

# The Importance of Issues at the Intersection of Housing and Welfare Reform for Legal Services Work

*By Barbara Sard*

Housing and welfare are two of the traditional core areas of legal services work. Yet major changes in the federal laws governing the low-income housing and family welfare programs since 1996 have transformed many of the basic tenets of either program, as well as the division of policy-setting authority between the federal and state/local levels.<sup>1</sup> As a result of this upheaval, welfare and housing agency policies and practices have become increasingly interdependent. At the same time, decision-making authority in both programs has devolved upon state and local agencies. Advocates can rely on less federal law to protect their clients—far less in the case of welfare policy—yet more opportunity to shape the rules that determine what rights poor families continue to have.<sup>2</sup>

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<sup>1</sup> In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress repealed the Aid to Families with Dependent Children program and replaced it with a block grant program called Temporary Assistance for Needy Families (TANF). Though not so drastic an overhaul as PRWORA, the Quality Housing and Work Responsibility Act of 1998 (QHWRA) altered many long-standing rules governing the public housing and Section 8 programs. (Pub. L. No. 105-276, 112 Stat. 2461, tit. V (Oct. 21, 1998). My article is part of a project to promote work at the intersection of housing and welfare advocacy in legal services programs and was funded by the Project for the Future of Equal Justice, itself a joint undertaking of the Center on Law and Social Policy and the National Legal Aid and Defender Association.

<sup>2</sup> See my and Jeff Lubell's *How the Statutory Changes Made by the Quality Housing and Work Responsibility Act of 1998 May Affect Welfare Reform Efforts* (Center on Budget & Policy Priorities Dec. 18, 1998) <[www.cbpp.org/12-17-98hous.htm](http://www.cbpp.org/12-17-98hous.htm)>. See *Congress' New Public Housing and Voucher Programs*, 28 HOUS. L. BULL. 165 (1998), for a discussion of QHWRA changes.

The new policy environment creates new imperatives for effective legal services work.<sup>3</sup> Advocates must understand how traditionally separate areas of the law affect each other, gain expertise in intersecting areas, and work collaboratively with other specialists. The network of legal services providers in each state must broaden the focus on rule enforcement to include policy advocacy with state and local agencies and educating clients and staff about the broad range of agencies with which they interact.

These abstract exhortations may sound familiar. In this article I make the need for such “intersection work” concrete by focusing on the new rules and advocacy opportunities concerning rent policies in the federally assisted housing programs that will have the greatest effect on families facing welfare work obligations and time limits. But first I must situate the legal, policy, and institutional issues in the context of a possible legal services case.

## **I. Hypothetical Legal Services Case**

Ms. Jones contacts your legal services program for help. She is a public housing tenant and received a notice of the housing authority’s intention to evict her for nonpayment of her previous month’s rent of \$250. She did not pay because she could not afford to. She quit her job because she did not have child care for her three-year-old son. Her aunt was taking care of her son for \$25 per week. Ms. Jones tried to get a child care subsidy to pay more but could not. The aunt decided that she needed to get a job to make more money. Ms. Jones was unable to find other child care, so she had to leave her job. Her only income is a partial Temporary Assistance for Needy Families (TANF) grant of \$200 month and some food stamps. She did not ask the welfare agency to increase her TANF grant or food stamps because she was afraid to report that she stopped working. She told the manager at her public housing development what happened and why she could not pay, but the manager said that there was nothing he could do.

How would your program handle a request for legal assistance? Would Ms. Jones be able to receive advice from an advocate who knows about public housing rent and eviction rules, welfare work requirements, and child care subsidies? Or would advice on these issues

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<sup>3</sup> See, e.g., Alan W. Houseman, *The Context for Information Technology: The Transformation of the Civil Legal Assistance System*, 33 CLEARINGHOUSE REV. 25 (May–June 1999).

require appointments with two or three advocates? Instead of letting her speak with one or more advocates, would your program send her advice on public housing grievance procedures, tell her to call when she had court papers, and ignore her implicit need for advice on welfare rules and child care?

If Ms. Jones is fortunate enough to receive advice, would the advocate be up-to-date on new rules that apply to Ms. Jones's rent obligation, such as the eligibility for a special earnings disregard, the requirement not to reduce rent when a member of a household loses income due to a welfare sanction, the option of public housing tenants to choose a "flat rent," or the rule to exempt tenants who have lost jobs from minimum rent? Would the advocate know whether the welfare agency would be likely to reduce or terminate Ms. Jones's TANF benefits if she reported her job loss and asked for a benefit increase? In your program (or available on referral) are there advocates who could help Ms. Jones solve her child care problem?

In addition to raising potentially troubling questions about whether legal services programs are organized to respond competently and efficiently to cases involving intersecting legal issues, this example challenges us to address whether the legal services delivery system in each state is adequate to minimize the likelihood that cases like this one will occur. Are advocates aware of the systemic problems facing families required to work under welfare reform? Are advocates pursuing effective strategies to address funding shortfalls in key areas? Are they knowledgeable about the programs and resources that housing programs can contribute to help families get and keep jobs? Are they working with tenant or other community groups to influence housing agencies' rent and self-sufficiency program policies?<sup>4</sup>

To increase advocates' understanding of the importance of issues at the intersection of housing and welfare and current key issues, in this article I review the linkage of housing programs and welfare reform efforts. I then focus on two specific areas of the housing/welfare intersection: housing agency work-related rent policies and new issues in retaining housing assistance as part of the safety net for families that lose subsistence income because of new welfare policies.

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<sup>4</sup> Programs that receive funding from the Legal Services Corporation are generally not precluded from using the corporation or other funds to advocate on behalf of eligible clients for housing agency policies beneficial to them. See note 52 *infra*.

## II. The Link Between Housing and Welfare Reform

Approximately 2.1 million families with children receive federal housing assistance. According to data from the U.S. Department of Housing and Urban Development (HUD), nearly half of the HUD-assisted families with children received income from Aids to Families with Dependent Children (AFDC) or TANF in 1996. Of these one million families, about 280,000 lived in public housing, 480,000 received tenant-based vouchers and certificates, and 250,000 lived in project-based Section 8 housing.<sup>5</sup>

### A. The Intersection of Housing and Welfare Receipt

As of late 1996, approximately one quarter of the families receiving AFDC/TANF benefits lived in assisted housing.<sup>6</sup> This ratio varied significantly from state to state, as shown in table 1.

In Massachusetts, for example, over 40 percent of AFDC families received housing assistance, while only 12 percent of AFDC families received housing assistance in California. Table 2 shows in each state the percentage of the households receiving welfare assistance and also receiving federal housing assistance.

Insert table 2

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<sup>5</sup> Administrative data tabulated by the Department of Housing and Urban Development (HUD). Data for public housing and the tenant-based program are from the 1997 Multifamily Tenant Characteristics System. Data for the project-based Section 8 program are from the 1996 Tenant Rental Assistance Certification System. Unfortunately, for all three programs, these are the latest data that track welfare receipt by family composition. The number of families receiving TANF has declined significantly since 1996, and the ratio of HUD-assisted households receiving welfare assistance has probably declined as well, though not necessarily as rapidly as the general caseload decline.

<sup>6</sup> This section is drawn from my and Jennifer Daskal's *Housing and Welfare Reform: Some Background Information* (Center on Budget & Policy Priorities Nov. 5, 1998) <[www.cbpp.org/hous212.htm](http://www.cbpp.org/hous212.htm)>.

## B. Interdependency of Housing and Welfare Programs

That a quarter or more of families receiving TANF benefits live in assisted housing and that a similar portion of households with federally assisted housing receive income from TANF have great significance for policymakers, program administrators, and advocates.<sup>7</sup> The success and financial soundness of the housing and welfare programs are interdependent in complex ways.

Families rendered destitute from welfare program changes cannot pay rent and are likely to increase housing agency costs for maintenance and security. Yet housing agencies control unique resources that can provide employment and support services for families trying to meet work obligations.<sup>8</sup> The prospect of increased rent as a consequence of increased income may discourage some TANF families in assisted housing from going to work or increasing their work hours. Can rent policies be adjusted to minimize this disincentive? Families without stable, affordable housing are less likely to be able to comply with work requirements and retain employment. Increased admission of current and recent TANF recipients to subsidized housing, however, may advance the goals of welfare reform.<sup>9</sup> Families who are in assisted housing and lose TANF benefits due to sanctions or

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<sup>7</sup> See *supra* note 5. Jill Khadduri et al., *Welfare Reform and HUD-Assisted Housing: Measuring the Extent of Needs and Opportunities* (paper presented at the conference on “Managing Affordable Housing Under Welfare Reform: Reconciling Competing Demands,” sponsored by the Fannie Mae Foundation and the Center on Budget and Policy Priorities, June 26, 1998) (in spring 2000 the Fannie Mae Foundation will publish a revised version of this paper as well as the other conference papers).

<sup>8</sup> See my *Outline of How Federal Housing Programs Can Help Provide Employment and Training Opportunities and Support Services to Current and Former Welfare Recipients* (Center on Budget & Policy Priorities Feb. 9, 1998) <[www.cbpp.org/pubs/housing.htm](http://www.cbpp.org/pubs/housing.htm)>; Office of Policy Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., *From Welfare to Work: Using HUD’s Programs to Help Families in Transition* (1999) <[www.huduser.org/publications/pubasst/transition.html](http://www.huduser.org/publications/pubasst/transition.html)>.

<sup>9</sup> See, e.g., Jeff Lubell’s and my *Welfare-to-Work Housing Vouchers: An Innovative Approach to Welfare Reform* (Center on Budget & Policy Priorities Feb. 2, 1999)

time limits are likely also to lose their housing unless their income is rapidly restored or rent obligations are reduced commensurately with the loss of income. Losing affordable housing may accelerate such families into a tailspin of instability and homelessness from which it is even more difficult to move into regular employment.

Examining work-related rent policies and new rent provisions affecting families who lose TANF benefits can illuminate the increased interdependency of housing and welfare programs and its significance for TANF recipients living in federally assisted housing.

### **III. Work-Related Rent Policies**

Tenants in most federally assisted housing programs pay 30 percent of their income for rent and utilities, with only small deductions from gross income for each minor dependent.<sup>10</sup> As a result, when families' incomes increase due to work, required rent payments generally increase as well.

#### **A. Earnings Disregard Policies**

For families receiving TANF and food stamps, incremental earnings are likely to decrease these benefits, and increase rent obligations.<sup>11</sup> The result is a common

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<[www.cbpp.org/12-2-98hous.htm](http://www.cbpp.org/12-2-98hous.htm)> and my and Jeff Lubell's *The Increasing Use of TANF and State Matching Funds to Provide Housing Assistance to Families Moving from Welfare to Work* <[www.cbpp.org](http://www.cbpp.org) (forthcoming)>.

<sup>10</sup> 42 U.S.C. § 1437a(a); 24 C.F.R. §§ 5.601 *et seq.* Elderly and disabled families qualify for additional deductions.

<sup>11</sup> TANF, like pre-TANF waiver programs, gives states flexibility to design their own earnings-disregard policies. Most states currently provide more generous earnings disregards than federal law previously allowed, i.e., families may retain some earnings before suffering a dollar-for-dollar reduction in welfare benefits. A few states disregard 100 percent of earnings for limited time periods or up to certain levels of income. Advocates must find out the specific earnings-disregard policies applied in their states (or, in some cases, counties). The Food Stamp Program disregards 20 percent of gross earned income before reducing benefits by about \$1 for every \$3 earned. As a result the Food

perception—by tenants, housing agency staff, and policymakers—that federal housing rent policies are a disincentive for tenants who receive welfare benefits to go to work or increase their earnings.<sup>12</sup>

Despite such consensus, there is reason to doubt that rent increases faced by tenants with new or increased earnings are by themselves significant disincentives to work when compared with the loss of some or all TANF and food stamp benefits, particularly in light of new welfare agency work requirements and time limits.<sup>13</sup> Still, there is no question that assisted housing tenants receive a lesser net benefit from going to work or increasing their incomes than families without housing assistance (even though they may be financially better off than families who do not have housing subsidies). Working tenants often feel it unfair that they pay more rent than tenants who receive welfare.

An example from Michigan, a typical state regarding the level of TANF benefits and

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Stamp Program reduces benefits by 24 percent of the net increase in income after TANF adjustments due to earnings. See L. Jerome Gallagher et al., *One Year After Federal Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997* (Urban Inst. May 28, 1998) <[www.urban.org/authors/gallagher.html](http://www.urban.org/authors/gallagher.html)>, for a summary on work-related policies. See Liz Schott, *State Choices on Time Limit Policies in TANF-Funded Programs* (Center on Budget & Policy Priorities Sept. 1998) <[www.cbpp.org/9-1-98wel.htm](http://www.cbpp.org/9-1-98wel.htm)>, regarding time limits.

<sup>12</sup> As part of the Jobs Plus demonstration research project, public housing tenants at selected developments in six cities responded to questions, inter alia, about their perceptions of problems they would face in taking a full-time job. Only 35 percent said that the resulting rent increase would not be a problem to them. More than 45 percent thought the rent increase would be a “pretty big” or “very big” problem. Manpower Demonstration Research Corporation, 2 Jobs-Plus Baseline Survey Data Resource Book 47. See QHWRA § 502(a)(3), (a)(5)(D), (b)(5), 112 Stat. 2520–21 (Findings and Purposes include reversing disincentives for economic self-sufficiency).

<sup>13</sup> Gallagher et al., *supra* note 11.

earnings disregards, illustrates these concepts. A woman in a three-member Michigan family who lives in subsidized housing and whose only income is TANF and who takes a half-time job that pays minimum wage (at \$5.15 per hour) would realize a net gain from working of only about \$1 for each hour of work. (This example assumes that none of the limited disregards discussed below applies.) The gain would be even less if she had work expenses other than payroll deductions. When the Earned Income Tax Credit (EITC) is taken into account, the family's total net income increases about \$3 for every hour of work—but most families receive their EITC refund only once per year. If the same family did not live in subsidized housing, the net increase in income would be a little less than \$2 for every work hour. Thus most of the earnings “tax” is the result of reductions in TANF and food stamps, with less than \$1 per hour due to the increase in rent.<sup>14</sup>

Working more does not significantly change the result. If the same worker took a full-time job paying \$6 an hour, she would realize only \$1.21 for each hour of work if the family lived in subsidized housing and \$2.18 for each hour of work if the family did not have housing assistance. (Both figures are computed without considering the EITC.) Families who increase their work effort to this extent are usually “rewarded” with the loss of Medicaid after one year, at least for the parent, notwithstanding that the jobs that former welfare recipients take rarely provide health insurance.<sup>15</sup>

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<sup>14</sup> Early research from Minnesota suggests that increasing the earnings disregard in the TANF program results in a greater increase in employment and earnings for families with housing assistance than for other TANF recipients. This is because the increased TANF disregard partially offsets the increase in rent and results in more net income from work efforts. CYNTHIA MILLER, *EXPLAINING MFIP'S IMPACTS BY HOUSING STATUS* (Manpower Demonstration Research Corp. Dec. 1998). This research highlights the potential value of increasing the net income of families with TANF and housing assistance through expansion of TANF earnings disregards rather than through the more constricted housing budget.

<sup>15</sup> States have new options to preserve Medicaid benefits for low-income parents; housing agencies may want to encourage states to adopt such policies so that tenants can take on jobs without health insurance. See Jocelyn Guyer & Cindy Mann, *Taking the Next Step: States Can Now Expand Health Coverage to Low-Income Working Parents through Medicaid* (Center on Budget & Policy Priorities Aug. 19, 1998) <[www.cbpp.org/702mcaid.htm](http://www.cbpp.org/702mcaid.htm)>. The example in the text is drawn from Ed Lazere & Jennifer Daskal, *Where is the Right Place to Start? A Comparison of Earnings Disregards in*



This example demonstrates why studies indicating that many former recipients feel that they are worse off financially after going to work should be no surprise.<sup>16</sup> Working families' net income increases are so small that they are frequently absorbed by work expenses and the increased cost of food and other necessities due to less time for shopping and food preparation.

Thus, whether or not “work disincentives” are a significant barrier to work for welfare recipients in assisted housing, families moving from welfare to low-wage jobs might need additional income or a reduction in expenses to meet their basic needs better. Other tenants not subject to work requirements may also experience disincentives to work or to increase earnings despite their need for additional income.<sup>17</sup> One way to offset whatever work disincentive the federal housing rent formula creates is to disregard a portion of earnings when calculating rent obligations.<sup>18</sup>

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Welfare Programs and Housing Programs and Their Impacts on the Transition to Work (paper presented at the conference on “Managing Affordable Housing Under Welfare Reform,” *supra* note 7).

<sup>16</sup> See, e.g., Arloc Sherman et al., *Welfare to What?: Early Findings on Family Hardship and Well-Being* (Children's Defense Fund 1999) <[www.childrensdefense.org/fairstart\\_welfare2what.html](http://www.childrensdefense.org/fairstart_welfare2what.html)>.

<sup>17</sup> While QHWRA establishes work requirements for public housing tenants, the new “community service” requirement is only eight hours per month of participation in an economic self-sufficiency program or community service for adult tenants who are not employed for at least this number of hours or exempt. Most tenants are exempt from the requirement, including members of TANF families who are in compliance with TANF program work requirements. Section 512, 112 Stat. 2539, *adding* 42 U.S.C. § 1437j(c) (effective Oct. 1, 1999). HUD's final community service regulation is at 24 C.F.R. § 960.600 *et seq.* (65 Fed. Reg. 16729, March 29, 2000).

<sup>18</sup> Numerous ways to help “make work pay” for low-wage workers do not target only assisted housing tenants and are not funded through the federal housing budget. These strategies, however preferable, are outside the scope of this article.

## B. Federal Law Concerning Work-Related Rent Policies

Federal law requires that working families with certain kinds of income and expenses pay lower rent than they would if all their income were considered when determining their rent obligation.<sup>19</sup> Recent changes also require that earning increases be temporarily disregarded for public housing tenants previously unemployed or receiving TANF benefits.<sup>20</sup> Housing agencies have options in how to design their rent policies that, if exercised, could be a significant benefit to tenants entering the labor force.

There is a new requirement that public housing authorities (PHAs) set forth their discretionary policies—including rent policies—in an annual plan subject to resident and public comment.<sup>21</sup> The requirement is an opportunity to influence PHAs to adopt rent policies that encourage work. Enforcing this requirement and advocating policies beneficial to residents are important legal services work in light of welfare reform.

### 1. Rules Applicable to All Federal Housing Programs

In the public housing and Section 8 programs, earnings received as part of a training program or used to meet reasonable child care expenses must be deducted from a family's gross income before determining the rent obligation. Earnings of minors are not considered. Federal law does not currently permit the disregard of any other earnings of adult Section 8 tenants, whether they have subsidies with which to move or to live in particular subsidized buildings.<sup>22</sup>

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<sup>19</sup> Section 3 of the Housing Act of 1937, 42 U.S.C. 1437a.

<sup>20</sup> QHWRA § 508, 112 Stat. 2526–28, *adding* 42 U.S.C. 1437a(d).

<sup>21</sup> QHWRA § 511, 112 Stat. 2531–39, *adding* 42 U.S.C. 1437c-1.

<sup>22</sup> The federal regulations governing income and rent that apply to more than one of the assisted housing programs are in 24 C.F.R. Part 5. HUD published final rules revising in part the income and rent regulations on March 29, 2000, effective April 28, 2000, at 65 Fed. Reg. 16692.

Housing agencies have the discretion, however, to delay increasing rent because a family is receiving additional income from working. Delaying an increase is equivalent to a 100-percent earnings disregard for the period of the delay. Agencies that exercise this option may wait as long as the HUD rules permit (which is until the next regular annual recertification) for families subject to income-based rents in order to maximize their administrative savings. Such agencies may also use a shorter, fixed delay period as a targeted work incentive. Such delayed recertification policies are optional for PHAs (for public housing tenants and Section 8 participants) and for private owners with project-based Section 8 units. About 40 percent of PHAs have adopted a variant of the delayed rent recertification option, at times explicitly to promote the transition from welfare to work.<sup>23</sup> PHAs must state their policies on interim reexaminations in the annual PHA plan.<sup>24</sup>

## 2. Public Housing Rent Policies

For public housing tenants who work, however, additional mandatory and optional rent policies apply. Under current law, three types of earnings disregard policies may pertain to public housing tenants.

### *a. Mandatory Earnings Disregard*

Federal law in effect through September 30, 1999, required PHAs to disregard, for 18

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<sup>23</sup> OFFICE OF POLICY DEV. & RESEARCH, U. S. DEP'T OF HOUS. & URBAN DEV., *THE USES OF DISCRETIONARY AUTHORITY IN THE PUBLIC HOUSING PROGRAM: A BASELINE INVENTORY OF ISSUES, POLICY, AND PRACTICE* 21–22 (Sept. 1999)  
<[www.huduser.org/publications/doc/discuse.doc](http://www.huduser.org/publications/doc/discuse.doc)> [hereinafter HUD PD&R].

<sup>24</sup> See 24 C.F.R. § 903.7 (d) (64 Fed. Reg. 56844, 56864 (Oct. 21, 1999)). The authority to delay rent recertification is at 24 C.F.R. § 5.657(b) (65 Fed. Reg. 16692, 16720 (March 29, 2000))(project-based Section 8); 24 C.F.R. §§ 960.257(a)(1), (c) (65 Fed. Reg. 16692, 16728 (March 29, 2000))(public housing); and 24 C.F.R. § 982.516 (a)(1), (d)(2) (64 Fed. Reg. 56894, 56915 (Oct. 21, 1999)) (Section 8 vouchers and certificates). HUD's initial PHA Plan Template says that PHAs should consider whether to require public housing tenants (not Section 8 tenants ) to report changes in income between annual income reexaminations. HUD Form 50075 at 23–25  
<[www.hud.gov/pih/pha/plans/phaplans.pdf](http://www.hud.gov/pih/pha/plans/phaplans.pdf)> [hereinafter PHA Plan Template].

months, any increase in public housing tenants' earnings resulting from participation in a public program of employment, training, and supportive services.<sup>25</sup> The new housing law eliminated the disregard as of October 1, 1999.<sup>26</sup> In its place the Quality Housing and Work Responsibility Act of 1998 (QHWRA) requires a new, albeit similar, time-limited mandatory disregard of incremental earnings for additional groups of public housing tenants. This disregard specifically includes current and recent TANF recipients.<sup>27</sup> The provision makes the following groups of public housing tenants eligible for the mandatory

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<sup>25</sup> 24 C.F.R. § 5.609(a)(13)(1999). The requirement was incorporated into HUD's regulations in 1994, but many PHAs failed to implement it. See PIH Notices 98-2 and 98-56, and *Earned Income Disregards for Public Housing Tenants*, 24 HOUS. L. BULL. 1 (Jan. 1998). Materials about the mandatory disregard are available at the National Housing Law Project Web site, [www.nhlp.org/pubhsg/phinfopkt.htm](http://www.nhlp.org/pubhsg/phinfopkt.htm).

<sup>26</sup> Section 508(b)(1)(A), Pub. L. No. 105-276, 112 Stat. 2461, 2527. The preamble to HUD's final rent regulations implementing the change makes clear that families in the midst of receiving the 18-month disregard on October 1, 1999, or who qualified for the disregard on or before September 30, 1999, may still receive the disregard. 65 Fed. Reg. 16705 (Mar. 29, 2000). I discuss other likely implementation issues in my *Housing Agency Work-Related Rent Policies and Welfare Reform*, app. 3 (Q&A on 10/1/99 Mandatory Earnings Disregard Issues) <[www.equaljustice.org/changing\\_needs/revpha.htm](http://www.equaljustice.org/changing_needs/revpha.htm)>.

<sup>27</sup> QHWRA § 508, 112 Stat. 2526–28, *amending* section 3 of the 1937 Housing Act, 42 U.S.C. §1437a(d). Section 8 families are authorized to receive the new disregard if “provided in advance in appropriations acts.” 42 U.S.C. §1437a(d)(4), 112 Stat. 2528, but neither fiscal year 1999 nor fiscal year 2000 HUD appropriations act extends this to Section 8 families. PHAs may offer tenants eligible for the new mandatory disregard the option to pay into a savings account the increase in rent that is due because of new employment. 42 U.S.C. 1437a(e). Unlike the escrow savings which families can accumulate through participation in the Family Self-Sufficiency Program (FSS) (see notes 44–46 *infra*) and which become the property of the family on successful completion of the program, a family may withdraw funds from this new type of escrow account only for limited purposes or when they move out of public housing. 24 C.F.R. § 960.255(d)(3)(65 Fed. Reg. 16728 (Mar. 29, 2000)).

earnings disregard:

- tenants whose total income increases as a result of employment of a family member who was previously unemployed for one or more years;<sup>28</sup>
- tenants whose earned income increases when a family member participates in a family self-sufficiency or other job training program;<sup>29</sup> and
- tenants who are or were receiving assistance under Title IV-A of the Social Security Act within the previous six months.

The new law requires PHAs to disregard 100 percent of the net increase in income resulting from employment or from an increase in earnings (for tenants qualifying on the basis of training or TANF receipt), for a period of 12 months; for the following 12 months, rent may be increased by only 50 percent of the amount it otherwise would have increased without the disregard. Any family member may receive the benefit of the disregard only during one four-year period in a lifetime. This allows for changes in jobs and periods of unemployment.<sup>30</sup>

In light of the apparent failure of most PHAs to implement the pre-QHWRA mandatory earnings disregard for public housing tenants, advocates should confirm whether PHAs have adjusted their rent calculation procedures to determine families' eligibility for

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<sup>28</sup> The statute does not define "unemployed." HUD's regulations define "previously unemployed" as earning no more than the equivalent of 500 hours of work at the established minimum wage in the previous 12 months. 24 C.F.R. § 960.255(a)(65 Fed. Reg. 16727 (Mar. 29, 2000)).

<sup>29</sup> Pre-QHWRA rules required that job training be funded or provided by the government, but the new law covers private job training, including technical schools and community colleges as well as sheltered workshops for the disabled. 24 C.F.R. § 960.255(a), definition of "qualified family" ¶ (ii) (65 Fed. Reg. 16705, 16727 (Mar. 29, 2000)).

<sup>30</sup> 24 C.F.R. § 960.255(b) (65 Fed. Reg. 16704, 16727 (Mar. 29, 2000)).

the new disregard.<sup>31</sup> PHAs will likely need assistance from advocates to understand the range of families who qualify for the disregard based on prior receipt of Title IV-A benefits.<sup>32</sup>

*b. Optional Earnings Disregards*

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<sup>31</sup>Legal Services Working Group on Housing and Welfare, *Possible Strategies to Improve Public Housing Agency Earnings Disregard Policies and Practices* (outline based on a discussion in a conference call on January 27, 1999, on housing and welfare intersection issues and subsequent comments)  
<[www.equaljustice.org/changing\\_needs/background2.htm](http://www.equaljustice.org/changing_needs/background2.htm)>.

<sup>32</sup> HUD's final rule clarifies that current or prior receipt (within the previous six months) of benefits or services under Part A of Title IV of the Social Security Act includes the Department of Labor-administered Welfare-to-Work program (generally administered through the Workforce Investment Boards at the state and local levels) as well as the TANF program. Further, the rule clarifies that "[t]he TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500." (24 C.F.R. § 960.255(a), definition of "qualified family" ¶ (iii)(65 Fed. Reg. 16727 (Mar. 29, 2000)). Note that a number of groups of tenants may be affected by the inclusion of participants in Department of Labor-administered Welfare-to-Work programs who would not otherwise be covered, such as parents who lost TANF benefits more than six months ago due to time limits, some non-custodial parents, youths aged 18 to 25 who have aged out of foster care, and custodial parents with incomes below the poverty line who have not received TANF in the previous six months (or previously). 42 U.S.C. § 603(a)(5)(C) as amended by Title VIII of the Welfare-to-Work and Child Support Amendments of 1999, P.L. 106-113 App. D, 113 Stat. 1501A-280 (effective Jan. 1, 2000 for competitive grantees and July 1, 2000 for formula grantees). It may be helpful for advocates to make PHAs aware of the list of TANF-funded programs that each state food stamp agency should have developed by September 1999 for the purpose of determining "categorical eligibility" for food stamps. See Memorandum from Deputy Administrator, Food and Nutrition Service, to States (July 14, 1999)  
<[www.fns.usda.gov/fsp/Clintoninitiative/Support/raletter2.htm](http://www.fns.usda.gov/fsp/Clintoninitiative/Support/raletter2.htm)>.

PHAs may establish additional earnings disregards for public housing tenants.<sup>33</sup> Such policies may apply to all tenants. For example, a PHA may choose to have tenants pay 25 percent rather than 30 percent of their income for rent.<sup>34</sup> A PHA may disregard only those with certain characteristics, such as those with current or recent welfare receipt. PHAs may choose to disregard a portion of earnings or to limit a disregard to particular expenses. Relatively few PHAs have adopted optional earnings disregard policies.<sup>35</sup> Adjusting tenants' income and resulting rent obligation for expenses related to working, such as transportation or contributions to health insurance, could be particularly helpful for low-wage workers.

### *c. Ceiling Rents and Flat Rents*

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<sup>33</sup> The disregard of child care expenses in determining rent is mandatory, not optional, for public housing as well as for Section 8. 24 C.F.R. § 5.611(a)(4)(65 Fed. Reg. 16692, 16717 (Mar. 29, 2000)). Based on QHWRA § 508, 112 Stat. 2526, *amending* 42 U.S.C. § 1437a(b)(5)(A)((iii), HUD's new rule adds two new conditions on child care expense deductions: they will have to be reasonable and necessary for a member of the household to be employed or to further his or her education. Anecdotal evidence suggests that PHAs do not uniformly implement the long-standing requirement to deduct child care expenses, and many tenants are not aware of it.

<sup>34</sup> *See* QHWRA § 523, 112 Stat. 2566, *amending* 42 U.S.C. § 1437a(a)(2)(B)(ii)(I); 24 C.F.R. § 960.253(c)(2) (65 Fed. Reg. 16727 (Mar. 29, 2000)). Such a policy would benefit nonworking as well as working families.

<sup>35</sup> HUD recently reported that only about 10 percent of PHAs used optional-earnings disregards for public housing tenants, although their use is more common in larger PHAs. HUD PD&R, *supra* note 23. In theory, under existing law, PHAs receive additional reimbursement from HUD for revenue losses due to mandatory earnings disregards, but not from optional disregards, except for ceiling rents. *See* note. 33 *infra*. This policy will be continued under the interim rule on the public housing operating subsidy agreed to by the negotiated rulemaking committee. Congress directed that the new formula provide an incentive to encourage public housing agencies to facilitate increases in earned income by families in occupancy. QHWRA § 519, 112 Stat. 2461, 2555, *amending* 42 U.S.C. § 1437g(e)(2)(B).

PHAs may also establish a maximum rent for public housing units that is less than 30 percent of a tenant's adjusted income. Such a policy is called a "ceiling rent." Ceiling rents as little as \$300 per month are now permitted.<sup>36</sup> Families with incomes above about \$12,000 per year would benefit from such a ceiling rent, although prior to QHWRA only families with significantly higher incomes would have benefited.

Beginning October 1, 1999, PHAs must establish "flat" rents for every unit.<sup>37</sup> Under the statute, flat rents are to be "based on" the market value of the unit, and must also be designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.<sup>38</sup>

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<sup>36</sup> Under QHWRA's section 519(d), 112 Stat. 2561, a ceiling rent must reflect the reasonable market value of the public housing unit and may, until a new operating subsidy rule is issued, be no lower than 75 percent of operating costs. Before QHWRA, ceiling rents were not allowed to fall below 95–100 percent of a PHA's average cost of operating a unit. This is still the rule for housing made up predominantly of elderly or disabled households. Operating costs for public housing units probably average less than \$400 per month. A \$300 rent would thus be permitted if it reflected the reasonable market value of the unit. HUD's initial guidance implemented this provision and advised PHAs that they would be held financially harmless for adoption of authorized ceiling rents but not for adoption of other optional earnings disregards. 64 Fed. Reg. 8192, 8201–2 (Feb. 18, 1999). It does not appear that the Negotiated Rulemaking Committee included a provision for the continuation of this new authority for reduced ceiling rent in the agreed new operating subsidy rule that HUD will publish shortly for public comment.

<sup>37</sup> QHWRA § 523, 112 Stat. 2565–67, 42 U.S.C. § 1437a(a)(2)(effective Oct. 1, 1999).

<sup>38</sup> 42 U.S.C. § 1437a (a)(2)(B)(i)(I) and (II). In some contrast to the requirement to set flat rents based on "market value" and "to encourage self-sufficiency," the statute authorizes PHAs to set flat rents equal to operating costs. 42 U.S.C. § 1437a(a)(2)(B)(i), 112 Stat. 2566. PHAs may be reluctant to forgo revenue by setting flat rents below operating costs until the new operating subsidy formula is made final. It is likely that the new operating subsidy formula will hold PHAs harmless for any foregone revenue due to how they set flat rents. See *supra* notes 35, 36.



HUD's final regulations, however, give only lip service to the second requirement and command PHAs to set flat rents "equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy."<sup>38a</sup> How PHAs set ceiling or flat rents will determine whether these policies will help families earning the typical below-poverty level wages of families making the transition from welfare to work.<sup>39</sup>

For families with fluctuating earnings that are unlikely to increase significantly, ceiling rents may be preferable to flat rents because ceiling rents afford families the security of never having to pay more than 30 percent of adjusted income.<sup>40</sup> By contrast, a flat rent, if chosen by the household at annual recertification, applies regardless of whether it exceeds the income-based rent. A family who chooses a flat rent may not switch to an income-based rent during the year unless the PHA agrees that the family is unable to pay the flat rent because of "financial hardship."<sup>41</sup>

Families making the transition to work are more likely to benefit from earnings

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38a. 24 C.F.R. § 960.253(b)(1) ((65 Fed. Reg. 16727 (Mar. 29, 2000))).

<sup>39</sup> See Sharon Parrott, *Welfare Recipients Who Find Jobs: What Do We Know About Their Employment and Earnings?* (Center on Budget & Policy Priorities Nov. 1998) <[www.cbpp.org/11-16-98wel.htm](http://www.cbpp.org/11-16-98wel.htm)>.

<sup>40</sup> HUD permits PHAs with ceiling rents prior to October 1, 1999 to use them instead of flat rents until October 1, 2002. By that date, each PHA must set flat rents, but a PHA can continue to have ceiling rents as part of its income-based rent policy (24 C.F.R. § 960.253(d); 65 Fed. Reg. 16,709, 16727 (Mar. 29, 2000)). About half of PHAs now have ceiling rents, but few use the QHWRA authority to reduce their ceiling rents to 75 percent of operating costs. HUD PD&R, *supra* note 23, at 24-26.

<sup>41</sup> 24 C.F.R. § 960.253(f) (65 Fed. Reg. 16727 (Mar. 29, 2000)). Loss or reduction of employment or earnings qualifies as "financial hardship" under the regulations (24 C.F.R. 960.253(f)(3)(i)), but tenants who choose a flat rent on the incorrect assumption that their income will increase may be denied an opportunity to switch to an income-based rent during the year.

disregards than from ceiling or flat rents because disregards apply regardless of how much a family earns. Unlike ceiling rents and flat rents that are of greatest benefit to tenants earning the highest incomes, disregards may be tailored for maximum benefit to the newly employed and lower-wage earners. Tighter targeting of rent incentives is important to PHAs concerned about inadequate revenues, families who will benefit directly, and tenants concerned about effective PHA operations and maintenance.<sup>42</sup> Using relatively low ceiling or flat rents only at developments in the poorest neighborhoods may be the best way for PHAs to balance concerns about reduced revenues with the need to encourage higher-income families to live in the lowest-income developments.<sup>43</sup>

### 3. Family Self-Sufficiency Program Escrow Savings Accounts

To help families who cannot benefit from an earnings disregard, PHAs may operate a Family Self-Sufficiency Program (FSS). The program is for families with tenant-based Section 8 subsidies or who live in public housing.<sup>44</sup> The FSS alternative would enable

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<sup>42</sup> If federal policies on reimbursing PHAs for any lost income resulting from use of ceiling rents continue to be more favorable than similar policies regarding optional income disregards, PHAs may be more likely to adopt ceiling rents than other earnings-disregard policies. See *supra* notes 40–41.

<sup>43</sup> QHWRA’s section 513, 112 Stat. 2544, requires PHAs to “deconcentrate” public housing by bringing higher-income tenants into lower-income projects and lower-income tenants into higher-income projects. 42 U.S.C. § 1437n(a)(3)(B). Rent incentives are specifically authorized to accomplish this goal. 42 U.S.C. § 1437n(a)(3)(B)(ii). See also 24 C.F.R. § 903.7(c)(2)(1999) (64 Fed. Reg. 56844, 56863–64 (Oct. 21, 1999) (HUD’s final rule on PHA plans)); 64 Fed. Reg. 8191, 8199 (Feb. 18, 1999) (HUD’s initial guidance).

<sup>44</sup> 42 U.S.C. § 1437u; 24 C.F.R. pt. 984. Since 1993, PHAs that received additional funding from HUD for incremental Section 8 certificates or vouchers or public housing units have been required to operate FSS programs for the equivalent number of Section 8 or public housing tenants. 42 U.S.C. § 1437u(b). FSS is not available to families in the project-based Section 8 program. For public housing families, PHAs have the option to design their own savings-in-lieu-of-rent program, as part of their income-based rent policy, without following specific FSS requirements. However, whether PHAs will receive HUD

families at least to receive a future refund of the additional rent they are required to pay due to increased earnings.

The FSS program has two major components: case management services that assess employment goals and education or training needs and that help families access needed services and an escrow feature that requires PHAs to deposit in a special savings account the amount of rent a family must pay because of increased earnings during the life of its FSS contract, which is usually five years.<sup>45</sup> Participation in the program by a family is voluntary.<sup>46</sup> Tenants and others interested in facilitating employment may want to encourage PHAs to expand their FSS programs to enable more families to save. With PHA permission, savings can be withdrawn on an interim basis and used for work-related purposes such as car purchase or repair and tuition.<sup>47</sup> Families who successfully complete

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reimbursement for such non-FSS savings accounts is unclear. In contrast, QHWRA requires that the new operating subsidy formula “take into account” public housing rental income forgone as a result of FSS escrow accounts. *See* QHWRA § 519, 112 Stat. 2555, *amending* 42 U.S.C. § 1437g(e)(2)(A)((vi); QHWRA § 523, 112 Stat. 2566, *adding* 42 U.S.C. § 1437a(a)(2)(B)(ii)(II); 24 C.F.R. § 960.255(d)(65 Fed. Reg. 16728 (Mar. 29, 2000)).

<sup>45</sup> *See* Center on Budget & Policy Priorities, *The Family Self-Sufficiency Program* (Apr. 19, 2000) (fact sheet) <[www.cbpp.org/5—5—99hous.htm](http://www.cbpp.org/5—5—99hous.htm)>. Many housing agencies obligated to operate FSS programs are not operating them or have fewer families enrolled than required. According to recent data, PHAs reported enrolling approximately 52,000 families in FSS, while 139,500 FSS slots were required nationwide (Memorandum from Robert W. Gray, Director, Program Monitoring and Research Division, HUD Office of Policy Development and Research, to Laurie Goldman, my research assistant (Aug. 20, 1999)). PHAs may operate a larger FSS program than they are obligated to run and those without an obligation may carry out an FSS program. *See* 24 C.F.R. §§ 984.105, 984.201(c)(1)(ii) (65 Fed. Reg. 16732 (Mar. 29, 2000)).

<sup>46</sup> 24 C.F.R. § 984.201(d)(10)(1999). For Section 8 families only (not public housing families), PHAs have the option to terminate Section 8 assistance if they are found to be in noncompliance with their FSS contract. 24 C.F.R. § 984.303(b)(5)(iii)(1999). Few PHAs make use of this option, as it understandably discourages family participation.

<sup>47</sup> 24 C.F.R. § 984.305(c)(2).

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their FSS contracts can use their escrow funds for any reason.<sup>48</sup> Many families use the funds to purchase a home or to start a business.

### **C. Need for New Approaches**

The new federal rules regarding housing agency rent policies to promote work illustrate the importance of advocating “old” issues in new ways. Housing advocates must understand the applicable rules, including recent changes, so that they may properly advise clients about whether they are charged too much for rent. But advocates must also be able to identify when rent overcharge is a defense to eviction. Tenants who are employed or facing work obligations, however, frequently speak with employment and welfare advocates about work-related financial concerns and do not meet with housing advocates. Nonhousing specialists therefore must be familiar with the new rent rules to advise clients properly about the consequences for the clients’ rents if the clients go to work or increase their work hours.

Moreover, few tenants concerned about the financial consequences of working will be counseled by legal services advocates. Many more will contact staff from agencies involved in welfare, job training and placement, and support services in addition to their housing agencies. An important role for legal services advocates is to ensure that community agencies have the information necessary to educate families about rent rules. Advocates should also encourage housing agencies to conduct outreach.

To know and enforce the rules and educate others about them is no longer sufficient

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<sup>48</sup> *Id.* § 984.305 (c)(1). HUD has made it substantially easier for families to complete their FSS contracts successfully. To be successful, families must be free of “welfare assistance” for at least 12 months prior to the end of their contract. In new regulations, HUD has narrowed the definition of “welfare assistance” to include only cash maintenance payments from Federal or State welfare programs. Parents who have completed their FSS contract and obtained employment will be able to receive their escrow funds even if the parent or another family member receives benefits or services such as Food Stamps, SSI, any health care or child care assistance, refundable earned income tax credit payments, short-term non-recurrent TANF-funded benefits, or a broad range of work-related or supportive services. 24 C.F.R. § 984.103(b)(definition of welfare assistance) (65 Fed. Reg. 16731-32 (Mar. 29, 2000)).

in doing a competent job representing clients. Now that housing agencies have substantial discretion over rent and other policies relating to self-sufficiency, advocates should support families making the transition to work by helping them affect the policies that PHAs choose to adopt.

PHAs now have greater independence from federal dictates. To create better PHA accountability to tenants and the public, QHWRA requires PHAs to develop five-year and annual plans.<sup>49</sup> Each of the discretionary policies already identified must be addressed in the annual PHA plan. These policies include interim rent adjustments based on increased income, optional earnings disregards, ceiling rents, other income-based rent policies, flat rents and how they will be administered, and FSS program size.<sup>50</sup> When developing a plan, PHAs must hold a public hearing and consult with an advisory board of public housing and Section 8 residents.<sup>51</sup> Advocates must work with tenants and community groups to persuade PHAs to adopt policies favorable to families facing the impact of welfare

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<sup>49</sup> See QHWRA § 511, *adding* 42 U.S.C. §§ 1437c-1, 112 Stat. 2531–39. Plans must be submitted to HUD 75 days before a PHA’s first fiscal year that begins on or after January 1, 2000 (24 C.F.R. § 403.3 (64 Fed. Reg. 56862 (Oct. 21, 1999))). HUD has delayed the initial required submission date for PHAs with fiscal years beginning January 1 and April 1. The first group of PHAs may submit their five-year and annual plans between December 1, 1999, and January 31, 2000; the second group may submit their first plans between January 15 and February 29, 2000 (64 Fed. Reg. 66106 (Nov. 24, 1999)).

<sup>50</sup> The annual PHA plan has 18 required elements, including PHA policies on admissions, self-sufficiency programs, demolition of public housing, the Section 8 voucher payment standard(s), and others. *See* David B. Bryson & Daniel P. Lindsey, *The Annual Public Housing Authority Plan: A New Opportunity to Influence Local Public Housing and Section 8 Policy*, 33 CLEARINGHOUSE REV. 87 (May–June 1999); CENTER FOR COMMUNITY CHANGE, A RESIDENT’S GUIDE TO THE NEW PUBLIC HOUSING AUTHORITY PLANS (June 1999). *See also* PHA Plan Template, *supra* note 24.

<sup>51</sup> 24 C.F.R. §§ 903.13, 903.17 (64 Fed. Reg. 56866 (Oct. 21, 1999)).

reform.<sup>52</sup>

#### **IV. Retaining Federally Assisted Housing as Part of the Social Safety Net**

For the approximately one million families who receive TANF benefits and federal housing assistance, federal housing law provided some income security amid the vagaries of welfare changes.<sup>53</sup> If a family lost income due to welfare benefit reductions or terminations or job changes, rent expenses at least were reduced. Zero income meant zero rent. As a result, families could retain their housing in a crisis.

Beginning in 1996, this long-standing principle was breached by provisions of the annual appropriations acts permitting minimum rents of up to \$50 per month, regardless of the amount of a family's income.<sup>54</sup> QHWRA makes a permanent part of federal housing law the option to impose minimum rents, although it does require housing agencies and owners that impose minimum rents to grant exemptions to families experiencing certain "financial hardships."<sup>55</sup> QHWRA's changes require PHAs to maintain a family's rent obligation, rather than reduce it, if the family loses welfare income due to failure to

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<sup>52</sup> Programs that receive funding from the Legal Services Corporation are not precluded from representing clients in the PHA plan process. *See* Alan W. Houseman, *What Can and Cannot Be Done by LSC-Funded Programs in Advocating on the New Housing Bill* (Mar. 1, 1999); *Short Primer on Policy Advocacy* (Mar. 1, 1999) <[www.nhlp.org/lscfund.html](http://www.nhlp.org/lscfund.html).

<sup>53</sup> *See supra* pt. II.A.

<sup>54</sup> Pub. L. No. 104-99, § 402(a), 110 Stat. 26, 40 (Jan. 26, 1996); Pub. L. No. 104-204, § 201(c)(1), 110 Stat. 2873, 2892 (Sept. 26, 1996); Pub. L. No. 105-65, § 201(d), 111 Stat. 1343, 1364 (Oct. 27, 1997).

<sup>55</sup> QHWRA § 507, Pub. L. No. 105-276, 112 Stat. 2461, 2518, *adding* 42 U.S.C. § 1437a(a)(3).

participate in an economic self-sufficiency program or to comply with a work-activity requirement. This new provision is often referred to as the “sanction rent” rule.<sup>56</sup>

Under the new provisions, advocates must understand welfare agency policies and practices in order for traditional rule enforcement strategies to be effective. Enhanced collaboration among housing and welfare advocates is necessary to protect families against the loss of affordable housing. Housing advocates must understand their states’ rules and procedures that are applicable to welfare sanctions, time limits, and diversion programs.<sup>57</sup> Conversely, when representing or advising families faced with the delay or denial of welfare benefits or the reduction or termination of TANF assistance because of sanctions or time limits, advocates must understand the ramifications for housing. Legal services programs need to recognize the new consequences of welfare sanctions in deciding their priorities for case acceptance, as affordable housing, once lost, is unlikely to be regained.

## **A. Minimum Rents and Hardship Exemptions**

PHAs may set a minimum rent of “not more than” \$50 per month, including utilities, for public housing and/or Section 8 tenants. PHAs may set a minimum rent of zero, so that when tenants have no income they will not be charged any rent.<sup>58</sup>

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<sup>56</sup> QHWRA § 512, *adding* 42 U.S.C. § 1437j(d), 112 Stat. 2541. Neither may PHAs reduce the rent of a family whose welfare benefits are reduced because of fraud. 42 U.S.C. § 1437j(d)(3).

<sup>57</sup> Diversion programs require would-be applicants for TANF benefits to undertake other activities—typically job search—before they may apply for benefits or before their applications are acted on, or such programs provide cash payments in instead of regular cash benefits. Many states have adopted diversion strategies as part of their TANF programs. The Web site of the State Policy Documentation Project, a joint project of the Center on Law and Social Policy and the Center on Budget and Policy Priorities, describes each state’s TANF application procedures, including diversion programs <[www.spdp.org/tanf/tanfapps.htm#div](http://www.spdp.org/tanf/tanfapps.htm#div)>.

<sup>58</sup> See *supra* note 55; 24 C.F.R. § 5.630(a)(2) (65 Fed. Reg. 16718 (Mar. 29, 2000)).

## 1. New Federal Law Requirements

The PHA's minimum- rent policy for its public housing and tenant-based Section 8 programs is a required subject for resident and public comment as part of the PHA annual plan.<sup>59</sup> HUD sets the minimum rent for tenants in project-based Section 8 developments—currently \$25 per month.<sup>60</sup>

QHWRA establishes mandatory hardship exemptions from minimum rents for families facing time limits, families unable to obtain public assistance, and families in which a parent loses a job. Two of the exemption categories are situations in which a “family has lost eligibility for or is awaiting an eligibility determination for a Federal, State or local assistance program” and when “the income of the family has decreased because of changed circumstances, including loss of employment.” A hardship exemption is also required for families who would be evicted because a minimum-rent requirement is imposed. PHAs may add their own criteria for hardship exemptions to the federally required categories.<sup>61</sup>

These hardship exemptions are retroactive to October 21, 1998.<sup>62</sup> In an initial guidance issued on February 18, 1999, HUD required PHAs to notify as soon as practicable all families potentially affected by the new exemptions.<sup>63</sup> How quickly PHAs have moved

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<sup>59</sup> See *supra* notes 44–46. HUD's PHA Plan Template, *supra* note 29, at 26, 30, makes clear that PHAs need not have any minimum- rent policy for public housing and may choose a minimum rent of zero for public housing and/or Section 8.

<sup>60</sup> HUD's new regulation continues the prior policy. 24 C.F.R. §5.630(a)(3) (65 Fed. Reg. 16718 (Mar. 29, 2000)).

<sup>61</sup> QHWRA § 507(a), 112 Stat. 2525, *adding* 42 U.S.C. § 1437a(a)(3)(B).

<sup>62</sup> 64 Fed. Reg. 8198 (Feb. 18, 1999). The statutory changes concerning minimum rents and hardship exemptions were effective when the law was signed on October 21, 1998.

<sup>63</sup> HUD's initial guidance required PHAs to notify “all” families of the minimum-rent hardship exemptions. In an April 30, 1999, notice, HUD clarified that “the notification to



to revise their minimum- rent policies is unclear. Advocates in Connecticut and Wisconsin report that PHAs have not notified families of the exemptions. The Minneapolis PHA sent tenants notice of the new exemptions as required by HUD but, like PHAs in Connecticut and Wisconsin, did not implement them. Many PHAs believe the mandatory hardship categories render a minimum-rent requirement ineffective. The obligation to exempt families suffering financial hardships from minimum rents also applies to private owners of project-based Section 8 developments.<sup>64</sup> In April 1999 HUD stated that when such owners determine rent obligations, they must grant the required exemptions and must also notify families affected by minimum rents about hardship exemptions.<sup>65</sup> HUD, however, has not directly sent notice of the new exemption requirements to private owners with project-based Section 8 units, and many may be unaware of the new requirements.

## 2. Importance of Local Advocacy

Enforcing rules at the local level is critical in preventing the eviction and homelessness of families unable to obtain welfare benefits or employment or whose income is so low that their income-based rent is below the applicable minimum rent.<sup>66</sup> To prevent wrongful evictions, advocates may have to persuade staff responsible for evictions at PHAs and Section 8 developments to implement processes to determine, before court action, whether they properly reviewed requests for rent reductions and, if legally required,

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be provided to families regarding hardship exemptions (which should have occurred already) can be to families subject to minimum rents or subject to minimum rents at some time since enactment of the QHWRA” (64 Fed. Reg. 23344 (Apr. 30, 1999)).

<sup>64</sup> Initial Guidance, 64 Fed. Reg. 8197 (Feb. 18, 1999); 24 C.F.R. § 5.630(b)(2)(ii) (65 Fed. Reg. 16718-19 (Mar. 29, 2000)).

<sup>65</sup> 64 Fed. Reg. 23344–45 (Apr. 30, 1999).

<sup>66</sup> The statute explicitly states that any family that “would” be evicted as a result of the minimum-rent requirements is entitled to a hardship exception (42 U.S.C. § 1437a(a)(3)(B)(i)(II)). The initial guidance and proposed rule, however, were not as clear on this point. HUD has corrected this problem in the final rule (24 C.F.R. § 5.630(b)(1)(ii) (65 Fed. Reg. 16703, 16718 (Mar. 29, 2000))).

granted exemptions from minimum rents.

Local action is also necessary to give meaning to the federal statutory exemption categories related to welfare receipt. HUD's initial guidance and final rule parrot the statutory language "lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program."<sup>67</sup> Will the hardship exemption continue to apply one year after a family is terminated from welfare assistance due to failure to attend a required appointment or because of time limits? Is a family that is in a four-week required job search that is a precondition to submitting a TANF application "awaiting an eligibility determination for a Federal, State, or local assistance program?" What about a person appealing a denial for Supplemental Security Income that is not yet a final determination? Implementation issues may also arise concerning families deemed to be "voluntarily" without income if they have lost a job due to a voluntary quit or have not aggressively looked for work. The statute and initial guidance, as well as the regulations, do not appear to allow PHAs or private owners to read in a "no-fault" condition to the exemption category of loss of employment.<sup>68</sup> Nonetheless some agencies might seek to apply a fault standard to requests for hardship exemptions from minimum rent.

Resident groups and advocates should use the new policies as grounds for urging PHAs to revisit whether even to apply minimum rents in addition to advocating the general implementation of the hardship exemptions and the proper application of such exemptions to particular cases. Because the statute requires only a suspension of the minimum rent when a hardship is "temporary" (lasting 90 days or less), rather than an exemption of the household from the minimum rent for whatever period it meets the criteria, HUD's initial guidance and regulations have established a cumbersome procedure for PHAs and private

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<sup>67</sup> 42 U.S.C. § 1437a(a)(3)(B)(I); 24 C.F.R. § 5.630(b)(1)(i) (65 Fed. Reg. 16718 (Mar. 29, 2000)). The final rule adds the clarification that this clause includes families with lawfully-admitted non-citizens who have lost eligibility for public benefits under the 1996 welfare legislation.

<sup>68</sup> 42 U.S.C. § 1437a(a)(3)(B); 64 Fed. Reg. 8197-98 (Feb. 18, 1999); 24 C.F.R. §5.630(b)(1)(i)(65 Fed. Reg. 16718 (Mar. 29, 2000)).

owners to follow after a family requests a hardship exemption.<sup>69</sup>

Families found unqualified for hardship exemptions or who suffer only temporary hardships must be allowed to enter into repayment agreements for unpaid rent.<sup>70</sup> In addition, families may challenge, through the public housing grievance procedures, findings that they are unqualified. Families receiving PHA-administered Section 8 subsidies may challenge such findings through the PHA's informal hearing process.<sup>71</sup> Some PHAs have reconsidered whether minimum rents are worth imposing and have eliminated them in light of new administrative burdens, the narrowing of the circumstances in which families can be charged minimum rents, and the prohibition of evictions for the failure to pay minimum rent.<sup>72</sup>

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<sup>69</sup> 42 U.S.C. § 1437a(a)(3)(B)(ii).

<sup>70</sup> If families are found to have a temporary hardship, they must be offered a “reasonable” repayment agreement (*see* 24 C.F.R. §5.630(b)(2)(i)(D)(public housing); §5.630(b)(2)(ii)(C)(Section 8) (65 Fed. Reg. 16718-19 (Mar. 29, 2000)). If found not to qualify for a hardship exemption, families are charged the minimum rent retroactively. The final rule requires: “If the responsible entity [PHA or private owner] determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including the back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.” (24 C.F.R. § 5.630(b)(iii)(A) (65 Fed. Reg. 16719 (Mar. 29, 2000)).

<sup>71</sup> The regulations exempt families in public housing from depositing the minimum rents due in escrow as a condition of receiving grievance hearings on hardship-exemption claims. 24 C.F.R. § 5.630(b)(3) (65 Fed. Reg. 16719 (Mar. 29, 2000)). The rule is silent about Section 8 families' appeal rights, but the initial guidance is clear that PHA informal hearing procedures apply to families whose rent is determined by the PHA (64 Fed. Reg. 8198 (Feb. 18, 1999)). Rent disputes generally give rise to informal hearing rights for Section 8 families (24 C.F.R. § 982.555(a)(1)).

<sup>72</sup> As of mid-September 1998, advocates reported that housing authorities in Boston, Cleveland, and Kansas City ceased using minimum rents. The Chicago Housing Authority retained the prior policy of no minimum rents (Loose Association of Legal Services

Including mandatory hardship exemptions to minimum- rent policies that are adopted may alter PHAs' calculations of risk when developing new policies in light of welfare reform. The requirement that a family's rent be reduced to zero when it has no income due to welfare time limits makes clear that assisted housing is to function as housing of last resort, at least for the tenants fortunate enough already to have it. Agencies will not be able lawfully to exclude tenants with no income through minimum-rent policies that are coupled with aggressive eviction strategies. While mandatory hardship exemptions pose financial risk to PHAs if HUD does not compensate them for lost revenue through the operating subsidy, the change increases the incentive for PHAs to undertake a variety of strategies to help make sure that their tenants have jobs when they lose welfare benefits.<sup>73</sup>

### 3. No Rent Reductions in Cases of Welfare Work-Related Sanctions

Public housing tenants and participants who are in the tenant-based Section 8 program and lose welfare benefits because a member of the family fails to participate in an economic self-sufficiency program or to comply with a work-activity requirement are no longer entitled to rent reductions.<sup>74</sup> This change does not apply to project-based Section 8 tenants.<sup>75</sup>

#### *a. New Federal Law*

PHAs may not alter this new rule, although they can decide how aggressively to warn

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Housing Attorneys and Clients' Public Housing/Certificate and Voucher Group conference call, Sept. 16, 1999). According to HUD, most PHAs do not know that they may set minimum rents at zero. Nearly all PHAs now charge a minimum rent for public housing tenants; about half charge \$50 per month. HUD PD&R, *supra* note 23, at 27–28.

<sup>73</sup> See *supra* notes 8, 35.

<sup>74</sup> QHWRA § 512, 112 Stat. 2461, 2541, 42 U.S.C. § 1437j(d)(2)(A).

<sup>75</sup> The only families covered by the new section 12 (d) of the U.S. Housing Act, 42 U.S.C. § 1437j(d), are families residing in public housing or provided tenant-based assistance under Section 8. 42 U.S.C. § 1437j(d)(1)(B).

tenants about it in advance of any request for rent reduction.<sup>76</sup> Based on the specific statutory language and HUD's initial guidance, PHAs must incorporate the new "sanction rent" rule into public housing leases and Section 8 "operating procedures" before the sanction rent rule can be applied to individual families.<sup>77</sup> Once a PHA meets these preconditions, however, the rule is effective.

This QHWRRA change is similar to earlier provisions that extended the penalties for work-related TANF sanctions to the Food Stamp Program and the Medicaid program. In the Food Stamp Program, as is now the case in the PHA-administered housing programs, the extension of work-related sanctions is mandatory.<sup>78</sup> Medicaid law gives states the option to terminate Medicaid benefits of nonpregnant parents (but not their children) in TANF work-related sanction situations; as of July 1, 1999, only 13 states opted to terminate such

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<sup>76</sup> In their annual plans, PHAs must describe "how" they will comply with the treatment of income changes resulting from welfare program requirements (QHWRRA § 511, *inserting* 42 U.S.C. § 1437c-1(d)(12)(C), 112 Stat. 2534; *see also* 24 C.F.R. § 903.7(l)(iii) (Oct. 21, 1999)). HUD's PHA Plan Template, *supra* note 24, has a checklist from which to choose a description

<sup>77</sup> 42 U.S.C. § 1437j(e), 112 Stat. 2543; 64 Fed. Reg. 8199 (Feb. 18, 1999).

<sup>78</sup> Section 6(d) of the Food Stamp Act (7 U.S.C. § 2015(d)) requires states to disqualify from food stamps a nonexempt individual who fails to comply with a TANF work requirement (*see* *Walton v. Hammons*, 1999 U.S. App. LEXIS 22811 (6th Cir. 1999) (Clearinghouse No. 51,877) (Michigan may reduce food stamps when adult in TANF household fails to cooperate with child support cooperation requirements)). States have the option to extend the food stamp disqualification to the entire household, but the disqualification of an entire household may not last more than six months. Food stamp law also contains penalties—some mandatory and some optional—for families who lose income due to a TANF nonwork conduct sanction (7 U.S.C. § 2017(d)). See CENTER ON BUDGET & POLICY PRIORITIES, STATE OPTIONS TO IMPOSE FOOD STAMP SANCTIONS ON INDIVIDUALS WHO FAIL TO COMPLY WITH TANF WORK REQUIREMENTS (Jan. 1998), for more detail.

benefits.<sup>79</sup>

*b. Welfare Sanctions*

Sanction rates in many state programs are substantial. For example, in Delaware, 49 percent of families receiving TANF were sanctioned during the first year the state's new TANF program operated. A 1998 Montana survey found that 31 percent of families were sanctioned.<sup>80</sup> Depending on state policy, the sanction for noncompliance with work-related requirements may be to reduce or terminate the grant.<sup>81</sup> Research shows that parents who are sanctioned have more barriers to employment than nonsanctioned individuals.<sup>82</sup> This may mean that sanctions will be more common among public housing and Section 8 tenants than a state's overall TANF caseload.<sup>83</sup>

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<sup>79</sup> Social Security Act § 1931(b)(3), 42 U.S.C. § 1396u-i(b)(3). The 13 states that, as of July 1, 1999, elect the Medicaid sanction option are Alabama, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Ohio, Rhode Island, and Wyoming. Montana had elected the option, but in April 1999 its legislature enacted the Welfare Recipients Protection Act, Senate Bill 353, reversing this decision, effective July 1, 1999.

<sup>80</sup> Jan Kaplan, *The Use of Sanctions Under TANF*, WELFARE INFORMATION NETWORK ISSUE NOTES (Apr. 1999) <[www.welfareinfo.org/sanctionissue\\_notes.htm](http://www.welfareinfo.org/sanctionissue_notes.htm)>.

<sup>81</sup> *Id.* The initial sanction results in a partial grant reduction in 36 states and in termination of the family's TANF benefits (known as "full-family sanction") in 14 states. Thirty-six states impose full-family sanction as their most severe penalty for noncompliance with work or other program requirements.

<sup>82</sup> *Id.*, citing studies from Minnesota, Michigan, Delaware, and Utah. See, John Bouman, *A High Dive into a Water Glass? Serving the "Hard to Serve" in Welfare-to-Work*, in this issue.

<sup>83</sup> Before TANF, looked at nationally, welfare recipients with federal housing assistance were less likely to be employed and had received welfare benefits for a longer

Welfare sanctions are subject to appeal to the state or county welfare agency, and the reversal rate in some states has been substantial.<sup>84</sup> Some states allow families to “cure” the sanction by complying with work requirements. Others impose a sanction for a minimum finite period regardless of any change in the parent’s behavior. To prevent erroneous sanctions and to help families with the most barriers comply with work requirements, some states have sanction-prevention programs. Nineteen states, including Alaska, Tennessee, Nebraska, Maryland, Utah, Rhode Island, and Delaware, report having programs in place.<sup>85</sup>

The prevalence of welfare sanctions among PHA-assisted families may be high, and the loss of public housing or Section 8 subsidies because of a family’s inability to pay unreduced rent has drastic consequences. That welfare and housing advocates work to minimize the number of families subject to sanctions is therefore important. PHAs and private landlords who rent to families with tenant-based subsidies may become allies for changing sanction policies as they learn that such policies may hurt them financially rather than help them. Increased evictions incur administrative costs and the cost of lost rent. Advocates should persuade PHAs to help residents resolve the imposition of wrongful sanctions with the welfare agency. They can do this directly or through referrals to legal services programs. PHAs can also help residents cure sanctions by encouraging participation in employment programs.<sup>86</sup>

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period (both in their current spell and cumulatively) than welfare recipients without housing assistance. Sandra J. Newman & Joseph Harkness, *The Effects of Welfare Reform on Housing: A National Analysis*, in *THE HOME FRONT* 29, 35 (Sandra J. Newman ed., 1999).

<sup>84</sup> Kaplan, *supra* note 80.

<sup>85</sup> *Id.*

<sup>86</sup> The efforts of a few PHAs to protect residents from the harmful effects of welfare sanctions are described in National Hous. Law Project, *PHAs Surveyed on Program and Policy Responses to New Welfare Law*, HOUS. L. BULL. 55, 65 (Apr. 1999). The Boston Housing Authority has realized the commonality of its interests with those of its residents subject to welfare sanctions and time limits and has contracted with Greater Boston Legal Services to train housing authority staff to make appropriate referrals and to represent tenants in cases where welfare benefit reductions and terminations may be reversed. The

*c. Likely Implementation Problems*

When the TANF benefits of public housing and certificate/voucher tenants are reduced or terminated due to sanctions, PHAs must apply the new rule properly, and advocates must try to ensure that the scope of the new rule is as narrow as possible. Below I discuss a number of potential implementation problems, nearly all of which require understanding how a state's sanction policies and practices intersect with housing law.

*i. Sanction Rent Rule Does Not Apply to the Reduction or Termination of Welfare Benefits Due to a Time Limit*

The new sanction rent policy applies only in welfare sanction situations—when a parent is found not to have cooperated with a specific welfare program rule—and not when benefits are reduced or terminated due to time limits. The statute clearly states that the welfare sanction rent rule does not apply when benefits are reduced because a “lifetime” time limit has been reached. When a family loses welfare benefits due to a durational limitation, such as a policy limiting a family to no more than 24 months of benefits in a five-year period, HUD's regulation applies a similar exception.<sup>87</sup>

*ii. Sanction Rent Rule Does Not Apply to Non-Work-Related Behavioral Sanctions*

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housing authority uses part of a HUD grant under the Economic Development and Supportive Services program to fund this contract. The program was recently converted into the Resident Opportunities and Self-Sufficiency Program. See 64 Fed. Reg. 51331 (Sept. 22, 1999) and my *Outline of How Federal Housing Programs Can Help*, *supra* note 8.

<sup>87</sup> 42 U.S.C. § 1437j(d)(2)(B); 24 C.F.R. § 5.615(b)(definition of “Specified welfare benefit reduction” ¶(2)(i)(65 Fed. Reg. 16717 (Mar. 29, 2000)). An ambiguity may arise, however, when the TANF program imposes special requirements (for an extension of a durational time limit) that come within the “work activities” or “economic self-sufficiency program” rubric, and a family is found not to comply with the extension requirements. Are benefits being terminated due to the durational time limit or due to the failure to comply with the work-related requirements for an extension? Particularly where the decision whether to grant an extension of TANF benefits beyond a time limit is discretionary or subject only to vague standards, the argument that the termination is due to the time limit should prevail, and the PHA would be required to reduce the family's rent.



Problems may also arise when benefits are reduced because a family member has failed to comply with a behavioral condition of the TANF program and not because a parent failed to comply with a work requirement or activity related to economic self-sufficiency.

Statutory language indicates that a family's rent must be reduced under the usual income-based rent rules even if a parent fails to cooperate in helping establish paternity or children do not comply with school attendance or immunization requirements; such failures, however, may lead to benefit reduction.<sup>88</sup> HUD's final rule is clear that these other common reasons for sanctions may not be grounds to deny a rent reduction.<sup>89</sup> The agency's PHA plan template probably contributes to any PHA confusion about the scope of the sanction rent rule because it characterizes the rule as applying generally "to the treatment of income changes resulting from welfare program requirements."<sup>90</sup> Comments on the PHA plan should emphasize that the PHA's no-rent-reduction policy should apply only to work-related sanctions.

*iii. Timely Action Is Required on a Rent Reduction Request Regardless of Welfare Agency Verification Delay*

Families whose welfare benefits are reduced for reasons other than work-related sanctions may also encounter verification hurdles and delays when they try to have their rents reduced. QHWRA states that ordinary rent reduction rules apply unless the PHA receives written notice from the welfare agency "specifying that the family's benefits have been reduced because of noncompliance with economic self-sufficiency program or work activities requirements or fraud, and the level of such reduction."<sup>91</sup> HUD's initial guidance

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<sup>88</sup> 42 U.S.C. § 1437j(d)(2)(A).

<sup>89</sup> 24 C.F.R. § 5.615(b)(definition of "Specified welfare benefit reduction" ¶(2)(iii)(65 Fed. Reg. 16717 (Mar. 29, 2000)(excludes welfare benefit reductions for reasons other than failure to comply with a requirement of an economic self-sufficiency program, as defined by HUD, 24 C.F.R. § 5.603). (65 Fed. Reg. 16717 (Mar. 29, 2000)).

<sup>90</sup> PHA Plan Template, *supra* note 24, at 37.

<sup>91</sup> 42 U.S.C. § 1437j(d)(4), 112 Stat. 2542.

directed PHAs to deny a rent reduction request only if they had in hand written verification from the welfare agency that the benefit reduction was for a reason that precluded rent reduction.<sup>92</sup> HUD's final rule implies, but does not state explicitly, that PHAs may decide when they need to obtain written verification from the welfare agency about why benefits were reduced before acting on a request for rent reduction, although it is clear that a request may only be denied based on the welfare agency's written notice.<sup>93</sup> The rule is silent on how long a PHA may wait for verification.<sup>94</sup> Advocates should use, in combination with the evidence available to the family about the grounds for sanction, the general statutory right to income-based rent to argue a family's entitlement to a rent reduction no later than the first of the month following the request.<sup>95</sup>

*iv. Challenge Validity of Sanction at Welfare and Housing Agency Hearings*

Families claiming a right to reduced rent because of the loss of welfare have hearing rights under either the public housing grievance procedure or the Section 8 informal hearing process.<sup>96</sup> HUD's final rule is clear, however, about the limited scope of the PHA

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<sup>92</sup> The initial guidance states: "Any PHA receiving a request for income reexamination and rent reduction predicated on a reduction in tenant income from welfare may deny the request *only* after obtaining written verification from the welfare agency that the family's benefits have been reduced because of noncompliance with economic self-sufficiency program or work activities requirements or because of fraud" (emphasis added) (64 Fed. Reg. 8199 (Feb. 18, 1999)).

<sup>93</sup> 24 C.F.R. §§ 5.615(c)(1), (2) and (e)(1) (65 Fed. Reg. 16717-18 (Mar. 29, 2000)). Some PHAs' computer links with welfare agencies can speed access to welfare notices. National Hous. Law Project, *supra* note 86.

<sup>94</sup>*Id.*

<sup>95</sup> 42 U.S.C. §§ 1437a(a)(1), (a)(2)(B)(ii).

<sup>96</sup> 24 C.F.R. § 5.615(d)(1) and (2) (65 Fed. Reg. 16717-18 (Mar. 29, 2000)).

<sup>96a</sup> 24 C.F.R. § 5.615(e)(2) and (3) (65 Fed. Reg. 16718 (Mar. 29, 2000)).

hearing. At the PHA hearing the only issues to be considered are whether the welfare agency's written notice sets forth a reason for the reduction or termination of welfare benefits that justifies the PHA's decision not to reduce the rent as requested, and whether the PHA imputed the correct amount of income to the family based on the notice. Any challenge to the propriety of the welfare agency's decision to reduce or terminate welfare benefits must be raised at the welfare agency.<sup>96a</sup>

Given the inability to challenge sanctions in the housing-side hearing, tenants should pursue their hearing rights at the welfare agency if they have grounds to challenge the imposition of the sanction, or otherwise use any available welfare agency process to "cure" a sanction. (As noted above, state policies differ concerning whether and when a sanction is curable.)

*v. Delay Imposition of a Sanction Rent Until Final Decision on Welfare Agency Appeal*

In many states, welfare appeals are subject to two time limits: a relatively short period, frequently 10 days, for an appeal that requires the agency to maintain benefits at the existing level and a longer period, frequently 90 days, during which the family may file an appeal but benefits are reduced or terminated as proposed. The sanction rent rule comes into play only when a family misses the initial "aid pending" appeal deadline. However, a TANF recipient with a valid challenge may need to file a postreduction appeal. If the state TANF program does not permit a sanction to be cured at any time, a welfare appeal may be the only way to regain lost benefits. For public housing and Section 8 tenants, PHAs could treat the welfare appeal as rendering the initial benefit reduction as not a final agency action, thus enabling PHAs to grant a rent reduction pending a final welfare agency decision on the sanction.<sup>97</sup>

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<sup>97</sup> See 24 C.F.R. § 5.615(e)(3) (65 Fed. Reg. 16718 (Mar. 29, 2000)). By careful wording, this final rule permits but does not require PHAs to suspend the imputing of welfare income while the family pursues its appeal rights "through the welfare agency's normal due process procedures." At least for public housing tenants, the provision of the regulations waiving the usual escrow requirement of the increased rent in a sanction-rent appeal may accomplish the same result in the short run, although if the tenant loses the PHA grievance hearing she will owe all the accrued rent. See 24 C.F.R. § 5.615(d)(1) (65 Fed. Reg. 16717-18 (Mar. 29, 2000)).

*vi. Obtain Prompt Rent Redetermination upon Change in Income*

Questions will arise concerning when a family who is subject to a sanction rent—that is, rent at the level paid before a benefit reduction due to a work-related welfare sanction—is entitled to a new determination of its rent obligation. If a family obtains other income such as Supplemental Security Income benefits, it should be entitled to a recertification of rent due even if the new income-based rent is lower than the prior sanction rent. If the family starts work or increases earnings and lives in public housing, it should be entitled to the new mandatory earnings disregard.<sup>98</sup>

## **V. Conclusion**

In a new era where multifaceted rent issues and other housing policies intersect with

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<sup>98</sup> HUD's final rules address the issue of how long the sanction rent level applies and how it is affected by an increase in income from another source. The rule directs that the sanction rent level lasts no longer than the term of the welfare sanction, and that during the term, the sanction rent is overcome when other income equals or exceeds the imputed welfare income. 24 C.F.R. § 5.615(c)(3) and (4)(65 Fed. Reg. 16717 (Mar. 29, 2000)). While an improvement over HUD's previous silence on this issue, this result may be unjust as applied to a change to SSI income (if the SSI income is less than the imputed welfare income), and may be particularly unsatisfactory in the six or seven states that impose lifetime full-family sanctions for failure to comply with work requirements. Delaware, Georgia, Idaho, Mississippi, Nevada, and Pennsylvania, and possibly Wisconsin currently impose lifetime sanctions against the entire family after a parent has repeatedly failed to comply with work requirements. U.S. General Accounting Office, *Welfare Reform: State Sanction Policies and Number of Families Affected*, GAO/HEHS-00-44, March, 2000, Appendix II at 44-46. A public housing family subject to the welfare sanction rent due to loss of welfare income for noncompliance with a work-activity requirement who later gets a job that pays more than the imputed welfare income may qualify for the new expanded earnings disregard so long as the family had received TANF benefits within 6 months of beginning employment or had been "unemployed" for 12 months. This appears clear from the statute even as HUD has been silent on the issue. *See supra* notes 25–32. The result would be that the family would continue paying rent at the "sanction-rent level" for the subsequent 12 months after beginning employment and then have its rent increased by half of the increase otherwise due.

welfare reform time limits and sanctions, advocating effectively for our clients requires a “bureaucratic bilingualism.”<sup>99</sup> Housing agencies may propose preferences for “working” families as part of their admissions policies, but how “work” is defined determines whether families complying with work requirements or who have recently left TANF are deemed eligible for the preference.<sup>100</sup> Despite the inherent difficulties in expanding knowledge and altering work patterns to foster cross-disciplinary strategies, effective advocacy on behalf of poor people requires legal services programs and individual advocates to make changes. My personal experience is that such change is a stimulating challenge!

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<sup>99</sup> I am indebted to Prof. Langley Keyes of the Massachusetts Institute of Technology’s Department of Urban Studies and Planning for this highly expressive phrase.

<sup>100</sup> See my *Housing Agency Admissions Preferences and Welfare Reform: Strategy Outline* (Apr. 9, 1999) <[www.equaljustice.org/changing\\_needs/background4.htm](http://www.equaljustice.org/changing_needs/background4.htm)> and *Housing Agency Admissions Preferences, Welfare Reform and the PHA Plan* (June 29, 1999) <[www.equaljustice.org/changing\\_needs/Admisrevd.htm](http://www.equaljustice.org/changing_needs/Admisrevd.htm)>.

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## Highlights

Federal law requires that working families with certain kinds of income and expenses pay lower rent than they would if all their income were considered when determining their rent obligation [first sentence in Part III B].

The new federal rules regarding housing agency rent policies to promote work illustrate the importance of advocating “old” issues in new ways. [first sentence in Part III C].

Sanction rates in many states programs are substantial. [first sentence in IV A 3.b]

## Running Head

The Intersection of Housing and Welfare Reform