

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 964

[Docket No. FR-4502-P-01]

RIN 2577-AC13

Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 2(b) of the United States Housing Act of 1937, which was added by section 505 of the Quality Housing and Work Responsibility Act of 1998 (the Public Housing Reform Act of 1998). Section 2(b) requires, with certain exceptions, that the membership of the board of directors or similar governing body of a public housing agency must contain not less than one member who is directly assisted by the public housing agency.

DATES: *Comments Due Date:* August 23, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Your comments should refer the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives, Room 4116, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410-5000; telephone (202) 708-0713 (this is not a toll-free number) or Paula Blunt, Associate Deputy Assistant Secretary for Community Relations and Involvement, Room 4226, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410-5000; telephone (202) 619-8201 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

a. Public Housing Reform

Section 505 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, 112 Stat. 2461)(the Public Housing Reform Act of 1998) amended section 2 of the United States Housing Act of 1937 (42 U.S.C. 1437)(the 1937 Act). New section 2(b)(1) of the 1937 Act requires, except in certain cases, that:

the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member—(A) who is directly assisted by the public housing agency; and (B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.

New section 2(b)(2) of the 1937 Act establishes two exceptions to the resident board member requirement. First, public housing agencies that are located in a State that requires the members of a board of directors or similar governing body of a public housing agency to be salaried and to serve on a full-time basis are excepted from the resident board member requirement. Second, public housing agencies with less than 300 units are excepted from the resident board member requirement if they meet two conditions:

(1) The public housing agency must provide reasonable notice to the resident advisory board of the opportunity for residents to serve on the agency's board of directors or similar governing body; and

(2) The public housing agency must wait a reasonable time after the resident advisory board has received this notice.

If the public housing agency has not been notified within this reasonable time that any resident intends to participate on the board of directors, then the public housing agency is excepted from the resident board member requirement.

Section 2(b) also makes clear that no person may be prohibited from serving on the board of directors or similar governing body of the public housing agency because that person is a public housing resident or is assisted under section 8 of the 1937 Act (42 U.S.C. 1437f)(section 8).

b. This Proposed Rule

This proposed rule would implement section 2(b) of the 1937 Act in a new subpart E (captioned "Resident board members") in 24 CFR part 964 (captioned "Tenant Participation and Tenant Opportunities in Public Housing"). In addition, this proposed rule would also revise § 964.3

(captioned "Applicability and scope") to clarify that while part 964 generally applies only to public housing residents, new subpart E would apply to both public housing residents and persons assisted under section 8.

The proposed rule would implement the requirements of section 2(b) discussed above. In addition, the proposed rule would clarify a number of issues raised by section 2(b) as follows:

(1) *Exception for public housing agencies not governed by board.* Public housing agencies that are not governed by a board of directors or similar governing body would be excepted.

(2) *Resident is full member.* A resident board member would be a full member of the board of directors or similar governing body. The board would not be able to exclude a resident board member from participating in any matter before the board on the grounds that the resident board member's lease with the public housing agency either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity.

(3) *Initial implementation of requirement.* A board of directors or similar governing body would be required to comply with the following deadlines, unless the membership of the board already contains at least one resident board member. If the board consists of appointed board members, the first seat on the board that becomes open on or after October 1, 1999, would have to be filled by an eligible resident. If the board consists of elected board members, the chief executive officer of the unit of general local government whose jurisdiction coincides most directly with the jurisdiction of the public housing agency would have to create at least one additional seat on the board, by December 31, 1999, and would have to fill that seat with an eligible resident. In the case of multi-jurisdictional public housing agencies, the chief executive officers of each unit of general local government that comprises the jurisdiction of the public housing agency would be jointly responsible for creating and filling any additional seats. For the purposes of this rule, the term "elected board member" means:

(1) A board member who is elected directly to the board; or

(2) An elected official who serves on the board as a result of being elected to another office (i.e. county commissioner, city council member, etc.).

(4) *Filling open seats.* When the term of a resident board member expires or a seat occupied by, or intended for, a

resident board member otherwise becomes open, the open seat would have to be filled with an eligible resident, unless the membership of the board would continue to have at least one resident board member after the seat becomes open. If the loss of a resident board member would leave the membership of the board with no resident board member, the open seat would have to be filled with an eligible resident and would have to be filled according to the following procedures.

If the public housing agency plan does not provide for an elected resident board member, the board's normal appointing authority would have to appoint an eligible resident to fill the open seat. If there are no eligible residents who wish to serve on the board at the time the seat becomes open, the board would have to continue to make reasonable efforts to identify an eligible resident, until an eligible resident is appointed to board.

If the public housing agency plan provides for an elected resident board member, the board would have to initiate an election process. If there are no eligible residents who wish to stand for election to the board at the time the seat becomes open, the board would have to cancel the election and initiate a new election process when the board identifies an eligible resident who wishes to stand for election. The board would have to continue to make reasonable efforts to identify an eligible resident until an eligible resident is elected to the board.

II. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, under HUD's regulations at 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule implements

section 505 of the Public Housing Reform Act of 1998 (42 U.S.C. 1437), which requires with certain exceptions, that the board of directors or similar governing body of a public housing agency contain not less than one member who is directly assisted by the public housing agency. Section 505 and this proposed rule provide flexibility for smaller public housing agencies through an exception for public housing agencies that have less than 300 public housing units. Consequently, HUD does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (captioned "Federalism"), has determined that the policies contained in this proposed rule would have federalism implications. Specifically, the requirement that the membership of the board of directors or similar governing body of a public housing agency must contain not less than one member who is directly assisted by the public housing agency would have direct effects on any state or local laws that govern the organization of public housing agencies. HUD has prepared and submitted to the Office of Management and Budget a Federalism Assessment that addresses the federalism implications raised by this proposed rule.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the

Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

List of Subjects in 24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 964 as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

1. The authority citation for 24 CFR part 964 is revised to read as follows:

Authority: 42 U.S.C. 1437, 1437d, 1437g, 1437l, 1437r, 1437t, and 3535(d).

2. Revise § 964.3 as follows:

a. Revise paragraph (a) to read as follows;

b. Redesignate paragraph (e) as paragraph (f); and

c. Add new paragraph (e) to read as follows.

§ 964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any HA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part, except for subpart E, does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U.S. Housing Act of 1937.

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(e) Subpart E of this part implements section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437), which provides for resident membership on the board of directors or similar governing body of a public housing agency. Subpart E applies to any public housing agency that has a public housing annual contributions contract with HUD or a housing assistance payments contract with HUD under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

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2. Add subpart E to read as follows:

Subpart E—Resident Board Members

Sec.

964.400 Purpose.

964.405 Applicability.

- 964.410 Additional definitions.
- 964.415 Resident board members.
- 964.420 Resident board member may be elected.
- 964.425 Exceptions.
- 964.430 Nondiscrimination.
- 964.435 Initial implementation of resident board member requirement.
- 964.440 Filling an open board member seat.

Subpart E—Resident Board Members

§ 964.400 Purpose.

The purpose of this subpart is to implement section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437).

§ 964.405 Applicability.

This subpart applies to any public housing agency that has a public housing annual contributions contract with HUD or a housing assistance payments contract with HUD under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

§ 964.410 Additional definitions.

The following additional definitions apply to this subpart only:

(a) *Directly assisted.* Directly assisted means a public housing resident or a participant in the tenant-based section 8 program.

(b) *Governing board.* Governing board means the board of directors or similar governing body of a public housing agency.

(c) *Resident board member.* A resident board member is a member of the governing board who is directly assisted by that public housing agency.

(d) *Related unit of general local government.* A related unit of general local government is the unit of State or local government whose jurisdiction coincides most directly with the jurisdiction of the public housing agency, or in the case of a multi-jurisdictional public housing agency, a unit of State or local government whose jurisdiction comprises the jurisdiction of the public housing agency.

(e) *Elected board member.* An elected board member is either a member of the governing board who is elected directly to the governing board or who serves on the board as a result of being elected to another office.

(f) *Eligible resident.* An eligible resident is a resident who is directly assisted by a public housing agency and is eighteen years of age or older.

§ 964.415 Resident board members.

Except as provided in § 964.425, the membership of the governing board of each public housing agency must contain not less than one resident board member.

§ 964.420 Resident board member may be elected.

Residents directly assisted by a public housing agency may elect a resident board member if provided for in the public housing agency plan.

§ 964.425 Exceptions.

The requirements of this subpart do not apply to any public housing agency that:

(a) Is located in a State that requires the members of a governing board to be salaried and to serve on a full-time basis;

(b) Is not governed by a governing board; or

(c) Has less than 300 public housing units provided that the public housing agency has:

(1) Provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board;

(2) Not been notified of the intention of any resident to participate on the governing board within a reasonable time of the resident advisory board receiving the notice described in paragraph (c)(1) of this section; and

(3) Repeated the requirements of paragraphs (c)(1) and (c)(2) of this section at least once every year.

§ 964.430 Nondiscrimination.

(a) *Membership status.* A resident board member is a full member of the governing board.

(b) *Residence status.* A governing board may not prohibit any person from serving on the governing board because that person is a resident of a public housing project or is assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) *Conflict of Interest.* A governing board may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the public housing agency either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity.

§ 964.435 Initial implementation of resident board member requirement.

Unless the membership of its governing board already contains not less than one resident board member, a public housing agency must comply with the following deadlines, as applicable:

(a) *If the governing board consists of appointed board members.* If the governing board consists of appointed board members, the first seat on the governing board that becomes open on

or after October 1, 1999, must be filled by an eligible resident according to the requirements of § 964.440.

(b) *If the governing board consists of elected board members.* If the governing board consists of elected board members, the chief executive officer of the related unit of general local government must create at least one additional seat on the governing board, by December 31, 1999, and must fill that seat with an eligible resident according to the requirements § 964.440. In the case of multi-jurisdictional public housing agencies, the chief executive officers of each related unit of general local government are jointly responsible for creating and filling any additional seats.

§ 964.440 Filling an open board member seat.

When the term of a resident board member expires or when a seat occupied by, or intended for, a resident board member otherwise becomes open, the open seat must be filled with an eligible resident, unless the membership of the governing board would continue to contain not less than one resident board member if the open seat were not filled with an eligible resident. An open seat that does not meet this requirement must be filled with an eligible resident according to the following procedures, as applicable:

(a) *If the public housing agency plan does not provide for an elected resident board member.* If the public housing agency plan does not provide for an elected resident board member, the governing board's normal appointing authority must appoint an eligible resident to fill the open seat. If there are no eligible residents who wish to serve on the governing board at the time the seat becomes open, the governing board must continue to make reasonable efforts to identify an eligible resident who wishes to serve on the governing board, until an eligible resident is appointed to the governing board.

(b) *If the public housing agency plan provides for an elected resident board member.* If the public housing agency plan provides for an elected resident board member, the governing board must initiate an election process. If there are no eligible residents who wish to stand for election to the governing board at the time the seat becomes open, the governing board must cancel the election and initiate a new election process when the governing board identifies an eligible resident who wishes to stand for election to the governing board. The governing board must continue to make reasonable efforts to identify an eligible resident

who wishes to stand for election to the governing board until an eligible

resident is elected to the governing board.

Dated: June 15, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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