

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 903

[Docket No. FR-4677-P-01]

RIN 2577-AC31

**Public Housing Agency Plans:
Deconcentration—Amendments to
“Established Income Range”
Definition**

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the deconcentration component of HUD's Public Housing Agency Plans regulations to revise the definition of Established Income Range (EIR) to include within the EIR those developments in which the average income level is at or below 30 percent of the area median income, and therefore ensure that such developments cannot be categorized as having average income “above” the Established Income Range. An income level that is at or below 30 percent of the area median income is defined as “extremely low income” in HUD's regulations. HUD believes that developments with an average family income at or below 30 percent of the area median income should not be categorized as higher income developments for purposes of income mixing because efforts to place lower income families into these developments would not result in income deconcentration as contemplated by the statute.

DATES: *Comment Due Date* October 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708-0713 (this is not a toll-free number). Persons with hearing or

speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2000 (65 FR 81214), HUD amended the deconcentration provisions of its Public Housing Agency Plan regulations to achieve two purposes: (1) To assure that PHAs know what they must do to deconcentrate poverty in the public housing program; and (2) to assure that PHAs know what they must do to affirmatively further fair housing, as it relates to admissions to public housing. The December 22, 2000 final rule was preceded by an April 17, 2000 proposed rule, and took into consideration public comment received on the proposed rule. By a final rule published on February 5, 2001 (66 FR 8897), HUD amended the December 22, 2000 final rule to provide that the first PHA fiscal year that is covered by the new deconcentration requirements of the December 2000 final rule is the PHA fiscal year that begins October 1, 2001. (The December 22, 2000 final rule provided that the first PHA fiscal year that is covered by the new deconcentration requirements is the PHA fiscal year that begins July 1, 2001.)

Since issuance of the December 22, 2000 final rule, HUD has received additional feedback from public housing agencies (PHAs). PHAs have advised HUD that in determining the Established Income Range (EIR) for certain developments, in accordance with the procedures of the rule, the EIR for these developments is sufficiently low that some developments for which the average income is at or below 30 percent of the area median income, actually fall above the EIR. Developments that fall above the EIR are categorized as “higher income developments,” and in accordance with the deconcentration requirements, PHAs must undertake efforts to place lower income families into higher income developments. HUD regulations define an income level that is at or below 30 percent of the area median income as “extremely low income” (24 CFR 5.603(b)). HUD agrees with PHA concerns that in all practicality deconcentration would not be fostered through efforts to place lower income families in developments categorized as higher income in which the average family income is in fact at the extremely low income level.

While HUD's current regulations allow a PHA to seek an exemption from income mixing by explaining why, in a

given case, efforts to income mix would not effectively promote income deconcentration, HUD believes that this situation is widespread enough to merit a change in the regulation rather than PHAs and HUD having to treat developments in which the average family income is extremely low income on a case-by-case basis. HUD agrees that efforts to place lower income families into “higher income developments” in which the average income of these “higher income developments” is extremely low income would not result in income deconcentration, as contemplated by the statute or HUD's regulation.

This Proposed Rule

This proposed rule would amend the deconcentration component of HUD's Public Housing Agency Plans regulations to revise the definition of Established Income Range to include within the EIR those developments in which the average income level is at or below 30 percent of the area median income. This revision will ensure that such developments cannot be categorized as having average income “above” the EIR.

HUD seeks comments and input from PHAs, residents, and other interested parties on this proposed change.

HUD also seeks comments from PHAs on the requirements of the December 22, 2000 final rule for placing “higher income families” into “lower income developments.” (See 24 CFR 903.2(c)(1)(iv) and (v).) No changes are being proposed to those requirements in this rule. In requesting comments on this issue, however, HUD recognizes that the success of income mixing actions may depend on marketability of a development and therefore may be beyond the PHA's control, at least to a certain extent; and that PHA efforts to achieve deconcentration by supporting resident self-sufficiency efforts as well as necessary admissions efforts should be encouraged. HUD is therefore interested in PHA comments and feedback on the suitability of the December 22, 2000 final rule in this regard. In particular, HUD requests comments on whether the current rule's provisions that allow for explanations and justifications (and require corrective actions in the event HUD determines the explanations are not adequate) are sufficiently flexible to take into account these concerns.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C.

605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule would amend the deconcentration component of HUD's Public Housing Agency Plans regulations to revise the definition of Established Income Range to ensure that included within that range are developments in which the average income level is at or below 30 percent of the area median income and therefore such developments cannot be categorized as having average income "above" the Established Income Range. This rule would not impose a burden on small entities. This rule would alleviate an administrative burden on PHAs that have developments in which the average income is extremely low income.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

This final rule does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

Environmental Impact

This issuance involves a discretionary establishment of external administrative or fiscal requirements or procedures related to rate or cost determinations which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24

CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory 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 economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Office of General Counsel, Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.850 and 14.855.

List of Subjects in 24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend part 903 of title 24 of the Code of Federal Regulations to read as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

1. The authority for 24 CFR part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

2. In § 903.2, paragraph (c)(1)(iii) is revised to read as follows:

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

* * * * *

(c) *Deconcentration of poverty and income mixing.*

(1) * * *

(iii) *Step 3.* A PHA shall determine whether each of its covered developments falls above, within or below the Established Income Range. The Established Income Range is 85 percent of the average family income to the greater of either 115 percent (inclusive of 85 percent and 115 percent) of the PHA-wide average income for covered developments as defined in Step 1 or an average family income at which a family would be defined as an extremely low income family under 24 CFR 5.603(b).

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Dated: July 12, 2001.

Mel Martinez,

Secretary.

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