

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Secretary****24 CFR Parts 10 and 966**

[Docket No. FR-3819-F-02]

RIN 2501-AB92

**Public Housing Lease and Grievance Procedures**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** On May 22, 1995 (60 FR 27058), HUD published a rule for public comment proposing to amend its regulations governing public notice and comment requirements and public housing lease and grievance procedures. This rule finalizes the policies set forth in the May 22, 1995 proposed rule. Specifically, this final rule clarifies that HUD is not required to use notice and comment rulemaking for issuance of a due process determination. This rule also authorizes Public Housing Agencies (PHAs) to bypass judicial eviction procedures, if the law of the jurisdiction permits eviction through administrative action. Additionally, this final rule corrects a typographical error currently contained in 24 CFR part 966.

**EFFECTIVE DATE:** April 25, 1996.

**FOR FURTHER INFORMATION CONTACT:** Linda Campbell, Director, Occupancy Division, Room 4206, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410; Telephone numbers (202) 708-0744; 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:****I. Background****A. The May 22, 1995 Proposed Rule**

On May 22, 1995 (60 FR 27058), HUD published for public comment a rule proposing to revise HUD's regulations at 24 CFR part 10, governing public notice and comment requirements, and 24 CFR part 966, governing public housing lease and grievance procedures.

Under 42 U.S.C. 1437d(k), a housing authority is generally required to provide a tenant with the opportunity for an administrative hearing before the commencement of eviction proceedings in the local landlord-tenant courts. The statute and HUD's implementing regulations at 24 CFR part 966 state that for certain criminal-related evictions the housing authority may bypass the administrative hearing. However, HUD

must first make a determination that local law requires a pre-eviction court hearing that provides the basic elements of due process.

In HUD's view, the issuance of a due process determination is not a rule, and is therefore not subject to 24 CFR part 10's notice and comment rulemaking requirements. However, in its decision in *Yesler Terrace Community Council v. Cisneros*, the Ninth Circuit held that the due process determination for the State of Washington was a rule to which part 10 applied. The *Yesler* decision has meant that Public Housing Agencies (PHAs) in the States comprising the Ninth Circuit cannot rely on the HUD due process determinations issued for those States. Even for jurisdictions outside the Ninth Circuit, the decision in the *Yesler* case will inevitably lead to dispute and litigation concerning the ability of PHAs to rely on a HUD due process determination. In order to remedy this serious situation, the May 22, 1995 rule proposed to amend part 10 to clarify that the issuance of a due process determination does not require prior public procedure.

The May 22, 1995 rule also proposed to amend 24 CFR part 966. The amendment would permit PHAs to evict without bringing a court action if the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, but does not require a court determination of the rights and liabilities of the parties. This proposed amendment was designed to avoid the necessity for duplicative administrative and judicial hearings.

The May 22, 1995 proposed rule described in detail the amendments to 24 CFR parts 10 and 966.

**B. Discussion of Public Comments on the May 22, 1995 Proposed Rule**

The public comment period on the proposed rule expired on July 21, 1995. By close of business on that date, a total of 8 comments had been received. Six of the eight commenters expressed support for the May 22, 1995 proposed rule and urged its adoption without change. As a result of this positive public response, HUD has decided to adopt the May 22, 1995 proposed rule without change. A representative comment read:

[Our organization] strongly supports the proposed amendments to regulations governing eviction from public and Indian housing \* \* \*. Granting these administrative hearings to persons engaged in serious criminal activity slows down the eviction process considerably, adversely affecting the quality of life in our developments for law-abiding families \* \* \*. We welcome the initiative taken by the Department of Housing

and Urban Development \* \* \*. This will provide support to the Housing Authority[ies] in [their] efforts to expeditiously evict persons engaged in criminal activities.

The other two commenters were opposed to the proposed amendment to part 966 which would permit certain PHAs to evict through administrative action. Both commenters believed that the proposed rule, by authorizing non-judicial evictions, would eliminate vital protections of the tenant's rights. For example, the commenters worried about the lack of a legally trained, impartial, presiding officer at administrative hearings. The commenters were also concerned about the lack of subpoena power in administrative eviction actions.

HUD, while recognizing that there are substantive differences between administrative and judicial proceedings, does not agree with the commenters. This final rule provides adequate safeguards against wrongful evictions. Only PHAs located in States which authorize administrative evictions will be able to bypass judicial eviction procedures. The administrative hearings will have to comply with Constitutional due process requirements, as well as the grievance hearing procedures set forth at 24 CFR part 966. Additionally, the administrative determinations will be subject to review by the State's courts.

**C. Technical Correction of § 966.4(l)(3)(ii)**

Paragraph (l)(3) of § 966.4 establishes the requirements for lease termination notices to public housing tenants. Paragraph (l)(3)(ii), which requires that the notice inform the tenant of the right to examine PHA documents directly relevant to the termination or eviction, contains a cross-reference to § 944.4(m). The cross-reference is incorrect, and should instead refer to § 966.4(m). This final rule makes the necessary correction.

**II. Other Matters****A. Impact on the Environment**

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

**B. Federalism Impact**

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has

determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

This final rule clarifies that HUD is not required to use notice and comment rulemaking procedures for issuance of a due process determination. Furthermore, this rule permits PHAs to evict without bringing a court action, if the law of the jurisdiction permits eviction by administrative action and does not require a court determination of the rights and liabilities of the parties. This final rule will effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

### C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under this order. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

### D. 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 will not have a significant impact on a substantial number of small entities. This final rule merely concerns HUD's public housing lease and grievance procedures, and will not have any meaningful economic impact on any entity.

### List of Subjects

#### 24 CFR Part 10

Administrative practice and procedure.

#### 24 CFR Part 966

Grant programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 10 and 966 are amended as follows:

### PART 10—RULEMAKING: POLICY AND PROCEDURES

1. The authority citation for part 10 is revised to read as follows:

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

2. Section 10.3 is amended by adding a new paragraph (c) to read as follows:

#### § 10.3 Applicability.

\* \* \* \* \*

(c) This part is not applicable to a determination by HUD under 24 CFR Part 966 (public housing) or 24 CFR Part 950 (Indian housing) that the law of a jurisdiction requires that, prior to eviction, a tenant be given a hearing in court which provides the basic elements of due process ("due process determination").

### PART 966—LEASE AND GRIEVANCE PROCEDURES

3. The authority citation for part 966 is revised to read as follows:

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

4. Section 966.4 is amended by revising the first two sentences in paragraph (l)(3)(ii) and by revising paragraph (l)(4) to read as follows:

#### § 966.4 Lease requirements.

\* \* \* \* \*

(l) \* \* \*

(3) \* \* \*

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the

tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. \* \* \*

\* \* \* \* \*

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action or;  
(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

\* \* \* \* \*

5. In § 966.51, paragraph (a)(2) is amended by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(iv) and adding new paragraphs (a)(2)(ii) and (a)(2)(iii) to read as follows:

#### § 966.51 Applicability.

(a) \* \* \*

(2) \* \* \*

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

\* \* \* \* \*

Dated: March 12, 1996.

Henry G. Cisneros,

Secretary.

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