

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 982****[Docket No. FR-4119-F-01]****Office of the Assistant Secretary for Public and Indian Housing; Technical Amendment to the Section 8 Certificate and Voucher Conforming Rule****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Final rule.

**SUMMARY:** On July 3, 1995 (60 FR 34660), HUD published a final rule combining and conforming the rules for tenant-based rental assistance under the Section 8 Rental Certificate and Rental Voucher Programs (24 CFR part 982). This final rule amends part 982 to provide that HUD may restrict a family's right to lease any unit within the initial Housing Agency's jurisdiction if HUD determines the limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree. The purpose of this rule is to remove any regulatory barrier that may hinder judicial efforts to address discriminatory racial or economic concentrations.

**EFFECTIVE DATE:** September 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Madeline Hastings, Deputy Director, Office of Public and Assisted Housing Operations, Office of Public and Indian Housing, Room 4226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2841. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

On July 3, 1995 (60 FR 34660), HUD published a final rule which combined and conformed the rules for tenant-based Section 8 rental assistance under the Section 8 Certificate and Voucher Rental Programs (42 U.S.C. 1437f). The final rule also amended the requirements for project-based assistance under the Section 8 Rental Certificate Program.

The July 3, 1995 final rule added a new § 982.353, which describes where a family can lease a unit with tenant-based assistance. Paragraph (a) of § 982.353 states that a family "may

receive tenant-based assistance to lease a unit located anywhere" in the Housing Agency's (HA's) jurisdiction. Further, 24 CFR 982.353(f) provides that, except under specified circumstances, the HA "may not directly or indirectly reduce the family's opportunity to select among available units." Nevertheless, courts have entered, and may enter in the future, orders which would require HUD and HAs to limit where tenant-based assistance may be used within the HA's jurisdiction. For example, a court may issue such an order to remedy racial or economic concentrations resulting from discriminatory housing practices. HUD is concerned that in such circumstances § 982.353 might conflict with the court mandate.

This final rule amends § 982.353 to provide that HUD may restrict a family's right to lease any unit within the initial HA's jurisdiction if HUD determines the limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree. This rule only amends paragraphs (a) and (f) of § 982.353, which concern tenant-based assistance within the jurisdiction of the original HA. This rule does not revise the portability procedures set forth at 24 CFR 982.353(b). This final rule, therefore, does not authorize limiting the residential choice of a family renting outside the jurisdiction of the initial HA.

**II. Justification for Final Rulemaking**

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that in this case prior comment is unnecessary. This final rule amends § 982.353 to remove any potential conflict between the current regulatory language and judicial efforts to address discriminatory racial or economic concentrations. Since the amendment made by this final rule would apply solely to HAs operating under the terms of a court order or consent decree, and therefore not involve all housing authorities and participants in the Section 8 Rental Certificate and Voucher Programs prior public comment is unnecessary.

**III. Other Matters***Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule amends § 982.353 to eliminate any possible conflict between the existing regulatory language and judicial desegregation goals, and is limited to housing authorities operating under court orders or consent decrees that address such goals. The rule will have no adverse or disproportionate economic impact on small entities.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the July 3, 1995 final rule. That finding remains applicable to this rule which merely makes a technical amendment to the July 3, 1995 final rule. The FONSI is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This purpose of this rule is to address any possible conflict between HUD's regulation at § 982.353 and judicial efforts to remedy discriminatory racial or economic concentrations. This rule will assist to facilitate the actions of courts, and will not affect the relationship between the Federal Government and State and local governments.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or

general well-being, and thus is not subject to review under the Order. This rule removes any potential conflict between 24 CFR 982.353 and nondiscrimination obligations generated by a court order or consent decree. No significant change in existing HUD policies or programs will result from promulgation of this rule.

#### List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 982 is amended as follows:

#### **PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM**

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Section 982.353 is amended by revising paragraphs (a) and (f) to read as follows:

#### **§ 982.353 Where family can lease a unit with tenant-based assistance.**

(a) *Assistance in the initial HA jurisdiction.* The family may receive tenant-based assistance to lease a unit located anywhere in the jurisdiction (as determined by State and local law) of the initial HA. HUD may nevertheless restrict the family's right to lease such a unit anywhere in such jurisdiction if HUD determines that limitations on a

family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree.

\* \* \* \* \*

(f) *Freedom of choice.* The HA may not directly or indirectly reduce the family's opportunity to select among available units except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g. prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the contract rent (certificate program) or rent to owner (voucher program) exceeds a reasonable rent).

Dated: August 6, 1996.

Michael B. Janis,

*General Deputy Assistant Secretary for Public and Indian Housing.*

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