

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR-4507-F-02]

RIN 2577-AC16

Public Housing Capital Fund Program Obligation and Expenditure of Funds

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

ACTION: Final rule.

SUMMARY: This final rule promulgates HUD's regulation for section 9(j) of the United States Housing Act of 1937, which deals with the obligation and expenditure of Capital Fund Program funds by public housing agencies, in accordance with congressional direction.

DATES: Effective Date: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: William Thorson, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-5000; telephone (202) 708-1640, ext. 4999 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, approved October 21, 1998) (QHWRA) amends section 9 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437g) to provide a "Capital Fund," to be established by HUD for the purpose of making assistance available to public housing agencies (PHAs) to carry out capital and management improvement activities. Among other things, section 9 requires HUD to develop a formula for determining the amount of assistance provided on an annual basis to PHAs from the Capital Fund, including a mechanism to reward performance. The statute also requires the Capital Fund Formula (CFF) be developed through negotiated rulemaking procedures. The CFF is the subject of a separate final rule, published on March 16, 2000 (65 FR 14422), and amended on May 2, 2000 (65 FR 25446). HUD will also publish a proposed rule that would provide additional Capital Fund Program (CFP) requirements.

Section 9(j) of the 1937 Act establishes time limits for the obligation

and expenditure of CFP funds, and penalties for violations of those limits. Under section 9(j), unless HUD grants an extension, a PHA has 24 months for obligation and four years for expenditure of CFP funds, which are received pursuant to section 9(d), before the statutory penalties may be imposed.

HUD's Fiscal Year 2003 Appropriations Act, Title II of Division K of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7, 117 Stat. 11, approved February 20, 2003) (FY 2003 Appropriations Act) includes a requirement "That the Secretary shall issue final regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)) not later than August 1, 2003." HUD is issuing this final rule to address that requirement. This rule places the obligation and expenditure requirements at 24 CFR 905.120 of HUD's regulations. The rule basically follows the statutory language of section 9(j) without addition except to conform the statutory language to a regulatory format as noted in this preamble.

The addition made by this rule consists of explicitly stating at § 905.120(b)(1) that a PHA may request an extension of the time period for obligation, as permitted under section 9(j)(2). Section 9(j)(2) permits HUD to grant an extension, and it follows that a PHA must be allowed to request an extension.

Findings and Certifications

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions for that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment in that prior public procedure would be unnecessary. Section 905.120 only repeats the statutory requirements of section 9(j) of the 1937 Act, which do not need rulemaking to be effective and which HUD may not, in any event, change through a regulation in response to public comment.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for this rule 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. 4332). 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 Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has 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 as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule only includes statutory requirements that the Department may not alter by regulation and all entities are treated as required by the statute.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments within the meaning of Executive Order 13132.

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.