

This rule does not impose, within the meaning of the UMRA, any federal mandates on any state, local, or tribal governments or on the private sector.

#### List of Subjects in 24 CFR Part 905

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

#### Catalog

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

■ For the reasons discussed in the preamble, chapter IX of title 24 of the Code of Federal Regulations is amended as follows:

#### PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 1. The authority citation for 24 CFR part 905 continues to read as follows:

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

■ 2. Add a new § 905.120 to read as follows:

#### § 905.120 Penalties for slow obligation or expenditure of CFP assistance.

In addition to any other statutory, regulatory, or contractual sanctions available to HUD, the penalties for slow obligation or expenditure of CFP assistance will be applied as follows:

(a) *Obligation of amounts.* (1) Except as provided in paragraph (b) of this section, a PHA must obligate any assistance received under this part not later than 24 months after, as applicable:

(i) The date on which the funds become available to the PHA for obligation in the case of modernization; or

(ii) The date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Notwithstanding paragraph (a)(1) of this section, any funds appropriated

to a PHA for Fiscal Year 1997 or prior fiscal years shall be fully obligated by the PHA not later than September 30, 1999.

(b) *Exceptions to obligation requirement.* (1) *Extension before expiration of obligation period.* A PHA may request and HUD may approve a longer timeframe or HUD may, by prior approval granted before the expiration of the time period in paragraph (a) of this section, extend the time period under paragraph (a) of this section for an additional period not to exceed 12 months, based on:

(i) The size of the PHA;

(ii) The complexity of the capital program of the PHA;

(iii) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(iv) Such other factors as HUD determines to be relevant.

(2) *Extension of obligation period.* HUD may extend the time period under paragraph (a) of this section for a PHA, for such period as HUD determines to be necessary, if HUD determines that the failure of the agency to obligate assistance in a timely manner is attributable to:

(i) Litigation;

(ii) Obtaining approvals of the federal government or a state or local government;

(iii) Complying with environmental assessment and abatement requirements;

(iv) Relocating residents;

(v) An event beyond the control of the PHA; or

(vi) Any other reason established by HUD by notice published in the **Federal Register**.

(3) *Disregard of minimal unobligated amounts.* HUD will disregard the requirements of paragraph (a) of this section with respect to any unobligated amounts made available to a PHA, to the extent that the total of such amounts does not exceed 10 percent of the

original amount made available to the PHA.

(c) *Effect of failure to comply.* (1) *Prohibition of new assistance.* A PHA will not be awarded CFP assistance for any month during any fiscal year in which the PHA has funds unobligated in violation of paragraph (a) or (b) of this section.

(2) *Withholding of assistance.* During any fiscal year described in paragraph (c)(1) of this section, HUD will withhold all assistance that would otherwise be provided to the PHA. If the PHA cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(3) *Redistribution.* The total amount of any funds not provided PHAs by operation of this section shall be allocated for PHAs determined to be high-performing under the Public Housing Assessment System (at 24 CFR part 902) (or the applicable performance evaluation program for public housing).

(d) *Expenditure of amounts.* (1) *In general.* A PHA must spend any assistance received under this part not later than four years (plus the period of any extension approved by HUD under paragraph (b) of this section) after the date on which funds become available to the PHA for obligation.

(2) *Enforcement.* HUD will enforce the requirement of paragraph (d)(1) of this section through default remedies up to and including withdrawal of the CFP funding.

(e) *Right of recapture.* Any obligation entered into by a PHA is subject to the HUD's right to recapture the obligated amounts for violation by the PHA of the requirements of this section.

Dated: July 28, 2003.

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