

Flexibility Act (5 U.S.C. 601 *et seq.*). Nonetheless, the Department of State certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule does not require the Department of State to prepare a statement because it will not result in any such expenditure, nor will it significantly or uniquely affect small governments. This rule involves visas, which involves foreign individuals, and does not directly or substantially affect state, local, or tribal governments, or businesses.

#### *Congressional Review Act*

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

#### *Executive Orders 12866 and 13563*

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State has examined this rule in light of Executive Order 13563, and has determined that the rulemaking is consistent with the guidance therein. The Department of State has reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. There are no anticipated direct costs to the public associated with this rule.

#### *Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effect on the States, on the relationship between the national

government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

#### *Executive Order 12988: Civil Justice Reform*

The Department of State has reviewed the rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Form DS-2019, Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT), is approved under the PRA (OMB Control No. 1405-0119).

#### **List of Subjects in 22 CFR Part 41**

Aliens, Cultural Exchange Program, Nonimmigrant, Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR Ppart 41 is amended to read as follows:

#### **PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

- 1. The authority citation for part 41 continues to read as follows:

**Authority:** 8 U.S.C. 1101; 1102; 1104; 1182; 1184; 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295); 1323; 1361; 2651a.

- 2. In § 41.112, revise paragraph (d)(2)(i) to read as follows:

#### **§ 41.112 Validity of visa.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Is in possession of a Form I-94, Arrival-Departure Record, endorsed by DHS to show an unexpired period of

initial admission or extension of stay, *provided that* in the case of a qualified F student or the accompanying spouse or child of such student, is in possession of a current Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, issued by the school that the student has been authorized to attend by DHS and endorsed by the issuing school official to indicate the period of initial admission or extension of stay authorized by DHS, and *provided that* in the case of a qualified J exchange visitor or the accompanying spouse or child of such exchange visitor, is in possession of a current Form DS-2019, Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT), issued and endorsed by the Department of State-designated sponsor of the exchange program, to indicate the period of initial admission authorized by DHS or the extension of stay authorized by the Department of State;

\* \* \* \* \*

**Kevin E. Bryant,**

*Deputy Director, Office of Directives Management, Department of State.*

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**BILLING CODE 4710-06-P**

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

### **24 CFR Parts 247, 880, 882, 884, 966**

[Docket No. FR-6286-I-01]

RIN 2501-AD99

#### **Extension of Time and Required Disclosures for Notification of Nonpayment of Rent**

**AGENCY:** Office of the Assistant Secretary of Public and Indian Housing, and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule applies when, during emergencies such the current COVID-19 pandemic, Federal funding is available to assist tenants with nonpayment of rent and tenants facing eviction for nonpayment of rent in public housing and properties with project-based rental assistance (PBRA) (for purposes of this rule, PBRA includes projects in the following programs: Section 8, Section 8 Moderate Rehabilitation, Section 202/162 Project Assistance Contract, Section 202 Project Rental Assistance Contract (PRAC), Section 811 PRAC, Section 236 Rental

Housing Assistance Program and Rent Supplement) need sufficient time and information to seek and receive such emergency rent relief. This interim final rule will allow the Secretary, upon making the requisite findings and providing the requisite notice, to require housing providers participating in those programs to provide tenants facing eviction for non-payment of rent with notification of and information about the opportunity to secure emergency funding and additional time to secure such funding prior to eviction.

**DATES:**

*Effective date:* November 8, 2021.

*Comment due date:* November 8, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim final rule 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](http://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 timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site 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 202-402-3055 (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, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For Public and Indian Housing: Danielle Bastarache, Deputy Assistant Secretary for Public Housing and Voucher Programs, 451 7th Street SW, Room 4204, Washington, DC 20410, telephone number 202-402-1380 (this is not a toll-free number). For a quicker response, email [PIH-COVID@hud.gov](mailto:PIH-COVID@hud.gov). For Multifamily: Robert Iber, Senior Advisor for the Office of Multifamily Housing Programs, 451 7th Street SW, Room 6106, Washington, DC 20410, telephone number 202-708-3055 (this is not a toll-free number). For a quicker response, email [mfcommunications@hud.gov](mailto:mfcommunications@hud.gov). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** This rule provides that, during the COVID-19 pandemic and other future emergencies, the Secretary may require that public housing authorities (PHAs) and PBRA owners provide tenants with specified information regarding any Federal funding that is made available to prevent eviction for nonpayment of rent during such emergency. The Secretary may also extend the time period before lease termination for nonpayment of rent to a minimum of 30 days after the tenant has received such information. This interim final rule will provide an important opportunity for tenants who face hardship due to emergencies, such as those who have lost income during the COVID-19 pandemic and are unable to pay rent, to learn about emergency funding opportunities and take steps to secure emergency funding. This will in turn prevent unnecessary evictions that would negatively impact the efficacy of HUD's programs.

**I. Background**

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in

January 2020, the disease has infected over 40 million Americans and killed over 631,000.<sup>1</sup> The disease significantly impacted the economy, resulting in millions of Americans losing their jobs or working fewer hours. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.<sup>2</sup> Between March 15 and May 15, 2020, over 35 million Americans filed initial jobless claims, and the unemployment rate climbed to over 14 percent in April 2020—the highest monthly level since 1948, when the U.S. Bureau of Labor Statistics started tracking this data.<sup>3</sup> The loss of jobs created by the COVID-19 pandemic exacerbated an affordable housing crisis that predated the pandemic. During this time, many households have faced housing insecurity.<sup>4</sup> Amid this once-in-a-century crisis, HUD and the Federal Government began intense efforts to provide support for affected families, and State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond to this crisis with emergency assistance at an immense scale.

On January 31, 2020, the Secretary of Health and Human Services (HHS) issued a determination under section 319 of the Public Health Service Act,<sup>5</sup> that a national public health emergency existed as of January 27, 2020, because of the COVID-19 pandemic.<sup>6</sup> On March

<sup>1</sup> Centers for Disease Control and Prevention (CDC), *COVID Data Tracker*, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Sept. 9, 2021).

<sup>2</sup> Federal Reserve Bank of St. Louis, *Unemployment Rate [UNRATE]*, <https://fred.stlouisfed.org/series/UNRATE> (last visited Sept. 9, 2021); Federal Reserve Bank of St. Louis, *Employment Level [LNU02000000]*, <https://fred.stlouisfed.org/series/LNU02000000> (last visited Sept. 9, 2021).

<sup>3</sup> U.S. Department of Labor, *Unemployment Insurance Weekly Claims Report*, May 21, 2020, <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/ui-claims/20201058.pdf>.

<sup>4</sup> Nirmita Panchal et al., *The Implications of COVID-19 for Mental Health and Substance Abuse*, Feb. 10, 2021, <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>; U.S. Census Bureau, *Household Pulse Survey Data Tables*, <https://www.census.gov/programs-surveys/household-pulse-survey/datasets.html> (last visited Sep. 9, 2021); Rebecca T. Leeb et al., *Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—US, Jan. 1–Oct. 17, 2020*, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

<sup>5</sup> 42 U.S.C. 247d.

<sup>6</sup> The HHS Secretary renewed this determination several times since then, most recently on July 19, 2021 (effective July 20, 2021). HHS, *Renewal of Determination That A Public Health Emergency Exists*, July 19, 2021, <https://www.phe.gov/>

13, 2020, the President declared a nationwide emergency pursuant to Section 501(b) of the Stafford Act.<sup>7</sup> All 50 states, the District of Columbia, and 5 territories were approved for major disaster declarations to assist with additional needs identified under the nationwide emergency declaration for COVID-19. On February 21, 2021, the President extended the national emergency, stating that the COVID-19 pandemic remains a significant risk to the United States.<sup>8</sup>

#### *Response to the COVID-19 Pandemic and Related Housing Insecurity*

In response to the national emergency declaration, HUD and other Federal agencies began efforts to support families impacted financially by the COVID-19 pandemic and at risk of losing their housing.<sup>9</sup> Additionally, the Coronavirus Aid, Relief, and Economic Security Act, 2020 “CARES Act,” a \$2.2 trillion economic stimulus bill, was signed into law on March 27, 2020.<sup>10</sup> Included in the CARES Act were provisions providing foreclosure and eviction moratoriums and providing additional financial relief for owners of certain multifamily housing projects in an effort to ensure continued stability of the housing market.<sup>11</sup>

Also included in the CARES Act was funding for several HUD programs to prevent, prepare for, and respond to COVID-19, including increased rental subsidies in HUD-assisted housing to pay for increased operating costs and loss of rental income due to tenants’ loss of income during the COVID-19 national emergency. This additional funding was meant to help ensure that HUD’s assisted housing programs continued to operate as effectively as possible and were not burdened by the additional expenses associated with preventable evictions.

Other efforts were also underway to prevent an onslaught of evictions that

would lead to an increase in homelessness and cohabitation, which according to the CDC, also create an environment that would further spread COVID-19.<sup>12</sup> As a result, on September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States due to the ongoing public health crisis.<sup>13</sup> That original CDC Order expired on December 31, 2020, subject to extension, modification, or rescission. The Consolidated Appropriations Act, 2021,<sup>14</sup> extended that Order until January 31, 2021, and the original CDC Order was extended multiple times due to the continued national emergency.

On August 3, 2021, following the surge in COVID-19 infections due to the highly contagious Delta variant, the CDC Director issued a new order temporarily halting evictions for persons in jurisdictions experiencing substantial or high rates of transmission. However, on August 26, 2021, the Supreme Court of the United States vacated the stay of a district court decision invalidating the original and new CDC Order, holding that the applicants had a substantial likelihood of success on the merits.<sup>15</sup> In considering the facts, the Court pointed to the availability of rental-assistance funds as, in its view, diminishing the government’s ongoing interest in maintaining an eviction moratorium.<sup>16</sup> Therefore, without the CDC Order in place, landlords may resume evictions across the United States during the national emergency, unless otherwise precluded under state or local eviction moratoriums.

#### *Emergency Rental Assistance*

In addition to trying to reduce evictions through the CARES Act, Congress created the Emergency Rental Assistance (ERA) program, funded through the Department of the Treasury, to make funds available to assist households that are unable to pay rent or utilities and provide funds to landlords to help cover tenants’ rent and utilities payments.

The first tranche of ERA funding, ERA1, provides up to \$25 billion under the Consolidated Appropriations Act,

2021, and the second tranche, ERA2, provides up to \$21.55 billion under the American Rescue Plan Act of 2021, which was enacted on March 11, 2021.<sup>17</sup> The funds are provided directly to states, U.S. territories, local governments, and, in the case of ERA1, also to Indian tribes or Tribally Designated Housing Entities, as applicable, and the Department of Hawaiian Home Lands. Grantees then make these funds available to provide rental assistance to eligible households through existing or newly created rental assistance programs. These funds may be disbursed to either tenants or landlords. Public Housing Authorities (PHAs), Housing Choice Voucher (HCV) landlords, other owners of HUD-assisted properties, and utility providers may accept funds from the ERA program for rental and most utility arrearages for HUD-assisted families. HUD-assisted families are eligible for assistance from the ERA program, provided that ERA funds are not applied to costs that have been or will be reimbursed under any other Federal assistance, including Housing Assistance Payments in the HCV Program, Operating Fund assistance in the Public Housing program, or rental assistance in Multifamily Housing programs.

The funding is designed to assist households that demonstrate a risk of experiencing homelessness or housing instability. Eligible households for ERA must have a household income at or below 80 percent of area median income, which corresponds with income thresholds for HUD assistance.<sup>18</sup> For both ERA1 and ERA2, other expenses related to housing include relocation expenses (including prospective relocation expenses), such as rental security deposits, and rental fees, which may include application or screening fees. Those expenses can also include reasonable accrued late fees (if not included in rental or utility arrears), and internet service provided to the rental unit.

The pace of distributing emergency funds that could prevent evictions for nonpayment of rent started slowly and faces a number of obstacles but has since picked up. From January to May 2021, only \$1.45 billion was delivered under ERA for rent, utilities, and arrears out of a total of \$25 billion.<sup>19</sup> In June

[emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx](https://www.emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx).

<sup>7</sup> 42 U.S.C. 5121 *et seq.*

<sup>8</sup> See The White House, *A Letter on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic*, Feb. 24, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

<sup>9</sup> See, e.g., HUD, *Mortgage Letter 2020-04: Foreclosure and Eviction Moratorium in Connection with the Presidentially Declared COVID-19 National Emergency*, Mar. 18, 2020, <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-04hsgml.pdf>; U.S. Dep’t of Agriculture, *Stakeholder Announcement: USDA Announces Guaranteed Housing Foreclosure and Eviction Relief*, Mar. 19, 2020, <https://www.rd.usda.gov/node/17107>.

<sup>10</sup> Public Law 116-136, 134 Stat. 281 (2020).

<sup>11</sup> *Id.* at sections 4022-4024.

<sup>12</sup> 86 FR 34013 (The 2017 Census Bureau American Housing Survey found that 32% of renters reported that they would move in with friends or family members upon an eviction.).

<sup>13</sup> 85 FR 55292 (pursuant to the CDC’s authority under the Public Health Service Act, 42 U.S.C. 264).

<sup>14</sup> Public Law 116-260 (2020).

<sup>15</sup> *Ala. Ass’n of Realtors v. Dep’t of Health and Human Servs.*, 594 U.S. \_\_\_ (2021) at 5, [https://www.supremecourt.gov/opinions/20pdf/21a23\\_ap6c.pdf](https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf).

<sup>16</sup> *Id.* at 7-8 (“Whatever interest the Government had in maintaining the moratorium’s original end date to ensure the orderly administration of those programs has since diminished.”).

<sup>17</sup> Public Law 117-2 (2021).

<sup>18</sup> Emergency Rental Assistance limits eligibility to households with income that does not exceed 80 percent of the median income for the area in which the household is located, as determined by HUD. Public Law 116-260, division N, section 501 (2020).

<sup>19</sup> Congressional Research Service, *Emergency Rental Assistance through the Coronavirus Relief*

2021, more than \$1.5 billion from ERA was paid directly to households, more than in all previous months combined.<sup>20</sup> July 2021 data demonstrates continued, steady improvement in funds distribution, particularly by States and local agencies following the Department of Treasury guidance.<sup>21</sup>

The application and approval process for ERA funds and the time it takes to access these funds vary by grantee. While it may generally be expected to take a few weeks for applications to be processed, and funds to be disbursed, some applicants have faced longer delays.<sup>22</sup>

There are multiple causes for the slow rollout of ERA assistance. Of particular concern with respect to this rulemaking, they include obstacles to tenants knowing about and applying for available funds, such as complexities in the application processes, privacy concerns, and a lack of understanding as to funding availability.<sup>23</sup> The bottom line is that ERA funding still has not reached many eligible tenants at risk of eviction for nonpayment, creating an increased risk that evictions will occur simply because funding that is specifically meant to help pay much or all of the back rent in question is not secured in time.

## II. This Interim Final Rule

### *Tenants' Need for Greater Information and Time*

HUD is continuously evaluating how best to help tenants and housing providers mitigate the pandemic's impact and economic issues arising during this national emergency, while ensuring that the various resources that are available to address the backlog of

unpaid rent are fully utilized. HUD has determined that, in the immediate aftermath of the judicial vacatur of the CDC eviction moratorium, it needs to act to prevent a wave of preventable evictions that will interfere with the orderly operation of HUD's programs and the accomplishment of HUD's mission. Historically, 3.6 million eviction cases are filed per year in the United States, resulting in 1.5 million annual eviction judgments.<sup>24</sup> But now, as more renters fell behind on their rental payments during the COVID-19 pandemic, many more households are at risk of eviction. As of July 2021, just before the CDC moratorium on evictions was vacated, 6.5 million households nationwide were at risk of eviction.

This interim final rule follows and complements earlier HUD actions, taken while the CDC moratoriums were in effect, aimed at assisting HUD-assisted tenants and landlords with securing available resources that assist with the payment of back rent and avoid unnecessary evictions for non-payment. For example, HUD issued guidance recommending that all PHAs make tenants aware of ERA funding and guidance about accepting ERA funding in multifamily housing.<sup>25</sup> Nonetheless, the ERA program's implementation indicates that many tenants (including in HUD-assisted properties) may remain unaware of or do not understand how to access ERA resources, have been unable to access the funds in time, or have incorrectly believed that they need not apply for ERA because rental obligations were suspended during the eviction moratorium. Many of those tenants may be eligible for ERA, yet they are not benefiting from it, thus requiring HUD to take this further, related action.<sup>26</sup>

HUD also issued guidance requesting that PHAs and owners work with tenants to recertify their rents for loss income or job loss, thus effectively lowering the rent payment HUD-supported tenants must make and helping them avoid eviction. However,

the possibility of recertification does not replace access to ERA funding, for a variety of reasons. This policy has been helpful but has not fully solved the problem. Not every tenant who could benefit from recertification has, whether because PHAs and owners have not reached out offering recertifications or because the tenants have chosen for a variety of reasons not to seek recertification. Additionally, PHAs and owners might permit recertification for rent going forward, but not recertify the loss of income retroactively, meaning that coverage of rent arrears by ERA could still be necessary to help prevent future evictions.

HUD now must take further action to ensure that tenants in public housing and PBRA<sup>27</sup> assisted units who are eligible for funding during a national emergency are afforded notice about the funding and have the opportunity to secure it before a lease termination for nonpayment of rent occurs. Congress specifically intended that ERA funds would reduce what otherwise would be an intolerably high number of evictions due to financial issues caused by the national emergency. While States and localities continue to accelerate and improve their programs to provide funding to tenants, many tenants who now face imminent eviction with the moratorium gone still need additional time and information to access the ERA applications and complete the process. This interim final rule will ensure that HUD-assisted tenants who are facing eviction for nonpayment of rent have notice of available emergency funds and are afforded more time to access that assistance. A tenant who has been previously made aware of eligibility for emergency assistance may not think to apply for it until they are facing eviction, as many tenants now are following judicial vacatur of the CDC's eviction moratorium. HUD believes that getting tenants information about accessing emergency funding at the moment when they most need it and are likely to take advantage of it is crucial for fulfilling HUD's mission.

### *Statutory and Regulatory Authority*

HUD has general rulemaking authority under 42 U.S.C. 3535 to implement its statutory mission, which

<sup>27</sup> HUD's PBRA programs included in the scope of this rule includes Section 8, Section 8 Moderate Rehabilitation, Section 202/162 Project Assistance Contract, Section 202 Project Rental Assistance Contract (PRAC), Section 811 PRAC, Section 236 Rental Housing Assistance Program and Rent Supplement. In addition, some housing developed with subsidized financing through former programs such as Section 221(d)(3) Below Market Interest Rate, Section 236 and Section 202 Direct Loan are part of HUD's PBRA Program.

*Fund*, (July 9, 2021) at 14, <https://crsreports.congress.gov/product/pdf/R/R46688>.

<sup>20</sup> U.S. Dep't of the Treasury, *Treasury Data: Amount of June Emergency Rental Assistance Resources to Households More Than All Previous Months Combined*, (July 21, 2021) <https://home.treasury.gov/news/press-releases/jy0284>.

<sup>21</sup> U.S. Dep't of the Treasury, *Treasury Announces Seven Additional Policies to Encourage State and Local Governments to Expedite Emergency Rental Assistance*, (Aug. 25, 2021) <https://home.treasury.gov/news/press-releases/jy0333>.

<sup>22</sup> U.S. Dep't of the Treasury, *Emergency Rental Assistance Data Shows Programs Ramping Up, but States and Localities Must Do More to Accelerate Aid*, (July 2, 2021) <https://home.treasury.gov/system/files/136/2021-07-02-ERA-Data-Blog-Post-vF.pdf>.

<sup>23</sup> See U.S. Dep't of the Treasury, *Emergency Rental Assistance Fact Sheet*, (May 7, 2021) [https://home.treasury.gov/system/files/136/FACT\\_SHEET-Emergency-Rental-Assistance-Program\\_May2021.pdf](https://home.treasury.gov/system/files/136/FACT_SHEET-Emergency-Rental-Assistance-Program_May2021.pdf); Nat'l Low Income Hous. Coal., *Treasury Emergency Rental Assistance Programs in 2021: Analysis of a National Survey*, (June 22, 2021) [https://nlhc.org/sites/default/files/HIP\\_NLIHC\\_Furman\\_2021\\_6-22\\_FINAL\\_v2.pdf](https://nlhc.org/sites/default/files/HIP_NLIHC_Furman_2021_6-22_FINAL_v2.pdf).

<sup>24</sup> Ashley Gromis, *Eviction: Intersection of Poverty, Inequality, and Housing*, Princeton University, Eviction Lab (2019) (measuring the number of evictions from 2000 to 2016).

<sup>25</sup> HUD, *Questions on the U.S. Treasury's Emergency Rental Assistance (ERA) and Other Rental Assistance Programs*, May 12, 2021, [https://www.hud.gov/sites/dfiles/PIH/documents/ERAP\\_PIH\\_ERAP\\_FAQs.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/ERAP_PIH_ERAP_FAQs.pdf); HUD, *Questions and Answers for Office of Multifamily Housing Stakeholders, Coronavirus Disease 2019 (COVID-19)*, (July 29, 2021) [https://www.hud.gov/sites/dfiles/Housing/documents/MF\\_COVID-19%20QA\\_7\\_29\\_21.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/MF_COVID-19%20QA_7_29_21.pdf).

<sup>26</sup> Recent Census Pulse survey data shows that 60% of renter households behind on rent have not applied to ERA. See U.S. Census Bureau, *Household Pulse Survey Data Tables*, <https://www.census.gov/programs-surveys/household-pulse-survey/data.html> (last visited Sep. 9, 2021).

is to provide assistance for housing to promote “the general welfare and security of the Nation and the health and living standards of [its] people.”<sup>28</sup> Each year, HUD provides States, local governments, and housing providers with billions of dollars in Federal financial assistance, appropriated and authorized by Congress. By taking the actions described here, HUD will prevent unnecessary evictions and the costs associated with them for both tenants and PHAs and owners, as compelled by its mission. These actions will promote the general welfare and security of the Nation by avoiding the societal ills exacerbated by the dislocations wrought by evictions in the time of a national emergency, such as deterioration of public health through disease transmission, extended disruptions to children’s schooling after the prolonged period of disruption that many have already experienced during the current national emergency and all the other problems attendant to increased homelessness.

In addition, increases in evictions frustrates HUD’s programmatic efficiency. It diverts resources to cover the costs of unnecessary evictions. Increased homelessness also makes it more difficult for HUD to provide services to the population that qualifies for HUD’s programs. People experiencing homelessness are less likely to receive information about HUD’s programs and to avail themselves of those programs. Accordingly, by reducing evictions, this rulemaking advances HUD’s statutory purposes.

HUD also has specific statutory authority under the U.S. Housing Act of 1937 to prescribe procedures and requirements for PHAs to follow to ensure sound management practices and efficient operations.<sup>29</sup> Even more specifically, HUD has the authority to establish “procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent.”<sup>30</sup> HUD also has authority to specify procedures that ensure tenants receive the elements of due process, such as notice of relevant information, before adverse action is taken against them.<sup>31</sup>

In particular, the Secretary is authorized to require public housing authorities to provide certain specified notice periods and other procedural protections (that are, in turn, incorporated into lease terms) before

different types of eviction proceedings.<sup>32</sup> In exercising that statutory authority, HUD’s regulations provide that in the case of termination for nonpayment of rent, a PHA shall provide at least fourteen days’ written notice. *See* 24 CFR 966.4.

The Secretary also has statutory authority to establish requirements for project-based rental assistance.<sup>33</sup> This statutory authority provides that during the lease term, the owner must not “terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause[.]”<sup>34</sup> The Secretary is also authorized to provide additional terms and conditions that must be incorporated into the tenant’s lease.<sup>35</sup> This rulemaking is consistent with the statutory restrictions placed on program participants under this authority and HUD’s regulations promulgated in this area.

Specifically, for termination for nonpayment of rent in HUD’s project-based rental assistance programs, HUD’s regulations generally provide that a termination notice must be provided with enough advance time to comply with both the rental agreement or lease and State laws.<sup>36</sup> *See* 24 CFR 247.4(c); 24 CFR 880.607(c)(2). By contrast, for termination of tenancy for “other good cause,” HUD regulations require 30 days’ notice along with the provision of specific information to the tenant. *See* 24 CFR 880.607(c)(2). HUD imposes different notice requirements in specific programs; in one program, five working days’ notice are required before tenancy termination while in another program the regulations provide for 10 days. *See* 24 CFR 882.511; 24 CFR 884.216.

This interim final rule amends these program regulations for public housing and project-based rental assistance to accommodate current and future exigencies, based on HUD’s statutory authority and policy discretion, in three ways.

<sup>28</sup> 42 U.S.C. 1437d(l).

<sup>29</sup> 42 U.S.C. 1437f(g) (Section 8 low-income housing assistance); 12 U.S.C. 1701q (Section 202 supportive housing for the elderly); 42 U.S.C. 8013 (Section 811 supportive housing for persons with disabilities).

<sup>30</sup> 42 U.S.C. 1437f(d)(1)(B)(ii). *See also* 42 U.S.C. 8013(i)(2)(B) (Section 811).

<sup>31</sup> 42 U.S.C. 1437f(d)(1)(B)(iv).

<sup>32</sup> The time period required by State laws can vary from 0 days to 30 days depending on the jurisdiction. *See* Nolo, *State Laws on Termination for Nonpayment of Rent*, <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html> (last updated Dec. 10, 2020) (citing W.Va. Code Section 55–3A–1 (no notification period), Fla. Stat. Ann. Section 83.56(3) (3 days); Idaho Code Section 6–303(2) (3 days) and D.C. Code Ann. Section 42–3505.01 (30 days)).

First, it provides that, when funding is available to assist tenants with nonpayment of rent during a national emergency, such as the current COVID–19 pandemic, the Secretary may determine that tenants facing eviction for nonpayment of rent must be provided with adequate time and notice to secure that funding. Upon that determination, the PHA or owner seeking to evict for non-payment must provide the tenant with such information as required by the Secretary for accessing the funds that are being made available related to the emergency. HUD will publish a Notice outlining the specific information to be included in the lease termination notification to assist eligible tenants in obtaining funding during this emergency. The Notice will explain the requirements for PHAs and owners to provide the information in a manner that ensures effective communication for individuals with disabilities, such as by providing the information in accessible electronic formats or in Braille, and to provide meaningful access for persons with limited English proficiency (LEP).

Second, to ensure tenants facing eviction for non-payment of rent are provided an adequate opportunity to access emergency funding, this interim final rule also extends the lease termination time period for such tenants to at least 30 days following the above-described notification. This 30-day period is consistent with the longest of the standard periods to which PHAs and owners are already accustomed for many evictions. For example, for evictions for reasons other than nonpayment of rent, health or safety concerns, or criminal activity, 42 U.S.C. 1437d(l) and 24 CFR 966.4(l)(3) already provide for a 30-day time period, unless State or local law allows a shorter period.

Similarly, HUD’s PBRA regulations at 24 CFR 247.4, 24 CFR 880.607, and 24 CFR 882.511, as well as 42 U.S.C. 8013(i)(2)(B), all provide that when termination of the tenancy is based on other good cause, the tenancy will not terminate earlier than 30 days after the tenant receives the notice. Further, some state laws already provide for 30 days more generally or specifically for the current national emergency.<sup>37</sup>

Third, the interim final rule provides that, for public housing, in addition to requiring the provision of specified information to tenants facing eviction

<sup>37</sup> *See, e.g.*, Colo. Executive Order No. D 2021–122, (July 8, 2021) <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202021%20122.pdf>.

<sup>28</sup> 42 U.S.C. 3531.

<sup>29</sup> 42 U.S.C. 1437d(c)(4).

<sup>30</sup> 42 U.S.C. 1437d(c)(4)(B).

<sup>31</sup> 42 U.S.C. 1437d(k).

for failure to pay rent, the Secretary may also require that all tenants be provided immediate notice of the availability of emergency funding. This notice may be posted in a public area, emailed to all tenants, or otherwise provided to groups of tenants rather than individuals, if the PHA so chooses.

HUD has chosen, based on its statutory authority for the public housing and PBRA programs,<sup>38</sup> its rulemaking authority,<sup>39</sup> and its policy discretion, to protect its assisted tenants and ensure it is fulfilling its statutory duties by promulgating this interim final rule.

HUD notes that this rule does not require PHAs or owners to modify tenant leases, which provide notification procedures and time periods that may be more limited than those provided in this rule. It would be administratively infeasible to update all public housing and PBRA leases to incorporate these changes, which are limited in the time they will be in effect, and to update all leases quickly enough to immediately protect families at-risk of eviction. However, the rule requires that PHAs and owners follow this rule in place of the usual lease provisions at times when its provisions are in effect, and does not prevent PHAs and owners from updating their leases if they so choose.

#### *Administrative Procedure Act (APA)*

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with both the APA, 5 U.S.C. 553, and its own regulations on rulemaking, 24 CFR part 10. Both the APA and Part 10, however, provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation, in addition to the Secretary's statutory and regulatory authority to waive regulations.<sup>40</sup> The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."<sup>41</sup> In order to publish a rule for effect prior to receiving and responding to public comments, the agency must make a finding that at least one of these "good cause" exceptions applies.

HUD has determined that good cause exists to promulgate this interim final rule without prior notice and comment, to ensure that tenants who are

imminently facing eviction for nonpayment of rent and are eligible for ERA funding receive the benefit of this rule's requirement of notice and an opportunity to access these funds. HUD finds that prior notice and comment is impracticable and would create undue harm by delaying this rule's effectiveness.

Given the recent vacatur of the CDC Order suspending evictions, which may put HUD-assisted tenants at risk of being abruptly evicted before they can receive ERA funding, immediate action is necessary to ensure that ERA funding reaches its intended beneficiaries quickly and efficiently. HUD is taking this action to foster stability in its own programs by preventing tenant turnover and increased homelessness; preventing unnecessary hardship for HUD-supported tenants; and promoting the most efficient and effective use of ERA funds.

HUD is also taking this action to prevent harm to HUD-assisted tenants and allow landlords and PHAs to avoid the time and expense of unnecessary evictions while simultaneously providing those landlords with the funds necessary to recoup arrearages and other eligible costs through ERA funding.

Good cause can be found when circumstances outside the agency's control make compliance with notice and comment impracticable.<sup>42</sup> HUD's good-cause determination is based on, among other things, the following considerations.

First, delay to allow prior notice and comment would effectively moot a significant aspect of this rule. This interim final rule is urgently needed right now, because the CDC Moratorium was abruptly enjoined prior to its anticipated expiration and thus evictions for nonpayment of rent are likely to proceed imminently. As some State and local grantees are only in the beginning stages of distributing ERA funds, many tenants may be unaware of their eligibility for such assistance or may be waiting for distribution of such assistance rather than acting themselves. Housing providers giving tenants information about ERA funding as soon as possible, and providing them with time to apply for it before more evictions occur, is crucial to ensuring the program's success and realizing Congress's intent in providing for ERA funding in the first place. The change in this interim final rule must be

undertaken with expedience to ensure the maximum intended effects of ERA funding. Such potential harm to the public is increased right now, given the recent vacatur of the CDC order and the continued need for additional time for ERA funding to reach eligible beneficiaries, making it critical that this rule go into effect when it is needed most.

HUD's Regulatory Impact Analysis provides that an estimated 217,000 households could be protected under this rulemaking when implemented. Delaying this interim final rule's effective date for months would render it useless and unavailable for a significant fraction of the tenants and landlords who would benefit from the rule. That would result in unnecessary evictions, preventable homelessness, and increased cohabitation during a pandemic.

Second, aside from mooting this interim final rule's purpose, delay due to prior notice and comment would result in evictions that could have been prevented if tenants had received adequate notification that assistance was available, and the opportunity to apply for and receive approval and funding prior to being evicted. Specifically, during an advanced notice and comment period, it is likely that individuals who could have benefited from this rule would face eviction before the rule goes into effect. That includes tenants who are now in the process of applying for ERA; tenants who are eligible for ERA but do not know of their eligibility or how to apply; and those who have completed applications but are waiting for receipt of funds.

Third, increased evictions are harmful not only to the individual families who lose their housing, but to HUD's mission and society as a whole. This is particularly the case when the processing of unnecessary evictions leads to increased cost and administrative burden for program participants as well as an increase in homelessness and cohabitation in particularly vulnerable populations. As the Federal agency responsible for housing assistance and community development,<sup>43</sup> HUD has responsibility to promote housing stability and the efficient and effective use of its resources to secure housing for vulnerable families. An increase in evictions also leads to instability in communities from tenant turnover,<sup>44</sup>

<sup>38</sup> 42 U.S.C. 1437d(l); 42 U.S.C. 1437f(g) (Section 8 low-income housing assistance); 12 U.S.C. 1701q (Section 202 supportive housing for the elderly); 42 U.S.C. 8013 (Section 811 supportive housing for persons with disabilities).

<sup>39</sup> 42 U.S.C. 3535.

<sup>40</sup> 42 U.S.C. 3535(q).

<sup>41</sup> 5 U.S.C. 553(b)(B); 24 CFR 10.1.

<sup>42</sup> 5 U.S.C. 553(b)(B); see, e.g., Tri-Cty. Tel. Ass'n v. FCC, 999 F.3d 714, 719–20 (D.C. Cir. 2021) (providing funds in an ongoing emergency caused by a natural disaster).

<sup>43</sup> 42 U.S.C. 3531.

<sup>44</sup> CB Richard Ellis (CBRE), *Apartment Turnover Declines Amid COVID-19 Crisis*, U.S. Multifamily Research Brief (June 2020) <https://www.cbre.us/>

children needing to change schools,<sup>45</sup> increased cohabitation,<sup>46</sup> and increased homelessness,<sup>47</sup> which harms owners and undercuts the effectiveness of HUD's work by increasing the strain on its resources and programs. Reducing evictions results in less costs and resources that PHAs and owners have to expend to process evictions; reduced costs associated with unit turnover; and reduction in burdens associated with bringing on new tenants. Additionally, there is potential benefit accruing to the landlord from the tenant's securing of ERA funding through the repayment of back rent using ERA funding. There is also benefit to PHAs and owners to maintain tenants who are otherwise good tenants other than the impact of the COVID-19 pandemic on their income.

Delaying the rulemaking for prior notice and comment would be impracticable and contrary to the public interest. HUD believes the public interest is best served by ensuring that all tenants can benefit from the opportunity to access ERA funding and stay in HUD-assisted housing than limiting such benefit only to tenants who would benefit from this rule after notice and comment.

HUD values public input in its rulemakings and believes that providing the opportunity for comment enhances its regulations. HUD's regulations on rulemaking at 24 CFR part 10, provide for 60-days of public comment for proposed rules and an exception for good cause. Additionally, HUD often solicits comments on its rules and provides for a 60-day comment period even when not required under the APA. Due to the COVID-19 national emergency, delaying this rule to accept

prior public comment would be contrary to the public interest. The provisions in this interim final rule are designed specifically to be limited in scope and apply only in a national emergency period. For the reasons explained above, HUD finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.

HUD's policy of providing 60 days for public comment only applies to proposed rules, not to interim final rules. In this case, HUD does not believe that 60 days is needed for public comment, given the limited changes being made in this interim final rule, and also believes it is in the public interest to secure comments quickly. In providing for 30-days, HUD anticipates reviewing any such comments on a rolling basis as they are received and acting quickly if it determines to adopt any suggestions that may be made in the public comments. For the reasons above, HUD has determined that in this case a 30-day public comment period is appropriate.

#### *Other Justifications for the Interim Final Rule*

In taking this action, HUD is protecting the efficient and effective operation of its public housing and project-based rental assistance programs, the interests of the tenants whose rent it subsidizes, and landlords' business needs. This interim final rule is narrowly tailored so that it will require, during an emergency such as this one, notification to be provided to tenants regarding the availability of emergency funds and a brief extension of the time that must be provided before lease termination for nonpayment of rent, thus permitting the tenant to seek to secure such emergency funds to cure the deficiencies before commencement of eviction. It will not change any other eviction procedures. This interim final rule does not require that PHAs or owners immediately amend leases in accordance with this rule, but it would not prohibit PHAs and owners from amending lease terms to be consistent with this rule if they so choose.

HUD recognizes that some housing providers are already supporting tenants' access to ERA funds and delaying evictions for nonpayment of rent. In fact, in HUD's rental assistance programs, households can recertify their income in the case of a job loss or other change in income so to avoid or reduce the likelihood of failure to pay rent delinquencies. Similarly, housing providers can also work with tenants to create repayment plans and to adjust rent amounts. HUD believes these to be

sound management practices that are aligned with this rule's purposes. However, not all housing providers may be providing additional time for tenants to access ERA funds, allowing recertifications to be retroactive to cover arrears, or actively encouraging tenants to recertify their income.

This focused interim final rule does not prevent evictions altogether, but instead requires PHAs and owners to provide information about accessing ERA and additional time to do so when there is an eviction for nonpayment of rent, thus minimizing costs associated with unit turnover from tenant to tenant, preventing unnecessary hardship for HUD-assisted tenants, and ensuring that housing providers can continue to operate effectively.

#### **III. Alternatives Considered and Scope**

This interim final rule's scope is limited to address only situations in which federally assisted public housing agencies and PBRA housing providers may access federally appropriated emergency funding to help tenants satisfy rent obligations caused by a national emergency, like the COVID-19 pandemic. It directly applies only in instances where tenants in certain HUD-supported housing are facing eviction due to nonpayment of rent during such an emergency and places the burden on HUD to provide the information necessary to include in the notice provided by PHAs and owners to tenants.

The interim final rule also seeks to balance the interest of tenants and the reliance of PHAs and multifamily owners in administering their program. The interim final rule provides for a modest period of additional time, 30-days, for tenants to apply for emergency financial assistance. HUD understands that some tenants may be unable to secure ERA funding, or future assistance provided to address an emergency, within a 30-day period. Administration of ERA assistance differs between states and localities and in some programs a PHA, owner, or tenant would not receive the ERA payment within 30-days of application. However, in considering what would be a reasonable and practical extension of time to *require*, HUD settled on 30 days because, as discussed above, it is a time-period to which owners are already accustomed, and it would have minimal impact on program operations. HUD also settled on at least 30 days because it is a set time frame for which PHAs and multifamily owners could rely for implementation.

HUD strongly encourages PHAs and owners to work with tenants who are

*research-and-reports/US-Multifamily-Research-Brief--Apartment-Turnover-Declines-in-COVID-19-Crisis-June-2020.*

<sup>45</sup> U.S. Centers for Disease Control and Prevention, *COVID-19 pandemic: Helping young children and parents transition back to school*, U.S. Centers for Disease Control and Prevention (Sept. 2, 2021) <https://www.cdc.gov/childrensmentalhealth/features/COVID-19-helping-children-transition-back-to-school.html>.

<sup>46</sup> See, e.g., L.E. D'Onofrio, Jr., F.D. Buono, and M.A.R. Coopera, *Cohabitation COVID-19 transmission rates in a United States suburban community: A retrospective study of familial infections*, U.S. National Library of Medicine, National Institutes of Health, (Jan. 16, 2021) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7816609/> ("The cohabitation infection attack rate of SARS-CoV-2 is significantly higher than previously reported. Age of household contacts and spousal relationship to the index case are risk factors for transmission of SARS-CoV-2 within a household.").

<sup>47</sup> Robert Collinson and Davin Reed, *The Effects of Evictions on Low-Income Households*, NY Furman Center for Real Estate & Urban Policy (February 2019) [https://robcollinson.github.io/Robwebsite/jmp\\_rcollinson.pdf](https://robcollinson.github.io/Robwebsite/jmp_rcollinson.pdf).

eligible for ERA funding and to delay lease terminations for any tenants whose application for ERA assistance is still pending after a 30-day period. Additionally, HUD notes that the Department of Justice issued guidance encouraging courts to consider postponing pending eviction cases to allow tenants to apply for emergency rental assistance.<sup>48</sup> For tenants who have already applied for such assistance, HUD would expect that courts may be even more inclined to postpone eviction proceedings. Further, a minimum 30-day time period may provide tenants with an opportunity to secure counsel to assist them in eviction proceedings. Given these factors, HUD believes that providing tenants with at least 30-days from the date of notification of lease termination and notification of the availability of emergency rental assistance will sufficiently help most tenants who are eligible for ERA to retain their housing, while ensuring PHAs and PBRA owners can operate effectively.

In determining that this interim final rule's requirement to provide the notice in the time period described above was the most appropriate means to achieve the goals discussed, the agency considered and rejected several other changes to its program requirements. For instance, HUD considered the imposition of an eviction moratorium in these programs, which would have allowed extensive time for tenants to seek ERA funding. HUD determined that its statutory authorities do not clearly provide the authority necessary to impose such a broad moratorium. By contrast, as noted above, HUD's authorities provide for the imposition of terms and conditions on public housing authorities and owners when those entities are exercising the discretion provided under the statute and their respective contracts to seek to collect rent and promptly take action for nonpayment of rent. HUD believes this more targeted action better accords with the statutory scheme, which gives landlords discretion to evict but provides HUD authority to regulate the prompt collection of rent and processing of evictions.

Additionally, HUD considered imposing a requirement on PHAs and owners to apply for emergency funding on behalf of tenants before proceeding with eviction. HUD also considered the use of required retroactive recertifications and required repayment plans for tenants who would qualify for

ERA assistance. HUD also considered tying the notification requirement on a more limited scale to a particular location, region or based on a specific finding that a jurisdiction had a high COVID rate. For all of these options, HUD has already worked with PHA and owners to encourage them to apply for ERA, allow recertifications, create repayment plans, and adjust to rents. However, HUD believed implementing these changes by regulation would be overly burdensome and create multiple challenges for implementation.

In deciding to act in the manner described in this interim final rule, HUD has based its actions on the enumerated authorities granted to it by statute. This interim final rule is consistent with HUD's statutory authority and is in keeping with the types of requirements imposed by HUD through its existing regulations.

#### IV. Findings and Certifications

##### *Executive Orders 12866 and 13563, Regulatory Planning and Review*

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive order. This interim final rule has been determined to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, but not economically significant. HUD has prepared a regulatory impact analysis that addresses the costs and benefits of the interim final rule. The analysis is available at [www.regulations.gov](http://www.regulations.gov) and is part of the docket file for this rule.

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. HUD believes that this interim final rule would provide added protections for tenants and is consistent with Executive Order 13563.

##### *Executive Order 12612, 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 interim final rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

##### *Environmental Impact*

This interim final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this interim final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. Because HUD determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

##### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. HUD requested emergency approval to OMB of the information collection changes described in this rule. HUD has published elsewhere in this issue of the **Federal Register** a separate notice for public comment informing the public of the additional burden associated with the existing collection for public housing OMB Control No: 2577–0006

<sup>48</sup> U.S. Dep't. of Justice, *Letter from Associate Attorney General Gupta*, June 24, 2021, <https://www.justice.gov/asg/page/file/1405886/download>.



and for multifamily housing OMB Control No: 2502-0178.

#### *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 on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

#### List of Subjects

##### *24 CFR Part 247*

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

##### *24 CFR Part 880*

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

##### *24 CFR Part 882*

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

##### *24 CFR Part 884*

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

##### *24 CFR Part 966*

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 247, 880, 882, 884, and 966 as follows:

#### **PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS**

- 1. The authority citation for part 247 continues to read as follows:

**Authority:** 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z-1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

- 2. Amend § 247.4 by adding a sentence to the end of paragraph (c) and a sentence to the end of paragraph (e) to read as follows:

#### **§ 247.4 Termination notice.**

\* \* \* \* \*

(c) \* \* \* In cases of nonpayment of rent, if the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency, the termination notice shall be effective no earlier than 30 days after receipt by the tenant of the termination notice.

\* \* \* \* \*

(e) \* \* \* Where the Secretary has made the determination in paragraph (c) of this section, the termination notice must provide such information as required by the Secretary.

\* \* \* \* \*

#### **PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM FOR NEW CONSTRUCTION**

- 3. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

- 4. Amend § 880.607 by adding paragraph (c)(6) to read as follows:

#### **§ 880.607 Termination of tenancy and modification of lease.**

\* \* \* \* \*

(c) \* \* \*

(6) In the case of failure to pay rent, if the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency:

(i) The termination notice must provide such information as required by the Secretary; and

(ii) The notice must provide the tenant with at least 30 days before termination.

\* \* \* \* \*

#### **PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS**

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

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

- 6. Amend § 882.511 by:

- a. Revising paragraph (d)(1)(i);  
 ■ b. Adding paragraph (d)(2)(iv); and  
 ■ c. In paragraph (d)(3), removing the reference to “paragraph (c)(2)” and adding the reference “paragraphs (d)(1) and (2) of this section” in its place.

The revision and addition read as follows:

#### **§ 882.511 Lease and termination of tenancy.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) When termination is based on failure to pay rent, the date of termination must be not less than five working days after the Family’s receipt of the notice; or, if the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency, the date of termination must be not less than 30 days after the Family’s receipt of the notice.

\* \* \* \* \*

(2) \* \* \*

(iv) Include such information to tenants during a national emergency, as required by the Secretary.

\* \* \* \* \*

#### **PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

- 7. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

- 8. Amend § 884.216 by adding paragraph (d) to read as follows:

#### **§ 884.216 Termination of tenancy.**

\* \* \* \* \*

(d) In the case of failure to pay rent, if the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency:

(1) The owner must provide the tenant with written termination notification that includes such information as required by the Secretary; and

(2) The written termination notification described in paragraph (d)(1) of this section must be provided to the tenant at least 30 days before termination.

#### **PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE**

- 9. The authority citation for part 966 continues to read as follows:

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

- 10. Add § 966.8 to read as follows:

#### **§ 966.8 Providing opportunity to receive emergency rent relief.**

(a) If the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency:

(1) The notice of lease termination required in § 966.4(l)(3) for failure to

pay rent must provide such information as required by the Secretary; and

(2) Notwithstanding § 966.4(l)(3)(i)(A), the notice of lease termination for failure to pay rent must provide for at least 30 days from the date the tenant receives the notice.

(b) Upon the Secretary's determination in paragraph (a) of this section, the PHA must provide notice to all tenants of the requirements in paragraph (a) taking effect.

**Dominique Blom,**

*General Deputy Assistant Secretary, Office of Public and Indian Housing.*

**Lopa P. Kolluri,**

*Principal Deputy Assistant Secretary, Office of Housing-Federal Housing Administration.*

[FR Doc. 2021-21960 Filed 10-6-21; 8:45 am]

**BILLING CODE 4210-67-P**

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket Number USCG-2021-0748]

**RIN 1625-AA08**

**Special Local Regulation; San Diego Bay, San Diego, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation for the San Diego Sharkfest Swim marine event that will be held on the navigable waters of San Diego Bay, San Diego, CA. This action is necessary to provide for the safety of life on these navigable waters of San Diego Bay during a swim event on October 10, 2021. This rule would prohibit spectators from anchoring, blocking, loitering or transiting through the event area unless authorized by the Captain of the Port San Diego or a designated representative.

**DATES:** This rule is effective from 8:30 a.m. to 10:30 a.m. on October 10, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0748 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management,

U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7656, email [D11MarineEventsSD@uscg.mil](mailto:D11MarineEventsSD@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by October 10, 2021. The Coast Guard was given short notice from the event sponsor that the date of the event would differ from the existing annual marine event as outlined in 33 CFR 100.1101, Table 1 to § 100.1101, Item 7. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters of San Diego Bay during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of life on the navigable waters of San Diego Bay during the marine event on October 10, 2021.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1236). The Captain of the Port Sector San Diego (COTP) has determined that a large amount of swimmers in San Diego Bay associated with the San Diego Sharkfest Swim marine event on October 10, 2021, poses a potential safety concern.

This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within San Diego Bay while the event is occurring.

**IV. Discussion of the Rule**

This rule establishes a special local regulation from 8:30 a.m. to 10:30 a.m. on October 10, 2021. This special local regulation will cover the navigable waters of San Diego Bay encompassed by a line connecting the following coordinates beginning at 32°42'14" N, 117°09'55" W (Point A); thence running southerly to 32°41'49" N, 117°09'57" W (Point B); thence running south, along the shoreline to 32°41'19" N, 117°09'48" W (Point C); thence running north easterly to 32°41'23" N, 117°09'41" W (Point D); thence running northerly to 32°42'00" N, 117°09'38" (Point E); thence running northerly, along the shoreline to the beginning point. The duration of the zone is intended to ensure the safety of vessels, event participants, and these navigable waters during the scheduled marine event. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

**V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the San Diego Bay will be of very limited duration, during morning hours when vessel traffic is historically low and is necessary for safety of life to participants in the event. Moreover, the Coast Guard would make a post in the Local Notice to Mariners with details on the regulated area, as well as, issue a