

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 964

[Docket No. FR-4501-P-01]

RIN 2577-AC12

### Direct Funding of Public Housing Resident Management Corporations

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises HUD's regulations regarding resident participation and resident opportunities in public housing. Specifically, the rule would make conforming amendments to the HUD regulations to reflect recent statutory changes made by the Quality Housing and Work Responsibility Act of 1998. The proposed rule provides that a resident management corporation (RMC) may receive capital and operating funds from HUD if the RMC has primary management responsibility for the public housing project and HUD determines that the RMC has the capacity to effectively discharge such responsibility.

**DATES:** Comments Due Date: December 20, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paula Blunt, Director, Customer Services and Amenities Division, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4228, Washington, DC 20410; telephone (202) 619-8201 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et*

*seq.*) (the "1937 Act") encourages resident management of public housing projects as a means of improving existing living conditions in public housing. HUD has implemented section 20 of the 1937 Act in its regulations at 24 CFR part 964 (captioned "Tenant Participation and Tenant Opportunities in Public Housing"). Under section 20, and 24 CFR part 964, an RMC must be a nonprofit corporation organized under the laws of the State in which the public housing project is located, and the tenants of the project must be the sole voting members of the RMC.

An eligible RMC enters into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the RMC and the PHA. The contract must be consistent with the requirements of the 1937 Act and may provide for the RMC to perform any or all of the management functions for which the PHA is responsible to HUD. The management contract is treated as a contracting out of services and is subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the PHA is subject. To assist and encourage resident management of public housing, HUD is developing a sample management contract for use by RMCs and PHAs. Once completed, the sample contract will be included as part of a broader HUD notice, which will also discuss other issues related to public housing management.

The performance of the RMC is subject to periodic review by the PHA to ensure that the RMC complies with all applicable requirements and standards of performance.

#### II. Public Housing Reform

On October 21, 1998, President Clinton signed into law HUD's fiscal year 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276; 112 Stat. 2461, 2522) (the "Public Housing Reform Act" or "Act"). The Public Housing Reform Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The changes made by the Public Housing Reform Act are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs. These changes are also designed to provide for more resident involvement, and to increase resident participation and awareness in creating and maintaining a positive living environment.

#### III. This Proposed Rule

This proposed rule would amend 24 CFR part 964 to reflect recent statutory changes made to section 20 of the 1937 Act by section 532 of the Public Housing Reform Act. Section 532 of the Public Housing Reform Act provides for the direct provision of capital and operating assistance to an RMC if: (1) The RMC petitions HUD for the release of the funds; (2) the management contract between the RMC and the PHA provides for the RMC to assume the primary management responsibilities of the PHA; and (3) HUD determines that the RMC has the capability to effectively discharge such responsibilities. In all other cases, operating and capital funding will be provided to the RMC by the PHA.

The proposed rule provides that HUD will consider this third requirement to be satisfied if the RMC is designated at least a "standard performer" under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and the RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing, or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

The standard that HUD will use to determine RMC eligibility for direct assistance does not impose any new requirements on RMCs. The proposed rule reflects existing performance measures and program requirements that RMCs must already comply with. For example, RMCs are already subject to the PHAS performance measures described in 24 CFR part 902. Further, RMCs are currently required to comply with all applicable program, civil rights, and financial requirements as a condition of assistance under HUD's public housing programs. HUD believes that the use of existing measures will allow HUD to accurately determine RMC management capability, while minimizing the burdens imposed on RMCs.

The Annual Contributions Contract between HUD and the PHA will provide for the direct allocation of operating and capital assistance to RMCs that meet the requirements described above. Any direct capital or operating assistance provided to the RMC must be used for purposes of operating the public housing developments of the PHA and for performing other eligible activities with respect to public housing. If HUD provides direct funding to an RMC, the PHA is not responsible for the actions of the RMC.

In addition to implementing section 532 of the Public Housing Reform Act, this proposed rule would also make one clarifying change to 24 CFR part 964. Specifically, this rule would revise § 964.225 (entitled "Resident management requirements") to clarify that an RMC must be in compliance with any local licensing requirement, or other local requirement, governing the qualifications or operations of a property manager.

#### **IV. Other Changes Made by the Public Housing Reform Act to Public Housing Resident Requirements**

In addition to the changes described above, the Public Housing Reform Act makes various other amendments to the statutory requirements regarding resident participation and resident opportunities in public housing. For example, the Public Housing Reform Act requires the participation of residents on the governing board of a PHA (section 505 of the Act) and provides for grant funding of services for public housing residents (section 538 of the Act).

The resident board membership requirements established by section 505 of the Act are being implemented through a separate proposed rulemaking published on June 23, 1999 (64 FR 33644). The June 23, 1999 proposed rule would create a new subpart E to 24 CFR part 964 describing these requirements. The other changes made by the Public Housing Reform Act affecting the part 964 requirements will be the subject of a separate proposed rulemaking. HUD is committed to the development of this proposed rule with the active participation of public housing residents (see Section V of this preamble below).

#### **V. HUD's Ongoing Efforts To Promote Effective Resident Participation**

To further promote effective resident participation in public housing, HUD is taking various steps to promote resident involvement in creating and maintaining a positive living environment. As discussed above, HUD is developing a proposed rule that will implement the resident related amendments made by the Public Housing Reform Act. HUD is committed to developing this proposed rule with the active participation of public housing residents. HUD will solicit resident input through the scheduling of public forums, solicitations for written comments, and/or other appropriate means.

HUD's goal in undertaking this rulemaking is to develop a set of easy-to-understand regulations that reflect

the meaningful contributions of public housing residents. Accordingly, the proposed rule will not only implement statutory amendments made by the Public Housing Reform Act, but will also streamline and reorganize 24 CFR part 964 to simplify and improve the clarity of HUD's resident participation requirements.

HUD is taking several other steps to increase resident participation in public housing. For example, HUD will conduct training for resident organizations and PHAs on the new Public Housing Reform Act. HUD will also clarify in the PHA Plan regulation that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

#### **VI. Findings and Certifications**

##### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

##### *Regulatory Flexibility Act*

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 reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies that contract with RMCs for the management and operation of specific public housing projects. Specifically, the rule would make various conforming amendments to 24 CFR part 964 (captioned "Tenant Participation and Tenant Opportunities in Public Housing") to reflect recent statutory changes made by the Public

Housing Reform Act. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The Public Housing Reform Act improves and simplifies the way in which PHAs and RMCs are funded. Specifically, section 519 of the Public Housing Reform replaces funding under the existing Performance Funding System (PFS) with formula funding under the new Operating Fund and the Capital Improvement Assistance Program (CIAP) and the Comprehensive Grant Program with formula allocations under the new Capital Fund. The implementation of section 519 is beyond the scope of this proposed rule, and is the subject of separate negotiated rulemakings that HUD is currently undertaking. Accordingly, the economic impact of this proposed rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

##### *Unfunded Mandates Reform Act*

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

##### *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. This proposed rule would revise 24 CFR part 964 to reflect recent statutory changes made to section 20 of the 1937 Act by section 532 of the Public Housing Act. The proposed rule would also make several clarifying and technical changes to the part 964. No

programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

#### *Regulatory Planning and Review*

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

#### **List of Subjects in 24 CFR Part 964**

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

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 964 as follows:

#### **PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING**

1. The authority citation for part 964 is revised to read as follows:

**Authority:** 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

2. Amend § 964.225 as follows:

a. Redesignate paragraphs (h), (i), (j), and (k) as paragraphs (i), (j), (k), and (l), respectively;

b. Add new paragraph (h); and

c. Revise newly designated paragraph (j).

The addition and revision to § 964.225 read as follows:

#### **§ 964.225 Resident management requirements.**

\* \* \* \* \*

(h) *Direct provision of operating and capital assistance to RMC.*—(1) *Direct provision of assistance to RMC.* The ACC shall provide for the direct provision of operating and capital assistance by HUD to an RMC if:

(i) The RMC petitions HUD for the release of funds;

(ii) The contract provides for the RMC to assume the primary management responsibilities of the PHA;

(iii) The RMC has been designated as at least a "standard performer" under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and

(iv) The RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

(2) *Use of assistance.* Any direct capital or operating assistance provided

to the RMC must be used for purposes of performing eligible activities with respect to public housing as may be provided under the contract.

(3) *Responsibilities of PHA.* If HUD provides direct funding to a RMC under paragraph (h)(1) of this section, the PHA is not responsible for the actions of the RMC.

\* \* \* \* \*

(j) *Bonding, insurance, and licensing.*

(1) *Bonding and insurance.*—Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the RMC or its employees.

(2) *Licensing and other local requirements.* An RMC must be in compliance with any local licensing, or other local requirement, governing the qualifications or operations of a property manager.

\* \* \* \* \*

Dated: October 13, 1999.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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