

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 968

[Docket No. FR-4462-F-02]

RIN 2577-AB97

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Comprehensive Improvement Assistance Program (CIAP) to permit the non-competitive distribution of CIAP funds to all eligible public housing authorities (PHAs) based on two equally-weighted factors: a PHA's share of the total number of units eligible for CIAP; and a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). The purpose of this amendment is to provide small PHAs the opportunity of a transition period to become familiar with a non-competitive, capital funding process in anticipation of formula funding in Federal Fiscal Year (FFY) 2000 under new statutory authority.

DATES: Effective date: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4134, Washington, DC 20410. Telephone (202) 708-1640. (This is not a toll free number.) Persons with hearing or speech impediments may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Comprehensive Improvement Assistance Program (CIAP) is authorized under section 14 of the United States Housing Act of 1937 (1937 Act). CIAP provides modernization funds to public housing authorities (PHAs) that own or operate less than 250 units of public housing, to enable them to improve the physical condition and upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families. In FFY 1999, a total of \$2.895 billion is available for Modernization Programs (CIAP and Comprehensive Grant Program (CGP)), of which approximately \$364 million will be available to CIAP PHAs.

On April 30, 1999 (64 FR 23484), HUD published and requested comment on a proposed rule to amend the CIAP regulations to permit the distribution of funds, after the formula allocation described in 24 CFR 968.103, to all eligible PHAs on a non-competitive basis.

II. Response to Public Comments

HUD received a total of 18 public comments on the April 30, 1999 proposed rule, 15 from PHAs and three from industry associations. The comments were almost entirely positive and in support of the proposed rule stating, for example, that the rule would allow PHAs to plan improvements each year based on funding they know they will receive rather than hope they will receive as in the past.

A few comments suggested changes to the proposal, primarily to the formula factors. Suggested as alternative or additional factors to use in the formula were: age of units; management performance; prior unfunded CIAP applications; geographic location; availability of other government funding; market competition with other federal rent subsidized units; need, generally; and counting each studio unit as a half-bedroom, rather than a one-bedroom unit. HUD acknowledges that many more or different factors could be considered, but for purposes of the FFY 1999 distribution, the final year of CIAP funding which this rule addresses, basically agrees with the comment that commended HUD for not complicating the formula with a multitude of other factors and stated: "Basing the formula only on the number of units and the bedroom distribution appears simple and straightforward." Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (the "Public Housing Reform Act"), authorizes a new system of funding capital improvement needs for all PHAs, large and small, on a formula basis beginning in FFY 2000.

Other comments focused on the vacancy preference provided in the proposed rule. One comment explicitly supported the retention of preferences for emergency modernization and vacancy reduction. Another comment stated that a vacancy factor of 25% is too high for a small PHA, and the presence of such a high rate suggests severe physical conditions, poor management, or design or area factors that would not be overcome with minor amounts of CIAP funding. HUD presently considers this factor an appropriate threshold as the determinant of an emergency that merits

additional funding, but will monitor the requests for and use of emergency funds for future reconsideration.

In consideration of the strong positive response to the proposed rule, HUD is adopting it as final without change.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements of the Comprehensive Improvement Assistance Program have been approved by the Office of Management and Budget under OMB Approval No. 2577-0044. 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 valid control number.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(2) of the HUD regulations, this rule amends an existing document, the regulations at 24 CFR part 968, which as a whole would not fall within an exclusion, but the amendment by itself would do so. Therefore, the actions in this document are determined not to have the potential of having a significant impact on the quality of the human environment and further review under the National Environmental Policy Act is not necessary. A Finding of No Significant Impact (FONSI) is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh

Street, SW, Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule would only modify the funding process for the final year of the CIAP to provide small PHAs with a transition period to become familiar with a non-competitive capital funding process.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule would only modify the funding process for the final year of the CIAP to provide small PHAs with a transition period to become familiar with a non-competitive capital funding process.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the Comprehensive Improvement Assistance Program is 14.852.

List of Subjects

24 CFR Part 968

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

Accordingly, for the reasons stated in the preamble, part 968 of title 24 of the

Code of Federal Regulations is amended as follows:

PART 968—PUBLIC HOUSING MODERNIZATION

1. The authority citation for 24 CFR part 968 continues to read as follows:

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

2. In § 968.110, paragraph (a) is revised to read as follows:

§ 968.110 Other program requirements.

* * * * *

(a) *Nondiscrimination and equal opportunity.* The PHA shall comply with Title II of the Americans with Disabilities Act and 28 CFR part 35; section 504 of the Rehabilitation Act of 1973 and 41 CFR part 60-471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and 24 CFR part 40.

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3. Section 968.210 is revised to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD will notify PHAs of the time frame for submission of the CIAP application and other pertinent information.

(b) *Distribution of funding.* HUD will distribute the available funding under this subpart to every eligible PHA that responds to the notice issued pursuant to paragraph (a) of this section based on two equally-weighted factors: a PHA's share of the total number of units eligible for CIAP; and a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). HUD will also provide a vacancy preference, consisting of an additional increment of

funding, to PHAs that have modernization capability and demonstrate that at least 25% of their units are vacant, substandard units (where vacancies are not due to insufficient demand). A PHA has modernization capability if it has previously received CIAP funding and meets the requirements of *Modernization capability* as defined at § 968.205.

(c) *ACC amendment.* HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (e.g., to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(d) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

Dated: June 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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