

MEMO OF MEMBERS

The Weekly Newsletter of the National Low Income Housing Coalition

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HUD

Proposed FMRs Released: Multiple Adjustments Cloud Implications for Tenants

After a long delay, the 2005 proposed Fair Market Rents (FMRs) were published in the Federal Register Friday, August 6. Starting Friday, the public officially has just 30 days to comment on the whether the FMRs adequately reflect the market for low income rental housing.

The 2005 proposed FMRs vary significantly from the 2004 FMRs currently in use. Metropolitan areas tend to see a decline in FMRs, while nonmetropolitan areas see an increase. While some of the changes may be due to actual rental market trends, which nationally remain unclear, additional—and often conflicting—sources of variation come from the implementation of the new metropolitan statistical areas (MSAs), “re-benchmarking” to the 2000 Decennial Census, and changes in how HUD calculates the FMRs this year.

The current standard is based on the 40th percentile rent as best HUD can determine it across metropolitan areas and rural counties. Since only the Census provides statistically valid counts of housing units and their characteristics at the county level, rebenchmarking to the new Census data is a necessary and welcome change this year. All things being equal, using newer data as the basis for projections will make these projections more accurate reflections of the rental housing market. If this were the only change, there would likely be little reason for general concern, even if the process had a few less-than-positive local impacts.

While the Office of Management and Budget’s new MSA definitions also result from the new Census, their implementation is far less straightforward. The new OMB definitions most often expand MSAs, encompassing many previously rural counties. Since the median rent within a metropolitan area is likely to be significantly higher than it is in the surrounding nonmetropolitan areas there are often dramatic jumps in FMRs for such “newly metropolitan” counties. The most extreme example in this year’s proposed FMRs is San Benito County, now in the greater San Jose MSA, which saw its FMR jump \$875. Sometimes counties are switched from one MSA to another or they revert to nonmetro status. Warren County, NJ, for example, saw its FMR drop \$302 because it was switched from the greater Newark MSA to the greater Allentown, PA, MSA. Counties that switch from metro to nonmetro status also likely experience declines in their FMRs. In New England, a move to county-based MSAs may have similar effects.

(See HUD on p. 2)

Save the Date! NLIHC Annual Conference

NLIHC’s 2005 Annual Housing Policy Conference and Lobby Day will be held Monday and Tuesday, May 2 and 3, at the Capital Hilton in Washington, DC. The Leadership Reception will be held the evening of May 3. Mark your calendar and plan to join us!

Remember NLIHC During the Combined Federal Campaign

Please keep NLIHC in mind during the 2004 Combined Federal Campaign, which will begin soon. Our CFC number is 0828.

POINT OF VIEW

by Sheila Crowley, President

A new report from the UC Berkeley Labor Center analyzes the use of publicly funded, income supplementing programs by Wal-Mart employees in California (see review and reference elsewhere in *Memo*). The thesis is that because Wal-Mart employees make such low wages and so few have health care coverage and thus must rely on food stamps, subsidized housing, state health insurance child care subsidies, and other safety net programs to make ends meet, the taxpayers are subsidizing Wal-Mart. Because Wal-Mart commands such a large and growing percentage of the market for food and other consumer goods that it is able to offer at lower prices because of its lower labor costs, other companies who would pay higher wages and provide more benefits can no longer compete. They go out of business or drop their wages to the lowest common denominator. The UC Berkeley study notes that Wal-Mart gives its “associates” information about public benefits for which they may qualify and how to apply for them.

I had the occasion last year to meet with some representatives of another national retail giant that also hires large numbers of “associates” who are paid less than a living wage. They wanted to know what they could do to help the growing number of their employees who could not find housing they could afford and were asking the company for help. Were there government programs they could refer their employees to? I quickly disabused

(See Point of View on p. 7)



NATIONAL LOW INCOME
HOUSING COALITION

HUD (cont'd from p. 1)

There is also another wrinkle to consider. This year OMB introduced the notion of a "Metropolitan Division," a county or group of counties *within* an MSA with a population of at least 2.5 million, which according to HUD functions "as a distinct social, economic, and cultural area within the larger region." OMB directed federal agencies to "consider" using divisions in their programs. HUD decided to implement divisions in calculating the FMRs, though it is not immediately clear that these divisions have much validity in the context of housing markets. In general, the result is that some of the better-off suburban counties have been separated from the so-called "core part" of the MSA, with clear implications for FMRs. For example, in the Washington, DC, area, Bethesda and Fredrick, MD, and their surrounding counties have been separated from the area that spans from Washington, DC, to Jefferson County, WV, and includes Prince Georges and a number of other Maryland counties. It is not clear why Bethesda, which borders Washington, DC, is less part of its housing market than Jefferson County, which is more than 50 miles away.

To complicate this further, in 2000, HUD published a rule stating that in order to facilitate housing choice in 39 highly segregated housing markets, 50th percentile rents rather than 40th percentile rents would be the basis for the FMR in these markets. Four of these 39 MSAs are subject to division in the proposed 2005 FMRs. In these four MSAs (Chicago, Detroit, Philadelphia, and Washington, DC) the non-core part of the MSA reverts to the 40th percentile. The core part of the MSA continues to have its FMR set at the 50th percentile. This change often has a contradictory effect, as the impact of higher median rents in non-core, suburban parts of the MSA are offset by the decline in the percentile of the rent distribution used as the basis for the FMR. Also in 2005, Bergen and Passaic Counties switch to the New York MSA and in the process lose their 50th percentile designation.

HUD also chose this year to implement the micropolitan area designation in the new OMB MSA definitions. These are nonmetropolitan counties that meet certain population and other criteria and therefore are differentiated from purely rural counties. Similarly this year HUD has decided to do away with the state minimum FMRs. For low population, nonmetropolitan counties with small Census recent mover samples (on which FMRs are based), county group data were used. The result is significantly more variation in FMRs among nonmetropolitan counties than in recent years.

These changes to how this year's proposed FMRs were calculated will contribute to the significant varia-

tion between the proposed FMRs and the 2004 FMRs. In turn, FMRs are an important part of the Section 8 and other housing programs, and over the next few weeks, advocates hope to gain a much clearer picture of what the implications of these changes mean for these programs.

Further muddying the waters, the HUD secretary has taken the unprecedented step of distancing himself from the FMRs. In an August 6 op-ed in the *New York Times* (see related article elsewhere in *Memo*), Secretary Jackson states that FMRs are "based on imprecise government data," and that they "rarely reflect true market value."

Advocates can find information on the FMRs as well as the data for their community at www.huduser.org/datasets/FMR/FMR2005/fmr05.html.

Homelessness Data Notice Released

The final notice regarding the Homeless Management Information Systems (HMIS) was released by HUD July 30. HMIS is a computerized data collection application that facilitates the collection of information on homeless individuals and families who use residential or other homeless assistance services. Beyond sharing information and tracking use of services, one goal is to assess and document a community's progress in reducing homelessness. A draft notice was published in June 2003, after which advocates including NLIHC urged HUD to request only essential data and to take steps to further ensure confidentiality.

The final notice presents the universal data elements that HUD has determined must be collected from all clients receiving homeless assistance services as well as the program-specific data elements to be collected from clients using certain types of programs. Data that must be collected include date of birth, gender, race and ethnicity, veteran's status, and some disability information. The notice also reviews HMIS privacy and security standards that apply to an HMIS and to programs that collect, use or process HMIS data.

The notice is effective August 30, 2004, except for "late-stage entry" by domestic violence programs, which have noted particular concerns regarding privacy. There is no deadline for the inclusion of domestic violence programs, according to the National Network to End Domestic Violence. NNEDV continues to lobby HUD to exempt domestic violence programs from participation altogether.

The final notice, FR 4848-N-02, can be found at www.hudclips.org/cgi/index.cgi.

SPECIAL REPORT

FY04 VOUCHER FUNDING CRISIS WEEK 16

Cuts Spur Concern and Action; Jackson Writes NYT Op-Ed

As reported for months in *Memo* and by media outlets around the country, advocates from coast to coast have been protesting HUD's policy on FY04 voucher funding as well as the Administration's proposed housing budget for FY05. Advocates in Berkeley are bringing attention to these issues through a petition drive and a video about housing funding cuts, while Seattle advocates held a well-attended rally in front of a federal office building. In Elgin, a suburb of Chicago, staff for House Majority Leader Dennis Hastert (R-IL) interceded to prevent voucher tenants from an imminent loss of their housing assistance. Montana officials have appealed insufficient funding levels, and officials in Woodbridge, NJ, have taken action to avoid the termination of 72 voucher holders, at least temporarily.

The *Chicago Tribune* reported on August 4 that the Housing Authority of Elgin was poised to terminate funding for 32 voucher tenants at the end of July, in response to a feared shortfall caused by HUD's FY04 voucher funding changes. Staff for Speaker Hastert arranged for the Housing Authority to meet with HUD officials and encouraged the Housing Authority to appeal HUD's funding levels. In anticipation of its meeting with HUD, the Housing Authority extended the tenants' vouchers until the end of August, as HUD helps the agency review its financial situation.

Meanwhile, news outlets in Montana have reported that 400 tenants with vouchers funded by the state's Housing Assistance Bureau may lose their subsidies or, in the alternative, the agency may reduce the subsidies paid on behalf of thousands of voucher holders in its program to avoid terminating vouchers. The Housing Assistance Bureau, which issues vouchers statewide, has a gap in funding of \$920,000. The agency has appealed its funding levels to HUD on the basis of decreasing tenant incomes and increasing utility costs.

The planned termination of vouchers in Woodbridge, NJ, garnered some of the early headlines following HUD's April notice on its FY04 funding policy. On July 31, Woodbridge Housing Authority (WHA) voted to accept a loan from the Woodbridge Affordable Housing Corp. to fund the restoration of 72 vouchers that had been terminated by the agency for August and September, according to the *Home News Tribune*. WHA had already voted to restore vouchers for July. But the

(Continued next column)

National Housing Trust Fund

NY Times Endorses Discharge Petition

Efforts to gain support for a discharge petition for National Housing Trust Fund legislation received a boost this week when the *New York Times* ran an editorial highlighting the efforts of Members of Congress to use the discharge petition to force consideration of progressive housing legislation.

"After a stretch of bad news for the millions of Americans trying to find decent affordable housing, there are finally signs of progress," the *Times* wrote on Monday, August 2. The editorial, titled "Mutiny in the House" went on to describe the petition as a way to sidestep "leaders in the House who have kept a bill that addresses the housing crisis bottled up in committee - even though it has more than 200 co-sponsors."

As reported in previous issues of *Memo*, the discharge petition was filed July 22 by three cosponsors of H.R. 1102, National Housing Trust Fund legislation. If a majority (218) of the Members of Congress sign the petition, the bill will have the opportunity to move to the floor of the House for debate and a vote. More information, as well as a link to the *Times* editorial, is available at www.nhtf.org.

(Continued from previous column)

72 voucher holders remain at risk after their two-month reprieve because WHA is waiting to learn whether HUD will approve rent levels sufficient to support those vouchers for WHA's next fiscal year, which begins on October 1. The *Home News Tribune* noted that the temporary restoration of funding for the 72 vouchers was too late for some families already forced to move because of the uncertainty about the funding.

Advocates protest with video, balloons. Strawberry Creek Lodge (SCL) is a senior building in Berkeley with 160 residents, including 50 project-based Section 8 tenants. The Legislative Committee of the SCL Tenants Association became extremely concerned as its members tracked possible voucher funding cuts through materials released by NLIHC and the Center on Budget and Policy Priorities. In response, the Legislative Committee, under the leadership of Bonnie Davidson, drafted a petition urging Congress to "enact legislation restoring the original purpose and funding of the Department of Housing and Urban Development as it was enacted in 1965."

The Legislative Committee, with a membership of en-
(See **Vouchers** on p. 4)

Vouchers *(cont'd from p. 3)*

ergetic seniors in their 70s and 80s, reached out to other senior buildings, drop-in centers and churches in Berkeley and Oakland and gathered 6,000 signatures on the petition. When asked how the seniors were able to collect so many signatures, Ms. Davidson said, "We just went out on our wobbly legs and got them." On April 13, the SCL tenants presented the petition to Representative Barbara Lee (D-CA) at an event that included speeches by Ms. Lee; Steve Barton, Berkeley's housing director; and Wanda Remmers, executive director of Housing Rights Inc., a Berkeley-based organization serving tenants.

The seniors turned the April 13 event into a video called "Save HUD: Seniors Fight Back." The video also includes music and views of the San Francisco Bay Area and is being given away by the SCL tenants for the cost of postage. (For more information, contact Bonnie Davidson, SCL Tenants Association, 510-644-9450, www.savehud.org.) Ms. Davidson said that SCL is known for its activism and advocacy. Even so, she said that she had to convince her fellow tenants that, while seniors in project-based properties might not be at immediate risk, the threat to the voucher program foreshadowed the dismantling of other housing programs in the future.

Showing passion equal to the SCL tenants, advocates in Washington State held a rally outside the federal building in downtown Seattle on August 3 to draw attention to HUD's current policy on voucher funding and proposed cuts for FY05 and beyond. The rally was attended by 350 people and the crowd's purpose on the federal building plaza was recognizable to passers-by from blue helium balloons reading "Save Section 8." The rally was organized by the Tenants Union of Washington and endorsed by several public housing agencies and 40 other advocacy, community, religious and labor organizations.

Speakers at the rally included Representative Jim McDermott (D-WA); staff for Senators Maria Cantwell (D-WA), Patty Murray (D-WA), and Representative Norm Dicks (D-WA); Tacoma Housing Authority Director Peter Ansara; Will Parry from the Alliance for Retired Americans; and tenants from Pierce and King counties. Surina Crumble, a Section 8 tenant with the Pierce County Housing Authority whose voucher will be terminated at the end of August, told the crowd, "These cutbacks not only affect my household and my family, but yours, the elderly and the disabled. We all have one thing in common: we are all poor."

Jackson writes NYT op-ed on FY05. "Section 8, the federal program created in 1975 to provide low income families with the opportunity to rent safe and affordable housing in the private market, is broken. The Department of Housing and Urban Development has a plan to fix it," HUD Secretary Alphonso Jackson wrote in an op-ed piece that ran in the *New York Times* on Friday, August 6. The article criticized the rising cost of the program in recent years and urged support for the Administration's Flexible Voucher Program, which would turn the program into a block grant to housing authorities beginning in FY05 and remove important resident protections.

Advocates were particularly distressed at Mr. Jackson's assertion that the cost of the voucher program has "spiraled out of control" and that these increases have "already begun eating away at other essential HUD programs." Advocates note that cost of the program has risen in recent years due to increasing rents, the funding of additional vouchers, and changes to the program made by Congress to help communities increase their utilization rates, and that these factors combined with additional need should lead Congress to increase federal housing assistance, as opposed to cutting other housing programs.

Mr. Jackson also criticized the voucher program as "overly prescriptive" and "unwieldly" and argued for programmatic changes including the elimination of the "quota system" that requires that three-quarters of vouchers go to families below 30% of the area media income. "Housing authorities would no longer have to discriminate against those moving up the economic ladder," he wrote.

Mr. Jackson called on Congress to consider the Flexible Voucher Program when it reconvenes. The Administration's proposal has not gained traction among Members of Congress of either party.

The op-ed can be found at www.nytimes.com/2004/08/06/opinion/06jack.html. In response, NLIHC submitted a letter to the editor, which can be found at www.nlihc.org.

Congressional Recess

Both the House and Senate have adjourned for the August recess and will return September 7. Advocates will use the time that Members of Congress are in their home districts to raise key housing issues with them.

Capitol Hill

Federal Deficit Projected to Set Record

The national deficit for 2004 is expected to reach \$445 billion, the largest ever, the White House reported July 30. The Bush Administration, which had anticipated an even higher deficit, downplayed the projection. “This improved budget outlook is the direct result of the strong economic growth the President’s tax relief has fueled. The Mid-Session Review shows receipts rising above our previous estimates by \$76 billion in 2004 and \$55 billion in 2005.” The Administration also maintains the deficit will be cut in half over five years.

Democrats criticized both the new deficit figure and the Administration’s attempts to claim at least a qualified success. The report, released by the Office of Management and Budget as its Mid-Session Review, also states that the federal government is on course to reach its debt ceiling limit—the maximum amount of debt allowed by federal statute—in early October. Congress would then have to raise the debt limit just before November elections.

Bills At a Glance

Current information on legislation being tracked by NLIHC is available through NLIHC’s legislative action center, at <http://capwiz.com/nlihc/issues/bills/>.

The Administration

CRA Protections Threatened

The Office of Thrift Supervision (OTS), under authority that has been questioned by the National Community Reinvestment Coalition (NCRC), has increased the threshold that savings associations must meet before being affected by Community Reinvestment Act (CRA) requirements—from \$250 million to \$1 billion. Meeting the threshold triggers compliance with CRA performance evaluations on the levels of lending, investing, and services to low and moderate income communities. While four banking regulatory bodies, including the OTS, were considering raising their CRA thresholds, only OTS moved forward. As a result, 88% of thrifts (828 institutions) in the United States will now have only cursory CRA exams that look only at limited lending activity.

While two other bank regulators, the Office of the Comptroller of the Currency and the Federal Reserve, withdrew their proposals to increase threshold levels, the fourth regulator, the Federal Deposit Insurance Corporation, may now follow OTS’s lead.

According to the National Association of Affordable Housing Lenders (NAAHL), if the FDIC increases its CRA exam threshold from \$250 million to \$1 billion, nonprofit providers of affordable housing that rely on

bank investments in loan pools, tax credits and purchase of mortgages on affordable rental housing will face significant declines in resources. And, because institutions with assets of \$250 million to \$1 billion comprise substantial market share in rural areas, such a change would mean that many rural communities and states would not have any institutions required to offer services and investments that benefit low and moderate income communities, according to NAAHL.

Housing in the Elections

Presidential Campaigns Receive Housing Questionnaire

As NLIHC’s most recent poll indicates (see *Memo*, July 23), likely voters are concerned about the affordable housing crisis. Advocates are hoping to translate this interest among voters into an increased discussion of affordable housing issues by the candidates during the last three months of the presidential campaign. To this end, the Campaign for Housing and Community Development Funding (CHCDF), a broad-based coalition of organizations of which NLIHC is a member, this week sent the Bush-Cheney and Kerry-Edwards campaigns a questionnaire asking the candidates to outline their positions on eight topics related to housing and community development issues, including housing production, homelessness, and the minimum wage.

The campaigns were given until September 1 to answer and return the questionnaires. Once CHCDF receives responses from the campaigns, individual member organizations will be able to distribute the questions and answers to their members. NLIHC plans to have the questions and answers sent to members by mid-September, and will encourage those participating in the National Homeless and Low Income Voter Registration Week, scheduled for September 26 through October 3, to use the questions and answers to educate their clients, guests, and residents on the candidates’ positions on these very important issues.

Advocates are hoping that another forum for the candidates to make their views on affordable housing known will be the three presidential debates and the vice-presidential debate, each of which will be nationally televised. The first presidential debate will be September 30 at the University of Miami in Coral Gables, FL; the second will be at Washington University in St. Louis, MO, on October 8; and the third will be at Arizona State University in Tempe, AZ, on October 13. The vice presidential debate will be October 5 at Case Western Reserve University in Cleveland, OH.

The location, time, format, and question selection are all chosen by The Commission on Presidential Debates (CPD). Check future *Memos* for any opportunities to submit questions for consideration by the commission.

Resources

Least Experienced Consumers Prefer Adjustable-Rate Mortgages

Minority and low income consumers are the most likely to prefer adjustable-rate to fixed-rate mortgages, and are also the most likely to underestimate the risks of ARMs, according to a new survey released by the Consumer Federation of America. While the majority of Americans in all subgroups still prefer fixed-rate mortgages, the percentages of younger, less educated, low income, and minority respondents who preferred ARMs were greater than those of people with more experience in the mortgage market. In addition, consumers who preferred ARMs were less likely to have clear reasons for doing so, and had less understanding of how an interest rate hike would affect their monthly payments.

CFA's survey asked participants to imagine purchasing a home in the next month with a 30-year mortgage, and to choose the type of mortgage they would prefer from three options described. Overall, 64% of Americans preferred fixed-rate mortgages, compared to 25% who preferred one of two types of ARMs; the rest were undecided or unable to answer. However, 33% of respondents with annual incomes below \$25,000 said they preferred ARMs to fixed-rate mortgages, compared with 20% of those earning more than \$50,000. Among 18-24 year olds, 32% preferred ARMs, while only 19% of those aged 45-64 did. In addition, 37% of Hispanics and 31% of black respondents favored ARMs, compared with 23% of whites.

The same groups more likely to favor ARMs were also less informed about the risks of these mortgages than the general population. For example, they were far less likely than all Americans to be able to estimate the increase in a hypothetical mortgage resulting from a two-point interest rate hike. When they did give an estimate, Hispanics, young adults, low income people, and those without high school degrees all underestimated the actual increase by 40% to 50%. According to CFA, these groups are also more likely to be attracted to more risky interest-only loans.

The report closes with a call to consumers to use caution and carefully evaluate their own financial situation before purchasing an ARM; it further urges lenders to stop marketing ARMs to consumers with low incomes, wealth, or credit scores.

The survey is available from CFA at www.consumerfed.org/backpage/realestate.cfm.

State Indirectly Subsidizes Wal-Mart

Each Wal-Mart worker in California costs the state an estimated \$1,952 in public assistance, including expenses from Section 8, health and childcare programs, TANF, and several other programs, a new report by the UC Berkeley Labor Center finds. The report shows, using a statistical model that projects public assistance costs based on eligibility rules and employees' demographic characteristics, wages, and benefits, that the state of California provides an indirect subsidy to Wal-Mart of \$85.9 million per year by allowing them to pay low wages and provide few benefits. The authors obtained data on Wal-Mart's wages from public testimony in the sex-discrimination lawsuit against the company; for other variables in the model, they used data from the Current Population Survey. The study also compares Wal-Mart to other large retailers in California, finding that California spends \$551 more on public assistance per Wal-Mart worker than on other retail employees. If the other retailers adopted Wal-Mart's wage and benefits standards, the report concludes, it would cost California taxpayers \$410 million more each year.

"Hidden Cost of Wal-Mart Jobs: Use of Safety Net Programs by Wal-Mart Workers in California" is available at laborcenter.berkeley.edu/lowwage/walmart.pdf.

Fact of the Week

Low Income, Less-educated, Younger, and Minority Consumers Prefer Interest-Only Mortgages

Percent who prefer interest-only loans

All respondents	17%
Income less than \$25,000	21%
Income above \$50,000	14%
No high school diploma	28%
College graduate	12%
Age 18-24	27%
Age 45+	10%
White	17%
Black	22%
Hispanic	30%

Source: *Fixed and Adjustable Rate Mortgage Survey*, Consumer Federation of America, July 8, 2004.

Point of View *(cont'd from p. 1)*

them of the notion that there was some untapped reservoir of government funds that would solve their employees' problems. I did suggest that the company might want to endorse the National Housing Trust Fund Campaign and advocate for greater public investment in affordable housing. Ironically, they were reluctant to make such a public statement that might give people the impression that their employees were not paid well enough. The last I heard, they were putting funds to help employees who needed housing aid into their employee assistance program.

I shared the podium at a conference earlier this year with a HUD employee who reported on an "innovative" welfare-to-work program. A public housing agency had applied for welfare-to-work vouchers (remember when HUD was distributing new incremental vouchers just a couple of years ago?). The application was well-received, and indeed approved, because the PHA had an arrangement with a local employee who agreed to hire anyone coming off of public welfare to whom the PHA would give a voucher. The question I asked was what was the voucher subsidizing – the tenant's rent or the tenant's wage?

Is the affordable housing crisis a housing problem or an income problem? This hardy perennial policy question is well-known to low income housing advocates. The answer, of course, is that it is both. We need more housing that low income people can afford, and low income people need higher incomes. Not only should government intervene when the market fails with aid to individuals, families, and communities, but government has an obligation and indeed an interest in intervening to prevent the market from failing to share profits equitably and fairly. That means increasing the minimum wage, passing living wage ordinances, backing workers' right to organize, and enforcing fair labor standards.

NLIHC Staff

NLIHC Seeks Policy Analyst

NLIHC seeks staff member to track, analyze, and advocate on federal legislative and regulatory issues related to NLIHC mission. Reports to Deputy Director. Qualifications include highly developed communication and policy analysis skills, knowledge of federal housing policy, and commitment to housing justice. Direct experience with the legislative process a plus. Masters' preferred. Send cover letter and resume to Deputy Director, NLIHC, 1012 14th St. NW, Suite 610, Washington, DC 20005. Applications accepted until position is filled. EE0/AA.

NLIHC Seeks Interns

NLIHC is seeking legislative, outreach and research interns for the fall semester who are passionate about social justice issues and who have excellent writing and interpersonal skills. Send a resume and cover letter to:

Internship Coordinator, NLIHC
1012 14th Street NW, Suite 610, Washington DC 20005
or to info@nlihc.org. Questions? Call 202-662-1530 x228.

Tell Your Friends...

NLIHC membership is the best way to stay informed about affordable housing issues, keep in touch with advocates around the country, and support NLIHC's work. Information is available at www.nlihc.org.



About NLIHC: Established in 1974, the National Low Income Housing Coalition is dedicated solely to ending America's affordable housing crisis. NLIHC educates, organizes, and advocates to ensure decent, affordable housing within healthy neighborhoods for everyone. NLIHC provides up-to-date information, formulates policy, and educates the public on housing needs and the strategies for solutions.

National Low Income Housing Coalition
Memo to Members
August 6, 2004
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The NIMBY Report

*on the continuing struggle
for inclusive communities*

National Low Income Housing Coalition

August 2004

GEORGIA

Suit Alleges Increasing Minimum Lot Size is Fair Housing Violation

Gradually, developers and builders have begun to understand the power of the Fair Housing Act to combat discrimination in zoning and land use matters. (See, e.g., Kelli Evans, "Oldsmar: Using Civil Rights Laws to Build Affordable Housing," *The NIMBY Report*, Fall 2002, available at www.nlihc.org/nimby/fall2002.pdf). Vivid support of that proposition can be found in the recent lawsuit filed by the Home Builders Association and Board of Realtors of Hall County, GA. Those organizations and others sued Hall County and its five county commissioners, alleging that recent amendments increasing minimum lot sizes amount to intentional discrimination against Latinos and African-Americans by limiting affordable housing options.

Filed in mid-July 2004 in federal court, the complaint says that zoning code changes in May 2003 and June 2004 that lowered densities in rural parts of the county have discouraged starter homes and put the cost of housing out of reach of people of color. A second count of the lawsuit alleges that recent amendments to the county's comprehensive land use plan violate state and federal fair housing laws because of their harsh effect on minority groups. John Harbin, at Atlanta attorney who represents the plaintiffs, says that he hopes the commission reconsiders these policies. "If not, that's what courts are for," he told the *Gainesville Times*. "We feel very strongly about the merits of our claim."

Litigation can often be a risky venture for individual builders and developers who are dependent on good relations with elected officials for the land use and funding approvals they may need to construct new units, whether they be affordable or luxury in nature. For example, in its recently published a "fair housing toolkit," *Addressing Community Opposition to Affordable Housing Development*, the Housing Alliance of Pennsylvania terms litigation a "last resort." In Hall County, this concern was blunted by the willingness of two powerful trade associations to join a number of individual companies to file the lawsuit.

County Commissioner Deborah Mack was named in the lawsuit, even though she voted against the proposed changes. "All my life I've been dictated to about where I could and could not live," Ms. Mack, who is African-American, said at the public hearing in June. Mr. Harbin explains that his clients were

forced to name all of the commissioners in order to preserve any possible claim they may have. The plaintiffs have asked for a jury trial, which is not likely to be held for at least a year.

For more information: John Harbin, Esquire, Powell Goldstein Frazer & Murphy. Telephone: 404-572-6609. E-mail: jharbin@PGFM.com.

CALIFORNIA

Advocates Sue Santa Cruz Co. over Failure to Provide Affordable Housing

Two years ago, *The NIMBY Report* reported that a "citizen's grand jury" in Santa Cruz County, CA, recommended that the county's district attorney sue county supervisors to force them to comply with state law requiring the county to provide more units of affordable housing. (See "Most Bay Area Municipalities Fail on Housing Crisis Report Card," *The NIMBY Report*, August 2002). Low income residents of Santa Cruz County, finally fed up with inaction from county officials who repeatedly made empty promises that its state-mandated "housing element" would address affordable housing issues, have filed suit in the state's Superior Court. The suit claims that the county's refusal to plan for, and take steps to achieve, a greater number of affordable units violates the state's fair housing law.

The lawsuit, filed in early July, pits California Rural Legal Assistance and the California Affordable Housing Law Project, two tenacious public interest legal groups, against a recalcitrant county that has not had an approved housing plan since the 1980s. The individual plaintiffs are a disabled mother of three, a farmworker who has been living in a storage shed for lack of affordable housing, and a single, unemployed father with one child. The complaint alleges that the county's failure to produce an adequate "housing element" plan puts them and others at risk.

Median single family housing prices in Santa Cruz County have reached nearly \$600,000, and the nearby cities of Santa Cruz, Watsonville, and Capitola have complied with the affordable housing mandate. The lawsuit alleges that unincorporated parts of the county, however, are being developed without regard for the needs of low income residents. More than 22,000 poor people are being forced to pay more than a third of their income for rent, nearly 12% of homes in the county are overcrowded, and there are more than 3,300 families on the county's Section 8 rental voucher waiting list. In addition, there are only 500 units

of farmworker housing in unincorporated areas, far below the actual need.

The primary relief sought by the lawsuit is similar to that the legal advocacy groups have secured in other lawsuits brought under the same legal arguments: a moratorium to prevent the county from issuing any planning or building permits until it completes a state-certified housing plan. The plaintiffs are also requesting that the county identify parcels of land that would permit the development of housing for families making as little as \$39,000 per year, that it increase permitted development density, and that it eliminate paperwork and political reviews for multi-family affordable housing.

Gretchen Regenhardt, an attorney with California Rural Legal Assistance, has little patience with municipal foot dragging. "Santa Cruz, Capitola and Watsonville have all found ways to find the housing necessary," she told the local newspaper. "But the county just isn't doing it. Their failure to adopt their housing plan on time is an abandonment of the low income, disabled, senior, and minority people in this county." Ms. Regenhardt claims that the county has drastically reduced the density allowed on land in the unincorporated areas of the county, making it impossible for developers to propose high-density developments.

For more information: Gretchen Regenhardt, Staff Attorney, California Rural Legal Assistance. Telephone: 831-724-2253. E-mail: gregenhardt@crla.org

MINNESOTA

Moratorium Imposed on Multifamily Housing

Officials with the City of Hastings, a commuting suburb about 30 miles southeast of St. Paul, are taking no pains to sugarcoat their opposition to the development of multifamily housing in the community. Last month, rather than permit a modest condominium project that had been approved by city planners and met all applicable zoning requirements, the Hastings City Council imposed a six-month moratorium on all multifamily developments. While resistance to condominiums and rental units is not unprecedented, most municipalities are subtler in their tactics. In Hastings, City Council members acted decisively against multifamily housing after listening to their homeowner constituents.

Since 1967, cities and towns in the Twin Cities area of Minnesota have been under the jurisdiction of the Metropolitan Planning Council, a regional planning agency which, among other things, sets affordable housing targets for nearly 200 municipalities. According to Tim Thompson, an attorney with the Housing Preservation Project, the Metropolitan Planning Council's goal for Hastings is to create 473 units of affordable

housing by 2010. So far, the city of 17,000 residents has built only 80. The moratorium is likely to slow future progress toward that goal.

One of the central allegations surrounding the moratorium is that Hastings is hostile to poor families. Evidently, the ban on new multifamily units was proposed in response to a developer's request to convert the 36-unit Riverwood project from owner-occupied condominiums to rental apartments. City Attorney Shawn Moynihan recently acknowledged to the *Pioneer Press* newspaper that he was looking for ways to ensure that the project does not turn into a rental property.

City Council member Danna Elling Schultz puts it more bluntly: "I understand the issue of 'Are we trying to keep low-income people out?' I think it's a matter of degrees. We are trying to get these neighborhoods to fit together. That becomes a difficult issue." The "fit" seems to be measured by nearby owners of single family homes who have little sympathy for renters. Hastings Planning Commissioner Anthony Alongi, who is running for City Council, had a hand in approving the Riverwood project, but defends the City Council's decision. Homeowners "work hard for a long time and spend a lot of money on a home, and they want a good view," he told the *Pioneer Press*. "I would expect the city to be a responsible steward of its assets. One of its assets is smart planning and its sensitivity to what people want in their neighborhood."

The courts have generally been skeptical of blanket moratoria against affordable housing because they operate as blunt instruments affecting large groups of people protected under the Fair Housing Act. As *The NIMBY Report* goes to press, there was no definitive word about whether the Hastings ordinance would be challenged in court.

For more information: Tim Thompson, Housing Preservation Project. Telephone: 651-642-0102.

SHORT ITEMS

Community Opposition in OK Kills Tax Credit Property

The handwriting was on the wall in late June, when the Metropolitan Area Planning Commission heard from the neighbors and voted 9-0 to reject the application of Bartlesville (OK) builder Gerald Coast to rezone 26 acres so he could build 216 units of rental housing that would be affordable to families with moderate incomes. Facing a similar defeat by the Bartlesville City Council, Mr. Coast quietly withdrew his application at the end of July. He knew that elected officials would never put up with his project, which they described as too "intense" in land use terms. A city of 40,000 residents about 40 miles north of Tulsa, Bartlesville is experiencing the kind of growth that accompanies localities near larger metropolitan areas. Coast's

project, funded primarily by the Low Income Housing Tax Credit program, would have made units affordable to families making less than \$30,000 per year. It would have provided housing for government workers, industrial employees, local teachers and nurses, and those who work in the retail and service businesses. For more information: Gerald Coast. Telephone: 918-333-2819.

Recovery Home Blues in Several Jurisdictions

News reports from California, Pennsylvania and Maryland during the last month remind us that community opposition to alcohol and drug recovery homes is alive and well, from coast to coast. In the first two instances, communities complain that they are doing more than their fair share. In the third, a city is struggling to update a 40-year old zoning code that violates the federal Fair Housing Act.

Newport Beach, CA: On July 13, the Newport Beach City Council responded to neighbors' concerns about alcohol and drug recovery homes by voting 4-2 to give preliminary approval to new zoning standards governing the homes. On final approval, some homes will have to apply for special use permits. Under the new ordinance, the Planning Commission will consider requests for exceptions. The public hearings leading up to the adoption of the ordinance featured strong support for the homes from people in the recovery community. Mayor Tom Ridgeway, seeming to relish the Council's power to restrict the homes further, told the *Los Angeles Times* that proponents for the homes "were all opposed to our ordinance, which tells me we're on the right track." For more information: Richard Perlin, Newport Coast Recovery. Telephone: 800-990-9691.

York, PA: As we reported last month ("York City Council Advised to Get Tough on Recovery Homes," *The NIMBY Report*, July 2004), York continues to experience serious tension over what city officials consider a proliferation of recovery homes in the small city. The latest skirmish involves plans to convert the former American Lung Association building in the "Doctor's Row" section of York into a 16-person recovery home. Opponents claim that there are more than three dozen recovery and group homes in the 400 and 500 blocks of West Market Street,

and that the neighborhood is fundamentally changed. C. Kim Brown, the city's director of community development, told the *Daily Record* that York officials are not opposed to the homes, but believes certain neighborhoods are overburdened: "Mayor (John) Brenner is doing everything he can to make sure these facilities do not take over every property in the City of York." The newest conflict arose in the context of York's comprehensive review of its zoning code and calls from neighbors and elected officials in favor of requiring permitting and public hearings for all such homes.

Baltimore, MD: Dating back to 1962, Baltimore's zoning code has required City Council approval before alcohol and drug recovery homes can open in residential neighborhoods. That language has persisted, despite passage of the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990, both of which prohibit discrimination in zoning on the basis of disability. Now, advocates have convinced Mayor Martin O'Malley and most of the City Council to update local law and avoid liability for civil rights violations. While expressing some skepticism and noting that neighborhood residents may be shocked to learn that people in recovery are protected by federal laws, even the *Baltimore Sun* has expressed its cautious support of the rewrite: "In a city with 60,000 addicts, drug treatment must be available, affordable and accessible. That should mean within blocks or a short bus ride away. Recovering addicts are living and working in the city now. You just may not know who they are because they have given you no reason to think they are anything but good neighbors." Advocates predict final passage of the new provisions by year's end. For more information: Ellen Weber, University of Maryland School of Law. Telephone: 410-706-0590. E-mail: eweber@law.umaryland.

Thanks to Michael Allen of the Building Better Communities Network (BBCN) for writing *The NIMBY Report*. More information about BBCN is available from its website, at www.bettercommunities.org. Suggestions for articles for *The NIMBY Report* can be sent to Michaela@bazelon.org.