DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5323–N–01]

Request for Comments on Ending ''Hold Harmless'' Policy in Calculating Income Limits Under Section 8 of the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: For Fiscal Year (FY) 2009, HUD has continued its policy of maintaining Section 8 income limits at the previously published level in cases where HUD's estimate of area median family income (MFI) or housing cost adjustment data, or changes in calculation methodology, would lead to a lower income limit than was previously published. The policy was adopted to ensure that Multifamily Tax Subsidy Projects (MTSPs) would not be subject to income-limit and rent decreases when the data underlying income limits otherwise indicated decreases. The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289) changed the tax code to protect existing MTSPs from decreases in income limits and rents, should HUD decide to discontinue this policy. However, maintaining artificially high income limits may have an adverse impact on other federal programs. HUD is requesting public comment on whether HUD should discontinue the practice with respect to Section 8 income limits such that income limits generally would be allowed to decrease.

DATES: *Comments Due Date:* October 14, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures their timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop income limits and median family income estimates, please call the HUD USER information line at 800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/il.html.* That Web site has current and historical income limits. Furthermore, HUD maintains an interactive on-line documentation system for income limits and median family income estimates. The documentation system will provide interested users with their income limits prior to the application of the hold-harmless policy in areas currently designated as ''historical exception'' areas. The FY 2009 documentation system may be accessed at *http://www.huduser.org/datasets/il/il09/index.html.* Questions may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone number 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. *Electronic Data Availability:* This **Federal Register** notice is available electronically from the HUD news page: *http://www.hud.gov/offices/adm/hudclips/index.cfm.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.gpoaccess.gov/fr/index.html.* This **Federal Register** notice also will be posted on the following HUD Web site: *http://www.huduser.org/datasets/il.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States Housing Act of 1937 (the 1937 Act) provides for assisted housing for ''low income families'' and ''very low income families.'' Section 3(b)(2) of the 1937

Act defines ''low-income families'' and ''very low-income families'' as families whose incomes are below 80 percent and 50 percent, respectively, of the median family income for the area, with adjustments for family size. These income limits are referred to as ''Section 8 income limits'' because of the historical and statutory links with that program, although the same income limits are also used as eligibility criteria by several other federal programs. The 1937 Act specifies conditions under which Section 8 income limits are to be adjusted either on a designated area basis or because of family incomes or housing-cost-to-income relationships that are unusually high or low. Section 8 income limits are calculated using Section 8 Fair Market Rent (FMR) area definitions, which in turn are based on Office of Management and Budget (OMB) metropolitan statistical area definitions.

It has been HUD's policy to maintain Section 8 income limits for certain areas at previously published levels when reductions would otherwise have resulted from changes in median family income estimates, housing cost adjustment data, median family income update methodology, income limit methodology, or metropolitan area definitions. This policy is commonly referred to as the ''hold harmless'' policy and was implemented to avoid jeopardizing the financial feasibility of existing housing projects in instances where program rents were tied to Section 8 income limits. Section 8 income limits have been maintained at the same level until such time as income limit calculations produced increases.

II. MTSPs

The primary federal housing programs that rely on HUD's Section 8 income limits for the determination of maximum rental rates are MTSPs, which include multifamily projects financed with Internal Revenue Code (IRC) section 42 Low-Income Housing Tax Credits and IRC section 142 tax-exempt private activity bonds. Maximum rents for units in MTSPs are generally 30 percent of the HUD-published Section 8 income limit, multiplied by a factor that is based on the number of bedrooms in a unit. Absent a hold-harmless policy, when Section 8 income limits fall, the maximum rent that a private owner can charge low-income tenants in MTSPs falls. This can place a financial strain on existing MTSPs. Accordingly, HUD has maintained Section 8 income limits at their existing levels when the normal calculation would otherwise result in a decrease. Section 3009 of Division C, Title I, Subtitle A, Part III of the Housing and Economic Recovery Act of 2008, Public Law 110–289, statutorily implements a project-level hold-harmless provision for existing MTSPs at 26 U.S.C. 142 (note), obviating the need for HUD to continue the policy for the benefit of MTSPs.

III. Other Programs

Maintaining artificially high income limits has had an adverse impact on other federal programs. Higher income limits increase the number of eligible participants, making it harder to target limited HUD resources to those most in need. Accordingly, HUD is considering whether to end its hold-harmless policy in calculating Section 8 income limits, since the policy is no longer needed to protect existing MTSPs. More than 99 percent of HUD assisted households have incomes below the extremely low-income level (30 percent of area median), so modest decreases in the Section 8 income limits resulting from this change would have minimal impact on families residing in assisted housing. However, other programs that use HUD's Section 8 income limits to determine program eligibility may be affected. These programs include, but may not be limited to, the Treasury Department's Tax-exempt Mortgage Revenue Bonds for Homeownership Financing; the Department of Agriculture's Rental and Ownership Assistance programs; the Federal Deposit Insurance Corporation's Disposition of Multifamily Housing to Non-profit and Public Agencies and the Disposition of Single Family Housing; the Federal Housing Finance Agency's Rental Program Funding Priorities and Homeownership Funding Priorities; the Veterans Administration's Eligibility for Disability Income Support Payments; and the HUD-administered, governmentwide Uniform Relocation Act to determine the extent of replacement housing assistance. Applicable income limits are modified to meet the requirements of each of these programs, but each starts with the Section 8 Very Low-Income Limit that incorporates high and low housing cost adjustments and the state nonmetropolitan median as a minimum. Additional details about the specific limits used by each of these programs can be found at: *http://www.huduser.org/datasets/il/il09/IncomeLimitsBriefingMaterial_FY09.pdf.*

In addition, determinations of Difficult Development Areas (DDAs) under IRC section 42 will be affected by this policy proposal. DDAs are areas with high ratios of construction, land, and utility costs to area median gross income and, collectively, may not include more than 20 percent of the population of all areas evaluated under the statutory formula. The hold-harmless policy may prevent increases in this ratio for areas that would otherwise experience decreasing income limits, making them less likely to be designated as a DDA.

HUD specifically invites public comment on whether these programs would better target persons and communities with the most need if HUD discontinued the hold-harmless policy and allowed Section 8 income limits to fall in accordance with the statutory and regulatory formula.

HUD also specifically invites comments on whether the hold-harmless policy should be maintained with respect to Section 8 income limits used for calculating HOME program rents, while discontinuing the hold-harmless policy with respect to eligibility requirements under the HOME program and other programs. The language defining income limits in the HOME program is parallel to that in Section 3(b)(2) of the 1937 Act, but does not refer specifically to that or any other section in setting income limits. Therefore, HUD may, for the HOME program's income limits and rents, use a process like that used to create the Section 3(b)(2) income limits, but with variations like a hold-harmless policy, if needed. Maintaining the hold-harmless policy for HOME program rents would prevent such rents from falling in areas where incomes may be falling, while discontinuing the hold-harmless policy with respect to eligibility requirements would help target HOME funds for use by families with lower incomes and greater need.

Any change in HUD's policy in this regard would become effective only upon publication of a future notice by HUD.

Dated: September 4, 2009.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

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