

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 982

[Docket No. FR-4149-F-02]

RIN 2577-AB73

**Section 8 Rental Voucher and
Certificate Programs; Restrictions on
Leasing to Relatives**

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

ACTION: Final rule.

SUMMARY: This final rule would limit the circumstances under which a landlord could lease a unit with Section 8 voucher or certificate assistance to a relative of the landlord. It would permit such leasing only if an HA determines that the leasing would accommodate a person with disabilities. The rule is intended to reduce the potential for misuse of Section 8 assistance.

EFFECTIVE DATE: June 17, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708-4594 or 1-800-877-8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Discussion

Proposed Rule

On March 10, 1997, the Department published a proposed rule at 62 FR 10786. Under that proposed rule, a housing agency (HA) may not approve a unit for lease if the owner is the parent, child, grandparent, grandchild, sister, or brother of the Section 8 voucher or certificate holder that is seeking to rent the unit. (Under § 982.306(e), "owner" includes a principal or other interested party.) The HA, however, could still approve the unit for lease, if the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

When implemented, the policy would apply to new admissions and to moves with continued assistance. HUD would add to HAP contract forms a simple certification by the owner that the owner is not a parent, child,

grandparent, grandchild, sister, or brother of any member of the family. HUD would also add a comparable certification to the rental voucher and the rental certificate.

After considering the comments discussed below, the Department has decided to publish this final rule as it was proposed.

Summary of Public Comments and Responses

The Department received 154 public comments. Sixty comments came from individuals that either were Section 8 tenants leasing from relatives or were landlords leasing to relatives with Section 8 assistance. Sixty-six comments were from housing agencies (HAs). One HA included 119 letters addressed to the HA from Section 8 tenants and landlords. The Department also received comments from two Congressmen, several cities, trade associations, and entities involved in managing housing. The following summarizes the major comments and gives the Department's response.

A. Comments on the Merits of the Policy

The following public comments, both pro and con, concern the overall merits of the policy of prohibiting leasing to close relatives with voucher or certificate assistance.

1. *The Presence or Absence of Program Abuse.* Several commenters urged HUD to adopt the rule because it would curtail program abuse. Some of them noted instances where property was quitclaimed and reconveyed to relatives and then leased to the former owner and other instances where the tenant was listed as a co-owner of the property. Some commenters noted instances where families were paying for their homes with Section 8 assistance by leasing to their relatives. Others indicated that there are times when landlords do not collect the full amount of tenants' share of the rent when they lease to relatives.

Other commenters said they did not see fraud where a landlord is renting to a relative. They argued that tenants have to follow the same policies whether they rent from relatives or nonrelatives and that HUD audits and reviews could see if the HA is being consistent when leasing with relative and nonrelative landlords. They claimed that the preamble to the proposed rule indicated that HUD's reviews did not disclose program violations. Some contended that there is no need for the rule if the HA is doing its job. If there is a problem in detecting fraud or abuse, it should be addressed by additional documentation, not by the proposed rule.

Some commenters viewed the rule as a reaction by HUD to bad press. They asserted that the reason HUD is proposing the rule is appearances. They thought the rule corrects a public perception more than program misuse. They believed HUD's arguments for the rule to be speculative with no documentation for the assertion that current policy encourages families that can house family members to obtain Federal assistance that would otherwise be available to more needy families. To assume that there is something improper in renting to relatives is a faulty assumption. HUD should not focus on an area that has yet to be proven misused but should focus on actual fraud cases. HUD should gather data showing abuse before it issues restrictions on housing choice.

Other commenters, however, pointed out that halting a practice that may appear to be improper is an important step in maintaining the integrity of the programs and the HAs operating them.

Some commenters saw the rule, if adopted, as increasing the possibility of abuse. They noted that the family relationship may be difficult to verify. An "other interested party" might not be on the deed. Some believe that the prohibition could be avoided by landlords "trading" relatives. HAs do not have the staff to verify property ownership.

2. *Extent of Practice of Renting to Relatives.* There was disagreement among commenters (mostly HAs) on the perceived extent of the practice of renting to relatives. A few commenters argued that there was little need for the rule because in their experience there were few instances of renting to relatives.

Other commenters, however, favored the rule because in their experience the practice is not rare. One HA indicated that about 12 percent of the units under lease were in units owned by immediate family. This commenter claimed that, from conversations with other HAs, this number may be representative of HAs in general. The commenter gave specific examples of landlords with a number of rental properties renting under Section 8 to a parent or child.

3. *Effect on Supply of Affordable Housing.* Another group of commenters acknowledged that the practice of leasing to relatives may be extensive, but favored the practice because they believed that it increased the supply of affordable housing. One commenter noted that 20% of its certificate holders rent from relatives and that its locality had a vacancy rate of 2 percent.

Some commenters asserted that the prohibition on leasing to relatives

would severely decrease the supply of affordable rental housing in small communities and rural areas which have few rental properties. Because of tight housing markets, family members purchase mobile homes and lease to relatives participating in the Section 8 program. The commenters stressed that their relatives are as needy as other Section 8 participants. They believed that the rule will reduce the base of participating owners. A relative is more likely to rent to a family member with a history of problems or a disability.

A few commenters thought that HUD was sending a mixed message because under HUD Notice PIH 97-13, "Lease-Purchase Agreements in the Section 8 Tenant-Based Rental Voucher and Certificate Programs," HUD clarified that Section 8 regulations do not prohibit lease purchase arrangements.

For these reasons some commenters recommended one or more of the following exceptions: for tight rental markets and for families working toward self-sufficiency; for HAs with fewer than 500 certificates and vouchers; and for rural areas.

4. *Landlords are not generally affluent.* Many of the commenters that were opposed to the rule believed that landlords who rented to relatives, in general, were not affluent and were not in a position to provide low rents without the Section 8 assistance. They argued that the owner/relatives are continuing to take responsibility for their family members even though some cost is borne by the Federal Government and that the rule would make it more difficult for relatives to assume some responsibility for a needy relative. Many of the comments from individuals explained how they either were aided by renting from relatives or were aiding relatives by renting to them. The most frequently described situation was of an owner renting to a low-income adult child, single-parent family. Some commenters believed that the current policy encourages family unity or promotes self-sufficiency.

While most of these commenters wanted HUD to drop the rule, some commenters recommended exceptions for certain owners. These recommendations included exceptions for owners: with fewer than 100 units; with fewer than 5 units; that own only one property; that cannot allow the unit to go unrented. One commenter asked for an exception for an owner-occupied duplex where one unit is occupied by an elderly relative or a relative with child care needs.

Another approach that was recommended was to permit leasing to relatives but require business financial

statements from a landlord that is a relative. This commenter recommended that an HA's determination of an owner's ability to forgo rent should include considering family size. One commenter, a landlord, expressed a willingness to provide financial information to show inability to support the relative.

5. *Costs.* The commenters disagreed on whether the rule would increase or decrease program costs. Some commenters indicated that their experience was that many voucher holders would probably give up assistance if they could not rent from a relative, indicating that assistance would become available for more needy families. Other commenters argued that contract rents generally are lower than average when a landlord leases to a relative. They believed that, if families do not rent from relatives, they will rent elsewhere; therefore, the rule could result in paying out higher assistance payments. One commenter's experience is that young families who rent from relatives do not stay on rental assistance long.

Some commenters noted that rental units owned by relatives are usually in good condition. Repairs generally are made quickly. They believed that there are fewer landlord-tenant problems and the tenant is more likely to help maintain the unit. Related owners are likely to provide transportation and child care which addresses obstacles to employment.

6. *Only Concerns Should Be Eligibility of Applicant and Condition of Property.* Some commenters objected to the proposed rule as seriously negating the goal of "maximum housing choice for assisted families." They believed that there should be no exception to current general policies on participation. That is, participants should choose where to reside and landlords should be able to lease to anyone as long as the tenant is income eligible and unit is in good condition. Income and assets of other relatives, they asserted, have never been a consideration in determining eligibility. They saw the rule as creating a back-door method of means testing of relatives without Congressional intent to do this. This is not an owner-income tested program, but rather a tenant-income tested program. Some commenters noted that food stamps and energy assistance can be used to buy food or fuel from a relative.

Some commenters saw the rule as injecting a morality that they did not believe belongs in regulations. They argued that there is no legal obligation for closely related individuals to provide for each other financially.

Unless there is a means to hold families accountable for housing all of their members, this rule will accomplish little. The Federal government and the HA are not in a position to determine if an owner can or should be responsible for housing a low income relative.

HUD Response. The Department acknowledges that information on the practice of owners leasing to relatives is anecdotal. Nonetheless, the Department continues to believe that both the actual instances of program abuse and allowing leasing among closely related persons create a systemic incentive to misuse the program. In addition, public perception that the program can be used in such a manner is itself detrimental to the program.

The restriction on leasing to a relative does not change the general eligibility requirements of these programs. The rule does not in any way impose a means test on owners. It should not substantially restrict housing choice to the certificate or voucher holder. The vast majority of affordable housing within the market remains available to voucher and certificate holders. It is only housing that is owned by a close relative which cannot be leased. Indeed, the argument that prohibiting leasing to relatives will decrease the supply of affordable housing underscores the doubt that such housing is truly available under the voucher and certificate programs. Rather, its availability appears to be dependent upon the family relationship between the landlord and tenant.

Adopting this rule should not increase the risk of fraud under the program. The practice of leasing to relatives exists in large part because it is permitted under current policies. Certification by the owner and the certificate or voucher holders is a minimally burdensome way of implementing this requirement.

B. Comments on Specific Elements of the Policy

1. *Comments Concerning Scope of Restriction and Exceptions.*

Comment. Some commenters recommended that the rule also exclude leasing to other relatives, such as, aunts, uncles and cousins. Other commenters believed that the restriction should apply to in-laws and step parents. They thought it might be easy to get around the proposed restriction if the restriction were not expanded.

HUD Response. The Department is not inclined, at this time, to expand the scope of relatives to which the restriction applies. This is both to keep the restriction easier to apply and because the Department believes that

the class of relatives covered is sufficient to cover the circumstances in which the program is most likely to be abused.

Comment. Most comments on the exception for persons with disabilities were favorable. They indicated that the exception should be kept because rentals for persons with disabilities are not readily available and relatives are better able to assist a family member who is a person with disabilities. Some commenters asked for a complete description of "person with disabilities." Others requested that persons with mental disabilities be included. One commenter recommended that the exception should also apply when the owner is the person with disabilities.

A few commenters were opposed to an exception for the persons with disabilities because they believed that many times such persons have other resources to rely on. One commenter was not opposed to the exception, but noted an inconsistency between restricting leasing to relatives (a resource issue) and allowing leasing to persons with disabilities regardless of the wealth of the owner.

HUD Response. The Department has retained the exception permitting leasing to a relative when the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. In the rental voucher and rental certificate programs, the term "person with disabilities," for purposes of reasonable accommodation and program accessibility for persons with disabilities, means "individual with handicaps" as defined in 24 CFR 8.3. For purposes of determining eligibility based upon disability status, "Person with disabilities" is defined for these programs in section 3(b)(3)(E) of the United States Housing Act of 1937.

Comment. A number of commenters argued that the exception should apply to the elderly. They believed that it was less costly to enable the elderly to live independently with assistance than to be placed in a nursing home. A commenter argued that it would create a hardship if he could not rent the adjacent duplex to his mother. Some commenters recommended that the exception should include: elderly, persons with disabilities (any form of disability not just physical), HIV positive, and AIDS tenants. Some commenters asked how the rule is fair to the elderly when they are allowed to transfer assets to become eligible for Medicaid.

HUD Response. This rule does not prevent the elderly person who is qualified for Section 8 assistance from living independently. If the elderly person is also a person with disabilities then he or she would qualify for that exception.

Comment. Some commenters recommended an exception for a tenant that is losing project-based assistance, such as under moderate rehabilitation.

HUD Response. Subject to the availability of funds, these tenants would receive a voucher or certificate. The Department does not see a reason for treating such a tenant differently than other certificate or voucher holders.

2. *HA Discretion.* A number of commenters argued that the rule should be discretionary for HAs. They characterized the rule as "overkill." They recommended that HAs should be able to address how to deal with leasing to relatives in their Administrative Plans if they perceived a problem. The Department has not adopted this recommendation because it believes that a uniform policy will better ensure the integrity of the Section 8 program.

3. *Alternatives to Prohibiting Leasing to Relatives.* There were a number of comments recommending restrictions that fell short of a general prohibition on leasing to relatives altogether.

One recommendation was that the contract rent for a relative should be set at 90 percent of the lower of the FMR for authorized or actual bedroom size when the landlord rents to a relative; others recommended that the rent be set at some percentage below FMR. Some of these commenters would prohibit such leases if the relative resides in the same building and would otherwise set the initial contract rent at no more than rent previously charged for the unit.

One commenter recommended that HUD require every such tenant to pay one quarter of the total rent.

HUD Response. The Department does not believe that any of the restrictions on rent deal directly with the problem which is avoiding having relatives structure arrangements where a family member receives assistance for housing that would be provided anyway.

4. *Affect on In-Place Tenants.* A number of commenters agreed with applying the new policy only to new admissions and moves. To do otherwise, they noted, would require HAs to apply the restriction to existing rental agreements which would create unnecessary confusion and hardship. One commenter contended that forcing someone who is eligible for assistance to relocate would not serve the overall goals of the program.

Other commenters believed that current participants leasing from relatives should not have the lease renewed in place. They recommended that current participants be given 6 months (some suggested 5 years) to locate another unit. Others thought that current tenants should have their assistance terminated at the next annual review if they did not move. Another recommendation was that, if a relative is allowed to remain in the unit, the owner should not be allowed a rent increase.

HUD Response. The Department recognizes that the rule does not address the concern about families that are currently benefiting from Section 8 by taking advantage of the fact that there was no prohibition on renting to relatives. These participants, however, have existing living arrangements that presumably were entered into in conformity with then applicable regulations. The Department is reluctant to alter these arrangements through this rulemaking.

5. *Issue of Discriminatory Practice.* Some commenters questioned whether the proposed restriction was a fair housing violation. Many commenters characterized the policy of refusing to allow landlords to rent to relatives as discriminatory.

HUD Response. The policy is not discriminatory. It does not distinguish between people based on a prohibited status. Rather it imposes a restriction based on a legal relationship that exists between individuals.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Department of Housing

and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C.

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that this final rule does not have a significant economic impact on a substantial number of small entities because it simply restricts leasing with assistance between certain related individuals and does not otherwise restrict or impose burdens on the use or availability of Section 8 rental certificate or rental voucher assistance.

Unfunded Mandates Reform Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this final rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has

determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not alter the relationship between HUD and the HAs. Rather, it simply amends one of the conditions for receipt of Federal assistance.

Catalog

The Catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 982 is amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

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

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d).

2. In § 982.306, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

§ 982.306 HA disapproval of owner.

* * * * *

(d) The HA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

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Dated: May 8, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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