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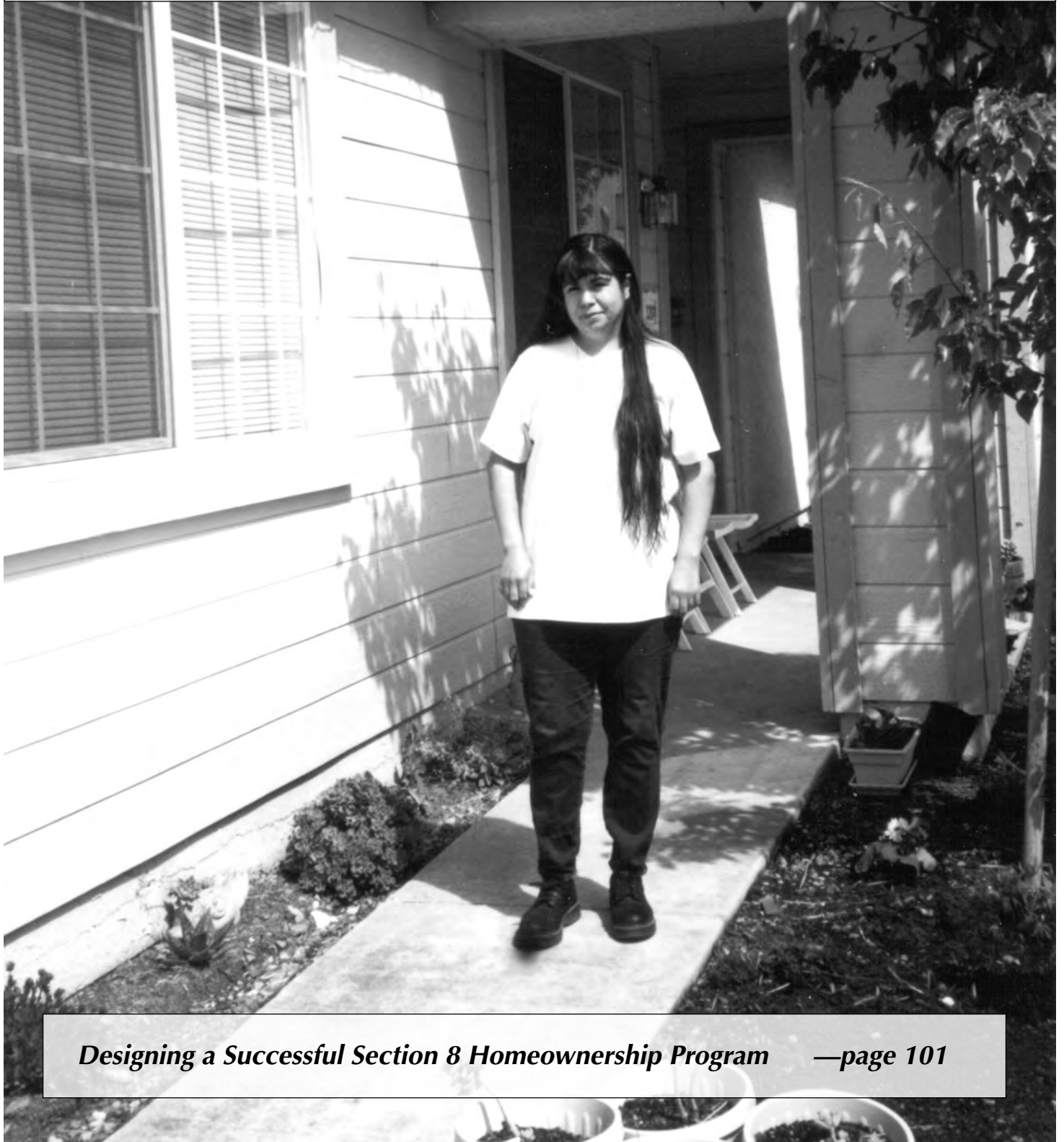


advancing housing justice

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Designing a Successful Section 8 Homeownership Program —page 101

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Community Participation and Program Flexibility are Key to Creating a Successful Section 8 Homeownership Program

Introduction

The new Section 8 homeownership voucher program, which was created by Congress in 1998 and implemented by a Department of Housing and Urban Development (HUD) final rule published on September 12, 2000,¹ is being met with enthusiasm and motivation across the country as more and more public housing authorities (PHAs) investigate establishing their own local programs. At the same time, the Section 8 Homeownership Program is receiving an encouraging response from local real estate and lending communities, community-based organizations and families who are participating in the Section 8 tenant-based voucher program.

Under the Section 8 Homeownership Option, PHAs may now allow families participating in the Section 8 voucher program to use their federal assistance to purchase their own homes. Although HUD does not provide any additional funding for this program, many PHAs across the country are beginning to implement homeownership programs for a variety of reasons, including the provision of additional housing opportunities for Section 8 Housing Choice voucher holders—especially in areas faced with an increasing lack of landlord participation in the Section 8 tenant-based program. By providing the homeownership option, eligible Section 8 voucher holders may expand their housing opportunities beyond the rental market and use their assistance to purchase homes in the communities of their choice. The Section 8 Homeownership Program may provide relief for tenants living in certain “hot” rental markets, who can no longer afford high rents but can still afford a lower mortgage payment. Finally, PHAs may desire to encourage families to utilize self-sufficiency and homeownership programs—such as the Family Self-Sufficiency Programs, Individual Development Accounts and local First Time Homeowner Downpayment grants—to propel them into successful homeownership. At the same time, the homeownership option provides a mechanism for creating long-term, stable housing opportunities for seniors, the disabled and others living on fixed, low incomes.

¹Public Law 105-276, Title V, § 501 *et seq.*, 112 Stat. 2518 (approved Oct. 21, 1998). The Quality Housing and Work Responsibility Act (QHWRA) amended the *United States Housing Act of 1937* (42 U.S.C.A. §§ 1437 *et seq.* (West 1994 and Supp. 2001)). The homeownership option is authorized under § 8(y) of the *United States Housing Act of 1937*, 42 U.S.C.A. § 1437i(y)(1)(B)(West Supp. 2001), as amended by § 555 of the QHWRA. See 24 C.F.R. Parts 5, 903 and 982; 65 Fed. Reg. 55,134 (Sept. 12, 2000). The Section 8 Homeownership Program regulations became effective on October 12, 2000. For an in-depth discussion of the final HUD Section 8 homeownership regulations, see 30 HOUS. L. BULL. 127 (Sept. 2000), at www.nhlp.org/html/sec8/homeownership.

To implement the Section 8 homeownership program, HUD has established mandatory requirements that PHAs must meet when implementing the program. These requirements pose many potential issues and conflicts which may affect poor families throughout the country. Despite the mandatory requirements, each PHA is afforded a great deal of discretion to design its own program to meet the needs of its local community. Accordingly, it is clear that each PHA must use this discretion wisely in order to implement a successful Section 8 homeownership program that complies with the HUD final rule while ensuring that the needs and rights of all potential Section 8 homeowners (especially those living on certain fixed incomes) are considered and preserved. With extensive community participation and education, and by developing flexible program policies and requirements, PHAs can provide increased opportunities to many families, including those with extremely low incomes and living in relatively high-cost housing areas, to participate in the dream of homeownership.

PHAs can provide increased opportunities to many families, including those with extremely low incomes, to participate in the dream of homeownership.

This article is the third in a series of articles about the new Section 8 Homeownership option. The first article, *HUD Issues Final Rule Implementing The Section 8 Homeownership Program*, discusses the final regulations and describes the mandatory, statutory and regulatory requirements that PHAs must adopt within its Homeownership Program.² The second article provides a description of the demonstration programs implemented by five of the 15 PHAs that were given demonstration authority prior to the publication of the HUD final rule.³ *The Section 8 Homeownership Demonstration Program: A Selective Review of Its Success* was published by the National Housing Law Project in January 2001. These demonstration programs were selected because the programs had produced the greatest number of escrow closings or demonstrated innovative program implementation. This article builds on the

²30 HOUS. L. BULL. 127 (Sept. 2000), at www.nhlp.org/html/sec8/homeownership.

³See 31 HOUS. L. BULL. 1 (Jan. 2001), at www.nhlp.org/html/sec8/homeownership. The demonstration authority was also provided under QHWRRA. Pub. L. 105-276, Title V, § 555(b), 112 Stat. 2613 (Oct. 21, 1998). When reviewing the demonstration programs, it is important to remember that these programs were designed to conform to the proposed Section 8 Homeownership rules that were published for comment on April 30, 1999. 64 Fed. Reg. 23,487. Accordingly, the final program rules differ significantly from the proposed regulations on a number of issues, such as the establishment of a minimum income requirement and housing assistance recapture provisions. However, it is useful to review features of the pilot demonstration programs because they demonstrate different approaches to financing and lending strategies that can be used in programs established in conformance with the final regulations.

previous articles to provide details of how to design a successful Section 8 Homeownership Program, including a discussion of community participation, flexible program features and financing options, and post-purchase practices. It also further examines the potential problems surrounding the use of the homeownership option.

Involving the Local Community

It is solely the decision of a PHA to allow Section 8 voucher recipients to use their federal assistance for homeownership. HUD does not designate or provide any additional Section 8 administrative funding for homeownership vouchers. As a result, there is little financial incentive for the PHA to adopt a homeownership program unless the homeownership program provides a mechanism for the PHA to utilize existing Section 8 vouchers that are not currently being utilized by Section 8 renters. In most cases, homeownership programs are more likely to be implemented by PHAs which understand, because of demonstrated need and strong advocacy efforts by tenants and their representatives and other community groups, that a voluntary homeownership option is in the best interest of Section 8 tenants and the community at large.

In some instances, a PHA's initial reaction may be that the homeownership option is not feasible in its program area. This reaction may be based on a belief that financial institutions lack the interest to lend to low-income families, or on inadequate information concerning how much mortgage payment (and therefore, the actual cost of a house) the Section 8 Housing Assistance Payment (HAP) can actually support. In other instances, the PHA may not have the necessary staff to review the regulations, research and develop its program and make the required amendments to its Administrative Plan (and possibly its Annual Plan).⁴

In fact, Section 8 homeownership programs are workable in most, if not all, jurisdictions. A PHA's indecisiveness or initial reaction to forego the homeownership option should be overcome or reconsidered through education and advocacy. It is imperative that local organizations, including Section 8 tenants and resident groups, lenders and real estate professionals provide information to the PHA about the needs of the local community and existing opportunities which can make the program successful. Likewise, since the PHA Annual Plan must be consistent with, and based upon, the needs of the community as identified in the local jurisdiction's Consolidated Plan, the PHA should be willing

⁴See generally 24 C.F.R. § 903.7(k) (2000). To implement the program, the PHA must include a statement of the homeownership program it administers, or intends to administer, in its Annual Plan. PHAs permitted to submit "streamlined" Annual Plans (i.e. high performing PHAs, "untroubled" PHAs with less than 250 public housing units and PHAs that only administer tenant-based assistance and do not operate or own public housing) are only required to include a statement of any homeownership program they administer under § 8(y) of the *Housing Act* in their streamlined plan. *Id.* §§ 903.11(b) and (c)(1). However, information must be provided in all streamlined plans regarding how the public may reasonably gain access to policies contained in the standard Annual Plan that are excluded from the streamlined submissions to HUD. *Id.*

to entertain any information that advances the feasibility of a local homeownership option.⁵ Moreover, models of existing programs as well as sample documents can be provided to the PHA in an effort to overcome resistance that may arise from the PHA having to expend limited staff time on researching and preparing its own program.⁶

In addition to involving community groups in its initial research of the homeownership option, the PHA should make every effort to contact other groups and organizations within the community to facilitate the drafting and implementation of its program. It must ensure that it identifies all potential resources available to, and potential obstacles that may be encountered by, the local Section 8 voucher population. Since many PHAs have little experience in the field of home purchases, including real estate practices and financing considerations, it is necessary to bring these groups on board to educate the PHA about homeownership issues. In turn, the PHA may need to educate these groups about the Section 8 voucher program.

Although the PHA may be tempted to develop its homeownership program independently before amending its Annual Plan at public hearing, it is wise for the PHA to contact community groups prior to the actual development of the plan. This approach will help ensure that the community is supportive and that the homeownership program is developed in a manner that capitalizes on existing opportunities, addresses local needs and minimizes any complications that may occur after the program becomes operational.⁷ In addition, involving community groups will also help the PHA develop the capacity to operate a successful program, a requirement that the PHA must demonstrate in its Annual Plan prior to implementing its homeownership program.⁸

⁵*Id.* § 903.15. For information about the Consolidated Plan, *see generally* 24 C.F.R. Part 91.

⁶Sample Section 8 homeownership programs and supporting documents are available on the NHLP Web site at www.nhlp.org. (Go to the Section 8 page.)

⁷The governing body of the PHA must conduct an open public hearing, with appropriate notice and publication, prior to the adoption, amendment or modification of the Annual Plan. 24 C.F.R. §§ 903.17(a) and (b), 903.21 (2001). The PHA must also conduct outreach to encourage broad public participation in the PHA Plan process. *Id.* § 903.17(c).

⁸If the PHA elects to provide a homeownership program, the PHA must demonstrate in its Annual Plan the capacity to operate a successful program. Such capacity can be demonstrated by any of the following methods: (1) requiring each family to pay a minimum downpayment of at least 3 percent of the purchase price and further requiring that at least 1 percent of such purchase price comes from the family's personal resources; (2) requiring that the financing for the home purchase is provided, insured or guaranteed by the state or federal government, complies with secondary mortgage market underwriting requirements, or complies with generally accepted private sector underwriting standards; or (3) otherwise demonstrating in its Annual Plan that it has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program. 24 C.F.R. § 982.625(d) (2001) (Hereinafter, all the citations to the Section 8 Homeownership program regulations will be limited to the section number). For example, the PHA may decide to partner or contract with existing experienced nonprofit organizations for consultation, implementation or administration of the homeownership program. *See* HUD response to *Comments Regarding the Role of Non-Profits*, 65 Fed. Reg. at 55,134, 55,145 (Sept. 12, 2000).

NLADA Substantive Law Conference July 25-July 29, Berkeley, California

The National Legal Aid and Defender Association's annual Substantive Law Conference is the legal services community's premier national training event. Trainers from national support centers and allied organizations, including the National Housing Law Project, as well as substantive experts from field programs will cover the latest legal developments and strategies affecting clients.

This year's conference will provide participants with comprehensive coverage of issues which are the focus of 10 training tracks. Additionally, participants have the opportunity to attend workshops addressing issues that cut across traditional poverty law specialty areas as well as a separate skills-based training track for participants who want to strengthen their ability to develop partnerships, collaborations and coalitions.

This year's training tracks include:

- Federal Housing
- Consumer Law
- Social Security
- Welfare
- Native American Law
- Women & Family Law
- Children & Youth Law
- Community Economic Development
- Employment Law
- Health Law

A detailed conference announcement with a registration form and preliminary agenda was sent out by NLADA to its members and others. For a copy of the form and for information about the conference, contact Marc Holladay at (202) 452-0620 or by e-mail at m.holladay@nlada.org.

Resident Groups and Housing Advocates

To be eligible for the Section 8 homeownership program, families must first be eligible for a Section 8 Housing Choice Voucher.⁹ Such families may be existing Section 8 tenants or new applicants admitted from the general PHA Section 8 voucher waiting list.¹⁰ Accordingly, it is prudent for a PHA to include local residents and their advocates in its drafting of the PHA Homeownership Program, including residents already serving on the PHA Resident Advisory Board, those participating in community self-sufficiency programs as well as applicant families waiting for Section 8 vouchers.

To demonstrate the capacity to administer a homeownership program in its Annual Plan, a PHA may choose to partner with a local organization with housing purchase and counseling experience for first-time homebuyers.

With such inclusionary practices, PHAs can obtain valuable insight into how long-term tenants may approach homeownership opportunities. Some families may have already explored the possibilities of becoming homeowners by comparing local real estate rental and ownership markets or attending credit counseling and homebuyer education classes. Other families can provide information regarding racial and/or economic barriers that they have encountered in different neighborhoods while searching for existing housing. As recommended by HUD, this type of information should be incorporated into the pre-ownership counseling provided by the PHA or its designee, and should be addressed further through the design of the PHA's homeownership policies.

Moreover, housing advocates and advocates for the poor, including local legal services programs, can contribute valuable information about the needs of their clients which should be utilized to avoid pitfalls later in the program. For example, advocates who regularly deal with income and asset issues of families on fixed incomes or who are receiving certain types of government benefits should be consulted on how the PHA housing assistance payment should be treated in order to avoid income and asset limitations associated with many government programs. Similarly, organizations that develop or rehabilitate housing for the disabled can provide information about the type and cost of housing allowances that should be considered for disabled homeowners. Organizations that provide services to people experiencing domestic

⁹See generally 24 C.F.R. Part 982 (Section 8 Tenant-Based Assistance: Housing Choice Voucher Program). For eligibility requirements of Section 8 voucher participants, see §982.201 *et seq.*

¹⁰§ 982.627(a)(1); see also HUD's Overview of the Section 8 Homeownership Program, 65 Fed. Reg. 55,134 (Sept. 12, 2000).

violence or changes in marital status should be contacted to incorporate necessary confidentiality procedures and to craft specific "first-time homebuyer" definitions. Legal Services programs in the area may also have valuable information concerning credit and foreclosure prevention issues as well as predatory lending practices.

Neighborworks[®] Organizations and Other Housing Counseling Agencies

To demonstrate the capacity to administer a homeownership program in its Annual Plan, a PHA may choose to partner with a local organization with housing purchase and counseling experience for first-time homebuyers. These partnerships are essential because prior to using homeownership assistance, HUD requires that a participating family attend and complete a pre-assistance homeownership and a housing counseling program prescribed by the PHA.¹¹ As suggested by HUD, the PHA-required pre-assistance counseling program should include:

- home maintenance (including care of the grounds);
- budgeting and money management;
- credit counseling;
- how to negotiate the purchase price of a home;
- how to obtain homeownership financing and loan preapprovals, including a description of the types of financing that may be available, and the pros and cons of different types of financing;
- how to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- advantages to purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- information about the *Real Estate Settlement Procedures Act* (12 U.S.C. 2601 *et seq.*) (RESPA), state and federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

Instead of developing pre-counseling assistance programs to provide this information, PHAs may choose to investigate and utilize existing programs in the locality. Community-based agencies such as NeighborWorks and Neighborhood Housing Services, housing counseling services, consumer credit counseling groups and nonprofit economic development organizations may provide extensive counseling in each of these areas.

¹¹§ 982.630(a) and (b).

For example, last year Congress appropriated \$90 million for use in neighborhood reinvestment activities to the Neighborhood Reinvestment Corporation, a national non-profit corporation created by Congress to revitalize older distressed communities through local nonprofit organizations.¹² The NeighborWorks network consists of 215 organizations in 48 states, the District of Columbia and Puerto Rico and is supported by the Neighborhood Reinvestment Corporation and its sister organization, Neighborhood Housing Services of America (which operates a secondary mortgage market that purchases housing loans from NeighborWorks organizations).¹³ Striving to expand opportunities for affordable housing and to provide support for the revitalization of neighborhoods, NeighborWorks organizations provide credit and budget counseling, downpayment and closing cost assistance, education regarding financing and home maintenance and delinquency intervention.

Of the \$90 million appropriated by Congress last year, \$5 million was designated for use with the Section 8 homeownership program.¹⁴ Through a competitive grant process, this money is to be distributed to 21 NeighborWorks and Neighborhood Housing Services (NHS) organizations across the country, including the Great Lakes Collaborative (which covers jurisdictions in Tennessee, Ohio and Indiana) and the NeighborWorks HomeOwnership Centers of Vermont.¹⁵ Over the next three years, grant recipients are projected to recruit more than 6,775 potential Section 8 homebuyers to the housing counseling programs and to assist approximately 685 of those families in completing the homeownership process.¹⁶

PHAs may also consider contacting or partnering with local HUD-approved housing counseling agencies and other credit counseling agencies to increase their capacity in providing the required pre-assistance counseling to families

wishing to utilize their Section 8 vouchers for homeownership. HUD-approved counseling agencies provide services locally to counsel first-time homebuyers, to educate persons with disabilities and minorities of homebuying opportunities and seek to improve access to mortgage financing for low and moderate-income families.¹⁷

Local Real Estate Professionals and Lending Institutions

Real estate practitioners play a significant role in the drafting and implementation of the homeownership programs. They have current knowledge of, and access to, a possibly fluctuating real estate market. They have knowledge of how long it may take the family to locate and purchase a home — a term that the PHA may include in its administrative policies governing its homeownership program.¹⁸ Some practitioners may have worked with first-time homebuyers in markets with rising purchase prices and will have knowledge of existing grants, loan programs and housing types that increase affordability. In many cases, alternative financing terms which increase buyer affordability take longer to process and fund, thereby increasing the need for the PHA to maintain flexibility in setting its maximum term limits for closing escrow on a home purchase. Moreover, real estate professionals have extensive knowledge of many of the real estate documents the PHA is required to generate, maintain and review through the administration of the Section 8 homeownership program. This includes knowledge of purchase and sale contracts, escrow instructions and lien documents, and third-party home inspections.

On the other hand, it is not uncommon for real estate practitioners to know very little about federally-assisted housing programs, including Section 8. Thus, it is extremely crucial for PHAs to conduct outreach to educate real estate professionals about the Section 8 Housing Choice Voucher program and how it is used for homeownership purposes. Because it is a new program that requires buyers and financial institutions to deviate from customary real estate practices, there is a risk that real estate practitioners may shy away from the program, thereby lessening the opportunities for participants to find homes to purchase. The PHA can reach out to real estate professionals through local real estate organizations which often conduct regular meetings and trainings and provide publications for practitioners.

For example, the Metropolitan Development and Housing Agency (MDHA), which operates one of the homeownership demonstration programs in Nashville (TN), incorporates training for local real estate practitioners as part of its Section 8 homeownership program. The training includes an overview of the Section 8 voucher and the homeownership option and what is required to close escrow for families receiving Section 8 assistance. After successfully completing the training, the PHA adds the practitioner to its list of resources available to Section 8 participants. Accordingly, a

¹²FY 2001 Appropriations Bill (H.R. 4635), Pub. Law No. 106-377 [The Department of Veteran's Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001](Oct. 27, 2000). For a summary of this bill, see *Congress Passes Modest Fiscal Year 2001 HUD Budget*, 30 HOUS.L. BULL. 184 (Nov./Dec. 2000). For more information about the Neighborhood Reinvestment Corporation, see www.nw.org.

¹³*Id.*

¹⁴For Fiscal Year (FY) 2002, the Neighborhood Reinvestment Corporation is proposing a \$95 million budget, expanding the Section 8 homeownership project to \$10 million. Written Testimony of Ellen Lazar, Executive Director, Neighborhood Reinvestment Corporation (April 25, 2001), at www.nw.org/nrc/what/testimony/testimony42501.html. [May 28, 2001].

¹⁵Other organizations to receive grants are Neighborhood Housing Service (NHS) of Chicago; CDC of Long Island; Home Headquarters (Syracuse, NY); NHS organizations in San Bernardino, Vallejo and Sacramento, California, Allentown, PA and Pueblo, Colorado as well as Little Dixie Community Action Agency in Hugo, Oklahoma. Several of these organizations are already partners in successful demonstration programs. See *The Section 8 Homeownership Demonstration Program: A Selective Review of Its Success*, 31 HOUS. L. BULL. 1 (Jan. 2001), at www.nhlp.org/html/sec8/homeownership.

¹⁶See *Neighborhood Reinvestment Corporation Awards Section 8 Homeownership Initiative Program Grants to 21 NeighborWorks® Organizations* (April 11, 2001), at www.nw.org/pressroom/CurrentFYReleases/ [May 28, 2001].

¹⁷A directory of HUD-approved housing counseling agencies is available at www.hudhcc.org/agencies/agencies.html.

¹⁸§ 982.629(a).

family that chooses a real estate practitioner from the list can be confident that they have chosen someone with knowledge of the Section 8 program. In addition, this training process allows the PHA to develop essential relationships with individuals and organizations which may not have been approached in the past and provides real estate practitioners with the opportunity to generate new clients.

Reputable lending institutions can be a practical resource in safeguarding against the predatory lending practices which typically plague lower-income and senior households.

Similarly, PHAs should seek to include financial institutions in the development and implementation of their Section 8 homeownership programs. Commercial banks and savings and loans, as well as representatives of the secondary market, such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), should be contacted to guarantee that the Section 8 homeownership policies created by the PHA satisfy and motivate financial institutions to provide mortgages to their Section 8 clients. The ability of the Section 8 buyer to secure financing on his or her new home depends significantly on whether the loan can be sold by the lender in the secondary market. Thus, to the extent that they have been developed, the PHA should have an understanding of the criteria and underwriting standards required by the secondary lenders, as well as the many specialized loan products made available by them.¹⁹ In addition, reputable lending institutions can be a practical resource in safeguarding against the predatory lending practices which typically plague lower-income and senior households.²⁰

Affordable Housing Developers, Community Development Organizations and Local Government

In addition to providing information about local real estate markets, affordable housing developers may be a good housing source for Section 8 voucher participants. By selling newly developed homes to voucher holders, nonprofit housing

¹⁹For details regarding different underwriting guidelines, see Flexible Financing Options, *infra*.

²⁰In developing the final Section 8 homeownership regulations, HUD sought to protect Section 8 homeownership participants from potentially abusive lending practices by providing PHAs with the ability to review the terms of each loan (for the purchase, refinancing or improvement or rehabilitation of the home) before permitting the Section 8 participant to enter into the loan. § 982.633. In addition, HUD joined the Department of Treasury in April 2000 in developing a joint HUD-Treasury report containing legislative, regulatory and other recommendations to restrain predatory lending practices nationwide. The joint HUD-Treasury report is available at: www.hud.gov/library/bookshelf18/pressrel/treasrpt.pdf. HUD is prepared to revise its Section 8 homeownership regulations if necessary to implement any legislative or other changes made pursuant to the joint report. See 65 Fed. Reg. 55,134, 55,159 (Sept. 12, 2000).

developers, including Community Housing Development Organizations (CHDOs), may have an easier time targeting lower-income families, making their new developments more competitive for affordable housing grants and programs. Since homeownership vouchers can be used to purchase a variety of housing types, including condominiums, cooperatives and townhomes, developers may still maximize density and reduce development costs by following traditional multi-family housing designs. Moreover, sweat-equity and other similar programs may be used for development of single family detached homes provided that the foundation or the footings for the unit has been poured to meet the “under construction” requirements of the Section 8 Homeownership program.²¹ Nonprofit housing organizations may also be involved in the purchase and rehabilitation of distressed housing; these houses may be resold to lower-income first-time homebuyers after the repairs are complete.

It is also important for the PHA to familiarize itself with programs that are designed to assist first-time homebuyers through development and the purchase of homes. Larger cities and counties receive entitlement funds from HUD, including, among other programs, HOME, Community Development Block Grant (CDBG) and Section 108 revitalization grants.²² Smaller cities have access to these funds through state entitlement grants. Administered either by the local government or through local community organizations, these HUD funds are a valuable resource for lower-income purchasers because they can be used to provide, among other things, downpayment grants, closing cost assistance and deferred and/or low-interest second mortgages. They can also be used by nonprofit affordable housing providers for land acquisition and unit development.

Cities and counties may designate locally generated money, such as general funds or redevelopment affordable housing set-asides, for development, acquisition or substantial

²¹To satisfy the eligible unit requirements, the housing unit must have been under construction or already existing at the time the PHA qualifies the family as eligible to receive Section 8 homeownership assistance to purchase the unit. § 982.628(a)(2). Under the current regulation, this requirement is satisfied if the foundation or footings for the unit has been poured. New proposed regulations regarding the Section 8 homeownership program, which are expected to be published by HUD in June 2001, may eliminate the prohibition on using Section 8 homeownership on new construction for some types of financing.

²²The Home Investment Partnerships Program (HOME) provides formula grants to states and localities (called Participating Jurisdictions), often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income people. See generally 24 C.F.R. Part 92, § 92.105 (2001). A participating jurisdiction must reserve 15 percent or more of its grant allocation to fund housing to be owned, developed, or sponsored by experienced, community-driven nonprofit groups designated as Community Housing Development Organizations (CHDOs). *Id.* §§ 92.300, *et seq.* The Community Development Block Grant (CDBG) program also provides annual grants on a formula basis to entitlement cities, urban counties and states. These funds are to be used to provide decent housing and suitable living environments, and to expand economic opportunities, for low and moderate income persons. See generally 24 C.F.R. Part 570. For information about Section 108, see *Id.* § 570.700.

rehabilitation of affordable housing units.²³ Welfare-to-Work programs may provide downpayment or closing costs grants with excess Temporary Assistance to Needy Families (TANF) funds for families moving toward self-sufficiency. Locally administered funds may also be used for lower-income homeowners, including families who have purchased their homes with Section 8 assistance, by providing low interest loans or grants for home rehabilitation, such as “paint” or “fence” subsidies.²⁴

Community development groups (with or without local government funding) may also provide other services designed to help families achieve self-sufficiency by improving incomes through job training or starting new businesses through micro-enterprise systems. Since the Section 8 homeownership program has a maximum term limit of ten or fifteen years, PHAs should utilize such services to ensure that families maintain and increase their incomes to a level that will support homeownership once the participant is no longer eligible to receive Section 8 homeownership assistance.

Incorporating Flexible Program Features

Each PHA must establish its Section 8 Homeownership Program by incorporating the program guidelines and policies into the PHA’s Administrative Plan.²⁵ In addition to mandatory, statutory and regulatory requirements, the PHA must adopt its own local homeownership policies to implement its program and to meet local community needs. These policies include any purchase, downpayment or financing requirements, and eligibility and continued assistance standards. PHAs are encouraged to keep their program policies flexible to both avoid limiting homeownership opportunities to otherwise eligible families and to incorporate the wide range of homeownership opportunities that may become available after the program has been implemented.

Program Eligibility for New Homeowners

PHAs must be cautious to avoid fair housing issues when limiting their homeownership option to certain classes of Section 8 participants. These issues may arise when determining eligibility through employment and minimum income standards or the establishment of certain preferences to enter the program.

²³For example, in California, local redevelopment agencies must designate 20 percent or more of their tax increment monies for “increasing, improving and preserving the community’s supply of low and moderate-income housing.” See Cal. Health & Safety Code § 33394.2.

²⁴A city or county may elect to use a portion of its CDBG funds, or other local funds, to provide subsidies for, among other things, exterior house paint, construction of fences for security and energy efficiency if the subsidies are necessary to meet the jurisdiction’s community development objectives and are provided to low and moderate-income households. For example, see 24 C.F.R. § 570.202(b) (2001)[authorizing the use of CDBG funds for necessary costs, including labor and financing, for housing rehabilitation].

²⁵§ 982.626(b).

Employment Requirements

HUD has statutory authority to establish by regulation a “family employment requirement” that operates as a condition for receiving homeownership assistance.²⁶ The employment requirement does not apply to elderly or disabled families. The disability exception also applies to a homeowner who must care for a disabled family member if an exemption is needed as a reasonable accommodation to make the program accessible to persons with disabilities.²⁷

If the family does not qualify for an exemption, HUD regulations require the family to demonstrate that one or more adult family members who own the home, upon initial receipt of homeownership assistance, meet two requirements: (1) at least one adult family member must be currently employed on a full-time basis (meaning not less than an average of 30 hours per week); and (2) at least one adult family member must have been continuously employed on a full-time basis for a year before receiving homeownership assistance.²⁸ These requirements are applied only to determine initial eligibility; the family cannot lose its homeownership assistance if it fails to meet the employment requirement after receipt of assistance. Furthermore, the PHA is prohibited from establishing an employment standard beyond that which is imposed by HUD.²⁹

PHAs must be cautious to avoid fair housing issues when limiting their homeownership option to certain classes of Section 8 participants.

The PHA, however, is provided wide discretion to permit self-employment, successive employment, sporadic or interrupted employment to meet the statutory requirement. Indeed, many lenders may consider a household to be qualified for mortgage financing without a traditional or full-time working history. Therefore, it is imperative that the PHA use flexibility in defining its eligibility requirements. Rather than adopting strict standards, a PHA should consider all circumstances of the household in meeting the employment requirement—especially if the family demonstrates a favorable work history and meets loan qualification requirements imposed by its lender.

For example, self-employed persons may require a certain amount of discretion depending on the type of business they operate. Persons with an otherwise long work history, or specific skill, may experience layoffs and an extended period of job-seeking time due to economic factors beyond the

²⁶§ 8(y) of the *United States Housing Act of 1937*, 42 U.S.C.A. 1437f(y)(1)(C) (West Supp. 2000).

²⁷§ 982.627(d)(3).

²⁸§ 982.627(d)(1).

²⁹§ 982.627(d)(4).

control of the employee. Some industries, such as those that employ school personnel, seasonal farmworkers or cannery workers, may preclude households from working full time throughout the year. Many households with regular full-time employment in seasonal industries may regularly receive unemployment benefits during the off-season. The failure to consider these circumstances may have a disparate impact on certain protected classes, including minorities and those relying on certain income sources, thereby violating applicable fair housing law protections.³⁰

Minimum Income Requirements

The HUD final rule establishes a national minimum income requirement equal to 2,000 hours of annual full-time work at the federal minimum wage, or currently \$10,300 per year.³¹ Like the initial employment requirement, the minimum income requirement is only considered in determining a family's initial qualification to purchase a home; it is not a continuing requirement and is not considered again unless the family opts to purchase a subsequent home with homeownership assistance.³² The PHA must consider the income of all adult family members who will own the home to determine eligibility for homeownership assistance and it must further include all welfare assistance and government benefit income in determining the annual income of disabled or elderly families.

The HUD regulations discriminate against most seniors and disabled persons living on fixed government incomes below the minimum income standard. As a result, the PHA may need to consider reasonable accommodations, if necessary, to make the Section 8 homeownership program readily accessible to, and usable by, persons with disabilities or the elderly.

For couples or joint borrowers, an income solely derived from government benefits may reach the minimum income level for qualification into the program. However, disabled single individuals receiving Supplemental Security Income (SSI) or other disability benefits, such as Social Security Disability Insurance (SSDI), or single seniors living solely on social security benefits or other fixed pension income are not likely to reach an annual income of \$10,300.

Employing a strict minimum income standard for people with disabilities and seniors, as well as other protected classes, is problematic because there are several loan products especially designed to make homeownership available for this population. For example, FannieMae has its HomeChoice loan program designed to provide more housing opportunities for people with disabilities. The Colorado Housing Finance Agency (CHFA) also offers financing through its HomeAccess Pilot Program for both disabled homebuyers

and for parents of a disabled child. Under the CHFA program, preference is given to borrowers who are receiving, or are eligible to receive, federal benefits for people with disabilities, namely SSI and SSDI.³³ Similarly, Citibank, Washington Mutual and California Federal, among others, offer special loan products for seniors and/or people with disabilities. The *New Immigrant Initiatives* offered by Citibank and California Federal consider, in addition to the borrower's hourly wage, the income of non-borrowers living in the home and part-time or multiple employment income over a 12-month period as a determinant of qualifying income.

Employing a strict minimum income standard for people with disabilities and seniors is problematic because there are several loan products especially designed to make homeownership available for this population.

Accordingly, in assessing whether the applicant family meets the minimum income requirement and whether the home to be purchased is affordable given the family's income and housing assistance payment, PHAs should consider all sources of income from all types of employment, especially if the family qualifies for specialized loan products offered by reputable lenders. To the extent the income of an elderly or disabled applicant falls below the minimum income, the PHA should consider any necessary reasonable accommodation to qualify the household for homeownership, including consideration of the homeownership assistance made available to the household or lender through the PHA. Permitting necessary reasonable accommodations will serve to affirmatively further fair housing and create more stable, permanent and accessible living conditions for people who often must go without such security.

Participation Requirements, Preferences or Limitations

In designing participation guidelines, PHAs should be careful not to exclude any family who would otherwise make a good homeownership candidate. Although the Family Self-Sufficiency (FSS) program is an ideal way for Section 8 families to transition into homeownership, the PHA should refrain from solely limiting its Section 8 homeownership program to FSS graduates or to FSS participants who have accumulated a certain dollar amount in their FSS escrow

³⁰24 C.F.R. § 5.105(a) (2001). In addition, some states and local governments have enacted "source of income" anti-discrimination laws making it unlawful to consider incomes sources in the sale or rental of housing.

³¹§ 982.627(c).

³²*Id.* See also 65 Fed. Reg. at 55,134, 55,138 (Sept. 12, 2000).

³³For more information regarding the CHFA HomeChoice program, see *The Section 8 Homeownership Demonstration Program: A Selective Review of Its Success*, 31 HOUS. L. BULL. 1 (Jan. 2001), at www.nhlp.org/html/sec8/homeownership.

account.³⁴ Likewise, if the PHA commits only a certain percentage of its Housing Choice vouchers to the homeownership program, it should avoid providing local preferences that target FSS graduates or participants.³⁵

The practice of limiting homeownership opportunities to only graduated or current FSS participants excludes all new applicants to the Section 8 voucher program who clearly satisfy the employment and minimum income requirements and may otherwise meet lender qualifications. To the extent that the PHA requires FSS participation beyond one year (i.e. successful completion of the program or a requirement that the FSS participant obtain a designated escrow balance), the PHA violates the prohibition against the PHA establishment of employment requirements beyond those established by HUD regulations.³⁶ In any event, disabled and elderly families must be exempted from, or provided corresponding preference to, any requirement or preference which holds employment as its premise.³⁷

Downpayment Requirements

Similarly, the PHA should refrain from insisting on a mandatory downpayment requirement. Rather, the PHA should leave any necessary downpayment to the discretion of the lender and specific loan product. Many loan products are especially designed for lower-income purchasers and accordingly include no, or very low, downpayment requirements. For example, the USDA Rural Housing Services' (RHS) Section 502 loan program has no downpayment requirement.³⁸ Moreover, local programs may offer downpayment grants for first-time homebuyers to use in conjunction with the purchaser's mortgage. Again, it is prudent for the PHA to remain flexible and allow the lender to establish downpayment requirements, if any, in accordance with the loan product offered to the borrower.

³⁴Family Self-Sufficiency (FSS) is HUD's primary program to assist Section 8 voucher recipients moving from welfare to work. 42 U.S.C.A. § 1437u (West 1994 & Supp. 2000); 24 C.F.R. Part 984 (2001). In addition to providing case management to develop individual program contracts and to provide assistance in accessing supportive services, the FSS program features an escrow account provision to support the family in its work efforts. *See id.* § 984.305. If an FSS participant increases earnings from work, an amount equal to 30 percent of the participant's net increase in income (or 30 percent of the participant's increased earnings, whichever is lower) will be deposited into an escrow account. If the participant graduates successfully from FSS, the participant will receive all of the funds in the escrow account. However, if the participant fails to complete the program, the participant loses the funds in the escrow account. PHAs receive additional funding from HUD to cover their contribution to FSS escrow accounts. *See also* Barbara Sard & Jeff Lubell, *The Family Self-Sufficiency Program* (rev. March 28, 2001), at www.cbpp.org/5-5-99hous.htm [May 28, 2001].

³⁵HUD regulations implementing the QHWR now permit local PHAs, under certain circumstances, to provide local preferences for admission into the Section 8 voucher program. 24 C.F.R. § 982.207 (2001).

³⁶*See id.* § 982.627(d)(4).

³⁷*Id.* § 982.207(b)(2).

³⁸*See* RD Handbook 1-3550, Attach. 3-D, at 3 (2001); available at www.rdinit.usda.gov/regs/hblist.html (May 30, 2001).

Downpayment requirements may unnecessarily limit the number of Section 8 voucher holders—both new applicants on the Section 8 waiting list and those families who are already Section 8 renters—that are able to participate in the homeownership program. It is simply unlikely that an applicant family on the Section 8 waiting list will have sufficient savings to meet most downpayment requirements. Furthermore, it is unlikely that a family currently participating in the Section 8 program would have had the resources to save a substantial amount toward the purchase of a new home. Yet, many applicants and Section 8 program participants may have sufficient income and credit histories to make them excellent candidates for the homeownership program. Accordingly, if the PHA incorporates a downpayment requirement in its Section 8 homeownership program, and especially if such a requirement mandates that the downpayment come from the families own resources (and not grants or loans), it will exclude potentially eligible households from the program. With downpayment requirements, the only voucher participants who will be able to utilize the Section 8 homeownership option will be those families who have already participated in FSS or similar programs for prolonged periods of time. For the reasons stated above, these results should be avoided.

Given the needs of the local community, the PHA must also remain flexible and refrain from restricting the type of homes that may be purchased with the Section 8 homeownership voucher under its program policies.

Purchasing Requirements

Given the needs of the local community, the PHA must also remain flexible and refrain from restricting the type of homes that may be purchased with the Section 8 homeownership voucher under its program policies. Nontraditional housing types, such as land trust homes or mobilehomes in resident-owned parks, may provide additional sources of affordable housing for lower-income households. By using its discretion, the PHA can determine whether a proposed purchase of a nontraditional home is indeed a viable option for certain families. For instance, instead of assuming that a certain housing type is unaffordable, the PHA can use its regulatory discretion to review the purchase financing to scrutinize affordability for the family. In addition, the PHA must complete a Housing Quality Standards (HQS) inspection and review an objective third-party inspection to determine the condition of the property. If the property does not meet applicable standards, the PHA may prohibit the purchase by the homebuyer. Accordingly, the PHA should focus on the affordability and quality of the home on a case-by-case basis

without categorically excluding the homeownership option to families based solely on certain types of housing.

Locating the Home and Closing the Deal

PHAs should also be as flexible as possible in imposing time limits for locating a home and closing escrow. Depending on the market, it may be extremely difficult for a family to locate an affordable home. Once a home is found, it may take longer to close escrow than a traditional purchase if the purchase is dependent on various types of first-time homebuyer loan packages and/or grants. Because of the length of time it may take to locate and finalize the Section 8 purchase, the PHA must continue to provide Section 8 rental assistance to a family already participating in the Section 8 tenant-based program while the family is engaged in the purchase.

Under the final regulations, the PHA must describe in its Administrative Plan its policy for disbursing the homeownership assistance payments either directly to the family or to the lender on behalf of the family.

Similarly, if a new applicant family elects to pursue homeownership opportunities and is willing to remain in a rental for a one-year lease term, the PHA should qualify the family for tenant-based voucher assistance while the family satisfies its homeownership counseling requirement and finalizes the home purchase. Thereafter, the potential homebuyer remains in the rental program (with a short-term lease) while searching for a home to buy. Once a successful purchase is made, the family simply converts their Section 8 voucher to the homeownership program. Conversely, if the family is unsuccessful in finding a home to purchase, the family remains in the rental assistance program rather than losing their Section 8 assistance or being placed back on the Section 8 waiting list. The practice of qualifying all families for the rental program before converting to mortgage assistance also ensures that the PHA will continue to utilize its existing Section 8 vouchers (instead of placing vouchers out of commission while a family searches for a home).

While it is not unreasonable to impose time limitations on both the search and closing time periods, it is prudent for the PHA to build in programmatic discretion to extend the time in defined increments for good cause. In order to purchase its home, the family may be required to pay a deposit to secure purchase contracts and open escrow accounts. It may also be required to expend funds, prior to closing escrow, to obtain appraisal reports, the HUD required home inspection report and any other desired inspections. Given the uncertainty of the home purchase process, the PHA must use discretion to extend any fixed deadlines if necessary after consideration of the specific circumstances of the purchase. It would be disastrous for the PHA to impose an arbitrary

time limitation on a family that expended its own funds toward buying a home and then force that family to abandon its purchase immediately prior to closing escrow.

Housing Assistance Payments and Homeownership Expenses

Under the final regulations, the PHA must describe in its Administrative Plan its policy for disbursing the homeownership assistance payments either directly to the family or to the lender on behalf of the family.³⁹ The PHA should also maintain flexibility on this issue, considering each purchase on a case-by-case basis. In determining each case, the PHA should consider the demands of the lender as many lenders prefer that the HAP be made to the mortgagor so that only one monthly payment is sent to the lender. Alternatively, the lender may require that the HAP payment be deposited directly into a limited access account in exchange for more favorable underwriting standards.

In deciding to whom the HAP should be paid, the PHA should also consider any specific income issues the family may encounter if it makes the HAP directly to the family. For some benefit programs, the HAP may incorrectly be considered income and the family may face disqualification from that benefit program. Thus, in some situations, it may be prudent for the PHA to send the HAP directly to the lender.

To ensure that the family can actually afford the home, the PHA should also consider, and provide for, each of the homeownership expenses permitted under the HUD regulations.⁴⁰ In addition to the utility allowance traditionally received under the Section 8 rental program, the Section 8 homeowner receives consideration for the actual costs of owning a home, including repairs and maintenance.⁴¹ Homeownership expenses should also cover the cost of repainting the house, replacing the roof and other systems, such as electrical, plumbing and heating/air-conditioning systems, as well as appliances, including washer, dryer and kitchen appliances. The replacement costs should be calculated on a

³⁹*Id.* § 982.635(d).

⁴⁰*Id.* § 982.635(c). The regulation sets forth permissible expenditures that may be covered as homeownership expenses, including mortgage debt, taxes and assessments, utility allowances, and maintenance, repair and replacements for both homeowners and for owners of cooperative and condominium units. Homeownership expenses may also include cooperative or condominium operating charges or maintenance fees assessed by a homeowner's association. In addition, the final rule clarifies that, if the PHA determines that such an allowance is needed as a reasonable accommodation, eligible homeownership expenses may include the cost for financing improvements to make a home accessible for a member of the family who has a disability.

⁴¹These amounts should be close to the actual costs incurred by the family, varying by the circumstances of each individual family. For example, Fannie Mae uses an initial base amount of 1 percent of the purchase price to compute annual maintenance and repair of the home. National Foundation for Credit Counseling, *Keys to Home Ownership*, 82 (2001). This amount is increased by, among other things, the age of the home (i.e. older homes typically require more repairs) and the circumstances of the homebuyer. For example, a disabled homeowner may incur greater monthly costs for maintenance for tasks that she cannot perform, such as lawn or yard maintenance.

monthly basis, amortized over the expected life of each item. Given the substantial cost of owning a home, it is likely that, without consideration of these allowances and actual expenses in the payment standard for the home, lower-income families may not be able to afford to maintain and keep their homes.

Due to the financial circumstances of certain Section 8 homeowners, the PHA may be required to provide a monthly payment directly to the homeowner for utility allowances and homeownership expenses. As with making the HAP directly to the homeowner, the PHA should carefully consider whether the allowance may be improperly deemed as income, especially for recipients of certain government benefits. Although such allowances are part of the HAP and should not be considered income, the family may face income or eligibility problems which could result in a loss of government benefits. Accordingly, the PHA should review each individual's circumstances and, if necessary, establish an escrow account to hold homeownership allowances until the funds are actually needed by the family for expenses.

Finally, as further discussed in the next section, underwriting guidelines almost always employ debt ratios, requiring that the family pay no more than a certain percentage of their income toward their payment for principal, interest, taxes and insurance (PITI). For example, some of FannieMae's loan products for Section 8 homeowners require a 28 percent PITI debt ratio, meaning that the family pay no more than 28 percent of its income toward PITI. Similarly, the USDA-RHS uses a 29 percent PITI debt ratio under its Section 502 loan program.

These debt ratios may appear to be inconsistent with the requirements of the Section 8 Housing Choice Voucher program. Under the voucher program, the family generally pays at least 30 percent of its income toward all its housing costs (which includes the cost of utilities and, for the homeownership option can include maintenance and reserves). The maximum housing costs permitted are determined by the applicable local payment standard.⁴² Accordingly, in addition to understanding the ratios used by varying lending institutions, it is imperative that the PHA correctly compute all homeownership expenses and allowances permitted by law. By ensuring that such expenses are included in the overall housing costs in determining both the HAP and the payment from the homeowner, the PITI paid by the borrower should qualify under the applicable debt ratio requirements.

Flexible Financing Options

While remaining attentive to abusive and predatory lending practices, the PHA can maximize the opportunities for Section 8 participants to use lower-income purchaser and first-time homebuyer programs by establishing flexible financing guidelines. Established Section 8 homeownership

⁴²See 24 C.F.R. § 887.351, *et seq.* It is important to note that certain exceptions are made in computing the applicable payment standard when computing the HAP and Section 8 homeowner payment under the homeownership option. *Compare id.* § 982.635 [Homeownership Option: Amount and distribution of monthly homeownership assistance payment].

demonstration programs have illustrated that financing opportunities for Section 8 homebuyers are diverse and may include conventional lending, secondary lending, conventional lending following secondary underwriting criteria, as well as federal and state subsidized loan programs.⁴³

While remaining attentive to abusive and predatory lending practices, the PHA can maximize the opportunities for Section 8 participants to use lower-income purchaser and first-time homebuyer programs by establishing flexible financing guidelines.

As noted above, lending institutions and the secondary market provide a variety of loan products designed specifically for lower income households, seniors and disabled persons. The USDA's RHS provides direct and guaranteed Section 502 loans for very low and lower-income borrowers, offering loans as low as 1 percent interest for 38 year terms.⁴⁴ Under its 203(k) loan program, the Federal Housing Administration (FHA) allows buyers to include rehabilitation costs in their purchase mortgage amount, appraising the home for financing consistent with the estimated value of the home after rehabilitation is completed.⁴⁵ State housing finance agencies in most states also provide low-interest loans with minimal downpayment requirements, as well as second mortgage loan products for downpayment and closing costs, for low-income people.

Moreover, underwriting guidelines among lenders may differ with respect to their application of the Section 8 homeownership Housing Assistance Payment (HAP) in determining the borrower's ability to repay the loan. One of the most favorable standards for the homeowner, which enables the borrower to purchase a more expensive home, is the application of the HAP directly to the mortgage payment. This method is utilized by the RHS in its Section 502 Direct Loan program and FannieMae in the underwriting of some of its Section 8 homeownership loan products.⁴⁶ To determine how

⁴³For detailed descriptions of the different demonstration programs, see *The Section 8 Homeownership Demonstration Program: A Selective Review of Its Success*, 31 HOUS. L. BULL. 1 (Jan. 2001), at www.nhlp.org/html/sec8/homeownership.

⁴⁴7 C.F.R. Part 3550. For more information about USDA-RHS' housing loan programs, operated by USDA's Rural Development division, for low and very low-income households, see www.rurdev.usda.gov/rhs/.

⁴⁵See www.hud.gov/fha/sfh/203k/203kabou.html. Note, however, that under the Section 8 homeownership option, the buyer is not obligated to make any repairs under the contract of sale unless specifically permitted by the PHA. § 982.631(c)(2)(iv). Moreover, the home must, at a minimum, pass the Housing Quality Standards (HQS) inspection conducted by the PHA before it can be purchased. § 982.631(a).

⁴⁶Both the USDA-RHS and Fannie Mae underwriting guidelines are available for review at www.nhlp.org.

much monthly mortgage payment the homeowner can afford, the base payment is calculated first on the borrower's annual earned income. Thereafter, the HAP is added to the base payment available to pay PITI, substantially increasing the amount of the affordable payment (and, of course, the amount of the mortgage.)

For example, consider a participant with a gross household income of \$14,000 who wishes to purchase a home with a local payment standard of \$800 per month, or \$9,600 per year.⁴⁷ Under the Section 8 program, the family usually pays 30 percent of its income for housing expenses. Thus, the family's annual payment toward its mortgage is roughly \$4,200, or \$350 per month. Based on the payment standard of \$800 and assuming that the family's income remains static, the HAP paid by the PHA will not exceed \$450 per month.

Typically, lenders also require that a household pay not more than 30 percent of its income for PITI.⁴⁸ Again, based on its income, the family's repayment ability is \$350 per month. However, by directly applying the HAP to the mortgage payment as permitted under this underwriting option, the family's repayment ability is increased from \$350 to \$800 per month (or \$9,600 annually). This increase in repayment income has a significant impact on the mortgage payment the family can carry, thus increasing the amount of mortgage the family can qualify for in purchasing their home.

In exchange for this liberal use of the HAP, lenders may apply certain restrictions. These may include restricting qualification by using lower debt ratios and establishing dedicated, limited access bank accounts by the lender or mortgage servicer for direct deposit of the HAP.⁴⁹

FannieMae also provides alternative underwriting options for qualifying borrowers with Section 8 assistance. One option calculates the total family income by simply considering both the borrower's actual income from employment as well as the HAP. The borrower's repayment ability is then based on this combined new income. In making this calculation, some lenders will increase (or "gross-up") the HAP amount by as much as 25 percent because of the tax-exempt status of the HAP. As a result, the family's income is increased to support a higher mortgage payment.⁵⁰

⁴⁷For details regarding how the payment standard is established, see 24 C.F.R. §§ 887.351, *et seq.* and 982.635.

⁴⁸To illustrate this example, we have simplified the repayment ability to 30 percent of the household income. Note, however, that certain lenders may have different debt ratio guidelines as explained in the section on Housing Assistance Payments and Homeownership Expenses, above.

⁴⁹For example, Fannie Mae allows this method to be used if the borrower has a debt ratio of 28/36, which means that the monthly PITI payment not exceed 28 percent of the borrower's repayment income and the family's total debt ratio (including mortgage payment and other debts, such as credit cards and automobile loans) not exceed 36 percent of the borrower's income. See *Fannie Mae and the Section 8 Homeownership Program: Breaking New Ground with Public Housing Agencies*, (May 2001), available at www.nhlp.org.

⁵⁰In its HomeChoice Loan for disabled borrowers on SSI, FannieMae adds the HAP to the borrower's SSI tax-exempt income, "grossing-up" the total income (SSI and HAP) by 25 percent. In addition, FannieMae increases the qualifying debt ratio from 28/36 to 28/50 for borrowers qualifying for the HomeChoice loan. For more information about loans specifically for disabled persons, see the section on Minimum Income Requirements, *supra*.

Using the previous example, the family's income of \$14,000 and the HAP of \$450 per month (or \$5,400 per year) are combined to arrive at an annual income of \$19,400. If the lender "grosses-up" the HAP by 25 percent, the resulting value of the HAP would be \$562.50 per month, or \$6,750 per year. Combined with the family's income, "grossing-up" the HAP results in an annual income of \$20,750.

This method of calculating a participant's repayment ability is more conservative than the first example because only a portion of the HAP is leveraged. Under the first example, the HAP is applied directly to the mortgage payment, increasing the family's repayment ability by \$9,600 per year. In this example, with the HAP included as income, the family's repayment ability is increased by only \$5,820 (based on an annual income of \$19,400). If the HAP is "grossed-up," the repayment ability is based on an annual income of \$20,750, resulting in a slightly larger increase of \$6,225.

The fact that the second mortgage is fully paid off by the HAP assistance leaves the household, at the end of the Section 8 homeownership voucher term, with continued level mortgage payments.

Another underwriting alternative used by lenders splits the home purchase price, or the amount financed with conventional loan products, into two secured loans. Except for non-disabled and senior borrowers who will receive unlimited Section 8 homeownership assistance, this is probably the most favorable option for Section 8 homeowners. Under this alternative, the first loan is based solely on the borrower's earned income, 30 percent of which is used to pay PITI. The HAP payment is then used to pay the principal and interest only on the second junior loan. If both loans under this option are amortized for the same term, this option yields the same results as the first option above in terms of the mortgage that the borrower can repay. However, some lenders are limiting the term of the second mortgage to coincide with the maximum length of the HAP assistance — ten or fifteen years depending on the term of the first mortgage.⁵¹ While the shorter term of the second mortgage reduces the total amount that the household can finance, the fact that the second mortgage is fully paid off by the HAP assistance leaves the household, at the end of the Section 8 homeownership voucher term, with continued level mortgage payments. As a result, the homeowner will experience no change in payment (since the first mortgage payment is based on the homeowner's actual earned income) after termination of the

⁵¹Unless the borrower is disabled or a senior, the maximum time the borrower is allowed to receive Section 8 homeownership assistance is 15 years if the purchase mortgage is for more than 20 years and 10 years in all other circumstances. § 982.634.

Section 8 subsidy, alleviating potential “sticker shock” and the need to refinance the home. This variation has the additional advantage of building up the household equity position in the home much faster than under the first two options which amortize loans with level payments over a term that is longer than the HAP contract.

As shown, PHAs should not unnecessarily restrict the financing options available to Section 8 participants. Undeniably, when any of the above financing options are used with conventional private loan products, the total amount that a family can borrow and repay is limited by the loan payment standard and the interest rate and term of the loan. Generally, the loan amount that a family can afford is smaller when the payment standard is relatively low, the interest rate is high or the term of the loan is shortened. Thus, in areas with high housing costs in comparison to the payment standard, families are likely to not be able to fully amortize the cost of a home just by using their income and the HAP. This is especially true for families at the lower end of the income eligibility spectrum. However, this should not preclude these families from participating in the homeownership program. There are numerous loan products and lenders that offer loan terms much more favorable than conventional financing as well as other creative ways in which very low-income families can be assisted.

Dueling Recapture Requirements

The PHA should remain flexible in mitigating the effects of dueling recapture provisions. Under the current regulations, the PHA is required to “recapture” a percentage of the homeownership assistance that was provided to the family when the family either sells or refinances the home.⁵² The percentage recaptured decreases in annual increments of 10 percent over a 10-year period. Thus, at the end of the 10-year period, the amount of homeowners assistance that is subject to recapture will be zero. The amount to be recaptured upon sale of the property is calculated by using several factors, including the amount of assistance provided to the family, the difference between the purchase and sales price of the home and the amount of capital expenditures, closing costs and real estate commissions. In addition, the PHA is currently required to secure its right to recapture the homeownership assistance by securing a lien on the property that is subordinate to any purchase or refinance mortgage(s).⁵³

In addition, many lenders offering financing to low-income borrowers also incorporate recapture requirements in

⁵²§ 982.640; see also 65 Fed. Reg. at 55,134, 55,135, 55,143, and 55,158 (Sept. 12, 2000). As noted in footnote 21 *supra*, HUD intends to publish new proposed regulations for the Section 8 homeownership program in June 2001. One of the issues expected to be addressed in the proposed regulations is the elimination of the recapture requirement under the Section 8 homeownership program for assistance paid to the borrower.

⁵³A sample *Notice of Lien and Obligations* is available at www.nhlp.org. If new regulations deleting the PHA recapture requirement are eventually implemented by HUD, any lien already recorded by the PHA against the homeowner’s property should be released by the PHA.

their loans. The effect of the dueling recapture provisions may be confusing to borrowers and raise concern among lenders. Since recapture provisions can substantially reduce the amount of equity the homeowner accrues in the property, PHAs should ensure that borrowers are completely informed about any potential recapture if the homeowner sells the property. Significantly, the PHA should not assume that housing counseling agencies will adequately advise the homeowner regarding loan recaptures. Indeed, housing counselors may shy away from the topic since the amounts to be recaptured (if any) may vary substantially among different lenders and recapture requirements may decrease in varying degrees over certain time periods. Therefore, it is imperative that the PHA direct its housing counselors to include education regarding recapture by both the PHA and the lending institutions. The PHA must also ensure that Section 8 participants receive full disclosure regarding the possibility of the PHA recapture of housing assistance upon

The PHA should also remain open to considering nontraditional financing tools. Local governments and nonprofit organizations provide a variety of first-time homebuyer programs

sale of the property or refinancing of their existing loan(s).

Lenders using loan recapture provisions may also be apprehensive about making loans to borrowers who are also subject to a potential HAP recapture by the PHA. Again, borrowers should have a complete understanding of the recapture provisions to assure the lender that they are comfortable with a potential reduction in equity. (In many cases, the low-income borrower may choose to own their own home, desiring stability and a permanent housing situation and therefore, are willing to risk a decrease in their asset upon resale.) To mitigate lender concerns, it is imperative that the PHA provide a clear written explanation of how any recapture of the HAP by the PHA will work. In addition, PHAs must be prepared to subordinate their recapture liens to other lenders and be willing to confirm that information prior to the lender’s entering into the transaction.⁵⁴

Non-Traditional Financing Tools

The PHA should also remain open to considering non-traditional financing tools. Local governments and nonprofit organizations provide a variety of first-time homebuyer programs, including silent seconds, deferred downpayment loans and closing costs grants from a variety of sources. These include local redevelopment funds, TANF grants, HOME and CDBG. Although many first time homebuyer programs are

⁵⁴See 24 C.F.R. § 982.640 (2001). Scenarios designed by the Benicia (CA) Housing Authority depicting the recapture of Section 8 housing assistance over three and five-year periods are available at www.nhlp.org.

financed or assisted with HUD funds, local jurisdictions are permitted to use local or state CDBG funds or other subsidized financing in conjunction with the Section 8 homeownership program.⁵⁵

In addition, more and more communities are establishing land trusts as a means of providing more affordable housing opportunities. For example, the Burlington Community Land Trust (BCLT) in Vermont maintains an inventory of homes that are available for purchase through the Burlington Housing Authority Section 8 homeownership program. Under the land trust concept, the family purchases the home but not the land. BCLT provides a home land grant of up to \$30,000, which is used to meet any downpayment requirement and to bring down the initial mortgage amount. In exchange, the family agrees to lease the land on which the home sits from BCLT for \$25 per month. Upon resale of the property at any time in the future, the family also agrees to repay a percentage of the increased equity in the home to BCLT.

The PHA should consider requiring post-purchase counseling during receipt of Section 8 homeowners assistance.

The Affordable Housing Program (AHP) is also a resource to families purchasing under the Section 8 homeownership option. Created under the *Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)*, AHP is a competitive program in which lending institutions specifically identify projects on which to submit proposals for affordable housing subsidies from their district Federal Home Loan Bank.⁵⁶ In Dixon (CA), a Section 8 homebuyer recently purchased her home from a nonprofit affordable housing developer. During the project development, the developer obtained an AHP grant in order to sell the home to a low-income purchaser. The AHP grant, in the amount of \$10,000, was used toward the downpayment and closing costs.⁵⁷

The new Individual Development and Empowerment Account (IDEA) administered under the Federal Home Loan Bank of San Francisco's Affordable Housing Program is a non-competitive homeownership set-aside program awarding

\$6.6 million to 52 homeownership programs. The program will benefit homebuyers in different cities and counties throughout California, Arizona, Nevada, Colorado, Florida, Maryland and New Jersey. Under the IDEA program, the bank will match funds for downpayment and closing cost assistance for families who have participated and saved through Individual Development Account programs or FSS programs provided through local PHAs. The bank provides up to \$10,000 for each household, matching up to three dollars for each dollar saved by the homebuyer.⁵⁸

Similar to the AHP pass-through from the selling non-profit developer, the PHA should avoid a blanket policy prohibiting seller financing by maintaining discretion in its Administrative Plan to carefully consider such financing on a case-by-case basis. Seller financing can substantially reduce closing costs because the borrower is not required to pay for points, document fees and other loan costs usually connected with commercial lending institutions. Nonprofit organizations may be in a position to develop and offer affordable homes for sale with seller financing. Other housing may become available through previous foreclosures or deeds-in-lieu of foreclosure whereby the seller of the property is not necessarily interested in receiving equity from the home to repurchase another property. The FHA-foreclosed "HUD Home" resales may also provide affordable housing opportunities in certain areas of the country.⁵⁹ As with all mortgage options, however, the PHA should carefully scrutinize the financing arrangement to ensure that the loan is affordable and that the homebuyer is protected from abusive lending practices.

Post-Purchase Practices

The PHA should establish post-purchase practices to ensure the Section 8 homeownership program is successful and to mitigate defaults. In addition to the mandatory attendance and completion of pre-assistance and housing counseling program administered by the PHA or its designee, the PHA should consider requiring post-purchase counseling during receipt of Section 8 homeowners assistance.⁶⁰ Such counseling may include home maintenance and repair, budget management and other homeownership-related classes provided in a classroom setting. More effective, however, may be regular individual meetings with homeownership counselors to establish continuing relationships with each family.

The goal of the Section 8 homeownership program is to work toward self-sufficiency and to move off the Section 8 program. Unless the family is elderly or disabled, the household will be terminated from receiving Section 8 homeownership assistance in 10 or 15 years. Accordingly, it

⁵⁵See *Overview of the Section 8 Homeownership Program*, 65 Fed. Reg. at 55,134, 55,135 (Sept. 12, 2000).

⁵⁶12 U.S.C.A. § 1430(j); 12 C.F.R. § 960.66 (2001).

⁵⁷The purchase price of the home was \$114,750. In addition to the AHP grant of \$10,000, the purchaser obtained a USDA-RHS Section 502 Direct loan for \$66,000, a deferred second loan of \$40,000 from the local government (using State of California HOME funds designated for its first time homebuyer program) and an additional credit from the seller for closing costs.

⁵⁸For more information, visit www.fhlbsf.com/new/pubrelease13.htm.

⁵⁹To learn about purchasing *HUD Homes*, see www.hud.gov/homes/index.cfm.

⁶⁰§§ 982.630, 982.633(b)(1) and (8).

is imperative that the family receive continued assistance directed at job retention, wage increase and skills enhancement. If the PHA does not provide such services, it should consider partnerships with local social services and nonprofit community development organizations that regularly provide such assistance.

PHAs should maintain delinquency safety nets by requiring that the family work with housing counselors to implement a financial arrangement to cure the default and develop an ongoing plan to keep the mortgage current and the family in the program.

Finally, the PHA should incorporate essential default intervention practices into its program. These practices should include a requirement that the family provide immediate notification to the PHA when it cannot make its monthly mortgage payment. With the mortgagor's permission, some PHAs have developed agreements with lenders to notify the PHA when the borrower's payment becomes delinquent. The goal is to provide necessary and immediate supportive services to the family prior to a mortgage default. In some cases, the family may simply need to be recertified due to a decrease in family income or an increase in homeownership expenses which, in turn, may decrease the family's contribution toward the mortgage payment.

Even after the family has defaulted, the PHA is encouraged to establish programs for early intervention to cure defaults, or address financial difficulties, as soon as possible. PHAs should maintain delinquency safety nets by requiring that the family work with housing counselors to implement a financial arrangement to cure the default and develop an ongoing plan to keep the mortgage current and keep the family in the program. PHA's should also familiarize themselves with lenders' delinquency intervention programs as well as state or other programs that will assist families facing hardships. For example, Pennsylvania has a program whereby it will make mortgage assistance payments on behalf of families that have defaulted on their loans for reasons beyond their control.⁶¹ The RHS has a moratorium on payments program that is available to Section 502 borrowers.⁶² Welfare agencies may also be able to make one-time payments to defaulting homeowners under programs designed to keep households out of the welfare system.⁶³

⁶¹See 35 Pa. Stat. § 1680.401 *et. seq.*

⁶²See 42 U.S.C.A. § 1475 (West 1994); 7 C.F.R. § 3550.207 (2001).

⁶³See Maloy, *Description and Assessment of State Approaches to Diversion Programs and Activities Under Welfare Reform*, Chap. 2 (1998) (Available at www.aspe.os.dhhs.gov/hsp/isp/diverzn/).

The PHA Administrative Plan must state whether the family will be allowed to return to the Section 8 rental assistance program (or placed on the Section 8 waiting list) if the family defaults on its mortgage.⁶⁴ To avoid default situations, the PHA should permit the family to return to the Section 8 tenant-based program if necessary. Indeed, the PHA should encourage the family, like most others who own their homes across the nation, to act responsibly and recognize when ownership is just not feasible for that household. By not permitting the family to mitigate its mistake by selling the home prior to foreclosure and returning to the tenant-based program, the family may be forced to remain in the home without making the mortgage payment, necessitating that the lender remove the occupants from the home through a judicial order of foreclosure and subsequent eviction action.

If possible, the PHA should explore imposing a right of first refusal in the event of incurable default (and an inevitable foreclosure) so that the affordable home can be sold quickly to the PHA and preserved for another lower-income household. Toward that end, in return for cooperating with the PHA and lenders to sell the home, the household should be permitted to return to the Section 8 tenant-based program. In any event, the PHA should incorporate policies that achieve the goal of preventing homelessness and providing opportunities—in both the rental and homeownership market—to maintain the affordability of housing for lower-income families.

Conclusion

Clearly, the development and implementation of a successful Section 8 homeownership program is a community-driven, inclusive process. It requires critical analysis by the PHA, with the help of community groups and organizations, to incorporate all possible opportunities and to examine all potential pitfalls. It also requires a commitment to educating the general public about the Section 8 Housing Choice voucher and how it can be used successfully in a homeownership market.

Once successfully implemented, however, the homeownership option opens opportunities for lower-income families to expand their housing options and to move to desired communities. Although inconceivable at one time, it provides poor families with hope to possibly achieve their dreams of homeownership. For families struggling with an increasingly unaffordable rental market or inaccessible housing, the homeownership option offers a chance to obtain stability for parents and children, seniors and people with disabilities. ■

⁶⁴§§ 982.638(d), 982.637(c)(2).

Homeownership Becomes a Reality for Section 8 Voucher Holder

“After many prayers and lots of hard work from many good people, I have been blessed with making the American Dream come true for me. I thank God, now I will be able to say, ‘you see that home over there, it’s mine.’”

—Olivia Estrada, first successful participant in the new
*Section 8 Homeownership Program**

On April 25, 2001, Olivia Estrada realized her dream—she bought a house in her hometown of Dixon, California. These days, even middle class Americans find this dream difficult to attain. But for Olivia, whose rheumatoid arthritis has left her permanently disabled and living on a fixed income since 1984, this dream seemed completely out of reach. However, last year a new federal program—the *Section 8 Homeownership Option*—was established that allows Section 8 voucher holders to use their vouchers to purchase homes. In April 2001, Olivia became the first person in the country to buy a home under the Section 8 homeownership final regulations.

Olivia is delighted to have this wonderful opportunity. She’s even more delighted since it almost didn’t happen. A delay in HUD’s issuance of the final regulations meant that the Solano County Housing Authority found itself unable to adopt the program which would have permitted Olivia to purchase her home. During the delay, the nonprofit housing developer, Sacramento Valley Organizing Community, maintained the home as a rental but early this year, it was forced to tell Olivia that they would have to sell the home to another purchaser. As a result, Olivia stood to lose her planned new home—one she had worked toward purchasing for nearly three years.

But, as part of our national *Section 8 Homeownership Initiative*, NHLP stepped in, working with the housing authority, the City of Dixon, Rural Housing Service, Sacramento Valley Organizing Community and Legal Services of Northern California to ensure that the Section 8 Homeownership Program was implemented in time for Olivia to purchase her new home. Her assistance from the Section 8 program was combined with a loan from the Department of Agriculture–Rural Development, a deferred second loan from the City of Dixon and an Affordable Housing Program grant through U.S. Bank so that she could afford the purchase price of \$114,741.

“Olivia’s example shows that Section 8 vouchers really can be used to help very low-income people buy homes,” says NHLP attorney, Lynn Martinez. “Potentially, thousands more lower-income people all across the country can benefit.

*Ms. Estrada is pictured on the front cover of this issue.

But it will take enormous commitment from housing authorities, lenders, cities, counties and other institutions as well as housing advocates to create local programs that really work.”

Under our initiative, NHLP is providing the technical assistance and training that can help implement successful Section 8 Homeownership programs like the one that assisted Olivia. As part of this effort, we recently conducted the first of two one-and-one-half hour national teleconferences on the program. “The teleconferences provided an inexpensive, concise and accessible format where advocates, housing providers and anyone else interested in the program could learn more,” says Martinez, one of the presenters. “The response was overwhelming—we had nearly 2000 people participate nationwide.”

To be successful, the *Section 8 Homeownership Program* is dependent on wide community participation and support. “In Olivia’s case, it took four months of hard work among many individuals, organizations and agencies to make her dream a reality,” says Martinez. “But knowing the difference this will make for people who would otherwise never have this opportunity, it’s worth it.” ■

HUD Data on Section 8 Projects

Current Department of Housing and Urban Development (HUD) data on Section 8 projects is available again on HUD’s Web site. No updates to the data were posted between September of 1999 and April 1, 2001. A statement on the site claims that the data will be updated weekly, and at least one update has occurred since April. The Web site address of the HUD database is: www.hud.gov/fha/mfh/mfhdiscl.html.

The data is compiled from multiple HUD systems and includes all properties with project-based Section 8 assistance regardless of the type of underlying financing, except possibly Section 8 Moderate Rehabilitation projects. There are about 100 data fields per property in two tables (*Properties* and *Assistance*), formatted in Microsoft Access. The data includes current basic information about projects such as rents, rents as a percentage of Fair Market Rent (FMR) (which is useful for restructuring and preservation purposes), the type of financing, and the identity of the owner. The 1999 data included some financial information about the projects, including the initial interest rate and the unpaid principal balance on the insured loan. For 2001, HUD omitted this information. The only significant new information is whether the owner is a nonprofit, limited dividend or profit motivated agency, and whether the project has been refinanced. However, you can still determine whether HUD insured the project and whether HUD holds any financing instruments or owns the project. Otherwise, the added information contains new fields for phone number and e-mail addresses.

The database is very large, so you should use your best computer (high speed modem, fast processor and ample RAM) to retrieve it. You will need Microsoft Access to use the database, although if you are technologically inclined, you can open it with Excel or another spreadsheet program. The database, in zipped format is approximately 14 megabytes (MB). Once expanded, it is about 97 MB. If you have a dial-up internet connection, it could take one to four hours or more to download. However, with a DSL or cable connection, it will download in about five to ten minutes.

There are instructions at the Web site about how to access the database. If the instructions are not entirely clear, we offer a few more pointers for Windows 95, 98 and 2000 operating system users:

1. On the Web page, click on *download*.
2. Click on *Database*.
3. You will be asked to save a file named:
mf_assistance_&_sec8_contracts.exe.
 - i. In Internet Explorer, you have to choose *Save file to disk*.
 - ii. Save the file in a place you will remember (try *Desktop* by clicking on the down arrow in the dialogue box that reads *Save In* and then selecting *Desktop*).
4. Next, on your desktop, double-click on the icon for *mf_assistance_&_sec8_contracts.exe*, and it will lead you through steps to expand the database in save it in a folder of your choosing.
5. Run Microsoft Access, and open the file from the folder you chose in step four. ■

California Section 8 Tenants Are Entitled to a 90-day Notice of Lease Termination

Introduction

California law requires an owner who terminates or fails to renew a contract or recorded agreement with a governmental agency that includes a rent limitation to give a 90-day written notice to the tenant.¹ During the 90-day period, the tenant's portion of the rent cannot be increased. The statute, codified in Cal. Civ. Code Section 1954.535, provides that:

Where an owner terminates or fails to renew a contract or recorded agreement with a governmental agency that provides for rent limitations to a qualified tenant, the tenant or tenants who were the beneficiaries

of the contract or recorded agreement shall be given at least 90 days' written notice of the effective date of the termination and shall not be obligated to pay more than the tenant's portion of the rent, as calculated under the contract or recorded agreement to be terminated, for 90 days following receipt of the notice of termination of [sic] nonrenewal of the contract.²

The California Statute Is Applicable to Tenant-based Contracts

The California legislature clearly intended section 1954.535 to apply to the Section 8 tenant-based program.³ The legislative materials accompanying section 1954.535 repeatedly state that "the bill requires a landlord to give Section 8 tenants at least 90 days written notice of the effective date of the owner's termination or non renewal of a 'Section 8' housing agreement. . . ."⁴ The statute is also applicable to other units with a recorded agreement with a governmental agency with rent limitations. This may include units assisted with local redevelopment agency funds, Community Development Block Grants (CDBG), HOME funds, California Multifamily Housing funds or California Farm Labor Housing Grants, all of which have contracts or recorded agreements that are likely to contain rent limitations. The applicability of the 90-day rule to the latter categories of housing units may arise less frequently because the recorded agreement or the contract will cover all the units in the building or development and the owners may therefore be more reluctant to terminate the recorded agreement or contract.⁵

The Section 8 Housing Choice Voucher program is covered by the statute because the contract with the owner contains rent limitations⁶ to satisfy the statutory requirement that the rent must be reasonable in comparison to other comparable units.⁷

²Cal. Civ. Code section 1954.535 (West Supp. 2000). This provision became effective January 1, 2000.

³California law requires owners of project-based Section 8 housing and/or federally insured multifamily housing to provide tenants with a 12-months notice of termination of a subsidy contract or prepayment of the federally insured or federally held mortgage indebtedness. Cal. Govt. Code section 65863.10 (West Supp. 2000).

⁴See e.g. Senate Rules Committee, SB 1098, amended April 7, 1999, at 2; see also Senate Rules Committee, SB 1098, amended August 31, 1999, at 2 and *id* at 1 (Subject: *Landlord and tenant law: rights of parties upon termination of Section 8 contracts*).

⁵Units developed with the Low Income Housing Tax Credit program, including those that have recorded agreements, are covered by the 12-month notice provisions set forth in Cal. Govt. Code Section 65863.10 (West Supp. 2000).

⁶Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program, HUD-52641 (March, 2000) (hereinafter HAP contract), Part A ¶ 6, Part B ¶ ¶ 6 and 8 and Part C ¶ ¶ 4, 5 and 15 (HUD requires that the HAP contract be used without modification). *Id.* at *Instructions for use of HAP Contract*, (column one) and 24 C.F.R. § 982.507 (2000); see also California Health and Safety Code Section 50675.2 (West Supp. 2000) which refers to units with "rent limitations" in the context of the California Multifamily Housing Program.

⁷42 U.S.C.A. § 1437f(o)(10)(A) (West Supp. 2000).

¹This provision is not applicable to "for cause terminations" such as non-payment of rent or tenant misbehavior.

The Statute Is Applicable Throughout California

Civil Code Section 1954.535 is applicable in both rent control and non-rent control jurisdictions. Unlike other provisions of Senate Bill (SB)1098, which is the source of section 1954.535, there is nothing in that section which limits its applicability to particular jurisdictions.⁸ The legislative history of section 1954.535 points out that the provision was enacted to address statewide problems such as a tight housing market for low-income housing and a tenant's need for time to respond.⁹ Both the judiciary and a city attorney have confirmed that California Civil Code section 1954.535 is applicable in non rent-control jurisdictions.¹⁰

In Rent Control Jurisdictions Special Additional Rules Apply

In a rent control jurisdiction, an owner who fails to renew a Section 8 contract in effect as of January 2000, may not establish an initial rent or any subsequent rents for the unit for a period of three years.¹¹ If, during the three-year period, a new tenancy is created, the initial rent must be set at the rental rate provided for in the Section 8 contract plus any increases authorized after the termination of the Section 8 contract.¹² Thus, an owner who previously rented a unit under the Section 8 program may not, under the *Costa-Hawkins Rental Housing Act*¹³ claim the benefits of vacancy decontrol, if the unit is re-rented within three years after a non-renewal or termination of a Section 8 contract. In addition if the tenant does not move as a result of the non-renewal or termination of the Section 8, the rent for the unit may be reduced below the Section 8 contract rent because the owner may not establish the initial rent. This reduction in rent will occur if the locally controlled rent for the unit is less than the Section 8 rent.

With one exception, the provision limiting an owner's ability to establish new initial rents is not applicable to a new tenancy of 12 months or more entered into after January 2000.

⁸City of Napa Inter-office Memorandum from Thomas B. Brown, City Attorney, to Don Dehorn, Housing Program Coordinator (Aug. 8, 2000); see also *California's 90-Day Notice Requirement for Termination of Section 8 Contract Precludes Rent Increases During 90-Day Term to All California Jurisdictions*, 30 HOUS. L. BULL. 123 (Aug. 2000).

⁹Senate Judiciary Committee, SB 1098, as amended April 7, 1999, hearing date April 13, 1999, at 5. This is not the first time that the legislature acted to require additional notice to tenants faced with a potential loss of a housing subsidy for their unit. See footnote 3 *supra*.

¹⁰*Anza Management Company v Osborne*, CA 01U00296 (Superior Court, County of Los Angeles, Mar. 28, 2001); City of Napa Inter-office Memorandum from Thomas B. Brown, City Attorney, to Don Dehorn, Housing Program Coordinator (Aug. 8, 2000).

¹¹Cal. Civil Code Section 1954.53(a)(1)(A) (West Supp. 2000). If the owner cannot establish the "initial rent," it means that the unit is still subject to rent control.

¹²*Id.*

¹³California Civil Code Section 1954.50-1954.535 was originally enacted in 1995. Generally, it preempts local rent control ordinances that limited the rent that a landlord can charge to a new tenant after the unit has been vacated voluntarily.

The exception applies if the prior vacancy for the unit was created because of a non-renewal or termination of a tenant-based Section 8 contract. Under that circumstance, all the provisions regarding the on-going control of rents continue to apply.¹⁴ In other words, the unit remains under rent control even if a second vacancy would qualify the unit for vacancy decontrol, if the first vacancy was created because of a non-renewal or termination of a tenant-based Section 8 contract.

In a rent control jurisdiction, an owner who fails to renew a Section 8 contract in effect as of January 2000, may not establish an initial rent or any subsequent rents for the unit for a period of three years.

The legislative history of section 1954.535 explains that the purpose of the legislation is to close a loophole in the *Costa-Hawkins Rental Housing Act*.¹⁵ That act allows landlords to establish a new initial rent whenever a tenant voluntarily vacates a rent control unit. Prior to the passage of SB 1098, if an owner terminated a Section 8 tenant-based contract and the tenant moved because he or she could no longer afford the unsubsidized rent, the resulting vacancy was considered a "voluntary vacancy" that allowed the landlord to establish a new rental rate for the unit. Because decontrolled rents are often greater than Section 8 rents, significant numbers of Section 8 owners had an incentive to terminate, and actually terminated, their Section 8 contracts to take advantage of this loophole.¹⁶ The legislature enacted SB 1098 with the understanding that "a rental unit is not 'decontrolled' if it is vacated when ...[t]he landlord no longer accepts Section 8 housing payments and the tenancy is terminated because the tenant could not pay the rent without Section 8 assistance. . . ."¹⁷

¹⁴*Id.* An argument could be made that a new Section 8 tenancy of less than 12 months formed after January 1, 2000 is subject to the statutory provisions regarding the establishment of initial rents and nonrenewal and termination of Section 8.

¹⁵Assembly Committee on Judiciary, SB 1098, amended July 13, 1999, at 4-5.

¹⁶*Id.* See also Senate Judiciary Committee, SB 1098, amended April 13, 1999, at 4-5 (Section 8 owners are advised to terminate Section 8 contracts as "rents in the future will in general not be generous as compared to vacancy decontrolled rents").

¹⁷Assembly Committee on Appropriations, Policy Committee, SB 1098, amended July 8, 1999, date of hearing August 18, 1999, at 1, see also Senate Rules Committee, Office of Senate Floor Analysis, *Unfinished Business*, SB 1098, August 31, 1999, at 3.

Advocacy Tips to Encourage Section 8 Owners to Remain in the Program

Increase the Payment Standard

In both rent control and non-rent control jurisdictions, an owner is likely to stay in the Section 8 program whenever the payment standard exceeds, respectively, the controlled or market rent. Therefore, an increase in the payment standard coupled with the PHA's approval of the lease at the payment standard, and, in rent control jurisdictions, permission by the rent control board to increase the rent to the payment standard is likely to discourage owners from exiting the program. Additionally, if the landlord is concerned about whether the tenant can continue to pay the rent and the tenant is paying more than 30 percent of income for rent because the rent for the unit exceeds the payment standard, an increase in the payment standard reduces the tenant's rent burden and may keep the landlord in the program because the landlord believes that it is more likely that the tenant will not default on the rent.

PHAs have the authority to set the payment standard at 90 to 110 percent of the FMR.¹⁸ For increases in the payment standard beyond 110 percent, PHAs must request approval from HUD, which may grant requests to increase the payment standard up to 120 percent of the FMR.¹⁹ In addition, as a reasonable accommodation, HUD may also approve an increase in the payment standard up to 120 percent of the FMR for an individual who is disabled.²⁰

The payment standard is based upon the FMR, so an increase in the FMR most likely will result in an increase in the payment standard. Several California PHAs have requested and received an increase in the FMR. For example, San Francisco received approval for an FMR increase of 150 percent while Santa Monica (CA) received approval for an increase to 180 percent of FMR. In other jurisdictions, HUD increased the FMR by increasing the percentile of area median rents upon which the FMR is based. For 39 metropolitan statistical areas (MSA), including six in California,²¹ HUD recently increased the FMR by basing the FMR rent calculation on the 50th percentile of area median rents instead of the 40th percentile as is usually the case.²² PHAs that were not included in the 39 jurisdictions may seek to have their FMR

calculations based upon the 50th percentile.²³ It should be noted that an increase in the FMR does not preclude a PHA from also increasing the payment standard to 110 percent of the FMR or seeking HUD approval to increase the payment standard to 120 percent.

For Rent Control Jurisdictions Only

In rent control jurisdictions, the unavailability of "vacancy decontrol" may convince an owner to remain in the Section 8 program. Therefore, tenant-based Section 8 owners in rent control jurisdictions should be informed of the change in the vacancy decontrol provisions of section 1954.535. They may decide that it is not in their interest to get out of the Section 8 program if they understand that they cannot take advantage of vacancy decontrol and establish an initial rent for a new tenant and that they also may be subject to a rent reduction if the Section 8 tenant remains in the unit after the Section 8 contract is terminated or not renewed.

Advocates should consider working with local rent control boards and PHAs to induce Section 8 owners to remain in the program. In Los Angeles, housing advocates and the Housing Authority of Los Angeles agreed to support an array of proposals submitted to the rent control board to encourage Section 8 owners to stay in the program. These proposals would:

- allow an owner with below market rents to take advantage of rent increases up to the maximum levels of the Los Angeles Rent Stabilization Ordinance (LARSO);
- allow an owner to increase rents to a level up to 120 percent of FMR (This provision will primarily benefit families who have a member who is disabled);²⁴ and
- allow an owner to increase the security deposit for tenants who remain in place (To increase the security deposit the owner must offer a phased-in payment plan).

As noted earlier, owners in rent control jurisdictions who either failed to renew or terminated Section 8 contracts may not establish an initial rent and must use the Section 8 rent as the initial rent for the unit if it is re-rented. To help enforce this provision, PHA's should be encouraged to compile a list of the units that are subject to the limitation and should be urged to make such a list available to the local rent control board. The rent control boards should then make the list available to tenants and owners. ■

¹⁸PHAs have the discretion to set the payment standard at any level between 90 and 110 percent of the published FMR. 24 C.F.R. § 982.503(b) (2000). The regulations do not impose any specific criteria for the PHA to apply before exercising its discretion.

¹⁹*Id.* at § 982.503(c) which sets for the various standards that HUD must apply to increase the payment standard up to 120 percent of the FMR.

²⁰*Id.* at § 982.503(c)(2)(ii).

²¹Oakland, Orange County, Sacramento, San Diego, San Jose and Ventura County.

²²HUD Announces That it Will Raise Section 8 Fair Market Rent Levels in Thirty-nine Metropolitan Areas, 30 HOUS. L. BULL. 135 (Sept. 2000); *Interim Rule on Increased Fair Market Rents and Higher Payment Standards for Certain Areas*, 65 Fed. Reg. 58,869 (Oct. 2, 2000); *50th Percentile and 40th Percentile FMRs for Fiscal Year 2001; Final Rule*, 66 Federal Register 161 (Jan. 2, 2001).

²³*Interim Rule on Increased Fair Market Rents and Higher Payment Standards for Certain Areas*, 65 Fed. Reg. 58,869 (Oct. 2, 2000).

²⁴24 C.F.R. § 982.503(c)(ii) (2000). It is anticipated that the Housing Authority of Los Angeles will seek HUD approval to increase the payment standard to 120 percent of the FMR. In general, PHAs have the discretion to set the payment standard at any level between 90 and 110 percent of the published fair market rent (FMR). *Id.* at 982.503(b). This range is called the basic range. HUD may approve a payment standard between 110 and 120 percent of the FMR. *Id.* at 982.503(c)(3). This range is called the "exception" range.

Recent Housing Cases

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

Shade v. Housing Authority of City of New Haven, ___ F.3d. ___, 2001 WL 436043 (2d Cir. March 30, 2001). The plaintiff filed two separate suits in federal court in Connecticut based on lead poisoning of her sons. In the first suit, she asserted a § 1983 cause of action against the Housing Authority of New Haven (HANH) claiming that it had deprived her sons of their statutory rights under the Lead-Based Paint Poisoning Prevention Act (LPPPA) along with state law negligence and negligence per se claims against the landlords of her Section 8 apartments. In the first case, the Second Circuit ruled that the defendants should not have been granted a new trial based on allegedly inconsistent jury instructions that the defendants had approved of, argued for, and not objected to. Thus, the court reinstated the judgments against all three defendants.

The second case is of greater interest to housing advocates. In that case, Ms. Shade sought damages from the United States under the *Federal Tort Claims Act* (FTCA) for the same lead-poisoning injuries to her sons. Under the FTCA, the United States could only be liable if, among other things, a private person would be liable under the same circumstances in accordance with state law. Acknowledging that HANH was not an agent of the United States, the plaintiff argued under a negligent supervision theory, alleging that the Department of Housing and Urban Development (HUD) had a duty to monitor local housing authorities—a duty it performed negligently. The Second Circuit found two “fatal flaws” with this argument. First, the plaintiff did not have any authority to establish that HUD has such a duty of supervision with respect to local housing authorities. Second, Connecticut law does not provide for recovery in negligent supervision case unless there is a special, particularized relationship such as that between parent and child, tavern owner and patron, or employer and employee. The court found no such particularized relationship in the case and upheld the granting of summary judgment in favor of the United States.

¹www.westlaw.com

²www.lexis.com

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

Robinson, II, v. Gorman and Housing Authority of City of Torrington, ___F.Supp.2d___, 2001 WL 376328 (D. Ct. March 30, 2001). The plaintiff, claiming to have a disability, filed federal discrimination claims against her landlords—who received federal financial assistance payments through the local housing authority—because they would not permit her to have a live-in aide. The plaintiff proceeded under the *Americans with Disabilities Act* (ADA), the *Fair Housing Act of 1968* (FHA), the *Rehabilitation Act*, and theories of common law negligence. The plaintiff rented one unit in a two-unit dwelling; the landlords resided in the other. The defendants filed a motion to dismiss the *Rehabilitation Act* claim, alleging that the FHA and *Connecticut's Fair Housing Act* pre-empted the housing discrimination claims and the ADA pre-empted discrimination claims based on an individual's disability. In denying the defendants' motion, the court rejected these contentions, ruling that an individual with a disability who is allegedly subjected to discrimination in a federally subsidized housing program may bring claims under all three statutes. The court also rejected the landlords' argument that they were exempt from the *Rehabilitation Act* because they were exempt under the FHA (due to their status as owners in residence) and under the ADA (because the dwelling was not a public accommodation). The court found that there was no indication that Congress intended similar exemptions under the *Rehabilitation Act*.

Lovejoy v. Intervest Corporation, ___So.2d___, 2001 WL 399871 (Ala. Civ. App. April 20, 2001). Ms. Lovejoy rented a Section 8 apartment from Intervest, who attempted to terminate her lease due to alleged lease violations. Ms. Lovejoy's portion of the \$538 total rent was \$0 at the time of the unlawful-detainer action against her. The lower court granted judgment to the landlords and issued a writ of restitution. Ms. Lovejoy appealed. While the appeal was pending, the court, pursuant to Alabama state law, ordered Ms. Lovejoy to pay to the court the full rent that had accrued (\$1799.56) since the filing of the unlawful-detainer action. The Alabama Court of Civil Appeals held that the tenant did not have to pay any monies into the court in order for her appeal to be heard. It reasoned that because her portion of the rent was \$0, the landlords could recover any other rent from the housing authority, and that making her pay amounts that she clearly could not afford effectively denied her right of appeal.

Turner v. Housing Authority of Baltimore City, ___A.2d___, 2001 WL 379096, (Md. April 17, 2001). Ms. Turner, a public housing tenant, was accused of narcotics violations and given notice to vacate her apartment. She was instructed that she had no right to a grievance hearing, but requested one anyway. The housing authority denied the request, filed suit, and was granted a judgment against the tenant. The tenancy, however, was under the jurisdiction of a Consent Decree guaranteeing all tenants the right to a grievance hearing before the initiation of eviction proceedings. Ms. Turner appealed the judgment, claiming the court had no jurisdiction because she was not given a grievance hearing. The

Court of Special Appeals agreed, reversing the judgment and remanding the case to the lower court. Shortly after the remand, however, a federal court vacated the Consent Decree. Upon the housing authority's motion, the lower court reinstated its judgment, based on the fact that the Consent Decree was no longer in place. On appeal, the Maryland Court of Appeals concluded that reinstating the judgment was improper. It held that since the Court of Special Appeals had reversed the decision in the case, the lower court was no longer empowered to grant the housing authority's motion to reinstate the judgment. According to the court, none of the exceptions to the "law of the case" doctrine applied to the circumstances before it, and that the lower court could not entertain the housing authority's motion to reinstate because it was inconsistent with the remand order. ■

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 March and April of 2001. For the most part, the summaries are taken directly from the summary of the regulation in the *Federal Register* or each notice's introductory paragraphs.

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

HUD Regulations

Assessments; Final Rule

66 Fed. Reg. 18,037 (Apr. 5, 2001) (12 C.F.R. Part 1701)

Summary: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation setting forth its policy and procedures with respect to the annual assessment of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation as provided by statute.

Effective Date: May 7, 2001.

¹At www.access.gpo.gov/su_docs.

²At www.hudclips.org/cgi/index.cgi.

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

⁴At www.rdinit.usda.gov/regs.

Prompt Supervisory Response and Corrective Action; Proposed Rule

66 Fed. Reg. 18,693 (Apr. 10, 2001)

Summary: The OFHEO solicits comments on a proposed regulation to set forth the procedures under which OFHEO administers the *Federal Housing Enterprises Financial Safety and Soundness Act of 1992*. It is under this act that the OFHEO takes prompt corrective action in response to specified declines in the capital levels of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises). The OFHEO also proposes to implement a system of prompt supervisory responses to be taken whenever certain developments, internal or external to an Enterprise, which are specified in the proposed rule, warrant special supervisory review by the OFHEO. The occurrence of such a development does not of itself establish that an Enterprise is in an unsound condition; rather, such a triggering occurrence provides a reasonable juncture for the OFHEO to undertake a focused inquiry into the likely consequences of the development for the Enterprise.

Dates: Written comments on the proposed rule must be received by July 9, 2001.

Rules of Practice and Procedure; Final Rule

66 Fed. Reg. 18,040 (Apr. 5, 2001) (12 C.F.R. Part 1780)

Summary: The OFHEO is issuing a final rule amending its rules governing administrative enforcement proceedings. The amendments summarize the OFHEO's statutory authority to issue cease and desist orders and to impose various corrective and remedial sanctions. These sanctions include civil money penalties, against the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), as well as their respective executive officers and directors, in appropriate cases. By describing the grounds on which such actions might be instituted, and providing examples of the terms and conditions the agency might impose, the OFHEO seeks to ensure greater transparency to, and public awareness of, the agency's supervisory regime and the safeguards affecting Freddie Mac and Fannie Mae.

Effective Date: May 7, 2001.

HUD Federal Register Notices

Lead Safe Housing: Notice of Extension of Transition Assistance Period to Certain Jurisdictions;

66 Fed. Reg. 18,285 (Apr. 6, 2001)

Summary: This notice advises the public of a direct notice that HUD issued on March 5, 2001, to jurisdictions which previously submitted a transition implementation plan to advise these jurisdictions regarding how they may obtain an additional time period to build capacity to comply with HUD's Lead Safe Housing Regulation.

Effective Date: March 5, 2001.

**Quality Housing and Work Responsibility Act of 1998;
Notice of Status of Implementation;
66 Fed. Reg. 18,287 (Apr. 6, 2001)**

Summary: On October 21, 1998, the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (the *Act*) was signed into law. This notice updates the public on HUD's overall implementation of the Act and identifies where existing implementation guidance may be found with respect to the provisions regarding public housing and tenant-based assistance.

**Housing Counseling Program Announcement of
Noncompetitive Funding Awards for Fiscal Year 2000;
66 Fed. Reg. 18,783 (Apr. 11, 2001)**

Summary: In accordance with section 102(a)(4)(C) of the *Department of Housing and Urban Development Reform Act of 1989*, this announcement notifies the public of funding decisions made by HUD in response to unsolicited proposals for funding of organizations providing housing counseling services. This announcement contains the names and addresses of the agencies selected for funding and the award amount.

**Housing Counseling Program; Announcement of Funding
Awards for Fiscal Year 2000;
66 Fed. Reg. 18,784 (Apr. 11, 2001)**

Summary: This announcement notifies the public of funding decisions made by HUD in a SuperNOFA competition for the funding of HUD-approved counseling agencies to provide counseling services. This announcement contains the names and addresses of the agencies selected for funding and the amount.

**Announcement of Funding Award—FY 2001
LeadBased Paint Hazard Control National
Center for Lead Safe Housing;
66 Fed. Reg. 18,790 (Apr. 11, 2001)**

Summary: This announcement notifies the public of a funding decision made by HUD to the National Center for Lead Safe Housing. This announcement contains the name and address of the awardee and the amount of the award.

**Announcement of Funding Awards for Fiscal Year 2000
Public and Indian Housing—Section 8 Housing Vouchers
Assistance Programs;
66 Fed. Reg. 19,186 (Apr. 13, 2001)**

Summary: This announcement notifies the public of funding awards for Fiscal Year (FY) 2000 to housing agencies and nonprofit agencies under the Section 8 Housing Vouchers Assistance programs. The purpose of this notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families.

**Announcement of Funding Awards for Fiscal Year 2001
Community Development Work Study Program;
66 Fed. Reg. 19,513 (Apr. 16, 2001)**

Summary: This document notifies the public of funding awards for the FY 2001 Community Development Work

Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract economically disadvantaged and minority students to careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

**Housing Opportunities for Persons With AIDS Program
Announcement of Funding Awards—FY 2000;
66 Fed. Reg. 19,962 (Apr. 18, 2001)**

Summary: This notice announces the funding decisions made by HUD under the Fiscal Year 2000 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice announces the selection of 22 project applications and two technical assistance applications under the FY 2000 HOPWA national competition which were announced under the SuperNOFA for Housing Community Development and Empowerment Programs. The notice contains the names of award winners and the amounts of the awards.

**Announcement of Funding Awards; Fair Share Allocation of
Incremental Voucher Funding for Fiscal Year 2000;
66 Fed. Reg. 19,967 (Apr. 18, 2001)**

Summary: This announcement notifies the public of funding decisions made by HUD for funding under the FY 2000 Notice of Funding Availability (NOFA) for the Fair Share Allocation of Incremental Voucher Funding for FY 2000. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications within each state and the allocation of vouchers and funding available for each state.

**Temporary Assistance for Needy Families (TANF) Program;
Conforming Changes to Annual Income Requirements for
HUD's Public Housing and Section 8 Assistance Program;
Proposed Rule
66 Fed. Reg. 20,367 (Apr. 20, 2001)**

Summary: This proposed rule would update and clarify HUD's annual income requirements for its public housing and Section 8 assistance programs. Specifically, the proposed rule would clarify that annual income includes payments under the TANF program, but only to the extent such payments qualify as "assistance" under the TANF program regulations issued by the Department of Health and Human Services and are not otherwise excluded under HUD's regulation. HUD believes that the proposed clarifications will make the annual income requirements easier to understand for both program participants and public housing agencies. The proposed changes would ensure greater conformity between HUD's annual income requirements and the TANF program regulations.

Comments Due Date: June 19, 2001.

**Federally Mandated Exclusions From Income;
66 Fed. Reg. 20,318 (Apr. 20, 2001)**

Summary: HUD's regulations provide that HUD will publish, periodically, a Federal Register Notice listing the amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits. This notice updates the list of exclusions last published on August 3, 1993.

Effective Date for payments by the Indian Claims Commission: October 10, 1978.

Effective Date for allowances, earnings and payments to AmeriCorps participants: October 1, 1993.

Effective Date for the first \$2000 of income received by individual Indians derived from interests in trust or restricted lands: January 1, 1994.

Effective Date for spina bifida payments: October 1, 1997.

Effective Date for victim crime compensation under the Victims of Crime Act: October 1, 1999.

Effective Date for payments received under programs funded in whole or in part under the Workforce Investment Act: August 7, 1998.

HUD Notices

Review of Health Care Facility Portfolios and Changes to the Section 232 Programs;

Notice H 01-03 (HUD) (Apr. 10, 2001)

Summary: On November 6, 2000, HUD issued Mortgagee Letter 00-42, Subject: *Headquarters Review of Certain Applications for Section 232 Mortgage Insurance*. The Mortgagee Letter announced a special Headquarters review of certain section 232 mortgage insurance applications. Multifamily Hubs and Program Centers are experiencing unprecedented interest from mortgagees and health care owner/operators in the section 232 mortgage insurance program for nursing homes, intermediate care facilities, board and care homes and assisted living facilities. The major reason for this interest is the health care industry's financial uncertainty resulting in a limited availability of capital. The Federal Housing Administration (FHA) recognizes its traditional role as a credit-enhancer in times of tightening mortgage capital availability. However, the FHA also needs to protect the financial viability of the FHA General and Special Risk Insurance funds and be certain that any section 232-insured loan is economically sound. Therefore, the FHA has reviewed its policies and procedures and is making certain changes to the Section 232 programs. Changes in processing procedures in this notice are designed to reflect changing conditions in the health care industry and adequately protect the FHA insurance funds.

Expiration Date: April 30, 2002

Availability of Credit Subsidy for FHA Multifamily Mortgages in FY 2001;

Mortgagee Letter 01-10 (Apr. 23, 2001)

Summary: The FHA has now earmarked the credit subsidy made available for FY 2001 including a small set-aside to cover mortgage increases at final endorsement. Please note that the FHA will not establish a set-aside to cover firm commitment mortgage increases. For the remainder of FY 2001, HUD expects that a small amount of credit subsidy will become available on September 1, 2001. Multifamily Hubs and program centers may continue to issue the FHA firm commitments for the positive credit subsidy programs in FY 2001, conditional upon the availability of credit subsidy.

Reprogramming of Public Housing Drug Elimination Program (PHDEP) Special Initiative Funds and Recapturing of Gun Buy Back Matching Funds;

Notice PIH 2001-12 (HA) (Mar. 30, 2001)

Summary: This notice provides instructions and clarification of how to handle unexpended PHDEP Special Initiative and Gun Buyback Matching funds.

Expiration Date: March 31, 2002

Fiscal Year 2001 and 2002 Renewal of Expiring Section 8 Moderate Rehabilitation (Mod Rehab) Housing Assistance Payments (HAP) Contracts;

Notice PIH 2001-13 (HA) (Apr. 6, 2001)

Summary: This notice provides instructions for implementing section 524 (b)(3) of the *Multifamily Assisted Housing Reform and Affordability Act of 1997*, Pub. L. 106-74, (MAHRA). The original statutory provisions governing Section 8 Mod Rehab contract renewals were codified at section 524(a)(2) of MAHRA, Pub. L. 105-65. Section 531 of HUD's *Fiscal Year 2000 Appropriations Act*, Pub. L. 106-74, however, amended section 524(a)(2), in part by creating a new section 524(b)(3), the implementation of which is the subject of this notice.

Expiration Date: September 30, 2002

Extension-Notice PIH 2000-18 (TDHEs), Accounting for program income under the Native American Housing Assistance and Self-Determination Act (NAHASDA);

Notice PIH 2001-14 (TDHEs) (Apr. 23, 2001)

Summary: This notice extends Notice PIH 2000-18 (TDHEs) of the same subject, for another year, until May 31, 2002.

Expiration Date: May 31, 2002

RHS Federal Register Notices

Notice of Funds Availability (NOFA) for Native Americans To Develop Essential Community Facilities

66 Fed. Reg. 18,593 (Apr. 10, 2001)

Summary: The Rural Housing Service (RHS) announces the availability of \$4 million in national competitive grant funds for the Community Facilities grant program for projects

benefitting federally recognized Native American tribes, with an agency emphasis on tribal colleges, to develop essential community facilities in rural communities.

Dates: Applications must be processed by the Rural Development State Office and forwarded to the Rural Housing Service in Washington, DC, by May 11, 2001 for the first window and by August 17, 2001, for the second.

RHS Notices

Transfer and Assumption of Multi-Family Housing Loans; RD AN No. 3628 (1965-B) (Mar. 28, 2001)

Summary: The purpose of this Administrative Notice (AN) is to provide further guidance in the assumption and transfer of Multi-Family Housing (MFH) loans. Additionally, this AN provides that the agency is willing to consider waiving certain parts of the regulation to allow for equity at the time of a program transfer. This AN supersedes AN No. 3492 (1965-B) dated November 8, 1999.

Expiration Date: January 31, 2002

Affirmative Fair Housing Marketing Plans for Community Facilities Projects;

RD AN No. 3629 (1942-A) (Apr. 3, 2001)

Summary: This Administrative Notice (AN) is being issued to advise field staff that Form HUD-935-2, *Affirmative Fair Housing Marketing Plan*, is required for certain housing-related projects financed through the Community Facilities (CF) loan and grant program. This AN updates RD AN No. 3529 (1942-A) which was issued on March 24, 2000, and expires on April 30, 2001.

Expiration Date: April 30, 2002.

Servicing On-Farm Labor Housing Borrowers;

RD AN No. 3630 (1930-C) (Mar. 29, 2001)

Summary: A recent review of files of on-farm type Labor Housing (LH) borrowers disclosed that many of these borrowers are charging rent, utilities, security deposits, or cleaning fees to tenants in violation of the borrowers' agreement with the RHS. The purpose of this Administrative Notice (AN) is to ensure that the RHS regulations regarding rent charges for on-farm type labor housing are fully understood and enforced by the Rural Development field staff and followed by all borrowers. This AN clarifies RHS policies with respect to rent charges in on-farm type housing and outlines the steps that field office employees should take to ensure that the regulations are not violated. This AN reissues the policies set out earlier in RD AN No. 3526(1930-C) dated April 10, 2000.

Expiration Date: March 31, 2002

Reporting, Authorization and Acceleration Requirements related to MFH Preservation Related Activities;

RD AN No. 3633 (1965-E) (Apr. 10, 2001)

Summary: To help standardize decision making during the prepayment process for Multi-Family Housing (MFH)

projects, the Office of Rental Housing Preservation (ORHP) has issued several Administrative Notices (AN) to provide guidance. This AN consolidates that guidance. This AN consolidates preservation guidance previously provided in expired RD AN No. 3527 (1965-E), dated March 24, 2000, and expired RD AN No. 3500 (1965-E), dated December 9, 1999.

Expiration Date: April 30, 2002

Prepayment Tracking and Concurrence System

RD AN No. 3634 (1965-E) (Apr. 10, 2001)

Summary: This Administrative Notice (AN) announces the implementation of the Prepayment Tracking and Concurrence System (PRE-TRAC). PRE-TRAC is a Web-based automated application that allows the RHS to significantly reduce the reporting burden required to process and monitor Multi-Family Housing (MFH) prepayment requests. The Office of Rental Housing Preservation (ORHP) will use PRE-TRAC to issue all concurrence and authorizations of incentives, equity loans, and prepayments. Previous guidance on reporting, concurrence and authorization requirements for the MFH prepayment process was in expired RD AN 3527 (1965-E), dated March 24, 2000.

Expiration Date: April 30, 2002

Processing Section 515 Loan Requests Project Designations and Bedroom Mix;

RD AN No. 3642 (1944-E) (Apr. 24, 2001)

Summary: The purpose of this Administrative Notice (AN) is to provide guidance and to clarify RD Instruction 1944-E as it pertains to the processing of section 515 loan requests. This AN replaces AN No. 3553 (1944-E), dated May 30, 2000.

Expiration Date: September 30, 2001

RHS Unnumbered Letters

Fiscal Year (FY) 2000 Management Control Review (MCR) of the Section 504 Loan/Grant Program (April 6, 2001)

Summary: Management Control Review reports for FY 2000 were issued December 1, 2000 to all state offices. The purpose of this memorandum is to address concerns raised as a result of the FY 2000 Management Control Review for the Section 504 loan/grant program. The Single Family Housing Section 504 loan/grant program was reviewed in four states during FY 2000 as part of the MCR process. Also, case files from six additional states were included in the reviews. The Program Support and Civil Rights staffs participated in this review. State and area offices are to be commended for assisting very low-income eligible homeowners to repair, improve or modernize their homes and make their homes safe by removing health and safety hazards.

Expiration Date: April 30, 2002 ■

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