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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR-5904-A-01]

Strengthening Oversight of Over-Income Tenancy in Public Housing
Advance Notice of Proposed Rulemaking

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

ACTION: Advanced notice of proposed rulemaking (ANPR).

SUMMARY: Through this notice, HUD announces that it is considering rulemaking to ensure that individuals and families residing in HUD public housing in fact continue to need housing assistance from HUD after admission. HUD's consideration of rulemaking is prompted by a report recently issued by HUD's Office of Inspector General (OIG). The report found, through comparison of annual household income reported in HUD's Public and Housing Information Center for approximately 1.1 million families to the applicable 2014 admission income limit, that as many as 25,226 families were subsequently over-income. Some of those families significantly exceeded the income limits. HUD seeks comment from PHAs and other interested parties and members of the public on the questions presented in this notice, including how HUD can structure policies to reduce the number of individuals and families in public housing whose incomes significantly exceed the income limit and have significantly exceeded the income limit for a sustained period of time after initial admission.

DATES: Comments Due Date: **[Insert date 30 days from date of publication in the Federal Register]**

ADDRESSES: Interested persons are invited to submit comments to the Office of the General

Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications should refer to the above docket number and title and should contain the information specified in the “Request for Comments” section. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted using one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD

will be available, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Todd Thomas, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4100, Washington DC 20410-4000; telephone number (678) 732-2056 (this is not a toll-free number). Persons with hearing or speech impairments may contact this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The United States Housing Act of 1937 (42 U.S.C. 1437 *et. seq.*) (1937 Act), which is the primary statute that governs public housing and its administration by HUD and PHAs, provides that public housing dwelling units shall be rented only to families who are low-income families at the time of their initial occupancy of such units. In accordance with the 1937 Act, and HUD regulations and policies, PHAs must undertake periodic reviews of family income. The 1937 Act does not require eviction or termination of tenancy of families whose income exceeds the income limits while residing in public housing. *See* 42 U.S.C. 1437a. HUD's regulations at 24 CFR part 960, which govern public housing admissions, reflect this statutory framework.

The parameters for income limits that determine initial eligibility for public housing are developed by HUD and outlined in 24 CFR part 5, subpart F. In general, HUD sets the low-income limit at 80 percent and very low-income limit at 50 percent of the median income for the

county or metropolitan area in which the household resides. Income limits vary from area to area and may be adjusted based on local market conditions.¹ Annual income is the anticipated total income from all sources received from the family head and spouse, and each additional member of the family 18 years of age or older. An individual's or family's rent is referred to as the Total Tenant Payment (TTP) and is based on a family's anticipated annual income less deductions, if any, or the applicable flat rent.

On July 21, 2015, HUD's OIG issued an audit report that presented the results of OIG's review of the number of families residing in HUD public housing whose income exceed the current income limits used in determining eligibility for such housing, several of whom significantly exceeded the income limits. The families identified by HUD OIG met the income limits at the time of admission to public housing but their income now exceeds such income limits. Currently, the regulations do not prohibit a family from continued occupancy when their income rises above the limit for initial admission. An increase in income is a good and welcomed event for families, and when a family's income steadily rises, it may be an indication that the family is on its way to self-sufficiency. However, an increase in income may be minimal or temporary, and a minimal or temporary rise in income should not be the basis for termination of public housing assistance. This ANPR solicits comment on how to structure policies to reduce the number of individuals and families whose incomes significantly exceed the income limit and have significantly exceeded the income limit for a sustained period of time after initial admission.

HUD takes seriously its obligation to provide clean, safe affordable housing to the neediest population. The Public Housing program is an essential resource for some of the

¹ 2015 Income Limit Documentation http://www.huduser.gov/portal/datasets/il/il15/HUD_sec8_15.pdf

nation's most vulnerable families. HUD strongly supports the efforts of PHAs to further the goals of providing quality affordable housing to eligible families in a manner that moves families toward increased and sustained self-sufficiency. At the same time, scarce public resources must be provided to those most in need of affordable housing. Any changes that would require the termination of tenancy for over-income families should be enacted with caution so as not to impede a family's progress towards self-sufficiency.

In a final rule published on November 26, 2004, at 69 FR 68786, HUD gave PHAs the authority to terminate the tenancy of or evict over-income residents. See 24 CFR 960.261. The final rule did not require PHAs to take action to evict over-income residents but provides PHAs with discretion to implement such policies and thereby make units available to applicants who are income eligible. The final rule noted that the 1937 Act did not require eviction and the purpose of rulemaking was to clarify that the absence of such a statutory requirement did not prohibit PHAs from terminating the tenancy of over-income families. The preamble to the rule stated that PHAs may decide that an over-income family is able to find other housing, and that the family's public housing unit could be made available to a family with greater housing need. The rule included discussion of the many factors that could be considered in developing these policies, including local market conditions, community stability, the source and duration of increased income, and whether the resident was elderly or disabled.

HUD is considering revising HUD's regulations at 24 CFR 960.261 (Restriction on eviction of families based on income) in a manner that would continue to give PHAs discretion on when to evict or terminate the tenancies of over-income families but narrow that discretion by providing circumstances that would require a PHA to terminate tenancy or evict an over-income family. Specifically, HUD is considering whether a family whose income significantly exceeds

the income limit and has exceeded such limit for a sustained period of time must be notified by the PHA that the family will be evicted or tenancy terminated. HUD is also considering what a reasonable period of time to find alternative housing would be.

HUD is not considering whether to alter the existing statutorily based exceptions to eviction or termination of tenancy related to income limits. Specifically, a family over the income limits who has a valid contract for participation in a Family Self-Sufficiency (FSS) program administered under HUD regulations in 24 CFR part 984 would not be subject to eviction or termination of tenancy. Additionally, a PHA may not evict a family over the income limits if the family is currently receiving the earned income disallowance authorized by the 1937 Act (See 42 U.S.C. 1473a(d)) and implemented through HUD regulations in 24 CFR 960.255 and 24 CFR 960.261(b).

II. Request for Comments

In a letter provided to PHAs on September 3, 2015, HUD strongly recommended that PHAs adopt local over-income policies while considering many factors, including, but not limited to how over-income is defined, income stability, length of time to provide a safety net for fluctuating incomes, preference for return and hardship policies.² In anticipation of a proposed rulemaking, HUD specifically solicits comment on the following issues:

1. How should HUD define income that “significantly” exceeds the income limit for public housing residency? Should such higher amount be determined by dollar amount, by a percentage, or as a function of the current income limit, and what should the amount be?

² This letter can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph.

2. Should area cost of living and family finances be taken into consideration when determining whether an individual or family no longer needs public housing assistance? Are there limits to the circumstances in which said data should be requested and applied in a determination?
3. What period of time in which an individual or family has had income that significantly exceeds the income limits should be determined as indicative that the individual or family no longer needs public housing assistance?
4. How should local housing market conditions or housing authority wait list data be considered?
5. What period of time should be allowed for an individual or family to find alternative housing?
6. Are there exceptions to eviction or termination of tenancy that HUD should consider beyond those listed in HUD's regulation in 24 CFR 960.261?
7. Should HUD allow over-income individuals or families to remain in public housing, while paying unsubsidized or fair market, rent? How would such a provision impact PHA operations and finances?
8. Should HUD require a local appeals process for individuals or families deemed over-income?
9. Where over-income policies have been implemented, what were the results to public housing residents and PHAs? What were the specific positive and negative impacts?
10. What financial impact would over-income policies have on PHA operations, and how can any negative impacts be mitigated?

11. What are the potential costs and benefits to public housing residents and PHAs that could result from the forcible eviction of public housing tenants?
12. What evidence currently exists in favor of or against the adoption of this type of policy?

It is the responsibility of HUD and PHAs to ensure that public housing units are available to those who need HUD assistance. All comments directed to steps that HUD and PHAs can take to ensure availability of public housing units for individuals and families meeting the income limits are welcome.

Dated: January 25, 2016.

Lourdes Castro Ramírez
Principal Deputy Assistant Secretary for
Public and Indian Housing

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