

sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act.

(2) Each allocation area shall also be of sufficient size, in terms of population and housing need, that the amount of budget authority being allocated to the area will support at least one feasible program or project.

(3) In establishing allocation areas, counties and independent cities within MSAs should not be combined with counties that are not in MSAs.

(c) *Determining the amount of budget authority.* Where the field office establishes more than one allocation area, it shall determine the amount of budget authority to be allocated to each allocation area, based upon a housing needs percentage which represents the needs of that area relative to the field office jurisdiction. For each program, a composite housing needs percentage developed under § 791.402 for those counties and independent cities comprising the allocation area shall be aggregated into allocation area totals.

(d) *Planning for the allocation.* The field office should develop an allocation plan which reflects the amount of budget authority determined for each allocation area in paragraph (c). The plan should include a map or maps clearly showing the allocation areas within the field office jurisdiction. The relative share of budget authority by individual program type need not be the same for each allocation area, so long as the total amount of budget authority made available to the allocation area is not significantly reduced.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26640, May 14, 1999]

§ 791.405 Reallocations of budget authority.

(a) The field office shall make every reasonable effort to use the budget authority made available for each allocation area within such area. If the Program Office Director determines that not all of the budget authority allocated for a particular allocation area is likely to be used during the fiscal year, the remaining authority may be allocated to other allocation areas where it is likely to be used during that fiscal year.

(b) If the Assistant Secretary determines that not all of the budget authority allocated to a field office is likely to be used during the fiscal year, the remaining authority may be reallocated to another field office where it is likely to be used during that fiscal year.

(c) Any reallocations of budget authority among allocation areas or field offices shall be consistent with the assignment of budget authority for the specific program type and established set-asides.

(d) Notwithstanding the requirements of paragraphs (a) through (c) of this section, budget authority shall not be reallocated for use in another State unless the Program Office Director or the Assistant Secretary has determined that other allocation areas within the same State cannot use the available authority during the fiscal year.

§ 791.406 Competition.

(a) All budget authority allocated pursuant to § 791.403(b)(2) shall be reserved and obligated pursuant to a competition. Any such competition shall be conducted pursuant to specific criteria for the selection of recipients of assistance. These criteria shall be contained in a regulation promulgated after notice and public comment or, to the extent authorized by law, a notice published in the FEDERAL REGISTER.

(b) This section shall not apply to assistance referred to in §§ 791.403(b)(1) and 791.407.

§ 791.407 Headquarters Reserve.

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed an amount equal to five percent of the total amount of budget authority available for the fiscal year for programs under the United States Housing Act of 1937 listed in § 791.101(a), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

(1) Unforeseen housing needs resulting from natural and other disasters, including hurricanes, tornadoes, storms, high water, wind driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides,

mudslides, snowstorms, drought, fires, floods, or explosions, which in the determination of the Secretary cause damage of sufficient severity and magnitude to warrant Federal housing assistance;

(2) Housing needs resulting from emergencies, as certified by the Secretary, other than disasters described in paragraph (a)(1) of this section. Emergency housing needs that can be certified are only those that result from unpredictable and sudden circumstances causing housing deprivation (such as physical displacement, loss of Federal rental assistance, or substandard housing conditions) or causing an unforeseen and significant increase in low-income housing demand in a housing market (such as influx of refugees or plant closings);

(3) Housing needs resulting from the settlement of litigation; and

(4) Housing in support of desegregation efforts.

(b) Applications for funds retained under paragraph (a) of this section shall be made to the field office, which will make recommendations to Headquarters for approval or rejection of the application. Applications generally will be considered for funding on a first-come, first-served basis. Specific instructions governing access to the Headquarters Reserve shall be published by notice in the FEDERAL REGISTER, as necessary.

(c) Any amounts retained in any fiscal year under paragraph (a) of this section that are not reserved by the end of such fiscal year shall remain available for the following fiscal year in the program under § 791.101(a) from which the amount was retained. Such amounts shall be allocated pursuant to § 791.403(b)(2).

PART 792—PUBLIC HOUSING AGENCY SECTION 8 FRAUD RECOVERIES

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AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

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EDITORIAL NOTE: Nomenclature changes to part 792 appear at 64 FR 26640, May 14, 1999.

Subpart A—General Provisions

§ 792.101 Purpose.

The purpose of this part is to encourage public housing agencies (PHAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the Section 8 housing assistance payments programs.

[64 FR 26640, May 14, 1999]

§ 792.102 Applicability.

(a) This part applies to a PHA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the PHA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the PHA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of a PHA administrative grievance procedure pursuant to, or incorporating the requirements of, § 982.555 of this title. This part does not apply to cases of owner fraud in PHA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the PHA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a