



MAY 24 1986

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING - FEDERAL HOUSING COMMISSIONER

MAY 22 1986

John L. Saxon, Esq.
Senior Attorney
Virginia Legal Aid Society, Inc.
Suite 517, Masonic Temple Building
Danville, VA 24541

Dear Mr. Saxon:

This responds to your letter to Conrad Egan requesting clarification of the effective date of interim adjustments.

If a tenant loses a job and requests an interim adjustment, the landlord should process the interim and make any resulting decrease in tenant rent effective the first of the month after the date of the action which caused the decrease -- in this instance, a loss of a job. This schedule will require retroactive adjustments when the information is reported late in the month and/or verification is delayed.

To respond to the specific questions on page 3 of your letter:

- o Paragraph 5-12(b) of 4350.3 refers to the date of the change in household circumstances (e.g., job loss). It does not refer to the date the tenant reports the change.
- o In both Situation #2 and Situation #3, the change would be effective August 1 because the job loss occurred in July.

Please note that our response is made in light of the qualifiers mentioned on page 4 of your letter - i.e., "that the tenant's reporting or failure to report the loss of income is not in connection with the annual recertification process and that the loss of income is not a temporary loss of income or due to any deliberate action of the tenant to avoid paying rent."

We are sorry for the delay in responding to your letter.

Sincerely,

Susan J. Donahue, Director
Management Procedures Division

RECEIVED MAY 19 1986

VIRGINIA LEGAL AID SOCIETY, INC.

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Conrad Egan, Director
Office of Multi-Family Housing Management
U. S. Department of Housing and Urban
Development
451 7th Street, S.W.
Washington, D. C. 20410

ATTN: James Tashah, Director
Program Planning Division

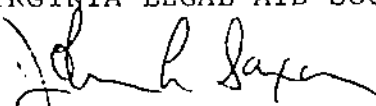
Dear Messrs. Egan and Tashah:

I wrote to you on March 17, 1986 in connection with a question involving Section 5-12(b) of HUD Manual 4350.3. I am enclosing a copy of my previous letter, which more fully explains the problem. I have not yet received an acknowledgment or response to this letter.

As I explained, although this issue was raised in connection with recent litigation in the circuit court, the judge, the landlord, and our office are very interested in obtaining clarification from HUD on this issue since this question will almost certainly be involved in other cases in the future. I would be most appreciative if you could respond to my previous letter as soon as possible. If you need any further information or want to discuss this matter further, please feel free to call me. I look forward to your prompt response.

Sincerely,

VIRGINIA LEGAL AID SOCIETY, INC.


John L. Saxon
Senior Attorney

JLS/jkh

cc: Joseph Gelletich, Asst. General Counsel

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March 17, 1986

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U.S. Dept. of Housing and Urban
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451 7th Street, SW
Washington, DC 20410

ATTN: James Tahash, Director
Program Planning Division

Dear Messrs. Egan and Tahash:

I am writing to you to request clarification of HUD's policy regarding the effective date of rent decreases due to interim recertifications for section 8 loan management set aside housing. More specifically, my question involves interpretation of the language found in section 5-12(b) of HUD Manual 4350.3. This issue recently came up in connection with litigation in the court, and, although the litigation has now been resolved, the judge specifically requested that the landlord's attorney and I obtain clarification from HUD on this issue since similar cases are sure to arise in the future.

My client, Ms. B., was a tenant in a HUD subsidized multi-family housing project and received section 8 rental assistance under the loan management set aside program. In May, 1985, her rent was zero dollars per month. She obtained a part-time job in May and reported this to the landlord. Since her recertification date was August 1, 1985, the landlord processed the case as an annual recertification and, on May 15, 1985, gave her proper notice of a rent increase from zero dollars to \$27.00 per month effective August 1, 1985. Ms. B lost her job around the end of May or the first of June; she received her last paycheck in June. There was some dispute as to whether or not Ms. B reported the loss of this income to the landlord during June, but it is clear that the landlord knew, as of August 8, 1985, that Ms. B had lost her job and that her only source of income was ADC benefits. It is also clear that if Ms. B's rent was based solely on her ADC benefits and not on the income from her former job, her rent would have been zero dollars to \$2.00 per month. The landlord offered to reduce Ms. B's rent effective September 1, 1985, but claimed that it could not retroactively decrease Ms. B's rent based on her prior loss of income, and, since

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Ms. B. did not pay the \$27.00 in rent for August, the landlord evicted her for nonpayment of rent.

Section 5-12(b) of HUD Manual 4350.3 states that if a tenant's rent decreases because of an interim adjustment, the landlord "must make the decrease effective the first day of the month commencing after the date of the action which caused the decrease." (Emphasis added.)

It is our position that the "action which caused the decrease" is the actual change in the household's circumstances, and, that the landlord is obligated to make a retroactive rent decrease under certain circumstances. We recognize that the landlord's obligation to process an interim recertification is dependent upon a tenant's reporting a change in household circumstances. If, however, the tenant reports a change in circumstances, the landlord is obligated to process the interim recertification, and if the tenant's rent decreases because of the interim adjustment, the landlord should make the rent decrease effective the first of the month following the month of the change, even if the change occurred in a prior month or the tenant did not promptly report the change.

This position is consistent with other sections in the Manual regarding interim recertifications and annual recertifications. For example, section 5-13(c) regarding retroactive rent increases due to a tenant's failure to report a change in household circumstances allows the rent increase to be effective "retroactive to the first month which commenced after the date of action (e.g., change in household composition) occurred." Emphasis added. (Although this section provides that a tenant's failure to supply interim reports as required by the lease or regulations will result in any rent decrease being implemented prospectively, this section would not apply to the present case since the tenant is not obligated to report a decrease in income under section 5-8 or her lease.) Similarly, section 5-5(b)(2) states that, in connection with delayed annual recertifications, any decrease in the tenant's rent must be retroactive to the scheduled effective date of recertification regardless of whether it was the tenant or the landlord that caused delay in recertification. Finally, since the landlord bills HUD one or two months in advance for rental assistance payments, the Manual recognizes that there

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is a procedure by which the landlord can obtain an adjustment and an increased rental assistance payment from HUD due to adjustments in the tenants share of the rent for prior months as long as the adjustment is necessary and proper under the regulations.

The landlord takes the position that the "action which caused the decrease" is the tenant's report of a loss of income, not the actual loss of income itself, and since Ms. B reported the loss of her income on August 8, 1985, the decrease should have been effective on the first day of the following month, i.e. September 1, 1985. The landlord takes the position that there is no authority in the HUD Manual for retroactive rent adjustments and that retroactive rent adjustments would be administratively burdensome.

I understand that HUD may have issued some prior clarification of this issue. If so, I would appreciate your providing me with copies of those documents. In any event, I would appreciate your providing me with a statement regarding HUD's policy on this issue and an opinion which specifically addresses the following questions:

1) Does the language in section 5-12(b) of HUD Manual 4350.3 regarding "the date of the action which caused the decrease" refer to the date of the change in household circumstances which caused the tenant's rent to decrease or the date of the tenant's report of this change to the landlord?

2) If a section 8 tenant's income decreases in July and the tenant reports this loss of income to the landlord prior to the end of the month but the landlord does not determine that this loss of income will result in a decrease in the tenant's rent until after the first of August, when must the landlord make the rent decrease effective?

3) If a section 8 tenant's income decreases in July but the tenant fails to report the loss of income to the landlord until after the first of August and the landlord determines that this loss of income will cause a decrease in the tenant's rent, when must the landlord make this rent decrease effective?

These questions assume that the tenant's reporting or failure to report the loss of income is not in connection

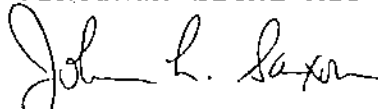
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with the annual recertification process and that the loss of income is not a temporary loss of income or due to any deliberate action of the tenant to avoid paying rent.

Thank you for your attention to this matter. If you need further information or want to discuss the case further, please feel free to call me. Any clarification you could provide regarding this issue would be greatly appreciated by both myself, the landlord, and the court. I look forward to hearing from you soon.

Sincerely,

VIRGINIA LEGAL AID SOCIETY, INC.



John L. Saxon
Senior Attorney

JLS:hrp

cc: Judge James F. Ingram
Martha W. Medley, Esquire