**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Public and Indian Housing**

**24 CFR Parts 941, 950, 965, and 968**

**[Docket No. FR–3967–F–01]**

**RIN 2577–AB59**

# Streamlining the Comprehensive Improvement Assistance Program and Comprehensive Grant Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends 24 CFR parts 950 (formerly 905) and 968 to streamline, simplify and eliminate unnecessary requirements for the Department's two modernization programs used in the public housing and Indian housing programs. The Comprehensive Improvement Assistance Program (CIAP) is used by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) that own or operate fewer than 250 public housing units. The Comprehensive Grant Program (CGP) is used by PHAs and IHAs that own or operate 250 or more public housing units.

The rule also combines into provisions of a part dealing with general provisions applicable to PHA-owned projects (part 965) the nearly identical provisions concerning prevailing wage rates that have been found in the development and modernization parts for public housing (parts 941 and 968).

**EFFECTIVE DATE:** April 4, 1996.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

## I. Paperwork Burden

The information collection requirements contained in this rule remain essentially unchanged. They are merely moved to different section numbers as part of this consolidation effort. (See §§ 950.618, 950.622, 950.630, 950.632, 950.634, 950.636, 968.135, 968.145, 968.210, 968.215, 968.225, and 968.230, previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3520) under OMB control number 2577–0044 (CIAP). See also §§ 950.650, 950.656, 950.658, 968.310, 968.325, and 968.330, previously approved by OMB under control number 2577–0157 (CGP).)

## II. Background

Upon assuming the leadership of the Department of Housing and Urban Development (HUD) in 1993, Secretary Cisneros made the reinvention of HUD one of his first priorities. HUD's reinvention efforts took place in the context of a broader, government-wide reinvention process, the National Performance Review, under the leadership of Vice President Gore. At that time, HUD established five program goals to accomplish its mission that involved working for healthy growth in cities, providing adequate housing for all, and protection of society's most vulnerable people.

HUD determined that one of the first steps needed in its transformation from the old HUD to a new HUD was the consolidation and streamlining of funding programs. HUD recently submitted to Congress sweeping changes to transform public housing to a resident-based program.

Another aspect of the reinvention involves HUD's rules, which have been at the forefront of HUD's reinvention efforts since those efforts commenced in 1993. The foundation of HUD's regulatory process is Executive Order 12866 (Regulatory Planning and Review) issued by President Clinton on September 30, 1993. This order directs agencies to, among other things, explore regulatory alternatives and, if regulations are determined to be necessary, to select approaches that maximize benefits and involve enhanced public accessibility and participation in the rulemaking process.

HUD has done a comprehensive review of 24 CFR part 968, Public Housing Modernization. Part 968 contains 3 subparts, covering general requirements and separate requirements for the Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP). Based on its comprehensive review, HUD has determined that certain provisions from CIAP and CGP can be consolidated in the general provisions, subpart A. HUD also has determined that there are a number of revisions that should be made to simplify subpart B for CIAP and subpart C for CGP. Similar changes are also being made to 24 CFR part 950, subpart I, which covers the modernization program requirements for Indian Housing.

In addition to the simplifications mentioned above and described in more detail in Part III below, the Department is also responding in this rule to public comments received on the interim CIAP rule published March 15, 1993 (58 FR 13916). This rule also makes changes resulting from experience gained during the Federal Fiscal Years (FFYs) 1993, 1994, and 1995 funding competitions (see Part IV below).

[The reader should note that, hereafter, for ease of discussion, the preamble to this final rule uses the term ''housing authorities (HAs)'' to refer to both public housing agencies (PHAs) and Indian Housing Authorities (IHAs) and the term ''public housing'' to refer to both Public and Indian housing, unless otherwise stated. In addition, the term ''development'' is used to refer to ''low-income projects,'' as defined at section 3(b)(l) of the Act.]

## III. Reinvention Changes for CIAP and CGP

As a part of other pending rulemakings, various Federal requirements that are applicable to a number of the Department's programs, including modernization, are being moved to Department-wide common rules. One example of such provisions are those now contained in § 968.110, Other Federal requirements.

The current section covers civil rights compliance, minority and women's business enterprise opportunity, lead-based paint poisoning prevention, environmental clearance, flood insurance, and wage rates, as well as audits, uniform administrative requirements, and energy conservation. Most of the civil rights authorities, including references to minority and women's business enterprise opportunity, have been consolidated into the Department-wide rule (24 CFR part 5) listing provisions applicable to all of the Department's programs. That rulemaking revised § 968.110 to refer to the Department-wide rule, leaving a few additional authorities in § 968.110(a). Another pending rulemaking addresses

the applicability of lead-based paint poisoning prevention.

This rulemaking also revises § 968.110 as follows: § 968.110(i), Audits, is being moved to a new § 968.145, Fiscal closeout; § 968.110(j), Uniform administrative requirements, is being moved to a new § 968.135, Contracting requirements; § 968.110(l), Energy conservation, is being moved to a revised § 968.115, Modernization and energy conservation standards; and the cross-reference in paragraph (e)(3) for preemption of prevailing wage rates is changed to 24 CFR 965.101. (Section 965.101 is amended in this rulemaking to broaden the coverage of its preemption of prevailing wage rates to extend to development and modernization, as well as to operations.)

Existing § 968.120, dealing with preemption of State prevailing wage requirements, is being moved to and combined with § 965.101.

The Indian housing program is not affected by the consolidation of general provisions by the other pending rulemaking. Consequently, § 950.120 still contains comparable provisions.

## IV. Relation of Current Regulations Sections to Final Rule Sections

The following chart shows the locations of similar provisions:

| New section | Current sections |
|---|---|
| 950.604 | 950.601 |
| 950.606 | 950.667 |
| 950.608 | 950.615, 950.666 |
| 950.610 | 950.603 |
| 950.612 | [New provision] |
| 950.614 | 950.635 |
| 950.616 | 950.639 |
| 950.618 | 950.642 |
| 950.620 | 950.645 |
| 950.622 | 950.657 |
| 950.630 | 950.618 |
| 950.632 | 950.624 |
| 950.634 | 950.648 |
| 950.636 | 950.651 |
| 950.638 | [New provision] |
| 950.640 | 950.654, 950.675 |
| 950.650 | 950.669 |
| 950.652 | 950.672 |
| 950.654 | 950.675 |
| 950.656 | 950.678 |
| 950.658 | 950.684 |
| 950.660 | 950.687 |
| 968.104 | 968.312 |
| 968.112 | 968.210, 968.310 |
| 968.125 | 968.225 |
| 968.130 | 968.230 |
| 968.135 | 968.235 |
| 968.140 | 968.240 |
| 968.145 | 968.260 |
| 968.210 | 968.215 |
| 968.215 | 968.220 |
| 968.225 | 968.245 |
| 968.230 | 968.250 |
| 968.235 | [New provision] |
| 968.240 | 968.345 |
| 968.310 | 968.315 |
| 968.315 | 968.320 |
| 968.320 | 968.325 |
| 968.325 | 968.330 |
| 968.330 | 968.340 |
| 968.335 | 968.345 |

## V. Public Comments and Description of the Simplified CIAP

### *A. Public Comments*

The Department received public comments on the March 1993 interim rule from four HAs and two HA interest groups (National Association of Housing and Redevelopment Officials (NAHRO) and Public Housing Authorities Directors Association (PHADA)). The commenters agreed that HUD has made substantial progress in simplifying the CIAP, and pointed out additional areas for simplification or clarification.

*Relocation requirements.* The March 1993 interim rule revised parts 905 (now 950) and 968 by updating the displacement, relocation and acquisition requirements pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and by removing the relocation requirements from the ''Other program requirements'' sections and creating separate sections for the relocation requirements at new §§ 905.117 (now 950.117) and 968.108.

*Comment:* PHADA and two HAs recommended that HUD be required to respond to an HA's request for a determination of coverage under the relocation requirements (§§ 968.108(g)(3) and 950.117(g)(3)) within 30 calendar days or within a longer stated period or provide a rebuttal period or the HA's interpretation would be accepted as final.

*Response:* The Department agrees that dialogue between HUD and an HA is important and should start in the planning stage. Technical assistance on relocation matters is readily available from Community Planning and Development relocation staff in HUD Field Offices. HUD will make every effort to respond promptly to HA requests for assistance. However, HUD cannot restrict the time period for a response as suggested. HUD's relocation rules implementing statutory requirements guaranteeing benefits to eligible persons cannot be amended by this rulemaking. In fact, HUD relies on regulations issued by the Department of Transportation for government-wide requirements, at 49 CFR part 24 (see 24 CFR part 42). A delay in HUD's response does not relieve an HA of its responsibility to comply with the Uniform Relocation Act, where applicable.

*Definition of modernization capability. Comment:* PHADA commented that the determination of no modernization capability be afforded an appeal to the Regional Administrator, and that HUD be required to inform the HA as to why the determination was made and what facts the determination is based on. *Response:* With regard to the Public Housing Management Assessment Program (PHMAP), the PHA may appeal its score on the Modernization indicator to the Field Office; if that appeal is denied, the PHA may appeal to HUD Headquarters. The HUD reorganization eliminated the Regional Offices. With regard to the CIAP technical review factor of modernization capability, HUD will provide guidance in the revised CIAP Handbook on how Field Offices should score the technical review factors, including modernization capability, to ensure greater uniformity among Field Offices. In addition, HUD has made clarifying changes to the definitions of modernization capability at §§ 950.102 and 968.205 to ensure that no arbitrary exclusion of participation due to lack of modernization capability will occur.

*Management improvement costs. Comment:* PHADA agreed with HUD on allowing CIAP programs composed solely of management improvements. Two HAs questioned whether training related to management improvements is eligible. *Response:* Training costs related to carrying out CIAP-approved physical and management improvements are eligible. See §§ 950.608(g)(2)(ii) and 968.112(g)(2)(ii).

*Comment:* Two HAs also asked if office space and storage space are eligible costs. *Response:* Such costs are eligible. See §§ 950.608(c) and 968.112(c).

*Comment:* PHADA indicated that some Field Offices have traditionally frowned on management improvement requests. *Response:* This rule clarifies that eligible management improvements, either development specific or HA-wide, may be approved as single work items under Other Modernization. In addition, this rule specifically states that the establishment of a preventive maintenance system or improvement of an existing system is an eligible management improvement. See §§ 950.608(g)(2)(v) and 968.112(g)(2)(v).

*Reasonable cost and total development cost (TDC). Comment:* PHADA agreed with the definition of reasonable cost (hard costs not exceeding 90% of TDC) for most cases, but suggested exceptions for compliance with accessibility requirements and

remedying environmental problems, such as asbestos and lead-based paint. It was suggested that these types of situations are not taken into account by the cost indices upon which TDC is based and, therefore, should be excluded from the definition. In addition, many IHAs with large numbers of homeownership (Mutual Help) units are performing comprehensive-type, not piecemeal, modernization.

*Response:* The rule has been revised to use the previous definition of reasonable cost (90% of TDC) and to handle any special cases on a case-by-case basis. The Department had tried a method that allowed more flexibility, which we have now determined to be inappropriate.

In the August 30, 1995, final rule streamlining the CGP, the Department added a second method of determining cost reasonableness to provide HAs with greater flexibility in determining the cost of rehabilitation versus the cost of demolition and new development. HAs could choose one of two methods which were: (1) unfunded modernization hard costs do not exceed 90 percent of computed total development cost (TDC); or (2) individual work items are reasonable in accordance with National cost indices, adjusted by local conditions and the HA's own recent procurement experience. During the FY 1995 program year, it became evident that use of the second method was having unintended consequences by allowing some very high cost developments to be determined to have reasonable cost. This result is inappropriate in the current environment of limited funding. Since it is clear that resources for Public and Indian Housing will remain constrained, it is incumbent on both the Department and the HAs to assure maximum return for the dollars invested. It is not tolerable to allow large-scale Federal investments to be made in properties which will remain uneconomical or provide marginally suitable housing even after such investments are made.

Accordingly, the Department has eliminated the second method of determining cost reasonableness, but has provided that the 90 percent of TDC limit may be exceeded where justified, and applied this procedure to both CIAP and CGP. If the HA and the Field Office recommend funding for a development which exceeds 90 percent of TDC, the Field Office must submit written justification to Headquarters for final decision.

*Social services. Comment:* PHADA and three HAs suggested that eligible costs include the direct provision of social services, because it is essential to enhance the living conditions and self-sufficiency opportunities for residents of small HAs. It was suggested that HUD allow start-up costs and reasonable operating costs for three years conditioned on the HA being able to provide HUD up-front with a reasonable plan for continuing the program after the CIAP funds are expended. *Response:* Although the 1995 Rescissions Act expanded the eligible activities that may be funded under Section 14 of the Act with FFY 1995 and prior year modernization funds, to include the direct provision of social services, there is no permanent statutory authority for eligibility of such activities. Therefore, the rule excludes the direct provision of social services from future year funding unless otherwise provided by law. If a later appropriation act specifically permits eligibility for these services, that change will be handled by language in the Notices of Funding Availability for the affected years.

*Program benefit. Comment:* PHADA and four HAs questioned the program benefit rules at §§ 950.615(j)(3) and 968.210(j)(3) (now found in §§ 950.608(n)(3) and 968.112(n)(3)). *Response:* The rule provides that where the physical or management improvement will benefit programs other than Public or Indian housing, such as Section 8 or local revitalization, eligible costs are limited to the amount directly attributable to the Public or Indian Housing Program. CIAP assistance must be used for the purposes expressed in the statute and not for other programs or purposes. OMB Circular A–87 also requires this program benefit rule. There is no statutory authority to use CIAP funds to subsidize the Section 8 program as suggested.

*Ineligible costs. Comment:* PHADA and four HAs mentioned arguments HAs have had with Field Offices regarding ineligible costs. The rule at §§ 950.615(k) and 968.210(k) stated that an HA shall not make luxury improvements, or carry out any other ineligible activities, as specified by HUD. *Response:* HUD has consulted with HA industry groups on the eligibility and ineligibility of various work items. In January 1994, the Department revised its policy, under the Public Housing Development Program and the CGP, on work items previously considered amenities to provide HAs with maximum flexibility. The Department is now extending that revised policy to the CIAP to allow work items that are modest in design and cost, but still promote the blending in of Public and Indian housing with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. However, no additional operating subsidy will be provided. Accordingly, the CIAP provisions on ineligible costs at §§ 950.615(b) and 968.210(b) have been revised and moved to §§ 950.608(o) and 968.112(o) to incorporate this policy. The CGP provisions on ineligible costs at §§ 950.666(c) and 968.310(c) also have been revised and moved to §§ 950.608 and 968.112 to incorporate this policy, consolidating in one section for IHAs and another for PHAs the policy applicable to both the CIAP and CGP.

*Administrative and maintenance space guidelines. Comment:* PHADA and three HAs commented that HUD needs to reexamine the standards for allowable administrative and maintenance space. *Response:* HUD has consulted with HA industry groups on this issue during the CGP rulemaking. A survey by NAHRO concluded that the variation among HAs is so great in terms of the programs which they operate for the benefit of the Public or Indian Housing Program, it is impossible to establish standards for such space. The Department agrees that establishing space standards is very difficult and, accordingly, is eliminating the maximum space guidelines for management, maintenance and community space. Instead, Field Offices are given, at §§ 950.608(c) and 968.112(c), the authority to approve space in accordance with the general principles of program need and benefit, as well as sound business practices.

*Expedited NOFA publication. Comment:* PHADA and two HAs urged HUD to publish CIAP NOFAs within 60 days of passage of an Appropriations Act or 30 calendar days from the start of a FFY, whichever is later, assuming there are no major statutory changes adopted in the Appropriations Act. *Response:* Secretary Cisneros has made expedited publication of NOFAs a priority. However, the amount of funds available for the CIAP each year cannot be determined until the modernization formula is run. The formula determines the funding split between the CIAP and the CGP. Revisions to the CGP (e.g., earlier update of the Formula Characteristics Report for CGP agencies) have enabled the Department to run the modernization formula earlier in the FFY, which, in turn, has benefitted the CIAP. The Department will continue its efforts to make CIAP funds available as soon as possible in the FFY.

*Application process. Comment:* PHADA suggested that a general format

should be developed by HUD to assist small HAs gather the information being requested. *Response:* The CIAP Application form (HUD–52822) provides a format for HAs to record their physical and management improvement needs. The Department believes that any other format may be burdensome to small HAs. The Department is open to the development of guidance material which may be helpful to small HAs and welcomes specific suggestions.

*Replacement estimate for equipment, systems or structural elements. Comment:* PHADA and two HAs questioned why the CIAP Application required identification of a cost estimate for the equipment, systems or structural elements which would normally be replaced over the remaining period of the Annual Contributions Contract (ACC) or during the 30-year period beginning on the date of submission of the application. *Response:* This was a burdensome statutory requirement from which HUD sought legislative relief. A technical amendment to section 14(d)(2) of the Act, was signed into law on April 11, 1994 (Pub. L. 103–233, 108 Stat. 369). Accordingly, the Department has eliminated this requirement on Form HUD–52822, CIAP Application.

*Application requirements for management improvements. Comment:* PHADA requested simplification of the application requirements for management improvements. *Response:* It appeared to PHADA that the regulation at §§ 950.610(g)(2)(i) and 968.215(c)(2) required a general recital of the management and administrative capabilities of the HA. In order to clarify that such items were only examples of eligible management improvements, the items have been moved to the eligible costs section at §§ 950.608(g)(2)(i) and 968.112(g)(2)(i).

*Development deficiencies. Comment:* PHADA pointed out a possible problem with §§ 950.618(e)(1)(ii) and 968.215(e)(1)(ii). Each development for which work is proposed must be at least three years old from the end of the initial operating period (EIOP). Since warranties are generally one year and some builders may go bankrupt, PHADA asked for relief to be provided for the unusual circumstance in which early assistance from CIAP is required. Such relief would be simpler than having to come to the Assistant Secretary for Public and Indian Housing for a regulatory waiver. *Response:* In order to make the CIAP consistent with the CGP, the Department has changed the threshold for development eligibility from EIOP to Date of Full Availability (DOFA) and under ACC at §§ 968.210(e)(1) and 950.630(e)(1). However, the Department stresses that the first avenue of correction of a development deficiency is from the architect or contractor, as appropriate. Where there is no approved actual development cost certificate (ADCC), HUD will continue to look to development funds first to correct the development deficiency; if development funds are not available, the Field Office may approve use of CIAP funds for correction, without Headquarters approval. Once there is an approved ADCC, any subsequently identified development deficiency may be funded by CIAP funds.

*Eligibility review. Comment:* PHADA was concerned about a situation where an HA is improperly managed and may be found to be ineligible under the regulatory criteria even if a new executive director or key staff member has been employed and is sincerely trying to correct the HA's problems. PHADA thought this situation may require a waiver of the eligibility criteria at §§ 950.618(e) or 968.215(e). *Response:* HUD disagrees with that interpretation and refers the commenter to the revised definitions of modernization and management capability found in §§ 968.205 and 950.102. A Troubled PHA shall be considered for funding of non-emergency improvements where it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement (or equivalent) or has obtained alternative oversight of its management functions. The Field Office shall determine whether the HA has a reasonable prospect of acquiring management or modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance.

*Technical review factors. Comment:* PHADA and two HAs questioned if the technical review factors are relevant for CIAP, considering the size of the HAs participating in CIAP. Specifically, items 5, 6, and 7 which deal with resident involvement, initiatives, and employment are difficult for many small HAs. While PHADA was not opposed to these items in theory, it was concerned about their practicality. PHADA suggested reexamination of these technical review factors since small HAs find it is very difficult to get residents involved and the opportunities for resident employment with the HA are severely limited. NAHRO stated that the degree to which resident programs are operating is more often a function of fund availability and the type of unit, elderly or family. Also, in some small towns, the local elected leadership may be anti-public housing. Item 8 (local government support for proposed modernization) may prevent improvements needed by the residents. NAHRO urged that while vacancies are a problem which should be addressed whenever possible through CIAP, when assigning weights to this factor, the Department should utilize data from the Vacancy Reduction Program to ascertain the extent to which modernization needs are causing vacancies in this size category of HAs. NAHRO indicated that anecdotal evidence thus far indicates that the vacancies in this size group are often caused by market conditions or an insufficient number of applicants, not modernization need.

*Response:* Section 14(d) of the Act requires CIAP Applications to be developed in consultation with the appropriate local officials and with residents of the housing developments for which assistance is requested; therefore, the technical review factors must, at a minimum, reflect these requirements. The other factors are a matter of Secretarial discretion. The Department supports strong resident involvement in all aspects of the Public or Indian Housing Program. These technical review factors reflect HUD's goals for the CIAP. HUD realizes that resident involvement varies depending on the size and resources of the HA, and those distinctions are considered in scoring the technical review factors. It also should be noted that the technical review factor on extent of vacancies has been clarified to indicate that points will be given only if the vacancies are not due to insufficient demand.

*PHMAP and rating. Comment:* PHADA and one HA were concerned about reinventing CIAP and PHMAP. It was suggested that no PHA should be rated down in management capability unless there is a failing PHMAP score or some unusual change occurs at the PHA. Conversely, a low PHMAP score should be used to increase the chances of needed management improvements being funded. *Response:* If a PHA needs CIAP funds for a management improvement to address a low PHMAP score, it is not penalized. Again, refer to the revised definition of management capability in § 968.205.

*Application review. Comment:* PHADA suggested that an application should be rejected only on new grounds once. PHADA wanted to avoid possible endless resubmissions. *Response:* The Department notes that the completeness review is not complex and that operating experience has indicated that only a relatively small number of HAs are required to correct or resubmit

documents. HUD cannot overlook deficiencies in HA submissions. Although HUD will make every effort to provide technical assistance to HAs before the application deadline date, HAs have a responsibility to prepare applications which meet HUD requirements.

*Debriefing for unsuccessful applications. Comment:* PHADA and two HAs were concerned that too often an HA not receiving the CIAP assistance it requested is not adequately informed as to why it was not funded. PHADA requested that the regulation be modified to require a debriefing for HAs whose applications are not funded so they can improve their situation for the next funding round. *Response:* HUD already requires the Field Office to inform an HA in writing as to why its application was unsuccessful. This requirement has been included in the final rule at §§ 950.630(i) and (j) and 968.210(i) and (j).

*Residual receipts. Comment:* PHADA and NAHRO noted that an HA will not be selected for Joint Review if it has residual receipts to carry out the modernization activities for which it is applying. PHADA, NAHRO and one HA indicated that residual receipts should be used as long as a HA is allowed to retain 50 percent of the maximum allowable reserves or $50,000, whichever is higher. This way, a reasonable amount of reserves can be used and at the same time the HA is not placed in financial jeopardy. *Response:* The Department has eliminated the requirement for PHAs to remit residual receipts, effective for HAs with fiscal years beginning on or after January 1, 1995. This change will make the retention or return of residual receipts a moot issue since there will no longer be funds identified as residual receipts and no provision on residual receipts in the rule. Accordingly, the Department has eliminated the provision in § 968.210(i) regarding non-selection for Joint Review where the PHA has residual receipts.

*Contracting and budget revisions approvals. Comment:* PHADA, NAHRO and one HA disagreed with HUD's approval procedures for contracting and budget revisions. They suggested that these situations could be modified so that if HUD does not act on an HA's submission within 15 calendar days, it is automatically approved and the project can proceed. NAHRO requested that HUD clarify the processes to be used by Field Offices in establishing more frequent reporting or more stringent requirements related to thresholds or prior HUD approval. NAHRO urged that PHMAP should be used and cross referenced here. *Response:* Field Offices are required to establish thresholds as high as possible to give CIAP agencies flexibility while protecting HUD's interests in the contracting area. These thresholds are based on an HA's in-house technical capability and past performance. The revised CIAP Handbook will establish time frames for Field Office review and action on documents which must be submitted for prior HUD approval. The Department will continue to urge Field Offices to respond in a timely manner, including use of form letters, where appropriate, and to monitor Field Office performance in this area.

The Department has streamlined the requirements regarding budget revisions by requiring that a budget revision be submitted for prior HUD approval only where an HA plans to deviate from the competitively funded modernization program. Prior HUD approval is not required for revisions that are consistent with, and necessary to, completion of the original modernization program. The regulation also clarifies that modernization funds may not be used for developments that are not covered by the original CIAP application, even where there are leftover funds remaining after the originally approved modernization program has been completed. See §§ 968.225 and 950.634.

*Modernization coordinator or contract administrator. Comment:* PHADA seeks appeal rights whenever HUD requires an HA to hire a modernization coordinator or contract administrator in order to receive the CIAP grant. PHADA considers this to be justified in certain cases, but urges that the regulation specifically allow the HA to appeal this to the Regional Administrator and also be informed specifically why HUD feels this is necessary. PHADA suggest that if these modifications are not made, this provision could be abused by some due to petty personal differences. NAHRO suggested that the Department establish in PHMAP the requirements or conditions for HAs who have performed poorly in the past. Additionally, NAHRO suggested that if the Field Office requires a contract administrator, the HA must be notified at Joint Review. This practice would give the HA the opportunity to protest, or if there is agreement, the time to search for one who can take over immediately following the execution of the ACC.

*Response:* It has been the Department's experience that some smaller HAs do not have in-house capacity to administer the CIAP and require administrative and technical assistance to implement their approved programs. The Department must be assured that approved programs will be carried out in an economical and effective manner. During Joint Review, the Field Office will discuss with the HA the type and amount of administrative and technical assistance which it may need during implementation of its CIAP program. However, such needs may not be finalized until the scope of work and amount of funding are determined after Joint Review. The Field Office has the final determination on this matter.

*Force account. Comment:* PHADA and two HAs recommended that §§ 950.635(a) and 968.225(a) be changed to allow HAs to use force account labor to carry out modernization in all cases except where it is specifically forbidden. *Response:* To provide a reward for high-performing HAs and to achieve consistency with the CGP, the Department has eliminated prior HUD approval for use of force account labor by PHAs that are designated as both over-all high performers and mod-high performers under the PHMAP and by all IHAs. See §§ 950.612(a) and 968.120(a). PHAs that are not both over-all high performers and mod-high performers will continue to obtain prior HUD approval to use force account labor through their CIAP budgets or budget revision submissions. The Field Office will approve or disapprove such use as part of the budget/budget revision approval process.

*Modernization priorities. Comment:* Following the CGP model, PHADA urged HUD to respect an HA's priorities and only modify the priorities after the HA agrees to the modification. *Response:* The key difference between CIAP and CGP is that CIAP is a competitive, not a formula, program. Although HUD does not set priorities for HAs in either program, HUD must assess the relative extent and urgency of need among CIAP agencies in rating and ranking the CIAP Applications.

*Comparability with CGP. Comment:* NAHRO noted that the CIAP is now similar in many respects to the CGP. It encouraged HUD to strive for comparability between the two programs on the issue of technical review. *Response:* Except for statutory differences, the Department has made every attempt to make the CIAP comparable to the CGP.

*Formula approach. Comment:* PHADA and one HA requested HUD to examine whether the competitive CIAP process could be replaced by a CGP formula distribution. *Response:* As part of HUD's reinvention, the Department has proposed to the Congress the establishment of a Capital Fund in the first stage of transforming public and Indian housing. The Capital Fund

would replace both the existing CIAP and CGP programs and provide formula funding to all HAs, regardless of size. In FFY 1995, the 904 CGP agencies were eligible to receive 89 percent of the available funds and the 2,496 CIAP agencies were eligible to receive 11 percent of the available funds.

*Board Resolution. Comment:* NAHRO questioned the HUD requirement for the Board of Commissioners to certify that the budget, implementation schedule or other documents are accurate and complete. It was suggested that the Board should be able to delegate responsibility to the Executive Director to make certain certifications on behalf of the HA. Accountability could be achieved by the fact that the Executive Director is accountable to the Board. *Response:* HUD requires that, after an HA is selected for funding, the HA submit the Board Resolution Approving the CIAP Budget, Form HUD–52820, with the CIAP budget and other required documents. The Board resolution does not require certification as to the accuracy and completeness of the budget, including the implementation schedule, and other documents. The Board resolution does contain various certifications and agreements regarding HA compliance with HUD policies, procedures, requirements, regulations and Federal statutes. The Department is willing to accept the certification by the Executive Director, in lieu of the Board, in these matters, where the Executive Director has been delegated this authority by the Board and is permitted to do so under State law.

*B. Description of Simplified CIAP*

This final rule continues the simplification of the CIAP, as set forth in the interim rule, in the areas of HA application requirements, modernization types, application processing and implementation. The final rule provides increased efficiency, reduces unnecessary requirements, and provides new flexibility for both the participating HAs and HUD. The changes to CIAP are the same for both Public and Indian housing, with the exception of the Mutual Help Program. Many of these changes are the result of recent meaningful dialogue with small HAs and experience gained through administering CIAP.

*C. Simplification of Procedures for Obtaining Approval of a Modernization Program*

Previously, the process for receiving CIAP funds involved multiple steps. This final rule continues the approach set forth in the interim rule regarding the elimination, combination or simplification of many of those previous requirements.

HUD expects that after modernization funds for a particular Federal Fiscal Year become available, HUD would continue to publish in the Federal Register a NOFA and the time frame for submission for applications. HUD currently publishes an annual CIAP NOFA for this purpose and, in the last two years, the CIAP NOFA has been significantly improved to describe clearly submission requirements, available amounts, eligibility, technical review factors, application processing, Joint Review selections, and funding decisions. The improvements to the CIAP NOFA also are intended to promote fair competition in the program.

This final rule establishes the following steps for obtaining approval of a modernization program: (1) application submission by the HA; (2) completeness review by HUD; (3) eligibility review by HUD; (4) technical review, including rating and ranking, by HUD; and (5) Joint Review by HUD and the HA; (6) funding decisions by HUD; (7) budget submission by HA; and (8) ACC amendment. Based on actual operating experience in FFYs 1993, 1994, and 1995, processing time was significantly reduced.

The first step for obtaining a CIAP grant is the application submission by the HA. As previously noted, the requirement to provide a cost estimate for the replacement of equipment, systems or structural elements over a 30-year period is no longer mandated by the statute and has been eliminated.

An HA has the option of including only the specific developments for which it is requesting funding or of including all its developments in the CIAP Application. The consequences of not including all its developments in the CIAP Application are that HUD may not, as a result of Joint Review, consider funding of any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. The benefits derived from including all its developments are the ability to: (1) revise specific work items among developments at Joint Review; and (2) use leftover funds upon completion of the modernization for modernization needs at other developments covered by the application. An HA must evaluate and describe its modernization needs and the estimated costs for each development covered by the application.

HUD will ensure that documentation and other information regarding each application submitted pursuant to the CIAP NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulation at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to the CIAP NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR §§ 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

The second step for obtaining a CIAP grant is the completeness review by HUD. The final rule clarifies that if the CIAP Application (Form HUD–52822) or any other essential document, as specified in the NOFA, is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing. If there is a technical mistake, such as no signature on a submitted form, the HA will be given an opportunity to correct the deficiency. This is not additional time to substantially revise the application. Deficiencies that may be corrected at this time are inadvertently omitted documents, as specified in the NOFA, or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application. In addition, the final rule clarifies that if the HA does not correct the deficiency within the specified time period, the HA is ineligible for further processing.

The third step for obtaining a CIAP grant is the eligibility review by HUD. Based on operating experience in FFYs 1993, 1994, and 1995, the Department has made the following changes from the interim rule:

(1) Eliminated work item eligibility and need which may be difficult to determine before Joint Review;

(2) Changed the requirement that each development on which work is proposed be at least three years old from the End of Initial Operating Period (EIOP) to a requirement that each development must have reached the Date of Full Availability (DOFA) and be under ACC. Also, clarified the eligibility of a development/building/unit assisted with Major Reconstruction of Obsolete Projects (MROP) funding, under section

5(j)(2) of the Act (see Section F of this Preamble). These changes make development eligibility under the CIAP consistent with the CGP;

(3) Eliminated the restriction on processing where the HA has not submitted the fiscal audit to HUD within one year after the end of the audit period, or requested an extension for submission, in conformance with the Single Audit Act requirements. The Department has decided to use regular monitoring as a more effective method of obtaining audit compliance rather than eliminating the HA up-front from full funding consideration;

(4) Eliminated the restriction on processing where the HA owes funds to the Department as a result of excess development, modernization or operating funds previously provided and the HA has not repaid the funds, or has not entered into a repayment agreement, or is not meeting its obligations under a repayment agreement. The Department has decided to use regular monitoring as a more effective method of obtaining funds owed to the Department rather than eliminating the HA up-front from full funding consideration;

(5) Where the HA has not completed the structural changes identified by the Section 504 Needs Assessment, added the restriction on processing to Emergency Modernization or physical work needed to meet Section 504 requirements;

(6) Where the HA has not complied with the statutory requirement to complete Lead Based Paint (LBP) testing on all pre-1978 family units, added the restriction on processing to Emergency Modernization or work needed to complete LBP testing; and

(7) Where the HA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements, continued the restriction on processing to Emergency Modernization or work needed to remedy civil rights deficiencies.

The fourth step for obtaining a CIAP grant is technical review by HUD. The Department is retaining the provisions of the interim rule regarding technical processing, categorizing the eligible HAs and their developments into two processing groups (Group 1 for Emergency Modernization and Group 2 for Other Modernization), and rating and ranking of applications in Group 2. Preference is given to all HA applications in Group 1 since such applications involve emergencies which are an immediate threat to resident health or safety. Accordingly, such applications are not rated and ranked during technical processing and are automatically selected for Joint Review.

The Field Office rates the Group 2 HAs/developments against the technical review factors to determine relative ranking. In accordance with section 14(h) of the Act, the Department will continue the preference given to HAs which request assistance for developments having conditions which threaten the health or safety of the residents or having a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities. This preference is reflected in the technical review factors and their maximum point scores.

The final rule recognizes the change in the Department's field structure by eliminating reference to the Regional Office. Since each Field Office receives its own allocation of CIAP funds, the Field Office will proceed to Joint Review selection after rating and ranking. The Field Office will identify for selection the highest ranking HA applications in Group 2 in descending order, and other Group 2 HAs with lower ranking applications but with high priority needs which most reasonably approximate the amount of modernization which can be funded by the Field Office. High priority needs are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. Again, all Group 1 applications will be automatically selected for Joint Review.

The fifth step for obtaining a CIAP grant is Joint Review. The purpose of Joint Review is for the Field Office to discuss with an HA the proposed modernization program, as set forth in the application, and determine the size of the grant, if any, to be awarded. The Field Office will notify those HAs whose applications have been selected for further processing as to whether the Joint Review will be conducted on-site or off-site (*e.g.*, by telephone or in-office meeting). If conducted on-site, the Joint Review may include an inspection of the proposed physical work. An HA will prepare for Joint Review by preparing a draft CIAP budget and reviewing the other items to be covered during Joint Review, as prescribed by HUD. The Field Office will review long-term viability and reasonable cost determinations during Joint Review.

HAs not selected for Joint Review will be notified by letter stating the reasons, such as the low priority of its physical improvement needs relative to available funding. If, prior to scheduling the Joint Reviews, there is determined to be a duplication of funding, the HA will not be selected for Joint Review. Where a duplication of funding is determined during Joint Review, the HA will not be selected for funding.

The sixth and seventh steps for obtaining a CIAP grant are funding decisions by HUD and budget submission by the HA. Upon completion of Joint Review, the Field Office will adjust the HAs/developments and work items to be funded and the amounts to be awarded, including processing groups, as necessary, based on information obtained at Joint Review, the results of FHEO review, and completion of the environmental reviews. After Congressional notification, the Field Office will announce the HAs selected for CIAP grants, subject to their submission of an approvable CIAP budget and other required documents. The Field Office will request the funded HA to submit a CIAP budget, which includes an implementation schedule, a resolution by the HA Board of Commissioners containing certifications required by HUD, and any other required documents. The Field Office will select all bona fide emergencies in Group 1 for funding before funding Group 2 applications. HAs not selected for funding will be notified in writing of the reason for non-selection.

After Field Office approval of the CIAP budget, the eighth step for obtaining a CIAP grant is that the Field Office and the HA enter into an ACC Amendment in order for the HA to obtain modernization funds. The ACC Amendment will require low-income use of the housing for not less than 20 years from the date of the ACC Amendment (subject to sale of homeownership units in accordance with the terms of the ACC). It should be noted that HUD has the authority to condition the ACC Amendment (*e.g.*, to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

The final rule continues the streamlined ACC Amendment process by allowing Field Office program staff to complete and forward the ACC Amendment to the HA with the budget approval letter, and by allowing the HA Executive Director, where authorized by the Board and permitted by State law, to sign and return the ACC Amendment to the Field Office for execution. This is identical to the ACC Amendment process in the CGP. Excluding Mutual Help developments, an HA also will, where necessary, execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout

the 20-year period during which the HA is obligated to operate the developments receiving modernization funds in accordance with the ACC, the Act, and HUD regulations and requirements.

*D. Other Simplifications and Revisions to CIAP*

When the revised CGP final rule was published on August 30, 1994, at 59 FR 44810, the Department eliminated the requirement that the cost of non-emergency health and safety work items increase the purchase price and amortization period for Turnkey III or Mutual Help homebuyer families. This requirement already was eliminated for the CGP and CIAP at §§ 950.602 and 968.102.

CIAP agencies shall administer previously approved CIAP grants under this final rule. It would be problematic for both HUD and CIAP agencies to administer CIAP programs in progress under differing requirements. HUD will continue to allow revisions to previously approved CIAP budgets, where appropriate.

*E. Major Reconstruction of Obsolete Projects (MROP)*

Section 111(b) of the Housing and Community Development Act of 1992 amended section 14(c) of the Act and provided that a building which is assisted with MROP funding (under section 5(j)(2) of the Act) is not eligible for CIAP funding. This statutory provision was implemented in the interim rule at § 968.101(b)(5). To provide further clarification, § 968.101(b)(5) is revised in the final rule to clarify that a development/building/unit is eligible for CIAP funding where it was funded under MROP after FFY 1988 and has reached DOFA or where it was funded under MROP during FFYs 1986–1988 and all MROP funds have been expended.

*F. Long-Term Viability*

The final rule clarifies at §§ 905.608(b) and 968.112(b) that HAs may expend funds on a non-viable development for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

*G. Previous Participation*

On June 20, 1994, the Department published at 59 FR 31521, an interim rule, which eliminated the requirement for HAs to submit Form HUD–2530, Previous Participation Certificate, on modernization contracts. Accordingly, §§ 950.642(d)(3) and 968.235(d)(3), requiring previous participation clearance, have been eliminated and §§ 950.642(g) (now 950.618) and 968.235 (now 968.135) have been modified to delete reference to previous participation.

*H. Time Extensions*

The Department has added new §§ 950.638 and 968.235 to specify requirements regarding time extensions to the obligation or expenditure deadline date approved by HUD in the original implementation schedule. HUD approves implementation schedules as part of the budget approval process (refer to Part III of the CIAP budget). The Department is allowing CIAP agencies to execute (as CGP agencies now are authorized to do), without prior HUD approval, time extensions commensurate with the delay no later than 30 calendar days after the obligation or expenditure deadline date where the HA is able to certify that the delay is due to reasons outside of the HA's control, such as the need to use leftover funds from a completed modernization program for additional work, unforeseen delays in contracting or contract administration, litigation, and HUD or other institutional delay. Where the delay is not due to reasons outside of the HA's control, the HA must request HUD approval of a time extension no later than 30 calendar days after the obligation or expenditure deadline date to avoid recapture of funds.

*I. Threshold for Performance and Payment Bond for CGP Agencies*

The Department's procurement regulations, as set forth in 24 CFR 85.36(h), require that HA contractors furnish a bid guarantee and a performance bond and payment bond for each construction or equipment contract over $100,000. For the CIAP and the CGP, the Department had reduced that threshold from $100,000 to $25,000 in order to protect the Federal interest. The Department has reconsidered this matter and has raised the threshold from $25,000 to $100,000 for both CIAP and CGP agencies at §§ 950.618(b) and 968.135(b). The Department inadvertently omitted the requirement of the bid guarantee when it reduced the threshold for the performance and payment bonds and has included it with this rule. In addition, the Department is continuing its policy of allowing for both CGP and CIAP agencies two other alternative methods of assurance to performance and payment bonds, which are a twenty percent cash escrow or a twenty-five percent letter of credit.

VI. Findings and Certifications

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10272, 451 Seventh Street, SW., Washington, DC 20410.

*Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the rule does not have substantial, direct effects on HAs. The revised modernization program is consistent with federalism principles since it reduces unnecessary burdens on HAs. While the program is revised, the primary change is only in the way that HUD processes and reviews HA modernization activities, and not the modernization activities themselves. This rule will not diminish the importance of State and local governments with respect to the Federal Government. As a result, the rule is not subject to review under the order.

*Impact on the Family*

This rule has been developed in accordance with Executive Order 12606, *the Family*. The General Counsel, as the Designated Official under the Executive Order, has determined that this rule does not have the potential for significant impact on family formation, maintenance, or general well-being, since its effect is limited to revising program procedures for HAs applying for discretionary grants. Families are not affected since HAs will continue to carry out modernization activities at public housing developments.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule codifies revisions to the existing CIAP under which HAs receive modernization assistance from HUD on a competitive basis. HUD does not anticipate a significant economic impact on small entities since HAs will continue to carry out their modernization activities by entering

into contracts for the work as they now do.

Catalog of Domestic Assistance

The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

*24 CFR Part 941*

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

*24 CFR Part 950*

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 965*

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

*24 CFR Part 968*

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

For the reasons set forth in the preamble, parts 941, 950, 965, and 968 of title 24 of the Code of Federal Regulations are amended as follows:

## PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

2. In § 941.208, paragraph (c) is revised to read as follows:

### § 941.208 Other Federal requirements.

* * * * *

(c) *Prevailing wage rates.* See part 965 of this chapter for applicable requirements on this subject.

* * * * *

3. In § 941.503, paragraph (d) is revised to read as follows:

### § 941.503 Construction requirements.

* * * * *

(d) *Prevailing wage rates.* See § 965.101 of this chapter.

## PART 950—INDIAN HOUSING PROGRAMS

4. The authority citation for 24 CFR part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee, and 3535(d).

5–6. Section 950.102 is amended by adding a definition of ''*other modernization (modernization other than emergency)*'' in alphabetical order, and by revising the definitions of ''*emergency modernization*'', ''*modernization capability*'', and ''*modernization project*'', to read as follows:

### § 950.102 Definitions.

* * * * *

*Emergency modernization (CIAP).* A type of modernization program for a development that is limited to physical work items of an emergency nature, that pose an immediate threat to the health or safety of residents or is related to fire safety, *and* that must be corrected within one year of CIAP funding approval.

* * * * *

*Modernization capability.* An IHA has modernization capability if it is:

(1) Not designated as high risk under § 950.135; or

(2) Designated as high risk, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. An IHA that has been classified high risk with regard to modernization is eligible for emergency modernization only, unless it is making reasonable progress toward meeting the performance targets established in its management improvement plan under § 950.135(f)(2) or has obtained alternative oversight of its modernization functions. Where an IHA does not have a funded modernization program in progress, the Area ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

* * * * *

*Modernization project.* The improvement of one or more existing Indian housing developments under an unique number designated for that modernization program (CIAP). For each modernization project, HUD and the IHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

* * * * *

*Other Modernization (modernization other than emergency).* A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or IHA-wide management work items (including planning costs), and/or LBP testing, professional risk assessments, interim containment, and abatement.

* * * * *

7. Subpart I of Part 950, is revised to read as follows:

### Subpart I—Modernization Program

General Provisions

Sec.

950.600 Purpose and applicability.
950.602 Special requirements for Turnkey III and Mutual Help developments.
950.604 Allocation of funds under section 14.
950.606 Reserve for emergencies and disasters.
950.608 Eligible costs.
950.610 Modernization and energy conservation standards.
950.612 Force account.
950.614 Initiation of modernization activities.
950.616 Fund requisition.
950.618 Contracting requirements.
950.620 On-site inspections.
950.622 Fiscal closeout.

Comprehensive Improvement Assistance Program (For IHAs That Own or Operate Fewer Than 250 Indian Housing Units)

950.630 Procedures for obtaining approval of a modernization program.
950.632 Resident and homebuyer participation.
950.634 Budget revisions.
950.636 Progress reports.
950.638 Time extensions.
950.640 HUD review of IHA performance.

Comprehensive Grant Program (For IHAs That Own or Operate 250 or More Indian Housing Units)

950.650 Determination of formula amount.
950.652 Comprehensive plan (including Five-Year Action Plan).
950.654 HUD review and approval of comprehensive plan (including Five-Year Action Plan).
950.656 Annual submission of activities and expenditures.
950.658 IHA Performance and Evaluation Report.
950.660 HUD review of IHA performance.

## Subpart I—Modernization Program

General Provisions

### § 950.600 Purpose and applicability.

(a) *Purpose*. The purpose of this subpart is to set forth the policies and procedures for the Modernization program, authorizing HUD to provide financial assistance to Indian Housing Authorities (IHAs).

(b) *Applicability*. (1) The sections under the undesignated heading ''General Provisions'' apply to all modernization under this subpart. The sections under the undesignated heading ''Comprehensive Improvement Assistance Program'' (CIAP) set forth the requirements and procedures for the CIAP for IHAs that own or operate fewer than 250 Indian housing units. An IHA that qualifies for participation in the Comprehensive Grant Program (CGP) is not eligible to participate in the CIAP. The sections under the undesignated heading ''Comprehensive Grant program (CGP)'' set forth the requirements and procedures for the CGP for IHAs that own or operate 250 or more Indian housing units. An IHA that has already qualified to participate in the CGP remains eligible to participate in the CGP so long as it owns or operates at least 200 units.

(2) This subpart applies to IHA-owned low-income Indian housing developments (including developments managed by a Resident Management Corporation pursuant to a contract with the IHA). This subpart also applies to the implementation of modernization programs which were approved before FFY 1996. Rental developments that are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act (42 U.S.C. 1437c, 1437s, 1437aaa), but that have not yet been sold by an IHA, continue to qualify for assistance under this subpart. This subpart does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(c) *Transition*. Any amount that HUD has obligated to an IHA shall be used for the purposes for which the funding was provided, or:

(1) For a CGP IHA, for purposes consistent with an approved annual statement or five-year action plan submitted by the IHA, as the IHA determines to be appropriate; or

(2) For a CIAP IHA, in accordance with a revised CIAP budget under § 950.634.

(d) *Other applicable requirements*. See subpart A of this part for applicable requirements, other than the Act, that apply to modernization under this subpart I.

(e) *Approved information collections*. The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577–0044: §§ 950.618, 950.622, 950.630, 950.632, 950.634, and 950.636. The following sections of this subpart have been similarly approved and assigned approval number 2577.0157: §§ 950.650, 950.656, and 950.658.

### § 950.602 Special requirements for Turnkey III and Mutual Help developments.

(a) *Modernization costs*. Modernization work on a Mutual Help or Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance*. (1) *Paid-off units*. A Mutual Help or Turnkey III unit that is paid off but has not been conveyed at the time work is included for it in the CIAP application or CGP Annual Statement is eligible for any physical improvements provided under § 950.608. However, in accordance with the provisions of § 950.440(e)(8), an IHA may perform nonemergency work on a paid-off Mutual Help unit only after all delinquencies are repaid.

(2) *Conveyed units*. Where modernization work has been approved prior to conveyance, the IHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. An IHA shall not use funds provided under this subpart for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other*. The homebuyer family shall be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for nonemergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements (e.g., accessibility for disabled persons, lead-based paint testing, interim containment, professional risk assessment, and abatement) and the correction of development deficiencies. Notwithstanding the above requirement, an IHA may, with prior HUD approval, complete nonemergency physical improvements on any homeownership unit if the IHA demonstrates that, due to economies of scale or geographic constraints, substantial cost savings may be realized by completing all necessary work in a development at one time.

### § 950.604 Allocation of funds under section 14.

(a) *General*. This section describes the process for allocating modernization funds to the aggregate of IHAs and PHAs participating in the CIAP (i.e., agencies that own or operate fewer than 250 units), and to individual IHAs and PHAs participating in the CGP (i.e., agencies that own or operate 250 or more units). The program requirements governing PHA participation in the CIAP and CGP are contained in 24 CFR part 968.

(b) *Set-aside for emergencies and disasters*. For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 968 of this title, an amount not to exceed $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs and PHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which an IHA may request such funds are set forth in § 950.606.

(c) *Set-aside for credits for mod troubled PHAs under 24 CFR part 968, subpart C*. (1) *General*. After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside no more than five percent of the remaining amount for the purpose of providing credits to PHAs under 24 CFR part 968, subpart C that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The purpose of this set-aside is to compensate such PHAs for amounts previously withheld by HUD because of their prior designation as a mod troubled agency.

(2) *Nonapplicability to IHAs*. Since the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed mod troubled for purposes of the CGP. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(a) of the Act, nor do they participate in the set-aside of credits established under paragraph (c)(1) of this section.

(d) *Formula allocation based on relative needs*. After determining the

amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which are designed to measure the relative backlog and accrual needs of IHAs and PHAs.

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount under paragraph (d) of this section based on the relative backlog needs of IHAs and PHAs, as follows:

(1) *Determination of backlog need.* (i) *Statistically reliable data.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or the aggregate of IHAs and PHAs with fewer than 250 units not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual IHAs and PHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(A) The most recently available data on the categories of backlog need under paragraph (e)(4) of this section;

(B) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(*1*) The average number of bedrooms in the units in a development (Weighted at 2858.7);

(*2*) The proportion of units in a development available for occupancy by very large families (Weighted at 7295.7);

(*3*) The extent to which units for families are in high-rise elevator developments (Weighted at 5555.8);

(*4*) The age of the developments, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the IHA provides HUD with the actual date of construction, in which case HUD will use the age of the development (or for scattered sites, the average age of all the buildings), subject to a 50 year cap. (Weighted at 206.5);

(*5*) In the case of a large agency, the number of units with 2 or more bedrooms (Weighted at .433);

(*6*) The cost of rehabilitating property in the area (Weighted at 27544.3);

(*7*) For family developments, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses (Weighted at 759.5); and

(C) An equation constant of 1412.9.

(2) *Calibration of backlog need for developments constructed prior to 1985.* The estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, shall be adjusted upward for developments constructed prior to 1985 by a constant ratio of 1.5 to more accurately reflect the costs of modernizing the categories of backlog need under paragraph (e)(4) of this section, for the Indian housing stock as of 1991.

(3) *Deduction for prior modernization.* HUD shall deduct from the estimated backlog need, as determined under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to an IHA or PHA for modernization, using one of the following methods:

(i) *Standard deduction for prior CIAP and MROP.* HUD shall deduct 60 percent of the CIAP funds made available on an IHA-wide or PHA-wide basis from FFY 1984 to 1991, and 40 percent of the funds made available on a development-specific basis for the Major Reconstruction of Obsolete Projects (MROP) (not to exceed the estimated formula need for the development), subject to a maximum 50 percent deduction of an IHA's or PHA's total need for backlog funding;

(ii) *Newly constructed units.* Units with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog; or

(iii) *Acquired developments.* Developments acquired by an IHA with major rehabilitation, with a DOFA date of October 1, 1991 or thereafter, will be considered to have a zero backlog.

(4) *Categories of backlog need.* The most recently available data to be used under either paragraphs (e)(1)(i) or (e)(1)(ii) of this section shall pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments;

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.610, and State, local and tribal codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a development, in accordance with HUD's modernization standards.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrual needs of IHAs and PHAs, determined as follows:

(1) *Statistically reliable data.* If HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual IHAs and PHAs with 250 or more units and for the aggregate of IHAs and PHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section; or

(2) *Statistically reliable data are unavailable.* If HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual IHAs and PHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of backlog need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following IHA or PHA, community, and development characteristics:

(A) The average number of bedrooms in the units in a development (Weighted at 100.1);

(B) The proportion of units in a development available for occupancy by very large families (Weighted at 356.7);

(C) The age of the developments (Weighted at 10.4);

(D) The extent to which the buildings in developments of an agency average fewer than 5 units (Weighted at 87.1.);

(E) The cost of rehabilitating property in the area (Weighted at 679.1);

(F) The total number of units of each IHA or PHA that owns or operates 250 or more units (Weighted at .0144); and

(iii) An equation constant of 602.1.

(3) *Categories of need.* The data to be provided under either paragraph (f)(1) or (f)(2) of this section shall pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in Indian housing developments; and

(ii) Items that shall be added to developments to meet HUD's modernization standards under § 950.610, and State, local, and tribal codes.

(g) *Allocation for CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs and PHAs with fewer than 250 units shall be allocated to IHAs in accordance with

the requirements under the undesignated heading of this subpart ''Comprehensive Improvement Assistance Program'' (CIAP) and to PHAs in accordance with the requirements of 24 CFR part 968, subpart B.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for IHAs with 250 or more units shall be allocated in accordance with the requirements under the undesignated heading of this subpart ''Comprehensive Grant Program,'' and for PHAs in accordance with the requirements of 24 CFR part 968, subpart C. An IHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation under this section in accordance with the requirements set forth in § 950.650. An IHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units, is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to an IHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this subpart, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of IHAs and PHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by an IHA or PHA, and the relative modernization needs of IHAs and PHAs, HUD shall count as one unit each existing rental, Mutual Help, and section 23 Bond-Financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III program. New development units that are added to an IHA's or PHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) *Demolition, disposition, and conversion of units.* (1) *General.* Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, HUD shall not adjust the amount the IHA or PHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the IHA or PHA over a 3-year period to reflect removal of the units from the ACC.

(2) *Determination of one percent cap.* In determining whether more than one percent of the units are affected on a cumulative basis, HUD will compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for the current year under formula funding, and shall base its calculations on the following:

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

(ii) Units that are lost as a result of demolition, disposition, or conversion shall not be offset against units subsequently added to an IHA's or PHA's inventory;

(iii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (j) of this section, but which later was converted into two units, shall be counted as two units under the ACC).

(3) *Phased-in reduction of units.* (i) *Reduction less than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the IHA or PHA will be funded as though no change had occurred.

(ii) *Reduction greater than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two-thirds of the difference between the initial year and the current year in the first year, plus one-third of the difference in the second year, and at the level of the current year in the third year.

(iii) *Exception.* A unit that is conveyed under the Mutual Help or Turnkey III programs will result in an automatic (rather than a phased-in) reduction in the unit count. Paid-off Mutual Help or Turnkey III units continue to be counted until they are conveyed.

(4) *Subsequent reductions in unit count.* (i) Once an IHA's or PHA's unit count has been fully reduced under paragraph (k)(3)(ii) of this section to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis.

(ii) A reduction in formula funding, based upon additional reductions to the number of an IHA's or PHA's units, will also be phased in over a 3-year period, as described in paragraph (k)(2) of this section.

**§ 950.606 Reserve for emergencies and disasters.**

(a) *Emergencies.* (1) *Eligibility for assistance.* An IHA (including an IHA that is determined to be high risk under § 950.135) may obtain funds at any time, for any eligible emergency work item as defined in § 950.102 (for IHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 950.102) (for IHAs participating in CIAP), from the reserve established under § 950.604(b). However, emergency reserve funds may not be provided to an IHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 950.604(e) and (f), other unobligated modernization funds, and its replacement reserves under § 950.608. An IHA is not required to have an approved Comprehensive Plan under § 950.652 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to an IHA participating in CIAP unless it does not have the necessary funds available from any other source, including unobligated CIAP, and no CIAP modernization funding is available from HUD for the remainder of the fiscal year.

(2) *Procedure.* To obtain emergency funds, an IHA shall submit a request, in a form to be prescribed by HUD, that demonstrates that without the requested funds from the set-aside under this section, the IHA does not have adequate funds available to correct the conditions that present an immediate threat to the health or safety of the residents. HUD will immediately process a request for such assistance, and if it determines that the IHA's request meets the requirements of paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* A CGP IHA that receives assistance for its emergency needs from the reserve under § 950.604(b) shall repay such assistance from its future allocations of assistance,

as available. For IHAs participating in the CGP, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 950.604(e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

(b) *Natural and other disasters.* (1) *Eligibility for assistance.* An IHA (including an IHA that has been determined by HUD not to be administratively capable under § 950.135) may request assistance at any time from the reserve under § 950.604(b) for the purpose of permitting the IHA to respond to a natural or other disaster. To qualify for assistance, the disaster shall pertain to an extraordinary event affecting only one or a few IHAs, such as an earthquake or hurricane. Any disaster declared by the President (or that HUD determines would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. An IHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent its needs are in excess of its insurance coverage. An IHA is not required to have an approved Comprehensive Plan under § 950.652 before it can request assistance from the reserve under § 950.604(b).

(2) *Procedure.* To obtain funding for natural or other disasters under § 950.604(b), an IHA shall submit a request, in a form prescribed by HUD, that demonstrates that it meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance, and if it determines that the request meets the requirements under paragraph (b)(1) of this section, it will approve the request, subject to the availability of funds in the reserve.

(3) *Repayment.* Funds provided to an IHA under paragraph (b)(1) of this section for natural and other disasters are not required to be repaid.

**§ 950.608 Eligible costs.**

(a) *General.* An IHA may use financial assistance received under this part for the following eligible costs:

(1) For a CGP IHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 950.656(e) and approved Five-Year Action Plan under § 950.652(e)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the IHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 950.652 and the Annual Submission under § 950.656, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP IHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability.* Except in the case of emergency work, an IHA shall only expend funds on a development for which the IHA has determined, and HUD agrees, that the completion of the improvements and replacements (for CGP IHAs, as identified in the comprehensive plan) will reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in § 950.102), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(c) *Physical improvements.* Eligible costs include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 950.610. These mandatory standards may be exceeded when the IHA (and HUD in the case of CIAP IHAs) determine that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Development specific work includes work items that are modest in design and cost, but still blend in with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. The Field Office has the authority to approve nondwelling space where such space is needed to administer, and is of direct benefit to, the Public and Indian Housing Program. If demolition or disposition is proposed, an IHA shall comply with subpart M of this part. Additional dwelling space may be added to existing units.

(d) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families *and* that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, management improvements are eligible costs.

(2) *Ineligible costs.* Routine maintenance or replacements, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* (i) Notwithstanding the requirements of paragraph (d)(1) of this section, an IHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family in order to return the unit to the inventory or make the unit suitable for homeownership purposes. An IHA that intends to use funds under this paragraph must identify in its CIAP Application or CGP Annual Submission the estimated number of units proposed for substantial rehabilitation and subsequent sale. In addition, an IHA must demonstrate that it has homebuyers who both are eligible for homeownership, in accordance with the requirements of this part, and have demonstrated their intent to be placed into each of the Turnkey III units proposed to be substantially rehabilitated.

(ii) Before an IHA may be approved for substantial rehabilitation of a unit under this paragraph (d), it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value of a unit caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or non-dwelling facilities, where the demolition is approved by HUD under subpart M of this part, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to non-dwelling use.

(f) *Replacement reserve costs (for CGP only).* (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the IHA in its needs assessments; or

(ii) A physical improvement requires more funds than the IHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the IHA may use under its 20% limit for management improvements (except as provided in paragraph (n)(2)(i) of this section), and the IHA needs to save a portion of its annual grant, in order to combine it with a portion of subsequent year(s) grants to fund the work item.

(2) The IHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate.

(3) Interest earned on funds in the replacement reserve will not be added to the IHA's income in the determination of an IHA's operating subsidy eligibility, but must be used for eligible modernization costs.

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, an IHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under § 950.606.

(5) An IHA is not required to use its replacement reserve for natural and other disasters.

(g) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or IHA-wide in nature are eligible costs where needed to upgrade the operation of the IHA's developments, sustain physical improvements at those developments or correct management deficiencies. An IHA's ongoing operating expenses are ineligible management improvement costs. For CIAP IHAs, management improvements may be funded as a single work item.

(2) *Eligible costs.* Eligible costs include:

(i) *General management improvement costs.* Eligible costs include general management improvement costs, such as: management, financial, and accounting control systems of the IHA; adequacy and qualifications of IHA personnel, including training; resident programs and services through the coordination of the provision of social services from tribal or local government or other public and private entities; resident and development security; resident selection and eviction; occupancy; rent collection; maintenance; and equal opportunity.

(ii) *Economic development costs.* Eligible costs include job training for residents and resident business development activities, for the purpose of carrying out activities related to the modernization-funded management and physical improvements. HUD encourages IHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out the modernization program under this part, and to contract with resident-owned businesses for modernization work.

(iii) *Resident management costs.* Eligible costs include technical assistance to a resident council or resident management corporation (RMC), as defined in § 950.962, in order to: determine the feasibility of resident management to carry out management functions for a specific development or developments; train residents in skills directly related to the operations and management of the development(s) for potential employment by the RMC; train RMC board members in community organization, board development, and leadership; and assist in the formation of an RMC.

(iv) *Resident homeownership costs.* Eligible costs are limited to the study of the feasibility of converting rental to homeownership units and the preparation of an application for conversion to homeownership or sale of units.

(v) *Preventive maintenance system.* Eligible costs include the establishment of a preventive maintenance system or improvement of an existing system. A preventive maintenance system must provide for regular inspections of building structures, systems and units and determine the applicability of work eligible for operating funds (routine maintenance) and work eligible for modernization funding (non-routine maintenance).

(h) *Drug elimination costs.* Eligible costs include drug elimination activities involving management or physical improvements, as specified by HUD.

(i) *LBP costs.* Eligible costs include professional risk assessments and interim containment of family developments/buildings constructed before 1980, testing and abatement of family developments/buildings constructed before 1978, and costs for insurance coverage for pollution hazards associated with the testing, abatement, clean-up and disposal of LBP on applicable surfaces of family developments/buildings constructed before 1978.

(j) *Administrative costs.* Administrative costs necessary for the planning, design, implementation and monitoring of the physical and management improvements are eligible costs and include the following:

(1) *Salaries.* The salaries of non-technical and technical IHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-modernization duties. An IHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (e.g., to the CIAP, CGP or operating budget);

(2) *Employee benefit contributions.* IHA contributions to employee benefit plans on behalf of non-technical and technical IHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP or CGP, as appropriate;

(3) *Preparation of CIAP or CGP required documents.*

(4) *Resident participation.* Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the CIAP application or the CGP Annual Submission and Comprehensive Plan and the implementation and monitoring of the approved modernization program; and

(5) *Other administrative costs,* such as telephone and facsimile, as specified by HUD.

(k) *Audit costs (for CGP only).* Eligible costs are limited to the portion of the audit costs that are attributable to the modernization program.

(l) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, LBP professional risk assessments and testing, and inspection of work in progress.

(m) *Relocation costs.* Eligible costs include relocation and other assistance for permanent and temporary relocation, as a direct result of rehabilitation, demolition or acquisition for a modernization-funded activity, where this assistance is required by 49 CFR part 24 or 24 CFR 950.117.

(n) *Cost limitations.* (1) *CIAP costs.* (i) *Management improvement costs.* Management improvement costs shall not exceed a percentage of the CIAP funds available to a Field Office in a particular FFY, as specified by HUD.

(ii) *Planning costs.* Planning costs are costs that are incurred before HUD approval of the CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of

solicitations, and LBP professional risk assessment and testing. Planning costs may be funded as a single work item. If an IHA incurs planning costs without prior HUD approval, an IHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed 5 percent of the CIAP funds available to a Field Office in a particular FFY.

(2) *CGP costs.* (i) *Management improvement costs.* Notwithstanding the full fungibility of work items, an IHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD.

(ii) *Administrative costs.* Notwithstanding the full fungibility of work items, an IHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by tribal or State law, unless specifically approved by HUD.

(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Indian housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the Indian housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

(1) Luxury improvements;

(2) Indirect administrative costs (overhead), as defined in OMB Circular A–87;

(3) Indian housing operating assistance;

(4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and

(5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

(1) New construction or acquisition of additional Indian housing units, including replacement units;

(2) Modernization activities related to the Indian housing portion of housing developments held in partnership, or cooperation with non-Indian housing entities; and

(3) Other activities related to Indian housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

**§ 950.610 Modernization and energy conservation standards.**

All improvements funded under this part shall:

(a) Meet the modernization standards as prescribed by HUD;

(b) Incorporate cost-effective energy conservation measures, identified in the IHA's most recently updated energy audit, conducted pursuant to part 950, subpart K;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in IHA-owned and IHA-operated public housing.

**§ 950.612 Force account.**

(a) An IHA may undertake the activities using force account or contract labor, including contracting with an RMC, without prior HUD approval.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the IHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the IHA and the RMC provide otherwise by contract.

**§ 950.614 Initiation of modernization activities.**

After HUD has approved the modernization program and entered into an ACC amendment with the IHA, an IHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the IHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

**§ 950.616 Fund requisitions.**

To draw down modernization funds against the approved CIAP budget or CGP Annual Statement, as appropriate, an IHA shall comply with requirements prescribed by HUD.

**§ 950.618 Contracting requirements.**

In addition to the requirements specified in 24 CFR parts 85 and subpart B of this part, the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) A 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), an IHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, an IHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with

the originally approved modernization program or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, an IHA shall make the award without HUD approval after the IHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with tribal, State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(2) For CGP only, an IHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, an IHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, an IHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, an IHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

**§ 950.620 On-site inspections.**

It is the responsibility of the IHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor, and with or without the services of an architect/engineer, to assure work quality and progress.

**§ 950.622 Fiscal closeout.**

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the IHA of all funds, or termination by HUD of the activities funded in a modernization program, an IHA shall submit the AMCC, in a form prescribed by HUD, to HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, an IHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, an IHA shall immediately take such corrective actions as HUD may direct.

Comprehensive Improvement Assistance Program (For IHAs that Own or Operate Fewer than 250 Indian Housing Units)

**§ 950.630 Procedures for obtaining approval of a modernization program.**

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the Federal Register a notice of funding availability (NOFA) and the time frame for submission of the CIAP application, and other pertinent information.

(b) *IHA consultation with tribal/local officials and residents/homebuyers.* An IHA shall develop the application in consultation with tribal and local officials and with residents and homebuyers, as set forth in § 950.632.

(c) *IHA application.* An IHA shall submit to HUD an application, in a form prescribed by HUD. Where an IHA has not included all its developments in the CIAP application, HUD may not consider funding any nonemergency work at excluded developments or subsequently approve use of leftover funds at excluded developments.

(d) *Completeness review.* To be eligible for processing, an application must be physically received by HUD by the time and date specified in the NOFA. Immediately after the application deadline, HUD shall perform a completeness review to determine whether the application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If the application form or any other essential document, as specified in the NOFA, is missing, the IHA's application will be considered substantially incomplete and, therefore, ineligible for further processing. HUD shall immediately notify the IHA in writing.

(2) If other required documents, as specified in the NOFA, are missing or there is a technical mistake, such as no signature on a submitted form, HUD shall immediately notify the IHA in writing to submit or correct the deficiency within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies that may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If an IHA fails to submit or correct the items within the required time period, the IHA's application will be ineligible for further processing. HUD shall immediately notify the IHA in writing after this occurs.

(4) An IHA may submit an application for Emergency Modernization whenever needed.

(e) *Eligibility review.* (1) *Eligibility for processing.* To be eligible for processing each eligible development for which work is proposed must have reached the Date of Full Availability (DOFA) and be under ACC amendment at the time of CIAP application submission.

(2) *Eligibility for processing on reduced scope.* When the following conditions exist, an IHA will be reviewed on a reduced scope:

(i) *Section 504 compliance.* Where an IHA has not completed all required structural changes to meet the need for accessible units, as identified in the IHA's Section 504 needs assessment, the IHA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements.

(ii) *Lead-based paint (LBP) testing compliance.* Where an IHA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the IHA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) compliance.* Where an IHA has not complied with any applicable FHEO requirements set forth in § 950.115, as evidenced by an enforcement action, finding or determination, the IHA is eligible for processing only for Emergency Modernization or for work needed to remedy civil rights deficiencies—unless the IHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance. The enforcement actions, findings, or determinations that trigger limited eligibility are described in paragraphs (e)(2)(iii)(A) through (E) of this section:

(A) A pending proceeding against the IHA based upon a charge of

discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the IHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of IHA noncompliance with civil rights statutes and executive orders under § 950.115, or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the IHA imposed by HUD under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities specified in § 950.115 in a civil action filed against the IHA by a private individual.

(f) *Technical processing.* After all CIAP applications are reviewed for eligibility, HUD shall categorize the eligible IHAs and their developments into two processing groups: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. IHA developments may be included in both groups and the same development may be in each group. However, an IHA is only required to submit one CIAP application. Group 1 developments are not subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Group 2 developments are subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Preference will be given to IHAs which request assistance for developments that either have conditions that threaten the health or safety of the residents or have a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities.

(g) *Rating on technical review factors.* After categorizing the eligible IHAs/developments into Group 1 and Group 2, HUD shall review and rate each Group 2 IHA on each of the following technical review factors:

(1) Extent and urgency of need, including need to comply with statutory, regulatory, or court-ordered deadlines;

(2) Extent of vacancies, where the vacancies are not due to insufficient demand;

(3) IHA's modernization capability;

(4) IHA's management capability;

(5) Degree of resident involvement in IHA operations;

(6) Degree of IHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Tribal/local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Ranking and selection for Joint Review.* After rating all Group 2 IHAs/developments, the Area ONAP shall then rank each Group 2 IHA based on its total score, list Group 2 IHAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest IHA ranking applications in Group 2 and other Group 2 IHAs with lower ranking applications, but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are nonemergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory, or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review.

(i) *Joint review.* The purpose of the Joint Review is for HUD to discuss with an IHA the proposed modernization program, as set forth in the CIAP application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded. HUD shall notify each IHA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). An IHA shall prepare for Joint Review by preparing a draft CIAP budget, and reviewing the other items to be covered during Joint Review, as prescribed by HUD. If conducted on-site, Joint Review may include an inspection of the proposed physical work. IHAs not selected for Joint Review will be advised in writing of the reasons for non-selection.

(j) *Funding decisions.* After all Joint Reviews are completed, HUD shall adjust the IHAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, environmental reviews, and FHEO review, and make the funding decisions. An IHA will not be selected for CIAP funding if there is a duplication of funding. HUD shall select all bona fide emergencies in Group 1 before funding Group 2 applications. After funding announcement, HUD shall request a funded IHA to submit a CIAP budget, including an implementation schedule, and any other required documents, including the ACC amendment. IHAs not selected for funding will be advised in writing of the reasons for non-selection.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the IHA shall enter into an ACC amendment in order for the IHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The IHA Executive Director, where authorized by the Board of Commissioners and permitted by tribal or State law, may sign the ACC amendment on behalf of the IHA. HUD has the authority to condition an ACC amendment (e.g., to require an IHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(l) *Declaration of trust.* As HUD may require, an IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

(Approved by the Office of Management and Budget under control number 2577–0044. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.)

**§ 950.632 Resident and homebuyer participation.**

An IHA shall establish a Partnership Process, as defined in § 950.102, to develop, implement, and monitor the CIAP. Before submission of the CIAP application, an IHA shall consult with the residents, the resident organization, or the resident management corporation (see subpart O of this part) (herein referred to as the resident) of the development(s) being proposed for modernization, regarding its intent to submit an application and to solicit resident comments. An IHA shall give residents a reasonable opportunity to present their views on the proposed modernization and alternatives to it and

shall give full and serious consideration to resident recommendations. An IHA shall respond in writing to the residents, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the IHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, an IHA shall inform the residents of the approved work items and its progress during implementation. Where HUD does not approve the modernization program, an IHA shall so inform the residents.

**§ 950.634 Budget revisions.**

(a) An IHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. An IHA shall submit a budget revision, in a form prescribed by HUD, if the IHA plans to deviate from the originally approved modernization program, as it was competitively funded, by deleting or substantially revising approved work items or adding new work items that are unrelated to the originally approved modernization program.

(b) In addition to the provisions of paragraph (a) of this section, an IHA shall comply with the following requirements:

(1) An IHA is not required to obtain prior HUD approval if, in order to complete the originally approved modernization program, the IHA needs to delete or revise approved work items or add new related work items consistent with the original modernization program. In such case, an IHA shall certify that the revisions are necessary to carry out the approved work and do not result in substantial changes to the competitively funded modernization program.

(2) An IHA shall not incur any modernization cost on behalf of any development that is not covered by the original CIAP application.

(3) Where there are funds leftover after completion of the originally approved modernization program, an IHA may, without prior HUD approval, use the remaining funds to carry out other eligible modernization activities at developments covered by the original CIAP application.

**§ 950.636 Progress reports.**

For each six-month period ending March 31 and September 30, until completion of the modernization program or expenditure of all funds, an IHA shall submit a progress report, in a form prescribed by HUD, to the HUD Area ONAP. Where HUD determines that an IHA is having implementation problems, HUD may require more frequent reporting.

**§ 950.638 Time extensions.**

An IHA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule without a time extension, as follows:

(a) *Certification.* An IHA may extend an obligation or expenditure deadline date no later than 30 calendar days after the existing deadline date, without prior HUD approval, for a time period commensurate with the delay, where the IHA certifies that the delay is due to reasons outside the IHA's control, such as:

(1) Need to use leftover funds from a completed modernization program for additional work;

(2) Unforeseen delays in contracting or contract administration;

(3) Litigation; and

(4) Delay by HUD or other institutions. Delay by the IHA's staff or Board of Commissioners or a change in the Executive Director is not considered to be outside of the IHA's control.

(b) *Prior HUD approval.* Where an IHA is unable to meet an obligation or expenditure deadline date and the delay is not due to reasons within the IHA's control, the IHA must request HUD approval of a time extension no later than 30 calendar days after the deadline date, to avoid recapture of funds. The request shall include an explanation of the delay, the steps taken to prevent future delay, and the requested extension.

**§ 950.640 HUD review of IHA performance.**

HUD shall periodically review IHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the quality of an IHA's inspections as evidenced by the quality of work, and the timeliness of the work. HUD's review may be conducted either in-office or on-site. Where conducted in-office, an IHA shall forward any requested documents to HUD for post-review. Where deficiencies are noted, an IHA shall take such corrective actions as HUD may direct.

Comprehensive Grant Program (For IHAs That Own or Operate 250 or More Indian Housing Units)

**§ 950.650 Determination of formula amount.**

(a) *Submission of formula characteristics report.* (1) *Formula characteristics report.* In its first year of participation in the CGP, each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under the CGP in accordance with § 950.604(e) and (f). If an IHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data that it has available concerning IHA and development characteristics for purposes of calculating the IHA's formula share. After its first year of participation in the CGP, an IHA is not required to submit formula characteristics report data to HUD, but is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or when requested by HUD. On an annual basis, HUD will transmit to the IHA the formula characteristics report that reflects the data that will be used to determine the IHA's formula share. The IHA will have at least 30 calendar days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY.

(2) *IHA Board Resolution.* In its first year of participation in the CGP, the IHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the IHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate.

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 950.604(e) and (f) based upon the IHA, development, and community characteristics, it shall notify the IHA of its formula amount and provide instructions on the Annual Submission in accordance with §§ 950.652(a) and 950.656;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of ''unique circumstances.'' The IHA shall indicate what is unique, specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the Federal Register a description of the facts supporting any successful appeals based upon ''unique

circumstances.'' Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from the subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The IHA may appeal on the basis of error the correctness of data in the formula characteristics report. The IHA shall describe the nature of the error and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *IHAs determined to be high risk.* If an IHA is determined to have serious deficiencies in accordance with § 950.135, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals previously established in its management improvement plan under § 950.135, HUD may designate the IHA as high risk. If HUD designates the IHA as high risk with respect to modernization, HUD may withhold some or all of the IHA's annual grant; HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions, so that the IHA or a particular function of the IHA may be administered by another entity; or HUD may take other sanctions authorized by law or regulation.

**§ 950.652 Comprehensive plan (including Five-Year Action Plan).**

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify IHAs in writing of their formula amount. For planning purposes, IHAs may use the amount they received under CGP in the prior year in developing their comprehensive plan, or they may wait for the annual HUD notification of formula amount under § 950.650(b)(1).

(b)(1) *Resident participation.* An IHA is required to develop, implement, monitor, and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan, and with democratically elected resident groups. In addition, the IHA shall also consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The IHA, in partnership with the residents, shall develop and implement a process for resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall include implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The IHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident organizations, resident advisory councils/boards and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies, and priorities identified in the Comprehensive Plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, five-year action plan, and annual statement. If necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on an IHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents and duly elected resident organizations under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations;

(4) *Advance meeting for residents and duly elected resident organizations.* The IHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident organizations at which the IHA shall explain the components of the comprehensive plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public Hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the comprehensive plan/annual submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents, tribal government officials, and other interested parties to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, tribal government officials, and other interested parties.

(c) *Tribal/local government participation.* An IHA shall consult with and provide information to appropriate tribal and local government officials with respect to the development of the comprehensive plan. In the case of an IHA with developments in multiple jurisdictions, the IHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation shall include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide, a specific description of the IHA's process for maximizing the level of participation by residents, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issues. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, resident organizations, and other interested parties upon request; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the IHA's planning process.

(d) *Contents of Comprehensive Plan.* The comprehensive plan shall identify all of the physical and management improvements needed for an IHA and all of its developments, and that represent needs eligible for funding under § 950.608. The plan shall also include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to

ensure the long-term physical and social viability of the development. Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the IHA shall identify these needs and strategies. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* An IHA shall include as part of its comprehensive plan an executive summary to facilitate review and comprehension by development residents and by the public. The executive summary shall include:

(i) A summary of total preliminary estimated costs to address physical needs by each development and IHA-wide physical and management needs; and

(ii) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation, and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process, and the IHA's response to the general issues. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request;

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that an IHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with lead-based paint testing and abatement requirements under § 950.120(g), and to comply with other program requirements under § 950.120. The physical needs assessment is completed without regard to the availability of funds, and shall include the following information with respect to each of an IHA's developments:

(A) A brief summary of the physical improvements necessary to bring each development to a level at least equal to the modernization and energy conservation standards set forth in § 950.610, to comply with the lead-based paint testing and abatement requirements under § 950.120(g), and to comply with other program requirements under § 950.120. The IHA also should indicate the relative urgency of need. If the IHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the IHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development), it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work; and

(D) In addition, the IHA shall provide with respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 950.608(d)(3).

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (d)(2), and shall retain such source documents in its files.

(3) *Management needs assessment.* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the IHA and of each viable development, so that decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved management improvement plan, the IHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the IHA;

(*2*) The adequacy and qualifications of personnel employed by the IHA in the management and operation of its developments, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents.

(B) Any additional deficiencies identified through audits and HUD monitoring reviews that are not addressed under paragraph (e)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved management improvement plan, the IHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the IHA wants to address at the IHA-wide or development level; and

(D) An IHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds.

(ii) *Sources of data.* The IHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under paragraph (d)(3) of this section, and shall retain such source documents in its files.

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (e)(2) and (e)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy, of the development at a reasonable cost. For cost reasonableness, the IHA shall determine whether the unfunded hard costs satisfy the definition of ''reasonable cost.'' Where the IHA wishes to fund a development, for other than emergencies, where hard costs exceed that reasonable cost, the IHA shall submit written justification to the Field Office. If the Field Office agrees with the IHA's request, the Field Office shall forward its recommendation to Headquarters for final decision. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required. The IHA shall keep documentation in its files to support all cost determinations. The Field Office will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. As necessary, HUD will review the IHA's documentation in support of its cost reasonableness, taking into account broader efforts to revitalize the neighborhoods in which the development is located;

(ii) *Determination of non-viability.* When an IHA's analysis of a development, under paragraph (e) of

this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies and essential nonroutine maintenance necessary to maintain habitability until residents can be relocated. The IHA shall specify in its comprehensive plan the actions it proposes to take with respect to the nonviable development (*e.g.,* demolition or disposition under subpart M of this part).

(5) *Five-Year Action Plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (e)(2) and (e)(3) of this section. In developing its five-year action plan, the IHA shall assume that the current year funding or formula amount will be available for each year of its five-year action plan, whichever the IHA is using for planning purposes, plus the IHA's estimate of the funds that will be available from other sources, such as tribal, state, and local governments. All activities specified in an IHA's five-year action plan are contingent upon the availability of funds.

(ii) *Requirements.* Under the action plan, an IHA must indicate how it intends to use the funds available to it under the CGP to address the deficiencies, or a portion of the deficiencies, identified under its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of an IHA's developments, an IHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This would include specifying the work to be undertaken by the IHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, an IHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory (or other legally mandated) requirements;

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements.

(B) *Management and operations.* An IHA shall address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the IHA, the IHA shall identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through audits, HUD monitoring reviews, and self-assessments (this would include establishing priorities based upon the relative urgency of need); and

(*2*) A preliminary IHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current Five-Year Action Plan.* The IHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) *Tribal/local government statement.* The Comprehensive Plan shall include a statement signed by the chief executive officer of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction), certifying as to the following:

(i) The IHA developed the comprehensive plan/five-year action plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/five-year action plan, in accordance with the requirements of paragraphs (b) and (c) of this section;

(ii) The comprehensive plan/five-year action plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The IHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable.

(7) *IHA resolution.* The plan shall include a resolution, in a form prescribed by HUD, adopted by the IHA Board of Commissioners, and signed by the Board Chairman of the IHA, approving the comprehensive plan or any amendments.

(e) *Amendments to the Comprehensive Plan.* (1) *Extension of time for performance.* An IHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner.

(2) *Amendments to needs assessments.* The IHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its five-year action plan or annual statement that are not reflected in its current needs assessments (except in the case of emergencies). The IHA may propose an amendment to its needs assessments, in connection with the submission of its annual submission (see § 950.656(b)), or at any other time. These amendments shall be reviewed by HUD in accordance with § 950.654;

(3) *Six-year revision of Comprehensive Plan.* Every sixth year following the initial year of participation, the IHA shall submit to HUD, with its annual submission, a complete update of its comprehensive plan. An IHA may elect to revise some or all parts of the comprehensive plan more frequently.

(4) *Annual revision of Five-Year Action Plan.* Annually, the IHA shall submit to HUD, with its annual submission, an update of its five-year action plan, eliminating the previous year and adding an additional year. The IHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year five-year action plan when making this Annual Submission.

(5) *Required submissions.* Any amendments to the comprehensive plan under this section shall be submitted with the IHA resolution under § 950.652(e)(7).

(f) *Prerequisite for receiving assistance.* (1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 950.604(b) and 950.606, and for modernization needs resulting from disasters under § 950.604(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the IHA that meets the requirements of § 950.652. An IHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less

any formula amounts provided to the IHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 950.604(e) and (f) in the subsequent FFY. An IHA that elects in any FFY not to participate in the CGP under this subpart may participate in the CGP in subsequent FFYs.

(2) *Requests for emergency assistance.* An IHA may receive funds from its formula allocation to address emergency modernization needs even if HUD has not approved the IHA's comprehensive plan. To request such assistance, the IHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of ''emergency work,'' as set forth in § 950.102.

**§ 950.654 HUD review and approval of comprehensive plan (including Five-Year Action Plan).**

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from an IHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 950.652; and

(ii) If applicable, the IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, or civil rights compliance findings.

(2) *Acceptance for review.* If the IHA has submitted a Comprehensive Plan (including the action plan) that meets the criteria specified in paragraph (a)(1) of this section, HUD shall accept the Comprehensive Plan for review, within 14 calendar days of its receipt in the Area ONAP. The IHA shall be notified in writing that the plan has been accepted by HUD, and that the 75-day review period is proceeding.

(3) *Time period for review.* A Comprehensive Plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan. HUD shall not disapprove a Comprehensive Plan on the basis that it cannot complete its review within the 75-day deadline.

(4) *Rejection of Comprehensive Plan.* If an IHA has submitted a Comprehensive Plan (including the action plan) that does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the IHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the Comprehensive Plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of Comprehensive Plan (including action plan).* (1) A Comprehensive Plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 days of the date of HUD's receipt of the Comprehensive Plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the Comprehensive Plan approvable. The IHA shall re-submit the Comprehensive Plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or the IHA fails to resubmit the plan by the deadline established by HUD, any funds that would have been allocated to the IHA shall be added to the subsequent year's appropriation of funds for grants under this subpart. HUD shall allocate such funds to IHAs and PHAs participating in the CGP in accordance with the formula under 24 CFR § 950.604 and 968.103. HUD shall not disapprove a Comprehensive Plan on the basis that HUD cannot complete its review under this section within the 75-day deadline.

(2) HUD shall approve the comprehensive plan except where it makes a determination in accordance with one or more of the following:

(i) Comprehensive plan is incomplete in significant matters;

(ii) Identified needs are plainly inconsistent with facts and data;

(A) Identified physical improvements and replacements are inadequate;

(B) Identified management improvements are inadequate;

(C) Proposed physical and management improvements fail to address identified needs;

(iii) Action plan is plainly inappropriate to meeting identified needs;

(iv) Inadequate demonstration of long-term viability at reasonable cost; or

(v) Contradiction of tribal/local government certification or IHA resolution.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. The IHA is expected to undertake the work set forth in the Annual Statement. However, the IHA may undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current approved Annual Statement or previously approved CIAP budgets, without further HUD approval. Actual uses of the funds are to be reflected in the IHA annual Performance and Evaluation Report for each grant. See § 950.658. HUD encourages the IHA to inform the residents of significant changes (such as changes in scope of work or whenever it moves work items within the approved Five-Year Action Plan). The IHA shall retain documentation of that information in its files. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 950.660. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

**§ 950.656 Annual submission of activities and expenditures.**

(a) *General.* The Annual Submission is a collective term for all documents that the IHA shall submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD. For planning purposes, an IHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under § 950.650 in

developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set forth the major work categories and costs, by development or IHA-wide, that the IHA intends to undertake in each year of years two through five. In preparing these Work Statements, the IHA shall assume that the current FFY formula amount will be available in each year of years two through five. The Work Statements for all five years will be at the same level of detail so that the IHA may interchange work items as discussed in § 950.652. An IHA may budget up to 8 percent of its annual grant in a contingency account for cost overruns.

(b) *Submission.* After receiving HUD notification of the formula amount estimating how much funding will be available from other sources, such as State and tribal governments, and determining its activities and costs based on the current FFY formula amount, the IHA shall submit its Annual Submission.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from an IHA, HUD shall determine whether:

(i) The Annual Submission contains each of the required components; and

(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance findings.

(2) If the IHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications shall be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 950.652, in consultation with officials of the appropriate governing body (or in the case of an IHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the IHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and that ensures notice to all duly elected resident organizations;

(2) *Advance meeting with residents.* The IHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The IHA will provide residents with information concerning the contents of the IHA's Five-Year Action Plan (and any proposed amendments to the IHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The IHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* IHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, between July 1 (i.e., after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If an IHA elects to use such expedited scheduling, it shall explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes. It shall also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which major work categories at which developments may be added or deleted to adjust for the actual formula amount and that any added work categories/developments will come from the Comprehensive Plan.

(e) *Contents of Annual Submission.* The Annual Statement for each year shall include, for each development or on an IHA-wide basis for management improvements or certain physical improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with an identification of major work categories;

(2) The cost for each major work category, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 950.614);

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs that have been identified by the IHA in its needs assessments;

(6) Documentation supporting the IHA's actions in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 950.120(a) and (b);

(7) Other information, as specified by HUD and approved by OMB under the Paperwork Reduction Act; and

(8) An IHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 950.652.

(f) *Additional submissions with Annual Submission.* An IHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 950.652, and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 950.654.

(g) *HUD review and approval of Annual Submission.* (1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for

review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications shall be received by HUD. HUD may request additional information (e.g., for eligibility determinations) to facilitate review and approval of the Annual Submission during the 75-day review period. HUD shall not disapprove an Annual Submission on the basis that HUD cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except when:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the IHA's approved Comprehensive Plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence that tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 950.672(d)(7).

(h) *Amendments to Annual Statement.* The IHA shall advise HUD of all changes to the IHA's approved Annual Statement in its Performance and Evaluation Report submitted under § 950.658. The IHA shall submit to HUD for prior approval any additional work categories (except for emergency work) that are not within the IHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funding and extension of time for performance.* (1) *Failure to obligate formula funds.* If the IHA fails to obligate formula funds within the approved or extended time period, the IHA may be subject to an alternative management strategy, which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 950.660 and the IHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. An IHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 30 calendar days of the date of its receipt of the IHA's appeal.

(2) *Extension of time for performance.* An IHA may extend the target dates for fund obligation and expenditure in the approved Annual Statement whenever any delay outside the IHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under § 950.660 as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's Comprehensive Plan and related statements when the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the IHA shall enter into an ACC amendment in order to draw down modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of Trust.* As HUD may require, the IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

**§ 950.658 IHA Performance and Evaluation Report.**

For any FFY in which an IHA has received assistance under this subpart, the IHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. The IHA shall make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

**§ 950.660 HUD review of IHA performance.**

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each IHA as may be necessary or appropriate to make the determinations required by this paragraph (a), taking into consideration all available evidence.

(1) *Conformity with Comprehensive Plan.* HUD will determine whether the IHA has carried out its activities under this subpart I in a timely manner and in accordance with its Comprehensive Plan.

(2) *Continuing capacity.* HUD will determine whether the IHA has a continuing capacity to carry out its Comprehensive Plan in a timely manner. After the first full operational year of CGP, CIAP experience will not be taken into consideration except when the IHA has not yet had comparable experience under the CGP.

(3) *Reasonable progress.* HUD shall determine whether the IHA has satisfied, or has made reasonable progress towards satisfying, the applicable performance standards.

(b) *Notice of deficiency.* Based on HUD reviews of IHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the IHA a notice of deficiency stating the specific program requirements that the IHA has violated and requesting the IHA to take any of the actions in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of IHA performance and findings of any of the deficiencies paragraph (d) of this section, HUD may issue to the IHA a corrective action order, whether or not a notice of deficiency has previously been issued in regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the IHA of the specific program requirements that the IHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section shall be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies.

(2) Before ordering corrective action, HUD will notify the IHA and give it an opportunity to consult with HUD regarding the proposed action.

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement.

(4) If HUD orders corrective action by an IHA in accordance with this section, the IHA's Board of Commissioners shall notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under paragraph (c) of this section, and the consequences to the IHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order an IHA to take corrective action only if HUD determines:

(1) The IHA has not submitted a performance and evaluation report, in accordance with § 950.658;

(2) The IHA has not carried out its activities under the CGP program in a timely manner and in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(1) of this section;

(3) The IHA does not have a continuing capacity to carry out its Comprehensive Plan in a timely manner or in accordance with its Comprehensive Plan or HUD requirements, as described in paragraph (a)(2) of this section;

(4) The IHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards described in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44 and § 950.120, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action;

(6) The IHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended; or

(7) The IHA has been determined to be high risk, in accordance with § 950.135.

(e) *Types of corrective action.* HUD may direct an IHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the IHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a IHA not meeting the standards in paragraphs (a)(1), (2), or (3) of this section;

(ii) Explaining any steps the IHA is taking to correct the deficiencies;

(iii) Documenting that IHA activities were not inconsistent with the IHA's annual statement or other applicable laws, regulations, or program requirements; and

(iv) Demonstrating that the IHA has a continuing capacity to carry out the Comprehensive Plan in a timely manner;

(2) Submit detailed schedules for completing the work identified in its Annual Statements and report periodically on its progress on meeting the schedules;

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts.

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(5) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(7) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(8) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 950.650); and

(9) Take such other corrective actions HUD determines appropriate to correct IHA deficiencies.

(f) *Failure to take corrective action.* In cases in which HUD has ordered corrective action and the IHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold some or all of the IHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the IHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* If HUD has withheld for a prescribed period of time some or all of an IHA's annual grant, HUD may reallocate such amounts to other IHAs/PHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs that HUD has determined to be administratively capable under § 950.135, and to PHAs under the CGP program that are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 950.604.

(h) *Right to appeal.* Before withholding some or all of the IHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the IHA and give it an opportunity, within a prescribed period of time, to present to ONAP Headquarters, in writing, any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The IHA's Board of Commissioners shall notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an IHA, based upon a determination that the IHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the IHA and give it an opportunity to appeal in accordance with paragraph (h) of this section. Any reallocation of recaptured amounts will be in accordance with paragraph (g) of this section. The IHA's board of Commissioners shall notify affected residents of HUD's final determination to recapture any funds.

## PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

8. The heading for part 965 is revised to read as set forth above.

9. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

### Subpart A—Preemption of State Prevailing Wage Requirements

10. The heading of subpart A is revised as set forth above.

#### § 965.101 [Amended]

11. Section 965.101 is amended by:

a. Removing from the section heading the words, ''With Respect to Maintenance and Operation of Projects'';

b. Removing the parenthetical phrase ''(including modernization)'' from the introductory text of paragraph (a); and

c. Removing the words, ''maintenance and operation'' wherever they appear in paragraphs (a) introductory text, (a)(2), (b)(1) introductory text, (b)(2), and (b)(3), and adding in their place, the words, ''development, maintenance, and modernization''.

## PART 968—PUBLIC HOUSING MODERNIZATION

12. The authority citation for 24 CFR part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

## Subpart A—General

13. Section 968.101 is amended by revising paragraph (a); removing the second sentence of paragraph (b)(2); revising paragraphs (b)(1), (b)(5), and (c); and adding a new paragraph (d), to read as follows:

### § 968.101 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to set forth the policies and procedures for the Modernization program authorizing HUD to provide financial assistance to Public Housing Agencies (PHAs).

(b) *Applicability.* (1) Subpart A of this part applies to all modernization under this part. Subpart B of this part sets forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP) for PHAs that own or operate fewer than 250 public housing units. Subpart C of this part sets forth the requirements and procedures for the Comprehensive Grant Program (CGP) for PHAs that own or operate 250 or more units. A PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. A PHA that has already qualified to participate in the CGP may elect to continue to participate in the CGP so long as it owns or operates at least 200 units.

* * * * *

(5) A development/building/unit which is assisted under section 5(j)(2) of the Act (Major Reconstruction of Obsolete Projects) (MROP) is eligible for section 14 funding (CIAP or CGP) where it received MROP funding after FFY 1988 and has reached Date of Full Availability (DOFA) or where it received MROP funding during FFYs 1986–1988 and all MROP funds have been expended.

(c) *Transition.* Any amount that HUD has approved for a PHA must be used for the purposes for which the funding was provided, or:

(1) For a CGP PHA, for purposes consistent with an approved Annual Statement or Five-Year Action Plan submitted by the PHA, as the PHA determines to be appropriate; or

(2) For a CIAP PHA, in accordance with a revised CIAP budget.

(d) *Approved information collections.* The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577–0044: §§ 968.135, 968.145, 968.210, 968.215, 968.225, and 968.230. The following sections of this subpart have been similarly approved and assigned approval number 2577.0157: §§ 968.310, 968.315, 968.325, and 968.330.

### § 968.102 [Amended]

14. Section 968.102 is amended by removing the reference to ''§ 968.310(d)'' in paragraph (b) and adding in its place a reference to ''§ 968.112(d)''.

15. Section 968.103 is amended by revising paragraphs (a), (b), (c), (e)(1) (i) and (ii) introductory text, (f)(1), (f)(2) introductory text, (f)(2)(i), (f)(2)(ii) (f), (g), and (h), and the heading to paragraph (e)(4), to read as follows:

### § 968.103 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of PHAs and IHAs participating in the CIAP and to individual PHAs and IHAs participating in the CGP.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 950 of this title, an amount not to exceed $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.104.

(c) *Set-aside for credits for mod troubled PHAs under subpart C of this part.* After deducting an amount for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining no more than five percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts previously withheld by HUD because of a PHA's prior designation as a mod troubled agency. Since part 901 of this chapter does not apply to IHAs, they are not classified as ''mod troubled'' and they do not participate in the set-aside credits established under paragraph (c) of this section.

* * * * *

(e) * * *

(1) * * *

(i) *Statistically reliable data are available.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or for the aggregate of IHAs and PHAs with fewer than 250 units, which are not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data;

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual PHAs and IHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

* * * * *

(4) *Categories of backlog need.* * * *

(f) * * *

(1) *Statistically reliable data are available.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual PHAs and IHAs with 250 or more units, and for the aggregate of PHAs and IHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section;

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual PHAs and IHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of accrual need under paragraph (f)(3) of this section;

(ii) * * *

(F) The total number of units of each PHA or IHA that owns or operates 250 or more units. (weighted at .0144);

* * * * *

(g) *Allocation of CIAP.* The formula amount determined under paragraphs

(e) and (f) of this section for PHAs and IHAs with fewer than 250 units shall be allocated to PHAs in accordance with the requirements of subpart B of this part (the CIAP), and to IHAs in accordance with the requirements of 24 CFR part 950, subpart I.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs with 250 or more units shall be allocated in accordance with the requirements of subpart C of this part (the CGP), and for IHAs in accordance with the requirements of 24 CFR part 950, subpart I. A PHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation in accordance with the requirements set forth in § 968.310(b). A PHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units is disqualified from receiving assistance under the CIAP under this part.

* * * * *

16. Section 968.105 is amended by adding in alphabetical order new definitions for *''CGP''*, *''modernization program''*, *''modernization project''*, and *''reasonable cost''*; by revising the definition *''Force account labor''*; removing the definition for *''CIAP program''*; and adding a definition for *''CIAP''* to read as follows:

**§ 968.105 Definitions.**

* * * * *

*CGP.* The Comprehensive Grant Program, which provides modernization funds on a formula basis to PHAs with 250 or more public housing units.

*CIAP.* The Comprehensive Improvement Assistance Program, which provides modernization funds on a competitive basis to PHAs with fewer than 250 public housing units.

* * * * *

*Force account labor.* Labor employed directly by the PHA on either a permanent or a temporary basis. See § 968.120.

* * * * *

*Modernization program.* A PHA's program for carrying out modernization, as set forth in the approved CIAP budget or CGP Annual Statement.

*Modernization project.* The improvement of one or more existing public housing developments under a unique number designated for that modernization program. For each modernization project, HUD and the PHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The terms ''modernization project number'' and ''comprehensive grant number'' are used interchangeably.

* * * * *

*Reasonable cost.* Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed Total Development Cost (TDC) for a new development with the same structure type and number and size of units in the market area.

* * * * *

**§ 968.312 [Redesignated as § 968.104]**

17. Section 968.312 is redesignated as § 968.104; and newly redesignated § 968.104 is amended by:

a. Removing from paragraph (a)(1) the phrase ''under § 968.310(a)(3)'';

b. Removing references to ''PHAs participating in CGP'' and ''PHAs participating in CIAP'' in paragraphs (a)(1) and (a)(3), and adding in their place references to ''CGP PHAs'' and ''CIAP PHAs'', respectively;

c. Removing references to ''PHA participating in CGP'' and ''PHA participating in CIAP'' in paragraph (a)(1), and adding in their place references to ''CGP PHA'' and ''CIAP PHA'', respectively;

d. Adding a sentence at the end of paragraph (a)(3);

e. Removing from paragraphs (a)(1) and (b)(1) the two references to ''§ 968.320'' and adding in their place references to ''§ 968.315'';

f. Amending paragraph (b)(1) in the fourth sentence, by adding after the words ''insurance coverage'' and before the period, the words ''or other Federal assistance''; and in the fifth sentence, by adding before the word ''PHA'', the word ''CGP''; and

g. Amending paragraph (b)(3) by removing the phrase, ''shall be in the form of a grant, and''; to read as follows:

**§ 968.104 Reserve for emergencies and disasters.**

* * * * *

(a) * * *

(3) * * * A CIAP PHA is not required to repay assistance for its emergency needs from the reserve.

* * * * *

**§ 968.108 [Amended]**

18. Section 968.108 is amended by removing paragraph (f)(2) and redesignating paragraph (f)(3) as paragraph (f)(2).

**§ 968.110 [Amended]**

19. Section 968.110 is amended by removing and reserving paragraphs (i), (j), and (l), by removing from paragraph (e)(3) the words ''or tribal'', and by removing from paragraph (e)(3) the reference to ''§ 968.120'' and adding in its place a reference to ''§ 965.101 of this chapter''.

20. A new § 968.112 is added, to read as follows:

**§ 968.112 Eligible costs.**

(a) *General.* A PHA may use financial assistance received under this part for the following eligible costs:

(1) For a CGP PHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 968.325 and approved Five-Year Action Plan under § 968.315(e)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 968.315 and the Annual Submission under § 968.325, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP PHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability.* Except in the case of emergency work, a PHA shall only expend funds on a development for which the PHA has determined, and HUD agrees, that the completion of the improvements and replacements (for CGP PHAs, as identified in the Comprehensive Plan) will reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in § 968.105), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(c) *Physical improvements.* Eligible costs include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These mandatory standards may be exceeded when a PHA (and HUD in the case of CIAP PHAs) determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Development specific

work includes work items that are modest in design and cost, but still blend in with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. The Field Office has the authority to approve nondwelling space where such space is needed to administer, and is of direct benefit to, the public housing program. If demolition or disposition is proposed, a PHA shall comply with 24 CFR part 970. Additional dwelling space may be added to existing units.

(d) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, management improvements are eligible costs.

(2) *Ineligible costs.* Routine maintenance or replacements, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of paragraph (d)(1) of this section, a PHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family in order to return the unit to the inventory or make the unit suitable for homeownership purposes. A PHA that intends to use funds under this paragraph must identify in its CIAP application or CGP annual submission the estimated number of units proposed for substantial rehabilitation and subsequent sale. In addition, a PHA must demonstrate, for each of the Turnkey III units proposed to be substantially rehabilitated, that it has homebuyers who both are eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and have demonstrated their intent to be placed into the unit.

(ii) Before a PHA may be approved for substantial rehabilitation of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value of a unit caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or non-dwelling facilities, where the demolition is approved by HUD under 24 CFR part 970, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to non-dwelling use.

(f) *Replacement reserve costs* (for CGP only). (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the PHA in its needs assessments; or

(ii) A physical improvement requires more funds than the PHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the PHA may use under its 20% limit for management improvements (except as provided in paragraph (n)(2)(i) of this section), and the PHA needs to save a portion of its annual grant, in order to combine it with a portion of subsequent year(s) grants to fund the work item.

(2) The PHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate.

(3) Interest earned on funds in the replacement reserve will not be added to the PHA's income in the determination of a PHA's operating subsidy eligibility, but must be used for eligible modernization costs.

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, a PHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under § 968.104.

(5) A PHA is not required to use its replacement reserve for costs related to natural and other disasters.

(g) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or PHA-wide in nature are eligible costs where needed to upgrade the operation of the PHA's developments, sustain physical improvements at those developments or correct management deficiencies. A PHA's ongoing operating expenses are ineligible management improvement costs. For CIAP PHAs, management improvements may be funded as a single work item.

(2) *Eligible costs.* Eligible costs include:

(i) *General management improvement costs.* Eligible costs include general management improvement costs, such as: management, financial, and accounting control systems of the PHA; adequacy and qualifications of PHA personnel, including training; resident programs and services through the coordination of the provision of social services from tribal or local government or other public and private entities; resident and development security; resident selection and eviction; occupancy; rent collection; maintenance; and equal opportunity.

(ii) *Economic development costs.* Eligible costs include job training for residents and resident business development activities, for the purpose of carrying out activities related to the modernization-funded management and physical improvements. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out the modernization program under this part, and to contract with resident-owned businesses for modernization work.

(iii) *Resident management costs.* Eligible costs include technical assistance to a resident council or resident management corporation (RMC), as defined in part 964, in order to: determine the feasibility of resident management to carry out management functions for a specific development or developments; train residents in skills directly related to the operations and management of the development(s) for potential employment by the RMC; train RMC board members in community organization, board development, and leadership; and assist in the formation of an RMC.

(iv) *Resident homeownership costs.* Eligible costs are limited to the study of the feasibility of converting rental to homeownership units and the preparation of an application for conversion to homeownership or sale of units.

(v) *Preventive maintenance system.* Eligible costs include the establishment of a preventive maintenance system or improvement of an existing system. A preventive maintenance system must provide for regular inspections of building structures, systems and units and distinguish between work eligible for operating funds (routine maintenance) and work eligible for modernization funding (non-routine maintenance).

(h) *Drug elimination costs.* Eligible costs include drug elimination activities involving management or physical improvements, as specified by HUD.

(i) *LBP costs.* Eligible costs include professional risk assessments and interim containment of family developments/buildings constructed before 1980, testing and abatement of family developments/buildings constructed before 1978, and costs for insurance coverage for pollution hazards associated with the testing, abatement, clean-up and disposal of LBP on applicable surfaces of family developments/buildings constructed before 1978.

(j) *Administrative costs.* Administrative costs necessary for the planning, design, implementation and monitoring of the physical and management improvements are eligible costs and include the following:

(1) *Salaries.* The salaries of non-technical and technical PHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-modernization duties. A PHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (*e.g.*, to the CIAP, CGP or operating budget);

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of non-technical and technical PHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP or CGP, as appropriate;

(3) *Preparation of CIAP or CGP required documents;*

(4) *Resident participation.* Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the CIAP Application or the CGP Annual Submission and Comprehensive Plan and the implementation and monitoring of the approved modernization program; and

(5) *Other administrative costs,* such as telephone and facsimile, as specified by HUD.

(k) *Audit costs (CGP only).* Eligible costs are limited to the portion of the audit costs that are attributable to the modernization program.

(l) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, LBP professional risk assessments and testing, and inspection of work in progress.

(m) *Relocation costs.* Eligible costs include relocation and other assistance for permanent and temporary relocation, as a direct result of rehabilitation, demolition or acquisition for a modernization-funded activity, where this assistance is required by 49 CFR part 24 or § 968.108.

(n) *Cost limitations.* (1) *CIAP costs.* (i) *Management improvement costs.* Management improvement costs shall not exceed a percentage of the CIAP funds available to a Field Office in a particular FFY, as specified by HUD.

(ii) *Planning costs.* Planning costs are costs incurred *before* HUD approval of the CIAP application *and* which are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of solicitations, and LBP professional risk assessment and testing. Planning costs may be funded as a single work item. If a PHA incurs planning costs without prior HUD approval, a PHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed 5 percent of the CIAP funds available to a Field Office in a particular FFY.

(2) *CGP costs.* (i) *Management improvement costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD or the PHA has been designated as both an over-all high performer and mod-high performer under the PHMAP.

(ii) *Administrative costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State or local law, unless specifically approved by HUD.

(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Public Housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the public housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

(1) Luxury improvements;

(2) Indirect administrative costs (overhead), as defined in OMB Circular A–87;

(3) Public housing operating assistance;

(4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and

(5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

(1) New construction or acquisition of additional public housing units, including replacement units;

(2) Modernization activities related to the public housing portion of housing developments held in partnership, or cooperation with non-public housing entities; and

(3) Other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

21. Section 968.115 is revised to read as follows:

**§ 968.115 Modernization and energy conservation standards.**

All improvements funded under this part shall:

(a) Meet the modernization standards as prescribed by HUD;

(b) Incorporate cost-effective energy conservation measures, identified in the PHA's most recently updated energy audit, conducted pursuant to part 965, subpart C;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing.

22. Section 968.120 is revised to read as follows:

**§ 968.120 Force account.**

(a) For both CIAP and CGP, a PHA may undertake the activities using force account labor, only where specifically approved by HUD in the CIAP budget or CGP Annual Statement, except no prior HUD approval is required where the PHA is designated as both an overall

high performer and Modernization high performer under the PHMAP.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the PHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the PHA and the RMC provide otherwise by contract.

23. New §§ 968.125, 968.130, and 968.135 are added, to read as follows:

**§ 968.125 Initiation of modernization activities.**

After HUD has approved the modernization program and entered into an ACC amendment with the PHA, a PHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the PHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

**§ 968.130 Fund requisitions.**

To draw down modernization funds against the approved CIAP budget or CGP Annual Statement, a PHA shall comply with requirements prescribed by HUD.

**§ 968.135 Contracting requirements.**

In addition to the requirements specified in 24 CFR parts 5, 85, and 965, subpart A, and § 968.110(e), the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with the following HUD requirements:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For both CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) a 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, a PHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with the originally approved modernization program or the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, a PHA shall make the award without HUD approval after the PHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

(2) For CGP only, a PHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, a PHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, a PHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, a PHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

(g) *Reward for high performers.* For CIAP only, if a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), HUD will not establish thresholds, and the PHA is not required to obtain prior HUD approval, under paragraphs (a), (c), and (e) of this section.

**§ 968.240 [Redesignated as § 968.140]**

24. Section 968.240 is redesignated as § 968.140.

25. A new § 968.145 is added to subpart A, to read as follows:

**§ 968.145 Fiscal closeout.**

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded in a modernization program, a PHA shall submit the AMCC, in a form prescribed by HUD, to HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, a PHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, a PHA shall immediately take such corrective actions as HUD may direct.

26. Subpart B is revised to read as follows:

**Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)**

968.205 Definitions.
968.210 Procedures for obtaining approval of a modernization program.
968.215 Resident and homebuyer participation.

968.225 Budget revisions.
968.230 Progress reports.
968.235 Time extensions.
968.240 HUD review of PHA performance.

## Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)

### § 968.205 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

*Emergency Modernization (CIAP).* A type of modernization program for a development that is limited to physical work items of an emergency nature that poses an immediate threat to the health or safety of residents or is related to fire safety, *and* that must be corrected within one year of CIAP funding approval.

*Management capability.* A PHA has management capability if it is:

(1) Not designated as Troubled under part 901 of this chapter, Public Housing Management Assessment Program (PHMAP); or

(2) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its management functions.

*Modernization capability.* A PHA has modernization capability if it is:

(1) Not designated as Modernization Troubled under part 901 of this chapter, PHMAP; or

(2) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

*Other Modernization (modernization other than emergency).* A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint testing, professional risk assessments, interim containment, and abatement.

*Work item.* Any separately identifiable unit of work constituting a part of a modernization program.

### § 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD shall publish in the Federal Register a notice of funding availability (NOFA), the time frame for submission of the CIAP Application, and other pertinent information.

(b) *PHA consultation with local officials and residents/homebuyers.* A PHA shall develop the application in consultation with local officials and residents/homebuyers, as set forth in § 968.215.

(c) *PHA application.* A PHA shall submit to HUD an application, in a form prescribed by HUD. Where a PHA has not included some of its developments in the CIAP application, HUD may not consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments.

(d) *Completeness Review.* To be eligible for processing, an application must be physically received by HUD by the time and date specified in the NOFA. Immediately after the application deadline, HUD shall perform a completeness review to determine whether the application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If the application form or any other essential document, as specified in the NOFA, is missing, the PHA's application will be considered substantially incomplete and, therefore, ineligible for further processing. HUD shall immediately notify the PHA in writing.

(2) If other required documents, including certifications, as specified in the NOFA, are missing or there is a technical mistake, such as no signature on a submitted form, HUD shall immediately notify the PHA in writing to submit or correct the deficiency within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If a PHA fails to submit or correct the items within the required time period, the PHA's application will be ineligible for further processing. HUD shall immediately notify the PHA in writing after this occurs.

(4) A PHA may submit an application for Emergency Modernization whenever needed.

(e) *Eligibility Review.* (1) *Eligibility for processing.* To be eligible for processing:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FFY 1988, the development/building/unit has reached DOFA or, where funded during FFYs 1986–1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for processing on reduced scope.* When the following conditions exist, a PHA will be reviewed on a reduced scope:

(i) *Section 504 compliance.* Where a PHA has not completed all required structural changes to meet the need for accessible units, as identified in the PHA's Section 504 needs assessment, the PHA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements.

(ii) *Lead-based paint (LBP) testing compliance.* Where a PHA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) compliance.* Where a PHA has not complied with FHEO requirements set forth in § 968.110, as evidenced by an enforcement action, finding or determination, the PHA is eligible for processing only for Emergency Modernization or for work needed to remedy the civil rights deficiencies—unless the PHA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of

noncompliance. The enforcement actions, findings, or determinations that trigger limited eligibility are described in paragraphs (e)(2)(iii) (A) through (E) of this section:

(A) A pending proceeding against the PHA based upon a charge of discrimination issued under the Fair Housing Act. A charge of discrimination is a charge under section 810(g)(2) of the Fair Housing Act (42 U.S.C. 3610(g)(2)), issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the PHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of PHA noncompliance with civil rights statutes and executive orders specified in 24 CFR part 5 and § 968.110 or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the PHA imposed by HUD under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the civil rights authorities specified in 24 CFR part 5 and § 968.110 in a civil action filed against the PHA by a private individual.

(f) *Technical processing.* After all CIAP applications are reviewed for eligibility, HUD shall categorize the eligible PHAs and their developments into two processing groups: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. PHA developments may be included in both groups and the same development may be in each group. However, a PHA is only required to submit one CIAP application. Group 1 developments are not subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Group 2 developments are subject to the technical review rating and ranking and the long-term viability and reasonable cost determination. Preference will be given to PHAs which request assistance for developments having conditions which threaten the health or safety of the residents or having a significant number of vacant, substandard units, and which have demonstrated a capability of carrying out the proposed activities.

(g) *Rating on technical review factors.* After categorizing the eligible PHAs/developments into Group 1 and Group 2, HUD shall review and rate each Group 2 PHA on each of the following technical review factors:

(1) Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines;

(2) Extent of vacancies, where the vacancies are not due to insufficient demand;

(3) PHA's modernization capability;

(4) PHA's management capability;

(5) Degree of resident involvement in PHA operations;

(6) Degree of PHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts;

(7) Degree of resident employment;

(8) Local government support for proposed modernization; and

(9) Such additional factors as the Secretary determines necessary and appropriate.

(h) *Ranking and selection for Joint Review.* After rating all Group 2 PHAs/developments, HUD shall then rank each Group 2 PHA based on its total score, list Group 2 PHAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest PHA ranking applications in Group 2 and other Group 2 PHAs with lower ranking applications, but with high priority needs, which most reasonably approximate the amount of modernization which can be funded. High priority needs are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review.

(i) *Joint Review.* The purpose of Joint Review is for HUD to discuss with a PHA the proposed modernization program, as set forth in the CIAP Application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded. HUD shall notify each PHA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (*e.g.*, by telephone or in-office meeting). A PHA shall prepare for Joint Review by preparing a draft CIAP budget and reviewing the other items to be covered during Joint Review, as prescribed by HUD. If conducted on-site, Joint Review may include an inspection of the proposed physical work. PHAs not selected for Joint Review will be advised in writing of the reasons for non-selection.

(j) *Funding decisions.* After all Joint Reviews are completed, HUD shall adjust the PHAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, environmental reviews, and FHEO review, and make the funding decisions. A PHA will not be selected for CIAP funding if there is a duplication of funding. HUD shall select all bona fide emergencies in Group 1 before funding Group 2 applications. After funding announcement, HUD shall request a funded PHA to submit a CIAP budget, including an implementation schedule, and any other required documents, including the ACC amendment. PHAs not selected for funding will be advised in writing of the reasons for non-selection.

(k) *ACC amendment.* After HUD approval of the CIAP budget, HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (*e.g.*, to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(l) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

**§ 968.215 Resident and homebuyer participation.**

A PHA shall establish a Partnership Process, as defined in § 968.105, to develop, implement and monitor the CIAP. Before submission of the CIAP application, a PHA shall consult with the residents, the resident organization, or the resident management corporation (see part 964, subpart C of this chapter) (herein referred to as the resident) of the development(s) being proposed for modernization, regarding its intent to submit an application and to solicit resident comments. A PHA shall give residents a reasonable opportunity to present their views on the proposed modernization and alternatives to it and shall give full and serious consideration

to resident recommendations. A PHA shall respond in writing to the residents, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, a PHA shall inform the residents of the approved work items and its progress during implementation. Where HUD does not approve the modernization program, a PHA shall so inform the residents.

**§ 968.225 Budget revisions.**

(a) A PHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. A PHA shall submit a budget revision, in a form prescribed by HUD, if the PHA plans to deviate from the originally approved modernization program, as it was competitively funded, by deleting or substantially revising approved work items or adding new work items that are unrelated to the originally approved modernization program, or to change the method of accomplishment from contract to force account labor, except as provided in paragraph (b)(4) of this section.

(b) In addition to the requirements of paragraph (a) of this section, a PHA shall comply with the following requirements:

(1) A PHA is not required to obtain prior HUD approval if, in order to complete the originally approved modernization program, the PHA needs to delete or revise approved work items or add new related work items consistent with the original modernization program. In such case, a PHA shall certify that the revisions are necessary to carry out the approved work and do not result in substantial changes to the competitively funded modernization program.

(2) A PHA shall not incur any modernization cost on behalf of any development that is not covered by the original CIAP application.

(3) Where there are funds leftover after completion of the originally approved modernization program, a PHA may, without prior HUD approval, use the remaining funds to carry out eligible modernization activities at developments covered by the original CIAP application.

(4) If a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), the PHA is not required to obtain prior HUD approval to change the method of accomplishment from contract to force account labor.

**§ 968.230 Progress reports.**

For each six-month period ending March 31 and September 30, until completion of the modernization program or expenditure of all funds, a PHA shall submit to HUD a progress report, in a form prescribed by HUD. Where HUD determines that a PHA is having implementation problems, HUD may require more frequent reporting.

**§ 968.235 Time extensions.**

A PHA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule without a time extension, as follows:

(a) *Certification.* A PHA may extend an obligation or expenditure deadline date no later than 30 calendar days after the existing deadline date, without prior HUD approval, for a period commensurate with the delay, where the PHA certifies that the delay is due to reasons outside of the PHA's control, such as:

(1) Need to use leftover funds from a completed modernization program for additional work;

(2) Unforeseen delays in contracting or contract administration;

(3) Litigation; and

(4) Delay by HUD or other institutions. Delay by the PHA's staff or Board of Commissioners or a change in the Executive Director is not considered to be outside of the PHA's control.

(b) *Prior HUD approval.* Where a PHA is unable to meet an obligation or expenditure deadline date and the delay is due to reasons within the PHA's control, the PHA may request HUD approval of a time extension no later than 30 calendar days after the deadline date, to avoid recapture of funds. The request shall include an explanation of the delay, steps take to prevent future delay, and the requested extension.

**§ 968.240 HUD review of PHA performance.**

HUD shall periodically review PHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the adequacy of a PHA's inspections as evidenced by the quality of work, and the timeliness of the work. HUD's review may be conducted either in-office or on-site. Where conducted in-office, a PHA shall forward any requested documents to HUD for post-review. Where deficiencies are noted, a PHA shall take such corrective actions as HUD may direct.

27. The heading for subpart C is revised to read as follows:

## Subpart C—Comprehensive Grant Program (for PHAs That Own or Operate 250 or More Public Housing Units)

**§ 968.301 [Removed]**

28. Section 968.301 is removed.

**§ 968.305 [Amended]**

29. Section 968.305 is amended by:

a. Removing the definition for ''*comprehensive grant number*''; and

b. Removing references to ''§ 968.310(a)(3)'', ''968.320(d)(5)'', and ''968.320(d)'', wherever they appear, and adding in their place, respectively, references to ''968.112(f)'', ''968.315(e)(5)'', and ''968.315(e)''.

**§ 968.310 [Removed]**

30. Section 968.310 is removed.

**§ 968.315 [Redesignated as § 968.310]**

31. Section 968.315 is redesignated as § 968.310; and newly redesignated § 968.310 is amended by:

a. Removing from paragraph (a)(1) the phrase, ''under this subpart,'';

b. Removing from paragraph (b)(1) the references to ''968.320'' and ''968.330'' and adding in their place references to ''968.315'' and ''968.325'', respectively;

c. Removing from paragraph (c)(5) the references to ''part 905'' and ''§ 905.135'' and adding in their place references to ''part 950'' and ''§ 950.135'', respectively;

d. Removing paragraph (d); and

e. Revising the section heading to read, ''*§ 968.310 Determination of formula amount.*''

32. A new § 968.315 is added, to read as follows:

**§ 968.315 Comprehensive Plan (including Five-Year Action Plan).**

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify PHAs in writing of their formula amount. For planning purposes, PHAs may use the amount they received under CGP in the prior year in developing their comprehensive plan, or they may wait for the annual HUD notification of formula amount under § 968.310(b)(1).

(b)(1) *Resident participation.* A PHA is required to develop, implement, monitor and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan. In addition, the PHA shall consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The PHA, in partnership with the residents, must develop and implement a process for

resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall involve implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The PHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident councils, resident advisory councils/boards, and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies and priorities identified in the comprehensive plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To ensure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the comprehensive plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Annual Statement. If necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on a PHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (b)(4) of this section and the public hearing under paragraph (b)(5) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA that ensures notice to all duly elected resident councils.

(4) *Advance meeting for residents.* The PHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident councils at which the PHA shall explain the components of the comprehensive plan. The meeting shall be open to all residents and duly elected resident councils.

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the comprehensive plan/annual submission and the status of prior approval programs. The public hearing shall provide ample opportunity for residents, local government officials, and other interested parties to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* A PHA shall consult with and provide information to appropriate local government officials with respect to the development of the comprehensive plan to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement and to coordinate meeting public and human service needs of the public and assisted housing projects and their residents. In the case of a PHA with developments in multiple jurisdictions, the PHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation must include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs PHA-wide and a specific description of the PHA's process for maximizing the level of participation by residents and a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, resident organizations, and other interested parties upon request; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the PHA's planning process;

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) *Contents of comprehensive plan.* The comprehensive plan shall identify all of the physical and management improvements needed for a PHA and all of its developments, and that represent needs eligible for funding under § 968.112. The plan also shall include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated plan that are to be used to help address these needs and strategies and the activities in the comprehensive plan that strengthen the consolidated plan. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* A PHA shall include as part of its comprehensive plan an executive summary to facilitate review and comprehension by development residents and by the public. The executive summary shall include the following:

(i) A summary of total preliminary estimated costs to address physical needs by each development and PHA-wide physical and management needs; and

(ii) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the Comprehensive Plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, duly elected resident councils, and other interested parties, upon request;

(2) *Physical needs assessment.* (i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with lead-based paint testing and abatement requirements under this part, and to comply with other program requirements under § 968.110. The

physical needs assessment is completed without regard to the availability of funds, and shall include the following:

(A) A brief summary of the physical improvements necessary to bring each such development to a level at least equal to applicable HUD standards with respect to modernization standards, energy conservation and life-cycle cost effective performance standards, lead-based paint testing and abatement standards. This summary must indicate the relative urgency of need. If the PHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the PHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development) it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and, in such cases, the physical improvements required to correct the conditions; and

(E) In addition, with respect to vacant or non-homebuyer occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 968.112(d)(3).

(ii) *Source of data.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (e)(2) and shall retain such source documents in its files;

(3) *Management needs assessment* (i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable development so decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the PHA;

(*2*) The adequacy and qualifications of personnel employed by the PHA in its management and operation, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents;

(B) Any additional deficiencies identified through PHMAP, audits and HUD monitoring reviews that are not addressed under paragraph (e)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the PHA wants to address at the PHA-wide or development level; and

(D) A PHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds;

(ii) *Sources of funds.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph (e)(3) and shall retain such source documents in its files;

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (e)(2) and (e)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy, of the development at a reasonable cost. For cost reasonableness, the PHA shall determine whether the unfunded hard costs satisfy the definition of ''reasonable cost.'' Where the PHA wishes to fund a development, for other than emergencies, where hard costs exceed that reasonable cost, the PHA shall submit written justification to the Field Office. If the Field Office agrees with the PHA's request, the Field Office shall forward its recommendation to Headquarters for final decision. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required. The PHA shall keep documentation in its files to support all cost determinations. The Field Office will review cost reasonableness as part of its review of the annual submission and the performance and evaluation report. As necessary, HUD will review the PHA's documentation in support of its cost reasonableness, taking into account broader efforts to revitalize the neighborhoods in which the development is located;

(ii) *Determination of non-viability.* Where a PHA's analysis of a development under paragraph (e) of this section establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The PHA shall specify in its comprehensive plan the actions it proposes to take with respect to the non-viable development (e.g., demolition or disposition under 24 CFR part 970);

(5) *Five-year action plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (e)(2) and (e)(3) of this section. In developing its five-year action plan, the PHA shall assume that the current year funding or formula amount will be available for each year of its five-year action plan, whichever the PHA is using for planning purposes, plus the PHA's estimate of the funds that will be available from other sources, such as state and local governments. All activities specified in a PHA's five-year action plan are contingent upon the availability of funds;

(ii) *Requirements.* Under the action plan, a PHA must indicate how it intends to use the funds available to it under the CGP to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of a PHA's developments, a PHA must indicate in its action plan how it intends to address, over a five-year period, the

deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This includes specifying the work to be undertaken by the PHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year, based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, a PHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory or other legally mandated requirements (e.g., compliance with a court-ordered desegregation plan or voluntary compliance agreement);

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements;

(B) *Management and operations.* A PHA must address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the PHA, the PHA must identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through PHMAP, audits, HUD monitoring reviews, and self-assessments. The action plan must indicate the relative urgency of need;

(*2*) A preliminary PHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current five-year action plan.* The PHA shall maintain a current five-year action plan by annually amending its five-year action plan, in conjunction with the annual submission;

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government (or, in the case of a PHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction) certifying to the following:

(i) The PHA developed the comprehensive plan/five-year action plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/five-year action plan, in accordance with the requirements of paragraphs (b) and (c) of this section;

(ii) The comprehensive plan/five-year action plan or amendments thereto are consistent with the appropriate governing body's assessment of its low income housing needs (as evidenced by its consolidated plan under 24 CFR part 91, if applicable), and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The PHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable; and

(7) *PHA resolution.* The plan shall include a resolution, in a form prescribed by HUD, adopted by the PHA Board of Commissioners, and signed by the Board Chairman of the PHA, approving the comprehensive plan or any amendments.

(f) *Amendments to the comprehensive plan.*—(1) *Extension of time for performance.* A PHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner;

(2) *Amendments to needs assessments.* The PHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its five-year action plan or annual statement that are not reflected in its current needs assessments (except in the case of emergencies). The PHA may propose an amendment to its needs assessments, in connection with the submission of its annual submission (see § 968.325) or at any other time. These amendments shall be reviewed by HUD in accordance with § 968.320.

(3) *Six-year revision of comprehensive plan.* Every sixth year following the initial year of participation, the PHA shall submit to HUD, with its annual submission, a complete update of its comprehensive plan. A PHA may elect to revise some or all parts of the comprehensive plan more frequently.

(4) *Annual revision of five-year action plan.* Annually, the PHA shall submit to HUD, with its annual submission, an update of its five-year action plan, eliminating the previous year and adding an additional year. The PHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year five-year action plan when making this annual submission.

(5) *Required submissions.* Any amendments to the comprehensive plan under this section must be submitted with the PHA resolution under § 968.315(e)(7).

(g) *Prerequisite for receiving assistance.*—(1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§ 968.103(b) and 968.112(a)(1)(ii), and for modernization needs resulting from disasters under § 968.103(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA that meets the requirements of this section. A PHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the PHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 968.103(e) and (f) in the subsequent FFY. A PHA that elects in any FFY not to participate in the CGP may participate in the CGP in subsequent FFYs;

(2) *Requests for emergency assistance.* A PHA may receive funds from its formula allocation to address emergency modernization needs where HUD has not approved a PHA's comprehensive plan. To request such assistance, a PHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of ''emergency work'' as set forth in § 968.305. (Approved by the Office of Management and Budget under control number 2577–0157)

**§ 968.320 [Removed]**

33. Section 968.320 is removed.

**§ 968.325 [Redesignated as § 968.320]**

34. Section 968.325 is redesignated as § 968.320; and newly redesignated § 968.320 is amended by:

a. Removing from paragraph (a)(1)(i) the reference to ''§ 968.320(d)'' and adding in its place a reference to ''§ 968.315(e)'';

b. Removing from paragraph (c) the references to ''§ 968.340'' and ''§ 968.345'' and adding in their place references to ''§ 968.330'' and ''§ 968.335'', respectively; and

c. Revising paragraph (b)(2) to read as follows:

**§ 968.320 HUD review and approval of comprehensive plan (including five-year action plan).**

* * * * *

(b) * * *

(2) HUD shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following:

(i) Comprehensive Plan is incomplete in significant matters;

(ii) Identified needs are plainly inconsistent with facts and data;

(A) Identified physical improvements and replacements are inadequate;

(B) Identified management improvements are inadequate;

(C) Proposed physical and management improvements fail to address identified needs;

(iii) Action plan is plainly inappropriate to meeting identified needs;

(iv) Inadequate demonstration of long-term viability at reasonable cost; and

(v) Contradiction of local government certification or PHA resolution.

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**§ 968.330 [Redesignated as § 968.325]**

35. Section 968.330 is redesignated as § 968.325; and newly redesignated § 968.325 is amended by:

a. Removing from paragraph (a) the reference to ''§ 968.315(b)(1)'' and adding in its place a reference to ''§ 968.310(b)(1)'' and by moving the phrase '', as discussed in § 968.320(d)(5)(i)'' from the end of the penultimate sentence in the paragraph to the end of the sentence before it, and revising the number ''§ 968.320'' in that phrase to read ''§ 968.315'';

b. Removing from paragraph (d) introductory text the reference to ''§ 968.320'' and adding in its place a reference to ''§ 968.315'';

c. Removing from paragraph (e)(8) the reference to ''§ 968.320(d)(7)'' and adding in its place a reference to ''§ 968.315(e)(7)'';

d. Removing from paragraph (f) references to ''§ 968.320(e)'' and ''§ 968.325'' and adding in their place references to ''§ 968.315(f)'' and ''§ 968.320'';

e. Removing from paragraph (g)(2)(ii) the reference to ''§ 968.320(d)'' and adding in its place a reference to ''§ 968.315(e)'';

f. Removing from paragraph (h) the reference to ''§ 968.305'' and adding in its place a reference to ''§ 968.330'';

g. Removing from paragraph (i)(1) references to ''§ 968.345'' and adding in their place references to ''§ 968.335'';

h. Removing from paragraph (j) the words ''to obtain'' and adding in their place the words ''in order for the PHA to draw down''; and

i. Revising the section heading and paragraph (e)(4), to read as follows:

**§ 968.325 Annual submission of activities and expenditures.**

* * * * *

(e) * * *

(4) For each development and for any management improvements not covered by a HUD-approved memorandum of agreement or management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 968.125);

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**§ 968.335 [Removed]**

36. Section 968.335 is removed.

**§ 968.340 [Redesignated as § 968.330]**

37. Section 968.340 is redesignated as § 968.330, and newly redesignated § 968.330 is amended by removing the paragraph designation and heading from paragraph (a), and by removing paragraph (b).

**§ 968.345 [Redesignated as § 968.335]**

38. Section 968.345 is redesignated as § 968.335; and newly redesignated § 968.335 is amended by:

a. Removing paragraphs (a)(1)(i) and (a)(1)(ii), paragraphs (a)(2)(i) and (a)(2)(ii), and paragraphs (a)(3)(i) through (a)(3)(iii);

b. Removing from paragraph (d) the reference to ''§ 905.684'' and adding in its place a reference to ''§ 968.330'';

c. Removing from paragraph (e)(7) the words ''(see § 968.315(d))'';

d. Removing from paragraph (g) references to ''§ 905.135'' and ''§ 905.601'' and adding in their place references to ''§ 950.135'' and ''§ 968.103(e) and (f)'', respectively;

e. Removing from paragraph (j) references to ''§ 978.345(h)'' and ''§ 968.345(g)'' and adding in their place references to ''paragraph (h) of this section'' and ''paragraph (g) of this section'', respectively; and

f. Removing the reference in paragraph (k) to ''§ 968.312(c)'' and adding in its place a reference to ''§ 968.310(c)''.

## Subpart D—Vacancy Reduction Program

**§§ 968.401, 968.403, 968.405, 968.407, 968.410, and 968.413 [Removed]**

39. Sections 968.401, 968.403, 968.405, 968.407, 968.410, and 968.413 are removed.

Dated: February 8, 1996.

Michael B. Janis,

*General Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.*

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