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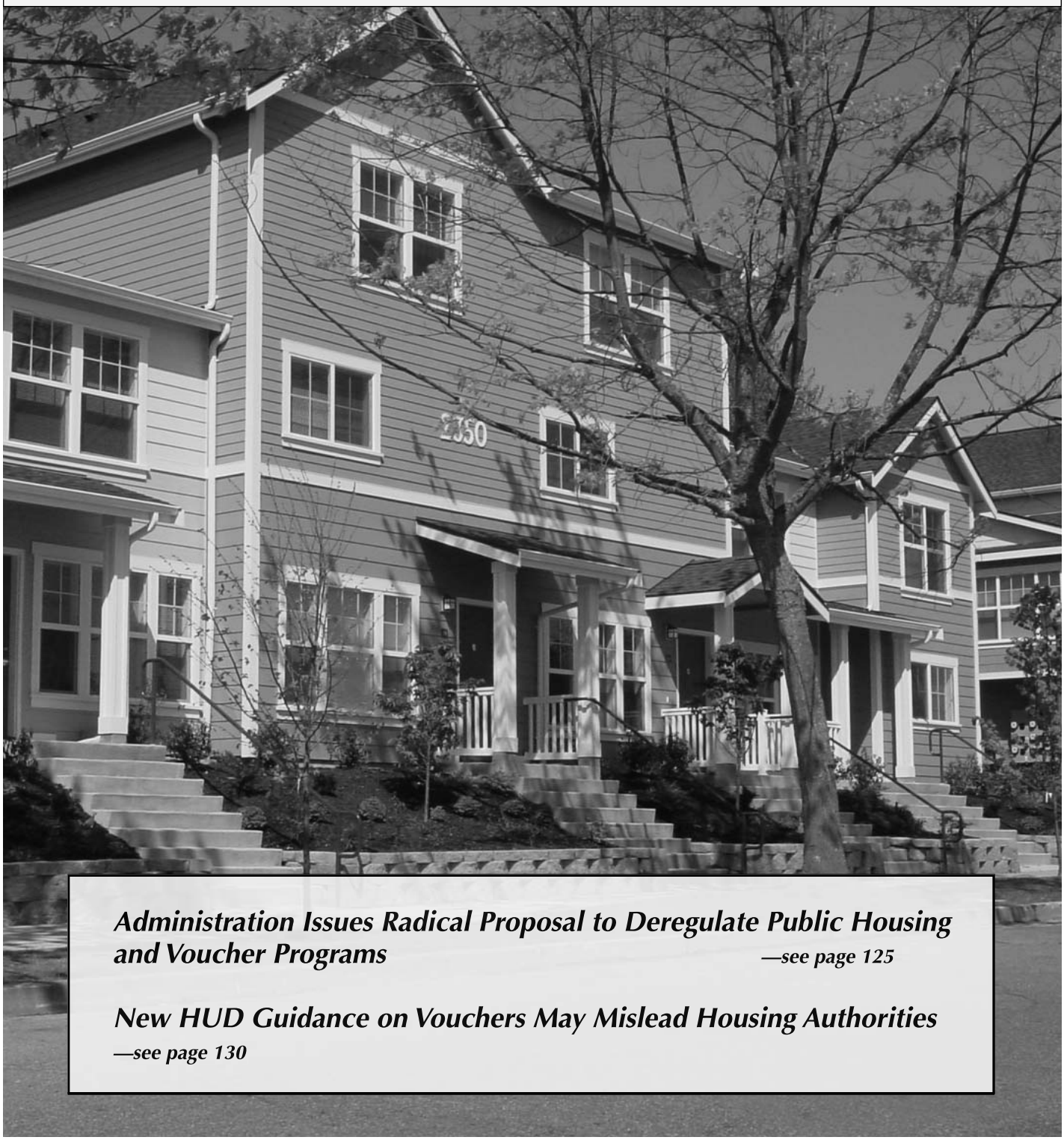

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SPECIAL FEATURE

AN ESSENTIAL RESOURCE FROM THE NATIONAL HOUSING LAW PROJECT

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Cover: Hillside Terrace Apartments, a development of 46 mixed units completed by the Tacoma Housing Authority (Oregon) in 2004. Thirty-three of the units are conventional public housing and the remaining rental units are affordable to very low-income households. The development, which consists of new and rehabilitated units, is financed by a combination of public and private lenders. Photo courtesy of Tacoma Housing Authority.

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Administration Issues Radical Proposal to Deregulate Public Housing and Voucher Programs[1]

The Bush Administration has developed unprecedented legislation that promises to roll back fundamental federal protections in two of the three major affordable housing programs administered by the Department of Housing and Urban Development (HUD). Senator Wayne Allard (R-CO), chair of the Housing Subcommittee of the Senate Banking and Urban Affairs Committee, has recently introduced the bill as S. 771, the so-called "State and Local Housing Flexibility Act of 2005." On the House side, because the Administration reportedly had difficulty getting Housing Subcommittee Chair Bob Ney (R-Ohio) to sponsor the bill, it was introduced there by Rep. Gary Miller (R-Calif.), the vice-chair of the Subcommittee, as H.R. 1999.

This bill would offer the carrot of fewer federal rules to public housing authorities (PHAs) in exchange for breaking the link between federal subsidy contributions and housing costs: voucher program payment standards would no longer have to be based upon local housing costs; voucher and public housing tenant rent contributions would no longer be established under the income-based formula of the Brooke Amendment; and PHAs faced with reduced federal subsidies could make ends meet by relaxing targeting to select higher-income families for vouchers. Over time, to save money, the Administration's bill would result in significantly higher rent burdens for federal housing tenants, as well as a massive transfer of subsidy benefits away from the most needy to many whose housing problems are far less severe, resulting in even longer waiting lists and greater housing deprivation among people with extremely low incomes.

HUD's bill (S. 771 and H.R. 1999) consists of three parts:

- a Flexible Voucher Program that is nearly identical to last year's proposal, though more detailed;
- elimination of affordability requirements for public housing tenants (called "Public Housing Rent Flexibility and Simplification"); and

[1]This article is largely based upon an April 18, 2005, analysis prepared by Barbara Sard of the Center on Budget and Policy Priorities (CBPP), entitled *Administration's Proposed "State and Local Housing Flexibility Act of 2005."* CBPP has posted an updated version on its Web site entitled *Administration Housing Proposal Lays Groundwork for Planned Funding Reductions* at http://www.cbpp.org/5-9-05hous.pdf, along with a brief fact sheet at http://www.cbpp.org/5-9-05hous-fact.htm. The April 2005 issue of the *Bulletin* contained an article focusing on the public housing rent provisions in Title II of S. 771, *Bush Administration Proposes Radical Overhaul of Rent Rules*, 35 HOUS. L. BULL. 105, 105 (2005).

- a proposed "Moving to Work Program," giving HUD unprecedented authority to grant sweeping waivers of virtually all housing laws.[2]

If enacted, the bill would make truly radical changes in federal housing policy. Historically, federal housing programs have been funded solely by the federal government, with appropriations generally provided based upon the costs of operating the number of housing units authorized. While funding shortfalls have plagued the public housing program from time to time over the past fifteen years, and were recently visited upon the voucher program for calendar year 2005, the basic program structure recognized the federal responsibility to provide appropriations and PHAs' responsibility to comply with federal rules on housing quality, tenants' rights and targeting. By severing the link between funding decisions and the number of families served and enabling costs to be shifted to tenants, the *proposed program changes would make future funding cuts more likely* in both the voucher and public housing programs. Although as an authorizing measure the bill does not propose to cut voucher funding immediately, contrary to last year's approach, Congress has proposed budget cuts in its budget resolution and the Administration has proposed funding reductions for vouchers elsewhere, which could result in an estimated 370,000 fewer vouchers in 2010.[3]

If the bill is enacted—

- **The federal government would no longer guarantee the affordability of housing** for the more than three million families that currently participate in the voucher and public housing programs, including more than one million elderly people and people with disabilities.
- **Nearly every core feature of the housing voucher program would be eliminated.** Agencies would be under no obligation to serve poor households or to provide assistance that is adequate to allow families a choice of where to live.
- **Families losing project-based assistance would no longer have a right to stay in their homes with voucher assistance for more than one year.** This would displace many elderly people and others from their homes of many years. Many would face new, unmanageable rent burdens.
- **Many public housing units could be lost**, replaced by "flexible voucher" assistance that would provide little help to families in paying rent.
- **The number of families receiving federal housing assistance could be sharply reduced**, exacerbating current homelessness problems.
- **HUD would have complete discretion to establish performance standards and permanently transfer program administration away from agencies** that do not meet HUD's unspecified standards to private companies, faith- or community-based organizations, or other entities of HUD's choosing.

Flexible Voucher Program

The bill would affect nearly every aspect of the existing housing choice voucher program.

Targeting

Under current rules, 75% of vouchers each year must go to families with incomes at or below 30% of the area median income level (about $15,000 per year).[4]

Under the bill, no vouchers would be reserved for the lowest-income families. The proposal[5] would use the same targeting as the HOME housing block grant program, requiring 90% of vouchers each year to be issued to families with incomes below 60% of area median income (about $30,000 per year nationally). The remaining 10% could go to families with incomes up to 80 percent of area median income.

Affordability

Administering agencies could determine how much tenants would have to pay in rent without regard to income. Agencies could establish minimum rents or "flat" rents of any amount.[6] No exceptions would be required for loss of employment or other good reason or hardship.

Subsidy Levels

Agencies could set the maximum subsidy for units at any level that is "reasonable and appropriate" for the market area, without any federal standards.[7] Combined with the absence of affordability protections, this lack of standards means that agencies could provide shallow subsidies and shift rent burdens substantially to tenants. Choice of neighborhoods could be severely curtailed. The lowest-income families and individuals may be unable to use vouchers at all if they cannot afford their remaining

[2]It also would allow PHAs to move funding from one program to another—for example, to cut their voucher programs to make up for shortfalls in public housing funding

[3]Center on Budget and Policy Priorities, *The Basis for the Estimate That the Budget Would Support 370,000 Fewer Vouchers in 2010* (Feb. 2005), *available at* http://www.cbpp.org/2-18-05hous-app.htm. Note that this estimate assumes that funding reductions would not be addressed by other policies reducing per-unit costs, such as cutting payment standards or increasing tenant contributions, both of which would be possible under this new proposal.

[4]42 U.S.C.A. § 1437n(b)(1) (West 2003).

[5]S. 771, 109th Cong. § 107(c) (2005) (hereafter, citations will be to the Senate bill, although the bills appear identical so the section references should be the same).

[6]*Id*. at §§ 109(c) and 109(d).

[7]*Id*. at § 109(f).

share of the rent. Once again, as prior to the enactment of the existing Brooke Amendment rent protection, some families may be too poor to afford assisted housing.

Families Losing Project-Based Assistance Would No Longer Be Protected

Under current law, tenants in privately owned buildings who face steep rent increases due to the end of federal subsidies now have a right to remain in their homes with "enhanced" vouchers to meet the increased rent costs. The bill would limit this anti-displacement protection to one year, after which families would receive regular "flexible vouchers," under the rent rules and subsidy limits that apply to other families.[8]

Elderly and Disabled Families

Borrowing a gambit from the Administration's Social Security proposal to neutralize powerful opposition from especially vulnerable beneficiaries, the bill provides that rent and other policy changes would not apply to existing elderly and disabled tenants until after January 1, 2009. Other than this brief respite, the bill provides no assurance that agencies will continue to serve poor seniors or people with disabilities or provide them with adequate subsidies. Agencies are required only to adopt a policy "to ensure that the needs" of elderly and disabled families are met.[9] It would be up to agencies to determine the "needs" of the elderly and people with disabilities, with no federal standards or review and no required community input. PHAs could not, however, apply time limits on assistance to these families.[10]

Portability

An important policy component of the voucher program has long been its promise of greater mobility—the right of recipients to move to other jurisdictions, so long as they move to an area where a PHA operates a voucher program. This bill would eviscerate the tenant's right to move with voucher assistance outside of the issuing PHA's jurisdiction.[11] Families would be able to move to other jurisdictions in the state or "region" with voucher assistance only upon the agreement of the agencies involved.[12] No interstate moves would be allowed except within agency-defined regions. No additional funding would be available to meet any increased costs of the moves that are permitted.

Discrimination

The bill specifically permits agencies to prefer applicants with certain types of disabilities over others for any type of flexible voucher assistance.[13] Authority to use such a discriminatory preference is not linked to the provision of a particular type of services. (It has long been a concern of advocates for people with disabilities—and HUD's own Office of Fair Housing and Equal Opportunity—that such a policy would particularly harm those with mental disabilities.) The bill also appears to allow agencies to deny or reduce assistance to people with disabilities and families with children based on these demographic characteristics, perhaps compromising the specific protections accorded these groups under the Fair Housing Act and other laws.

Time Limits and Work Requirements

Agencies could impose time limits of not less than five years beginning January 1, 2008, on all families that are not elderly or disabled.[14] Families also could be required to work, comply with a self-sufficiency contract, or meet other agency-imposed conditions in order to receive assistance.

Self-Sufficiency

Despite the bill's stated purpose of encouraging self-sufficiency, it would eliminate the obligation of some PHAs to operate a Family Self-Sufficiency (FSS) Program.[15] It also appears that agencies would be free to terminate the contracts of families currently enrolled in an FSS program, depriving families of case management support and the opportunity to accumulate savings. Agencies would have to choose between spending scarce funds on staffing and savings incentives for FSS or similar initiatives and providing more adequate subsidies to additional families.

Public Housing Units Could Be Lost and Families Could Be Required to Move and Face Increased Rent Burdens

A number of current policies allow agencies to move families out of public housing that is taken out of service, temporarily or permanently, if the families receive "comparable" housing. The bill would allow agencies to substitute "flexible vouchers" for public housing, even if families with vouchers would face substantially higher rent burdens and time limits on assistance.

In addition, the bill would allow agencies to "convert" public housing to flexible voucher assistance if the reduced subsidies permitted by the new law would be less expensive than continuing to operate (and possibly rehabilitate) the public housing units. Since shallower subsidies are obviously less expensive, more units would thus qualify for conversion. If agencies shift to shallower voucher subsidies, as they may choose to do to maintain

[8] *Id*. at § 115.

[9] *Id*. at § 105.

[10] *Id*. at § 107(d)(2)(A).

[11] *Id*. at § 113.

[12] The definition of a "region" would be up to the agencies, and would not necessarily coincide with a metropolitan area. Proposed regions that cross state lines would have to be submitted to HUD for review. It is not clear what happens if different sets of agencies within a metropolitan area define regions in overlapping or contradictory ways.

[13] S. 771, 109th Cong. § 107(e)(2) (2005).

[14] *Id.* at §107(d).

[15] *Id.* at §§ 114 and 120(k).

services in the face of shrinking budgets, they may also be *required* to convert "distressed" public housing to flexible voucher assistance.[16]

Absence of Public Accountability

Federal law would no longer require agencies to consult with residents, other stakeholders or the public in exercising their expanded flexibility to set key policies. The bill would eliminate the requirement to have a person served by the agency on the agency governing body and allows an agency to prohibit a recipient of voucher assistance from serving on the board.[17] No voucher policy issue would be part of the PHA plan process,[18] thus eliminating the only right of the public or residents to comment on proposed voucher program policies.

Administration

Administration of the housing voucher program by approximately 2,500 primarily local agencies would continue. Eligibility for voucher assistance and the amount of subsidy provided could vary sharply from one community to another. Agencies would be required to determine annually whether unit rents are reasonable.[19] Frequency of required certification of family incomes and of unit inspections would be reduced.[20]

Performance

HUD would have complete discretion to develop performance standards *after enactment*. (Title III of the bill indicates such performance standards could include reducing average subsidy costs and increasing homeownership opportunities, regardless of local priorities or needs.) If HUD determines that an agency has failed to meet its performance standards, HUD may take away the agency's funding and give it to another entity, including a for-profit company.[21]

Funding

At least until 2008, subject to the level of actual appropriations, each agency would receive funding "proportionate" to its 2005 funding for subsidy payments and administrative costs adjusted only for inflation.[22] HUD would not be required to base such adjustments on local data or to correct any errors or inequities in the 2005 funding allocation. Agencies' actual funding in 2006 and 2007 could increase or decrease, depending on appropriations. HUD implicitly acknowledges that maintaining the 2005 funding policy over time is untenable, and proposes to establish a new funding formula for subsidy payments and for administrative fees by negotiated rulemaking within two years of enactment.

Uses of Funds

Agencies could use funds for homeownership assistance and self-sufficiency activities, as well as for rental assistance.[23] Similar to current law, no more than 20% of funds could be used for project-based assistance, but there would be no limit on the amount that could be used for down payments or other homeownership assistance. Most of the current statutory provisions concerning project-based voucher assistance would be retained.

Continuity of Existing Homeownership and Project-Based Agreements

Families receiving homeownership assistance on the date of enactment would continue to receive subsidy payments based on current law. Similarly, owners with project-based voucher contracts would continue to receive subsidy payments consistent with their contracts.[24]

Public Housing: Rents

The key change for the public housing program would be the elimination of the current Brooke Amendment rent limitation, which since 1969 has provided the basic tenant affordability protection and has historically provided the basis for determining operating subsidies.[25] Under the bill, PHAs would have the same options for designing public housing rent policies as they would for the voucher program: rents would no longer be required to be proportional to income.[26] Flat rents—with or without "tiers" based loosely on incomes—would be permitted. Minimum rents of any amount would be allowed, without any required hardship exemptions.

Current deductions for extraordinary medical expenses or child care costs would not be required. Overriding

[16] *Id.* at §§ 120(i) (demolition and disposition of public housing under Section 18 of the U.S. Housing Act), 120(j) (voluntary conversion of public housing under USHA Section 22), 120(l) (HOPE VI), and 120(m) (mandatory conversion of public housing under USHA Section 33).

[17] *Id.* at § 120(a).

[18] *Id.* at § 120(d).

[19] *Id.* at § 109(e).

[20] *Id.* at §§ 107(f) and 112.

[21] *Id.* at §§ 104(a) and 106.

[22] *Id.* at §§ 110, 117, and 118.

[23] *Id.* at § 108.

[24] *Id.* at §§ 103(c) and 103(d).

[25] The April 2005 issue of the *Bulletin* contained an article focusing on the public housing rent provisions in Title II of S. 771, *Bush Administration Proposes Radical Overhaul of Rent Rules*, 35 HOUS. L. BULL. 150, 150 (2005). For historical background, also see NHLP, *Shifting Affordable Housing Cost Burdens to Tenants: A Historical Perspective*, 35 HOUS. L. BULL. 1, 8 (2005). Around a decade ago, Congress took a prior run at repeal of Brooke during its "Contract With America" phase back in 1995-98, as it developed the legislation that became the so-called Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, tit. V (1998). *See* NHLP, *The Brooke Amendment Should Not be Repealed*, 26 HOUS. L. BULL. 17, 17 (1996); NHLP, *Proposed Changes to Brooke Will Not Work*, 26 HOUS. L. BULL. 59, 79 (1996); NHLP, *Mandatory Flat Rents and the Brooke Amendment Cap: Is the Best of Both Worlds Possible?*, 27 HOUS. L. BULL. 37, 42 (1997).

[26] S. 771, 109th Cong. § 202 (2005).

directives in other federal laws, the bill allows agencies to increase families' rent obligations if they receive other federal benefits, including Earned Income Tax Credits and Food Stamps.

Because recently Congress has rarely provided full funding for public housing operating subsidies that supplement tenants' income-based rent contributions, PHAs have operated with insufficient funds and have had to cut basic services and maintenance. Inviting PHAs to make up such shortfalls by increasing tenants' rents provides an inevitable solution for cash-strapped PHAs, paving the way for even greater federal operating subsidy reductions from a tax-cutting Congress.

If both the voucher and public housing proposals were enacted, current rent protections in federal law would remain only for families in the project-based Section 8 program, where rents are determined by private owners pursuant to federal law. Maintaining these historical rent protections for just one subset of federal housing tenants would become highly improbable.

Moving to Work Redux: A New HUD Superwaiver

The Moving to Work (MTW) provisions of the bill are potentially even more far-reaching than the voucher and public housing components. Agencies allowed to participate in a revamped and greatly expanded MTW program would have even more flexibility to redesign program policies than they would have under the voucher and rent sections. Currently, participation in the MTW demonstration is limited to thirty-two agencies, and these agencies must serve substantially the same number of families as they did prior to their special MTW status. *HUD's proposal would permit agencies to reduce or eliminate tenant-based vouchers and to use voucher funds to operate public housing*.

Participation in the new program would not be limited to high-performing larger agencies. Under the bill, agencies with more than 500 vouchers **or** 500 public housing units **or** that are "high-performers" under HUD's current assessment systems would be eligible to participate in the new waiver program, **but** HUD **also** could allow any agency to join the MTW program (except perhaps an agency that had been found to have substantial performance problems). HUD could set criteria for other agencies to receive sweeping waivers.[27] Depending on the eligibility criteria that HUD adopts, the funding for nearly all public housing agencies could be converted to a single block grant, combining public housing and voucher funds, subject to virtually no federal rules. It is important to note, however, that the new program would not provide agencies with any special right to maintain funding in the face of federal cutbacks, unlike some agreements under the current MTW demonstration.

The Bush Administration and its Congressional allies propose to gut protections for millions of extremely low-income tenants currently served by HUD's federal housing programs.

Even if the voucher and rent sections of the bill are not adopted, the proposal would allow HUD to waive *all* statutory requirements in the voucher program and adopt any rent policy it chooses in either program, for those agencies participating in MTW.[28] In public housing, HUD could waive all current tenant protections, including limitations on when agencies may exclude people with disabilities from public housing buildings "designated" for occupancy by the elderly. Public housing residents could lose the right to have input into agency policy-setting, to have administrative grievance hearings and to be protected against arbitrary evictions. Voucher tenants could lose participation and hearing rights as well. Congress itself would have no role in determining the fate of its currently enacted policies. Current requirements to pay prevailing wages on construction projects under the Davis-Bacon Act also could be waived.

Conclusion

Make no mistake about it: under the guise of flexibility, the Bush Administration and its Congressional allies propose to gut protections for millions of extremely low-income tenants currently served by HUD's federal housing programs. Despite the rhetoric, their purpose is not to improve performance, but to save money. Reducing domestic discretionary spending is a prerequisite to delivering on their promise of further tax cuts for wealthier Americans whose own gargantuan housing subsidy benefits already flow steadily through the entitlements provided under the tax code's mortgage interest deduction. To accomplish this goal, the Administration must shift rent burdens away from government to the tenants themselves, and permit the resulting shallower subsidies to be reallocated to higher-income families. ■

[27]In addition to agencies participating in the MTW demonstration and those meeting other HUD criteria, S. 771 states the eligibility criteria for agency participation in the new waiver program in the alternative: agencies may qualify as high-performers, *or* administer 500 or more vouchers, *or* manage 500 or more public housing units. In contrast, the version of the proposal circulated a few days prior to the filing of S. 771 would have combined these three elements, requiring an agency to have 500 or more public housing *and* 500 or more voucher units *and* have high-performer status in both programs. It is not clear if the change represents an intentional policy decision by Senator Allard.

[28]S. 771, 109th Cong. § 302 (2005) (proposing a new Sec. 36(b)(3) of the United States Housing Act).

Fortunately, so far many leaders in Congress, from both parties, understand the Administration's goal and its impact on housing programs and our society's ability to provide affordable housing for millions of the most needy. In addition to the strong criticism from Democratic housing committee leadership on both the House and Senate sides,[29] particularly notable have been the recent highly critical comments of both HUD and OMB by Senator Kit Bond of Missouri, the chair of the new Senate Appropriations Subcommittee on Transportation, Treasury, the Judiciary and HUD that oversees HUD's funding, particularly concerning the Administration's proposal to relax the current targeting requirements for vouchers.[30] Providing these leaders with additional support from communities and others in Congress as the budget, appropriations and policy process unfolds over the coming months will be essential to defeating this myopic effort to turn back the clock. ■

[29]Senators Sarbanes, Reed, Murray and Corzine, and Reps. Frank and Waters. Senator Sarbanes (D-MD), Ranking Member of the full Senate Committee on Banking, Housing and Urban Affairs, specifically noted his receipt of a sign-on letter from thirty-nine national organizations voicing strong opposition to proposed Flexibility Act, reading aloud from the letter that the bill "represents a seismic shift in national housing policy" and that the "program changes proposed by the bill would be devastating to those currently participating in HUD affordable housing programs as well as to the millions in need of such assistance," and requesting that the letter be entered into the record. For the letter, see http://www.nlihc.org/news/042105.html.

[30]Statement of Senator Christopher Bond at April 14, 2005, Senate Transportation, Treasury, Judiciary and HUD Subcommittee hearing on HUD's FY 2006 Budget Request, as well as his remarks criticizing the Administration's social spending priorities at an April 21 Subcommittee hearing with OMB Director Joshua Bolton. Other Republicans who ought to know better, for example Florida Senator and ex-HUD Secretary Mel Martinez, have been disappointing. At an April 21 hearing before the Senate Subcommittee on Housing of the Senate Banking Committee, Sen. Martinez appeared to support the Administration's proposal to gut voucher targeting on the twisted logic that the requirement prevents many PHAs from using all of their allotted vouchers.

HUD's New Guidance on Vouchers May Mislead Housing Authorities[1]

The Department of Housing and Urban Development (HUD) recently issued a notice providing guidance on the "flexibility" that public housing agencies (PHAs) have with respect to implementing policies that will result in cost savings for the voucher program.[2] Most PHAs likely are facing funding shortfalls in 2005 and will need to adopt policies or practices to restrict spending.[3] It is important that HUD is recognizing that PHAs need guidance. However, by publishing the notice, HUD missed the opportunity to provide effective guidance to PHAs regarding the complexity and impact of the decisions they may face. Moreover, on some issues the notice urges PHAs to take actions that may not be lawful, or through silence fails to alert PHAs to the potential pitfalls of certain policies.

Maintaining Confidence in the Voucher Program Is Critical

The notice, while reminding PHAs to manage within their budgets for the calendar year, fails to emphasize the importance of maintaining confidence in the stability and reliability of the voucher program among participants and landlords.[4] PHAs that need to take affirmative steps to reduce program costs have the full calendar year to bring spending in line with funding. For other PHAs, the local housing market may have softened and/or tenant incomes increased sufficiently so that no steps are required to reduce costs. Thus, a PHA should proceed deliberately, and review its budget in light of available reserves, anticipated costs over the twelve-month calendar year period,[5] and anticipated turn-over in vouchers.

[1]This article was co-authored by Barbara Sard of the Center on Budget and Policy Priorities.

[2]Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005, PIH 2005-9 (HA) (Feb. 25, 2005).

[3]*See* Barbara Sard, Peter Lawrence & Will Fischer, *Appropriations Shortfall Cuts Funding for 80,000 Housing Vouchers This Year*, Center on Budget & Policy Priorities, *available at* http://www.cbpp.org/2-11-05hous.htm (Feb. 11, 2005).

[4]HUD knows or should know, based upon the chaos that occurred in many communities in 2004, that some PHAs that are improperly advised or perceive an immediate crisis may take precipitous action which negatively impacts the program. Barbara Sard, *Funding Instability Threatens to Erode Business Community's Confidence in the Housing Voucher Program*, Center on Budget & Policy Priorities, *available at* http://www.cbpp.org/10-14-04hous.htm (Oct. 24, 2004); Barbara Sard & Will Fischer, *Local Consequences of HUD's Fiscal Year 2004 Voucher Funding Policy*, Center on Budget & Policy Priorities, *available at* http://www.cbpp.org/7-15-04hous-survey.htm (updated August 16, 2004).

[5]For 2005, PHAs are funded for the voucher program on a calendar year basis, January 1 to December 31. There is some confusion because in

Only then, if required, should it take steps to reduce costs that may hurt families or undermine program credibility. If costs must be reduced, the savings likely to result from a particular cost-saving strategy should be measured against the harm to the residents and the stability of the program. Actions which have the most adverse consequences for program participants and the stability of the program should be avoided or taken with all due care.

Compliance with Fair Housing and Civil Rights Laws

The notice is silent on PHAs' obligations to comply with the Fair Housing and Civil Rights laws and as a result they may be misled. PHAs should be mindful of their obligations to certain protected classes of individuals including people with disabilities, families with children and racial and ethnic minorities. The Fair Housing and Civil Rights laws provide that a PHA may not adopt a policy that, although neutral on its face, has a discriminatory effect either because it perpetuates segregation or has a disparate impact upon a protected class. For example, a PHA should determine if a change to its payment standard will result in segregating voucher recipients in racially impacted areas. In addition, PHAs have a duty to affirmatively further fair housing. This obligation requires PHAs to collect and assess racial and socio-economic data and to use that data to inform their decisions. For example, a PHA should review the impact of a change in the minimum rent it charges or the occupancy standard it uses to determine the unit size a family's voucher will pay for to determine its racial and economic impact.

For program participants with disabilities, PHAs are required to respond to requests for reasonable accommodation. Responses to requests for reasonable accommodation may be limited only if the request creates an undue burden or requires fundamental alteration in the program.[6]

years prior to 2004, PHAs were funded based upon their fiscal years, which begin on either January 1, April 1, July 1 or October 1. Agencies should be assessing the adequacy of the voucher funds allocated by HUD in light of likely spending for the calendar year, regardless of the agencies' fiscal year budgets.

[6]*See, e.g.,* 24 C.F.R. §§ 982.303 (reasonable accommodation required for extending search time), 982.505(d) (reasonable accommodation required for higher payment standard) and 982.517(e) (reasonable accommodation required for higher utility allowance) (2004). *See also* New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities" and the Housing Choice Voucher Program, PIH 2005-5 (Feb. 1, 2005).

Preemption as an Alternative to Section 1983

The Civil Rights Act, 42 U.S.C. § 1983, has long been the primary vehicle for challenging state or local governmental actions that violate federal laws that do not contain an explicit private right of action. In the past few years, and especially since *Gonzaga University v. Doe*, 536 U.S. 273 (2002), the Supreme Court has made it increasingly difficult to sustain Section 1983 claims based on federal statutes and regulations. This month's issue of the *Clearinghouse Review: Journal of Poverty Law and Policy* contains an important article, "Preemption as an Alternative to Section 1983," by Lauren K. Saunders, Directing Attorney of the Herbert Semmel Federal Rights Project at the National Senior Citizens Law Center.

The article explains how preemption claims under the Supremacy Clause of the Constitution can be used as an alternative when a Section 1983 claim is in doubt. Preemption allows a court to enjoin enforcement of any law that conflicts with federal law or frustrates its purposes and goals. Preemption is not simply invoked by corporations seeking to avoid regulation, but also has been used to enforce federal public benefits statutes, among other laws of interest to public interest advocates.

There are two principle advantages to a preemption claim over Section 1983. First, the plaintiff need not show that the federal law expressly creates any "rights," and preemption can be used to enforce many federal laws—and even federal regulations and agency directives—that cannot be enforced under Section 1983.

Second, in determining whether a federal statute preempts state or local law, the court asks whether the statute's broad purpose as a whole is frustrated. Under a Section 1983 claim, by contrast, the state or local law fails only if it violates a specific "right" shown in individually focused language in the discrete subsection of the federal statute at issue.

For several reasons outlined in the article—including the unavailability of damages and attorneys fees and the differing purposes of Section 1983 and the Supremacy Clause—judges are often comfortable sustaining preemption claims even while striking claims under Section 1983.

The article is available online for *Clearinghouse Review* subscribers at www.povertylaw.org. Companion articles in the same issue by Jane Perkins and Bob Capistrano discuss the use of Section 1983 to enforce federal statutes, and to raise constitutional claims in garden-variety cases, respectively. ■

PHAs should be careful that they do not adopt policies that favor one protected class of voucher recipients over another. For example, presumably everyone would agree that a PHA cannot decide to selectively terminate or provide a distinct payment standard applicable only to Caucasian families or African-American families. Policies that selectively advantage seniors or people with disabilities at the expense of families with children are similarly likely to violate the Fair Housing Act. A PHA cannot set policies regarding payment standards or terminations that treat these families differently based solely on their status as disabled, elderly or families with children.[7] HUD's regulation concerning admissions preferences for working families supports the argument that PHAs cannot discriminate against one group in favor of another. In this rule, HUD requires PHAs that choose to provide a preference for working families to grant an equivalent "working" preference to all disabled and elderly families.[8]

PHAs should be careful that they do not adopt policies that favor one protected class of voucher recipients over another.

Types of Actions to Address Funding Shortfalls

This section briefly assesses a number of the policies that PHAs may adopt to remedy funding shortfalls. In evaluating the advantages and disadvantages of adopting particular policy changes in order to reduce voucher costs, PHAs and advocates should be mindful of the potential cumulative impact of policy changes over time. If funding shortfalls force agencies to choose between assisting fewer families and making cost-cutting changes that will seriously undermine the effectiveness of the program, it may be better to reduce program size. This is particularly true if an agency is able to reduce program size by "shelving" vouchers as families leave the program rather than by terminating any current voucher holders. As unfortunate as it is to serve fewer families from the waiting list when so many are in desperate need of affordable housing, it will hurt more people if per-family subsidy levels are reduced to the point where vouchers no longer provide a real choice of housing or guarantee of affordability. These types of program changes hurt current participants as well as new families with vouchers and make the program less effective. If housing vouchers are no longer seen as a successful program, it will be less likely that funding will be restored if national priorities change in the future.[9]

Ensuring Reasonable Rents

Ensuring that vouchers are used in units with rents that do not exceed those of comparable unassisted units—known as "rent reasonableness"—is the best strategy for reducing costs. It is a strategy that is consistent with the purposes of the program and one that imposes the least harm on residents. This strategy should have been the first one listed in the notice.

Use of Annual Contributions Contract Reserves

It is unfortunate that while informing PHAs as to how they may evade the rules of the voucher program through waiver requests, HUD fails to remind them that they may request funds from their reserves to make up for shortfalls in 2005 due to the new funding formula.

Before concluding that voucher costs must be reduced due to a funding shortfall for 2005, PHAs should determine whether they have reserve funds that they can use to meet the funding gap. Some PHAs with reserves in excess of one week have requested and obtained funds in 2005 from their program (or project) reserve. The notice indicates that HUD will allow PHAs to gain access to reserves above the one-week level up to the difference between their actual costs for January to March 2005 and one-quarter of their annual HAP funding. (The notice states that HUD will not sweep reserves in this amount when it implements the Congressional directive to reduce reserves to one week by September 30, 2005.) The notice is silent, however, about whether PHAs will be able to draw reserves to meet shortfalls that occur after the first quarter, or by when they have to make such a request. It appears, however, that the more rapidly a PHA requests the additional reserve funds (if it has such funds) the more likely it will be to receive them. As recently as April 2005, HUD has allowed some PHAs to access program reserves in excess of the one-week level.

[7]PHAs can provide a preference in admission for certain classes of families such as elderly or people with disabilities or individuals and families that are homeless, but only if these preferences are based upon an analysis of the data concerning housing need in the community. 42 U.S.C.A. § 1437c-1(d)(1) (West 2003) (Needs).

[8]24 C.F.R. § 5.655(c)(2) (2004).

[9]Some PHA staff believe that their agency will be sanctioned by HUD if they use less than 97% of their authorized vouchers, and as a result strive to stretch their allocated funding to reach this target. The basis of this belief under current policy is not clear. Some years ago HUD applied this standard of high voucher utilization to determine eligibility for award of new vouchers. But Congress has not funded incremental vouchers since fiscal year 2002, and no such awards are likely in the next few years. Voucher utilization for purposes of assessing agency performance under the Section Eight Management Assessment Program (SEMAP) is measured by the use of allocated budget authority or of "units" (vouchers), whichever is higher. An agency can score high under SEMAP if it uses all of its funds, regardless of the percentage of authorized vouchers it uses.

We urge PHAs to also consider the availability of any other outside resources before adopting policies that will seriously harm vulnerable families and undermine the program's effectiveness with the private sector. Many PHAs have been able to obtain loans or grants from city or county governments in order to avoid termination of voucher assistance.

Reducing Payment Standards

The timing of the effective date of a reduction in the payment standard

The new HUD notice explains that a PHA may opt to reduce the payment standard as a cost-saving strategy. The notice discusses the timing for implementation of a reduced payment standard and notes that it is applicable immediately only for new admissions, all movers and stayers on whose behalf the PHA enters into a new housing assistance payments (HAP) contract with the owner. Some PHAs may mistakenly interpret HUD's ambiguous discussion as an authorization to terminate HAP contracts unilaterally and then enter into new HAP contracts using the reduced payment standards, in order to avoid restrictions regarding the implementation date for a new payment standard. Such action is not authorized by the statute or the regulations.

On a practical level, the notice fails to caution PHAs that if they are going to require a new HAP contract and a lower payment standard in the event of a new lease, the tenants and landlords should be informed of the new circumstances (i.e., reduced payment standards) and the consequences of their actions. Some landlords might want to forestall imposing a new lease to avoid a reduction in the payment standard because such a reduction may jeopardize the tenant's ability to pay rent. For the long-term stability of the program, it is important when there are new facts, such as reduced payment standards, a change in policies or the adoption of new practices, that the parties impacted understand how the rules and practices have changed and the effect of such changes on their future actions.

The notice also states—as required by current HUD regulations—that for all other tenants, the effect of a new payment standard is delayed until the second regular reexamination.[10] The notice then states that because this requirement is regulatory, and not a statutory requirement, PHAs experiencing financial difficulties may request that HUD waive the regulation for good cause.[11] (HUD is not authorized to waive statutory provisions except for the few PHAs participating in the Moving to Work demonstration.)

The notice also cautions that any request for a waiver regarding the payment standard must include the calculation the PHA used to arrive at the shortfall, and factor in turnover as well as other cost-saving measures. A waiver request also must include data on the current rent burden of families in the program. In addition, the notice requires an affirmative statement that the implementation of the waiver will allow the PHA to manage the program within its budget.[12] The presumption is that any change to the payment standard must be adopted with care, be well documented and must resolve any budget problems.

PHAs' request to approve a payment standard below 90% of the Fair Market Rent

The notice also addresses the issue of requests by PHAs for approval of a payment standard below 90% of the fair market rent (FMR). The notice acknowledges that the regulations state that HUD will not approve a payment standard of less than 90% of FMR if the "family share" (the families' contribution for rent and utilities) for more than 40% of voucher participants exceeds 30% of monthly adjusted income.[13] Surprisingly, the notice concludes that this regulation is independent and does not implement a statutory requirement and thus may be waived, for good cause.[14]

Contrary to the notice, the regulation directly implements a statutory requirement. The voucher statute allows HUD to approve a PHA request to use a payment standard that is less than 90% of FMR. It then provides that:

> The Secretary—
>
> shall monitor rent burdens and review any payment standard that results in *a significant percentage* of the families occupying units of any size paying more than 30 percent of adjusted income for rent; and may require a public housing agency to modify the payment standard of the public housing agency based on the results of that review.[15]

The purpose of this section is to create a bulwark against payment standards that are too low. In the voucher regulations, HUD implemented the statutory language "significant percentage" of families as 40% of families.[16] This interpretation of the legislative language

[10]24 C.F.R. § 982.505(b)(3) (2004).

[11]Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005, PIH 2005-9 (HA), at 3 (Feb. 25, 2005); 24 C.F.R § 5.110 (2004) ("Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title . . . .").

[12]Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005, PIH 2005-9 (HA), at 3 (Feb. 25, 2005).

[13]24 C.F.R. § 982.503(d) (2004).

[14]Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005, PIH 2005-9 (HA), at 2 (Feb. 25, 2005).

[15]42 U.S.C.A. § 1437f (1)(E) (West 2003) (emphasis added).

[16]The interim voucher regulations defining "significant burden" initially recognized that the issue of changes to the payment standard "because of incidence of high rent burdens" is statutorily based. The introductory comments to the interim regulations, in summarizing the regulations, cited the statutory basis for this rule as "Section 8(o)(1)(B), (D) and (E) of

by the administering agency at a time soon after the legislation was enacted is entitled to due deference. HUD has no authority to approve a payment standard below 90% of FMR based on a waiver of the rent burden regulation. Such action would be outside HUD's authority, arbitrary and capricious and therefore subject to legal challenge.[17] A PHA relying on HUD's action could be subject to a legal challenge and the costs of litigation as well as not being able to realize the planned-for savings.

Freezing or Reducing Utility Allowances

The notice urges PHAs to review utility allowances to determine if they are too high and notes that it will, if requested, waive the rule requiring changes in the utility allowance if rates increase by 10% or more. To save costs, a retained or reduced utility allowance must result in more units having a gross rent (including the utility allowance) that is lower than the payment standard or otherwise reduce the average gross rent further below the payment standard than it otherwise would be.

HUD's urging that PHAs reduce or fail to increase their utility allowances violates the statute. The Brooke Amendment provides that tenants, in general, pay no more than 30% of their income for rent. Rent includes a reasonable amount for the use of utilities.[18] In addition, under the voucher program rent includes an "amount allowed for tenant paid utilities." If the utility allowance is unreasonably low, many tenants who are directly billed for utility usage will pay more for shelter despite a reasonable consumption of utilities. These tenants will pay more than 30% of their income for rent in violation of the Brooke Amendment. To the extent that a PHA has set or allowed an allowance that is not reasonable, it should revise it. But if it has set the allowance at a reasonable level and the rates have increased by 10%, then the allowance should be adjusted. Failure to adjust renders the allowance unreasonable and violates the statute, as interpreted by both HUD and the United States Supreme Court.

In setting the utility allowance, PHAs also ought to be concerned that an inadequate utility allowance may have adverse consequences for other housing programs which serve lower-income families. For example, tax credit properties determine a gross rent, which includes an allowance for utilities. In most cases, the allowance used is that adopted by the PHA.[19] If the allowance is too low or inaccurate tenants will pay more for housing than is statutorily permitted.[20]

Reducing Subsidy (Occupancy) Standards

The notice advises PHAs to revise "overly generous" subsidy standards by reducing bedroom size eligibility. It then states that "a subsidy standard of two persons per bedroom regardless of sex or age, is acceptable." This statement is inconsistent with the published regulation, which provides that:

> [t]he dwelling unit must have at least one bedroom or living/sleeping room for each two persons. *Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.*[21]

HUD's failure to identify the relevant regulation may result in PHAs taking illegal actions for which they may be challenged. Moreover, a PHA ought to review any adjustments in the number of individuals per unit or per bedroom to determine if the new standards would be likely to violate its obligation to affirmatively further fair housing. Such an analysis should consider whether the new standard would be likely to make it more difficult for large families, presumably families with more children, to find rental units and whether the revised standards would be likely to result in concentrations of such families in areas that are racially and poverty impacted. Also, a PHA should be alert to and inform tenants with disabilities about its obligation to consider requests for reasonable accommo-

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the USH Act; 42 U.S.C. 1437f(o)(1)(B), (D) and (E) . . . ." Section 8 Tenant-Based Assistance, Statutory Merger of Section 8 Certificate and Voucher Programs, Interim Rule, 64 Fed. Reg. 26,632, 26,632 (May 14, 1999). HUD's determination that 40% of the families constituted a significant percentage is consistent with the congressional concern that tenants, in general, not pay more than 30 or 40% of income for rent. It is also consistent with the long-term reporting requirements which instruct HUD to report annually to Congress "the jurisdiction in which more than 10 percent of the families assisted under section 8 of such Act pay for rent more than the amount determined under section 3(a)(1) of such Act . . . ." Pub. L. No. 101-625, § 550(b), 104 Stat. 4079, 4223 (1990). There is no public record of HUD ever submitting such reports.

[17]Motor Vehicle Mfrs. Assoc. of the United States v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (case involved a rescission of regulations by an agency).

[18]Wright v. City of Roanoke Redev. & Hous. Auth., 479 U.S. 418, 420 (1987) (HUD has consistently considered "rent to include a reasonable amount for the use of utilities, which is defined by regulation as that amount equal to or less than an amount determined by the PHA to be a reasonable part of the rent paid by low-income tenants.") The Court "reject[ed] respondent's argument that the Brooke Amendment's rent ceiling applies only to the charge for shelter and that the HUD definition of rent as including a reasonable charge for utilities is not authorized by the statute." *Wright*, 479 U.S. at 430, n.11.

[19]26 U.S.C.A. § 42(G)(2)(b)(ii) (West 2003) ("gross rent includes any utility allowance determined by the Secretary after taking into account such determination under Section 8 of the United States Housing Act of 1937"). *See* Joseph Guggenheim, Tax Credits for Low-Income Housing 24 (9th ed. 1996) (In tax credit buildings not regulated by HUD or Rural Housing Services (RHS), "the schedule of utility allowances of the PHA is used to determine the effective maximum rent.").

[20]For example, if the gross rent set at 30% of 60% of area median income (AMI) is $800 and the utility allowance is $40, the maximum tenant rent would be $760. If the allowance is inaccurate and too low because the PHA did not adjust it as rates increased, the family will be forced to pay a rent that is above the statutory maximum.

[21]24 C.F.R. § 982.401(d)(ii) (2004) (emphasis added).

dation with respect to determinations regarding bedroom size, particularly if such tenants require the assistance of a personal care attendant.

Limiting Portability and Moves within the PHA Jurisdiction

The notice states that a PHA may deny portability moves and any other moves if the PHA has insufficient funds under its calendar year 2005 budget to subsidize moves to a higher-cost area or unit. HUD does note that a portability move may not be denied if the receiving PHA will absorb the voucher. According to HUD, no waiver is needed to "make a determination in order to deny such moves."

The notice is woefully inadequate and may create substantial problems for PHAs that blindly follow its path. Portability is a key element of the voucher program. Congress defines "tenant based assistance" as "rental assistance under subsection (o) that is not project-based assistance and that provides for the eligible family to select suitable housing and to move to other suitable housing."[22] Numerous HUD rules give tenants the right to move to units inside or outside the jurisdiction of the PHA.[23]

A PHA may deny a portability move if it has insufficient funding.[24] However, a PHA also has an obligation to manage the program in a manner that ensures that it has the financial ability to provide assistance to families that move out of the jurisdiction as well as those who remain.[25] Moreover, a PHA must assess any proposed restrictions on mobility in light of its fair housing obligations. A PHA has a legal obligation to affirmatively further fair housing. This duty is especially implicated when moves that a PHA may deny are to integrated communities or areas and units that meet the needs of persons with disabilities.

The notice states that a PHA may deny portability and other moves within the jurisdiction if it has "insufficient funds." There is no definition of what is meant by insufficient funds. We believe that a PHA cannot legitimately claim to have insufficient funds until it has analyzed likely future costs in light of other policy changes it may have adopted and considered the availability of reserve funds, including administrative fee reserves, and the possibility of savings costs through voucher turnover. (In other words, a family cannot lawfully be denied the right to move if the PHA would have sufficient funds by not reissuing turnover vouchers.) Even if such analysis finds a likelihood that funds available may be insufficient to cover anticipated costs, a PHA should use other cost-cutting strategies that impinge less directly on statutorily protected rights before restricting families' right to move.[26] In addition, arguably HUD approval is a necessary prerequisite to such action.[27]

Termination of Assistance Due to Insufficient Funding

The notice states that a PHA may terminate assistance due to insufficient funding. Significantly, HUD explains that any policy for terminating assistance should be added to the Section 8 administrative plan and reminds PHAs that they may develop policies with respect to the resumption of assistance. HUD also requires that determinations of insufficient funds must be documented. Unfortunately, the notice fails to explain what should be included in the documentation. As explained in the above section on portability, the documentation should include a thorough analysis of the PHA's resources and likely expenses, including voucher turnover. Prior to resorting to termination of existing participants—with the significant likely harm to the families as well as to the credibility of the program to landlords and lenders—PHAs should consider a full range of other strategies to reduce costs and explore the availability of other funds from other governmental sources.

Whether or not HUD approval is a prerequisite, in 2005, to termination of assistance due to insufficient funds,[28] it makes sense for an agency to consult with HUD staff prior to taking this drastic step. In many cases in 2005, as well as in 2004, HUD staff were able to make additional resources available to agencies to prevent termination of voucher assistance for current families on the grounds of insufficient funds.

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[22]42 U.S.C.A. §§ 1437f(f)(7) and 1437f(r) (West 2003).

[23]*See e.g.*, 24 C.F.R. §§ 982.353(b) (voucher participant has the right to port his or her voucher), 982.1(a)(2) (participant may select a unit anywhere in the country served by a voucher program) (2004).

[24]24 C.F.R. § 982.314(e)(1) (2004).

[25]*Id.* at § 982.355(d)(6).

[26]In discussing the procedures that a PHA must follow to seek a waiver of the payment standard, the notice states that there must be a justification. The request for such a waiver must include, at a minimum, the PHA's calculation of the shortfall, factor in anticipated turnover and other cost-saving measures, and affirm that the requested change will allow the PHA to operate the voucher program within its budget. Also when a termination of tenancy may result from a determination of insufficient funds, the notice instructs that the "PHA needs to ensure that the determination of such fact [insufficient funding] is documented." No similar guidelines regarding factors that must be considered or cautionary language is used with respect to determinations of the lack of funds as a basis for restricting portability. Despite HUD's silence, a court would be likely to find that at least equivalent measures must be taken before interfering with the core right to choose where to live.

[27]In 2004, HUD advised PHAs that restrictions on portability should not be undertaken without "prior *HUD* analysis of PHA finances and PHA development of a plan to reduce costs via other means" (emphasis added). This statement was made in PowerPoint slide 53 (as a follow-up to Question No. 15) in HUD's June 21, 2004, and July 13, 2004, Webcast on Housing Choice Voucher Appropriations Implementation. *See also* Letter from William O. Russell, III, HUD, to Judith Liben, Massachusetts Law Reform Institute (Oct. 21, 2004), *available at* http://www.nhlp.org/html/sec8/voucher_funding_2005.cfm.

[28]HUD approval was a prerequisite in 2004. *See* note 27, *supra*.

PHAs Must Follow Procedural Requirements Prior to Changing Policies and Practices

If a PHA determines it must reduce payment standards, increase minimum rents, restrict moving rights or consider other changes of the nature set forth in the notice, in most cases it must make changes to its annual plan and Section 8 administrative plan. Changes to the annual plan require notice to the public and the Resident Advisory Board with an opportunity to comment.[29] Any change to the Section 8 administrative plan requires approval of the PHA's governing board.[30]

To the extent that a PHA determines that substantial changes to policy or practice are required, it should consult broadly with the public, including landlords and program participants, and of course it should comply with the law. The purpose of such consultation and explanation is to make the PHA accountable and to improve the understanding in the community of the funding for the voucher program and the issues facing the PHA while maintaining public confidence in the voucher program. A failure to follow the requisite procedures may be subject to challenge and may result in a policy change that is unenforceable.[31]

Significantly, HUD does not mention in the notice the need to revise the PHA annual plan and only mentions the need to amend the Section 8 administrative plan in the context of termination of assistance due to insufficient funding. Changes in policy regarding the following issues listed in the notice may require changes to the PHA annual plan:

- adoption of a lower payment standard;
- freezing voucher issuance; and
- changes in the minimum rent.

Changes in policy regarding the following issues, also listed in the notice, may also require changes to the Section 8 administrative plan:

- adoption of a lower payment standard;
- ensuring reasonable rents;
- resumption of assistance after termination due to insufficient funds;
- voucher issuance; and
- bedroom size subsidy determinations. ■

[29] *See* 24 C.F.R. § 903.13(a)(1) and (c) (2004).

[30] *Id.* at § 982.54(a).

[31] Baldwin v. Hous. Auth. of the City of Camden, 278 F. Supp. 2d 365, 386 (D.N.J. 2003) (failure to comply with notice and comment requirements violated plaintiff's due process rights in an admission case involving credit worthiness).

Successfully Appealing RHS Single-Family Servicing Decisions:

Using the Administrative Appeals Process to Prevent Foreclosures

The Rural Housing Service (RHS, formerly Farmers' Home Administration) Section 502, single-family homeownership programs are a significant source of financing for affordable homeownership in rural parts of the United States. RHS funds homeownership through direct financing as well as through loan guarantees to private lenders. RHS issues approximately $3 billion in guarantees annually for single-family mortgages.[1] On the direct side of the program, USDA made 118,737 loans between October 1995 and April 2004.[2] The direct lending program is for very-low and low-income residents, while the guaranteed program may also serve moderate-income residents. The intent of each program is to provide financing to those who are not able to access financing otherwise for the purpose of purchasing or refinancing a modest home in a rural area.[3]

When homeowners in the direct loan program have difficulty keeping up with their mortgage or are not abiding by a term of their mortgage unrelated to payment, they are required to address the issue with RHS' Centralized Servicing Center (CSC). Unfortunately, resolving issues with CSC can be problematic. Complaints from advocates across the country include CSC's failure to offer special servicing options to homeowners that would let them keep their homes, as well as general rudeness and a lack of interest in helping homeowners avoid foreclosure. When rural homeowners or their advocates are unable to resolve problems with CSC, then an appeal is generally the next step that they must take. In the guaranteed loan program, borrowers may appeal only those decisions made by RHS, not those made by the lender (even if RHS concurs with those decisions).

The United States Department of Agriculture's National Appeals Division (NAD) is an entity independent of RHS that hears such cases. Borrowers must request a hearing within thirty days of the adverse decision.[4] That time period is tolled if the appellant is entitled to and requests mediation first.[5] The borrower or RHS may

[1] *See Rural Housing Service–Testimony of William B. Shear,* Knowledgeplex, *at* http://www.knowledgeplex.org/news/79228.html (Mar. 16, 2005).

[2] GAO, Elderly Housing: Federal Housing Programs That Offer Assistance for the Elderly 50 (2005).

[3] 42 U.S.C. § 1471 (West 2003).

[4] 7 C.F.R. § 11.6(b) (2004)

[5] *Id.* at § 11.5(b).

request a Director's Review of the hearing decision. The parties may then request the Director's reconsideration of his or her decision. Once administrative review has been exhausted, dissatisfied parties may be able to proceed to court if they have sufficient grounds.

Most cases will not proceed beyond the administrative hearing process and not receive NAD review, for reasons that include lack of access to attorney representation or lack of borrower sophistication. Understanding the mechanics and basic legal requirements of the NAD appeals process is one essential element of assisting a low-income homeowner.[6]

Another key element is understanding what types or quantum of evidence NAD hearings staff find persuasive or sufficient. One tool to that end is via the NAD's Web site, where it posts its hearing decisions.[7] The names of parties are redacted, along with other identifying information, such as the state and city where the property in question is located. However, the key content of the decisions is posted, and the database of decisions is searchable by key word or phrase.

NAD Determination Decisions

Several recent RHS payment assistance cases in which NAD reversed RHS actions provide some insight into NAD's review process and the types of problems low-income homeowners are having in the RHS single-family program.

Income Eligibility

In one case, RHS projected that a homeowner would continue to receive overtime pay in the coming year, and for that reason, found the homeowner ineligible for payment assistance that would have reduced monthly mortgage payments to a manageable level. NAD found that RHS should not have included overtime in projected income, given the evidence it had from the homeowner's employer indicating that such payments would probably not be on-going.[8]

RHS/CSC Servicing Problem

In another case, a homeowner submitted a payment assistance renewal package, but RHS (apparently through the CSC) claimed it did not have a complete package and denied the renewal request. The details of this case are important, as they reflect the experience of other homeowners in the program. RHS acknowledged that it had logged a subsidy renewal package from the borrower into its document imaging records on August 16, 2004. RHS acknowledged that it sent another renewal package to the borrower one week later, along with a letter indicating that the only additional documents the borrower needed to submit were an Authorization to Release form, and proof of Social Security and/or pension. The homeowner testified that she signed the release and returned it with pension information. She also testified that she called the RHS servicing center twice thereafter in August to inquire about the status of her renewal request. RHS had no record of those phone calls.

The borrower's experience is reflective of a common complaint: the CSC is disorganized and loses servicing and other documents with some regularity.

Nonetheless, the NAD found the homeowner's testimony credible and found that RHS had sufficient documentation to determine the borrower's eligibility for subsidy renewal. NAD also found that RHS' instructions to the homeowner about what documentation was needed were "inconsistent," as its letter requested only two additional documents but an entire renewal package was sent to her. NAD concluded that additional evidence indicated that RHS was having difficulty managing the homeowner's loan account documents.[9]

The borrower's experience in this case is reflective of a common complaint of advocates who work on RHS single-family loan cases, which is that the CSC is disorganized and loses servicing and other documents with some regularity. As a result, borrowers may face unwarranted foreclosure efforts by RHS rather the opportunity to work out a payment or other servicing plan for their loans.[10]

CSC Servicing Failure

A homeowner's credible testimony persuaded the NAD in another recent case in which NAD concluded that RHS had not properly serviced a homeowner's account

[6]*See* the NAD Hearing Guide, USDA National Appeals Division, *available at* http://www.nad.usda.gov/nadguide.pdf. *See also* Christopher R. Kelley, The National Agricultural Law Center, USDA National Appeals Division: An Outline of the Rules of Procedure (2004), *available at* http://www.nationalaglawcenter.org/assets/articles/kelley_exhaustion.pdf; Karen R. Krub, The National Agricultural Law Center USDA National Appeals Division Procedures and Practice (2003), *available at* http://www.nationalaglawcenter.org/assets/articles/kelley_exhaustion.pdf.

[7]USDA National Appeals Division Web site is available on-line at http://www.nad.usda.gov/public_search.html (when searching by case number, use the "Enter the word or phrase here" field).

[8]Case No. 2005W000364 (NAD Apr. 18, 2005) (director's review determination), *at* http://www.nad.usda.gov/public_search.html.

[9]Case No. 2005W000283 (NAD Apr. 14, 2005) (director's review determination), *at* http://www.nad.usda.gov/public_search.html.

[10]This information comes from a survey NHLP conducted in spring of 2005 of housing advocates, including legal services attorneys and housing counselors, regarding servicing of RHS Section 502 Direct and Guaranteed loans.

[11]Case No. 2005E000319 (NAD Mar. 11, 2005) (director's review determination), *at* http://www.nad.usda.gov/public_search.html.

after her moratorium had ended.[11] RHS claimed that the homeowner had refused to sign a reamortization agreement it sent to her when her moratorium ended. The homeowner testified to the contrary, stating that she had never received such an agreement, nor had the local RHS field office; she also testified that she had told RHS that she had not received a reamortization agreement. The NAD hearing officer found specifically that the homeowner's testimony was more credible than the RHS agency record, which contained nothing to refute her testimony. In addition, the hearing officer found that "it is illogical to think that Appellant [the homeowner] would have refused to sign the document that would bring her account current."[12] Furthermore, the hearing officer noted that the homeowner had relied on the many conversations she had with RHS staff from whom she received information that was "confusing and conflicting."

Homeowners who have done their best to comply with RHS procedures should not be afraid to appeal an adverse decision, even if their own testimony is the only corroboration they have of certain events.

Evidence and Corroboration

NAD's findings in these last two cases about the homeowners' credibility and RHS'organizational problems are important. They indicate that homeowners who have done their best to comply with RHS procedures should not be afraid to appeal an adverse decision, even if their own testimony is the only corroboration they have of certain events.

In a case that did not reach the NAD, an advocate in West Virginia[13] assisted a woman who had had a Section 502 direct home loan with RHS since March 1992. She received $175 per month in payment assistance. In May 2004, she received a statement eliminating the assistance and increasing the payment from $117 per month to $292 per month. She also received a statement alleging $12,393.20 in unauthorized assistance over a six-year period, and demanding immediate repayment. Both claims asserted that a male friend had resided with her during that time, and that his income was not reported.

The homeowner's legal services counsel contested RHS' action and provided RHS with twenty-seven documents showing client living at one physical address and thirty documents showing the male friend living at another physical address. RHS reversed its decision. However, RHS then added the $12,393.20 to the homeowner's loan balance and refinanced it. RHS also escrowed her real estate taxes and house insurance, which the homeowner had always paid in the past. As a result, the homeowner's monthly payment quadrupled to $452.49 per month.

The homeowner's legal services counsel contested the decision a second time. RHS rejected the challenge, claiming that the homeowner had made a written request that her account be refinanced and escrowed. Her counsel filed a third challenge, denying that the homeowner had made any such request. RHS finally admitted its error and reduced the required payment to $117 per month.[14]

Conclusion

NAD appeals decisions show that NAD can be an effective forum, particularly for addressing problems involving structural inefficiencies within RHS. Low-income rural homeowners will often need the support of legal services attorneys to bring these appeals. The on-line database of Director's Review Decisions on the NAD Web site is a valuable resource in preparing such appeals. The successful outcome achieved by the legal services advocates in West Virginia also indicates that such matters may be resolvable even without reaching the NAD appeals phase. Part of the strength of the advocate's approach was in the care with which he documented the RHS error, leaving the agency with little doubt that the advocate and his client would be successful in a formal appeals process. That type of thoroughness and preparation can lead to a successful outcome without pursuing the lengthier NAD process. ■

[12] *Id.* at 3.

[13] Martin Wegbreit, Senior Managing Attorney, Central Virginia Legal Aid Society, who may be reached at (804) 648-1012, ext. 3005, or marty@cvlas.org.

[14] Copies of the three appeals letters filed on the homeowner's behalf are available on-line at http://www.probono.net/va and can be accessed with "find-it" number 10001191.

Task Force Calls for Strengthening the Section 515 Rural Rental Housing Program

The Housing Assistance Council (HAC) and the National Housing Law Project (NHLP) convened a task force of tenant advocates, nonprofit organizations, public bodies and for-profit developers to review the Rural Housing Service (RHS) Section 515 rural rental housing program. The task force subsequently released a report of its findings on April 7, 2005. The report makes a number of administrative, regulatory and legislative recommendations regarding the preservation of the Department of Agriculture's (USDA) Section 515 Rural Rental Housing (RRH) stock.[1]

Funding for the task force report was provided by the John D. and Catherine T. MacArthur Foundation. Task force members included: Gideon Anders, NHLP; Jennifer Archibald, Fannie Mae; Michael Bodaken, National Housing Trust; Colleen Fisher, Council for Affordable and Rural Housing; Toby Halliday, Local Initiatives Support Corporation; Moises Loza, HAC; Norman McLoughlin, Kitsap County Consolidated Housing Authority; Robert Rapoza, National Rural Housing Coalition; Matt Schwartz, California Housing Partnership Corporation; Patrick Sheridan, Volunteers of America; Timothy Thompson, Housing Preservation Project; and Chuck Wehrwein, Mercy Housing. The broad recommendations of the multilateral task force propose that efforts seek to: (1) strengthen USDA administrative processes; (2) preserve Section 515 properties for low-income residents and revitalize their physical condition; and (3) protect tenants.[2]

The task force met both in person and via teleconference several times between the summer of 2004 and the spring of 2005. During the course of its discussions, significant developments regarding the Section 515 housing stock and its preservation took place. Notably, the RHS released: Administrative Notice 4010, which guides the agency in facilitating transfers of physical assets to nonprofits and public bodies; the commissioned Comprehensive Property Assessment by ICF Consulting, which evaluated the stock and made several policy recommendations;[3] Interim Final Rule 3560 and its accompanying handbooks;[4] and the President's Fiscal Year (FY) 2006 budget request.[5] The task force incorporated information from these releases into its final report. Highlights from the report follow.

Strengthening Incentives and Administrative Processes

The task force agreed that there are four areas that required attention in order to ensure responsible stewardship of the Section 515 stock.[6] The first of these is to provide more authority to the RHS's National Office and to take other steps to ensure timely, consistent and coordinated actions by USDA Rural Development (RD) and the RHS office.[7] In order to accomplish this, the task force recommended that RD's activities be centralized and standardized while emphasizing the need for transaction consistency and greater authority of the RHS Administrator over local offices.[8] Concurrently, the report recommends simplification of the prepayment and transfer of physical assets processes and the use of outside expert contractors.[9]

The task force saw the need for better agency facilitation of transfers to preservation purchasers as a mechanism toward responsible stewardship of the Section 515 program.[10] Its major recommendations for achieving better facilitation involve the agency enabling the consolidation of loans and the consolidation of owner entities while providing more financial assistance to nonprofits that preserve properties through either the prepayment process or transfer process.[11] More specifically, the report recommends that the current due diligence grant for nonprofits which purchase through the prepayment process be: (1) significantly increased from its $20,000 level; (2) greater publicized; and (3) authorized to cover costs associated with the transfer process.[12]

The needs of small Section 515 projects in remote areas garnered attention from the task force.[13] The uniqueness

[1] HAC & NHLP, FINAL REPORT OF THE TASK FORCE ON RURAL RENTAL HOUSING PRESERVATION (2005) [hereinafter FINAL REPORT], *available at* http://www.nhlp.org/html/rhs/PreservationTaskForceReport%20Final.pdf.

[2] *Id.* at 1-2 (Executive Summary); *see also* Press Release, Housing Assistance Council, Sales, Refinancing, and Tenant Protections Recommended by Rural Preservation Task Force (April 7, 2005) *available at* http://www.ruralhome.org/pressreleasesview.php?id=156.

[3] *See* NHLP, *Long-Awaited Rural Rental Housing Report Released*, 35 HOUS. L. BULL. 1, 11-16 (2005).

[4] *See* NHLP, *New RHS Multi-Family Housing Regulations and Handbooks*, 35 HOUS. L. BULL. 71, 89-93 (2005).

[5] *See* NHLP, *Proposed 2006 Budget Would Slash Federal Housing Programs and Freeze Spending*, 35 HOUS. L. BULL. 71, 83-84 (2005).

[6] FINAL REPORT, *supra note* 1, at 10-16.

[7] *Id.* at 10. On the national level, RHS falls under the Rural Development agency of the USDA. The Office of Rural Housing Preservation is situated under RHS. However, on the state level, state and area RD offices administer the Section 515 program.

[8] *Id.*

[9] *Id.* at 10-11.

[10] *Id.* at 12.

[11] *Id.* Each section of the report includes additional recommendations that follow "High Priority Recommendations." The full lists of all recommendations may be accessed online. *See* FINAL REPORT, *supra note* 1.

[12] *Id.* at 12.

[13] *Id.* at 14.

of these projects primarily lies in the fact that there are no economies of scale in purchasing, rehabilitating or operating them. Therefore, potential purchasers often fail to find their preservation cost effective.[14] While the task force urged USDA to find creative solutions in addressing this problem, the report calls for the agency to do the following: simplify the transfer process; cover the preservation purchasers' costs for purchase and operation (i.e., debt relief); encourage and assist conversion to resident cooperatives where tenants are willing to take on the responsibility and have high-enough incomes with which to do so; permit mixed uses (e.g., family with elderly occupancy); permit partial demolition when only part of a project is still needed in the market area; and expand information availability and treat portfolios as single properties so that transfers may be handled in one deal.[15]

Finally, the report recommends encouraging better stewardship through improved information sharing and communications.[16] Improved communications, in the task force's view, would automatically inform public housing authorities (PHAs) about prepayment applications and make property information and prepayment decisions readily available.[17] To facilitate information sharing the report suggests that the agency continue holding state-level meetings with current and potential owners, publicize best practices and launch the PIX database (a web-based program that provides information about potential prepayments to interested organizations).[18]

To assist in making the recommendations into realizations, the report makes specific administrative, regulatory and legislative suggestions. Administrative suggestions were made for the agency to:

- Give more authority to the RHS National Office to ensure timely, consistent, coordinated actions by USDA Rural Development and RHS offices.
- Centralize and standardize RD activities.
- Revise and simplify the prepayment and TPA processes.
- Use expert outside contractors.
- Enable consolidation of loans.
- Enable consolidation of owner entities.
- Cover up-front costs for nonprofit and public agency purchasers.
- Update and simplify TPA regulations.
- Provide management fees for nonprofits.
- Standardize requirements for nonprofits' structures.
- Allow all entities an opportunity to purchase with restrictions.
- Simplify the transfer process.
- Cover purchasers' costs.
- Encourage and assist conversion to resident cooperatives.
- Permit mixed uses.
- Permit partial demolition.
- Expand information availability.
- Treat portfolios as single properties.
- Inform PHAs about prepayments.
- Make property information readily available.
- Make prepayment decision information readily available.
- Facilitate information sharing and communications among all parties.[19]

The task force asks Congress to:

- Reorganize RD to provide RHS with greater authority, in the event that the department does not undertake an internal reorganization.
- Increase the amount of up-front cost reimbursements available to nonprofit and public agency purchasers.
- Cover up-front costs for the TPA process.
- Broaden the definition of nonprofit to include a for-profit limited partnership with a nonprofit-controlled general partner.
- Enact exit tax relief.
- Allow all entities an opportunity to purchase with restrictions.
- Permit mixed uses.
- Permit partial demolition.[20]

Preservation of Affordability and Revitalization of Physical Conditions

In an effort to revitalize and preserve the Section 515 stock for long-term affordability, the report calls for the

[14] *Id.*

[15] *Id.* at 14-15.

[16] *Id.* at 15.

[17] *Id.*

[18] *Id.* at 16.

[19] *Id.* at 16-17.

[20] *Id.* at 17.

increase of preservation funding, the removal of superfluous regulatory barriers and the enabling of third-party financing.[21] The report notes that the task force appreciated the administration's FY 2006 budget, which requests more than $200 million for revitalization efforts; however, it cautions that fairness to all parties merits attention before allocations and program changes are made.[22]

The task force's highest priority recommendations include: the need for improved communications between RD and state agencies; availability of 9% tax credits; tax credit set-asides for Section 515 preservation; HOME- and CDBG-fund set asides for Section 515 preservation; the use of voucher funding as incentives to owners to stay in the program; and consistency of RHS regulations with other government and private sector financing standards for underwriting and processing.[23]

To empower and enable third-party financing, the task force found that greater private lender and secondary market involvement is needed in preservation efforts.[24] The report noted that support from Fannie Mae and Freddie Mac would prove beneficial in this area.[25] The government-sponsored agencies should continue to encourage private lender involvement and work to define the transaction types where third-party debt can be used in the preservation of the Section 515 portfolio.[26]

The report recommends that USDA/RD/RHS should:

- Improve communications between RD and state agencies.
- Ask state allocating agencies to set aside tax credits for 515 preservation.
- Permit operating deficit reserve accounts.
- Make RHS regulations consistent with other government and private sector financing standards for underwriting and process.
- Continue to provide incentives for owners to remain in the 515 program.
- Allocate more RHS funding for preservation.
- Request more RHS funding for preservation.
- Make subordination of Section 515 debt easier.
- Allow above-market rents when needed to cover costs.
- Facilitate greater private lender involvement in preservation.
- Enable secondary market involvement in preservation.[27]

Concurrently, Congress should:

- Amend the tax statute, if necessary, to ensure that 515 properties are eligible for 9% tax credits.
- Enable RD voucher funding to be used as an incentive to owners.
- Authorize RHS to forgive and bifurcate debt.
- Appropriate additional funds for 515 preservation.
- Strengthen the Community Reinvestment Act.[28]

Additionally, the Federal Deposit Insurance Corporation, Federal Reserve Board, Office of the Comptroller of the Currency, and Office of Thrift Supervision should fully implement the Community Reinvestment Act in rural areas.[29]

Protecting Tenants

According to the task force, the protection of tenants includes assurance against displacement and the promise of decent, safe, sanitary and affordable homes that are managed in ways that protect tenants' interests.[30] Specifically, the report states that tenants who are threatened with displacement from their homes by Section 515 loan prepayments that are approved by the ELIHPA process, foreclosures, or maturing 515 mortgages must be protected by the issuance of vouchers that are comparable to today's HUD Enhanced Vouchers.[31] The report notes three additional ways in which post-prepayment protection should take place. They include the right to appeal prepayment decisions, certain notice requirements and participation in the process through comments to the agency.[32]

Other notable ways in which the report suggests that protection of tenants may be facilitated require the agency to standardize its ELIHPA determinations about the impact of prepayments on minority housing opportunities. The task force's suggestions seek to discourage decisions based on assumptions unsupported by actual evidence and demographic data. The task force also recommends the deletion of the "disproportionate" standard regarding

[21] *Id.* at 18-21.

[22] *Id.* at 18.

[23] *Id.* at 18-19.

[24] *Id.* at 21.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 22.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 23.

[31] *Id.*

[32] *Id.* at 24. The Council for Affordable and Rural Housing declined to concur in recommending these three suggestions.

a prepayment's affect on minority housing opportunities that appears in the agency's new regulations.

Specifically, the task force suggests that the agency:

- Use vouchers comparable to HUD Enhanced Vouchers.
- Allow residents to appeal decisions that would terminate their tenancy.
- Provide clear, adequate and appropriate notices to tenants.
- Ensure that residents are consulted and invited to comment on any decision made with respect to their developments.
- Inform and consult residents whenever an owner proposes to take actions that would affect the residents without causing their permanent displacement.
- Delete "disproportionate" from the regulations relating to impact on minority housing opportunities.
- Standardize determinations of impact on minority housing opportunities.
- Define comparable housing and market area clearly.
- Protect tenants when loans are accelerated and paid off.
- Do not allow acceleration to be used to circumvent the prepayment process.[33]

As discussed above, the task force's single congressional request regarding tenant protections seeks authorization for the agency to issue vouchers that are comparable to HUD Enhanced Vouchers.[34]

Conclusion

The task force intends to follow up on its recommendations by engaging both the agency and relevant legislators. NHLP will report further developments in future issues of the *Housing Law Bulletin*. ■

[33] *Id.* at 26.

[34] *Id.*

Recent Cases

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

Landlord-Tenant — Habitability; Landlord-Tenant — Negligence

Robinson v. Bates, 2005 WL 927166 (Ohio App. Ct. Apr. 22, 2005). In this landlord-tenant negligence case, the Court of Appeals of Ohio ruled, *inter alia*, that the common law defense to negligence liability regarding open and obvious defects did not abrogate a landlord's statutory duty to maintain leased premises in habitable condition. The case centered around injuries suffered by Plaintiff tenant when she slipped on loose concrete bricks left in the driveway of her leased home by Defendant landlord's building contractor.

Landlord-Tenant — Termination of Tenancy

Andrus v. Dunbar, 2005 WL 927127 (Vt. Apr. 13, 2005). In this eviction action, the Supreme Court of Vermont ruled, *inter alia*, that service of a subsequent notice to vacate voided a prior notice to vacate.

Lead Paint — Generally; Residential Lead-Based Paint Reduction Act

Mason v. Morrisette, 403 F.3d 28 (1st Cir. 2005). In this case, the First Circuit ruled that minor children lacked standing to bring a claim against their parent's landlord under the Residential Lead-Based Paint Reduction Act, 42 U.S.C. §§ 4851, *et seq.*, for failure to disclose information regarding lead paint. Relying on the language of the statute, the court held that only a "purchaser or lessee" may have such standing. ■

[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 2005. 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 Proposed Rules

70 Fed. Reg. 19,858 (Apr. 14, 2005)
Revisions to the Public Housing Operating Fund Program

Summary: This proposed rule would revise the regulations for the Public Housing Operating Fund Program. Through the Operating Fund Program, HUD determines the allocation of operating subsidies to public housing agencies.

Comments Due Date: June 13, 2005.

70 Fed. Reg. 18,194 (Apr. 8, 2005)
Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2004

Summary: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly *Federal Register* notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous *Federal Register* notice. The purpose of this notice is to comply with the requirements of Section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2004, and ending on December 31, 2004.

70 Fed. Reg. 21,437 (Apr. 26, 2005)
Modification of the Waivers Granted to and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees Under the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005

Summary: This notice advises the public of additional waivers of regulations and statutory provisions granted to CDBG disaster recovery grantees for the purpose of assisting in the recovery from the federally declared disasters that occurred between August 31, 2003, and October 1, 2004. HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose. This notice describes additional waivers requested by the State of Maryland to allow it to administer disaster recovery grant funds directly rather than by distributing funds to units of general local government or Indian tribes.

Effective Date: May 11, 2005.

HUD PIH Notice

Notice PIH 2005-12 (HA)(Apr. 19, 2005)
Continuation of Implementation of the Public and Indian Housing Information Center (PIC) Demolition/Disposition Sub-module for Application Submission and Data Collection for Public Housing Unit Removals

Summary: The Department of Housing and Urban Development (HUD) requires public housing agencies (PHAs) to use the PIC Demolition/Disposition sub-module to submit applications to the Special Applications Center for units they are proposing to remove from their public housing inventory, and to promptly record such removal of all approved units after the Demolition/Disposition action has taken place. After the PHA has completed its required functions in PIC, HUD Field Offices must confirm, in the PIC Demolition/Disposition sub-module, the removal of units in order to effectuate the reduction of units within PIC. The purpose of this notice is to provide PHAs and Field Office staff information pertaining to their obligation of maintaining current information within PIC, tracking the inventory of public housing units, and HUD's transition to the use of the PIC system for these purposes.

Expired: April 30, 2006.

Notice PIH 2005-13 (Apr. 21, 2005)
Extension—Notice PIH 2004-5 (HA) HUD PIH Notice for Mixed-Finance Development of Operating Subsidy-Only Projects

Summary: This notice extends Notice PIH 2004-5 (HA), same subject, which will expire on April 30, 2005, for another year until April 30, 2006.

Expires: Aril 30, 2006.

[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.

Notice PIH 2005-14 (HA)(Apr. 22, 2005)
Calendar Year 2005 Administrative Fee Funding for Homeownership Voucher Program Implementation and Closings

Summary: HUD will again provide additional administrative fees to PHAs that create a homeownership voucher program, or expand an existing homeownership voucher program, during calendar year 2005. This notice provides information concerning these additional homeownership administrative fees.

Expires: April 30, 2006.

Notice PIH 2005-15 (HA) (Apr. 26, 2005)
Reinstatement of Notice PIH 2004-4 (HA), Submission and Processing of Public Housing Agency Applications for Housing Choice Vouchers for Relocation or Replacement Housing Related to Demolition or Disposition (Including HOPE VI), and Plans for Removal (Required/Voluntary Conversion Under Section 33 of the U.S. Housing Act of 1937, As Amended, and Mandatory Conversion Under Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996) of Public Housing Units

Summary: This notice reinstates Notice PIH 2004-4 (HA), which expired on March 31, 2005.

Expires: April 30, 2006.

RHS Administrative Notices

RD AN No. 4068 (1980-D)(April 1, 2005)
Single Family Housing Guaranteed Loan Program (SFHGLP) Applicant Credit History Verification

Summary: This Administrative Notice (AN) elaborates upon what forms of credit history and current debt verifications are acceptable for loans guaranteed under the SFHGLP. This AN establishes that Rural Development will accept similar verification methodologies currently acceptable to the residential mortgage industry, secondary markets, and other federal agencies.

Expiration Date: April 30, 2006.

RD AN No 4069 (1980-D)(April 1, 2005)
Single Family Housing Guaranteed Loan Program (SFHGLP) Determining Repayment Income for Self-Employed Applicants

Summary: This AN provides guidance on how to properly analyze a self-employed applicant's loan application for repayment ability. This AN addresses the following topics:

- What documentation is generally required for self-employed applicants?
- What method should the lender's underwriter use when analyzing the applicant's tax returns?
- How should the underwriter treat business-related debts that are paid with business funds, rather than personal income?

Following these guidelines will ensure processing uniformity and reduce the possibility of underwriting errors.

Expiration Date: April 30, 2006.

RD AN No. 4070 (1980-D)(April 1, 2005)
Single Family Housing Guaranteed Loan Program Acceptable Alternative Documentation to Verify the Applicant's Employment Income

Summary: This AN elaborates on the acceptable forms of employment income verifications for loans guaranteed under the Single Family Housing Guaranteed Loan Program. The Rural Housing Service (RHS) will accept verification methodologies similar to those currently acceptable to the residential mortgage industry, secondary markets, and other Federal agencies.

Expiration Date: April 30, 2006.

RD AN No.4072 (1901-E)(April 11, 2005)
Program Outreach Requirements

Summary: The AN provides guidance to field staffs, borrowers and grantees concerning "Civil Rights" compliance with outreach requirements for Rural Development programs. This policy will be communicated to the public through all appropriate USDA public information channels, in English or languages appropriate to the local population and in alternative means of communication (Braille, large print, audiotape, etc.). Rural Development personnel and borrowers and/or grantees will not participate in any public meeting in which persons are illegally discriminated against because of their race, color, national origin, sex, religion, age, disability, political belief, sexual orientation, or marital or family status. In addition, all outreach meetings planned by Rural Development personnel and borrowers and/or grantees shall be held in facilities that are accessible to persons with disabilities. Rural Development personnel and borrowers and/or grantees must ensure compliance with this policy.

Expiration Date: April 30, 2006.

RD AN No. 4073 (1901-E)(April 11, 2005)
Rural Housing Service Program Poster Requirements

Summary: This AN advises state and field staff of their responsibility to provide posters to borrowers, grantees, contractors and subcontractors regarding USDA nondiscrimination policies.

Expiration Date: April 30, 2006. ■

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HUD Housing Programs: Tenants' Rights (3d ed. 2004) **(Special offer expires June 30, 2005)**	$ ~~355~~ 300		
Housing Law Bulletin (annual subscription, 10-12 issues)	$ 175		
Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)	$ 5		
Housing for All: Keeping the Promise (1995)	$ 5		
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