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Why Are Over-Income Tenants Living in Public Housing?

October 22, 2015 (IN10381)

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A recent report from the Department of Housing and Urban Development's (HUD's) Office of Inspector General (OIG) and subsequent news articles have raised questions about the treatment of so-called "over-income" families living in federally assisted public housing. "Over-income" families had, at the time of their initial move-in, income low enough to be eligible to live in public housing (income at or below 80% of local area median income), but their incomes later increased above the eligibility threshold. The Inspector General report found that as many as 25,226 over-income families resided in public housing in 2014 (2.6% of all public housing residents). While the majority of over-income families had incomes that exceeded the initial income eligibility limits by less than $10,000, a small subset of families had incomes that were significantly higher.

As HUD has pointed out in its response to the OIG report, allowing over-income families to remain in public housing is not inconsistent with federal law or regulations.

Federal law sets maximum income limits for *initial* eligibility for public housing, but it is silent regarding *ongoing* income eligibility for public housing. Specifically, the law states that public housing units "shall be rented only to families who are low-income families at the time of their *initial* occupancy of such units" (emphasis added). This statutory language comes most recently from the Quality Housing and Work Responsibility Act of 1998 (P.L. 105-276), but is consistent with prior law, which also only addressed eligibility for initial occupancy.

Current HUD regulations, which have been in place since 2004, allow the Public Housing Authorities (PHAs) that administer public housing the discretion to establish policies to evict over-income tenants. The 2004 regulations were intended to make it easier for PHAs to evict over-income families. Prior regulations, which had been in place in some form since the early 1980s, generally restricted the ability of PHAs to evict over-income families unless the PHA had identified safe, decent, and affordable housing that could be available to the family.

Permitting over-income tenants to live in public housing may seem contradictory to the intent of the program, which is to provide affordable housing for low-income families, especially given the high demand for such a scarce resource. HUD estimates that 7.7 million households have worst-case housing needs, yet there are long, or even closed, waiting lists for housing assistance in communities across the country.

However, allowing higher-income tenants to live in public housing is consistent with other federal public housing policies established by federal statute. For at least the last three decades, PHAs have been encouraged, and in some cases required by law, to deconcentrate poverty and develop mixed-income public housing. Further, a policy of not evicting over-income tenants may be consistent with efforts to promote work among public housing residents. Families may be more likely to increase their incomes through earnings if they are not at risk of losing their homes. In fact, promoting mixed-income public housing and creating work incentives for residents of public housing were among the purposes of the 1998 public housing reform law that established the most recent income eligibility standards for public housing.

From a fiscal standpoint, it is also less expensive for PHAs to serve higher-income families. Federal subsidies are intended to make up the difference between what it costs to run public housing and the rent paid by tenants. The amount of rent that families living in public housing must pay is calculated based on their income. The higher the family's income, the more rent the family pays and the less federal subsidy required. The fact that recent federal appropriations have not been sufficient to fully fund public housing operating or capital costs may make the increased rent paid by higher-income families even more valuable to PHAs. HUD, in its response to the recent OIG report, contends that over-income families require no federal subsidy and estimates that they reduce program costs by nearly $116 million annually.

The treatment of over-income tenants continues to be subject of debate in Congress. A legislative proposal to limit access to housing assistance for over-income families was included in a broader assisted housing reform bill that was approved by the House in the 111th Congress (Section 4 of H.R. 3045). The Congressional Budget Office (CBO), in its score of the bill, estimated that the policy change would have resulted in potential increased government cost in the form of a discretionary score.

Most recently, the chairman of the Housing and Insurance Subcommittee of the House Financial Services Committee introduced a broad assisted housing reform bill that includes restrictions on over-income tenants in public housing (Section 103 of H.R. 3700). Specifically, for families whose incomes increase to a moderate income level (120% of local area median income) for two years, a PHA would be required to either evict the family or charge the family rent equal to market-comparable rent plus any subsidy the Secretary of HUD determines is being paid on behalf of the family.