

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4774-N-01]

### Notice on Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as "Covered Units" Eligible for Inclusion in the Federal Public Housing Program

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

**ACTION:** Notice to public housing agencies on applying to HUD for designation of certain New York state public housing units as Federally covered units.

**SUMMARY:** The purpose of this Notice is to: advise public housing agencies (PHAs) in the State of New York on applying for designation of public housing units developed and funded in accordance with New York law as "covered units," up to 7,000 of which will be eligible to receive Federal public housing operating and capital funds allocated according to statutory and regulatory formulas; obtain information about all developments and units that could be "covered units"; and obtain PHAs' preferences as to which of their developments and units they would want included in the Federal housing program.

**DATES:** PHAs must respond by: September 10, 2002.

**ADDRESSES:** Submit one original set of information requested in this notice to HUD Headquarters at the following address: HUD Office of Public and Indian Housing, Grants Management Center, 501 School St. SW., 8th Floor, Washington, DC 20024.

Provide one copy of the information requested in this notice to the local HUD Program Center or HUB.

**FOR FURTHER INFORMATION CONTACT:** Sherry Fobear-McCown, Program Analyst, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone: (202) 708-0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 9(n) of the United States Housing Act of 1937 (1937 Act), added

by section 519 of the Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105-276), authorized the Secretary of HUD to include State and locally developed public housing units developed under New York law into the Federal public housing program for purposes of receiving allocations of operating and capital funds pursuant to statutory and regulatory formulas. This provision authorizes the inclusion of not more than 7,000 units in New York in the federal public housing program. However, a separate provision of the same law (Sec. 226 of Pub. L. 105-276) prohibited the use of these Federal funds to provide new assistance for State and locally developed public housing units. These conflicting provisions gave rise to legal questions concerning HUD's authority and responsibility to implement section 9(n). Both the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit have issued decisions this year, indicating that implementation of section 9(n) should proceed retroactive to Fiscal Year 2000.

##### II. Eligibility

A New York public housing agency that operates, owns, or manages covered locally developed public housing units is eligible to seek inclusion of those units in the Federal public housing program. The term "covered locally developed public housing units" is defined by section 9(n)(1)(b) of the 1937 Act as public housing units developed pursuant to laws of the State of New York and that received debt service and operating subsidies pursuant to such laws.

##### III. Funding

Funding for "covered units" will be provided from the public housing Operating Fund and Capital Fund. Funding for "covered units" will cover Fiscal Year 2000 through 2003 and thereafter, and will directly reduce the amount of Operating Fund and Capital Fund monies in Fiscal Year 2003 and thereafter that would otherwise be distributed to all public housing agencies.

##### IV. Response Due Date and Address for Submission

Information requested by this notice, and in the form and manner described in this Notice, is due no later than September 10, 2002. No exceptions to this deadline will be considered. Submit one original set of documents to HUD Headquarters at the following address and one copy to the local HUB or

Program Center: HUD Office of Public and Indian Housing, Grants Management Center, Michael E. Diggs, Director, 501 School St. SW., 8th Floor, Washington, DC 20024, Telephone: (202) 358-0221 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

##### V. Required Materials

PHAs interested in having units designated as "covered units" shall submit the following information for *all* units they administer that were developed pursuant to the laws of the State of New York and that received debt service and operating subsidies pursuant to such laws. This information will be used to aid HUD in determining which units shall receive the "covered" designation.

Provide the following in the order it is presented. Items 1-11 shall be submitted for each site:

- (1) Name of development;
- (2) Number of units;
- (3) Location (census tract);
- (4) Age and general condition;
- (5) Composition of units by bedroom size, and family, elderly, or disabled designation;
- (6) Current vacancy rate and vacancy rate for past two years;
- (7) If readily available, actual operating expenses for the last two fiscal years; if such information is not readily available, list any unusually large recent, current, or projected operating costs (e.g. extraordinarily high utilities costs);
- (8) Summary of large capital improvements made over preceding five-year period;
- (9) Projected capital needs for next five years;
- (10) Debt service amounts (if any);
- (11) Extraordinary liabilities the Federal government may need to assume (e.g., litigation);
- (12) Most recent Public Housing Assessment System (PHAS) rating and designation for the PHA from HUD, or copy of any recent performance assessment from applicable State or local government or other independent entity; and
- (13) Other information requested by HUD as necessary to complete its review.

In addition, the PHA shall identify in its submission the developments and total number of units it seeks to include in the Federal public housing program and any other factors HUD should take into account.

**Paperwork Reduction Act Statement**

The information collection requirements contained in this notice NOFA have been submitted to the Office of Management and Budget (OMB) for emergency approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Upon approved, the OMB Control Number will be published in a separate notice. 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.

**VI. Final Approval**

Final approval and funding, for both fiscal years commencing with Fiscal Year 2000 and future fiscal years, are subject to any further relevant legislative action; acceptable submission and HUD approval of all information required by this Notice; documentation of sufficient managerial competence HUD may require if PHAS or other

assessments of competence are not applicable or sufficient; an independent physical inspection satisfactory to HUD; and the execution of an Annual Contributions Contract (ACC) or ACC amendment including the covered units selected pursuant to this Notice.

Dated: June 27, 2002.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

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