

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 5, 941, 950, and 968**

[Docket No. FR-4166-F-01]

RIN 2501-AC38

**Admission Preferences, Public Housing Development, and Public Housing Modernization Regulations: Technical Amendments****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule: technical amendment.

**SUMMARY:** This final rule makes technical amendments to several of HUD's regulations that affect its assisted housing programs. These amendments make the following changes: revise language in a rule governing admission preferences in the assisted housing programs to make it more general, to cover all the Section 8 Housing Assistance Payments programs it was intended to cover, as evidenced by the Section 8 regulations that cross-reference the preferences rule; restore language regarding "total development cost" that was removed from regulations covering the public housing development program when an interim rule expired on May 29, 1995; restore language stating review criteria for performance under modernization standards; and conform the requirements for paid-off and conveyed Turnkey III units in public housing to those in the Indian housing program. These changes rectify problems that occurred inadvertently in previous rulemakings.

**EFFECTIVE DATE:** June 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** For the public housing program, contact Bill Flood, Director, Office of Capital Improvements, Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (voice): (202) 708-1640, ext. 4185. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1-800-877-8339.

For the Section 8 programs, contact Gerald J. Benoit, Director, Operations Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (voice): (202) 708-0477, ext. 4069. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be

accessed via text telephone by dialing the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 29, 1993, an interim rule was published (58 FR 62522), which revised the definition of "Total development cost" found in the public housing development regulations (24 CFR part 941) and the Indian housing regulations (located then at 24 CFR part 905, now at part 950). That rule also revised other sections of those regulations specifying how the total development cost concept was used to limit the maximum approvable cost for a project. That rule contained an expiration date of May 29, 1995.

Having lost track of the existence of that expiration date for these provisions and, having further revised the sections in the meantime, the Department failed to realize that the definitions and other affected sections might return to their pre-1993 status. In the case of the public housing development regulations, the definition of "Total development cost" was omitted when title 24 of the Code of Federal Regulations was published, in accordance with the expiration date. In the case of the Indian housing regulations, the definition remains.

A second prior rulemaking that occasioned the need for this rule is the final rule published on March 6, 1996 (61 FR 9040), consolidating the provisions governing admissions preferences into a single part, 24 CFR part 5, subpart E. Although the terms of the 1997 appropriations for HUD continue the suspension of application of the Federal preferences to HUD programs through September 30, 1997, the Department feels it necessary to correct the rule that will apply on October 1, 1997, absent additional Congressional action on this subject.

The consolidated preferences rule states, at 24 CFR 5.410(d)(1)(i), that its provision concerning consideration of matching the characteristics of the unit with the characteristics of the applicant family applies to "developments administered under the Section 8 New Construction and Substantial Rehabilitation programs and the public housing program". The Section 8 program regulations, on the other hand, provide (at 24 CFR 882.514(a)(1) and 882.514(b), 886.132 and 886.337) that the preferences provisions of 24 CFR part 5 apply to the Section 8 Moderate Rehabilitation and Section 8 HUD-Held and HUD-Owned projects. The intent of the consolidation was to apply the provision (§ 5.410(d)(1)(i)) that requires

matching characteristics of a unit with characteristics of applicants (including accessibility features and such needs), along with other preferences provisions, to all Section 8 programs where the responsible entity is selecting a family for a particular unit. This technical amendment corrects this oversight in the listing of covered Section 8 programs by changing the above-quoted language to, "developments administered under the Section 8 programs and \* \* \* public housing".

A third rulemaking that occasioned the need for this rule is a final rule published on October 18, 1996 (61 FR 54492) that consolidated provisions dealing with income and rent applicable to several assisted housing programs from 24 CFR parts 813 and 913 into one subpart of 24 CFR part 5. It preserved language in the new § 5.617(b)(3) referring to the purposes of this "part," when it should have modified the language to fit the new context of its placement in a "subpart." An old typographical error in that same section was preserved from the former location, and is being corrected in this amendment.

A fourth rulemaking that is a foundation for this rule is a final rule published on March 5, 1996. That rule streamlined the modernization provisions of the Indian housing and public housing programs. However, in one respect it used different language, inadvertently. This rule conforms the language of the public housing rule (§ 968.102(b)) to the language of the Indian housing rule with respect to the treatment of paid-off Turnkey III units. (See § 950.602(b) at 61 FR 8721.) It also conforms the language of the public housing rule to the language of the Indian housing rule with respect to increased value of a homeownership unit caused by its substantial rehabilitation by adding the word "not" to paragraph § 968.112(d)(3)(ii) before the phrase, "by an automatic increase in its selling price." (See §§ 950.608(d)(3)(ii) and 968.112(d)(3)(ii) at 61 FR 8724 and 8739, respectively).

In addition, it has come to the Department's attention that performance standards were omitted from both the Indian housing and public housing rules in that rulemaking. This rule corrects that omission by adding new provisions §§ 950.660(a)(3) and 968.335(a)(3), which describe what HUD means by "reasonable progress" in implementing the HA's modernization plan.

## II. Findings and Certifications

### A. Justification for Final Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

This final rule merely makes technical amendments to existing rules to restore language removed inadvertently, and to correct language to remove an apparent inconsistency between program regulations and a consolidated rule. Implementation of the rule's provisions is needed as soon as possible to correct existing rules in effect. Therefore, the Department has determined that good cause exists to omit prior public procedure for this final rule because such delay would be contrary to the public interest and unnecessary.

### B. Impact on the Environment

This rule does not in itself have an environmental impact. This rule merely makes technical changes to existing rules to restore provisions removed inadvertently; to correct language to provide consistency between program regulations, consistent with their original intent; and to correct editorial errors. It does not alter the environmental effect of the regulations. At the time of development of the original program regulations whose language is restored or corrected by this rule, Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The findings remain applicable to this rule and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

### C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have significant impact on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the

Order. The rule only makes minor technical changes to existing rules.

### D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities. This rule makes only technical amendments to clarify existing regulations.

### E. Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

### Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

### List of Subjects

#### 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

#### 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

#### 24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

#### 24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community

development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 5, 941, 950, and 968 of title 24 of the Code of Federal Regulations are amended as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 101r–1; 42 U.S.C. 1436a, 3535(d), 3543, and 3544.

2. In § 5.410, paragraph (d)(1)(i), the first sentence is revised to read as follows:

### § 5.410 Selection preferences.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) *Characteristics of the unit.* For developments administered under the Section 8 programs and for public housing, the responsible entity may, in selecting a family for a particular unit, match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms.

\* \* \*

\* \* \* \* \*

3. In § 5.617, paragraph (b)(3) is revised to read as follows:

### § 5.617 Reexamination and verification.

\* \* \* \* \*

(b) \* \* \*

(3) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this subpart or applying for assistance.

\* \* \* \* \*

## PART 941—PUBLIC HOUSING DEVELOPMENT

4. The authority citation for part 941 continues to read as follows:

**Authority:** 42 U.S.C. 1437b, 1437c, 1437g and 3535(d).

5. Section 941.103 is amended by adding a definition of "Total development cost" in alphabetical order at the end of the definitions, to read as follows:

### § 941.103 Definitions.

\* \* \* \* \*

*Total development cost (TDC).* The sum of all HUD-approved costs for planning (including proposal preparation), administration, site acquisition, relocation, demolition, construction and equipment, interest and carrying charges, on-site streets and utilities, non-dwelling facilities, a

contingency allowance, insurance premiums, off-site facilities, any initial operating deficit, and other costs necessary to develop the project. The total development cost in the proposal, when reviewed and approved by HUD, becomes the maximum total development cost stated in the ACC. Upon completion of the project, the actual development cost is determined, and this becomes the maximum total development cost of the project for purposes of the ACC. The maximum total development cost excludes costs funded from donations.

#### **PART 950—INDIAN HOUSING PROGRAMS**

6. The authority citation for part 950 is revised to read as follows:

**Authority:** 25 U.S.C. 450e(b), 42 U.S.C. 1437aa–1437ee, and 3535(d).

7. In § 950.660, paragraph (a)(3) is revised to read as follows:

#### **§ 950.660 HUD review of IHA performance.**

(a) \* \* \*

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

\* \* \* \* \*

#### **PART 968—PUBLIC HOUSING MODERNIZATION**

8. The authority citation for part 968 continues to read as follows:

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

9. In § 968.102, paragraph (b) is revised to read as follows:

#### **§ 968.102 Special requirements for Turnkey III developments.**

\* \* \* \* \*

(b) *Eligibility of paid-off and conveyed units for assistance.*—(1) *Paid-off units.* A Turnkey III unit that is paid off but has not been conveyed at the time the CIAP application or CGP Annual Submission is submitted, is eligible for any physical improvement under § 968.112(d).

(2) *Conveyed units.* Where modernization work has been approved before conveyance, the PHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. A PHA shall not use funds provided under this part for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

\* \* \* \* \*

#### **§ 968.112 [Amended]**

10. Section 968.112 is amended by adding to the last sentence of paragraph (d)(3)(ii) the word “not” before the phrase “by an automatic increase in its selling price.”

11. In § 968.335, paragraph (a)(3) is revised to read as follows:

#### **§ 968.335 HUD review of PHA performance.**

(a) \* \* \*

(3) *Reasonable progress.* HUD shall determine whether the PHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

\* \* \* \* \*

Dated: May 7, 1997.

**Andrew Cuomo,**

*Secretary.*

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