' income exceeds program limits.

Exception for Independent Students

In its guidance to the final rule, HUD recognized that students under age 24 who are independent from their parents may receive Section 8 assistance without regard to their parents' income eligibility, similar to other programs.[11] To establish independence under the HUD rule—

- the student must be of legal contract age under state law;
- the student must have established a household separate from parents for at least one year, or meet the U.S. Department of Education definition of an independent student;[12]
- the student cannot be claimed as a dependent; and
- the student must provide a written certification of the amount of financial assistance his or her parents will provide, signed by the person providing that support.[13]

If a review of this information reveals that the student is independent of his or her parents, the student may be eligible without consideration of his or parents' income eligibility. For example, a 23-year-old graduate student (meeting Department of Education criteria for independence) who is neither claimed as a dependent nor receiving financial assistance from her parents could be eligible for Section 8 regardless of her parents' income.

New Income Calculation

Under the statute, all students seeking Section 8 assistance separately from their parents—except those students who both are over the age of 23 and have dependent children—are subject to new income calculation requirements for Section 8 programs.[14] Annual income now includes all educational financial assistance in excess of tuition that is received under the Higher Education Act,[15] from private sources,[16] or from an institution of higher education. Educational financial assistance includes athletic and academic scholarships that exceed a student's tuition costs; it excludes loan proceeds.[17] This new income calculation is used to determine both income eligibility and rent.[18] (Note, that the other eligibility restrictions described above also apply.)

[8]Higher Education Act of 1965, § 102, 20 U.S.C. 1001-02 (2000) (reprinted in 71 Fed. Reg. 18,149 (Apr. 10, 2006)).

[9]A "dependent child" is a member of the family other than the family head or spouse, excluding foster children and foster adults, who is under 18, has a disability, or is a full-time student. 24 C.F.R. §5.603 (reprinted in 71 Fed. Reg. 18, 148 (Apr. 10, 2006)). This definition does not include other persons recognized as legal dependents under Title IV, such as elderly dependent parents. 20 U.S.C. § 1087vv(d)(6) (2005).

[10]HUD interprets parents' eligibility to indicate income eligibility. 70 Fed. Reg. 77,742 (Dec. 30, 2005).

[11]71 Fed. Reg. 18,147 (Apr. 10, 2006). This was the first mention of this important exception, which was not stated in the law or the final rule.

[12]The only relevant "independent student" criteria for Title IV aid are to (1) be an orphan or ward of the court through the age of 18; (2) have legal dependents other than a spouse (including elderly dependent parents); or (3) be a graduate or professional student. Under any of the other criteria (be at least 24 years of age, a U.S. military veteran, or married), a student would already be exempt from the new Section 8 eligibility requirements.

[13]This certification must be signed by the person providing the support, even if the student receives no support. 71 Fed. Reg. 18,147 (Apr. 10, 2006). HUD does not specify what other program practices support this criteria, so it is not clear how to address the possibility of an estranged or abusive parent refusing to sign a certification of nonsupport. HUD's guidance suggests that Section 8 administrators can take a flexible approach to determine whether parents' income is relevant. This permits administrators to prevent abusers from using the availability of Section 8 against their victims, consistent with the Violence Against Women Act 2005 (VAWA) amendments to federal housing programs. Pub. L. No. 109-162, tit. VI, 119 Stat. 2960 (2006).

[14]For students over the age of 23 with dependent children, educational financial assistance is excluded from their annual income. Pub. L. No. 109-115, § 327(b).

[15]Higher Education Act Assistance includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and the Federal Work Study programs. Loan programs cited in the Higher Education Act, such as Perkins, Stafford and Plus loans, are excluded. 71 Fed. Reg. 18,148 (Apr. 10, 2006).

[16]Assistance from private sources means non-governmental sources of assistance, including assistance from parent, guardian or other family member, whether or not the family member is residing in the Section 8 unit, and from other persons outside the unit. 71 Fed. Reg. 18, 148 (Apr. 10, 2006).

[17]Educational loans, like all loans, are excluded from annual income.

[18]Congress confined the use of the new income calculation to determining eligibility, and HUD's final rule suggested nothing different. Pub. L.

For example, if a student's tuition is $15,000 per year, and the student receives $5000 in loans, $2000 from her parents, and $12,000 in grants and scholarships, she would not have any income from educational assistance because her non-loan aid ($14,000) does not exceed her tuition costs ($15,000). However, a student with a tuition of $15,000 who receives a $10,000 grant, $1500 in Federal Work Study funds, and a $7500 stipend for living costs would have $4000 in educational assistance counted toward his income ($10,000 + $1500 + $7500 - $15,000 = $4000). It is unlikely this amount would affect the student's eligibility, but it could significantly increase his required rental contribution. While it seems unlikely that many students' educational aid will exceed their tuition costs, the burden on those unfortunate few could be substantial.

The revised income calculation, however, may have unintended consequences for needy students outside the conventional college mold.

Exceptions

The new income calculation does not apply to households in which students live with their parents.[19] The financial assistance of students living with their parents will still be excluded from the household's annual income.[20] In non-parent households with eligible students, on the other hand, the students' educational financial assistance will be included in household income for eligibility and rent determination purposes.

Households receiving Section 8 that include ineligible students living with people other than their parents will have their Section 8 assistance terminated. This means that if a student in a non-parent household becomes ineligible for Section 8 because of an increase in income, the entire household will lose its assistance.[21]

As explained above, the new income calculation requirements do not apply to students over age 23 with dependent children.[22] These students will continue to have all educational assistance excluded from their annual income for determinations of eligibility and rent-setting, even if they receive scholarships in excess of their tuition costs. The income of a 27-year-old student with three dependent children would not include any student aid.

HUD has stated that it contemplates termination of assistance only for students under age 24, noting that Congress' focus in amending the program was on the income eligibility of non-veteran, unmarried students under age 24 without dependent children.[23] However, the rule may have a broader application. The income of a 45-year-old college student without dependent children must now include any non-loan financial aid she receives that exceeds her tuition costs. If the additional income makes her ineligible for Section 8, her assistance must be terminated or denied; as a nontraditional college student, however, it is unlikely she would receive more non-loan educational assistance than she would owe in tuition. A 27-year-old graduate student, on the other hand, might receive a fellowship in excess of tuition; unless he has dependent children, his income would include his excess educational aid, which could raise his required rent contribution or even make him ineligible for Section 8 altogether.

Conclusion

The new eligibility restrictions will have the greatest effect on their intended target—college students who are often not so needy as they might have appeared under the old rule—while preserving the eligibility of truly needy students. The revised income calculation, however, may have unintended consequences for needy students outside the conventional college mold, for whom even a small increase in income might have a significant effect on eligibility and rent determinations. ■

No. 109-115, § 327(b); 70 Fed. Reg. 77,742 (Dec. 30, 2005). In its guidance, however, HUD stated that the new income calculation will be used for two purposes: determining income eligibility, and calculating rent. 71 Fed. Reg. 18,146 (Apr. 10, 2006). Tenants adversely affected by this distinction, although they may be few, have a possible legal claim to challenge the breadth of the HUD regulation.

[19] 71 Fed. Reg. 18,147 (Apr. 10, 2006). HUD defines parents, for purposes of this rule, as biological or adoptive parents, or guardians (including grandparents, aunt/uncle, godparents, etc.), or other definition adopted by the PHA. *Id.* at 18,149.

[20] 24 C.F.R. § 5.609(b)(9). *See* 71 Fed. Reg. 18,147 (Apr. 10, 2006) (citing language of the 2006 act).

[21] 71 Fed. Reg. 18,148 (Apr. 10, 2006). In its guidance, HUD provides greater detail on termination procedures for ineligible individuals living in households with eligible members. These guidelines apply to the Housing Choice Voucher Program; HUD will provide separate guidance for administering the Moderate Rehabilitation, Project-Based Certificate and Project-Based Voucher Programs.

[22] 71 Fed. Reg. 18,147 (Apr. 10, 2006); Pub. L. No. 109-115, § 327(b).

[23] 70 Fed. Reg. 77,745 (Dec. 30, 2005); 71 Fed. Reg. 18,148 (Apr. 10, 2006).

Additional Note

In 2004, Congress required athletic scholarships that include housing costs to be considered adjusted income for Section 8 and public housing. Pub. L. No. 108-447, § 224, 118 Stat. 3321 (2004). HUD implemented this provision for all PIH programs in 2005. HUD Notice, PIH 2005-16 (HA) (June 15, 2005, expiring June 30, 2006) (guidance on screening college students, rejecting students who receive housing assistance in athletic scholarships, and using local preferences to favor needy families).

Recent Cases

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

Fair Housing — Disparate Impact; Fair Housing — Disparate Treatment

2922 Sherman Avenue Tenants' Assoc. v. District of Columbia, 2006 WL 954582 (D.C. Cir. Apr. 14, 2006). Resident organizations challenged plans by District of Columbia and private landlords to close certain apartment buildings as a violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq*., and the D.C. Human Rights Act, alleging disparate impact and disparate treatment on the basis of national origin. The D.C. Circuit ruled, *inter alia*, that statistical evidence regarding the demographic composition of neighborhoods surrounding the apartment buildings, but not the buildings themselves, was not sufficient to support the jury's verdict at trial that the plans had a disparate impact on Latinos. However, the D.C. Circuit also ruled that this neighborhood demographic evidence did support the jury's disparate treatment verdict.

Fair Housing — Generally; Standing to Sue

Long Branch Citizens Against Hous. Discrimination, Inc. v. City of Long Branch, 2006 WL 1044814 (D.N.J. Apr. 18, 2006) (marked "not for publication"). In this suit challenging city ordinances intended to discourage students from renting in single-family dwellings, the federal district court issued partial summary judgment in favor of the city defendants based on plaintiffs' lack of standing. Plaintiffs contended that the ordinance amounted to unlawful discrimination on the basis of race and familial status in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq*., and state law. Emphasizing the "numerous exceptions" provided under the ordinance, the court concluded that the plaintiffs had failed to demonstrate imminent harm.

Housing Choice Voucher Program — Terminations

Carter v. Lynn Hous. Auth., 845 N.E.2d 1153 (Mass. App. Ct. 2006) and *Wojcik v. Lynn Hous. Auth*., 845 N.E.2d 1160 (Mass. App. Ct. 2006). See *Courts Revisit Procedural Protections for Voucher Terminations* in this issue.

Public Housing — Trespass and Related Policies

State v. Hayes, 2006 WL 1029744 (Tenn. Apr. 20, 2006) (not yet released). In this criminal appeal, the Supreme Court of Tennessee concluded that an identification checkpoint at the street entrance of a public housing complex violated Fourth Amendment prohibitions against unreasonable seizure. The court summarized its holding:

> We granted this appeal to answer a question of first impression: whether an entry identification checkpoint at which police officers stop and question persons attempting to enter a public housing development, whose conduct is unremarkable and free from suspicion, is an unreasonable seizure in violation of the United States Constitution and article I, section 7 of the Tennessee Constitution. Under the facts presented in this case, we answer that question in the affirmative. ■

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[1]http://www.westlaw.com.

[2]http://www.lexis.com.

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

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 April of 2006. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

Copies of the cited documents may be secured from various sources, including (1) the Government Printing Office's Web site on the World Wide Web,[1] (2) bound volumes of the *Federal Register*, (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.

HUD Federal Register Final Rule

71 Fed. Reg. 18,152 (Apr. 10, 2006)
Mortgagee Time Limits for Supplemental Claims for Additional Insurance Benefits, Final Rule

***Summary*:** This final rule amends HUD's regulations to establish a time limit for filing supplemental multifamily mortgage insurance claims. The time limit established will provide an incentive for mortgagees to complete all mortgage insurance claims in a timely manner. This final rule revises and further defines the term "final payment." This final rule follows publication of a May 6, 2005, proposed rule, and takes into consideration the public comments received on the proposed rule.

Effective Date: May 10, 2006.

HUD Federal Register Notices

71 Fed. Reg. 16,660 (Apr. 3, 2006)
Disaster Voucher Program; Notice of Statutory and Regulatory Waivers for Public Housing Agencies Assisting with Recovery and Relief in Hurricanes Katrina and Rita Disaster Areas.

***Summary*:** This notice advises the public of the implementation of certain statutory and regulatory waivers pursuant to the Department of Defense Appropriations Act, 2006, enacted into law on December 30, 2005. This act provides $390 million for rental voucher assistance under section 8(o) of the United States Housing Act of 1937 to families that, prior to Hurricanes Katrina or Rita, were receiving housing assistance under certain HUD housing programs or were homeless or in emergency shelters in the declared disaster areas. The $390 million rental voucher assistance program is referred to as the Disaster Voucher Program.

Effective Date: January 27, 2006.

71 Fed. Reg. 17,130 (Apr. 5 2006)
Operating Fund Program; Transition Funding and Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy

***Summary*:** On September 19, 2005, HUD published a final rule amending the regulations of the Public Housing Operating Funding Program to adopt a new formula for determining the payment of operating subsidies to public housing agencies (PHAs). The September 19, 2005, final rule contained different transition provisions to determine whether a PHA will have a reduction or an increase in operating subsidy. The Operating Fund Program final rule also provides that PHAs may submit documentation of successful conversion to asset management in order to discontinue their reduction in operating subsidy under the new formula, commonly referred to as the "stop-loss" provision. This notice advises the public that HUD has posted a notice on its website providing additional guidance on the calculation of transition funding and how PHAs may qualify for the "stop-loss" provision.

71 Fed. Reg. 17,478 (Apr. 6, 2006)
Announcement of Funding Awards for Fiscal Year 2004 for the Housing Choice Voucher Program

***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 Fiscal Year (FY) 2004 to housing agencies (HAs) 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 HAs for non-competitive funding awards for housing conversion actions, public housing relocations and replacements, and HOPE VI voucher awards. Due to Congressional mandates and limited staff, these awards were not published in the *Federal Register.*

71 Fed. Reg. 18,146 (Apr. 10, 2006)
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance

***Summary*:** On December 30, 2005, HUD published a final rule implementing a new law that restricts individuals who are (1) enrolled at an institution of higher education (i.e., students), under the age of 24, not a veteran,

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[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.

unmarried, and do not have a dependent child, and (2) seeking assistance under Section 8 of the United States Housing Act of 1937 (Section 8 assistance) in their individual capacity (that is, separately from their parents) from receiving Section 8 assistance if neither the student nor the student's parents are income eligible. This notice provides guidance to further assist with the implementation of these new eligibility restrictions.

71 Fed. Reg. 18,496 (Apr. 11, 2006)
Supplement to the Fiscal Year (FY) 2006 SuperNOFA for HUD's Discretionary Programs: NOFAs for the HOPE VI Revitalization Grants Program and HOPE VI Main Street Grants Program

***Summary*:** On March 8, 2006, HUD published its FY 2006 SuperNOFA for HUD's Discretionary Programs, which contained thirty-nine funding opportunities. Today's publication supplements the SuperNOFA by adding funding opportunities for the HOPE VI Main Street and HOPE VI Revitalization programs. Since these NOFAs are part of the SuperNOFA, the NOFAs published today are governed by the information and instructions found in the Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA that HUD published on January 20, 2006, and the Introduction published on March 8, 2006.

***Dates*:** The key dates that apply to the HOPE VI Main Street and HOPE VI Revitalization programs are found in the individual program NOFAs.

71 Fed. Reg. 18,344 (Apr. 11, 2006)
Change of Effective Date of 2004 Amendatory Notice for Designation of Difficult Development Areas Under Section 42 of the Internal Revenue Code of 1986

***Summary*:** This notice changes the extended effective date language applicable to 2003 Difficult Development Areas that were not so designated in 2004 in HUD's November 2, 2004, notice to include the date of December 17, 2004, to allow its applicability to projects affected by a misinterpretation of the November 2, 2004, notice on the part of a Low-Income Housing Tax Credit-allocating agency.

71 Fed. Reg. 22,734 (Apr. 24, 2006)
Semiannual Regulatory Agenda

***Summary*:** In accordance with Section 4(b) of Executive Order 12866 "Regulatory Planning and Review," as amended, HUD is publishing its agenda of regulations already issued or that are expected to be issued over the next several months. The agenda also includes rules currently in effect that are under review, and describes those regulations that may affect small entities as required by Section 602 of the Regulatory Flexibility Act.

71 Fed. Reg. 24,735 (Apr. 26, 2006)
Amendment, Consolidated Delegation of Authority for the Office of Community Planning and Development

***Summary*:** This notice amends the existing Consolidated Delegation of Authority for Community Planning and Development to add the Renewal Communities, urban Empowerment Zones, and urban Enterprise Communities Initiative and Technical Assistance Awards to the list of programs delegated to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development. This amendment also authorizes the General Deputy Assistant Secretary to further redelegate any of the authority delegated under the Consolidated Delegation of Authority, as amended.

Effective Date: March 27, 2006.

71 Fed. Reg. 24,736 (Apr. 26, 2006)
Redelegations of Authority to Directors and Deputy Directors of Community Planning and Development in Field Offices

***Summary*:** In this notice, the Assistant Secretary of Community Planning and Development redelegates to the Directors and Deputy Directors of Community Planning and Development in HUD Field Offices all powers and authorities necessary to carry out Office of Community Planning and Development programs, except those powers and authorities specifically excluded.

Effective Date: March 27, 2006.

HUD CPD Notice

Notice CPD 06-03 (Mar. 31, 2006)
HUD Review of Appeals Under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as Amended (URA); or Section 104(d) of the Housing and Community Development Act of 1974, as Amended (HCD Act)

***Summary*:** Handbook 1374 (Tenant Assistance, Relocation and Real Property Acquisition-HUD CPD Staff Responsibilities) dated February 1992, established a policy for handling appeals under the subject statutes. This policy must be revised based on the current structure and staffing at HUD. This notice will establish a new protocol for handling complaints with regard to actions covered by these statutes and applicable HUD regulations, and supersedes paragraph 1-7 of Handbook 1374. Other HUD statutes or program regulations may establish an appeals process for displaced persons not covered by this protocol.

***Expires*:** March 31, 2007.

HUD Housing Notice

Notice 06-05 (Apr. 19, 2006)
Reinstatement and Extension of Notice 03-28, Guidance on Asset Management Issues Concerning Bond Financed Section 8 Projects

***Summary*:** Notice H 03-28, which was issued December 1, 2003, and expired December 31, 2004, is being reinstated and extended to April 30, 2007. The notice was previously reinstated by Notice 05-03, which was issued on January 26, 2005, and expired on January 31, 2006.

***Expires*:** April 30, 2007.

HUD PIH Notices

Notice PIH 2006-16 (HA) (Mar. 29, 2006)
Project-Based Voucher Units with Low-Income Housing Tax Credit Allocations

***Summary*:** This notice amends Notice PIH 2002-22 as it relates to the project-based voucher program and provides updated instructions to public housing agencies (PHAs) concerning the applicability of certain requirements to units assisted under the project-based voucher program when such units receive low-income housing tax credits and were selected for project-based voucher assistance by a PHA prior to November 14, 2005. This notice also provides instructions to PHAs concerning the applicability of requirements to such units that were selected on or after November 14, 2005.

***Expires*:** March 31, 2007.

Notice PIH 2006-17 (TDHEs) (Apr. 17, 2006)
Total Development Costs (TDC) for Affordable Housing under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

***Summary*:** This notice supersedes Notice PIH 2003-16 (TDHE), Total Development Costs (TDC), dated June 19, 2003. This notice transmits the updated schedule for the maximum amount of funds that may be used for affordable housing under NAHASDA. The requirement for the development and implementation of these limits is found at 24 CFR 1000.156 through 1000.162 of the Indian Housing Block Grant regulations published in the *Federal Register* on September 28, 2001, and effective October 29, 2001.

Expires: April 30, 2007. ■

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