

Center on Budget and Policy Priorities
Greater New Orleans Fair Housing Action Center
Lawyers Committee for Civil Rights Under Law
New Orleans Legal Assistance
New Orleans School of Law/Loyola University
National Housing Law Project
National Policy and Advocacy Council on Homelessness
Poverty & Race Research Action Council
c/o National Low Income Housing Coalition

Honorable Alphonso Jackson, Secretary
U.S. Department of Housing and Urban Development
Room 10000
451 Seventh Street S.W.
Washington, D.C. 20410

March 10, 2006

Dear Secretary Jackson:

We are a group of New Orleans organizations and individuals, as well as national low-income housing advocacy organizations. We are writing regarding a number of concerns and questions pertaining to the “operating requirements” for the newly named Disaster Voucher Program replacing KDHAP (PIH Notice 2006-12, dated February 3, 2006). The revised policies are designed to implement the provisions of the supplemental appropriations act (P.L. 109-148) that made \$390 million available to HUD for assistance under the housing voucher program [section 8(o), 42 U.S.C. §1437f(o)] to assist certain families displaced by Hurricanes Katrina and Rita.

This letter presents the issues that are most important to us, followed by comments or questions (*in italics*) that we would appreciate addressed.

1. **Extension of assistance to Rita-affected families.** DVP will cover families displaced from HUD-assisted housing by Hurricane Rita as well as households that were homeless in the Rita disaster area before the storm, in addition to similar families displaced by Hurricane Katrina.

How many households does HUD estimate may qualify for DVP assistance due to the extension to households displaced by Hurricane Rita?

What efforts is HUD making to identify such families and advise them of their eligibility for special section 8 assistance?

2. **Families omitted from eligibility for DVP.** Some types of displaced households eligible under the KDHAP rules will not be eligible for DVP assistance.

- Families and individuals who lived in certain types of units with HUD-subsidized mortgages prior to the hurricanes are not eligible for DVP assistance. (Ineligible families include those previously living in units assisted under the so-called 221(d)(3)(BMIR) and 236 programs without section 8 assistance, and units with RAP or Rent Supplement assistance.) This result is required by the language of the appropriations bill. HUD has arranged with FEMA to continue to provide KDHAP assistance to these households using FEMA funds for the month of February only. PIH Notice 2006-12 (p. 8) says that HUD will issue guidance "that addresses assisting this population of families subsequent to February 28, 2006."

How many such families is HUD currently assisting?

We are aware that the president has submitted an additional supplemental request which, if approved by congress, will address this problem. However, in the event that the additional supplemental is not approved before the end of February, what is HUD's plan for addressing this population?

If, as appears from reports submitted by HUD to the appropriations committees, HUD has not spent the full \$82M covered by the FEMA Mission Assignment, will HUD request permission from FEMA to continue to use FEMA funds to provide housing assistance to these families?

At the very least, will HUD provide assurance that it will not cease providing rental subsidies to these families until they have received a determination of eligibility for rental assistance under FEMA's Individuals and Households Program (section 408), and received the initial payment of funds?

- Some previously homeless households or those receiving assistance under the HOPWA, Shelter Plus Care, 202 or 811 programs pre-disaster may be denied eligibility for DVP assistance due to use of Section 8 screening requirements pertaining to criminal history, drug and alcohol abuse, and citizenship status.

All families that received Section 8 assistance or lived in public housing prior to the disasters had to meet such requirements, therefore no new screening should be required of these families.

Will HUD instruct PHAs to use their discretion under voucher program rules to minimize any denial of housing assistance due to this change?

- HUD rules currently allow PHAs to provide assistance to a family prior to verification of eligibility in accordance with the rules regarding restrictions on assistance to non-citizens. 24 C.F.R. § 5.512(b). The rule also recognizes that a family may be a mixed family with both eligible members and members who do not contend that they have eligible status. 24 C.F.R. § 5.508(e) These families may receive pro rata assistance. Appendix 2 of the Notice ignores these provisions although it does expand the period of time allowed for verification of status by the Immigration and Customs Enforcement.

In order to provide immediate DVP assistance to those who have been displaced and are in need of assistance and to avoid increased delays in providing assistance, will HUD advise PHAs that they may elect to provide assistance prior to verification and of the pro ration provisions?

3. **Imposition of unauthorized time limit on voucher assistance.** PIH Notice 2006-12 states that "assistance" to DVP participants is "expected to end" by September 30, 2007. (p. 2) The supplemental appropriations act does specify that the \$390M appropriated for disaster related housing vouchers is available only until that date.

But the bill language does not authorize HUD or PHAs to terminate housing voucher assistance to families still receiving assistance on that date. Indeed, Congress omitted language proposed by the Administration that would have limited assistance to individual households to 18 months. It is clear from other portions of the Notice that most families receiving housing voucher assistance pre-hurricane are to be transitioned to regular section 8 voucher payments. (See #4 below for the exception situation.) But other families assisted by DVP could lose their housing under the HUD policy, contrary to the apparent intent of Congress. (See ¶4(f), p. 11 top; ¶4(n), pp. 17-18 (in effect restricting families' right to move beginning October 1, 2006 if they did not have voucher assistance pre-disaster.)

Will HUD work with the Congress to ensure that sufficient funds are available to maintain assistance to families displaced by the hurricanes who do not return to HUD-assisted housing in the disaster areas by September 30, 2007?

4. **Implications of DVP time limit for PHAs.** PHAs that gave vouchers from their own programs to displaced families have been able to receive KDHAP – and now DVP – funds for these households. This was an important policy change, and avoided the unfair result of PHAs' initial humanitarian response creating further delay in receipt of voucher assistance by local families. In effect, this funding policy means that these PHAs receive section 8 funds from two sources in 2006: from regular voucher renewal funds allocated by HUD under the formula in the 2006 appropriations act, and from the supplemental appropriation for disaster assistance.

This dual funding pattern will continue in 2007, but only until September 30, 2007, unless Congress extends this date through the end of the 2007 calendar year (consistent with the funding year for regular voucher funds) or provides supplemental funds to these PHAs for use in 2007. The Administration's supplemental request for additional Section 8 funds for disaster vouchers, submitted to Congress on February 16, 2006, also would fix September 30, 2007 as the end date for availability of funds. If Congress does not fix this problem, these PHAs will be forced to cut back on the number of families they serve in 2007 to adjust for the loss of funds in the last quarter of the year. If the "receiving" PHAs do not "absorb" displaced families into their own voucher programs, PHAs in the disaster area will also be limited in the number of families they can serve in 2007 by the need to reserve funds to pay the last-quarter costs of families that have moved with voucher assistance to other areas. (p. 19)

Will HUD work with the Congress to ensure that sufficient funds are available to maintain assistance to families displaced by the hurricanes who do not return to the disaster areas by September 30, 2007?

5. **Use of DVP funds to free up regular section 8 voucher funds for other (unspecified) uses.** HUD will use part of the \$390M to assist pre-hurricane voucher holders in the most heavily impacted areas of LA and MS, freeing up regular 2006 voucher funds for other unspecified uses (such as rehabilitation of public housing) under the fungibility provision, section 901 of the defense appropriations bill. The Notice appears to limit this funding shift to pre-disaster voucher households that left the disaster area and then returned (to their pre-disaster unit or a different unit), and not to households that never left, who would continue to be assisted with regular voucher program funds. (See pp. 1 and 3.)

It would be helpful to have an estimate of the number of such voucher households HUD estimates funding through DVP, and the corresponding amount of funds to be made available to PHAs under the fungibility provision.

When will HUD issue guidance on the fungibility provision?

- PHAs in the disaster areas had been required under KDHAP to make partial payments to other PHAs where voucher families had relocated if the agencies currently serving families used a voucher payment standard above 100 percent of the local FMR. Because DVP uses regular section 8 voucher payment standards, DVP assistance will cover the full amount of such families' subsidies, making such partial payments unnecessary. This change frees up additional 2006 voucher funds at the disaster-area PHAs for such unspecified other uses.

As of January 2006, for how many vouchers were PHAs in the disaster areas making partial payments?

What was the amount of such partial payments in January 2006?

- PHAs could use their regular 2006 voucher funds to assist new households from their waiting lists needing rental assistance to meet the escalating rents in the disaster area, as well as to increase their payment standards to meet reasonable rent adjustments requested by landlords of current participants.

Will HUD make clear to PHAs in the upcoming guidance that before shifting voucher funds to the public housing program they should insure that payment standards are adjusted in light of changes in local rents, and that they have the option to use their regular 2006 voucher funds to provide housing vouchers to local families (up to their authorized number of assisted households without regard to the families shifted to the DVP program)?

6. **Transition issues.** HUD appears to have minimized, to the extent possible, the risks that owners will opt out of receiving voucher subsidies due to the need to execute new paperwork for the DVP program, but some families may still lose their housing as an unintended consequence of the shift from initial FEMA funding to section 8 assistance.

Will HUD use remaining FEMA funds (see #2 above) to provide additional months of housing assistance to these relatively few households, whose landlords will not agree to sign the DVP paperwork, until they are able to find other housing where they can use DVP vouchers?

7. **Flexibility in allowing shorter than 12-month leases.** Under the regular voucher program, initial 12-month leases are the norm. HUD had allowed 6-month leases under KDHAP, creating the potential need to extend the term of the initial lease as part of the transition to DVP. Families now under KDHAP leases and new families entering the DVP program may want the flexibility of a shorter lease to be able to move back to the Gulf area (perhaps when the school year ends in a few months) or to expand their local housing choices.

PIH Notice 2006-12 unduly limits when a PHA may approve a lease term of less than 12 months. (pp. 6 and 17.) The relevant statutory language is that the PHA must determine “that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be “a” prevailing market practice.” § 1437f(o)(7)(A). The shorter term of lease does not have to be “the” prevailing practice but only “a” prevailing practice; in other words one of the prevailing practices in the jurisdiction. (We recognize that the Administration has proposed, as part of the recent supplemental request, that HUD be granted authority to waive the statutory provision on the initial lease term. Even if Congress approves this request, however, it is likely to take several months before there is final action.)

Will HUD revise the PIH notice and any subsequent guidance provided to PHAs to track the proper legal requirement?

8. **Adjusting subsidy levels as a reasonable accommodation to persons with disabilities.** One of the important differences between section 8 voucher program rules and the rules HUD adopted for KDHAP is the ability – and possibly obligation – of PHAs to increase the subsidy level above the usual payment standard if necessary to allow a person with disabilities to rent a suitable unit. PIH Notice 2006-12 goes to great length to explain the subsidy rules of the program to PHAs (see pp. 13 -15) but fails to remind PHAs of this significant change.

Will HUD revise PIH Notice 2006-12 and provide guidance to PHAs concerning their obligations to persons with disabilities?

9. **Policies concerning re-occupancy of pre-disaster HUD-assisted housing.** In the supplemental appropriations act, Congress included a clear mandate to HUD that “all households receiving housing vouchers under this heading shall be eligible to reoccupy their previously assisted housing, if and when it becomes available.” (emphasis added). HUD indicates that it will issue separate guidance on reoccupancy policies. (pp. 11, 19)

Will you assure us that HUD’s guidance will be consistent with this mandate?

Will HUD ensure that policies adopted by the HUD-appointed receiver for the Housing Authority of New Orleans comply with this requirement? (On February 21, the Times-Picayune reported that the HANO receiver proposed to the New Orleans City Council that it adopt a “working preference” for public housing residents. It was not clear from the article whether this proposal was intended to cover only new applicants (which could be lawful) or was also intended as a re-screening requirement for returning tenants (which would not be permissible).

The DVP Notice provides helpful direction to eligibility screeners at Referral Call Centers or PHAs that if the HUD database indicates that a family's pre-disaster unit is ready for reoccupancy that the family can choose to return to their prior home. For poor families, however, realizing this right may be impossible without funds to pay for moving costs.

What steps will HUD (and FEMA) take to provide families with the funds needed to return home?

10. **Housing agency participation in the DVP program.** Under KDHAP, PHAs could choose not to participate in the new program. Some agencies (*how many?*) declined, apparently due to concern that their administrative obligations would exceed the funds available to meet them. Under PIH Notice 2006-12, it is clear that no new contract is required with agencies already participating in the Section 8 program, and that supplemental DVP funds will be added to their regular Section 8 contract with HUD. (¶4(d), p. 9) In addition, PIH Notice 2006-12 increases the initial administrative fee (from \$1,000 under KDHAP to \$1,500) for each family placed, compared with the regular voucher program in which PHAs do not receive a special initial lease-up fee. Nevertheless, PIH Notice 2006-12 again gives agencies a choice whether to participate in the special section 8 voucher program for families displaced by Hurricanes Katrina and Rita.

Why is HUD potentially restricting families' choice of where to live by giving PHAs the option whether to participate in DVP?

Has HUD considered the potential fair housing implications of allowing such a choice?

11. **Use of DVP assistance in project-based section 8 units.** PIH Notice 2006-12 allows owners of units with project-based section 8 assistance to forego payments under their project-based contract and rent units to families with DVP subsidies. This decision appears to be the owner's alone, without regard to whether there is a waiting list for units in the building.

Why has HUD adopted this policy?

Will HUD agree to revise PIH Notice 2006-12 to limit this option to buildings without a waiting list of eligible families?

12. **Notifying families searching for housing of new DVP provisions.** PIH Notice 2006-12 fails to direct PHAs to inform families now searching for housing with vouchers issued under the KDHAP rules of the changes made by DVP. It is important that families understand the changes, as the new policies – particularly the obligation to use the PHA payment standard – have significant implications for the housing available and the families' cost burden.

Will HUD take steps to require PHAs immediately to notify searching families of the DVP changes?

13. **Preventing resegregation.** Families displaced to Baton Rouge, Houston, Atlanta, and elsewhere may become resegregated in areas of high minority and/or poverty concentration because KDHAP payments were low, relative to market rents.

If newly adjusted FMRs are inadequate to provide families with a full range of housing choices, will HUD permit higher exception rents in order to expand displaced families' housing choices and thereby help prevent resegregation?

PIH 2006-12 directs PHAs to provide intensive housing search assistance, and provides for one-time initial placement fees of \$1,500.

Will HUD provide guidance encouraging PHAs to provide housing counseling to DVP households in order to prevent resegregation?

Will HUD provide guidance encouraging PHAs to engage in landlord outreach in order to identify and encourage participation by landlords outside of high-poverty areas?

Thank you for consideration of our questions and concerns. We look forward to your response.

Sincerely,

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Greater New Orleans Fair Housing Action Center, James Perry
Lawyers Committee for Civil Rights Under Law, Joe Rich
New Orleans Legal Assistance, Laura Tuggle
New Orleans School of Law/Loyola University, Bill Quigley
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