programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 203 of subpart B of Title 24 of the Code of Federal Regulations, published on November 21, 2003, at 68 FR 65824, as corrected on January 2, 2004, at 69 FR 4, is promulgated as final, without change.

Dated: November 19, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–26113 Filed 11–24–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960 and 966

[Docket No. FR–4824–F–02]

RIN 2577–AC42

PHA Discretion in Treatment of Over-Income Families

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

ACTION: Final rule.

SUMMARY: This final rule gives public housing agencies (PHAs) the discretion, in accordance with federal law and regulations, to establish occupancy policies that include the eviction of 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 eligible low-income families with greater housing need. This final rule takes into consideration the public comments received on the proposed rule. After careful review of the comments, HUD has decided to adopt the proposed rule with minor revision.

DATES: Effective Date: December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Director, Public Housing Occupancy and Management Division, Office of Public and Indian Housing, 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). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 2003 (68 FR 45734), HUD published a notice of proposed rulemaking (NPRM) that proposed to grant PHAs the discretion to evict a family that is over the eligible income limit, with exceptions for families entitled to EID (addressed at 42 U.S.C. 1437a(d)) or with valid contracts of participation under the Family Self Sufficiency (FSS) program (42 U.S.C. 1437u). In submitting this proposed rule for public comment, HUD stated its view that public housing should be available to eligible 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 current rule on eviction at 24 CFR 960.261 limits the ability of PHAs to evict over-income families 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.

This final rule does not require PHAs to evict over-income residents, but rather gives PHAs the discretion to do so and thereby make units available for applicants who are income-eligible.

II. This Final Rule

This final rule follows publication of the August 1, 2003, proposed rule. The public comment period for the proposed rule closed on September 30, 2003. Sixteen public comments were received from a variety of individuals and groups during the comment period. Commenters included tenant organizations, housing authority trade associations, public housing tenants, and PHAs. Three of the public comments were in the form of petitions signed by multiple public housing residents from one city, and gathered and submitted by a single organization. After consideration of these comments, HUD has decided to adopt a final rule that, like the proposed rule, provides an exception to eviction for over-income tenants who are receiving the earned income disallowance or have active contracts of participation in a family supportive services program. In addition, this rule makes a conforming technical change to 24 CFR 966.4(l)(2)(ii).

III. Discussion of Public Comments

Comment: The rule properly grants discretion to the PHAs regarding over-income residents. One PHA commenter agreed with the rule so long as implementation is voluntary and ''with no penalty for non-participation.'' Similarly, another PHA did not oppose the concept of the proposed rule that will grant ''public housing agencies '' the discretion to evict over income families from public housing, as long as this rule remains a PHA option.'' ''In an effort to increase accountability and ensure that public housing participants are not being evicted prematurely before reaching self-sufficiency,'' this commenter would prefer PHAs be given discretion to regulate this policy, rather than being subject to a mandatory regulation.

Observing that there may be widely divergent local strategies ranging from targeting only households most in need to retaining some over-income households as role models and to maintain the marketability of public housing, one commenter, also a PHA, agreed with the discretion the rule would grant to PHAs, and states that ''local communities deserve federal respect for the diverse implementation strategies they devise to accomplish broadly stated national policy goals.'' Another commenter stated, ''We appreciate and support the Department's recognition of the importance of local-level discretion in setting housing policies'' and ''LHAs [local housing agencies] must retain true discretion to establish policies that suit their communities.'' However, this commenter, a housing association, stated that ''a more useful formulation of the notice would be one that gives PHAs the discretion to formulate local policies with regard to families who have increased their incomes while residing in public housing.'' Another PHA stated that ''ultimate discretion'' on if, how and when it is applied should be left to the individual PHA. Local PHAs should be allowed to set the over-income ''target'' for triggering the eviction based on local market conditions.''

Response: HUD agrees with these commenters in their desire for PHAs to act with discretion. This rule gives PHAs the discretion to make decisions concerning their local housing market needs. HUD will not penalize PHAs for not incorporating this rule into their admission and continued occupancy policies.

Comment: The rule would have a negative effect on deconcentration of poverty and income-mixing goals. Several commenters specifically commented on the rule's effect on income-mixing and deconcentration of poverty. One PHA stated that having a range of incomes is preferable to having

a concentration of low-income families, observing that the presence of higher-income families under the flat-rent system serves as role models and as the core homeownership clientele. Another PHA stated that this rule would conflict with the goals of deconcentrating poverty (24 CFR 903.1), income targeting (24 CFR 960.202), and choice of income-based or flat rent (24 CFR 960.253). This commenter stated that the rule would ''negatively impact the ability of PHAs to move toward socioeconomic diversity in public housing'' and that due to the conflicts, the rule should not be implemented. A PHA-related trade association commented, ''The wisdom of evicting over income families or encouraging them to take advantage of other housing options is contingent on local policy preferences * * * retention [of some over-income families] may also contribute to whatever mixed income character public housing apartments may retain.'' Another trade association stated that, ''Families with increasing incomes can also play a vital role in local strategies to create mixed-income communities and deconcentrate poverty in public housing. The presence of working families in public housing provides role models that contribute to a healthy, stable community. The presence of relatively higher-income families could help PHAs secure private funding for development purposes, helping both residents as well as the broader community.'' An individual petition signer made a similar point.

Other commenters cited similar concerns. One individual commenter stated:

> In 1998, Congress passed the law stating that PHAs could admit higher-income tenants into low-income public housing project, because having a high concentrations of poor people had a negative effect on the neighborhoods. By adding higher-income tenants, Congress hoped to stabilize the neighborhoods.
>
> One of the problems the [HOPE VI] Revitalization grants may be used for, is demolition of drug-infested, severely distressed low-income public housing. HUD's proposal perpetuates the problem by recreating high concentrations of poor people all over again.

This commenter cited the example of the commenter's own development, which lost most of its moderate-income tenants in favor of lower-income tenants. Two commenters opposed to the rule stated that ''the proposed rule works against deconcentration objectives.'' These commenters further stated, ''Under the 1998 Quality Housing and Work Responsibility Act [QHWRA], PHA's are required to plan for deconcentration, in order to promote a comparable mix of incomes in all developments'' and ''by evicting over-income households, PHAs may be promoting higher concentrations of low income residents in some developments, thereby defeating the purposes of deconcentration.''

These commenters further stated that high turnover in a neighborhood can lessen the capacity of a community to address its needs and interests, and when the turnover occurs among higher-income households who demonstrate self-sufficiency and represent positive role models, the community can lose its strongest leaders and be significantly destabilized.

Some individual petition signers also stated that the rule would contradict income-mixing and HOPE VI goals.

Response: HUD believes that this rule does not contradict deconcentration or income-mixing policies, because those policies can be successfully achieved by a PHA while implementing this rule. Specifically, deconcentration can occur within tenant populations that are within 80 percent of area median income (AMI), since PHAs are required to target only 40 percent of extremely low-income families in the public housing program. Public housing is intended for low-income families (at or below 80 percent of AMI). Therefore, the resources of public housing should not be used by those who are not low-income while many who are low-income remain on the waiting list.

Comment: PHA commenters raised issues regarding how much pre-eviction notice to give.

One commenter suggested ''a one-to two-year minimum time limit to allow families to prepare for their move into the private market'' as not all PHAs have the resources to help residents become independent of public housing assistance. One commenter suggested a 6-month ''stabilization or grace period'' at the '' 'top rent' level for people 'exiting poverty,' '' with a mutually agreed termination of tenancy at the end of the six months. Another commenter suggested a 60-day advance notice to allow families time to enroll in a supportive services program. Another commenter, citing an example of a family that had borrowed heavily during a period of unemployment due to injury, questioned whether a PHA could establish a one-year post-employment grace period to allow families to ''get back on their feet and pay off some debt?'' One commenter observed that the length of notice is not covered in the rule.

Response: This rule will provide PHAs the discretion to determine the time frame needed to execute an eviction notice, as long as the PHA's decision complies with HUD's regulations and state and local laws.

Comment: Other issues regarding eviction. In a comment, a PHA stated that eviction might create a blemish on the family's record that could make it difficult for it to find other housing. This commenter stated that an eviction policy would require the support of local courts, cause the PHA to incur legal expenses, and should be a last resort. The commenter suggested that a better option might be to permit PHAs not to renew the lease, allowing the ''PHA to notify the over-income family that this would be the last year they would be able to lease from the PHA and provide an interim step before eviction.'' One trade association commenter stated that it has generally supported initiatives that encourage public housing residents to increase their earned income and decrease their dependence on housing assistance. The commenter disagreed with ''the rule's encouragement of punishing assisted housing families who succeed.'' The commenter believed that the rule expresses a preference for eviction, and would prefer that PHAs make discretionary use of their existing tools to encourage over-income families to seek to move, instead of the punitive measure of eviction. In another comment, a PHA stated that ''eviction is a rather serious step that cannot be taken lightly and should only occur when there is clear evidence that affordable rental opportunities are available in the open market to the household against which the action is being taken.'' An individual petition signer expressed fear of eviction if the rule becomes final. Another petition signer added a comment that the rule would ''penalize'' and ''dissuade people from moving up and out of poverty.''

Response: This rule does not require PHAs to evict, but gives PHAs the flexibility to evict or terminate the tenancies of over-income families, where it deems it appropriate, so long as its policy complies with HUD's regulations and state and local law governing tenant and landlord relations. Therefore, a PHA could take into account mitigating factors such as the family's self-sufficiency efforts.

Comment: Five commenters (three PHAs and two trade associations) disagree with, or suggest changes in, the proposed rule's exemptions for families participating in a Family Self-Sufficiency program under 24 part 984 (FSS) and families entitled to the earned-income disallowance. One commenter stated that the exemptions

are invitations to ''play the system,'' and suggested that the rule should require FSS families also to be eligible for the earned-income disallowance ''to ensure reversion of funds to PHA's by those who do not meet their commitment.'' After the 24-month period for the disallowance ends, there should be a mutual termination of tenancy with an option for eviction.

One commenter believed that working families and FSS recipients will be negatively affected if forced to leave after the end of the moratorium on the rent increase, and that the rule will be a disincentive to work if the residents' income results in the possibility of an eviction.

A trade association commenter disagreed as a matter of law that either the FSS program or the earned-income disallowance under 42 U.S.C. 1437a(d) protects over-income families from eviction. The earned-income disallowance speaks only to rent increases, not to continued tenancy, and FSS families have no right to remain in the program once their income exceeds the eligibility limits. This commenter stated that some of its members see the Quality Housing and Work Responsibility Act's favorable treatment of these classes of over-income tenants over other working families in public housing as troubling, and complained that the rule would ''aggravate this disparate statutory treatment'' by placing certain working families at risk of eviction while protecting others. This commenter would prefer HUD to grant PHAs broad discretion in connection with the retention or eviction of all classes of over-income households, or at least remain silent as to the proposed excluded classes, and leave their treatment up to PHAs as well.

Another trade association commenter similarly stated that the proposed rule's exemptions would exclude ''working families who have increasing incomes but have not participated in FSS or met the limited EID qualification criteria.'' The commenter described this different treatment of working families as a ''potential incongruity.'' This commenter also agreed that the exemptions are not required by statute. This commenter stated that ''PHAs should establish exemption categories as part of their local strategies.''

An individual housing authority commenter stated that ''FSS participants should be exempted from this rule as long as they are enrolled in the program and are actively pursuing the goals included in their contract. Over-income families should also be notified of the availability of the program and given the opportunity to enroll in the FSS program with reasonable notice before eviction proceedings are commenced.''

Response: The purpose of the Earned Income Disallowance in 42 U.S.C. 1437a(d), implemented at 24 CFR 960.255, is to encourage families to increase their annual income through participation in self-sufficiency and job training programs and employment by allowing the PHA to exclude the resulting increase in income for one 12-month period and exclude 50 percent of the increase in the second 12-month period. The total lifetime availability of any individual is limited to 48 months. To evict families properly qualified for and receiving the disallowance would clearly be contrary to the statutory purpose and to the regulation providing for the exclusion of such income. Since the earned income disallowance is available only for a limited time, and since it applies upon the commencement of employment of a qualifying family member, HUD does not believe there would be wide latitude to use the exemption improperly to avoid eviction. Therefore, HUD is including the exception to eviction for families receiving EID in this final rule.

FSS is a contractual agreement between the participant and the PHA. Because FSS involves contractual agreements, it is HUD's policy and rule to exempt participants in FSS programs until their contract of participation has ended. Otherwise, PHAs may continue to apply their admissions and continued occupancy policies except as they are modified by this rule.

Comment: One commenter states that this rule would increase program complexity. This commenter, a trade association, stated that this rule would ''make program implementation more complex rather than less complex.'' PHAs would have to identify FSS families and families entitled to the earned income disregard. Additionally, a PHA's determination of household eligibility for FSS or an earned income disregard ''may affect the amount of rent a family pays or the availability of support services to the family. If a PHA elects to implement a local discretionary policy to evict over-income households, these determinations of eligibility may come to affect a household's eligibility for continued occupancy in public housing. * * * .''

Response: PHAs are currently required to monitor FSS families and to apply the earned income disallowance in appropriate cases; therefore, this rule will not add additional complexity to the program.

Comment: HUD should support PHAs in enforcing a time limit for over-income families. This commenter agreed that a family making above 80 percent of the median ''should be evicted if that family is not making an effort to obtain housing in the private sector,'' and that PHAs should receive support from HUD to enforce a time limit not exceeding one year of housing for over-income families.

Response: HUD supports a PHA's discretion, as provided by this rule, to determine the appropriate time limit, if allowed to remain in public housing at all, for families that have reached the 80 percent AMI threshold.

Comment: Two PHA commenters support exemptions for elderly and disabled residents. One commenter, citing a particular case of an elderly resident whose income suddenly rose, asked whether a PHA could allow for an exemption for elderly or disabled persons. Another commenter stated that the only exceptions to eviction should be for elderly and disabled families who remain in public housing for a variety of reasons. ''If PHAs'' must evict an elderly or disable family, it should be for failure to comply with state laws and housing laws, not for being over income; otherwise, elderly/disable families will suffer.'' Also, ''More elderly families may become houseless or choose to rent from the private market. PHAs cannot compete with private market budgets.''

Response: This rule will provide PHAs the flexibility to exempt from eviction specific classes of families, including elderly and persons with disabilities, as long as the exemption is implemented fairly, does not violate civil rights laws, and is included in the PHA's admission and continued occupancy policies.

Comment: The type of increased income should be considered. One commenter, in addition to concerns about elderly and disabled residents, asked whether PHAs would be permitted to ''incorporate this proposal based on increased employment income only?''

Response: PHAs will have the flexibility to set and enforce over-income policy, including distinguishing employment income, so long as the distinction does not violate any other law.

Comment: Two commenters questioned whether perceived ''loopholes'' could be closed. One commenter, a PHA, stated that it is interested in implementing such a rule, while asking whether the final rule will include language to assure that PHAs have the authority to proceed with termination despite intentional or after-the-fact reductions in income in order to divert the termination process and, if not, what discretion PHAs would have

to ''close this easily-manipulated loophole.''

Another commenter stated that to be successful, this program would require that ''interim recertifications should be performed and rents adjusted accordingly (when the cumulative increase passes some baseline amount such as $100 per month to avoid the inefficient expense of [recertifications] for a few dollars)'' and that ''any six months (cumulative, not necessarily continuous) require the cessation of housing subsidy benefits.'' HUD needs to ''continually close the loopholes'' or ''creative tenant workarounds'' that divert resources from assisting the truly needy.

Response: This rule will allow PHAs to have the flexibility, within the parameters of state and local law, to set interim rent policies and other ways to ensure that the policies operate effectively.

Comment: The rule would result in hardship or homelessness. One commenter stated, ''I do not feel a family especially with children should be punished and put out just because their parents are working.'' The commenter stated that rents in her locality are ''out of control,'' and that families evicted under this rule would likely become homeless.

Two commenters stated that ''in localities with low vacancy rates and high rents, the proposed rule, if applied, will result in displacement and severe hardship for evicted families.'' These comments stated that the rule does not distinguish between localities with tight rental markets, such as New York and San Francisco, and those where vacancies are more plentiful. In tight rental markets, eviction under the rule may result in displacement of families with children, disruption of their social and community networks, access to work and other opportunities, and cause stress and hardship.

A number of individual petition signers also stated that the rule would cause displacement or homelessness among families that cannot afford the private rental market.

Response: Public housing is intended for low-income families. This rule is being implemented so that PHAs may, if it deems appropriate, require families with incomes higher than 80 percent AMI to find housing in the unassisted market so that the PHA may tend to its mission of serving truly low-income families on the waiting list.

Comment: Relationship with PHA plan. A commenter asked whether, should this rule become final, PHAs would have to wait until approval of their next agency plan to incorporate it into their policies and practices. Two commenters stated that PHAs intending to use the discretion granted by this rule should so state in their annual plan so that the PHA would be open to public comment under the annual public hearing required by QHWRA. These commenters stated that ''use of this discretion should not bypass the accountability requirements under the law.''

Response: PHAs that implement this rule must state their policy in an attachment to their annual plan required under section 5A of the U.S. Housing Act of 1937 (42 U.S.C. 1437c–1), or submit a plan amendment if necessary under local guidelines. A PHA may proceed with eviction actions up to presentation to the court pending the certification of the plan.

Comment: One commenter, a public interest group, submitted petitions signed by public housing residents.

One petition text submitted stated the following:

> Mi entendimiento es que esta propuesta/regla le dara el derecho a la Autoridad de Viviendas Publicas de Boston de desalojar residentes de viviendas publicas que estan sobre el limite de ingreso para hacer eligible para participar en programas de viviendas publicas. BHA puede hacer la decision que familias sobre ingresos pueden encontrar viviendas alternativa y viviendas publicas solamente deben hacer disponible para familias que tengan una gran necesidad para viviendas publicas.
>
> Sinceramente le pido a HUD que mantega sus restricciones en el desalojamiento de familias que estan sobre el limite de ingreso y la Autoridad de vivienda publica no pueda desalojar esas familias que estan sobre el limite de ingreso o terminar su contrato de arrendimiento.

31 persons signed this petition.

This commenter also submitted a similar petition in English, which reads as follows:

> My understanding is that this proposed rule would give the Boston Housing Authority the right to evict public housing tenants who are over the income limit for eligibility to participate in public housing programs. BHA 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.

One hundred fifty-four persons signed this petition. Some of these signers appended substantive individual comments. The issues raised in those comments are noted elsewhere in this preamble.

The same commenter also submitted a petition with a different text, which reads as follows:

> I am a resident of Massachusetts where the cost of rental housing is the highest in the nation, a studio apartment averages $900 per month and a four bedroom can run $2400 in my neighborhood (A copy of the Boston Globe classified is attached for your review.) Public housing residents are America's working poor. It takes two, three and even four combined incomes to just live decently. Over income is based on adult children who will some day leave, spouses who may leave, get laid off or even die. Every month we read about another company closing down or leaving the state; employment is not stable here. Left alone we would shortly return to homelessness if evicted for over income during our stable times. I want decent, safe, and sanitary housing. I respectfully ask HUD to maintain its restriction on eviction of families based on income which state that a PHA may not evict or terminate the tenancy of a family solely because the family is over income.

Sixty-three persons signed this petition. Some of these signers appended substantive individual comments. The issues raised in those comments are noted elsewhere in this preamble.

Response: It is HUD's position that PHAs should have the discretion to implement this rule. Local discretionary policies can address variances in rental markets as well as potential displacement of over-income families. As long as a PHA complies with state and local law, it will have the right to determine all housing requirements.

Comment: Fluctuations in earned income need to be taken into account.

The proposed rule should take into account fluctuations in income. An over-income family may be evicted under the rule, then suffer a reversal that makes it impossible to afford decent housing in the open rental market. The result will be to ''lock out'' these families until their turn comes up again in the waiting list. These commenters, public interest groups, propose that an ''over-income family'' be defined as one that is over-income for five consecutive years, and has little risk of suffering a significant income reversal in the next five years. Several of the individual petition signers make a similar point, that employment income is not necessarily stable and that the rule could result in eviction followed by a decrease in income.

Response: This rule provides PHAs with the flexibility to deal with the changes in a family's earned income status in terms of eviction.

Comment: Self-sufficiency planning should begin early. One PHA commented that ''With the exception of seniors and truly disabled persons, the day someone begins to receive assistance is the day self-sufficiency planning needs to begin.'' HUD assistance should be temporary.

Response: HUD agrees with the commenter's views. In fact, residents are made aware as they enter public housing of the availability of self-sufficiency programs that will allow them to become self-sufficient and make the transition out of public housing and possibly to homeownership. One of HUD's strategic goals is to increase homeownership opportunities and help residents make the transition out of public housing and possibly on to homeownership. HUD's homeownership programs are intended to assist in this process.

Comment: Asset limitations for seniors should be considered. With regard to senior citizens, a reasonable asset limitation in addition to income should be considered.

Response: PHAs have the discretion to consider asset limitations in their policies, as long as the limitations meet state and local legal requirements.

Comment: Government should increase available resources for low-income housing. A public interest group commented that HUD increase the funding of the public housing capital fund and support a national housing trust fund to finance expanded development of affordable low-income housing. This commenter also stated that HUD should increase the minimum income targeting requirement of PHAs from 40 percent of admissions to 60 percent of admissions for extremely low-income families.

Another public interest group similarly stated that HUD should increase federal commitments to adequate funding of public housing, including enabling high-performing housing authorities in tight rental markets to expand the inventory of public housing, and that HUD should recommend that the provision of prohibiting expansion of public housing stock be repealed. This commenter also agreed with the prior commenter that HUD should increase the admissions of extremely low income families from 40 to 60 percent, and added that HUD should propose an amendment to QHWRA to accomplish this.

Response: This rule addresses the public housing program only, not other available low-income housing funding sources, which are outside the scope of this rulemaking.

Comment: Concerns about flat rents and overall high rents. A number of signers of the petition submitted as comments disagree with increases in, or express concerns with, the flat rent. Other petition signers stated generally that rents are too high in relation to their income and other expenses. Others also stated that rents are too high in relation to the condition of public housing units.

Response: HUD regulations at 24 CFR 960.253(2)(b) set the standard for flat rents. Flat rents are statutorily required and must be set by comparable market rents. Any concern about the level of flat rents should be raised to either the PHA or local HUD office.

Comment: Petition signers suggest giving a homeownership option to over-income public housing residents who cannot afford rent in the private market. One commenter stated that ''if someone's income is to high place them in their own home build by the state so they would only need to pay a mortgage [sic].'' Another asked why the government does not allow PHAs to build or buy and refurbish old housing for over-income residents, and give them an option to buy after a certain length of time with no down-payment. This would free up an overly saturated market and help alleviate homelessness.

Response: HUD programs are intended for eligible families—those with incomes below 80 percent of AMI. Various homeownership options are available to those above this level.

Comment: Length of time for upper-income families to remain. One petition signer asked: If over-income residents are moved out, will a new standard be established as to how long upper income families replacing them can remain in the development?

Response: This rule provides the PHA flexibility to determine if over-income families should remain in public housing.

IV. Findings and Certifications

Environmental Impact

This rule concerns a statutorily required 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 *et seq.*), under 24 CFR 50.19(c)(6) of HUD's regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will 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 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, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

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 on the private sector. This final rule does not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of 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 rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this 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 rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 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

24 CFR 960

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

24 CFR 966

Grant programs—housing and community development, Public housing.

■ Accordingly, HUD amends 24 CFR parts 960 and 966 to read 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 § 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 paragraph (b) 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 the income limit for public housing, if the family has a valid contract for participation in an FSS program under 24 part 984. A PHA may not evict a family for being over the income limit for public housing if the family currently receives the earned income disallowance provided by 42 U.S.C. 1437a(d) and 24 CFR 960.255.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 3. The authority citation for part 966 continues to read as follows:

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

Subpart A—Dwelling Leases, Procedures and Requirements

■ 4. Amend § 966.4 by redesignating paragraph (l)(2)(ii) as (l)(2)(iii) and adding a new paragraph (l)(2)(ii) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(2) * * *

(ii) Being over the income limit for the program, as provided in 24 CFR 960.261.

* * * * *

Dated: November 19, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–26114 Filed 11–24–04; 8:45 am]

BILLING CODE 4210–27–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adding a procedural rule to provide that parole revocation and reparole decisions resulting from a revocation hearing for a District of Columbia Code offender may be administratively appealed. With this change, the Commission is also amending several rules to permit the initial decisions in DC parole revocation cases to be made by one Commissioner. Extending an appeal procedure to revoked DC parolees provides an avenue for these parolees to seek administrative correction of alleged errors in revocation proceedings and to present their views before a second Commissioner. The rule changes further the Commission's goal of greater uniformity in decision-making procedures for all cases within the Commission's jurisdiction.

DATES: *Effective Date:* December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Since the Parole Commission assumed the revocation functions of the former District of Columbia Board of Parole in August 2000 under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the Commission has required that parole revocation and reparole decisions for District of Columbia offenders be made by the concurrence of two Commissioners. The Commission adopted this requirement to replicate the voting procedures of the former DC Board, which made its decisions on the basis of a majority of the quorum of Board members (*i.e.*, two out of three).[1] The Board did not provide for an appeal of any of its decisions, and, when the Commission took on DC revocation functions, neither did the Commission. (The Commission is required by statute to afford an appeal procedure to U.S. Code offenders.) In response to recommendations that the Commission allow DC offenders to submit appeals, the Commission has explained that staff resources were not sufficient to justify increasing the agency's workload by allowing appeals for DC offenders, and that the two-vote requirement was an acceptable substitute for an appeal procedure. See 65 FR 45885, 45886 (July 26, 2000).

Last year the Commission began modifying its procedures for post-hearing voting and appeals in DC cases. The Commission promulgated a rule permitting appeals of revocation decisions for DC supervised releasees, and made a corresponding amendment that allowed the initial revocation decision for these releasees to be made by one Commissioner. *See* 68 FR 41696–41714 (July 15, 2003). Now the Commission is adopting similar changes for DC offenders who have had parole revocation hearings. DC parolees will now have a formal avenue for seeking administrative correction of alleged errors in revocation proceedings. By extending an appeal procedure to DC parole violators, the Commission will provide for cumulative review of the case by two Commissioners for those offenders who file an appeal. Under the Commission's long-standing practice, an appeal is, whenever possible, reviewed by a Commissioner who did not participate in the decision under review. *See* 28 CFR 2.26(b)(1). For appeals from revoked DC parolees, the Commission will employ the same policies and practices that the Commission identified in the publication of the rule granting an appeal procedure for revoked DC supervised releasees. *See* 68 FR 41698.

In adding an appeal procedure for revoked DC parolees, the Commission must also ensure that the initial dispositions in these cases continue to be made in a timely manner. The

[1] The Board's use of a majority-vote procedure was required by former DC Code § 24–201.2 (renumbered § 24–401.02), but this law and others regarding the creation, powers, and rulemaking authority of the Board were abolished by section 11231(b) of the Revitalization Act.