



24 CFR Parts 5, 92, 93, 574, 960, 966, 982

[Docket No FR-6057-P-02]

RIN 2577-AD03

Housing Opportunity Through Modernization Act of 2016:

Re-opening Public Comment Period on Subject of Over Income Families

AGENCY: Office of the General Counsel, HUD.

ACTION: Proposed rule; re-opening of comment period.

SUMMARY: On September 17, 2019, HUD published a proposed rule implementing sections 102, 103 and 104 of the Housing Opportunity through Modernization Act (HOTMA) of 2016.

The comment period for the proposed rule closed on November 18, 2019. Among other things, § 960.507 of the rule proposed adding a section addressing the treatment of families in public housing whose family income exceeds the new limit in HOTMA. Before finalizing the rule, HUD seeks additional public comment on the implementation of the public housing income limit, specifically public housing agencies' (PHAs') discretion in addressing over-income families. This notice therefore re-opens the public comment period on the HOTMA proposed rule for an additional 30 days solely to seek comment on these specific issues. HUD is not soliciting comment on any other issues related to HUD's September 17, 2019, proposed rule.

DATES: The comment period for a specific topic in the proposed rule published on September 17, 2019 (84 FR 48820), is re-opened. The due date for comments discussed in this supplemental notice of proposed rulemaking is **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov. To receive consideration as public comments, comments must be

submitted through one of two methods, specified below. All submissions must refer to the above docket number and title.

1. *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 them 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.

2. *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.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410; telephone number 202-402-5300 (this is not a toll-free number). Individuals with hearing- or speech-impairments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

On July 29, 2016, the president signed HOTMA into law (Pub. L. 114-201, 130 Stat. 782). HOTMA makes numerous changes to statutes governing HUD programs. In particular, section 103 of HOTMA imposed an income limit on families residing in public housing. Specifically, section 103 provides that two years after the family has reached the income limit, PHAs have the option of requiring families to vacate their units within 6 months or allowing the

families to stay, provided the families pay the higher of fair market rent or a rent equal the amount of the monthly subsidy for the unit. HOTMA requires HUD to determine the amount of subsidy through regulation.

On November 29, 2016, HUD published a Federal Register notice (81 FR 85996), seeking public input on how HUD should determine the income limit for public housing residents, pursuant to section 103 of HOTMA. HUD followed this notice with a July 26, 2018, notice (83 FR 35490) that made some provisions of section 103 of HOTMA effective.

On September 17, 2019, HUD published a proposed rule to update its regulations according to HOTMA's statutory mandate. Additional details about the proposed rule may be found at 84 FR 48820 (September 17, 2019). In this proposed rule, HUD proposed a new 24 CFR 960.507, which would codify the implementation of treatment of over-income families in public housing, including how to determine the monthly subsidy for such families' units.

While reviewing public comments and developing the final rule, HUD determined that it would be appropriate and helpful to obtain additional public comment on very specific aspects of HUD's implementation of the income limit for public housing. HUD believes that HOTMA provides that families who are over-income (OI) under HOTMA for two consecutive years are no longer public housing tenants eligible for the public housing program and the PHA must terminate the families' participation in the public housing program, even if they are allowed to remain in their units. Because these families would no longer be public housing tenants, they would not be subject to public housing regulations such as 24 CFR part 960 (including income reexamination requirements), and HUD would have no statutory basis to directly regulate these unassisted families. However, HUD can impose various requirements on the PHAs, which may then be able to require OI families to comply with requirements as a condition of their lease for the unit.

HUD seeks public comment on this determination, the implications of terminating such participation and, as specifically outlined in this notice, what procedural rights, if any, OI families remaining in their unit should be afforded.

II. Questions for Public Comment

HUD is seeking public input on the following questions:

1. Repositioning

For PHAs planning or currently taking advantage of options to convert public housing units under repositioning using one of HUD's repositioning tools such as Rental Assistance Demonstration (RAD), Demolition/Disposition (Section 18) and Streamlined Voluntary Conversion (Section 22), should special considerations regarding relocation apply to OI families permitted to remain in public housing units after the 2-year grace period (the two years after a PHA has first determined a family is over-income before the PHA must terminate the family's tenancy; for more information, see the proposed rule at 84 FR 48828) has ended?

For example, should OI families be afforded any of the tenant protections offered to income-eligible families during conversion? Further, are there any additional implications for the repositioning process that HUD should consider, specifically regarding the possibility of the PHA reducing the number of Tenant Protection Vouchers (TPV) they are eligible for as a result of units being occupied by a non-HUD-assisted family for more than 24 months?

2. Rent and Reexamination & Community Service Activities or Self-Sufficiency Activities (CSSR):

What requirements, if any, in 24 CFR part 960 should apply to OI families that are permitted to remain in public housing units after the 2-year grace period has ended?

Should PHAs have the option to create a preference to allow OI families that have experienced a reduction in income to be immediately re-admitted to the public housing program if they are determined to be income eligible again or should they be considered applicants starting at the bottom of the waiting list?

With respect to CSSR, should HUD give discretion to PHAs to allow for non-public housing leases to contain community service requirements?

3. Dwelling Leases, Procedures and Requirements:

What requirements, if any, in 24 CFR part 966 should apply to OI families permitted to remain in public housing units after the 2-year grace period has ended?

Under HOTMA, the only required lease provision for OI families is to charge a rental amount equal to the greater of the fair market rent (FMR) or an alternative rent comprising any amounts from the Operating Fund and Capital Fund under section 9 of the United States Housing Act of 1937 used for the unit. What role should HUD have, if any, specific to non- public housing lease requirements? For example, should HUD mandate minimum lease provisions such as those related to conduct and occupancy restrictions pertaining to drugs, drug-related criminal activity, or lifetime registration as a sex offender?

4. Grievance Procedures and Requirements

Should there be specific grievance or due process rights afforded to OI families permitted to remain in public housing units after the 2-year grace period has ended? At present, if such families are terminated from the public housing program, they would not be afforded the same rights as families that are public housing program participants that are over and above due process rights created by State and local law. What should be HUD's role, if any, in determining or mandating grievance and or due process rights for OI families? With respect to any grievance or due process rights, should discretion be given exclusively to PHAs and deference given to applicable state and local laws?

5. Additional Ramifications

What are the consequences to the families and PHAs if a PHA allows OI families to stay in public housing units while no longer participating in the public housing program? Does such a situation increase or decrease burdens on the families and PHAs? Are there implications for other rights or procedures that have not been discussed above?

III. Justification for Public Comment Period

In accordance with HUD's regulations on rulemaking at 24 CFR part 10, it is HUD's policy that the public comment period for proposed rules should be 60 days. In the past, HUD has generally provided for 60 days for public comment in the case of interim rules as well. However, HUD's policy does not require 60 days for public comment in the case of reopened public comment periods.

HUD solicited input on the implementation of over-income provisions multiple times, and this is a very narrow solicitation of additional comments. If HUD determines to adopt any suggestions that may be made in the public comments in the final rule, HUD would like to be able to do so as quickly as possible so that the final rule can be published in an expedient manner.

For these reasons, HUD has determined that in this case a 30-day public comment period is appropriate.

IV. Solicitation of Comment Only on Over-Income Provisions

This solicitation of public comment is solely on the specific questions pertaining to the over-income provisions as provided in this supplemental notice of proposed rulemaking. This notice is not re-opening public comment on any other issues related to HUD's September 17, 2019 proposed rule, and HUD will not review or consider public comments that address issues other than the specific questions in this document directed to the over-income provisions.

Aaron Santa Anna, Associate General Counsel for
Legislation and Regulations

