

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-3880-P-02]

RIN: 2577-AB75

Ceiling Rents for Public Housing

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit public housing agencies (PHAs) to adopt caps on total tenant payments for public housing projects or dwelling units that are assisted under the United States Housing Act of 1937 (1937 Act). The Balanced Budget Downpayment Act I (also known as the Continuing Resolution) amended the 1937 Act to permit the establishment of caps, or ceiling rents, on the income-based monthly total tenant payment that reflect the reasonable market value of the housing, but that are not less than the monthly costs: to operate the housing of the PHA; and to make a deposit to a replacement reserve (in the sole discretion of the PHA). The proposed rule would not amend HUD's Indian housing regulations. Further, this proposed rule would not apply to Section 8 assisted housing.

DATES: *Comments due date:* January 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. 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 during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Campbell, Director, Marketing and Leasing Management Division, Office of Public and Indian Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW Washington, DC 20410, telephone (202) 708-0744 (this is not a toll-free number). Hearing or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Total Tenant Payment
Section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) establishes the monthly total tenant payment for tenants of public housing assisted under the 1937 Act as the highest of: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or (3) if a family receives welfare assistance and the welfare assistance is subject to adjustment in accordance with actual housing costs, the portion of that assistance specifically designated for housing costs. Further, section 402(a) of the Balanced Budget Downpayment Act, I (Pub.L. 104-99, 110 Stat. 40, approved January 26, 1996) (also known as the Continuing Resolution), as amended by section 201(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub.L. 104-204, 110 Stat. 2874, approved September 26, 1996) requires that, notwithstanding section 3(a)(1) of the 1937 Act, each family assisted under the Public or Indian housing rental programs shall pay a monthly minimum rent of up to \$50.

B. Ceiling Rents Under Section 102 of the 1987 HCD Act

Section 102 of the Housing and Community Development Act of 1987 (Pub.L. 100-242, 101 Stat. 1815, approved February 5, 1988) (1987 HCD Act) added a new section 3(a)(2) to the 1937 Act which allows the establishment of caps ("ceiling rents") on the income-based monthly total tenant payment, as calculated under section 3(a)(1). Under section 102 of the 1987 HCD Act, the ceiling rents could not be greater than the income-based formula, and not less than the average monthly amount of debt service and operating expenses attributable to units of similar size in other housing projects owned and operated by the Public Housing Agency (PHA).

Ceiling rents are a useful tool in easing the rent burden on working families residing in public housing assisted under the 1937 Act. Working families are generally regarded as having positive effects on housing projects by providing leadership and acting as role models for other tenants. Higher income families are often the resident leaders who help to ensure that the units are well-maintained and drug-free. Working families also help create an economic and social mix that is desirable in preventing the isolation of the very poor in public housing projects.

Without ceiling rents, these residents are often faced with the dilemma of leaving public housing or having total tenant payments that are above the market value of their units.

On March 15, 1989, HUD published a notice for public housing (54 FR 10733) announcing that it would consider applications from PHAs for waivers of the requirements of its regulations implementing section 3(a)(1) of the 1937 Act, so that PHAs could adopt ceiling rents for projects or dwelling units owned and operated by the PHAs.

C. Section 402(b) of the Continuing Resolution

Section 402(b) of the Continuing Resolution amended section 3(a)(2) of the 1937 Act. Specifically, the Continuing Resolution permits the establishment of ceiling rents that reflect the reasonable market value of the housing, but that are not less than the monthly costs: (1) to operate the housing of the PHA; and (2) to make a deposit to a replacement reserve (in the sole discretion of the PHA). A replacement reserve may be used for major expenditures, such as the acquisition of capitalized equipment and structural repairs. Section 402(b) of the Continuing Resolution does not mandate the establishment of a replacement reserve, but leaves the decision regarding the creation of such a reserve to each PHA.

Section 402(b)(2)(B) of the Continuing Resolution provides that pending HUD's issuance of final regulations implementing the changes to section 3(a)(2), a "transition rule" will be in effect. Under the "transition rule," PHAs can implement ceiling rents, which must be not less than the monthly costs to operate the PHA's units and: (1) using the provisions of the prior law (i.e., section 3(a)(2) of the 1937 Act as it existed prior to the Continuing Resolution); (2) equal to Fair Market Rents (FMRs) for the area in which the unit is located; or (3) equal to the 95th percentile of total tenant payments paid for a unit of comparable size by tenants in the same housing development or a group of comparable developments totalling 50 units or more. HUD has issued nonregulatory guidance (Notice PIH 96-6, February 13, 1996) to assist those PHAs wishing to establish ceiling rents prior to the issuance of a final rule implementing the amendments made by the Continuing Resolution.

D. Effectiveness of Continuing Resolution Beyond Fiscal Year 1997

Section 402(f) of the Continuing Resolution limited the effectiveness of the ceiling rents and minimum rent

provisions to Fiscal Year (FY) 1996. Section 201(c)(2) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104-204, 110 Stat. 2874, approved September 26, 1996) extended their effectiveness through FY 1997. Although section 402(b) of the Continuing Resolution will expire at the end of FY 1997 (September 30, 1997), HUD believes the burden of increased total tenant payments on many tenant families is significant enough to merit proceeding with the establishment of the necessary regulatory procedures for implementing ceiling rents. HUD is advocating the extension of the current statutory authority for ceiling rents.

II. This Proposed Rule

A. General

This proposed rule would amend HUD's regulations governing total tenant payments for its public housing programs (24 CFR part 5, subpart F) to implement the changes made by the Continuing Resolution to section 3(a)(2) of the 1937 Act. The proposed rule would not amend the corresponding requirements for HUD's Indian housing programs (24 CFR part 950). The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104-330, 110 Stat. 4016; approved October 26, 1996) completely revises HUD's Indian housing programs. The regulations promulgated under the Native American Housing Assistance and Self-Determination Act of 1996 will address the applicability of the Continuing Resolution to HUD's Indian housing programs.

B. Applicability

This rule proposes to establish a new 24 CFR 5.614 which would describe the policies and procedures governing the establishment of ceiling rents. Section 5.614 would apply to public housing rental projects. It would not apply to: (1) homeownership programs (such as the Turnkey III program—24 CFR part 904); (2) applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)); or (3) the Section 8 Rental Voucher and Rental Certificate Programs.

C. Calculating Ceiling Rents

This proposed rule would permit a PHA to establish ceiling rents which reflect the reasonable market value of the housing and which are not less than the statutory minimum: the monthly

cost to operate the housing of the PHA and to make a deposit to a replacement reserve (in the sole discretion of the PHA).

In determining the reasonable market value of the housing, a PHA may utilize: (1) the 95th percentile of the total tenant payments paid for a unit of comparable size by tenants in the same public housing development or group of comparable developments totalling 50 units or more or having at least 15 units of the same unit size (number of bedrooms) for which ceiling rents would be applied; (2) the FMRs for the area in which the unit is located; or (3) any other similar indicator of reasonable market value, such as a comparability study. The comparability study would have to analyze relevant factors for the community in which the unit is located, including unassisted rents for housing of similar age, location, condition, amenities, design, and size.

For purposes of determining the minimum ceiling rent, the average monthly operating expense would equal one-twelfth (1/12) of the sum of all annual operating expenses reported on the Statement of Operating Receipts and Expenditures (SORE) for the PHA's most recent fiscal year and the aggregate annual utility allowances for all tenant-paid utilities; minus the sum of excess utility charges and annual costs, if any, associated with units approved for deprogramming.

The sum of the operating expenses would be distributed over all of the PHA's public housing dwelling units, except those approved for deprogramming, whether or not ceiling rents are adopted for all units, with an adjustment only for unit size (number of bedrooms). Operating expenses would be allocated according to unit size with larger units receiving a larger portion of the operating expenses than smaller units.

Under this proposed rule, HUD would establish the two-bedroom unit as the base total tenant payment. The allocation of operating expenses for a particular unit will be calculated by multiplying the base total tenant payment by an adjustment factor. The adjustment factors will vary from 70 percent of the base total tenant payment for an efficiency to 182 percent of the base total tenant payment for a six-bedroom unit. HUD uses this method to adjust total tenant payments by unit size in establishing the FMRs (24 CFR 888.113(c).)

The Appendix to this proposed rule demonstrates how the statutory minimum is calculated in establishing ceiling rents.

D. Establishing Ceiling Rents

This proposed rule would permit a PHA to establish ceiling rents for: (1) all dwelling units in its inventory; (2) all of the units in one or more projects; or (3) some of its units in one or more projects, based on bedroom size. The rule would allow a PHA to implement, change the amount of, or revoke ceiling rents after giving reasonable notice to the affected tenants. If the amount of the ceiling rent is changed, the new amount would have to conform with the provisions of this rule.

Since section 402(b) of the Continuing Resolution authorizes, rather than mandates ceiling rents, a PHA has the discretion to decide whether to establish ceiling rents. If a PHA elects to establish ceiling rents, however, each tenant family admitted to or living in a dwelling unit subject to a ceiling rent is eligible for the ceiling rent. This proposed rule also provides that a family residing in a dwelling unit subject to a ceiling rent may not be charged an amount that exceeds the amount the family would pay under the income-based calculation of 24 CFR 5.613(a), as required by the Continuing Resolution. Therefore, a family residing in a dwelling unit with a ceiling rent will be charged the lesser of the income-based total tenant payment or the ceiling rent set for the unit; however, in all cases the family must pay the minimum rent established by the PHA.

A PHA must ensure that the ceiling rents it has established are not less than the statutory minimum (i.e., the monthly cost to operate the housing of the PHA and, in the sole discretion of the PHA, to make a deposit to any replacement reserve) at the time it prepares its Statement of Operating Receipts and Expenses each fiscal year, and must update the ceiling rents accordingly. PHAs are also reminded that in establishing ceiling rents, they must abide by Federal laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, age, disability, and familial status.

The final rule may require that a PHA maintain records regarding its calculation and establishment of ceiling rents. Further, the final rule may require a PHA to notify HUD that it has established or revoked ceiling rents. HUD invites comment on what would be the least burdensome recordkeeping and notification methods.

E. Continued Effectiveness of Existing Ceiling Rents

Section 102 of the 1987 HCD Act originally limited the effectiveness of ceiling rents for a period of 36 months.

This period was subsequently extended to 60 months by section 302 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235; 103 Stat. 1987, approved December 15, 1989) (HUD Reform Act). Section 102 of the Housing and Community Development Act of 1992 (Pub. L. 102-550; 106 Stat. 3672, approved October 28, 1992) removed the 60 month limit and extended the ceiling rents in effect prior to the date of enactment of the HUD Reform Act without time limitation. Accordingly, this proposed rule would not impact the effectiveness of those ceiling rents that were approved by a HUD regulatory waiver under the March 15, 1989 **Federal Register** notice. These ceiling rents are valid indefinitely, as long as they cover current operating expenses and the PHA wants to have them. Further, HUD also considers any ceiling rents adopted under the transition rule and HUD Notice 96-6 as being valid for an indefinite period of time, as long as they cover current operating expenses and the PHA wants to have them (subject to the extension of the statutory authority for ceiling rents beyond September 30, 1997).

A PHA with HUD-approved ceiling rents under the March 15, 1989 **Federal Register** notice may opt to switch to PHA-adopted ceiling rents under the provisions of the transition rule (or later, under the provisions of HUD's final rule on ceiling rents). However, although ceiling rents adopted under the March 15, 1989 notice are valid for an indefinite period of time (so long as they cover current operating expenses and the PHA wants to have them), any ceiling rents adopted under the transition notice or HUD's final rule are valid only until September 30, 1997, unless extended by law.

III. 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, implementing 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 during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Executive Order 12612, 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 rule have no Federalism implications, and that the policies are not subject to review under the Order. Specifically, this proposed rule would permit PHAs to adopt ceiling rents for public housing projects or dwelling units that are assisted under the 1937 Act. It will effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will have no adverse or disproportionate economic impact on small entities. Each PHA will make the decision whether to implement ceiling rents and is not expected to do so if ceiling rents will have a significant economic effect on the PHA. Furthermore, the procedures for administering ceiling rents should not entail significantly greater expense to the PHA than the PHA would normally incur in administering income-based rents.

Unfunded Mandates Reform Act

The Secretary has reviewed this 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 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.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule would not pose an environmental health risk or safety risk on children.

Executive Order 12866, Regulatory Planning and 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 subsequent to its submission to OMB are identified in the docket file, which is available for public

inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for Public and Indian Housing is 14.850.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 5 would be amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations for the Public Housing and Section 8 Programs

2. The authority citation for subpart F continues to read as follows:

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

3. A new § 5.614 is added to read as follows:

§ 5.614 Ceiling rents for public housing.

(a) *Applicability.* This section applies to public housing rental projects. This section does not apply to:

- (1) Homeownership programs, such as the Turnkey III program;
- (2) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)); or
- (3) Section 8 assisted housing.

(b) *Calculating ceiling rents.* (1) *General.* A PHA may establish caps on total tenant payments (as described in § 5.613) for the dwelling units described in § 5.614(c)(1) that reflect the

reasonable market value of the housing, but that are not less than:

(i) The average monthly amount of operating expenses attributed to units of similar size in public housing projects owned by the PHA; and

(ii) The monthly cost to make a deposit to a replacement reserve (in the sole discretion of the PHA).

(2) *Reasonable market value.* The reasonable market value of the housing is equal to:

(i) The 95th percentile of the total tenant payments paid for a unit of comparable size by tenants in the same public housing development or group of comparable developments totalling 50 units or more or having at least 15 units of the same unit size (number of bedrooms) for which ceiling rents would be applied;

(ii) The Fair Market Rents (FMRs) for the area in which the unit is located (See 24 CFR part 888); or

(iii) Any other similar indicator of reasonable market value utilized by the PHA, such as a comparability study.

(3) *Average monthly operating expenses.* The average monthly operating expenses is one-twelfth ($1/12$) of the sum of:

(i) All annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the PHA's most recent fiscal year and the aggregate annual utility allowances for all tenant paid utilities; minus the sum of:

(ii) Excess utility charges and annual costs, if any, associated with units approved for deprogramming.

(4) *Distributing the average monthly amount of operating expenses.* The total average monthly amount of operating expenses must be distributed over all of the PHA's public housing dwelling units, except those approved for deprogramming, whether or not ceiling rents are proposed for all units, and adjusted only for unit size (i.e., number of bedrooms), in accordance with paragraph (b)(5) of this section.

(5) *Unit adjustment factors.* The adjustment for unit size is determined by using a percentage relationship based on the rent of a two-bedroom unit as an

adjustment factor. Adjustment factors for all units are as follows:

(i) Zero-bedroom units (efficiencies)—0.70;

(ii) One-bedroom units—0.85;

(iii) Two-bedroom units—1.00;

(iv) Three-bedroom units—1.25;

(v) Four-bedroom units—1.40;

(vi) Five-bedroom units—1.61; and

(vii) Six-bedroom units—1.82.

(c) *Establishing ceiling rents.* (1) A PHA may establish ceiling rents for:

(i) All dwelling units in its inventory;

(ii) All of the units in one or more projects; or

(iii) Some of its units in one or more projects, based on bedroom size.

(2) A PHA may implement, change the amount of, or revoke ceiling rents after giving reasonable notice to the affected tenants. If the amount of the ceiling rent is changed, the new amount would have to conform with the provisions of this section.

(3) The total tenant payment of a family residing in a dwelling unit subject to a ceiling rent is the lesser of the income-based total tenant payment or the ceiling rent for such dwelling unit; however, the total tenant payment may not be lower than the minimum rent established by the PHA.

(4) A PHA must ensure that the ceiling rents it has established are not less than the statutory minimum (i.e., the monthly cost to operate the housing of the PHA and, in the sole discretion of the PHA, to make a deposit to any replacement reserve) at the time it prepares its Statement of Operating Receipts and Expenses each fiscal year, and must update the ceiling rents accordingly.

(5) In establishing ceiling rents, a PHA is reminded that it must abide by Federal laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, age, disability, and familial status.

Date: August 22, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix—to 24 CFR Part 5

Note: This appendix will not be codified in title 24 of the Code of Federal Regulations.

Example of Calculating the Statutory Minimum in Establishing Ceiling Rents

Step 1

1. Operating expenses (Line 620) from the Statement of Operating Receipts and Expenditures for the PHA's most recent fiscal year. _____ \$190,000
2. Cost of utility allowances for tenant-paid utilities for the PHA's most recent fiscal year. _____ \$30,000
3. Add line 1 and line 2. _____ \$220,000
4. Excess utility charges (Line 070) from HUD-52599 for the PHA's most recent fiscal year. _____ \$5,200
5. Costs associated with deprogramming units, if any, for the PHA's most recent fiscal year. _____ \$0
6. Add line 4 and line 5. _____ \$5,200
7. Subtract line 6 from line 3. _____ \$214,800
8. Total average monthly operating expenses (line 7 divided by 12). _____ \$17,900

Step 2

Number of units owned by PHA Times
Adjustment Factor *

0-bedroom units 20×0.70	14
1-bedroom units 40×0.85	34
2-bedroom units 20×1.00	20
3-bedroom units 20×1.25	25
4-bedroom units 0×1.40	0
5-bedroom units 0×1.61	0
6-bedroom units 0×1.82	0
Total.....	93

* Whether or not a ceiling rent is proposed for these units.

Step 3

Calculate the two-bedroom minimum monthly rent:

1. Enter Line 8 from Step 1. _____ \$17,900
2. Enter Total from Step 2. _____ 93
3. Calculate the 2-bedroom minimum monthly rent (line 1 divided by line 2) _____ \$192.47
4. Calculate the minimum rent for other size units:

a. 0-bedroom (line 3 \times .70).....	\$134.73
b. 1-bedroom (line 3 \times .85).....	\$163.69
c. 3-bedroom (line 3 \times 1.25).....	\$240.59
d. 4-bedroom (line 3 \times 1.40).....	N/A
e. 5-bedroom (line 3 \times 1.61).....	N/A
f. 6-bedroom (line 3 \times 1.82).....	N/A

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