DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR 4672–F–02]

RIN 2577–AC29

Exception Payment Standard to Offset Increase in Utility Costs in the Housing Choice Voucher Program

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

ACTION: Final rule.

SUMMARY: This final rule withdraws the interim rule that temporarily increased FMRs in areas affected by increased utility prices, and restores the regulatory language to that which was in effect before the issuance of the interim rule.

DATES: Effective Date: October 4, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–0001; telephone (202) 708–0477 (this is not a toll-free number). Persons with hearing-or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

1. The June 6, 2001 Interim Rule

During Fiscal Year (FY) 2001, increased energy costs in some parts of the country had an adverse impact on the ability of applicants and participants in the Housing Choice Voucher program to either lease a unit while paying no more than 40 percent of their income for rent, or, once having leased a unit, to continue to pay both rent and the higher utility costs. In order to mitigate those effects, in the interim rule issued on June 6, 2001 (66 FR 30568), HUD temporarily approved higher exception payment standard amounts for certain Public Housing Agencies (PHAs) that adopted new utility allowance schedules after October 1, 2000 of between 110% and 120% of the FMRs without requiring those PHAs to seek HUD approval. HUD calculated these exception payment standards using the most recent rental data, which are also the same data on which the FY 2002 FMRs are based, which had the effect of raising the exception payment standard amount to between 110% and 120% of then-current FMRs in areas where energy costs have increased substantially.

The interim rule by its own term was applicable only for the balance of the Federal Fiscal Year ending September 30, 2001. The FMRs for FY 2002, which have now been published, reflect the most recent rental data, including the increased cost of utilities.

2. This Final Rule

The interim rule provided for termination on its own terms after September 30, 2001. The FMRs that went into effect as of October 1, 2001, reflect the latest rental data, including the increased utility costs (*see* 66 FR 50024, October 1, 2001). Therefore, no further alteration of the FMRs is necessary. Accordingly, this final rule withdraws the changes made by the June 6, 2001, interim rule, and restores the regulatory language to that which was in effect before the issuance of the interim rule.

3. Public Comments

HUD received no public comments on this rule.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule withdraws the interim rule that allowed PHAs in areas affected by sharply increased utility costs to use the new rental data before the FY 2002 FMRs went into effect nationwide. This rule simply recognizes that the FY 2002 FMRs are in effect. There is no change from the viewpoint of the affected PHAs.

Environmental Impact

This rule relates to establishment of rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 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 on the private sector. This rule does 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 number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

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

2. Amend § 982.503 as follows:

a. Revise paragraph (b)(2) to read as follows;

b. Revise the introductory text of paragraph (c)(2)(i); and

c. Remove paragraph (c)(2)(iii).

§ 982.503 Voucher tenancy; payment standard amount and schedule.

* * * * *

(b) * * *

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount (''exception payment standard amount'').

(c) * * *

(2) *Above 110 percent of FMR to 120 percent of published FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

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3. Amend § 982.505 by revising paragraph (c)(4) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

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Dated: July 15, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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