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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

#### 24 CFR Parts 200, 905, 941, and 968

[Docket No. R-95-1724; FR-3645-F-02]

RIN 2577-AB42

#### Amendment to the Participation and Compliance Requirements for Public Housing Agencies and Indian Housing Authorities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** This final rule deletes the current regulatory requirements that public housing agencies and Indian housing authorities (referred to as HAs) be subject to HUD's Previous Participation Review and Clearance Procedures. The purpose of the amendment is to streamline the contracting process for HAs and to enable them to obligate much needed development and modernization funding in a more timely fashion.

**EFFECTIVE DATE:** August 10, 1995.

**FOR FURTHER INFORMATION CONTACT:**

William C. Thorson, Director, Maintenance and Supply Division, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4124, Washington, DC 20410. Telephone: (202) 708-4703. This is not a toll-free number.

Indian housing authorities may contact Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, Room B-133, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708-0032. This is not a toll-free number.

Hearing or speech impaired individuals may contact this Office via TDD number (202) 708-9300 (which is

not a toll-free number) or 1-800-877-8339 (which is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### I. Paperwork Reduction Act Statement

This final rule does not impose any information collection requirements. Instead, it would eliminate the requirement for HAs and HA contractors to submit form HUD-2530, Previous Participation Certificate, to HUD. As a result of this final rule, there would be a reduction in the information burden on HUD program participants.

#### II. Background

Formerly, subpart H of 24 CFR part 200 of the HUD regulations made principals participating in projects financed pursuant to the United States Housing Act of 1937 subject to HUD approval under the previous participation and review requirements set forth in that Subpart. Principals included "an individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, nursing home administrator or operator, packager, or consultant; and architects and attorneys who had any interest in the project other than an arms-length fee arrangement for professional services."

Previously under subpart H, all principals were requested to sign personally a certificate setting forth their record of previous participation in HUD programs. These certifications were subjected to review and either approval or disapproval by the Department. An approval was required as a precondition to participation by the principal in a specific project.

HAs frequently cited the previous participation approval requirement as an obstacle to their timely obligation of funds. In reviewing the matter, the Department found that approximately 78,000 principals were entered into HUD's previous participation automated system during 1993. This figure included principals from all programs administered by the Assistant Secretary for Housing and the Assistant Secretary for Public and Indian Housing. The automated system approved over 73,500 principals while approximately 4,500 principals were referred to Headquarters for further review. About 1,500 of the

referrals (less than 2 percent) involved principals in the public/Indian housing programs. Of the 1,500 public/Indian housing principals, the majority were found to be approvable. Only a limited number were disapproved, and most of the disapprovals were based on existing debarments or suspensions. It should also be noted that HAs already have the authority to disqualify contractors who are on the General Services Administration Debarred and Suspended List.

This Departmental analysis of the previous participation process raised serious questions regarding the benefits derived vs. the delays caused in program implementation. Also taken into account in the analysis was the fact that the Department's procurement regulations, at 24 CFR 85.36, require State and local grantees, including HAs, to award contracts only to contractors possessing the ability to perform successfully under the terms and conditions of their contract. In assessing their ability to perform, consideration should be given by grantees to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. It was also noted that, in other similar State, local, or Indian Tribes grant programs administered by the Department, such as the Community Development Block Grant program, grantees are not subject to a second previous participation and compliance review by HUD. Instead, grantees, pursuant to the procurement procedures set forth at 24 CFR part 85, are given the responsibility to make their own determinations of contractor responsibility and are permitted to execute contracts without obtaining prior HUD approval.

Given the very low number of disapprovals of public/Indian housing principals compared to the relatively high dollar value of the program (approximately \$3 billion annually) and the urgent need to streamline HUD procedures, the Department has concluded that the risk to the Government of eliminating the previous participation approval for HAs is extremely limited. Accordingly, the Department issued an interim rule on June 20, 1994 amending the existing regulations to remove public and Indian housing developments financed under the U.S. Housing Act of 1937 from the

Previous Participation and Compliance Requirements set forth in 24 CFR part 200, Subpart H. HAs are still expected, however, to determine, pursuant to 24 CFR 85.36, if a contractor is responsible, based on its own records, the GSA Debarred and Suspended list, the HUD Limited Denial of Participation List, and any other information available to the HA. HUD is now issuing a final rule to complete this regulatory action.

### III. Public Comment on Interim Rule

Seven written comments were received from the public on the June 20, 1994 interim rule. All were from public housing authorities. Six of the commenters strongly endorsed the rule.

One commenter (Town of Rampano Housing Authority) objected to the rule's elimination of the previous participation certificate requirement for HAs. It argued that "without the necessity of a contractor completing HUD 2530, the Authority has no way of verifying whether or not the contracting firm is both ethical and/or viable. Said unethical company might start out in Texas, however, by the time it reaches New York—other than through the use of the 2530, the Authority has no way of making the appropriate determination. Certainly, you must agree that the aforementioned will not be indicated on either the GSA Debarred list."

As noted above, HAs are required by the Department's procurement regulations at 24 CFR 85.36 to determine contractor responsibility. As a part of that determination, HAs can and should obtain a list of references indicating the contractor's past experiences. HAs should check those references to verify that the contractor's past performance was acceptable. The Department does not believe that it should continue to maintain this additional approval level which only serves to delay contract award and the completion of much needed work.

### IV. Other Matters

#### A. Environmental Impact

The subject matter of this final rule is categorically excluded from HUD's environmental clearance procedures under 24 CFR 50.20(k). It relates to administrative procedures whose content does not constitute a development decision but only to the preparation of reports and HUD management activities.

#### B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has

determined that the provisions of this final rule do not have "federalism implications" within the meaning of the Order. This final rule does not, in any substantive manner, change existing relationships between the Federal government and State and local authorities.

#### C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and, by approving it, certifies that it will not have a significant economic impact on small entities. This final rule only directly affects PHAs and IHAs which are State and local governmental entities. The final rule should prove beneficial to PHAs and IHAs and should have no negative impact upon their contractors.

#### D. Executive Order 12606, The Family

The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the provisions of this final rule do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order.

#### E. Regulatory Agenda

This rule was listed as item 1529 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23402) under Executive Order 12866 and the Regulatory Flexibility Act.

#### F. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

#### List of Subjects

##### 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

##### 24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community

development, Loan programs—Indians, Low and moderate income housing, 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 968

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

Accordingly, parts 200, 905, 941, and 968 of title 24 of the Code of Federal Regulations are amended by adopting the interim rule published in the **Federal Register** June 20, 1994 (59 FR 31521) as final, without change.

Dated: July 3, 1995.

**Henry G. Cisneros,**

Secretary.

[FR Doc. 95-16935 Filed 7-10-95; 8:45 am]

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**30 CFR Parts 18, 19, 20, 22, 27, 28, 35, 36, 50, 56, 57, 70, 71, 74, 77, 90**

#### Technical Amendments

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is amending its regulations to make certain nomenclature changes and to correct addresses which have changed since the regulations were originally issued.

**EFFECTIVE DATE:** July 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA 703-235-1910.

**SUPPLEMENTARY INFORMATION:** MSHA has identified numerous sections with inaccurate addresses and in need of other nomenclature changes. This final rule makes technical amendments to update these sections. The address for MSHA's Approval and Certification Center is corrected; obsolete references to two specific testing laboratories are removed; references to metal and nonmetal subdistrict offices, which no longer exist, are removed; the name of the Denver Safety and Health