

March 3, 2015

Helen R. Kanovsky, General Counsel
Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs, 80 Fed. Reg. 423 (January 6, 2015)

Dear Ms. Kanovsky and staff,

We are writing on behalf of the undersigned regional housing mobility programs and fair housing organizations to express our serious concerns about a provision in the recent proposed “Streamlining Administrative Regulations” that would permit Public Housing Agencies (PHAs) to “limit[] the effective date of the [Section 8] lease to a certain day or days of the month, such as the first day of the month” (proposed § 982.309(a)(5)). Under current procedures, tenants can begin the move-in process as soon as they find a unit.

The proposed rule’s specific request for comments states that “HUD is concerned that this proposed change may have the unintended consequence of limiting tenant choice. Does the provision provide enough of a benefit to PHAs to merit inclusion in this streamlining regulation?”

The answer to this question is no. This proposed rule would have a detrimental impact on tenant choice, further restricting an already limited supply of housing in lower poverty areas and forcing even more families into buildings and neighborhoods of concentrated poverty. There is absolutely no need for a well-run housing authority to adopt such a primitive administrative tool, and it is likely that restricting move-in dates would impose a new set of unintended burdens on PHA staff. But even if there were some marginal benefit to smaller PHAs, such benefits would be outweighed by HUD’s duty to affirmatively further fair housing, which requires that HUD work to expand the range of housing options available to residents, not restrict them.

Restricting move-in dates would limit tenant choices, particularly in communities and neighborhoods where families have more difficulty finding available units

Voucher tenants face intense pressure to find a suitable housing unit within the search time limits imposed by HUD rules and local PHA policy. In tight housing markets, and in low poverty communities, these pressures are magnified. Where a unit is available mid-month, often in smaller properties, this is an opportunity that should not be passed up. Jerrold Levy, director of the Yonkers housing mobility program reports:

“With a number of our lease-ups, the ability to meet the landlord demand and lease up a family during the month has saved the deal and enabled the family to move into a low minority, low poverty area.”

In Dallas, Demetria McCain, the vice president of the Inclusive Communities Project, anticipates that the proposed rule would limit her clients’ housing choices in high opportunity areas:

“Newly-recruited landlords with properties in high opportunity areas are already riled at the idea of having to wait (1) to see if their paperwork is adequate upon submission, (2) for an inspection to take place and (3) for production of the HAP contract. Asking them to wait for an otherwise arbitrary lease effective date, while their units are empty, gives them another reason to deny occupancy to a qualified voucher tenant and move on to a non-voucher holder.”

Alison Bell Shuman, Executive Director of the Baltimore Regional Housing Partnership, stresses the value of flexibility in lease dates in bringing new landlords into the Baltimore Mobility Program:

“We have observed that it is incredibly important to new landlords we have recruited in high opportunity areas that we be flexible on lease start dates. If a family is able to move into a great neighborhood on a mutually agreeable date between the family and the landlord – it is to everyone’s advantage and gives all of our families access to a wider number of units. The more flexible we can be with landlords in opportunity areas, the more likely they are to view us as a valued partner in providing high quality housing to families.”

The proposed rule change could also have the perverse effect of pushing some families out of the program – if their allowed search period ends before the “first of the month,” when HAP and lease documents can be signed. McCain foresees a risk of homelessness or extreme rent burdens for her clients in Dallas:

“Voucher holders who have certain lease expiration dates risk periods of homelessness while waiting for the arbitrary lease effective date that may be unrelated to when they need to move. Alternatively, HUD/the PHA advises voucher holders to not move into a unit until the HAP contract is completed. This policy would push families to be overburdened by paying for an unsubsidized unit during the weeks in which they wait for the approved lease up date.”

Flexibility in the lease start date is particularly important for families who must immediately vacate a unit, such as victims of domestic violence.

Not only would the proposed change limit families’ housing choices, it would likely lead to increased housing segregation. As Chris Klepper, of the Housing Choice Partners mobility program in Chicago noted:

"We already struggle with short search times (90 days), long inspection times (sometimes a month) and lack of tolling time for voucher holders and this new HUD proposal could add another month to the processing times. We believe such a change would completely inhibit moves to already tight markets in opportunity areas. The last thing we want is for participants to feel like they have to take the first thing they find which is often in an area that's racially segregated, with high poverty rates."

It is reasonable to predict that this proposed rule change would provide the most benefit to landlords in higher poverty, segregated neighborhoods, who rely on Section 8 vouchers to fill their properties, and who have close business relationships with local PHAs. *See, e.g.,* Eva Rosen, "Rigging the Rules of the Game: How Landlords Geographically Sort Low-Income Renters," *City & Community* 13(4) (2014).

The proposed change would not significantly reduce costs, and may increase administrative burdens for PHAs

In the proposed rule, HUD suggests that limiting the date when an HCV tenant may move into an assisted unit "would streamline administration of move-ins for some PHAs, reduce the need for pro-rated checks and possibly the number of checks issued, and provide Housing Assistance Payment (HAP) savings by eliminating overlapping HAP payments."

The administrative concerns identified by HUD seem insignificant and almost petty in comparison to the difficulties faced by families in the housing search process. The vast majority of PHAs use computerized payment systems, making it easy to authorize prorated HAPs without an increase in administrative burden. And there is no difference in the number of checks issued – the first month's rent is a single check, regardless of whether it is a full or partial month's rent. Also, many PHAs don't even issue physical HAP checks but use direct deposit for subsidy payments to landlords.

The unintended administrative consequences of the proposed rule change could be serious. Bunching of lease approvals at one particular time of the month, rather than spreading out these administrative tasks over the month, is not an efficient use of PHA staff time and will inevitably lead to delays. Limiting the number of units available to tenants will lead to increases in the number of requests for extensions of search time, decreased voucher success rates, increased paperwork associated with voucher terminations, and increased paperwork associated with issuing new vouchers and briefing new families coming into the program.

The proposed rule change is inconsistent with HUD's obligation to affirmatively further fair housing

HUD seems eager to delegate its fair housing responsibilities to grantees under the proposed Affirmatively Furthering Fair Housing rule. But the obligation imposed by the Fair Housing Act under 42 U.S.C. §3608 applies first and foremost to HUD itself. It

requires that HUD administer its programs in a manner that is not only non-discriminatory, but also promotes integration and helps to dismantle the negative effects to individuals and society from decades of entrenched segregation. Past policies and practices by government agencies, at the local, state and federal levels, helped to create and perpetuate that segregation. It is critical that HUD now operate in a manner that expands opportunity for all, which this proposed provision would not do.

We urge HUD to eliminate proposed Section 982.309(a)(5) from the proposed Streamlining Administrative Regulations.

Sincerely,



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