

CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov>. Fees must be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(3) \* \* \*

(ii) *Fee payment.* The operator of the passenger-carrying vessel must pay the accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, 6650 Telecom Drive, Indianapolis, Indiana 46278, with a check or money order payable to U.S. Customs and Border Protection, or the CBP Form 349 and payment must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov>.

\* \* \* \* \*

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: July 31, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8-17967 Filed 8-4-08; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 903, 941, 945, and 966

[Docket No. FR-4990-P-01]

RIN 2577-AC59

### Streamlining Public Housing Programs

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would support HUD's overall objective to streamline the regulations governing public housing programs and to facilitate the transition of public housing agencies (PHAs) to asset management. In general, this proposed rule would streamline portions of the public housing regulations, and more

closely align the regulatory framework of public housing with other federally subsidized housing programs, providing PHAs greater flexibility within the parameters of current law. This proposed rule offers general principles and basic guidelines for PHAs to follow, rather than overly prescriptive measures, thus allowing PHAs to operate projects more efficiently as PHAs move toward asset management.

**DATES:** *Comment Due Date:* October 6, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

#### 1. *Submission of Comments by Mail.*

Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

#### 2. *Electronic Submission of*

*Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (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 (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Bessy M. Kong, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, telephone number (202) 708-0713, extension 2548 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 19, 2005, at 70 FR 54983, HUD published a final rule implementing revisions to the Public Housing Operating Fund program, providing for a new formula for distributing operating subsidy to PHAs, and establishing requirements for PHAs to convert to asset management. That final rule was based substantially on the recommendations of the congressionally funded Harvard University Graduate School of Design study on the cost of operating well-run public housing (Harvard Cost Study). Appendix H of the Harvard Cost Study included a list of requirements unique to public housing that, if alleviated or otherwise eliminated, would either make it easier for PHAs to transition to asset management or would more closely conform the public housing regulatory environment with that of other assisted housing programs. Generally, HUD agrees that streamlining the requirements and procedures included in the Harvard Cost Study would make the transition to asset management easier. Streamlining these processes would also increase PHA flexibility and reduce program costs.

This proposed rule does not, however, address all of the recommendations of the Harvard Cost Study. Specifically, while the Harvard Cost Study and other industry representatives identified the Department's regulations in the area of tenant participation, codified at 24 CFR part 964, as an area that would benefit from streamlining, the Department has chosen not to address part 964 in this rulemaking, but will consider addressing it separately.

## II. This Proposed Rule

### A. Overview of Proposed Changes

This proposed rule would amend 24 CFR part 903 to eliminate procedural requirements regarding the implementation of deconcentration policy. PHAs would no longer be required to determine the average income of all families residing in all covered developments, the average income of all families residing in each covered development, and whether each of the covered developments fall above, within, or below the Established Income Range. Part 903 would also be amended to remove unnecessary reporting requirements for PHA plans. PHAs would no longer be required to provide annual updates on PHA progress toward meeting goals described in the 5-year plan. Eliminating these requirements would benefit PHAs by reducing staff time devoted to administrative tasks and by achieving cost savings through reduced paperwork.

Part 941 would be revised to provide PHAs greater flexibility to structure mixed-finance transactions. Under the proposed rule, a PHA partner or owner entities would be permitted to serve as the general contractor for a mixed-finance project or development if certain conditions are met. PHAs would benefit from more options to develop mixed-finance projects and reduced project costs by working with a PHA partner or owner entity.

This proposed rule would also change 24 CFR part 966 to remove procedural requirements pertaining to grievances. PHAs would be permitted to establish their own procedures for informally settling grievances, obtaining a hearing, and preparing and distributing the decisions of the hearing officer or hearing panel. The elimination of these requirements would reduce PHA staff and administrative costs and increase their capacity to respond to hearing requests.

HUD recognizes that PHAs may incur some initial costs in making the determinations afforded by the increased flexibility under the proposed rule. However, the Department believes that the benefits to both the Department and PHAs far outweigh any costs associated with this proposed rule. Subsequent guidance will provide assistance in implementing this rule and will also help to minimize additional cost burdens associated with it.

### B. Part-by-Part Discussion

This proposed rule would amend 24 CFR part 903 (Public Housing Agency Plans); part 941 (Public Housing Development); and subpart B of part 966

(Grievance Procedure). This proposed rule also removes 24 CFR part 945 (Designated Housing). This section of the preamble discusses the proposed regulatory amendments to these parts.

#### 1. Part 903—Public Housing Agency Plans

Subpart A of part 903, entitled “Deconcentration of Poverty and Fair Housing in Program Admissions,” would be amended to remove procedural requirements not required by statute. The elimination of these requirements would allow PHAs flexibility in bringing higher-income tenants into lower-income developments and lower-income tenants into higher-income developments, to avoid a concentration of low-income families as prohibited by law. HUD data indicate that most PHAs have few properties that fall outside the established income range. Additionally, PHAs that have developments above the established income range often are exempt, since the income level is considered extremely low-income.

The rule would remove prescriptive language in § 903.2(c) pertaining to steps for implementation of deconcentration and elements of explanations or justifications, and would allow PHAs to establish discretionary strategies. A PHA’s deconcentration plan and practices may not take preference over the requirements for provision of accessible units for disabled tenants. Section 903.2(d), which sets forth fair housing requirements, would be streamlined and moved to subpart B of 903.

Subpart B of part 903, entitled “PHA Plans,” would be amended to remove certain obsolete references and requirements that address initial plan requirements. Also, references to the Drug Elimination Grant Program, which is no longer funded, would be removed. Further, this subpart would be amended to include statutory language not previously contained in the regulation pertaining to PHA Plan updates, including language requiring 5-year and annual plans to include statements about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking, in accordance with the requirements of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162).

Section 903.7, which describes the information a PHA must provide in its Annual Plan, would also be revised to incorporate fair housing requirements

and to more closely reflect statutory provisions. Currently codified information that is more appropriately provided in non-regulatory guidance would also be removed from the regulations, including some of the detailed information related to statements of housing needs, financial resources, and capital needs. The requirement for a statement of PHA grievance procedures would be amended to conform to changes to part 966 described elsewhere in this proposed rule. Redundant information would be revised or removed to clarify the regulation, including the requirement for a statement about public housing developments designated as housing for elderly families or families with disabilities.

Sections 903.11 and 903.12, which provide information for submitting streamlined plans, would be removed. The submission process for all PHAs would be limited to policies concerning elements within HUD’s scope of review. The scope of review is addressed in the regulation. These regulations address certain discretionary policies for which there is no HUD approval mechanism other than the Annual Plan. HUD would not impose any additional requirements similar to those that currently exist relating to submission requirements for small PHAs, high-performing PHAs, or those that administer only tenant-based assistance. HUD believes that such information is more suitable for non-regulatory guidance rather than in a regulation. PHAs would continue to provide information on how the public may reasonably obtain additional information on the PHA policies contained in the Annual Plan.

Section 903.13 would be amended to increase PHA flexibility, reduce program costs, and facilitate the transition to asset management. Specifically, § 903.13 would be amended to clarify § 903.13(a), remove the prescriptive requirements in § 903.13(b), and conform the section to requirements provided for by statute.

Section 903.23, which describes the process by which HUD reviews, approves, or disapproves an Annual Plan, would be revised to remove repetitive language that is already addressed in this section.

#### 2. Part 941—Public Housing Development

Section 941.606 would be amended to provide greater flexibility for PHAs to structure mixed-finance transactions. It would allow a PHA partner and/or owner entities (or other entities with an identity of interest) to serve as the general contractor for a mixed-finance

project or development if the PHA or its partner conducts a public bid process and the identity of interest general contractor's bid is the lowest bid submitted in response to a public request for bids, or the PHA submits written justification and provides an independent third-party cost estimate that demonstrates that the identity of interest general contractor's costs are less than or equal to the independent third-party estimate.

### 3. Part 945—Designated Housing—Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families

Part 945 would be removed because it is now obsolete. Part 945 does not incorporate the requirements of section 10(a) of the Housing Opportunity Program Extension Act of 1996, Public Law 104-120 (approved March 28, 1996). Section 10(a) amended section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e), which governs designated housing for elderly and disabled families. The 1996 Act requires a PHA that wants to designate certain housing for these populations to have an approved designated housing plan, which has a substantially different set of requirements than the current part 945 being removed.

### 4. Part 966 Subpart B—Grievance Procedures and Requirements

In subpart B, procedural requirements, not required by statute, would be eliminated to allow PHAs maximum flexibility in establishing and implementing grievance procedures.

Section 966.54, which describes the requirements for an informal settlement of grievances, would be removed to allow PHAs flexibility in establishing such a process.

Section 966.55, which describes the procedures to obtain a hearing, would be removed. PHAs would now have the flexibility to establish grievance procedures addressing failure to request a hearing and requiring escrow deposits. Matters related to scheduling and location would be merged with procedures governing the hearing.

Sections 966.56 and 966.57, which describe the procedures governing the hearing and decision of the hearing officer would be revised to remove language that is overly prescriptive or repetitive. For instance, matters relating to transcripts, copies, and how the hearing is conducted would be left for the PHA to determine.

## III. Findings and Certifications

### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "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 an economically significant regulatory action under the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is exclusively concerned with PHAs that administer public housing programs under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would streamline administration of the public housing program by PHAs and give PHAs more flexibility in establishing policies that better meet local housing needs and priorities. 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 PHAs that are part of a political jurisdiction with a population of fewer than 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on 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 less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

### *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, that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

### *Paperwork Reduction Act*

The information collection requirements described in this rule in 24 CFR parts 903, 941, and 945 have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0226, 2577-0157, 2577-0192, and 2577-0157, respectively. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for 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 any federal mandate on any state, local, or tribal government,

or on the private sector, within the meaning of the UMRA.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

#### **List of Subjects**

##### *24 CFR Part 903*

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

##### *24 CFR Part 941*

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

##### *24 CFR Part 945*

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

##### *24 CFR Part 966*

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 parts 903, 941, 945, and 966 as follows:

#### **PART 903—PUBLIC HOUSING AGENCY PLANS**

1. The authority citation for part 903 continues to read as follows:

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

2. Revise the heading of subpart A to read as follows:

#### **Subpart A—Deconcentration of Poverty**

3. Amend § 903.2 by revising paragraph (c), and removing paragraphs (d)(1), (d)(2), (d)(3), and (e) to read as follows:

##### **§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?**

\* \* \* \* \*

(c) *Deconcentration of poverty and income mixing.* (1) A PHA's deconcentration policy may include, but is not limited to, providing for one or more of the following actions:

(i) Providing incentives designed to encourage eligible families with higher incomes to occupy dwelling units in developments predominantly occupied by eligible families having lower

incomes, and provide for occupancy of eligible families having lower incomes in developments predominantly occupied by eligible families having higher incomes.

(ii) Skipping a family on the waiting list to reach another family in an effort to further the goals of the PHA's deconcentration policy.

(iii) Providing such other strategies as permitted by statute and determined by the PHA.

(2) A family has the sole discretion whether to accept an offer of a unit made under a PHA's deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy.

\* \* \* \* \*

4. Amend § 903.4 by revising paragraph (a), removing paragraph (c), redesignating existing paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

##### **§ 903.4 What are the public housing agency plans?**

(a) *5-Year Plan.* Not less than once every 5 fiscal years, each public housing agency shall submit to HUD a plan that includes, with respect to the 5 fiscal years immediately following the date on which the plan is submitted:

(1) The PHA's mission for serving the needs of low-income, very low-income, and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan.

(b) *Annual Plan.* (1) *In general.* Each PHA shall submit to HUD an annual PHA plan under this subsection for each fiscal year for which the PHA receives assistance under:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(2) *Updates.* For each fiscal year after the initial submission of an annual plan, a PHA may comply with requirements for submission of a plan under this subsection by submitting an update of the plan for the fiscal year.

\* \* \* \* \*

5. Revise § 903.5 to read as follows:

##### **§ 903.5 When must a PHA submit the plans to HUD?**

(a) *5-Year Plan.* For all PHAs, after submission of their first 5-Year Plan, all

subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan, in accordance with § 903.7(r).)

(b) *Annual Plans.* For all PHAs, after submission of the first annual plan, all subsequent annual plans will be due no later than 75 days before the commencement of the PHA's fiscal year.

6. Add § 903.6(a)(3) to read as follows:

##### **§ 903.6 What information must a PHA provide in the 5-Year Plan?**

(a) \* \* \*

(3) The goals, objectives, policies, or programs that will enable the PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

\* \* \* \* \*

7. Amend § 903.7 as follows:

a. Revise the introductory text;

b. Revise paragraphs (a), (b), (c), (e)(1), (f), (h), (i)(1), (j)(2), and (j)(3);

c. Remove paragraph (j)(5);

d. Revise paragraphs (k)(1)(iii) and (k)(1)(iv) and add paragraph (k)(1)(v);

e. Redesignate paragraphs (m) through (r) as (n) through (s), respectively;

f. Add a new paragraph (m);

g. Remove newly redesignated paragraph (n)(3) and redesignate paragraph (n)(4) as paragraph (n)(3);

h. Revise newly redesignated paragraph (p);

i. Remove newly redesignated paragraph (s)(1), and redesignate

paragraphs (s)(2) and (s)(3) as paragraphs (s)(1) and (s)(2), respectively.

The revisions and additions read as follows:

##### **§ 903.7 What information must a PHA provide in the Annual Plan?**

The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* This statement must address the housing needs of the extremely low-income, low-income, and very low-income families that reside in the jurisdiction served by the PHA, and other families that are on the public housing and Section 8 tenant-based assistance waiting lists, including the housing needs of elderly families, disabled families, households of various races and ethnic groups residing in the jurisdiction or on the waiting list, and the means by which the PHA intends, to the maximum extent possible, to address those needs.

(b) *A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies that govern resident or tenant eligibility, selection, and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)), as well as any unit assignment policies for public housing. This statement must include the following information:

(1) *Deconcentration policy.* The PHA's deconcentration policy applicable to public housing, as described in § 903.2(a).

(2) *Waiting list procedures.* The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments may include (notwithstanding any other law, regulation, handbook, or notice to the contrary) a system of site-based waiting lists as authorized by section 6(r) of the 1937 Act (42 U.S.C. 1437d) that is consistent with all applicable civil rights and fair housing laws and regulations.

(c) *A statement of financial resources.* A statement of financial resources available to the PHA and planned uses for those resources.

\* \* \* \* \*

(e) *A statement of the PHA's rules, standards, and policies.* (1) A statement of the PHA's rules, standards, and policies governing maintenance and management of housing owned, assisted, or operated by the PHA.

\* \* \* \* \*

(f) *Grievance procedures.* A statement of the PHA's grievance procedures.

\* \* \* \* \*

(h) *A statement of any demolition and/or disposition.* With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. **Note:** The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(i) *A statement of the designated public housing developments.* (1) A statement of the public housing developments (or portions thereof) that the PHA has designated or will apply for designation as housing for only

elderly families, or only disabled families, or elderly and disabled families, as provided by section 7 of the 1937 Act (42 U.S.C. 1437e). **Note:** The designated housing application and approval process is a separate process.

\* \* \* \* \*

(j) \* \* \*

(2) The statement also must include an analysis of the developments or buildings required to be converted under section 33 of the 1937 Act.

(3) For both voluntary and required conversions, the statement must include the amount of assistance received to be used for rental assistance or other housing assistance in connection with such conversion.

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(iii) An approved HOPE I program (42 U.S.C. 1437aaa);

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z-4); or

(v) Any homeownership programs administered by the PHA under section 9(d)(1)(f) of the 1937 Act (42 U.S.C. 1437g).

\* \* \* \* \*

(m)(1) A description of any activities, services, or programs provided or offered by a PHA, either directly or in partnership with other service providers, to child or adult victims of violence, dating violence, sexual assault, or stalking;

(2) A description of any activities, services, or programs provided or offered by a PHA that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking; and

(3) A description of any activities, services, or programs provided or offered by a PHA to prevent domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.

\* \* \* \* \*

(p) *Civil rights certification and fair housing.* All admission, occupancy, and other policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and with regulations to affirmatively further fair housing.

(1) *General fair housing requirements.*

(i) *Nondiscrimination.* A PHA must carry out its PHA plan in conformity with the nondiscrimination requirements in federal civil rights laws, including Title VI of the Civil Rights Act of 1964 and the Fair Housing Act.

(ii) *Affirmatively furthering fair housing.* PHA policies that govern eligibility, selection, and admissions under its PHA plan should be designed to reduce racial and national origin concentrations. Any affirmative steps or incentives a PHA plans to take must be stated in the admissions policy. HUD regulations at 24 CFR 1.4(b)(6)(ii) provide that PHAs should take affirmative steps to overcome the effects of conditions that resulted in limiting participation of persons due to any prohibited basis.

(2) *Site-based waiting lists.* (i) The PHA plan shall address the reasonable measures the PHA has taken and will take to ensure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing requirements. Measures include marketing activities to attract applicants regardless of race or ethnicity and providing full disclosure to each applicant of all available developments and programs, including amenities and accessibility, within the PHA's jurisdiction.

(ii) Adoption of a site-based waiting list may not violate any court order, settlement agreement, conciliation agreement, voluntary compliance agreement, or any other agreement with HUD.

(3) *Civil rights certification.* (i) The PHA must certify, as part of both its annual and 5-year plans, that it will carry out its plan in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). The PHA also must certify that it will affirmatively further fair housing.

(ii) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.7(p)(1), examines its programs or proposed programs to identify any impediments to fair housing choice within those programs, addresses those impediments in a reasonable fashion in view of the resources available, and works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing in conformity with § 903.15. A PHA shall maintain records reflecting these analyses and actions.

\* \* \* \* \*

#### §§ 903.11 and 903.12 [Removed]

8. Remove §§ 903.11 and 903.12.

9. Amend § 903.13 by revising paragraphs (a) and (b) to read as follows:

**§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?**

(a)(1) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(2) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(b) Each PHA must establish one or more Resident Advisory Boards.

\* \* \* \* \*

**§ 903.23 [Amended]**

10. Amend § 903.23 by removing paragraph (c)(1), redesignating existing paragraphs (c)(2), (c)(3), and (c)(4) as paragraphs (c)(1), (c)(2), and (c)(3), respectively, removing paragraph (d), and redesignating existing paragraph (e) as paragraph (d).

\* \* \* \* \*

**PART 941—PUBLIC HOUSING DEVELOPMENT**

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

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

12. Revise § 941.606(n)(1)(ii)(B) to read as follows:

**§ 941.606 Proposal.**

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) If the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract if either:

(1) The identity of interest general contractor's bid is the lowest bid submitted in response to a public request for bids; or

(2) The PHA submits a written justification and provides an independent third-party cost estimate that demonstrates that the identity of interest general contractor's costs are less than or equal to the independent third-party cost estimate.

\* \* \* \* \*

**PART 945—[REMOVED]**

13. Under the authority of 42 U.S.C. 1473e and 3535(d), part 945 is removed.

**PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURES**

14. The authority citation for part 966 continues to read as follows:

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

15. Amend § 966.52 by revising paragraph (a) to read as follows:

**§ 966.52 Requirements.**

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance, as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart. A PHA may establish an expedited grievance procedure as defined in § 966.53.

\* \* \* \* \*

16. Amend § 966.53 by revising paragraph (b), removing paragraph (e), redesignating paragraph (d) as paragraph (e) and revising it, adding new paragraph (d) and removing paragraph (g) to read as follows:

**§ 966.53 Definitions.**

\* \* \* \* \*

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office.

\* \* \* \* \*

(d) *Expedited grievance* means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) *Hearing officer* shall mean an impartial person or persons designated by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person.

\* \* \* \* \*

17. Remove § 966.54 and § 966.55.

18. Amend § 966.56 by revising paragraph (a), removing paragraphs (b)(5) and (c), redesignating paragraph (d) as paragraph (c) and revising it, redesignating existing paragraph (e) as paragraph (d), removing paragraphs (f) and (g), and redesignating existing paragraph (h) as paragraph (e) to read as follows:

**§ 966.56 Procedures governing the hearing.**

(a) The hearing shall be scheduled promptly for a time and place reasonably convenient to both the

complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate official.

\* \* \* \* \*

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed 5 business days or may make a determination that the party has waived the party's right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

\* \* \* \* \*

19. Revise § 966.57 to read as follows:

**§ 966.57 Decision of the hearing officer.**

(a) The hearing officer shall prepare a written decision, including the reasons for the PHA's decision, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder.

(b) The decision of the hearing officer shall be binding on the PHA, unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations, which adversely affects the complainant's rights, duties, welfare, or status.

(2) The decision of the hearing officer is contrary to applicable federal, state, or local law, HUD regulations, or requirements of the ACC between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA, or which denies the relief requested by the complainant in whole or in part, shall not constitute a waiver of, nor affect in any manner whatsoever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

Dated: July 7, 2008.

**Paula O. Blunt,**

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

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