

(6) *Failure to provide replacement housing in a timely fashion.* (i) A PHA will be subject to the actions described in paragraph (i)(7)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as provided in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations; and

(B) Make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i), HUD will require appropriate corrective action under these regulations; may recapture and reallocate the funds; or may take other appropriate action.

(7) *Requirement to obligate and expend replacement housing factor funds within specified period.* (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the replacement housing factor within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, HUD shall reduce the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor.

(j) *Performance reward factor.* (1) PHAs that are designated high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive a performance bonus that is:

(i) 3% above their base formula amount in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned); and

(ii) 5% above their base formula amount in future years (for any year in

which the performance reward is earned).

(2) The performance bonus is subject only to the condition that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers.

(k) *Eligible expenses.* (1) Eligible expenses include the following:

(i) Development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(ii) Vacancy reduction;

(iii) Addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(iv) Planned code compliance;

(v) Management improvements;

(vi) Demolition and replacement;

(vii) Resident relocation;

(viii) Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(ix) Capital expenditures to improve the security and safety of residents; and

(x) Homeownership activities, including programs under section 32 of the 1937 Act (42 U.S.C. 1437z-4).

(2) Such assistance may involve the drawdown of funds on a schedule commensurate with construction draws for deposit into an interest earning escrow account to serve as collateral or credit enhancement for bonds issued by a public agency for the construction or rehabilitation of the development.

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§ 905.120 Penalties for slow obligation or expenditure of CFP assistance.

In addition to any other statutory, regulatory, or contractual sanctions available to HUD, the penalties for slow obligation or expenditure of CFP assistance will be applied as follows:

(a) *Obligation of amounts.* (1) Except as provided in paragraph (b) of this section, a PHA must obligate any assistance received under this part not later than 24 months after, as applicable:

(i) The date on which the funds become available to the PHA for obligation in the case of modernization; or

(ii) The date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Notwithstanding paragraph (a)(1) of this section, any funds appropriated to a PHA for Fiscal Year 1997 or prior fiscal years shall be fully obligated by the PHA not later than September 30, 1999.

(b) *Exceptions to obligation requirement—(1) Extension before expiration of obligation period.* A PHA may request and HUD may approve a longer time-frame or HUD may, by prior approval granted before the expiration of the time period in paragraph (a) of this section, extend the time period under paragraph (a) of this section for an additional period not to exceed 12 months, based on:

(i) The size of the PHA;

(ii) The complexity of the capital program of the PHA;

(iii) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(iv) Such other factors as HUD determines to be relevant.

(2) *Extension of obligation period.* HUD may extend the time period under paragraph (a) of this section for a PHA, for such period as HUD determines to be necessary, if HUD determines that the failure of the agency to obligate assistance in a timely manner is attributable to:

(i) Litigation;

(ii) Obtaining approvals of the federal government or a state or local government;

(iii) Complying with environmental assessment and abatement requirements;

(iv) Relocating residents;

(v) An event beyond the control of the PHA; or

(vi) Any other reason established by HUD by notice published in the FEDERAL REGISTER.

(3) *Disregard of minimal unobligated amounts.* HUD will disregard the requirements of paragraph (a) of this section with respect to any unobligated amounts made available to a PHA, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the PHA.

(c) *Effect of failure to comply—(1) Prohibition of new assistance.* A PHA will not be awarded CFP assistance for any month during any fiscal year in which the PHA has funds unobligated in violation of paragraph (a) or (b) of this section.

(2) *Withholding of assistance.* During any fiscal year described in paragraph (c)(1) of this section, HUD will withhold all assistance that would otherwise be provided to the PHA. If the PHA cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(3) *Redistribution.* The total amount of any funds not provided PHAs by operation of this section shall be allocated for PHAs determined to be high-performing under the Public Housing Assessment System (at 24 CFR part 902) (or the applicable performance evaluation program for public housing).

(d) *Expenditure of amounts—(1) In general.* A PHA must spend any assistance received under this part not later than four years (plus the period of any extension approved by HUD under paragraph (b) of this section) after the date on which funds become available to the PHA for obligation.

(2) *Enforcement.* HUD will enforce the requirement of paragraph (d)(1) of this section through default remedies up to and including withdrawal of the CFP funding.

(e) *Right of recapture.* Any obligation entered into by a PHA is subject to the HUD's right to recapture the obligated amounts for violation by the PHA of the requirements of this section.

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