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Dated: May 29, 2014.

Margaret P. Grafeld,

Deputy Assistant Secretary, Department of State.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 943, and 982

[Docket No. FR-5778-N-01]

HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition, and Utility Allowances

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

ACTION: Notice of statutory changes.

SUMMARY: Section 243 of the Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act) authorizes HUD to implement certain statutory changes to the United States Housing Act of 1937 made by the 2014 Appropriations Act through notice followed by notice and comment rulemaking. This notice establishes the terms and conditions by which HUD will implement changes to the statutory definition of a “public housing agency” (PHA), the frequency of housing inspections, the statutory definition of “extremely low-income,” and utility allowances for tenant-paid utilities.

DATES: *Effective Date:* July 1, 2014.

FOR FURTHER INFORMATION CONTACT: For Public Housing and Voucher program questions, contact Michael Dennis, Director of the Office of Housing Voucher Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 4228, Washington,

DC 20410; telephone number 202-402-4059 (this is not a toll-free number). For questions regarding the multifamily programs, contact Claire Brolin, 451 7th Street SW., Suite 6138, Washington, DC 20410 at 202-402-6634 (this is not a toll-free number). Persons with hearing or speech impairments may access either of these numbers through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The general provisions of the 2014 Appropriations Act¹ include five statutory changes to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) that are designed to reduce administrative burdens on PHAs, enable PHAs to better target assistance to families in need of such assistance, and reduce Federal costs.² Expediting the implementation of these provisions through notice will help PHAs to benefit from the changes in the law sooner than if implementation was accomplished solely through public rulemaking. The only statutory change that is applicable to multifamily project-based section 8 programs is the added definition of “extremely low-income” in section 238. For all other statutory changes, the changes provided in this notice apply only to the public housing and section 8 voucher programs.

Section 212 of the 2014 Appropriations Act amends the definition of a PHA to include a consortium of such entities.

Section 220 allows PHAs to comply with the requirement to inspect assisted dwelling units during the term of a housing assistance payment (HAP) contract by conducting biennial housing quality inspections instead of annual inspections. PHAs are also able to utilize alternative inspection methods to demonstrate that housing meets the housing quality requirements under the voucher program.

Section 238 creates a statutory definition of “extremely low-income families,” which is defined as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30 percent of Area Median Income.

Section 242 establishes a cap on the utility allowance for families leasing

oversized units. The cap is set at an amount based on family size rather than the size of the unit leased, with the ability to set a higher amount to provide a reasonable accommodation to the family of a person with disabilities, harmonizing the utility allowance standard with the payment standard requirement.

In order to allow PHAs to receive, as quickly as possible, the benefit of the reduced burden that these provisions are designed to achieve, the 2014 Appropriations Act authorizes HUD to implement the changes through notice, provided that HUD follows with notice and comment rulemaking within six months of the issuance of the notice.

II. Implementation Requirements

A. PHA Consortia

Section 212 of the 2014 Appropriations Act amends the definition of “public housing agency” at subparagraph (A) of section 3(b)(6) of the 1937 Act (42 U.S.C. 1437a(b)(6)(A)) to include in its general definition “a consortium of such entities or bodies as approved by the Secretary.” PHAs may follow 24 CFR part 943 to form, participate in, and utilize consortia. PHAs may request a waiver of any current provision related to consortium organization, elements of the agreement, the relationship between HUD and the consortium, and the responsibilities of the consortium.

The Secretary will not approve any consortium of PHAs for administration of multifamily project-based section 8 program contracts.

B. Biennial Inspections

Section 220 of the 2014 Appropriations Act allows PHAs to comply with the requirement to inspect assisted dwelling units during the term of a HAP contract by inspecting such units not less than biennially instead of annually and to rely upon alternative inspection methods to meet this requirement. However, a PHA may not use the alternative inspection method in lieu of the initial unit or any interim inspection. PHAs are still required to conduct an initial inspection, prior to entering into a HAP contract, and interim inspections, if a family or government official notifies the PHA of a unit's failure to comply with housing quality standards, in accordance with the housing quality standards (HQS) of the HCV program.

1. In General

In order to bring relief to PHAs and owners as expeditiously as possible, HUD is implementing certain elements

¹ HUD's 2014 Appropriations Act is Title II of Division L of Public Law 113-76, 128 Stat. 5, approved January 17, 2014. See Public Law 113-76 at 128 Stat. 604.

² The five general provisions are sections 210, 212, 220, 238, and 242. This notice addresses sections 212, 220, 238, and 242. Section 210, which pertains to flat rents is addressed separately PIH Notice 2014-12, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=14-12pihn.pdf>.

of section 220 through this notice in a somewhat limited fashion. HUD recognizes that fuller implementation of these elements (e.g., the use of alternative inspection methodologies and the treatment of mixed-finance properties) may necessitate additional complexity and certain trade-offs, and that HUD will greatly benefit from stakeholder input on how best to effectuate these statutory changes through the rulemaking process.

Section 220 will be immediately effective for any unit under HAP contract where the PHA has conducted an HQS inspection within the 12 months preceding the effective date of this notice. If a PHA has conducted an HQS inspection in that time period, the PHA will not be required to re-inspect until the lapse of 24 months following their last inspection. If the most recent inspection occurred prior to the 12 months preceding the effective date of this notice, then the PHA is required to conduct an annual HQS inspection for that unit and is afforded no relief from that annual inspection responsibility as a result of the change in the law. However, once that unit has been inspected, the PHA will then have the option to wait up until two years before the next inspection is required.

This notice does not require a PHA to wait two years from the last inspection before conducting an inspection. If a PHA desires to make inspections on a more frequent basis, it may do so.

Currently, HUD's Section 8 Management Assessment Program (SEMAP) evaluates PHAs on the frequency with which they conduct inspections. HUD will score PHAs based on their compliance with the statutory requirement that they conduct inspections at least biennially.

2. Alternative Inspections

A PHA may comply with the biennial inspection requirement through reliance upon an inspection conducted for another housing assistance program. If a PHA relies on an alternative inspection to fulfill the biennial inspection requirement for a particular unit, then the PHA must identify the alternative standard in its administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its PHA plan amendment and public notice requirements before utilizing the alternative inspection method.

Compliance with the biennial inspection requirement may be met by reliance upon an inspection of housing assisted under the HOME Investment Partnerships (HOME) program (under Title II of the Cranston-Gonzalez

National Affordable Housing Act, 42 U.S.C. 12701 note) or housing financed via the Treasury Department's Low-Income Housing Tax Credit program (LIHTC), taking into account the standards employed by those programs. A PHA may also comply with the biennial inspection requirement by relying upon an inspection performed by HUD, for example an inspection performed by HUD's Real Estate Assessment Center. A PHA is permitted to rely upon inspections conducted for the HOME or LIHTC program or performed by HUD with no action other than amending its administrative plan.

If a PHA wishes to rely upon an inspection conducted to a standard other than a standard listed above, then it must first submit to its local HUD Field Office a certification affirming, under penalty of perjury, that the standard "provides the same or greater protection to occupants of dwelling units meeting such standard or requirement" as would HQS. Once this certification has been submitted, the PHA must amend its administrative plan to formalize its adoption of the standard. A PHA that has chosen to rely upon an alternative inspection method must monitor any changes to the standards and requirements applicable to such method so that the PHA is made aware of any weakening of the method that would cause it to no longer meet or exceed HQS, in which case the PHA may not rely upon such method to comply with the biennial inspection requirement.

The statute makes clear that, in order for an inspection to qualify as an "alternative inspection method," a property inspected pursuant to such method must "meet the standards or requirements regarding housing quality or safety" applicable to properties assisted under the program that employs the alternative inspection method (e.g., HOME, LIHTC). For purposes of this notice, HUD is implementing this statutory element as follows:

- If a property is inspected under an alternative inspection method, and the property receives a "pass" score, then the PHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.
- If a property is inspected under an alternative inspection method, and the property receives a "fail" score, then the PHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.
- If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of the LIHTC program, where deficiencies are simply

noted—then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a "fail" score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection methodology, the PHA must conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies. The HQS inspection must take place within a reasonable period of time. HUD will solicit input through rulemaking on circumstances under which a PHA could rely upon corrective actions taken under an alternative inspection method to assure that the property is brought into compliance with the standards or requirements regarding housing quality or safety applicable to the alternative inspection method.

As with all other inspection reports, and as required by 24 CFR 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be retained for at least three years.

3. Interim Inspections

If a family or government official reports a condition that is life-threatening (i.e., the PHA would require the owner to make the repair within no more than 24 hours in accordance with 24 CFR 982.404(a)(3)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (i.e., the PHA would require the owner to make the repair within no more than 30 calendar days), then the PHA must inspect the unit within 15 days of when the PHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

4. Mixed-Finance Properties

Section 220 gives HUD the authority to alter the frequency of inspections for mixed-finance properties assisted with project-based vouchers to facilitate the use of an alternative inspection method. HUD intends to exercise this authority through the rulemaking process as

opposed to this implementation notice. In the interim, a unit under HAP contract must be re-inspected at least biennially, through either the regular inspection process or the alternative inspection method.

C. Extremely Low-Income

Section 238 of the 2014 Appropriations Act amends section 3 of the 1937 Act (42 U.S.C. 1437a) to add a definition of extremely low-income (ELI) families. ELI families are defined as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30 percent of Area Median Income. This provision affects the ELI targeting requirements in section 16 of the 1937 Act (42 U.S.C. 1437n) for the public housing, housing choice voucher (HCV), project-based voucher (PBV), and multifamily project-based section 8 programs. As of the effective date of this notice, compliance with the targeting requirements under each of these programs must take into account the new definition of ELI.

Beginning with the effective date of this notice, a PHA or HUD, if HUD is the contract administrator, shall meet its targeting requirements through a combination of ELI admissions prior to the effective date (using the old definition) and ELI admissions after the effective date (using the new statutory definition). Neither a PHA nor HUD may skip over a family on the waiting list if that family meets the new definition of ELI as enacted by this section.

For the public housing program, not less than 40 percent of the units that become available per PHA fiscal year must be made available for occupancy by ELI families.

For the HCV and PBV programs, compliance with targeting requirements is determined for each of the PHA's fiscal years based on new admissions to both programs (i.e., a single, combined total). Not less than 75 percent of such admissions shall be ELI families.

For the multifamily project-based section 8 programs, the contract administrator (i.e., HUD or a PHA under an Annual Contributions Contract with HUD) must make available for occupancy by ELI families not less than 40 percent of the section 8-assisted dwelling units that become available for occupancy in any fiscal year.

The following example clarifies how a PHA administering the HCV and PBV programs would comply with this provision: A PHA with a fiscal year end of December 31 shall consider admissions to the HCV and PBV programs from January 1 up until the effective date of this notice using the old

definition; from the effective date of this notice through December 31, it shall consider admissions using the new definition. To further illustrate, assume the PHA admitted 50 families into their HCV program between January 1 and the effective date of this notice. Forty families were ELI (under the old definition), 6 families did not meet the old definition of ELI but would have met the new definition of ELI had it been implemented at the time of their admission, and 4 did not meet either definition of ELI. In terms of calculating the ELI targeting requirement for the period of the PHA fiscal year prior to implementation of the change in the ELI definition, only 40 families met the ELI definition with regard to the targeting requirement (not 46). Assume the PHA admitted another 50 families before the end of the PHA fiscal year and 45 of those families met the new definition of ELI. The total number of families that met the ELI requirement for the PHA fiscal year would be 85 (40 plus 45), or 85 percent.

In some communities, the extremely low-income and very low-income levels will be identical for some or all household sizes, in which case PHAs meet their ELI targeting requirements by serving VLI households, since those families meet the new definition of ELI. To reduce the work a PHA or contract administrator must do to determine which standard it should be using, HUD's Office of Policy Development and Research has calculated the new income limits for extremely low-income families, taking the previous sentence into account, and has made the new area income limits available online at <http://www.huduser.org/portal/datasets/il/il14/index.html>.

D. Utility Allowances

Section 242 of the 2014 Appropriations Act limits the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, with an exemption for families with a person with disabilities.

Under section 242, the utility allowance for a family shall be the lower of: (1) The utility allowance amount for the family unit size; or (2) the utility allowance amount for the unit size of the unit rented by the family. However, upon the request of a family that includes a person with disabilities, the PHA must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation in accordance with HUD's regulations in 24 CFR part 8 to make the program

accessible to and usable by the family member with a disability. This provision applies only to vouchers issued after the effective date of this notice and to current program participants. For current program participants, a PHA must implement the new allowance at the family's next annual reexamination, provided that the PHA is able to provide a family with at least 60 days' notice prior to the reexamination.

Dated: June 12, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

Milan Ozdinec,

Deputy Assistant Secretary for the Office of Public Housing and Voucher Program.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9671]

RIN 1545-BL97

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210-AB61

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS-9952-F2]

RIN 0938-AR77

Ninety-Day Waiting Period Limitation

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rules.

SUMMARY: These final regulations clarify the maximum allowed length of any reasonable and bona fide employment-based orientation period, consistent with the 90-day waiting period limitation set forth in section 2708 of the Public Health Service Act, as added by the Patient Protection and Affordable Care Act (Affordable Care Act), as