



National Association of Housing and Redevelopment Officials

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March 1, 2016

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0001

Re: [Docket No. FR-5904-A-01] Advance Notice of Proposed Rulemaking: Strengthening Oversight of Over-Income Tenancy in Public Housing

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I am pleased to offer the following comments in response to the advance notice of proposed rulemaking (ANPR) (FR-5904-A-01) entitled “Strengthening Oversight of Over-Income Tenancy in Public Housing,” published in the Federal Register on February 4, 2016. Formed in 1933, NAHRO represents over 20,000 individual and agency members. Collectively, our membership manages over 970,000 public housing units, or approximately 83 percent of the entire public housing inventory, as well as 1.7 million Housing Choice Vouchers. Many of NAHRO’s members are also involved in the administration of federal funding through Community Planning and Development programs. NAHRO works to support policies that allow housing authorities to efficiently and effectively meet the needs of their communities.

Of the 1.1 million families living in public housing, just 2.6 percent have incomes above eligibility limits. Although an unmet need for housing assistance certainly exists, there are legitimate and appropriate reasons for housing authorities to continue serving these families. Examples of the “egregious abuses” highlighted in HUD’s Office of the Inspector General (OIG) report that acted as the genesis for this ANPR are rare. Rather, the vast majority of these families earn just over the income eligibility limit and are still progressing toward economic stability. These are families that met eligibility requirements at their initial lease and subsequently increased their incomes. Dislocating them would penalize their success and make it more challenging to house lower-income tenants as many of these families do not receive any rent subsidy but rather pay a rent determined by the market value of the property. This additional rent helps offset the costs of housing lower-income families, allowing housing authorities to focus resources on those most in need at a time when funding for public housing is unprecedentedly

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low. Currently, the Operating Fund is prorated at 84 percent of full eligibility, and the Capital Fund is funded at only half of its annual rate of accrual. Increased income and improved economic standing are testament to the positive impact public housing has on families in need, and NAHRO cautions against any overly-stringent policy that limits over-income tenancies without regard to these important considerations.

Costs and Benefits to Public Housing Residents and PHAs

Currently, there is no statute or regulation that prohibits over-income families from continuing to reside in public housing. HUD's regulations at § 960.261 give PHAs the discretion to develop policies that meet the needs of their communities. In fact, while the regulations do not require PHAs to terminate the tenancy of any over-income household, they do specify circumstances when PHAs are prohibited from doing so. These are families that were income-eligible at the time of admission and subsequently successfully increased their incomes. This is a favorable outcome and testament to the positive impact public housing has and has had on the ability of families to improve their economic standing over time. Dislocating these families would be tantamount to a penalty against public housing residents for increasing their income, creating disincentives to do so.

There are myriad reasons why over-income tenants remain in public housing. First, examples of the "egregious abuses" highlighted in OIG's report are rare. Rather, the vast majority of these families earn just over the income eligibility limit and are still progressing toward economic stability. Further, housing stability plays a critical role for families. Although these tenant's incomes have increased, many would not be able to remain in the same neighborhood or part of town if they were evicted from their housing, especially in larger cities. This has implications for school attendance, job availability and access, which can be especially challenging for individuals without transportation, and displacement from close-knit support systems like friends and family who may provide child care or other critical assistance.

Over-income households help PHAs deconcentrate poverty in their public housing developments. Housing higher-income residents on site in public housing results in income-mixing and, in so doing, also results in deconcentrating low- and very low-income families. Housing policy has advocated for this for decades. The presence of higher-income residents in public housing can provide positive examples of success and upward mobility for others residing in the community. Establishing policies that would increase concentrated poverty by evicting over-income tenants would be antithetical to HUD's mission to affirmatively further fair housing, especially in light of the recently published Affirmatively Furthering Fair Housing final rule. Consideration of new policies requiring PHA's to possibly evict over-income residents will result in added regulatory confusion for PHAs trying to navigate these contradicting goals.

NAHRO is concerned that overly stringent policies regarding over-income tenancies would disincentivize low-income families in public housing from striving toward self-sufficiency. Families residing in public housing were income-eligible at the time of admission and have successfully increased their incomes. Evicting them as a result of their success would provide a disincentive to other families in Public Housing to work toward self-sufficiency. This seems to

be in clear opposition to HUD and PHA goals to create rent policies that encourage employment and self-sufficiency.

Negative Financial Implications

Overly-stringent policies limiting over-income tenancies in public housing will have adverse financial implications to the management and operation of those properties. Stable tenancies reduce the costs of identifying and certifying new households as well as the costs of preparing the new units for new occupants. In fact, the lower costs associated with continuing to house higher-income households allow PHAs to focus additional resources on lower-income tenants, as many over-income families pay a rent determined by the market value of their property and do not actually receive a subsidy. These higher rents can further help offset the costs of housing lower-income families and reduce the cost to operate public housing. As one of our members noted, it is very difficult to evict a family paying \$1,000 in order to admit a family paying \$50 or have a unit sit empty. Although this is acknowledged in OIG's report, it concludes that the opportunity costs of housing eligible low-income families outweighs the loss in additional rents that offset housing authority operating costs. Although NAHRO agrees that unmet need for housing assistance certainly exists, the funding reality faced by PHAs today is far more precarious than acknowledged by OIG. PHAs are struggling to find creative ways to account for the fact they are only receiving 84 cents for every dollar they are owed for operating public housing. Any additional income, from higher tenant rents or otherwise, is critical for PHAs in this time of drastically limited funding. Reducing rental income will cause a significant need for HUD to provide additional subsidy that is currently not available.

The forced evictions of public housing residents resulting from limits on the tenancy over over-income families would be a costly and time consuming process for PHAs. PHAs must undertake a lengthy Grievance Process and Court Procedure which can take months and sometimes years, especially if tenants fight the eviction even when they have violated the lease terms. If a resident does not have anywhere to go, a Judge can refuse to grant an eviction. If HUD limits the tenancies of over-income families in public housing, enough time must be granted before the eviction to ensure those families can save money to purchase a home or locate a private rental housing unit, save for down payments or security deposits, and improve their credit scores if need be. Furthermore, the costs of moving for the tenants are high as well, and HUD would need to provide enough time for over-income families to save for moving costs and costs associated with transferring utilities.

PHA Discretion

Currently, regulations require that a household must establish its eligibility for Public Housing at the time of admission. Since 2004, PHAs have had the discretion to establish and implement policies to terminate participation of families that increase their incomes above the eligibility income-limits, so long as these families are not receiving the earned-income disregard or participating in the Family Self-Sufficiency program. While the final rule gives PHAs significant discretion, it does not require PHAs to ensure that households meet the income eligibility criteria on a continuing basis. That discretion is important for PHAs to ensure they have the ability to

determine steps forward on a case by case basis. NAHRO advises against removing this discretion in any future proposed rule that limits over-income tenancies.

It is important that any regulation limiting tenancies of over-income residents provides flexibility to address the diversity that exists amongst different PHAs. PHAs range dramatically in size, location, property type, and resident population, and these differences are necessary to take into account. Certain markets, especially larger cities, have insufficient stock of appropriate and affordable housing in the private market. Although a tenant may be over-income, they still may not be able to find affordable housing within their community. Housing stability is critical for families, elderly individuals, and individuals with disabilities. A move across a large urban area like New York City or Los Angeles has the potential to uproot individuals and families. Allowing the Secretary to grant waivers to over-income families would help provide increased housing stability to families and vulnerable individuals facing these specific circumstances.

PHAs should be provided the option to examine their waitlists when determining whether limitations to over-income tenancy should be enacted or not. Although there is a significant unmet need for safe, affordable housing for many Americans, not all PHAs face waiting list backlogs. This is especially true in smaller, rural communities. Evicting an over-income tenant when no household is available to move into the unit would be a considerable revenue loss for these PHAs. Currently, small PHAs are allowed to preserve public housing by renting to over-income households where no eligible households are on the waiting list as specified in Section 3(b)(4) of the Housing Act of 1937. This allows small PHAs to ensure they continue receiving revenue from rents in order to maintain the operating and maintenance of their housing units. These units cost no money to taxpayers, as tenants are charged at market rents. This provision is critical for many small PHAs that operate in rural communities, does not require any subsidy from HUD, and should be maintained in any regulation that limits over-income tenancies.

Thresholds

Recently, the House of Representatives passed the Housing Opportunity Through Modernization Act (HOTMA). Section 103 of the bill contains language oriented to limit the tenancies of over-income residents in a responsible, effective way that still provides significant discretion to PHAs. The language in HOTMA places the threshold for over-income families as those with incomes over 120 percent of area median income (AMI) for the most recent two consecutive years. If a family meets this threshold, PHAs have the option of either charging the higher of the fair market rent for the unit or the monthly subsidy (operating and capital fund), or terminating the tenancy within 6 months. Language in HOTMA also provides the Secretary the discretion to establish different income limitations based on local construction costs or unusually high or low incomes, vacancy rates, or rents. NAHRO is supportive of the increased flexibility offered in the language, and recommends HUD look to the text of the bill in moving forward with the informal rulemaking process.

HOTMA would also require housing agencies to submit to HUD and make public a report listing the number of families in public housing with incomes above the 120 percent of area median income limit and the number of families on public housing waiting lists each year. NAHRO

hopes that this will show the minimal impact that over-income tenants have on public housing and help minimize recent scrutiny of the issue.

In addition to the language included in HOTMA, exemptions should exist for vulnerable over-income populations, including seniors and disabled individuals, as well as those that face specific financial constraints. Over-income senior and disabled households may face challenges in finding suitable, affordable housing that other populations do not due to their specific needs. NAHRO recommends providing waivers, or other exemptions, to seniors and disabled individuals to ensure they maintain access to safe, affordable housing regardless of changes to their incomes. Furthermore, large families may also face greater challenges finding affordable and appropriate housing than other over-income households. Consideration should be provided in these instances to ensure large families that become over-income are not evicted before they are able to secure appropriate housing. Additionally, families facing certain financial constraints, like a child in college, should be allowed to deduct those educational expenses from their income. Significant tuition costs can greatly minimize the ability of a family with an income that falls just over income limits to find affordable housing if they move from their public housing unit. This has the potential to disincentive families from taking on the additional costs that come from attaining a college degree. If self-sufficiency is a goal of HUD and public housing, this would be a step in the wrong direction.

As always, NAHRO is appreciative of the opportunity to comment on this important advance notice of proposed rulemaking. We are also appreciative of the Department's efforts to include the perspectives and feedback of NAHRO and our members in drafting a regulation that limits over-income tenancies. NAHRO continues to have numerous concerns regarding OIG's report on Overincome Families Residing in Public Housing Units, but understands HUD's efforts to ensure the rare abuses highlighted in the report do not reoccur. In drafting the proposed rule, NAHRO requests that HUD keep in mind the need for flexibility to ensure the proposed rule takes into account regional differences, enough time for over-income tenants to find safe, affordable, and appropriate housing, PHA discretion to determine what works best in this time of significantly limited funding and staffing reductions.

We look forward to continuing our work together in finding a reasonable, appropriate mechanism for reducing these already rare instances of high-income families residing in public housing. Please do not hesitate to contact us if we can provide additional information or clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Oberdorfer". The signature is stylized with a large initial "E" and "O".

Eric Oberdorfer
Policy Advisor, Public and Affordable Housing