



FEB 15 2019

The Honorable Maxine Waters
Chairwoman
Committee on House Financial Services
U.S. House of Representatives
Washington, DC 20510-0535

Dear Madam Chairwoman:

Section 102(b) of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) requires the Department of Housing and Urban Development (HUD) to submit to Congress "...a certification that the hardship and tenant protection provisions in clause (i) of section 3(a)(3)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(3)(B)(i)) are being enforced at such time and that the Secretary will continue to provide due consideration to the hardship circumstances of persons assisted under relevant programs of this Act." The Department submits the following information in response to this statutory requirement.

Background

Section 3(a)(3) of the United States Housing Act of 1937 (the Act) establishes a minimum rent of no more than \$50 per month for families residing in a public housing unit, or who are receiving voucher assistance through the Housing Choice Voucher program (HCV). For families who are residing in a property receiving assistance under other Section 8 programs, HUD has the discretion to establish a minimum rent amount (which HUD established at \$25 per month). Section 3(a)(3)(B) of the Act establishes exception criteria for certain families that experience a financial hardship and are unable to pay the minimum rent. Specifically, financial hardships include:

- (I) the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.];
- (II) the family would be evicted as a result of the imposition of the minimum rent requirement;
- (III) the income of the family has decreased because of changed circumstance, including loss of employment;
- (IV) a death in the family has occurred; and
- (V) other situations as may be determined by the agency or HUD.

Available HUD Data on Number of Families Granted an Exception

HUD collects information about the number of families granted a minimum rent exception on forms HUD-50058 and HUD-50059. HUD does not currently collect information on the number of families that have applied for a minimum rent exception and were denied.

In the public housing program, excluding Moving to Work (MTW) agencies, there were 3,787 families who had been granted a minimum rent exception out of 893,306 households nationwide (.4%). In the HCV program, excluding MTW agencies, there were 13,137 households who had been granted a minimum rent exception out of 1,951,197 families nationwide (.7%). MTW agencies are excluded from these counts because MTW agencies may establish alternative minimum rent requirements. In Multifamily Housing, there were 4,696 households who had been granted a minimum rent exception out of 1,206,741 families nationwide (.4%). The data for all programs reflects activity for calendar year 2017.

HUD Guidance on Proper Application of Minimum Rent Requirements

HUD codified the requirements of Section 3(a)(3) at 24 CFR § 5.630. Regarding the flexibility to establish minimum rents, HUD clarified in 24 CFR § 5.630(a) that:

- a responsible entity must charge a minimum rent as established by the entity;
- the minimum rents in the HCV and public housing programs may be set at no more than \$50 per month (but could be set at \$0 per month); and
- the minimum rent for other Section 8 programs must be set at \$25 per month.

24 CFR § 5.630(b)(1) mandates that responsible entities grant an exception to the minimum rent if the family is experiencing a financial hardship and requires such responsible entity to establish written policies about the minimum rents to be charged and the circumstances regarding financial hardships. 24 CFR § 5.630(b)(2) establishes specific implementation requirements for each affected program.

For the public housing program, public housing agencies (PHAs) must:

- suspend the minimum rent charges beginning the next month after a hardship request until such time that a PHA has determined whether to grant the request;
- determine whether a qualifying hardship exists, and whether it is temporary or long term;
- not evict a family for at least 90 days beginning the month after the family's hardship request;
- begin charging the minimum rent, and collect any retroactive rent through a reasonable repayment agreement back to the date of the request if the PHA determines that the hardship is temporary; and,
- permit a grievance hearing in accordance with the requirements of 24 CFR § 966, and not require an escrow deposit as a condition for obtaining a grievance hearing.

For all Section 8 programs, the responsible entity must:

- suspend the minimum rent charges beginning the next month after a hardship request until such time that the responsible entity has determined whether to grant the request;
- determine whether a qualifying hardship exists, and whether it is temporary or long term;
- not charge the family the minimum rent for the 90-day period beginning the month after the request if the responsible entity determines that hardship is temporary;

- begin charging the minimum rent, and collect any retroactive rent through a reasonable repayment agreement back to the date of the request if the responsible entity determines that the hardship is temporary.

For all programs, if the responsible entity determines that the financial hardship is long term, the responsible entity must not charge the family the minimum rent for as long as the financial hardship exists, and must not charge retroactive rent for the period for which the hardship existed.

HUD Oversight of PHAs and Responsible Entities

Given resource constraints in recent years, HUD's Office of Public and Indian Housing (PIH) has shifted its more comprehensive on-site and remote reviews that included income determinations to a risk-based monitoring protocol that focuses on ensuring that PHAs are administering their public housing and HCV programs in a manner that is safe, decent and sanitary. Further, the protocol examines the potential risk of improper activities or financial mismanagement based on past performance and Federal funds administered by each agency. Although the monitoring protocol does not include a specific review of minimum rent administration, should HUD receive complaints about a PHA improperly administering program requirements, HUD has mechanisms in place to investigate and address such complaints. In future changes to HUD systems and reporting requirements, including those necessitated by HOTMA, HUD will explore improvements to reporting for the minimum rent requirements.

In addition to this risk-based monitoring protocol, PHAs that are required to submit an Annual PHA Plan certify to HUD that they are operating their public housing and HCV programs "...in compliance with applicable Federal statutory and regulatory requirements, including the Declaration of Trust(s)." Failure to submit this certification, or findings by HUD that a PHA's certification is untrue, can result in sanctions against the PHA.

In the upcoming year, HUD will be publishing revised guidebooks for both the public housing and HCV programs, and will emphasize proper administration of the minimum rent requirements in those guidebooks.

HUD Oversight of Multifamily Owners and Responsible Entities

HUD's Office of Multifamily Housing Programs and/or the Performance Based Contract Administrator (PBCA) monitors each project-based Section 8 property's compliance with HUD rules and requirements, including minimum rent and hardship exception policies, through periodic management and occupancy reviews (MORs). An MOR is a comprehensive on-site review of the owner's procedures for overseeing project operations, and the adequacy of the procedures for carrying out day to day, front-line activities, including leasing, occupancy, certification and recertification of family income, and determination of the family payment of rent. After an MOR is complete, areas of noncompliance and corrective actions taken against the owner are documented in form HUD-9834, Management Review for Multifamily Housing Projects. Verification of an owner's compliance with HUD's minimum rent and hardship exemption policies is included in form HUD-9834 under question 22, d, ix.

HUD's capacity to complete annual MORs was severely limited in prior years by budget constraints and pending litigation that required the temporary suspension of MORs by PBCAs in 42 states, beginning in 2011. During the suspension, Multifamily staff conducted limited MORs on a risk-based approach in the impacted areas. HUD has continued to investigate tenant complaints, including complaints to HUD or the PBCA about denials of hardship exceptions, on a case by case basis. When a complaint is received, staff will contact the owner to resolve the complaint and may initiate a limited-scope MOR based on the circumstances.

In May 2016, Multifamily reinstated contracts with all PBCAs to conduct MORs, allowing for more frequent monitoring of compliance with minimum rent and hardship exemption policies. Budget and staffing constraints continue to limit the number of MORs completed annually, with less than half of all PBRA properties reviewed in 2017. Frequency of routine MORs is expected to increase to desired levels upon award of new Section 8 support services contracts in fiscal year 2020.

As a complement to monitoring activities, Multifamily is preparing technical assistance outreach to highlight minimum rent and hardship exception requirements for owners and to enhance tenants' understanding of current policies.

HUD Enforcement Mechanism

HUD has a number of enforcement actions that may be taken against a PHA/owner for failing to substantially comply with statutory, regulatory and other HUD requirements. The Annual Contributions Contract (ACC) entered into between the PHA and HUD, and the Housing Assistance Payments Contract (HAP contract) entered into between the owner and HUD, provides that PHAs/owners are required to comply with all HUD program requirements and gives HUD discretion to determine the appropriate remedial action.¹ Such actions may include, but are not limited to: repayment agreements, mandatory technical assistance and staff training, withholding or reducing payments or declaring breach of the ACC/HAP contract.

If you have any additional questions about HUD's administration of the minimum rent requirement, or any other program requirement, please do not hesitate to contact us.

Sincerely,



Dominique Blom
General Deputy Assistant Secretary
Office of Public and Indian Housing



C. Lamar Seats
Deputy Assistant Secretary for
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¹ See Sections 10 and 15 of Form HUD-52520 for the HCV program and Sections 5 and 17 of Form HUD-53012-A for the public housing program.