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## **At a Glance**

This article summarizes last year's legislative activity, administration developments, and court decisions that will have an impact on the housing rights of the poor. Some of 1994's major developments in federally subsidized housing programs include:

- congressional resistance to HUD proposals for more severe cuts in funding for public housing
- new preference regulations and proposed citizenship-based eligibility regulations that will have broad impact on tenant selection
- refocusing of the national effort toward full achievement of fair housing

In 1995, the National Housing Law Project will continue to monitor carefully Congressional and administrative activities, with a particular focus on administrative advocacy to insure effective implementation of initiatives in the foregoing areas; develop its fair housing work; and continue advancing the campaign to achieve a universal "right to housing" in the United States.

## Federal Housing Policies 1994

*By the National Housing Law Project*

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Last year many of the changes regarding federal housing programs resulted from action by HUD -- in terms of both seeking broad public input /1/ and formal rulemaking. Interestingly, albeit still continuing deep funding reductions, Congress, in one of its most significant actions, was resisting HUD proposals for severe reductions in funding for additional housing assistance for families with incomes at the poverty level. Beyond that, in the courts there were a few positive developments.

### **I. Legislative Activity**

Despite a flurry of legislative activity related to low-income housing programs, only FY 1995 appropriations and two authorization measures of significance were enacted in the past year. /2/ Unlike other needs-based programs, housing assistance has never been made available to every family that needs it because Congress refuses to appropriate sufficient funds to make housing programs an entitlement. Thus, the most important battles are ensuring renewal of funds for families already participating in the programs and then wringing from Congress increased funding to assist additional households.

#### **A. Current Assisted Households**

Housing assistance is provided in many forms including conventional public housing, project-based Section 8 programs, certificates and vouchers, and FmHA programs. Each of those programs requires different appropriations in order to function satisfactorily. In its waning days, the 103d Congress approved the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, setting annual contributions for assisted housing totaling \$11 billion, almost \$1 billion more than HUD's budget request, which had proposed significant cuts in the public housing and elderly housing programs. /3/

Strong congressional support for the public housing program was demonstrated by funding that exceeds HUD's budget request for the three major public housing programs. Operating subsidies, the government-funded difference between the rents tenants pay and the cost of public housing, are funded at \$2.9 billion. The public housing modernization program, the main source for rehabilitation of projects in the nation's 3,400 PHAs, is funded at \$3.7 billion. About \$25 million of that amount is earmarked for the Tenant Opportunity Program, supporting resident management and social service activities.

Other funding of interest to public housing advocates includes \$500 million for severely distressed public housing (HOPE VI/Urban Revitalization Demonstration) and \$290 million for the Public Housing Drug Elimination Grant Program (PHDEP), providing grants for PHA crime-prevention activities. /4/ A set-aside of \$2 million was provided from funding for HUD's Office of Policy Development and Research to support a Center on Violence in Public Housing.

Capital grants and rental assistance for the section 202 program for the elderly is funded at \$1.279 billion, significantly up from the administration's request of \$150 million. Other funding decisions of interest include \$555 million for property disposition and \$76 million for the Family Unification program to provide rental assistance for families for whom the loss of housing is a factor in the placement of children in foster care.

As in previous years, Congress provided funds to renew all expiring Section 8 and voucher contracts for five-year terms, thereby affirming, at least for the present, /5/ that no family should lose its housing due to a contract termination. Section 8 rental assistance actually received a boost through the appropriation of \$2.785 billion.

## ***B. Unserved Families***

Funding for incremental subsidies and units to serve the growing needs of unserved families is what continues to suffer most in the process. The public housing development program is funded at \$598 million, which will support the construction of 6,994 new units. Although this represents a deduction from last year, it is a substantial increase over the administration request of \$150 million. However, the Section 8 appropriation does include funding for 62,774 incremental certificates and vouchers and a set-aside of \$350 million under the pension fund program authorized in the HUD Demonstration Act. /6/

For the rural housing programs, however, only \$220 million was appropriated by the Agriculture Appropriations Committee for FmHA's Section 515 Rural Rental Housing program. This represents more than a 50-percent cut over last year's appropriation. For the Section 502 single-family homeownership program, \$1.2 billion was appropriated. /7/

The Community Development Block Grant program (CDBG) is funded at \$4.6 billion, while \$1.4 billion is appropriated for the HOME Investment Partnership Program.

## ***C. HUD Demonstration Act***

The HUD Demonstration Act of 1993 authorized several of the then new Clinton Administration's ambitious legislative initiatives. Among the most widely anticipated was the Innovative Homeless Initiatives Demonstration Program, which makes up to \$200 million in grants available for FY 1994 to nonprofit organizations and certain local governments to develop homeless initiatives.

The Moving to Opportunity for Fair Housing Program (MTO), which couples tenant-based subsidies with supportive services, was conceived as a means of offering participants greater housing choice throughout certain metropolitan areas included in the demonstration. Possibly due to resistance to the program in some of the participating communities, Congress declined to appropriate the \$149 million sought by HUD for implementation. /8/

Finally, the Act froze Section 8 administrative fees received by PHAs for operating the tenant-based Section 8 subsidy programs, pending a HUD study to be submitted to the Congress. /9/

## **II. Admissions and Eligibility**

The federal preferences for housing assistance grant priority to applicants who are living in substandard housing or are homeless, are paying more than 50 percent of their incomes for housing, or are being displaced involuntarily. Those preferences tend to direct assistance to applicants with the lowest income and affect how scarce housing resources are allocated to different income groups. HUD has always allowed PHAs and private subsidized landlords to disregard the federal preferences when renting a certain designated percent of their units that become vacant. /10/ However, in implementing recent statutory changes, HUD has practically allowed PHAs and Section 8 landlords to do whatever they wish regarding preferences. /11/

The only saving grace may be that the public-hearing requirement will serve as an effective brake against diversion of housing assistance to tenants with higher income. /12/ Furthermore, although landlords or PHAs may make 100 percent of the units or certificates and vouchers available to federal preference holders, they also have the option of using local preferences in making their allocations. /13/ Many as yet unanswered questions arise out of concerns about how these new policies will be implemented, including the determination of limits on residency preferences, especially as they affect people of color in consideration of fair housing implications.

In addition to the preference issues, the new regulations also revise the HUD rules on tenant selection by PHAs. The major issue regards use of employment as an eligibility criterion, in addition to being a preference factor. Prior to these regulations, HUD had always prohibited PHAs from rejecting applicants because they belong to a particular category of persons, including welfare recipients or families without employment income. /14/ These regulations authorize PHAs to use employment only as a selection preference, not as an eligibility criterion. /15/

In 1994, HUD took steps to implement 1992 legislation authorizing the segregation of persons with disabilities from the elderly in subsidized housing previously designated to serve both populations. /16/ Final regulations for public housing and an interim rule for Section 8 New Construction and Substantial Rehabilitation complexes have been issued. /17/ In both issuances, subsidized landlords, including PHAs, may deny admission to nonelderly disabled applicants to housing designated exclusively for the elderly. Although PHAs (but not other landlords) must seek HUD approval for their plans for elderly designation, such approval is deemed granted if not affirmatively denied within 45 days, or 90 days in some situations.

HUD has also finally issued proposed regulations that would implement the statute limiting eligibility for some of HUD's programs to citizens and certain categories of immigrants. /18/ Not surprisingly, there are major issues that the proposed regulations raise, especially with regards to mixed families, that is, those comprised of persons who are citizens or documented aliens and persons who are undocumented aliens. /19/

### **III. Third-Party Release of Information**

A major concern of applicants and current participants has been HUD's attempt to have them sign forms under which they give consent to have almost any third party release information about them, including confidential information, at any time in the future. /20/ Pursuant to congressional mandate, HUD has revised the consent forms. HUD Form 9886, Authorization for the Release of Information/Privacy Act Notice, is applicable to public housing and those Section 8 programs that are managed by PHAs. /21/

Form 9886 authorizes the release of information for up to 15 months after it is signed to HUD or the specified housing authority from state wage information collection agencies and state welfare and food stamp agencies. In addition, HUD, but not PHAs, is authorized to obtain information from SSA and IRS.

Applicants and tenants who refuse to sign this new Form 9886 face denial of eligibility or termination from the program. However, persons who had previously refused to sign the rescinded HUD Form 9886 or earlier versions of the form must be given a chance to sign the new revised Form 9886 before the PHA can seek to deny them admission or terminate their housing subsidy.

### **IV. Rents**

One of the most consistent problems for assisted-housing tenants has been determining what amount should be counted as income for purposes of calculating their rents. Last year, HUD published its notice implementing the 1992 statutory changes which excluded federal student financial assistance from being counted as income for federal housing purposes. /22/ The notice also reports that earned income tax credit (EITC) refunds /23/ and the value of certain child care /24/ are not to be counted toward income for purposes of public and other federally subsidized rental housing programs where income is a factor in eligibility and rent determinations. In 1994, HUD issued a final rule regarding the exclusion of the EITC refund from income in order to delete the current contradictory regulatory requirement. /25/

Another difficulty concerning rents continues to arise because of states' cuts to welfare grants in efforts to cover their budget deficits. Those welfare cuts are devastating for all families on welfare, but, for subsidized housing tenants who also participate in the welfare programs, the impact of the cuts can be mitigated in part because their rents should be reduced when their grants decrease. In past years when various states cut welfare, HUD offices responding to housing advocates directed PHAs and subsidized landlords to reduce the tenant's rents expeditiously. /26/ In 1994, California again cut welfare grants, and the HUD office in California again responded favorably. /27/

## **V. Employment Opportunities and Self-Sufficiency**

A great deal of attention has been focused in recent years on efforts to tie housing assistance to job, education, and training programs as a means of assisting low-income persons in pursuit of social and economic self-sufficiency. The most significant congressionally created program is the Family Self-Sufficiency (FSS) Program that offers additional funding for certificates, vouchers, and public housing development to PHAs that operate self-sufficiency programs. Because, to date, these efforts have been mounted largely on a demonstration basis, experience is limited. FSS became mandatory for the administering PHAs only in FY 1993, and programs are just getting under way. /28/

Other such programs include: the Family Investment Centers Program, which provides funds to PHAs to develop and partially to operate centers in or near public housing projects that will provide self-sufficiency services to public housing tenants, /29/ and the Family Support Centers Program, which provides funds from HHS to state and local governments, nonprofit organizations, and hospitals to provide self-sufficiency services in centers in the vicinity of public or other subsidized housing projects to the project residents who are at risk of becoming homeless or were previously homeless. /30/

The other development in the employment area relates to Section 3, which mandates that programs of direct financial assistance administered by HUD to the greatest extent feasible provide economic opportunities for job training and employment to lower-income residents and businesses in connection with projects in their neighborhoods. /31/ HUD issued an interim rule designed to implement statutory changes made in 1992. /32/ Unfortunately, the interim rule still does not fully reflect the statute's original intent, nor does it incorporate the significant improvements offered by the many commentators on the proposed regulations published on October 8, 1993.

## **VI. Preserving Existing Projects**

In addition to authorizing the HUD initiatives noted above, Congress this year took action to address its inventory of deteriorating insured and formerly insured multifamily projects with the Multifamily Housing Property Disposition Reform Act of 1994. /33/ HUD and Congress sought to increase HUD's flexibility in disposing of its inventory of multifamily housing, given limited budget authority. By reducing the subsidy requirements for sales that had been previously mandated, the new relaxed restrictions will make it far easier for HUD to dispose of properties.

The new law relaxes prior subsidy requirements by decreasing substantially the subsidy commitment for formerly subsidized projects and by giving HUD several subsidy options for disposing of multifamily housing. /34/ In addition, the statute also provides HUD with even more flexibility to permit conversions of a certain number of units under the law's "alternative use" provisions, /35/ notwithstanding the other new disposition requirements. HUD has indicated that it will generally carry forward any existing project-based subsidies at disposition sales, although the new law provides other subsidy options. Left largely unsubsidized will be those units that formerly

had no Section 8 contract, both in subsidized projects and occupied by low-income families in unsubsidized projects. Families, units, and neighborhoods will be at substantial risk under these new rules.

If appropriations prove inadequate to provide project-based subsidies to preserve even the housing that currently receives such assistance, look for HUD to take full advantage of the conversion options created by the law. Many of them require only five-year budget authority for tenant-based subsidies as replacement units, rather than the 15-year commitment required for subsidizing rehabilitation without new HUD insurance. An interim rule for comment was expected before the end of 1994.

With regard to the preservation of subsidized rental housing under Title VI /36/ and Title II, /37/ HUD finally took concrete steps to implement the two grant programs established by the Housing and Community Development Amendments of 1992: (1) the project-specific grant programs for building the capacity of resident groups and for predevelopment expenses /38/ and (2) the preservation support grant programs, consisting of outreach and training grants for assisting resident groups to become organized and informed participants in the preservation process, and general preservation activity grants. /39/ Many legal services offices are working with resident groups who can seek the project-specific resources from intermediaries selected by HUD; others are serving as applicants or advisors for preservation support grants. These resources will help fill the void in many areas for resident and program support.

Despite HUD's zero-budget request, which had been based upon several rejected proposals to reduce program cost and the alleged sufficiency of unexpended carryover funding, the appropriation for FY 1995 contains \$175 million for the program.

## **VII. Criminal and Drug-Related Activity**

For the past few years, a share of legal services housing practice has been focused upon evictions and terminations for drug-related activity. A major victory in this area came early in the year, when the Illinois appellate court upheld the trial court's summary judgment ruling that a Section 8 tenant may not be held strictly liable for the illegal acts of a guest. /40/ The appellate court rejected the landlord's claim of strict liability. In so doing, the court found that the lease provision on tenant liability for the acts of guests had to be read in a manner consistent with the "for cause" termination provision of the lease, which is the standard lease provision required by HUD. /41/ Absent any evidence on the pivotal issue of the tenant's knowledge, summary judgment is the proper relief.

Currently, for FHA-subsidized and project-based Section 8 programs, the HUD model lease is the major authority prohibiting tenants from engaging in unlawful activities. /42/ However, this year HUD proposed regulations implementing 1990 statutory changes allowing for evictions under these programs for specified criminal activity, including drug-related criminal activity, which would parallel existing public housing and Section 8 existing housing regulations. /43/

On a more proactive note, HUD announced on February 4, 1994, a new initiative called Operation Safe Home, the scope of which includes all neighborhoods where HUD provides assistance, though

initially focusing on public housing. Various elements, including law enforcement, crime and violence prevention programs, training and technical assistance, and changes in management policies are covered in order to encourage the federal agencies to concentrate their efforts in public housing and HUD-assisted neighborhoods in a more coordinated way. As a result, they will be concentrating on several public and assisted-housing sites for coordinated law enforcement activities, including increased monitoring of local police departments' responses in public housing. In furtherance of the initiative, HUD has published several related issuances. /44/

A major element of the initiative is training and technical assistance for PHAs and tenant groups, funded by way of the Drug Elimination Grant Program and the new Tenant Opportunities Program (TOP). Apparently, TOP grants will be made directly from HUD to tenant organizations, without any required PHA participation.

## **VIII. Community Planning and Development**

In recent years, there has been a growing effort by legal service attorneys and other housing advocates to increase the share of HOME, CDBG, tax credit, and other housing funds that benefit those people with the greatest housing needs. HUD's Comprehensive Housing Affordability Strategy (CHAS) /45/ requirements provided opportunities for advocates to pursue strategies aggressively, at the state and local level, to increase the amount of funds benefiting poor people. Some communities have had excellent successes. /46/

Last year, HUD threw these efforts into turmoil by announcing the consolidated plan, designed to consolidate and replace the CHAS and the CDBG planning processes with a single "streamlined" document. The initiative is part of the Clinton Administration's reinventing government campaign that is designed to eliminate paperwork and duplicative activity. The consolidated plan will completely replace the current regulations for the CHAS with a rule that will consolidate into one document the planning and application aspects of HUD's CDBG, Emergency Shelter Grant, Home Investment Partnerships, and the Housing Opportunities for People with AIDS Program. Performance-reporting requirements also will be consolidated. Communities will be submitting three- to five-year strategic plans and annual plans on how they will spend each year's federal community planning and development funds.

HUD initially proposed that the regulations contain only those requirements that literally are found in the statutes. This "minimum statutory standard" approach excluded, for example, any interpretation of vague statutory language and previous regulations and guidelines that filled gaps in the CHAS statute. The Loose Association of Legal Services Housing Advocates and Clients CHAS/HOME/CDBG working group and others urged HUD to add several provisions that were critical to poor people, even though they did not meet HUD's minimum statutory standard approach. The proposed regulations published in August 1994 incorporate many of the recommendations, including key provisions on citizen participation and the reporting of housing needs of households earning between 0 and 30 percent of median income. /47/

In a rather unprecedented approach, HUD has commenced a training program for state and local government for submission of their consolidated plans for the fiscal year commencing October 1,

1994, even though only proposed regulations and guidelines have been issued. Unless they seek and are granted an exception, state and local governments will be submitting a consolidated plan to HUD between November 15, 1994 and late spring 1995.

Housing advocates should determine what their local government is doing in this new process, make sure citizen participation requirements have been complied with, and comment on the proposed plan, even if it has already been submitted. A concerned government can amend its plan or consider changes for the fiscal year commencing October 1, 1995.

## **IX. Fair Housing**

Despite some apparent local and congressional opposition, HUD continued forward with its MTO program, which provides Section 8 certificates and housing counseling to enable very low-income families with children to move out of affected, underserved neighborhoods into better-served communities. Implementation of MTO began during 1994 in Baltimore, which is one of five cities /48/ receiving funding from FY 1994 funds for the MTO demonstration. HUD will monitor MTO participants for five years to assess the impact of the program on their employment and education achievements.

Quite possibly, in retrospect, 1994 will be viewed as the year when this country truly dedicated itself to fair housing and took a step toward making housing for all an entitlement. On the Martin Luther King, Jr., holiday, President Clinton issued Executive Order 12892. /49/ In the accompanying memorandum, the role of the federal government, under the direction of the Secretary of HUD, is clearly stated: to further fair housing affirmatively. The order creates a Fair Housing Council to implement it and coordinate the activities of all the relevant entities, specifically including federal banking agencies, in conjunction with full aggressive fair housing enforcement actions.

The other major fair housing action last year occurred on January 1, 1994, when the strongest fair housing law in the country became effective in California after three years of hard work by many advocates, including a number from the legal services community. /50/ Highlights of the legislation include (1) liability under the act for discriminatory effect (i.e., proof of intent is not necessary) and (2) prohibitions against discriminatory land use practices and liability for discrimination based upon mixed motives (i.e., when the housing provider has both discriminatory and legitimate reasons for denying housing). Although the statutory scheme is not ideal, many fair housing advocates point to the new California legislation as a model for fair housing. Effective implementation and replication will ensure significant advances in fair housing in California and throughout the nation. /51/

### Footnotes

/1/ See LALSHAC: What It Is, What It's Doing, 24 Hous. L. Bull. 17 (Mar. -- Apr. 1994), regarding housing policy advocacy.

/2/ The House completed action on H.R. 3838, the Housing and Community Development Act of 1994, on July 22. As of press time, the Senate had not taken action on the bill.

/3/ Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. No. 103-327, 108 Stat. 2298 (1994).

/4/ Reauthorization had been sought for the Public Housing Drug Elimination Grant Program as the broader COMPAC (Community Partnerships Against Crime) program.

/5/ In the pending authorizing bills for FYs 1995 and 1996, Congress is considering provisions to address the approaching expiration of thousands of project-based contracts under the Section 8 New Construction and Substantial Rehabilitation programs. See *Congress Grapples with Expiring Section 8 Contracts*, 24 Hous. L. Bull. 65 (July -- Aug. 1994).

/6/ Pub. L. No. 103-120, 107 Stat. 1144 (1993).

/7/ H.R.4554, FY 95 Agriculture Appropriations, cleared the Congress on September 27 and was signed by the President on September 30, 1994.

/8/ See e.g., James Bovard, *Clinton's Wrecking Ball for the Suburbs*, Wall St. J., Aug. 4, 1994.

/9/ *Section 8 Administrative Fees: A Report to Congress* (June 1994).

/10/ Originally set at 10 percent for all programs, in 1992 Congress retained the 10 percent for certificates and vouchers but raised the allowance for local preferences to 50 per cent for PHAs and 30 percent for private landlords in the Section 8 project -- based programs. Pub. L. No. 102-550, Sec. 112, 106 Stat. 3672, 3689 (1992).

/11/ 59 Fed. Reg. 36616 (public housing and Section 8 programs other than certificates and vouchers) and 36662 (Section 8 certificate and voucher programs) (July 18, 1994).

/12/ Pub. L. No. 102-550, Sec. 105, 106 Stat. 3672, 3684 (1992). See *HUD's New Preference Rules Are Flawed But Final*, 24 Hous. L. Bull. 69 (July -- Aug. 1994).

/13/ One advantage of this virtually unbridled discretion may be the ability to ensure relief for persons who have been sexually harassed by landlords or building managers in subsidized housing. See *Federal Preferences Available to Persons Seeking to Escape Sexual Harassment*, 24 Hous. L. Bull. 44 (May-June 1994).

/14/ 24 C.F.R. Sec. 960.204(c)(1).

/15/ *Id.* Sec. 960.205(a). Note, however, that one of the Administrative provisions in the FY 1995 Appropriations Act allows a preference for working families for both public housing and project-based Section 8, which will sunset after FY 1995.

/16/ Pub. L. No. 102-550, Secs. 622 (public housing) and 651 -- 61 (generally project-based Section 8 housing), 106 Stat. 3672 (1992) (amending 42 U.S.C. Secs. 1437e and 13611 -- 13620, respectively).

/17/ 59 Fed. Reg. 17652 (Apr. 13, 1994) (final rule re public housing designated for disabled, elderly, or disabled and elderly families) and 59 Fed. Reg. 22916 (May 3, 1994) (effective June 2, 1994 -- May 3, 1995: Interim Rule permits preferences for elderly families for Section 8 projects originally designed primarily for them; requires reservation of units as statutorily determined for disabled nonelderly families).

/18/ 42 U.S.C. Sec. 1436a. See 59 Fed. Reg. 43900 (Aug. 25, 1994), applicable for public housing, Section 8, Indian housing, Section 236, Rent Supplement, Housing Development Grant, and Section 235 homeownership programs.

/19/ See 24 Hous. L. Bull. 92 (Sept. -- Oct. 1994) for a full discussion of these issues.

/20/ HUD Notice PIH 91-32, re Authorization for the Release of Information, Form HUD-9886 (July 1991).

/21/ Issued May, 26, 1994; HUD Notice PIH 94-36 issued June 13, 1994. On the privately owned subsidized housing side, HUD has submitted Form 9887 for departmental clearance.

/22/ 58 Fed. Reg. 41287 (Aug. 3, 1993) implementing 20 U.S.C. Sec. 1087uu.

/23/ 26 U.S.C. Sec. 32(j).

/24/ 58 Fed. Reg. 41287 ((Aug. 3, 1993) implementing 42 U.S.C. Sec. 9858q).

/25/ 59 Fed. Reg. 32648 (June 24, 1994), to be codified at 24 C.F.R. pts. 215, 236, 813, 913 (1995).

/26/ See, e.g., HUD Region V, Detroit Area Office Management Newsletter 91-4 from John G. Terranella to all owners and agents of subsidized housing (May 16, 1991) re Special Instructions for Calculating Annual Income.

/27/ HUD Memorandum, from Janet Browder to Kathleen Ragan re AFDC Reductions (Aug. 11, 1994, electronic transmission).

/28/ See 42 U.S.C. Sec. 1437u; 58 Fed. Reg. 30906, (May 27, 1993), adopting as final rule, interim rule of same date, 58 Fed. Reg. 30858 (Family Self-Sufficiency Program Interim Rule which amends 24 C.F.R. pt. 905 and adds new pts. 962, 984); see also PIH 93-57 (HA), issued October 29, 1993, expires Oct. 31, 1994 -- Approval of Exceptions to Required Establishment of Section 8 and Public Housing Family Self-Sufficiency Programs of the Mandatory Minimum Size. See also C.M. Bishop, The Family Self-Sufficiency Program: An Advocate's Guide (National Housing Law Project 1994).

/29/ 42 U.S.C. Sec. 1437t.

/30/ Id. Secs. 11481 -- 89.

/31/ Pub. L. No. 90-448, Sec. 3, 82 Stat. 476 (1968), as amended. 12 U.S.C. Sec. 1701u.

/32/ 59 Fed. Reg. 33866 (June 30, 1994), effective Aug. 1, 1994, through June 30, 1995.

/33/ Multifamily Housing Property Disposition Reform Act of 1994, Pub. L. No. 103-233, Sec.101, 108 Stat. 342 (1994). The new law rewrites 12 U.S.C. Sec.1701z-11.

/34/ Pub. L. No. 103-233, 108 Stat. at 348 -- 53.

/35/ Id., 108 Stat. at 352.

/36/ Low-Income Housing Preservation and Residential Homeownership Act of 1990 (LIHPRHA), Title VI (Secs. 605 -- 8) of the National Affordable Housing Act of 1990, Pub. L. No. 101-625, tit. VI, 104 Stat. 4079 (1990) (codified at 12 U.S.C. Secs. 4101 et seq.).

/37/ Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA), Pub. L. No. 100-242, tit. II, 101 Stat. 1877 (1988) (codified at 12 U.S.C. Sec. 17151).

/38/ 59 Fed. Reg. 16366 (Apr. 6, 1994) (notice of funding availability making funds available for project-specific grants to be distributed by qualified intermediaries selected by application).

/39/ 59 Fed. Reg. 30640 (June 14, 1994), as amended by 59 Fed. Reg. 41634 (Aug. 12, 1994).

/40/ Diversified Realty Group v. Davis, 628 N.E.2d 1081 (Ill. App. Ct. 1993) (Clearinghouse No. 49,601).

/41/ HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, through CHG-25 (May 11, 1993), App. 19a Para. 23(b).

/42/ HUD Handbook 4350.3, App. 19a (Nov. 1981) (model lease defines good cause in the same way as for public housing, to include criminal activity and drug-related activity); see also HUD Notice H-91-35, Drug Problems in HUD-Insured and Assisted Housing -- Lease Changes (May 9, 1991) (permits lease modifications to track public-housing language).

/43/ 59 Fed. Reg. 5155 (Feb. 3, 1994) implementing 42 U.S.C. Sec. 1437f(d)(1)(B)(iii).

/44/ 59 Fed. Reg. 43622 (Aug. 24, 1994) (final rule replacing the Resident Management Program with the Tenant Opportunities Program); 59 Fed. Reg. 39402 (Aug. 2, 1994) (implements 1990 statutory provision to allow otherwise ineligible police or security personnel to reside in public housing); 59 Fed. Reg. 33372 (June 28, 1994) (notice of funding availability for up to \$ 1.5 million generally to implement the initiative in 11 designated cities).

/45/ 42 U.S.C. Secs. 12705 et seq.

/46/ E.g., Connecticut committed 25 percent of its HOME funds to a tenant-based rental assistance program targeted to households earning less than 25 percent of median. San Francisco targeted all of its HOME funds to households earning less than 60 percent of median with a preference for projects serving people below 25 percent of median.

/47/ 59 Fed. Reg. 40148 (Aug. 5, 1994).

/48/ The others are New York, Boston, Los Angeles, and Chicago.

/49/ Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, issued Jan. 17, 1994.

/50/ Assembly Bill No. 2244 (Oct. 10, 1993) amending the Fair Employment and Housing Act, Cal. Govt. Code Secs. 12900 et seq.

/51/ For a full discussion of the California legislation, see California Enacts Nation's Strongest Fair Housing Law, 15 Youth L. News 1 (Jan. -- Feb. 1994), from which this abbreviated description is drawn.

#### Congress Buries Important Program Changes in Appropriations Act

The legislative logjam before Congress' October 1994 adjournment prevented passage of a HUD reauthorizing bill by FY 1995, but Congress did manage at the last minute to enact appropriations legislation, which contains a number of important changes in HUD's housing programs, including:

- prohibiting any FY 1995 funds from being used to assist immigrants who have not been admitted for lawful residence;
- establishing shallow rental subsidies, limited to the difference between a newly established minimum floor rent and preservation costs, for certain projects with expiring use restrictions that were being processed under HUD's Title VI preservation program;
- reducing the contract rents paid to owners of Section 8 projects under the New Construction, Substantial Rehabilitation, or Moderate Rehabilitation Programs;
- allowing for the first time a local admission preference for employed public housing and Section 8 families;
- authorizing the nonjudicial foreclosure of certain defaulted single-family mortgages held by HUD, thereby allowing HUD to utilize a procedure similar to the deed of trust foreclosure procedure used in approximately half of the states.

## ***New Congress Spells Uncertainty for Housing Programs***

"Federal Housing Policies 1994" was written before the November 8, 1994, midterm elections. The resulting shift from Democratic to Republican majorities in both houses of Congress signals an uncertain course for housing programs over the next two years. Where housing fits into the agenda of the new Congress is unclear: press reports speculate that much more pressure will be put on the HUD budget; yet, because of a fairly strong bipartisan support for last year's housing legislation, a moderately revised version of that legislation will be pushed through Congress quickly in 1995.

## ***HUD Due Process Determinations Subject to Notice and Comment***

In most cases, public housing tenants threatened with eviction are entitled to a preeviction grievance hearing, the major exception being for evictions involving certain criminal activity. However a PHA may exclude such evictions from its grievance procedure only if the state court eviction procedure meets HUD's definition of due process.

Recently, in *Yesler Terrace Community Council v. Cisneros*, No. 92-35603, 1994 WL 487358 (9th Cir. Sept. 12, 1994) (Clearinghouse No. 48,081), the Ninth Circuit agreed with public housing tenants who filed suit after HUD issued its due process determination for the state of Washington without affording them an opportunity to comment upon it and decreed that the statute requires notice and comment rulemaking for eviction due process determinations. Hence, not only must public housing tenants have an opportunity to comment upon a housing authority's proposed changes to its grievance procedures as required by the regulations, 24 C.F.R. Sec. 966.52(c), but also they must have an opportunity to comment upon HUD's state court due process determination that the state's eviction procedure provides tenants an appropriate hearing.