

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 5, 960, 964, 984, and 990

[Docket No. FR-4087-A-03]

RIN 2577-AB68

**Strengthening the Role of Fathers in
Public Housing Families**

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

ACTION: Advance notice of proposed rulemaking; Notice of withdrawal.

SUMMARY: The Department published an Advance Notice of Proposed Rulemaking (ANPRM) on the subject of "Strengthening the Role of Fathers in Public Housing Families" on July 30, 1996 (61 FR 39812), with a 45-day comment period. The ANPRM invited public comments on measures, practices, and authorizations to local public housing agencies in support of efforts to encourage absentee parents, especially but not necessarily limited to absentee fathers, to play a more responsible social and economic role in the lives of families in PHA-owned or assisted developments. Upon review of comments received in response to that ANPRM, the Department has determined that it is unnecessary to go forward with a regulatory change at this point, but that the purposes described in the ANPRM and in this Notice would be best served by proceeding with the development of less formal guidance material, described below.

DATES: The ANPRM on the subject of "Strengthening the Role of Fathers in Public Housing Families," published on July 30, 1996 at 61 FR 39812 is withdrawn as of October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Richard A. Trebelhorn, Technical Assistance and Planning Division, HUD, Room 4236, 451 Seventh Street SW, Washington, DC 20410-5000, telephone (202) 708-3642 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Department published an Advance Notice of Proposed Rulemaking (ANPRM) on the subject of "Strengthening the Role of Fathers in Public Housing Families" on July 30, 1996 (61 FR 39812), with a 45-day comment period. HUD received

comments from 32 entities, most of which were State or local housing agencies, and the substance of those comments is summarized below. In addition to comments received in response to the ANPRM, HUD convened a roundtable discussion on this subject in early September 1996, in which knowledgeable housing professionals and academics shared their thinking on measures that would encourage more responsible roles for fathers, and that would facilitate reuniting public housing families.

The comments on the ANPRM and comments and observations from the roundtable generally suggest that a formal rulemaking might be unnecessary, and in the absence of a compelling need for regulatory action, the Department has determined not to proceed with publication of a Proposed Rule at this time. Therefore, consistent with the majority of the comments on the ANPRM and the draft proposed rule, and with the recommendations of the roundtable, HUD will sponsor development of a "best practices" guidebook or source book for use in local fatherhood initiatives. HUD, or a contractor under HUD supervision, will visit a substantial number of sites—probably 12 to 15 locations beginning with and in addition to the known programs in Baltimore and Hartford—to gather information on best practices, procedures, attributes, and similar program elements or components of local programs compatible with the Department's goal of strengthening the role of fathers in public housing families.

Based on information gathered in the course of the site visits, information developed from the roundtable and comments on the ANPRM, and any other information that becomes available, HUD will develop a guidebook or source book of materials for PHA managers planning a fatherhood initiative. The materials in this guide or source book will emphasize "how-to" information on program modules or components that can be replicated, as opposed to narrative descriptions or case studies; case studies are expected to be used for illustrative purposes, but are not to be the principal focus of the research project or the resulting guide or source book.

Using inputs from the roundtable and the best practices study, HUD will use contracted resources to develop an Implementation Guide and a training package for use by PHAs electing to develop and implement a "fatherhood initiative."

The Guide would be a compendium of current thinking, reflecting but not duplicating the best practices material referenced above, that would be useful to housing authorities in initiating a local program to encourage or facilitate fathers' playing a more positive and responsible role in public housing families and communities. The training and implementation component is expected to include a short video to introduce HUD's interest in strengthening the role of fathers in public housing families, suitable for use with tenant groups and HUD field office staff as well as PHA personnel. It will also include detailed lesson plans and training materials for program managers at the PHA and project-site levels.

II. HUD Responses to Public Comments on the ANPRM

In drafting the Advance Notice of Proposed Rulemaking, HUD assumed an initial goal of reuniting families and bringing absent fathers back into their children's homes. Responses to the ANPRM and explicit comments in HUD's roundtable suggest that the ANPRM blurred necessary distinctions among several important goals. These include, at least, (1) facilitating the return of absentee fathers to their families; (2) encouraging men who are living intermittently or clandestinely with their public housing families to come forward and assert a responsible social and financial role; (3) assuring that estranged parents accept financial responsibility for their children in public housing; and (4) making it possible for absentee fathers to connect or re-connect with their children in public housing communities.

By subsuming these (and probably other) reasonable goals under a general statement of support for "re-uniting families," the ANPRM assumed an active PHA role in areas and issues that generally are beyond the authority and the capacity of local housing agencies. HUD recognizes that the program outlined in the ANPRM required considerable refinement. The Department recognizes that many of the activities that would go into a local program for strengthening the role of fathers and encouraging fathers to play responsible roles in their children's growth and development fall more appropriately within the capacity and responsibility of social service agencies outside the housing authority.

Therefore, any further initiative in this area—including the proposed best practices guide and implementation package—will necessarily place less emphasis on a presumed role for a housing authority. This Notice identifies

PHA actions or activities already authorized in statute and/or regulation that can be employed to further the goals described in the ANPRM. The proposed best practices guidebook will address additional measures that can be undertaken by a PHA and/or another service agency or contractor, and the implications of such measures for PHA management, including financial management.

The ANPRM invited comments on several specific items, and most respondents commented on most of those elements. Those comments are summarized, under the subject area heading of the ANPRM that is addressed by the comment, as follows:

1. *To the extent that it may be necessary to encourage responsible behavior by an absent parent, HAS would be encouraged, but not necessarily required, to:*

a. *Provide a priority for transfer among HA properties;*

Summary: The vast majority of respondents pointed out that PHAs already have the latitude to permit, authorize, or require transfers among their properties, and that such policies are spelled out in tenant selection and assignment plans; no further regulation should be necessary.

Response: HUD accepts these comments, and acknowledges that transfer policies are best left to local decision-making. HUD will continue to examine the desirability or practicality of including in a transfer policy explicit recognition of requested transfers that would result in a family's better access to day care, or more convenient access to employment or job training, especially in cases involving a returning parent.

b. *Offer a priority for a Section 8 certificate or voucher (consistent with the principles of the Family Unification program);*

Summary: Most respondents were opposed to Federal preferences in any guise, including this one. Several comments suggested that a preference, especially a new preference, was unfair to applicants already on waiting lists, some for several years. Other comments made the point that offering public housing residents a priority for Section 8 placement creates vacancies in public housing.

Response: HUD accepts these criticisms, and does not plan to emphasize use of tenant selection preferences to further the goals described in the ANPRM.

c. *Exempt from rent determinations the incremental income of the returning parent for a period of up to three years without adverse effect on the HA's*

eligibility for operating subsidy under the PFS.

Summary: Income disregards, rent forgiveness, and rent credits elicited more comment than almost any other part of the ANPRM. Only two respondents—both state housing agencies—opposed incentives of this kind, and several respondents recommended expansion of PHAs' latitude to disregard incremental income from a new job, income from a second job or second wage-earner (whether a new family member or not), or any earned income.

Response: Under section 402 of the 1996 Continuing Resolution, PHAs are permitted to adopt optional earned income deductions in determining adjusted income (but are not eligible for commensurate increases in eligibility for operating subsidy); this provision was extended in section 201 of the Department's 1997 Appropriations Act and is in effect at least through September 30, 1997 pending additional legislation.

In addition, the Department's recently-published Optional Earned Income Exclusions Final Rule, published May 5, 1997 (62 FR 24334), permits PHAs to adopt an exclusion for earned income; PFS Operating Subsidy will not increase to cover rental income reductions resulting from such exclusions, but will allow a PHA that achieves net increases in rents from earned income to maintain eligibility for subsidy up to an amount equal to the PFS operating subsidy shortfall (see also the Interim Rule on Performance Funding System—Incentives, published in the **Federal Register** on September 30, 1996 61 FR 51178).

2. *To obtain any benefits or incentives offered by an HA program, a returning parent would be required to enter into a formal agreement or contract, binding him or her to comply with the requirements of the HA lease and to make and honor commitments to family members and to the HA community. HUD requested public comments on the nature of such an agreement, and on the range of obligations that could reasonably be demanded of a returning parent. Should HUD create a model form of agreement for this purpose? Are there certain minimum requirements that HUD could itemize, and permit HAs to make additions to reflect local interests? Or should HAs be given maximum latitude to develop their own standards and agreements?*

Summary: Responses to this item were nearly as varied as comments on income disregards, ranging from specific recommendations for contract language, to suggestions that all the requirements

for positive parental behavior are already written into marriage vows and lawful marriage ought to be a major goal of fatherhood initiatives.

Response: HUD's first conclusion is that the ANPRM was too narrowly focused to have introduced this subject as a contract between the PHA and a returning parent/father. As was correctly pointed out in the comments, the PHA already has a lease with the subject family, and if a returning father joins that household, he becomes subject to that lease. If there is another agreement, securing additional rights or privileges beyond those of the leasehold, that agreement would be between the program participant—the returning parent, presumably—and the service agency managing the fatherhood program. That service agency may or may not be a PHA; experiences related at HUD's roundtable suggested that in many cases, if not most often, the service agency would not be a PHA, but a wholly separate community services entity whose clientele could include PHA families but would not be limited to PHA families. The substance and the enforcement of any such additional agreement, and the range of benefits secured by the agreement—employment, employment counseling, job training, behavior counseling—would be entirely between the signatories; neither HUD nor the PHA need necessarily be involved in that agreement.

HUD anticipates that the "best practices" study will develop a variety of agreements and components of agreements from which service providers, including any PHAs that elect to manage their own fatherhood initiative, can develop agreements suited to their specific situations.

A second major observation is that, particularly in the context of returning parents and re-uniting families, agreements between the absentee parent and the service agency are necessarily secondary to an agreement between the public housing leaseholder and the absentee parent. If the parent or grandparent is living in public housing with the children, then as a practical matter, that person will exert far more influence and control than the PHA or the service agency over the terms under which the absentee parent establishes or re-establishes a relationship with the children.

This observation also responds to several comments to the effect that restoring an absent parent to a household is not necessarily a good idea; sometimes the best resolution is for the absentee to remain absent. HUD's goal in fostering local fatherhood

initiatives is to facilitate plans that will enable absentee parents, especially fathers, to establish or re-establish positive social and/or economic links with their children, but HUD also recognizes that any such links must be mutually agreeable to the absentee and the custodial parent.

Summary: There were specific comments to the effect that HUD and/or the PHAs should encourage, or even require, lawful marriages as part of this effort.

Response: The policies and authorizations incident to this initiative are intended to facilitate the establishment or re establishment of positive social and economic links between absentee parents and their children in public housing communities; any explicit prescription concerning linkages or relationships among adult residents is beyond the scope of HUD rulemaking.

3. *HUD's position is that participants must be subject to admissions screening, to assure the rest of the community that the new or re-joining family member would not constitute any special threat to the peace and quiet of the neighborhood.*

Summary: Respondents were nearly unanimous in favor of rigorous screening of all applicants, including persons joining or re-joining resident families.

Response: HUD will instruct developers of subsequent guidance material to make explicit that housing authorities have the right to review and to reject persons proposing to join (or re-join) resident families, irrespective of the applicant's relationship to the resident family or of any prior leasehold interest enjoyed by that person: if someone has left the household, return is not necessarily automatic.

Summary: Several comments suggested that there was an apparent conflict between the "one-strike" provisions of section 9 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, approved March 28, 1996) (the "Extension Act") and outreach efforts to engage absentee parents in public housing communities.

Response: HUD has reviewed those comments and the cited statute, and is of the opinion that there is no conflict between this initiative and the Extension Act. Section 16(e)(2) of the Extension Act sets forth several exceptions to the Extension Act's rule that Public Housing authorities must deny assistance to persons who have a pattern of use of a controlled substance or a pattern of abuse of alcohol that interferes with the health, safety, or right to peaceful enjoyment of the

premises by others. The Extension Act states that in determining whether to deny occupancy or assistance, a housing authority may consider whether an individual:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and is no longer engaging in the use of a controlled substance or abuse of alcohol (as applicable); or

(B) Has otherwise been rehabilitated successfully and is no longer engaging in the use of a controlled substance or abuse of alcohol (as applicable); or

(C) Is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

For purposes of screening tenants who would join or re-join public housing resident households, the PHA should take into consideration an applicant's participation in a Fatherhood Initiative. Where that services or counseling program includes a substance abuse counseling component, the housing authority may, but is not required to, accept that as compliance with the rehabilitation provisions of the one-strike limitations in section 16(e)(2), and permit an exemption from the prohibitions of sections 6(r) and 16(e)(1) of the United States Housing Act of 1937 (1937 Act).

In addition to screening for admission or re-admission to residency in a public housing community, the issue of screening for acceptance into an employment, job training, or other social service program was subsumed in the ANPRM's reference to "screening." In response to comments on the ANPRM and information shared at the roundtable, the Department recognizes that criteria for participation in a services program are not necessarily the same as tenant selection criteria. HUD anticipates that the best practices study will include a variety of selection factors and screening techniques from which service providers, including any PHAs that elect to manage their own fatherhood initiative, can develop procedures suited to their specific situations.

4. *Returning parents, or a parent newly accepting a responsible role in a family, would be required to participate in a parenting and/or counseling program. To the extent that some returning parents may have been involved in domestic violence or abuse, such counseling or training must have been completed before admission or re-admission to the HA housing. Parenting training or counseling would be allowable budget costs for the HA.*

Summary: Respondents were generally in favor of parent training and counseling, and not necessarily limited to new or returning parents, but several PHAs objected to the suggestion that such services could be operated or financed by the housing authority.

Response: HUD's response is to remind all concerned that certain PHA-provided tenant services and management of external services are already allowable costs under PFS procedures, at least to the extent that such services are part of an approved Family Self Sufficiency plan under section 23 of the 1937 Act.

Where participation in a parenting class, anti-abuse counseling, or any other sort of behavior counseling is a component of a non-PHA service agency's program, the PHA has the latitude to accept or reject an applicant for admission (or re-admission) to public housing, irrespective of the applicant's participation in the training or counseling program, in accordance with the PHA's tenant selection and screening policies or procedures.

5. *The Hartford Family Reunification model includes an explicit requirement that returning parents be and remain free of substance abuse, including provisions for pre-admission testing and subsequent random testing for substance abuse. Testing is at the expense of the housing authority. HUD is interested in public comments on such drug abstinence and drug testing requirements and policies.*

Summary: As stated in the ANPRM, the discussion of drug abstinence and drug testing unfortunately blurs the distinction between public housing residency versus participation in employment, training, and services programs. Responding housing authorities were nearly unanimous in opposition to substance abuse testing requirements for returning fathers (although a few comments were positive toward universal substance abuse testing). Negative comments cited issues of discrimination against a particular segment of PHAs' clientele, the inappropriateness of PHAs' involvement in medical processes, PHAs' lack of capacity to manage or operate a substance abuse testing or identification program, and the costs of such an undertaking.

Response: Where a service provider operates a fatherhood initiative that includes a substance abuse testing component, existing regulations authorize PHAs to take into account the results of testing for controlled substances in screening potential residents, including parents seeking to

re-establish residency with their families.

PHAs can also condition continued rent abatement or income disregard benefits on a resident's successful participation in an employment, training, or services program, including success in abstinence from controlled substances where that abstinence is a condition of the program.

Dated: October 17, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

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