

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 882 and 982

[Docket No. FR-4159-P-01]

RIN 2577-AB72

**Implementing Provisions of the
Housing Opportunity Program
Extension Act of 1996; and Revising
Section 8 Certificate, Voucher, and
Moderate Rehabilitation Admission
and Occupancy Policies**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the admission and occupancy requirements for the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs as follows: Make certain applicants ineligible for admission if evicted from housing assisted under the United States Housing Act of 1937; Terminate assistance to tenant-based certificate and voucher participants evicted for serious lease violations; Screen out illegal drug users and alcohol abusers; and Terminate assistance to illegal drug users and alcohol abusers.

DATES: Comment due date: May 30, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. 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 between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Associate Deputy Assistant Secretary for the Office of Public and Assisted Housing Operations, Room 4228, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708-1842. (This telephone number is not toll-free.) For hearing- and speech-impaired persons, this number may be accessed via text telephone (TTY) by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Change and Related Change to Bar Admission of Certain Evicted Tenants

The statutory foundation for the Section 8 program is the United States Housing Act of 1937 (42 U.S.C. 1437a et seq.) (the Act). On March 28, 1996, the Act was amended by the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120; 110 Stat. 834) (the Extension Act). It makes an individual who has been evicted from housing assisted under the United States Housing Act of 1937 (public housing, Indian housing, Section 23, or any Section 8 program) for drug-related criminal activity ineligible for admission to Section 8 housing for a 3-year period beginning from the date of the eviction. The Public Housing Agency (HA) has the discretion, however, to determine that the evicted individual's family is eligible for admission if the HA determines that the evicted individual has successfully completed a rehabilitation program approved by the HA or that the circumstances leading to the eviction no longer exist (e.g., the individual involved in drugs is no longer in the household because of incarceration). In this proposed rule, HUD would interpret the 3-year period to be at least 3 years, so that an HA can determine the period of time it believes reasonable for particular types of drug-related criminal activity, as long as that period is at least 3 years long.

The Extension Act also requires HAs to establish standards for prohibiting occupancy in any Section 8 unit by any person who the HA determines is illegally using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the project. In this connection, the Extension Act authorizes the HA administering the program to determine whether an applicant has been rehabilitated from drug or alcohol abuse.

In this proposed rule, HUD also proposes two related changes for tenants evicted from assisted housing: (1) Tenants evicted from housing assisted under the United States Housing Act of 1937 for serious lease violations would be ineligible for admission to units assisted under the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs for an appropriate period of time; and (2) Section 8 tenant-based certificate and voucher participants evicted for serious

lease violations would be ineligible for continued assistance by the HA. For example, families evicted for a serious lease violation (such as committing crimes against persons or property or other acts that affect the health, safety, or right to peaceful enjoyment of the premises by other residents) would be barred from admission to Section 8 housing for a specified period and, if applicable, be terminated from the Rental Certificate or Voucher Program. HUD is also proposing a similar requirement for the public housing program barring the admission of residents evicted from housing assisted under the United States Housing Act of 1937 for serious lease violations. These proposals would facilitate efforts by HUD and HAs to eliminate crime and to impose tougher expectations on Federally assisted tenants, holding them responsible for their actions.

In order to determine the eligibility of an applicant under this proposed rule, an HA needs to know whether the applicant was evicted from housing assisted under the U.S. Housing Act of 1937 and whether the eviction involved drug-related criminal activity. HUD is specifically requesting public comment on ways HAs can share this information with each other, and the best means to obtain information on evictions from privately owned assisted projects such as Section 8 new construction projects.

II. Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of Regulatory Reinvention, HUD is reviewing all its regulations to determine whether they can be eliminated, streamlined, or consolidated with other regulations. As part of this review, this proposed rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, HUD welcomes comments on how this proposed rule may be made more understandable and less burdensome.

III. Findings and Certifications

A. Paperwork Reduction Act

The proposed information collection requirements contained at §§ 882.514(g) and 982.553(b) of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) *Title of the information collection proposal:* Implementing Provisions of the Housing Opportunity Program Extension Act of 1996; and Revising Section 8 Certificate, Voucher, and Moderate Rehabilitation Admission and Occupancy Policies.

(2) *Summary of the collection of information:* HAs have local admission and subsidy termination policies that detail when applicants are eligible, how applicants are selected, waiting list management, denial of assistance to applicants, and termination of assistance to participants. This rulemaking requires HAs to (1) deny admission because of drug-related criminal activity and certain evictions from housing assisted under the 1937 Housing Act, (2) terminate assistance when a family is evicted from a tenant-based subsidy unit for serious lease violations, and (3) establish admission

and termination standards concerning drug use and alcohol abuse.

(3) *Description of the need for the information and its proposed use:* The information collected is needed to assure that subsidy is only provided to eligible families, and to monitor compliance with HUD Section 8 program admission and termination requirements authorized by statute.

(4) *Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Respondents will be the 2500 HAs administering the Section 8 program. The proposed frequency of responses is once annually.

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:* HA admission and termination policies are contained in the HA administrative plan. When an HA first begins to administer the Section 8 program, the HA develops an administrative plan in conjunction with its first funding application. Thereafter, the HA updates

the administrative plan periodically on an as-needed basis (estimated not to exceed an average of once a year). HUD approval of the administrative plan is not required and it is maintained locally. Additional burden to HAs required by this rule is minimal since the collections are a part of the day-to-day operation of the HAs, the rule simply requires HAs to consider additional factors when making admission and termination determinations, HAs already update the administrative plan periodically to reflect new statutory requirements and changes in local policies, and the collection requirements for the administrative plan are already included in the burden hours attributed to preparing a funding application and periodically updating the administrative plan. The reporting and recordkeeping burden for the application form HUD-52515 (which includes the administrative plan) were previously approved by the Office of Management and Budget (OMB), and assigned OMB control number 2577-0169, as follows:

	Number of respondents	Freq. of response	Est. avg. response time (Hours)	Est. annual burden (Hrs.)
Reporting Burden	2,500	1	2.0	5000
Total Reporting Burden	5000

B. Regulatory Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. 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 in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. While this rule would amend

occupancy and tenant selection policies in the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs, it would not have a significant economic impact on small entities.

D. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

E. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the

relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this proposed rule is not subject to review under the Order. The proposed rule would merely implement statutory and related requirements with respect to admission and occupancy of housing funded by the Federal Government.

F. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule would not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. This proposed rule would increase the safety and security of families living in assisted housing. Since the impact of this proposed rule on the family would be beneficial, no further review is considered necessary.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4;

approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are 14.855 (Vouchers), 14.856 (Moderate Rehabilitation) and 14.857 (Certificates).

List of Subjects

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 882 and 982 of title 24 of the Code of Federal Regulations, are proposed to be amended as follows:

PART 882—SECTION 8 CERTIFICATE AND MODERATE REHABILITATION PROGRAMS

1. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. In § 882.413, paragraph (b) is amended by adding a new sentence after the first sentence, to read as follows:

§ 882.413 Responsibility of the Family.

* * * * *

(b) * * * No Family member may abuse alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. * * *

* * * * *

3. Section 882.514 is amended as follows:

- a. By revising paragraph (a)(2);
- b. By redesignating paragraph (a)(3) as paragraph (a)(4);
- c. By adding a new paragraph (a)(3);
- d. By revising paragraph (g); and
- e. By adding a new paragraph (h); to read as follows:

§ 882.514 Family participation.

(a) * * *

(2) A Family is ineligible for admission if:

(i) The Family contains any Family member evicted from housing assisted under the 1937 Act for drug-related criminal activity during a reasonable time period specified by the PHA, which is not less than 3 years from the date of the eviction. Notwithstanding the immediately preceding sentence, the PHA may, in its discretion, determine that the Family is eligible for admission if the PHA determines that the evicted Family member who was engaged in drug-related criminal activity has successfully completed a rehabilitation program approved by the PHA or that the circumstances leading to the eviction no longer exist (e.g., the evicted Family member involved in drugs is no longer in the household because of incarceration); or

(ii) The Family contains any Family member evicted from housing assisted under the 1937 Act for other serious violation of the lease during a reasonable time period specified by the PHA, unless the PHA determines that the circumstances leading to the eviction no longer exist.

(3) A PHA may determine to deny assistance to an applicant Family because one or more Family members have engaged in violent criminal activity or drug-related criminal activity as defined in § 882.413, illegal use of a controlled substance, or abuse of alcohol that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. See paragraph (g) of this section.

* * * * *

(g) *Considerations in certain denials and terminations.* (1) The PHA must establish standards for denying program assistance if the PHA determines that:

- (i) Any Family member is illegally using a controlled substance; or
- (ii) There is reasonable cause to believe that a Family member's illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) The PHA must establish standards for determining whether to terminate program assistance if the PHA determines that:

- (i) Any Family member is illegally using a controlled substance; or
- (ii) A Family member's use of a controlled substance or abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) In determining whether to deny or terminate program assistance for illegal use or pattern of use of a controlled substance or for abuse or a pattern of abuse of alcohol, by a Family member, the PHA may consider whether the person:

- (i) Is no longer engaging in illegal use of a controlled substance or in abuse of alcohol (as applicable); or
- (ii) Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable), has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program (as applicable).

(4) The PHA may require a Family member who has engaged in the illegal use of a controlled substance, or in alcohol abuse activity that interfered with the health, safety, and peaceful enjoyment of the premises by other residents, to submit evidence of participation in, or successful completion of, a supervised drug or alcohol rehabilitation program (as applicable) as a condition to being allowed to reside in the unit.

(5) At any time, the HA may deny program assistance to an applicant or terminate program assistance to a participant Family if the PHA determines that any Family member has engaged in drug-trafficking or violent criminal activity. In determining whether to deny or terminate program assistance based on drug-related criminal activity, violent criminal activity, or alcohol abuse, the PHA may deny or terminate program assistance if the preponderance of evidence indicates that a Family member has engaged in such activity, regardless of whether the Family member has been arrested or convicted.

(h) *Inapplicability to a program administered by an IHA.* Paragraphs (a)(2)(i) and (g)(1) through (g)(5) of this section are not applicable to a program administered by an IHA.

PART 982—TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

4. The authority citation for part 982 continues to read as follows:

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

5. In § 982.201, paragraph (a) is revised to read as follows:

§ 982.201 Eligibility.

(a) *When applicant is eligible: general.* (1) The HA may only admit an eligible family to a program. To be eligible, the

applicant must be a "family", must be income-eligible, and the members of the family must be citizens or noncitizens who have eligible immigration status as determined in accordance with 24 CFR part 5.

(2) The family must not contain any family member evicted from housing assisted under the 1937 Act for drug-related criminal activity during a reasonable time period specified by the HA, which is not less than 3 years from the date of the eviction. Notwithstanding the immediately preceding sentence, the HA may, in its discretion, determine that the family is eligible for admission if the HA determines that the evicted family member who was engaged in drug-related criminal activity has successfully completed a rehabilitation program approved by the HA or that the circumstances leading to the eviction no longer exist (e.g., the individual involved in drugs is no longer in the household because the person is incarcerated).

(3) The family must not contain any family member evicted from housing assisted under the 1937 Act for other serious violation of the lease during a reasonable time period specified by the HA, unless the HA determines that the circumstances leading to the eviction no longer exist.

(4) Paragraph (a)(2) of this section is not applicable to a program administered by an IHA.

* * * * *

6. Section 982.551 is amended by redesignating paragraph (m) as paragraph (n), and by adding a new paragraph (m), to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(m) *Alcohol abuse by family members.* The members of the family may not abuse alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

7. Section 982.552 is amended as follows:

- a. By removing paragraph (b)(2);
- b. By redesignating paragraphs (b)(3) through (b)(10) as paragraphs (b)(2) through (b)(9), respectively;
- c. By redesignating paragraph (f) as paragraph (h); and
- d. By adding new paragraphs (f) and (g); to read as follows:

§ 982.552 HA denial or termination of assistance for family.

* * * * *

(f) *Eviction from 1937 Act housing: Requirement to deny admission.* See § 982.201(a) for a statement of the circumstances in which the HA must deny program assistance for an applicant if any family member has been evicted from housing assisted under the 1937 Act.

(g) *Eviction for serious lease violation: Requirement to terminate assistance.* The HA must terminate program assistance for a participant family (i.e., all family members) if the family is evicted from housing assisted under the program for serious violation of the lease.

* * * * *

8. Section 982.553 is revised to read as follows:

§ 982.553 Crime or alcohol abuse by family members.

(a) *Drug-trafficking or violent criminal activity: Authority to deny admission or terminate assistance.* At any time, the HA may deny program assistance to an applicant or terminate program assistance to a participant family if the HA determines that any family member has engaged in drug-trafficking or violent criminal activity.

(b) *Illegal drug use and alcohol abuse: Requirement to establish standards for denial of admission or termination of assistance.* (1) The HA must establish standards for denying program assistance if the HA determines that:

- (i) Any family member is illegally using a controlled substance; or
- (ii) There is reasonable cause to believe that a family member's illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) The HA must establish standards for determining whether to terminate program assistance if the HA determines that:

- (i) Any family member is illegally using a controlled substance; or
- (ii) A family member's use of a controlled substance or abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) In determining whether to deny or terminate program assistance for illegal

use or pattern of use of a controlled substance or for abuse or pattern of abuse of alcohol by a family member, the HA may consider whether the person:

(i) Is no longer engaging in illegal use of a controlled substance or in abuse of alcohol (as applicable); or

(ii) Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable), has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program (as applicable).

(4) The HA may require a family member who has engaged in the illegal use of a controlled substance, or in alcohol abuse activity that interfered with the health, safety, and peaceful enjoyment of the premises by other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program (as applicable) as a condition to being allowed to reside in the unit.

(c) *Eviction for drug-related criminal activity from 1937 Act housing: Requirement to deny admission.* See § 982.201(a) for a statement of the circumstances in which the HA must deny program assistance for an applicant if any family member has been evicted from housing assisted under the 1937 Act for drug-related criminal activity.

(d) *Evidence of criminal activity or alcohol abuse.* In determining whether to deny or terminate program assistance based on drug-related criminal activity, violent criminal activity, or alcohol abuse, the HA may deny or terminate program assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

(e) *Inapplicability to a program administered by an IHA.* Paragraph (b) of this section is not applicable to a program administered by an IHA.

Dated: March 4, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

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