

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****24 CFR Part 968**

[Docket No. FR-4462-P-01]

RIN 2577-AB97

**Comprehensive Improvement
Assistance Program**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 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: Comments due date: June 1, 1999.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

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, D.C. 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. Modernization funds are allocated between CIAP and CGP PHAs based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by field inspections conducted for the HUD-funded Abt Associates study of modernization needs. This allocation results in CIAP PHAs receiving approximately 12.5% and CGP PHAs receiving approximately 87.5% of the total funds available. In previous years, an allocation of CIAP funds has been made for each Field Office based, in part, on the relative shares of backlog and accrual needs for CIAP PHAs. After the assignment of funds to Field Offices, CIAP funds were then distributed to PHAs pursuant to a competitive process, under which applications submitted to HUD were rated and ranked. Awards were then made in rank order to the extent that funds were available. Under this system of distribution, not every PHA that submitted an acceptable application was funded.

In lieu of the former distribution method, HUD proposes to continue to use the formula allocation for CIAP described in 24 CFR 968.103 (but not to assign CIAP funds to Field Offices and then distribute the CIAP funds to PHAs by a competitive method) and to amend the CIAP regulations to permit the distribution of funds after formula allocation to all eligible PHAs on a non-competitive basis. Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA), authorizes a new system of funding capital improvement needs for all PHAs, large and small, on a formula basis beginning in FFY 2000. The final year of CIAP funding will be FFY 1999. HUD will be working with housing industry and resident groups, and representatives of small, medium and large PHAs to develop, using the

negotiated rulemaking process, an entirely new formula for capital funds distribution for all PHAs. Rather than have PHAs that own or operate less than 250 units continue to plan for and obtain capital funding on a competitive basis that will soon no longer be available, HUD wishes to provide these small PHAs the opportunity of a transition period in which funding is made available under a process that is closer to the formula-based capital program that will apply to all PHAs beginning in FFY 2000.

This rule would amend 24 CFR 968.210 to remove the provisions that require competitive funding and to add a provision that permits funding distributions on the basis described below. To initiate the distribution process, HUD will notify PHAs of their estimated dollar amount and the time frame for submission of the CIAP application and other pertinent information. Every eligible PHA (owning or operating less than 250 units) that responds to the notice would then receive a distribution based on two equally-weighted factors: (1) A PHA's share of the total number of units eligible for CIAP; and (2) a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). HUD currently estimates that for a given PHA, each unit would receive between \$1250 and \$2250 per unit of CIAP funding under this proposed system, and that for most PHAs, the per unit funding will be between \$1600 and \$2000 per unit.

This proposed rule would also provide for the preferences under section 14(h) of the 1937 Act. Under section 14(h), preferences are given to small PHAs for projects having conditions which threaten the health or safety of the tenants (emergency modernization preference) or having a significant number of vacant, substandard units (vacancy preference), and that also have demonstrated modernization capability.

Under the competitive system of distributing CIAP funds, emergency modernization was funded as Group 1 during the competition or during the course of the year from the emergency reserve under 24 CFR 968.104. For the vacancy preference, HUD provided for extra points in the CIAP NOFAs to PHAs that demonstrated the high priority needs and modernization capability required for the vacancy preference.

The emergency modernization preference will be satisfied by processing all emergency modernization under existing procedures in 24 CFR 968.104. In addition, HUD will set-aside

from the CIAP distribution approximately \$6.1 million for the East Texas housing authorities (those with less than 250 public housing units) involved in the *Young v. Cuomo* civil rights case, to meet the requirements of the settlement agreement, which is subject to judicial oversight.

Because CIAP funds would not be distributed competitively under this rule, the vacancy preference cannot be implemented by providing extra points. This rule applies the vacancy preference by providing 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. PHAs must apply for the vacancy preference incremental assistance as part of the CIAP application (to be provided by HUD under the notification required by 24 CFR 968.210(a)).

As an additional matter, this rule would make a technical correction to § 968.110(a), replacing a citation to "section 503 of the Rehabilitation Act of 1973" with "section 504 of the Rehabilitation Act of 1973".

II. Findings and Certifications

Justification for Shortened Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, in order to provide a sufficient transition period for small PHAs to become familiar with working under a new statutory system of funding capital improvement needs on a formula basis rather than a competitive basis, the Department is shortening its usual 60-day public comment period to 30 days.

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 proposed 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 proposed rule under executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed 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 proposed 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 proposed 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. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **COMMENTS**

sections in the preamble of this proposed rule.

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 in 24 CFR Part 968

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

Accordingly, 24 CFR part 968 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 chapter 60-471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and 24 CFR part 40.

* * * * *

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: March 25, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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