

Housing and Development Law Institute

THE COUNSELLOR

VOLUME 5, ISSUE 1

HDLI: A Legal Resource for Public and Affordable Housing Law

Calendar of Events:

HDLI's 2008 Employment Law Training & Spring CLE Conference
April 24-25, 2008
Washington, D.C.

See Page 5 for More Information on Upcoming HDLI Events

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A 2007 RETROSPECTIVE: Major Legal Changes to Apply in 2008

By Lisa L. Walker

Affiliates

During 2007, HUD published a number of changes and proposed changes to its program regulations, and issued important guidance affecting a number of its programs.¹ Some of these changes are far-reaching, and some only affect a few in the industry. The first part of this article summarizes, in subject matter alphabetical order, the changes that are most relevant to the majority of us in the industry, followed by a summary of the more idiosyncratic changes. All of the 2007 regulatory changes (final rules) and proposed rules are set forth in HDLI's current edition of the *Index to HUD Regulations*.²

For several years the HUD Office of Inspector General (OIG) has been scrutinizing relationships between PHAs and their affiliates. On June 20, 2007 HUD issued a **final Notice** intended to reaffirm the requirements of PIH programs, the ACC, and regulations (collectively, public housing requirements) that apply to public housing relationships with affiliates, including mixed-finance development activities. See Notice PIH 2007-15 (HA). Appendix 1 to the Notice is a checklist that serves as guidance for assessing compliance with the requirements discussed in the Notice.

This Notice restates HUD's policy of encouraging the use of affiliates and instrumentalities. It also provides guidance on the fiduciary and organizational linkages between affiliates, instrumentalities and PHAs. It describes the extent to which public housing funds can be used to form affiliates and instrumentalities, and also underscores that when an affiliate or instrumentality participates in a public housing development program it becomes subject to existing requirements. Further, the Notice provides guidance to HUD Headquarters and field office staff on identifying trans-

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¹ While endeavoring to highlight the most important regulatory changes and Notice guidance which took place in 2007, in the interest of space, this article does not include all changes that occurred in 2007. For example, this Article omits reference to changes in the areas of subsidy calculation, HAP payments, NOFAs, disaster relief and the Indian Housing program, among other areas. A complete list of all PIH, CPD, and other Housing Notices that were published in 2007 are set forth in a table at the end of this article, and the entire 2007 HUD regulatory changes may be found at: www.access.gpo.gov/su_docs/fedreg/frcont07.html.

² The *Index to HUD Regulations* is now available for purchase from HDLI's new WebStore at www.hdlistore.org.



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President's Message

Dear Colleagues,

It is with continued enthusiasm that I share a brief message as the president of HDLI. The Spring is a time for renewal and growth. HDLI is poised for growth in both our membership and our programs – we appreciate the need to remain financially healthy and remain the organization of choice for members with limited dollars. In the upcoming months, the board will consider candidates to fill the newly established corporate seats for membership. Our strategic plan has resulted in not only an awareness of broadening membership type categorically, as our partners include corporations, but also broadening membership involvement and scope of education. HDLI has the brightest and most successful professionals in the country among its ranks in membership and leadership. We are working toward expanding our membership to include partners in our industry who can provide meaningful insight and perspective into the legal issues that we face in our daily operations. These new members would include management companies, developers, financial institutions, syndicators, tenant service providers, and other corporate entities that have a stake in the affordable and public housing business and want to stay in tune with legal developments in our industry. We expect that representatives of these groups will add an additional dimension to our conferences and forums, and we look forward to the networking opportunities and synergies that will arise from our relationships. Please encourage your business partners to join our HDLI family. Direct them to our website at www.hdli.org to learn more information about HDLI and our services.

We also are growing our programs! In addition to our customary annual CLE conferences and our General Counsel Forum, this year HDLI is planning to launch new programs to develop our membership's

awareness of new development opportunities outside of the traditional public housing and section 8 avenues, such as variations on workforce housing and transit-oriented development - - avenues that PHAs of all sizes can participate that provides additional and non-federal revenue. We always like to consider the input of our members, so if you have an area about which you would like to learn more or areas you would like to share as a moderator or panelist, please let HDLI staff know and we will do our best to incorporate it into our programming. We are here to serve you.

Lastly, as the election season heats up, I implore you to utilize your role in the community as a housing professional to place housing on the radar of discussion, requesting a commitment of action for the advancement of the country. As we are aware, very rarely does housing, particularly affordable housing for low and moderate income individuals, reach that of the list of platform items for politicians. With the sub prime market crisis and displacement of families, many may seek refuge and consider alternative housing choices. One of the HDLI objectives is to provide information on viability and serving markets with new and innovative models. Stay tuned.

Mattye Gouldsby Jones





Lisa L. Walker, Esq.

A Letter from the Executive Director and General Counsel

Dear Valued HDLI Members,

Congratulations on another successful year in our business. Any year that you are still operating with all of the challenges and unfunded mandates that you face truly is a success! As highlighted in HDLI President Mattye Jones' message, HDLI is moving forward to assist you in continuing to address the legal challenges in the industry through enhanced programming and expanded member relationships. We work hard with the precious resources that your membership provides and we are grateful for your loyalty and involvement. Please make time to read the lead article in this Issue – *A 2007 Retrospective* - to ensure that you are well-armed to lead your agency throughout 2008.

GIVE YOUR STAFF ON-SITE FAIR HOUSING TRAINING THIS YEAR!

Having a well-trained and informed staff is the best way to avoid litigation and adverse HUD monitoring reviews. Take the offensive this year, and consider providing your staff with timely, up-to-the-minute fair housing training right in your own offices. Interesting and interactive training from a knowledgeable outside trainer may have a far greater impact than in-house training. HDLI has a great track record in already having trained more than 2500 agency maintenance and security personnel, front-line staff, low and middle managers, executive staff and agency

attorneys on the fair housing principles that are most relevant in your daily operations. We are conducting fair housing training at the Indiana and Ohio NAHRO state conferences this year, so if you're in those states, be sure to join us! Contact HDLI now to secure the date(s) of your choice for basic and/or advanced fair housing training **on-site at your agency**. A fair housing brochure is attached.

HDLI's SPRING LEGAL CONFERENCE IS APRIL 24-25.

Come and meet the HUD General Counsel and his senior headquarters and regional staff! This year is the time to bring your **senior managers** and legal counsel to a conference designed to reinforce the key issues raised in the wide range of prevalent lawsuits by and against the housing provider. Staff, not just attorneys, needs to hear the information from this conference. Make plans to attend **Landlord and Counsel Unite! Successful Strategies to Prevent, Defend and Win The Most Prominent Cases in the Affordable Housing Arena**. We will present the **latest legal developments** and provide relevant materials on the "hot topic litigation areas" in the industry today. We provide **up to 12 attorney CLE credits in your state** (including ethics). Come and take part in seminars to include:

- Evictions and terminations
- Collection of rent and other "non-rent" monies owed
- Tenant Bankruptcy
- Eminent domain after *Kelo*
- Personal injury/Premises liability
- Mold, Lead, and Other Toxic Torts
- Pre-trial and Trial Strategy
- Legal Ethics
- Key Note Luncheon
- Annual Review of Case Law
- Welcome Networking Reception
- And more!

REGISTER NOW on the enclosed Spring Conference registration form.

NEW GRIEVANCE PROCESS TRAINING is coming soon!

Many of you are taking advantage of HDLI's on-site fair housing training for staff. We are happy to announce that in the coming weeks, we will be bringing you training for your staff, commissioners, and hearing officers on the **informal grievance process**. First, this interactive training will fully prepare your staff in selecting and training appropriate hearing officers. Incorporating real case studies in our industry, the training will provide in-depth training with regard to legal due process, PHA responsibilities, tenant defenses, necessary documentation, and other critical considerations during the hearing process. The training

continued on next page

A Letter from the Executive Director and General Counsel Continued

also will show you how to successfully defend favorable decisions of the hearing officer. Our training manual and DVD are sure to be *must-have* desk references.

HDLI's WEBSTORE! Did you know that you can order HDLI conference materials, order the latest *Index to HUD Regulations*, renew your HDLI membership, and donate to HDLI in minutes from the internet? Visit HDLI's new WebStore at www.hdlistore.org! See the enclosed WebStore announcement for more information.

HDLI's Listserve has been very active in recent weeks! Much thanks to those

who are making it such a timely resource. *Keep the discussions flowing* ...



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HDLI is delighted to acknowledge the generous financial support of its GOLD MEMBER SPONSORS:

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Please contact HDLI at (202) 289-3400 or hdli@hdli.org for information on becoming a *GOLD, SILVER, OR BRONZE MEMBER SPONSOR*.

HDLI Welcomes to Membership:

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Tampa, Florida**

**Housing Authority of the City of Lexington
Lexington, Nebraska**

**Sanford Housing Authority
Sanford, Florida**

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Dallas, Texas**

Calendar of HDLI Events

EMPLOYMENT LAW TRAINING APRIL 23, 2008!

3:00 PM – 6:00 PM

**Conducted by the employment law
experts of the Legal Learning Group
of Littler Mendelson, LLG**

Come to the Spring Conference a day early and join us for an afternoon of current Personnel & Employment law training: **HOT TOPICS IN EMPLOYMENT LAW IN 2008: Focusing on the Areas of Greatest Concern to PHAs.** Up to 3 additional CLE credits! In these times where employee lawsuits against PHAs continue to rise, the Legal Learning Group of Littler Mendelson (LLG) will focus on the key employment-related issues that are of greatest concern to PHA administrators, managers, and human resource professionals.

Led by LLG's attorney-educators, this program will blend custom curricula, subject matter expertise, innovative multimedia, and **engaging scenarios based on real world cases and experience.** These lively and entertaining sessions are designed to encourage audience participation and to get managers and employees to think proactively about the employment issues and trouble spots they face every day in the workplace.

The training will focus on common issues and pitfalls related to:

- **Top 5" Maximum Exposure Areas in the Public Sector and How to Avoid Being Sued**
- **Harassment & Discrimination Prevention and Defense**
- **Workplace Violence Prevention and Defense**
- **Special Concerns for Employees With Disabilities**

**REGISTER NOW ON THE ATTACHED
REGISTRATION FORM**

HDLI's SPRING LEGAL CONFERENCE

APRIL 24-25, 2008

***Washington Marriott Hotel
Washington, D.C.***

Come and meet the HUD General Counsel and his senior headquarters and regional staff! This year is the time to bring your **senior managers** and legal counsel to a conference designed to reinforce the key issues raised in the wide range of prevalent lawsuits by and against the housing provider. Staff, not just attorneys, needs to hear the information from this conference. Make plans to attend **Landlord and Counsel Unite! Successful Strategies to Prevent, Defend and Win The Most Prominent Cases in the Affordable Housing Arena.** We will present the **latest legal developments** and provide relevant materials on the "hot topic litigation areas" in the industry today. We provide **up to 12 attorney CLE credits in your state** (including ethics).

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- Legal Ethics
- Key Note Luncheon
- Annual Review of Case Law
- Welcome Networking Reception
- And more!

REGISTER NOW on the enclosed Spring Conference registration form.

THE BEST HDLI GENERAL COUNSEL FORUM YET!

What an informative, thought-provoking, and overall fun time we had in Tampa at our General Counsel Forum during the *Gasparilla Festival* weekend of January 25th! In an intimate, round-table format, counsel and executives from nearly 30 public housing agencies from around the country met for a full day to discuss pressing issues facing those functioning as general counsel, as well as other critical industry issues. This year's presenters were well-prepared and refreshingly candid in their presentation and materials. **Ricardo Elias Morales**, General Counsel of the New York City Housing Authority, began our discussions with a presentation on agency responsibilities under the new **e-discovery rules**, and moderated a discussion of the practical consequences of the new mandate.

Jan Goslee, General Counsel of the Housing Authority of Baltimore City, and **Dana Braun**, a partner in the law firm of Callaway, Braun, Riddle & Hughes, P.C. in Savannah, GA, together led a very lively discussion on the issues prevalent in the **relationship between "inside" and "outside" counsel** working together for the benefit of the PHA client. It was very beneficial for both sides to hear the concerns and interests of the other. **Timothy E. Alcott**, General Counsel of the San Antonio Housing Authority, shared his agency's experiences and initiated a discussion on very **costly legal mistakes** that an agency can make and how to avoid them. HDLI Executive Director and General Counsel, **Lisa L. Walker**, discussed recent and interesting case law in the **employment law** area. To conclude our

working day, **Jennifer Bell**, General Counsel for Oakland Housing Authority and partner in the Oakland law firm of Goldfarb Lipman, led our discussion on areas where PHAs have the greatest exposure.

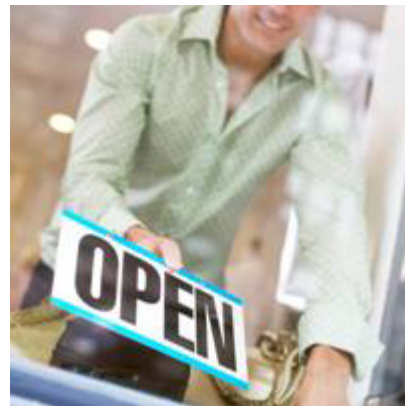
In addition to the brainstorming and critical thinking that took place all day, participants in this year's General Counsel Forum enjoyed three days chock full of enjoyable networking activities. On the Thursday preceding the Forum, the Tampa law firm of **Saxon Gilmore**, and partners **Ricardo L. Gilmore** and **Rhonda Stringer**, provided free skybox tickets to several of our group to attend the **Tampa Bay Lightning hockey game**. During the Forum's **catered luncheon**, we heard from representatives of a national resident home health provider - **Quality of Life/Almost Family** - and residents in their program, who introduced us to valuable home health services that are available to public housing residents at no-cost to the PHA. Additionally, once again this year, **Ric Gilmore, Rhonda Stringer, and Saxon Gilmore** hosted a very gracious **welcome cocktail reception** at the Gilmore's beautiful waterfront residence. For the convenience of our group, the firm provided van transportation to and from our hotel. But perhaps the highlight of our weekend networking activities was the **tented reception on the Gasparilla Festival parade route**. This reception was very warmly hosted by **Quality of Life/Almost Family**, and allowed our participants to eat, drink, and watch the *Gasparilla Festival* (a "G-Rated" mardi-gras like parade) in grand style. HDLI President, Mattye Jones,

lead all others in garnering favor and beads from the parade marchers. We won't tell you how she got all of those beads . . . What happens at Gasparilla, stays at Gasparilla! **Remember to make plans in your 2009 budget to join us next year at the General Counsel Forum (activities for spouses and children too).**



INTRODUCING HDLI'S NEW WEBSTORE!

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Want to review HDLI's semi-annual reviews of case law? Every six months, you can read thoughtful analyses of the **most recent cases** affecting our industry prepared by HDLI's Executive Director and General Counsel.

Looking for that elusive regulation? Find it in minutes! Purchase HDLI's **INDEX TO HUD REGULATIONS** online now at www.hdlistore.org

All case law reviews and written materials in conference binders **from Spring 2003 through Fall 2007** are now available for **immediate download and purchase** on line at www.hdlistore.org!

You can order one section, multiple sections, or the entire binder of materials. Within minutes, you can be reading these valuable materials right at your desk!

ALSO: When it is time, visit HDLI's **WEBSTORE** to **renew your HDLI membership** on-line. Or, make a **tax-deductible donation** to HDLI anytime!

IT'S SO EASY! Here's how:

1. **VISIT.** Visit HDLI's WebStore at www.hdlistore.org
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4. **RECEIVE.** There are two ways to receive the materials: 1) you can **immediately download a pdf version** of the materials directly to your computer -or- 2) If purchasing an entire conference binder, elect to have **HDLI print and send** you the binder of materials via mail at no extra charge.

Contact HDLI at hdli@hdli.org or (202) 289-3400 for more information

CASE CORNER

The following recently-reported cases are full of interesting issues:

SECTION 8

***Basco v. Machin*, No. 07-11368, 2008 U.S. App. LEXIS 1250 (11th Cir. Jan. 23, 2008)**

COURT: U.S. Court of Appeals for the Eleventh Circuit.

FACTS: A voucher holder, Ms. Basco, entered into a lease for a single-family residence. The lease provided that only she, her husband, and children would reside in the unit. Subsequently, a neighbor telephoned the PHA to provide information regarding disturbances at the Basco unit, multiple police calls to the unit, and the arrest of a member of Ms. Basco's household. The PHA obtained from the police department copies of two police reports involving the Basco's unit. The first police report referred to a sworn statement from Mr. Basco that "Emanuel Jones" was "staying at the house," and noted that Emanuel's address was the same as that of the Basco's unit. The alleged sworn statement was not contained in or attached to the report. The second police report listed an "Elonzel Jones" with an address of the Basco unit. The PHA assumed that "Emmanuel" and "Elonzel" Jones were the same person, and neither name was listed as an occupant of the unit. Based on these two police reports, the PHA sent Ms. Basco a Notice of Intent to Terminate along with

copies of the reports based the presence of on an unauthorized resident in her unit in violation of 24 CFR. §§ 982.551 and 982.516. In response to the termination notice, Ms. Basco requested, and was granted, a hearing before an impartial hearing officer. The PHA's only evidence of the unauthorized tenant was the two copies of the police reports. Both Ms. Basco and her landlord (who was her mother) testified that Jones did not live at the assisted unit. Ms. Basco also submitted a notarized letter from Jones's mother stating that Jones had only ever lived at two addresses, neither of which was Ms. Basco's. To rebut the alleged statement by Mr. Basco contained in the first police report, Ms. Basco asked to have her husband directly testify by telephone. The Hearing Officer denied the request and upheld the PHA's decision to terminate Ms. Basco's benefits. The Bascos twice sought to have the Hearing Officer's decision overturned, and provided the PHA with a new notarized letter from Jones stating that he had only lived with his grandmother and mother, and that he had never lived in Ms. Basco's unit. The hearing officer denied the request for a new hearing. The Bascos also retained a legal services attorney, who cited the PHA's Administrative Plan provision stating that "[t]he burden of proof that the individual is a visitor rests on the family. In the absence of such proof the individual will be considered an unauthorized member of the house-

hold and the PHA will terminate assistance" The Bascos then filed suit, alleging deprivations of their right to procedural due process under 24 CFR. § 982.555(e)(5) and (6), and 42 U.S.C. § 1983. In particular, the Bascos asserted that the PHA denied them the opportunity to confront and cross-examine witnesses against them, and improperly placed the burden of proof on them rather than on the PHA, which sought to terminate their housing assistance. The district court granted summary judgment in favor of the PHA, finding no violation of due process.

ISSUE 1: Whether the PHA or a Section 8 participant bears the burden of persuasion in an administrative hearing under HUD regulations to determine whether a participant's housing subsidy should be terminated.

HOLDING/RATIONALE 1: The court held that, contrary to the terms of the PHA's Administrative Plan, the PHA has the burden of persuasion and must initially present sufficient evidence to establish a *prima facie* case that an unauthorized individual has been in the unit more than 15 consecutive days without PHA approval, or for a total of 30 days in a 12 month period. Thereafter, the Section 8 participant has the burden of production to show that the individual

continued on next page

CASE CORNER CONTINUED

is a visitor." Accordingly, the appellate court held that the district court applied the wrong standard.

ISSUE 2: Whether the PHA can meet its burden of persuasion by using unauthenticated copies of police reports to establish a *prima facie* case that Jones was not a visitor, but an unauthorized occupant of the Basco unit.

HOLDING/RATIONALE 2: No. The court found that the first police report's statement regarding Mr. Basco's alleged written statement violated due process, since the statement was not attached to the police report, and although it is not hearsay, was insufficient alone to establish that Jones was an unauthorized resident. The court found that it merely established that Jones stayed with the Bascos, but it does not speak to the length of his stay, which, according to the PHA's Administrative Plan, must be at least fifteen consecutive days or thirty days in a twelve-month period in order for Jones to be an unauthorized resident. Therefore, we consider only the police reports as to the statements allegedly made to the police officers by Emanuel and Elonzel. Citing 11th Circuit precedent that militates against basing an adverse administrative determination on hearsay statements, the court found that the Bascos could not subpoena the officers, Emanuel, or Elonzel for cross-examination. However, even assuming *arguendo* that the reports and statements were properly admitted, the court found that they did not establish that Emanuel and Elonzel were the same individual and therefore, as with Mr. Basco's alleged statement, do not speak to the length of the stay at the Bascos' residence. The court was not convinced

that the evidence proved that the two individuals were one and the same. Accordingly, appellate the court held that the police reports presented by the PHA were legally insufficient to establish a *prima facie* case that either Emanuel or Elonzel had resided at the Bascos' residence for fifteen consecutive days or for thirty days in a twelve-month period. Accordingly, the court reversed and remanded the district court's grant of summary judgment.

***Graoch Assoc. # 33 v. Louisville/Jefferson Co. Metro Hum. Rel. Comm'n*, No. 06-5561, 2007 U.S. App. LEXIS 26883 (6th Cir. Nov. 21, 2007)**

COURT: U.S. Court of Appeals for the Sixth Circuit.

FACTS: A Section 8 landlord sought to voluntarily withdraw from the Section 8 program because of disputes with his housing commission regarding rent payments and the abatement of rent for the failure to make certain repairs. The landlord informed the commission that it would honor existing Section 8 leases, but would not renew those leases or sign any new Section 8 leases. Of the 18 affected tenants, 17 (or 94%) were minority and 1 (or 6%) was white. The commission opposed the withdrawal on the grounds that it constituted unlawful racial discrimination because it had a disparate impact on African-Americans. The landlord countered that its decision to withdraw resulted from a business necessity.

The landlord brought a declaratory judgment action seeking a declaration that it did not violate the Fair Housing Act (FHA) by withdrawing from the Section 8 program. The trial court granted summary judgment for the landlord, holding that a party offering only evidence that a

landlord's withdrawal from the Section 8 program had a disparate impact on members of a protected class cannot establish a *prima facie* case that the landlord violated the FHA. The commission appealed.

ISSUE 1: Can a landlord's withdrawal from the Section 8 program violate the Fair Housing Act solely because it has a disparate impact on members of a protected class?

HOLDING/RATIONALE 1: Yes. The appellate court found that disparate-impact claims against private defendants under the FHA should be analyzed under a form of the *McDonnell Douglas* burden-shifting framework. It held that the mere fact that a landlord could withdraw from Section 8 without violating the terms of Section 8 or the FHA does not mean that withdrawal from Section 8 could never constitute a violation of the FHA. The court found that the commission failed to show that the owner's withdrawal from Section 8 would harm a disproportionate percentage of African-American tenants because the overwhelming racial make-up of tenants at the owner's complex was African-American and not all of them received Section 8 assistance. The commission failed to show that the owner's withdrawal from Section 8 had a segregative effect.

ISSUE 2: What are the standards for measuring disparate impact?

HOLDING/RATIONALE 2: The court held that, like Title VII claims, disparate-impact claims against private defendants under the FHA should be analyzed using a form of the *McDonnell Douglas* burden-shifting framework: First, a plaintiff must make a *prima facie* case of

continued on next page

CASE CORNER CONTINUED

discrimination by identifying and challenging a specific housing practice, and then showing an adverse effect by offering statistical evidence of a kind or degree sufficient to show that the practice in question has caused the adverse effect in question. Second, if the plaintiff makes a *prima facie* case, the defendant must offer a "legitimate business reason" for the challenged practice. Third, if the defendant offers such a reason, the plaintiff must demonstrate that the defendant's reason is a pretext for discrimination, or that there exists an alternative housing practice that would achieve the same business ends with a less discriminatory impact. The final inquiry balances the strength of the plaintiff's statistical evidence against the strength of the defendant's business reason. Disagreeing with the position taken by the Second and Seventh Circuits which expressly exempt landlords from any possible liability under the FHA for a complete withdrawal from the Section 8 voucher program, the Sixth Circuit held that a plaintiff can, in principle, rely on evidence of some instances of disparate impact to show that a landlord violated the Fair Housing Act by withdrawing from Section 8.

ISSUE 3: Whether the Commission stated a *prima facie* case of disparate impact discrimination.

HOLDING/RATIONALE 3: No. The court concluded that the commission failed to satisfy the second requirement - showing an adverse effect by offering statistical evidence of a kind or degree sufficient to show that the practice in question has caused the adverse effect in question - because it failed to allege any facts making the statistical compari-

son necessary to determine whether his withdrawal from Section 8 had a disparate impact on African-Americans. The court found that the Commission presented three pieces of data: 1) seventeen of the eighteen families who received Section 8 assistance and lived at Autumn Run when the landlord announced its withdrawal are African-American; 2) as of 2003, 6,270 of the 8,849 Jefferson County residents receiving Section 8 vouchers were African-American; and 3) as of the 2000 census, 18.9% of Jefferson County residents were African-American and 24% were members of African-American households. However, the court found that the commission failed to make any other allegations regarding the racial makeup of Autumn Run or the surrounding community.

The court further found that the landlord applied its "no Section 8" policy to all residents of Autumn Run. Consequently, to determine whether the policy had a greater adverse effect on African-Americans than whites, the court stated that one should compare the percentage of African-Americans among the Section 8 tenants whose leases were not renewed (about 94 percent) to the percentage of African-Americans among the total pool of tenants at Autumn Run. The court found that the Commission failed to present any data regarding the total tenant pool and has not even alleged that there are more whites among the non-Section 8 tenants than among the Section 8 tenants. Likewise, the court found that the Commission failed to state a *prima facie* case based on the second type of discriminatory effect, as well, since it never claimed that the landlord's withdrawal from Section 8 had a segregative effect nor alleged any facts from which a segregative effect could be inferred. The commission failed to provide any information about the racial makeup of the community

surrounding Autumn Run or about the likely effect of withdrawal on the racial makeup of Autumn Run itself.

MORTGAGE PREPAYMENT/REGULATORY TAKING

***Cienega Gardens, et al. v. U.S.*, 503 F.3d 1266 (Ct. App. Fed. Cir. 9/25/07)**

COURT: U.S. Court of Appeals for the Federal Circuit.

FACTS: After passage of the Emergency Low Income Housing Preservation Act of 1987, Pub. L. No. 100-242, § 202, 101 Stat. 1877 (1988) ("ELIHPA"), and the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. No. 101-625, 104 Stat. 4249 (1990) ("LIHPRHA"), which effectively barred prepayment of Section 8 mortgages, various Section 8 owners sued the U.S. Government, alleging that LIHPRHA curtailed the owners' right to prepay their federally secured mortgages and withdraw from the Section 8 program and, thus, constituted a regulatory taking of the owners' property. LIHPRHA was in effect from November 28, 1990, until the HUD appropriations statute implementing HOPE VI was enacted on April 29, 1996. The United States Court of Federal Claims found that the enactment of these statutes effected a taking and entered judgment in favor of the owners, with compensatory damages in the millions of dollars (including more than \$13 million for a single plaintiff). The government appealed.

continued on next page

CASE CORNER CONTINUED

ISSUE 1: Whether the claims should be dismissed for lack of ripeness.

HOLDING/RATIONALE 2: The government argued that LIHPHA provided benefits to the plaintiffs of which they failed to take advantage. In arguing that the plaintiffs' claims were not ripe, the government argued that the plaintiffs did not (1) petition HUD for prepayment approval, and (2) pursue an option provided under LIHPHA to sell their property in a manner that would continue its low income nature. Rejecting that argument, the court found that it would have been futile for the owners to apply to HUD for approval to prepay. Moreover, the court found that the ripeness doctrine does not require the owners to apply for voluntary incentives such as the sale option that they did not wish to pursue. The Court further determined that these incentives were not relevant to the ripeness analysis.

ISSUE 2: Need a plaintiff prove that s(he) has suffered a complete loss of property or value in order to establish a compensable regulatory taking?

HOLDING/RATIONALE 2: No. The court held that to constitute a compensable taking the statute need not appropriate the owners' titles or dispossess them in any way, nor does the restriction have to be permanent. The court further held that the plaintiffs did not need to establish that the prepayment restrictions denied them all economically beneficial use of their property in order for the takings to be compensable. The court stated that "it is clearly not the law that only such 100% value regulatory takings are compensable." Finally, the court rejected the government's argument that the plaintiffs reasonably should have expected that

the prepayment right would be eliminated by future statute because plaintiffs knew that they were entering a sensitive and highly regulated field that was subject to continuing congressional interest and attention. The court explained that the fact that the industry is regulated is not dispositive and all regulatory changes are not reasonably foreseeable. Accordingly, the court concluded that the owners could not reasonably have expected the change in the regulatory approach.

ISSUE 3: What is the standard for a regulatory takings analysis?

HOLDING/RATIONALE 3: The court stated that the focus of the regulatory takings analysis is on fundamental fairness - that is, whether it is fair for the government to impose the cost of a regulation on private parties rather than on the public as a whole through public spending. Noting that there is no set formula to resolve this issue, the court noted that the U.S. Supreme Court in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978), identified three factors that have "particular significance" to this inquiry. First, courts must consider the character of the governmental action, that is, the precise action that the government has taken and the strength of the governmental interest in taking that action. Second, courts must consider the economic impact on the regulated parties. Finally, courts must consider whether the regulated parties had reasonable investment-backed expectations that they would not be subjected to such regulation. The court further noted that the *Penn Central* test is the same whether the regulation is permanent or temporary in nature, although in the latter situation, the court must carefully consider the duration of the restriction under the economic impact prong.

ISSUE 4: Whether courts must consider the impact of the restriction on the property as a whole, or consider the income from the project for each individual year as a separate property interest, the so-called "return-on-equity approach."

HOLDING/RATIONALE 4: The court held that the Court of Federal Claims erred in not considering the impact of the restriction on the property as a whole. Rather, the Court of Federal Claims compared the rate of the return that the owner would receive on its investment with (6%) and without (8.5%) the restriction of a single year. The court found that this error impacted the court's *Penn Central* analysis. The court rejected the plaintiffs' argument that

ISSUE 5: What is the correct way to compare the value of the restriction to the value of the property as a whole so as to determine if there has been severe economic loss?

HOLDING/RATIONALE 5: The court held that there were at least two ways: 1) a comparison could be made between the market value of the property with and without the restrictions on the date that the restriction began (the "change in value" approach), and 2) a comparison could be made between the lost net income due to the restriction (discounted to present value at the date the restriction was imposed) with the total net income without the restriction over the entire useful life of the property (again discounted to present value). Finding neither approach to be inherently better than the other, the court instructed the Court of Federal Claims on remand to consider both approaches, as well as any other possible approaches that

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CASE CORNER CONTINUED

determine the economic impact of the regulation on the value of the property as a whole.

ISSUE 6: Whether the Court of Federal Claims erred in failing to consider the offsetting benefits that the statutory scheme afforded which were specifically designed to ameliorate the impact of the prepayment restrictions.

HOLDING/RATIONALE 6: Yes. The court found that, since there can be no claim here that the government compensated the owner by providing substitute property, the benefits conveyed by the statute also must be considered as part of the takings analysis. In this case, the court found that LIHPRHA provided owners with two benefits: (1) the right to sell the property at its fair market value or, if there was no offer or if HUD failed to provide financial assistance to the purchasers, the right to prepay the mortgage and eliminate the regulatory restrictions; or (2) entering into a use agreement with HUD under which HUD would provide financial incentives to the owner. See 12 U.S.C. §§ 4107, 4110 (2000). The court found that the sale and use agreement options thus conferred considerable benefits on the owners. The major effect of the statute on an owner who did not elect to enter into a use agreement and wished to prepay was to keep the restrictions in place during the sale period which might expire near the prepayment date; to compel the owner to offer the property for sale at a fair market value; and, if there was no sale (and the owner prepaid the mortgage), to restrict rent increases for a three-year period. This sale option was plainly an available alternative because many owners in fact elected to sell their property. Likewise, the court found that

the benefits to the owners electing to enter into use agreements were also considerable. Thus, the court found error in not considering offsetting benefits with respect to those owners who entered into use agreements and those that did not. In considering whether the owners that elected to enter into use agreements suffered a taking, available offsetting benefits must be taken into account generally, along with the particular benefits that actually were offered to the plaintiffs.

ISSUE 7: Whether the Court of Federal Claims erred in failing to consider the time period that LIHPRHA was in effect and applied to the owners.

HOLDING/RATIONALE 7: Yes. The court held that takings law requires consideration of the duration of the legislation as part of the takings analysis. The court noted that the LIHPRHA restrictions remained in effect from November 28, 1990, until the HUD appropriations statute, implementing HOPE, was enacted on April 29, 1996. The court further noted that four owners did not enter into use agreements and were thus relieved of the LIHPRHA restrictions in April 26, 1996, when the HOPE appropriation was enacted, thus having their prepayment rights restricted for at most a short period--from nineteen to twenty-seven months--when the legislation was in effect. The court directed the Court of Federal Claims to consider on remand that the owners who did not enter into use agreements were only subjected to the legislation for a limited period of 19 to 27 months.

ISSUE 8: Whether the owners whether the plaintiffs had a reasonable investment-backed expectation that the restrictions were permanent.

HOLDING/RATIONALE 8: No. While the court found no error in the Court of

Federal Claims' conclusion that the owners subjectively expected to have the option to prepay their mortgages after twenty years, it did find that the Court of Federal Claims erred in part in its analysis of the reasonableness of the plaintiffs' expectations. The court found that one important aspect of investment-backed expectations is whether, in the regulatory environment, it would be expected that the law might change to impose liability. The court stated that the critical question is whether extension of existing law could be foreseen as reasonably possible. The court found that the plaintiffs could not reasonably have expected the change in regulatory approach. However, the court noted that the reasonable expectations prong also requires that the expectations be investment backed. The court directed the Court of Federal Claims on remand to determine the actual investment and the expectations of the industry at the time that LIHPRHA was enacted. In sum, the appellate court held that further analysis was required to determine whether a regulatory taking occurred.



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actions that have not been approved by the Department and addressing the issues that arise in the transactions. See the August 2007 edition of HDLI's *Counsellor* publication, available to HDLI members at www.hdli.org, for a more in depth description of this Notice.

Civil Penalties

On February 6, 2007, HUD issued a **final Rule** increasing civil penalty amounts for violations of a host of HUD programs, including violations by applicants, HUD employees, mortgagees and lenders, loan guarantors for Indian housing programs, multifamily and Section 202 or 811 mortgagors, GNMA issuers and custodians. See 72 FR 5585 (2/6/07), effective March 8, 2007. This Rule also addresses Interstate Land Sales violations, dealers or loan correspondents, other FHA program participants, FANNIE MAE, FREDDIE MAC program participants, fair housing act violations, manufactured home, and RESPA violations. Consult the February 2007 edition of HDLI's *Messenger* publication, available to HDLI members at www.hdli.org, for more information about these penalties.

Disability Law

Pets/Service Animals

On October 15, 2007, HUD published a **proposed rule** revising HUD's regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities. See 72 FR 58447 (10/15/07). The proposed rule would revise HUD regulations that apply to HUD assisted housing, such as housing programs that serve the elderly and disabled, to make their assistance animal exceptions similar to the require-

ments and procedures for other HUD public housing programs. Most importantly, the proposed rule would remove the requirement for tenants of HUD-assisted housing to certify that the tenant or a family member is a person with a disability and that the assistance animal has been trained to assist persons with that specific disability.

The proposed rule broadens the definition of assistance animals in HUD-assisted housing to include animals that "assist, support, or provide service to persons with disabilities." The current regulation is limited to animals that "assist persons with disabilities." This broadened definition would, if adopted, be reflected in the prohibition against project owners and public housing authorities applying or enforcing pet ownership policies against assistance animals. An animal qualifies as a reasonable accommodation if: (1) An individual has a disability, as defined in the Acts, (2) the animal is needed to assist with the disability, and (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

The pet ownership policies and general requirements for pet ownership applicable to public housing and multifamily housing projects for the elderly or persons with disabilities are described in HUD's regulations at 24 CFR part 5, subpart C. Pet ownership by residents in public housing, except housing projects for the elderly or persons with disabilities and not including housing assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f et seq.), is addressed in HUD's regulations at 24 CFR part 960, subpart G. Under these regulations, in addition to HUD's pet ownership policies, PHAs and owners may develop and impose additional, reasonable requirements for

pet ownership by tenants and residents. See 24 CFR part 5, subpart C and 24 CFR part 960, subpart G for descriptions of applicable policies and requirements.

Parts 5 and 960 contain minor differences in pet ownership exclusion policies and requirements for animals that assist persons with disabilities. In 24 CFR 5.303, entitled, "Exclusion for animals that assist persons with disabilities," project owners and PHAs may not apply or enforce any pet rules developed under part 5 against individuals with animals that are used to assist persons with disabilities. Part 5, however, states that owners or PHAs may require that assistance animals qualify for the exclusion and that owners must grant this exclusion under certain circumstances. These circumstances include: (1) The tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is a person with a disability; (2) the animal has been trained to assist persons with that specific disability; and (3) the animal actually assists the person with a disability. In contrast, Sec. 960.705 states that PHAs may not apply or enforce pet policies established under 24 CFR part 960 against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to such animals that reside in public housing, other than housing developments for the elderly or persons with disabilities, and to such animals that visit these developments. The provisions in part 960 do not contain the tenant certification or the animal training requirements found in Sec. 5.303. PHAs, however, are authorized to verify that the animal qualifies as a reasonable accommodation under Section 504 and the Fair Housing Act.

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SHAKESPEARE'S REVENGE

The first thing we do, let's kill all the lawyers."

-- William Shakespeare

Did you ever want to one-up somebody who told you a bad lawyer joke? Here's the ammunition . . .

At the height of a political corruption trial, the prosecuting attorney attacked a witness. "Isn't it true," he bellowed, "that you accepted five thousand dollars to compromise this case? The witness stared out the window as though he hadn't hear the question.

"Isn't it true that you accepted five thousand dollars to compromise this case?" the lawyer repeated. The witness still did not respond.

Finally, the judge leaned over and said, "Sir, please answer the question."

"Oh," the startled witness said, "I thought he was talking to you."

Real Life Courtroom Q & A

Q: All your responses to the questions must be oral. Do you understand?

A: Yes

Q: What school did you attend in the fall of 1995?

A: Oral.

Q: Are you married?

A. No, I'm divorced.

Q: And what did your husband do before you divorced him?

A. A lot of things I didn't know about.



"Do you promise to pay the bill, the whole bill and nothing but the bill?"

Q: Your first marriage was terminated by death?

A: Yes, by death.

Q: And by whose death was it terminated?

Q: You stated that the stairs went down to the basement, is that correct?

A: Yes.

Q: And these same stairs, did they also go up?

Q: What is your relationship with the plaintiff?

A: She is my daughter.

Q: Was she your daughter on February 13, 1979?

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are on dead people.

"Even if you do learn to speak correct English, whom are you going to speak it to?"

-- Clarence Darrow

Real Life Cross-Examination Questions:

"Now, your youngest son, the twenty-year old, how old is he?"

"Were you alone, or by yourself?"

"Were you present when your picture was taken?"

"Was it you or your younger brother who was killed in the accident?"

"Did he kill you?"

"How far apart were the vehicles at the time of the collision?"

"You were there until the time you left, is that true?"

"How many times have you committed suicide?"

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Fair Housing

On May 16, 2007, HUD published a **final Rule** establishing the criteria for certification of state and local fair housing laws that are substantially equivalent to the federal Fair Housing Act, as well as for decertification of state and local fair housing laws that are deemed no longer substantially equivalent. See 72 FR 19069 (5/16/07), effective May 15, 2007. This final Rule also revises the funding criteria for agencies participating in the Fair Housing Assistance Program (FHAP).

First, this final Rule adds a timeframe for FHAP agencies to send 100-day letters. It requires that an agency unable to complete investigative activities with respect to a complaint within 100 days must send written notification to the parties within 110 days of the filing of a complaint. Second, this rule clarifies that HUD may suspend all types of funding (not just complaint processing funds) during suspension and withdrawal because of FHAP agency performance deficiencies. Third, this final Rule includes examples of "meritorious mention," which is one of the criteria for obtaining funding. Finally, the Rule requires that a FHAP agency spend at least 20 percent of its total annual budget on fair housing activities - that is, FHAP agencies that enforce antidiscrimination laws other than a fair housing law.

FOIA and Other Discovery

On March 15, 2007, HUD published a **final Rule** clarifying the procedures to be followed by persons seeking a waiver or a reduction of fees under the Freedom of Information Act ("FOIA"). See 72 FR 12539 (3/15/07), effective April 16, 2007. Once more, on February 26, 2007, HUD published a

final Rule explaining the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by the Department's document production and testimony approval regulations. See 72 FR 8579, effective 3/28/07. This final Rule describes the procedures to be followed by a party in making a demand for HUD documents and HUD testimony. The final Rule also explains the standards to be followed by HUD in determining whether production of documents or testimony should be permitted and, if so, any conditions or restrictions that HUD should impose.

HOME

On April 4, 2007, HUD published a **final Rule** revising HOME Investment Partnerships Program (HOME)/American Dream Downpayment Initiative regulations. See 72 FR 16677 (4/4/07), effective May 4, 2007. This final Rule makes final the March 30, 2004 interim rule establishing regulations for a downpayment assistance component under the HOME, referred to as the American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD makes formula grants to participating jurisdictions under the HOME Program for the purpose of assisting low-income families to achieve homeownership. In addition, this rule also makes final HUD's November 22, 2004 interim rule, which revised and clarified the HOME Program homeownership affordability requirements of the HOME Investment Partnerships Program. Further, this final Rule clarifies that the purchase of manufactured homes is an ADDI eligible activity, and broadens and clarifies the use of HOME funds to help preserve affordable housing previously assisted with HOME funds.

LEP

On January 22, 2007, HUD published a **Notice** providing **final guidance** on

PHA limited English proficiency (LEP) requirements. See 72 FR 2732, effective February 21, 2007. HUD's LEP Final Guidance can be found at: www.hud.gov/offices/fheo/promotingfh/lep.cfm. Note that on February 16, 2007 HUD extended the effective date of the final guidance to March 7, 2007. See 72 FR 7666 (2/16/07), effective March 7, 2007.

Manufactured Housing

On May 14, 2007 HUD published a **final Rule** creating a new Manufactured Home Dispute Resolution Program. See 72 FR 27221 (5/14/07), effective February 2, 2008. This rule establishes a federal manufactured home dispute resolution program and guidelines for the creation of state-administered dispute resolution programs. Under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, HUD is required to establish a program for the timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility, and the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation.

Also, on October 19, 2007, HUD published another **final Rule** establishing new Model Manufactured Home Installation Standards (Model Installation Standards) for the installation of new manufactured homes. See 72 FR 59338 (10/19/07), effective October 20, 2008. The National Manufactured Housing Construction and Safety Standards Act of 1974 requires HUD to develop and establish Model Installation Standards after receiving proposed installation

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standards from the Manufactured Housing Consensus Committee (MHCC).

Operating Fund/Asset Management³

HUD issued a number of new rules regarding its operating fund rules, most notably including the implementation of asset management. On April 10, 2007, HUD issued **Notice** PIH 2007-9 (HA), transmitting changes in financial management and reporting for public housing agencies (PHAs). HUD published updates to its Financial Management Handbook, Handbook 7475.1 REV., CHG-1, "Changes in Financial Management and Reporting for Public Housing Agencies Under the New Operating Fund Rule (24 CFR 990) – Revised, April 2007." This Notice supersedes PIH Notice 2006-33 that HUD issued on September 6, 2006 providing interim guidance pertaining to various aspects of public housing's conversion to asset management.

Implementation of Asset Management

Under HUD's regulations for the Public Housing Operating Fund Program, PHAs with 250 or more units are required to convert to asset management under specific deadlines. PHAs with less than 250 units may elect to convert, but are not required to do so. On September 6, 2006, HUD published interim guidance to assist PHAs in the conversion to asset management and posted on its web site PIH Notice 2006-33, "Changes in Financial

Management and Reporting Requirements for Public Housing Agencies Under the New Operating Fund Rule (24 CFR part 990)", that provided interim guidance on changes in PHA financial management and reporting necessitated by the conversion to asset management.

Following public comment on the September 6, 2006 Federal Register notice and PIH Notice 2006-33, on April 17, 2007, HUD published **notice** that it had posted on its website **final guidance** on the implementation of asset management. See 72 FR 19211(4/17/07). The final guidance and public comment summary may be downloaded at HUD's asset management Web page: www.hud.gov/offices/pih/programs/ph/am/. In the interest of space, this article does not discuss the particulars of the rule; however, we refer you to very good materials prepared by HDLI sponsor Reno & Cavanaugh, PLLC - *Current State of Asset Management* - Julie McGovern's presentation on understanding the current state of asset management delivered at HDLI's Spring 2007 CLE Conference. Additional substantive materials are available at HDLI's webstore at www.hdlistore.org. Of course, there also are well crafted articles on this topic on NAHRO and CLPHA's websites: www.nahro.org; www.clpha.org. Moreover, HUD lists all of its asset management-related notices on its website at: www.hud.gov/offices/pih/programs/ph/am/notices.cfm

Stop Loss Extensions

On June 18, 2007, HUD PIH issued **Notice** PIH 2007-16 extending the Year 1 and Year 2 stop-loss deadlines,

previously published under PIH Notice 2006-35 and PIH Notice 2006-14. "Stop loss" is a mechanism whereby PHAs may submit documentation of successful conversion to asset management in order to discontinue their reduction in operating subsidy under the Operating Fund Program regulations (24 CFR part 990). The Notice contains a table listing the new deadlines. The Notice further states that, although § 990.260(b) permits PHAs that have less than 250 units to combine all developments into one project, if these PHAs want to apply for stop-loss, they should group their projects in accordance with the criteria under Item 4, Guidelines for Determining Projects, in PIH Notice 2006-10, Identification of Projects for Asset Management. Pursuant to § 990.230(f), PHAs must select from a list of HUD-approved professionals to conduct an independent assessment of compliance with the conversion to asset management. In the event that HUD is unable to produce a list of independent assessors on a timely basis, pursuant to § 990.230(f), the PHA may submit its own demonstration of successful conversion directly to HUD.

Waivers

On March 1, 2007, HUD published a **Notice** providing guidance on expedited regulatory waivers for public housing programs to assist with transition to asset management. 72 FR 9348 (3/1/07). The expedited regulatory waiver process applies only to waivers of PIH program regulations applicable to PHAs. This guidance does not apply to PHAs with less than 250 units that do not elect to

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³ For the most recent developments concerning asset management, consult HUD's Asset Management website at: www.hud.gov/offices/pih/programs/ph/am/

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convert to asset management. The guidance also does not apply to) Indian and Tribally Designated Housing Entities (TDHEs) or local tribal governments, or PHAs that administer only the Section 8 Housing Choice Voucher program ("Section 8-only PHAs").

By way of background, consistent with amendments to the Public Housing Operating Fund Program at 24 CFR part 990 which requires the conversion to asset management, this final Rule provides a new formula for distributing operating subsidy to PHAs. Responding to the concern that the transition to asset management necessitates extensive PHA organizational changes, which may require the waiver of certain HUD regulatory requirements, HUD has provided guidance on expedited regulatory waivers.

Waivers of HUD regulations will continue to be handled on a case-by-case basis. You still need to submit a written waiver request to HUD that specifies the need for the waiver. If you are successful, in accordance with 24 CFR 5.110, upon determination of good cause, HUD may, subject to statutory limitations, waive provisions of title 24 of the Code of Federal Regulations. HUD's authority to grant waivers is limited to non-statutory requirements. Accordingly, HUD regulations that repeat statutory requirements may not be waived. The Secretary has delegated regulatory waiver authority for PIH programs to the Assistant Secretary for Public and Indian Housing (see the delegation of authority published on September 16, 2003 (68 FR 54240)). PHAs converting to asset management in accordance with 24 CFR part 990 (including PHAs with less than 250 units electing to convert to asset management) are eligible to request regulatory waivers

using the expedited process announced in this notice.

This notice does not apply to PHAs with less than 250 units that do not elect to convert, TDHEs, local tribal governments, or PHAs that administer only the Section 8 Housing Choice Voucher program ("Section 8-only PHAs"). PHAs, TDHEs, and local tribal governments ineligible to request regulatory waivers using the expedited procedures of this notice may submit waiver requests for HUD's consideration on a case-by-case basis using customary waiver procedures. Eligible PHAs that wish to obtain a regulatory waiver under the expedited process described in this notice must submit their waiver request to the following email address:

PH_Asset_Management_Expedited_Waiver_Process@hud.gov

While HUD is not requiring PHAs to modify their policies and procedures prior to applying for these waivers, PHAs are to certify that they will modify them accordingly prior to implementation, if HUD approves the waiver request. To the extent that any such changes require resident and/or public notice under 24 CFR part 966 (governing public housing lease and grievance procedures), the PHA certifies to meeting those procedural requirements prior to implementation. Under part 966, modifications to rules and regulations that are required to be incorporated by reference in leases are subject to comment by affected tenants. Specifically, Sec. 966.5 provides that PHAs "shall give at least 30-day written notice to each affected tenant setting forth the proposed modification, the reasons therefor, and providing the tenant an opportunity to present written comments which shall be taken into consideration by the PHA prior to the proposed modification becoming effective." Under the expedited waiver process contained in this notice, HUD will review and either approve or disapprove the requests within 30 days

of receipt of a complete submission package. HUD reserves the right to withhold or reject a waiver request due to a PHA's operating performance or due to other matters.

The notice provides three examples of the types of PIH program requirements that HUD may consider waiver requests under this notice:

1. Public Housing Assessment System (PHAS) - 24 CFR 902.60(d). For PHAs that request and show good cause, HUD will waive the requirement to submit a management operations certification, and will also waive the resident satisfaction survey, for a PHA's final year prior to required conversion to project-based budgeting and accounting (i.e., PHAs with fiscal years ending June 30, 2007, September 30, 2007, December 31, 2007, and March 31, 2008). HUD will not waive the independent physical inspection (conducted on all PHAs that score less than 80 on the previous year's inspection) or the requirement to submit a Financial Data Schedule (FDS). For purposes of scoring, HUD may, on a case-by-case basis, consider several alternatives that provide a PHAS score based on all four indicators, including: (1) Carrying over the PHA's entire PHAS score from the previous year, or (2) carrying over only the management assessment and resident satisfaction scores and tabulating new physical condition and financial condition scores.

2. Annual Inspections - 24 CFR 902.43 (a)(4). Section 6(f) of the United States Housing Act of 1937 requires PHA annual inspections. Waivers will be considered relating to the conduct of PHA annual inspections in accordance with Uniform Physical Condition Standards (UPCS). A PHA would still be required to conduct annual inspections;

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however, in accordance with section 6(f), it could perform those inspections in accordance with laws, standards, or state or local codes that the Secretary, upon granting the waiver, determines meet or exceed the UPCS. In requesting a waiver of the UPCS inspection requirement, the PHA must indicate the alternative inspection standards it intends to use and why such alternative standards meet or exceed the UPCS. PHAs are still subject to Real Estate Assessment Center physical inspections using UPCS at the frequency contained in 24 CFR part 902.

3. Tenant Participation - 24 CFR Part 964. Part 964 establishes various requirements for PHAs pertaining to tenant (resident) participation. HUD will consider requests for waivers relating to such issues as: the role of jurisdiction-wide resident councils (as these are not mandated by law), PHA roles in resident participation activities, requirements concerning resident council membership, election procedures, and uniform bylaws.

Procurement

On December 27, 2007, HUD published a **final Rule** relocating HUD's regulations governing nonprocurement debarment and suspension to a new part in title 2 of the Code of Federal Regulations (CFR). See 72 FR 73483 (12/27/07), effective January 28, 2008. This relocation is part of a government-wide initiative to create one location where the public can access both the Office of Management and Budget (OMB) guidance for grants and agreements and the associated Federal agency implementing regulations. The new part adopts the OMB guidance on nonprocurement debarment and suspension and supplements it with HUD-specific clarifications

and additions. The rule also makes conforming changes to HUD regulations referencing the nonprocurement debarment and suspension regulations.

Additionally, on October 29, 2007, HUD published a **final Rule** revising HUD's Acquisition Regulations (HUDAR) to codify the suspension and debarment procedures applicable to HUD's procurement contracts. See 72 FR 61269 (10/29/07), effective November 28, 2007. This final Rule affirms that the suspension and debarment procedures in 24 CFR Part 24 apply to both procurement and nonprocurement contracts. This rule does not change the suspension and debarment procedures in part 24; rather, it only amends the HUDAR regulations to reflect the applicability of these requirements to procurement contracts.

Rents

On August 24, 2007 HUD PIH issued **Notice PIH 2007-27 (HA)** setting forth the consequences for failure to identify and correct income and rent determination deficiencies. This Notice applies to public housing and HCV programs, and became effective August 24, 2007. The Notice provides that, while disallowed costs due to HUD shall be forgiven if amounts are less than or equal to \$2,500 per PHA program review, PHAs will now be required to reimburse HUD **100 percent** of disallowed costs for PHA errors identified in the HCV program that exceed \$2,500. The reimbursement must come from the Administrative Fees Net Restricted Assets or other nonfederal funds. The Notice discusses existing incentives for pursuing tenant fraud and disallowed costs, sanctions for failure to timely respond to monitoring review reports, and failure to implement a Corrective Action Plan when required, adjustment of Section 8 Management Assessment Program (SEMAP) scores when inconsistent with the findings of an on-site monitoring review and self-

assessment reviews. Additionally, the Notice states that PHAs will not be reimbursed for underpayment of subsidies.

The Notice states that PHAs are required to reimburse families for overpayment of the total family share. Such reimbursements of the tenant portion of the rent can be made in current and future months through an increase in HAP to the landlord and a decrease in the family share until the family's overpayment is fully compensated. A PHA may not use funds from its HAP account or HAP Net Restricted Assets to directly reimburse families for overpayment of the total family share. If the family did not receive the full amount of utility reimbursement from the PHA, the PHA must reimburse the family. These reimbursements may be paid out of the PHA's HAP account or HAP Net Restricted Assets. Note that a PHA cannot reimburse prior year costs with current year funding.

With regard to sanctions, the Notice provides the sanctions for PHA failure to formally address errors uncovered during monitoring reviews of both the HCV and public housing programs. With regard to the HCV program, the Notice states that, pursuant to 24 CFR 982.152(d), if, as a result of an on-site monitoring review, it is discovered that a PHA does not respond in writing to an onsite monitoring review report within 45 days, or does not implement its corrective actions within the timeframes approved by the field office, 10 percent of one-twelfth of its annual administrative fee amount will be withheld beginning the month the field office makes the sanction effective and lasting until the PHA has complied with the program requirements.

With regard to public housing program sanctions, the Notice states that, pursu-

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ant to 24 CFR 990.215, if as a result of an on-site monitoring review, it is discovered that a PHA does not respond to an on-site monitoring review report within 45 days, or does not implement its corrective actions within the timeframes approved by the field office, 5 percent of its monthly scheduled operating subsidy will be withheld beginning with the month the field office makes the sanction effective, and shall last until the PHA has complied with the program requirements. The Notice sets forth the appeals process with regard to the imposition of sanctions, and/or disallowed costs.

TANF

On June 6, 2007, HUD PIH issued **Notice** PIH 2007-20 (HA) providing guidance as to whether Temporary Assistance for Needy Families (TANF) "nonneedy" and "child-only" grants on behalf of a dependent child are considered "welfare assistance" under the regulatory definition for the FSS program. This Notice applies to families enrolled in the Public Housing and Housing Choice Voucher Family Self Sufficiency (FSS) programs.

By way of background, families participating in the FSS program can receive TANF grants. These grants are made to a dependent child or to a caretaker on the child's behalf solely on the basis of the child's need, and not on the need of the child's current non-parental caretaker. These grants are commonly referred to as "TANF child-only grants" or "TANF non-needy grants." To successfully complete its FSS contract the head of the FSS family must seek and maintain suitable employment and all family members must be independent of welfare assistance. An FSS escrow account is established for each FSS family. If the family completes its

FSS contract, the family receives the funds in the escrow account.

Credits to the FSS escrow account are calculated based on increases in the earned income of the family during the term of the family's FSS contract. This Notice addresses whether receipt of the non-parental TANF "child-only" or "non-needy" grants would be considered income to be credited against the FSS escrow account, and states that HUD has determined that child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not on the need of the child's current non-parental caretaker do not qualify as welfare assistance under the FSS regulations because such grants are not designed to meet the "family's ongoing basic needs."

Tax Credits - LIHTCs

On November 19, 2007, HUD published a **final Rule** revising the low-income housing tax credit ("LIHTC") rent provisions of HUD's Project-Based Voucher (PBV) program regulations. See 72 FR 65206 (11/19/07), effective December 19, 2007. The previous regulatory cap limited the rent to owners on all units in projects receiving LIHTCs to the allowed LIHTC rent, which, in high fair market rent areas, could be less than the allowed project-based Section 8 program rents. The cap had been instituted in a comprehensive revision of the project-based Section 8 program regulations in October 2005. Agreeing with industry concerns that this cap impedes, rather than promotes, HUD's goal of increasing and preserving affordable housing by reducing the supply of needed low-income housing, HUD issued this final Rule which holds that the LIHTC rent does not serve as a cap on rents in PBV projects receiving LIHTCs. The final Rule also re-emphasizes that PHAs may not enter into assistance contracts until HUD, or an independent entity approved by HUD, has conducted the

required subsidy layering review and determined that the assistance is in accordance with HUD requirements.

Violence Against Women Act (VAWA)

On March 16, 2007, HUD issued a **Notice** with guidance on the application of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA), as amended, to HUD programs. See 72 FR 12696 (3/16/07). This notice addresses a technical corrections bill signed into law in August 2006, and (2) HUD's plans to issue rules or guidance on this new law. This notice presents information from HUD's Offices of Community Planning and Development, General Counsel, Housing, and Public and Indian Housing, and provides an overview of key provisions that affect HUD programs, identifies those provisions that require program participants to take action to be in compliance, and advises of efforts underway within HUD to further facilitate compliance with this new law, including rules and guidance that are under consideration or development.

Utilities

On October 24, 2007, HUD PIH issued **Notice** PIH-2007-30 (HA) urging PHAs to use ENERGY STAR to Promote Energy Efficiency in Public Housing. HUD's Energy Conservation equipment and practices regulations currently require PHAs to purchase original or replacement equipment that meet minimum efficiency requirements set by the U.S. Department of Energy (24 CFR 965.306). This Notice **encourages** increasing the standard to that of purchasing ENERGY STAR products, **encourages** PHAs to implement energy saving activities, and informs that EN-

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ENERGY STAR expertise is available to provide valuable assistance for implementing energy conservation initiatives. The Notice advises that several states have begun requiring new affordable housing be built to ENERGY STAR specifications. Purchase of ENERGY STAR equipment, as with all procurement transactions, must be consistent with the standards set forth in 24 CFR 85.36. Finally, the Notice informs that ENERGY STAR partners occasionally sponsor special offers such as sales tax exemptions, credits, or rebates on qualified products. The ENERGY STAR website has search capability that identifies local opportunities to reduce the purchase price of specific ENERGY STAR products: www.energystar.gov/index.cfm?fuseaction=store.store_locator.

Vouchers

Voucher Homeownership Assistance

On October 22, 2007, HUD published a **final Rule** revising HUD's regulations for the homeownership option authorized under the HCV program. See 72 FR 59935 (10/22/07), effective November 21, 2007. Through the homeownership option, a PHA may provide voucher assistance for an eligible family that purchases a dwelling unit for residence by the family. This final Rule authorizes the use of voucher homeownership assistance for the purchase of units *not yet under construction* at the time the family contracts to purchase the home.

Housing Counseling

On September 28, 2007, HUD published a **final Rule** creating new regulations for HUD's Housing Counseling program. See 72 FR 55637 (9/28/07), effective October 29, 2007. This final Rule

makes changes to the December 23, 2004 proposed rule on this subject set forth at 69 FR 77118 (12/23/04).

HUD's Housing Counseling program makes grants to, or for contracting with, HUD-approved housing counseling agencies to provide counseling. Housing counseling services offered under this program may include, but are not limited to, the following: Assisting eligible homebuyers to find and purchase homes; helping renters locate and qualify for assisted rental units; helping eligible homebuyers obtain affordable housing; assisting homeowners to avoid foreclosures; assisting renters to avoid evictions; helping the homeless find temporary or permanent shelter; reporting fair housing and discrimination complaints; and addressing housing problems.

Borrowers seeking a reverse mortgage are required to receive counseling from an independent counselor to assure that they understand their loan options, including the option to not get a reverse mortgage. This final Rule allows participating agencies to fund the counseling using funds from lenders, as long as the relationship does not create a conflict of interest and that the relationship is disclosed to the client."

In addition to adding or revising definitions for the counseling program, this final Rule provides for alternative counseling settings when it a client is unable to meet with a housing counselor at the agency's offices. Under these circumstances, the agency must arrange to meet with such persons at an alternative location or through an alternative format. In addition, agency facilities must meet, when applicable, accessibility requirements under section 504, 24 CFR parts 8 and 9, and Title III of the Americans with Disabilities Act. The final Rule also acknowledges that there may also be circumstances where an agency will have to provide a person with a disability counseling in an alternative

format or at an alternative location as a reasonable accommodation to the person's disability. The final Rule requires that an agency's housing counseling work plan address alternative settings for the provision of housing counseling services. Additionally, HUD also removed the requirement that housing counseling agency facilities be located in the communities they serve. The Rule further provides that agencies must make space available to provide housing counseling services; however, they are not required to limit the use of the space solely for the purpose of providing housing counseling services.

The final Rule also provides that for agencies to seek HUD approval, to maintain HUD approval, and to participate in HUD's Housing Counseling program, at least one-half of an agency's counselors must have the minimum 6 months counseling experience.

The final Rule also provides that offenses that reflect upon the responsibility, integrity, or ability of housing counseling agencies to participate in housing counseling activities refers to a criminal offense that can be prosecuted at the local, state, or federal level. An example of such an offense would be if a member of the board of directors, the executive director, or an employee has been indicted or convicted of embezzling city, state, or federal funds.

The proposed rule originally required that an agency's workload would be a minimum of 50 clients annually and also that an agency maintain funding that enables the agency to provide housing counseling to a minimum workload of 50 clients. However, this final Rule provides that the workload determination is now a minimum of 30 clients annually. Similarly, the Rule requires that the agency

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A 2007 Retrospective Continued

maintain a level of funds that enables it to provide housing counseling to at least this required 30-client workload every year, whether or not the agency receives HUD funding. In a change in this final Rule, HUD is clarifying that it will allow for participating agencies to accept funding from lenders, as long as the relationship does not create a conflict of interest and that the relationship is disclosed to the client (see Sec. Sec. 214.303 and 214.313).

In addition, in the final Rule, HUD revised the provisions for charging fees to clients. Under this final Rule, agencies may charge reasonable fees to clients, as long as the fee does not place a hardship on the client. Acknowledging that a client's ability to pay a fee is based on factors beyond the client's income, HUD revised the requirement that a fee be based solely on the client's income. The housing counseling agency may make a determination about a client's ability to pay based on factors, including, but not limited to, income and debt obligations. Clients should not be turned away because of an inability to pay. Agency fee schedules, as well as determinations of clients' ability to pay, are subject to review by HUD during periodic monitoring conducted in accordance with Sec. 214.307. In another change from the proposed rule, HUD removed the provision that HUD would pre-approve an agency's fee schedule. Instead, HUD will review fee schedules during a review of an agency's application for approval or a performance review, in order to ensure that the fees are consistent with fees charged by similar agencies providing similar services.

The final Rule also addresses a number of recordkeeping changes. HUD has

removed the client and counselor signature requirement from Sec. 214.315. Although the action plan is an important document required under Sec. 214.300(a)(2), it is unnecessary and burdensome to require the plan to be signed by both client and counselor. HUD also removed the intake interview requirements at Sec. 214.315. In addition, HUD has revised Sec. 214.315(b) to expand the recordkeeping requirements so that the client file can be a paper file, an electronic file, or a combination. HUD believes that as housing counseling agencies increasingly utilize client management systems, client files will be a combination of electronic and paper files. HUD also revised Sec. Sec. 214.315(e) and (f) to clarify the requirements for client files and education files. Finally, HUD modified Sec. 214.315(d) to include client income data among the client information that agencies collect.

Also, on January 8, 2007 HUD issued a **proposed rule** proposing to establish Home Equity Conversion Mortgage (HECM) testing standards to qualify individuals as HECM counselors. See 72 FR 869 (1/8/07).

Demolition or Disposition Vouchers

On April 30, 2007, HUD PIH issued **Notice** PIH 2007-10 (HA) providing guidance on the funding process for the provision of providing housing choice vouchers (HCVs) for relocation or replacement housing in connection with the demolition, disposition, or conversion of occupied public housing units. The Notice describes the circumstances under which HCVs are available for these purposes and the maximum number of vouchers allowed. The Notice states that Headquarters will fund all eligible applications; although funds will only be provided for vouchers that will be leased in the calendar year during which the

funding application is submitted. Funding for vouchers to be leased in the next calendar year will be deferred until that calendar year.

Form HUD-50058 assessment and sanctions process

On October 10, 2007, HUD PIH issued **Notice** PIH-2007-29 (HA) adding significant changes to the Form HUD-50058 assessment and sanctions process implemented under Notice PIH 2006-24 for the HCV program, but only to the extent that the assessment process is not applicable to the public housing program. This Notice applies to PHAs administering HCV programs (including the project-based certificate, project-based voucher and homeownership programs). For PHAs that participate partially in the Moving to Work (MTW) program, this Notice applies only to those households that are not part of the MTW program. This Notice does not apply to PHAs that participate fully in the MTW program, a PHA's Moderate Rehabilitation Program, or Tribally Designated Housing Entities ("TDHEs").

The Notice requires that PHAs have a minimum 95 percent reporting rate (or 94.5 percent before rounding) or they will be subject to sanctions for each month the PHA is noncompliant. The Notice also provides that, pursuant to 24 CFR 982.152(d), PHAs subject to sanctions because their reporting rates fell below 95 percent may have their monthly administrative fee reduced or offset in an amount determined appropriate by HUD. The Notice further provides that, in determining whether, and to what extent, HUD will reduce or offset the administrative fees, HUD will consider such factors as the magnitude of the deficient reporting rate and the number of months that the reporting deficiency

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A 2007 Retrospective Continued

persists. The Notice provides that all HCV sanctioned funds will be **permanently recaptured** and will not be returned to the PHA once its reporting rate is in compliance.

The Notice also describes a new assessment process. The Department will assess all PHAs administering HCV programs quarterly effective upon the submission of the March 31, 2008 Voucher Management System (VMS) data, which contains leasing data for the months of January, February and March 2008. This leasing data, once validated, will be compared to the PIC Delinquency Reports VMS data for the same months (which is generally the VMS data from the last month of the previous quarter). The same assessment process will ensue for future VMS submissions. The Department will use the validated monthly VMS data rather than the VMS data used in the Delinquency Report for the applicable month to determine the actual reporting rate. Finally, the Notice provides that a PHA may demonstrate compliance with the 95 percent reporting requirements if, under portability, receiving PHAs are not properly submitting Form HUD-50058 records on families for which they are billing the initial PHA or have not correctly completed line 12f (PHA code billed). Consequently, these families will not be recorded on the PIC PHA Billed Portability Billing Report. This would affect the denominator of the PHA's reporting rate.

In addition to the foregoing, HUD also published the following changes that are not as far reaching as those mentioned above.

Ginnie Mae

On August 27, 2007 the Government National Mortgage Association (Ginnie

Mae) published a **proposed rule** regarding physical certificates. See 72 FR 49123 (9/26/07). This proposed rule would restrict the issuance of physical certificates representing Ginnie Mae mortgage-backed securities (MBS) and clarify that book-entry securities may be withdrawn from the Federal Reserve book-entry system after Ginnie Mae has approved a request for physical certificates, also known as definitive securities, in the same amount. The rule also proposed to eliminate the requirement for a classified balance sheet.

HUD Board of Contract Appeals

On September 20, 2007, HUD published a **final Rule** reflecting the statutorily mandated termination of the HUD Board of Contract Appeals. See 72 FR 53875 (9/20/07), effective October 22, 2007. As required by the National Defense Authorization Act for Fiscal Year 2006 ("2006 NDA Act"), the contract-related functions of the HUD Board of Contract Appeals have been transferred to the new Civilian Board of Contract Appeals. This final Rule also describes the organization, address, and officer qualifications of the new Office of Hearings and Appeals (OHA) and its two divisions, which will carry out the nonprocurement functions performed by the former HUD Board of Contract Appeals. This rule also makes conforming changes to other HUD regulations to reflect this organizational change. Additionally, this rule makes a technical correction to HUD's Freedom of Information Act (FOIA) regulations to include reference to Regional Counsel, which was inadvertently omitted from a previously published rule.

CDBG - Insular Areas

On March 15, 2007, HUD published a **final Rule** implementing regulatory

timeliness standards for the Insular Areas Program. See 72 FR 12533 (3/15/07), effective April 15, 2007. This final Rule provides that an Insular Area grantee may submit an abbreviated consolidated plan rather than a full consolidated plan. This final Rule also makes technical and conforming changes to the Insular Areas program. Under these standards, the amount of grant funds available but undisbursed 60 days prior to the conclusion of the Insular Area grantee's most recent program year must be no more than two times the amount of the Insular Area grantee's most recent grant. If the grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control, the grantee shall be deemed to be untimely.

HOPE VI

On June 29, 2007, HUD PIH issued Notice PIH-2007-19 (HA) explaining the procedures for establishing public housing development cost limits and providing an updated schedule of unit Total Development Cost (TDC) limits.

Mark-to-Market (M2M)

On November 26, 2007, HUD published a **final Rule** implementing a number of administrative changes to the Mark-to-Market ("M2M") program for the purpose of facilitating processing. See 72 FR 66033 (11/26/07), effective December 26, 2007. The M2M program is HUD's mortgage restructuring program for FHA-insured projects with project-based Section 8 assistance. Administrative in nature, this final Rule addresses a range of administrative and programmatic issues other than the project-based assistance contracts.

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MARCH 2008 MEDITATIONS

(A.K.A. STRESS NEUTRALIZERS)

O.K., RIGHT NOW . . . stop multi-tasking (e.g., typing, writing, eating, and talking on the phone while you're reading this), take a deep soothing breath, exhale, read the following and take heed . . .

This Mouse must give up one of the Mouse ways of seeing things in order that he may grow.

-- Hyemeyohsts Storm

There is an American Indian tale of a mouse who heard a roaring in his ears and set out to discover what it was. He encountered many animals who helped him on his way. Finally, the mouse had a chance to offer help to another. He gave away his eyes to help two other animals.

Without his sight, defenseless, he waited for the end. Soon he heard the sound eagles make when they dive for their

prey. The next thing the mouse knew, he was flying. He could see all the splendor around him. Then he heard a voice say, "You have a new name. You are Eagle."

Like the mouse, we also feel something inside us we'd like to explore. That secret, like all others, has its answer hidden deep within us, yet right under our very nose. Often, we merely have to give up our eyes and see in a different way. When we do this, we are rewarded with a new kind of vision, one that lets us discover our true potential.

How can you look at things differently today?

Searching for the Wordless Wonder

The purpose of a fish trap is to catch fish, and when the fish are caught, the trap is forgotten. The purpose of a rabbit snare is to catch rabbits. When the rabbits are caught, the snare is forgotten. The purpose of words is to convey ideas. When the ideas are grasped, the words are forgotten. Where can I find a man who has forgotten words? He is the one I would like to talk to.

-- Chuang Tzu

A 2007 Retrospective Continued

Pest Management

On May 24, 2007, HUD PIH issued Notice PIH 2007-12 (HA) to inform PHAs and Tribally Designated Housing Entities of reference materials on Integrated Pest Management (IPM) located in Maintenance Guidebook Seven: Termite, Insect and Rodent Control (September, 1995). The Notice reiterates that the decision to reflect IPM processes in their ongoing pest control efforts rests solely on local

management, and that the use of this material is voluntary for PHAs. Paragraph 7 of the Notice lists a number of reference materials for implementing IPM.

Uniform Physical Condition Standards Inspections

On December 28, 2007, HUD PIH issued Notice PIH 2007-33 (HA) explaining how PHAs are to certify to the correction of EHS deficiencies observed during Uniform Physical Condition Standards inspections. It also outlines the procedures for field office staff to enter and record any follow-up activities that

they have completed to ensure that EHS deficiencies have been corrected or abated. HUD has posted two appendices, Appendix 1, EHS Deficiency Correction Certification PHA User Instructions, and Appendix 2, EHS Deficiency Correction Certification Field Office User Instructions, on its "Exigent Health & Safety, EH&S" website at: www.hud.gov/offices/reac/products/pass/ehs.cfm.

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List of 2007 HUD PIH Notices and Letters*

* The text of the following Notices may be found at: www.hud.gov/offices/pih/publications/notices/2007.cfm.

* The text of the following Letters may be found at: www.hud.gov/offices/adm/hudclips/letters/pihletters.cfm.

(Note that unlike PIH Notices, PIH Letters are in effect until canceled and do not require annual renewal. HUD advises that it plans to issue more PIH Letters to reduce the volume of notices that must be renewed each year).

<u>Topic</u>	<u>Notice Citation</u>	<u>Issue Date</u>
Reinstatement -- Notice PIH 2006-1 Requirement for Designation of Public Housing Projects	PIH 2007-1 (HA)	January 3, 2007
Native American Housing Assistance and Self-Determination Act (NAHASDA) Interim Funding for Tribes or Tribally Designated Housing Entities (TDHE) in Fiscal Year (FY) 2007	PIH 2007-2 (TDHEs)	January 23, 2007
Reoccupancy Policies for Pre-Disaster HUD Assisted and Special Needs Families Displaced by Hurricanes Katrina and Rita	PIH 2007-3	January 23, 2007
Extension -- Disaster Voucher Program (DVP) Operating Requirements -- Rental Assistance for HUD-Assisted Families and Special Needs Families Displaced by Hurricanes Katrina and Rita	PIH 2007-4 (HA)	February 4, 2007
Revised Voucher Housing Assistance Payments Contract (Form HUD 52641) and Tenancy Addendum (Form HUD 52641A); Housing Choice Voucher Program Administration and the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA 2005)	PIH 2007-5 (HA)	February 16, 2007
Process for Public Housing Agency Voluntary Transfers of Housing Choice Vouchers, Project-Based Vouchers and Project-Based Certificates	PIH 2007-6 (HA)	March 7, 2007
Guidance on Appeals under Subpart G of the Revisions to the Public Housing Operating Fund Program, Final Rule, Published in the Federal Register on September 19, 2005 (79 FR 54983)	PIH 2007-7	March 13, 2007
Extension -- Notice PIH 2006-15 (HA), Single Audit Act (A-133) Independent Auditor Report Submission for Public Housing Agencies (PHAs)	PIH 2007-8 (HA)	March 22, 2007

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List of 2007 HUD PIH Notices and Letters Continued

<u>Topic</u>	<u>Notice Citation</u>	<u>Issue Date</u>
Updated Changes in Financial Management and Reporting Requirements for Public Housing Agencies Under the New Operating Fund Rule (24 CFR part 990)	PIH 2007-9 (HA)	April 10, 2007
Voucher Funding In Connection with the Demolition or Disposition of Occupied Public Housing Units	PIH 2007-10 (HA)	April 30, 2007
Extension -- Notice PIH 2006-17 (TDHE), Total Development Costs (TDC) for Affordable Housing under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)	PIH 2007-11 (TDHEs)	April 30, 2007
Guidance on Integrated Pest Management	PIH 2007-12 (HA)	May 24, 2007
Certification of accuracy of data in the Public Housing Information Center System used to calculate the Capital Fund formula allocation in Fiscal Year 2007	PIH 2007-13 (HA)	June 15, 2007
Implementation of Federal Fiscal Year 2007 Funding Provisions for the Housing Choice Voucher Program	PIH 2007-14 (HA)	June 18, 2007
Extension of Notice PIH 2007-57 -- Depository Agreements for Recipients of the Indian Housing Block Grant (IHBG) Program (Letter)	L-2007-02	June 18, 2007
Financial Audit Requirements Reissuance of PIH Notice 2006-20 (ONAP) (Letter)	L-2007-03	June 19, 2007
Applicability of Public Housing Development Requirements to Transactions between Public Housing Agencies and their Related Affiliates and Instrumentalities	PIH 2007-15 (HA)	June 20, 2007
Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 1 and Year 2 Applications	PIH 2007-16	June 18, 2007

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List of 2007 HUD PIH Notices and Letters Continued

<u>Topic</u>	<u>Notice Citation</u>	<u>Issue Date</u>
Disaster Voucher Program (DVP) -- Extension of the DVP and Revised Term for the Waiver of Tenant Contribution	PIH 2007-17	June 21, 2007
Enhanced Vouchers -- Adjustment of Voucher Housing Assistance Payments for Certain Families that Received "Preservation" Voucher Assistance as the Result of an Owner Prepayment or Voluntary Termination of Mortgage Insurance for a Preservation Eligible Property in Federal Fiscal Year (FY) 1997, FY 1998, and FY 1999	PIH 2007-18 (HA)	June 26, 2007
Public Housing Development Cost Limits	PIH 2007-19 (HA)	June 29, 2007
Impact of Non-Parental Child-Only Welfare Grants on Families Participating in the Family Self-Sufficiency (FSS) Program	PIH 2007-20 (HA)	June 6, 2007
Guidance on Methods and Schedules for Calculating Federal Fiscal Year (FFY) 2008 Operating Subsidy Eligibility	PIH 2007-21 (HA)	July 23, 2007
Submission of Calendar Year 2007 Notices of Intent and Fungibility Plans by PHAs in Hurricane Katrina and Rita Disaster Areas Authorized to Combine Section 8(o) and 9(d)(e) Funding Under Section 901 of 2006 Emergency Supplemental Appropriations, as Extended by 2007 Emergency and Supplemental Appropriations	PIH 2007-22 (HA)	July 31, 2007
\$100 Million Set-Aside Provision to Adjust Public Housing Agencies' Baseline Funding, Housing Choice Voucher Program CY 2007	PIH 2007-23 (HA)	August 1, 2007
Administrative Requirements for Investing Indian Housing Block Grant (IHBG) Funds	PIH 2007-24 (TDHEs)	August 10, 2007
"Public Housing Agency (PHA) Cost-Saving Initiatives in the Housing Choice Voucher (HCV) Program"	PIH 2007-25	August 14, 2007

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List of 2007 HUD PIH Notices and Letters Continued

<u>Topic</u>	<u>Notice Citation</u>	<u>Issue Date</u>
Disaster Housing Assistance Program (DHAP) Operating Requirements	PIH 2007-26	August 16, 2007
Disallowed Costs and Sanctions Resulting from On-Site Monitoring Reviews	PIH 2007-27 (HA)	August 24, 2007
Changes in the Project Numbering System and Process for Requesting Changes in Project Identifications	PIH 2007-28 (HA)	August 27, 2007
New Code on Family Report (Form HUD-50058) for Low Income Housing Tax Credit Units (Letter)	L-2007-04	August 28, 2007
Reinstatement of Notice PIH 2006-13 (HA) Non-discrimination and Accessibility for Persons with Disabilities (Letter)	PIH LETTER L-2007-05	September 21, 2007
Reporting Requirements and Sanctions Policy under the Housing Choice Voucher Program for the Family Report (Form HUD-50058) into the Public and Indian Housing Information Center	PIH 2007-29 (HA)	October 10, 2007
Using ENERGY STAR to Promote Energy Efficiency in Public Housing	PIH 2007-30 (HA)	October 24, 2007
Disaster Housing Assistance Program (DHAP) - Revisions to the Operating Requirements	PIH 2007-31	November 6, 2007
Line of Credit Control System/Voice Response System (LOCCS/VRS) for the Indian Housing Block Grant Program	PIH 2007-32 (ONAP)	November 13, 2007
Exigent Health and Safety Deficiency Correction Certification -- New Reporting Procedures	PIH 2007-33 (HA)	December 28, 2007
Extension of Notice PIH 2006-21 (HA), which reinstated Notice PIH 2005-5 (HA), <i>New Freedom Initiative</i> , Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program (Letter)	PIH LETTER L-2007-01	n/a

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List of 2007 HUD CPD Notices*

*The text of the following Notices may be found at:
www.hud.gov/offices/adm/hudclips/notices/cpd/07cpdnotices.cfm

<u>Topic</u>	<u>Notice Citation</u>	<u>Issue Date</u>
Transition Policy for Low/Mod Income Summary Data (LMISD) Updates for Fiscal Year (FY) 2007 Community Development Block Grant (CDBG) Program --- Entitlement Grantees	CPD 07-01	March 21, 2007
Transition Policy for Low/Mod Income Summary Data Updates for Fiscal Year 2007 for the State Community Development Block Grant Program	CPD 07-02	March 21, 2007
Instructions for Urban County Qualifications for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FYs) 2008-2010	CPD 07-03	April 17, 2007
Notice of Procedures for Designation of Consortia as a Participating Jurisdiction for the HOME program	CPD 07-04	June 12, 2007
HOME Program - Match Reductions for Fiscal and Severe Fiscal Distress and for Major Presidentially-Declared Disasters under the Stafford Act	CPD 07-05	July 11, 2007
Interim Reporting Requirements for the State Performance and Evaluation Report (PER) pending Re-engineering of the Integrated Disbursement and Information System (IDIS)	CPD 07-06	October 10, 2007
Implementing Risk Analyses for Monitoring Community Planning and Development Grant Programs in FY 2008	CPD 07-07	October 19, 2007
Use of Community Development Block Grant (CDBG) Program Funds in Support of Housing	CPD 07-08	November 21, 2007

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List of Other Housing Notices in 2007*

*The text of the following Notices may be found at:
www.hud.gov/offices/adm/hudclips/notices/hsg/

<u>Topic</u>	<u>Notice Citation</u>	<u>Issue Date</u>
Disaster Recovery Guidance by Multifamily Housing After Presidentially-Declared Disaster	H 07-01	February 2, 2007
Guidelines for Continuation of Interest Reduction Payments after Refinancing: "Decoupling," Under Section 236(e)(2) and Refinancing of Insured Section 236 Projects into Non-insured Section 236(b) Projects	H 07-02	March 13, 2007
Fiscal Year 2007 Interest Rate for Section 202 and Section 811 Capital Advance Projects	H 07-03	March 23, 2007
Fiscal Year 2007 Policy for Capital Advance Authority Assignments, Instructions and Program Requirements for the Section 202 and Section 811 Capital Advance Programs, Application Processing and Selection Instructions, and Processing Schedule	H 07-04	June 21, 2007
Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Program Loans in Transfer of Physical Assets (TPA) and Refinance Transactions	H 07-05	July 6, 2007
Fiscal Year 2007 Annual Operating Cost Standards -- Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs	H 07-06	October 10, 2007
Good Neighbor Next Door Sales Program - Adoption of Contents for Subordinate Note and Mortgage; Referral of Customers for Servicing Information	H 07-07	November 30, 2007

TODAY'S POSITIVE QUOTATION

“People demand freedom of speech to make up for the freedom of thought which they avoid.”

- Soren Aabye Kierkegaard (1813-1855)