



**Calendar of Events:**

**HDLI's 2009 General Counsel Forum - February 6, 2009 in Tampa, FL**  
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## President Signs Amendments to Americans With Disabilities Act Into Law: More People Will Be Considered "Disabled" Under ADA

**Effective Date: January 1, 2009**

*By Lisa L. Walker*

On September 25, 2008, President Bush signed into law the "Americans With Disabilities Amendments Act" ("ADA Amendments Act") which increases the number of impairments that will be considered "disabilities" under the Americans With Disabilities Act ("ADA").

### **Background**

In the years since the passage of the ADA in 1990, courts have interpreted various of the ADA's provisions in a manner which has alarmed disability advocates. Of most concern to the advocates was the narrowing of the definition of who is considered "disabled" under the ADA.

### **Definition of Disability**

The definition of "disability" under the federal disabilities laws, and many (but not all) state laws is a person:

1. With a physical or mental impairment that *substantially* limits one or more major life activities; or
2. Having a record of such an impairment; or
3. *Being regarded* as having such an impairment.

At issue with regard to the ADA Amendments Act are the "substantially limits" and "regarded as" aspects of the definition.

### **"Substantially" Limits**

Not all ailments are covered disabilities under the ADA. The requirement that a disability "substantially" limit one or more major life activities effectively has narrowed the range of covered disabilities. Indeed, in the 2002 case of *Toyota v. Williams*, the U.S. Supreme Court ruled that an auto assembly line worker's carpal tunnel syndrome was not covered under the ADA because the worker's condition did not

"substantially limit a major life activity."

### **Mitigating Measures**

In 1999, the U.S. Supreme Court ruled in the case of *Sutton v. United Airlines*, 527 U.S. 471 (1999), that persons are not deemed "disabled" under the ADA when they are able to use "mitigating measures" to reduce or eliminate the adverse effects of their disability. At issue in *Sutton* were visually impaired pilots who were able to use glasses and contact lenses as "mitigating measures," thereby removing them from the "disabled" classification. Also that year, the Supreme Court similarly ruled in *Murphy v. UPS*, 527 U.S. 516 (1999), that, because a truck driver's high blood pressure could be controlled by medication, the driver was not "disabled" under the ADA. Accordingly, a disabled person's use of

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## **President's Message**

Dear Colleagues,

At the time you read this letter, we will be well immersed with news on the current state of the country's Bail-Out plan or what more recently has been coined the Financial Rescue Plan. While economists may disagree as to the cause of the crisis, we have all heard that it is rooted in problems generated from the mortgage industry and individuals buying homes they could not afford. We, as housing professionals, care dearly about the supply and quality of housing, particularly affordable housing. Ideally, after the restructuring of the pertinent legislation, congress will set in place a means for the recovery of the markets that have affected the low income housing industry. The commentary heard from candidates for president and vice president doesn't echo "affordable housing"; however, I remain optimistic that legislators will concentrate on solutions that will advance the prosperity of the families of this country.

Many of the families that will have an opportunity for a different lifestyle under the various HUD insured and tax credit programs await a resolve. This task is particularly daunting on the heels of addressing issues created by Hurricanes Katrina, Rita, Gustav and Ike. The membership of HDLI is involved as practitioners in educating those individuals faced with crucial decisions as the country leaders, both local and national, navigate solutions to issues in uncharted waters. The leadership at HDLI remains steadfast in its programming to provide real-time responses and education to its members and to continue to participate along with other groups to address issues that impact the housing industry.

I am happy to report that the financial health of HDLI is good. We are not alone in our zeal to maintain membership; many trade groups are challenged in their budgets as funding for

dues and registration fees become more and more scarce. Although stable, HDLI needs to increase membership to raise the resources to adequately respond to the needs of our members. Attendance at the various HDLI conferences is priceless because of the materials and excellent panelists – attendees receive a handsome number of CLE hours, with ethics credit! The face-to-face networking of attorneys in the industry, including interfacing with the leadership of HUD counsel across the country, many members have found very beneficial.

Many of you who attended the Spring Conference can attest to the immeasurable benefit of having senior HUD counsel respond to crucial questions submitted by our members. We appreciate the partnership established between HUD and HDLI. The next General Counsel's Forum scheduled for the weekend of February 6, 2009 in Tampa, Florida has proven to be an excellent opportunity, as well, to share best practices business models and receive ideas for housing and community development projects.

As you know HDLI has corporate membership; the directors join me in the excitement surrounding the opportunity for participation on the board of directors by corporate members. The board of directors will focus on the initiative to expand participation by our corporate friends. Particularly due to the financing schemes such mixed finance and due to development structures with housing and redevelopment authorities, we believe membership is very beneficial for developers, managers of housing, financial institutions, syndicators, and others in the industry who could be served by membership on our association and would be an addition to our conference programs. Lastly, we hold true to provide a service to our members who are

*continued on next page*



**Lisa L. Walker, Esq.**

## A Letter from the Executive Director and General Counsel

notices that address the Housing and Economic Recovery Act of 2008, eminent domain, PHAS, over-housing, over-subsidization, affiliates and instrumentalities, renewable energy, VMS data, and VAWA.

training *on-site at your agency*. Our rates have remained the same! A fair housing brochure is attached.

**50% DISCOUNT ON INDEX TO HUD REGULATIONS!** Have you been procrastinating in ordering your copy of HDLI's *Index to HUD Regulations* covering HUD's Title 24 regulations through December 31, 2007? Beginning November 15, 2008, as a benefit to its members, HDLI is offering a 50% discount on the sale of the current edition of the *Index*. **ORDER YOURS TODAY** using the attached Order Form or from HDLI's online WebStore – see below.

**HDLI's WEBSTORE!** Did you know that you can order HDLI's semi-annual case law reviews, order HDLI written 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.

*Happy Holidays! Lisa*

Dear HDLI Members,

Wow! 2008 is almost over. Where did the year go? HDLI has been hard at work advocating for you through the filing of *amicus* briefs to protect landlord rights related to important fair housing issues (see articles herein), through the provision of fair housing training for more than two thousand employees of small, medium, and large housing authorities in Seattle, California, Ohio, Indiana, Kentucky, and Florida, and by keeping you informed of legal developments through our conferences and publications. The lead article in this issue highlights the amendments to the ***Americans With Disabilities Act (ADA)*** which very recently were signed into law by President Bush.

### **IMPORTANT NEW HUD RULES!**

Please take some time to review the summaries of several recent HUD proposed rules and notices beginning on page 16. Of particular interest are the

**BUDGET NOW: GIVE YOUR STAFF PHA-CENTERED ON-SITE FAIR HOUSING TRAINING IN 2009!** Having a well-trained and informed staff is the best way to avoid litigation and adverse HUD monitoring reviews. Don't be the next agency compelled to sign a voluntary compliance agreement. 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 nearly 3000 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. Contact HDLI now to secure the date(s) of your choice for basic and/or advanced fair housing

### **President's Message Continued from page 2**

faced with litigation. HDLI continues to be the first call many of you make for day-to-day operational issues and we give guidance on complex matters. We continue to keep our members in the loop of precedent-setting litigation happening in our communities. Please

continue to use HDLI's list serve. Our Executive Director & General Counsel, in addition to the fair housing training conducted across the country, provides *amicus* briefs on behalf of members. This service continues to be a coveted treasure of HDLI members. We believe it important to address the courts on matters that affect our industry.

Again, please encourage your colleagues and business partners to join our HDLI family. Direct them to our website at [www.hdli.org](http://www.hdli.org) to learn more information about HDLI and our services. Stay tuned for information on upcoming programs, designed especially for you.

*Matty Gouldsby Jones*

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## HDLI Welcomes to Membership:

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# HDLI ANNOUNCEMENTS



## **HDLI's 2009 General Counsel Forum - New 2-day format!**

**Thursday, February 5 - Friday, February 6, 2009**

**Quorum Hotel Tampa  
700 N. Westshore Boulevard, Tampa, Florida**

HDLI will hold its 4th Annual General Counsel Forum on Thursday, February 5 through Friday, February 6, 2009 in Tampa, Florida, the day before Tampa's famous Gasparilla Pirate Festival! Additional networking opportunities available over the weekend...

***Register Now On the Attached Form!***

## **Save the Date for HDLI's Spring Conference!**



**HDLI's 2009 Spring CLE Conference will be held  
May 7-8, 2009 in Washington, D.C.  
*More information coming soon...***

## **Conference Written Materials are Now Available for Purchase HDLI's 2008 Fall Legal Conference**



*LEGAL HOT TOPICS FOR 2008 & BEYOND:  
New Financial Resources, Energy Conservation, Asset Management,  
Affiliates & Instrumentalities, VAWA, LEP, and Other Important Issues for 2008*

HDLI's 25th Annual Fall Legal Conference was held on October 27, 2008 in San Antonio, Texas. The written materials are now available and an order form is attached. The Conference included sessions on the following topics:

- |   |                                  |
|---|----------------------------------|
| Asset Management                              | Energy Conservation              |
| Creative ways to add resources                | LEP                              |
| Legal Issues Related to Your Residents        | Affiliates and Instrumentalities |
| Review of case law affecting assisted housing | Section 8 Homeownership          |

***Please use the attached form to order HDLI's 2008 Fall Conference materials.***

## President Signs Amendments...

Continued from page 1

assistive devices and/or medication to control their disability would effectively preclude their protection under the ADA and eliminate the obligation of their employer or landlord to provide them a reasonable accommodation or modification.

Advocates began lobbying Congress to amend the ADA to restore certain protections which they believed were eroded through the aforementioned court jurisprudence. The advocates proposed an "ADA Restoration Act," H.R. 3195/S. 1881<sup>1</sup> which sought to:

- 1) Redefine "disability" by eliminating the requirement that it "substantially limit a major life activity;
- 2) In determining whether an individual has an impairment, prohibit any consideration of the impact of any mitigating measures the individual may be using or whether any impairment manifestations are episodic, in remission, or latent;
- 3) Consider actions taken because of an individual's use of a mitigating measure to be actions taken on the basis of a disability; and
- 4) Shift the burden of proving that one is a "qualified individual with a disability" from the tenant to the landlord, as an affirmative defense.

Not surprisingly, the ADA Restoration Act was met with opposition by the U.S. Chamber of Congress and other business groups, as being far too onerous on

employers. Landlords have many of the same concerns. Nonetheless, the Chamber decided to work with the advocates on a compromise.

The compromise bill that evolved out of the parties' negotiations, and what ultimately became law, is the "ADA Amendments Act," which President Bush signed into law on September 25, 2008.

The ADA Amendments Act differs from the advocates' bill in the following material respects:

### A. Definition of "disability:"

1. Where the Restoration Act sought to eliminate the phrase "*substantially limits*" from the definition of disability, the ADA Amendments Act retains it, but provides a definition for "substantially limits" as "materially restricts." Of course, this likely will spurn additional litigation to define the phrase "materially restricts."

2. Where the Restoration Act also sought to eliminate the phrase "*major life activity*" from the definition of disability, the ADA Amendments Act retains it, but also provides a non-exhaustive list of major life activities, including, but not limited to: "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working." There is nothing new here. These are the traditional life activities that courts have already recognized. However, the ADA Amendments Act also includes within the definition "the operation of major bodily functions," which include, but are not limited to,

"functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions."

3. With regard to the "regarded as" prong of the definition, where the Restoration Act sought to place no limitation on the duration or seriousness of an impairment to satisfy this prong, the ADA Amendments Act places limitations by making clear that transitory and minor impairments are not included. The ADA Amendments Act defines "transitory" impairment as an impairment with an actual or expected duration of six months or less. Most importantly, the ADA Amendments Act makes clear that a housing provider, employer, or other covered entity has no duty to provide a reasonable accommodation to individuals who fall solely under the "regarded as" provision."

**B. "Mitigating Measures:"** Where the Restoration Act sought to completely eliminate the current rule that "mitigating measures" may not be considered in determining whether an individual has an impairment, the ADA Amendments Act does generally eliminate the consideration of mitigating measures, but also provides a narrow exception for "ordinary eyeglasses or contact lenses." The ADA Amendments Act further makes clear that episodic conditions are considered in their active state.

**C. "Qualified Individual With A Disability:"** Where the Restoration Act sought to eliminate the requirement of a disabled person to prove that they are

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<sup>1</sup> The text of H.R.3195 may be found at "<http://www.aapd-dc.org/News/adainthe/downloads/hr3195.pdf>". The text of S1881 may be found at: "<http://www.govtrack.us/congress/billtext.xpd?bill=s110-1881>"

### President Signs Amendments... Continued

"qualified," and only provided an employer with an affirmative defense if an employee/applicant is "not qualified" to perform the essential functions of the job/program, the ADA Amendments Act retains the traditional burden of proof

standards.

**D. Broad Construction.** Both the Restoration Act and the ADA Amendments Act state that the definition of disability "shall be construed broadly." Previously, courts were construing the definition more narrowly.

**E. Effective Date.** Where the Restoration Act sought to make the amendments effective upon enactment, the

ADA Amendments Act provides an effective date of January 1, 2009.



## AKRON METRO HOUSING AUTHORITY PREVENTS ESTABLISHMENT OF "HOSTILE LIVING ENVIRONMENT" CAUSE OF ACTION IN OHIO; HDLI WEIGHED IN

On July 8, 2008 the Ohio Supreme Court announced an important 7-0 decision in favor of HDLI member Akron Metropolitan Housing Authority (AMHA). Ohio's highest court held that a tenant cannot bring a cause of action against a landlord under the Ohio fair housing statute for "hostile living environment," absent direct wrongful conduct by the landlord. The court

declined to accept the plaintiff's argument that well-established "hostile work environment" in the workplace was analogous, finding that the relationship between employer/employee was not parallel to that of landlord/tenant. HDLI filed an *amicus* brief in support of AMHA. You can find a copy of the court's decision and HDLI's

*amicus* brief on HDLI's website at [www.hdli.org](http://www.hdli.org).



## DALLAS HOUSING AUTHORITY GETS FAVORABLE AG RULING ON NONDISCLOSURE OF EMPLOYEE SEVERANCE PACKAGE

On October 27, 2008, HDLI member Dallas Housing Authority (DHA) received a favorable ruling from the Texas Attorney General on the issue of whether an employee's severance package must be disclosed under the Texas Public Information Act (Act). DHA argued that, since the severance payments were paid solely out of non-public fee income received by DHA's Central Office Cost Center (COCC), the payments were not subject to

disclosure under the Act. The Texas Attorney General agreed, concluding that since the severance payments at issue were funded by COCC fee income, and not state or local funding, the information relating to the severance payments was not public information for purposes of the Act and DHA was not required to release the information pursuant to the Act. A copy of the AG opinion may be found on the

"Legally Important" page of HDLI's website: [www.hdli.org](http://www.hdli.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.

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## Hawaii Public Housing Authority Successfully Invokes Sovereign Immunity Defense in Disability Discrimination Lawsuit

In a case where a housing authority clearly bent over backwards in attempting to accommodate a disabled tenant, HDLI member Hawaii Public Housing Authority (HPHA) convinced a court that its sovereign immunity barred the tenant's claims. In the case of *Kalai v. Haw. Pub. Hous. Author., et al.*, No. 06-00433 JMS/LEK, 2008 U.S. Dist. LEXIS 64215 (D.Hawaii Aug. 20, 2008), an elderly public housing resident who used a wheelchair lived in a unit that was not handicap accessible. The tenant requested that the housing authority provide her wheelchair access, handle bars in the bathroom, and an accessible parking stall for her existing unit. She later asked for permission to install grab bars that she had purchased.

The housing authority agreed to provide wheelchair access from the unit to the parking stall and to install the grab bars that she had purchased in both bathrooms, but it refused to modify its policies regarding post-construction alterations to its buildings to allow the tenant to install the grab bars herself. The housing authority later determined that it could not install a handicapped parking stall at the existing building because of its location and steep slope, and thus offered the tenant the option of moving to an accessible unit.

The housing authority first offered the tenant a one bedroom unit that was wheelchair accessible and had grab bars, but the tenant rejected the unit. The tenant also rejected another accessible unit with grab bars and handicapped parking. The housing authority then offered the tenant a third unit, a studio

unit which was not accessible but had some grab bars already installed, which she also denied. The tenant then identified a different one bedroom unit that she preferred, and the housing authority agreed to move her to that unit.

During the time that the housing authority was making offers to move her to accessible units and the tenant was

**“There was no support for extending *Lane’s* limited holding in the ADA context to the FHA, where the FHA itself contains no clear congressional intent to abrogate sovereign immunity.”**

refusing the offers, and while the parties' negotiations continued, the housing authority did not install the grab bars in the bathrooms of her current unit due to the fact of her impending move. Plaintiff eventually fell in the bathroom of her existing unit and was injured. She subsequently moved into her new unit, with grab bars fully installed. Later, she moved out of public housing altogether.

The tenant sued the housing authority,

seeking injunctive relief and damages. She alleged that the housing authority violated the federal Fair Housing Act (“FHA”) by not properly accommodating her disability and by refusing to give her permission to install the grab bars that she had purchased. She also claimed that the housing authority was negligent for failing to install the grab bars in her first unit.

The housing authority moved for summary judgment on the grounds that the tenant's claim for damages was barred by the state's sovereign immunity, and that her request for injunctive relief was moot since she no longer resided in public housing.

With regard to the immunity defense, the court first held that Congress has not abrogated the housing authority's sovereign immunity, since the FHA contains no clear congressional statement unequivocally expressing an intent to abrogate sovereign immunity. The court rejected the tenant's argument that when the FHA is read together with the Rehabilitation Act and the Americans With Disabilities Act there is congressional intent to abrogate states' Eleventh Amendment sovereign immunity under the FHA.

Importantly, the court distinguished *Tennessee v. Lane*, 541 U.S. 509 (2004), where the U.S. Supreme Court had held that Congress validly abrogated sovereign immunity under Title II of the ADA, finding that that case involved the narrow

*continued on next page*

## Hawaii Public Housing Authority... Continued

issue of access to courts. The court stated that *Lane's* limited holding did not implicate the FHA and that there was no support for extending *Lane's* limited holding in the ADA context to the FHA, where the FHA itself contains no clear congressional intent to abrogate sovereign immunity.

Accordingly, the court held that the tenant's FHA claims seeking damages were barred by the Eleventh Amendment and awarded the housing authority summary judgment as to the claims for damages. Having dismissed the federal claims, the court declined to exercise its supplemental jurisdiction over the tenant's state law negligence claim. Finally, with regard to the mootness defense, the court found that since the tenant no longer resided in public

housing, there was no longer a live issue upon which the court could issue prospective relief and granted summary judgment on that issue, as well.



## CONGRATULATIONS ORLANDO HOUSING AUTHORITY!

June 26, 2008 marked a dual celebration for HDLI member Orlando Housing Authority (OHA). OHA began the festivities with a ribbon-cutting ceremony at its model home at the Carver Park development, located in the south Parramore area of Orlando, Florida. Carver Park is a planned 203 unit mixed-

income development, funded, in part, with a 2002 HOPE VI grant from the United States Department of Housing and Urban Development (HUD), and is modeled on the OHA's previously awarded HOPE VI-funded development, the successful Hampton Park community. The festivities then moved to the Orange County Regional History Center, where a reception was held to celebrate

OHA's 70<sup>th</sup> anniversary. OHA's Executive Director is Vivian Bryant, Esq., Vice President of HDLI's Board of Directors.



## HDLI WELCOMES ITS NEWEST BOARD MEMBER: Richard C. Gentry

HDLI is proud to introduce you to its newest board member: Richard C. Gentry, who brings a great depth of experience to HDLI. Many of you know Rick as a past President and Senior Vice President of NAHRO. Rick recently took over as President and CEO of the San Diego Housing Commission, but formerly was the Senior Vice President of Asset Management at the National Equity Fund in Chicago. Rick joined NEF in 2000 from the Local Initiatives Support Corporation (LISC), where he served as LISC's Vice President for Public Housing Initiatives in the Washington, D.C. office. Prior to joining LISC

in 1998, Rick had extensive experience as a housing agency executive, having spent eight years as the Chief Executive Officer of the Richmond Redevelopment and Housing Authority in Virginia, served as Chief Executive Officer of the Austin Texas Housing Authority, Director of Operations for the Greensboro North Carolina Housing Authority, and an Asset Management Officer with HUD in North Carolina.

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# CASE CORNER

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

## SECTION 8

***Konarski v. City of Tucson, 2008 U.S. App. LEXIS 17897 (9<sup>th</sup> Cir. Ariz. Aug. 18, 2008)***

**COURT:** U.S. Court of Appeals for the Ninth Circuit.

**FACTS:** Sometime prior to 1998, a Section 8 owner had one or more disputes that apparently had racial overtones with tenants of his apartment structure and that led the Section 8 administrator to decline to enter into any new Section 8 contracts with him. The owner brought several lawsuits as a result of the incident and the decision not to enter into any new contracts. The trial court granted summary judgment in favor of the administrator, finding that the owner had no right to participate in the Section 8 program. The decision was affirmed by the Ninth Circuit. A few years later, the owner attempted to bring new actions against the administrator, contending that the only sanction against him was an 18 month suspension, rather than termination from the program. The district court ruled that these new claims were barred by res judicata, and the owner appealed.

**ISSUE 1:** Whether res judicata barred the owner's new claims?

**HOLDING/RATIONALE 1:** Yes. The court held that, since the owner's assertion that he could only be sus-

pending from the Section 8 program for 18 months is dependent upon his having a right to participate in the program, an issue that had been finally resolved against him.

## DISABILITIES

***Reasoner v. Hous. Auth. of Teague, 2008 U.S. App. LEXIS 15464 (5<sup>th</sup> Cir. Tex. July 18, 2008)***

**COURT:** Texas Court of Appeals.

**FACTS:** A disabled woman and her minor son were permitted to live in a public housing complex specifically designed and operated to assist elderly persons as a reasonable accommodation for her disability. The Housing Authority received numerous complaints on multiple occasions from other residents that the behavior of both the tenant and her son, including the tenant's threat to kill against another tenant, was in violation of the "Rules and Regulations" attached to her lease. Additionally, the tenant was two months behind in rent payments. After the housing authority issued her notices to vacate, the tenant filed suit alleging discrimination on the bases of disability and familial status under the Fair Housing Act; however, she elected only to pursue her familial status discrimination claim. Four days before trial, the housing authority moved to amend its answer to include as a defense the statutory exemption from all provisions

regarding familial status for "housing for older persons" granted by Congress in 42 U.S.C. §§ 3607(b)(1) and (2). The court granted the housing authority's motion.

On appeal, the tenant argued that the district court (1) erred in granting the housing authority's motion to amend its answer to include the exemption for housing for older persons, (2) should have held the housing authority to the compelling business necessity standard in establishing a justification for evicting the tenant and her son, and (3) erred in admitting written statements evidencing the tenant's threat against another tenant.

**ISSUE 1:** Whether the statutory exemption for housing designated for older persons under 42 U.S.C. § 3607(b) barred the tenant's claim.

**HOLDING/RATIONALE 1:** Yes. The court ruled that applicability of the statutory § 3607(b) exemption was an issue of law the relevant facts of which-- that the complex in which the mother and her son lived was housing for older persons within the meaning of the FHA-- were undisputed and admitted at trial. The court found that since the tenant did not challenge the district court's factual finding that the housing unit in which she lived was properly designated housing for older persons within the meaning of

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## Case Corner Cont INUED

the FHA, the tenant's other claims did not have to be addressed since the district court correctly found that the § 3607(b) exemption acted as a complete bar to her claim.

**ISSUE 2:** Whether the housing authority's motion to amend its answer filed four days before trial was prejudicial to the tenant.

**HOLDING/RATIONALE 2:** No. The court found that the fact that the housing authority would raise this defense should not have come as any surprise to the tenant, and since it was filed before trial it was properly granted.

### DUE PROCESS

***Ervin v. Hous. Auth. of the Birmingham Dist.*, 2008 U.S. App. LEXIS 13138 (11<sup>th</sup> Cir. Ala. June 17, 2008)**

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

**FACTS:** A Section 8 landlord forwarded to the housing authority a letter from the local police department indicating that a search warrant had been served on his property and that during the search three marijuana plants were found in the participant's apartment having a street value of approximately \$6,000.00. Additionally a witness reported to the housing authority that someone in possession of cocaine and marijuana previously had been arrested at the residence that day. Accordingly, the housing authority sent the participant a 30 day notice specifically providing that the participant's Section 8 rental assistance "will terminate . . . due to failure to comply with Section 8 regulations." The notice went

on to inform the participant that the regulation violated was "Crime by Family Members . . . Drug-related activity" and that the factual basis for the determination was "use of illegal drug sales and/or purchase." However, the notice did not specify the individual alleged to commit the illegal activity, nor the exact time that the criminal activity took place. The notice also advised the participant of her right to request an informal hearing. The participant requested and received an informal hearing. At the informal hearing, the housing authority did not produce the letter from the police; rather, an authority employee testified to receiving the same. The hearing officer upheld the termination.

**ISSUE 1:** Whether the information contained in the notice was insufficient to constitute a "brief statement of reasons for the decision to terminate assistance," within the meaning of 24 CFR § 982.555(c)(2).

**HOLDING/RATIONALE 1:** Yes. The court found that the statement of reasons was sufficiently specific for it to enable the tenant to prepare rebuttal evidence to introduce at her hearing. The Housing Authority's notice provided that her Section 8 rental assistance would terminate due to her failure to comply with Section 8 regulations and that the regulation violated was "Crime by Family Members . . . Drug-related activity" and that the factual basis for the determination was "use of illegal drug sales and/or purchase." The court found that this language sufficiently stated the reasons for the termination of the participant's benefits.

**ISSUE 2:** Whether the notice was deficient because it did not specify the individual alleged to commit the illegal activity or the exact time that the criminal activity took place.

**HOLDING/RATIONALE 2:** No. Based upon the participant's own testimony, the court found that she was well aware of the incident being relied upon.

**ISSUE 3:** Whether the court erred in allowing the adverse administrative determination against the participant to be solely based upon hearsay evidence.

**HOLDING/RATIONALE 3:** Yes. The court stated that there are due process limits on the extent to which an adverse administrative determination may be based on hearsay evidence. The court found that the evidence supporting the adverse administrative decision wholly consisted of hearsay. Acknowledging that hearsay may constitute substantial evidence in administrative proceedings, on the present record, the court was unpersuaded that the factors that assure the underlying reliability and probative value of the evidence were present. It was not comfortable with the evidence capable of appellate review and, thus, vacated and remanded to the district court for further consideration whether the factors that assure the underlying reliability and probative value of the evidence were present in this case.

### SEX OFFENDER

***Miller v. McCormick*, Civ. No. 08-26-B-W, 2008 U.S. Dist. LEXIS 71899 (D. Me. 2008)**

**COURT:** U.S. District Court for the District of Maine

**FACTS:** A housing authority in Maine became aware that one of its Section 8 homeownership program participants was subject to a requirement that he register as a sex offender due to a prior conviction of child molestation in the First Degree in a state from which he

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## Case Corner Cont INUED

ported to another jurisdiction and then to Maine, and that he had failed to register when he moved to Maine, in violation of Maine law. The housing authority notified the participant that it was terminating his voucher because he committed fraud or another corrupt act by failing to disclose his registration requirement and/or because he engaged in criminal activity threatening the health or safety of others by failing to register.

At the informal hearing that the housing authority provided the participant, it was determined that the housing authority failed to justify the termination. A due process hearing ensued. The presiding state administrative hearing officer set aside the decision to terminate the participant's benefits, concluding that there was not sufficient evidence of fraud because the participant had not made an affirmative false representation and because he was never "made aware of any obligation to disclose that status." She also decided that the participant's criminal act of failing to register was not threatening to the public's health or safety because there was no evidence offered concerning anyone living in the vicinity of the participant's new residence.

Thereafter, the housing authority raised alternative grounds to terminate the participant's voucher; i.e., that since the participant was subject to a lifetime registration requirement federal law required that he be removed from the program. The officer gave the participant another termination notice, this time contending that he had committed "violent criminal activity," in violation of the applicable housing regulations, consisting of the facts underlying the participant's conviction for child mole-

tation in the first degree. Another hearing ensued and the same hearing officer again denied the termination of benefits, concluding that the regulation in question concerned only criminal activity that transpired while the participant was receiving housing benefits, not past criminal history that predated the participant's admission to the Section 8 program. The hearing officer also considered whether the participant was, in fact, subject to a lifetime registration requirement which would mandate his expulsion from the program. The officer concluded that the record before her did not establish, by a preponderance of the evidence, that the participant was subject to a lifetime registration requirement because the court that preside over his conviction could relieve him of the obligation to register and the housing authority had not demonstrated facts likely to preclude future relief from the registration requirement. (About a year later, the State of Maine determined that the participant was subject to a lifetime registration requirement in Maine).

Nevertheless, following the second adverse decision, the housing authority notified the participant that it was terminating his voucher regardless of the hearing officer's decisions because they were contrary to HUD regulations and requirements or otherwise contrary to federal and state law. The housing authority then terminated and ceased making payments on the voucher. The participant sued the housing authority under 42 U.S. Section 1983, alleging that it deprived him of property without due process of law and that the termination of his benefits violated his rights under the Section 8 voucher program. The participant sought a declaration that the defendants' conduct violated his rights, and an order that the defendants reinstate his benefits, be enjoined from terminating them again, and reimburse him for the value of the mortgage subsidy he lost during the

pendency of this action. The housing authority requested that the court enter judgment against the participant's claims and also requested judgment in their favor on a counterclaim for unjust enrichment in the value of \$8,104.00, the funds it had provided to the participant under the program. Both parties moved for summary judgment.

**ISSUE 1:** Whether the housing authority properly exercised its discretion to terminate the voucher of a sex offender with a lifetime registration requirement.

**HOLDING/RATIONALE 1:** Yes. The court noted that 24 CFR § 982.553(c) and 24 CFR §982.522(c)(xi)(authorizing an agency to terminate assistance at any time "if the family has engaged in criminal activity . . . described in §982.553, not merely as described in §983.553(b). The court ultimately held that a lifetime registrant must be denied admission and that, if he erroneously was admitted into a Section 8 voucher program (whether due to oversight and neglect on the part of the PHA or due to unlawful failure to register on the part of the participant), the PHA may terminate his assistance. The court found that the housing authority had the discretionary authority to terminate the benefits of a participant who is subject to a lifetime registration requirement, pursuant to both 24 CFR § 982.553(c) (providing that a PHA "may terminate assistance" for such criminal activity), and pursuant to subsection 2.E of the form HUD-52649, which the participant executed in connection with his application for the homeownership voucher. The court declined to exercise its supplemental jurisdiction over the housing authority's sole state common law claim for unjust enrichment.



## NEW YORK CITY HOUSING AUTHORITY SETTLES MENTAL DISABILITY CLASS ACTION SUIT

### *Blatch, et al. v. New York City Housing Authority*

In the past, HDLI has reported on *Blatch, et al. v. New York City Housing Authority*, an important class action lawsuit brought by Legal Aid eleven years ago (1997) against HDLI member the New York City Housing Authority (NYCHA) in the U.S. District Court for the Southern District of New York. In this case, Legal Aid represented a class of mentally disabled public housing tenants who were subject to administrative grievances, tenancy terminations or eviction proceedings in housing court or appeals from NYCHA's administrative determinations in state court. The tenants alleged that NYCHA's pursuit of tenancy termination actions against the mentally incompetent, and its failure to advise the court of information regarding a tenant's mental status during tenancy termination proceedings, violated the tenants' rights under the Fourteenth Amendment Due Process Clause and 42 U.S.C. § 1983; Title II of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("Rehabilitation Act"), and the Fair Housing Amendments Act. The tenants sought declaratory and injunctive relief.

Considering cross-motions for summary judgment in 2005 that included thousands of pages of evidentiary and argumentative submissions, the court did grant summary judgment in NYCHA's favor dismissing some of the class's claims. However, the court also granted summary judgment in favor of the tenants on their request for a declaration that NYCHA's practices and procedures for conducting administrative tenancy termination hearings and its practice of pursuing non-payment proceedings in

housing court without informing the court that it had information indicating that the tenant was incapable of meaningfully participating in the proceedings violated the due process rights of mentally disabled tenants. It ordered injunctive relief mandating the establishment and implementation of comprehensive procedures. The court further determined that further proceedings were necessary to resolve claims concerning outreach and procedures for the reasonable accommodation of mental disabilities of class members during administrative tenancy termination and housing court proceedings and ordered the parties to negotiate those issues with the assistance of a magistrate judge.

After more than three years of negotiations, the parties were able to fashion a proposed settlement of the remaining claims that created new procedures for determining whether tenants are mentally incompetent, and for making sure that mentally incompetent tenants have appropriate representation during NYCHA termination or eviction proceedings. Following a fairness hearing, on November 3, 2008 the district court approved the settlement which provided for a permanent injunction with the following key terms:

1. Requires NYCHA to appoint guardians *ad litem* for **mentally incompetent** persons in connection with **termination of tenancy and remaining family member** grievance proceedings **at NYCHA's expense**;
2. Requires NYCHA to **advise the**

**housing court of information relevant to mental status** in connection with housing court proceedings against residential tenants;

3. Designates specific **procedures for investigating mental status and making determinations** regarding mental incompetency;

4. Provides that for the first **four years** following the settlement, the procedures cannot be changed without the consent of class counsel or court approval;

5. Provides a **universal definition of an "incompetent" person** as someone who, "as a result of mental disease or defect, the tenant or grievant is unable to (1) understand the nature of the proceedings or (2) adequately protect and assert his/her rights and interests in the tenancy;"

6. Requires NYCHA to **train staff** in the settlement procedures and their responsibilities thereunder;

7. Provides that, if NYCHA does not comply with the agreement, class members can bring certain types of **challenges** to decisions that went against them;

8. Allows certain unresolved mental disability identification and reasonable accommodation claims asserted on behalf of the class to be **withdrawn** and brought at another time; otherwise, dismisses the case with prejudice;

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### NEW YORK CITY HOUSING AUTHORITY... Continued

9. Provides for *monetary payment to one of the named plaintiffs* who was the only one who suffered actual damages in connection with an eviction proceeding; and

10. Awards *attorneys' fees* to plaintiffs' counsel in an amount to be determined by either the parties, or the court.

While this case arguably has limited precedential effect outside of the Second Circuit and/or the state of New York, this case underscores the increased due process considerations that courts are requiring in cases involving mentally disabled tenants. Other housing agencies should take this time to review their

own policies to ensure that adequate due process is afforded mentally disabled tenants during the administrative or judicial tenancy termination process.



## 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 . . .

A paralegal, an associate and a partner of a large law firm are walking through a city park, when they spotted an antique oil lamp.

The paralegal picked it up, but both the associate and partner grabbed for it, arguing that they found it first. Their tussling had the effect of rubbing the lamp, and to their shock a Genie emerged in a great cloud of smoke.

The Genie announced, "In gratitude of your freeing me from the lamp, I grant you three wishes. As there are three of you, you each get one wish."

The paralegal blurts out, "I want to be in the Barbados, sipping cocktails with a gorgeous movie star." Poof! The paralegal was gone.

The associate, excited by the events, stammers, "I want to be in Hawaii, relaxing on the beach with a professional hula dancer on one side and a Mai Tai on the other." Poof! The associate was gone.

"You're last," the Genie says to the partner, "What is your wish?"

The partner replied, "I want those two back in the office after lunch."

### You might be a lawyer if:

- You are charging someone for reading these jokes.
- You have a daughter named Sue and a son named Bill.
- The shortest sentence you have ever written was more than eighty words long.
- When you look in a mirror, you see a lawyer.
- When your wife says "I love you," you cross-examine her.

## TODAY'S POSITIVE QUOTATION

"Always bear in mind that your own resolution to succeed is more important than any other."

Abraham Lincoln

## RECENT HUD NOTICES

*Following are some of the important recent HUD Rules, Proposed Rules, and/or Notices that appear in the Federal Register, along with a brief description. Note - this is not meant to be an exhaustive list of HUD Notices. For instance, notices involving the Indian Housing Program and Disaster Assistance are omitted. You may access all HUD notices at [www.hudclips.org](http://www.hudclips.org).*

### RECENT HUD PIH PROPOSED RULES & NOTICES (Office of Public and Indian Housing)

#### PROPOSED RULES

<u>Proposed Rule</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
73 FR 70928	11/24/08	Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remediating Substantial Default: Reopening of Public Comment Period	HUD published a proposed rule on 8/21/08 (73 FR 49544) that proposed comprehensive changes to the PHAS regulations. This reopens the comment period until January 8, 2009 to allow for additional public comment. Announces a new "scoring template" that enables PHAs to see what their score would be. Allows electronic submissions of comments.	

#### NOTICES

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
PIH 2008-02 (HA)	1/4/08	Guidance for obtaining HUD Consent for Takings of Public Housing Property by Eminent Domain	Provides guidance on 12 factors that HUD will consider in determining whether to consent to a taking of public housing property that was developed/acquired by, or is maintained with funds from the 1937 Act. Reiterates that, if HUD does not agree to a taking, it may choose to enforce its interest in the public housing property by requesting that the DOJ intervene in the eminent domain proceeding or petition the court to dismiss the proceeding on jurisdictional grounds.	1/4/09

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### RECENT HUD PIH NOTICES Continued

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
PIH 2008-09 (HA)	1/30/08	Financial Reporting Requirements for the Housing Choice Voucher Program Submitted through the Financial Assessment Subsystem for Public Housing and the Voucher Management System	Clarifies the financial reporting requirements and deadlines for those PHAs that administer the HCV and HCV related programs (Disaster Voucher Program (DVP), Katrina Disaster Housing Assistance Program (KDHAP), Moderate Rehabilitation (Mod Rehab) and Mainstream 5-year program (MS5), if applicable).	1/31/09
PIH 2008-10 (HA)	1/31/08	Extension of Notice PIH 2007-1 (HA) - Requirement for Designation of Public Housing Projects	Extends Notice PIH 2007-1 (HA) that reiterated the streamlined requirements for designating public housing projects for occupancy by elderly families only, disabled families only, or elderly and disabled families only. This Notice also includes the requirements and procedures for renewal of, or changes to, previously HUD approved designation plans.	1/31/09
PIH 2008-11 (HA)	2/6/08	Reporting Requirements and Sanctions Policy under the Public Housing Program for the Family Report (Form HUD-50058) to the Office of Public and Indian Housing (PIH) Information Center (PIC)	Renews the Form HUD-50058 assessment and sanctions process implemented under Notice PIH 2006-24 with four key changes: <ul style="list-style-type: none"> <li>◦ Notice not applicable to the HCV program. See Notice PIH 2007-29 issued 10/10/07</li> <li>◦ Changes to the applicability of various Delinquency Reports</li> <li>◦ Three new scenarios under which PHAs can submit Demonstrations of Compliance were added</li> <li>◦ Applies to PHAs affected by Hurricanes Katrina, Rita and Wilma (no longer exempt).</li> </ul>	2/28/09
PIH 2008-12 (HA)	2/15/08	Enhanced Voucher Requirements for Over-housed Families	Sets forth the enhanced voucher policies that are applicable to over-housed families. Applies to both enhanced voucher families that are determined to be in an over-housed situation in the future, as well as any over-housed family where the enhanced voucher subsidy is currently based on the gross rent of the over-sized unit.	2/28/09
PIH 2008-13 (HA)	3/10/08	Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation	Facilitates the process for review and approval of special payment standards under the HCV program as a reasonable accommodation for a family with a person with disabilities. Clarifies the calculation of the payment standard and the type of supporting documentation that should be included in the waiver request.	3/31/09

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### RECENT HUD PIH NOTICES Continued

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
PIH 2008-15 (HA)	3/20/08	Implementation of Federal Fiscal Year 2008 Funding Provisions for the Housing Choice Voucher Program	Implements the HCV program funding provisions resulting from enactment of the 2008 Consolidated Appropriations Act.	3/31/09
PIH 2008-16 (HA)	3/25/08	Guidance on Asset Management Provisions in the Consolidated Appropriations Act, 2008	Provides guidance on two provisions of the FY09 appropriation: Section 225 involving exemptions of PHAs that own and operate 400 or fewer public housing units, and Section 226 involving requirements that restricts or limits the use of capital funds for central office costs.	3/31/09
PIH 2008-17 (HA)	3/25/08	Guidance on Disposition of Excess Equipment and Non-Dwelling Real Property under Asset Management	During the conversion to asset management, certain assets that are no longer necessary for the operation of projects become assigned to the COCC. Since these assets were originally purchased with program funds, this notice provides guidance on how PHAs may dispose of these assets to the COCC, without program recognition.	3/31/09
PIH 2008-18 (HA)	3/27/08	Information on Upcoming Rulemaking Associated with the Public Housing Assessment System as a Result of the Conversion to Asset Management	Provides an update on the status of the proposed changes to the Public Housing Assessment System (PHAS) and other related activities.	3/31/09
PIH 2008-20 (HA)	4/16/08	Over Subsidization in the Housing Choice Voucher Program	In response to the HUD OIG's report on over subsidization in the HCV program due to the issuance of vouchers with unit sizes greater than the number of family members, this notice discusses the categorization of live-in aides, other reasonable accommodation issues and corresponding data entry into the Public and Indian Housing Information Center (PIC).	4/30/09
PIH 2008-23 (HA)	5/16/08	Exclusion of tax rebates from the Internal Revenue Service (IRS) under the Economic Stimulus Act of 2008	Excludes the one-time IRS economic stimulus payments (tax rebates) from all interim and annual income determinations.	5/31/09

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### RECENT HUD PIH NOTICES Continued

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
PIH 2008-25 (HA)	6/11/08	Renewable energy and green construction practices in Public Housing	Strongly encourages PHAs to use solar, wind and other renewable energy sources, and other "green" construction and rehab techniques whenever they procure for maintenance, construction, or modernization, defines green building principles for construction practices in Public Housing, identifies the benefits of green construction and rehabilitation practices and products, and identifies expertise that is available to provide valuable assistance for implementing such practices.	6/30/09
PIH 2008-26 (HA)	6/24/08	Income exclusion under temporary employment by U.S. Census Bureau	Provides guidance that PHAs are to exclude temporary income payments from the U.S. Census Bureau, i.e., lasting no longer than 180 days and not culminating in permanent employment.	6/30/09
PIH 2008-27 (HA)	7/2/08	Extension of PIH 2007-15 (HA)	Extends PIH 2007-15 (HA) regarding the applicability of public housing development requirements to transactions between PHAs and their related affiliates and instrumentalities.	7/31/09
PIH 2008-31 (HA)	7/17/08	Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 3 Applications	Provides information for PHAs that wish to submit documentation of successful conversion to asset management for "stop-loss" purposes. Notice applies only to PHAs that: 1) lose funding under the new formula; and 2) wish to submit documentation in accordance with the requirements for Year 3.	7/31/09
PIH 2008-33 (HA)	8/14/08	Public Housing Operating Subsidy Calculations for Calendar Year (CY) 2009	Provides operating subsidy calculations for CY 2009	8/31/09
PIH 2008-35 (HA)	8/20/08	Cost-Test and Market Analyses Guidelines for the Voluntary Conversion of Public Housing Units Pursuant to 24 CFR Part 972	Provides the cost-test and market analyses guidelines related to PHA requests to voluntarily convert a public housing property, or portion thereof, to tenant based assistance.	8/31/09
PIH 2008-39	11/3/08	Processing Changes for Voucher Management System (VMS) Data in HCV Program	Announces changes to the submission and processing of data in the VMS.	11/30/09

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### RECENT HUD PIH NOTICES Continued

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
PIH 2008-40 (HA)	11/4/08	Income Exclusion of Kinship Care Payments when Foster Children Are Placed With Relatives	Clarifies that payments made on behalf of a related child to the tenant household are excluded from income certifications pursuant to 24 CFR 5.609(c)(2)	11/30/09
PIH 2008-41 (HA)	11/13/08	Public Housing Agency (PHA) Five-Year and Annual Plan Process for All PHAs	Announces the availability of a revised PHA Five-Year and Annual Plan template (HUD-50075), a PHA Certifications of Compliance with the PHA Plans and Related Regulations (HUD 50077), a revised Annual Statement/ Performance and Evaluation Report (HUD 50075.1), and a revised Capital Fund Program Five-Year Action Plan (HUD 50075.2). Clarifies the transition to new project numbers that took place in April 2008 pursuant to PIH Notice 2007-28. Implements Title VII of the Economic Recovery Act of 2008.	11/30/09
73 FR 71037	11/24/08	The Housing and Economic Recovery Act of 2008 Applicability to HUD Public Housing, Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs	Provides information about the applicability of the Act to the delineated HUD programs. Identifies provisions that are self-implementing and require no HUD action and those that require implementing regulations.	

### OTHER RECENT HUD NOTICES

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
H-08-01	4/29/08	Nominal interest rate for the Section 202 and Section 811 Capital Advance Programs	FY 2008 nominal interest rate for the Section 202 and Section 811 Capital Advance Programs is 5.25 percent	9/30/08
H-08-02	5/12/08	FY 2008 Grant Extension Procedures for Service Coordinator (SC) and Congregate Housing Services Program (CHSP) Grantees	Provides guidance on the process for extending SC and CHSP grants whose funds will be expended and whose grant term will end on or before December 31, 2008. HUD's policy is to provide extension funding, to the extent funds are available, to enable programs to continue operating for an additional 12-month period.	12/31/08

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### OTHER RECENT HUD NOTICES *Continued*

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
72 FR 29984 (final rule)	6/23/08	Project Design and Cost Standards for the Section 202 and Section 811 Programs	Revises HUD's regulations that govern the project design and cost standards for HUD's section 202 supportive housing for the Elderly and section 811 Persons with Disabilities programs. Allows project sponsors to use HUD funds for dishwashers in individual supportive housing units for the elderly and in independent living projects for persons with disabilities.	n/a
H-08-03	6/25/08	Enterprise Income Verification (EIV) System	Provide guidance to owners and management agents (O/As) on using the data in EIV for verifying, at the time of recertification, the employment and income of individuals participating in one of Multifamily Housing's rental assistance programs and provides guidance for using the various reports by O/As at the time of recertification.	6/30/09
H-08-04	7/31/08	Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Program Loans in Transfer of Physical Assets (TPA) and Refinance Transactions	Amends and restates HUD's draft Guidance dated June 2006, titled "Draft Policy for Assumption and Subordination of Mark-to-Market ("M2M") Notes in Transfer of Physical Assets ("TPA") Transactions." These apply to any Request to assume, subordinate, and/or assign a loan evidenced by a Note (defined below), and to waive the due-on-sale or refinance clause contained therein and applies to Requests to assume and/or subordinate loans originated under M2M's predecessor program, the Portfolio Reengineering Demonstration Program ("Demonstration Program").	7/31/09
H-08-05	8/18/08	Fiscal Year 2008 Economic Stimulus Payments (Tax Rebates) Excluded from Income	Asserts the exclusion of the Economic Stimulus payments (tax rebates) received by applicants for assisted housing and by tenants participating in HUD's rental assistance programs from all purposes of determining eligibility and rent.	8/31/09
H-08-07	9/30/08	Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005 for the Multifamily Project Based Section 8 Housing Assistance Payments Program	Provides guidance to owners and management agents administering the project-based Section 8 programs on the implementation of VAWA. Transmits the victim certification forms (HUD 91066) (Attachment 1) and the HUD-approved Lease Addendum (HUD 91067) (Attachment 2)	9/30/09

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**OTHER RECENT HUD NOTICES Continued**

<u>Notice</u>	<u>Date Issued</u>	<u>Subject</u>	<u>Substance</u>	<u>Expiration Date</u>
Docket No. FR-5217- N-02, 73 FR 54902	9/23/08	Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2008	Lists regulatory waiver requests approved by HUD during the second quarter of FY08.	n/a
Docket No. FR-5205- N-02, 73 FR 71387	11/24/08	Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2008	Lists regulatory waiver requests approved by HUD during the third quarter of FY08.	n/a

