

“Brief History of HUD Release Forms”

In conjunction with its implementation of the SWICA regulation, in April 1991 HUD issued a standard form, HUD Form 9886, which all applicants and tenants in HUD-assisted housing were required to sign. This form authorized HUD, PHAs and owners of assisted housing to collect certain personal information about tenants and applicants.¹ The form included a lengthy nonexclusive list of the categories of information that might be sought, including credit history, criminal activity, employment, marital status, and residences. The list of potential sources of information included schools and colleges, medical care providers and banks and financial institutions. The form provided that information could be gathered from any individual or organization without limitation, and did not limit it to confirmation of facts relevant to eligibility or rent recertification, nor did it contain an expiration date.

Tenants and applicants challenged the form as being unauthorized and in violation of statutory or constitutional limitations: the record-keeping requirements of the Privacy Act of 1974,² the restriction on governmental access to personal financial records of the Right to Financial Privacy Act,³ a separate statutory provision barring HUD from “imposing any unnecessarily duplicative or burdensome reporting requirements on tenants or Public Housing agencies”,⁴ and the constitutional right to privacy.

After litigation was filed challenging the original Form 9886,⁵ HUD revoked it and issued two new forms with a Notice directing that tenants not be evicted or have their assistance terminated for refusal to sign the old form. A revised Form 9886 covered public housing and

¹ HUD Notice PIH 91-32, *Re Authorization for the Release of Information, Form HUD 9886* (an explanation of the required use of the form by PHAs for conventional Public Housing, Section 8 Certificates and Vouchers) (July 7, 1991, expires July 30, 1992) (copy on enclosed CD); HUD Notice 91-28, *Re Authorization for the Release of Information, Form HUD 9886* (Apr. 5, 1991, expires Apr. 30, 1992) (an explanation of the required use of the form by FHA-subsidized and Section 8 project-based landlords) (copy on enclosed CD).

² 5 U.S.C.A. § 552a(e)(1)-(3) (West, Westlaw, through P.L. 107-200 (July 23, 2002)).

³ 12 U.S.C.A. §§ 3401 and 3404 (West, Westlaw, through P.L. 107-200 (July 23, 2002)).

⁴ 42 U.S.C.A. § 1437d(m) (West 2003).

⁵ **Error! Main Document Only.** *Hanson v. Kemp*, No. CA S-92-889-GED-JFM (E.D. Cal. amended complaint filed July 24, 1992), 26 CLEARINGHOUSE REV. 815 (No. 48,473, Nov. 1992). See also *Clemons v. Springfield Hous. Auth.*, No. 90-CV-166 (Mass. Hous. Ct., Hampden, June 15, 1990), 24 CLEARINGHOUSE REV. 600 (No. 45,812, Oct. 1990) (TRO issued against PHA’s use of information release forms in income redetermination process); and *Housing Auth. of Sacramento v. Van De Kamp*, 272 Cal. Rptr. 584 (Cal. Ct. App. 1990) (California Penal Code does not authorize the release of criminal records of Public Housing applicants and residents).

the Section 8 Certificate and Voucher programs, and a new Form 9887 covered the privately owned, multifamily subsidized projects.⁶

Congress also reacted to the controversy in 1992 by enacting a statute to require HUD to rewrite the form, after consulting with tenant organizations and their lawyers, and limiting it as to time and relevant material. The amendment prohibited the eviction of anyone for refusal to sign the old form.⁷ In 1993, Congress again amended the legislation to require tenants and applicants to sign a consent forms allowing HUD to collect certain kinds of income information from the Social Security Administration (SSA) and tax return information from the Internal Revenue Service (IRS).⁸ See discussion on HUD computer-matching with SSA and IRS in Chapter 3 of the Green Book, *infra*.

⁶ HUD Notice PIH 92-50, *Re Authorization for the Release of Information, Form 9886* (issued Oct. 19, 1992, expired Oct. 31, 1993).

⁷ Pub. L. No. 102-550, § 903, 106 Stat. 3672 (Oct. 28, 1992), *codified at* 42 U.S.C.A. § 3544(e) (West 2003).

⁸ Pub. L. No. 103-66, §§ 3003 and 13403(a), 107 Stat. 338, 565 (Aug. 10, 1993), *codified at* 26 U.S.C.A. § 6103(l)(7)(D)(ix) (West, Westlaw, through P.L. 107-200 (July 23, 2002)) and 42 U.S.C.A. § 3544(b)(3) (West 2003).