DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket Number FR–5105–F–02]

RIN 2577–AC72

Public Housing Operating Fund Program; Revised Transition Funding Schedule for Calendar Years 2007 Through 2012

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

ACTION: Final rule.

SUMMARY: This final rule modifies HUD's regulations for transition funding under the Operating Fund Program. The Operating Fund Program, as revised by a September 19, 2005, final rule, adopted a new formula for determining the payment of operating subsidy to public housing agencies (PHAs). Transition funding is based on the difference in subsidy levels between the new formula and the formula in effect prior to the implementation of the September 19, 2005, final rule. As a result of the new formula, PHAs may experience either an increase or decrease in the amount of funding that they receive. This final rule revises the schedule for those PHAs that will experience a decline in funding, by extending the transition phase-in period an additional year. This final rule follows publication of the two proposed rules published on November 24, 2006, and takes into consideration the public comments received on the proposed rules. With the exception of a technical change, this final rule adopts the proposed regulatory changes without change.

DATES: *Effective Date:* September 14, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hanson, Deputy Assistant Secretary, Departmental Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2000, Washington, DC 20410; telephone number (202) 475–7949 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The September 19, 2005, Final Rule

On September 19, 2005, at 70 FR 54984, HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990 to provide a new formula for distributing operating subsidy to PHAs and to establish requirements for PHAs to convert to asset management. More detailed information about this rule can be found in the preamble to the September 19, 2005, final rule. Additionally, on October 24, 2005, at 70 FR 61366, HUD published a technical correction (Correction Notice) correcting the September 19, 2005, final rule to provide that the revised allocation formula is to be implemented for calendar year 2007, and adjusting the related dates specified in the rule to reflect the corrected implementation date.

In accordance with both the September 19, 2005, final rule and the Correction Notice, the new Operating Fund formula for determining public housing operating subsidies goes into effect in calendar year 2007. As a result of the new formula, PHAs may experience either an increase or decrease in the amount of funding that they receive. PHAs that will experience a gain under the new formula would receive 50 percent of their gain in calendar year 2007 and the full amount of the gain in calendar year 2008.

For PHAs experiencing a decrease in operating subsidy as a result of the new formula, the current regulations limit that reduction to 24 percent of the difference between the old and new funding levels in the first year following implementation. In each of the following three years the subsidy will be reduced by 43, 62, and 81 percent of the difference, respectively. In the last year of the phase-in PHAs will be subject to the full decrease. The phase-in of the reduction in subsidy is designed to lessen the impact of the decline in funding, assisting PHAs with the conversion to asset management while continuing PHAs' ability to perform necessary functions and provide services.

B. The November 24, 2006, Proposed Rules

On November 24, 2006, HUD published two proposed rules for public comment to revise HUD's regulations for transition funding under the Operating Fund Program.

For PHAs that experience a decline, the first rule published on November 24, 2006 (71 FR 68408), proposed to cap the loss at 5 percent of the difference between the old and the new funding levels for calendar year 2007. As explained in the preamble to the proposed rule, the transition phase-in schedule codified in the part 990 regulations is the product of negotiated rulemaking. The negotiated rulemaking committee discussed the phase-in of reductions at length and agreed upon the schedule established in the September 19, 2005, final rule. Increased utility costs in public housing have reduced funding levels relative to total eligibility. Implementation of a difference of 24 percent at this time, given current utility costs, would in effect result in subsidy losses greater than the agreed upon 24 percent.

The second rule published on November 24, 2006 (71 FR 68404), proposed to modify the transition phase-in schedule for the years following calendar year 2007 to reflect the one-time 5 percent cap. The proposed transition funding schedule would result in a 24 percent reduction in calendar year 2008, a 43 percent reduction in calendar year 2009, a 62 percent reduction in calendar year 2010, and an 81 percent reduction in calendar year 2011. The phase-in would conclude with the full reduction being experienced in calendar year 2012.

Assuming no change in appropriations, HUD estimates that PHAs experiencing a subsidy increase under the new formula will have their subsidy reduced by approximately 0.7 percent as a result of the extended transition schedule. The 0.7 percent reduction is constant for each year of the transition funding schedule, but will end in year 2012 upon completion of the formula phase-in. While these PHAs have also experienced an increase in utility costs, the overall effect of the two November 24, 2006, proposed rules would be to more closely match the agreements reached during the negotiated rulemaking process.

These proposed revisions to the transition phase-in schedule were intended to provide PHAs experiencing a reduction in operating subsidy with adequate time to plan and prepare their budget and management operations. All other provisions of the September 19, 2005, final rule and the Correction Notice remain unchanged and in effect.

II. This Final Rule

This final rule follows publication of the two November 24, 2006, proposed rules and takes into consideration the public comments received on the proposed rules. Given the similarity in the subject matter of the two proposed rules, and of the issues raised by the public comments on both proposed rules, HUD has decided to follow publication of the proposed rules with this single consolidated final rule.

The public comment period on the first proposed rule closed on December 26, 2006. HUD received six public comments. Comments were received from individual PHAs, organizations representing PHAs, and a consulting firm. During the public comment period on the second proposed rule, which closed on January 23, 2007, HUD received 10 public comments. The comments were received from individual PHAs, organizations representing PHAs, consulting firms, and a labor union. Comments generally supported the proposed rules, and HUD has carefully considered the issues raised. As explained more fully in section III of this preamble, and to address confusion expressed by the commenters on the proposed rule, HUD has updated the table at § 990.230(e) regarding ''stop loss'' application due dates to reflect the most recent information posted on HUD's Web site. With the exception of this technical change, HUD has adopted the two proposed rules without change.

III. Discussion of Public Comments Received on the November 24, 2006, Proposed Rules

Comment: Support for proposed rules. The majority of commenters wrote in support of the two November 24, 2006, proposed rules. The commenters wrote that the proposed rules avoid the possible adverse consequences of the currently codified transition funding schedule, which might have necessitated the laying off of PHA staff and otherwise negatively impacting the ability of PHAs to provide safe and decent housing.

HUD Response. HUD appreciates the support expressed by the commenters. As noted, this final rule adopts the two proposed rules without substantive change.

Comment: Proposed rules will negatively impact historically underfunded PHAs. Several commenters opposed the proposed rules on the grounds that the ''cost'' of the revised transition funding schedule would be borne by those PHAs that have historically been underfunded. As noted above in this preamble, PHAs experiencing a subsidy increase under the new formula will have their subsidy reduced by approximately 0.7 percent as a result of the extended transition provision, assuming no change in appropriations.

HUD Response. HUD has not revised the rules in response to this comment. The commenter is correct in noting that the revised transition-funding schedule will result in a slight decrease in funding for those PHAs gaining under the new formula. However, as indicated above in this preamble, the overall effect of this final rule is to more closely match the agreements reached during the negotiated rulemaking process that developed the revised Operating Fund formula. The members of the negotiated rulemaking committee discussed the phase-in of subsidy reductions at length. Implementation of a difference of 24 percent at this time, given current utility costs, would in effect result in greater subsidy losses than those agreed upon by the committee members.

Comment: Losses should be permanently capped at 5 percent for small PHAs. Several commenters recommended that the losses for small PHAs be permanently capped at 5 percent.

HUD Response. HUD has not adopted the change requested by the commenter. The members of the negotiated rulemaking committee that developed the new Operating Fund formula represented a large cross-section of PHAs, both large and small and from different geographic regions. The committee agreed that the transition-funding schedule should not vary due to PHA size. However, in consideration of the unique organizational and administrative challenges faced by small PHAs, the part 990 regulations allow PHAs with less than 250 units to elect whether to convert to asset management (other PHAs are required to convert). HUD is also taking steps to facilitate the transition to asset management for those small PHAs that elect to convert. For example, on September 6, 2006, at 71 FR 52710, HUD published a notice providing interim guidance on implementation of asset management, which addressed the possible administrative and financial burdens for small PHAs of establishing a central office cost center (see 71 FR 52712).

Comment: Extension of first-year stop-loss application. As a result of a typographical error in the November 24, 2006, proposed rules, several commenters mistakenly read them as extending the first-year deadline for ''stop-loss'' applications. Specifically, the two proposed rules mistakenly proposed to revise the table codified at § 990.230(e) establishing the demonstration dates under the ''stop loss provision'' of the regulations. These commenters supported a ''further extension'' of the stop-loss application deadline.

HUD Response. As the preambles to both proposed rules made clear, and as several other commenters noted, the November 24, 2006, proposed rules were exclusively concerned with the transition funding schedule, and did not address the subject of stop-loss. However, HUD is aware that the table codified at § 990.230(e) is outdated, given the adjustments to the stop-loss application due dates (see Public and Indian Housing (PIH) Notice 2007–16, issued on June 18, 2007). To address the potential for confusion, HUD has taken the opportunity provided by this final rule to update the codified table. The updated table codified by this final rule is identical to the table contained in PIH Notice 2007–16, and HUD wishes to emphasize that this final rule does not modify the stop-loss application due dates. The due dates provided in PIH Notice 2007–16 remain in effect.

IV. Findings and Certifications

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, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection 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). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Environmental Impact

This rule provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

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 entities that would be subject to this rule are PHAs that administer public housing. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, this rule modifies the transition funding percentage for calendar year 2007 for PHAs experiencing a decline in funding between the old and new funding formulas, easing the transition for PHAs of all sizes. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would 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 rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.850.

List of Subjects in 24 CFR Part 990

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

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 990 to read as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

■ 1. The authority citation for 24 CFR part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 335(d).

■ 2. Revise § 990.230(a), (b), (c), and (e) to read as follows:

§ 990.230 PHAs that will experience a subsidy reduction.

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

(1) 5 percent of the difference between the two funding levels in the first year of implementation of the formula contained in this part;

(2) 24 percent of the difference between the two funding levels in the second year of implementation of the formula contained in this part;

(3) 43 percent of the difference between the two levels in the third year of implementation of the formula contained in this part;

(4) 62 percent of the difference between the two levels in the fourth year of implementation of the formula contained in this part; and

(5) 81 percent of the difference between the two levels in the fifth year of implementation of the formula contained in this part.

(b) The full amount of the reduction in the operating subsidy level shall be realized in the sixth year of implementation of the formula contained in this part.

(c) For example, a PHA has a subsidy reduction from $1 million, under the formula in effect prior to implementation of the formula contained in this part, to $900,000, under the formula contained in this part using FY 2004 data. The difference would be calculated at $100,000 ($1 million − $900,000 = $100,000). In the first year, the subsidy reduction would be limited to $5,000 (5 percent of the difference). Thus, the PHA would receive an operating subsidy amount pursuant to this rule plus a transition-funding amount of $95,000 (the $100,000 difference between the two subsidy amounts minus the $5,000 reduction limit).

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(e) The schedule for successful demonstration of conversion to asset management for discontinuation of PHA subsidy reduction is reflected in the table below:

STOP-LOSS DEMONSTRATION TIME LINE AND EFFECTIVE DATES

Demonstration date by	Applications due	Reduction stopped at	Reduction effective for
September 30, 2007	October 15, 2007	5 percent of the PUM difference	Calendar Year 2007 and thereafter.
April 1, 2008	April 15, 2008	24 percent of the PUM difference	Calendar Year 2008 and thereafter.
October 1, 2008	October 15, 2008	43 percent of the PUM difference	Calendar Year 2009 and thereafter.
October 1, 2009	October 15, 2009	62 percent of the PUM difference	Calendar Year 2010 and thereafter.
October 1, 2010	October 15, 2010	81 percent of the PUM difference	Calendar Year 2011 and thereafter.

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Dated: August 2, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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