

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR-4824-P-01]

RIN 2577-AC42

PHA Discretion in Treatment of Over-Income Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would give public housing agencies (PHAs) the discretion, in accordance with federal law and regulations, to evict public housing tenants who are over the income limit for eligibility to participate in public housing programs. PHAs may decide that such families should be able to find other housing and that public housing units should be made available for families with greater housing need.

DATES: Comments Due Date: September 30, 2003.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Pat Arnaudo, Office of Public Housing Occupancy and Management, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410-5000; telephone (202) 708-0744 (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

This rule proposes to amend 24 CFR 960.261, "Restrictions on evictions of families based upon income," which limits the authority of PHAs to evict families residing in public housing based on an increase in income unless: (1) The PHA has determined that there is other decent, safe, and sanitary housing available to the tenant at a rent not exceeding the then-current tenant rent; or (2) the PHA is required to evict

the family by local law. Through this rule, HUD proposes that a PHA have the discretion to evict a family that is over the eligible income limit. HUD believes that public housing should be available to low-income families and that it is inappropriate to limit the ability of a PHA to move over-income families out of public housing to make room for low-income families on waiting lists.

The restriction on eviction provision is a regulatory requirement, not a statutory one. The CFR section has undergone some revision since its original promulgation; it was promulgated in its current form on March 29, 2000. (*See* 65 FR 16729.)

There are statutory provisions in the U.S. Housing Act of 1937, 42 U.S.C. 1437 *et seq.* (the 1937 Act) and policy considerations that affect the ability of PHAs to evict residents based on income changes in some specifically defined cases. These considerations relate to the two-year earned income disallowance in section 3(d) of the Act, 42 U.S.C. 1437a(d), and the Family Self-Sufficiency program under section 23 of the Act, 42 U.S.C. 1437u.

In order to create an incentive for public housing residents to find employment, the 1937 Act provides for a moratorium on increases in rent because of employment, under specified statutory criteria that ensure that over-income families remain in place for valid reasons. Section 3(d) of the 1937 Act (42 U.S.C. 1437a(d)), provides that for certain families who have a member who succeeds in becoming employed, rent is not increased at all for the 12-month period following the commencement of employment and is increased only in a 50 percent increment for the subsequent 12-month period. This temporary disallowance only applies to families who have a member: (1) Whose income increases as a result of employment if the member was previously unemployed for one or more years; (2) whose income increases because of participation in a local self-sufficiency program; or (3) who is or was within the previous 6 months assisted under a state program for temporary assistance to needy families (TANF). (*See* 42 U.S.C. 1437a(d).) This statute not only implies that such families should not be considered over-income until the period of rent moratorium expires, it is part of an important HUD policy to create incentives for self-sufficiency and employment that will ultimately enable families to leave public housing. HUD does not wish to undermine this policy, so this rule would exempt families eligible for the earned income disregard

from those who may be immediately evicted when over income.

Similarly, the Family Self-Sufficiency (FSS) program under 42 U.S.C. 1437u, provides that families enter into contracts of participation with the PHA under which the head of the household is required to seek suitable employment during the term of the contract. The FSS program is an important policy initiative of the department to coordinate resources to enable public housing residents to achieve economic self-sufficiency. Allowing participants to be evicted during the term of the contract because they found employment, which is the object of the self-sufficiency contract, would undermine the program. Therefore, this proposed rule would exempt such families from eviction so long as they have a valid contract of participation in an FSS program under the statute and HUD's regulations.

II. This Proposed Rule

HUD believes that, except for the statutory special-case exemptions noted above in Section I of this preamble, PHAs should be free to make local decisions to serve low-income families. Those with incomes over 80 percent of the median—the upper limit for public housing admissions eligibility—should be able to find housing in the private market, and the PHA will therefore be able to focus its efforts on families with lower incomes. In the past, 24 CFR 960.261 and its predecessor sections have unduly limited the PHA's ability to respond to over-income families who choose to remain in public housing. HUD believes it is better policy to grant PHAs the ability to target scarce public resources to those most in need for housing. HUD, under its general regulatory authority provided in 42 U.S.C. 3535(d), which states that the Secretary may "make such regulations as may be necessary to carry out his functions, powers, and duties," is proposing to implement this policy by amending 24 CFR 960.261.

III. Findings and Certifications

Environmental Impact

This rule concerns a statutorily required and/or discretionary establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. As such, this rule is categorically excluded from the provisions of the National Environmental Policy Act, 42 U.S.C. 4332, under 24 CFR 50.19(c)(6) of HUD's regulations.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule is concerned only with granting PHAs the discretion to evict over-income families. It does not mandate that any PHA take such action. Furthermore, the rule preserves the ability that small PHAs with fewer than 250 units have to admit over-income families in cases where there is no demand for a unit by an eligible family, thus preventing such small PHAs from having to support vacant units. Therefore, this rule would not have a significant economic impact on a substantial number of small entities.

Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent

practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.850.

List of Subjects in 24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 960 as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

1. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

* * * * *

Subpart C—Rent and Reexamination

2. Revise 24 CFR 960.261 to read as follows:

§ 960.261 Restriction on eviction of families based on income.

(a) PHAs may evict or terminate the tenancies of families who are over income, subject to paragraphs (b) and (c) of this section.

(b) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over income, if the family is entitled to the disallowance of earned income as provided at 42 U.S.C. 1437a(d), so long as that family or a member of that family meets the requirements of that section.

(c) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over income, if the family has a contract for participation in an FSS program under part 984 of this title.

Dated: July 2, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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