

**§ 968.428**

**24 CFR Ch. IX (4-1-13 Edition)**

(2) *Consultation with grantee.* Before ordering corrective action, HUD will give the grantee an opportunity to consult with HUD regarding the proposed action.

(3) *Bases for corrective action.* HUD may order a grantee to take corrective action only if HUD determines:

(i) The grantee has not submitted a performance report as required by HUD;

(ii) The grantee has not carried out activities under its vacancy reduction program in a timely manner and in accordance with HUD requirements;

(iii) The grantee does not have continuing capacity to carry out activities in its vacancy reduction plan; or

(iv) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews, reveals deficiencies that HUD reasonably believes require corrective action.

(d) *Nature of corrective action.* (1) HUD shall design corrective action to prevent a continuation or recurrence of the same or a similar deficiency or to mitigate to the greatest extent feasible any adverse effects of the deficiency.

(2) HUD may order a grantee to take the corrective action that HUD determines appropriate for carrying out the elements of the vacancy reduction plan. Corrective action may include, but is not limited to, suspension of grantee's authority to incur costs against the vacancy reduction funding and reimbursement, from sources other than HUD funds, of any amount spent improperly.

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

(1) Withhold vacancy reduction funds from the grantee;

(2) Declare a breach of the ACC by the grantee; and

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

**§ 968.428 Program closeout.**

(a) *Requirements for grantees.* Upon completion of the activities funded in accordance with this part, the grantee shall submit to HUD, and in a form

prescribed by HUD, the actual modernization cost certificate for HUD's review, audit verification, and approval. The grantee shall immediately remit any excess funds provided by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the grantee shall take such corrective actions as HUD may direct.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements.

(Approved by the Office of Management and Budget under control number 2577-0181)

**§ 968.435 Other program requirements.**

In addition to the program requirements applicable to this subpart under § 968.110, each PHA participating in the vacancy reduction program under this subpart shall:

(a) Certify that any modernization, reconstruction, or rehabilitation activities that are funded under this subpart will be undertaken in accordance with modernization standards, as set forth in HUD Handbook 7485.2, as revised;

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply.

(c) Provide for resident involvement, in a manner to be determined by the Secretary, in the process of applying for any funding available under this part.

[59 FR 30478, June 13, 1994, as amended at 64 FR 50229, Sept. 15, 1999]

**PART 969—PHA-OWNED PROJECTS—CONTINUED OPERATION AS LOW-INCOME HOUSING AFTER COMPLETION OF DEBT SERVICE**

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- 969.104 Continuing eligibility for operating subsidy.

## Asst. Secy., for Public and Indian Housing, HUD

## § 969.105

969.105 Extension of ACC upon payment of operating subsidy.

969.106 ACC extension in absence of current operating subsidy.

969.107 HUD approval of demolition or disposition before ACC expiration.

AUTHORITY: United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 45 FR 52372, Aug. 7, 1980, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

### § 969.101 Purpose.

This part provides a basis for maintaining the low-income nature of a public housing project after the completion of debt service on the project, specifying methods for extending the effective period of those provisions of the Annual Contributions Contract (ACC) which relate to project operation. Such an extension provides a contractual basis for the continued operation of the project under the Low-Income Public Housing Program, including continued eligibility for Operating Subsidy.

### § 969.102 Applicability.

This part applies to any low-income public housing project that is owned by a Public Housing Agency (PHA), including any Turnkey III housing, and is subject to an ACC under section 5 of the United States Housing Act of 1937 (Act). This part does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs, the Section 10(c) and Section 23 Leased Housing Programs, Lanham Act and Public Works projects that remain under administration contracts, or Indian Housing projects.

[56 FR 922, Jan. 9, 1991]

### § 969.103 Definitions.

(a) "ACC expiration date" means the last day of the term during which a particular public housing project is subject to all or any of the provisions of the ACC. The ACC term for a particular project expires at the latest of:

(1) The end of the "Debt Service Completion Date," which is the last day of a one-year period beginning with, and inclusive of, the last debt service Annual Contribution Date for

the project, as determined under the ACC (e.g., if the last debt service Annual Contribution Date is June 15, 1983, the one-year period continues through the end of the day on June 14, 1984, which is the Debt Service Completion Date); or

(2) The end of the date of full repayment of any indebtedness of the PHA to the Federal government in connection with the project; or

(3) The end of the last date of an extension of the term of the ACC provisions related to project operation, as effected under § 969.105 or § 969.106.

(b) "Operating subsidy" means additional annual contributions for operations under section 9 of the Act.

### § 969.104 Continuing eligibility for operating subsidy.

Until and after the Debt Service Completion Date for any project, HUD shall pay Operating Subsidy with respect to such project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation, pursuant to § 969.105 or § 969.106. The ACC amendment shall be in the form prescribed by HUD and shall specify the particular provisions of the ACC which relate to continued project operation and, therefore, remain in effect for the extended ACC term. These provisions shall include a requirement that the PHA execute and file for public record an appropriate document evidencing the PHA's covenant not to convey, encumber or make any other disposition of the project before the end of the project's ACC Expiration Date, without HUD approval.

### § 969.105 Extension of ACC upon payment of operating subsidy.

(a) *ACC amendment.* As a condition for the first HUD approval for payment of Operating Subsidy with respect to the projects under a particular ACC for a PHA fiscal year beginning after the effective date of this part, the PHA and HUD shall enter into an amendment to the ACC for all projects under the ACC. This ACC amendment shall provide that the ACC provisions related to project operation shall continue in effect with respect to each project under the ACC for a period of 10 years after

the end of the last PHA fiscal year for which Operating Subsidy is paid with respect to the project.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (Consolidated ACC), each annual Operating Subsidy payable under that ACC is a lump-sum amount, which is not divided into discrete amounts for the individual projects which are subject to the Consolidated ACC (see 24 CFR part 990). Accordingly, if a PHA, before submitting a request for Operating Subsidy pursuant to paragraph (a) of this section, determines that any project(s) under the Consolidated ACC will not require Operating Subsidy and should not be subject to the provisions of paragraph (a), of this section the PHA shall accompany its request with a resolution certifying that no Operating Subsidy shall be utilized with respect to such project(s) after the effective date of this rule and that all financial records and accounts shall be kept separately for such project(s). In such case, the removal of the project(s) from the request for Operating Subsidy shall be reflected by the exclusion of that number of unit months available for the project(s) when making the calculations, under 24 CFR part 990, for determination of the total amount of Operating Subsidy payable under the Consolidated ACC. In any event, no Operating Subsidy payable under a Consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project which is ineligible or otherwise excluded from Operating Subsidy under § 969.104. Even if no Operating Subsidy is received with respect to a project, the PHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

**§ 969.106 ACC extension in absence of current operating subsidy.**

Where Operating Subsidy under an ACC is not approved for payment during a time period which results in extension of the term of the ACC provisions related to project operation, with respect to a particular project, pursuant to § 969.105, the PHA shall, at least one year before the anticipated ACC

Expiration Date for the project, notify HUD as to whether or not the PHA desires to maintain a basis for receiving Operating Subsidy with respect to the project after the anticipated ACC Expiration Date. This notification shall be submitted to the appropriate HUD Field Office in the form of a resolution of the PHA's Board of Commissioners. If the PHA does not desire to maintain a basis for Operating Subsidy payments with respect to the project after the anticipated ACC Expiration Date, the resolution shall certify that no Operating Subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the PHA does desire to maintain a basis for such Operating Subsidy payments, the resolution shall include the PHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon HUD's receipt of the request, HUD and the PHA shall enter into an ACC amendment effecting the extension for the period requested by the PHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in 24 CFR part 970 (HUD's regulation on demolition or disposition of public housing).

**§ 969.107 HUD approval of demolition or disposition before ACC expiration.**

This part is not intended to preclude or restrict the demolition or disposition of a project pursuant to HUD approval in accordance with 24 CFR part 970. Subject to the requirements of 24 CFR part 970, HUD may authorize a PHA to demolish or dispose of public housing at any time before the ACC Expiration Date.

**PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS**

- Sec.
- 970.1 Purpose.
- 970.3 Applicability.
- 970.5 Definitions.