

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR-4586-I-01]

RIN 2577-AC18

Section 8 Housing Choice Voucher Program; Expansion of Payment Standard Protection

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

ACTION: Interim rule.

SUMMARY: On October 21, 1999, HUD published a final rule implementing the statutory merger of the Section 8 tenant-based and certificate programs into the new Housing Choice Voucher program. This interim rule amends HUD's regulations governing this new merger program to expand the regulatory payment standard protection against subsidy reduction. The October 21, 1999 final rule limited payment standard protection to the first 24 months of the lease term. The interim rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term. This interim rule also corrects a typographical error contained in the October 21, 1999 final rule.

DATES: *Effective Date:* August 9, 2000. *Comment Due Date:* September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1999 (64 FR 56894), HUD published a final rule implementing the Section 8 tenant-based program provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105-276, approved October 21, 1998) (referred to as the "Public Housing Reform Act"). Of particular significance, the October 21, 1999 final rule implemented section 545 of the Public Housing Reform Act.

Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs. HUD's regulations for the new Section 8 merger program (known as the "Housing Choice Voucher program") are located at 24 CFR part 982.

The October 21, 1999 final rule became effective on November 22, 1999. The final rule was preceded by HUD's publication of an interim rule on May 14, 1999 (64 FR 56894). The final rule took into consideration the public comments received on the interim rule, and most of the changes made at the final rule stage were in response to public comment.

II. This Interim Rule

The October 21, 1999 final rule amended the part 982 regulations to provide that payment standard protection will only apply during the first two years of the lease term. After the first two years of the lease, a family's subsidy would be based on the appropriate payment standard determined at the last regular annual reexamination of family income.

On reconsideration, HUD believes that this provision is too restrictive. HUD wishes to provide the benefit of protected subsidy levels to a greater number of assisted families—not just to new participants in the Housing Choice Voucher program, or assisted families moving to a new unit. HUD believes payment standard protection should extend for the duration of the lease term, and not be restricted to a limited number of years.

Accordingly, HUD is amending 24 CFR part 982 to expand the regulatory payment standard protection. This interim rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term.

This final rule also corrects a typographical error contained in the October 21, 1999 final rule. Specifically, the interim rule corrects § 982.501(c), which mistakenly provides that the provisions of § 982.521 apply solely to a tenancy under the Section 8 rental certificate program.

III. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit

advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reasons for HUD's determination are as follows.

HUD believes that the limits on payment standard protection established by the October 21, 1999 final rule are too restrictive. The interim rule corrects this error by providing assisted families with broader and more equitable regulatory safeguards against reductions in subsidy. Specifically, the interim rule extends the regulatory payment standard protection to all assisted families, not just to new program participants and assisted families moving to a new unit.

Delaying the effectiveness of this interim rule to solicit prior public comment would result in uncertainty among PHAs and affected families, as PHAs consider adjustments in payment standards under the existing requirements of the October 21, 1999 final rule without knowing the full scope of the additional regulatory changes to be made by HUD. Immediate effectiveness of this interim rule will reduce this uncertainty, and will allow PHAs to make payment standard adjustments knowing the likely implications of these decisions. Neither PHAs nor Section 8 residents will be disadvantaged by the change.

HUD also notes that the new Housing Choice Voucher program was implemented through an extensive public process, including three public forums across the nation, as well as the customary notice and comment rulemaking procedures.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comment on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

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*. OMB 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 in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared on the October 21, 1999 final rule in accordance with the HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4223). That Finding is applicable to this interim rule, and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this interim rule would not have a significant economic impact on a substantial number of small entities. The interim rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under Section 8 of the United States Housing Act of 1937. Specifically, the final rule would establish requirements governing tenant-based assistance for an eligible family. The interim regulatory amendments would not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Federalism Impact

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 would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt

State law within the meaning of the Executive Order.

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 interim 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.855.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Rent subsidies.

Accordingly, for the reasons discussed in the preamble, HUD is amending 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

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

2. In § 982.501(c), revise the reference to "982.520, and 982.521" to read "and 982.520."

3. Amend § 982.505 by revising paragraphs (c)(3), (c)(4), and (c)(5) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. The PHA must determine the payment standard for the family as follows.

(i) *Step 1:* At the first regular reexamination following the decrease in the payment standard amount, the PHA shall determine the payment standard for the family in accordance with paragraphs (c)(1) and (c)(2) of this

section (using the decreased payment standard amount).

(ii) *Step 2 (first reexamination payment standard amount):* The PHA shall compare the payment standard amount from step 1 to the payment standard amount last used to calculate the monthly housing assistance payment for the family. The payment standard amount used by the PHA to calculate the monthly housing assistance payment at the first regular reexamination following the decrease in the payment standard amount is the higher of these two payment standard amounts. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard amount.

(iii) *Step 3 (second reexamination payment standard amount):* At the second regular reexamination following the decrease in the payment standard amount, the lower payment standard amount shall be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard amount, in which case the payment standard amount is determined in accordance with paragraph (c)(4) of this section.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

(5) *Change in family unit size during the HAP contract term.* Irrespective of any increase or decrease in the payment standard amount, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard amount for the family beginning at the family's first regular reexamination following the change in family unit size.

Dated: June 15, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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