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Office of the General Counsel
Rules Docket Clerk
Room 10276
U.S. Department of Housing & Urban Development
451 Seventh Street SW
Washington, DC 20410-0001

*Submitted Electronically via
Federal eRulemaking Portal*

**RE: Comments on Proposed HUD Rule on “Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs”;
24 CFR Parts 5, 92 and 908**
Docket No. FR-4998-P-01
Published 6/19/2007; 72 Fed. Reg. 33844

The St. Paul Public Housing Agency (PHA) submits the comments set forth below regarding HUD’s Proposed Rule on “Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs”. The Saint Paul Public Housing Agency is an independent governmental agency which owns and manages over 4,200 public housing dwelling units and administers over 4,000 Section 8 Housing Choice Vouchers in the City of Saint Paul, Minnesota. The PHA has been rated a “High Performer” agency every year under PHAS and PHMAP and for six years under SEMAP.

The PHA offers the following comments:

1. In general, the PHA supports the proposal to use the prior year’s income to establish annual income, and to use Upfront Income Verification (UIV) in place of third party verifications of income, subject to the concerns discussed below.
2. Delay requiring use of UIV for applicant income information. (proposed 24 CFR §5.233)
HUD’s Enterprise Income Verification (EIV) system is useful, but in its present form it cannot provide income information for applicants for public housing and Section 8 vouchers. PHA’s may not have alternative computerized databases to use. We have found it cumbersome and expensive to create agreements with the State Wage Information Collection Agency (SWICA).
 - a. Recommendation: HUD should not require PHA’s to use UIV or computerized databases for applicants’ income information until HUD itself can provide suitable tools for that purpose.
 - b. Recommendation: HUD should authorize PHA’s to rely on income determinations conducted for other federal means-tested programs such as TANF. (This provision is in SEVRA but could be approved by HUD under current statutes, we believe.)

3. Clarify requirements to use “most recent 12-month data”; EIV information is not timely. (proposed 24 CFR §§5.233 and 5.609(a)(2)) EIV does not provide income information for “the [full] most recent 12-month period” because there is a lag of 1 ½ months or more before information is posted.

Typically wage information from the second quarter of the year (ending June 30) becomes available in EIV 45 days later, or around August 15. In one extreme case our PHA just encountered, the most recent wage information in EIV for a Section 8 participant is from the last quarter of 2006, over seven months ago. (The participant is a PHA employee, and we know that the earnings have been reported properly.)

Proposed §5.233(a) says, “Income data older than 12 months contained in the EIV system must not be used in verifying annual income.” That restriction would narrow the “window” for usable data to ten months at best, or as few as four months if the most recent data is eight months old.

Recommendation: Allow more flexibility in using income data in EIV that is older than 12 months. For example, “Income data older than 12 months contained in the EIV system should be used with caution, considering whatever other evidence of more recent income is available. Recent wage information data from sources other than UIV/EIV need not be supported by written third party verification if it is reasonably consistent with EIV (not necessarily identical). Income data in EIV that is older than 18 months must not be used in verifying annual income.”

4. The use of UIV/EIV should be permissive, not mandatory. The extreme time lag in EIV information for one participant cited above is one reason why HUD should encourage but not require PHA’s to use UIV/EIV in all cases. When EIV works well it saves time and provides a useful tool for PHA’s to discover unreported income. Therefore PHA’s will want to use EIV in most cases. However, when the EIV information is not timely, or if it appears unreliable, PHA staff should have the discretion to rely on other sources, without repeatedly having to document the reasons for not using EIV in a given case. Another example would be erroneous wage information reported in EIV, where the tenant and PHA staff previously verified the mistake but the wrong information still appears in EIV.

Instead of making UIV/EIV use permissive for all PHA’s, a compromise alternative would be to allow greater latitude to PHA’s that are High Performers under PHAS or SEMAP.

5. Discretionary treatment of recent changes in income should be clarified. (proposed 24 CFR §5.609(b)) The proposed rule is difficult to understand and should be rewritten for clarity. It states:

“If the processing entity believes that the most recent income data documents a change in the family’s annual income, the entity must use and annualize this income data to determine the family’s annual income for the 12- month period.”

We read the proposed language as giving the PHA discretion whether to rely on—or to reject—evidence of recent income changes when determining annual income. To make that intent clear, the provision could be reworded as follows:

“If, in the opinion of the processing entity, the most recent income data (from UIV/EIV or other sources) reliably indicates an ongoing change in the family’s annual income, the entity must consider this income data when determining the family’s annual income for the 12- month period.”

One reason the PHA should have discretion in this matter is that some program participants have been known to manipulate (reduce) their income temporarily before annual recertifications, to reduce their rent obligation. If the participant then reports an income increase after the recertification date, the PHA has to process an interim adjustment and give notice of a future rent increase, and the participant gets the benefit of a couple of months of reduced rent. Since some agencies’ policies do not require interim rent adjustments, participants may enjoy the artificially lower rent until their next annual recertification.

In other cases a participant may have a recent increase in income, but PHA staff may see seasonal or historical patterns or other strong evidence that the higher income will be short-lived. Again, the PHA should have discretion to discount the recent income increase and not base the entire annualized income on that information.

6. Evidence of Eligible Immigration Status (proposed 24 CFR §5.508). The proposed rule is difficult to understand and should be rewritten for clarity. For example the section of the proposed rule highlighted below cites documents that are not proof of U.S. citizenship or nationality, and therefore they should not be requested as verification of the declaration of citizenship or nationality.

(b) Evidence of citizenship or eligible immigration status. * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity must request verification of the declaration by requiring presentation of a U.S. passport, U.S. birth certificate, **Social Security card, Alien Registration card, Employment Authorization card, Temporary Resident card,** or other appropriate documentation, as provided by Section 214. (*emphasis added*)

7. Clarify what is “Eligible Immigration Status”. The language of the proposed rule quoted immediately above indicates that a non-citizen legally residing in the U.S. is eligible for public housing and Section 8 rent assistance if he or she can show an Employment Authorization card or a Temporary Resident card. A recent applicant for housing assistance at this PHA provided both of those documents, but under current law and regulations we were uncertain whether he could be approved for assistance. The INS verified that the documents appeared to be valid and that the applicant was a “non-immigrant alien legally residing in the US.” The applicant has Temporary Protective Status from INS. Our legal counsel recommended that we deny the application, citing

42 U.S.C. § 1436a, which states that housing assistance may be provided only to “an alien lawfully admitted for permanent residence as an immigrant....”

We have found that the current regulations on assistance to non-citizens are very difficult to interpret, and the proposed revisions do not seem to improve the situation.

Recommendation: HUD should take this opportunity to rewrite the regulations in 24 CFR Subpart E, Restrictions on Assistance to Noncitizens, to make them easier to understand and follow. This would benefit program administrators, applicants and participants, and other stakeholders.

Thank you for the opportunity to submit these comments. We also support the comments submitted by the Public Housing Authorities Directors Association (PHADA) and the Council of Large Public Housing Authorities (CLPHA), to the extent that our comments are not inconsistent with theirs.

We hope that the spirit of HUD’s recent Administrative Reform Initiative will guide this rulemaking process and subsequent rulemaking. We appreciate the determination of HUD’s leadership to eliminate unnecessary regulations and guidance, avoid micromanagement of public housing and Section 8 operations, and provide only necessary and understandable regulations and guidance, to achieve maximum benefit for the intended beneficiaries of HUD programs.

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