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February 10, 2009

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Housing and Urban Development: Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Housing and Urban Development (HUD), entitled “Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule” (RIN: 2501-AD16). We received the rule on January 27, 2009. It was published in the *Federal Register* as a final rule on January 27, 2009. 74 Fed. Reg. 4832.

The final rule implements an upfront income verification process for HUD’s public and assisted housing program. This rule requires public housing agencies and multifamily housing owners and management agencies to use HUD’s Enterprise Income Verification system when verifying the employment and income of program participants at the time of all reexaminations or recertifications.

Enclosed is our assessment of HUD’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that HUD complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Camille E. Acevedo
Associate General Counsel for
Legislation and Regulations
Department of Housing and
Urban Development

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ENTITLED
"REFINEMENT OF INCOME AND RENT DETERMINATION
REQUIREMENTS IN PUBLIC AND ASSISTED HOUSING PROGRAMS;
FINAL RULE"
(RIN: 2501-AD16)

(i) Cost-benefit analysis

HUD estimates that if this rule were to be 100 percent effective in eliminating earned income-based errors and no over-subsidized tenants left the program in response to rent increases, then the net transfer to new tenants would be about \$480 million per year, resulting in approximately 92,284 new tenants served. HUD estimates that if the rule were to be 100 percent effective in eliminating earned income-based errors, but that all households who were over-subsidized due to earned-income error left HUD-assisted housing in response to rent corrections under the rule, the transfer to new tenants would amount to approximately \$1,715,667,000 per year, resulting in approximately 337,000 new tenants served.

HUD states that it does not consider the expectation that the rule will be 100 percent effective to be realistic, but it has no realistic basis for assessing a range of effectiveness away from a range of \$0 to \$480 million. HUD also concluded that there is no basis for assessing the primary estimate. For these reasons, HUD determined that \$1,715,667,000 represents the high estimate (assuming 100 percent effectiveness and 100 percent of existing tenants leave replaced by 337,000 new tenants) and \$0 represents the low estimate, assuming 0 percent effectiveness.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603–605, 607, and 609

HUD determined that final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

HUD determined that this final rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

HUD published a proposed rule on June 19, 2007. 72 Fed. Reg. 33,844. HUD received 34 public comments from a variety of sources, including individuals, public housing agencies, national public housing authorities and redevelopment organizations, affordable housing advocacy associations, and immigration policy groups. HUD addressed comments in the final rule. 74 Fed. Reg. 4833–4838.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

HUD determined that this final rule contains information collection requirements under the Act. The Office of Management and Budget (OMB) has approved these information collection requirements and assigned them OMB Control Numbers 2577–0220 and 2502–0204.

Statutory authorization for the rule

HUD cited the authority to promulgate this final rule as sections 1437a, 1437c, 1437d, 1437f, 1437n, 3535, 3543, 3544, 3608a, and 12701–12839 of title 42, United States Code and section 327 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006. Pub. L. No. 109-115, 119 Stat. 2936, 2466–2467 (Nov. 30, 2005).

National Environmental Policy Act, 42 U.S.C. §§ 4321–4370f

HUD determined that this final rule involves external administrative requirements or procedures that are related to income limits and exclusions, and, therefore, the requirements or procedures do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, HUD determined that this final rule is categorically exempt from environmental review under the Act. *See*, 24 C.F.R. § 50.19(c)(6).

Executive Order No. 12,866 (Regulatory Planning and Review)

HUD determined that this final rule is economically significant under the Order and a regulatory impact analysis was prepared. OMB reviewed this rule.

Executive Order No. 13,132 (Federalism)

HUD determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on states and local governments or preempt state law within the meaning of the Order.