



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR 5743-I-02]

RIN 2577-AC94

**Streamlining Administrative Regulations for Public Housing:
Revisions to Public Housing Flat Rents**

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

ACTION: Interim rule.

SUMMARY: Section 238 of the Department of Housing and Urban Development Appropriations Act, 2015 (2015 Appropriations Act) amended the requirements in the United States Housing Act of 1937 (1937 Act) for public housing agencies (PHAs) to set flat rents in public housing. These requirements were previously amended by Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act). This interim rule amends HUD regulations implementing the Fiscal Year (FY) 2014 statutory language regarding public housing flat rents to allow PHAs to take advantage of the FY 2015 authority that provides PHAs with more flexibility in setting flat rents. This interim rule supersedes the portion of a proposed rule issued by HUD earlier this year that addressed the issue of setting flat rents in public housing, and HUD continues to seek comment on this issue.

DATES: Effective Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

Comment Due Date: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule.

All communications must refer to the above docket number and title. 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.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at 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 www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

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

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

Public Inspection of Public Comments. All properly submitted 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).

Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Todd Thomas, Program Analyst, Public Housing Management and Occupancy Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 40 Marietta Street, NW, Atlanta, GA 30303, telephone (678) 732-2056 (this is not a toll-free number) or at Todd.C.Thomas@HUD.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3(a)(2)(B) of the 1937 Act (42 U.S.C. 1437a(a)(2)(B)) requires PHAs to set a flat rental amount for each public housing unit. In the 2014 Appropriations Act,¹ this amount was statutorily set at no less than 80 percent of the applicable fair market rent (FMR), as determined by HUD under section 8(c) of the 1937 Act (42 U.S.C. 1437f(c)). In the event that implementation of this requirement would increase a family's rental payment by more than 35 percent a year, the PHA must phase in the flat rent as necessary to avoid such result. The 2014 Appropriations Act required HUD to implement this change by notice, and to begin the rulemaking process necessary to amend the corresponding regulations. HUD implemented the 2014 statutory change by notice issued on May 19, 2014² and commenced rulemaking on January 6, 2015, at 80 FR 423.³

¹ Title II of Division L of the Consolidated Appropriations Act, 2014, Pub. L. 113-76, approved January 17, 2014.

² See Notice PIH 2014-12 at <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2014-12.pdf>.

³ See <http://www.gpo.gov/fdsys/pkg/FR-2015-01-06/pdf/2014-30504.pdf>.

In the 2015 Appropriations Act,⁴ section 3 of the 1937 Act was amended again to allow for additional flexibility to the requirement that the flat rental amount be set at no less than 80 percent of the applicable FMR, as established under 8(c) of the 1937 Act. HUD may allow a PHA to establish a flat rent based on an FMR that is based on an area geographically smaller than would otherwise be used, if HUD determines that the resulting FMR more accurately reflects local market conditions. In addition, a PHA may apply to HUD for an exception allowing a flat rental amount that is lower than the amount otherwise determined under the two allowable FMRs, if HUD determines that the two FMRs do not reflect the market value of the property and the lower flat rental amount is based on a market analysis of the applicable market. In either case, the alternative flat rent must not create a disincentive for families seeking to become economically self-sufficient to continue to reside in public housing.

In addition to providing additional flexibility to the 80 percent of an applicable FMR and allowing PHAs to apply for an exception, the 2015 Appropriations Act struck the statutory language requiring flat rents to be based on the rental value of the unit and the language requiring PHAs to comply with the statutory provisions by June 1, 2014.

HUD's January 6, 2015 rule proposed regulatory changes to conform to several statutory changes made to the 1937 Act that were designed to streamline and ease the burden of administrative requirements, imposed primarily on PHAs but also on multifamily housing owners administering programs and certain HUD Multifamily Housing and HUD Community Planning and Development programs. The January 6, 2015, proposed rule addresses a variety of administrative requirements, including verification of Social Security numbers, annual reexamination for families on fixed incomes, utility reimbursements, and the Earned Income

⁴ Title II of Division K of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, approved December 16, 2014.

Disregard used in several HUD programs. That proposed rule also included changes to 24 CFR 960.253(b), the regulations addressing public housing flat rents,⁵ and proposed to codify the changes already implemented for flat rents by PIH Notice 2014-12.

This interim rule replaces only the proposed changes with respect to flat rents in § 960.253(b); the changes proposed in January for other portions of § 960.253 remain in place, and are not effective until HUD issues a final rule that addresses all the regulatory changes proposed by HUD on January 6, 2015. HUD intends to issue a single final rule that takes into consideration all public comments received on both the January 6, 2015, proposed rule and this interim rule.

II. This Interim Rule—Summary of Changes

This interim rule, consistent with statutory authority and the notice implementing the changes in the 2014 Appropriations Act, establishes a standard flat rent amount at not less than 80 percent of the applicable FMR for a given unit.

However, the 2015 Appropriations Act allowed PHAs flexibility when establishing flat rents if 80 percent of the applicable FMR did not reflect the market value of a unit.⁶ This interim rule amends 24 CFR 960.253(b)(2) to provide PHAs additional flexibility when setting flat rents using a HUD-determined FMR. First, this interim rule provides that HUD may permit a flat rental amount based on either 80 percent of the applicable FMR, or an FMR that more accurately reflects local market conditions and is based on an area geographically smaller than the one that would otherwise be used. This second FMR would be either the Small Area FMR (SAFMR), issued for metropolitan counties, or the unadjusted rents, for counties not covered by an SAFMR,

⁵ See the discussion of flat rents in the preamble of the January 6, 2015, proposed rule at 80 FR 426, and the proposed regulatory changes at 80 FR 432-432.

⁶ See, for example, the description of section 238 in the attached overview of the 2015 Appropriations Act by the Council of Large Public Housing Authorities, at <http://www.clpha.org/articledetail/?aid=645>.

or any successor fair market rental determination. If neither a SAFMR nor an unadjusted rent has been determined for an area, PHAs must set flat rents based on the applicable FMR for the larger area. Second, this interim rule provides that the PHA may submit to HUD a request for an exception to use a flat rental amount that is lower than the amount allowed under the two FMRs. This request, if made, must include a market analysis and a demonstration that the proposed lower flat rental amount is based on a market analysis of the applicable market and is reasonable in comparison to other comparable unassisted units.

While the new statutory authority grants PHAs additional flexibility in establishing flat rents, PHAs are not required to exercise such flexibility. PHAs may opt to continue to implement flat rents equal to not less than 80 percent of the applicable FMR, as determined under 8(c) of the 1937 Act. Some PHAs may want to wait for the conclusion of public comment and the final rule before taking advantage of the new authority, and HUD understands and supports this position.

However, consistent with the 2014 Appropriations Act and the implementing PIH Notice 2014-12, PHAs are required to adjust flat rents downward to account for tenant-paid utilities and to revise flat rents within 90 days of HUD's issuance of new FMRs. In addition, the family's rent must not increase by more than 35 percent in a single year as a result of the new flat rent rules.

Finally, this interim rule removes language requiring documentation on the part of the PHA regarding the PHA's methods of determining a unit's flat rent, as the process setting flat rents is now less reliant upon discretionary actions by the PHA, except in the case of exception requests, which require documentation provided by PHAs.

III. Justification for Interim Rulemaking

In general, HUD publishes rules for advance public comment in accordance with its rule on rulemaking at 24 CFR part 10. However, under 24 CFR 10.1, HUD may omit prior public

notice and comment if it is “impracticable, unnecessary, or contrary to the public interest.”

Under such circumstances, HUD may publish an interim rule without soliciting public comment.

In this instance, HUD has determined that it is unnecessary to delay the effectiveness of this rule for advance public comment.

First, section 238 of the 2015 Appropriations Act is effective immediately and introduces statutory changes intended to provide relief to PHAs and tenants burdened by the current statute. This interim rule implements those statutory changes.

Second, while the interim rule does exercise some discretion on the part of HUD, the exercise is minimal and generally relies on the PHA requesting action by HUD to initiate the action. HUD is not mandating that PHAs use the flexibility authorized by the new statutory language, but is rather allowing PHAs the option to utilize the new authority if they so choose. PHAs may elect to continue to establish flat rents in accordance with the changes allowed under the 2014 Appropriations Act. Given that many PHAs want to use the new authority, this interim rule strikes the right balance of allowing them to implement this new authority but not requiring them to do so.

Finally, although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, HUD recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing a 60-day public comment period.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, “Regulatory Planning and Review.” This rule was determined to be a “significant

regulatory action,” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, 451 7th Street SW, Room 10276, Washington, DC 20410– 0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

Information Collection Requirements

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577-0220 and -0169. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (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 interim rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), in connection with HUD's publication of the Streamlining Administrative Regulations proposed rule, published on January 6, 2015, at 80 FR 423. That FONSI remains applicable to this interim rule, and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Impact on Small Entities

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 interim rule reduces administrative burdens on PHAs in many aspects of administering public housing. All PHAs, regardless of size, will benefit from the burden reduction made by this interim rule. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this interim rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this interim rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this interim rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Public Housing program is 14.872.

List of Subjects for 24 CFR Part 960

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

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 960 as follows:

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

1. The authority citation for 24 CFR part 960 continues to read as follows:

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

2. In § 960.253, revise paragraph (b) to read as follows:

§ 960.253 Choice of rent.

* * * * *

(b) Flat rent. The flat rent is determined annually, based on the market rental value of the unit as determined by this paragraph (b).

(1) The PHA must establish a flat rent for each public housing unit that is no less than 80 percent of the applicable Fair Market Rent (FMR) as determined under 24 CFR part 888, subpart A; or

(2) HUD may permit a flat rent of no less than 80 percent of an applicable small area FMR (SAFMR) or unadjusted rent, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used in paragraph (b)(1) of this section. If HUD has not determined an applicable SAFMR or unadjusted rent, the PHA must rely on the applicable FMR under paragraph (b)(1) or may apply for an exception flat rent under paragraph (b)(3).

(3) The PHA may request, and HUD may approve, on a case-by-case basis, a flat rent that is lower than the amounts in paragraphs (b)(1) and (2) of this section, subject to the following requirements:

(i) The PHA must submit a market analysis of the applicable market.

(ii) The PHA must demonstrate, based on the market analysis, that the proposed flat rent is a reasonable rent in comparison to rent for other comparable unassisted units, based on the location, quality, size, unit type, and age of the public housing unit and any amenities, housing services, maintenance, and utilities to be provided by the PHA in accordance with the lease.

(iii) All requests for exception flat rents under this paragraph (b)(3) must be submitted to HUD.

(4) For units where utilities are tenant-paid, the PHA must adjust the flat rent downward by the amount of a utility allowance for which the family might otherwise be eligible under 24 CFR part 965, subpart E.

(5) The PHA must revise, if necessary, the flat rent amount for a unit no later than 90 days after HUD issues new FMRs.

(6) If a new flat rent would cause a family's rent to increase by more than 35 percent, the family's rent increase must be phased in at 35 percent annually until such time that the family chooses to pay the income-based rent or the family is paying the flat rent established pursuant to this paragraph.

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Dated: August 7, 2015

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

Nani A. Coloretti, Deputy Secretary

Approved on August 7, 2015

[5743-I-02]

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