

**PHOTOCOPY
PRESERVATION**

HUD sub -

HUD Deconcentration

rule

Andrea Kane

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP

cc:

Subject: HUD deconcentration rule

I don't know if you've had a chance to wade through this, but Michael Deich is asking his staff for views on other options short of making HUD entirely change their rule, such as a) having HUD go forward with their 'apply to everybody' approach in the proposed rule and discuss pros and cons of their 'apply to everybody' approach vs our 'apply one to the bad guys' approach in the preamble or b) lay out both options and ask for public comments. Since it's a proposed rule, it's not clear how HUD could enforce either policy pending a final rule -- we're checking into that issue some more.

In any case, let me know if you have any reactions on the general issue.

----- Forwarded by Andrea Kane/OPD/EOP on 03/09/2000 05:08 PM -----

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Subject: HUD deconcentration rule

I've been working with OMB on the deconcentration rule that HUD was originally interested in announcing in February. The rule implements a provision of the 1998 public housing reform act that requires PHAs to use assignment policies that deconcentrate poverty and minimize income disparities among their projects and buildings (see statutory background at the bottom of this email). There are two issues: one process and one policy. I think we've reached agreement with HUD on process, but I believe HUD will protest on policy and I want to get your reaction. You may get a call from Jacquie or from the Secretary.

Process: HUD issued a final rule on Public Housing Agency (PHA) plans back in October which basically restated the statutory language about deconcentration (see below), but did not include specific steps on how they should achieve deconcentration. Based on the generally poor quality of plans they've received, HUD has determined they need to clarify and be more specific about the steps they expect PHAs to take to achieve this policy. They proposed to do so in a revised final rule, but OMB believes these changes are too significant to skip the public comment stage, and has told HUD they need to issue the changes as an NPRM. HUD has reluctantly agreed to do the NPRM.

Policy: The public housing law requires PHAs to a) deconcentrate poverty in public housing and b) affirmatively further fair housing in both public housing and Section 8 housing. Deconcentration essentially means that PHAs will bring relatively higher income families into relatively lower income buildings and relatively lower income families into relatively higher income buildings.

Note all of this is relative since most people in public housing are poor. Under the '98 housing law, PHAs

may admit families up to 50% of area median income, though at least 40% of families admitted each year must be below 30% of area median income -- roughly the poverty level. In fact, based on July 1999 data, the actual average income of PHA families is \$8,350.

HUD has proposed a very specific set of steps that all PHAs must follow in all cases in order to deconcentrate (see below). They've essentially defined a concentration problem as any place where average income of residents is 1 or more percentage points above the average. They require a PHA to skip over people on the waiting list so that only families with below average income can go into developments with above average income and families with above average income can go into developments with below average income.

While OMB and I agree with the policy objective, we're concerned that imposing this approach on all PHAs and for all developments within a PHA could provoke backlash, both because it is burdensome for the PHAs and because it could in fact result in some of the poorest families waiting longer for housing (if openings come up less frequently in higher income buildings).

OMB offered what I believe is a reasonable alternative (see below) that essentially draws a "tolerance band" around developments (or buildings within developments -- this is an open issue) that are between 90% and 110% of the PHA-wide average income. Nothing magic about 90 - 110% but this seemed to be a natural break point based on the data HUD provided, which show that about half of all family developments have average income between 90 - 110% of the PHA average. A resident with below average income could go to any open unit in a development or building with average income of at least 90% of the PHA-wide average income, and a resident with above average income could go to any open unit in a development or building with average income of less than 110% of the PHA-wide average income. In other words, units in the "acceptable range" would be open to the next person on the waiting list regardless of whether they are above or below average income -- no skipping would be required. want? ?

We're concerned that imposing HUD's approach on all PHAs and for all developments within a PHA could provoke backlash, both because it is burdensome for the PHAs and because it could in fact result in some of the poorest families waiting longer for housing (if openings come up less frequently in higher income buildings). The alternative preserves the intent of the law and the draft rule, but increases the chances it will be accepted and in that sense actually strengthens the rule. The alternative focuses deconcentration efforts on PHAs and projects where there are significant income disparities, reduces or eliminates the extra administrative burden for PHAs that don't have large disparities, preserves enough building/project options for people on the waiting list so that it is unlikely that poor applicants will effectively be denied assistance, and is less likely to be undermined by caricature or ridicule.

HUD's initial reaction was cool because the Secretary invested significant time and attention to the rule and considered other options before selecting this proposed approach. When pushed on why they chose to apply the remedy to all situations, regardless of how large or small the problem, they indicated they wanted to cover the maximum number of situations. However, if the goal is to deconcentrate poverty, then it seems we should focus our efforts where there are more significant disparities. I have a hard time understanding what is to be gained by skipping around in those situations where the incomes of families in a particular development (or building) are close to the average. HUD argues it's hard to draw a line, but if we have to draw one, it seems better to say that anything between 90 - 110% is "acceptable" rather than saying developments with incomes at 99% of the PHA-average represent concentrated poverty while those with incomes at 101% do not.

HUD Draft Rule

Public Housing Authorities (PHAs) would calculate their PHA-wide average resident income, which would be used as the marker to place new families in buildings. If a new family's income was above average it would only be offered housing in buildings where average income is below the PHA average. Conversely, families with below-average incomes would only be offered housing in buildings where average income exceeds the PHA average. A below-average income family on the waiting list could be skipped indefinitely

until all above-average income families are offered and refuse housing in that below-average income building. This policy would be applied nation wide to all PHAs and all family developments within their housing stock.

Example: average income for PHA is \$10,000. Opening occurs in a development where average income is \$9,800 (98% of PHA-wide average). The next three people on the waiting list have incomes of \$9,900, \$9,800, and \$1,100. PHA would skip over the first two and only allow the above avg income family to have that opening.

An Alternative

Apply the policy only to those PHAs with developments above 110 percent of the PHA average income or below 90 percent of the PHA average income. Families with below-average incomes would be offered housing in properties that were at or above 90 percent of PHA average income and families above the average income would be offered housing in properties at or below 110 percent of PHA average income. This alternative might also allow for "hardship exemptions" that would suspend this policy if locating a family in a property on the basis of income would significantly increase their commuting time, interrupt their employment, and/or move them away from family or child care.

You'll see that OMB is also considering a hardship exemption as part of the alternative. My inclination is not to support that - while I'm sympathetic to the problem, I'm even more sympathetic to HUD's counterargument that it will be very hard to administer and subject to manipulation/abuse.

The deconcentration policy focuses on income mixing, so it doesn't have a direct racial component. Irene's taken a look and is comfortable with the alternative proposal. She also notes that on the civil rights side there seems to be less controversy since it simply requires that they certify that their plan will conform with civil rights laws, will take affirmative actions to make sure that its policies do not discriminate or cause segregation.

Statutory Background

Section 513 of the 1998 Public Housing Reform Act amends the Housing Act of 1937, creating a new Section 16(a)(3), which reads in part:

"(A) PROHIBITION.--A public housing agency may not, in complying with the requirements under paragraph (2), concentrate very low-income families (or other families with relatively low incomes) in public housing dwelling units in certain public housing projects or certain buildings within projects. The Secretary shall review the income and occupancy characteristics of the public housing projects and the buildings of such projects of such agencies to ensure compliance with the provisions of this paragraph and paragraph (2).

"(B) DECONCENTRATION.--

"(i) IN GENERAL.--A public housing agency shall submit with its annual public housing agency plan under section 5A an admissions policy designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. This clause may not be construed to impose or require any specific income or racial quotas for any project or projects."

It goes on to authorize PHAs to offer incentives for higher income families to occupy lower income projects, and the reverse and to explicitly permit PHAs to skip families on the waiting list for the purpose of income-mixing.