

January 10, 2018



Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Submitted electronically on regulations.gov

[RE: Docket Number FR 5743-I-04 – Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America’s Surface Transportation (FAST) Act]

To Whom It May Concern:

On behalf of LeadingAge and its members, please accept the following comments on the interim final rule on streamlining and FAST Act changes as published in the Federal Register on December 12.

The members of LeadingAge and affiliates touch the lives of 4 million individuals, families, employees and volunteers every day. The LeadingAge community (www.LeadngAge.org) includes 6,000 not-for-profit organizations in the United States, 39 state partners, hundreds of businesses, research partners, consumer organizations, foundations and a broad global network of aging services organizations that reach over 30 countries. The work of LeadingAge is focused on advocacy, education, and applied research. LeadingAge promotes home health, hospice, community-based services, adult day service, PACE, senior housing, assisted living residences, continuing care communities, nursing homes as well as technology solutions and person-centered practices that support the overall health and wellbeing of seniors, children, and those with special needs. Our affordable housing provider members have a long history of commitment to the serving the needs of America’s elderly, and represent the largest portion of Section 202 and senior-specific housing in the HUD multifamily portfolio.

We commend HUD on its continued efforts to reduce regulatory burden and seek streamlining among rental assistance programs wherever possible. We believe the authorities granted in this implementation of FAST Act provisions that allow public housing agencies (PHAs) and multifamily housing owners to elect to conduct less-than-full income verification for two of every three years, with full recertification for families with 90 percent or more of their income from fixed-income only every three years instead of annually, will reduce the administrative time and effort required to make annual rental assistance adjustments for those that adopt the new flexibilities.

Making the administrative procedures for families meeting the fixed-income threshold as similar as possible to families who do not have 90 percent or more of their income from fixed sources,

but still have some fixed income, is a valued move toward helping reduce the burden of regulatory compliance for housing providers operating various program types. We also are grateful to HUD for extending two of the administrative streamlining changes that were adopted in 2016 for the Housing Choice Voucher and Public Housing programs to Multifamily programs, as options for owners to consider.

LeadingAge members have responded favorably to the expanded authority for Multifamily owners to elect to accept family declaration of assets under \$5,000, where third-party verification of all family assets will only be required every 3 years. Though we suggest that it would be helpful for HUD to provide a common use form as a template.

Unfortunately, however, we must report that member response has been less than overwhelmingly positive towards other aspects of the interim rule overall. Some of this we attribute to the interim rule being somewhat confusing - in part for what it doesn't say and by some of the terminology – and for this, we hope our comments and suggestions will be useful to any modifications or further guidance. Also, where there is layered financing involving tax credits, or certain state subsidies are involved, it appears those programs will require that all income and rent information has to be current, so not all multifamily owners will have the ability to adopt the changes. For some, as well, moving away from the known to the unknown raises questions and some concerns.

As these changes are optional, we expect a delay before all the potential benefits become known or felt. Widespread adoption of the changes enabled by this rule may take some time. Further, LeadingAge members have asked whether an owner can opt to implement some *but not all* provisions covered in this interim rule. Or whether they must adopt all provisions if they choose to adopt any. Nonetheless, we believe that reducing the frequency of mandatory third-party verification of certain elements of income and assets – particularly if they *are* able, in years two and three, to simply apply a single-value COLA adjustment to year one *total* income as part of annual rent adjustments (for residents with 90% or more of their income coming from fixed sources) – owners should see a significant time savings. And, as the other components of this interim final are adopted, more owner/agents will come to appreciate that administrative processes can be significantly shorter. Ultimately, once comprehensive certification policy changes related to HOTMA are fully realized, their regulatory burden will be significantly reduced.

We hope that our comments and suggestions will inform useful modifications of the final rule and enhance both understanding and more widespread support for and adoption of the current new flexibilities address in this interim final rule.

Revise Terminology That May Be Confusing

What has long been referred to as “three-year certification” needs to be clarified. With this interim rule, the distinction is really full vs. limited verifications of “fixed” income sources (particularly where at least 90 percent of family income comes from “fixed” income

sources). Yet, this interim final rule indicates that residents must still provide annual *certifications* regarding assets and income. And it is not clear if a single document will suffice for all, or if they must be individually obtained for each of the various sources of fixed income. And, as discussed further on in our comments, we do not believe that annual verification of medical expenses has changed. As one member commented, how does this [interim final rule] reduce the administrative burden if there still has to be an annual certification?

Expectations of this long-awaited streamlining may have trended toward a potentially unrealistic hope that no documentation or adjustments would be required during the years 2 and 3, or that there would only be a flat rate increase based on cost of living or other designated (and perhaps even externally managed) fixed rate of adjustment overall.

Whatever the case may be, the term “certification” as used here is loaded with historical contextual understanding and may infer more third-party contact and information extraction than will actually be needed. So reconsideration and replacement of the term in this context may help persuade some that continuing to do annual income certifications (or full recertifications) in the old way is not, in fact, easier than trying to adopt any change.

We suggest that the annual document provided by residents to attest that there has been no change in assets or income sources might better be called an annual “declaration”. Yes, the resident will then have to sign, or self-certify, attesting to the veracity of their statement, but calling it a certification is the sticking point. Selection of some other terminology may help promote both better understanding of the concept and adoption of the new flexibilities.

Clarify that Annual Adjustment for Allowable Medical Expenses Continues

LeadingAge members are, by organizational focus, particularly attuned to impacts on the senior population and, as such, are particularly concerned that this interim final rule, because it does not say anything to the contrary, might somehow preclude annual adjustments of allowable medical expenses for the elderly which are often very volatile, with significant unexpected increases due to sometimes drastic changes in chronic or acute health concerns. While some members may conceptually presuppose that streamlined certification would be a single adjustment to an overall figure, other members are seeking assurances that medical expense adjustments will continue to reflect the most current annual medical expenses, which is considered essential to the most at-risk and least resourced residents

We believe HUD’s intent, however, is not that 3-year Verification of Income/Assets would preclude annual adjustment for allowable medical expense deductions, but urge HUD to specifically address and clarify in the final rule that HUD intends owners/agents to continue to provide annual adjustments for verified allowable medical expense deductions. We further suggest that HUD should specifically address the fact that while this interim rule does not incorporate the increased standard medical deduction and new threshold for deduction of allowable medical expenses or incorporate authority to use the past year’s income and expenses that will be coming as HOTMA changes are implemented (which should further significantly reduce the level of documentation required for annual rental assistance calculations

and adjustments), for those who wish it, beginning to transition from full verification at each annual recertification to 3-year verifications, adopting the streamlining provisions now available is certainly a step in the right direction.

Address Single-source COLA and Provide Scenarios for Streamlined Verification of All Fixed Income Sources

The Interim Final Rule states:

- PHA/owner/agents will be able to reduce the burden of the annual income review, in some years, by applying a COLA to fixed income sources for families with incomes that are made up of at least 90 percent fixed income.
- The PHA/owner/agents may, but are not required to, verify non-fixed income amounts in years where no fixed-income review is required (Years 2 and 3), but are still required to use third-party documentation for a full income recertification every 3 years.

Further, with the option of not verifying the remaining income where less than 10% comes from non-fixed source, HUD references (in the justification for the interim rulemaking at Section III, p. 58337, column 1) the use of a single-source COLA citing the “specific use of the Social Security Administration’s COLA...unless requested otherwise by the family, will provide PHAs and owners with additional streamlining benefits.” But the single-source COLA is not further developed, nor is any detail provided anywhere else in the interim final. And some have questioned whether HUD intends to allow owners to use streamlined verification for *all* fixed sources of income, regardless of whether or not those sources are 90% or more of the resident’s total income. We do not feel this interim rule precludes this, but as the question has been asked, a formal response or need for clarification along this line is advisable.

We certainly agree that having a single value COLA moving forward for families with at least 90 percent of their income coming from fixed sources would help alleviate more regulatory burden and further expedite annual rent adjustments. Therefore, assuming it is HUD’s intent, we urge HUD to explicitly state that owners may begin to use the current SSA COLA as of the interim rule effective date of March 12 to adjust the overall total or each line item for the various sources of fixed sources of income; and that this factor may also be applied to all other sources of non-fixed income that comprise less than 10% of the total resident income, where the owner chooses not to verify them. Otherwise, HUD should provide more information on the matter and explicitly state that a notice will need to be before this time-saving single value COLA adjustment can be implemented.

We further suggest that HUD should specifically reiterate that Notice H 2016 -09 still applies and that owners may continue streamlined verification for all fixed incomes sources, regardless of overall percentage of total income. Some examples of how to proceed with certifications where residents have some income from fixed sources, while other sources are non-fixed, would be helpful.

Restate and/or Update EIV Use Policies

LeadingAge members have questioned how the interim final rule will impact policies concerning required use of EIV. While the interim final rule does not specifically address this issue, we believe the answer is largely found in Notice H 2016-09 as excerpted here below:

Effect on Use of the Enterprise Income Verification (EIV) System - “In the years when an O/A elects to utilize streamlined income determination, the fixed source of income does not have to be verified using the EIV system. The O/A may, however, use the EIV system at his/her discretion and as indicated in the property’s policies and procedures. *All non-fixed sources of income remain subject to full income-verification requirements.*” (p. 9, Section VII,F – italics ours, see below.)

As owner compliance in use of EIV continues to be one of the most frequently cited violations reported by HUD and third-party oversight entities, and some of our members’ shared their views about the burden and complexity of the EIV system and its procedures, saying that the EIV system is very time sensitive, often wrong, and burdensome, we request that additional details be provided in the final rule to instruct owners on how the new streamlining authorities and options should be addressed in their site-specific EIV policies.

Specifically, LeadingAge suggests that language from Notice H 2016-09 concerning optional use of EIV should be restated and/or included by specific reference in the forthcoming final rule. Additionally, modification and/or clarification of the last line of that notice extract (in italics above) should also be addressed, as this interim final rule states that it is optional whether owners will choose to verify the remaining 10 percent or not, yet clarify or reiterate that, for residents with more than 10% of income coming from non-fixed sources, full income-verification requirements remain. The above referenced notice language does not support that option.

Clarify Expanded Utility Reimbursement Flexibility for 202/811 Program

We specifically commend HUD for expanding voucher and public housing authorized options to allow multifamily owner/agents the same options, as better alignment of the distinctions between various subsidy programs should (and we believe ultimately will) help to improve policy understanding, process application and oversight administration over time. This also appears to help align policies for tax credit programs as well.

However, concerning the option of making utility reimbursement payments on a quarterly vs. a month basis where reimbursements totally \$45 or less per quarter, it is unclear what the process will be for 202 PRAC and 811 PRACs to amend their assistance contracts to incorporate these flexibilities. And we are concerned, as with other owner optional policies (even some specifically encouraged at HUD headquarters level) that there will be a lack of clear understanding for some time at the field office level which could significantly impede or delay owner efforts to take action and ultimately frustrate owner interests. *We urge HUD to provide more details on this matter and consider assigning a centralized point of contact at HUD*

headquarters or in the regional offices for 202/811 owners seeking amendment to their assistance contracts for this purpose, as opposed to directing owners to contact their property-specific account executives.

Clarify Please – All or Nothing?

As referenced earlier in our comments, LeadingAge members have specifically asked if owners can pick and choose among the new flexibilities extended to them by this interim final rule. Some have asked, for example, “if an owner chooses NOT to implement the streamlined fixed income for recertification every three years, can the same owner still choose to streamline the Family Declaration of Assets Under \$5000 every three years? Or is HUD only allowing the streamlined fixed assets IF we streamline the fixed income?” Another asks, similarly, “is this an all or nothing regulation? Can we do recerts for some residents using FAST and continue in current process for others?” Clarification here, too, is requested.

Thank you for this opportunity to provide our comments. Should further discussion or any clarification be needed on these matters, please contact me at 202 509-9483 or cbloom@leadingage.org.

Sincerely,

Colleen Bloom
Director, Housing Operations