

II. This Final Rule

In addition to removing the prohibition on the use of project labor agreements in federal and federally assisted construction contracts, Executive Order 13502 directs agencies to revoke any regulations based on the prior Executive Order 13202. Consistent with those directions and the lack of a legal foundation for HUD's regulation in 24 CFR 5.108, this rule removes that regulatory section from the Code of Federal Regulations.

Executive Order 13502 further directs the Director of the Office of Management and Budget (OMB), in consultation with the Secretary of Labor and with other officials, as appropriate, to provide recommendations to the President, within 180 days of the signing of Executive Order 13502, on whether broader use of project labor agreements with respect to both construction projects undertaken under federal contracts and construction projects receiving federal financial assistance would help to promote the economical, efficient, and timely completion of such projects. HUD is therefore deferring any rulemaking to implement Executive Order 13502 in HUD-assisted construction contracts, pending OMB's recommendations on this issue.

III. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest." In this case, HUD has determined that prior public comment is unnecessary. Because this final rule removes a rule for which the legal basis has been revoked, HUD is left with no discretion on which public comment could be considered on the subject of removal of the regulation.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically

significant regulatory action, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (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 final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

■ Accordingly, for the reasons described in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

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

§ 5.108 [Removed]

■ 2. Remove § 5.108.

Dated: August 24, 2009.

Shaun Donovan,
Secretary.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR-4998-F-05]

RIN 2501-AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: HUD is delaying the effective date of the rule entitled "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs" published in the **Federal Register** on January 27, 2009. The January 27, 2009, final rule, which was scheduled to become effective on September 30, 2009, will become effective on January 31, 2010. Today's action will provide the Department with the necessary additional time to review the subject matter of the January 27, 2009, final rule and to consider the public comments on HUD's February 11, 2009, **Federal Register** notice that

solicited public comments on the regulatory amendments made by the January 27, 2009 final rule.

DATES: *Effective Date:* The effective date of the final rule, which was published on January 27, 2009 (74 FR 4832), delayed March 27, 2009 (74 FR 13339), is further delayed until January 31, 2010.

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Program Advisor for the Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 4226, Washington, DC 20410, telephone number 202-402-4267. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 6138, Washington, DC 20410, telephone number 202-402-2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 2009 (74 FR 4832), HUD published a final rule, entitled “Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs.” The January 27, 2009, final rule revises HUD’s public and assisted housing program regulations to implement the upfront income verification process for program participants and to require the use of HUD’s Enterprise Income Verification (EIV) system by public housing agencies (PHAs) and owners and management agents. The January 27, 2009, final rule was originally scheduled to become effective on March 30, 2009, but provided multifamily housing owners and management agents with an additional six months (until September 30, 2009) to implement use of the EIV system.

On February 11, 2009 (74 FR 6839), HUD published a notice in the **Federal Register** seeking public comment on whether to delay the effective date of the January 27, 2009, final rule. The February 11, 2009, notice was issued in accordance with the memorandum of January 20, 2009, from the assistant to the President and Chief of Staff, entitled “Regulatory Review” and subsequently published in the **Federal Register** on January 26, 2009 (74 FR 4435). The notice explained that HUD was considering a temporary 60-day delay in

the effective date to allow the Department an opportunity for further review and consideration of new regulations, consistent with the Chief of Staff memorandum of January 20, 2009. In addition to soliciting comments specifically delaying the effective date, the February 11, 2009, notice also requested comment generally on the January 27, 2009 final rule.

The comment period on the February 11, 2009 notice closed on March 13, 2009. HUD received 50 public comments. Comments were submitted by a variety of organizations including PHAs, property owners, management agents, program training organizations, legal aid organizations, community development organizations, and public interest organizations. The majority of comments were supportive of a delayed effective date, but also raised additional questions and comments about various aspects of the January 27, 2009, final rule. Among other issues, commenters requested that HUD clarify the definition of annual income, questioned how the rule would affect participants that might have difficulty obtaining social security numbers for their children, and noted confusion regarding the use of HUD’s EIV system.

Following publication of the February 11, 2009, **Federal Register** notice, HUD issued a final rule on March 27, 2009 (74 FR 13339) that delayed the effective date of the January 27, 2009, final rule to September 30, 2009, for the purpose of providing HUD with time to review the public comments received in response to the February 11, 2009 notice (March 2009 extension final rule).

II. This Final Rule

Through this final rule published in today’s **Federal Register**, HUD further delays the effective date of the January 27, 2009, final rule until January 31, 2010. The two HUD Assistant Secretaries with responsibility for the programs affected by the rule were only recently confirmed. HUD seeks to ensure that these two officials have sufficient time to review the subject matter of this rule, and to review and consider the public comments received in response to HUD’s February 11, 2009, **Federal Register** notice.

HUD notes that it generally publishes regulatory changes, including revisions to the effective date of its rules, for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause

requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.” Given the possibility of changes to the provisions of the January 27, 2009, final rule and the fast approaching September 30, 2009, effective date of the regulatory amendments, HUD has determined that it would be contrary to the public interest to delay issuance of today’s rule for effect. A delay in the extension of the effective date of the January 27, 2009, final rule would compel PHAs, owners and management agents, and residents of HUD-assisted housing to bear the burden of compliance with regulatory requirements that may be subject to further amendment in the near-term. Moreover, and as noted above, the 50 public comments received on HUD’s February 11, 2009, notice raised several substantive questions and concerns regarding the provisions of the final rule. It would be contrary to the public interest to defer extending the effective date and require compliance with the January 27, 2009, final rule before the appropriate and newly confirmed HUD officials have the opportunity to review and consider the issues raised by the commenters.

The Department remains committed to the implementation of the EIV system and continues to believe that the use of upfront income verification will help to identify and cure inaccuracies in public and assisted housing rental determinations. Given the number of public comments submitted in response to the February 11, 2009 notice, and the concerns and questions raised in those comments, the additional time provided by today’s final rule will allow the Department to carefully weigh available policy options and to help ensure the successful implementation of the enhanced income and rent verification procedures. Should HUD determine that additional rulemaking is necessary or appropriate, HUD will provide the public with the opportunity to comment on any proposed changes to the regulations in the January 27, 2009 final rule.

Therefore, the effective date of the final rule, which was published on January 27, 2009 (74 FR 4832), delayed March 27, 2009 (74 FR 13339), is further delayed until January 31, 2010.

Dated: August 25, 2009.

Shaun Donovan,
Secretary.

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