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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