

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket Nos. FR-3769-N-02; FR-3774-N-03; FR 3832-N-02; FR-3841-N-04; FR-3867-N-02; and FR-3871-N-02]

**Impact of Rescissions Act on
Availability of Funding for Fiscal Year
1995: Public Housing Development;
Traditional Indian Housing
Development; Demolition and
Disposition; Public and Indian Housing
Modernization Program; and Family
Investment Centers**

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

ACTION: Notice of Impact of Rescissions Act on Availability of Funding for Fiscal Year (FY) 1995 for public housing development, the Traditional Indian Housing Development Program, public housing demolition and disposition, the public and Indian housing modernization program, and Family Investment Centers.

SUMMARY: The FY 1995 Rescissions Act affects the public and Indian housing programs described below by rescinding funds and amending the U.S. Housing Act of 1937. This notice advises the public of the rescissions and their impact on Notices of Funding Availability (NOFAs) that have been issued. This notice also advises the public of changes to regulation requirements and program policies, implementing some, but not all, of the provisions of the Rescissions Act that amend the 1937 Act for FY 1995.

DATES: This notice does not revise or extend any application deadlines, except with regard to demolition/disposition applications requesting replacement housing, as described in section I of this notice, under the heading **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

For public housing programs, contact: William Minning, Director of Policy and Evaluation Division, Room 4236. Telephone (202) 708-0713, or (202) 708-0850 (TDD).

For Indian housing programs, contact: Bruce Knott, Native American Programs Housing and Community Development Division, Room P8204. Telephone (202) 755-0068, or (202) 708-0850 (TDD).

The address for both individuals is: Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION:

I. Public Housing Development

On June 16, 1995 (60 FR 31842), HUD published a NOFA that announced the availability of \$600,278,866 for public housing development, of which \$598,000,000 was derived from the FY 1995 appropriation and the remainder from carryover funds.

In the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. L. 104-19, approved July 27, 1995) (the Rescissions Act), Congress rescinded \$620,600,000 of public housing development funds. The rescissions amount will be taken from FY 1995 funds, carryover funds, and recaptures.

The Rescissions Act provides that:

[Of the total rescinded under this heading, [Annual Contributions for Assisted Housing,] \$700,600,000 shall be from amounts earmarked for development or acquisition costs of public housing (including \$80,000,000 of funds for public housing for Indian families), except that such rescission shall not apply to funds for priority replacement housing for units demolished or disposed of (including units to be disposed of pursuant to a homeownership program under section 5(h) or title III of the United States Housing Act of 1937, as amended (hereinafter referred to as "the Act")) from the existing public housing inventory, as determined by the Secretary, or to funds related to litigation settlements or court orders, and the Secretary shall not be required to make any remaining funds available pursuant to section 213(d)(1)(A) of the Housing and Community Development Act of 1974 and notwithstanding any other provision of law, the Secretary may recapture unobligated funds for development or acquisition costs of public housing (including public housing for Indians) irrespective of the length of time funds have been reserved or of any time extension previously granted by the Secretary. * * *

Under the June 16, 1995 NOFA (60 FR 31842), applications were limited to the following funding categories:

- (1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937;
- (2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the U.S. Housing Act of 1937;
- (3) Headquarters Reserve: Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) "Other" applications.

Under the Rescissions Act, funds for priority replacement housing (including unforeseen housing needs resulting from natural and other disasters) and funds related to litigation settlements or court orders are not rescinded.

Therefore, these are the only categories of Headquarters Reserve that can be funded. To the extent that HUD funds FY 1995 public housing development activities of this nature, however, the magnitude of the rescission dictates that HUD recapture unobligated prior year public housing funds (i.e., funds that have not been placed under an Annual Contributions Contract (ACC)), as described further below.

Because of the enactment of the Rescissions Act, HUD is now able to address only the first three categories of funding in the June 16, 1995 NOFA. To pay for the congressionally mandated FY 1995 funding actions under the first three NOFA categories, HUD will recapture prior year unobligated funds from funding awards not within congressionally protected categories.

The one-for-one replacement requirement of section 18 of the U.S. Housing Act of 1937 (the 1937 Act) was eliminated by the Rescissions Act for all public housing (but not Indian housing) demolition or disposition applications approved on or prior to September 30, 1995, including all previous section 18 approvals. Therefore, public housing (but not Indian housing) authorities are no longer required to provide replacement units for such demolition or disposition, nor is HUD obligated to make commitments to provide funding to meet that requirement. However, in keeping with the congressional directive that priority replacement housing funds are not rescinded, HUD intends to review FY 1995 replacement public housing applications and to consider funding those applications it views as best meeting the priorities stated in the NOFA.

Application Requirements

All provisions of the FY 1995 NOFA for public housing development, published on June 16, 1995, still apply except the references to category 4, "Other" applications. There will not be a "fair share" distribution of funds in FY 1995. HUD plans to destroy all category 4 "Other" applications submitted in response to the FY 1995 NOFA. Any public housing authorities (PHAs) interested in having their unfunded applications returned should contact the Office of Public Housing in the local HUD office.

The June 16, 1995 NOFA also provided that category 1 or 2

applications would not be funded unless the underlying demolition or disposition application was submitted by the time funding selections are made (60 FR 31845). The NOFA further provided that HUD may make a funding award if the underlying application had not yet been approved, if all aspects of the underlying application other than compliance with Section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, were approvable by August 1, 1995 (See 60 FR 31845, section III.C.1, column 1.)

The last two sentences of section III.C.1. of the June 16, 1995 NOFA no longer apply and are replaced by the following three sentences:

For those housing authorities that intend to submit an application for replacement housing under this NOFA, the underlying demolition or disposition application must be submitted by September 15, 1995, and must additionally be approvable by that date. The Department may make a funding award if the underlying application has not yet been approved, if all aspects of the underlying application other than compliance with section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, are approvable by that date. The Department reserves the right to extend to an individual housing authority that submits a demolition or disposition application by the extended deadline the ability to augment its application submission for items that the HUD staff finds are not complete after an initial review for approvability and that can be completed within the time specified by HUD.

II. Traditional Indian Housing Development Program

On January 20, 1995 (60 FR 4330), HUD published the NOFA for the Traditional Indian Housing Development Program for Fiscal Year 1995. The NOFA announced that up to \$282,000,000 was available for new Indian Housing units. Of that amount, \$20,000,000 was retained until July 1, 1995 for replacement of approved demolition/disposition units. The NOFA also included a table reflecting the percentage of total funds being made available to each of the Field Offices of Native American Programs (FONAPs) (60 FR 4331).

HUD has completed its funding decisions under this NOFA. With the exception of \$1,819,131, all funds have been reserved under grants to Indian Housing Authorities.

As referenced under the Public Housing Development section of this notice, Congress rescinded \$80,000,000 of funds for public housing for Indian families, which reduces the maximum authorized budget authority for FY 1995 to \$202,000,000. Since HUD completed funding decisions prior to the

enactment of the Rescissions Act, HUD must reduce awards made to Indian housing authorities by \$78,180,869 (the amount of the rescission less unreserved funds).

HUD intends, as practical, to assign an amount to be rescinded to each FONAP based upon the original assignment of Indian Housing Development funds. Each FONAP, in consultation with representatives of client groups, will identify sources of unobligated funds equal to that FONAP's share of the rescission. If an individual FONAP has insufficient unobligated funds, any remaining funds required to meet the rescission requirements will be prorated to each remaining FONAP.

III. Demolition or Disposition of Public Housing

On January 18, 1995, HUD published in the **Federal Register** (60 FR 3706) a final rule for demolition or disposition of public housing projects. The final rule implemented section 121 of the Housing and Community Development Act of 1987, which amended section 18 of the 1937 Act, governing approvals of demolition and disposition of public and Indian housing. Section 121 provided that developments or portions of developments may not be demolished or disposed of unless the housing agency (HA) has developed a plan for the provision of a replacement unit for each unit involved. The Rescissions Act eliminates the requirement for one-for-one replacement of dwelling units in the case of any application for demolition or disposition of public housing (but not Indian housing) approved on or before September 30, 1995.

In accordance with section 1002 of the Rescissions Act, HAs that have applications for demolition, disposition, or conversion to homeownership of public housing dwelling units approved *on or before September 30, 1995*, including all previous approvals, are no longer required to provide one-for-one housing replacement, and HUD is not obligated to commit the funds necessary to carry out the replacement housing plan. The Rescissions Act provides that no application for replacement housing submitted by a public housing agency to implement a final order of a court issued, or a settlement approved by a court, before enactment of the Rescissions Act, shall be affected.

Review of Pending and New Demolition/Disposition Applications

HUD's review of all pending applications (those currently in Processing Centers or in Headquarters) and all new applications approved on or before September 30, 1995, will require

compliance with all provisions of 24 CFR part 970, except that HUD will not require compliance with 24 CFR 970.11, Replacement Housing Plans. HAs submitting new demolition or disposition applications should be aware that if their applications are approved on or before September 30, 1995, replacement housing is not required.

However, as directed by Congress and stated in the public housing development section of this notice (section I, above), HUD will review and consider for funding FY 1995 applications for use of public housing development funds as priority replacement housing. As HUD will describe in another notice to be published soon in the **Federal Register**, certain Section 8 funds will also be made available for replacement of public housing units that are to be demolished or disposed of.

HAs with pending applications for demolition or disposition are encouraged to inform the residents, the related resident organizations, and the units of local government that approved the replacement housing plans of the changes brought about by the Rescissions Act.

Approved Demolition/Disposition Applications With Reserved Funding

For those HAs whose demolition or disposition applications were previously approved by HUD on or before September 30, 1995, for which there are public housing development funds or Section 8 15-year or 5-year certificates reserved (i.e., the replacement housing plan is either fully or partially funded), the HA must use the funds that have been reserved, and are not recaptured, in accordance with all applicable requirements, even though the replacement housing requirement is no longer applicable.

Other Provisions

Other provisions of the Rescissions Act may be addressed in future **Federal Register** notices.

IV. Public and Indian Housing Modernization

The Rescissions Act rescinds \$815 million previously appropriated for FY 1995 modernization under Section 14 of the 1937 Act. The \$815 million rescission will be achieved by the following:

Eliminating Choice in Management set-aside	\$100,000,000
Reducing Lead-Based Paint Risk Assessment set-aside	4,203,655

Reducing Reserve for Emergencies and Natural Disasters	40,000,000
Reducing Comprehensive Improvement Assistance Program (CIAP) funds	70,398,701
Reducing Comprehensive Grant Program (CGP) funds	600,397,644
Total	815,000,000

Set-asides for Section 6(j) technical assistance to HAs, the Tenant Opportunity Program, inspection and technical assistance, and lead-based paint indemnification will not be affected by the rescission.

Expanded Use of Modernization

The Rescissions Act amends section 14 of the 1937 Act by adding a new subsection (q) that expands the eligible activities that may be funded with modernization assistance (CGP or CIAP). An HA may use modernization assistance for any eligible activity related to public and Indian housing that is currently authorized by the 1937 Act or applicable appropriations Acts for an HA. For example, new eligible items include:

- Development of additional units or replacement housing;
- Modernization activities related to the public or Indian housing portion of housing developments held in partnership, or cooperation with nonpublic housing entities (this would include development of replacement housing and receipt of operating subsidy); and
- Other activities related to public and Indian housing, including activities eligible under the Urban Revitalization Demonstration (Hope VI).

However, the Rescissions Act does not authorize use of modernization assistance for public and Indian housing operating assistance.

If the HA wishes to undertake any of these previously ineligible activities, the HA shall revise its Physical Needs Assessment or Management Needs

Assessment, as well as the Annual Statement or Five-Year Action Plan, and shall conduct another public hearing and obtain another Local Government Statement. If the revised Annual Statement includes any of these previously ineligible activities, the HA is required to submit another Board Resolution, approving the revised Annual Statement.

The Rescissions Act also states that modernization funds must be used principally for physical improvements or replacement housing and for associated management improvements, except as otherwise approved by the Secretary.

Comprehensive Grant Program (CGP)

The effect of the Rescissions Act is to reduce by 19 percent the amount of CGP funds available in FY 1995, from \$3,153,244,533 to \$2,552,846,889. The Rescissions Act directs HUD "to take actions necessary to assure that such rescission is distributed among public housing authorities, as if such rescission occurred prior to the commencement of the fiscal year." To comply with the Rescissions Act and to ensure that each CGP agency receives its proportionate reduction, HUD has rerun the CGP formula using the revised appropriation. HUD sent each CGP agency a letter on August 9, 1995, informing it of the revised formula amount and operating procedures to implement the rescission.

Comprehensive Improvement Assistance Program (CIAP)

On March 17, 1995 (60 FR 14538), HUD published a NOFA announcing the availability of \$369,715,143 for the Comprehensive Improvement Assistance Program. The effect of the Rescissions Act is to reduce by 19 percent the amount of CIAP funds available in FY 1995, down to \$299,316,442. The fund assignment to each HUD Field Office will be reduced accordingly. Since FY 1995 CIAP funding decisions were not final at the

time the Rescissions Act was signed, no adjustments to FY 1995 CIAP grants are necessary. FY 1995 CIAP emergency applications that are already approved are not affected by the rescission.

V. Public and Indian Housing Family Investment Centers

HUD published a NOFA for up to \$60,000,000 for Public and Indian Housing Family Investment Centers (FICs) on February 15, 1995 (60 FR 8900). HUD also published NOFAs for the following set-asides from FIC funds: \$3,500,000 for the Family Investment Centers After-School Program, March 14, 1995 (60 FR 13850); \$10,000,000 for a Youth Development Initiative, May 30, 1995 (60 FR 28304); and \$1,000,000 for the HOPE in Youth Pilot Demonstration, July 20, 1995 (60 FR 37552).

The Rescissions Act provides that \$66,000,000 shall be rescinded from amounts earmarked for family investment centers. However, \$5,209,500 has already been awarded and placed under contract either to correct errors in HUD's processing of the FY 1994 family investment center competition or as part of an after school demonstration program. HUD concluded upon review that two applicants were not funded during the FY 1994 family investment center competition due to an error. HUD funded these two applicants for a total of \$1,709,500. In addition HUD funded four grantees for a total of \$3,500,000 as part of an after school demonstration program. These funds cannot be recaptured because they are under contract.

HID will not award additional grants in FY 1995 under the Family Investment Centers program.

Dated: August 30, 1995.

Michael B. Janis,
General Deputy Assistant Secretary for Public and Indian Housing.

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